

OL-101-CU
HOWARD L. BEISH et al -vs- ZONING HEARING BOARD OF LAWRENCE
TOWNSHIP, CLEARFIELD COUNTY, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

HOWARD L. BEISH and
ROSE M. BEISH, husband
and wife,
APPELLANTS

: No. 01- 161 -CD

: Type of Case: Civil

: Type of Pleading:
Notice of Appeal

: VS.

ZONING HEARING BOARD OF
LAWRENCE TOWNSHIP,
CLEARFIELD COUNTY,
PENNSYLVANIA

: Filed on behalf of: Appellants

: Counsel of Record for this Party:
Laurance B. Seaman, Esquire

: Supreme Court No.: 19620

: GATES & SEAMAN
: Attorneys at law
: Two North Front Street
: P. O. Box 846
: Clearfield, Pennsylvania 16830
: (814) 765-1766

FILED

FEB 02 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

HOWARD L. BEISH and ROSE	:	
M. BEISH, husband and wife	:	
	:	
Appellants	:	No. 01- -CD
-vs-	:	
ZONING HEARING BOARD OF	:	
LAWRENCE TOWNSHIP, CLEARFIELD	:	
COUNTY, PENNSYLVANIA	:	
Appellee	:	

NOTICE OF APPEAL

HOWARD L. BEISH and ROSE M. BEISH, Appellants, by and through their attorneys, Gates & Seaman, hereby appeal the decision of the Zoning Hearing Board of Lawrence Township, Clearfield County, Pennsylvania, and in support thereof, state the following:

1. Appellants are both adult individuals *sui juris* and are the owners of Lot 21 of the Howard L. Beish Plan of Lots located on Overlook Drive, Lawrence Township, Clearfield County, Pennsylvania, identified by Clearfield County Assessment Map No. J9-700-21, hereafter referred to as "Premises".

2. Appellee is the Zoning Hearing Board of Lawrence Township, Clearfield County, Pennsylvania, with offices at George Street, Clearfield, PA 16830.

3. Appellants filed an Application for Hearing with Appellee requesting a variance on the denial of a building permit for construction of a bi-level single family dwelling on

the Premises, which permit had been initially denied and referred to Appellee on the basis of not meeting the minimum square footage requirement.

4. A hearing was conducted by Appellee on said Application on December 6, 2000 and Written Findings and Decision of Appellee, dated December 30, 2000, was issued by Appellee's solicitor, Kim C. Kesner, Esquire, and mailed to Appellants under cover of letter dated January 2, 2001, which Solicitor Kesner and Appellants' Counsel have agreed was received by Appellants on January 5, 2001, and the Decision is to be considered as having been entered on January 5, 2001. A copy of the Board's Written Findings and Decision is attached hereto and made a part hereof as Exhibit "A".

5. The Findings of Fact are not supported by the evidence and the Conclusions of Law and Decision of the Board are erroneous as a matter of law in that:

a. Appellants subdivision and laying out of lots was done in 1973 and was in conformance with the zoning and subdivision ordinances of Lawrence Township in effect at that time.

b. Appellants met the requirements of the Zoning Ordinance for the grant of a variance on minimum lot size;

c. The hardship was not self-inflicted, as Appellants were required by Lawrence Township, to join Lots 19 and 20 in the same plan (which adjoin the Premises) before a building

permit would be issued for the construction of a home thereon (minimum lot size then was 15,000 square feet -- reduced by Amendment in 1998 to 12,500 square feet), thus leaving Appellants with the undersized Premises (Lot 21);

d. Appellants created the subdivision of the undersized lots prior to the enactment on April 19, 1993 of the existing Zoning Ordinance, which Ordinance did not contain a lawful savings clause or grandfather clause covering existing undersized lots, which affect not only the Premises, but also several other building lots within Lawrence Township;

e. The conveyance by Appellants of conjoined Lots 19 and 20 after the effective date of the present Zoning Ordinance was not voluntarily done, but rather was under compulsion and/or the direction of Lawrence Township, because Lawrence Township would not issue a building permit for the construction of a house on either Lot 19 or 20, as both lots were also undersized, but did issue a permit for both Lots together, leaving Appellants owning the Premises, an undersized lot;

f. Lawrence Township should be estopped from enforcement of the Ordinance against the issuance of a building permit for the Premises on the basis of minimum lot size, due to the Township's creation of the problem;

g. The enactment of the Zoning Ordinance and the requirement of Lawrence Township that Lots 19 and 20 be joined

before a building permit would be issued for the construction of a house thereon, constituted a defacto condemnation and a taking of the Premises; and

h. The size of Appellant's Lots 19, 20 and 21 should have been grandfathered as a non-conforming use and the failure to do so by Lawrence Township constituted a defacto condemnation and taking of the same.

6. Appellants will file a Motion with the Court for the presentation of additional evidence to substantiate the above.

WHEREFORE, Appellants request that the Court reverse the action of the Lawrence Township Zoning Hearing Board and direct that Appellants be granted a variance and that the requested building permit be issued forthwith to them.

GATES & SEAMAN
By:

Date: 2/2/01


Laurence B. Seaman, Esquire
Attorney for Appellants

Law Offices of Gates & Seaman
2 North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

VERIFICATION

The undersigned verify that they are the Appellants in the within action, and that the statements made in the foregoing Notice of Appeal are true and correct to the best of their knowledge, information and belief. The undersigned understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.


Howard L. Beish


Rose M. Beish

DATE: February 2, 2001

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW
NO. 01-
-CD

HOWARD L. BEISH and ROSE M.
BEISH, husband and wife,
APPELLANTS

VS.

ZONING HEARING BOARD OF
LAWRENCE TOWNSHIP, CLEARFIELD
COUNTY, PENNSYLVANIA,
APPELLEE

NOTICE OF APPEAL

FILED
FEB 13 2001
SAC
William A. Shaw
Prothonotary
CLEARFIELD, PA.

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

HOWARD L. BEISH and ROSE :
M. BEISH, husband and wife :
:
Appellants : No. 01-1(2) -CD
-vs- :
ZONING HEARING BOARD OF :
LAWRENCE TOWNSHIP, CLEARFIELD :
COUNTY, PENNSYLVANIA :
Appellee :
:

WRIT OF CERTIORARI

TO: THE ZONING HEARING BOARD OF
LAWRENCE TOWNSHIP

The Plaintiffs in the above action have duly filed a
NOTICE OF APPEAL on the decision of the Zoning Hearing Board of
the township of Lawrence, December 30, 2000. A copy of said
Notice of Appeal is attached hereto.

Therefore, you are hereby COMMANDED, within twenty (20)
days after the receipt of this Writ, to certify to the court
your entire record in this matter from which the land use
appeal has been taken, or a true and complete copy thereof,
including any transcripts of testimony in existence and
available to the Zoning Hearing Board at the time this Writ is
received by you.

WITNESS THE HAND AND SEAL OF WILLIAM SHAW,
PROTHONOTARY, this 2nd day of February, 2001.

Prothonotary

BONNIE

MAIL
COPY & WRIT TO
ZONING HEARING BOARD BY
COURT MAIL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

THURSDAY

HOWARD L. BEISH and ROSE :
M. BEISH, husband and wife :
Appellants : No. 01-1601 -CD
-vs- :
ZONING HEARING BOARD OF :
LAWRENCE TOWNSHIP, CLEARFIELD :
COUNTY, PENNSYLVANIA :
Appellee :
way

WRIT OF CERTIORARI

TO: THE ZONING HEARING BOARD OF
LAWRENCE TOWNSHIP

The Plaintiffs in the above action have duly filed a
NOTICE OF APPEAL on the decision of the Zoning Hearing Board of
the township of Lawrence, December 30, 2000. A copy of said
Notice of Appeal is attached hereto.

Therefore, you are hereby COMMANDED, within twenty (20)
days after the receipt of this Writ, to certify to the court
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including any transcripts of testimony in existence and
available to the Zoning Hearing Board at the time this Writ is
received by you.

WITNESS THE HAND AND SEAL OF WILLIAM SHAW,
PROTHONOTARY, this 2nd day of February, 2001.



Prothonotary

1585 1585 116034

P.S. § 11002-A

GENERAL MUNICIPAL LAW
PLANNING AND DEVELOPMENT

53 P.S. § 11003-A

that prescribed period will be dismissed since the court has no power to extend the appeal period as a matter of law. *Clarendon v. Upper Gwynedd Bd. of Co. Mong. 69 (1971)*. If appealed, the petitioner must nevertheless show (1) that he had a valid and compelling reason for not filing his appeal within the time allowed and (2) that there was a prima facie case of abuse of discretion on the part of the board of adjustment. *Appeal of Todd, 56 Mont. 24 (1940)*.

3. **Validity of ordinance**
Appeal from decision of board of adjustment is not proper manner to attack validity of zoning ordinance, for appeal assures validity of ordinance. *Krohne v. Jenkins, 23 Berks 250, 1931*.

The proper manner of challenging the procedural validity of the enactment of an amendment to a zoning ordinance is under this section. *Blemer v. Lower Southampton Zoning Bd. of Adjustment, 24 Bucks 157 (1973)*.

§ 11003-A. Appeals to court; commencement; stay of proceedings

(a) Land use appeals shall be entered as of course by the probonoary or clerk upon the filing of a land use appeal notice which concisely sets forth the grounds on which the appellant relies. The appeal notice need not be verified. The land use appeal notice shall be accompanied by a true copy thereof.

(b) Upon filing of a land use appeal, the probonoary or clerk shall forthwith, as of course, send to the governing body, board or agency whose decision or action has been appealed, by registered or certified mail, the copy of the land use appeal notice, together with a copy in the matter in which the land use appeal has been taken, or a true and complete copy thereof, including any transcript of testimony in existence and available to the governing body, board or agency at the time it received the writ of certiorari.

(c) If the appellant is a person other than the landowner of the land directly involved in the decision or action appealed from, the appellant, within seven days after the land use appeal is filed, shall

4. Special exceptions

Following a zoning hearing, board of appeal of an application for a special exception under § 10908(9), the sole remedy to challenge the approval is an appeal within 30 days under § 53 P.S. § 11002-A, and not a request for an injunction made 45 days after the approval. *City of Illinois v. Lesko, 12 Pa. D. & C.4th 290 (1980)*.

5. Waiver

Party waives its right to seek review of conditions imposed by zoning hearing board if that party has failed to take timely appeal. *Township of Harrison v. Smith, 636 A.2d 288, 161 Pa. Commw. 166, Crwth. 1993*.

6. Appeal following remand

If governing body abuses its discretion in passing upon plans submitted by challenging landowner after remand for that purpose, challenging landowner has right to appeal to court of common please. *Elk v. Board of Sup'rs of Worcester Twp., 333 A.2d 339, 17 Pa. Crwth. 406, Crwth. 1975*.

to the landowner or his attorney at his last known address. For identification of such landowner, the appellant may rely upon the record of the municipality and, in the event of good faith mistakes as to such identity, may make such service more precise by leave of court.

(d) The filing of an appeal in court under this section shall not stay the action appealed from, but the appellants may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the landowners to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question of the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing it respondent to the petitioner for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond from an order of the court dismissing a land use appeal for refusal to post a bond, such responding party, upon petition of petitioner and, after hearing in the court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by petitioner.

1968, July 31, P.L. 805, No. 247, art. X-A, § 11003-A, added 1988, Dec. 24, P.L. 1322, No. 170, § 101, effective in 60 days.

Historical and Statutory Notes

Prior Laws: 1978, Sept. 28, P.L. 385, No. 150, § 2.
1972, June 1, P.L. 333, No. 93, § 19.

Notes of Decisions

	Bond—Lien'd	Bond—Lien'd
In general 2	13	Hearing 13
Amount of bond 16	17	Waiver of bond 17
Amendment 12-17		
In general 12		
Amount of bond 16		
Amendment 14		
Discretion, bond 14		
Previous appeal 15		
Dismissal 18		

FILED

FEB 05 2001
0/ 4:00 (w) William A. Shaw
Prothonotary

01-161-CD

U.S. Postal Service CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
Article Sent To:	
ZONING HEARING BOARD OF LAW. TWP.	
01-1601-CD	
Postage	\$.55
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.95
Name (Please Print Clearly) (to be completed by mailer)	
PROTHONOTARY	
Street, Apt. No., or PO Box No.	
P.O. Box 549	
City, State, ZIP+4	
CULFO, 16870	

PS Form 3800 (July 1999) See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Zoning Hearing Board of
Lawrence Township
George Street
Clearfield, PA 16830

01-161-CO
00010100

COMPLETE THIS SECTION ON DELIVERY**A. Received by (Please Print Clearly)**

George Anderson

Date of Delivery

1/16/01

C. Signature

X George Anderson

Agent

Addressee

D. Is delivery address different from item 1?

Yes

If YES, enter delivery address below:

No

PO Box 508

Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

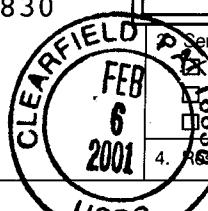
Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number (Copy from service label)

7000 0000 0023 6399 4340



UNITED STATES POSTAL SERVICE



First-Class Mail
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• Sender: Please print your name, address, and ZIP+4 in this box •

William A. Shaw
Prothonotary/Clerk of Courts
P.O. Box 549
Clearfield, PA 16830

01-161-CD

01-161-CD

FILED

FEB 07 2001

110:55

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

HOWARD L. BEISH and ROSE M. :
BEISH, husband and wife, : No. 01-161 -CD
Appellants :
vs. :
ZONING HEARING BOARD OF :
LAWRENCE TOWNSHIP, CLEARFIELD :
COUNTY, PENNSYLVANIA, :
Appellee :
.

CERTIFICATE OF RECORD

AND NOW, comes the Lawrence Township Zoning Hearing Board, by it's Solicitor, Kim C. Kesner, Esquire, who in accordance with 53 P.S. Section 11003-A(b) hereby certifies that the record of the Lawrence Township Zoning Hearing Board in the matter in which this appeal has been taken is annexed hereto, filed herewith and consists of:

1. Written Findings and Decision of The Lawrence Township Zoning Hearing Board dated December 30, 2000.
2. Transcript of hearing conducted on December 6, 2000.



Kim C. Kesner
Solicitor, Lawrence Township
Zoning Hearing Board

cc: Laurance B. Seaman, Esquire
Attorney for Howard L. & Rose M. Beish
James A. Naddeo, Esquire
Solicitor, Lawrence Township

FILED

FEB 07 2001

012581(w)

William A. Shaw
Prothonotary

3 cents to Perry Kesner



BEFORE THE LAWRENCE TOWNSHIP ZONING HEARING BOARD

IN RE: Application by Howard L. Beish and
Rose M. Beish regarding real property
carrying Clearfield County Assessment
Map No. 123-J09-700-21

WRITTEN FINDINGS AND DECISION OF
THE LAWRENCE TOWNSHIP ZONING HEARING BOARD

I. Procedural History

1. On November 13, 2000, Richard M. Lenhart for Howard L. and Rose M. Beish, submitted an application for a building permit to Lawrence Township Zoning and Code Enforcement Officer, Hope A. Martin ("Martin").

2. The application requested a building permit for construction by Richard M. Lenhart, of a bi-level single family dwelling on a lot located on Overlook Drive, Lawrence Township, Clearfield County, Pennsylvania, identified by Clearfield County Assessment Map No. J09-700-21 and being Lot 21 of the Howard L. Beish Plan of Lots dated December 15, 1973 ("Premises"), upon purchase of the Premises from the Beishs.

3. The application was rejected by Martin because the lot does not meet the minimum area requirements of the Lawrence Township Zoning Ordinance of 1993, as amended ("Zoning Ordinance").

4. Howard L. and Rose M. Beish filed an Application for Hearing ("Application") with the Lawrence Township Zoning Hearing Board ("Board") requesting a variance. (Note: The application was verified by the Beishs on November 13, 2000, the same date of the Application for Building Permit. However, George Anderson, Lawrence Township Secretary certified that the Application was received on October 31, 2000. This incongruity was not sufficiently explained at hearing, but does not affect the Board's analysis.)

5. The Board conducted a hearing on the Application on Wednesday, December 6, 2000.

II. Jurisdiction.

The Board has jurisdiction over the Application filed for the Beishs under Section 10909.1(a)(5) of the Pennsylvania Municipalities Planning Code, 53 P.S. Section 10909.1(a)(5) and Section 608(5) of the Zoning Ordinance.

III. Findings of Fact.

1. The Premises contains 8,289.64 square feet.

2. Section 307.10 of the Zoning Ordinance requires a minimum lot area of 12,500 square feet for construction of a single family dwelling.

3. The Beishs conveyed Lot 22, adjoining Lot 21 on the west, in 1978. Testimony of Howard L. Beish.

4. Lots 19 and 20, adjoining Lot 21 on the east, were sold and conveyed by the Beishs as a double lot to Beish & Miller Construction in 1994. Testimony of Howard L. Beish.

5. The Ordinance was enacted by the Board of Supervisors of Lawrence Township on April 19, 1993 with an effective date of April 19, 1993.

6. The Premises lies in a residential suburban district under the Zoning Ordinance.

7. The proposed construction as specified in the Application for Building Permit would comply with the front yard, side yard, rear yard and minimum lot coverage requirements of the Zoning Ordinance.

8. The variance requested is thirty-four (34%) percent of the minimum lot area requirement.

IV. Conclusions of Law.

1. Applicants have failed to meet the burden under Section 608(8) of the Ordinance required for a variance from the minimum lot area requirements of Section 307.10.
2. The variance requested is a substantial departure from the minimum lot area requirements. Therefore, the Beishs may not be granted relief under the doctrine *de minimis non curat lex*.
3. Relief may not be granted under Section 402 of the Ordinance because Lot 21 was not "held in separate ownership different from the ownership of adjoining lots..." on the effective date of the Zoning Ordinance, as the Beishs owned Lots 19, 20 and 21 until 1994.
4. Applicants have failed to establish that the provisions of the Zoning Ordinance impose an unnecessary hardship upon the Premises. Any hardship was self inflicted by the Beishs' transfer of Lots 19 and 20 and retention of Lot 21 in 1994 after the effective date of the Zoning Ordinance.
5. The method that the Beishs chose to transfer the lots cannot govern nor pre-empt the provisions of the Zoning Ordinance.
6. Applicants have failed to establish that the Premises cannot be reasonably used for a permitted purpose.

V. Discussion.

A variance is a strict departure from the literal enforcement of a zoning ordinance. Brenan vs. Zoning Board of Adjustment, 409 Pa. 376, 187 A.2d 180 (1963). It should only be

granted in exceptional cases, and the applicant bears a heavy burden of proving entitlement to it.

Williams vs. Salem Township, 92 Pa. Cmwlth. 634, 500 A.2d 933 (1985).

Requirements for a variance were codified by the 1988 Amendments to the Pennsylvania Municipalities Planning Code, (“MPC”) 53 P.S. Section 10910.2 as follows:

- a. The property has unique physical characteristic;
- b. The ordinance imposes an unnecessary hardship of property;
- c. The hardship is not self-inflicted;
- d. The variance will not have an adverse impact on the health, safety, and welfare of the general public;
- e. The variance sought is the minimum that will afford relief.

An unnecessary hardship means that the property is rendered almost valueless absent a variance. Vagnoi vs. Zoning Hearing Board of Exeter Township, 74 Pa. Cmwlth. 431, 459 A.2d 1361 (1983). A variance may be granted only where the property as a whole cannot be reasonably used for a permitted purpose. Burger vs. Zoning Hearing Board of Cheltenham Township, 54 Pa. Cmwlth. 405, 422 A.2d 219 (1980). Economic hardship is insufficient to warrant a variance. Increasing the profitability of a property is not a basis to grant a variance. Atlantic Refining & Marketing Company vs. Zoning Hearing Board of Upper Marion Township, 133 Pa. Cmwlth. 261, 575 A.2d 961 (1990). There is no right to utilize ones property for its highest and most economically valuable use. Chrisner vs. Zoning Board of the Borough of Mount Pleasant, 40 Pa. Cmwlth. 87, 387 A.2d 30 (1979).

It is obvious in this case that the Premises are too small under the Zoning Ordinance for construction of a single family dwelling. The circumstance of a “small lot” can support a variance only under limited and distinct circumstances not existing here. In Rudd vs. Lower

Gwynedd Township Zoning Hearing Board, 578 A.2d 59 (Pa. Cmwlth. 1990), the Commonwealth Court held that the grant of a variance for construction of a house on an undersized lot was required where denial of the variance would preclude any reasonable use of the land. The facts of that matter were as follows:

Rudd is the equitable owner of a parcel of property located in (Lower Gwynedd) Township. The parcel was subdivided in 1929. The Township's first zoning ordinance, enacted in 1947 made the lot nonconforming. That ordinance provided that a lot held in a single and separate ownership since the effective date of the ordinance which was too small under the ordinance's terms could be built upon if a variance was obtained.

Affirming the lower court's grant of a variance to Rudd, the Commonwealth Court stated:

...refusal to grant variances in a "small lot" case would effectively preclude the landowner from obtaining any reasonable use of the land. In the present case, it is obvious that the land cannot be reasonably used as a farm, being in a residential neighborhood. Furthermore, as discussed in footnote 1, the land cannot be used as an accessory use because there is no other "principal" use to which the accessory use can be subordinated...a landowner must be permitted to make reasonable use of his or her property.

578 A.2d, at page 62.

The facts here are clearly distinguishable from those in Rudd. Applicants do have one "small lot" being a remnant of a subdivision occurring prior to the Ordinance. The key distinction is that Lot 21 did not exist in separate ownership, distinct from that of abutting properties prior to the adoption and effective date of the Zoning Ordinance. Accord, Southland Corporation vs. East Caln Township Zoning Hearing Board, 405 A.2d 1078 (Pa. Cmwlth. 1979) To the contrary, the Beishs held Lots 19, 20 and 21 until 1994. There can be no doubt that subsequent conveyances by the Beishs were governed by the Zoning Ordinance. In 1994, the Beishs were able to create lots compliant with the zoning requirements. Applicants' conveyancing of Lots 19 and 20 and retention of Lot 21 created the hardship. Any hardship was thus self-inflicted.

In Carman vs. Zoning Hearing Board of Adjustment, 1638 A.2d 365 (Pa. Cmwlth. 1994), the Commonwealth Court was faced with a similar issue here. In Carman, a developer divided two lots it purchased into twenty lots then applied for a variance on one of the lots which was undersized under the Zoning Ordinance. The Commonwealth Court ruled that the Zoning Board of Adjustment of the City of Philadelphia erred in granting the developer's application for a variance and reversed, stating as follows:

With respect to the variance, Section 910.2 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, added by Section 89 of the Act of December 21, 1988, P.L. 1329, 53 P.S. Section 10910.2 requires that in order to grant a variance, unique physical circumstances which are not self-inflicted must exist and cause an unnecessary hardship or unreasonable inhibition of the use of the property. In addition, the variance must not adversely impact the health, safety, and welfare of the general public or authority more than the minimum variance necessary to afford relief. Goodman vs. Zoning Board of Adjustment of Philadelphia, 132 Pa. Cmwlth. 298, 572 A.2d 848 (1990).

Thus, parties seeking a variance have the burden of proving that unnecessary hardship will result if the variance is denied and that the proposed use will not be contrary to the public interest. Valley View Civic Association vs. Zoning Board of Adjustment, 501 Pa. 550, 452 A.2d 637 (1983).

Developer argues that its hardship is not self-inflicted because it and the Department believed that the Code permitted the subdivision as planned as a matter of right. However, it is well established that the law does not permit a developer to subdivide its land and then make a subsequent claim for a variance because a remnant of that land does not conform with the zoning ordinance. Volpe appeal, 384 Pa. 374, 121 A.2d 97 (1956); Ephros vs. Solebury Township Zoning Hearing Board, 25 Pa. Cmwlth. 140, 359 A.2d 182 (1976). The opportunity for greater profit from more lots in a subdivision is not a ground for the grant of a variance. Kelley vs. Zoning Hearing Board of Upper Moreland Township, 87 Pa. Cmwlth. 534, 487 A.2d 1043 (1985); Burger vs. Zoning Hearing Board of Cheltenham Township, 54 Pa. Cmwlth. 405, 422 A.2d 219 (1980).

In the matter sub judice, any hardship which Lot No. 1 presents arose from the subdivision plan which created the undersized lot and therefore developer is not entitled to a variance because the undersized lot could have been combined with developers adjacent property and obviate the need for a variance.

Consequently, the Board erred in granting developers application for variance and the order of the trial court is reversed.

638 A.2d, at page 369.

Carman governs this case and compels the denial of a variance. Any hardship has been created by Applicants' conveyance of Lots 19 and 20 after the effective date of the Ordinance.

When the Ordinance was enacted, the Township had the power to grant relief for pre-existing under sized lots. It could have granted absolute exemptions or limited exemptions on specified grounds. It could have enacted a special exception provision allowing an under sized lot to be used if certain standards and guidelines conditioning the special exception were met. Or it could have granted no relief. See Rogers vs. East Pikeland Zoning Hearing Board, 520 A.2d 922 (Pa. Cmwlth. 1987). It chose, Section 402 of the Zoning Ordinance, to permit the Zoning Hearing Board to grant relief to "(a)ny lot of record existing at the effective date of this Ordinance and held in separate ownership different from the ownership of adjoining lots..."

As Lot 21 was held by Applicants with adjoining lots and as a variance in area of forty-five (45%) percent is substantial, the Board lacks any power to grant a variance here.

VI. Decision.

Applicants' Application for Variance from the provisions of Section 307.10 of the Zoning Ordinance is denied.

We, the members of the Lawrence Township Zoning Hearing Board declare this to be our unanimous decision this 5th day of December, 2000.

Nancy Yeager
Nancy Yeager, Chairman

Ray Busch
Ray Busch
Randy Powell
Randy Powell

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FILED

FEB 27 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

HOWARD L. BEISH and ROSE :
M. BEISH, husband and wife :
Appellants : No. 01- 161 -CD
-vs- :
ZONING HEARING BOARD OF :
LAWRENCE TOWNSHIP, CLEARFIELD :
COUNTY, PENNSYLVANIA :
Appellee :
:

O R D E R

AND NOW, this 28th day of February, 2001, upon
consideration of the attached Motion, a Rule is hereby issued
upon Appellee, LAWRENCE TOWNSHIP ZONING HEARING BOARD, to Show
Cause why the Motion should not be granted.

Rule Returnable the 20th day of March, 2001,
for filing a written response.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU
WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE
FOLLOWING MOTION BY ENTERING A WRITTEN APPEARANCE
PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH
THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER
SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU
FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN
ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT
FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER
OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF
YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO
OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT
WHERE YOU CAN GET LEGAL HELP.

David S. Meholic, Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Extension 1303

FILED

BY THE COURT:

FEB 28 2001
6/3/01
William A. Shaw
Prothonotary
I certify to the
8
RE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

HOWARD L. BEISH and ROSE M. BEISH, husband and wife : **FILED**
-vs- Appellants : No. 01-161-CP FEB 27 2001
ZONING HEARING BOARD OF LAWRENCE TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA : William A. Shaw
Appellee : Prothonotary

MOTION TO ALLOW PRESENTATION OF ADDITIONAL EVIDENCE

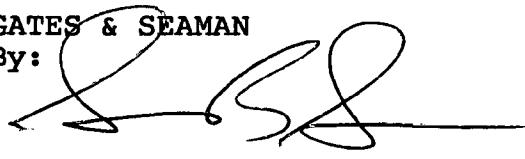
Appellants, HOWARD L. BEISH and ROSE M. BEISH, husband and wife, by their attorneys, Gates & Seaman, move this Honorable Court to allow for the presentation of additional evidence in this Appeal, and in support thereof, aver as follows:

1. The primary, if not the sole, reason Appellants' request for a variance was denied by Appellee was a determination by Appellee that the hardship was self-inflicted.
2. Appellants were unrepresented at the hearing before Appellee and the record is incomplete because Appellants did not realize the significance of fully presenting evidence on the creation of the hardship and the part played therein by Lawrence Township.
3. Appellants also desire to present additional evidence on the issue of a defacto condemnation and taking of their land when the Township required the joinder of Lots 19 and 20 for the issuance of a prior building permit, knowing full well that the same would leave Appellants with an undersized Lot

No. 21.

4. The interests of fairness and justice require the presentation of additional evidence in this case.

WHEREFORE, Appellants respectfully request this Honorable Court to allow the presentation of additional evidence.

GATES & SEAMAN
By: 

Laurance B. Seaman, Esquire
Attorney for Appellants,
Howard L. and Rose M. Beish

Date: 2/26/01

VERIFICATION

The undersigned verify that they are the Appellants in the within action, and that the statements made in the foregoing MOTION TO ALLOW PRESENTATION OF ADDITIONAL EVIDENCE are true and correct to the best of their knowledge, information and belief. The undersigned understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Howard L. Beish
Howard L. Beish

Rose M. Beish
Rose M. Beish

DATE: February 26, 2001

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 01-161-CD

HOWARD L. BEISH and
ROSE M. BEISH, husband and
wife

-vs-

ZONING HEARING BOARD OF
LAWRENCE TOWNSHIP, CLEARFIELD
COUNTY, PENNSYLVANIA

MOTION TO ALLOW PRESENTATION
OF ADDITIONAL EVIDENCE

W.L.B.
FEB 27 2001
J/133/105/C
William A. Shay
Prothonotary

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

HOWARD L. BEISH and ROSE M.
BEISH, husband and wife,
Appellants

: No. 01-161-CD

vs.

ZONING HEARING BOARD OF
LAWRENCE TOWNSHIP, CLEARFIELD
COUNTY, PENNSYLVANIA,
Appellee

FILED

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LAWRENCE TOWNSHIP ZONING HEARING
BOARD'S WRITTEN RESPONSE TO
APPELLANT'S MOTION TO ALLOW PRESENTATION
OF ADDITIONAL EVIDENCE

William A. Shaw
Prothonotary

AND NOW, comes the Lawrence Township Zoning Hearing Board, by it's Solicitor, Kim C. Kesner, Esquire, and files the following written response to Appellant's Motion as required by this Court's Order of February 28, 2001:

1. The averments contained in paragraph 1 of Appellant's Motion constitute contentions or conclusions of law to which no response is required. To the extent that a response is required, it is admitted that the Findings of Fact and Conclusions of Law supporting the Zoning Hearing Board's decision are set forth in its Written Decision of record, which included a determination that any hardship was self-inflicted.

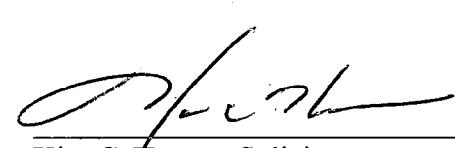
2. It is admitted that Appellants chose not to be represented at the hearing before the Zoning Hearing Board and that all available evidence relevant to their burden may not have been presented by them.

3. It is admitted that the averments contained in paragraph 3 comprise the reasons why Appellants "desire to present additional evidence". By way of further answer, it is admitted

that the proffered evidence was not presented at the hearing before the Zoning Hearing Board. It is also admitted that the standard for determination of whether to permit the presentation of additional evidence in a land use appeal under the Municipalities Planning Code, 53 P.S. §11005-A is whether the "proper consideration of the land use appeal requires the presentation of additional evidence" and this determination is a matter of discretion with this Court. The Zoning Hearing Board avers that its decision is compellingly supported by the record of the proceedings before it. Notwithstanding, the Zoning Hearing Board has no objection to this Court's receipt of additional evidence. However, the Court's attention is directed to the provisions of 53 P.S. §11005-A, a copy of which is annexed hereto, which permits the Court to remand the case to the Zoning Hearing Board or refer it to a referee to receive the additional evidence and further provides that if the Court receives additional evidence, it must make it's own findings of fact "based on the record below as supplemented by the additional evidence..."

Respectfully submitted,

Dated: 3/8/01



Kim C. Kesner, Solicitor
Lawrence Township Zoning
Hearing Board

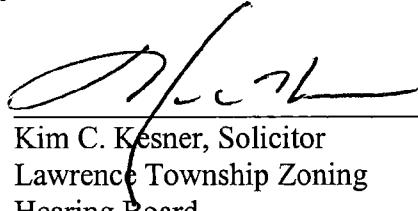
cc: Laurance B. Seaman, Esquire
Attorney for Howard L. & Rose M. Beish
James A. Naddeo, Esquire
Solicitor, Lawrence Township

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Written Response to Appellant's Motion to Allow Presentation of Additional Evidence was served by U.S. Mail, First Class, Postage Prepaid upon the following on March 8, 2001:

Laurance B. Seaman, Esquire
Gates & Seaman
2 North Front Street
P.O. Box 846
Clearfield, PA 16830

James A. Naddeo, Esquire
Solicitor – Lawrence Township
211 ½ East Locust Street
P.O. Box 552
Clearfield, PA 16830


Kim C. Kesner, Solicitor
Lawrence Township Zoning
Hearing Board

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
NO. 01-161-CD

HOWARD L. BEISH and ROSE M.
BEISH, husband and wife,
Appellants

vs.

ZONING HEARING BOARD OF LAWRENCE
TOWNSHIP, CLEARFIELD COUNTY,
PENNSYLVANIA,
Appellee

LAWRENCE TOWNSHIP ZONING HEARING
BOARD'S WRITTEN RESPONSE
TO APPELLANT'S MOTION TO ALLOW
PRESENTATION OF ADDITIONAL EVIDENCE

FILED

MAR 08 2001
03/27/01 CATHY KADNER
William A. Shaw
Prothonotary

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, PA 16830
(814) 765-1706

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION -LAW

HOWARD L. BEISH and ROSE :
M. BEISH, husband and wife :
Appellants : No. 01-161-CD
:
-vs- :
:
ZONING HEARING BOARD OF :
LAWRENCE TOWNSHIP, CLEARFIELD :
COUNTY, PENNSYLVANIA :
Appellee :
:

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
:SS.
COUNTY OF CLEARFIELD :
:

LAURANCE B. SEAMAN, ESQUIRE, of the Law Offices of Gates & Seaman, being duly sworn according to law, states that he mailed on March 1, 2001 by regular U. S. Mail, postage prepaid, a certified copy of Appellants' Motion to Allow Presentation of Additional Evidence, with attached Order which specifies a Rule Returnable date of March 20, 2001, to:

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, Pennsylvania 16830

GATES & SEAMAN

Laurance B. Seaman, Esquire
Attorney for Appellants

Sworn to and subscribed before me
this 2nd day of March, 2001.

Sharon J. Bailey

NOTARIAL SEAL
SHARON J. BAILEY, Notary Public
Bradford Twp., Clearfield County, PA
My Commission Expires June 23, 2001

FILED

MAR 06 2001

William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HAROLD BEISH and ROSE BEISH
Plaintiffs

vs.

LAWRENCE TOWNSHIP ZONING HEARING BOARD
Defendant

* NO. 2001-161-CD

*

*

*

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FILED

APR 16 2013

0/11:30 am
William A. Shaw
Prothonotary/Clerk of Courts

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ORDER

NOW, this 15th day of April, 2013, following a review of the docket, due to the case's extended period of time in pending status; it is the ORDER of this Court that a **status conference** be and is hereby scheduled for the **8th day of May, 2013 at 1:30 p.m.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

If this case has been concluded, the moving party is directed to file the appropriate Praeclipe with the Prothonotary of Clearfield County to finalize that status of the case.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

HOWARD L. BEISH and ROSE M. :
BEISH, husband and wife, Appellants :
: No. 2001 - 161 - CD
vs. :
: Type of Case: Civil
ZONING HEARING BOARD OF LAWRENCE :
TOWNSHIP, CLEARFIELD COUNTY, :
PENNSYLVANIA, Appellee :
: Type of Pleading: PRAECIPE
: Filed on behalf of Plaintiffs
:
: Counsel of Record for this Party:
: Laurance B. Seaman, Esq.
: Supreme Court No.: 19620
: GATES & SEAMAN, LLP
: Attorneys at law
: Two North Front Street
: P. O. Box 846
: Clearfield, PA 16830
: (814) 765-1766

FILED ²

APR 16 2013
01 3:30 PM '13
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

HOWARD L. BEISH and ROSE M. BEISH, :
Appellants :
: :
-vs- : No. 2001 - 161 - CD
: :
ZONING HEARING BOARD OF LAWRENCE :
TOWNSHIP, CLEARFIELD COUNTY, :
PENNSYLVANIA, Appellee :
:

PRAECIPE

TO: WILLIAM A. SHAW, PROTHONOTARY:

Please mark the above-captioned matter as "Settled, Discontinued and
Ended".

Date: April 16, 2013



Laurance B. Seaman, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

HOWARD L. BEISH and ROSE M. BEISH, :
Appellants :
: :
-vs- : No. 2001 - 161 - CD
: :
ZONING HEARING BOARD OF LAWRENCE :
TOWNSHIP, CLEARFIELD COUNTY, :
PENNSYLVANIA, Appellee :
:

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2013, a true and correct copy of this
Praecepice, filed on behalf of Plaintiffs, was sent by regular U. S. Mail, postage
prepaid, to:

Kim C. Kesner, Esquire
212 South Second Street
Clearfield, PA 16830

Gates & Seaman, LLP

By:



Laurance B. Seaman, Esquire

CA

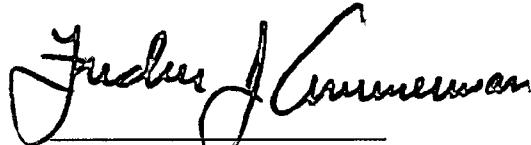
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HAROLD BEISH and ROSE BEISH * NO. 2001-161-CD
Plaintiffs *
vs. *
LAWRENCE TWP ZONING HEARING BOARD *
Defendant *

ORDER

NOW, this 25th day of April, 2013, the Court notes that a Praeclipe for Discontinuance in the above-captioned case was filed on April 16, 2013 by Laurance Seaman, Esquire. Therefore, it is the ORDER of this Court that the **status conference** in the above-captioned case scheduled for the 8th day of May, 2013 is **canceled**.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED 1CC Attn's
09:43 AM
APR 29 2013
S Seaman
William A. Shaw
Prothonotary/Clerk of Courts
Kesner