

# YORK TOWNSHIP

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

York Township Zoning Hearing Board  
September 26, 2017  
6:00 p.m.

The September meeting of the York Township Zoning Hearing Board was called to order by Glenn Myers, Vice Chair.

Those in attendance were:

Glenn Myers, Vice Chair  
William Descar, Secretary  
James Barnes, Asst. Secretary  
Timothy Salvatore, Member  
Kathleen Cronin, Alternate Member  
Anthony Pantano, Member  
Jeffrey Rehmeyer, Esquire, Solicitor  
Lisa Frye, Zoning Officer

## MINUTES OF AUGUST 22, 2017

A correction was made to the minutes to reflect that for Application 2017-09 and Application 2017-15 that the vote was 4-1. The Zoning Hearing Board minutes of the August 22, 2017, meeting were approved as corrected.

## DECISIONS OF AUGUST 22, 2017

The Zoning Hearing Board decisions of the August 22, 2017, meeting were approved.

## SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2017-16: OSS Realty Co./OSS Health requests a

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

York Township Zoning Hearing Board  
Tuesday, September 26, 2017  
Page 2

Variance to exceed allowable maximum building height for an accessory building (parking deck) on property located at 1855 Powder Mill Road, York, PA, in a Commercial Office (CO) District.

Present: John Elliott, Esquire  
Joshua George  
Michael Enriquez

**MOTION:** On Application 2017-16, OSS Realty Co./OSS Health requests a Variance to exceed allowable maximum building height for an accessory building (parking deck) on property located at 1855 Powder Mill Road, York, PA, in a Commercial Office (CO) District, that the application be approved.

**MOTION MADE BY:** James Barnes  
**SECONDED BY:** Anthony Pantano  
**MOTION PASSED UNANIMOUSLY**

**ATTEST:**

  
\_\_\_\_\_  
William Descar, Secretary

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2017-16  
**Hearing Date:** September 26, 2017  
**Applicant:** OSS Realty Co./OSS Health  
**Property Owner:** Oss Realty Company  
**Property:** 1855 Powder Mill Road  
UPI: #54-000-20-0174-00-00000  
**Existing Zoning District:** Commercial Office (CO)

**Relief Requested-** Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-406(E)(2) thereof.

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## 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. John Elliott, Esquire represented the Applicants. Joshua George, P.E. with Snyder Secary and Associates, LLC and Michael Enriquez, who is the Chief Executive Officer of OSS Realty Company, were present on behalf of the Applicants.
3. The following Exhibits were included with the Application:
  - a. The drawing entitled Variance Exhibit for OSS Parking Deck by Snyder Secary and Associates, LLC dated August 31, 2017 and denoted as Sheet VE 1.0 (the "Drawing Exhibit").
  - b. Various photographs of the Property including areas surrounding it (the "Photographs").
  - c. The Parking Deck on Powder Mill Road expansion rendering shown with existing facilities, the proposed Parking Deck and appurtenances (the "Rendering Exhibit").
  - d. The Grading and Utility Plan prepared by LSC Design dated August 31, 2017 and denoted as Sheet LD-7 (the "Grading and Utility Plan Exhibit").
4. The Applicant is seeking approval for a Parking Deck to serve the existing Medical Facility Buildings on the Property (the "Parking Deck") with characteristics as follows:
  - a. The Parking Deck will be placed largely over an existing, surface parking lot.
  - b. The Parking Deck will be integrated with the existing topography of the Property, which topography is unusual.
  - c. The Parking Deck will include 74 parking spaces.
  - d. The Parking Deck will be accessed through a driveway serving 1873 Powder Mill Road.

- e. There will be no direct access to the Parking Deck from the lower parking areas.
  - f. There will be a Stair Tower on the Northeast portion of the Parking Deck, allowing for pedestrian access from the Deck to ground level and the adjacent Buildings.
  - g. The height of the Tower will be 33 feet above ground level.
  - h. The Stair Tower will be enclosed to provide protection from the elements.
  - i. The Parking Deck will be setback approximately 42 to 48 feet from the Southernmost property line.
  - j. The height of the Parking Deck varies between zero feet (to the West) to 15 feet (to the bottom of the Deck to the East). At the East, the elevation from ground level to the top of the Deck will be 18 feet. At the East, the height to the top of the parapet wall surrounding the Parking Deck will be 22 feet.
  - k. The Parking Deck is proposed to be constructed primarily of concrete.
  - l. There will be a parapet wall around the entirety of the Parking Deck, except for the point of entrance to the West.
  - m. The Parking Deck is proposed to be utilized by employees of OSS Health.
  - n. The existing pine trees surrounding the proposed location of the Parking Deck are intended to remain and to serve as a natural buffer.
  - o. The Southern portion of the land adjacent to the Parking Deck is elevated and the pine trees sit thereon.
  - p. There are some gaps among the existing pine trees to the South.
5. The Parking Deck is intended to be utilized in conjunction with 1873 Powder Mill Road as follows:
    - a. 1873 Powder Mill Road has an existing one story dwelling and garage thereon.
    - b. 1873 is proposed to be consolidated with 1855 Powder Mill Road.
    - c. The Applicant proposed to add 23 parking spaces behind the dwelling (to the East) and 6 parking spaces to the South of the dwelling, adjacent to the existing garage.
    - d. The existing dwelling building will be repurposed into a business office.
    - e. The Applicant desires to retain many of the exterior features of 1873 Powder Mill Road, to include the dwelling, garage, and trees to the South.
    - f. There will be a ramp from the Northeastern portion of the parking behind the dwelling following the contour of the land down to the East, adjacent to the hospital building and the parking area below the Parking Deck.
  6. The Applicant has requested a Variance of Section 265-406.E.2., which limits the maximum height of a structure to be 15 feet, with an addition of 1 foot for each additional foot that all front, side and rear setbacks are increased, to a maximum total of 20 feet (the "Height Variance").
  7. The Applicant has also noted that Section 265-518.B. of the Ordinance indicates that height regulations do not apply to certain projections, including structures on buildings, such as clock towers, cupolas, water tanks and other mechanical appurtenances, if such structures at any level do not cover more than 25% of the roof on which they are located.
  8. Additionally, the Applicant has noted that parapet walls used solely for ornamental purposes are also not included in the height calculations if not in excess of 5 feet above the roof line, per Section 265-518.C of the Ordinance.
  9. The Applicant has asserted that the average height of the Parking Deck should be less than 20 feet, as the height on the East end of the Parking Deck (including the Stair Tower roof) is 33 feet, but the height on the West end of the Parking Deck is essentially zero since it matches the backyard grade at 1873 Powder Mill Road.

10. The Applicant provided information on the Property in support of the Variance request to include the following:
  - a. The Property consists of approximately 25 acres.
  - b. However, there is a stream channel that bisects the Property and separates the Eastern portion of it from the Western portion of it.
  - c. The buildings and surface parking area are currently on the Property on the Western portion of it.
  - d. They were made possible by the installation of a significant retaining wall to the rear of them, which wall lies to the West of the stream channel.
  - e. There are flood plains and wetlands in the middle of the Property near the stream channel, such that it cannot be utilized for any purposes requiring construction thereon.
11. In response to the criteria for a Variance, the Applicant provided the following:
  - a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, which include the stream channel which separates the Property into Eastern and Western portions, the wetlands, flood planes and steep slopes, all of which constitute exceptional topography 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.
  - b. 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 the authorization of a Variance is therefore necessary to enable the reasonable use of the Property, especially in light of the unusual topographical conditions.
  - c. The unnecessary hardship is not being created by the Applicant, as the topography consists of natural features and existing construction on the Property has already attempted to mitigate those features.
  - d. 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 or development of 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 to the regulation at issue.
12. In response to questions, the Applicant provided the following:
  - a. The Parking Deck should not be visible from any locations on Vinmar Drive because of the existing buffering.
  - b. The existing dwelling and garage are to remain because they are in good condition and can be reutilized, in conjunction with the addition of 29 parking spaces.
  - c. The roof on the Stair Tower will be designed to match the balance of the medical buildings already constructed on the Property.
  - d. Any lighting structures on the Parking Deck shall comply with the York Township Subdivision and Land Development Ordinance ("SALDO"), in all respects, such that they will be at a minimum shielded and not provide glare to off-site properties.
  - e. The underside of the Parking Deck will include lighting fixtures and will be of an acceptable design to allow access by emergency vehicles.
  - f. The Township has not voiced any objection to access to the Parking Deck via Powder Mill Road.

- g. The repurposed dwelling at 1873 Powder Mill Road will likely be utilized for paperwork for home health services offered by OSS Health.
  - h. It is expected that 10 to 12 employees will be transitioned from existing buildings on the Property to the dwelling.
  - i. The Property was rezoned to allow for these uses.
  - j. There is not expected to be a major traffic impact, although traffic has not been studied.
  - k. The third entrance, to the Parking Deck, has not yet been formally approved.
  - l. The Applicant was uncertain if additional turning lanes would be required to access the Parking Deck and if so, from where the property would be obtained.
  - m. An additional level to the Parking Deck is not presently contemplated.
  - n. The trees existing on the Southern portion of 1873 Powder Mill Road are desired to be retained.
  - o. The Parking Deck should not be any noisier than the surface parking lot since it will be created from concrete.
13. Testimony was offered in opposition to the Parking Deck as follows:
- a. Woody Bupp indicated that while OSS has been a good neighbor, he has concerns about the proximity of the Parking Deck to his home and the effect of lighting or debris.
  - b. Dean Markel is opposed because the proposed access to the Parking Deck is across Powder Mill Road from his driveway.
  - c. Katie McAllister is opposed because of traffic concerns, the segmented approval process (zoning and thereafter land use), and concerns about detrimental effects to the neighborhood.
  - d. Gary Godfrey is concerned about lighting and the proximity of parking spaces on the Southern portion of 1873 Powder Mill Road, near his house.
14. The Zoning Officer indicated on behalf of the Township that it has some initial input relative to the Parking Deck including comments from the Township Engineer, but that much more is expected to be done in the land development case.
15. The Applicant accepted additional conditions to the grant of any relief, more specifically as follows:
- a. The entire area between the 6 parking spaces on the Southern portion of 1873 Powder Mill Road and the property to the South (varying between approximately 28.08 and 29.56 feet), would be enhanced to constitute a buffer strip type D, per the SALDO, with 100% screening at 8 feet for the entire 60 foot width of those 6 parking spaces.
  - b. From the Western portion of the Parking Deck to the Eastern portion of the adjacent property of Elmwood M. and Joyce L. and Darby Rupp, there would be a SALDO Buffer Strip C, between the existing on-site ground parking area and the Southernmost Property line of the Property, which would provide screening of 80% at a height of twelve (12) feet.  
(15(a) and (b) being the "Buffer Conditions").
  - c. Additionally, the parapet walls on the Parking Deck would be no less than 4 feet in height, constructed such that they are solid and made of concrete, which will not allow lighting to pass through the parapet walls on at least the Southern and Eastern parapet walls on the Parking Deck (the "Parapet Wall Condition").  
(The Buffer Conditions and the Parapet Wall Condition may be referred to collectively as the "Conditions").

**CONCLUSIONS OF LAW**


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

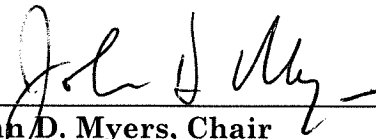
1. The Stair Tower is not subject to the height adjustment under Section 265-518 of the Ordinance, and accordingly, the height regulations do apply to the Stair Tower. The Stair Tower is *not a structure on a building* (emphasis added), such as clock towers, cupolas, water tanks and other mechanical appurtenances and further, while the Stair Tower does not cover more than 25% of the Parking Deck, it is not on a roof.
2. Additionally, the Parapet Walls are not subject to the height adjustment under Section 265-518 of the Ordinance, so the height regulations do apply to the Parapet Walls. The Parapet Walls are *not used solely* (emphasis added), for ornamental purposes and further, while they are not in excess of 5 feet, they are not above a roofline.
3. The Variance criteria have been met.
4. The grant of relief via Variance is appropriate only if the Conditions, to which the Applicant agreed, are imposed.

Accordingly, Jim Barnes moved, and Anthony Pantano seconded, to grant the Variance to exceed allowable maximum building height for an accessory building (Parking Deck), subject to the Conditions, on the Property located at 1855 Powder Mill Road in a Commercial Office (CO) District. The motion passed unanimously with Glenn Myers, William Descar, Jim Barnes, Timothy Salvatore and Anthony Pantano voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP  
ZONING HEARING BOARD

  
\_\_\_\_\_  
William Descar, Secretary

By:   
\_\_\_\_\_  
John D. Myers, Chair

10/24/17  
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.