

YORK TOWNSHIP

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The November 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
William Descar, Secretary
Anthony Pantano, Asst. Secretary
Timothy Salvatore, Member
Albert Granholm, Member
Jeffrey Rehmyer, Esquire, Solicitor
Lisa Frye, Zoning Officer

MINUTES OF OCTOBER 25, 2022

The Zoning Hearing Board minutes of the October 25, 2022, meeting were approved.

DECISIONS OF OCTOBER 25, 2022

The Zoning Hearing Board decisions of the October 25, 2022, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2022-20: Elwood Rupp, Joyce Rupp and Darby A. Rupp request a Variance of required Lot Width, required Lot Frontage, required Lot Coverage and Parking on property located at 213-215 Vinmar Drive in a Residential Medium Density (RM) District.

Present: John Ogden
Patti Fisher
Elwood Rupp

York Stenographic Services, Inc.
2303 East Philadelphia Street, York, PA 17402 (717) 854-0077

York Township Zoning Hearing Board
Tuesday, November 22, 2022
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MOTION: On Application 2022-20, Elwood Rupp, Joyce Rupp and Darby A. Rupp request a Variance of required Lot Width, required Lot Frontage, required Lot Coverage and Parking on property located at 213-215 Vinmar Drive in a Residential Medium Density (RM) District, that the Variance be approved.

CONDITIONS: Subject to the condition that the Applicant file an approved subdivision plan with the Township.

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

Application 2022-21: Verdad Real Estate, Inc. requests a Special Exception to establish a Vertical Self Storage Facility on property located at Dairyland Square Shopping Center in a Commercial Industrial (CI) District.

Present: Stacey MacNeal
Patton Cocke

MOTION: On Application 2022-21 Verdad Real Estate, Inc. requests a Special Exception to establish a Vertical Self Storage Facility on property located at Dairyland Square Shopping Center in a Commercial Industrial (CI) District, that the Special Exception be approved.

MOTION MADE BY: Anthony Pantano
SECONDED BY: William Descar
MOTION PASSED UNANIMOUSLY

Application 2022-22: Hudson Ridge Ventures LLC requests a Variance of just over 3' to reduce the building setback in nine locations to allow adjacent single-family attached dwellings to retain decks on property located at 100 Stratford Drive in a Residential High Density (RH) District.

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Present: Stacey MacNeal
Joshua George
Mickey Thompson

MOTION: On Application 2022-22, Hudson Ridge Ventures LLC requests a Variance of just over 3' to reduce the building setback in nine locations to allow adjacent single-family attached dwellings to retain decks on property located at 100 Stratford Drive in a Residential High Density (RH) District, that the Variance be approved as a de minimus Variance.

CONDITIONS: Completion of a subdivision plan, revisiting the buffer effectiveness, and also an easement agreement to be prepared that would be reviewed by the Township Solicitor.

MOTION MADE BY: John Myers
SECONDED BY: William Descar
MOTION PASSED 5-1, Anthony Pantano voted negatively.

ATTEST:



William Descar, Secretary
Anthony Pantano Ast Sec.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2022-20

Hearing Date: November 22, 2022

Applicant: Elwood Rupp, Joyce Rupp and Darby A. Rupp

Property Owner: Elwood Rupp, Joyce Rupp and Darby A. Rupp

Property: 213-215 Vinmar Drive
UPI: #54-000-20-0215-00-00000

Existing Zoning District: Residential Medium Density (RM)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-402(B)(2).

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. Board Chairman, James Barnes announced that he was previously employed by James R. Holley & Associates, Inc., and no one had any objection to him presiding over the hearing or voting thereon as a result of that prior employment.
3. Present were Elwood Rupp, one of the Applicants and Property Owners; Patti Fisher of James R. Holley & Associates, Inc. and Attorney John Ogden on behalf of the Applicants.
4. Applicants are seeking Variances necessary to allow for the subdivision of the Property, which Variances were specifically for Minimum Lot Width and Minimum Lot Frontage (the "Variances").
5. Included with the Application was a Zoning Exhibit for 213-215 Vinmar Drive by James R. Holley & Associates, Inc., and an older drawing showing the Property and adjacent properties.
6. Applicants also provided Exhibit #1, which was an aerial photograph with the tax map overlay showing the Property and many similar dwellings in the vicinity.
7. Attorney Ogden called Mr. Rupp who provided background information as follows:
 - a. Mr. and Mrs. Rupp reside in 215 Vinmar Drive.
 - b. Mr. Rupp's sister-in-law, Darby A. Rupp, resides in 213 Vinmar Drive.
 - c. Both 213 and 215 Vinmar Drive were conveyed with the same Deed and are considered to be a single parcel with the UPI referenced above.
 - d. The Rups purchased the Property in 2005.
 - e. At the time, his sister-in-law and brother were already a tenant in 213 Vinmar Drive.
 - f. Mr. Rupp has had cancer for the last 8 years.

- g. Mr. Rupp has depleted his retirement funds and gone into debt.
 - h. Mr. Rupp is concerned if he has a relapse, he cannot get money.
 - i. Accordingly, Mr. Rupp needs assistance.
 - j. Mr. Rupp desires to obtain a home equity line of credit to pay certain medical bills.
 - k. However, he is unable to obtain a loan or even sell his duplex.
 - l. Years ago, the York County Assessment Office separated the Deeds for a number of nearby properties that were also similar duplexes, but they were owned by unrelated parties.
 - m. Mr. Rupp believes that if the relief was granted, there would be no outward change in appearance and the use of the Property or the dwellings thereon.
 - n. Further, he believes there would be no hardship to neighbors or the Township.
8. Attorney Ogden called Patti Fisher who explained the Zoning Exhibit referenced above as follows:
- a. The Exhibit highlights the existing lot size, lot width and frontage of the Property as is and if it would be subdivided, with the subdivision running parallel and down the center line between the two dwellings (the "Proposed Subdivision").
 - b. If the Proposed Subdivision were completed, Lot 215A (which is 213 Vinmar Drive) would have sufficient minimum lot size, minimum lot width and minimum frontage.
 - c. However, Lot 215B (which is 215 Vinmar Drive) would have insufficient lot width (33.95 feet where 65 feet is needed), and insufficient minimum lot frontage (50 feet is needed and 28.04 would be provided).
 - d. A challenge with this Property is the irregular shape, as well as it being adjacent to an existing stormwater basin, which limits its outermost boundaries.
 - e. Other properties in the vicinity are perpendicular to the roadway and therefore, when subdivided, have sufficient lot width and lot frontage.
9. Mr. Rupp has invested \$5,000.00 in analysis of the issue and efforts to proceed with the Proposed Subdivision.
10. In response to the criteria for the Variance, the Applicant provided the following:
- a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, including the irregular shape of the lot, its existence on a cul-de-sac, the presence of a stormwater facility beside it, legal and Deed history, unilateral County action with regard to other properties, and the inability to move the adjacent lot lines, 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, as the Variance is necessary for adequate and safe use.
 - c. The 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 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.
11. In response to questions, the Zoning Officer provided information about the Property as follows:
- a. The Subdivision Plan was filed around 1988.
 - b. The Plan called for a 2-single family attached dwellings on one lot.
 - c. The builder was American Dream Homes.
 - d. The dwellings were to be condominiums.
 - e. Around 2006, the Township became aware that the County of York redrew the property lines to separate and to assign Uniform Parcel Identification numbers to many of the duplex properties.
 - f. The County did not redraw the lines and effectively separate 3 of the properties where there was the same owner for both of the units, including the Property.
 - g. There has been correspondence between the Township and the Assessment Office in the past.
 - h. The lots failed to meet many of the required minimums for the zone.
 - i. There are no legal descriptions in existence for the Properties.
 - j. There have been many calls from settlement companies.
 - k. In response to questions, the Applicant indicated that the driveway to 215 Vinmar Drive crosses over the adjoining Property, but an Easement will be obtained and recorded.
12. There were no questions from the audience.
13. There was no testimony for or against the Application.
14. On behalf of the Township, the Zoning Officer did not voice an objection to the subdivision and the grant of the relief.
15. To alleviate some concerns with the Property, a Condition was established, which is that there would need to be a Subdivision Plan that would be prepared, filed, approved and recorded to complete the Proposed Subdivision, which Plan shall provide legal descriptions for each of the resultant lots, which descriptions shall be used in new Deeds to be prepared and recorded for them (the "Condition").

CONCLUSIONS OF LAW


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

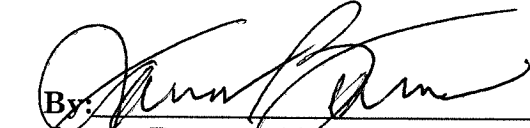
- 1. The history of this Property and those in the vicinity is unique, particularly with regard to the County action.
- 2. The Applicants met the criteria for a Variance.

Accordingly, Timothy Salvatore moved, and John D. Myers seconded, to grant the Variances as requested, subject to the Condition, on the Property located at 213-215 Vinmar Drive in a Residential Medium Density (RM) District. The motion passed unanimously with James Barnes, John D. Myers, William Descar, Timothy Salvatore and Anthony Pantano voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


William Descar, Secretary
Anthony Pantano Asst Sec

By: 
James Barnes, Chair
2/27/22
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: 2022-21
Hearing Date: November 22, 2022
Applicant: Verdad Real Estate, Inc.
Property Owner: Dairyland One, LLC
Property: Dairyland Square
UPI: #82-000-GK-0038-00-00000
Existing Zoning District: Commercial Industrial (CI)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-668.1.

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. Patton Cocks was present on behalf of the Applicant. Also present was Attorney Stacey MacNeal, as counsel for the Applicant.
3. The Applicant is seeking a Special Exception to construct a Vertical Self-Service Storage Facility pursuant to Section 265-668.1 of the Ordinance (the "Special Exception").
4. Attorney MacNeal provided to the Board the following Exhibits:
 - a. Exhibit #1 – Aerial photograph of the Property with a tax map overlay.
 - b. Exhibit #2 – Final Subdivision Plan for Dairyland One, LLC which identifies the Property as Lot #2.
 - c. Exhibit #3 – Bennett Williams marketing materials for Dairyland Square.
 - d. Exhibit #4 – Verdad Proposed Self-Service Storage drawing showing the units that would be put inside the building.
 - e. Exhibit #5 – Drawings for the elevations of the building, North, South, East and West, as well as Proposed Signage for "Extra Space Storage".
 - f. Exhibit #6 – Extra Space Storage Lease Agreement including an Addendum thereto.
5. Attorney MacNeal called Mr. Cocks who testified as follows:
 - a. He is a development manager for the Applicant.
 - b. He located the Property and identified it as a candidate for self-service storage facility.
 - c. There is still a strong demand for self-service storage facilities.
 - d. The building itself has been vacant for years.
 - e. He discussed the building and adjacent properties as shown on Exhibit #1.

- f. He indicated awareness of the subdivision that was completed for the Property as evidenced by Exhibit #2.
 - g. The Property itself is 5.489 acres gross and 5.344 acres net.
 - h. The building is approximately 50,000 square feet.
 - i. The building has 100 parking spaces.
 - j. The prior use of the building was a department store.
 - k. With regard to Exhibit #3, Mr. Cocks noted the surrounding uses, which included residential and commercial, making the area mixed use in nature.
 - l. With regard to Exhibit #4, he highlighted the interior structure.
 - m. Specifically, the floor would be scraped and sealed.
 - n. There would be added a maximum of 380 self-service storage units.
 - o. With regard to Exhibit #5, he indicated there would only be modest exterior changes, so as to preserve the character of the building.
 - p. The cladding would be improved.
 - q. Deferred maintenance would be done.
 - r. The building itself was 26 feet in height.
 - s. The self-service storage facilities are on the ground floor.
 - t. There is a mezzanine floor that would not have any particular use.
 - u. With regard to parking, 8 spaces are needed based on the number of units, as well as 2 spaces for the manager, for a total of 10 spaces, and the Property has well in excess of that amount.
 - v. Loading and unloading of items at the Property would occur on the South side.
 - w. They may add some impervious area to create an area to turn around a vehicle.
 - x. Currently, the Property has 77 percent coverage, and they will not exceed the 90 percent limitation.
 - y. Any such work will be done with the appropriate permits and approvals.
 - z. There will be no use of the back (West) loading areas by the dwellings to the rear.
 - aa. There would be no trailer or truck rentals.
 - bb. There would be added lighting, in the loading area, but it would be shielded.
 - cc. A rental contract is proposed as Exhibit #6.
 - dd. The rental contract will have an Addendum to prohibit uses disallowed by the Zoning Ordinance, as well as outdoor storage and human habitation.
 - ee. There will be "dead" storage only.
 - ff. They expect 30 trips to and from the facility per day maximum.
 - gg. There will be an on-site manager from 6:00 am to 6:00 pm, seven days per week.
 - hh. The Property will have cameras, motion sensors and secured doorways.
 - ii. The Agreement would be appropriately enforced, with legal issues being reported if they arise and eviction of Tenants if there is a violation of the Agreement.
6. With regard to the specific criteria for a Vertical Self-Service Storage Facility in Section 265-668.1, the following was offered:
- a. The building is 2 stories in height and does not exceed 45 feet.
 - b. There is sufficient parking with 10 spaces being required and 100 being available.
 - c. No trailer/truck rentals shall be permitted.
 - d. All lighting shall be shielded to direct lighting away from adjacent properties and streets and sufficient light levels shall be provided to ensure public safety during operations.
 - e. There will be an office on-site for operations and management purposes.

- f. There will not be multiple buildings.
 - g. There will be adequate area for loading and unloading in proximity to the exterior doors of the building.
 - h. The following uses are prohibited by the Addendum to the Lease Agreement:
 - 1. Bulk storage of flammable, combustible, explosive or hazardous material.
 - 2. Repair, construction, or reconstruction of fabrication of any item.
 - 3. Auctions, except as provided for in accordance with the Self-Service Storage Facilities Act, commercial, wholesale or retail sales not related to the storage activity on the premise, or garage sales.
 - 4. The operation of power tools, spray-tanning equipment, compressors, welding equipment, kilns or other similar tools or equipment.
 - 5. Any business activity in the storage units.
 - 6. Outdoor storage of any kind.
7. In response to the General Standards for a Special Exception in Section 265-1009.C., the following was provided:
- a. The intended purpose of the proposed Use shall be consistent with the Township's development objectives as established in the Comprehensive Plan.
 - b. The proposed Use shall be in the best interest of properties in the general area, as well as the community at large, when viewing the proposed Use in relationship to and its potential effects upon surrounding land uses and existing environmental conditions regarding the pollution of air, land and water, noise, potential of hazards and congestion, illumination and glare, restrictions to natural light and circulation.
 - c. The proposed Use is suitable for the Property in question and is designed, constructed and will be operated and maintained suitably for the anticipated activity and population served, numbers of participating population, frequency of use, adequacy of space and generation of traffic.
 - d. There are adequate and available utility services and facilities, such as sanitary and storm sewers, water, fire, police and other public facilities and the ability of the Township to supply such services.
 - e. The proposed Use has adequate ingress, egress, interior circulation of pedestrians and vehicles, off-street parking and accessibility to the existing Township street system.
 - f. The Use shall be in conformance with all applicable requirements of the Ordinance and, where applicable, in accordance with the Township's Subdivision and Land Development Ordinance.
8. Attorney MacNeal moved for the admission of the Application and Exhibits, which were accepted.
9. In response to questions, the Applicant confirmed the following:
- a. The units would only be on the first floor of the building and there is no use in mind for the second floor mezzanine.
 - b. The main entrance would be at the front of the building (East), with loading on the South.
10. There were no questions from the audience.
11. There was no testimony for or against the Applicant.
12. The Township Zoning Officer expressed no concerns on the part of the Township.

CONCLUSIONS OF LAW

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

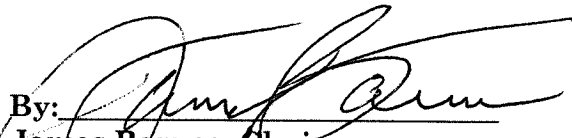
1. The Applicant met the specific criteria for a Special Exception.
2. The Applicant met the general criteria for a Special Exception.

Accordingly, Anthony Pantano moved, and William Descar seconded, to grant the Special Exception for the Vertical Self-Service Storage Facility, on the Property located at Dairyland Square Shopping Center in a Commercial Industrial (CI) District. The motion passed unanimously with James Barnes, John D. Myers, William Descar, Timothy Salvatore and Anthony Pantano voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


William Descar, Secretary
Anthony Pantano Asst Sec

By: 
James Barnes, Chair
12/27/22
Date

The Special Exception 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 Special Exception, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2022-22
Hearing Date: November 22, 2022
Applicant: Hudson Ridge Ventures, LLC
Property Owner: Hudson Ridge Ventures, LLC
Property: 100 Stratford Drive
UPI: #54-000-66-0327-00-00000
Existing Zoning District: Residential High Density (RH)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-649.B.

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. Mickey Thompson, Esquire, Land Development Manager and in-house counsel of the Applicant was present on behalf of the Applicant and Property Owner. Joel Patterson of Burkentine and Sons was present on behalf of the Applicant and Property Owner. Also present was Joshua George, P.E. as the engineer and Stacey MacNeal, Esquire as counsel
3. The Applicant is requesting a Variance of just over 3 feet to reduce the building setback in 9 locations to allow adjacent single-family attached dwellings to retain decks on the Property (the "Variance").
4. Three Plans were included with the Application as Variance Exhibits #1, #2 and #3 were as follows:
 - a. Variance Exhibit #1 – Overall site plan for Hudson Ridge Phase I.
 - b. Variance Exhibit #2 – Partial site plan Hudson Ridge Phase I.
 - c. Variance Exhibit #3 – Partial landscape plan Hudson Ridge Phase I.
5. Attorney MacNeal presented an exhibit pack which included the following:
 - a. Exhibit #1 – Aerial photograph with tax map overlay.
 - b. Exhibit #2 – Final Subdivision and Land Development Plan for Hudson Ridge Phase I including Cover Page, General Note Sheet 2.0, Partial Site Plan Sheet 7.2, Landscape Plan Sheet 11.2 and Overall Open Space Plan Sheet 4.0.
 - c. Exhibit #3 – York Township Zoning Hearing Board Decision #2018-10, which granted a Special Exception for multi-family dwellings on the Property.
 - d. Exhibit #4 – Photograph of the front of numerous multi-family dwellings on the Property.

- e. Exhibit #5 – Photograph of the front of numerous multi-family dwellings on the Property.
 - f. Exhibit #6 – Photograph showing the rear of the aforementioned multi-family dwellings, including the decks thereon.
 - g. Exhibit #7 – Buffer easement area language.
 - h. Exhibit #8 – Photograph between the rear of multi-family dwelling units.
6. Attorney MacNeal called Joshua George who testified as follows:
- a. The Property is Phase I of Hudson Ridge.
 - b. When looking at Exhibit #1, the Property is approximately 14.8 acres.
 - c. Many of the streets are in place as are the utilities any many dwelling units.
 - d. Per the approved Land Development Plan, there are 196 units involved, with 134 units being multi-family and 62 being single-family.
 - e. Per Exhibit #2, and in particular Sheet SP7.2 and Sheet LL 11.2, there is to be a 35 foot landscape buffer between the units that front on Cadbury Drive and Hudson Boulevard (the “Landscape Buffer”).
 - f. There are 5.8 acres of Open Space provided which is more than necessary.
 - g. Per Exhibit #3, all buildings are to be set-back a minimum of 50 feet from the Property lines or street rights-of-way.
 - h. Relief is needed in the distance of approximately 3 feet of that 50 foot set-back.
 - i. When reviewing the Variance Exhibits, it was noted that the façade of the multi-family dwellings facing the road were staggered, such that every other one was set-back approximately 3 feet from the other.
 - j. The staggered façade was present on the multi-family dwellings on both Cadbury Drive and Hudson Boulevard, as shown on Variance Exhibit #1 and Variance Exhibit #2.
 - k. Units 127 through 144, which front on Hudson Boulevard, were conveyed to third parties.
 - l. Many of those homes had decks constructed thereon.
 - m. Some did not.
 - n. The approved plans did not show the units being staggered.
 - o. On the units that were set-back on Hudson Boulevard, decks erected thereon encroached upon the 25 foot rear building set-back.
 - p. For example, Unit 127, which is closer to Hudson Boulevard, has a deck but it does not encroach.
 - q. Conversely, Unit 128, which is set-back, has a deck that encroaches approximately 3 feet.
 - r. Three of the units do have decks that are encroaching.
 - s. The other units that would like to have decks that would also be encroaching.
 - t. The multi-family dwellings on Hudson Boulevard are owned by individuals.
 - u. The multi-family dwellings on Cadbury Drive are owned by the Property owner and are rental units.
 - v. Accordingly, the proposal is to shift the rear Property lines on select units that front Hudson Boulevard 3 feet towards the rear of the corresponding units that front on Cadbury Drive (which are multi-family dwellings owned by the Property Owner).
 - w. Accordingly, the following transfers of approximately 3 feet from Lot #327 (which has the multi-family rental units) are proposed:
 - i. Land to be conveyed from Lot #327 to Lot #128 (63.33 square feet/.0015 acre).
 - ii. Land to be conveyed from Lot #327 to Lot #130 (63.33 square feet/.0015 acre).

- iii. Land to be conveyed from Lot #327 to Lot #132 (63.33 square feet/.0015 acre).
- iv. Land to be conveyed from Lot #327 to Lot #134 (94.99 square feet/.0022 acre).
- v. Land to be conveyed from Lot #327 to Lot #136 (63.33 square feet/.0015 acre).
- vi. Land to be conveyed from Lot #327 to Lot #138 (94.99 square feet/.0022 acre).
- vii. Land to be conveyed from Lot #327 to Lot #140 (63.33 square feet/.0015 acre).
- viii. Land to be conveyed from Lot #327 to Lot #142 (63.33 square feet/.0015 acre).
- ix. Land to be conveyed from Lot #327 to Lot #144 (72.15 square feet/.0017 acre).
- x. The above transfers of land, for units #128, #130, #132, #134, #136, #138, #140, #142 and #144, would allow the deck already attached on the dwellings to remain or standard sized decks to be attached, all while still providing the necessary 25 foot building set-back from the newly created rear Property line.
- y. However, the corresponding units opposite those referenced above on Cadbury Drive would have their building set-back of 50 feet reduced by approximately 3.17 feet each, for which the Variance is sought.
- z. The total amount of land being conveyed to adjust the Property line is 642 square feet or 0.136 acre.
- aa. The multi-family dwellings will still have virtually the same amount of Open Space.
- bb. The 35 foot Proposed Buffer between the units on Hudson Boulevard and Cadbury Drive has yet to be installed.
- cc. It is proposed that there would be restrictions imposed on the land being conveyed if relief is granted in this matter related to Zoning Decision #2018-10 so that the land would have to be maintained as a Buffer yard.
- dd. The Proposed Buffer easement language is to be reviewed by the Township solicitor and sample language was provided as Exhibit #7.
- 7. Mickey Thompson was called by Attorney MacNeal. He is in-house counsel and development coordinator for Burkentine & Sons, Inc. who testified as follows:
 - a. The problem arose because of the desire to stagger the front of the units to make them look better.
 - b. He indicated that the units desire to have a 10 foot x 12 foot deck.
 - c. He explained that the plans for the balance of the development have been adjusted so that this type of relief will not be necessary in any other instance.
 - d. The only relief needed involves these 9 units.
 - e. This is Legacy Project and accordingly the rental units are going to be retained by the owner/developer.
 - f. There will be no change on-site.
 - g. There will be no fences on the rental side.
 - h. There would be no impact from a public safety perspective.
 - i. This is a minor deviation.
- 8. In response to questions, the following answers were given:
 - a. The decks are partially cantilevered so some of the area that it intrudes is actually above the ground because the posts are set back from the very edge of each deck.

- b. The land in question, including the Proposed Buffer, would be maintained by Homeowners' Association.
9. There were no questions from the audience.
10. There was no testimony for or against the Application.
11. On behalf of the Township, the Zoning Officer voiced no opposition.
12. Conditions were presented and agreed upon by the Applicant, to include the following:
 - a. The completion of Subdivision Plans with an emphasis on preserving the functionality of the Buffer Easement.
 - b. A separate Easement Agreement being developed and recorded, noted in the Deeds to the Properties, and set forth in the Subdivision Plans and reviewed by the Township solicitor.
(Collectively the "Conditions").
13. Attorney MacNeal argued that the Variance being sought is *De minimis* because it represents approximately 3.71 foot reduction in a 50 foot set-back (6%) and the conveyance of land in the total amount of 642 square feet or 0.0136 acre on a project site that is approximately 62.613 acres.
14. In response to the criteria for the Variance, 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.
 - 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.
 - c. The 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 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.

CONCLUSIONS OF LAW

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

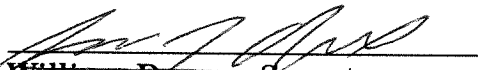
1. The fact pattern of this case is unique, involving multi-family dwellings that are owned by individuals and by a developer for rental purposes.
2. The issue that arose with regard to the decks appears to have been the result of an innocent mistake or oversight.
3. The amount of relief being requested, in this case approximately 3.17 feet in a set-back of 50 feet (just over 6% or 0.136 acre in a project of 62.613 acres) is determined by this Board to be *De minimis*.
4. The Variance being requested is dimensional.
5. The deviation being requested is minor.
6. Rigid compliance with the Zoning Ordinance is not necessary for the protection of the public policy concerns of the Ordinance, especially with the imposition of the Conditions and preservation related to the Buffer Easement.


7. If the Variance were denied, it would cause a hardship to 9 individual property owners.
8. Even though the Property Owner has not meet all the traditional Variance requirements, the Zoning limitation has a unique and particularly injurious impact.
9. The purposes of the Zoning Ordinance are otherwise served by the other components of the Subdivision and Land Development as well as the Conditions.

Accordingly, John D. Myers moved, and William Descar seconded, to grant the Variance, subject to the Conditions, to reduce the building set-back in nine locations, on the Property located at 100 Stratford Drive, in a Residential High Density (RH) District. The motion passed by a vote of 4 to 1, with James Barnes, John D. Myers, William Descar and Timothy Salvatore voting in favor of the motion and Anthony Pantano voting against the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


William Descar, Secretary
Anthony Pantano Asst Sec

By: 
James Barnes, Chair
12/27/22
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.