

WARWICK TOWNSHIP ZONING HEARING BOARD MINUTES
March 14, 2018

Zoning Officer Tom Zorbaugh convened the March 14, 2018 meeting of the Warwick Township Zoning Hearing Board at 6:30 p.m. Present were Board Members Brent Schrock, Dane St. Clair, Tom Matteson, Dana Clark and Mark Will. Absent was Board Member Gary Lefever. Also present were Tom Zorbaugh, Code and Zoning Officer; Neil Albert, Zoning Hearing Board Solicitor; Lisa Miller, Court Reporter; Wade Hartz, 615 Log Cabin Road, Leola; Jack Hartz, 131 E. Woods Drive, Lititz; Laura Knowles from the Lititz Record; Dale and Debra Hershey, 1684 Wheatland School Road, Lancaster; Regan Hershey; Jonathan Hoestetter from Blakinger Thomas, 28 Penn Square, Lancaster; Sophia Bejgrowicz, 409 Glenbrook Court, Lancaster; Connor & Nicole Eisenbach, 338 Bridled Tern, Lititz; Susan Matteson, 15 Duffield Drive, Lititz; and John Gibbel, PO Box 16, Lititz.

CASE #853- RISS-HERR ASSOCIATES, INC.: T. Matteson stated this case was withdrawn by the Applicant.

CASE #855- JOHN GIBBEL: T. Matteson stated the Applicant has requested to table this Case for tonight. On a motion by T. Matteson, seconded by M. Will, the Board unanimously approved to table Case #855 for tonight. N. Albert, Solicitor, stated the motion includes the Case will be continued at the next regularly scheduled meeting of the Zoning Hearing Board which will be held on April 11, 2018.

MINUTES APPROVAL: On a motion by D. St. Clair, seconded by T. Matteson, the minutes were approved as submitted.

POSTINGS, PROOFS OF PUBLICATION AND NOTICES: T. Zorbaugh, Code and Zoning Officer, confirmed that the case was properly posted.

HEARING PROCEDURE: For the benefit of those present, N. Albert the Solicitor, explained the procedure to be followed for tonight's hearing.

CASE #854- DALE HERSHEY-SPECIAL EXCEPTION/VARIANCE: The property in question is located at 1049 Log Cabin Road, Leola, PA. The Applicant is appealing the Zoning Officer's interpretation of short term rentals therefore not allowing such permitted within a single family dwelling; or if the Zoning Hearing Board determines the Zoning Officer is correct in the interpretation, the Applicant is then requesting a Special Exception to the Warwick Township Zoning Ordinance under Section 340-5 "uses not provided for" to allow a home to be rented nightly or weekly within the Agricultural District. The Chairman then inquired if there was anyone who would like to be given party status. Wade Hartz of 1015 Log Cabin Road, Leola requested party status as he is a direct neighbor to the property. On a motion by T. Matteson, seconded by M. Will, the Board unanimously approved party status to W. Hartz.

J. Hoestetter with Blakinger Thomas was present representing Dale and Debra Hershey, owners of Log Cabin Holdings, LLC who will be giving testimony tonight. D. Hershey was sworn in. J. Hoestetter stated the property is approximately .64 acres in size and located in the Agricultural Zone. The Hershey's purchased the property in November of 2017 and have been operating it as a short term vacation rental. The Hersheys stated the property been operated as a short term rental since 2011. At the time the Hershey's bought the property they were unaware they needed any type of zoning approval and thought the property had been approved for this use. The Applicant is here tonight to ask for approval of the property to be used as a short term vacation rental. One way to allow for this approval is determine the use is permitted by right. Mr. Hoestetter claimed that the courts have determined that short term rental use is permitted as a single family detached dwelling use according Section 340-11(B)(1) and Section 340-10. This use could also be permitted by Special Exception under Section 340-5 as a use not provided for. Three requirements must be met under this Ordinance: 1. It must be similar and compatible to the uses permitted in that zone. 2. It must be a use that is not provided for in any other zone. 3. It must be a use that is not in conflict with the general purposes and intent of the general zoning ordinance.

J. Hoestetter then started asking questions of D. Hershey. He inquired what D. Hershey's relationship was to Log Cabin Holdings, LLC. D. Hershey stated his wife and himself are the owners. He was also asked if he and his wife applied to the Zoning Hearing Board for permission to operate a vacation rental home on the property. D. Hershey stated yes. Photos of the property were then reviewed. J. Hoestetter asked what the property was being used for prior to the Hershey's buying it. D. Hershey stated it was being used as a short term vacation rental all the way back to 2011 with a break where someone was living in it for a short while. J. Hoestetter inquired if the Hershey's ever stay at the property. D. Hershey stated they do not. J. Hoestetter inquired how the property is advertised. D. Hershey stated it is advertised through AirBNB Home Away and on Facebook. J. Hoestetter inquired if the whole home and property were advertised for rental or if it was advertised as being rented by the room. D. Hershey stated the whole property is rented out as one, you cannot just rent out one room. J. Hoestetter inquired what the average length of time was that the home was rented. D. Hershey stated three nights is the average rental time however it can be rented for up to a week at a time. Anything less than two nights is not allowed. J. Hoestetter inquired what type of people will typically rent the home. D. Hershey stated typically higher end clients rent the home due to the cost and it is typically rented by families. The maximum number of guests allowed is five. J. Hoestetter stated there was a complaint from a neighbor about a shed on the property that is partially located on his property. D. Hershey stated there is not a shed on his property and there was not a shed on the property when he purchased it. Another complaint received is that a burn barrel is being used on the property. D. Hershey stated there was a burn barrel on the property when it was purchased but it has since been removed. There was also a complaint about the guests leaving the property and digging in neighboring fields and looking inside barns. D. Hershey stated he did not receive any complaints about this issue. D. Hershey was asked if he manages the property or if a Management Company was utilized. D. Hershey stated he manages the property and there is an employee who manages the reservations. Another concern was regarding trash being left out on days other than the scheduled pick-up day. D. Hershey stated he contracts with Goods Disposal Service. J. Hoestetter inquired if the on-lot septic system was functioning adequately. D. Hershey stated the septic system was last serviced within the last six to eight weeks. Water to the property is provided through a well. J. Hoestetter inquired if D. Hershey knew anything about a fence post being removed from a neighbor's property. D. Hershey stated a Thomas Erb truck hit the pole. He told Thomas Erb he would take care of it and got rid of the pole not knowing it wasn't on his property. However, according to the survey marker the post was on his property. There was also an allegation made that guests were parking on a neighboring property blocking horse and tractor paths. J. Hoestetter inquired where guests were allowed to park on the property. D. Hershey stated they are only allowed to park on the driveway and there is enough room to park up to 5 cars. J. Hoestetter inquired if anything was done to modify the exterior of the property to alter its appearance as a residential home since it was purchased. D. Hershey stated no. J. Hoestetter then inquired if there was a direct means of escape from the second floor to the ground floor. D. Hershey stated yes. J. Hoestetter inquired if guests were permitted to offer food to non-guests. D. Hershey stated no. J. Hoestetter inquired if Labor and Industry approval was required for the property as it is currently being used. D. Hershey stated no.

T. Matteson asked if the second floor escape could be described. D. Hershey stated the property is raised up so the first floor is actually like a second floor and the second floor has no escape to the outside.

B. Schrock inquired where the disputed post location was. D. Hershey stated it was right at the corner of the road and the driveway.

N. Albert stated the letter that was first sent to Log Cabin Holdings, LLC regarding the possible violation will be entered as Township's exhibit 1.

M. Will asked D. Hershey to describe the type of family that typically rents the property. D. Hershey stated typically it is a mother, father and two or three children and on occasion a couple. M. Will also asked if D. Hershey considers this a business. D. Hershey stated yes.

D. Clark inquired with no one on-site who polices the guests and how does D. Hershey know the guests are abiding by the rules. D. Hershey stated there are three cleaners and the reservation person however no one is there 24/7. If there is an issue the renters are able to get ahold of someone.

The floor was then opened up to the public for questions. Wade Hartz requested to speak so he was sworn in. W. Hartz wanted to dispute some of D. Hershey's statements. He stated Log Cabin Holdings, LLC lists the home as having three bedrooms and 1 ½ bathrooms. However public records show the home as having two bedrooms and one bathroom. W. Hartz was questioning if a permit was received to add a third bedroom and a half bathroom. W. Hartz also stated the Applicant stated the property has been rented as a nightly rental since 2011. However a previous owner sold it as a two bedroom one bathroom home in November 2016. So up until this time it was owner occupied. W. Hartz presented information that the property is being rented not only to families as D. Hershey stated but also for "girls weekends", "cousin trips", friends weekends", and "couples weekends". In addition, there are typically three to four cars there at any given time more than a "family" would require. W. Hartz has seen people wandering through the farm in the barns and through the machinery and this has become a liability. W. Hartz stated this is the first time he has met the Applicant. W. Hartz stated he could not find any contact information on how to get in touch with anyone if there is an issue. In addition, both hearings that were cited in the application were owner occupied properties. W. Hartz gave a PA State Supreme Court decision that he believes the Board should refer to as he feels this case closer resembles the situation.

B. Schrock inquired if W. Hartz could have contacted someone through the website. W. Hartz stated he called the police and stated they too had a difficult time finding a contact.

M. Will asked W. Hartz a number of questions regarding the adjoining farm.

J. Hoestetter asked D. Hershey to confirm how many bathrooms were in the home. D. Hershey stated there was just one. The 1 ½ bathrooms listed on the MLS is an error.

EXECUTIVE SESSION: With no other questions from the Applicant, the public or the Board, the Board went into an Executive Session to discuss the Case.

Upon return from the Executive Session, T. Matteson turned the meeting over to the Solicitor. The Solicitor explained that this is a situation where this is a use not provided for however it is not a situation for which a Special Exception for that use is appropriate. The Board cannot ignore the definition of dwelling in the Ordinance which specifically excludes hospitals, hotels, boarding, rooming and lodging houses, institutional houses, tourist's courts and the like offering overnight accommodations to guests or patients. In addition, a use not provided for is not to be granted if it in any way conflicts with the general purpose and intent of the chapter and the Board feels this business in an Agricultural Zone does create that sort of conflict. Therefore, the Solicitor recommends the form of motion the

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Board should make is that the Board upholds the interpretation of the Zoning Ordinance as provided by T. Zorbaugh in Township Exhibit 1 and that the Board deny the Special Exception request to operate the facility as a use not provided for. On a motion by T. Matteson, seconded by D. St. Clair, the Board unanimously agreed with these two motions.

ADJOURNMENT: With no more business to come before the Board, the meeting was adjourned at 8:35.

Respectfully submitted,

Tom Zorbaugh
Code and Zoning Officer