

**TOWNSHIP OF DERRY**  
**BOARD OF SUPERVISORS PUBLIC HEARING MINUTES**  
**FEBRUARY 9, 2021 6PM**

**CALL TO ORDER**

*To ensure public safety during the COVID-19 crisis, the February 9, 2021 public hearing was held by audio and video conferencing via a Zoom Virtual Webinar and shown live on YouTube on the Derry Township YouTube page.*

Chairman Abruzzo called the February 9, 2021 Public Hearing of the Township of Derry Board of Supervisors to order at 6:07 p.m. via video conferencing with a Zoom Virtual Webinar through the on-line Meeting Room. He advised that all public meetings are recorded for providing accurate notes. After the Pledge of Allegiance, a roll call was performed.

**IN ATTENDANCE:**

**SUPERVISORS**

E. Christopher Abruzzo, Chairman  
Natalie L. Nutt, Vice Chairwoman  
Carter E. Wyckoff, Secretary  
Richard D. Zmuda  
Susan M. Cort

**ALSO PRESENT:**

Christopher Christman, Township Manager  
Patrick Armstrong, Township Solicitor  
William Oetinger, Township Solicitor  
Chuck Emerick, Director of Community Development  
David Habig, Assistant Director of Community Development  
Brian Blahusch, IT Manager  
Maria O'Donnell, Stenographer  
Julie Echterling, Recorder

**APPLICANT TEAM IN ATTENDANCE:**

Mr. Charles Courtney Attorney with McNees, Wallace & Nurick LLC and Ms. Michelle Buck.

**PUBLIC IN ATTENDANCE:**

Dave Weaver, David Buffington, George Davis, John Conner, John Foley, Jonathan M. Crist, Esq., Matthew Lena, Richard Gamble, Steven Seidl.

**INTRODUCTION:**

Solicitor Armstrong stated this is a Public hearing regarding Zoning Amendment Petition No. 2020-01, as filed by Michele G. Buck, to amend the text of the Zoning Ordinance by permitting disturbance of slopes greater than 20% for residential structures, subject to certain standards and restrictions. He noted this was a petition for an amendment to the ordinance. He noted there is not a procedure in the MPC for allowing a property owner proceeding with a zoning amendment without the Board of Supervisors approval. He stated they will hear from the applicant tonight on proposed changes to the amendment. If the Board wants to move forward, then the procedure outlined in the MPC will be followed.

Chairman Abruzzo asked what the procedure would be if the Board wants to move forward. Solicitor Armstrong discussed the normal process in these types of requests. He noted if the Board wants to move forward, then the amendment would go to the Township's and County's Planning Boards for their input, a public hearing would be advertised and held, and then the Board would vote on the request. Mr. Courtney stated they will follow what is necessary noting it has been to both Planning Boards already. Solicitor Armstrong noted if the Board moves forward then they can follow the process in the MPC. He stated he and Mr. Courtney would speak offline. Chairman Abruzzo spoke about how the meeting would proceed based on the discussion. He turned over the hearing to Mr. Courtney to discuss their request.

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**APPLICANT PRESENTATION:**

Mr. Courtney stated Michele Buck is with him tonight. They are requesting a text amendment to the Zoning Ordinance. He characterized the zoning ordinance restrictive for steep slopes for other than agriculture and conservation. He noted for relief under the current ordinance would be a use variance. If you are a homeowner and would like to expand your house or outdoor living and are living in the house, you would not be able to meet the requirements for a use relief.

He stated this is from Michele who is looking to expand her outdoor living area. Her lot is 2.4 acres and the majority has steep slopes. The zoning ordinance prohibits her from adding this living area because of the slopes. He noted that Mr. Emerick has received other requests such as this one. Solicitor Armstrong asked Mr. Courtney if this was a request. Mr. Courtney stated yes and stated he is not saying it is illegal, but rather more restrictive than what he has seen.

He stated the Zoning Ordinance §225-401.2.1.B “Sensitive environmental areas shall not be physically disturbed or used for any use other than agricultural uses, natural conservation areas and uses for the conservation of open space, water, soil and wildlife resources.” He spoke about uses and requirements for a variance including hardship. He spoke about the difference with use variances and how residents can use their property and wouldn’t be eligible for a use variance with the MPC definition. He noted the Zoning Hearing Board provided relief for Lot 310 that was vacant and needed the variance so the property could be developed. This variance was needed to be developed versus residents wanting to improve their land.

He showed the Board maps of the steep slopes in the Township. He noted the areas with steep slopes in the Township and development in those areas. He noted most of the Township does not have steep slopes. He stated they tried to restrict the amendment to these areas. He stated §225-401.2.1.A.1 states “Land areas having slopes in excess of 20% which are not the result of man-made changes to the natural terrain”. They are proposing adding the phrase “*when such area exceeds 200 square feet.*”

In addition, they are proposing §225-401.2.1.B be changed to the following: “*Notwithstanding the forgoing, on lands not subject to a Cluster Development or Master Plan approval process, the lesser of the lesser of 10% or 6,000 square feet of non-man-made slopes in excess of 20% slope existing on each lot as of the date of enactment of this Zoning Ordinance shall be permitted to be disturbed for residential structure(s). Prior to issuance of a zoning permit or building permit for such structure (s), an applicant proposing such disturbance shall submit to the Zoning Officer the additional information:*

- *A topographic site plan, with minimum contour intervals of two feet, indicating the raw data (spot elevations) or other source of the contours, depicting the slope of all non-man-made slopes and the proposed improvements and disturbance, and providing a calculation of the percentage of such slopes that are to be disturbed for such structure(s). Such plan shall be sealed by a professional engineer, a professional land surveyor or a landscape architect.*
- *A geotechnical report prepared by a registered professional engineer or geologist in Pennsylvania with geotechnical training and experience certifying the proposed disturbance will not create or exacerbate unsafe conditions and providing for means and measures necessary to stabilize the disturbed slope.*

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The proposed changes do not change the maximum impervious coverage, minimum lot areas and widths, setbacks, or other environmental conditions (wetlands, streams, floodplains). This amendment would not change the Township's permit process with the requirement of permits, land development plan review and approval, stormwater management permit and the commonwealth approvals.

Solicitor Armstrong mentioned the 200 square foot exemption per lot should be made clear. Mr. Courtney explained how they would be excluded. Solicitor Armstrong asked about having a cumulative measure for the 10% or 6,000 square foot this year and then again next year. Mr. Courtney stated the intent is for it to be on a cumulative basis. Solicitor Armstrong asked if there were any questions from the Board.

Supervisor Zmuda had some concerns and spoke with Mr. Emerick who put his mind at ease with his answers. Supervisor Wyckoff asked how often residents face this issue as he was at the Zoning Hearing Board and heard the mentioned case. Mr. Emerick spoke about Walton Spring Hills and how those residents have had impeded projects with the current ordinance. He noted this is only for residential properties. He noted that if land is subdivided, the 10% would apply to the size of the lot when this amendment is passed, not 10% of both parcels. Supervisor Wyckoff asked if this was approved by the County. Mr. Emerick stated they supported the changes.

Vice Chairwoman Nutt asked Mr. Emerick to confirm that restrictions on wetlands, quarries and cemeteries are still in effect. Mr. Emerick stated if they had steep slopes and one of those mentioned, they would be restricted. Solicitor Armstrong needed to leave the meeting and stated any costs for the ordinance will be the applicant's responsibility. He noted Solicitor Oetinger would continue to be in the meeting to help the Board.

**PUBLIC COMMENT:**

Mr. Steven Seidl introduced himself as a resident and the Chairman of the Zoning Hearing Board. He attended the Planning Commission Meeting where he expressed some concerns. He believes a lot more needs to be considered prior to approving the amendment. He believes it should have come to the Board first and then to the Planning Commissions. Solicitor Oetinger noted that petitions normally come to the Board first then the Planning Commission which was not the case for this request. Mr. Seidl was surprised and concerned about the process. His concern is 6,000 square feet of disturbance is a lot of space. He spoke about the exceptions that are in place including utilities and the one that came before the Zoning Hearing Board. Taking a developed property and developing 6,000 square feet is a significant disturbance. Runoff, flooding, buffer, streams, ponds, should be considered as well as other environmental issues, and not just safety. He stated he has additional input that he would like to share. Chairman Abruzzo asked him to provide his additional input to Mr. Emerick.

Chairman Abruzzo noted because of the time and since a vote will not be taken, that any additional public comment be limited to 2 minutes or less.

Mr. Jonathan Crist is an attorney with 40 + years of land development experience. He believes this zoning ordinance is from the 1970s and is in the 1993 zoning ordinance. He spoke about this being in the SALDO (185-17-B). He is glad to hear the proposed changes are for residential properties only. He spoke about the Towne Suites project that the Township granted approval for 30% slopes to the detriment of the neighboring

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property. He stated this issue was not raised for the Towne Suites project, which was approved in April 2020.

Chairman Abruzzo noted he is the Chairman of the County Planning Commission and this amendment came to them. They reviewed it for consistency with both the Township and County's Comprehensive Plans and supported it. Both Planning Boards are advisory commissions and do not have legislative powers. He checked with Solicitor Armstrong and confirmed there is no conflict for him to be on the County Planning Board. He stated the Board can move forward as written, or work can be done on the amendment or state we are not interested in the changes to the ordinance.

Solicitor Oetinger stated there is an additional option that Mr. Courtney can make changes. He asked them if they want to advertise it as written and the Board can authorize it for advertising. If there are changes, they need to be made before advertising. Chairman Abruzzo asked Mr. Emerick if it needs to be revisited. Mr. Emerick noted that the amendment was a collaborative effort, and he would like to hear Mr. Seidl's comments. He stated zoning ordinances are a living document and are subject to change. He asked the Board if anyone has concerns about the amendment.

Chairman Abruzzo is in favor of giving property owners more rights, however it needs to be evaluated for the impact on others. He asked about the revision Solicitor Armstrong suggested. The Board discussed the process, word changes and advertising with Solicitor Oetinger.

Mr. Courtney discussed the process and stated that everyone wants to be comfortable with the ordinance. He noted one of the tweaks would be the cumulative concept in the amendment. He spoke about getting to the point of setting up the public hearing where everyone is comfortable with the ordinance. He would like everyone's comments so they can be incorporated into the changes. Solicitor Oetinger suggested it could be put on the next Board's agenda for discussion for advertising. Chairman Abruzzo stated they can put it on the agenda for the February 23 meeting. By that time, all the comments can be addressed with Mr. Courtney and Mr. Emerick and a vote can be taken for advertising for the public hearing. He thanked everyone and deferred action until the next meeting.

**ADJOURNMENT:**

Chairman Abruzzo closed the public hearing at 7:19 p.m.

**SUBMITTED BY:**

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Carter E. Wyckoff  
Township Secretary