

**DERRY TOWNSHIP
ZONING HEARING BOARD MEETING MINUTES
August 18, 2021**

CALL TO ORDER

The Wednesday, August 18, 2021 Derry Township Zoning Hearing Board meeting was called to order at 6:01 p.m. by Chairman Steve Seidl in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA.

ROLL CALL

Board members in attendance: Chairman Steve Seidl; Vice Chairwoman Sandy Ballard; Secretary Dean Morgan; Member Mike Angello; Member Lindsay Drew

Board members absent: None

Also present: Megan Huff, Solicitor to the Board; David Habig, Assistant Director of Community Development; Maria O'Donnell, Court Reporter; Jenelle Stumpf, Planning/Zoning Coordinator

Public registering attendance: David Garpstas, G and Z Investments, LLC; Rick and Angela Knauer, KK Lawn & Landscape; Carl and Pamela Fackler, 124 McKinley Avenue, Hershey; Randy Wright, 1342 East Derry Road, Hershey; Charleton E. Zimmerman, 119 North Roosevelt Avenue, Hershey; Sandra Arndt, 130 McKinley Avenue

APPROVAL OF MINUTES

On a motion made by Chairman Seidl, seconded by Vice Chairwoman Ballard, and a majority vote, the July 21, 2021 minutes were approved as written. Member Drew abstained from voting because she was not present at the July meeting.

OLD BUSINESS

None.

NEW BUSINESS

- A. Hearing in the Case of G and Z Investments, LLC (2021-05)
Property location: Rear East McKinley Avenue and Rear East Derry Road
(Dauphin County Tax Map Parcel Numbers 24-006-060 and 24-060-282)**

The two adjacent properties are located in the Palmdale Mixed Use zoning district. The Rear East McKinley Avenue property is improved with a garage and warehouse and the Rear East Derry Road property is improved with a loading ramp. The applicant desires to utilize the property as storage for KK Lawn Care and Maintenance. Relief was sought in the form of a special exception for re-establishment of a discontinued nonconforming use or, in the alternative, as a variance regarding permitted uses in the Palmdale Mixed Use zoning district.

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David Garpstas, Rick Knauer, and Angela Knauer were sworn in.

Mr. Garpstas stated that he and his partners began purchasing properties approximately three years ago. Mr. Garpstas has been a licensed real estate agent for seven years. G and Z Investments, LLC works with municipalities to find vacant, blighted properties to purchase and beautify to improve neighborhoods.

Mr. Garpstas explained that the subject parcels were at one point part of the same deed as 1314 East Derry Road, but they were separated from that deed prior to G and Z Investments, LLC purchasing 1314 East Derry Road and at that time, the subject parcels were sold to a different purchaser. The purchaser then contacted Mr. Garpstas approximately two or three months after settlement and asked if G and Z Investments, LLC wanted to buy the subject parcels because he no longer had use for the buildings. Mr. Garpstas said that G and Z Investments, LLC have a vested interest in the neighborhood because they own 1314 East Derry Road and they wanted to make sure they protected their property, so that was their reason for purchasing the subject properties. Mr. Garpstas added that he is to blame for not doing the proper research prior to purchasing the subject properties and not knowing that the buildings cannot be used for storage.

Mr. Garpstas stated it is his understanding that the previous owner used the subject property for his construction and contracting business. When the previous owner passed away, the use was discontinued. The proposed use would essentially be the same impact or less of an impact than the previous use. In response to a question from Secretary Morgan, Mr. Garpstas stated that the information he has on the previous use of the property is likely speculation; however, it was what he and Chuck Emerick were able to come up with after researching the deeded history of the property. Secretary Morgan inquired if Mr. Garpstas had any specific evidence to prove the previous use of the property. Mr. Garpstas responded that based on the equipment and tools that were left on the property, one would guess that the property was used for a construction business. Mr. Knauer added that there is still some industrial construction equipment on the site from the previous use, such as a big air compressor on wheels, gas cans, and framing materials. Tractors and forklifts have already been removed from the buildings by a property maintenance company that was hired by G and Z Investments, LLC.

Regarding the request for a special exception, Chairman Seidl asked the applicant to explain how they meet the required criteria for the re-establishment of a discontinued nonconforming use per Section 225-502.12.A of the Zoning Ordinance:

1. *No action was taken to remove or replace the nonconforming use with a conforming one.*

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Mr. Garpstas stated that they have not done anything to replace the nonconforming use with a conforming use. They are currently not using the property at all.

2. *No action was taken that would have caused the use to be conforming or to otherwise modify or change the existing conditions of the nonconformity as it originally existed.*

Mr. Garpstas stated that the buildings were not constructed in a manner that they could be used for residential purposes. There is no insulation or water and sewer hookups. Mr. Garpstas has not modified the buildings in any way.

3. *No zoning violations exist on the subject property.*

Mr. Garpstas stated that he is not aware of any zoning violations on the property. David Habig concurred.

4. *The reestablished nonconforming use will be no more intense than what had originally existed.*
5. *The reestablished nonconforming use will operate under the same conditions and hours as the original nonconforming use.*

Mr. Knauer, KK Lawn Care and Landscape, explained that their intentions are to beautify the buildings. They have no intentions of making the site worse than it already is. Mr. Knauer noted that they had started to move their equipment onto the property; however, he decided to call the Township and confirm that their use was permitted. Upon learning that the use was not permitted, Mr. Knauer immediately ceased the moving process.

Mr. Knauer said that they want to get everything fixed up so the property looks good again. They would like to make a community area with a pergola for the neighbors to use, and KK Lawn Care and Landscape could also use the area when customers stop by. Their plans for the future include installing a fence in the backyard area so that if they have a busy day and come back to the site late, they can park a truck or trailer overnight in the fenced-in area. Mr. Knauer noted that the buildings are situated perfectly so that their employees can pull the trucks out of the buildings and leave for the day. The neighbors would likely only see employees on the site for a long period of time if there was a maintenance issue with a piece of equipment that needed to be fixed. They hope to be off the property by 8:00 AM and not back until 4:00 PM or 5:00 PM on weekdays. They usually do not work on weekends. KK Lawn Care and Landscape buys their products from Long's Nursery, so that will not be stored on the property.

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In response to questions from Secretary Morgan, Mr. Knauer stated that the square footage of the larger building is 50 feet by 38 feet, and the square footage of the smaller building is 25 feet by 25 feet. The property will only be used for storage; there will not be an office and the building will not be staffed. KK Lawn Care and Landscape's office is currently at Mr. Knauer's home, and it will remain there; however, if a customer wants to see something the company is doing, they might tell that person to stop by. The employees will come to the property in the morning, park their personal vehicles, get the company's trucks and trailers out the buildings, and leave for the day. Mr. Knauer stated that he can only speculate about the size of the contracting company that the previous owner had or anything regarding his use of the buildings; however, industrial-sized equipment was removed from the buildings. The equipment that was removed was much larger than anything KK Lawn Care and Landscape would ever use. Their hours of operation will primarily be during daylight hours. The exception may be if they have to deal with a maintenance issue late in the day, and that will be done inside the building. In addition to landscaping, KK Lawn Care and Landscape also provides snow removal and holiday lighting services. They try to keep their employees year-round, so they know who those employee are. They do not hire seasonal employees because they are not quality. Mr. Knauer added that their employees wear special shirts, so they will be recognizable by neighbors if they are on the property.

Chairman Seidl inquired about the number of employees KK Lawn Care and Landscape has. Mr. Knauer replied that he and his wife own the business; however, they are usually not on site on a daily basis. Their son is the crew leader, and they also have one or two full time employees in addition to their son. Sometimes in the summer they hire a college intern for part time work.

In response to a question from Vice Chairwoman Ballard, Mr. Knauer stated that his company has three full-time employees and two to four part-time employees. He would count himself and his wife in the total number of part-time employees. Vice Chairwoman Ballard asked if the approval of the requested relief would allow Mr. Knauer's business to grow and he would hire more employees. Mr. Knauer responded that there is more than enough room in the building to add one more truck and one more trailer. They currently have two trucks and four trailers. The only trailer that would be sitting outside is their dump trailer because it is bigger. Mr. Knauer would like to have a total of three trucks and three trailers; however, they do not want to grow the business outside of their comfort zone as a family. They are happy where they are with three full-time employees.

Chairman Seidl commented that it sounds like most of KK Lawn Care and Landscape's equipment would be stored inside the two structures. Mr. Knauer agreed. Chairman Seidl asked about the vehicles shown outside of the building on the applicant's sketch. Mr. Knauer answered that two of the vehicles with trailers on the back would actually be stored inside. He just wanted to give the Board an idea of how the property would look.

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In response to a question from Secretary Morgan, Mr. Knauer stated that there are large garage doors on each end of the building, and they are large enough to accommodate the equipment KK Lawn Care and Landscape has.

Chairman Seidl asked if the smaller building is accessed from the McKinley Avenue side. Mr. Knauer responded that both buildings are accessed from North 2nd Street and North 3rd Street.

Member Drew inquired if the property was in use by the previous owner commercially when G and Z Investments, LLC acquired it. Mr. Garpstas answered that it was not. The previous owner died a few years prior, and Mr. Garpstas does not know when the property was last in use.

In response to a question from Secretary Morgan, Mr. Garpstas stated he does not know when the buildings, which are on the same parcel, were constructed.

Member Drew noted that based on Dauphin County Tax Assessment's website, it appears as though the property was developed in 1965. Its use is listed as a commercial garage/auto dealer.

Mr. Garpstas confirmed that if the Board does not grant relief in the form of a special exception to allow the re-establishment of a discontinued nonconforming use, the applicant is requesting a variance regarding permitted uses in the Hershey Mixed Use zoning district. He noted that G and Z Investments, LLC did not construct the buildings. They are shell buildings. There is no insulation and only minimal electric in the one building, otherwise the buildings are not prepped for residential use at all. Mr. Garpstas is speculating that the buildings were constructed specifically for the previous owner's construction business use. The applicant is not looking to modify the footprints at all or add any structures.

Chairman Seidl asked the applicant to comment on the physical characteristics of the property. Mr. Garpstas stated that it is a very oddly shaped parcel. The buildings pretty much occupy the entire parcel, and it is his understanding that it has been that way since 1965.

Secretary Morgan asked Mr. Garpstas if he spoke to any of the neighbors about their feelings on the proposed use of the property. Mr. Garpstas answered that he did not.

Chairman Seidl inquired about the future pergola that Mr. Knauer mentioned in his testimony. Mr. Knauer responded that the pergola was just an idea for his company to build something on the property that looks nice because there is nothing in that area now. They could make the hardscape big enough to accommodate some benches to improve the appearance of the property. Mr. Knauer is aware that they are not currently asking for approval for anything else other than the use of the property as storage for their business. They have no plans to build the pergola now, it is conceptual for the purposes of the rendering that was given to the Board.

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Public comment

Charleton E. Zimmerman, 119 North Roosevelt Avenue, Hershey, was sworn in. Mr. Zimmerman stated that he has lived at 119 North Roosevelt Avenue since 2002 and lived in Palmdale from 1954 to 1976. He is very familiar with the subject property. Mr. Nornhold, Sr. started the Nornhold Excavating and Builders Contractor company and gave Mr. Zimmerman his first job, which was cutting weeds on the subject property. Mr. Zimmerman asked if a Mr. Evan Pattishall was present. *(No one responded.)* Mr. Zimmerman said that Mr. Pattishall is the owner of 164 North Third Street, which is the adjacent property to the east of the subject property. Mr. Zimmerman inquired why G and Z Investments, LLC did not work with the post office to get an address for the subject property if they want to rent it out. There is no code in Derry Township where the zoning department makes the building addresses. It is pertinent that emergency responders can respond to a call at the site. Secretary Morgan asked if Mr. Zimmerman was referring to a particular statute or regulation. Mr. Zimmerman responded that the State Code of 2nd and 3rd Class Townships states that each Township or Borough can enact an ordinance to work with the post office to specify addresses.

Mr. Zimmerman suggested that since there is no water or sewer to these properties, maybe a development plan should be issued. He inquired why the subject properties were designated as being in the Palmdale Mixed Use zoning district. Chairman Seidl explained that the Zoning Hearing Board does not establish the Zoning Ordinance for the Township. Mr. Zimmerman stated that Mr. Nornhold, Sr. stored excavating equipment on the property but it was never used as an office. In response to a question from Member Drew, Mr. Zimmerman noted that he is not taking a position of being for or against the proposed use of the property, he is just giving information to the Board.

Randall Wright, 1342 East Derry Road, was sworn in. He commented that the primary list of permitted uses in the Palmdale Mixed Use zoning district are all residential uses. The only non-residential uses, such as offices, banks, hotels, and bakeries, are restricted to Overlay districts along East Chocolate Avenue and the Hersheypark Drive extension. Mr. Wright stated that he and his family have lived at 1342 East Derry Road since 1987 and the only operation they have ever seen at the subject property was the two existing buildings and the storage of some equipment. He clarified that the last owner was Harold Nornhold, Jr. It was his father, Harold Nornhold, Sr., who operated the excavating business. Harold Nornhold, Jr. had nothing to do with the business, which is why the property has looked exactly the same way for 35 years. There has been no parking, cars, or any activity to indicate a commercial operation.

Regarding the applicant's request for a special exception, Mr. Wright referenced Sections 225-502.12.A.4 and 225-502.12.A.5 of the Zoning Ordinance which state that the re-

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establishment of a nonconforming use will be no more intense than what had originally existed and will operate under the same conditions and hours as the original nonconforming use. Mr. Wright has yet to hear any testimony that explains what the conditions and hours were of the previous nonconforming use, which tells him that it is very difficult to compare what is being proposed to the previous nonconforming use. The previous use has been discontinued for more than 35 years. Mr. Wright believes it is a stretch to think that the applicant can substitute the proposed use for a previous use that has been discontinued for 35 years. His opinion is that the Board should consider the applicant's alternative request of a use variance instead of the special exception to continue the previous nonconformity.

Regarding the requested use variance, Mr. Wright stated that this is purely an existing residential neighborhood, and he does not think it was ever intended that a commercial operation should be allowed in a residential district such as this. There have been other landscape contractors who have been interested in the property but when they found out they cannot use the property for commercial storage, they did not buy it. Mr. Wright asked the Board to put themselves in the neighbors' shoes when considering if interior storage is a reasonable use for the subject property. For the last 35 years, the neighbors have not seen or heard running vehicles, employees coming to park, or storage of materials. Mr. Wright is concerned about the potential for outside activity and asked if there will there be bulk deliveries of mulch and stacks of pavers stored outside on the property. He is also concerned about the snow removal aspect of the business's services because of the unpredictability of snowstorms and the potential for noise in the middle of the night when employees arrive at the property to take the snow removal equipment out of the building.

Mr. Wright noted that this request seems to be specific to KK Lawn Care and Landscape and they will be leasing the property. This site does not seem to be the site where any business would want to grow because there is no room to grow. He inquired what the setbacks would be since the property is bordered by alleys on the north, south, and west. David Habig responded that Township staff has decided that North 3rd Street would be the main frontage to match the address of the adjacent property to the east. The setbacks for a principal structure would be 20 feet from the front, five feet from the sides, and 25 feet from the rear because rear alleys do not count as a dual frontage. The setbacks for an accessory structure would be 50 feet from the front, five feet from the sides, and five feet from the rear. Mr. Habig clarified that the alley on the western side of the property is not maintained by the Township.

In response to questions from Secretary Morgan, Mr. Wright stated that he and his family have lived at 1342 East Derry Road since May of 1987 and in that time, there has been no construction business activity on the subject property at all.

Pamela and Carl Fackler, 124 McKinley Avenue, were sworn in. Ms. Fackler stated that their garage opens onto the alley to the west of the subject property and asked how they will be affected by the comings and goings of the KK Lawn Care and Landscape employees. Ms. Fackler asked what would happen if the requested relief is approved but after a year this particular business vacates the property. Could a McDonald's drive-through replace the use?

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The Facklers have lived at 124 McKinley Avenue since November of 1988 and the previous use has not been active. Mr. Nornhold, Sr. passed away in the last five years. Mr. Fackler does not think the property was publicly advertised for sale and he does not understand why.

Sandra Arndt, 130 McKinley Avenue, was sworn in. Ms. Arndt purchased her property in June of 2005. She stated that she has never seen any work activity on the subject property, and the previous owners did not even come to remove the things that were stored there. Ms. Arndt also wondered why the property was never listed for sale. She was told by G and Z Investments, LLC that they would be renting the properties to doctors or nurses for long-term rentals. She noted that her family as well as several others would have loved to purchase the subject property to live on, not to use as a rental property. Ms. Arndt is concerned about KK Lawn Care and Landscape's large trucks coming in and out of that little triangle of alleys, pedestrians who walk on the alleys, and potential damage to her property. She agreed that it would be nice to have the subject buildings cleaned up, but she does not think the proposed use is what the community needs. She suggested that the improvement of the property for the storage of antique cars would be a great use.

Mr. Garpstas emphasized that his company puts a lot of thought and care into what they do. They are not stereotypical landlords. He apologized that no one knew the property was for sale but that was the previous owner's choice. Mr. Garpstas was contacted to analyze the property for investment potential. He would be more than happy to give his cell phone number to the neighbors so they can contact him if there is an issue on the property because he stands behind what his company does.

In response to inquiries from Secretary Morgan, Mr. Knauer stated that his company does not have dump trucks. They use regular 2500 Chevrolet pickup trucks; they are not diesel. Storage of equipment and materials will all be inside the buildings. An exception might be one or two skids of materials that are outside temporarily if they are delivered late in the day. Regarding snow removal, Mr. Knauer said they use their pickup trucks as well as snow blowers. KK Lawn Care and Landscape has not signed the lease for the property yet. The term of the lease is one year, with renewable options. Mr. Knauer stated that they have been in business since 2012. They are currently storing their equipment at the Knauers' home at 822 Londonderry Boulevard, Palmyra.

Member Drew asked Mr. Knauer if they are planning to have signage or anything else that would change the character of the buildings. Mr. Knauer said they are not planning on changing the characteristics of the buildings other than installing new, smaller windows and cleaning up the property so it is community friendly. They are planning for a very small sign in one of the windows to identify the business. Member Drew asked if they will be adding any lighting that is motion specific for security purposes that might affect the adjacent properties. Mr. Knauer responded that there are lights on two of the buildings now but none of them work. They were going to fix it so the area is lit up better for employees to get in and out of the property. It is very dark back there now. The length of time that the lights would be on would have to be determined. The light on the back of the building would never shine on the

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adjacent properties. Mr. Knauer added that if something does not happen with these buildings, they are going to fall apart and create a bigger eyesore. It is KK Lawn Care and Landscape's intent is to use the buildings for the benefit of the community.

Member Drew noted that Mr. Knauer has testified that they will not have customers in and out of the property with the exception of possibly a demonstration or showing them information. She asked if he would say that the building will stand out as a business to those customers or if the property will be represented as the storage use that has been testified to except at the beginning of the day and the end of the day when the employees are coming to and leaving the property. Mr. Knauer stated that activity will only be apparent at the beginning of the day and end of the day on weekdays. Their employees do not like to work past 5:00 p.m. and they very rarely work on Saturdays. It is not their goal to make this property a retail location. Member Drew inquired if the property could be redeveloped with a conforming use that would not require relief from the Zoning Ordinance. She also asked if KK Lawn Care and Landscape would be unable to find another location for the storage of their equipment. Mr. Knauer acknowledged that they have a back-up plan for storing their equipment. There is no chance that anything could be put on the subject property that would be cost worthy. Mr. Garpstas added that they have not found any conforming use for the property that would be beneficial.

Mr. Wright stated that he does not want to see blighted buildings in any neighborhood, but he and his neighbors will not trade the improvement of the property for the commercial use of it. Secretary Morgan inquired about the size of Mr. Wright's lot. Mr. Wright said it is 150 feet by 42 feet. Secretary Morgan asked what type of lawnmower most of the residents in the neighborhood use. Mr. Wright responded that the lots on the south side of East Derry Road are smaller, and the residents mostly use push mowers. There are larger lots on the north side of East Derry Road, and some of those residents have small riding mowers.

Mr. Habig noted that Mr. Nornhold passed away in 2016. Additionally, if the Board grants the requested relief, Township staff proposes a condition of approval that parking remain on the site.

No one else offered testimony.

Chairman Seidl 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.

The hearing closed at 7:33 p.m.

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DELIBERATION

The Board met to deliberate in the case of G and Z Investments, LLC (2021-05) and directed the Solicitor to prepare the draft decision on the case for formal action at the September 2021 meeting.

Submitted by:

Dean Morgan, Secretary