
**BEFORE THE ZONING HEARING BOARD OF CARROLL TOWNSHIP
YORK COUNTY, PENNSYLVANIA**

IN RE:

Docket No.: 2024-002

DAVID M. WEAVER
Applicant.

Hearing Date: March 25, 2024

FINAL DECISION

AND NOW, this 25th day of March, 2024, after consideration and hearing upon the appeal filed by David Weaver, pursuant to § 450-605.B, of the Zoning Officer's determination set forth in the January 31, 2024 enforcement notice, the Zoning Hearing Board of Carroll Township hereby affirms the determination of the Zoning Officer and denies this appeal as set forth more fully herein:

FINDINGS OF FACT

1. David Weaver ("Applicant") and Amy Weaver own and control the real property situate at 92 Logan Road, Dillsburg, PA 17019 (UPI #: 20-000-OC-0150.G0-00000) ("Property" or "92 Logan Road").
2. The Property is adjoined on its east side by 94 Logan Road, Dillsburg, PA 17019 (UPI #: 20-000-OC-0150.H0-00000) ("94 Logan Road"), which is currently owned by Ian and Angelique Poragratti.
3. There is a U-shaped driveway (with two access points off of Logan Road) that is situated on both 92 and 94 Logan Road ("Driveway").
4. While the majority of the Driveway is situated on 92 Logan Road, a portion of the Driveway is located on the northwest portion of 94 Logan Road.
5. On or about November 13, 2023, Applicant sold 94 Logan Road to the Poragrattis.
6. Prior to this purchase/sale of 94 Logan Road to the Poragrattis, both 92 and 94 Logan Road were under Applicant's common ownership.
7. On January 31, 2024, the Zoning Officer of Carroll Township ("Zoning Officer") issued an enforcement notice ("Enforcement Notice") to Applicant because

the Property was in violation of § 450-407.J of the Zoning Ordinance of Carroll Township (“Ordinance”).

8. Specifically, the Enforcement Notice stated *inter alia*: “Driveways must be a minimum of 3’ from a property line. The driveway in question crosses a property line and is partially on an adjacent lot.”

9. By application dated February 28, 2024, Applicant submitted an application (“Application”) to the Zoning Hearing Board of Carroll Township (“Board”) appealing the Zoning Officer’s determination as set forth in the Enforcement Notice.

10. A hearing upon Application 2024-002 (“Hearing”) was held before the Board on March 25, 2024, at approximately 6:05 P.M.

11. The Board conducted the Hearing at the Carroll Township Municipal Building located at 555 Chestnut Grove Road, Dillsburg, PA 17019.

12. Present at the hearing was Chairman Reihart, Board Member Setlak, and Board Member Gensler, together constituting a quorum of members that were able to attend the Hearing, participate in the proceeding, and vote on the Application.

13. Also in attendance were Alternate Members Mark Heishman and Linda Fiscus, who participated in the Hearing but did not take any part in the vote.

14. At the beginning of the Hearing, the following individuals expressed the intention to become a party to this Hearing and/or were sworn in for the purpose of providing testimony:

- (a) David Weaver, 92 Logan Road, Dillsburg, PA 17019;
- (b) Brandon Slatt (Zoning Officer), 555 Chestnut Grove Road, Dillsburg, PA 17019.

15. The Applicant was represented at the Hearing in a legal capacity by David R. Galloway, Esq. of Walters & Galloway, PLLC.

16. Once the parties were sworn in, Zoning Officer Slatt provided the following general testimony regarding this Application:

- (a) the Property was posted and notice was provided to the appropriate parties in accordance with the law;
- (b) the Hearing was advertised in accordance with the Ordinance; and
- (c) the application fee was paid by the Applicant.

17. Following this general testimony, Zoning Officer Slatt provided testimony in support of the Enforcement Notice as follows:

- (a) On January 31, 2024, the Zoning Officer received a complaint from Mrs. Poragratti regarding the Driveway;
- (b) That same day, the Zoning Officer investigated the complaint and issued the Enforcement Notice to the Applicant;
- (c) The Ordinance enacted and in effect when the residence on 92 Logan Road was first constructed required a driveway to be located no less than three feet from a property boundary line;
- (d) The residence currently situated on 92 Logan Road was constructed around 2001;
- (e) At this time, a permit for one driveway entrance was issued by the Township for the Property, which contemplates a driveway that is centered on 92 Logan Road;
- (f) The Township possesses no record that a second driveway entrance permit was ever requested or issued for the Driveway;
- (g) The second driveway was installed sometime between 2003 and 2014;
- (h) Within the Township, two driveways are permitted on a lot, provided permits are obtained and certain dimensional requirements are met (e.g., setbacks);
- (i) Without having a survey conducted to determine exactly where the property boundary lines were, the Zoning Officer had no reason to believe that the Driveway violated the Ordinance;
- (j) The Zoning Officer only discovered the existence of a violation upon the receipt of a complaint from Mrs. Poragratti regarding the Driveway and the subsequent investigation that followed; and
- (k) This issue with the Driveway never came up previously because both 92 and 94 Logan Road were under common ownership.

18. Following Zoning Officer Slatt's testimony, Applicant provided testimony in opposition to the Enforcement Notice as follows:

- (a) Applicant purchased 92 and 94 Logan Road in 2010;
- (b) At the time of this purchase, the U-shaped Driveway was already located on the Property;
- (c) Applicant is unaware when the U-shaped Driveway was installed on the Property;
- (d) Since purchasing, Applicant has not made any changes to the shape or placement of the Driveway;
- (e) In the last couple years, Applicant decided to sell 94 Logan Road;
- (f) At this time, Applicant determined to have a survey done;
- (g) When this survey was performed, the surveyor notified Applicant that the Driveway located primarily on 92 Logan Road spilled over onto 94 Logan Road;

- (h) Due to this discovery, Applicant had an access easement and maintenance agreement prepared and recorded in April of 2022;
- (i) Applicant sold 94 Logan Road to the Poragrattis in November of 2023;
- (j) Prior to settlement, Applicant and the Poragrattis agreed to share the Driveway; and
- (k) After closing, Applicant and the Poragrattis became aware that a shared driveway was not permitted.

19. Public comment was provided by Betty Hufford, real estate agent for the Poragrattis, that the Poragrattis were and are amenable with a shared driveway situation but were unaware that this was not permitted by the Ordinance.

20. Legal arguments were provided by Applicant's counsel regarding this Application.

21. After legal arguments, Chairman Reihart closed testimony, and pursuant to 65 Pa.C.S.A. § 708, the Board recessed the Hearing to hold an executive session for purposes of quasi-judicial deliberations.

22. Following this executive session, the Board reconvened the Hearing and rendered its decision on the Application.

23. The Board accepted the following exhibits into the record:
- (a) Township Exhibit A – pool permit issued to prior owner of Property in 2003;
 - (b) Township Exhibit B – Enforcement Notice;
 - (c) Applicant Exhibit A – Access Easement and Maintenance Agreement (Weaver/Weaver);
 - (d) Applicant Exhibit B – Engineer Aerial Rendering of 92 and 94 Logan Road;
 - (e) Applicant Exhibit C – February 16th Correspondence from Zoning Officer Slatt;
 - (f) Applicant Exhibit D – Deed (Britton → Weaver); and
 - (g) Applicant Exhibit E – Photos of Property included with Appeal.

CONCLUSIONS OF LAW

24. Pursuant to § 450-407.J of the Ordinance, a driveway within the Township may not be within three feet of a property line.

25. The Driveway, which is located on both 92 and 94 Logan Road, is within three feet of the property boundary line dividing these two parcels.

26. Accordingly, both 92 Logan Road and 94 Logan Road are in violation of § 450-407.J of the Ordinance.

27. The Board finds the testimony provided by both the Applicant and the Zoning Officer to be credible.

28. The Board finds that the Zoning Offer provided testimony and evidence sufficient to establish the existence of a violation of § 450-407.J of the Ordinance.

29. The Board finds the facts of this Application to be meaningfully distinguishable from the facts in *Appeal of Heidorn*, 412 Pa. 570, 195 A.2d 349 (1963) (cited by Applicant), where the affirmative defense of laches was found to be relevant.

30. In *Appeal of Heidorn*, the Court made much of the fact that the violation was obvious and that the Township's indifference was inexcusable: "It cannot be said that these objects were concealed from public view. The overhang stuck out like the proverbial sore thumb, and the stoop stuck out like the stoop it was for the world to see or stumble over."

31. The facts in this Application are entirely different – namely, the violation was hidden from view until a complaint was filed, an investigation occurred, and the boundary lines for 92 and 94 Logan Road were ascertained, after years of common ownership.

32. Furthermore, *Appeal of Heidorn* involved a situation involving the extension of a non-conforming use.

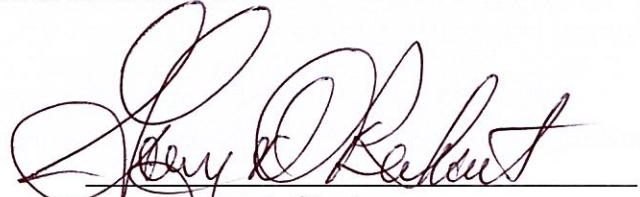
33. The testimony and evidence at the Hearing do not suggest the existence of a non-conforming driveway use, but rather, indicate that the three-foot setback requirement antedates the construction of the Driveway.

34. Accordingly, the Board finds the equitable defense of laches to be inapplicable in this case.

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A motion was made by Board Member Setlak, and seconded by Board Member Gensler, to deny Applicant's appeal from the determination of the Zoning Officer set forth in the Enforcement Notice. The motion to deny was passed by the Board with a unanimous vote of 3-0.

BOARD SIGNATURES:



Gary Reinhart, Chairman



Richard Gensler, Vice-Chairman



Frank Setlak, Secretary

Dated: March 25, 2024

Date of Mailing: 5-2-2024

Note: Any party aggrieved by this decision may appeal to the Court of Common Pleas of York County within thirty (30) days of the date of this written decision.