

COVERT TOWNSHIP

ZONING BOARD OF APPEALS

MINUTES OF THE APRIL 28, 2022 REGULAR MEETING

6:30 P.M., COVERT TOWNSHIP HALL

1. Call to Order and Roll Call

Chairperson Rice called the meeting to order at 6:30 p.m.

Members Present: Ella Harrington, Darrin Rice, John Snow, DeWayne Swans,
Lonzey Taylor
Members Absent: None
Others Present: Rebecca Harvey, Township Planning Consultant

2. Approval of Agenda

It was noted that Item 5.C. – Establish Regular ZBA Meeting Date was addressed at the November, 2021 meeting and can be removed from the agenda. Taylor moved to approve the agenda as amended. Snow supported the motion. Motion carried unanimously.

3. Approval of Minutes

The next matter to come before the Board was consideration of the proposed minutes of November 10, 2021. It was noted that Members Present should be corrected to read ‘D. Swans’ and that ‘Members Absent – Ella Harrington’ should be added. Harrington moved to approved the minutes as corrected. Taylor supported the motion. The motion carried unanimously.

4. Public Comment on Non-Agenda Items

No public comment was offered on non-agenda items.

5. New Business

A. *Election of Chair:*

Taylor moved to nominate/elect Darrin Rice as Zoning Board of Appeals Chairperson for 2022. Snow supported the motion. The motion carried unanimously.

B. *Public Hearing Item:*

Chairperson Rice announced that he is the applicant for the following public hearing item and so will be abstaining from the Zoning Board of Appeals' consideration of the request due to a recognized 'conflict of interest'. Rice left the Board table and represented the application as a member of the public.

Ella Harrington was selected to serve as Acting Chair during consideration of the public hearing item.

Variance Request – *Darrin Rice*

The next matter to come before the Board was the request by Darrin Rice for variance approval from the provisions and requirements of the Covert Township Zoning Ordinance pertaining to number of residences permitted on a single parcel. The subject property is located at 74953 CR 376 and is within the AG Agricultural District.

Acting Chairperson Harrington opened the public hearing.

Harvey explained that the subject property consists of 4 contiguous 10-acre parcels, each dimensioned at 165 ft (width) x 2640 ft (depth), under the ownership of the applicant. She noted that Article 15 establishes a minimum frontage/width requirement of 300 ft and a minimum lot size requirement of 5 acres within the AG District, effectively rendering the 4 lots lawfully nonconforming.

She referenced Section 26.09 which requires that lots that are 1) in common ownership; 2) are adjacent to each other or have continuous frontage; and 3) individually do not meet the lot width or area requirements of the Ordinance . . . *'shall be combined into a lot (or lots) complying as nearly as possible with the lot width and lot size requirements of the*

Ordinance . . . and shall not be used or divided in a manner that diminishes compliance with lot width and lot size requirements.'

Harvey noted that, pursuant to Section 26.09, the subject 4 contiguous nonconforming parcels in common ownership are considered to be 2 – 330 ft x 2640 ft undivided 'zoning lots' . . . specifically:

- Zoning Lot 1 (74953 & 74901) - 330 ft frontage/width; 2640 depth; 20 acres; 2 dwellings
- Zoning Lot 2 (74887 & 74761) - 330 ft frontage/width; 2640 depth; 20 acres; 1 dwelling

She further explained that Section 18.05 establishes that '*no more than 1 dwelling unit shall occupy any lot*' . . . which renders the existing 2 dwellings on Zoning Lot 1 as a nonconforming use situation.

Harvey, referencing the *Lot Line Adjustment Survey* submitted in the application, stated that the applicant desires to modify Zoning Lots 1 and 2 so as to create the following 2 parcels:

- Front 970 ft of Zoning Lot 1 (74953 & 74901) - 350 ft frontage/width; 970 ft depth; approximately 8 acres; 1 dwelling
- Rear 1670 ft of Zoning Lot 1 (74953 & 74901) + Zoning Lot 2 (74887 & 74761) - 310 ft frontage/width; approximately 32 acres; 2 dwellings

She summarized that the proposed lot line adjustment will:

- 1 – continue to result in 2 parcels;
- 2 – continue to result in parcels that comply with the dimensional requirements of the AG District (300 ft frontage; 5 acres; 4 to 1 depth/width ratio);
- 3 – be consistent with the zoning lot requirements of Section 26.09; and
- 4 – continue to result in a parcel that is occupied by 2 dwellings, in violation of Section 18.05.

Accordingly, the applicant is requesting variance approval from Section 18.05 so as to allow for the proposed lot line adjustment that will result in 2 dwellings on a single parcel.

Darrin Rice was present on behalf of the application. He provided the history of development of the subject 4 parcels, noting that the house located at 74593 was existing when the property was purchased, but that the homes located at 74887 and 74901 were constructed in 2008 and 2009, respectively, and were done so with all required Township permits and inspections.

He stated that he understands the 'zoning lot' requirements applicable to the property and that he desires only to adjust the property line . . . not to create any additional building sites or change the existing nonconforming situation of 2 dwellings on 1 parcel. Rice explained that the proposed property line adjustment will simply place 2 dwellings on the larger parcel intended for sale . . . and leave his residence on the smaller parcel, in support of his goal to reduce the size and scope of his property responsibilities.

Wayne Rendell requested confirmation of the elements of the proposal.

No further public comment was offered on the matter and the public comment portion of the public hearing was closed.

The Board inquired as to the status of the existing buildings on the property and reviewed various parcel boundary scenarios.

The Board then proceeded with a review of the variance criteria set forth in Section 28.07, Zoning Ordinance. Specifically, the following findings with respect to the requested variance were noted:

#1 – In determining if compliance is unnecessarily burdensome, it was noted that the property currently exists as 2 'zoning lots', 1 of which is occupied by 2 dwellings, and that a denial of the requested variance will not prevent the owner from using the property for a permitted purpose, nor from continued occupancy of the property by 3 dwellings. It was recognized, however, that there are no available options for compliance with both the dimensional standards and the number of dwellings/parcel requirement.

#2 – The requested variance will not allow a use which is not permitted by right within the AG District.

#3 – The existing dimensions of the property (660 ft x 2640 ft) are the only circumstances of the property preventing compliance with the 1 dwelling/parcel and do not constitute an ‘exceptional’ or ‘unique’ condition of the property.

#4 – In determining substantial justice, it was noted that allowing 2 dwellings on a single parcel will provide the applicant with a ‘property right not possessed by other properties in the area’. However, the proposed lot line adjustment will allow an existing nonconforming situation to continue relatively unaltered, which is a ‘property right similar to that possessed by other properties in the district/area.’

#5 – In recognition that the intent of the dwelling/parcel ratio requirement is to regulate density, generally affect building spacing and lot coverage, and provide for public health and safety (e.g., water/sewer; separation; access), the following was noted:

- the proposed lot line adjustment will not create an additional parcel nor alter the existing dwelling/parcel ratio;
- the AG District establishes a density standard of 1 dwelling/5 acres; the existing overall density of 3 dwellings on 40 acres is not inconsistent with density objectives;
- the proposed lot line adjustment will maintain 2 parcels that meet the dimensional requirements of the AG District and provide adequate area for existing buildings to meet setback, separation and lot coverage objectives; and
- the proposed lot line adjustment will maintain adequate area for utilities to remain located on the site of the dwelling being served.

#6 – The presence of 3 dwellings on property not sufficient in size/frontage was at the discretion of the property owner . . . resulting in practical difficulties created by an affirmative action of the property owner . . . and represents a self-created hardship.

Swans observed that the 2 dwellings located on the proposed 32-acre parcel (rear 1670 ft of Zoning Lot 1 + Zoning Lot 2) are located to the rear of the property and will not be impactful to adjacent properties or the area in general.

Swans then moved to grant variance approval from Section 18.05 so as to allow the proposed lot line adjustment that will result in 2 dwellings on a single parcel, based upon the findings of the Board on the variance criteria set forth in Section 28.07, Zoning Ordinance. Snow supported the motion. The motion carried unanimously.

C. OnGoing Business

Chairperson Rice stated that no 'Ongoing Business' was scheduled for consideration.

D. Adjournment

Having no other business on the agenda, the meeting was adjourned at 8:05 p.m.

**COVERT TOWNSHIP
ZONING BOARD OF APPEALS**

Rebecca Harvey
Township Planning Consultant