

YORK TOWNSHIP

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

York Township Zoning Hearing Board
Tuesday, September 25, 2007
6:00 p.m.

The September meeting of the York Township Zoning Hearing Board was called to order by Kenneth Silberstein, Chairman.

Those in attendance were:

Kenneth Silberstein, Chairman
Teri Hollway, Vice-Chair
Missy Gugino, Secretary
Jerry Kotek, Member
Lisa Frye, Zoning Officer
Dennis Henry, Township Engineer
Craig Sharnetzka, Esq., Solicitor

MINUTES AND DECISIONS OF AUGUST 28, 2007

The Zoning Hearing Board minutes and decisions of August 28, 2007, were approved.

HEARINGS

Appl.2007-29: Scott S. Weaver, O.D. requests a Variance to utilize precautionary steep slope areas for building expansion on property located at 2791 South Queen Street in a Commercial-Shopping (C-S) zone.

Present: Ronald Perry
Scott Weaver
James Barnes

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

Appl.2007-30: Site Enhancement Services requests a Variance for sign height, color and area calculation on property located at 830 East Main Street in a Heavy and Highway Commercial (C-H) zone.

Present: Shawn Smith

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

Appl.2007-31: DB Builders requests a Variance to utilize steep slopes for construction of a building and stormwater retention pond on property located at South Franklin Street in a Residential-Medium Density (RM5) zone.

Present: Doug Brey
David Winters

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

Appl.2007-32: Jerry S. Henry requests a Special Exception to expand a nonconforming use on property located at 645 Chapel Church Road in a Commercial-Shopping (C-S) zone.

Present: Jerry Henry

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

Appl.2007-33: S.R. Campbell Associates, Inc., requests a Special Exception to expand a nonconforming use on property located at 218 Dew Drop Road in a Residential-Medium Density (RM5) zone.


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Tabled at the request of the applicant.

ADJOURNMENT

This meeting adjourned at 8:58 p.m.

ATTEST:


Missy Gugino, Secretary

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2007-29
Hearing Date(s): September 25, 2007
Applicant(s): Scott S. Weaver, O.D.
Property Owner(s): Julienne L. Weaver c/o Scott S. Weaver, O.D.
Property: 2791 South Queen Street, Dallastown, PA 17313
UPI 54000HJ0240H000000

Existing Zoning District: Shopping Commercial (C-S)

Relief Requested- Variance under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Section 265-34.C thereof.

FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) The Applicant was represented by Ronald Perry, Esquire.
- 3) James Barnes from J.R. Holley & Associate, provided information on his experience and education, and the Board accepted him as an expert in the field of land development.
- 4) The Applicant is seeking a variance to allow expansion of a building into a precautionary steep slope.
- 5) Attorney Perry provided a background overview of Dr. Weaver's Property.
- 6) Mr. Barnes explained the details of the project as follows:
 - a) The proposed building expansion will be within the steep slope.
 - b) Two thirds to three quarters of the building expansion will be within the steep slope.
 - c) There will be no need, based on the topography of the land, for an additional retaining wall.
 - d) There will be six (6) additional parking spaces added.
 - e) After the building, there will be 67% of impervious coverage, but 80% is permitted.
- 7) Attorney Perry provided a summary of the testimony to support the request for the variance pursuant to Section 265-167 as follows:

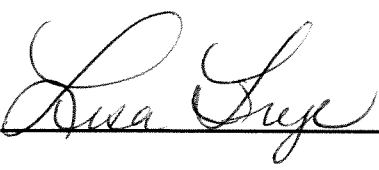
- a) The unnecessary hardship that exists for the Property is a result of the expansion of South Queen Street several years ago.
 - b) Because of the physical circumstances and conditions, and economic considerations that are relevant because of the variance is dimensional, the modernization is necessary for reasonable use of the Property.
 - c) The unnecessary hardship was not created by the Applicant, as the steep slopes were created by prior land development
 - d) The variance, if authorized, will not alter the essential character of the neighborhood or the district in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property and not be detrimental to the public welfare.
 - e) The variance, if authorized, will represent the minimum variance that would afford relief, and represent the least modification possible of the regulations at issue.
- 8) The Zoning Officer stated that the Township had no general objections to the project.
- 9) The Engineer, Dennis Henry, testified that he had no problems with the expansion. The surrounding grade could be stabilized with landscaping and therefore, concurred that there would be no need for an additional retaining wall and that the parking would not be in the precautionary steep slope area.

CONCLUSIONS OF LAW

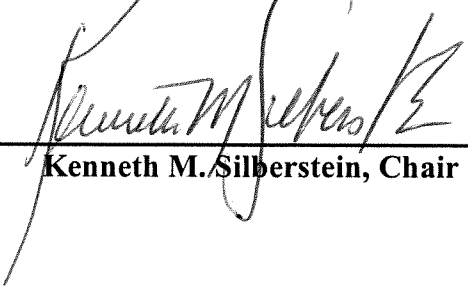
- 1) The Applicant has met all of the general standards for a variance.

Accordingly, Teri Hollway moved, and Jerry Kotek seconded, that the variance pursuant to Application 2007-29 be approved and the steep slope be granted and that no other portion of the Ordinance be waived or other relief be granted. The motion passed with a vote of 4-0, with all voting in favor.

WITNESS/ATTEST



**YORK TOWNSHIP
ZONING HEARING BOARD**

By: 

Kenneth M. Silberstein, Chair

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 a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (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: 2007-30
Hearing Date(s): September 25, 2007
Applicant(s): Site Enhancement Services
Property Owner(s): Westminster Place Partnership
Property: 830 East Main Street, Dallastown, PA 17313
UPI 540000900090000000

Existing Zoning District: Heavy and Highway Commercial (C-H)

Relief Requested- Variance under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Section 265-41.C and D. thereof.

FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) The Applicant was represented by Shawn Smith, who is with Site Enhancement Services.
- 3) The Applicant is seeking variances for sign height, color, and area calculation.
- 4) Mr. Smith explained the details of the project as follows:
 - a) The color scheme for the proposed sign is not in contradiction on color with the Ordinance.
 - b) The reason of the height request to expand the sign five (5) feet above what is permitted (twenty (20) feet) is because of the nearby retaining wall, on the adjacent property, the sight distance to see the sign above the retaining wall, and the fact that there exists a slope on the property restricting visibility of the sign from the south bound direction.
 - c) If you remove the calculation for the border on the sign and just calculated the red interior of the sign then is actually 99 square feet, where in they would be allowed 100 square feet and therefore, would not need a variance as originally thought for the area calculation.
- 5) The Applicant provided a summary of the testimony to support the request for the variance pursuant to Section 265-167 as follows:

- a) The unnecessary hardship that exists for the Property is a result of the slope on Broadway Street. In addition, the Rite Aid retention wall blocks visibility of the sign.
 - b) That because of such physical circumstances or conditions of the retaining wall and slope of Broadway Street, there is no possibility that the Property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - c) The unnecessary hardship was not created by the Applicant.
 - d) The variance, if authorized, will not alter the essential character of the neighborhood or the district in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property and not be detrimental to the public welfare.
 - e) The variance, if authorized, will represent the minimum variance that would afford relief, and represent the least modification possibly of the regulations at issue.
- 6) The Zoning Officer testified that based on site constraints, the Application was not beyond the scope of other signs in the Township and no relief was necessary in this instance for the sign colors.
- 7) The Engineer, Dennis Henry, testified that he had no problems with safety from an engineering standpoint with regard to the sign.

CONCLUSIONS OF LAW

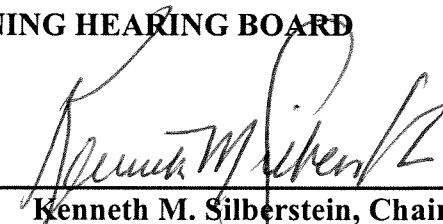
- 1) The Applicant has met all of the general standards for a variance.

Accordingly, Missy Gugino moved, and Jerry Kotek seconded, that the variance pursuant to Application 2007-30 to allow the sign to be twenty-five (25) feet, which is five (5) feet above what is permitted, and that no other portion of the Ordinance be waived or other relief be granted. The motion passed with a vote of 4-0, with all voting in favor.

WITNESS/ATTEST



**YORK TOWNSHIP
ZONING HEARING BOARD**

By: 
_____ **Kenneth M. Silberstein, Chair**

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 a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (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: 2007-31
Hearing Date(s): September 25, 2007
Applicant(s): DB Builders Inc. (Attn: Doug Bray)
Property Owner(s): Fitz & Smith
Property: Franklin and Blymire Street, Dallastown, PA 17313
Existing Zoning District: Residential- Medium Density (RM5)

Relief Requested- Variance under the York Township Zoning Ordinance of 1996, as amended, (the "Ordinance") and pursuant to Section 265-34 thereof.

FINDINGS OF FACT

- 1) The foregoing information and the Application including its attachments are incorporated by reference.
- 2) Doug Bray of DB Builders Inc. presented on behalf of the Applicant, as well as Dave Winters from Winter's Engineering Group.
- 3) The Applicant requested a variance to remove approximately four (4) feet of a man made steep slope to create a flat area for a foundation.
- 4) The Applicant also requested a variance to create a retention pond in a corner of the steep slope area.
- 5) The Applicant testified that there will be no adverse effect on the existing stream as a result of the intrusion to the steep slope.
- 6) The Township Engineer testified to the following:
 - a) The tract of land is narrow and there has been a significant amount of fill dirt added to the site.
 - b) If the Applicant were to move forward as proposed, there would be the need for a retaining wall to protect disturbance created by the incursion into the steep slope and to prevent erosion problems.
 - c) The steep slope is well over 25% and in reality is probably 40%-50%.
 - d) There would have to be storm water management on the Property. He recommends a geological technical expert design with regard to the potential stormwater runoff.

- 7) The Township Zoning Officer testified that this was a difficult site and understood the issues with regard to the narrowness and relief that was requested.
- 8) The Applicant provided testimony in support of the variance criteria of Section 265-167 of the Ordinance as follows:
 - a) The hardship on the Property is a man made steep slope which encompasses the entire width of the Property.
 - b) That due to the man made steep slope, there is no way the Property could be developed in strict conformity. However, there maybe two other options to develop the Property in strict conformity with the guidelines of the Ordinance. Specifically, they may create a canti lever to build out over the steep slope or they may build the homes closer to the stream, requiring culverts covering the stream. Such options were questionable in the opinion of the Township Engineer.
 - c) The Applicant testified that the unnecessary hardship was a result of conditions that pre-existed his ownership and accordingly, the Applicant did not create the unnecessary hardship.
 - d) The Variance will not alter the essential character of the neighborhood or the district in which the Property is located nor substantially or permanently impair the appropriate use or development of adjacent property, but enhance the value of surrounding property.
 - e) His belief that the Variance is the minimum that would afford relief.
- 9) A prior subdivision was recorded. In that subdivision, there are five (5) lots that were approved. However, only Lot 4 and Lot 5 would be affected by this Application and the intrusion of the steep slope.
- 10) Adjoining land owners, Jane Ryer and her husband Ben, provided testimony questioning the ability to stabilize and to maintain the erosion and provided photographs of their home in 1985, when it was built, and as of the day of the Hearing. They also testified that there was substantial fill dirt put on the site by Fitz and Smith.
- 11) John Armpriester, an adjoining land owner, voiced his concerns with regard to traffic safety due to the steep slope on Blymire Road and traffic accidents resulting from vehicles that are unable to stop at the stop sign and travel onto the Property.
- 12) Peggy Tayler, an adjoining land owner, also testified that she had concerns with traffic safety on Blymire Road, which would increase, and the condominium development being built on fill ground.
- 13) Mr. Winters testified as to the following:
 - a) There would be no impact on the existing properties with the intrusion of the steep slope and the engineered storm water retention pond would stabilize the steep slope.
 - b) There would be sidewalk, curbing, and green space to buffer the space between the stop sign at Blymire Road and the proposed properties.
 - c) In his opinion the steep slope was stable and that vegetation which exists would help defray erosion.

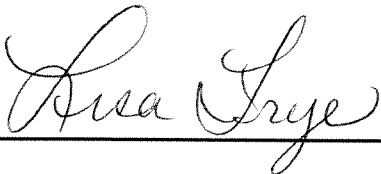
- d) In his opinion the 6-inch sewer lateral which was existing would handle the sewage capacity.

CONCLUSIONS OF LAW

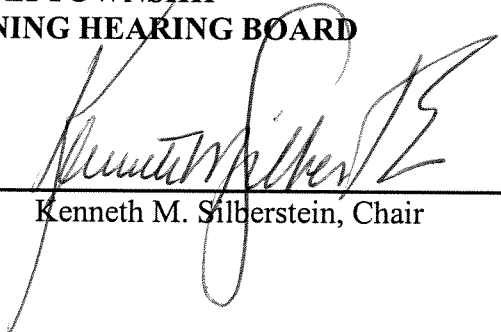
- 1) The Applicant has not met the general standards for a variance as follows:
 - a) The Board finds that there is an effect on public welfare with regard to traffic safety concerns.
 - b) The Board believes that the Property can be developed in conformity with the Ordinance and reasonably used.
 - c) The Board finds that any hardship alleged is self imposed, or enhanced as it is the result of the placement of fill by Fitz & Smith, and therefore the hardship is not unnecessary.
 - d) The Board finds that the variance requested does not represent the minimum variance that will afford relief or the least modification possible of the regulations at issue, based upon its findings and the admissions of the Applicant.

Accordingly, Teri Hollway moved, and Jerry Kotek seconded, that the requested variance pursuant to Application 2007-08 is denied because the variance criteria has not been met. The motion passed with a vote of 4-0, with all Board Members present voting in favor of the motion.

WITNESS/ATTEST



**YORK TOWNSHIP
ZONING HEARING BOARD**

By: 

Kenneth M. Silberstein, Chair

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2007-32
Hearing Date(s): September 25, 2007
Applicant(s): Jerry S. Henry
Property Owner(s): Jerry S. Henry
Property: 645 Chapel Church Road, Red Lion, PA 17356
UPI #54000HJ0088B00000000

Existing Zoning District: Shopping Commercial (C-S)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Section 265-81(2) thereof.

FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) Mr. Henry was present as Applicant.
- 3) Mr. Henry presented background information on the Property and the proposed pole barn that he would like to build. The existing residence is 26' x 63', ranch style home totaling 1,638 square feet. He proposes to build a 24' x 24' pole barn totaling 576 feet, approximately 6 feet from the adjoining property owner (Applicant increased distance to 10 feet after questioning from the Chair and as required by the commercial zone). The property is a residential use in a commercial area. There is an existing shed that is 10' x 12'.
- 4) The Applicant's intent is to store an antique tractor and antique car in the proposed pole barn. Since there is no access, the vehicles will only be stored in the pole barn.
- 5) The Applicant provided testimony in support of the general special exception criteria in Section 265-166 (D) as follows:
 - a) The use will be in harmony with the orderly and appropriate development of the zoning district.
 - b) The location of the use is appropriate with respect to existing streets giving access to it.
 - c) The nature and intensity of the proposed use would be appropriate and in conformity with the neighborhood.
 - d) Adequate water, septic, storm drainage, and fire and police protection are available for use.
 - e) The use of the adjacent land and buildings would not be discouraged and the value of the adjacent land and buildings would not be impaired by the location, nature, and heights of the buildings, walls and fences.

- f) The use will not create further traffic congestion.
- 6) The Township Zoning Officer testified that the building of the pole barn is an expansion of the pre-existing non-conformity due to the Applicant owning the Property since 1966, prior to the enactment of the zoning of a CS Zone.
- 7) The Zoning Officer testified that the proposed pole barn was permitted as an expansion.
- 8) Adjoining property owner, Richard Garee, testified that he and the Applicant spoke regarding the pole barn and that he had no objections.

CONCLUSIONS OF LAW

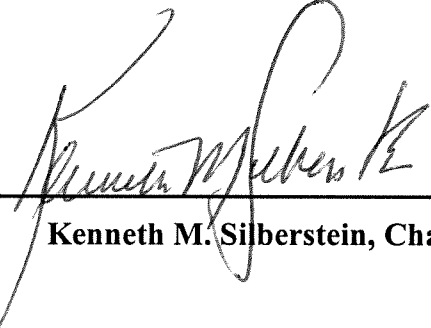
- 1) The Board finds that the Applicant has met the requirements for zoning relief and a special exception.

Accordingly, Teri Hollway moved, and Missy Gugino seconded, to approve the special exception pursuant to Application 2007-32, as proposed, but with the condition that the pole barn be placed no closer than 10 feet from the rear of the adjoining property and that the pole barn remain a private garage as defined in the Zoning Ordinance, and that no other portion of the Ordinance be waived or other relief be granted. The motion passed with a vote of 4-0, with all members voting in favor.

WITNESS/ATTEST



**YORK TOWNSHIP
ZONING HEARING BOARD**

By: 

Kenneth M. Silberstein, Chair

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 a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.