

WARWICK TOWNSHIP ZONING HEARING BOARD MINUTES
FEBRUARY 8, 2023
6:30 p.m.

Acting Chairman Tom Matteson convened the February 8, 2023 meeting of the Warwick Township Zoning Hearing Board to order at 6:30 p.m. In attendance were Board Members Tom Matteson, Dane St. Clair, Mark Will, and Dana Clark. Also in attendance were Tom Zorbaugh, Zoning and Code Officer; Neil Albert, Zoning Hearing Board Solicitor; Allen Blank, Court Reporter; Jeffrey Shank, 222 S. Market Street, Elizabethtown; Cameron Renehan, Team Ag; Arthur Hoover, 2490 Rothsville Road, Lititz; Wayne Hoover, 2350 Rothsville Road, Lititz; Cheryl & Randall Justice, 1220 Brooke Court, Lititz; Allen Martin, 937 E. Newport Road, Lititz; Jim Hess, 23 Troy Drive, Lititz; Dennis & Darlene Hess, 307 Millway Road, Lititz; Sarah & Tom Gehret, 1210 Brooke Court, Lititz; John & Linda Eccleston, 14 Dogwood Valley, Lititz; Douglas Swanson, 1200 Brooke Court, Lititz; Ray & Esther Zimmerman, 1240 Brooke Court, Lititz; and James Ross.

ELECTION OF OFFICERS FOR 2023: T. Matteson opened the nominations for Chairman, Vice-Chairman, and Secretary of the Zoning Hearing Board. On a motion by M. Will, seconded by D. St. Clair, the Board voted unanimously to nominate and elect T. Matteson as Chairman of the Zoning Hearing Board. On a motion by T. Matteson, seconded by D. Clark, the Board voted unanimously to nominate and elect M. Will as Vice-Chairman of the Zoning Hearing Board. On a motion by T. Matteson, seconded by M. Will, the Board voted unanimously to nominate and elect D. Clark as Secretary of the Zoning Hearing Board.

MINUTES APPROVAL: On a motion by T. Matteson and seconded by D. Clark, the Board approved the December 14, 2022 minutes as written.

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.

CASE #929:

An application has been received from Wayne & Minerva Hoover, 2350 Rothsville Road, Lititz, owners of the property at 870 Clay Road, Lititz, PA, within the Ag. Zoning District. The applicant is seeking relief from the Warwick Township Zoning Ordinance for a Variance of Section 340-11.H.(b & c) to reduce the south side setback to 10', the north side setback to 25' and the rear yard setback to 25', all requiring 50'; and Section 340-11.I(1) to increase the lot coverage to 16/36% from 10%, to allow 2 permanent green houses and 6 high tunnels. The application has been assigned Case #929 and is scheduled for a public hearing this evening.

Cameron Renehan with Team Ag, Wayne Hoover, and Arthur Hoover were sworn in by the court reporter.

The following individuals were sworn in and were made party status on a motion by T. Matteson and seconded by D. St. Clair:
Jeffrey Shank, counsel for Roy & Esther. Zimmerman, 1240 Brooke Court, Lititz
Doug Swanson, 1200 Brooke Court, Lititz
Randall Justice, 1220 Brooke Court, Lititz
Tom Gehret, 1210 Brooke Court, Lititz
Mark Will, 1213 Orchard Road, Lititz

C. Renehan stated that he is present representing Wayne Hoover. The applicant is proposing to build crop protection tunnels at their property at 870 Clay Road. These crop protection tunnels are temporary plastic hoop structures to grow tomatoes. There are 3 crop protection tunnels located at the south end of the property, each being 22' wide by 450' in length. The tomatoes are grown in the soil and the tunnels are used to protect the tomatoes from hail and pests such as insects and birds, cold temperatures, and frost. Some of the other benefits would be supporting soil health by not allowing erosion and also they are easy to ventilate. These 3 tunnels are located just down-slope from the existing swale that you can see on the site plan and the southern one is proposed 10' north of the southern property line. The plastic roofs on these tunnels will be removed during the winter season. Towards the southeast corner there is also 3 proposed heated tunnels which are also temporary. They are 32' wide by 145' in length. They are 10' north of the southern property line and they are 50' east of the right-of-way line, so they do meet the front yard setback. They are temporary, small, heated tunnels which will be covered all year which is slightly different than other protection tunnels that will have the covering removed during the winter months. After 5 years, the 3 crop protection tunnels and the 3 heated tunnels are proposed to be relocated to the northern property line. There are also 2 permanent green houses, one of which is 32' by 145' and the other is 24' by 145' located just south of the existing barn that will remain permanent. The lot coverage calculations are based off of the entire parcel which was 10 acres. The existing impervious coverage is just under 21,000 square feet which equates to 4.74% lot coverage. After installation of the crop protection tunnels and the green houses, the lot coverage would increase to just over 71,000 square feet or 16.36%. According to Section 340-11.I(1) of the Warwick Township Zoning Ordinance the maximum lot coverage for agricultural, horticultural, or forestry related uses is 10%. The ordinance defines lot coverage as a percentage of the lot area which may be covered with an impervious surface, ex: driveways, parking areas, sidewalks, or by any structure. The plastic covering on the temporary structures differ from plastic mulch that is planted on crops early in the spring to help protect crops from frost. Plastic mulch is also impervious surface but not counted as lot coverage however temporary crop protection tunnels are counted as lot coverage. The applicant is requesting an approval of a variance to allow an increase in lot coverage to 16.36%. The applicant is also asking for a variance of section 340-11.H.(1)(b) and (c) related to side yard and rear yard setbacks. The zoning ordinance requires both the side and rear yard setback to be 50'. The applicant is proposing a 10' setback for the temporary crop protection tunnels. The required horizontal setbacks defined as the required horizontal distance between a setback line and the property or street right-of-way line and setback line is defined as a line within a property and parallel to a property or street line which delineates the required minimum distance between some particular use of property and that property or street line. Renehan asked if temporary crop protection tunnels fall within the definition of structures. The zoning ordinance defines structure as any assembly of materials constructed or erected with a fixed location in the ground or attached to something having a fixed location on the ground, any portion of which is above the natural surface grade, including but not limited to buildings, sheds, cabins, fences, dams, culverts, roads, etc. Also, the structure shall not include such things as fences, sandboxes, decorative fountains, swing sets, bird houses, bird feeders, mail boxes and any other similar non-permanent improvements. These crop protection tunnels are not on a fixed location on the ground and they are non-permanent improvements. The variances are required for the Hoover's to farm tomatoes as proposed according to the drawing exhibit, then they need to meet certain criteria for the variances which is found in Section 340-121 of the zoning ordinance. The first criteria is that there are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter. The unique physical circumstances for this property is that the best land for farming is around the periphery of the property, there is the least amount of slope, the least amount of rock and the center portion of the property there are very steep slopes roughly between 20% and 30% and those soils are also classified as not prime farmland. The zoning ordinance defines environmentally significant or sensitive areas as any areas that are exceeding 15% slope so the areas that have the steeper slopes are not ideal to install the high tunnels. The hardship is that the Hoover's as tomato farmers are prevented from using modern means such as temporary crop protection tunnels for producing tomatoes due to the restrictions in the zoning ordinance. These temporary tunnels are considered as structures and counted in lot coverage. The limits on coverage and the zoning ordinance prevent horticulture farms to utilize crop protection tunnels extensively on their crop land. The three long temporary crop protection tunnels are located below an existing swale the Hoover's do not want to install above or relocate. The second criteria for variance in because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of the variances

there necessary to enable reasonable use of the property. The Hoover's want to farm tomatoes and other vegetables using temporary crop protection tunnels but due to the physical conditions of the property, they are unable to do so. The third criteria is that such unnecessary hardship has not been created by the applicant. This hardship has been created by a number of factors. Agricultural practices are always changing to produce food and for farmers to adapt to the market demands they need to adapt and use the best practices available to have a profit and lower risk. The zoning ordinance regulations on setbacks and lot coverage prevent the Hoover's from using best practices such as crop tunnels due to the limitations on lot coverage and setbacks. With criterial 4 the variance, if authorized, will not alter the essential character of the zone or neighborhood in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare. By installing the temporary crop protection tunnels, the farm will continue to be in agriculture. The farm will have a conservation or an ag E & S plan and these temporary tunnels will not impair the use or development adjacent property nor be detrimental to public welfare. Criteria 5 is that the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least amount of vocation possible of the regulations in issue. The minimum variance is requested so that the Hoover's can earn enough income from the crop protection tunnels for the production of tomatoes to pay for their expenses for the farm. Criteria 6 is related to the floodplain zone which does not apply and criteria 7 in granting a variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter. D. Clark asked if the applicant had a copy of the previous soil conservation plan from the previous owner. Mr. Renehan stated that he did not have a copy of that conservation plan. T. Matteson asked why the tunnels need to be moved after 5 years. W. Hoover stated that you need to rotate every so many years so you do not build up disease resistance. D. Clark asked how the tunnels will be irrigated. Mr. Hoover stated that they will be using drip irrigation run from the well. D. Clark asked about fertilizing. Mr. Hoover stated that fertilization will be run through the drip irrigation so everything is water soluble. They do use some granular fertilizer before they lay plastic inside the tunnels. Mr. Justice asked what the height of the tunnels will be. A. Hoover stated that the height of the tunnels is 15 feet. It was asked of the Team Ag representative what his understanding of the requirements as far as stormwater management is concerned. Mr. Renehan stated he cannot speak to the exact requirements in terms of whether it will be a minor or major stormwater plan but his understanding is that if it is a major plan they would meet all the requirements of the stormwater management ordinance such as reducing or capturing enough volume for the increase in runoff due to the impervious services. Similarly, they would reduce post development peak rates to match or be better than predevelopment conditions. Mr. Renehan was asked if the Hoovers would be growing agricultural commodities for commercial gain to which he agreed. It was asked what the existing use of the farm. Mr. Hoover stated that it was a vegetable farm previously but that farmer did not use the high tunnel system. Mr. Hoover was asked if there is area within the setbacks that the tunnels could be placed. Mr. Hoover stated that it would make it harder to put the tunnels in within the setbacks. Mr. Hoover stated that with the tunnel dimensions would have to be smaller to fit other than outside the agricultural setback. Mr. Hoover was asked about the dimensions of the tunnels and if there is a certain production that needs to be met. A. Hoover stated that they determined the size due to the fact that they sell wholesale so they need a certain amount to sell wholesale. If it was a retail operation they could do with a lesser amount but for the wholesale market you need a certain amount or you won't be able to compete in the market. The previous farm sold in the retail market where demands for quality were not as stringent. The Hoovers could plant entirely in tomatoes and meet the volume they need, but they would not have the quality to be able to complete in the wholesale market. Mr. Hoover also stated that with the wholesale market the product needs to hold up longer than in the retail market where produce is sold within a day or two. The Hoovers are planning to only grow tomatoes at this time but depending on demand they could grow other vegetables in the tunnels. Mr. Hoover clarified that the plastic would be removed from the tunnels at the end of the growing season which would be approximately December but the metal would stay in place with the plastic going back on in March. N. Albert asked why, respecting the need for the 50' setback variance, if you started 50' back and slid the 3 tunnels somewhat forward, it seems that you could still have an envelope where you could get them all within your moderate slopes and avoid being in the steep slopes which he understands would be a problem. Mr. Renehan stated that one of the reasons is that on the north side of the northern most crop tunnel, there is the existing swale that they would like to maintain and protect there. He also stated that the swale is not specific to stormwater but it is an ag BMP that is helping maintain runoff from the upslope. James Hess who is the property owner to the south side of the property stated that he is not in favor of the 10' setback due to crop spraying. He also stated that 10' is the measurement of the drive that goes down between the two properties and that is not very wide. He asked if grass will be planted between the green houses. Mr. Hoover

confirmed that they are planning to plant grass in those areas between the greenhouses and that would all be diverted into the stormwater. Mr. Hoover also stated that the tomatoes could be planted 10' away or on the property line so the tunnels might actually help in the case of chemicals drifting from farm to farm. There is no restriction against the tomatoes having to be a certain distance away. Mr. Hoover stated that he could work with the neighboring farmer when it came time to spray his crops. Mr. Hess also questioned the runoff from the first tunnel running into the shared drive. Mr. Hoover did state that they are planning to do a stormwater plan to take care of the water. Mr. Hess also asked if the drive will remain and if Mr. Hoover will be planting grass on it. Mr. Hoover stated that he cannot answer that question for sure at this point. Typically when they put their tomatoes out they always have a lane around the tomatoes so they can get in to pick them and haul them out. D. Clark ask if the applicant has explored other possible options for placement of the tunnels in regards to the topography. The ground could be terraced and there are other ways to deal with steep slope to accommodate need. There was discussion in regards to ground working and the existing swale. D. Clark ask what the permanent green houses would be constructed of. Mr. Hoover stated that they would also be metal frame with plastic. Clark asked who they would deal with winter conditions and snow loading with those structures. Mr. Hoover stated that those structures are more heavy duty. The pipes are thicker and the plastic is a double layer inflated. Mr. Hoover stated that the tunnel that is 24' wide which would not be as heavy because of the width of the tunnel. Roy Zimmerman asked who would be enforcing the removal of the plastic over the winter months. T. Zorbaugh stated that if the Board chooses to approve this application that they could put a condition on the approval for the timing of the removal and erecting of the plastic. If the condition were not be followed it would T. Zorbaugh's responsibility to enforce it. D. Clark asked how the pipes for the tunnels are anchored. Mr. Hoover stated that most of them are pounded into the soil similar to a fence post. Clark asked how do you control uplift and maintain the security and integrity to the ground. Mr. Hoover stated he has the same type tunnels and in 25 years he has had never had a loose hoop. D. Swanson asked if the wind has been assessed on the property in regards to the temporary structures. Mr. Hoover stated that it is typically not a problem unless the plastic is too old. He stated that plastic is typically good for 5 years and after that it is more likely to tear. The plastic would be replaced when the hoops were relocated because the plastic shrinks every year.

Mr. Hoover stated that he feels that on the property it is ideal for vegetable production and they realize it is zoned for a chicken house or hog barn but that is not what they want to do. They feel they need to do the lot coverage to make it work. He feels with the setbacks on the south side they would be able to shift a little bit with the 3 tunnels but it would pretty difficulty to get to the 50' setback.

J. Shank stated that the proposed use is awfully intense for 10 acres and that is creating an impact on the neighbors to the north regarding their use and enjoyment regarding their sight lines and the increased activity of this nature. He makes that observation because if we were to be looking at this by current ordinance standards for this use they would have to require 20 acres. He also mentioned that it has been previously determined or would suggest that it has been determined that this is a continuation of the prior farming or ag use when only 10 acres were required. The observation is that you can still judge the public interest regarding this proposed used in a way that the ordinance would look at a use of this intensity would require 20 acres under the current standards. The applicant is asking for a substantial reduction and essentially encroaching on the use and enjoyment of the neighbor's property but the applicant does not propose to use any of that space until year 6 of the plan and he would submit to the Board that the ordinance for the grant of a variance provides that any grant expires 1 year from the date of the decision unless construction has commenced and per those plan drawings, the applicant does not propose to construct those heated tunnels until year 6 or use those in that manner and therefore the grant of any variance would have long since expired before the applicant would commence any type of construction and therefore they would submit that the request for a variance regarding the setback requirement for the northern most property is essentially premature. The applicant is also asking to increase the maximum lot coverage by 50% from what the ordinance requires and they believe that reflects the intensity of the use and the conclusion that the use on a property of this nature is simply to intense. Mr. Shank also stated that by definition within the ordinance Section 340-10 agricultural use is defined and includes horticulture but there is also reference to the permitted use of a non-commercial green house in connection with the property of this particular nature. These are the legal arguments that he is asking the Board to consider with regard to the application.

Mr. Zimmerman shared how this proposal would affect him and his property in regards to setbacks.

R. Justice shared his concerns with changing farming practices and the need for further variances. He also shared the impact the proposal would have on the enjoyment of his property. He asks that the Board look at the difference between hardship and preference and how thoroughly developed the plan is and whether it really proportionately the burden is shared between the property owner and the people around them who have their own separate and distinct right for use and enjoyment.

Allen Martin shared that he felt the neighbors to the north may have been misled when they bought their properties in regards to the possible changes to the farm use and how it would impact their view. Mr. Martin shared his support for the Hoover's plan.

Tom Gehret shared his opinions and concerns regarding the proposed plan and the setbacks.

Doug Swanson also shared his opinions and concerns regarding the proposed plan and the setbacks.

Mark Will stated that the plan that was presented does not warrant a variance in regards to setback. The applicant has the ability to use the farm for the purpose they purchased it whether or not it can yield what they would like it to based on installing so much infrastructure. Mr. Will shared his concerns and suggestions regarding the proposed plan.

T. Zorbaugh stated that this being a 10 acre parcel it is considered a farm in the agricultural zoning district so they do have a right to farm it. He also stated that agricultural use is permitted in all zoning districts. Being 10 acres, the applicant did call and contact the Township regarding high tunnels and the requirements that need to be met to use them on the property. What is before the Board tonight is a setback variance for the high tunnels and a variance of lot coverage from 10% to 16.36%. Those are the two requests that the Board is looking at, not the use of the property, but it is the setback requirements and then the lot coverage.

The Board went in to Executive session at 7:44 p.m. and readjusted at 8:00 p.m.

T. Matteson stated that it is the Board's opinion that first they support the agricultural community but they also respect that the Township has zoning and that there are neighbors that are going to be impacted by this proposal. T. Matteson made a motion to deny variance 340-11.H.(b & c) to reduce the setbacks but to grant the variance of Section 340-11.I(1) to increase the lot coverage which was seconded by D. St. Clair. That will allow the applicant to simply try to conform with the setbacks and move the tunnels into different areas but allow you to still do as many as you need to make the farm viable. N. Albert, as a point of order, restated that the Chairman's proposed motion would include the ability after 5 years to relocate to an alternate location in the north but respecting the setbacks to which the Chairman confirmed. T. Zorbaugh stated that within 45 days the applicant will receive a written decision but within a week they will be receive a narrative stating what happened at the meeting.

CASE #930:

An application has been received from John Eccleston, 14 Dogwood Valley, Lititz, owner of the property located at 32 Owl Hill Road, Lititz, PA, within the R-1 Zoning District. The applicant is seeking relief from the Warwick Township Zoning Ordinance for a Special Exception of Section 340-112, to add a third unit to the existing two unit apartment building. The application has been assigned Case #930 and is scheduled for a public hearing this evening.

Mr. Eccleston was sworn in by the court reporter.

Mr. Eccleston stated that he owns the property at 32 Owl Hill Road which is currently a 2-unit apartment building. He is proposing a small addition to serve as a third unit. He is in the opinion that it would add good housing stock to Warwick Township with minimal implications on green space. They have existing parking and all the infrastructure for the addition is already in place with the current unit.

T. Matteson stated there would need to be 9 parking spaces available. Mr. Eccleston stated that option A allows for the middle door of the garage to be accessed at all times and then assign spaces 4 and 5 with one tenant on that side of the garage and spaces 2 and 3 with the other tenant so they would only be blocking themselves in so if the tenant is parked in unit 3 they would be blocking their own door to the garage. T. Matteson stated that the spaces on the plan measure out at 7 feet. Mr. Eccleston stated that he was told by T. Zorbaugh that the spaces needed to be 8' by 23'. T. Zorbaugh stated that they did not ask for a variance for the amount of spaces because they thought they could show it with the 3 because the 3-car garage can actually fit more than 3 cars in it but the idea is that each one of the tenants is probably getting a garage space and then 2 spaces in front of their garage door and then one tenant would get spaces 1 and 6. Option B would actually make each tenant be front and back behind each other which is actually allowed. There was a discussion in regards to the parking options and backing in or out of the driveway. M. Will asked if the applicant could lease parking spaces from the neighboring church which T. Zorbaugh stated is a potential. Mr. Will asked if there is any way to expand the parking area in front of the garage. It was suggested adding additional paved area towards the house to increase parking. The required area for a parking space is 9' by 20'. T. Matteson is in favor of Option B and then add some macadam to get to 6 spaces across the front of the garage. It could be stone too instead of macadam. The Board and applicant reviewed the plan and the potential options. T. Matteson stated that he would be okay with continuing this application to allow for the applicant to speak with the church and get permission for the 3 visitor spaces to be used on their lot and then the applicant would only have to provide 6 spaces on his lot. M. Will questioned the use of the church because the Board would want those spaces to be available every day and that would interfere with church hours. The applicant would prefer to have parking on his own property rather than rely on the church lot. The Board agreed that there was no other issues with the plan other than the parking. T. Matteson stated that Option B is the closest the applicant gets to compliance, but they would like the applicant to come back with a plan that shows how the applicant can provide the 6 spaces in a row in front of the garage and then they will allow the 3 spaces in the garage to be assigned as the applicant wishes. T. Matteson clarified the space size to be 9' by 19'. There was a discussion on the possible options for parking. The applicant committed to providing 5 spaces across the front of the garage, 3 in the garage, and one on the other side of the nee wall with each space measure 9' by 20'.

On a motion by T. Matteson and seconded by M. Will, the Board approved Case #930 with the condition that the applicant provided tenant parking spaces on the existing macadam area and one additional space on the other side of the nee wall.

ADJOURNMENT: Meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Tom Zorbaugh
Zoning Officer