

WARWICK TOWNSHIP ZONING HEARING BOARD MINUTES
MAY 10, 2023
6:30 p.m.

Chairman Tom Matteson convened the May 10, 2023 meeting of the Warwick Township Zoning Hearing Board to order at 6:30 p.m. In attendance were Board Members Tom Matteson, Dana Clark, Mark Will, Dane St. Clair, and Joel Lingenfelter. Also in attendance were Tom Zorbaugh, Zoning and Code Officer; Neil Albert, Zoning Hearing Board Solicitor; Vanessa Smith, Court Reporter; Brian Harris, Warwick Township Municipal Authority; Anthony Smoker, 744 Owl Hill Road, Lititz; Steve Gergely, Harbor Engineering; John King, Jr., Millport Road; Steve Riley, Entech; Jeff Weit, 695 E. Millport Road, Lititz; Jim Bushong, 1403 Brunnerville Rd., Lititz; Craig Hasson, Log Cabin Road, Lititz; and Ben Hasson.

MINUTES APPROVAL: On a motion by T. Matteson and seconded by D. Clark, the Board unanimously approved the April 12, 2023 minutes as submitted.

POSTINGS, PROOFS OF PULICATIONS AND NOTICES: T. Zorbaugh confirmed that all three 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.

CASE # 937: An application has been received from Brian Harris, Warwick Township Municipal Authority Manager, equitable owners of the property located at 727 Furnace Hills Pike, Lititz, Pennsylvania, within the I-1 Zoning District, owned by Sam High. The applicant is seeking relief from the Warwick Township Zoning Ordinance for a variance of Sections 340-18.D of minimum lot size, and 340-18.H to allow a 49-foot tall tank to be located closer than 49 feet to the west and south property lines. The application has been assigned Case Number 937. Brian Harris and Steve Riley were sworn in by the court reporter. Mr. Harris stated they are present seeking relief on two different topics, minimum lot size, as well as the setback on the southern-most lot line and the westerly lot line.

B. Harris mentioned that the Township did receive funding through the Marketing to Attract Tourism Program through the state for three projects. Those projects are the water tank project, upgrades to Pump Station 13, and improvements to the intersection at Newport Road and Brunnerville Road. Harris stated that they are proposing a one million gallon tank to be located on Sam High's Industrial-1 parcel located on the back side of Cindy Lane. Harris mentioned that when you look at tank sites elevation has a lot to do with it. The proposed tank is going to meet the existing overflow of the Kissel Hill tank. There were only a few options that were viable for tank placement. They were successful in negotiating with Sam High on acquiring some land from him. The minimum lot size for I-1 zoning is one acre. Part of their justification for asking for relief is that Mr. High is donating the land to the Township and they wanted to take as little land as possible. Mr. High is agreeing to give the Township 25,600 square feet. As shown on the proposed Land Development Plan, the 12-inch line would come off the existing main

on Route 501. There would be a temporary construction easement that would go back to the tank. There would be a perpetual 30-foot wide permanent easement. Once the tank is constructed, all access will be off of Cindy Lane. A mailer was sent to the adjacent property owners informing them of the proposal and they met with a few of the residents. The tank is not going to provide additional expansion of our system, rather it is for redundancy and to maintain pressure and fire flow in that area. On the Land Development Plan you can see the existing I-1 parcel owned by Mr. High measuring 2.43 acres. The plan shows the easement and line coming in to the 160'X160' area. They are proposing a 10-foot gated access drive coming off of Cindy Lane and a 6ft. high fence around the complex.

Harris stated that when they go before the Planning Commission in May they are proposing to extinguish the lot line for Mr. High and it would make this parcel one parcel minus the tank site which was one of the requests throughout negotiations with Mr. High. The tank is a squat tank measuring 49 feet high and made of concrete. The inside diameter of the tank is 64 feet and the outside measures 66 feet in diameter. One of the reasons for the relief on setback is, should anything catastrophic happen it's more likely to crumble on itself. There are no structures located in any of the potential fall zones. The grades were very favorable for the proposed location. Harris mentioned there being substantial slopes in the area. When standing on Cindy Lane, although the tank is 49-feet high, the actual elevation that you see isn't quite as grave.

There is an agreement of sale with Sam High and the township has executed the proposal with Entech, the authority engineers, to do the design work. The design work would start in 2023, bidding going out in early 2024, and construction anticipated to start in 2024. Harris also stated that there are a couple of partners on the project in terms of helping with some of the financing. The township did receive grant funding but that funding is only for the hard costs associated with the project. Both United Zion and Lititz Borough see the benefit of this project. As part of the project, the meter pit at Brookfield Drive and Grant Street will be upgraded so we can have bi-directional flows so if something ever happened to Kissel Hill that they need to utilize this, it would be backflow into the system.

Harris noted they are seeking relief from the minimum lot size with the justification that they do not want to take too much from Mr. High and then to following zoning requirements. Public utilities are a permitted use by right in this zoning district, and in the I-1 the max height is 35 feet except for chimneys, flag poles, and water tanks. M. Will asked if it was possible to run the easement along the property line or the zoning line. S. Riley stated it was primarily following the driveway for the most part. There are a couple spots where we get out of the driveway just trying to minimize impact with the in and out traffic for the existing business there. After speaking with Mr. High it was agreed upon that they follow the driveway. Putting it in the driveway, unless they relocate the driveway, it's always going to be macadam and we don't have to worry about something being placed over top of it. Mr. Clark stated that there is usually a setback from the property line, so the likelihood that you would build over the easement because of the setbacks created by the property line is probably less than if you stick it in the middle of the site. M. Will stated it could limit future development. S. Riley stated you could have planting though, which equally a tree or a building on top of a water main both create similar challenges.

B. Harris met with Mr. High and asked him if he would like to be present for this meeting or the Planning Commission meeting and his response was absolutely not. D. Clark asked about screening or planting on the site. Harris stated that the existing tree line on the north side of Sam's lot is a mature wood line. Harris is not opposed to doing some plantings. If the Zoning Hearing Board is comfortable conditioning the relief on additional landscaping provided at the entrance, as well as supplementing the existing

wood line, that is fine with the authority as well. T. Matteson asked if the authority is open to replacing what has been taken out, other than where the driveway is going to be, but to get the tank itself in, if there has to be an opening created there that when you are done you can fill it back in with new plantings. S. Riley confirmed that they are agreeable to that request. B. Harris mentioned that the land is vacant with grass planted. He also stated that the only impacts would be off of the northern lot line off of Cindy Lane where they are going in. M. Will asked where the applicant is looking for setback relief. B. Harris stated that on the southern lot line they only have 36 feet, so they would be asking for 14 feet of relief to meet the 50 feet and they have 31 feet on the eastern lot line so they are asking for 19 feet of relief to meet the 50 feet. M. Will wanted to clarify that the relief is not for the residential lot, but rather the I-1 lot. Mr. Harris confirmed that is the case. Harris also mentioned that Mr. High is preparing for auction in August. Mr. Will asked if there was any stormwater management plans. Mr. Harris confirmed that there will be 1 basin which will be contained on the lot. S. Reily stated that there will need to be a small stormwater easement approximately 20 feet beyond the property line in the corner of the property.

On a motion by T. Matteson and seconded by D. St. Clair, the Board unanimously approved Case # 937 as presented with the condition that landscaping on the Cindy Lane side of the new lot that is disturbed during construction is replaced with the exception of where the access drive is to be located.

CASE # 938: An application has been received from John L. Jr. and Rosanna R. King, owners of the property located at 743 East Millport Road, Leola, PA, within the Agricultural Zoning District. The applicant is seeking relief from the Warwick Township Zoning Ordinance for a Special Exception of Section 340-22.J(2)(d)[1] to allow a driveway within the 100 year floodplain. The application has been assigned Case #938.

No one wished to be granted party status for this case.

Steve Gergely and John L. King, Jr. were duly sworn or affirmed by the court reporter.

S. Gergely stated that this is a subdivision that was recently gotten through John King and his family. It is a 21.05 acre lot at 743 East Millport Road. The property has frontage on East Millport Road and a small portion on Creek Road which are both state roads. Gergely highlights a significant flood plain that is associated with Lititz Run that goes through the property. The entire frontage onto East Millport Road is located within the flood plain. The property is currently cultivated and pastured so there is a fence line that runs north and south on the property.

Mr. King's daughter and son-in-law would like to build a homestead on the farm with the intent to try to minimize the impacts to the farm so the property can continue to be a working farm. As part of the subdivision plan there was a riparian buffer corridor and associated plantings along the flood plain to be completed within 2 years of the subdivision plan approval. The applicant has submitted a minimum use driveway permit from PennDot because with the PennDot road they need an HOP. The proposed driveway will go where the existing driveway is located and the sight distance has been approved by PennDot. The PennDot permit is pending.

The applicant is requesting a Special Exception for a driveway, a small portion of the driveway, about 115 feet, to be located within the 100-year flood plain. There is no proposed grading associated with the driveway. There won't be any impacts with the base flood elevations for the upstream or

downstream property owners. It also meets all of the general criteria for a Special Exception. There is no other option for a driveway on Millport Road to be out of the flood plain. Based on the FEMA flood elevation and the survey that was done, the driveway might be covered in as much as 28 inches of water during a 100 year storm.

Mr. Matteson asked why not take the driveway out to Creek Road. Gergely stated they do not want to impact the cultivated area of the property. Matteson also questioned the sewer plume easement that crosses over the driveway. Gergely noted that they did check with a hydrogeologist and DEP and the plan that was submitted does have an approved sewage plan and module, the driveway is actually permitted. They just had to make sure that the impervious surface associated was exclusive of the driveway. M. Will asked what material would be used for the driveway. Gergely stated that the driveway will probably be stone but it may be macadam at some point. D. Clark mentioned having the driveway come off of Creek Road it is substantially shorter and you wouldn't need an easement. You are losing ground to pasture just the same and, in fact, you are losing more with the proposed driveway. Mr. King noted that his son-in-law works for the business on Millport Road. He stated that running their scooters, pedaling, or walking they choose the most direct route which makes the most sense coming in and out always going up around Creek Road.

On a motion by T. Matteson and seconded by J. Lingenfelter, the Board unanimously approved Case #937 as presented.

CASE #939: An application has been received from Craig Hasson, 952 Log Cabin Road, Leola, owner of the property located at 699 East Millport Road, Lititz, PA, within the R-1 Zoning District. The applicant is seeking relief from the Warwick Township Zoning Ordinance for a Variance of Sections 340-14.B to allow a second principal use; 340-E or J to reduce setbacks for the second use; and 340-31 to waive the second principal use standards required. The application has been assigned Case #939.

Craig Hasson and Ben Hasson were sworn or affirmed by the court reporter.

Craig Hasson introduced his son Ben who is taking over the property and is planning on living at the property. B. Hasson stated that he has a 1700 square foot, two story, single-family dwelling on the front of the property. Directly behind the dwelling is an 800 square foot summer house that is comprised of a basement, first floor, and second floor. To the left of the property is a 1200 square foot barn which has a first floor and half of the barn is a second floor. He is proposing the demolition of the barn and summer house and to construct a new accessory building behind the two story single family dwelling. The reason for this proposal is because the barn impedes with the sight line of traffic going around the corner of East Millport Road. Both buildings are in very bad condition and they are deteriorating. He also mentioned the barn encroaches on the right-of-way line. They are proposing an accessory garage which would be a four car garage and a two-bedroom apartment on the top floor. They are requesting the permitted use to have the apartment upstairs.

J. Lingenfelter asked what the purpose of the second story apartment is. Hasson stated that currently the summer house is living space, and most likely as it stands they would have that summer house as an apartment, but since they are taking that down they would like to keep that use in the building. D. Clark asked if the new building is just for B. Hasson's family. Mr. Hasson responded that the 4-car garage would be for his family but the apartment they would be looking to rent out. T. Matteson asked if the summer house has a kitchen and everything in it and if it is truly a stand-alone residence. Hasson stated

that there isn't any running water currently but there is a stove. There is electric and there is an upstairs for a bedroom and a basement also. M. Will explained how and why summer kitchens were used. J. Lingenfelter asked the age of the house. Hasson did not feel comfortable answering that question because he doesn't know.

T. Zorbaugh stated that the summer house, barn and the house are listed as Class III structures. If it was Class I or II we would have to go through conditional use to take it down, but it is a Class III, so it is listed. Before any further renovations or any demolition, we need to get in and get a full picture and documentation of the structures. A permit is needed for demolition. T. Zorbaugh explained the difference between Class I, II, and III. T. Matteson mentioned that if the garage were only the 4 bays and nothing more it could be built in this location without any variance at all. T. Zorbaugh stated correct. As an accessory structure and that's kind of what we're looking at if you go to that building it's strictly an accessory structure is ten feet from the property line. It's the living unit overtop, so if you want to say your-re classified as a full accessory structure then you're going to waive the setbacks for the primary to be an accessory structure. Zorbaugh compared similar properties in the area with accessory buildings with living spaces. The property does have public water and sewer. The sewer only shows it as one living unit, one EDU, so as part of this they will still have to add that, but if it would have two EDU's it wouldn't have even gone through the second use, they'd just be doing the setbacks. It was likely never a living unit, it was a summer kitchen.

D. Clark mentioned that the distinctions made by Mr. Zorbaugh between other properties and this proposal is that the others were family occupied accessory buildings. Mr. Matteson asked how big the property is. Hasson stated the property is .51 acres, or approximately 22,000 square feet. M. Will asked if they looked at the impervious area for the property. Hasson confirmed the impervious area will be below the 30% threshold for lot coverage. T. Zorbaugh asked if the square footage for the barn being taken down and the proposed structure will be the same square footage. Hasson stated that the total square footage of the proposed demo buildings would be 1, 176 and the new building would be 1,326 square feet of impervious coverage.

N. Albert explained what party status entails. Mr. Anthony Smoker was sworn or affirmed. Mr. Smoker stated that he is the next door neighbor at 744 Owl Hill Road. Millport turns into Owl Hill Road. He has a couple concerns with the proposed plan. Mr. Smoker has been inside the summer house and he would not consider it a livable space so to justify a one-for-one swap for a second floor apartment, he doesn't think it is equal. He is also questioning it being an R-1 low density zoning district and whether they meet that criteria. Mr. Smoker also mentioned the maximum height for accessory structures being 20 feet and the proposed building would be 26 feet. His main concern is proximity to his house being 25-30 feet away and how it would impact the aesthetics and privacy of his home as well as encroaching on the rear setback along the neighboring property line.

T. Zorbaugh stated that if the accessory structure is approved as a living unit then the height would be allowed to go higher, it is no longer an accessory structure, it becomes a second principal use. The setback from the neighboring property meets the 15-foot side yard setback so the relief the applicant is asking for is not off the side, it is strictly the rear which is probably this gentleman's property. What the applicant would be asking for is a rear yard setback and a side yard setback would still be maintained. The Board is going to look at this proposal and determine whether they consider it an accessory structure or a second principal use. M. Will asked about the height of the proposed structure. T. Zorbaugh stated that the first floor was 9, the second floor was 8 and the truss was 6 and you cut the

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truss in half and that's 3, so that's 20 feet. M. Will wanted to clarify that the proposed structure would be the 20-foot accessory. J. Lingenfelter stated it would not meet the second use.

Jeff White was sworn or affirmed by the court reporter. Mr. White stated that his property sits west of the proposed property. He would like to see a blueprint of what is being proposed. Are they looking for an easement to come closer to his property? Mr. Zorbaugh stated yes and it looks like you are maintaining 15 feet there also. Mr. White asked what the normal setback is. Zorbaugh stated for a shed it would be 10 feet and for a home it would be 35 feet. The applicant is maintaining 15 feet, so 20 feet closer. It would only be 20 feet closer than the existing summer kitchen so where the summer kitchen is, it looks like he is coming back 20 feet. Mr. White stated as far as this goes, he thinks it is clever. He does not agree with the assessment of the summer kitchen and feels with a little bit of work the summer kitchen could have been utilized as a residence. He also feels the barn should have come down 20 years ago.

The Board entered Executive Session at 7:24 p.m. and returned at 7:36 p.m.

T. Matteson, due to lack of hardship, made a motion to deny Case #939 with D. Clark seconding so with a 4-1 vote Case #939 was denied.

CASE #929:

T. Zorbaugh stated there is one item still on the agenda. Last month when we came out of executive session we did not announce that we had come out of executive session. We need to formally state that there was publication and now make a motion to what the last time was for. On a motion by T. Matteson and seconded by D. Clark, the Board authorized the solicitor to file a brief on behalf of the Zoning Hearing Board defending the decision in the Wayne Hoover Case #929. M. Will abstained.

ADJOURNMENT: On a motion by T. Matteson the meeting was adjourned.

Respectfully Submitted,

Tom Zorbaugh