

**APPLICATION OF JOHN AND DEBORAH HORSTMANN
AND CRAIG AND PAMELA ELTERS
BEFORE THE ZONING HEARING BOARD
CHARLESTOWN TOWNSHIP, CHESTER COUNTY,
PENNSLVANIA
NO. 01-15**

DECISION

The Application of John and Deborah Horstmann and Craig and Pamela Elters, was heard by the Zoning Hearing Board of Charlestown Township on February 19, 2015, at a public meeting held at the Charlestown Elementary School. The Horstmans are the legal owners of realty and improvements located 315 Buckwalter Road, Charlestown Township, Chester County, Pennsylvania, and the Elters are the legal owners of realty and improvements located at 325 Buckwalter Road, Charlestown Township, Chester County, Pennsylvania. The Horstmans and the Elters are sometimes identified herein as “Applicants”. The Elters desire to sell one acre of land which forms part of their realty located at 325 Buckwalter Road, and the Horstmans desire to buy said one acre and make it part of their realty located at 315 Buckwalter Road. A condition precedent to the sale and purchase shall be Charlestown Township’s approval of a lot line revision for the exchanged one acre. Applicants have requested the Zoning Hearing Board to grant relief from the minimum net lot area requirement of the Ordinance should the exchange occur and either lot fails to comply with the FR net lot area requirement set forth at §27-405.1. Randall Patry, P.E., appeared at the meeting on behalf of Charlestown Township and informed the Board that Charlestown Township would not present any evidence in

opposition to Applicants' request. John and Deborah Horstmann and Craig and Pamela Elters testified and submitted into evidence Exhibit A-1, a 13 page document, depicting, inter alia, site plans of the subject properties before and after the proposed exchange. After the close of testimony, the Zoning Hearing Board voted in open session, on the record, and by affirmative vote of John C. Martin and Robert C. Wert, granted Applicants' request. The Zoning Hearing Board makes Findings of Fact and Conclusions of Law in support of its Decision and Order.

FINDINGS OF FACT

1. John and Deborah Horstmann are the legal owners of realty and improvements located at 315 Buckwalter Road, Charlestown Township, Chester County, Pennsylvania, which property is designated tax map parcel 35-02-0046.01. Exhibit A-1.

2. Craig and Pamela Elters are the legal owners of realty and improvements located at 325 Buckwalter Road, Charlestown Township, Chester County, Pennsylvania, which property is designated tax map parcel 35-02-0046. Exhibit A-1.

3. Situated upon approximately 3.1 acres (135,036 square feet +/-) of 325 Buckwalter, Road, Charlestown Township, Chester County, Pennsylvania, is the Elters' single family detached dwelling. Testimony, Exhibit A-1.

4. Situated upon approximately 2.3 acres (100,000 square feet +/-) of 315 Buckwalter, Road, Charlestown Township, Chester County, Pennsylvania, is the Horstmanns' single family detached dwelling. Testimony, Exhibit A-1.

5. 315 and 325 Buckwalter Road were part of a subdivision of land that occurred during 1975 and said single family detached dwellings situated thereon were built prior to June 20, 1979. Testimony, Exhibit A-1.

6. The Ordinance of June 20, 1979, at §201, defined “lot area” as “the total horizontal area of the lot lying within the lot line”.

7. §403.A. of the Ordinance of June 20, 1979, provided in pertinent part, that a lot area of not less than one hundred thousand (100,000) square feet shall be provided for each single family detached dwelling or other structure erected or used for any permitted use, except agricultural.

8. Applicants’ lots complied with the minimum area requirement, §403.A., on June 20, 1979.

9. Ordinance No. 60 of 1991, added the following definition of “net lot area” to §201 of the Ordinance: The total horizontal area within the lot lines of a lot following exclusion of:

A. Seventy-five (75%) percent of the aggregate horizontal area of all floodway, flood fringe, and general flood plain areas as defined in Section 1102.E.3. of this Ordinance;

B. Wetland areas within the subject-matter jurisdiction of the Commonwealth of Pennsylvania Department of Environmental Resources and/or the United States Army Corp of Engineers;

C. Areas of very steep slope as defined in Section 1201.C.3. of this Ordinance;

D. Areas within an existing, public or private, easement (other than conservation easements) or right-of-way the terms or conditions of which restrict or limit the nature, dimensional characteristics, or intensity of development or development activities within the said easement or right-of-way; and

E. In the case of an interior lot, any right-of-way easement connecting such interior lot to a road or street.

10. Ordinance No. 60 of 1991, also amended §403 of the FR district, pertinent to the minimum lot area for uses other than agricultural uses which provided as follows: “A net lot area of not less than eighty thousand (80,000) square feet shall be provided for each and every single-family detached dwelling or other structure erected or used for any other permitted principal use.

11. §201 of the Ordinance of 1979, which was in place when Ordinance No. 60 of 1991 was enacted, defines nonconforming lot as follows: “A lot of record existing at the passage of this Ordinance or subsequent zoning amendments, which does not have the minimum width or other required dimensions, does not contain the minimum area for the district in which it is located or otherwise does not conform to permit as of right the construction of a principal building otherwise permitted as of right in the district in which the lot is located.

12. Applicants’ lots, located at 315 Buckwalter Road and 325 Buckwalter Road, are lawfully existing nonconforming lots notwithstanding their failure to comply with Ordinance No. 60 of 1991, as each lot contains at least 100,000 square feet between the lot lines.

13. At hearing, each owner of 315 Buckwalter Road and 325 Buckwalter Road confirmed the representation made to Charlestown Township’s Planning Commission that, should Charlestown Township approve the exchange of the acre by a lot line revision, Applicants will include in the recorded Deed to each of the aforesaid properties that the lot will not be further subdivided.

14. Should the one acre be exchanged as proposed by Applicants, 315 Buckwalter Road will contain 3.3 acres (143,560 square feet +/-) and 325 Buckwalter Road will contain 2.1 acres (91,476 square feet +/-).

15. Notice of Hearing was advertised in the Daily Local News.

16. Daniel Wright, Charlestown Township's Zoning Officer, posted a Notice of Hearing on each of the properties on or about February 9, 2015, and said notices were posted continually until the date of Hearing.

17. Adjoining property owners were provided with notices of hearing by regular U.S. mail, at least 7 days prior to the hearing.

CONCLUSIONS OF LAW

1. Applicants' properties are lawfully existing nonconforming lots. 2. No part of 315 Buckwalter Road and no part of 325 Buckwalter Road is subject to the net lot area requirement presently set forth at §27-405.1 of the Ordinance.

3. A function of the Zoning Hearing Board is to interpret provisions of the Charlestown Township Zoning Ordinance which may be misapplied. §27-1904.

4. In interpreting the language of Zoning Ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction. 53 PS §10603.1.

5. Following the proposed transfer, the acreage of the two lots will total 5.4 acres, and the only change from the existing area requirements for

the nonconforming lots will be a failure of lot 325 Buckwalter Road to comply with the one hundred thousand (100,000) square feet lot requirement set forth in the §403.A. of the Ordinance of 1979.

6. Because lot 325 Buckwalter Road will exceed the eighty thousand (80,000) square feet requirement set forth in §27-405.1, by 11,146 square feet, we conclude that its nonconforming status may be retained even though it no longer contains one hundred thousand (100,000) square feet, it will not be subject to the minimum lot area requirement.

7. As lot 315 Buckwalter Road will contain more than one hundred thousand (100,000) square feet, it will not be subject to the minimum lot area requirement.

8. Notice of hearing was properly made in accordance with statute and provisions of the Charlestown Township Zoning Ordinance.

ORDER

It is hereby Ordered this 6th day of March, 2015, that should John and Deborah Horstmann, legal owners of 315 Buckwalter Road, and Craig and Pamela Elters, legal owners of 325 Buckwalter Road, make application for a lot line revision (minor subdivision approval), following a transfer of one acre from 325 Buckwalter Road to 315 Buckwalter Road, and Charlestown Township approves said application, the areas of said realty following approval shall not be subject to the net lot area requirement of eighty thousand (80,000) square feet. Said approval is conditioned upon said landowners' compliance with the following conditions of this Order:

1. No later than May 1, 2015, said landowners shall make an application for a lot line revision in compliance with Exhibit A-1;
2. No later than fifteen (15) days following Charlestown Township's final Order of any approval, the legal owners of said properties shall provide William R. Hagner, Esquire, with a Deed, recordable in form, and a completed Realty Transfer Tax Statement of Value for each of the approved lots;
3. The Deed for each of the properties shall contain a restriction that the described realty shall not be subdivided;
4. The said Deeds shall be prepared at Applicants' expense and the costs of recordation shall be borne by Applicants; and

5. Applicants shall comply with any further conditions which Charlestown Township may impose at the time of approval.

This Order shall be retroactively effective to February 19, 2015; however, appeal rights shall commence on the mail date of this Order.

BY THE ZONING HEARING BOARD
OF CHARLESTOWN TOWNSHIP