

The applicant proposes to construct six four-story buildings, which would result in 96 units or 13.5 units per developmental acre. Each building would be 53.55 feet in height. The grade falls away from the surrounding properties. Nonetheless, the applicant proposes to place the buildings at the top of the highest elevation of the property, which is also nearest to the adjoining properties. There would also be one story of underground parking, which limits the surface parking required. The applicant would retain the existing barn, which is 48 feet high, and residence. The applicant's goal is a community. The barn would be restored as a community center, and the residence's use is yet to be determined.

The applicant admitted it could comply with the Ordinance requirements. In that case, there would be eight three-story buildings, with each building being no more than 40 feet in height. There would be little green space and no underground parking. Instead, the applicant would rather add an additional floor and reduce the number of buildings. The applicant denied an impact on the existing community because the mature trees are the height of the proposed buildings, and those trees would reduce the visual impact of the buildings. The applicant submitted photographs of similar style buildings, albeit with three stories, and a concept plan of the proposed layout, which were admitted into the record. There was no concept plan for the eight three-story buildings. In addition, no topographical survey and no photographs from the neighboring streets were submitted.

The applicant admitted that the unit count is necessary to make this investment make sense. The applicant argued it costs more to build six buildings with underground parking than it does to

build eight buildings and surface parking. The applicant asserted that the latter would be worse for green space and impervious coverage.

Mr. Scott stated that the applicant appreciates the concerns of the neighbors, but those neighbors would still oppose the development of the property even if no zoning relief was required. Those neighbors also live in the R-3 zoning district, which permits multi-family housing. Mr. Scott state there is not a question of developing a multi-family use, but rather how it will look.

Brian Prucha, who resides at 1220 Auburn Avenue, is the Stone Creek Homeowners Association President. He appeared with the Association's attorney, Tucker Hall, and testified at the hearing. The Association includes 207 homeowners. According to the Association, a 34% deviation from the Ordinance requirements is not a minor deviation. Sixteen homes will be irreparably harmed by the 4 story buildings that will tower over those homes. The other homes in the Association will also be affected. There are no other tall buildings in the area. The proposed buildings will be close to the homes in the neighborhood. Those buildings will be visible even through the trees. The buildings will block the views from the neighboring properties. The applicant admitted it could comply with the Ordinance so the relief should be denied. Even if the applicant did not need relief, Mr. Prucha would be opposed to development of the property. Mr. Prucha admitted that the Association considered buying the property but did not purchase it.

Rob Muscalus, who resides at 2471 Zell Court, testified at the hearing. Mr. Muscalus opposes the variance. He thought the applicant should have discussed the variance before buying the property. He testified that the proposed buildings would change the quality of life of the

neighbors on the border because the backs of those properties have decks, screened-in porches, and bedrooms that will be impacted by the buildings.

Nancy Sajeski, who resides at 2147 Carey Way, testified at the hearing. She agreed with Mr. Muscalus' testimony. She lives at the closest duplex, and she will not be able to see the sun with a 53 feet high building.

Robert Sheffield, who resides at 2441 Zell Court, testified at the hearing. It would be a burden to have a 3 or 4 story building in the back yard. He can see the top of the barn from his property. He criticized the applicant for not preparing elevation drawings. He argued that the applicant bought the property knowing the issues with the property. He agreed with the prior testimony of the neighbors.

Terry Novchich, who resides at 2421 Zell Court, testified at the hearing. She opposes the variance request. She thinks the maps do not give a true appreciation of the topography of the property.

Jane Erikson, who resides at 2459 Zell Court, testified at the hearing. She submitted a photograph of the barn from her screened-in porch. The pine trees do not shield the view. The barn is visible from her bedroom. Her photograph was entered into the record.

Thomas, who declined to state his last name on the record, who resides at 1280 Stone Creek Drive, testified at the hearing. He argued the applicant has not met its burden. The applicant admitted it could develop the property in strict conformity with the Ordinance. The proposed buildings will tower over the neighborhood as there are no other structures that high in the neighborhood. The applicant proposes to build at the top of the hill so it will be seen from

everywhere. A park like setting to be used and enjoyed could be achieved with one dwelling on the subject property.

Sherri Stom, who resides at 2427 Zell Court, testified at the hearing. She agreed with all of the neighbors' testimony in opposition of the requested variance. Most of the homes were one or two stories, owner occupied homes in the neighborhood. This proposed development will change the character of the neighborhood with almost 100 units, which would increase traffic.

Steve Geduldig, who resides at 2483 Zell Court, testified at the hearing. He is not anti-development, but the applicant provided no proof that the proposed buildings would not affect the neighbors. No pictures were presented by the applicant. Trees cannot block a four story building.

Rose Knepp, who resides at 2141 Carey Way, testified at the hearing. She lives behind the subject property. She can see the second floor of the residence on the subject property. Adding two more stories will affect her view. She agrees with the comments already made in opposition to the application.

Elwood Menear, who resides at 1215 Upton Court, testified at the hearing. He is pro-capitalist, but tenants do not take care of properties like owners do. He wonders what the property will look like in the future.

The Ordinance limits the maximum height of a principal structure to 40 feet. *See* Ordinance, §225-306, Table 11, Item G. The criteria for issuing zoning variances are set forth in §225-1007.9.A of the Derry Township Zoning Ordinance. The Zoning Board may grant a variance provided that all of the following findings are made where relevant:

1. There are unique physical circumstances or conditions of the lot in question, and due to these conditions, an unnecessary hardship results to the property owner;
2. That because of the physical circumstances, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance, and that the authorization of the variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the applicant;
4. The variance will not alter the essential character of the neighborhood or otherwise impair the appropriate use or development of adjacent property or be detrimental to the public welfare; and
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.


In this matter, the Board finds that the applicant is not entitled to the requested relief. Initially, the Board finds that while the elevation changes within the property, the property can still be developed in conformity with the Ordinance, as the applicant admitted. Most significantly, the Board finds that the proposed relief will have a detrimental impact on other properties in the area and the public welfare. The Board finds that the proposed relief will alter the essential character of the neighborhood and would negatively impact surrounding properties. The Board finds that the placement of the proposed four story buildings nearest the neighboring properties would have a detrimental impact on those neighboring properties. Finally, the Board finds that the applicant did not request the minimum relief necessary.

ORDER

AND NOW, this 20th day of December, 2023:

1. The applicant's request for a variance from §225-306, Table 11, Item G, regarding the maximum height of a principal structure is DENIED.

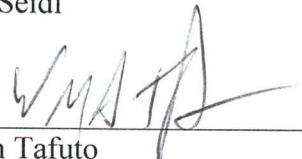
THE FOLLOWING BOARD MEMBERS VOTE TO ADOPT THIS DECISION AS WRITTEN AND DENY THE RELIEF TO THE APPLICANT:



Steven Seidl

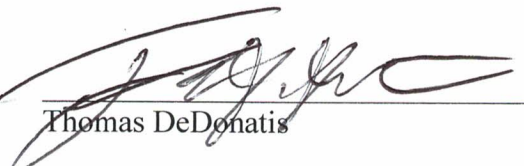


Michael Angello



William Tafuto

THE FOLLOWING BOARD MEMBER VOTES AGAINST THIS DECISION AS WRITTEN AND WOULD INSTEAD GRANT THE RELIEF REQUESTED BY THE APPLICANT:



Thomas DeDonatis

As a result of a vote of three members against the requested relief, and one member in favor of the requested relief, the relief is **DENIED**.