

YORK TOWNSHIP

190 Oak Road, Dallastown, Pennsylvania 17313
Phone (717)741-3861 Fax (717)741-5009

The June meeting of the York Township Zoning Hearing Board was called to order by James Barnes, Chair.

Those in attendance were:

James Barnes, Chair
John Myers, Vice Chair
Timothy Salvatore, Member
George Cronin, Member
Jeffrey Rehmeyer, Esquire, Solicitor
Lisa Frye, Zoning Officer

MINUTES OF MAY 24, 2021

The Zoning Hearing Board minutes of the May 24, 2021, meeting were approved.

DECISIONS OF MAY 24, 2021

The Zoning Hearing Board decisions of the May 24, 2021, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES, APPEALS

Application 2021-08: Weis Markets, Inc. requests a Variance to allow additional signage on property located at 698 Lombard Road (Cape Horn Shopping Center) Red Lion, PA in a Commercial Shopping (CS) District

Present: Jim McFarland
Tim Snyder

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

York Township Zoning Hearing Board
 Tuesday, June 22, 2021
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MOTION: On Application 2021-08, Weis Markets, Inc. requests a Variance to allow additional signage on property located at 698 Lombard Road (Cape Horn Shopping Center) Red Lion, PA in a Commercial Shopping (CS) District, that a request for a continuance to the July 2021 meeting be approved.

MOTION MADE BY: Timothy Salvatore
 SECONDED BY: John Myers
 MOTION PASSED UNANIMOUSLY

Application 2021-09: Jeffrey L. Henry, Inc. requests a Variance to allow burial plots or facilities within the fifty (50) foot required setback from property lines on property located along the east side of Chambers Road at the intersection with Legacy Lane, York, PA, in a Residential Medium Density (RM) District

Present: Stacey MacNeal, Esquire
 Adam Anderson

MOTION: On Application 2021-09, Jeffrey L. Henry, Inc. requests a Variance to allow burial plots or facilities within the fifty (50) foot required setback from property lines on property located along the east side of Chambers Road at the intersection with Legacy Lane, York, PA, in a Residential Medium Density (RM) District, that the application be denied.

MOTION MADE BY: John Myers
 SECONDED BY: Timothy Salvatore
 MOTION PASSED UNANIMOUSLY

Continued Applications 2021-04 and 2021-05: Dairyland One LLC requests two (2) Variances, 1) from road frontage, lot width and setback requirements and, 2) reduction in required on-site parking on property located at Dairyland Square Shopping Center, Red Lion, PA, in a Commercial Industrial (CI) District.

York Stenographic Services, Inc.
 34 North George St., York, PA 17401 - (717) 854-0077

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Present: Stacey MacNeal, Esquire
Adam Anderson


MOTION: On Continued Application 2021-04,
Dairyland One LLC requests a Variance from road
frontage, lot width and setback requirements on
property located at Dairyland Square Shopping
Center, Red Lion, PA in a Commercial Industrial
(CI) District, that the application be approved.

MOTION MADE BY: Timothy Salvatore
SECONDED BY: George Cronin
MOTION PASSED UNANIMOUSLY

MOTION: On Continued Application 2021-05,
Dairyland One LLC requests a Variance for a
reduction in required on-site parking on property
located at Dairyland Square Shopping Center, Red
Lion, PA, in a Commercial Industrial (CI)
District, that the application be approved.

MOTION MADE BY: Timothy Salvatore
SECONDED BY: John Myers
MOTION PASSED UNANIMOUSLY

ATTEST:



William Descar, Secretary

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2021-04
Hearing Date: June 22, 2021
Applicant: Dairyland One, LLC
Property Owner: Dairyland One, LLC
Property: Dairyland Square
UPI: #54-000-38-0001-B0-00000
Existing Zoning District: Commercial Industrial (CI) District

Relief Requested- Variances under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-408.D.2; 265-408.F.2; 265-408-F.3; 265-670.B. thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. Attorney Stacey MacNeal of the law firm of Barley Snyder, Adam Anderson of Site Design Concepts and Chad Whichard of Dairyland One, LLC were present on behalf of the Applicant.
3. The Applicant is seeking Variances from frontage, lot width and side setbacks requirements of Section 265-408.D.2, 265-408.F.2, 265-408.F.3 and 265-670.B. of the Ordinance (collectively the "Variances").
4. Attorney MacNeal presented to the Board a packet of Exhibits to support the Application and its attachments, which Exhibits included the following:
 - a. Exhibit 1 - An aerial photograph of the Property with a tax map overlay.
 - b. Exhibit 2 - A Zoning Exhibit Plan for the project known as Dairyland Square Shopping Center for Dairyland One, LLC by Site Design Concepts.
 - c. Exhibit 3 - A photograph showing a small portion of the existing buildings on the Property, in the Northwest corner thereof.
 - d. Exhibit 4 - An aerial photograph of the Property, showing the proposed delineation of Lot 1 and Lot 2, to be created by subdivision, as well as adjacent properties.
 - e. Exhibit 5 - The Bennett Williams Retail Dairyland Square leasing materials, consisting of 4 pages.
 - f. Exhibit 6 - Two photographs showing of the building on the Property formerly known as Jamesway.
 - g. Exhibit 7 - Three photographs of various portions of the building along the Northern portion of the Property.

- h. Exhibit 8 - Four photographs of the parking areas.
5. Attorney MacNeal called Mr. Anderson, who provided testimony as follows:
 - a. The Property is 17.95 acres in size, as shown on Exhibit 1.
 - b. The Property has a very unique boundary line shape, as shown on Exhibit 1 and Exhibit 2.
 - c. The only access to the Property comes from the intersection of Burrows Road, Dove Lane and Dairyland Square.
 - d. There is no access to the Property from Glen Avenue, even though the Property is adjacent to Glen Avenue at the Northwest portion thereof.
 - e. The Property has 118 feet of road frontage along Burrows Road.
 - f. The road frontage on Glen Avenue is 131 feet.
 - g. The Property has a flag lot shape, with the flag pole being along the Eastern portion thereof.
 - h. The Applicant desires to subdivide the Property into 2 lots, as generally shown on Exhibit 4 (the "Subdivision").
 - i. After the Subdivision, Lot 1 would include the buildings along the Western portion of the Property, that run somewhat parallel to Glen Avenue and include parking area adjacent thereto.
 - j. Lot 2 would be the former Jamesway store ("Jamesway") and parking adjacent thereto.
 - k. Lot 2, with the Jamesway building thereon, would only have 36 feet of road frontage.
 - l. Additionally, there would not be a building setback beside the Jamesway building on Lot 2.
 - m. The Property line between Lot 1 and Lot 2, at the Jamesway building, would be the common building line.
6. Attorney MacNeal questioned Mr. Anderson further with regard to the Subdivision and he testified as follows:
 - a. There would be no additional buildings or commercial floor space.
 - b. If the Subdivision were completed, Lot 2 would no longer be considered a Shopping Center, but rather a Retail Use.
7. Attorney MacNeal called Chad Whichard who testified as follows:
 - a. The Applicant has owned the Property for approximately 3 years.
 - b. When the Property was purchased, it was in a state of disrepair.
 - c. Since the purchase, the Applicant has done a considerable amount of work to the Property, to include repaving certain areas of the parking lot and roof work.
 - d. The Property is burdened with significant tenant vacancies.
 - e. The Property has been marketed for years.
 - f. Most recently, Bennett Williams has been aggressively marketing the Property.
 - g. Bennett Williams created and has been utilizing the Dairyland Square Lease materials, which are Exhibit 5.
 - h. Per page 3 of Exhibit 5, there are only tenants in 4 of the 20 spaces, to include Jerry's Great Value, which is a grocery store in Space 1; the Dairyland Restaurant in Space 4; Family Dollars in Space 9; and the Beer and Soda Mart in Space 10.
 - i. Busy Beaver, which is an affiliate of True Value, has interest in Space 20.
 - j. However, Busy Beaver will not enter into a lease or purchase a condominium unit.

- k. The Subdivision is necessary to accommodate the sale of the Lot 2 portion of the Property, after the Subdivision, to Busy Beaver.
 - l. Space 20 and Lot 2 represent a significant portion of the Property at large.
 - m. If Busy Beaver were to purchase Lot 2 and renovate the Jamesway store, it would serve as an anchor use for the Property at large.
 - n. As an anchor use, Busy Beaver would increase traffic to all stores on the Property, encourage tenants along the strip of buildings that would remain on Lot 1, and those tenants would pay rent and create reinvestment capital that could be utilized for the Property.
 - o. Rejuvenation of the Property without an anchor occupant will be extraordinarily challenging.
 - p. The Jamesway property has been vacant for 10 to 15 years. Jamesway itself was last in the building in 1999.
 - q. The photographs in Exhibits 6 and 7 evidence disrepair, if not some blight.
 - r. Even if the Variances are granted, the Property will have the same functionality in the future as it has in the past.
8. Attorney MacNeal called Abe Kahn who provided testimony in support of the Variance as follows:
- a. He is a senior leasing agent with Bennett Williams Retail.
 - b. He is very familiar with the Property.
 - c. He has been actively involved in marketing efforts related to the Property.
 - d. The Property was on the market with another real estate company many years before the involvement of Bennett Williams.
 - e. Bennett Williams was hired by the Property Owner about 3 years ago.
 - f. Much of the Property has been vacant since the late 1990's.
 - g. Bennett Williams tried to locate a tenant for the 50,000 square foot Jamesway space.
 - h. Those efforts involved cold calling, email blasts and trying to identify missing uses.
 - i. Diligent efforts were undertaken to try to fill that space.
 - j. The lack of an anchor in the Jamesway store limits leasing.
 - k. The pandemic has made the entire process more difficult in the last year and one-half.
 - l. An anchor user is crucial.
 - m. Busy Beaver was contacted by cold call.
 - n. Busy Beaver is a family owned business that offers discounted hardware.
 - o. Busy Beaver indicated that it would not enter into a long-term lease or condominium.
 - p. Busy Beaver would be interested in purchasing the Jamesway store and Lot 2 if it could own them outright, in fee simple.
 - q. If Busy Beaver purchased Lot 2, there would be substantial investments, to include interior work, exterior work, the roof, and parking areas.
 - r. Further, the HVAC system installation would be \$1 Million dollars.
 - s. Accordingly, the Subdivision and sale to Busy Beaver is necessary for rejuvenation of the Property at large.
 - t. If the Variances were not granted, more tenants would be lost and the Property would likely spiral into a further state of disrepair and blight.

- u. If the zoning relief is granted, there is more opportunity even if Busy Beaver does not proceed with the purchase, as there would be a new pool of potential purchasers and/or tenants.
9. In support of the criteria for the Variances, the Applicant provided the following:
- a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, and such unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provision of this chapter in the neighborhood or district in which the Property is located. The unique physical circumstances or conditions of the Property include;
 - i. An odd shape, including the flagpole, with varying topography.
 - ii. Very limited road frontage, despite the larger size of the Property, with approximately half of the road frontage being located in an area where the Property does not have access to a public roadway.
 - iii. The sole access point from the intersection of Burrows Road, Dove Lane and Dairyland Square, which is limiting.
 - iv. The Property being a large scale commercial property with extraordinarily high vacancies, which Property seems unable to be rejuvenated.
 - v. Ongoing deterioration.
 - b. Because of such physical circumstances or conditions, there is no possibility that the Property can be redeveloped in strict conformity with the provisions of this Chapter and the authorization of a Variances are therefore necessary to enable the reasonable use of the Property, especially where the Variances will not result in any substantive change in the physical layout of the Property (namely building locations and square footage and parking areas) and the Variances are necessary for adequate and safe use.
 - c. The unnecessary hardship is not being created by the Applicant, but rather is a function of time and changing market conditions.
 - d. The Variances, if authorized, will not alter the essential character of the neighborhood or district 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, and to the contrary, the essential character of the neighborhood will be improved as the Property is rejuvenated, which support enhanced usage of adjacent properties, and benefit the public welfare.
 - e. The Variances, if authorized, will represent the minimum Variances that will afford relief and will represent the least modification possible to the regulation at issue.
10. Lisa Frye, the Township zoning officer, indicated there is no opposition to the Variances from the Township perspective and stated the following:
- a. The Property, in recent years, has become a nuisance.
 - b. The current Property Owner has made the Property much better than it has been in the past.
 - c. In response to legal notice with regard to the hearing, she received several telephone calls from neighbors who were grateful for the potential occupancy that could be facilitated if zoning relief were granted.
11. There were no questions from the floor.
12. There was no testimony for or against the Applicant.

CONCLUSIONS OF LAW

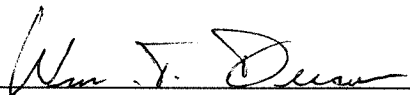
Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

1. The Property is a substantial land development in York Township.
2. The Property is unique, when considering its history, characteristics and current condition.
3. If the zoning relief is not granted, the deteriorated condition of the Property is likely to continue and result in increased blight.
4. It is significant to the Zoning Hearing Board that the Subdivision will not result in any change in functionality of the Property, as it will still look like a Shopping Center and be utilized like it has been in the past, even though it may not be considered a Shopping Center by the Ordinance.
5. The Applicant has met the specific criteria for a Variance.

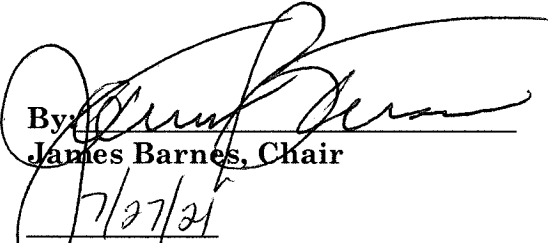
Accordingly, Timothy Salvatore moved, and George Cronin seconded, to grant Variances from road frontage, lot width and setback requirements, on the Property located at Dairyland Square in a Commercial Industrial (CI) District. The motion passed unanimously with Jim Barnes, John Myers, Timothy Salvatore and George Cronin voting in favor of the motion.

WITNESS/ATTEST

**YORK TOWNSHIP
ZONING HEARING BOARD**



William Descar, Secretary

By 

James Barnes, Chair
7/27/21
Date

The Variance granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Variance, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2021-05
Hearing Date: June 22, 2021
Applicant: Dairyland One, LLC
Property Owner: Dairyland One, LLC
Property: Dairyland Square
UPI: #54-000-38-0001-B0-00000
Existing Zoning District: Commercial Industrial (CI) District

Relief Requested- Variances under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-806.B. thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. The Application, Exhibits, Testimony, Findings of Fact and Conclusions of Law from Decision 2021-04 are incorporated by referenced herein.
3. The Applicant is seeking Variances to allow for the reduction in required on-site parking requirements per Section 265-806.B. of the Ordinance (the "Variance").
4. Attorney Stacey MacNeal called Adam Anderson who testified as follows:
 - a. There is no increase in the commercial floor space being proposed on the Property.
 - b. The existing site has 546 total spaces.
 - c. There is proposed reduction of only 3 parking spaces across the entirety of the Property.
 - d. The loss of 3 parking spaces is necessary to install additional ADA compliant parking spaces to the anchor store that will be in the Jamesway building on Lot 2.
 - e. The Property is currently permitted as a Shopping Center, which requires 4.5 spaces per 1,000 square feet of gross floor area (except that convenience stores and restaurants shall be required to calculate required off-street parking spaces independently over the whole Shopping Center).
 - f. If the Subdivision were granted, then Lot 1 would be required to have 454 parking spaces.
 - g. The Applicant is proposing 398 parking spaces.
 - h. If the Subdivision were granted, Lot 2 would require 256 parking spaces.
 - i. The Applicant is proposing 145 parking spaces.

- j. Retail Stores require 1 space per 200 square feet of gross floor area, excluding storage areas, where as Shopping Centers require 4.5 spaces per 1,000 square feet.
 - k. Accordingly, if the Subdivision were to occur and the Property were viewed as Retail Stores rather than Shopping Center, then there would need to be an extra half space per 1,000 square feet of gross floor area.
 - l. This results in more required parking for the Retail Store uses, even though the square footage sizes of the stores will not increase.
 - m. The parking for the entirety of the Property will be virtually the same as it has been for decades, except for the loss of 3 standard parking spaces to create the additional ADA parking spaces.
5. In support of the criteria for the Variances, the Applicant provided the following:
- a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, and such unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provision of this chapter in the neighborhood or district in which the Property is located. The unique physical circumstances or conditions of the Property include:
 - i. An odd shape, including the flagpole, with varying topography.
 - ii. Very limited road frontage, despite the larger size of the Property, with approximately half of the road frontage being located in an area where the Property does not have access to a public roadway.
 - iii. The sole access point from the intersection of Burrows Road, Dove Lane and Dairyland Square, which is limiting.
 - iv. The Property being a large scale commercial property with extraordinarily high vacancies, which Property seems unable to be rejuvenated.
 - v. Ongoing deterioration.
 - b. Because of such physical circumstances or conditions, there is no possibility that the Property can be redeveloped in strict conformity with the provisions of this Chapter and the authorization of a Variance is therefore necessary to enable the reasonable use of the Property, especially where the Variance will not result in any substantive change in the physical layout of the Property (namely building locations and square footage and parking areas) and is necessary for adequate and safe use.
 - c. The unnecessary hardship is not being created by the Applicant, but rather is a function of time and changing market conditions.
 - d. The Variances, if authorized, will not alter the essential character of the neighborhood or district 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, and to the contrary, the essential character of the neighborhood will be improved as the Property is rejuvenated, which support enhanced usage of adjacent properties, and benefit the public welfare.
 - e. The Variances, if authorized, will represent the minimum Variances that will afford relief and will represent the least modification possible to the regulation at issue.
6. Lisa Frye, the Township zoning officer, indicated there is no opposition to the Variances from the Township perspective and stated the following:
- a. The Property, in recent years, has become a nuisance.
 - b. The current Property Owner has made the Property much better than it has been in the past.

- c. In response to legal notice with regard to the hearing, she received several telephone calls from neighbors who were grateful for the proposed occupancy.
7. There were no questions from the floor.
 8. There was no testimony for or against the Applicant.


CONCLUSIONS OF LAW

Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

1. The Property is a substantial land development in York Township.
2. The Property is unique, when considering its history, characteristics and current condition.
3. If the zoning relief is not granted, the deteriorated condition of the Property is likely to continue and result in increased blight.
4. It is significant to the Zoning Hearing Board that the Subdivision will not result in any change in functionality of the Property, as it will still look like a Shopping Center and be utilized like it has been in the past, even though it may not be considered a Shopping Center by the Ordinance.
5. The Applicant has met the specific criteria for a Variance.

Accordingly, Timothy Salvatore moved, and John Myers seconded, to grant Variances to allow a reduction in required on-site parking, on the Property located at Dairyland Square in a Commercial Industrial (CI) District. The motion passed unanimously with Jim Barnes, John Myers, Timothy Salvatore and George Cronin voting in favor of the motion.

WITNESS/ATTEST


William Descar, Secretary

YORK TOWNSHIP ZONING HEARING BOARD


By James Barnes, Chair

7/27/21
Date

The Variance granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Variance, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2021-09
Hearing Date: June 22, 2021
Applicant: Jeffrey L. Henry, Inc.
Property Owner: Yost Properties
Property: Chambers Road (the "Property")
UPI # 54-000-IJ-0057-D0-00000

Existing Zoning District: Medium Density Residential (RM)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-616. A. thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. Stacey MacNeal, Esquire, of Barley Snyder and Adam Anderson of Site Design Concepts represented Applicant.
3. The Applicant is seeking a variance from Section 265-616. A (the "Variance") to allow for the creation of residential boundary lines that are closer than 50 feet from the burial plots and facilities of a preexisting cemetery on the Property (the "Cemetery").
4. Attorney MacNeal provided to the members of the Zoning Hearing Board the following exhibits, which supplemented those materials provided with the Application:
 - a. Exhibit 1- An aerial photograph with the tax map overlay of the Property, and surrounding properties, which was labeled Exhibit 1.
 - b. Exhibit 2- An older subdivision plan by the Property that delineates the portion of the Property at issue.
 - c. Exhibit 3- Schematic Site Plan 4.1 for Residential Development for Jeffrey L. Henry, created by Site Design Concepts, which shows a number of single family attached and single family detaches and dwellings on the portion of the Property.
 - d. Exhibit 4- Seven photographs of the cemetery on the Property.
 - i. The first photograph was the gate and the fencing at the southeast corner of the Cemetery.

- ii. Vegetation and unmarked headstones in the Cemetery.
- iii. More vegetation and unmarked headstone.
- iv. Additional vegetation and unmarked headstones.
- v. The headstone of Henry Marks, who was born on September 10th, 1867 and died on May 15th, 1934.
- vi. The close up of a headstone, with words on it that cannot be read in vegetation.
- vii. Another close up of a headstone with words on it that cannot be verified.

6. Attorney MacNeal questioned Mr. Anderson, who provided information as follows:

- a. 14.9 acres of the Property, at the northern portion thereof and along Chambers Road (to the west) is proposed to be created from the Property by subdivision.
- b. Upon the subdivided Property, the Applicant intends to build 44 duplex and 3 single family dwellings (with the subdivision and construction of the homes being referred to collectively herein as the "Project")
- c. The Project would connect to an existing roadway, known as Nova Light, which also intersects with Ray Light Drive, to the north.
- d. In the center of the Property and the Project, there exists the small Cemetery.

7. Attorney MacNeal questioned Mr. Anderson for more details with regard to the Cemetery.

- a. The Cemetery has 12 headstones.
- b. The Cemetery appears to date back to the early 20th century.
- c. The most recent headstone appears to be from 1934, as photographed and part of Exhibit 4.
- d. It appears that the Cemetery was for the Marks family.
- e. There is no public access to the Cemetery.
- f. There is wrought iron fencing around the majority of the Cemetery.
- g. The dimensions of the Cemetery are approximately 60 feet by 40 feet, with a total area of 2,400 square feet.
- h. The Cemetery is not routinely maintained.
- i. If the Project were to proceed, it would provide benefits to the Cemetery. Specifically, the Project would have a Home Owners' Association, which could be required to maintain the Cemetery in perpetuity. The road system accessing the Project would create public access to the Cemetery.
- j. The Project contemplates, as shown in Exhibit 3, that certain Property lines would be further than 50 feet away from the Cemetery, particularly on the South, West, and North. However, the setback proposed on the East side of the Cemetery is only 10 feet. Since a 10 foot setback is proposed, the Variance is being requested. There are no more burials anticipated for the Cemetery.

7. With Regards to the criteria for a variance in section 265-1010. C. the Applicant offered the following:

- a. There are unique physical circumstances or conditions of the Property, specifically the presence of the Cemetery, its age, its location in the central part of the Property, and its lack of public access, and that the unnecessary hardship is due to such conditions and not to circumstances or conditions generally carried by the provisions of this Ordinance in the neighborhood or district in which the Property is located.
- b. Due to such physical circumstances or conditions, there is no possibility that the Property can be developed as strict conforming with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the Property as it is zoned currently.
- c. Such unnecessary hardship is not being created by the Applicant.
- d. The Variance, if authorized, will not alter the essential character of the neighborhood or district in which Property is located, nor substantially or permanently impair the appropriate use or development of the adjacent property, nor be detrimental to the public welfare.
- e. The Variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

8. In response to questions, the Applicant answered with the following:

- a. There is a desire to maximize the number of dwellings in the Project.
- b. The provisions of the Ordinance and the 50 foot setback for a Cemetery impact only one or two of the proposed dwellings in the Project.
- c. The 50 foot setback on such a small Cemetery is not appropriate.
- d. Utilizing proposed roads in existence and roads to be built for the Project, along with a right of way, would allow access to the Cemetery.

9. Mr. Anthony Marone provided testimony in opposition to the Variance as follows:

- a. The Property and the Project can be developed in strict conformity with the Ordinance.
- b. The loss of 2 dwellings from a potential total of 47 is not a hardship.
- c. The only purposes of this Variance are to allow for more dwellings to be constructed and create a larger profit.

10. Attorney MacNeal explained to the Board her belief that the Variance being sought is dimensional and accordingly, the legal requirements are lesser.

11. The Zoning Officer did not indicate any particular concerns with regard to the Variance or the Project.

CONCLUSIONS OF LAW


Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows for:

1. The presence of the Cemetery is a unique physical circumstance or condition of the Property, but it does not create an unnecessary hardship.
2. The Property can be developed in strict conforming with the provisions of the Ordinance.

3. The authorization of the Variance as requested is not necessary to enable the reasonable use of the Property.
4. Any hardship that might arise is a direct result of the desire of the Applicant to develop the Property by the Project and the hardship is therefore self-created.
5. The Variance, if authorized will not alter the essential character of the neighborhood or district in which the Property is located nor substantially or permanently impair the appropriate use of development for adjacent Property, nor be detrimental to the public welfare, especially since much of the adjacent Property is already developed.
6. The Variance does not represent the minimum that would afford relief nor the least modification possible of the regulation at issue.

Accordingly, John Myers moved and Tim Salvatore seconded, to deny the Variance to allow burial plots of facilities within the fifty (50) foot required setback from Property lines, on the Property located along the east side of Chambers Road at the intersection with Legacy Lane, York, PA, in a Residential Medium Density (RM) district, with all members voting in favor.

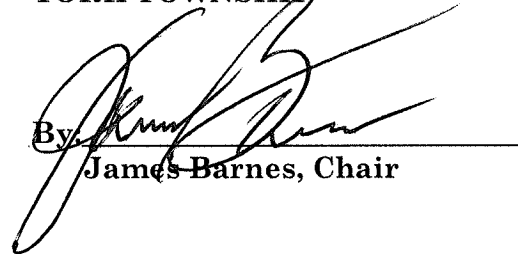
WITNESS/ATTEST
ZONING HEARING BOARD



William Descar, Secretary
7/27/21

Date

YORK TOWNSHIP

By 

James Barnes, Chair