



MOUNT JOY TOWNSHIP

• Lancaster County, Pennsylvania •

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Minutes of the Regular Meeting of The Mount Joy Township Zoning Hearing Board Wednesday, February 1, 2023

1. Chairman Thomas N. Campbell called the meeting to order at 7:00 P.M. in the Mount Joy Township Municipal Building located at 8853 Elizabethtown Road, Elizabethtown, PA 17022.
2. Meeting Attendance:
 - Members Present: Thomas N. Campbell and Gregory R. Hitz, Sr.
 - Members Absent: James E. Hershey
 - Alternate Member Present: Robert F. Newton, Jr.
 - Township Representatives: Justin S. Evans, Township Manager/Zoning Officer
 - Lancaster County Court Reporter: Angela N. Kilby
 - Zoning Hearing Board Solicitor: John P. Henry, Esq. of Blakinger Thomas
3. Mr. Evans, Township Zoning Officer, stated that a Public Notice was published in the November 16, 2022 and November 23, 2022 editions of the LNP. The subject property was posted on November 23, 2022. These are the original notice dates since the case was continued at the December 7, 2022 meeting.
4. Procedural briefing by the Zoning Hearing Board Solicitor
5. Swearing-in of all potential witnesses by the Court Reporter
6. Zoning Case #220015:
 - a. Applicant: Pennmark Management Company, Inc.
 - b. Landowner: Tyson Foods, Inc.
 - c. Property Location: 455 Ridge Run Road, Mount Joy, PA 17552; Tax Parcel ID #461-34081-0-0000
 - d. Zoning District: A, Agricultural District
 - e. Variance Request:
 - 1) Chapter 135, Article IX, §135-85.C(3) to reduce a lot containing an agricultural use below the 25-acre minimum lot size

The following members of the public requested standing as parties to the hearing:

- Jay Brubaker, 382 Ridge Run Road
- Carol Hess, 270 Ridge Run Road
- Hope Wissler, 317 Ridge Run Road
- Bobbi Thompson, 8226 Elizabethtown Road, also part owner of 2619 Stauffer Road
- Donna Bucher, 680 Cloverleaf Road
- Cortney Ranck-Cameron, 2151 Sheri Lane

A motion was made by Robert F. Newton, Jr. and seconded by Gregory R. Hitz, Sr. to grant those individuals standing as parties to the hearing. All members present voted in favor of the motion.

Todd Smeigh of DC Gohn Associates represented the applicant as the project designer. Exhibit A-1, a revised zoning exhibit, was submitted to show the PPL and AT&T utility rights-of-way crossing the site. He testified to the following:

- Penmark has a sales agreement with Tyson Foods Inc., who owns the property at 455 Ridge Run Road and operates the chicken hatchery thereon.
- The Tyson property is located in the Agricultural District.
- The hatchery site was developed over 30 years ago on a lot created by an agricultural subdivision dating back 50 years or more.
- 28.1 acres were subdivided from the Tyson parent tract in 1992, leaving 26.95 acres for the subject property.
- Approximately 10 acres of the subject property is used for the hatchery, with the remaining area occupied by lawn, parking, etc.
- 11 acres behind the hatchery facility are currently farmed and are the subject of the proposed subdivision which requires a variance.
- The subject property is surrounded by undeveloped agricultural land.
- The proposed subdivision line coincides with the center of the PPL right-of-way, leaving an 11-acre tract to be joined in common with other Penmark lands to the south.
- Subdivision of the Tyson property would leave 15.88 acres, which is 9.12 acres short of the minimum lot size for agricultural uses in the district.
- The 25-acre minimum is intended to maintain land for agricultural use, however, the hatchery only needs the site immediately surrounding the facility.

Mr. Campbell questioned the use of the word “undeveloped” in describing the surrounding lands. Mr. Hitz asked Mr. Smeigh to review the requirements for a variance. He read from the narrative submitted with the hearing application, noting the following:

- The PPL right-of-way bisects the subject property and the AT&T right-of-way crosses through it as well, creating a unique situation for the use of the land.
- Tyson does not need the remainder of the site that is not used to support the hatchery.
- The hatchery can effectively operate on 15.88 acres.
- The entire property is still zoned Agricultural regardless of subdivision.
- This is the only relief necessary to accommodate the proposed subdivision. Mr. Smeigh noted compliance with all other applicable bulk and area requirements in the Agricultural District.

Mr. Hitz asked what the applicant will do with the subdivided land. Penmark wishes to join that acreage in common with their remaining lands. Mr. Smeigh confirmed compliance with Agricultural District standards at the request of Mr. Newton. Part of the deal to acquire the Tyson property involves providing the hatchery with public sewer service. Their sewage tanks are pumped daily at a tremendous expense. The Elizabethtown Regional Sewer Authority has not confirmed capacity, though the applicant owns several EDUs.

The Board struggled to recognize the hardship. Mr. Smeigh stated that the variance would enable a subdivision of land to enlarge the property to the south to 39+ acres while reducing the hatchery lot to 15.88 acres. The hardship demonstrated is an economic hardship.

Ms. Hess stated that although the subdivision will not change the use of the land, Penmark recently made attempts to buy other properties including hers to aid in developing their site. Mr. Smeigh noted that the application does not change the use of either property, and that the zoning hearing is needed due to reducing the Tyson lot below 25 acres.

Mr. Brubaker asked what would keep future applicants from requesting similar variances to reduce agricultural properties below 25 acres.

Ms. Hess questioned the justification of not considering the hatchery as agricultural.

Ms. Wissler noted that the subject property is being farmed, so what is the hardship? Mr. Smeigh stated that Tyson does not need the acreage behind the hatchery to operate. She then asked why Penmark wants agricultural land and why Tyson is not present at the hearing if they truly want to sell the land. Mr. Smeigh said that Penmark owns adjacent property and wants to enlarge it, but was not sure why Tyson is not represented at the hearing.

Ms. Bucher asked why Penmark is not purchasing the Tyson property in whole. Tyson does not want to sell the hatchery operation.

Ms. Ranck-Cameron asked about the maximum number of subdivisions allowed for the property. Under the Agricultural District standards two subdivision rights are allotted, and one was used in 1992. The second right would be used by this subdivision.

Ms. Thompson asked what can be placed in the utility rights-of-way. The utility agreements prohibit excavation, fill, and other alterations to the land. Can it be paved? Perhaps, but limited. How deep is the underground utility? Unknown. Is the property enrolled in Clean and Green? Unknown.

Mr. Brubaker asked what would happen if public sewer is not extended to the hatchery? Could the on-lot system be subdivided off from the hatchery property? It is tough to say with rock underlying the site. There is capacity for sewage at the Schwanger Road pump station to the north.

Ms. Wissler requested confirmation that the hatchery is served by an on-lot septic system. The hatchery's sewage flows to a holding tank that gets pumped.

The applicant's testimony was closed.

Mr. Brubaker testified as a neighbor who lives across Ridge Run Road from the site. He expressed concerns about runoff leaving the hatchery down their driveways. Further development of the surrounding lands could make the issue much worse. He also noted the presence of a sinkhole.

Ms. Hess gave a history of her 250-year-old farm adjacent to the Pennmark properties. The farming community faces the hardship of losing agricultural land and she does not want to see further subdivision of farms. The Township's ordinances were adopted to protect the viability of farming in the community.

Jimmy Eberly and Ms. Ranck-Cameron echoed sentiments of there being no hardship and of concern for commercial development on the site.

A motion was made by Robert F. Newton, Jr. and seconded by Gregory R. Hitz, Sr. to deny the request for a variance. Mr. Campbell read the purpose statement of the Agricultural District prior to holding a vote on the standing motion. All members present voted in favor of the motion.

7. Next hearing is scheduled for Wednesday, February 15, 2023 at 6:00 p.m.
8. A motion was made by Gregory R. Hitz, Sr. and seconded by Robert F. Newton, Jr. to adjourn the meeting at 8:31 p.m. All members present voted in favor of the motion.

Respectfully Submitted,



Justin S. Evans, AICP
Township Manager/Zoning Officer

For: Gregory R. Hitz, Sr., Secretary
Mount Joy Township Zoning Hearing Board