**COVERT TOWNSHIP**

**ZONING BOARD OF APPEALS**

**MINUTES OF THE OCTOBER 13, 2021 REGULAR MEETING**

**6:30 P.M., COVERT TOWNSHP HALL**

1. **Call to Order and Roll Call**

Acting Chair Harrington called the meeting to order at 6:30 p.m.

Members Present: Ella Harrington, Darrin Rice, John Snow, Lonzey Taylor

Members Absent: None

Others Present: Rebecca Harvey, Township Planning Consultant

1. **Approval of Agenda**

The agenda was approved as presented.

1. **Approval of Minutes**

Motion by Taylor, supported by Harrington, to **postpone approval** of the minutes of the August 8, 2018 regular Zoning Board of Appeals meeting to a future meeting where the full board will be present. The motion carried unanimously.

1. **Public Comment on Non-Agenda Items**

No public comment was offered on non-agenda items.

1. **New Business**

*Election of Chair:*

It was determined that the election of ZBA Chair should be postponed to a future meeting (likely the first meeting in 2022) when a full board will be seated. It was reasoned that this would be consistent with the ZBA Bylaws and the person selected could then serve as Chair for 2022.

Motion by Taylor, supported by Snow to select Harrington as Acting Chair for the duration of this meeting. The motion carried unanimously.

*Public Hearing Item:*

1. Variance Request – Philip Kolehmainen

The next matter to come before the Board was the request by Philip Kolehmainen for variance approval to allow the division of ‘contiguous nonconforming lots in common ownership’ required to remain combined by Section 26.09, Zoning Ordinance. The proposed division will result in two parcels that are more nonconforming in lot width and lot size than required by Article 15, Zoning Ordinance. The subject property is located at 79179 Ravine Way (Lots 3-6, Palisades Park 3rd Subdivision) and is within the LD-1 Low Density Residential District.

Harvey explained that the subject property consists of 4 contiguous platted lots, each 66 ft in width and 6800-8500 sq ft in area, under the ownership of the applicant. She noted that Article 15 establishes a minimum frontage/width requirement of 200 ft and a minimum lot size requirement of 5 acres within the LD-1 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 considered to be an undivided parcel.

Section 26.09 further requires that the lots 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 as an undivided parcel, the subject site is 30,900 sq ft (less than 1 acre) in size and is provided 264 ft of frontage. As required by Section 26.09, the 4 lots combined comply with the 200 ft frontage requirement . . and ‘as nearly as possible’ with the lot size requirement.

Harvey explained that the applicant desires to divide the property so as to combine Lots 3 & 4 into a separate lot that is undeveloped and combine Lots 5 & 6 into a separate lot that is currently occupied by a residence. The proposed division will ‘diminish compliance’ with both the lot width and lot size requirements, in violation of Section 26.09.

Philip Kolehmainen was present on behalf of the application. He stated that he does not feel Section 26.09 applies to his situation in that the 4 lots were purchased as 2 separate parcels (with 2 separate tax bills) and that he asked the Township Assessor to combine the property into a single parcel. He reasoned that since the property was not ‘combined’ pursuant to Section 26.09, it is not a violation of Section 26.09 to split the property back into 2 lots.

Koloehmainen provided a history of the property, noting that the property existed as 2 separate lots when the house was built. He further noted that the property is not located in a low-density area of development (as suggested by the current zoning), pointing out that the property is surrounded by similar-sized lots. He presented an aerial photo to demonstrate that leaving half of the current site undeveloped would be uncharacteristic of the surrounding area. He also noted that allowing the division would increase the value of the property.

Koloehmainen stated that he has addressed all of the variance criteria the Board is to consider and has adequately established a basis for granting the variance.

Barbara Rose expressed concern regarding the impacts of additional building sites on a sewer system that is already identified as inadequate for the area. She also questioned if the lots were part of a ‘subdivision association’ and whether an additional building site would be allowed by the subdivision bylaws.

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

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 is already occupied by a residence and that denial of the proposed land division would not prevent use of the property for a permitted use. It was recognized that the property as a combined lot conforms with the frontage requirement and is less nonconforming in size . . leaving no options for division in compliance with the Ordinance.

#2 – The requested variance will not allow a use which is not permitted by right within the LD-1 District.

#3 – The existing dimensions of the 4 lots are the only circumstances of the property preventing compliance and do not constitute an ‘exceptional’ or ‘unique’ condition of the property. It was noted that the applicant presented the surrounding density/lot layout as the unique circumstance of the property.

#4 – In determining substantial justice, it was noted that the subject site is surrounded by LD-1 zoning, where lot size and lot frontage requirements are the same as those currently being applied to the subject site. It was also recognized that the lot combination requirement of Section 26.09 will apply similarly to nonconforming lots in the surrounding area . . suggesting that not to apply the standards would be treating the applicant differently than other properties in the area/district. It was noted that the applicant presented the presence of nonconforming lots in the surrounding area as a demonstration that allowing additional lots of similar size would in fact be treating all properties in the area similarly.

#5 – In recognition that the intent of lot size and frontage requirements are to regulate density, affect building spacing and lot coverage, and limit the quantity and spacing of driveways, the following was noted:

* the proposed land division will result in an additional building site, inconsistent with the density objectives of the lot size and frontage standards of the LD-1 District;
* the proposed land division will result in 2 – 19,000 sq ft lots, each with 132 ft of frontage, suggesting inadequate area will be provided for development consistent with the building separation and lot coverage objectives of the LD-1 District;
* the proposed land division will create an additional development site and related driveway without the requisite 200 ft of frontage, inconsistent with access management objectives related to driveway spacing and number of driveways.

#6 – The proposed land division is at the discretion of the applicant and represents a self-created hardship.

Snow observed that the subject property is not located within an environmentally-sensitive area. He also referenced the lot sizes in the surrounding area, noting that perhaps the area is within the wrong zoning district.

Rice opined that the proposed lot division would create a reasonably-sized building site that would allow for compliance with applicable setback requirements, noting that it had existed at one time as a building site.

Taylor observed that the request was not well supported by the criteria, and to grant a variance in the absence of justification per the criteria would establish an unsupported precedence.

Harrington stated that the variance request is not supported by the standards. If it is felt that the dimensional requirements are excessive or the property is in the wrong zoning district, then the corrective action should be legislative and not through a variance.

Rice inquired as to what legislative options are available to the applicant. Harvey explained that the applicant can 1) pursue having the property (and surrounding area) rezoned from LD-1 to a district with dimensional standards consistent with the proposed land division; and/or 2) seek to have the dimensional requirements of the LD-1 District revised.

Kolehmainen requested additional opportunity to address the variance criteria. He stated that he felt compliance would be unnecessarily burdensome since others in the surrounding area are able to build on comparable-sized lots; the age of the subdivision constitutes a unique circumstance of the property; given the lot size/layout in the surrounding area, the requested variance would allow for substantial justice to all property owners in the area; if the 4 lots were not owned by a single entity they would be available as individual building sites; and, it is not a self-created situation in that the lots were combined per Section 26.09 and not by the applicant.

Taylor then moved to deny variance approval from Section 26.09 to allow the proposed land division based upon the findings of the Board on the variance criteria set forth in Section 28.07, Zoning Ordinance. Harrington supported the motion. The motion received a vote of 2 to 2, Rice and Snow dissenting, resulting in no action.

It was then suggested that the matter be postponed to the November meeting in anticipation of the appointment of the fifth member of the board. Rice then moved to postpone consideration of the request to the November 10, 2021 regular meeting when a full board may be present. Taylor supported the motion. The motion carried unanimously.

1. **OnGoing Business**

Acting Chair Harrington stated that no ‘Ongoing Business’ was scheduled for consideration.

1. **Next Meeting Date**
* Regular Meeting – November 10, 2021
1. **Adjournment**

Having no other business on the agenda, the meeting was adjourned at 8:15 p.m.

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 Rebecca Harvey

Township Planning Consultant