

Dover Township
Planning Commission Minutes
December 9, 2020, *conducted virtually*

Using a virtual meeting format, Chairman Wayne Hoffman called the *recessed* Planning Commission meeting to order at 7:00 p.m. Members present: Anthony Pinto, Eric Harlacher, Justin Bigham, and alternate Mark Miller. Absent with prior notice: alternates Brian Kimball and Stephen Stefanowicz. Also absent: Michael Curley. Also present: Solicitor John Baranski, Zoning Officer John McLucas, Engineers Terry Myers and Cory McCoy, Recording Secretary, and two citizens.

Mr. Miller will be a voting member tonight.

II. **Zoning Case**

A. ZHB 20-4, Variance request by Charles and Sara Pifer for riding academy and boarding facility at 6810 Detters Mill Road; with dimensional Variance requested for 10-acre minimum requirement; Crossroads Village Overlay district

Charles and Sara Pifer were present (virtually). Mr. McLucas reported what the violations were. He received a complaint in September about the applicants' running of a riding academy/riding stable. Followed up on the complaint. Applicants were cordial in dealing with the violations. This property is in the Crossroads village overlay, Conservation Zone. Interpretation that the Crossroads Village Overlay is a separate zoning district. The property was mostly brought into compliance; dimensional variance requested for 10-acre requirement.

If this were just in the Conservation Zone, not the overlay, the use would be permitted by special exception. Mr. Myers said the ordinance lists riding academy as permitted use by right and by special exception in conservation. Correct. *There's an error in that section, essentially.*

The village overlay permits certain activities to take place in that overlay that wouldn't be permitted in another zone. Is that correct? Considering the overlay as a separate zone, yes? Is that spot zoning? An overlay is an exception to spot zoning, per Mr. Baranski. Law doesn't permit spot zoning – an overlay permits specificity with uses within the Township. Within the conservation zone, there are parcels with houses, etc., so the purpose of the overlay is to permit other activities without the usual restrictions of the main zone, particularly in the Agricultural and Conservation Zones. Does the overlay detract from the main district?

How about the 10-acre requirement? Must that be contiguous acreage? Just says minimum lot size, 10 acres. The lot that the use is on must be 10 acres. The lot requirement would come into play if it were a permitted use. If the applicants are granted a Variance for the use, the dimensional variance would likely go away. The Variance requested is for the use and for the 10-acre requirement. Even if the use were permitted, the applicant still can't meet the 10-acre requirement.

What's their hardship in requesting the Variances? They border the Conservation Zone, right on the edge of the Overlay. Could they request to have the line shrunk a bit? Sure. Shrinking the Overlay would put them within the Conservation Zone. They've chosen the path of requesting the Variance at this time.

Charles Pifer said that they purchased the property 10 years ago, with two personal horses. Two years later, they inherited 4 more horses, and shortly after that, opened a riding academy. At purchase time, they asked the Township “can we have horses?” The answer was yes, and no restrictions were discussed. There was no mention of a riding academy business at that time, either by the Pifers or the Township. The applicants started a private riding academy; then it morphed into the more public academy. They thought what they were doing was permitted. Then the complaint was logged, the applicants invited Mr. McLucas to the site, and took steps to comply as they could. Downsized the number of horses to be within compliance. [Sara does this riding academy full-time. But the finances can’t be part of the hardship.] Neighbors have written letters of support. The applicants do have a manure management plan on file with the state.

Questions from the PC: they can have horses, yes, 1000 pounds per acre. The problem is that this use is not permitted in the Village Overlay district. Privately, family only, is one thing, but when the public gets involved, that’s different. That’s why the Township has to make sure the citizens/public are served well and safe, etc.

Mr. Pinto asked about the AEU, animal equivalent unit; this is an algorithm that states how much live animal weight is permitted on a particular lot/acreage. Based on weight, not numbers of animals. Right now they are under the numbers permitted for their acreage. And how about pasturage? What is that? Grazing area for the animals.

Chairman Hoffman noted that when a farmer/landowner exceeds the number of AEUs permitted, a new nutrient or manure management program is required.

Mr. McLucas noted that the ordinance AEU has more to do with residential lots.

Mr. Myers outlined the standards for the Variance. Permitted and SE uses do not meet with the purpose of the zone in the first place. Section 27-1003 would be the applicable section here. Perhaps focus on the unnecessary hardship part – not financial in nature and hasn’t been created by the applicant. The parcel size does not meet the 10-acre requirement.

However, per Mr. Hoffman, the problem is that the whole use is not even permitted in the Village Overlay district. How do the applicants mean to get around that with the ZHB? Perhaps that the Village overlay is intended to provide more uses; why is this use permitted in the Conservation District but yet is not permitted with the overlay? The Overlay sort of cancels the Conservation District’s requirement out.

Mr. Hoffman noted that if pasturing is permitted, it’s difficult to have pasturing without animals to graze on that pasture. Perhaps they can focus on that. But it will likely be pointed out that they are permitted to have horses, just not a riding academy in this district.

Is the Planning Commission leaning toward that the Crossroads Village Zone isn’t consistent with the original intent? Sounds like.

Mr. Harlacher – if the Village overlay were not there, would they be permitted to have a riding academy? Yes. Permitted by use (Section 27-655) and by special exception. But they still can’t meet the minimum lot requirement. How does an overlay eliminate the underlying zoning? Attorney Baranski explained that it indeed does -- it imposes more refined restrictions on the general district.

Special exception, D, school—commercial, mentions riding in the definitions. Does that help? Section 27-615, then to the definition section. If this is a permitted use,

what do they need other than the 10 acres (as applies to the horses only, not parking, etc.)? Yes, that might help. It might mean that the applicants can use their own horses to teach people to ride but would not be permitted to board others' horses. The applicants would be totally fine with that.

The applicant has the option to withdraw the application, even though they've paid, and the hearing has been advertised. They can't, however, change the terms of the application. If approved, great. If denied, they can discuss other options. Perhaps, then, they could apply for a commercial school, because that is permitted by special exception, and that would require another zoning hearing and application fee.

Mr. Hoffman noted that success often has to do with how the case is presented. If this is a permitted use, perhaps they shouldn't move forward with the Variance request. They still need a variance for the minimum ten acres. BUT, with the commercial school option, there's no minimum acreage requirement.

Chairman Hoffman suggested that the applicants might want to withdraw the application. Mr. Baranski said ride it out and see what happens.

Applicant – at the time of making the application, they had no knowledge of the potential for applying for the commercial school option.

They could withdraw and refile an application for commercial school; ask zoning officer to amend the application now and restart the process and charge them; or continue with the application and perhaps get a favorable ruling without any limitations for commercial school.

Is the Zoning Officer comfortable classifying this as a commercial school? Unknown at this point; Mr. McLucas needs more research. Riding academy or boarding stables probably better defines this use. He needs to better look at the Ordinance. Essentially, the Planning Commission can't guarantee that the Zoning Officer will agree with the interpretation. Comes down to the Zoning Officer's interpretation with consultation with the Solicitor.

Motion by Harlacher, second by Pinto, to recommend approval of the application. All members voted aye; motion carried.

Fix the ambiguity in the ordinance that says the use is a permitted use and a special exception. Discussion was held on the other overlay zones within the Township and what they do to the underlying zones. Does something need to be fixed?

The next meeting will be held on January 6, 2021, 7 p.m. Don't forget – that's the Reorganization meeting. Plus there will be at least two plans on the Agenda for that evening. The meeting might be virtual... or maybe it won't. Stay tuned.

Motion by Harlacher, second by Pinto, to adjourn. All members voted aye; motion carried. The meeting adjourned at 8:49 p.m.

Respectfully submitted,

Julie B. Maher,
Recording Secretary