

**YORK  
TOWNSHIP**

190 Oak Road, Dallastown, Pennsylvania 17313  
Phone (717)741-3861 Fax (717)741-5009

York Township Zoning Hearing Board  
Tuesday, December 23, 2008  
6:00 p.m.

The December meeting of the York Township Zoning Hearing Board was called to order by Teri Hollway, Chair.

Those in attendance were:

Teri Hollway, Chair  
William Yanavitch, Vice-Chair  
Albert Granholm, Secretary  
John Wimbley, Member  
Carl Dallmeyer, Member  
Shirley Sterner, Alternate Member  
Glen Myers, Alternate Member  
Lisa Frye, Zoning Officer  
Jeffrey Rehmeyer, II, Esq., Solicitor

**MINUTES AND DECISIONS OF NOVEMBER 25, 2008**

The Zoning Hearing Board minutes and decisions made at the November 25, 2008, meeting were Approved.

CORRESPONDENCE - 6 month extension request from Timothy E. Debes, P.E., of Nutec Design Associates, Inc., for Appl. 2008-31, Shipley Stores

A motion was made to grant the extension.

MOTION MADE BY: William Yanavitch  
SECONDED BY: John Wimbley

York Stenographic Services, Inc.  
34 North George St., York, PA 17401 - (717) 854-0077

York Township Zoning Hearing Board  
Tuesday, December 23, 2008  
Page 2

MOTION PASSED UNANIMOUSLY

HEARINGS

Appl. 2008-36: Grove Estates, L.P., Timothy F. Pasch, President, requests a Special Exception to establish multifamily dwellings, 3 stories and under, on property located at 2324 South Queen Street and 253 Cherry Street in an Office Professional (O-P) zone.

Present: Robert Katherman, Esq.  
Jerry Stahlman  
Douglas Plank  
Timothy Pasch

Information on the application was presented and after discussion, the application was denied, pending a written decision.

MOTION MADE BY: William Yanavitch  
SECONDED BY: Albert Granholm  
MOTION PASSED 3-2

Appl. 2008-38: KD Medical Building Partnership, a General Partnership, requests a Variance to allow disturbance of precautionary and prohibitive steep slopes for construction of building and parking expansion on property located at 1010 Blymire Road in an Office-Professional (O-P) zone.

Present: Jim Barnes  
Mike Dobish

Information on the application was presented and after discussion, the application was approved, pending a written decision.

MOTION MADE BY: Albert Granholm  
SECONDED BY: William Yanavitch  
MOTION PASSED UNANIMOUSLY

Appl. 2008-39: OSS Realty Company requests a Variance

York Stenographic Services, Inc.  
34 North George St., York, PA 17401 - (717) 854-0077

York Township Zoning Hearing Board  
Tuesday, December 23, 2008  
Page 3

for reduction of required separation of structures  
upon common property on property located at 1855  
Powder Mill Road in an Office-Professional (O-P) zone.

Present: Robert Katherman, Esq.  
Kathy Conley  
Todd Lord

Information on the application was presented  
and after discussion the application was  
approved, pending a written decision.

MOTION MADE BY: Carl Dallmeyer  
SECONDED BY: John Wimbley  
MOTION PASSED UNANIMOUSLY

Appl.2008-40: Dawn E. Zang requests a Special  
Exception to establish a home occupation (nail salon)  
on property located at 20 Belmar Drive in a  
Residential-Medium Density (RM5) zone.

Present: Dawn Zang

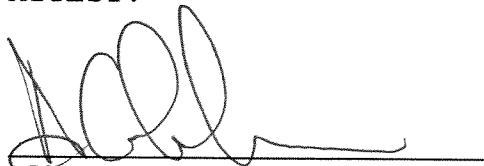
Information on the application was presented  
and after discussion the application was  
approved, pending a written decision.

MOTION MADE BY: Albert Granholm  
SECONDED BY: William Yanavitch  
MOTION PASSED UNANIMOUSLY

ADJOURNMENT

This meeting adjourned at 12:15 a.m.

ATTEST:

  
Albert Granholm, Secretary

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2008-36

**Hearing Date:** December 23, 2008

**Applicants:** Grove Estates, LP, Timothy F. Pasch, President

**Property Owner:** Grove Estates, LP, Timothy F. Pasch, President

**Property:** 2324 South Queen Street, York, PA 17402  
UPI # 54000HI01860000000

253 Cherry Street, York, PA 17402  
UPI # 54000HI0184A000000

**Existing Zoning District:** O-P

**Relief Requested-** Special Exception under the York Township Zoning Ordinance of 1996, as amended (the “Ordinance”) and pursuant to Section 265-116 thereof.

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## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) The Applicant was represented by J. Robert Katherman, Esquire, Timothy F. Pasch, Jerry T. Stahlman, P.E., and Douglas Plank.
- 3) The Applicant desires to construct and operate an apartment complex on the Property (the “Project”).
- 4) Attorney Katherman referenced the materials submitted with the Petition for Special Exception, including the documents originally dated October 1, 2008 that were revised November 21, 2008, which he proposed to be collectively referred to as “Applicant’s Exhibit 1”, with references therein to be made to specific documents or pages.
- 5) Attorney Katherman called Jerry T. Stahlman, P.E. who testified as follows:
  - a. Mr. Stahlman is a licensed professional engineer in the Commonwealth of Pennsylvania.
  - b. He did the design work for the Project, and as part of those efforts had visited the Property and became familiar with it.
  - c. When looking at Applicant’s Exhibit 1, page 4, which is the Application for Special Exception, Mr. Stahlman confirmed that he verified the background information including the Owner and the proposed use of the Property, which is Use 7 on the Residential Use Schedule in the Ordinance (dwelling, multifamily, 3 stories and under) (the “Use”).

- d. Attorney Katherman directed Mr. Stahlman's attention to Site Plan Special Exception Exhibit G (in color) which is part of Applicant's Exhibit 1 (the "Site Plan"), which drawing is dated November 21, 2008.
- e. Mr. Stahlman reviewed the adjacent uses on adjacent lands and gave his opinion that there would be no adverse effect from the Project as proposed.
- f. He noted a recreational area on the Site Plan entitled "Play Space" to be offered for the use following finalizing the area, which may include a meeting with representatives of the Township for guidance.
- g. Mr. Stahlman explained that the existing home on the Property would remain, but the barn would be removed.
- h. He said that there would be no employees on the Property.
- i. When continuing to look at the Site Plan, Mr. Stahlman noted that the location of the storage area for residents' boats, trailers, etc. required by Section 265-116 B(2) of the Ordinance could be shifted to another location on the Property (the "Trailer Storage Area").
- j. He stated that the Trailer Storage Area would be screened from nearby residences.
- k. Mr. Stahlman provided his opinion that the parking as shown on the Site Plan is sufficient to meet the requirements of Section 265-116 B(1) of the Ordinance, and that amount of spaces had been reduced to 672 spaces from the amount in the original submission on October 1, 2008, because of the reduction in the number of apartment units to 336.
- l. Mr. Stahlman indicated that the traffic had been analyzed to review distribution as compared to use of the Property for offices.
- m. He explained that access to the Project would be via both Cherry Street and Dew Drop Road, and he highlighted a connector street that the Applicant would install between those existing streets.
- n. Mr. Stahlman indicated that signs for the Project would be at the access points of the Property near both Cherry Street and Dew Drop Road.
- o. He explained that he would work with Township staff regarding lighting on the Property.
- p. Mr. Stahlman stated that his review of the latest Comprehensive Plan of the Township envisioned a mixed use for this Property.
- q. He explained that the Project includes walking trails among the buildings and throughout the Property.
- r. Mr. Stahlman further indicated that he had spoken with the Township Engineer, Dennis Henry, regarding the Project and the Site Plan.
- s. When looking at the general standards for a special exception in Section 265-166 D, Mr. Stahlman opined that there would harmony between the Project and the adjacent uses, as it would serve as a buffer between commercial uses to the North and residential uses to the South while providing Open Space, which he calculated to be twice that amount required under the Ordinance for the Project as proposed.
- t. Mr. Stahlman explained that he had been working on calculating the Gross Lot Area and Net Lot Area, as defined within the Ordinance, including Ordinance 2005-17.
- u. He admitted that he still had work to do to confirm those portions of the Property to be excluded from the calculations of Net Lot Area, including, but not limited to, steep slopes and ponds in order to finalize with certainty the Lot Area.
- v. Mr. Stahlman indicated that the number of units would be adjusted, if necessary, depending upon the final calculation of Net Lot Area.
- w. He explained his belief that there would be fire and police protection.

- x. Mr. Stahlman opined that the Project would not discourage the use of adjacent lands and buildings.
  - y. Mr. Stahlman agreed that the Project would follow the Ordinance and meet all Township standards.
- 6) Attorney Katherman then referenced a Memorandum offered by the Township Engineer, Dennis Henry, which was initially drafted in October of 2008 when the Special Exception was initially made and subsequently updated as the Application was revised, and the Board accepted the Memorandum as an Exhibit (the "Memorandum").
- a. The Memorandum was a letter memorandum finally dated December 17, 2008.
  - b. Attached to the Memorandum was a copy of a November 5, 2008 letter from Traffic Planning and Design, Inc. to Lisa Frye regarding trip calculations and a letter dated October 21, 2008 from the ELA Group, Inc. to Mr. Timothy Pasch.
- 7) Attorney Katherman introduced Douglas Plank, who testified as follows:
- a. Mr. Plank is the Director of Transportation for the ELA Group, Inc.
  - b. He is not a registered engineer although he does have an undergraduate degree in transportation engineering and 30 years of experience.
  - c. Mr. Plank highlighted the trip calculations as set forth in his October 21, 2008 letter (the "ELA Letter").
  - d. In the ELA Letter, he had confirmed that an office use on the Property would generate 373 more trips than an apartment use during AM peak hours and 295 more trips than during PM peak hours.
  - e. He further highlighted that his calculations were based upon 375 apartment units and that the Applicant had now reduced that number to 336 units.
  - f. He offered his conclusion that the apartment use would generate less traffic than an office use on the Property.
- 8) Attorney Katherman called Mr. Timothy Pasch.
- a. Mr. Pasch testified that he heard the testimony of Mr. Stahlman and Mr. Plank and believed it all to be true.
  - b. He explained that he owns other apartment complexes.
  - c. He explained, in his experience, that an average apartment unit generates 0.8 children, when thinking of the impact on the public school system.
  - d. He explained that the connecting roads shown on the Plans accompanying the Application, and particularly the road that connects to Lexington Road, would be in place thereon at the direction of the Township.
- 9) In response to questions from the Board, the Applicant answered as follows:
- a. The Lot Area calculations were done by computer.
  - b. The drawings submitted with the Application did not delineate the steep slopes and other areas that were to be excluded from the calculation of the Net Lot Area.
  - c. There were meetings between the Applicant's Engineer and the Township Staff, which resulted in the reduction of number of units in the Project.
  - d. The Applicant indicated that it would coordinate with the Township concerning the landscaped Play Spaces required by Section 265-116 C (4) of the Ordinance.
  - e. The Applicant confirmed, based upon its current calculations, that there would be no more than 336 apartment units and that the final density would be based upon the final calculations of Lot Area.
  - f. Mr. Plank indicated that the traffic to be generated by the office use was based upon generally accepted numbers for general office uses.
  - g. Mr. Plank further opined that he felt there would be no significant impact on traffic in the area as a result of the Project.

- h. However, Mr. Plank did not have a specific opinion with regard to the impact of bus traffic.
  - i. Mr. Pasch indicated that of the 0.8 children that would be generated on average by the apartments, but not all of the children would be of school age.
  - j. Mr. Pasch could not confirm that all neighbors had offered opinions with regard to the Project, but he indicated that it was acceptable to Mr. Godfrey who owns adjoining land.
  - k. The Applicant was asked to explain its assertion that the Open Space was twice that required by the Ordinance under the current Project consisting of 336 units even though the prior plan, which had 372 units, had to have the number units thereon reduced to meet the Open Space requirements.
  - l. If more Lot Area is needed for the Project as presented, then the number of units would be reduced, and the Applicant would make no claim to a certain number of units if this special exception were approved without finalization of the Lot Area.
  - m. There were questions with regard to whether or not all of the general criteria for special exception had in fact been met, including the evaluation of impact on adjoining properties.
- 10) In response to questions from the audience, the Applicant answered as follows:
- a. The differences in size between one and two bedroom apartments are based upon the overall square footage as well as the fact that a one bedroom apartment has more non-bedroom space.
  - b. When asked a question about Cherry Street's ability to handle traffic from the Project, Mr. Pasch indicated that considerable money will be spent on roads, including those the Township as impact fees.
  - c. When asked if the primary road connecting Cherry Street and Dew Drop Road would be built as part of the Project, even though it was not entirely on the Property subject to the Application, Attorney Katherman indicated that such a requirement could be a condition.
  - d. Mr. Pasch indicated that there would not likely be any children residing in the one bedroom apartment units.
  - e. The Applicant confirmed that there would be sidewalks on the Project as shown in white on the Site Plan.
  - f. When asked about a plan for emergency access, Mr. Pasch indicated that would be done as part of land development.
  - g. The Applicant confirmed that the Trailer Storage Area may be moved to somewhere else on the Property.
  - h. When asked about the purchase of the recreational equipment, Mr. Pasch indicated that he would work with the Township on that issue.
- 11) When questioned by the Township Solicitor, Steve Hovis, the Applicant answered as follows:
- a. There was no proposed commitment for a 50 foot buffer with the Project, but the Applicant would accept it as a reasonable condition.
  - b. The Applicant would construct the roadway connecting Cherry Street and Dew Drop Road, if it could be done in conjunction with the construction of the Project, such that the road would be built as buildings are built and completed on or before the construction of the last apartment building in the Project.
  - c. The Applicant highlighted the Play Space on the Site Plan.
  - d. Mr. Stahlman highlighted the Open Space on the Site Plan, as indicated by those areas with the diagonal lines across them.

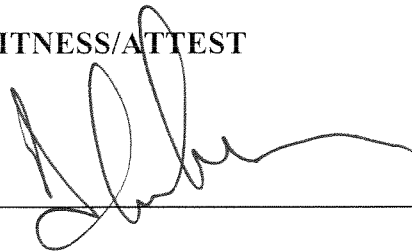
- e. Mr. Stahlman indicated that the storm water management facilities and wetlands were included as part of Net Lot Area calculations.
  - f. Mr. Stahlman admitted that he has not conducted an analysis of useable and nonuseable Open Space.
- 12) When proceeding with audience comment,
- a. The Board Chair read into the record two emails that she had received.
  - b. In response to one of the emails, Attorney Katherman indicated that Mr. Pasch is only going to build the connector road to Lexington if required by the Township and the special exception has nothing to do with that connector road.
  - c. Mr. Walker Gill asked that the condition of any approval be the removal of connector road to Lexington.
  - d. Mr. Richard Doll indicated that all materials should be reviewed carefully and specific plans provided, since those submitted lacked detail. He felt that the Applicant was offering promises but that all details should be reviewed.
  - e. Mr. Arthur Aubry questioned the calculations and the supporting materials. He felt the Applicant should have a traffic engineer. He also was generally concerned.
- 13) From the Township prospective, Lisa Frye indicated that there were questions regarding the Final Land Development, specifics regarding the Play Space, the location of the Trailer Storage Area, and Traffic. She felt that some of those issues might be discussed as part of the Land Development Plan process.
- 14) In response to further questions, the Applicant highlighted that the Project would have a community building/facility and that there would be an employee on site who would manage the Project.
- 15) The Applicant's Attorney noted that an attorney from his firm had notified the Solicitor for the Dallastown Area School District of the special exception application.
- 16) When reviewing the specific criteria for a special exception for a multifamily dwelling in Section 265-116 in the Ordinance, the Applicant answered as follows:
- a. The Lot Area involved was determined from calculations done by the Applicant's Engineer.
  - b. The lot width would be greater than 150 feet.
  - c. The building height would be less than 35 feet.
  - d. The parking calculations are set forth on the Site Plan, and Mr. Stahlman believes them to be accurate. They provide for 672 spaces for motor vehicles as well as 28 spaces in the Trailer Storage Area.
  - e. A community building would be provided.
  - f. Public water and sewer would be provided.
  - g. No building would exceed 200 feet in length, with the maximum length being 188 feet.
  - h. The minimum distance between the buildings would comply with the Ordinance.
  - i. A proposed suitably equipped and landscaped Play Space is shown on the Site Plan, and it could be subject to further clarification at the request of the Township or as part of the Land Development Plan process.

**CONCLUSIONS OF LAW**

- 1) The Zoning Hearing Board finds that the Applicant has not met the specific criteria for a special exception as set forth in Section 265-116 of the Ordinance, including sufficiently detail and substantiated calculations or information about the following:
  - a. Area and bulk regulations.
  - b. The specific location of the apartments for purposes of calculating the setbacks.
  - c. Maximum building height, as could be shown by a front elevation of the proposed building.
  - d. The specific parking requirements, since the final number of units could not be determined for lack of specific Lot Area calculations.
  - e. Suitably equipped and landscaped play spaces and useful open space.
- 2) While the Applicant offered to accept certain conditions as part of the grant of a special exception, the Board would not utilize conditions to fulfill the specific requirements of the Zoning Ordinance for the special exception. *See Elizabethtown/Mt. Joy Associates, L.P. v. Mount Joy Township Zoning Hearing Board*, 934 A.2d 759, 2007 Pa.Comm. LEXIS 542.
- 3) While the Applicant proposed that certain specific requirements of the special exception could be resolved as part of the land development process, the Board found such a proposal as unacceptable to fulfill the requirements of the Ordinance. *See Elizabethtown/Mt. Joy Associates, L.P. v. Mount Joy Township Zoning Hearing Board*.

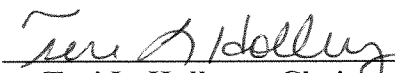
**Accordingly, William Yanavitch moved, and Al Granholm seconded, to deny the special exception as requested by the Applicant for failure to meet the specific criteria set forth in the Zoning Ordinance. The motion was passed with a vote of 3-2, with Teri Hollway, William Yanavitch and Al Granholm voting in favor of denying the special exception and John Wimbley and Carl Dallmeyer voting against denying the special exception.**

**WITNESS/ATTEST**



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**YORK TOWNSHIP  
ZONING HEARING BOARD**

By:   
Teri L. Hollway, Chair

1-27-09  
Date

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2008-38  
**Hearing Date:** December 23, 2008  
**Applicant:** KD Medical Building Partnership, A General Partnership  
**Property Owner:** KD Medical Building Partnership, A General Partnership  
**Property:** 1010 Blymire Road, Dallastown, PA 17313  
UPI # 540000GJ0104B000000  
**Existing Zoning District:** O-P

**Relief Requested-** Variance for the expansion of a Medical Facility into Steep Slopes under the York Township Zoning Ordinance of 1996, as amended (the “Ordinance”) and pursuant to Section 265-167 thereof.

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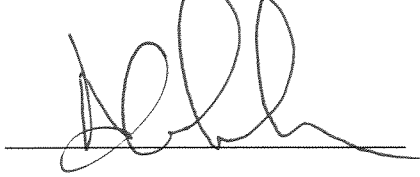
## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments and enclosures, are incorporated by reference.
- 2) The Applicant was represented by, Jim Barnes of James R. Holley and Associates, Inc. and Dr. Michael Dobish.
- 3) Mr. Barnes provided information and testimony in support of the Application as follows:
  - a. The Property itself is 1.975 acres, and it is improved with the medical building upon it (the “Medical Facility”).
  - b. The Applicant is seeking to expand the Medical Facility by building out from the existing walls to the north, west, and east as shown on the drawing entitled “Exhibit Plan” submitted with the Application (the “Addition”).
  - c. When reviewing the original site plan by Slonaker Associates Architects dated October 7, 1983, the steep slopes at issue can be seen at the Northeast and Southwest corners of the Medical Facility (the “Steep Slopes”).
  - d. The Steep Slopes were created when the Medical Facility was originally constructed around 1983.
  - e. Prior to that time, there were no Steep Slopes on the Property as defined by the Ordinance.
  - f. Rather, the grade transitions were necessitated by the construction of the Medical Facility.
  - g. The variance to disturb the Steep Slopes is needed for the Addition and added parking.
  - h. The parking is needed to allow the medical practice to function, but not to meet the minimum requirements of the Ordinance.

- i. There is a septic system in the side yard near Blymire Road.
  - j. If the Addition is constructed, the stormwater facilities will be enhanced.
  - k. There will be 12 additional parking places installed with the expansion, three of which will be for handicapped individuals.
- 4) Dr. Michael Dobish is a physician with the practice that operates in the Medical Facility on the Property and he testified as follows:
- a. When the Medical Facility was originally constructed, it was placed underground on the North and Western sides.
  - b. The construction was done to increase energy efficiency.
- 5) In response to questions, Mr. Barnes indicated that cut slopes were allowed to be at a ratio of two to one and fill slopes were allowed to be at a ratio of three to one, per the Township Ordinances in effect in 1983.
- 6) Lisa Frye, on behalf of the Township indicated that there were no concerns with regard to the application.
- 7) The Applicant provided testimony in support of the criteria for a variance as follows:
- a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, including the man-made Steep Slopes that were permitted when the Medical Facility was originally constructed that constitute exceptional topographical and physical conditions peculiar to the Property.
  - b. To enable the reasonable use of the Property, expansion of the Medical Facility and parking is necessary, as it will allow the Medical Facility to continue to function, and the Addition and new parking as proposed are the only places that it can be accomplished on the Property.
  - c. This unnecessary hardship is not being created by the Applicant because the Steep Slopes were not problematic when originally created to facilitate the construction of the Medical Facility.
  - d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the Property is located or substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare, and in fact, the variance will allow the Medical Facility to be better operated for the benefit of all concerned.
  - e. The variance, if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue, as it is in fact a minimum requirement to accommodate the appropriate use of the Property and the Medical Facility.

Accordingly, Al Granholm moved and John Wimbley seconded, to grant the variance to disturb the man-made Steep Slopes to accommodate the Addition to the Medical Facility and that no other portion of the Ordinance be waived or other relief granted. The motion passed with a vote of 5-0, with all members voting in favor.

WITNESS/ATTEST



YORK TOWNSHIP  
ZONING HEARING BOARD

By: Teri L. Hollway  
Teri L. Hollway, Chair

1-27-09  
Date

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at the hearing or in writing, whichever comes first) pursuant to Sections 265-145A. (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2008-39  
**Hearing Date:** December 23, 2008  
**Applicant:** OSS Realty Company  
**Property Owner:** OSS Realty Company  
**Property:** 1855 Powder Mill Road, York, PA 17402  
UPI # 540002001740000000  
**Existing Zoning District:** O-P

**Relief Requested-** Variance for an Addition to a Hospital and Medical Facility under the York Township Zoning Ordinance of 1996, as amended (the “Ordinance”) and pursuant to Section 265-167 thereof.

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## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments and enclosures, are incorporated by reference.
- 2) The Applicant was represented by Robert Katherman, Esquire, Kathy Conley, and Todd M Lord.
- 3) Attorney Katherman introduced Kathy Conley, and she presented testimony as follows:
  - a. She is an engineer in training with LSC Design, Inc., and has been working there for 12 years.
  - b. She reviewed the plans, Property, and exiting building layout.
  - c. A Hospital was authorized by special exception in 2007 (the “Hospital”).
  - d. Under the Ordinance, the Hospital and existing medical building (the “Medical Facility”) must be separated by 30 feet.
  - e. Unfortunately, such a separation is problematic.
  - f. It would impact parking on site by utilizing space for setbacks.
  - g. A variance is being requested from the setbacks as required by Section 265-77 of the Ordinance (20 feet plus 5 feet for each of the second and third story, which equals 20 feet + 5 feet + 5 feet = 30 feet side setback required by the Ordinance)
  - h. If the variance would be authorized, then the side setbacks would be as shown in Variance Exhibit Plan EX-1, varying from as little as 5 feet at most locations to up to 13 feet at others.
  - i. There will be canopies attached to the Medical Facility and the Hospital which will actually overlap but not touch each other to provide protection from the elements when traveling from one building into the other.
- 4) Attorney Katherman introduced Todd M. Lord, who testified as follows:

- a. He is the chief executive officer of Orthopedic and Spine Specialists (“OSS”).
  - b. OSS operates in the Medical Facility.
  - c. According to the attorney assisting OSS, Pennsylvania law will not allow the Medical Facility and Hospital to be connected even though that may be functionally advantageous.
  - d. The Commonwealth Department of Health (the “Department”) would accept a five foot sidewalk between the Medical Facility and Hospital.
  - e. However, the buildings cannot physically touch.
  - f. Mr. Lord referenced a letter from Mark Nowack of Davis Stokes Collaborative, P.C. Architects, who are assisting with the Hospital, which letter was accepted as an exhibit.
  - g. Mr. Nowack’s letter explained how the canopy for the Hospital would be integrated with the canopy of the Medical Facility without them touching.
- 5) In response to questions from attendees, the Applicant answered as follows:
- a. Stormwater runoff from the Hospital will be addressed as part of the land development plan.
  - b. There are no ambulances anticipated.
  - c. Some concerns arose with regard to parking and the Applicant noted that parking will be to the South and Northwest of the Hospital.
- 6) Attorney Katherman provided a Memorandum of Law within which he argued that the level of proof in this case should not be as great for the dimensional variance being requested as it would be for a use variance. He quoted case law indicating that a property owner need only show that “the zoning requirements work an unreasonable hardship in the owner’s pursuit of a permitted use” relying upon *Hertzberg v. Zoning Bd. of Adjustment of Pittsburg*, 554 Pa. 249, 257, 721, A.2d 43, 47 (1998).
- 7) When addressing the criteria for a variance as set forth in Section 265-167 of the Ordinance, the Applicant offered the following:
- a. The unnecessary hardship that exists relates to the request for a dimensional variance, which requires lesser proof, and is based upon requirements of the Commonwealth of Pennsylvania regarding the placement of medical facilities in the vicinity of hospitals, which runs contrary to the setback requirements of the York Township Zoning Ordinance.
  - b. The imposition of setbacks would make the implementation of the Hospital problematic, which is a hardship for the owner and its use of the Property for medical care.
  - c. The hardship has not been created by the Applicant, as it is a result of laws of the Commonwealth of Pennsylvania.
  - d. 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 for development of adjacent Property nor be detrimental to the to the public welfare, and conversely, the variance will benefit the public welfare.
  - e. The variance if authorized will represent the minimum variance that will afford relief and represent the least modification possible to the regulation at issue.

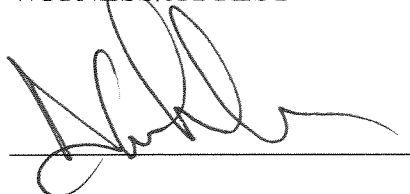
**CONCLUSIONS OF LAW**

- 1) The Board finds that the Applicant has met the burden required for the grant of a dimensional variance, when considering the specific facts at issue and the case law suggested by Applicant’s counsel.
- 2) Such a conclusion is contingent, however, upon the Applicant providing documentation to confirm that the separation of the Medical Facility and Hospital is required by State Law and that the layout for the Hospital as proposed, with the sidewalk separation of a width no less than 5 feet, would be acceptable to the Department.

Collectively, (the “Conditions”)

**Accordingly, Carl Dallmeyer moved and John Wimbley seconded, to grant the variance provided that information is provided to meet the Conditions and that no other portion of the Ordinance be waived or other relief granted. The motion passed with a vote of 5-0, with all members voting in favor.**

**WITNESS/ATTEST**



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**YORK TOWNSHIP  
ZONING HEARING BOARD**

By: Teri L. Hollway  
**Teri L. Hollway, Chair**

1-27-09  
**Date**

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at the hearing or in writing, whichever comes first) pursuant to Sections 265-145A. (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2008-40  
**Hearing Date:** December 23, 2008  
**Applicant:** Dawn E. Zang  
**Property Owner:** John Jackson  
**Property:** 20 Belmar Drive, Dallastown, PA 17313  
UPI # 540002200080000000  
**Existing Zoning District:** RM5

**Relief Requested-** Special Exception for Home Occupation under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Section 265-91 thereof.

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## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments and enclosures, are incorporated by reference.
- 2) The Applicant Dawn E. Zang, represented herself.
- 3) The Applicant testified as follows:
  - a. She is seeking a special exception to conduct her work of doing nails as home occupation on the Property (the "Home Occupation").
  - b. She has been doing nails for 17 years.
  - c. Approximately 300 feet of the 2,000 square feet in the dwelling would be used as part of the Home Occupation.
  - d. She indicated that she would only serve 1 customer at a time, and that customer would park on the Property.
  - e. There would be no exterior sign.
  - f. The primary hours would be between 9 a.m. and 3 p.m., with occasional hours in the evenings but no later than 7 p.m.
  - g. Deliveries of necessary supplies will be made by overnight carrier (i.e. FedEx).
  - h. She does not expect any children to visit the Property as used for the Home Occupation.
- 4) When looking at the special exception criteria for a Home Occupation Section 265-91, the following was offered:
  - a. The Applicant would be the person primarily responsible for the Home Occupation, and she is a full time resident on the Property.
  - b. No more than 25% of the gross floor area of the home would be used for the practice of the Home Occupation.
  - c. There would be no displays or change in the building facade.

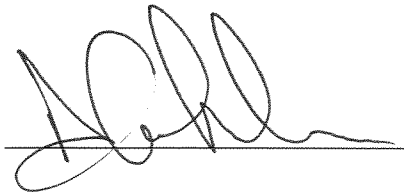
- d. There would be no external evidence of the Home Occupation.
- e. There is sufficient parking facilities on the Property, as evidenced in the photographs provided with the Application.
- f. The storage of any materials for the Home Occupation would be solely within the dwelling.
- g. The Home Occupation shall be conducted entirely within the dwelling.
- h. The deliveries shall not restrict traffic circulation.
- i. The traffic generated by the Home Occupation would not exceed the amount normally to be expected in a residential neighborhood.
- j. The Home Occupation will not produced noise, obnoxious odors, vibrations, lighting glare, fumes or smoke detectable to normal sensory reception on any adjacent lots or streets or electrical interference.
- k. All materials will be disposed in compliance with all regulations of the York Township Water and Sewer Authority and all other applicable government codes.
- l. The sale of any goods on premises would be those incidental to the services performed.
- m. Any materials shall be stored appropriately.
- n. The hours of operation would avoid land use conflicts.

**CONCLUSIONS OF LAW**


- 1) The Board finds that the Applicant has met the specific criteria for a special exception for Home Occupation set forth in Section 265-91(C) as well as the general criteria for a special exception in 265-166.

**Accordingly, Al Granholm moved and William Yanavitch seconded, to grant the special exception for a Home Occupation as requested and that no other portion of the Ordinance be waived or other relief granted. The motion passed with a vote of 5-0, with all members voting in favor.**

**WITNESS/ATTEST**



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