

A P P R O V E D

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD**

JULY 3, 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: Benjamin McCue, Zoning Officer
Randall Heilman, Director of Community Development
Gavin Markey, Solicitor
Jill Trostle, Stenographer
Official Court Stenographer

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.

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

Benjamin McCue, Zoning Officer
Randall Heilman, Director of Community Development

Zoning Officer Benjamin McCue confirmed that the cases presented this evening were properly advertised.

ACTION ON THE MINUTES:

A. JUNE 6, 2024

**DAVID SEILER MOVED TO ACCEPT THE JUNE 6, 2024 MINUTES, SECONDED BY
MARK BAIR. THE MOTION UNANIMOUSLY CARRIED.**

OLD BUSINESS: There was no old business to be discussed.

NEW BUSINESS:

ZHB-2024-0008 - 1725 Deamerlyn Drive

Mr. McCue provided a brief summary of the case. Brian K. and Amy M. Young are requesting a special exception to the terms of Section §325-22.C.4 of the Township Zoning Ordinance - Accessory Dwelling Unit for a Family Member. The property is located at 1725 Deamerlyn Drive, York, PA in the R-20 Zoning District.

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

The following persons were sworn in:

1. Baron Mease, Owner of BLM Construction who has been hired to construct the proposed accessory dwelling
2. Amy Young, Resident

Baron Mease and Amy M. Young

Mr. Mease stated the applicant is requesting a special exception for an accessory dwelling unit. The existing space is currently an existing bedroom with a vanity and window that will be transformed by removing the window and installing a door, kitchenette, and sink. The plan proposes to have an exterior entrance by way of steps and a deck into the new door.

Chairman Achenbach entertained questions of the Zoning Hearing Board members.

Responses to Questions of the Zoning Hearing Board

- The proposed dwelling is on the second floor of the residence.
- There is an existing master bath adjacent to the bedroom.
- The family member to be residing in the dwelling unit is the brother of Amy Young.
- The additional dwelling unit will not be more than 30% of the total floor area of the dwelling.
- The family member would be preparing microwave meals in the kitchenette.

Solicitor Comments

Solicitor Markey stated Section §325-159 - Accessory Dwelling Unit for Additional Family Member contains specific criteria to be satisfied. The regulation states “The family member shall include and be restricted to the following: grandparent, parent, children, or grandchildren.” Therefore, it seems a variance would be necessary for purposes to allow the brother to live in the additional dwelling unit. In addition, an affidavit should have been submitted to the Zoning Hearing Board to verify that the owner is a resident and the person is a family member. The Board can stipulate continued compliance with specific criteria. Ms. Cunningham asked if there is a hardship related to Mrs. Young’s brother, to which the applicant responded that he suffers from severe depression and OCD and is under the care of a physician and psychiatrist. The applicant wishes to provide a safe and more affordable living arrangement for him as a result of this hardship. Solicitor Markey noted that the criteria of “children” could be considered very broadly in order to allow the brother to live in the additional dwelling.

Solicitor Markey recommended there be continued compliance with all the specific criteria of Section §325-159.A-F. because it requires on an annual basis an affidavit to be submitted to the Township to continue to verify the family member still lives there and that no rent is being charged. This condition should be placed within the approval. Solicitor Markey recommended the Board imply a variance request to §325-159.A as part of the package, thereby amending their application accordingly during this meeting. The Township staff agreed with the proposed recommendation. Mr. Heilman also noted that this particular ordinance should be reviewed to include this additional category of family member. Ms. Cunningham added that ordinance should also reference “hardship.”

Mr. Achenbach addressed the applicant and stated the action to be taken this evening is specific to this case as are most special exceptions for dwelling units for family members and asked if Mrs. Young would agree to treating the case as a variance in order to allow for the brother to qualify as a family

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

member under the ordinance §325-159, as well as submitting an affidavit annually to confirm the brother still lives in the dwelling and that no rent is being charged. In addition, approval is unique to this situation and would not stay with the property if /when sold. Mrs. Young agreed to the conditions noted. Solicitor Markey shared that subsection F states *“At such time as the owner is no longer a resident or the approved family member is no longer an occupant of the unit, the owner shall immediately notify the Township and the unit shall be returned to the use as a part of a normal single family home.”*

Chairman Achenbach opened the floor to public comments. There was no one in attendance to speak for or against the applicant’s request for variance and special exception.

IN THE CASE ZHB-2024-0008, DAVID SEILER MADE A MOTION THAT THE SPECIAL EXCEPTION AND VARIANCE TO§325-159 - ACCESSORY DWELLING UNIT FOR ADDITIONAL FAMILY MEMBER BE APPROVED SUBJECT TO CONTINUED COMPLIANCE WITH ALL CRITERIA UNDER SECTION §325-159 A-F, AS SET FORTH BY THE SOLICITOR. SANDE CUNNINGHAM SECONDED THE MOTION. ALL BOARD MEMBERS PRESENT VOTED IN FAVOR AND THE MOTION CARRIED.

ZHB-2024-0009

Mr. McCue provided a brief summary of the case. Mark and Holly DeVries are requesting a variance from the terms of Section §325-20.C.1 - Front Yard Setbacks to construct a porch. The property is located at 3952 Sandra Drive, York, PA in the R-10 Zoning District.

The following applicants were sworn in:

1. Mark DeVries
2. Holly DeVries

Mark and Holly DeVries

Mark and Holly DeVries requested a variance on the setback requirement to add a ten foot porch on the front of the house extending from the driveway to the front door for protection from the weather. The existing residence was built too close to the street’s driveway. Mr. and Mrs. DeVries are the second owners and did not have the house built. Photos of homes in the neighborhood with similar porches were provided with the application. Yorklyn Construction has been hired to construct the porch if approved.

Responses to Questions of the Zoning Board members

- There will be an overhang on the porch.
- The roof will extend over the entire porch.
- Yorklyn Construction built the porch depicted in the photos provided.
- The home was originally built in 1985 or 1986. Mr. and Mrs. DeVries moved into the home in 1991.
- When the applicants began to consider adding the porch, they were told there was not enough setback to do so. The house was built only 30 feet from the right of way and does not meet the 35 foot setback requirement. If a variance is approved, there would be ten feet of encroachment into the 35 foot setback.
- Ms. Cunningham stated it would have been beneficial to see a photo of the roof over the porch.

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

- Stormwater management and drainage issues were reviewed and addressed when the permit was submitted.

Chairman Achenbach opened the floor to public comments. There was no one in attendance to speak for or against the applicant's request for variance.

Solicitor Markey's Comments

Solicitor Markey expressed no objections from a legal perspective, noting this is a purely dimensional variance with a reduced burden of proof upon the applicant.

IN THE CASE ZHB-2024-0009, MARK BAIR MOVED THAT THE REQUEST FOR VARIANCE TO §325-20.C.1 - FRONT YARD SETBACKS BE APPROVED, SECONDED BY DAVID SEILER. ALL BOARD MEMBERS PRESENT VOTED IN FAVOR AND THE MOTION CARRIED.

ZHB-2024-0010

Mr. McCue provided a brief summary of the case. Carl Sowers and Debera Hershey are requesting variances from the terms of Section §325-136.A and Section §325-139.A of the Township Zoning Ordinance regarding Side Yard Setbacks in order to approve an existing Gazebo/Deck that was built one year ago on the property line. The property is located at 560 Eton Lane, York, PA in the R-10 Zoning District.

The following witnesses were sworn in:

1. Carl Sowers, Applicant
2. Debera Hershey, Applicant
3. Robin Potthorf, Neighbor and Daughter

Carol Sowers and Debera Hershey

Ms. Hershey stated their original desire was to add a deck and firepit, but decided to add a pavilion for a more finished look. A year later they were notified they were not in compliance with the setback boundary requirements, to which they were unaware. The pavilion was built in the current location because of its close proximity to the back door for easy access to any kind of outdoor functions. The pavilion does not interfere with any neighbor's views, is open on all four sides, and is very attractive. A variance is requested so that the pavilion does not have to be disassembled and moved. Ms. Hershey stated if moved, it would be located in the middle of the yard which is not as aesthetically pleasing or accessible.

Responses to Questions of the Zoning Board members

- The pavilion was built by an acquaintance and not a professional construction/builder who would have been familiar with permit, zoning law and setback requirements.
- The location of the gazebo is right on the property line beside the neighbor's fence.
- Mr. McCue stated for the record that it was stated to the Zoning Office that the applicant was unaware they needed a permit for this project and the violation was brought to Mr. McCue's

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

attention by a phone complaint received two months ago. Mr. McCue then visited the property to verify the complaint and did confirm no permit was submitted.

- Mr. Heilman also visited the site with Mr. McCue and confirmed that most complaints are anonymous. Mr. Heilman confirmed that the pavilion is nicely done, but is right on the property line.
- The applicant has received no complaints from the neighbor in regard to the firepit.
- Mr. Kaufmann expressed concern about the potential noise.
- There is no room to add vegetation between the pavilion and the neighbor's fence

Chairman Achenbach stated that granting a variance after the fact is not the preferred procedure and expressed a concern of a potential problem in the future when ownership of either residence changes.

Solicitor's Opinion

Solicitor Markey confirmed that approval of the variances would stay with the property. In addition, if the neighboring property changes ownership, any potential new owner would already be aware of the existence of the pavilion and approved variance. Solicitor Markey stated he has no reason to believe the owners were not aware of the permit requirement and that it is a difficult case that is up to the Board to approve or not approve.

Chairman Achenbach opened the floor to public comments.

Robin Potthorff, Neighbor and Daughter of Applicant

Ms. Potthorff stated she lives two doors down from the applicant and stated it is a beautiful structure. No further public comment was presented.

Chairman Achenbach entertained a motion.

IN THE CASE ZHB-2024-0010, DAVID SEILER MADE A MOTION THAT THE TWO VARIANCES TO §325-136.A AND §325-139.A - SIDE YARD SETBACKS BE APPROVED IN THIS CASE ONLY, RELUCTANTLY SECONDED BY MR. BAIR.

ADDITIONAL DISCUSSION: Mr. Bair stated he understands the position of the applicant; however, they caused their own problem. Mr. Bair asked Solicitor Markey what could happen if the variances are granted and the neighboring property changes hands and the new owner files a complaint. Solicitor Markey responded time would have lapsed for any kind of appeal process. He also stated that if the concern was so strong that a complaint was called in, the person filing the complaint should have attended the meeting to reinforce the concern. Ms. Cunningham stated it would be important to know who filed the complaint, the neighbor affected by the encroachment, or someone down the block.

VOTE ON MOTION: THE MOTION PASSED WITH A VOTE OF 4 AYES AND 1 NAY (SANDE CUNNINGHAM).

Chairman Achenbach polled the members of the public in attendance, for any objections to rearranging the agenda by hearing Cases ZHB-2024-0012 and 0013 ahead of ZHB-2024-0011. Hearing no objections, the agenda was rearranged to hear case ZHB-2024-0011 after 0012 and 0013 since case 0011 may be lengthy.

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

ZHB-2024-0012 - 2811 E. Prospect Drive, York PA

Mr. McCue provided a brief summary of the case. Laura Maring and Ripleigh Maring DBA Ripleigh's Creamery submitted an application to request a variance from the terms of Section §325-131.C of the Township Zoning Ordinance to allow a special event to occur for more than 45 days. The property is located at 2811 E. Prospect Drive, York, PA in the Mixed-Use Zoning District.

The following persons were sworn in:

1. Ripleigh Maring, Owner
2. Laura Maring, Owner

Laura Maring and Ripleigh Maring, DBA Ripleigh's Creamery

Ripleigh Maring is one of the owners of Ripleigh's Creamery and is requesting approval to extend their current permit for special event outdoor seating through Labor Day. The outdoor event does not include entertainers, only seating for customers to enjoy their ice cream outdoors. The applicants were aware that the permit applied to only 45 days, and applied with the intention of requesting a variance to extend beyond the 45 days. The current permit began May 25, 2024 and ends July 7, 2024. The applicants plan to apply for special event outdoor seating again next year beginning Memorial Day through Labor Day.

Comments and Questions of the Zoning Board members

- Ms. Cunningham asked Township staff if the applicant would have to apply and pay for a permit each year, to which the response was yes.
- Applicants were aware of the 45-day limitation, but this was the best permit available to them.
- If a variance is approved, the extension would end September 3, 2024.
- The creamery is open all year round.

Township Staff Comments

Mr. McCue confirmed that the Zoning Ordinance allows only one permit for four special events for outdoor seating that may not accumulate to more than 45 total days and an applicant may only apply for one special event permit per year. In order to extend beyond 45 days, the applicant must request a variance. Applicants would have to apply for the permit and variance each year, unless there is a change in the ordinance.

Mr. Kauffman commented that there are other restaurants that have outdoor seating. Mr. McCue responded that other restaurants may have a constructed patio for outdoor seating. It was noted that the new Dairy Queen has outdoor seating in the parking area. Mr. McCue responded that not every restaurant applies for a permit or comes to Township to request zoning approval as required.

Mr. Heilman agreed that the specific ordinance should be reviewed because it does not make sense for the applicant to request a permit and variance each year.

Mr. Bair suggested the applicant explore reconstructing existing parking spaces to be used for outdoor seating, which may eliminate the need to request a permit every year. Laura Maring responded they would love to continue outdoor seating through the fall as many customers love to bring their dogs and eat outdoors.

Chairman Achenbach opened the floor to public comments. No comments were received.

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

Solicitor Comments

Solicitor Markey confirmed that the applicant would have to reapply for the 45 day permit each year, unless the ordinance is changed. He also encouraged the applicant to explore with the Zoning Officer the idea proposed to convert parking spaces to outdoor seating for a more permanent solution. In summary, he had no objection and recommended an end date of September 3, 2024.

IN THE CASE ZHB-2024-0012, DAVID SEILER MOVED THAT THE VARIANCE TO §325-131.C TO ALLOW SPECIAL EVENT OUTDOOR SEATING BEYOND 45 DAYS BE GRANTED AND CONCLUDE AT THE END OF THE DAY ON SEPTEMBER 3, 2024. MARK BAIR SECONDED THE MOTION. ALL BOARD MEMBERS VOTED IN FAVOR AND THE MOTION CARRIED.

ZHB-2024-0013 - 4298 Britain Drive

Mr. McCue provided a brief summary of the case. Jayeneca Elby is requesting a variance from the terms of Section §325-121.A of the Township Zoning Ordinance to allow a fence to exceed the maximum permitted height in a front yard. The property is located at 4298 Britain Drive, York PA in the R-20 Zoning District.

The following persons were sworn in:

1. Brandon Elby
2. Jayeneca Elby

Brandon Elby stated they are requesting a variance to allow a six foot vinyl privacy fence constructed in their yard. Mr. Elby noted they came before the Zoning Hearing Board in May 2021 and were approved for the same application request; however due to the pandemic, the cost of lumber had doubled at that time. They are now submitting the same variance request for approval. Plan drawings were submitted with the application. The applicant's residence is on the corner of Britain and Campbell, which is a busy street. Across the street is a wooded area. Mr. Heilman stated the property probably has double frontage because it is a corner lot.

Comments and Questions of the Zoning Board members

- The fence will surround the entire back yard, but the variance is requested for the fencing along Campbell Road.
- There are comparable fences in the surrounding neighborhood.
- The six foot fence will not obstruct the view of traffic
- Mrs. Elby stated the house across the street from their residence is also a corner lot and it also has a six foot fence.
- The applicant believes the fence conforms with other fences in the neighborhood.
- The fence is vinyl.
- Mr. Bair confirmed that the applicant is essentially applying for the same variance for the same reason that was approved in 2021 and that no changes have been made.

Chairman Achenbach opened the floor to public comments. No comments were presented for or against the applicant.

Solicitor's Opinion

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

Solicitor Gavin Markey had no objection to approving the variance from a legal perspective and reiterated it was approved by the Zoning Hearing Board in 2021.

IN THE CASE ZHB-2024-0013, MARK BAIR MOVED TO APPROVE THE VARIANCE TO SECTION §325-121.A ALLOWING A SIX FOOT FENCE IN THE FRONT YARD, SECONDED BY DAVID SEILER. ALL BOARD MEMBERS PRESENT VOTED IN FAVOR AND THE MOTION CARRIED.

ZHB-2024-0011 - 3409 Druck Valley Road, York PA

Mr. McCue provided a brief summary of the case. Thomas P. Sanders is requesting a variance from the terms of Section §325-134.B of the Township Zoning Ordinance regarding locating an accessory structure in a front or side yard. The property is located at 3409 Druck Valley Road, York, PA in the Rural Residential Zoning District.

The applicant, Thomas Sanders, was sworn in.

Thomas Sanders, Owner of 3409 Druck Valley Road, York PA

Thomas Sanders is the owner of the property at 3409 Druck Valley Road. Mr. Sanders is requesting a variance to construct a 12 x 16 foot backyard shed in the northeast section of the property, just off the end of the existing pole building. Mr. Sanders does not reside at this property, but operates R. E. Sanders Plumbing on the property, which is owned by KTKD, LLC. The property is separate from the business operation. The location of the proposed structure sits closer to Trout Run Road. There is an existing pole building that was constructed 20 years ago. Mr. Sanders acquired the property in December 2023. There is 100 feet from the end of the building to Trout Run Road. Mr. Sanders already has a permit for a fenced area that is shown on the plan.

Mr. Achenbach asked if there has been a problem determining which side is the front yard and which is the side yard. Mr. McCue responded that the proposed location is the side yard, noting there are roads on two of the three sides of the property. It is Mr. McCue's opinion that where the proposed shed is to be placed would be considered a side yard. Mr. Achenbach stated since the address is Druck Valley Road, the side on Druck Valley Road would be considered the front yard.

Comments and Responses to Questions of the Zoning Hearing Board

- Mr. Seiler noted that the application provided in the packet is unsigned, to which Mr. McCue responded the signed original is in his office.
- The Zoning Ordinance allows for a six foot high fence, for which there is already a permit.
- The size of the shed proposed was clarified as 12 x 16.
- The side yard setback minimum is 15 feet. The proposed shed is to be 31.5 feet from the center of the right of way.
- The existing accessory structure is a storage facility, and the proposed shed will be used as a storage facility also.
- The business is a service business and not a retail business that attracts retail customers.

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

Mr. Heilman noted this is a double frontage lot with two roads so a variance was recommended. No issues were expressed from a staff level concern, but clarification was requested of the Zoning Board to determine whether the proposed location of the shed is in the front yard or side yard. Mr. McCue stated that the ordinance states no accessory structure can be located in the front yard. Ms. Cunningham asked where the shed should be located to which Mr. McCue responded in the rear yard, but the lot does not have a rear yard. The variance is needed by the applicant because there is no rear yard.

Chairman Achenbach opened the floor to public comments. The following persons were sworn in to provide public comments:

1. Mitzi Bensinger, 3021 Trout Run Road
2. Carol Tanzola, 3009 Trout Run Road
3. John Stein, 3404 Druck Valley Road
4. Earl Shirey, 3410 Druck Valley Road
5. Tom Duchome, 3057 Trout Run Road

Mitzi Bensinger, 3021 Trout Run Road

Mitzi Bensinger has lived at 3021 Trout Run Road for 51 years and owns a 58 acre preserved farm located .2 tenths of a mile from the applicant's property. The area is very rural and is all zoned rural residential with several farms and small single family dwellings. The only reason the applicant's business is there is because it has been grandfathered. The original existing building was a school house built in the 1800s, which later became an auction house. That use was a gentle use which didn't disturb the neighborhood at all. Ms. Bensinger claims that what is occurring now is much more intense. There is a traffic safety issue and she encouraged Township staff and the Zoning Board to look at the area before a decision is made. Ms. Bensinger requested the Board deny the variance request or put it on hold until further investigation is conducted. Her main concern was how do you address this variance when it is in a zone where it is really not allowed to exist. It is a commercial business in a rural residential zone. Ms. Bensinger raised the following questions and concerns:

1. Do you go by the rural residential area requirements for permitted use on the rear setback or side setback? Ms. Bensinger noted commercial business is not a permitted use within the rural residential zone.
2. The rear yard is in the middle of the street and there are two side yards.
3. The commercial business affects the underlying nature of the area. It has been disruptive. It is an active business with 7 or 8 vehicles (trucks/trailers), a skid loader and two very unsightly dumpsters that sit right along Trout Run Road, one of which is overflowing right now. She referenced the current ordinance which states "shall be located with emphasis upon shielding the site from public view" in an attempt to landscape the area or site to minimize the detrimental effect on neighboring properties. The ordinance requires the dumpster area to be screened with fencing, trees and shrubbery. She referenced Article 26 of the supplemental regulations, section §325-120. She requested this be enforced because it is one of the unsightly aspects of this property.
4. The permitted use on this property has been much more intensive than what was there previously.
5. Safety is a concern with ingress and egress. Both sides of the property are open to the road which is a very dangerous situation when trucks are coming out and others are trying to make a left on Trout Run or Druck Valley Road.

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

6. There is a disruption to the underlying nature of the neighborhood with the increased commercial activity and the escalation of activity in a rural, quiet, agricultural environment, which is the only open agricultural area remaining in the Township.
7. She asked the Board to deny the request based on the lack of a rear yard, the safety concerns, or delay until all facts are known and negative effects on the quality of life of the surrounding community are considered.

Thomas Sanders' response: Security Fence has been engaged to erect a fence around the dumpster area as per Township regulations. Mr. Sanders' claimed traffic was a bigger concern when auctions were held. When Mr. Sanders' inquired about purchasing the property, John Luciani, the Township Engineer, told him that the actual auction house was a permitted nonconforming business and that the plumbing business would also be a permitted nonconforming business and was therefore allowed. The plumbing operation has several service trucks with staff that travel to commercial jobs. First thing in the morning there is a crew of men that report to the office, but some travel straight to the job site. At the end of the day, some staff return to the office and others travel straight home. Since occupying the property, Mr. Sanders stated that he has been able to reduce the amount of traffic that was using the parking lot as a shortcut. The road is traveled heavily in the morning and evening by the general public because Druck Valley Road goes to Kreutz Creek and on to Hellam. Travelers tend to take this route to avoid the congestion on Mount Zion Road. Mr. Sanders does not feel his business has created additional traffic concerns. Mr. Sanders has lived in this area for 30 years. His occupancy on the property began in January 2024 and the business was fully moved to the location in April. Mr. Heilman confirmed this timing was accurate.

Carol Tanzola, 3009 Trout Run Road

Carol Tanzola stated she resides at a 30+ acre farm with horses at 3009 Trout Run Road and has been there since 1985. The auction house has always been an auction house and is listed on the Township's historic preservation listing. When it was an auction house it was not an inconvenience because auctions were only held several times during the year. She is aware of two persons who attempted to put businesses in the auction house, including a previous owner who just wanted to sell flowers twice per year and was told she couldn't because it was not a permitted use. Ms. Tanzola stated this is a perfect case of spot zoning that never should have happened. She went on to say the area is rural residential and should never have become a commercial property.

Thomas Sanders' response: Mr. Sanders indicated that he knows the person referenced by Ms. Tanzola. Mr. Sanders stated it was his understanding that the flower sale was turned down because it was a retail use with customers driving in and out to purchase products. The plumbing business is not considered a retail business.

John Stein, 3404 Druck Valley Road

John Stein stated he has lived at 3404 Druck Valley Road since 1962. The property in question was an auction house when he lived there as a child. Auctions were held three nights per week at that time which created a lot more traffic in and out of the parking lot. Mr. Stein's concern is the permits for the building. Mr. Stein believes the front yard is the "V" between Druck Valley Road and Trout Run Road because that is what you see first as you come up the road. The side yards abut Druck Valley and Trout Run. Mr. Stein stated it is a nonconforming building and the backyard is the parking lot which holds about 75 vehicles. When the auction was in its prime, cars would park along the side of the road when the parking lot was full. Mr. Stein supports the variance request as long as the setback requirements are met.

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

Mr. Achenbach asked if there is an entrance to the building within the “V” area that he referenced as the front yard. Mr. Stein responded yes, and added that most auctioneer attendees entered the building from the Druck Valley Road side.

Earl Shirey, 3410 Druck Valley Road

Earl Shirey lives across the street from the applicant’s property at 3410 Druck Valley Road. Mr. Shirey has no problem with the variance request. Mr. Shirey stated that he sees traffic go through the parking lot all the time and does not believe Mr. Sanders’ occupancy of the property has increased the traffic flow in the area. Mr. Shirey stated he attended the meeting this evening to support Mr. Sanders’ request for variance.

Carol Tanzola, 3009 Trout Run Road

Ms. Tanzola asked to make an additional comment. She stated the traffic has always gone through the property; however, there have been times she has come past the property and there may be ten trucks parked in the parking lot for Mr. Sanders’ services. She shared that initially there were toilets and sinks on the back porch and the place was a wreck. Ms. Tanzola filed a complaint and it was cleaned up, but she expressed that it cannot continue that way. Ms. Tanzola stated the property has now been turned into a commercial area which is unfortunate for the rest of the neighbors.

Thomas Sanders’ response: Mr. Sanders admitted the property looked bad for awhile, but he was in the process of moving a business that was located in North York for 46 years. The shelves of the previous location had to be emptied of their contents in order to be moved to the new property, so inventory had to be stored outside until the shelving was moved and installed in the new location. Mr. Sanders indicated it takes time to move and become organized. He extended his apologies for the mess that occurred during that time. Mr. Sanders referenced a photo of the property as it appears today.

Additional Comments and Concerns from Zoning Board Members and Township Staff

Mr. Heilman confirmed the Township has received various complaints, including Mrs. Tanzola’s complaint and other anonymous complaints from property owners in the area. Mr. Sanders was informed of those complaints and Mr. Heilman visited the property twice. Mr. Heilman stated that Mr. Sanders appears to be cooperative and willing to work with the Township on these issues. Mr. Heilman stated he is holding Mr. Sanders accountable and asks that the residents be respectful of Mr. Sanders’ business, and that Mr. Sanders be respectful of the surrounding neighbors.

Ms. Cunningham asked Solicitor Markey to address nonconforming uses and expansion of such. Solicitor Markey stated this is not a case of spot zoning. Solicitor Markey described spot zoning as unjustifiably focusing on a particular property that is not congruous with surrounding zoning. The definition of rezoning is when someone approaches a municipality and says they would like to formally rezone a specific tract of land, which can be done by individual petition or petition through the Township fathers. The Township then considers whether to readjust or change the zone designation on the map. The property in question is a pre-existing nonconforming commercial operation within the rural residential zone. Solicitor Markey expressed agreement that it is an unfortunate situation; however, he shared that the Supreme Court in Pennsylvania has reaffirmed it in several prestigious cases that you can’t deprive a property owner of his legitimate property use because it is considered pre-existing before the introduction of zoning. The other unfortunate situation when you have a commercial site such as this within the rural residential zone is the law says the owner has natural right of expansion to add

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

supplementary or accessory uses to the existing use. In summary, the plumbing operation is permitted because the property is a pre-existing nonconforming use. Mr. Sanders cannot make carte blanche changes because the Township is requiring him to legitimately follow applicable regulations that might be impacted by any changes he makes on the site. Solicitor Markey stated nothing can be done to change the fact that there is a commercial operation on the property. The Zoning Board has been presented with a request to allow a 16 x 12 accessory structure to be within the front yard or side yard on Trout Run Road. The Board needs to consider if there is a justifiable hardship to legitimize the location of the structure at that location. After reviewing the exhibits presented with this application, if there was ever a site that suffers from hardships and development challenges, it would be this intersection of Trout Run Road and Druck Valley Road. The Board has to determine if there is sufficient hardship to justify the location of the accessory structure.

Ms. Cunningham asked if the size of the proposed structure was within the limits of expanding the nonconformity. Solicitor Markey responded given the size of the site, a 16 x 12 structure is not an enormous structure. Solicitor Markey stated the applicant has agreed to locate the structure well within the setback requirements.

Mr. Sanders proposes to install a pre-constructed wood backyard shed to be used for storage of tools, lawn mower, gasoline, etc. The flooring will be composed of plywood.

Chairman Achenbach asked if it is a valid argument that the vortex or “V” referenced earlier determines the location of the front yard. Mr. Sanders responded there are three doors on the building; one on Druck Valley which is the legal address, one on the parking lot side, and one on the vortex in the front. Mr. McCue stated he believes the applicant has established the “V” as the front of the building.

Mr. Achenbach expressed concern whether or not the variance granted would change the characterization of the use of the property such that the traffic flow would be significantly changed to the detriment of the neighborhood. Mr. Achenbach hopes to gain clarification from all parties that this will not make the traffic situation worse than it has been in the past and that all efforts will be made to bring this property into full compliance with the demands of the ordinance and requests of the Township. Mr. Sanders agreed that he would be in full compliance and does not believe the accessory structure would negatively affect the flow of traffic. Mr. Achenbach asked if Mr. Sanders has plans to change the current structure of the auction building, to which Mr. Sanders responded no, none whatsoever. Mr. Sanders added that if the business were to grow, he would eventually have to move to a different location.

Tom Duchome, 3057 Trout Run Road

Mr. Duchome asked about the orientation of the building as it relates to Trout Run Road and whether or not access into the parking lot would be decreased. Solicitor Markey responded that the applicant has indicated he is going to honor any and all applicable setbacks. Mr. Sanders responded the building will be positioned east to west with the 16 length side parallel to Trout Run Road. Mr. McCue noted that the proposed shed will be in the grass area and not the driveway.

Mitzi Bensinger, 3021 Trout Run Road

Ms. Bensinger made additional comments. It was Ms. Bensinger’s opinion that the entrance used as the front entrance into the building does face the parking lot; therefore, the parking lot is the front yard. If you determine the front of the building by the entrance that is used and has been used, then that front entrance is on the parking lot making it the front yard. In terms of the setback, behind the accessory building that is already there, how close is that to the homes behind it? Does it meet the setback

Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024

requirement there and can you locate a building within the setback or must it be outside the setback? According to the ordinance, an accessory building is one that is larger than 150 square feet. A 16 x 12 building is 192 feet making it an accessory building. Ms. Bensinger stated installation of a seepage pit could be required. Ms. Bensinger expressed concern that the impervious surface created could create runoff that would affect nearby roads and residences and wanted to be sure this would be addressed. Ms. Cunningham responded this would be taken into consideration with the building permit process.

Ms. Bensinger then referenced Solicitor Markey's comments about the law favoring the developer of the commercial property and their right to add more structures. She asked what rights area residents have to maintain their quality of life, as this is a rural residential area and not a commercial zone. Solicitor Markey responded that the rights of the residents in the area to maintain their quality of life is limited, but not unlimited in the sense that the Township can mandate that the applicant in this situation comply with any and all regulations on anything the applicant wishes to do on the site. Ms. Bensinger asked if there is a history with grandfathered lots that at some point in time the grandfather clause terminates or if that grandfathered use cannot go beyond a certain number of buildings or intensity. She stated the closest other commercial property to this area is the Hueters Greenhouse on top of Rocky Ridge. Ms. Bensinger asked at what point in time could the residents not have a commercial enterprise in the middle of the community. Solicitor Markey responded there are laws relative to abandonment of a pre-existing nonconforming use that would require a certain period of time depending on the factual circumstances and the demonstration of an intent of the property owner to abandon the use. Abandonment would start with the property owner abandoning the current nonconforming use.

Mr. Heilman stated he understands the concerns expressed by the nearby residents and has been exposed to similar situations during his 36 years as a planner; however, he stated Mr. Sanders is not doing or requesting to do anything that is not allowed and he would be held accountable for anything moving forward. Mr. Heilman reiterated he has been responsive to complaints received, has visited the site and will continue to be responsive if Mr. Sanders is not in compliance with the Township ordinance and building permit process.

Solicitor's Final Opinion

Chairman Achenbach asked Solicitor Markey for any final comments. Solicitor Markey stated there is justification for granting the variance due to unique hardship given the layout, shape and configuration of the property.

Chairman Achenbach summarized the position of the Board and its obligation to look at the factors presented with respect to a limited scope variance on the property. The Board does not have the ability to modify decisions made in the past. There may be opportunities in the future to recharacterize the property, one of which might be abandonment of the use that allows it to continue to be grandfathered. Chairman Achenbach expressed his hope that all those involved can understand and accommodate one another going forward.

Mr. Sanders stated he intends to operate the business, keep equipment put away out of sight and maintain the property in good condition. Mr. Sanders reiterated that he asked several questions of the Township staff and Mr. Luciani to ensure he would be able to operate the plumbing business on the premises.

Mr. Achenbach stated that he hoped the open spaces on the property would not be turned into a parking lot. Mr. Sanders responded that the standard procedure for each service employee that is given a service truck is to drive the service truck home because he is on call. Service trucks parked in the lot overnight

**Springettsbury Township Zoning Hearing Board
Minutes of July 3, 2024**

are there because they are spare trucks not currently in use or are going to be sold. There are currently 7 service staff and 3 office staff.

Ms. Bensinger stated she drives by the property everyday. As she drove by this evening there were 9 vehicles, mostly trucks, including a skid loader and two dumpsters. Ms. Bensinger claimed there are multiple trucks in the parking lot 24/7 and personal vehicles during the day.

Solicitor Markey stated the law says there is a natural right of expansion, however, if the owner of the property expands the commercial use in an unnatural way, or in an excessive way over and above what would be considered natural, the Township could step in and fight any proposed expansion or alteration they consider to be unnatural. Solicitor Markey suggested that Mr. Sanders consult with the Township on anything he proposes to do on the site. Mr. Heilman added that all additions or changes would fall under the context of a building permit application.

Chairman Achenbach entertained a motion.

IN THE CASE ZHB-2024-0011 MARK BAIR MOVED THAT THE REQUEST FOR VARIANCE TO §325-134.b OF THE TOWNSHIP ORDINANCE BE GRANTED SUBJECT TO MEETING ALL OF THE REQUIRED SETBACKS AS DETERMINED BY THE TOWNSHIP. CHRIS SHUTTLESWORTH SECONDED THE MOTION. ALL ZONING BOARD MEMBERS VOTED IN FAVOR AND THE MOTION CARRIED.

Chairman Achenbach thanked everyone for attending and taking an interest in the case.

5. ADJOURNMENT

MARK BAIR MOVED TO ADJOURN, SECONDED BY DAVID SEILER. THE MEETING ADJOURNED AT 8:22 PM.

Respectfully submitted,

Secretary

/jht