

**HATFIELD TOWNSHIP
RESOLUTION #15-24**

**PRELIMINARY/FINAL CONDITIONAL MINOR SUBDIVISION APPROVAL
FOR TODD E. WALKER FOR PROPERTY LOCATED ON
SCHOOL STREET, HATFIELD TOWNSHIP, PA**

WHEREAS, TODD E. WALKER, (the “Applicant”), is the legal owner of a majority of the subject property and possesses equitable title to other small portions of the subject property as a result of a May 24, 2014 Land Swap Agreement with Hatfield Township, which is attached hereto and made a part hereof as Exhibit “A”; and

WHEREAS, the subject property is located on School Street near its intersection with Catherine Street and is designated as Montgomery County Tax Parcel Nos. 35-00-11435-006; 35-00-01435-015; 35-00-09793-009; 35-00-01404-001; and 35-00-01438-003 (hereinafter collectively referred to as the “Property”); and

WHEREAS, the Applicant has submitted plans for the subdivision of the Property into two (2) building lots, each to be developed with a single-family dwelling; and

WHEREAS, the Applicant appeared before the Zoning Hearing Board of Hatfield Township and received relief from the Zoning Ordinance to effectuate the 2-lot subdivision albeit subject to conditions. The Zoning Hearing Board Decision, #Z14-04, is attached hereto and made a part hereof as Exhibit “B”; and

WHEREAS, the Applicant, in accordance with the Land Swap Agreement, and the Zoning Hearing Board Decision, has requested preliminary/final approval of the minor subdivision and land development application for the Property as shown on a set of plans prepared by Schlosser & Clauss Consulting Engineers, dated May 1, 2015, last revised June 22, 2015, consisting of 7 sheets (the “Plans”); and

WHEREAS, the Plans and application have been reviewed by the Township Engineer, Township Traffic Engineer, the Township Landscape Architect, Hatfield Township (the “Township”) and Montgomery County reviewing agencies, and have been found to be suitable for preliminary/final approval, subject to the conditions set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the Hatfield Township Board of Commissioners grants preliminary/final minor subdivision approval of the Plans subject to the following conditions and requirements:

1. Following final approval, but prior to issue of permits, the Applicant shall execute a Land Development and Escrow Agreement, appropriate plans, execute and deliver all necessary and appropriate deeds of dedication, and post financial

security for construction of improvements on the Property, all of which shall be in a form acceptable to the Township Solicitor.

2. Following final approval, but prior to the recording of the Plans, the Applicant shall execute a Stormwater Operations and Maintenance Agreement which shall be recorded against the Property in a form acceptable to the Township Solicitor.
3. Following final approval, but prior to the recording of the Plans, the Applicant shall tender to the Township a Traffic Impact Fee in the amount of \$4,563.76.
4. The Applicant shall further comply with all provisions and conditions set forth in the following review letters:

July 10, 2015 -	CKS Engineers, Inc. to Hatfield Township;
June 17, 2015 -	McMahon Transportation, Engineers and Planners to Hatfield Township;
July 10, 2015 -	McCloskey & Faber, PC to Hatfield Township;

(collectively referred to as "Review Letters") except as expressly waived or expressly modified herein.

5. The Township grants a waiver/partial waiver to the Applicant from the following requirements of the Stormwater Management Ordinance ("SWM") and Subdivision and Land Development Ordinance ("SALDO") as described in the Review Letters:
 - (a) SALDO Section 250-38.E – from the requirement that all existing trees with an 8 inch diameter or greater that are being removed during construction be replaced.
 - (b) SWMO Section 242-18.B.2(g) - from the requirement that a minimum diameter of all storm sewer piping shall be 18 inches and that storm sewer shall be reinforced concrete pipe. The Applicant proposes 12 inch diameter High Density Polyethylene (HDPE) Pipe.
 - (c) SALDO Section 250-31.A – which requires sidewalks to be provided along existing street frontage. The Applicant does not propose sidewalk along the School Street frontage.
6. In exchange for the waivers described above, in particular from the sidewalk requirement and from certain landscape requirements, the Applicant agrees to pay a fee in lieu thereof in the amount of \$1,200.00 for sidewalk and \$5,100.00 for landscaping so that these improvements may be made elsewhere in the Township.

7. The Applicant shall comply with the Zoning Hearing Board Decision and the Land Swap Agreement which includes an exchange of Deeds with Hatfield Township within thirty (30) days after all applicable permits and approvals have been obtained.
8. This approval and grant of the waivers set forth above are further conditioned upon the acceptance of the conditions contained herein by the Applicant and his signifying acceptance of these conditions by signing a copy of this Resolution and returning it to the Township.
9. In the event that said execution of the Resolution is not delivered to the Township office by 7:00 PM, Wednesday, July 22, 2015, it shall be deemed that the Applicant does not accept these conditions and any approvals conditioned upon the acceptance of the conditions are revoked and the Application shall be considered denied for the reasons of the deficiencies found in the above-referenced Review Letters as described in the Township SWM and SALDO, as authorized in Section 508 of the Pennsylvania Municipalities Planning Code, 53 PS Section 10508.
10. Prior to issuance of any permits, all outstanding legal, engineering, and administrative fees applicable to this subdivision must be paid by Applicant.
11. This approval is subject to the fulfillment of all of the foregoing conditions, in their entirety, and no permit shall be issued, nor shall any development take place on the Property, unless and until all such conditions are fulfilled.

DULY PRESENTED AND ADOPTED by the Hatfield Township Board of Commissioners, Montgomery County, Pennsylvania, in a public meeting held this _____ day of _____, 2015.

ATTEST:

**HATFIELD TOWNSHIP
BOARD OF COMMISSIONERS**

Aaron Bibro, Township Manager

Thomas C. Zipfel, President

ACCEPTED: Todd E. Walker

By: _____

Date: _____

LAND SWAP AGREEMENT

THIS AGREEMENT is made this 28 day of May, 2014, by and between Todd E. Walker an individual with an address of 63 East Broad Street, Hatfield, Pennsylvania 19440 ("Walker") and Hatfield Township, a Township of the First Class, 1950 School Road, Hatfield, Pennsylvania 19440 (the "Township").

Background

A. Walker is the owner of certain parcels of land known as tax parcels as set forth in Exhibit "A" located within Hatfield Township.

B. The Township is the owner of certain parcels as set forth in Exhibit "B".

C. Walker has proposed to swap the parcels on Exhibit "A" for the parcels on Exhibit "B" in order to construct two (2) single family homes. The properties currently are in single and separate ownership and the swap will facilitate a more cohesive two lot subdivision and the properties being provided by Walker will give the Township ground contiguous to an existing park they already own.

D. Therefore, based on the above the parties have agreed to each convey respectively swap the parcels set forth in Exhibit "A" and "B".

In consideration of the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Land Swap.

(a) Walker agrees to swap with the Township subject to the terms and conditions of this Agreement, the parcels as set forth in Exhibit "A" in exchange for the parcels set forth in Exhibit "B" the Township agrees to swap the parcels set forth on Exhibit "B" and convey same to Walker.

2. Closing.

(a) Closing (the "Closing") hereunder shall be on a date within (30) days after Walker has obtained all applicable permits and approvals to proceed with the proposed two lot subdivision for the lots on all those described on Exhibit "B" and the adjoining lots.

(b) If Closing has not been completed within two (2) years after the date of this Agreement, then either party shall have the right to terminate this Agreement by delivery of written notice to the other party; whereupon, this Agreement shall be null and void, and neither party shall have any further rights hereunder.



3. Condition of Title.

(a) Title to that portion owned by Walker shall be conveyed pursuant to Section 1(a) above shall be (i) free and clear of all liens, restrictions, easements, encumbrances, leases, tenancies and other title objections, excepting, however, the exceptions disclosed in the title commitment prepared by Evans Abstract, dated _____, 2014, as attached as Exhibit "C" and those objections will not interfere with the Township's proposed use of such parcels, and (ii) insurable under an ALTA Owner's Policy, by any reputable title insurance company at regular rates. It shall be the Township's option to take title insurance.

(b) Title to that portion of the Township Property being conveyed pursuant to Section 1(a) above shall be (i) free and clear of all liens, restrictions, easements, encumbrances, leases, tenancies and other title objections, excepting, however, the exceptions disclosed in the title commitment prepared by Evans Abstract, dated _____, 2014, as attached as Exhibit "D" and those objections will not interfere with the Township's proposed use of such parcels, and (ii) insurable under an ALTA Owner's Policy, by any reputable title insurance company at regular rates. Walker shall have the right to purchase title insurance at his option.

4. Provisions with Respect to Closing. At Closing, both Walker and the Township shall deliver or cause to be delivered to each other the following:

(a) A quit claim deed for the parcels set forth in Exhibit "A", duly executed and acknowledged by Walker.

(b) A quit claim deed for that portion of the Township Property being conveyed pursuant to Section 1(a) above, duly executed and acknowledged by the Township.


5. Conditions Precedent. The obligations under this Agreement are subject to Walker, all permits and approvals reasonably acceptable to proceed with the construction of the proposed two (2) lots on Exhibit "B" and the adjoining lots. The Necessary Permits shall be deemed to have not been obtained until any applicable appeal periods have expired without an appeal having been filed in opposition thereto.

6. Cost and fees. It is the intent and understanding of the parties that the Township shall incur zero cost or fees relative to this transaction. Walker shall reimburse the Township for any and all legal fees relative to this transaction and shall pay any and all costs to effectuate the same, including but not limited to, deed preparation, recording costs, transfer taxes and the like. In the event the Township chooses to obtain title insurance in a minimal amount, Walker shall pay for the same.


(c) The parties intend that the proposed land swap be exempt from the notice and bidding requirements of the First Class Township Code as an "exchange" of property in accordance with 53 P.S. §56501.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have executed this Agreement as of the date first above written.

TODD E. WALKER

By: 
Name:
Title:

HATFIELD TOWNSHIP

By: 
Name:
Title: PRESENT

**BEFORE THE ZONING HEARING BOARD
OF HATFIELD TOWNSHIP**

**TODD E. WALKER
Z14-04**

DECISION AND ORDER

FINDINGS OF FACT

1. On or about April 7, 2014 Todd E. Walker (the "Applicant") submitted an Appeal (the "Appeal") to the Hatfield Township Zoning Hearing Board (the "Board") requesting relief from the Hatfield Township Zoning Ordinance (the "Ordinance").

2. The real property which is the subject of the Appeal (the "Subject Property") is located on School Street near its intersection with Catherine Street, and designated as Montgomery County Tax Parcels 35-00-11435-006; 35-00-01435-015; 35-00-09793-009; 35-00-01404-001; and 35-00-01438-003.

3. A hearing on the Appeal (the "Hearing") occurred before the Board on December 18, 2014, at which time Applicant was represented by Marc B. Davis, Esquire.

4. In support of its Appeal the Applicant presented the testimony of Kirk W. Clauss, Professional Engineer, who was accepted as an expert witness by the Board; and Mr. Gerald Snyder.

5. The Applicant is legal owner of a majority of the Subject Property, and possesses equitable title to other small portions of the Subject Property as the result of a May 28, 2014 Land Swap Agreement (the "Land Swap Agreement") with Hatfield Township. Accordingly, the Applicant has standing to pursue the Appeal.

6. The Subject Property and its plan for development are depicted upon a plan (the "Plan attached hereto as Exhibit "A") introduced into the record of the Hearing.



7. Those portions of the Subject Property being acquired from Hatfield Township pursuant to the Land Swap Agreement are depicted as shaded by diagonal lines.

8. The Property is located within the B-Residential District and consists of approximately 37,000 square feet.

9. The Subject Property is currently un-improved.

10. The Board acknowledges and finds that Subject Property consists of a number of non-conforming lots which do not satisfy numerous dimension criteria of the Ordinance, yet exist as valid non-conforming lots as the result of the fact that their existence and configuration pre-dates enactment of the Ordinance.

11. The Plan proposes subdivision of the Subject Property into two building lots, each to be developed with a single-family dwelling, and designated upon the Plan as Lot A and Lot B, respectively.

12. Access to the individual lots depicted on the Plan shall be by way of a common driveway (the "Driveway") to be constructed within the paper street known as Catherine Street, which immediately abuts the Subject Property.

13. The Board recognizes that the numerous individual non-conforming lots comprising the Subject Property might each be legally developable, thereby yielding more than two single-family dwellings upon the Subject Property, with each being further violative of currently applicable zoning regulations than the two being proposed by the Applicant.

14. The Plan, and the building envelopes drawn upon the Plan, depict Lot A as possessing an area of 18,582 square feet, and Lot B as possessing an area of 17,218 square feet, where the Ordinance requires a 20,000 square foot lot area each, as a minimum.

15. The Plan, and the building envelopes drawn upon the Plan, depict two 25-foot front yard setbacks upon Lot A, and one 25-foot front yard setback on Lot B, where the Ordinance requires a minimum of 50 feet as a front yard setback.

16. The Plan, and the building envelopes drawn upon the Plan, depict a rear yard setback of 20 feet on Lot B, where the Ordinance requires a minimum rear yard setback of 35 feet.

17. The Plan depicts Lot B as having no frontage along a public street, as required by the Ordinance.

18. In order to realize its desire to subdivide the Subject Property into two lots, certification of a non-conforming lot, and variances from Ordinance Sections:

a) 282-48.A, which mandates a 20,000 square-foot lot area minimum;

b) 282-50.A, which mandates a minimum front yard setback of 50 feet;

c) 282-50.C, which mandates a minimum rear yard setback of 35 feet; and

d) 282-207, which mandates that every lot have frontage along a public street.

19. The Subject Property possesses certain unique physical characteristics in that (among other things) it is comprised of numerous individual and undersized non-conforming lots.

20. The proposed development of the Subject Property will be compatible with, and will not alter the essential character of, the surrounding neighborhood.

21. In order to establish its conformance with requirements for the grant of the variances requested, the Applicant explained and offered certain conditions under which the Subject Property would be developed and utilized, some of which are set forth in the Order below.

22. The Board finds that the variances requested will not impair the appropriate use or development of adjacent properties.

23. The Board finds that the requested variances are the minimum necessary to afford the Applicant reasonable use of the Subject Portion.

24. No one entered an appearance at the Hearing in opposition to the requested relief.

DISCUSSION

In order to grant a variance, the Applicant is required to show that they have met the criteria set forth in Section 910.2 of the Pennsylvania Municipalities Planning Code ("MPC"), as follows:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located;

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

(3) That such unnecessary hardship has not been created by the Applicant;

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare; and

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

The Applicant provided significant testimony and exhibits to establish that unique physical conditions exist at the Subject Property which would create an unnecessary hardship if the Applicant were forced to strictly conform with Ordinance requirements.

Further, the Board is satisfied that granting the relief necessary to effectuate the proposed uses will not adversely affect surrounding properties or be in any way detrimental to the public health, safety, and welfare.

Based upon the Findings of Fact set forth above, the Board concludes that, with the conditions set forth below and agreed-to by the Applicant, the criteria for the grant of a variance as stated in the MPC and other applicable law have been satisfied.

CONCLUSION OF LAW


Applicants have satisfied the criteria necessary to show entitlement to the variances requested, subject to the condition set forth below.

ORDER

AND NOW, this 29th day of January, 2015, the application of Todd E. Walker for variances from Ordinance Sections 282-48.A; 282-50.A; 282-50.C; and 282-207, to facilitate subdivision of the Subject Property into two single-family residential building lots, is hereby GRANTED, subject to the conditions:

- 1) -that the Applicant shall obtain approval from the Hatfield Township Fire Marshall of the Driveway width and configuration;
- 2) -that the Driveway shall be constructed and maintained to the satisfaction of the Township Engineer;
- 3) -that the maintenance and repair of the Driveway shall be as set forth in a recorded Driveway Maintenance Agreement, in a form satisfactory to the Township Solicitor, constituting a covenant running with and binding (at a minimum) both Lot A and Lot B of the Subject Property;
- 4) -that the real property designated in the Land Swap Agreement shall in fact be transferred as per the terms of that Agreement;
- 5) -that, the subdivision described in the Appeal shall obtain approval through the Township's Subdivision Approval Process; and
- 6) -that development and use of the Subject Property will be in substantial conformance with the testimony and exhibits presented at the Hearing, including (without limitation) Exhibit "A" attached hereto.

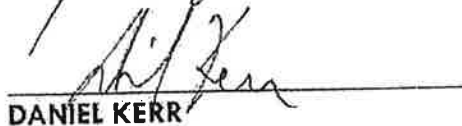
**ZONING HEARING BOARD
OF HATFIELD TOWNSHIP**



JAMES BLEAKLY



NEIL BRADY



DANIEL KERR

