

June 28, 2023

The regular meeting of the Zoning Hearing Board was held on Wednesday, June 28, 2023, at 6:00p.m. in the Assembly Room of the Millcreek Township Municipal Building, 3608 West 26th Street.

PRESENT: Messrs. Tanner, Calhoun, DiPlacido, Attorney Jeremy Toman, Matthew Puz Jr., Zoning & Development Officer, and Julie Maggio, Assistant Zoning & Development Officer.

BUSINESS:

Appeal No. 23-12: DOUGLAS R. WOLF, for property located at 3133 Zuck Road, seeking a use variance to convert an existing nonconforming Professional Service to a dwelling to create a Two-Family Dwelling in the R1 Single Family Residential District. **Index 333-012**

Appeal was withdrawn 6-19-2023

Appeal No. 23-13: DICK'S SPORTING GOODS, for property located at 5800 Peach Street, seeking a height variance to install a fence in excess of 8' in height in the C2 Regional Commercial District. **Index 750-020**

Michael Takas, Boehler Engineering, 1 Allegheny Square, spoke on behalf of this variance. He stated that this project was the redevelopment of the former Bon-Ton in which Dick's Sporting Goods will relocate to. Dick's Sporting Good were modifying the way the stores run and the offering that they have. He gave the board **EXHIBIT A (AERIAL VIEW OF THE PROPERTY, SITE PLAN, VICTOR NY FIELD, KNOXVILLE TX FIELD, MINNETONKA MN FIELD PHOTOS)** and reviewed the exhibit. Dick's Sporting Goods was in the process of constructing a new prototype an outdoor sports field and track was to be constructed where athletes can try out equipment and specific sports groups can have classes and/or seminars as a part of the overall Dick's Sporting Goods experience. In the winter months, an outdoor skating rink would be installed for use in winter activities. The sports field would be contained within an enclosure to keep the activities contained within the field area and to not interfere with the surrounding parking area and other business. To accomplish this, the enclosure would be constructed of painted steel columns and covered with a painted chain-link mesh to maintain visibility and to keep the activities contained. The enclosure would be 30' in height and had been successfully implemented on other Dick's location and communities. They believed that while the code identified this enclosure as a fence, there was no provision for sports activities and their associated enclosure and safety fencing. The McDowell High School baseball field has a backstop and safety fencing that performs the same function as this sports enclosure that exceeds the 8' maximum height. In addition, there was a safety net that was used at the Millcreek Golf and Learning Center facility adjacent to the Erie International Airport that far exceeded the height of the proposed sports field enclosure. They did not feel that the application of the fence requirement was applicable towards this particular use but in order to construct, they were requesting a variance from the 8' maximum fence height requirement.

Mr. Tanner asked Mr. Puz about the fence vs enclosure definition in the ordinance. Mr. Puz replied that under the prior ordinance ornamental fence was not defined. Therefore, the existing fences, barriers, enclosures met the ordinance. In the new updated ordinance, the fence met the definition of solid fence. In that section, it also included fence, hedges, enclosures, and other similar items. Mr. Tanner understood and only questioned because of the McDowell fieldwork that had fencing that exceeded that requirement. Mr. Puz responded that the project was approved in 2019 under the old ordinance.

Anthony Cafaro Jr., Millcreek Mall, wanted to thank everyone in advance for their support of the Millcreek Mall and the future of malls in America.

There were no other comments from the public.

A motion was made by Mr. Calhoun, seconded by Mr. DiPlacido, that this appeal be granted. Motion 3-0

Appeal No. 23-14: KERRY, HELEN, AND EMILY GOULDSMITH, for property located at 2702 Angle Street, seeking a use variance for the Noncommercial Keeping of Livestock in the R1 Single Family Residential District. **Index 326-007**

Atty. Phil Margolis, spoke on behalf of this variance via video. He volunteers for and helps with the non-profit Society for Advancement of Pet Pigs d/b/a as Pig Placement Network, which helped with legal matters like this case. He stated that the Gouldsmith's were requesting a variance from the requirements from §145.41C in order to keep the potbelly pigs' pet house and outside accommodations and from §145.15D. The Zoning Officer stated the Gouldsmith's potbelly pigs, Penelope and Penny were household pets under the previous ordinance specifically under §145-35 as they came to live at the Gouldsmith residence in 2020 as testimony would show. Therefore, they were lawful non-conforming under the current ordinance even though they were household pets and not livestock or farm animals. He did not believe that Gouldsmith's required a variance because the Zoning Office was asserting that the pet house was a non-allowed non-commercial structure for livestock under 145-41C. and his client was seeking relief. Due to that section that intended to protect neighboring properties from active agricultural uses, and in his opinion, the 50' setback requirement should not apply to the Gouldsmith pet house or pet accommodations. The Gouldsmith's were told by the zoning office that they had to get a variance for the pet house after first being told that they needed to remove their pets from the property by June 2nd. He then had Emily Gouldsmith give the members Exhibit A, which he went through and explained in entirety.

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Atty. Lydia Caparosa, Millcreek Township Counsel, stated that as indicated, the Township had conversation with Ms. Goludsmith and the issue was §145.41C which was the non-commercial keeping of livestock. It was presented by Atty. Margolis that the pigs had been on the property prior to the new zoning ordinance. She would like to establish this first before the analysis of pets and being kept there.

Atty. Margolis called Helen Gouldsmith, 2702 Angle St, as a witness. He asked her how long she had lived at this property. She replied 23 years in August, and she lived there with her husband and daughter. He asked if there was fencing at the property and if so, how long it was there. She replied yes and they had added some new fencing for the pot belly pig enclosure in 2020 (summer). He then asked when Penelope and Penny came to live at 2702 Angle Street. Mrs. Gouldsmith responded the summer of 2020. He asked if there were any complaints about the potbelly pigs from the neighbors. She replied no and no one knew that they were there.

Atty. Caparosa asked Mrs. Gouldsmith how big her property was and what structures were located on the property. Mrs. Gouldsmith replied she was not sure of the dimensions of the property and the only structures were the house and garage. Atty. Caparosa informed Mrs. Gouldsmith that she had reference of a pig house. Mrs. Gouldsmith responded that it was just a little house where they slept. Atty. Caparosa asked if the pigs slept inside or outside. She responded they slept outside not in the house. Atty. Caparosa asked if Penelope and Penny arrived in 2020 and if she had checked with the zoning office. She replied yes, and the potbelly pigs arrived in 2020. Her daughter checked in 2011 about grooming dogs they said no but yes to potbelly pigs because they were domesticated animals. Atty. Caparosa asked if there were any other pets on the property. Mrs. Gouldsmith replied yes, her three dogs. Atty. Caparosa asked Mrs. Gouldsmith to identify in EXHIBIT A where the pen area was located, which she did. Atty. Caparosa asked if the pig house area was abutting the rear property line. Mrs. Gouldsmith replied yes, the pig house was behind the garage 3'-8' from the fence and separate from the other yard area. Atty. Caparosa asked if there were any complaints from the neighbors and how the waste from the pigs were handled. Mrs. Gouldsmith replied that no neighbors had complained about the pigs and her daughter cleaned up the waste just like you would from a dog. Atty. Caparosa informed Mrs. Gouldsmith that the reason they were here today was because the Township received a complaint. Mrs. Gouldsmith responded that Alisa McGraw only complained because she wanted to sell her property and did not live in the neighborhood.

Atty. Margolis called Emily Gouldsmith, 2702 Angle St, Erie PA, and asked her how long she had lived at this address. She replied 2000. He then asked when the first contact with the Zoning Officer was. She replied in 2011, when she was finished with grooming school and wanted to know about running a grooming business and having a potbelly pig. She noted she was not allowed to have a grooming business at the home but was allowed to have pet potbelly pigs since they were domestic animals (She talked to Chuck Pierce at the Township). Atty. Margolis asked what the measurements of the potbelly pigs' house were. She replied 4.5' long 3.5' wide 3' high. He then asked when Penelope and Penny started living at the house and when was the pet house built. She replied December or June of 2020. Atty. Margolis asked what the measurements of the pets were. She replied they were full grown and were 24" long and 15" tall. He then asked how much time she spent with them. Miss Gouldsmith replied roughly four hours daily and she cleaned the yard in the morning and in the evening. He asked her if she measured the back yard and, if so, what the measurements were. Miss Gouldsmith replied she did measure, and they were 64' from the house to the fence and 52' wide. He had Miss Gouldsmith distribute EXHIBIT B and had her explain the packet information. He then had Miss Gouldsmith distribute EXHIBIT C letter of support from the neighbors that they had signed. He then asked Miss Gouldsmith how she felt about her pets. Miss Gouldsmith replied that she loved and cherished them and had them since they were 8 weeks old.

Atty. Caparosa asked Miss Gouldsmith if she had contacted the Township in 2020 to see if any changes had been made from when she contacted them in 2011. Miss Gouldsmith responded no. She then asked if she had a copy of the e-mail from the Township from 2011. Miss Gouldsmith responded no. Atty. Caparosa asked if she prepared EXHIBIT C. Miss Gouldsmith replied that she did. Atty. Caparosa asked Miss Gouldsmith that she indicated that she had had the pets since they were 8 weeks old and how old they were now. Miss Gouldsmith responded she got them when they were 8 weeks old and are now 3 (Penny) and 4 (Penelope) years old. Atty. Caparosa informed Miss Gouldsmith her information was inconsistent because the EXHIBIT C stated that she had the pigs for a year. She wanted to know if she had them for a year, in 2020, or 8 weeks old. Miss Gouldsmith responded that they were on the property for one year. She then asked Miss Gouldsmith about TOWNSHIP EXHIBIT A AND TOWNSHIP EXHIBIT B.

Mr. Tanner wanted it clarified how long the pigs had been on the property because of discrepancies in the application and in the testimony. Miss Gouldsmith stated that the potbelly pigs were moved to the property June 2022 from the boarding barn.

Atty. Margolis stated that to his understanding the potbelly pigs came to live at the home (2702 Angle Street) in 2020, from the information he received and from the testimony.

Miss Gouldsmith apologized for the mix-up and that the potbelly pigs came to live at 2702 Angle Street in June 2022.

Atty. Toman asked Miss Gouldsmith that she had had the pigs since they were eight weeks old and where they were located prior to her home. Miss Gouldsmith replied that they were in Greenfield Township at a boarding barn.

Mr. Tanner asked if the pigs lived fully outside or, di, they come inside. Miss Gouldsmith replied that they lived fully outside, and, in the winter, she provided straw to keep them warm.

Mr. DiPlacido asked if the pigs made noise or squealed a lot. Miss Gouldsmith responded not all the time.

Atty. Caparosa stated that in the beginning, she believed this to be related to a non-conforming use based on the information previously provided. She did not believe that to be the case anymore because the pigs had only been residing there for 1 year which was subsequent to the adoption of the new Township Zoning Ordinance.

Atty. Caparosa questioned Julie Maggio, Assistant Zoning and Development Officer, and asked her if she sent the Gouldsmith's a letter on May 10th, 2023. Ms. Maggio stated she did send a letter because the Township received a complaint and she investigated the site, took photos, and she cited §145-11, the non-commercial keeping of livestock. She asked Ms. Maggio where this property was located and was it permitted keeping of non-commercial livestock. Ms. Maggio responded that this property was in R-1 District and was not permitted keeping of livestock. The keeping of non-commercial livestock was permitted in CR District. She then gave a copy of TOWNSHIP EXHIBIT C AND D. Atty. Caparosa asked if the fence was setback 10' from the property line which would be required for the enclosure for animals. Ms. Maggio replied, it did not appear to be. Atty. Caparosa had Ms. Maggio read the definition of livestock from the ordinance. She asked Ms. Maggio if it made the distinction as if someone was keeping it as a pet vs using it for farming purposes. Ms. Maggio replied, no it did not. She asked if pigs would be considered livestock in this definition. Ms. Maggio replied yes.

Atty. Margolis asked Ms. Maggio if she surveyed the property to find out where the boundaries were. Ms. Maggio replied, no. He then asked if 33' was a reasonable distance for the pet house to the fence. Ms. Maggio replied she did not regulate pet houses. If it was a detached accessory structure it would have to be like a garage or shed and be 2' off the property line. He asked if she had sent a letter to the Gouldsmith's stating they had to get rid of the pigs by June 2nd. Ms. Maggio said she gave them a deadline of June 2nd.

Atty. Caparosa asked Ms. Maggio to identify where the fencing area was that the Township had access to through Connects, a popular program that showed aerials of boundaries. Ms. Maggio indicated they were approximately where the yellow line was located. She then asked if there were interior fences but was not sure where the locations were. Ms. Maggio replied that was correct. She asked the notice issued in 2023 was the deadline to either remove the animals or to appeal the determination. Ms. Maggio replied that was correct.

Atty. Caparosa questioned Matthew Puz, Zoning and Development Officer, and asked him if he received any inquiries from the Gouldsmiths' about potbelly pigs as pets. Mr. Puz replied no he did not. She then asked what the new Zoning Ordinance effective date was. Mr. Puz responded May 2022. She then asked, under the current Zoning Ordinance, would the non-commercial keeping of livestock be permitted in the R-1 District and where would it be permitted. Mr. Puz responded they would only be permitted in CR District. She asked in his interpretation of the old ordinance would potbelly pig be allowed. Mr. Puz replied yes under the old ordinance it would be allowed, but under the new ordinance it would not be allowed. They would be considered livestock. Atty. Caparosa asked about the variance request for keeping the pig in the R-1 District and was there anything unique about the property that would prohibit it from being utilized in accordance with the Zoning District. Mr. Puz responded no. She asked based on the testimony; the issue was created by the homeowners. Mr. Puz responded that appeared to be correct. She asked if the use of the pigs be consistent with the Residential District. Mr. Puz responded no, not according to the ordinance. She asked if the Board would allow this the structures, according to the dimensions of the lot be able to meet the setback requirements. Mr. Puz replied without a survey he could not say for certain but from the aerial he would say no. Atty. Caparosa asked Mr. Puz to read §145-15 and §145-14.

Mr. Tanner asked about the setback for the enclosure for the pigs in the CR District. Mr. Puz responded that §145-41C6 which stated it shall be setback 10' from adjoining street right-of-way lines or property lines for outdoor pasture recreation areas.

Atty. Toman asked since there was no definition for domesticated pets, the only definition that would be applicable would-be livestock and was that correct. Mr. Puz replied that was correct and he read the definition.

Atty. Margolis asked Mr. Puz if someone had a dog or a doghouse what would be the setback requirement. Mr. Puz responded that he would consider it a detached accessory structure and would have to be 2' from the side of the property lines. He asked if it was correct that they would not have to apply for a variance to have a pet house. Mr. Puz responded that was correct.

Atty. Caparosa asked Mr. Puz in the definition of livestock, it did not make a distinction of what type of pig. Mr. Puz replied that was correct. She then asked if there was anywhere else in the Zoning Ordinance that addresses pigs as pets. Mr. Puz replied, no.

Mr. Tanner asked Miss Gouldsmith to define pig and potbelly pig. Miss Gouldsmith responded they were pet pigs not raised for consumption.

Atty. Margolis asked Miss Gouldsmith about the confusion with her testimony because her application stated that Penelope and Penny came to live at the house in 2020 and wanted her to clear it up. He asked her when the potbelly pigs came to live at the home. Miss Gouldsmith responded that they came to live at the house in June 2022. He asked if she was sure because her mother testified under oath that it was in 2020. Miss Gouldsmith replied it was June 2022.

Atty. Caparosa stated that the pigs have only been on the property since June of 2022 which was after the new ordinance was adopted which specifically identified the non-commercial pets use in the CR District. This was a residential district, 60x150' lot with two pigs on it, and it would not meet the setback requirements. This was not a non-conforming use issue as it was

previously believed to be. The Township was therefore requesting that the request for a variance be denied because the hardship requirements have not been met.

Atty. Margolis stated that the issue was the same regardless of the dates of the pets' arrival. This was the issue of pet vs livestock. He asked if they could imagine in someone had dogs that were three times the size of pigs and had to apply for a variance to have them. To him, livestock was livestock and pets were pets and presented all the documentation to show that they were pets. The hardship existed because if they were required to meet the setbacks of §145.41C or any of the other setbacks required, it was impossible because of the lot size. He respectfully requested that the Board grant his client's request so that they could keep their pets. He noted that the neighbors supported them for having the pets and the only one that complained did not live in the neighborhood. He hoped that the Board could see that potbelly pigs were not farm animals like other jurisdictions had.

Martha Baginski, 2803 Sterrettania Rd, asked if these pigs were considered pets, were they vaccinated so they did not spread disease. She stated that she was not aware they had potbelly pigs and the only reason she knew was because she received a letter in the mail. She did not have any objections to the pets but was concerned of them spreading disease. She did not want to start bringing farm animals into the neighborhood in Millcreek.

Alias McGraw, 5206 Cardinal Dr, owner of the abutting lot, stated that the fence in the backyard was her fence. She did not agree with them having the pigs and that was why there was a Zoning Ordinance and rules. She was trying to sell her property and one of the reasons for it not being sold was that interested people did not like the smell coming from the property and the noise. They did not want to build a house and have pigs in the backyard.

Beth Dzikowski, 2947 W 25 St, stated she was against this appeal.

Kendra Parker, 2939 W 25 St, stated she empathized with the owners of the pigs but did not support livestock in the neighborhood. She did not want to set a precedent for livestock in the neighborhood and was against this variance.

EXHIBIT A (PACKET OF - GOVERNOR'S OFFICE PROCLAMATION OF POTBELLIED PIG DAY, FEDERAL DEFINITION OF LIVESTOCK, PA LIVESTOCK ASSOCIATION LETTER FOR PET PIGS, ALABAMA PROCLAMATION OF MINIATURE POTBELLIED PET PIG DAY, LETT FROM IL DEPT OF AGRICULTURE, LETTER FROM QUAKERTOWN VETERINARY CLINIC, LETTER FROM DELEWARE VALLEY VETERINARY HOSPITAL, LETTER FROM RUTGERS COOPERATIVE ESTERSON OF PASSIAIC COUNTY, LETTER FROM NJ LIVESTOCK ASSOCIATION INC, LETTER FROM IL DEPT OF REVENUE SALES TAX DIVISION, LETTER FROM EMERAL CITY EMERGENCY CLINIC, LETTER FROM US DEPT. OF AGRICULTURE, RESPONSE FROM THE PA DEPARTMENT OF REVENUE).

EXHIBIT B (PACKET OF AERIAL VIEW OF THE PROPERTY, PICTURE OF HOME, PICTURES BACKYARD, PICTURES OF THE PIGS, PICTURES OF THE AREA THEY WERE IN).

EXHIBIT C (LETTER OF SUPPORT)

TOWNSHIP EXHIBIT A (AERIAL VIEW OF THE PROPERTY)

TOWNSHIP EXHIBIT B (PICTURE OF THE BACKYARD & PIG AREA)

TOWNSHIP EXHIBIT C (COPY OF §145-11 DEFINITIONS IN THE ORDINANCE)

TOWNSHIP EXHIBIT D (COPY OF §145-41 DEFINITIONS IN THE ORDINANCE)

TOWNSHIP EXHIBIT E (COPY OF §145-14 DEFINITIONS IN THE ORDINANCE)

TOWNSHIP EXHIBIT F (MILLCREEK TOWNSHIP'S MEMORANDUM IN OPPOSITION OF APPEAL)

There were no other comments from the public.

A motion was made by Mr. Di Placido, seconded by Mr. Calhoun, that this appeal be denied. Motion 3-0

There being no further business, the meeting was adjourned at 8:07 p.m.

Scott Calhoun - Secretary