

TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
August 15, 2018

CALL TO ORDER

The August 15, 2018 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Vice Chairman Steve Moniak in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA 17033.

ROLL CALL

Board members in attendance: Vice Chairman Steve Moniak; Secretary Matthew Luttrell; Member Sandy Ballard

Board members absent: Chairman Michael Kushner; Member Philip Wood

Also Present: Megan Huff, Solicitor to the Board; Chuck Emerick, Director of Community Development; Maria O'Donnell, Court Reporter; Jenelle Stumpf, Community Development Secretary

Public Registering Attendance: Robert D. Brackbill, Jr., 1244 Waltonville Road; Maureen Buckfelder, 22 East Areba Avenue; Erik Harmon, Light-Heigel; Leah and Howard Lewis, 66 East Areba Avenue; Quentin Miller, NP 1 Ventures, LLC; Lesa Brackbill, 37 East Areba Avenue; Teresa and Ted Mortensen, 46 East Areba Avenue; Kelly, Kyle, and Karl Karpa, 33 East Areba Avenue; Jeff Gelbaugh, P.O. Box 85, Hershey; Robert J. Illo, A&E; Wayne Easterwood, 160 Maple Avenue; Beth and Mike Correll, 244 Cedar Avenue; Steph Shaw, 218 Elm Avenue; Alan McLin and Sherri Luchs, 123 East Areba Avenue

APPROVAL OF MINUTES

On a motion by Secretary Luttrell, seconded by Member Ballard, and a majority vote, the July 18, 2018 minutes were approved as written. Vice Chairman Moniak abstained.

OLD BUSINESS

A. Adoption of Decision in the Case of John Deiter (2018-09)
Property location: 1076 Cocoa Avenue, Hershey

On a motion by Member Ballard, seconded by Secretary Luttrell, and a majority vote, the decision was adopted as written. Vice Chairman Moniak abstained.

B. Continuance in the Case of NP 1 Ventures, LLC (2018-08)
Property location: 1338 East Chocolate Avenue, Hershey

This property, located in the Palmdale Mixed Use and East Chocolate Avenue Overlay zoning districts, is improved with a two-family dwelling, a rear addition that is currently vacant, and associated parking for the dwelling units. The applicant proposes to convert the building to a

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multi-family apartment dwelling, including three additional units proposed for the rear addition (five dwelling units total). Relief is sought from maximum permitted residential density for the East Chocolate Avenue Overlay zoning district.

Eric Harmon, Light-Heigel & Associates; Bob Illo, Architect; and Quentin Miller, NP 1 Ventures, LLC, were sworn in.

Secretary Luttrell recused himself and stepped into the audience to be able to comment on the proposal.

Mr. Harmon recapped some of the testimony that was made at the June hearing as follows: The present use of the property is multifamily apartments. There are 2 existing units in the brick dwelling at the front of the property (1 two-bedroom unit and 1 one-bedroom unit). There is a 2,500-square-foot structure at the rear of the property that has had various uses in the past and is currently vacant.

Mr. Harmon stated that the applicant recently obtained building and zoning permits to improve the existing parking lot with the construction of a handicapped-accessible parking space and striping of the other spaces for a total of 6 spaces in the main lot, 1 pull-in space off East Chocolate Avenue, and 1 space in the garage in the lower level of the 2,500-square-foot structure. There is now enough parking to support the 5 proposed dwelling units. There would be a total of 3 two-bedroom units and 2 one-bedroom units on the property. In conjunction with the parking lot improvements, some of the impervious area was removed along the western property line so the property is now in compliance with the maximum impervious area requirements.

Mr. Harmon stated that the following exterior improvements are proposed if the requested relief is granted:

- New roof and spouting on the original part of the house to match the proposed renovated addition.
- Any old-style or single pane windows will be replaced.
- Vegetation and trees will be added at the western property line at the time of completion of construction.
- Landscaping will be added in front of the house along East Chocolate Avenue.
- The building block on the rear building will be painted and the trim will be updated as needed.

Mr. Illo stated that the concept plan shows how 3 apartments could fit into a 2,500-square-foot building. In response to a question from Vice Chairman Moniak, Mr. Illo explained that

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the 3 apartments are proposed in addition to the 2 apartments that currently exist in the existing house.

Vice Chairman Moniak noted that at the previous hearing a tenant expressed concern about entryways and security issues in terms of the structural integrity of the existing separation door. He asked what has been done to address those issues. Mr. Illo responded that the applicant will do any construction that is needed; however, Mr. Illo is not sure what the problem is because there is no functional connection between the 2 buildings. Mr. Harmon added that the door will be more secure than it is now, and the applicant would be agreeable to walling off the door entirely as a condition of approval.

In response to an inquiry from Member Ballard, Mr. Harmon explained that the upstairs tenant in the front building enters the building to the left of the foyer. The downstairs tenant enters through the door in the rear, and that door is not used by anyone else. The door by the stairway goes to the basement.

Member Ballard asked if the applicant considered reducing the number of apartments or bedrooms. Mr. Miller responded that they considered it but economically, going from 2 to 3 units is the same amount of planning work as 4 or 5 units. He thinks the proposed layout with the 2 bedrooms will result in not as much tenant turnover.

Mr. Harmon stated that the applicant is requesting relief for 5 dwelling units, which is 15.9 dwelling units per net developable area (NDA). The allowable NDA in this zoning district is 12 units. The applicant believes this is a reasonable request and the minimum that would be required to develop the property. Member Ballard asked how many additional units could be added if the applicant stayed within the permitted 12 units per NDA. Mr. Harmon responded that only one additional unit would be permitted. Member Ballard questioned the hardship and why it is impossible to propose 4 units instead of 5 units. Mr. Harmon stated that the hardship is the size of the lot and the unique existing structures on the lot. It is not as feasible to have 2 units in the back because of the amount of work required for planning and permits. The result would be 2 very large units that would not fit the market. Member Ballard asked if those 2 larger units would have a higher rent per unit than the 3 units proposed. Mr. Miller answered yes, but they might not be as easy to rent in this part of the Township.

Vice Chairman Moniak asked if the applicant calculated the size of the apartments in the back building as being 2 two-bedroom apartments when they were calculating the density for the total of 4 units. Mr. Harmon answered that he believes so. Mr. Emerick added that the Zoning Ordinance does not differentiate the number of bedrooms when calculating the density.

Public comment:

Matt Luttrell, owner of 1332 East Chocolate Avenue, stated that he spoke with Mr. Miller at Mr. Miller's request. The parking lot is a nice improvement and Mr. Luttrell appreciates some of the concessions that were expressed by the applicant. However, while the floor plan as

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presented works in some fashion, it does not take into account the second floor of the existing residence. Mr. Luttrell is concerned that the proposed parking underneath the building is not a viable parking space. There is not really a driveway of any sort, it is just a grass strip. Also, the cars park head-in to the proposed apartments and given the proximity to the building, Mr. Luttrell is not sure that there will be safe ingress and egress from the building based on the proposed location of the door. He thinks this is indicative of the challenges of proposing a total of 5 dwelling units on the property. Mr. Luttrell stated that he is not opposed to the project; however, maybe more of an investment needs to be made to achieve an appropriate facility for 5 dwelling units.

Member Ballard asked if the applicant would reduce the number of parking spaces if they were to reduce the number of bedrooms. Mr. Harmon answered yes.

Mr. Harmon explained that the garage parking space is something that was discussed with Mr. Emerick, and Mr. Harmon's understanding was that the space is permitted. Mr. Emerick confirmed that it is permitted as grandfathered space, regardless of dimensions.

Regarding accessibility issues, Mr. Illo noted that there will have to be a striped area in the parking outside of the egress door. The feasibility of the garage space would be an agreement between the landlord and the tenant. Mr. Harmon added the applicant understands that a condition of the relief, if granted, is building code approval.

Member Ballard asked if the applicant followed up with the concerned tenant. Mr. Harmon responded that while he does not think there was a conversation with the tenant, the applicant is addressing her concerns. The subject door connection will be eliminated, and regarding the tenant's concern about parking, what is provided is what is required by the Township.

Member Ballard inquired if the applicant talked to any of the other neighbors in the vicinity. Mr. Miller answered no. Member Ballard stated it appears that if the applicant were to change the mix of units they would reduce the number of vehicles; therefore, the parking requirements would go down to 7 spaces. She asked if the applicant would consider 2 one-bedroom apartments in the back and 1 two-bedroom apartment. Mr. Miller answered that a two-bedroom apartment is usually seen as a longer-term tenant, so that is what he would like to do.

Mr. Emerick asked the following questions regarding some of the applicant's suggested conditions of approval:

- *Any old-style or single pane windows will be replaced.* Mr. Emerick asked if that will apply to both buildings. Mr. Miller answered yes.

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- *Vegetation and trees will be added at the western property line at the time of completion of construction.* Mr. Emerick asked the applicant to quantify the number of trees and/or shrubs. Mr. Miller proposed 4-6 arborvitae trees.
- *Landscaping in front of the house along East Chocolate Avenue.* Mr. Emerick commented he does not know how to quantify that and suggested it not be a condition of approval. Member Ballard stated that she would like to retain the condition, even if it is vague. Mr. Miller proposed 4 bushes not to exceed 3 feet in height.

No other persons provided testimony.

Vice Chairman Moniak informed the applicant that the Board has 45 days to render a decision and if the applicant is aggrieved in any way, they have 30 days to appeal the decision.

NEW BUSINESS

A. Hearing in the Case of Dawson, Katherine, and Daniel Burnham (2018-10)
Property location: 41 East Areba Avenue, Hershey

This property, located in the Hershey Mixed Use zoning district, is improved with a two-family detached dwelling. The applicants desire to operate a bed and breakfast home in one of the dwelling units. Relief is sought in the form of a special exception to permit the operation of the bed and breakfast home. The applicants also request relief in the form of a variance to keep the home as a separate two-family detached dwelling.

Kathy Burnham, 1049 Pennland Lane, Hershey, was sworn in. Ms. Burnham explained that she, her husband Daniel, and their son Dawson are co-owners of the subject property. She is speaking on behalf of her son, who is proposing the use. Dawson is currently working two jobs and is also a college student. He was unable to attend the hearing due to work obligations.

Ms. Burnham stated that Dawson would like to use the dwelling as an Airbnb. Her son wants to become independent and move into the subject dwelling; however, he needs to find a way to pay the mortgage and utility expenses. He considered having roommates but thought that might be a conflict of interest with friends. He does not really want to be alone in the house and thought he might like to have guests.

Member Ballard noted that the relief requested is for a special exception and a variance. Mr. Emerick explained that the Zoning Ordinance does not recognize the term "Airbnb" because it is a marketing strategy, not a use. The Ordinance allows for three types of uses: bed and breakfast homes, specialty homes, and boarding homes. This use is being proposed as an owner-occupied bed and breakfast home and that requires a special exception in this zoning district. The variance request relates to the fact that bed and breakfast homes are only

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permitted in single family dwellings, and the unit at 41 East Areba Avenue is a two-family dwelling.

Ms. Burnham stated that the upstairs and downstairs units can be accessed from inside the structure since there are only locked doors between the units. Mr. Emerick commented that since this is technically a two-family dwelling, there are two kitchens. The vision of a bed and breakfast home is specifically that cooking facilities are not provided to the guests.

Secretary Luttrell stated that there are technical criteria that an applicant is required to meet in order to be granted a special exception to operate a bed and breakfast home in this district. He inquired what the neighbors think about the use in terms of the health, safety, and characteristics of the neighborhood. Ms. Burnham replied that there is some misinformation about Airbnbs. It is not just random people – they are vacationing or going to the Medical Center, so they are not undesirable individuals. With Airbnbs, the guests are verified and each time they stay somewhere, the host gives feedback as to what the guests are like. Dawson would screen the guests and would not allow anyone to stay who did not already have a good rating. Ms. Burnham added that they have had their share of challenges with leasing the subject property. A tenant is harder to remove than a guest, and if the owner resides in the dwelling, they can just make the guests leave. It is much simpler in that regard. Ms. Burnham is aware the neighbors are concerned but Dawson is able to choose good citizens and vacationers, and since he will live in the dwelling he can supervise the guests and make sure they are not being disruptive.

Secretary Luttrell noted that the Board is considering a request for relief to permit a specific type of use, not the Airbnb aspect. If the Airbnb factor is taken out, the host loses the ability to screen the guests, regardless of whether or not the host resides in the dwelling. Ms. Burnham stated that having traveled using Airbnb, she believes it is really important for the Zoning Hearing Board to be open minded about how this can positively impact the Township because it creates a much more welcoming environment to visitors to have an option to stay somewhere other than at a hotel.

Solicitor Huff asked how many bedrooms are being proposed. Ms. Burnham responded that there will be two bedrooms for use by the guests. Solicitor Huff inquired who would be providing the meal service if Dawson is working two jobs and also going to school. Ms. Burnham stated that in the Airbnb description, the hosts informs people about their home and it is understood if it is just a place to sleep. She added that Dawson is proposing that the guests would have their own bathroom in addition to the two bedrooms. Member Ballard asked about the number of kitchens in the dwelling. Ms. Burnham stated that because the building is considered a two-family dwelling, there are two kitchens. Part of the relief being requested is a variance to be able to retain both kitchens. Solicitor Huff inquired if the second kitchen is necessary. Ms. Burnham responded that travelers enjoy having a place to cook meals, and Dawson would like to be able to offer that amenity.

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Member Ballard asked who a guest would contact if they have an issue while Dawson is working. Ms. Burnham responded that she and her husband would be able to co-host the dwelling even though they do not live there, so the guests would also be able to contact Dawson's parents if an issue arises. Ms. Burnham added that Dawson will soon be able to quit his second job and is not planning to go back to college in the fall, so he will be more available to the guests.

Public comment:

Lesla Brackbill, 37 East Areba Avenue, was sworn in. She stated that she is fully in support of short-term rentals at 41 East Areba Avenue and that the Brackbills had initially wanted to do the same thing. Last summer they operated an Airbnb in their upstairs apartment as an extra source of income and also as a way to serve others on tight budgets because hotels are expensive and in short supply in the summer. Ms. Brackbill noted that they ceased to operate the Airbnb after the Township make it difficult for them to afford to do it, and also because they learned they were expecting twins. She stated that none of her bookings were single guests, they were all families or couples. The guests were quiet at night. All Airbnb guests are background checked. Ms. Brackbill believes the neighbors' complaints are not entirely accurate.

Kelly Karpa, 33 East Areba Avenue, was sworn in. She provided packets of information for the Board's review. Ms. Karpa stated that a lot of misinformation has been given to the neighbors by the applicants regarding ownership, who lives in the dwelling, and the amount of space that is available for rent. The Karpas were told in May that Dawson owned the subject property; however, that was not true until approximately 3 weeks ago. Currently there is a permanent tenant on the first floor of the building and the second floor is being rented as an Airbnb. The neighbors were led to believe that Dawson resides at the subject property, but that is not true. Some of the neighbors have been taking pictures at different times throughout the day to document when Dawson's car is parked on the property, and it is never there. Ms. Karpa does not think it can be guaranteed that the health and safety of the residents in the neighborhood will not be adversely affected due to number of transient visitors coming and going from the subject property. Ms. Karpa stated that the Brackbills have been and continue to rent their dwelling not only to Airbnb but to another organization, known as RYFO (Rock Your Face Off), that hosts bands. Ms. Karpa's son had a bad experience last summer when guests of the Brackbills approached him about where they could purchase drugs. Ms. Karpa stated that she tried to report the incident to the owners at that time and learned they were out of the area for several weeks, so there is no guarantee that the owner will always be available on site even if they reside in the dwelling. Ms. Karpa also noted that some of the neighbors have seen probation and parole officers coming and going from the downstairs apartment at 41 East Areba Avenue. This puts the neighbors on edge because they do not know what is going on to warrant these visits. Ms. Karpa stated that parking is a huge issue. There is only on-street parking on one side of East Areba Avenue, so when there are transient visitors staying at the subject property, there is not enough on-street parking for the permanent residents. Finally, Ms. Karpa stated her property's value has decreased by

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\$90,000 since the two Airbnbs have been operating. She also submitted a petition in opposition to the requested use that was signed by residents of East Areba Avenue.

Teresa Mortensen, 46 East Areba Avenue, was sworn in and stated that she agrees with Ms. Karpa's comments. Ms. Mortensen is concerned about the decrease in property values because of the Airbnbs. She inquired how the Township will put a limit on how many of these uses are allowed in the area if the requested relief is granted. The two Airbnbs have divided the neighborhood, and most of the residents are against them. Regarding Airbnb performing background checks on renters, Ms. Mortensen is not sure how that can be done properly without the necessary personal information.

Kyle Karpa, 33 East Areba Avenue, was sworn in. He stated that last year while he was outside doing yard work, he was approached by two renters from the neighboring (Brackbill) property who inquired where they could "score more stuff." Mr. Karpa noted that the individuals' eyes were bloodshot, they were slurring their words, and they smelled like marijuana. Mr. Karpa noted that he immediately returned to his house to inform his parents. The incident made him feel very uncomfortable.

Ted Mortensen, 46 East Areba Avenue, was sworn in. Mr. Mortensen stated that he is concerned the neighborhood will change for the worse and it will no longer be a family neighborhood.

Leah Lewis, 66 East Areba Avenue, was sworn in. She commented that this is a quiet, residential neighborhood that is in close proximity to the school. She is concerned that the character of the neighborhood will be affected and inquired how the applicant will address the parking issue. There are other opportunities for Airbnbs in appropriately-zoned areas in the Township. The homes on East Areba Avenue are older homes and it is not known how the subject dwelling would be affected when the additional amenities that are being offered are running. Ms. Lewis also stated she is very concerned that the applicant is before the Zoning Hearing Board to beg forgiveness instead of asking permission for the use.

Member Ballard asked why the use was not stopped when it was brought to the attention of the Township. Mr. Emerick responded that the notice of violation was sent on May 29, 2018 and that is why the applicant is before the Board requesting relief.

Ms. Burnham stated that it was never their intention to operate illegally. Regarding the neighbors' allegations that Dawson is not living at the subject property, Ms. Burnham stated that Dawson is working 3 jobs and going to college. He has a limited amount of time to sleep and is having a difficult time sleeping at 41 East Areba Avenue because of his aversion to the downstairs tenant's cigarette smoke and barking dogs. The concerns about Dawson not being there will be addressed when the downstairs tenant vacates the dwelling. He understands his obligation for Airbnb that he needs to be present. Regarding the amenities, Ms. Burnham stated that nothing additional would be used than what is already there. On-street parking will not be affected because the guests are given instructions about how many

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parking spaces are available on the property. Regarding the safety of the neighborhood, Ms. Burnham stated that they have had tenants who have created domestic situations, drugs were involved, and the police were called. There is no way around that, and this neighborhood is two blocks away from downtown Hershey and tourist attractions. The guests at Airbnbs want a quiet night's rest, whereas tenants have different schedules and friends going in and out of the house. The neighbors' misunderstanding of the Airbnb terms does not mean the Burnhams are lying.

Member Ballard commented that this is an awkward situation for the Board because a lot of what Ms. Burnham is saying is about what Dawson will do, yet he is not at this hearing in person to represent his proposal.

No other persons provided testimony.

Vice Chairman Moniak informed the applicants that the Board has 45 days to render a decision and if the applicants are aggrieved in any way, they have 30 days to appeal the decision.

B. Hearing in the Case of Robert D. Brackbill, Jr. (2018-11)
Property location: 1244 Waltonville Road, Hummelstown

This property, located in the R-1 zoning district, is improved with a single-family dwelling. The applicant desires to construct a garage/pool house. Relief is sought from setback requirements for an accessory use.

Robert D. Brackbill, Jr. was sworn in. Mr. Brackbill stated that he and his wife purchased the home approximately 10 months ago. They propose to construct a 24' x 24' garage/pool house in front of the inground pool. Mr. Brackbill explained the grading issues on the property. There was a 12' x 20' shed in front of the pool that has been removed. The reason why the pool is not directly behind the house is because of the location of the septic system. There is also a natural spring and a 100' utility easement on the property. There is only one area for the proposed garage/pool house, and that is where the old shed had been located.

Mr. Brackbill noted that their contractor did not contact the Township for a stakeout inspection until after the foundation was poured for the structure. When the stakeout inspection was conducted, it was discovered that the 50' setback had to be measured from the property line, which is 15 feet from the edge of the road. The contractor measured from the edge of the road and therefore, the foundation is encroaching into the front yard setback by 14 feet. All work on the garage/pool house has stopped since the setback issue was discovered.

Mr. Brackbill stated that the structure will look like a garage from the front and in the back there will be a door that leads to a covered porch. New landscaping will be provided around the structure. Vice Chairman Moniak asked if the Brackbills will park vehicles in the garage. Mr. Brackbill answered yes.

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No other persons provided testimony at this hearing.

Vice Chairman Moniak informed the applicant that the Board has 45 days to render a decision and if the applicant is aggrieved in any way, they have 30 days to appeal the decision.

Hearings closed at 8:03 p.m.

DELIBERATIONS

The Board met to deliberate in the cases of NP 1 Ventures, LLC (2018-08); Dawson, Katherine, and Daniel Burnham (2018-10); and Robert D. Brackbill, Jr. (2018-11) and directed the Solicitor to prepare the draft decisions on each case for formal action at the September 2018 meeting.

Submitted by:

Matthew Luttrell, Secretary