

**WARWICK TOWNSHIP ZONING HEARING BOARD MINUTES**  
**OCTOBER 12, 2022**  
**6:30 p.m.**

Chairman Tom Matteson convened the October 12, 2022 meeting of the Warwick Township Zoning Hearing Board to order at 6:30 p.m. In attendance were Board Members Tom Matteson, Dana Clark, Dane St. Clair and Brett Nolt. M. Will and C. Martin were absent. Also in attendance was Tom Zorbaugh, Zoning Officer; Neil Albert, Zoning Hearing Board Solicitor; Melissa Anderson, Court Reporter; Karen & Mel Harnly, 6 Farm Lane, Lititz; L. Sam & Christina Ovalle, 2113 Main Street, Lititz; Brian Grimsey, 902 Perry Road, Lititz; Tyler Landis, 917 Rabbit Hill Road, Lititz; Charles Sweigert, Jr., 918-A Rabbit Hill Road, Lititz; William, Jr. & Shirley Aurand, 906 Perry Road, Lititz; Steve & Carolyn Polonus, 106 Brittany Lane, Lititz; David Cochran, 911 Perry Road, Lititz; Christian Miller, MPL Law Firm, 96 S. George Street, York; Randall & Courtney Weaver, 94 Hossler Road, Manheim; Jerry & Debra Warlow, 105 Brittany Lane, Lititz; Robert & Wendi Keeney, 114 Brittany Lane, Lititz ; Noah Martin, 59 S. Hazel Street, Manheim; Jake Deery, 11 Farm Lane, Lititz; Deb Nissley, 113 Brittany Lane, Lititz; Lanette Judy, 920 Rabbit Hill Road, Lititz; John & Jean Robbins, 904 Perry Road, Lititz; John Shenk, 911 Disston View Drive, Lititz; Peter Shenk, 9 Paddock Drive, Lititz; Renee Christiansen, 907 May Road, Lititz; Tom Page, 2 Farm Lane, Lititz; Peter Caputo, 10-b Farm Lane, Lititz, and Craig Hasson, 952 Log Cab Road, Leola.

**MINUTES APPROVAL:** On a motion by D. St. Clair and seconded by D. Clark, the August 10, 2022 meeting minutes were approved as submitted.

**POSTINGS, PROOFS OF PULICATIONS AND NOTICES:** T. Zorbaugh confirmed that both cases were properly posted and advertised as required by the law. The agenda was posted at the Township Office and on the Township website.

**MEETING PROCEDURE:** For the benefit of those present, Neil Albert, Township Solicitor explained the procedure to be followed for this evening's hearings.

All participants wishing to take part in this meeting were sworn in by Melissa Anderson, Court Reporter.

**CASE #925:** An application has been received from Leslie & Christina Ovalle, 2113 Main Street, Lititz, PA, within the MU Zoning District in Rothsville. The applicant is seeking relief from the Warwick Township Zoning Ordinance for a Variance of Section 340-16.B, permitted uses to convert the second floor of a detached structure to be an apartment. The application has been assigned Case #925 and is scheduled for a public hearing at 6:30 p.m. on October 12, 2022. There were no individuals seeking party status for this case.

Christina Ovalle stated that they have a barn that is detached behind their house. It does already have parking available. The applicants did consult with an architect but he is not officially hired because he recommended they get approved by the Zoning Board first. The architect did look at the property and he felt it was a viable option. The applicants are proposing 1-2 residents in the apartment. Potentially in the future, one of the applicant's children may rent the home and the applicants would move in to the proposed apartment.

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D. St. Clair asked which neighboring property has apartments. Ovalle stated that immediately to the right of their property there is a brick house that is 2 units. The property on the other side of their residence does not have an apartment but they do share a portion of the driveway with the applicant. N. Albert asked how many parking spaces would be provided for this proposal. Mrs. Ovalle stated that they will be providing 2 parking spaces for this proposal. She stated that if you pull up to the barn there is enough room on the side of the barn for 2 cars and then the 2-car garage is where the residents park. Leslie Ovalle stated that on the west side the house used to be 1 person but it was purchased and converted into 2 units and then beyond that, the same thing and then beyond that residence is whole apartment complex. N. Albert asked what the square footage of the apartment would be. Mr. Ovalle stated that the approximate size would be 24' X 36'. N. Albert asked if the apartment would be 1 or 2 bedrooms. Mrs. Ovalle stated that the plan is for 1 or 2 bedrooms but it would be rented as a single unit. T. Matteson asked if the applicants planned on connecting water and sewer to their current laterals. Mrs. Ovalle stated that she spoke to Jon Bunch and he was on board with this proposal, however the connection is across the street and it is a 3/4" pipe so the applicant would have to work with PennDOT to bring the pipe up to 1-2 inches. The property is connected to public water and sewer. There was no one in the audience who had questions regarding this case. T. Matteson asked if conversion apartments are permitted by conditional use in this zone. T. Zorbaugh stated that the house could be converted into two units. The applicant is asking for an accessory structure to be used so that is why it is a variance request. The Township would recommend that there is a condition put on there that the house could not be split in to 2 without coming back to the Zoning Hearing Board for a variance because the idea is each property could have 2 units so if they were to split the house in the future it would take the property to 3 units. N. Albert asked if the applicant was agreeable to the suggested condition to which they agreed they were on board with the condition being put in place.

On a motion by T. Matteson and seconded by D. St. Clair, the Board approved Case #925 as presented with the condition that the house may not be further split into additional apartments without either a change to the zoning ordinance or the applicant coming back for another approval. T. Zorbaugh stated that within a short period of time the applicant will receive a letter from Mr. Zorbaugh stating that your case was approved and within 30-45 days the decision will be rendered and then you will receive the actual written decision.

**CASE #926:** An application has been received from Randall & Courtney Weaver, 94 Hossler Road, Manheim, equitable owners of the property located at 918 Rabbit Hill Road, Lititz, PA, within the Agriculture Zoning District. The applicant is seeking relief from the Warwick Township Zoning Ordinance of Section 340-121.H, that the Zoning Officer's interpretation of the use not being permitted on this property is incorrect, and that the applicant can meet the requirements of Section 340-109 "Continuation", or, the applicant will seek a Special Exception of Section 340-113 "Substitution or Replacement" to allow the equitable owners business to be substituted for the existing business. The application has been assigned Case #926 and is scheduled for a public hearing at 6:30 p.m. on October 12, 2022.

The following individuals were granted party status to this case.

Steve Polonus, 106 Brittany Lane, Lititz  
John Shenk, 911 Disston View Drive, Lititz  
Robert Keeney 114 Brittany Lane, Lititz  
Jerry Warlow 105 Brittany Lane, Lititz  
Lannette Judy, 920 Rabbit Hill Road, Lititz  
Deb Nissley, 113 Brittany Lane, Lititz  
Tyler Landis 917 Rabbit Hill Road, Lititz

Christian Miller of MPL Law Firm is present on behalf of the applicant, Randall Weaver and is also accompanied by Craig Hasson who is the current owner of the property. Mr. Miller stated they are before the Board regarding the property located at 918 Rabbit Hill Road, Lititz which will become 1110 Brittany Lane, Lititz. The Weaver's went under contract to purchase the property at auction on August 15, 2022, purchasing it from Craig Hasson. As soon as the hammer fell, the Weaver's received a letter from the Zoning Officer that the property was no longer going to be able to be used for a business, which Mr. Hasson will testify is essentially a contracting business for the past 28-30 years.

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The applicant is here based on the letter they received from the Zoning Officer and some of the determinations that were made in that letter that the applicant does not think are completely accurate. The applicant would be pre-existing non-conforming, meaning they are allowed to continue to exist even though the zoning ordinance has changed. In the alternate, they would ask that they are considered vested rights by variance, essentially because the Township knew of and acquiesced in the use for such a long period time that it would be detrimental to the owner or equitable owner to change that. Craig Hasson, 952 Log Cabin Road confirmed his name and address. Mr. Hasson confirmed that he sold the property at 918 Rabbit Hill Road on August 15, 2022 to Randall and Courtney Weaver via an auction. Mr. Miller asked Mr. Hasson how long he has been at the 918 Rabbit Hill Road property. Mr. Hasson stated that he has been at the Rabbit Hill Road property since 1995. Mr. Hasson stated that he was using space from the previous owner until he purchased the property in 2001. Since 1995, Mr. Hasson has used the property as storage space. Mr. Hasson stated that in the beginning the property was used mostly for storage space for equipment and small tools and then as the business grew, he purchased the property and then it became a location for an office and storage for all his tools and equipment. Mr. Miller asked if the business would be consider a general contracting business or is it a specific type of contracting business. Mr. Hasson stated that the business entailed building, excavating, and remodeling. Mr. Miller asked Mr. Hasson when he stopped any business operations out of that location. Mr. Hasson stated the business ceased in November 2021. At the peak of the business, there were approximately 19-20 employees, with 3 office staff employees and the remaining employees working out in the field. Mr. Miller stated there is one residential dwelling on the property. Mr. Miller asked Mr. Hasson what changes were made to the property after he purchased it. Mr. Hasson stated that the residential dwelling was rented out after he purchased the property. Mr. Hasson stated that there is a barn on the property and an office building. Mr. Miller asked if there were improvements done to the office building since Hasson purchased to turn it into an office building. Mr. Hasson stated that they repaired the roof and eventually divided the area into more office spaces. Mr. Miller asked Mr. Hasson if the Township was aware of how he using the property. Mr. Hasson stated that he couldn't speak on the Township's behalf. Mr. Miller asked if the Township had access to his equipment or did they ever rent his equipment. Mr. Hasson stated that he had a working relationship with the Township that if they needed something that he had that they were always welcome to use it. Mr. Hasson confirmed that the Township did on occasion borrow equipment. Mr. Miller asked if the Township had access Mr. Hasson's equipment during non-working hours or weekends just in case of emergency. Mr. Hasson stated that there was a time when the sewer authority got keys to the dump trucks in case they would need equipment over the weekend of when no one was available to help them. Mr. Miller requested everyone turn to Exhibit B – Final Plan Rabbit Hill Estates Subdivision. Mr. Miller asked Mr. Hasson if he helped create that plan. Mr. Hasson stated that he had purchased the whole farm and then subdivided it into lots. Mr. Miller highlighted a statement that says upon final approval of this subdivision Craig Hasson will volunteer lots 6 and 8 for rezoning to agricultural. Upon the rezoning lots 6 and 8 will be subject to all requirements of the agricultural district. Mr. Hasson does remember agreeing to that plan. Mr. Miller asked if Mr. Hasson did go through any formal rezoning of lot 6 and 8. Mr. Hasson stated that he thought this was all part of the subdivision. Mr. Miller asked if Mr. Hasson changed any of his operations or do anything differently on the property because of the note. Mr. Hasson stated that nothing changed. Mr. Miller asked Mr. Hasson if the property was always a contractor operation facility until November 2021. Mr. Hasson stated that as far as he used the property it was a contractor operation. Mr. Miller asked Hasson if the Township ever made him aware that the use on that property was illegal or not permitted under zoning. Mr. Hasson does not recall being contacted by the Township is regards to the use of the property. Mr. Miller referred to the violation letter sent to Mr. Hasson on July 1, 2021 from the Township. The letter states that the property was not approved for commercial use or storage of material or equipment. The letter further states that if Mr. Hasson does not take any steps to remedy the violation then a formal violation will be sent to him. Mr. Hasson stated that he had some correspondence back and forth, but he does not have another letter. Mr. Miller asked Mr. Hasson what the outcome of the letter and other correspondence. Mr. Hasson stated that he was working to clean up material that was stored there.

Mr. Randall Weaver of 94 Hossler Road, Manheim was called to testify. Mr. Weaver is the current equitable owner under contract for the purchase of 918 Rabbit Hill Road which he won at auction on August 15, 2022. Mr. Miller asked Mr. Weaver when he was approached by the Zoning Officer and provided the August 15, 2022 letter stating that the property could not be used as a business. Mr. Weaver confirmed that he was given the letter right after the hammer fell on the auction. Mr. Miller asked Mr. Weaver if his intention was to use in a similar contractors facility as Mr. Hasson

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had been using it to which Mr. Weaver confirmed that was his intention. Mr. Weaver has an excavating business. Mr. Miller asked Mr. Weaver if his use of the property would be greater or less than what Mr. Hasson was using. Mr. Weaver stated that his intended use would be less than the use of Mr. Hasson. Mr. Weaver stated that they currently have 15 employees in the field and 2 in the office. Their team does not meet at the office every day, they go directly to the job sites so the only time people come back to the office is to get tools or some equipment. Mr. Miller asked Mr. Weaver about his storage of tools/equipment stored outside. Mr. Weaver stated that he typically does not have tools/equipment stored outside. They do have a small inventory of pipe and one container that they store stuff in and everything else would be inside. They do have 3 equipment trailers and some skid loaders and mini excavators, but all the bigger equipment goes directly from job site to job site. Mr. Miller asked Mr. Weaver what he is planning to do with the existing residential dwelling on the property. Mr. Weaver stated that he will be moving in to the dwelling on the property. Mr. Weaver stated that his hours of operation are typically 7 a.m. – 3:30 p.m.

Mr. Zorbaugh was sworn in by the court reporter. Mr. Zorbaugh stated that the property was approved as a residential use in the Ag zone. Mr. Hasson was the owner of the land, he developed it, so all the plan notes that are on the plan Mr. Hasson was aware of. There was a lot of people concerned with further subdivision and that is why item 2 of the letter was added so no further subdivision of the property is permitted. Mr. Zorbaugh stated that the letter being referenced came about from people contacting the office. He drafted a letter so when people called in the situation could be addressed. Mr. Zorbaugh stated that he did not speak to Mr. Weaver before the sale and he didn't talk to any of his representatives that he was working with. The auctioneer was given the information and they chose at the beginning of the auction to make a comment that they were not addressing any zoning issues, that this was a sale of the property only. The Township worked with Mr. Hasson in regards to abandoning Rabbit Hill Road. Since they are no longer using Rabbit Hill Road the entrance is off of Brittany Lane which resulted in the new address of 110 Brittany Lane. Mr. Zorbaugh stated that there is no record of a business being approved for the property and there haven't been any permits for any improvements on the property. Whether a business remains or a business receives approval, the zoning would require that things are done properly. Mr. Zorbaugh stated that he had not been made aware of the applicant moving into the residential dwelling. With the applicant living on the property, you could be discussing a home occupation which is a completely different use. Mr. Zorbaugh stated that the Township did not advertise for a home occupation so that option cannot be discussed. Mr. Zorbaugh mentioned that the Zoning Hearing Board is looking at whether there is an equal substitution or is Mr. Zorbaugh's interpretation is correct or incorrect. Zorbaugh confirmed that the Township was aware of Mr. Hasson's business on the property. He stated that there was a gentlemen's agreement that Mr. Hasson was allowed to use that property as a staging area while he built the development. Now that Mr. Hasson no longer owns the property, it is the proper time to clean up the property from a zoning perspective. T. Matteson asked if the Township is opposed to the business being there or are they simply wanting it to be cleaned up from a zoning perspective so that it is proper one way or the other. Zorbaugh stated that he could not speak for the Board of Supervisors, but currently he didn't think the Township was looking to appeal anything that the Zoning Hearing Board determines.

Mr. Miller stated that the applicant still believes that the appeal for the non-conformity would stand. Miller stated that as long as you advertise for the correct relief, you can amend an application to ask for a new variance. If you advertise as a special exception or a variance you are allowed to amend your application at the hearing to request the additional relief that has already been advertised. In this case, there was an advertisement of a special exception request, which would be the case if they looked for the substitution, which they are not, but there is still an advertisement to let the public know that a special exception is being sought. The applicant would respectfully amend the application at this time to add an alternative relief request for a special exception for a home occupation. The Zoning Hearing Board cannot with an appeal put on reasonable conditions to an appeal. To a special exception to the extent that the applicant meets the relief required, the Zoning Hearing Board is absolutely allowed to put on reasonable conditions to the use of that relief.

N. Albert asked if the applicant is prepared to proceed factually as far as square footage of the residence versus all the other special issues of proof in a home occupation case. Mr. Miller stated they are not prepared on all of those but they would ask that the appeal go forward and ask for a continuance on the home occupation. Mr. Albert mentioned

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that on the agenda the case is listed as a special exception but his concern is that if the applicant needs some kind of variance from the home occupation requirements there would be a new set of issues. T. Matteson stated that he is not comfortable with just amending the application tonight and moving ahead with a home occupation because he does not think there are criteria the applicant can meet. The applicant would need additional variances so you would have to amend the application and to do that correctly you need to take time and come up with a revised application to send in. T. Zorbaugh stated that the home occupation is a special exception but there are going to be variance requests and the Township would have to advertise those. N. Albert stated that the Board would not be able to hold the hearing on the variances because that is not on the agenda and has not been advertised. T. Matteson mentioned some different options from an appeal to a special exception for the substitution, or a special exception for a home occupation with associated variances. N. Albert stated that if the Board refuses to accept the amendment to seek a home occupation that is off the table. Tonight it is the interpretation and the substitution that is before the Board. N. Albert referred to the letter of August 15, 2022 from Mr. Zorbaugh. Point 1 – the property was approved as a residential use. Albert asked if that is simply stating that residential uses are allowed in the agriculture zone or is he referring to a particular point in time. T. Zorbaugh stated that you can put a residential use in the agriculture zone, but this particular lot does not meet the agricultural requirements of 20 acres or more, so once you are under that 20 acres then you are considered a residential use in the agriculture zoning district. Zorbaugh referred to point 3 where it talks about animal rights by zoning approval under non-commercial keeping of livestock there was animal rights for the property and even though the property is a residential use because it doesn't meet the agricultural requirements, in the agriculture zone you can do non-commercial keeping of livestock and there were existing animal rights. That came about because the Township was getting a lot of contacts by plain sect Amish and Mennonite about whether they could put their horses there, could they have some sheep or cows. Albert asked if the access lane to Rabbit Hill Road was abandoned. T. Zorbaugh stated that it has not been abandoned but the use of it for construction equipment had stopped which happened the beginning of 2021. Mr. Albert asked if the Township's position is that access lane to Rabbit Hill Road should be discontinued. T. Zorbaugh confirmed that the Township's position is that the access lane to Rabbit Hill Road should be discontinued. Zorbaugh did mention that discontinuing the access to Rabbit Hill Road was a plan note of the subdivision approval. Albert asked if the Zoning Board were to go the applicant's way, would the applicant accept the discontinuance of the access lane to Rabbit Hill Road as a condition of approval. M. Miller stated that from the Township perspective the applicant would not have a problem because that is on the plan. There is an access and maintenance easement from September 2018 between all the property owners to keep it open as an access easement so that is property rights versus the Township allowing an access. The applicant would be all right with the Township, but he doesn't know how that plays in to these accesses. N. Albert stated that the Zoning Board cannot interfere with anyone's property rights. What the Board could say is that the note in the subdivision must be enforced that the lane would be closed. T. Zorbaugh asked Mr. Miller if the access agreement addressed construction equipment or was it all continuation of anything being used. Mr. Miller stated that the agreement does not limit it. T. Matteson stated that he doesn't think the rights of the owners would be in any way jeopardized by this access being abandoned. N. Albert referred to point 6 of the August 15, 2022 letter. He stated that there is no record in the Township that a business was ever formally approved, however testimony from Mr. Zorbaugh is that the Township was aware that there was a business going on there. Mr. Zorbaugh confirmed that statement. Mr. Albert stated that the business was distinct from the activities associated with construction of the subdivision which Mr. Zorbaugh confirmed is correct. The business that was there, which was testified to by the prior witness, all that happened without the owner getting any permits. Mr. Miller stated that the property was approved as a residential use which the applicant agrees to because of the lot size the only thing you could do on the property is a residential use but he thinks that is a misnomer saying that it was approved that means there is an active position the Township is taking saying they approve residential use. Whereas what is really happening is nothing else can go there based on what the Township is saying. D. Clark asked if we know what the zoning was before 1995. Mr. Zorbaugh stated that the zoning prior to 1995 was rural estate but was rezoned to agricultural as part of the subdivision. T. Matteson stated that he thinks that the property being rural estate in 1995 destroys the substitution argument because it was simply an illegal business. It doesn't deal with the second issue of their appeal which is the vested rights but it would eliminate substitution because the business should have never gone there to begin with. Mr. Zorbaugh stated that would have been the Township's interpretation. Matteson stated that the application and narrative is vague that the applicant didn't know for sure prior to it being zoned agricultural what it was zoned. Mr. Miller could not find any records online and he was unable to make it to the Township office to find out

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what it was zoned. Matteson stated that now that the prior zoning has been established, he thinks that substantially ends the substitution continuation. B Nolt member asked if the improvements were made to the barn or the residence. Mr. Hasson stated that there were no improvements made to the house and that the only improvement was converting the upper part of what would be the office building into an office spaces. D. Clark asked Mr. Hasson if the footprints of the buildings had changed. Mr. Hasson confirmed that the footprints of the buildings did not change. N. Albert asked what the office building was before Mr. Hasson started using it as an office building. Mr. Hasson stated he thought it was used for garage space above and below and there is still garage space below.

Steve Polonus, 106 Brittany Lane, Lititz stated that his property is adjacent to 918 Rabbit Hill Road. Mr. Polonus asked if all the construction equipment will be coming down Brittany Lane with the change of address for the property from 918 Rabbit Hill Road to 1110 Brittany Lane. Mr. Miller stated that if the access lane is vacated and abandoned then the only other access would be onto Brittany Lane. Mr. Polonus stated that Brittany Lane is a rural road in a residential neighborhood where a lot of people walk. Construction equipment will be very noticeable and the entrance to the property is narrow and larger equipment ends up driving over a corner of Mr. Polonus' property. Mr. Polonus asked if the business will be able to grow from the size they are proposing. Mr. Matteson stated that there are a lot of factors that would weigh in to whether that could occur and how it would occur, but yes conceivably the business could grow.

John Shenk, 911 Disston View Drive, Lititz stated that Mr. Hasson's equipment was gone by the time the pictures were taken by Mr. Shenk. Mr. Shenk stated that Mr. Weaver was kind enough to come visit him twice and they had good conversations and Mr. Shenk made it plain to him that what Mr. Shenk had to say was not against him but had to do with some things that were prior to his coming to the sale. The sale bill for the sale of the property was confusing because it said it was zoned ag but then in larger print it said it has been home of Bottom-Line Construction for 25 years. Mr. Weaver saw that and didn't make any calls to the Township. Mr. Shenk is calling it intentional ambiguity as far as the sale bill. Mr. Shenk called the auctioneer and told him the status as he understood it and T. Zorbaugh emailed the auctioneer. Mr. Shenk felt the auctioneer was being deliberately ambiguous. Mr. Shenk pointed out an addition to the front of the barn in one of his pictures. Mr. Shenk pointed out from a picture taken in 1999 that there was no equipment on the property at that time so the 25 years that was mentioned on the sale bill was an inaccurate statement. You will also see in the pictures that the addition on the front of the barn was not there. Mr. Shenk stated that part of the impacts that they have had to deal with are storm water and weeds. Mr. Shenk stated that the understanding in the neighborhood was that after the construction of the houses were finished, that was supposed to be the end of Bottom Lines usage of the land as a staging area for construction. On numerous occasions when Mr. Shenk talked to D. Zimmerman, former Township Manager, he confirmed that agreement. In pictures from Google Earth from 2004 or 2005 there was no equipment on the side of the barn. Mr. Shenk stated that the property has been cleaned up. Mr. Shenk's main concern moving forward what was going to happen with the property when it was sold. Mr. Shenk asked for something in writing at one point because Mr. Zimmerman was retiring and there would be continuity in terms of the information and he provided Mr. Shenk with information. D. Clark asked about the agreement or something in the plans that the storage of materials and the staging area was only for a limited amount of time. Mr. Clark asked for more specifics about this agreement. Mr. Shenk stated that in one of the meetings Mr. Shenk had Mr. Zimmerman he had what appeared to Mr. Shenk to be like a site plan or something that had writing on it. Mr. Shenk did not get a copy of the plan. Mr. Shenk stated that the document identifying a staging area until the construction of the houses. Mr. Miller lodged a continuing objection to hearsay. N. Albert stated that hearsay is perfectly allowable in a zoning case. Mr. Shenk called an individual who worked in the Bottom Line organization that confirmed that they were aware of that agreement. N. Albert stated that the thumb drive would be marked as Shenk Exhibit #1, the letter Mr. Shenk wishes to read from would be Shenk Exhibit #2. Mr. Shenk read from correspondence dated November 4, 2021 as follows "The construction site on Brittany Lane is slowly being converted back into ag property. The two partners are in litigation and once it is resolved, Bottom Line will no longer being using this site and it will be cleaned up. One of the partners has moved his personal items to Rock Lititz and the other partner has purchased property in Lebanon and his equipment is moving there. The joint equipment was sold at an auction house and the tenants items will remain until the lease is up." Mr. Shenk stated that he was banking on this in terms of the posture of the Township in terms of the property as they were making their agreements with the Township and the Farm Preservation Board. Mr. Shenk stated that when the houses on Brittany and road were made, part of the construction project was a storm

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water retention basin which is now on the property of one of the houses. He thinks it is approximately 12 acres down the valley from where the houses were built. If the Township had at any point anticipated the way that the property was going to be used, they would have insisted on storm water management for that area that is now running towards Mr. Shenk's property so he interprets that there was no anticipation by the Township of the kind of use that it ended up being.

Jerry Warlow, 105 Brittany Lane, Lititz stated that this is a residential neighborhood and having the truck traffic will impact the value of the properties in that area. Mr. Warlow asked what type of pipes would be stored in the barn. Mr. Weaver stated that it would be ADS HTEP, ductal iron pipe, plastic and metal pipe. They would be 20 feet long sections and anywhere from 6 inch to 36 inches in diameter. Mr. Warlow asked how the pipe would be delivered to the property. Mr. Weaver stated that the pipe gets delivered directly to the job sites and the pipe only comes back if there are scrap pieces. Mr. Weaver confirmed that they would not be warehousing material in the barn that the materials would be shipped directly to the job sites.

Lannette Judy, 920 Rabbit Hill Road, Lititz asked for some clarification in regards to the easement. N. Albert stated that there was a plan note made some years ago that the Rabbit Hill Road access was to be abandoned. That is set in stone and the Board cannot change that. Some years later, 2018, an agreement was entered in to but that agreement is subject to the plan notes and that is the game plan here. Mr. Albert stated that the Board has no jurisdiction over private agreements. There would be no reason to make the agreement an exhibit because it is not material to the case. The Board cannot issue a ruling that either voids or upholds the private easement agreement. Ms. Judy asked for definition on shutting down the road and what changes as far as the lane. Mr. Albert stated that the plan notes indicate that the access lane to Rabbit Hill Road is to be abandoned and removed from that property, not the whole access lane. The agreement is based on all the owners of property that front that access lane are part of the agreement and that agreement was redone in 2018. T. Matteson reviewed the plot plan with Ms. Judy. Anyone else who has access to the shared driveway going out to Rabbit Hill Road will still have access per that agreement, but the 918 Rabbit Hill Road connection to the shared driveway gets removed. Ms. Judy shared concerns with large equipment sharing the rural roads where kids ride bikes or people walk.

Tyler Landis stated that is was brought up concerns that hours of operation would be from 7 a.m. to 3:30 p.m. Mr. Weaver stated that office staff comes in from 8 a.m. to 3:30 p.m. and the team members go directly to the job sites unless they need to grab something from the shop. Mr. Weaver stated that if there were trucks and trailers coming and going it would not be before 7:00 a.m. T. Matteson asked if the equipment comes back to the shop between jobs. Mr. Weaver stated that only the smaller equipment comes back to the shop and the larger equipment goes from site to site. So anything that you can pull with a pick-up truck comes back to the shop. Mr. Weaver mentioned that they have 2 tri-axle trucks that mostly come back to the shop and 3 trailers, 2 of which are on the back of pick-up trucks and 1 that goes on the back of a tri-axle truck. Mr. Landis asked Mr. Weaver what his projected staffing. Mr. Weaver stated that 15 employees is what they can manage and they plan on staying there for now. Mr. Weaver was asked how long it took them to get to 15 employees. Mr. Weaver stated that they started in the commercial side in 2018 and in 2014 is when they started residential so in 3-4 years, they have grown to 10-15 employees. Mr. Weaver was asked if he thought the business would at 10-15 more employees in the next 3-4 years. Mr. Weaver does not have any plans for that at the present time. Mr. Clark asked what the biggest piece of equipment is used by Mr. Weaver. Mr. Weaver stated that the biggest piece of equipment is a Kimatsu 490. Mr. Albert asked Mr. Weaver where he gets his heavy equipment serviced. Mr. Weaver stated that the large equipment gets serviced in the field. Mr. Weaver stated that the biggest piece of equipment they have had back to their shop is a skid loader. Courtney Weaver stated that they are looking to store pipe in the larger bays for the most part. Mr. Albert asked if the pipe was stored inside or outside. Mr. Weaver stated that typically pipe is stored inside but it can be stored outside too. Mr. Weaver was considering installing a fence if the pipe were to be stored outside so it looked nice for the neighborhood. Mr. Landis shared his concern with the increased traffic and the potential for future expansion. Mr. Weaver was asked what the average trip is to the shop. Mr. Weaver stated that currently beside his wife and her assistant, he had guys go back to the shop 3 days this week. All the foremen take work trucks home so they have a few odd ball trucks. Mr. Weaver does not have a full time tri-axle drivers so once in a while they go out but it is not every day. As an example, this week Mr. Weaver had 3

field staff that went back to the shop to get material and go back out to the job site. All the material does not go to the shop first it goes out to the site and what comes back to the shop is extra material that is from a project.

Mr. Miller stated that they urge the Board to consider that this vested right by estoppel is still applicable and has still been met. This is a legal argument that if the facts apply to this law it is not really a question of what the neighbors think and want, this is whether the applicant meets the criteria. He also stated that with the majority of the concerns he heard there are concerns with value of property which is definitely a concern but at the same time these are all people that have been living beside this current use that is only going to lessen and get cleaned up. We heard from Mr. Shenk where he admitted and the Township Zoning officer said the majority of that has been cleaned up and Mr. Weaver will most likely go one step further in cleaning up. We are worried what happens in 40-50 years even though we admit that Mr. Weaver could be a good owner. Why would we sacrifice something good in the near future for a long-term future that no one knows what exactly is going to happen. Regarding the vested rights, it is clear it is a long period of failure to enforce and there has been testimony that the Township is actually acquiesced in this use. The landowner acted in good faith and relied on the Township not having any issue with this business and so it has been there for at least 25 years from the testimony. There has been no refuted testimony to that. There has been substantial expenditures and estoppel would be a necessary hardship. The property was purchased for close to \$850,000.00 based on being used for a business. If the property could not be sold for that it wouldn't bring that much money or on the inverse if the client purchases the property for that thinking they are going to be using it for a business and now they no longer can all that value that they put into the property is gone so that is substantial hardship. This is why they think they meet the variance by vested right argument and that is what they would like the Board to consider. N. Albert stated that in a vested rights case one of the elements of the applicant's case is reliance upon Township inaction and substantial expenditure of funds in reliance on that. Typically that is the landowner that has already put up a building and now they are being told to tear it down or something like that. As he understands the applicant's theory the client is not even the landowner at this point. Your expenditure argument is based upon his purchase price at the auction. Mr. Miller stated that the only reason the property drew that purchase price is because of the business being able to be located there. All the value you are putting in the property, which is now locked in, you can't get out of the contract and it has to settle, is going to be wiped out. Albert stated that at this point there has been a failure of proof as to any due diligence on the part of the Weaver's to determine the zoning status of the property.

The Zoning Hearing Board held an executive session with their Solicitor.

Upon returning, N. Albert stated that the Board has determined that there are three separate issues in play tonight. One is the interpretation of the Zoning Officer's letter and they will have a separate vote on that. The other is the special exception request that is before us on two theories, the continuation or substitution. The third issue is the request for the vested rights argument or variance by estoppel which is taken up a good deal of the testimony tonight. In the course of the executive session Mr. Albert has had occasion to examine the agenda as well as the application and it is his advice to the Zoning Board that the argument of variance by estoppel vested rights argument is a variance request. The application does not contain a request for a variance, no such request was advertised, or noted on the agenda. This Board has no jurisdiction to entertain a variance by estoppel request. Mr. Albert stated that the Board will not be acting upon the variance by estoppel request for that reason. The Board does have jurisdiction to entertain the interpretation question and the special exception question. In terms of the interpretation question, the question is whether the letter of Mr. Zorbaugh is correct in its phrasing as far as Mr. Zorbaugh's interpretation of the legal status of the property. The issue is whether Mr. Zorbaugh's letter is to be affirmed or disaffirmed and there needs to be a motion and second to that affect and a vote on that. On a motion by D. Clark and seconded by D. St. Clair the Board affirmed Mr. Zorbaugh's letter that the interpretation is correct. Mr. Albert stated that concludes the second issue. The third issue remaining are the special exception request which were duly applied for and advertised on the two theories. On a motion by T. Matteson and seconded by D. St. Clair, the Board denied the special exception related to Section 340-109 for the continuation and Section 340-113 for substitution or replacement. T. Zorbaugh stated that within a short period of time the applicant will receive a letter from Mr. Zorbaugh stating that your case was approved and within 30-45 days the decision will be rendered and then you will receive the actual written decision.



**EXTENSION OF TIME FOR CASE #915 – COMPASS MILL:** T. Matteson stated that the applicant is requesting a 6 month time extension. On a motion by T. Matteson and seconded by D. Clark, the Board granted the 6 month time extension as requested.

**EXECUTIVE SESSION ON CASE #924, JOAN CHOO APPEAL & AGREEMENT:** N. Albert stated at this time, Joan Choo's had filed an appeal that could tie it up in court for quite some time. Ms. Choo's Attorney reached out to the Township and is offering an agreement for our consideration to allow her to continue the operation until the end of the year and then cease because she already had commitments and bookings. If the appeal is taken and that is the route this goes, she could frankly tie it up for years and continue to rent the business. If by virtue of an agreement we might be able to short circuit that and end it by the end of the year. The Board is going to review the agreement worked out by the Township Solicitor and Ms. Choo's solicitor, discuss the agreement and decide whether the Board wishes to follow through with that agreement or not. N. Albert stated that the Zoning Board does not do enforcement. This Board votes a case up or down and what happens from there is completely outside the Board's control. If someone violates a zoning decision, the complaint goes to Mr. Zorbaugh and he investigates, consults with the Board of Supervisors and they decide whether or not they authorize him to institute a prosecution. The Zoning Board has nothing to do with that. The Board would not even know if there is an enforcement action going on. In this case Ms. Choo took an appeal and it would 2 years before you get through the Commonwealth Court on one of these cases and it has always been if the legality of a land use is being challenged and its going through the courts you let it roll. The courts will not shut down a land use on an enforcement action unless it is a physical danger to the community while the legality of it is being litigated. The Commonwealth Court may disagree with the Board or the Common Pleas Court might disagree with the Board so she would be allowed to operate her business for 2-3 years. The Township solicitor and Mr. Albert have negotiated with Ms. Choo. The Township is a party to the appeal and the Zoning Board is a party to the appeal because they are appealing the Board's decision. Albert and the Township have added language to the agreement and they are all comfortable with the agreement. The Board will take an executive session to discuss the agreement. There is no new testimony to come in, this is not a hearing on the case. Ms. Choo agrees to abide by the agreement just in a couple months rather than a couple years.

**DISCUSSION ON THE PROPOSED AGREEMENT FOR JOAN CHOO:** After reconvening, the Zoning Hearing Board approved the agreement, and the Chairman signed the agreement to be submitted to the Board of Supervisors. T. Zorbaugh asked if once the agreement is signed, should the parties be provided with a copy of the agreement. N. Albert stated if they ask for it, it can be given to them.

**ADJOURNMENT:** Meeting was adjourned at 8:36 pm.

Respectfully submitted,

Tom Zorbaugh  
Zoning Officer