

WARWICK TOWNSHIP ZONING HEARING BOARD MINUTES
Warwick Township Municipal Office
October 14, 2020

Chairman Tom Matteson convened the October 14, 2020 meeting of the Warwick Township Zoning Hearing Board to order at 6:30 p.m. Present were Board Members Dane St. Clair, Mark Will, Dana Clark, Tom Matteson, and Brent Schrock. Absent was Board Member Jeremy Strathmeyer. Also in attendance were Tom Zorbaugh, Code and Zoning Officer; Neil Albert, Solicitor; Alan Blank, Court Reporter; Seth Hillier from Blakinger Thomas, Lancaster, PA; Vim & Kathy Esterby of 1035 Elbow Road, Lititz; David Reiste of 119 Race Street, Lititz; Eric Stauffer of 6 Village Drive, Lititz; Stacy Wiernicki of 122 Race Street, Lititz; Katie Summers from Kegel Keln Litts & Lord; Glen Bollinger of 69 Maple Farm Road, Ephrata; Mathew Mack of 429 Barbara Street, Landisville; Dan & Marion Roberts of 50 Pinewood Avenue, Lititz; Jason Roberts; Christopher Hartman of 1025 Berkshire Blvd; Anthony Petersheim of 155 Jalyn Drive; and David Lapp of 500 Clay School Road.

MINUTES APPROVAL: On a motion by T. Matteson, seconded by B. Schrock, the Board unanimously approved the September 9, 2020 minutes as submitted. M. Will abstained.

MEETING PROCEDURE: For the benefit of those present, the solicitor explained the procedure to be followed for this evenings hearings.

POSTINGS, PROOF OF PUBLICATIONS AND NOTICES: Tom Zorbaugh, Code and Zoning Officer, confirmed that the cases for tonight were properly posted.

CASE #901-STACY WIERNICKI-CONTINUED FROM AUGUST 12, 2020: K. Summers requested that Applicant Exhibit E be submitted for the record. S. Wiernicki explained to the Board the efforts she has made to minimize the noise from the rooster and peacock since the last hearing. Back in May when the first complaint was made she got rid of two out of the three roosters she had. She also blackened the windows to their nighttime box. She does not let the rooster out until 9:00 or 10:00 a.m. when she feels most people are up and she has been scattering their food around to keep them busier and distracted so they are not making excessive noise.

S. Hillier, who represents David Reiste, submitted a letter as Exhibit #7 for the record. S. Hillier stated his client is still objecting to the noise issue and believes that the animals fail under the terms of not being permitted within the Township's Ordinance.

Kathy Esterly was sworn in. She noted that while the birds have been quieter lately she fears that if the variance is granted this could change in the future. The noise was disruptive to her children who were home during the spring doing homework. Her daughter has sleep issues and anxiety and the noise from the rooster and peacock made it worse.

David Reiste stated the noise level has been better however he refers to S. Hillier's letter with regards to how loud peacocks can be and how far their sound can travel. He is not willing to risk another spring mating season as he did this past spring and is therefore requesting the Board to deny the variance and to enforce the Township's Ordinance.

Shirley Mann was sworn in. She stated she is concerned that if this were to get passed then anyone who wanted to would be able to get a peacock or rooster. She stated she is three houses away from S. Wiernicki and can clearly hear the peacock.

K. Summers stated in her closing argument that conditions can be imposed if the variance is granted.

S. Hillier stated in his closing argument that the Ordinance specifies that noisy birds are a problem and in light of the testimony presented requested that the application be denied.

The Board went into an executive session at this time.

Upon return from executive session, T. Matteson stated the Board determined the peacock is a domestic pet and as such is permitted by right and is subject to the nuisance requirement of the Zoning Ordinance. Therefore, on a motion by T. Matteson seconded by D. Clark, the Board allowed the peacock by a vote of 3-2. M. Will strongly recommended that S. Wiernicki follow through with her comment that she would obtain an insulated cage.

With regards to the rooster, on a motion by T. Matteson, seconded by D. St. Clair, the Board unanimously denied the variance and special exception request by a vote of 5-0.

CASE #904-DON & MARILYN ROBERTS-VARIANCE: Glen Bollinger representing the applicants along with Don & Marilyn Roberts were sworn in. Bollinger stated the Applicants would like to extend their garage out the front so they can turn the back of the garage into a bedroom and bathroom. No impervious area will be added as the area to be extended will be located over the existing driveway. The extension will be 10' 6" closer to the road. T. Matteson inquired when the development was built. G. Bollinger stated in the early 1980's which would pre-date the ordinance. T. Zorbaugh stated that this application could be heard under Section 340-14.J making it an existing lot which means it is subject to the 30 foot front yard setback, reducing the requested relief down to 6". T. Matteson noted the street had the standard 25 foot right-of-way.

On a motion by T. Matteson, seconded by D. St. Clair, the Board unanimously approved Case #904 under Section 340-14.J for a six inch variance by a vote of 5-0.

CASE #905-BLESSINGS OF HOPE-SPECIAL EXCEPTION/VARIANCE: Christopher Hartman with Hartman, Valeriano, Magovern & Lutz PC submitted Exhibits for the record on behalf of the Applicant. David Lapp was affirmed. Anthony Petersheim and Matthew Mack were sworn in. The Applicant is seeking relief for the expansion of the food processing, food warehouse and food distribution operation that is currently on the property. The Township's ordinance has a Special Exception section under 340-112 that allows expansion of a nonconforming use. The intended use would be a nonconforming use as it is a non-permitted use in the Ag zone. The pre-existing nonconforming use which was an apple processing warehouse and distribution operation is the same use as that of Blessings of Hope. Therefore expansion by Special Exception under Section 340-112 is permissible. However it is C. Hartman's understanding that the 50% limitation of expansion of nonconforming uses under Section 340-112 was used up by the prior owner. Therefore in order to utilize this section, a variance would be required to exceed the 50% expansion of a nonconforming use. The project will be a 3.9% additional expansion. If the Board does not agree that Blessings of Hope is the same use, then the Applicant would like the Board to consider Section 340-113 which deals with substitution or replacement of a nonconforming use. However there are certain limitations under this section including the requirement the proposed use must be permitted as a right by Special Exception or by Conditional Use Approval in a more restrictive zone than the existing nonconforming use. This requirement cannot be met as the project is in the Ag zone which is the most restrictive zone in the Township's zoning ordinance. Therefore, if the Board were to consider Section 340-113, the Applicant would need a variance for this condition under Section 340-113.A to allow the substitution of one use for another. The applicant also requests a variance for a use of Section 340-11.B Permitted Use if the Board were to find the Applicant does not qualify under either Section 340-112 or Section 340-113. If this were the case the

Applicant would request a use variance under the general variance standards of the Township's zoning ordinance. In addition, the applicant requests a variance from the off street parking regulations of the Township. The two reasons the Applicant is seeking this variance are one the majority of the off street parking on the site is in Manheim Township. The off street parking spaces in Warwick Township cannot be shown that would meet the Township's regulations. Secondly, relief is being sought for the number of spaces that would typically be required in the Township. The reason for this is that the Applicant wishes to have a replacement septic system at some point in the future and this space is needed in order to accommodate this area. C. Hartman stated three people will be providing testimony tonight. David Lapp, CEO of Blessings of Hope, Anthony Petersheim who has worked on the building design, and Matthew Mack the engineer for the project. All three were sworn in.

David Lapp was asked numerous questions by C. Hartman regarding the project as well as how Blessings of Hope operates. D. Lapp is the CEO of Blessings of Hope. He explained that Blessings of Hope is a distribution point between corporations that want to donate to places such as church food pantries and halfway houses. In November of 2019 they were serving 100 organizations within a two hundred mile radius. Currently they are now serving over 500 organizations. The hours of operation are Monday through Friday 7:00 a.m. to 5:00 p.m. and Saturdays 8:00 a.m. to 2:00 p.m. On Mondays and Thursdays there are a few employees there until 10:00 p.m. There are 12 shifts a week for volunteers and each shift is approximately two and a half to three hours in length. There is an approximately 12,000 square foot area which is called the food selection area for pastors or someone from a halfway house etc. to come and select food to restock their food pantry. They pay a handling fee. For example for \$90.00 a month they receive 600 pounds of food which is .15 cents a pound. This handling fee helps cover the operating costs of the facility. All the food that is taken from the facility by individuals is by volunteers or someone who is purchasing food for a food pantry.

Anthony Petersheim of Lancaster Design, was asked numerous questions by C. Hartman regarding the renovations that have already occurred and the proposed renovations to the building. A. Petersheim stated that Phase I of the renovation included retrofitting the northeast corner of the existing building which included tearing up and replacing some concrete that was in poor disrepair and adding ADA compliant restrooms. Phase II included renovation of the southwest and southeast corners of the building. This included expanding the ministry shopping area, installing a new freezer area, and renovation of some existing docks on the western side of the building. Phase IIIA included connecting the existing dock level to the existing cooler levels in the Phase II part of the building. The proposed renovations for Phase III include replacing the existing dock as well as tearing up the existing concrete and replacing it with new dock space and four new freezer/cooler boxes. In addition, on the western side there will be a minor repair shop. Office space for the managers and truck drivers is also being proposed. Phase IV includes the entire Land Development part which does not fall into Warwick Township but does include a small addition on the south side of the building which will add some additional office space as well as some additional on-rig loading space and some additional space to facilitate packing. There will be some reduction to the driveway entrance and exit and the delineation of dock space and dock truck entry versus small vehicle entry. The paved space on the east side of the building is going to be removed. The northern entrance will be for truck traffic and employee parking only and the southern entrance will be for volunteers. A fence is proposed to act as a barrier to separate the truck and non-truck traffic and will run from the southern corner of the existing building to the southwest corner. In order to reduce the noise from the outside refrigeration units, they will be either roof mounted or interior mounted compressors and will be partially shielded by the proposed cooler walls in Phase III. If noise is still an issue after the compressors are installed, a sound blocking fence will be placed to help reduce the noise further. On the northeast corner of the building where the entrance for the volunteers was located in 2019, a temporary lean to was built where shopping carts were stored. A six month temporary permit was obtained from the Township for this building. Six months has since passed and the temporary lean to has been taken down. The entrance has now been shifted to the southeast corner of the building and a railing has been installed to keep the carts in place at this location. The goal is to apply for another temporary building permit to install the lean to on the southeast corner of the building to house the shopping carts.

Matthew Mack was asked numerous questions by C. Hartman as an expert witness on zoning and Land Development issues on the site plan.

At this time, C. Hartman was done with his questioning of witnesses and the Board was allowed to ask questions. B. Schrock inquired how Blessings of Hope was funded. D. Lapp replied current operations are funded by the handling fees from the churches and donations from the community. The food that Blessings of Hope receives is all by donation. M. Will inquired what percentage of people come to pick up food at the facility. D. Lapp stated approximately 25%. T. Matteson brought up the point that D. Lapp mentioned the building had been abandoned for three years prior to Blessings of Hope purchasing the property so the use was abandoned therefore it cannot be applied as a continuation or expansion. C. Hartman stated there is testimony that all of the fixtures were still there for refrigeration and movement of product and under PA Case Law there must be an intent to discontinue a nonconforming use in order to be effective. N. Albert stated a nonuse, even if it goes on for a long time, is not abandonment. If the fixtures had been taken out, if the cooling equipment had all been ripped out, and if the tanks had been dug out then it would have been shown it would not have been used as the old use. T. Zorbaugh also stated that even though they had moved to a new facility the existing building was still used for storage which was done intentionally to keep the use. D. Clark inquired how the 3.9% was calculated. T. Zorbaugh stated it included the concrete area that was used for storage. C. Hartman stated that if the concrete area isn't included in the original decision they would be well under the 50% increase. M. Will inquired on a given day approximately how many employees and volunteers are onsite. D. Lapp stated around 70.

The Board went into an executive session at this time. Upon returning from executive session T. Matteson stated the Board felt the current use is substantially different than the prior use mainly due to the fact that the apple business supported farming. Therefore the Board felt this would require a Use Variance. The Board would like the Applicant to reconsider their application to a Use Variance and come back before the Board after they have prepared for this. The Board would also like input from the Township's Board of Supervisors and Planning Commission by a formal recommendation. The Board is requesting the Applicant go before the Board of Supervisors and Planning Commission to obtain this recommendation as to their positions on the case. On a motion by T. Matteson, seconded by M. Will, the Board unanimously voted to table Case #905 until the November 11, 2020 meeting. N. Albert explained to the Applicant and his council that if for some reason a Board Member present tonight would be unable to attend next month's meeting, the Alternate, Jeremy Strathmeyer, will be provided with a transcript of tonight's hearing so he would be able to participate. The Applicant and his Council had no objection to this.

ADJOURNMENT: With no other business to come before the Board, the meeting was adjourned at 10:30 p.m..

Respectfully submitted,

Thomas Zorbaugh
Code and Zoning Officer