

IN RE: : **BEFORE THE ZONING HEARING BOARD**
: **OF EAST HANOVER TOWNSHIP**
APPLICATION FOR VARIANCE OF :
LISA DEORNELLAS : **HEARING: November 13, 2014**
: **DECISION: November 13, 2014**
No. 2014.11 : **WRITTEN DECISION MAILED:**
: **January 5, 2015**
:

DECISION OF THE ZONING HEARING BOARD

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted a properly advertised and properly posted public hearing on November 13, 2014, commencing at approximately 7:00 p.m., upon the Application for Variance of Lisa DeOrnellas, with respect to the property which was the subject of the hearing, to wit: 280 South Hill Drive, East Hanover Township, Dauphin County, Grantville, PA, 17028, being Dauphin County Tax Parcel No. 25-014-051.

Notice of the hearing was published in *The Patriot News* on October 28, 2014, and November 4, 2014, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with Section 603.1.1 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on October 27, 2014, on and about the tract of land which is the subject of the hearing. Jackie Wilbern, the East Hanover Township Zoning Officer, was present at the hearing and confirmed that the property had been posted with the hearing notice. Furthermore, Ms. Wilbern confirmed that she had provided written and mailed notices on October 20, 2014, of the hearing to those property owners adjacent to the subject properties as identified with the Application for Variance as well as the Applicant.

At final hearing of the matter on November 13, 2014, a quorum of the Zoning Board was present comprised of JoLynn Stoy, Chairperson and Mark Stremmel, Member. Owner of the property, Lisa DeOrnellas, was present at the hearing in addition to Jackie Wilbern, the Zoning Officer, for East Hanover Township as well as Ronald Reeder, the Township Manager. The Township was represented by E. Lee Stinnett II, Esquire. Also in attendance were neighboring property owners. All witnesses offering testimony in the course of the hearing were duly sworn.

FINDINGS OF FACT

The request for a variance submitted by the Applicant property owner sets forth a narrative addressing the matters provided under Sections 605 and 201.2.H of the East Hanover Township Zoning Ordinance and a copy of a portion of a plot plan with respect to the subject property. The Application also includes a copy of a Certificate of Licensure for the Applicant to conduct and maintain a health facility as a hospice at 2741 Paxton Street, Suite 2A, Harrisburg, Pennsylvania. Upon hearing of the matter, a copy of an Enforcement Notice dated September 24, 2014 issued by Newberry Township Zoning Officer has been admitted and marked as Township Exhibit No. 1. Photographs of the property and posting of the hearing notice have been marked as Township Exhibit No. 2 and admitted as part of the record. A copy of correspondence dated November 12, 2014 from the East Hanover Township Sewage Enforcement Officer has been marked as Applicant Exhibit No. 1 and admitted as part of the record.

The subject property consists of approximately 12.34 acres and is located in a Rural Agricultural Zone (RA) pursuant to Section 201 of the East Hanover Township Zoning Ordinance. Located on this property is an existing single-family dwelling together with a detached five car garage. The location of these structures are noted on the copy of the plan

which has been submitted as part of the Application. A meadow is located to the west, woods to the north and south and several single-family residences are situated to the east in proximity to Applicant's property.

Applicant's single-family dwelling has a total area of approximately 5,081 square feet of which 1,500 square feet is not finished. The home has a finished basement area of approximately 1,121 square feet which will be utilized for operation of a hospice business office as a home occupation. This office area comprises 22.06% of the entire home.

Ms. DeOrnellas acquired this property and has resided there since August 28, 2014. She has been a licensed nurse and worked in hospice care since approximately 1995. Four years ago Applicant opened a business to provide hospice services for patients in need. Actual hospice patient care services are provided entirely offsite and will not be conducted on the property. However, clerical and staff management functions relative to the hospice operations are to be conducted upon the subject property.

All of the individuals involved in Applicant's hospice business are licensed professionals. It is proposed that a maximum of four employees in addition to Ms. DeOrnellas would be on the subject property daily, Monday through Friday, between 8:30 a.m. and 4:30 p.m. to staff the business office. The hospice operations regularly involve approximately fifteen (15) to twenty-four (24) other employee professionals. Applicant proposes that these individuals will meet on the subject property to discuss the plan and care of each patient. Medicare requirements provide that such meetings must take place no less than once every fifteen (15) days.

The following monthly schedule is proposed by Applicant regarding staff management and operations: the first Wednesday is dedicated to team meetings; the second week of the month is provided for staff meetings; the third week of the month is typically devoted again to

team meetings; and during the fourth week of the month there are no meetings on the premises. All staff and team meetings will be held between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday. The team consists of physicians, registered nurses, licensed practical nurses, social workers and various clergy. Background checks are done on all individuals associated with the hospice operations. The team meetings which occur during the first and third weeks of the month are to be conducted between the hours of 1:00 p.m. and 3:00 p.m.

In the course of providing hospice services, Applicant procures general supplies which are used by personnel. These supplies typically consist of various personal patient care items, but do not include hospital beds or other types of hospital and medical care equipment. Supplies are typically received by personnel at the scheduled team meetings. Deliveries of these products are received by Applicant between 8:00 a.m. and 5:00 p.m. during the week. It is estimated that approximately six (6) to fifteen (15) boxes of supplies are delivered in alternating weeks by UPS or other commercial delivery companies. Four (4) storage racks are located in the finished basement, each being approximately four (4') feet by six (6') feet in dimension, which are used for the temporary storage of the supplies until they are distributed to the hospice care providers.

All hospice services are provided directly to patients at their homes, care and treatment facilities, or wherever they may be located. No patients will be on the subject premises. In the course of providing hospice services, Applicant indicates that infrequently some hospice patient blood work is required to be done. Applicant maintains medical biohazard bags and CDC sharp containers in accordance with applicable regulations and requirements to comply with safe handling protocols. A medical waste disposal company is contracted by Applicant to remove and safely dispose of these items when required. No medications are stored onsite by the Applicant.

Ms. DeOrnellas utilizes the subject property as her primary residence together with a family member, who is not part of the hospice operations. Applicant proposes that a business office will be conducted only within the basement of the home. This will involve the use of various desks and other typical office furnishings in addition to the limited storage shelves for supplies.

Applicant's paved driveway being approximately 125 feet in length provides access to nine (9) parking spaces which are located between the five (5) car garage and Applicant's home. When staff are on the premises parking is provided on the driveway, between the garage and home as well as on the lawn areas. No exterior signs will be located on the property concerning the hospice operations and there will be no exterior lighting related to the proposed business office.

As part of the hospice operations Applicant typically hosts single day events typically during the spring and fall to provide memorial services, picnic and related fellowship activities for staff, care providers and hospice patient families. The number of attendees at such events has ranged from approximately twenty-five (25) to as many as seventy (70). Approximately thirty (30) cars were parked on the subject property during the most recent event held by Applicant. Large tents would also be temporarily erected on the property to accommodate guests for an event.

The subject property is serviced by a private well and sand mound on-lot septic system. Applicant has had the system inspected and proffered the report of East Hanover Township Sewage Enforcement Officer dated November 12, 2014 as confirmation of same. The site was inspected for any signs of sewage malfunction from the system that serves the existing house. No evidence of malfunction was reported at the time of the inspection.

Applicant has requested a variance in order to increase the number of employees permitted to be on the premises daily. In addition, such variance also is requested in order to accommodate the collective employee team meetings which occur two out of four weeks each month. As a result of such additional employees being on the premises, additional parking spaces are also required to accommodate this use.

Applicant's property will become handicap accessible. A sidewalk is to be installed for direct access to the business office and basement of the property. The sidewalk will extend around the home to the walkout basement. Until such time as the sidewalk is completed, access is gained to the basement office area through the front door of the home.

DISCUSSION

Section 201.2.H of the East Hanover Township Zoning Ordinance provides that home occupations as defined therein are a permitted use. Applicant is the sole proprietor of a hospice business and desires to conduct office operations within the subject premises as a home occupation. However, Section 201.2.H.b requires that only: "Up to two (2) non-resident employees shall be permitted" on the premises. Applicant has proposed to exceed these requirements and therefore a variance will be needed.

In addition, Section 201.2.H.k also provides that: "In addition to the required parking spaces for the dwelling unit, one (1) parking space for patrons on site at one time shall be provided". In order to accommodate the number of daily employees and biweekly meetings of additional employees to be conducted on the premises, a variance will be needed from the parking limitations.

Applicant has filed an application for a Variance as an appeal from the Enforcement Notice to Cease and Desist hospice related operations on the property. Upon consideration of all

the testimony and evidence presented as well as the home occupation requirements of section 201.2.H, the Board is persuaded that variances from Sections 201.2.H.b and 201.2.H.k of the Zoning Ordinance as requested by the Applicant will be appropriate for the property, however, subject to the conditions and limitations as hereinafter stated.

The Board is persuaded that the primary use of this property is residential in nature and the home occupation use shall be incidental thereto. Only 22% of the entire dwelling shall be utilized for the home occupation. The size and scope of Applicant's home occupation does not exceed the 25% limitation as set forth in Section 201.2.H.i of the Zoning Ordinance.

No other home occupations are currently located on the premises. Applicant proposes that no alterations of the appearance of the home, garage or other areas of the property shall be made in order to accommodate the home occupation. The single office in the basement will have a separate access.

The hospice operations do not involve the use of mechanical equipment in the home and only incidental supplies, furniture and equipment customarily found in a small office setting will be used. There are no sales of any goods or merchandise which are manufactured or otherwise made on the premises. Accordingly, there are no goods which would be displayed or be visible from the exterior of the premises.

Furthermore, there are no accessory buildings or structures which are utilized as part of the home occupation. The detached garage on the property is designed and used for a single-family residence and can accommodate five (5) cars for parking of the residents and staff. Applicant has provided likewise evidence of applicable state licensure approvals for her operation of the hospice.

Turning to the staff operations on the premises, various objections and concerns have been raised with regard to the number of vehicles on the premises at any one time, communal gatherings and activities as well as the number of employees to be on site regularly. Although the property will maintain its primary physical appearance as a residence, these additional vehicles, employees and participants provide an impression that a more extensive and commercial type of operation rather than a home occupation is being conducted on the property. This would be contrary to the general premise of a minimal or no-impact home-based business which is desired pursuant to section 201.2.H of the Zoning Ordinance.

Applicant proposes to utilize four (4) employees on site daily Mondays through Fridays. In weeks one and three of each month, the number of employees briefly by substantially increases to an additional fifteen (15) and possibly twenty-four (24) individuals on the premises. Parking is accommodated on and about the driveway, lawn areas and garage. In addition, it is reported that at least twice per year larger numbers of individuals will be invited to the property for hospice related activities and fellowship for patient families and friends. Applicant reports that the large number of guests observed by neighbors occurred only one time recently due to an unexpected large number of families which attended a scheduled gathering. In order to accommodate such outdoor activities temporary tents were erected on the premises, which also contributed to the appearance of a much larger business operation on the property than was intended by the Zoning Ordinance.

Concerns have been expressed by neighbors at the hearing of this matter regarding the large number of vehicles present on the premises. As a matter of safety access by emergency vehicles could also be obstructed to either of the structures and other areas of the property.

Limiting the number of employees present for meetings and daily on site would minimize these potential obstructions.

Applicant has noted during the hearing that actually not all four (4) office employees need to be on the premises daily Monday through Friday. The ordinance does allow for two employees. Applicant has therefore modified the variance request such that only four (4) employees would be present one day per week, e.g. Wednesdays, and for the remaining four (4) days of the week a maximum of three (3) employees on site could be maintained.

Ms. DeOrnellas has confirmed that the five bays of the detached garage can be made available for use on a daily basis by her daily employees. By doing so the appearance of the employees on the premises will be minimized and the appearance of the property as a residence rather than a home occupation will be enhanced.

Applicant has also further modified the Variance request to allow the meetings which take place on the first and third weeks of each month to be divided into two sections. Doing so would reduce and limit the number of staff that would need to be present at any one time. The area between the garage and the house can also be utilized for parking which would lessen the need for parking on other areas on the premises such as the lawn and allow vehicle parking to be more easily accommodated on the existing driveway.

By reason of all the foregoing, the Board is persuaded that subject to the limitations and modifications of the variance proposed by Ms. DeOrnellas, minimal relief from the ordinance can be provided. The nature of Applicant's business is service oriented, occurs off site and does not involve daily customer traffic such as would be experienced by a retail operation.

In all pertinent respects, the appearance of the property inclusive of a home-occupation office, can remain that of a single-family residence. The Board is therefore persuaded that the

variances if authorized would not alter the essential residential character of the zone and neighborhood in which this property is located, nor substantially or permanently impair the appropriate use of the adjacent properties. Applicant's property is of substantial size, and can readily accommodate a few extra vehicles on the premises subject to the conditions stated hereafter. Accordingly, the Board finds that doing so will not be detrimental to the public welfare.

In granting a variance, the Board is authorized by Section 604.4 of the Zoning Ordinance to attach conditions which are considered necessary to protect that public welfare and the purposes for the uses as stated in this RA zone. This includes conditions which are more restrictive than are established for other uses within this same zone. The Board finds under the circumstances presented, that such conditions are necessary in order to maintain the minimum variance, as well as serve the purposes and intent of the Rural Agricultural Zone with respect to the allowance of a home occupation.

ORDER

For the reasons previously set forth, the request of Applicant, Lisa DeOrnellas, for a variance from the requirements of Sections 201.2.H.b and 201.2.H.k to permit additional employees and parking spaces on the premises with respect to the operation of an office for a home occupation on the premises located at 280 South Hill Drive, East Hanover Township, Dauphin County, Grantville, Pennsylvania, 17028, being Dauphin County Tax Parcel No. 25-014-051, is hereby granted subject to the following conditions:

1. All business related meetings by Applicant shall not exceed twelve (12) employees plus the Applicant and shall also not exceed two (2) meetings per week.

2. Parking shall be allowed for a maximum of nine (9) vehicles on the premises, but all such vehicles shall be parked so as not to obstruct or prohibit access to the dwelling.

3. Daily employees on the premises shall park in the existing detached garage.

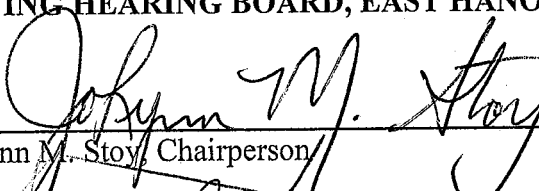
4. The maximum number of employees that may be on the premises daily shall be as follows: three (3) employees plus the Applicant four (4) days per week; and four (4) employees plus the Applicant one (1) day per week.

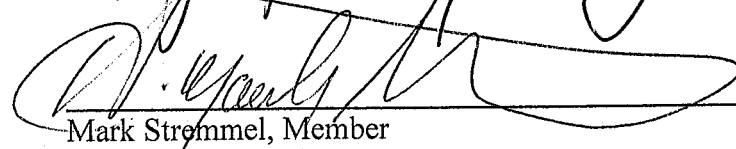
5. Applicant shall obtain and provide proof of a current medical biohazard waste disposal contract to the Township for the premises.

6. No public gatherings related to the business shall be conducted on the property.

7. Applicant must provide annually on-lot septic disposal services and a pumping report to the Township.

ZONING HEARING BOARD, EAST HANOVER TOWNSHIP


JoLynn M. Stoy, Chairperson


Mark Stremmel, Member

Kenneth Wolensky, Member

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