

A P P R O V E D

**SPRINGETTSBURY TOWNSHIP  
ZONING HEARING BOARD**

**FEBRUARY 1, 2024**

**MEMBERS IN**

**ATTENDANCE:** Dale Achenbach, Chairman  
David Seiler, Vice Chairman  
Sande Cunningham, Secretary  
Mark Bair  
Chris Shuttlesworth (via Zoom)  
Brian Kauffman (Alternate)

**ALSO IN**

**ATTENDANCE:** John Luciani, Interim Zoning Officer  
Gavin Markey, Solicitor  
Randall Heilman, Director of Community Development  
Benjamin McCue, Deputy Zoning Officer  
Jill Trostle, Stenographer

**1. CALL TO ORDER**

**A. Pledge of Allegiance**

Chairman Achenbach called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Mr. Achenbach introduced members of the Zoning Hearing Board and Township staff.

**2. ACTION ON THE MINUTES**

**A. JANUARY 4, 2024**

Solicitor Gavin Markey requested clarification on the acreage for the Barwood Road case as listed on page 4 of the minutes. Mr. Heilman responded that he believes the correct acreage is 1.0, but would research the issue.

**DAVID SEILER MOVED TO ACCEPT THE JANUARY 4, 2024 MINUTES AS PRESENTED SUBJECT TO FINAL DETERMINATION OF 1.0 OR 2.0 ACRES.**

Mr. Heilman then provided information confirming it is 1.0 acres when there is public sewer, so the minutes are correct.

**MR. SEILER MODIFIED HIS MOTION TO ACCEPT THE JANUARY 4, 2024 MINUTES AS SUBMITTED, SECONDED BY SANDE CUNNINGHAM. THE MOTION UNANIMOUSLY CARRIED.**

Board members were asked to remain after the meeting to sign formal decisions from the last Zoning Hearing Board meeting.

**SWEARING-IN OF TOWNSHIP STAFF:** The following Township staff were sworn in:

John Luciani, Interim Zoning Officer  
Randall Heilman, Director of Community Development

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Mr. Luciani confirmed that the cases presented this evening were properly advertised and signs posted as required by the Municipality Planning Code.

**REORDER OF AGENDA ITEMS**

Chairman Achenbach suggested a revision to the order of business, with the three cases to be heard this evening to be presented in the following order:

- Case Zone 2023-0013 - 1780 Valley Vista Drive
- Case Zone 2024-0001 - 1124 Bonneview Road
- Case Zone 2023-0015 - 3377 Barwood Road

**SWEARING-IN OF CASE REPRESENTATIVES**

All case representatives were sworn in. All case representatives agreed to the proposed reorder of business.

**4. NEW BUSINESS:**

**ZHB-2023-0013 - 1780 Valley Vista Drive**

Mr. Luciani provided a brief summary of the case. The applicant is requesting one variance for section §325-138.D.3 - Front Yard Setback for the storage of a recreational vehicle, boat and trailers for on-lot parking storage. The ordinance is provided below:

Article XXVII Accessory Uses  
325-138.D.3 Recreational vehicle, boats and trailers on-lot parking and storage, storage location, Front yard setback. Any yard that is adjacent to a public street is a front yard for purposes of this section. Front yard storage is permitted only if the recreational vehicle is located 100 feet from the public right-of-way.

The applicant is requesting a variance to allow the storage of a recreational vehicle in the front driveway of said property and to waive the front yard setback requirement for recreational vehicles. The applicant cites that the 24-foot recreational vehicle cannot fit on the side or rear of the property due to short length of the driveway and the house being close to the street. Under Section §325-138.D.3, all recreational vehicles, boats and trailers if stored in the front yard must be at least 100 feet from the public right-of-way (ROW).

The following applicants were sworn in: Jeff and Kelly Patterson of 1780 Valley Vista Drive

**Jeff Patterson, 1780 Valley Vista Drive**

Mr. Jeff Patterson confirmed he lives at 1780 Valley Vista Drive with his wife and two sons. They own a 24-ft motorhome which they would like to park beside the residence on a hard surface. He noted the current location is flush with the front of the residence and does not impede the view of the street or sidewalk. The motorhome is registered, inspected, insured and well-maintained. He is requesting a variance of the 100-foot requirement to 40 feet. Mr. Patterson stated if the motorhome cannot be parked at the residence, he would incur the cost of storage, security of the vehicle would become an issue, the

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ability to provide general maintenance would be reduced, and the ability to leave on a whim would not be possible. Mr. Patterson drives the vehicle once per month in the off-season to ensure it is running smoothly. Mr. Patterson and his family have ten trips planned for the coming year, and making trips to and from a storage facility would be an inconvenience. Six photos of the motorhome parked at the residence were submitted for reference with the application.

Mr. Kaufman asked if a variance is really needed if the recreational vehicle is parked flush with the front of the residence. Mr. Luciani noted that the zoning requirement also requires the vehicle itself be a minimum of 100 feet from the public right of way. In this case, the front of the house is only 42 feet from the public right of way, making it impossible to meet the 100-foot requirement of the ordinance.

Solicitor Markey recommended the Board proceed on the variance request as outlined in the Zoning Officer's summary.

Ms. Cunningham stated it would have been helpful to have the specific dimensions of the property as part of the application.

Chairman Achenbach asked if there are similar situations where recreational vehicles have been permitted to park in driveways in the neighborhood. Mr. Heilman responded this has been an ongoing situation in the Township for those with recreational vehicles and a number of citations have been issued. Residents have encouraged the Township to address this specific ordinance during its ordinance review process.

Chairman Achenbach asked if the Township views the multitude of violations as fair or justifiably rigid. Mr. Heilman responded that residents find the ordinance rigid and a change in legislation needs to occur by the Board of Supervisors through the Zoning Ordinance update process, which won't take place in the near future. It was noted that finding alternate storage locations has become challenging due to the number of residents with RVs.

Chairman Achenbach asked if it is fair to ask an applicant to wait until the new ordinances take effect. Mr. Luciani responded due to the uncertain timing of the ordinance revision process, it would not be economically feasible to ask the applicant to wait.

Public Comment - The following individuals were sworn in to provide public comment.

Michael Eckenrode, 1781 Valley Vista Drive

Mr. Eckenrode stated he has lived across the street from the applicant for years and it is his observation that the camper is neat, clean, well maintained, and is not in the front yard, but is parked beside the house. Mr. Eckenrode believes the applicant has done everything possible to park the vehicle in a safe location.

Christopher Rossi, 1770 Valley Vista Drive

Mr. Rossi has lived at 1770 Valley Vista Drive for a couple years and supports the variance request. Mr. Rossi stated everything is well maintained, the vehicle does not stand out and is not an eyesore.

Solicitor Gavin Markey's Opinion

Solicitor Markey reminded the Board this is a dimensional variance which carries a reduced burden of proof upon the applicant when they desire a variance from the mandates of the zoning ordinance. When

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considering these types of variances, the Board must determine if there are unique physical circumstances or conditions that justify the deviation from the 100-foot setback mandate. It was Mr. Markey's opinion that the applicant's testimony has addressed these circumstances and provided sufficient burden of proof to justify a variance request.

**MARK BAIR MOVED IN THE CASE ZONE 2023-0013 THAT THE REQUEST FOR VARIANCE TO §325-138.D.3 BE GRANTED, SECONDED BY SANDE CUNNINGHAM. THE MOTION PASSED UNANIMOUSLY.**

**ZHB-2024-0001 - 1124 Bonneview Road**

Mr. Luciani, Interim Zoning Officer, provided a brief summary of the case submitted by the applicant, Sean Hoyer, of 1124 Bonneview Road. Mr. Luciani noted this is similar to the case previously discussed. The applicant is requesting a variance to allow the storage of a recreational vehicle in the front driveway of said property because the recreational vehicle cannot fit on the side or rear of the property due to the narrow size of the property. Under Section §325-138.D.3, all recreational vehicles, boats and trailers if stored in the front yard must be at least 100 feet from the public right-of-way (ROW). The applicant is requesting a variance to waive the front yard setback requirement for recreational vehicles, boats and trailers for on-lot parking storage by allowing said vehicle to be stored in the front driveway.

The ordinance sections requiring a variance are provided below:

Article XXVII Accessory Uses

§325-138.D.3 Recreational vehicle, boats and trailers on-lot parking and storage, storage location, Front yard setback. Any yard that is adjacent to a public street is a front yard for purposes of this section. Front yard storage is permitted only if the recreational vehicle is located 100 feet from the public right-of-way.

Witnesses for the case were sworn in.

**Sean Hoyer, 1124 Bonneview Road**

Mr. Hoyer stated he has lived at his residence for 1-1.5 years. His recreational vehicle is a tow-behind camper which has been specifically designed for his special needs son who has Dravet Syndrome, a genetic form of epilepsy. The camper was given to the family from the Make-A-Wish Foundation and contains his oxygen tanks and is air-conditioned to meet his needs. Mr. Hoyer is requesting the variance because the dimensions of his property do not allow him to meet the 100-foot setback requirement of the zoning ordinance. Mr. Hoyer read a letter from one of his neighbors who was unable to be present:

“Sean and his family have lived here for a little over a year. What I can tell, he seems like a very good family man and a good neighbor. He has made major improvements, putting up a new fence and replacing the driveway. All in all, I think they are very good people.”

Mr. Hoyer referenced a letter from his son's neurologist which was included in the application packet, confirming that the camper was provided by the Make-A-Wish Foundation and specifically set up as a safe play area for his son's development and as a place for the family to get away in a safe environment for his son. Mr. Hoyer stated if the RV were moved off-site, it would defeat the purpose of being a play area for his son.

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Zoning Board members asked questions. The following comments are noted in response to those questions.

- The camper is small, about the size of the applicant's truck.
- The camper is used every weekend during spring, summer and fall to travel to the beach and a family farm in Cambridge, Maryland.
- The air conditioning prevents seizures, as his son cannot thermoregulate.
- The applicant received a notice of violation from the Township.

Public Comment: The following person was sworn in.

Russell Wantz, 1465 Coffee Mill

Mr. Wantz stated he is a 30-year resident of the Township and owns five properties within the neighborhood. He attended in opposition of the variance, but after hearing the applicant's testimony, understands the circumstances surrounding the special needs son. The situation with the applicant's driveway and the parking of the RV in front of the residence is challenging. The driveway was widened in order to park the camper, but Mr. Wantz is opposed because he does not feel campers should be parked in driveways throughout Springettsbury Township.

Mr. Achenbach asked Mr. Wantz if movement of the camper in and out of the driveway causes a problem in the neighborhood. Mr. Wantz responded the applicant has a very tight situation due to the length of the driveway and there is no option to park the camper behind the home. Mr. Wantz noted that one of the family vehicles is parked on the street due to the situation in the driveway,

Solicitor Gavin Markey's Opinion

Solicitor Markey confirmed that approval of the variance would remain with the property and justification for the variance should not be based purely on the special needs son, but on the application of the facts to the criteria for the variance, such as unique physical circumstances or conditions. Attorney Markey stated there is an issue in the Township with recreational vehicles being parked in driveways of residential structures and will be an issue for revision in the comprehensive plan zoning ordinance review. From a legal perspective, Attorney Markey had no objections to granting approval of the variance request.

**IN THE CASE ZHB-2024-0001 SANDE CUNNINGHAM MOVED TO APPROVE THE APPLICANT'S VARIANCE REQUEST TO §325-138.D.3 FOR THE FRONT YARD SETBACK. MR. SEILER SECONDED THE MOTION. ALL BOARD MEMBERS VOTED IN FAVOR AND THE MOTION CARRIED.**

**3. OLD BUSINESS**

**ZHB-2023-0015 - 3377 Barwood Road**

Mr. Luciani, Interim Zoning Officer, provided a brief summary of the case submitted by the applicant, Robert Kettering, which was first presented at the January Zoning Hearing Board meeting. The applicant is currently in the process of building a single-family home on the property. Currently the property is located in the R-R Rural Residential zoning district. The Applicant is requesting three (3) variances from the following sections of Article XIX S-S Steep Slope Overlay:

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§325-85.D.2.b Pre-existing impervious due to steep slope

The applicant is requesting a variance to deduct pre-existing impervious surface coverage from the maximum impervious coverage in the precautionary slope area. Under Section §325-85.D.2.b property site is almost entirely 15% or greater slope with an approximate 90% of the property considered impervious area. The maximum impervious coverage of the site is 20%. The applicant is requesting a variance to waive the pre-existing impervious coverage due to steep slope which would allow a single-family home to be constructed on the property.

§325-27 Area and bulk requirements for minimum lot size

The applicant is requesting a variance for the area and bulk requirements for minimum lot size. Under §325-27, the minimum lot size for a property seeking to build a single-family home is one acre. Currently the property is 0.6 acres. The applicant is requesting a variance to waive the minimum lot coverage for properties in the R-R district, which would allow a single-family home to be constructed on the property.

§325-27 Area and bulk requirements for minimum lot width

The applicant is requesting a variance for the area and bulk requirements for minimum lot width. Under §325-27, the minimum lot width for a property seeking to build a single-family home is 200 feet. Currently the property is approximately 101 feet. The applicant is requesting a variance to waive the minimum lot width for properties in the R-R district, which would allow a single-family home to be constructed on the property.

Mr. Luciani provided a brief background on the case. In 2022, the applicant filed for a stormwater permit. At the time the steep slope and challenges of the site were noted. When the subdivision was first developed, it was assumed all lots would be on a septic system because there was no public sewer. The public sewer did go through due to sewage failures in the neighborhood. Mr. Luciani believes the lot was created as a residential lot and it is his opinion that dimensional relief is not needed because it was created before the zoning ordinance; therefore, he did not feel the request for variances to lot size and width needed to be addressed. He suggested the Zoning Board members concentrate on the variance request to the steep slope ordinance.

Solicitor Markey asked Mr. Luciani if he was willing to concede because this is a pre-existing non-conforming lot that was established by a subdivision in 1963, that he would not mandate they request variances to lot size and width. Mr. Luciani responded yes. Solicitor Markey asked the attorney for the applicant, Jeffrey Shank, Esq., if he was in agreement to withdraw the requests for the two-dimensional variances. Mr. Shank agreed as long as there won't be any issues moving forward regarding the dimensional variances that were otherwise requested in the application. Solicitor Markey stated since both parties agree, all testimony would be confined to the variance request to the zoning ordinance for pre-existing impervious due to steep slope.

The following persons were sworn in:

Jeffrey S. Shank, Esq., Attorney with Nikolaus & Hohenadel, LLP  
Andrew Weaver, Professional Engineer, Envalue Engineering  
Bob Kettering, Applicant, Property Owner and Builder

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Jeffrey S. Shank, Esq., Nikolaus & Hohenadel, LLP

Attorney Shank summarized that the existing slopes are natural and historic in nature and are a characteristic of the site. The applicant is proposing to build a single family home which is a permitted use in the Rural Residential zone. At the conclusion of the testimony the applicant will be requesting a variance pursuant to his application from the steep slope overlay requirements. The Township's ordinance allows for 20% of impervious coverage on the portion of the lot that is not in steep slope and only 10% impervious coverage on the portion of the lot that is subject to the steep slope of which is a majority of the lot. The applicant is requesting relief to allow him to build a single family home that will require approximately 3,500 to 4,000 SF of impervious coverage over the entire lot.

Andrew Weaver, Professional Engineer, Envalue Engineering

Mr. Weaver stated there is a 20% lot coverage in the overall zone and the steep slope overlay is 10%. Mr. Weaver stated that the difficulty is any area over 15% slope is automatically considered impervious. The zoning ordinance provides an example of a 100,000 SF lot of which 5,000 SF is steep slope which is considered to be 5% impervious before any construction. After construction, the lot can only be 20%. In the applicant's case, 90% of the lot is steep slope and is 9% impervious before construction. The request is to allow the 10% impervious be applied to the steep slope area and 20% impervious applied to the area under 15%. Mr. Weaver referenced steep slope charts which were included in the application packet, noting they were taken from the PA Department of Natural Resources aerial topography from 2008, which he believes is adequate for planning purposes. He demonstrated the areas that would be the best for the building pad and driveway. It was noted that slopes on either side of this lot are similar. He noted the building area does not contain 3:1 slopes. For comparison purposes, Mr. Weaver referenced photographs submitted with the application which demonstrate homes constructed on 2:1 steep slopes with boulders in the Lancaster area. In summary, it was Mr. Weaver's opinion that the site is challenging, but not unbuildable. The variance requested is the minimum variance that would allow construction on the lot.

Mr. Kettering stated the Lancaster example provided is an extreme example and the lot in question is not as extreme. He stated there would be a rock wall in the back to help with the grade.

Mr. Luciani asked if an aerial topography was performed on the site, to which Mr. Weaver replied no. Mr. Weaver noted that performing a topography survey before the variance was granted would be a waste of money spent, unless the variance is contingent on the survey.

Mr. Weaver summarized that the total lot is 31,480 SF, with 9% in the steep slope overlay which is allowed 10% impervious. The remaining 10% is less than 15% which would allow 20% impervious, resulting in a total of 3,460 SF impervious.

Bob Kettering, Applicant, Property Owner and Builder

Mr. Kettering stated he plans to build a house on the lot that is similar to the homes on the left and right. The proposed driveway is 21-22% and is similar to the driveway on the left. The driveway to the right is around 17%. The home is being built for a client.

Attorney Shank asked that all photos shown during the presentation be incorporated into the record subject to the Board's approval. Mr. Shank stated there is no difference in the relief requested with regard to the steep slope issue created by the ordinance, that the applicant did nothing to create this and it was a pre-existing condition. The applicant is aware it is a non-conforming lot and his intent is to construct a

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single-family home on this property that is consistent with the type of homes constructed on this street. It is Mr. Shank's opinion that an unnecessary hardship has been satisfied by the testimony presented and encouraged the Zoning Hearing Board to grant the steep slope variance necessary for the project to move forward. Mr. Shank noted that some of the concerns that may be presented this evening are subject to being addressed in other approval processes as the project moves forward.

**Additional Comments of John Luciani, Interim Zoning Officer**

Mr. Luciani shared that he visited the site and took photos, which he requested be entered into the record. The 1963 plan survey by Gordon Brown was referenced. When you take the northeastern corner of the lot elevation all the way down to the elevation along Barwood Road, this gives you the elevation differential. He noted that the average flow is over 25% of the entire lot. The lot collects water from Rocky Ridge Park and flows into the stream. The applicant was told it would be a challenging lot to build upon. The applicant prepared a grading plan, but no survey. The grading plan estimates there is four feet from the retaining wall to the backyard to the north. However, Mr. Luciani noted if the average grade were used, the distance would be closer to 24 feet. The applicant plans to include a basement in the home which means the hole required will be 26 feet deep at the back corner. There is only a 25-foot setback. Mr. Luciani estimates the builder will have to go 50 feet on either side of the corner of the rear of the building to grade the site. The amount of fill that will need to be pulled out of the lot is significant. There is also a wetland in the front yard according to the York County Conservation District. Mr. Luciani submitted a concept cost plan as one of the exhibits which indicates the cost will be significant due to the amount of excavation and depth. The proposed driveway is going to be significantly steep. Mr. Luciani is concerned that the applicant is not aware of the work that would be required to stabilize the lot. Mr. Luciani expressed concern about the challenges and the builder's ability to meet the challenges. Exhibits were entered as ZO-A1 through ZO-A4. Solicitor Markey stated the exhibits should be entered as Township Exhibit 1 collectively. Mr. Luciani also produced photos of the site which were entered into the record as Township 2 and 3.

Due to the concerns expressed by the Township Engineer, Mr. Achenbach questioned the Board's ability to approve the variance and allow the applicant to proceed in the development of the site. Mr. Luciani expressed that the concept plan is not realistic because the lot is steeper than the plan drawing submitted by the applicant. If detailed topography were provided, it might be possible to develop an appropriate grading plan. Mr. Luciani went on to say you can build on any lot if you have enough money to perform the work required to stabilize it. The applicant needs to demonstrate that he is willing to spend the funds required to properly develop the property.

Mr. Achenbach asked at what point can it be determined that the applicant has demonstrated his ability to develop the property to the satisfaction of the Township. Mr. Luciani responded the applicant should have done the following prior to requesting the variance: Backhoe the property to dig to determine location of rock, water, and to determine how much water flows through the site and shoot topography before developing the grading plan. Mr. Luciani reported the Pennsylvania Spatial Data Access (PASDA) charts used to develop their grading plan are not consistent with the site and the Gordon Brown plan from 1963.

Mr. Seiler asked Attorney Markey for his opinion. Attorney Markey asked to reserve his thoughts until after public comment was completed.

Attorney Shank stated the denial of the request for the steep slope variance based upon any of the comments or testimony from the Township staff is reversible error. He stated case law is very clear as to

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the basis of the criteria for a variance that has been clearly met and it is borderline suggested by staff that it is the applicant's checkbook that will determine whether or not this Zoning Hearing Board grants relief. Mr. Shank expressed this is not an appropriate measure and it is reversible error to deny this based upon those comments.

Mr. Kettering provided comments regarding Mr. Luciani's observations about the ability to build on the lot and the engineer has additional rebuttal. Attorney Markey assured Mr. Kettering that the Zoning Hearing Board would be applying the criteria for the granting of the variances outlined within the Pennsylvania Municipalities Planning Code to the request before them and would take Township Engineer Luciani's testimony into consideration.

Mr. Weaver stated the plan submitted qualifies as a level 2 stormwater plan which is a simplified process that doesn't require the rate control and requires only volume control. For existing lots like the one in this case, it allows the builder to deal with the application themselves. Mr. Weaver stated he is a professional engineer and has consulted on many similar plans. His involvement in this development plan has been minimal because he did not think he needed to be more involved. When the steep slope issue came up, the opinion was there was no point in putting a lot of time into the plan unless the variance was approved by the Zoning Hearing Board.

Attorney Markey stated the testimony was beyond the scope of information to be analyzed this evening. Attorney Markey asked Mr. Weaver to provide the hardship that is affecting this property that justifies the granting of the variance, to which Mr. Weaver responded the hardship is the steep slope and without the variance, nothing can be built on the slope.

Ms. Cunningham asked what year the diagrams used were developed, to which Mr. Weaver responded 2008, and added there is a heavy margin of error because contours from 1963 do not show the channel of water that runs through the upper part of the site. In 1963, topography was not the largest concern. Mr. Weaver agreed that a new survey would be more accurate than the 2008 charts that were used.

Mr. Kettering stated the contour of the back of the house is 596 and the contour at the road is 578, which is a difference of 18 feet from the road to the back of the house, which represents 18%. Mr. Kettering said he would agree to conduct the survey to determine exact measurements, if these numbers are incorrect. However, Mr. Kettering has used these figures on other construction sites, and they are close to being accurate. Mr. Kettering shared he has been a builder for over 40 years on a lot of various sites. He agreed this site is going to be a challenge but is not insurmountable. He noted that most of the steep slopes are behind the house. He also noted that the home to the left and the home to right have the same steep slopes. Mr. Kettering indicated he would agree to a continuance in order to have time to have a topography survey completed.

Public Comment

Mark Swomley, 3366 Barwood Road

Mr. Swomley stated if the case is continued, it would put the residents of Barwood Road at a disadvantage if comments are not allowed to be heard this evening.

Solicitor Markey suggested a continuance could be approved in order to collect additional information. He noted the case law to be applied will be the steep slope variance criteria. He suggested opposition testimony be heard this evening and then the Board should make a decision based on the case law.

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Public Comment

All members of the public that wished to offer testimony were sworn in.

Mark Swomley, 3366 Barwood Road

Mr. Swomley stated he is a degreed engineer, served 12 years on the Planning Commission and 10 years on the Township Board of Supervisors. Mr. Swomley noted he was not here in his capacity as a Township Supervisor, but as a resident of Barwood community having lived there for 38 years. He understands the terrain and problems in the community as well as anyone in attendance. Mr. Swomley shared he has seen projects that were doomed to failure at the start and believes this case is one of them. Mr. Swomley referenced the picture design of the house and commented on the waterflow of the property. The retaining walls shown in the photo are designed to push all the water that flows down the hill onto the neighboring properties. He noted there are artesian springs along the side of the hill with a continuous flow of water into the stormwater system and on to the road surface regardless of rainfall. The Township has done remediation work a number of times. The plan to work with an impervious surface other than what is intended by the ordinance does not make sense to Mr. Swomley. He shared that a resident immediately to the west has an artesian well in the basement that had to be blocked and a drain dug around the side of the house to take the flow down to the street. The water then flows continuously year-round over the curb and into the sewer system. Mr. Swomley takes exception to the lot size issue because this property is the narrowest lot and pushes up against the neighbors on each side. Mr. Swomley presented photos of the community which were entered as Protestants-1 collectively. Mr. Swomley stated there is not just surface rock, but also bedrock on the lot. On the lot directly across from Mr. Swomley, a developer came in and cut down several trees before he realized it would not be possible to spend the money needed to get the sewer in because the site was all rock and the property was abandoned. Several large trees whose roots were disturbed started to lean toward Mr. Swomley's home. He has been blocked by downed trees about 12 times over the last three years. If the applicant's lot is disturbed, the same conditions will occur. Mr. Swomley anticipates this property will be abandoned just like the lot across from his home. Mr. Swomley has already taken measures to address stormwater issues at his property because the stream encroaches on his property. He went to the state and received a permit to have a stream restoration done at his expense and put a retaining wall up in the back to protect his home. Mr. Swomley stated if relief is given for steep slopes, what is the point of the ordinance. His basement wall was damaged when blasting occurred during development of the Overview community due to the terrain. He is concerned blasting will be needed on this property in order to get the sewer line in and it will result in damages to the homes of local neighbors. Mr. Swomley shared that another neighbor who was unable to be present this evening had called the police on August 18 after an altercation with the developer over the property line.

Mr. Kettering asked to respond to the police incident. He stated he was measuring the property when the neighbor came over and told him the line was not correct and should be 20 feet over. When he asked how she knew that, she said the realtor had indicated the location of the property line. He responded he had just had the property surveyed and suggested she could also have the property surveyed. Mr. Kettering stated that she did have the property surveyed and it was accurate.

Zach Wilt, 3381 Barwood Road

Mr. Wilt lives to the right of the lot in question. Mr. Wilt attested to the water issues on the lot. Mr. Wilt stated he has a stream through his property and there is a stream through the applicant's property. Mr. Wilt has a pond as a result of a naturally flowing stream that constantly runs through his property, into the

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street. He has had constant battles with leakage and his foundation was repaired. He is concerned about runoff from the applicant's property onto his property and that it will weaken the tree roots. He has had a number of trees come down. He shared he is concerned that a proper survey was not completed before this case was presented for variance. He feels this case is about making money and not completing the proper steps.

Scott Corter, 3374 Barwood Road

Mr. Corter's residence is across the street from the lot in question. His concerns and feelings align with the Township Engineer related to the challenges of building on this lot, such as the rock, water and steep slopes. Mr. Corter shared that his biggest concern is how the project might affect his property, as well as the possibility it will be abandoned, turning a nice natural landscape into a disturbed building lot with downed trees and a big hole.

Beverly Cline, 3378 Barwood Road

Ms. Cline lives across the street from the lot in question and has lived in Barwood since 1968 for a total of 56 years. Her concern is the same as others have expressed—the water runoff. Ms. Cline shared she does not understand the surface variances presented, but does not believe there is much room to build a home on the lot. She did not like hearing the engineer refer to “maybe” or “perhaps” during his presentation because it sounds like he is not positive about what they are going to do to address the issues.

Maria Swomley, 3366 Barwood Road

Ms. Swomley was present on behalf of her neighbor Bill Sonnenberg who was not able to be here. She has lived next door to Bill Sonnenberg for 37 years. She stated he is an environmental engineer and sent an email to Ms. Swomley who read the email to the Zoning Hearing Board members for the record.

“First, will the severe blasting that will be needed to make the lot usable cause damage to neighboring foundations, springs, sewer, water, etc.? Two, will the lot be partially cleared of trees and then left to look ugly as was done at the lot two doors down? Three, will the home being built be comparable with other homes in the neighborhood? Four, (Ms. Swomley added: ‘and this is in reference to the altercation—this is his perception, he’s a smart man, worked for Caterpillar’) can we believe anything the owner, or his representatives say considering they were caught moving the property markers as witnessed by Springettsbury Police?”

Attorney Shank objected and asked the Chairman that Mr. Sonnenberg's email be stricken from the record because it is hearsay, and not appropriate for testimony in this case. Mr. Achenbach asked Ms. Swomley to avoid being too descriptive. Ms. Swomley responded it was his perception. Attorney Markey noted that Ms. Swomley is suggesting there is a credibility issue involved in analyzing what they say on the record. Mr. Swomley stated for the record that Mr. Sonnenberg had signed in at the last meeting and was not able to be here tonight, which is why he sent the email.

With Attorney Markey's agreement, Mr. Achenbach requested a copy of the email to be introduced as evidence. Attorney Shank objected because legally it is hearsay, it impugns the integrity of his client and is not a basis for this Zoning Hearing Board to decide whether or not to grant the relief. Attorney Markey recommended the email be entered into the record because the formal rules of evidence don't apply in zoning proceedings, noting that it is hearsay and the Board may give it whatever credibility it wishes.

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Mr. Weaver shared that he was present with Mr. Kettering when the police were called. They were there to locate the wetland flags that the wetland specialist set. While there, Mr. Weaver tried to locate two corners. Mr. Kettering had walked over and picked up an iron pipe on its side, and attempted to straighten it up. Mr. Weaver stated the neighbor came out, a conversation took place and the iron pipe was laid back down. Mr. Weaver said the incident was low key and Mr. Kettering was very polite.

Mr. Kettering stated again his own recollections of the altercation that took place when the local police were called.

Opinion of Solicitor Gavin Markey, Esq.

Solicitor Markey reviewed the Springettsbury Township Zoning Ordinance criteria for the granting of a variance which the Zoning Board is charged to apply to the facts presented. The first one is critical to evaluating the 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 property and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located. Solicitor Markey stated this particular language refers to the fact that the sole justification for the granting of a steep slope variance cannot be the fact that there are steep slopes. There must be other unique physical circumstances or conditions that subject the property to the legitimacy of a variance. He went on to say that steep slopes cannot be the justification. However, when Attorney Markey asked Mr. Weaver what he thought the hardship was, he indicated the hardship was the steep slope. Attorney Markey shared a case where the Zoning Hearing Board denied a steep slope variance that went up on appeal. The Court said: *“Having considered the applicant’s argument, we note that it is striking for what it does not purport. Applicants do not argue that the unnecessary hardship has not been caused by the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.”* In other words, the Court is indicating they didn’t have those facts other than they tried to justify the granting of the variance based on steep slopes. The Court further stated: *“Given the applicant’s failure to show their unnecessary hardship arises from unique physical circumstances of their property, as opposed to the circumstances generally created by the ordinance, an undoubtedly relevant criteria, we cannot agree with the applicant’s assertion that the Zoning Hearing Board abused its discretion or committed an error of law in denying their variance request.”* From a legal perspective it was Attorney Markey’s opinion that the variance not be approved because the applicant did not carry the burden of proof for the granting of the variance.

Attorney Shank asked to respond to Attorney Markey’s legal argument. Mr. Shank suggested that Mr. Markey was ignoring the totality of the testimony. Mr. Shank stated the Board heard significant testimony regarding the lot itself and none of the circumstances of the lot have been caused by the applicant. Mr. Shank suggested that the denial of relief essentially renders the lot unusable. Mr. Shank believes the totality of the physical uniqueness is not just limited to the steep slopes and asked the Board to consider the totality of the lot and totality of the testimony which indicates there is a uniqueness with contour and lot size that would satisfy the criteria for variance.

Chairman Achenbach asked if the Board members or the Township are liable if the variance would be approved and someone would be injured during excavation or construction, to which Attorney Markey responded that the Zoning Hearing Board is a judicial body and members are not individually liable. Since Attorney Markey is not the Solicitor for the Township, he did not respond as to the Township’s liability. He reiterated that he does not think the variance is justified given the testimony provided.

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Mr. Kettering stated that the Board heard from the neighbor to the left and the neighbor to the right and that all three lots are comparable. Mr. Kettering reiterated that both neighbors have been able to mitigate and correct their water issues; therefore, Mr. Kettering asked why he can't, as the person in the middle with the same slopes, build a house as his neighbors to the left and right. Mr. Kettering shared it does not make sense that he can be denied when he would be doing the same thing as the neighbors to his left and right have already done. The neighbors' water runs down between the lots and his plan would do the same.

Mr. Swomley responded it took a long history and a lot of problems and consternation to resolve his water issues. He added that relief from the steep slopes because of water creates impervious area and water issues that are not going to go away by building on another lot.

Mr. Kettering responded to Mr. Swomley that the water will continue to come down the hill but will come down the sides of the lot between their properties. He also reminded Zoning Hearing Board members that he has constructed over 1,000 houses over 40 years, and never started a house that was not completed.

Attorney Shank stated that the ordinance allows building and construction in steep slope areas, but there is just not enough area on this particular lot, which creates the uniqueness of the property. Mr. Shank reiterated the lot becomes sterile if relief is not granted, and there is no use or purpose for which it could be used. His client believes that relief should be granted under those circumstances.

Mr. Swomley responded to Attorney Shank's statement by saying he believes there are other alternatives for the lot.

Chairman Achenbach entertained a motion on ZHB-2023-0015.

**IN THE CASE ZHB-2023-0015, SANDE CUNNINGHAM MOVED TO DENY THE VARIANCE TO ZONING ORDINANCE §325-85.D.2.b PRE-EXISTING IMPERVIOUS DUE TO STEEP SLOPES. MARK BAIR SECONDED THE MOTION. ALL ZONING HEARING BOARD MEMBERS VOTED IN FAVOR AND THE MOTION CARRIED.**

**6. ADJOURNMENT**

**MR. BAIR MOVED TO ADJOURN THE MEETING, SECONDED BY MR. SEILER. THE MEETING ADJOURNED AT 8:24 PM.**

Respectfully submitted,

Secretary

/jht