

<b>IN RE:</b>	:	<b>BEFORE THE ZONING HEARING BOARD</b>
	:	<b>OF EAST HANOVER TOWNSHIP</b>
<b>APPLICATION FOR VARIANCE OF</b>	:	
<b>DAN HENGST AND SUZIE HENGST</b>	:	<b>HEARING: August 15, 2016</b>
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<b>No. 2016.02</b>	:	<b>DECISION: August 15, 2016</b>
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	:	<b>WRITTEN DECISION MAILED:</b>
	:	<b>September 29, 2016</b>
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**DECISION OF THE ZONING HEARING BOARD**

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted an initial properly advertised and properly posted public hearing on August 15, 2016, commencing at approximately 7:00 p.m., upon the Application for Variance of Dan Hengst and Suzie Hengst, with respect to the property which was the subject of the hearing, to wit: 1893 Creek View Drive, East Hanover Township, Palmyra, PA, 17078. The owners of the property are Dan Hengst and Suzie Hengst (hereinafter "Owners").

Notice of the hearing was published in *The Sun* on July 28, 2016, and August 4, 2016, 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 August 1, 2016, 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 July 22, 2016 to the Applicants and August 1, 2016 to owners adjacent to the subject property.

All of the members of the Zoning Hearing Board being JoLynn Stoy, Chairman, Shirley Allison and Mark Stremmel, including alternate Kenneth Wolensky, were present throughout the

hearing. Property owners, Dan and Suzie Hengst, participated in the hearing individually. Jackie Wilbern, the Zoning Officer, provided background at the hearing pertaining to the property. All witnesses offering testimony in the course of the hearing were duly sworn.

### **FINDINGS AND DISCUSSION**

The request for a variance submitted by the Applicants and property owners includes a copy of a plot plan for the subject property adopted from the final plan of subdivision for "Bow Creek" as prepared by Keystone Custom Homes, Inc. originally for John and Anne Marie Buschiazzo, which plot plan is identified by Keystone as Job No. BWs030. Included with the application is a site drawing of the subject property providing some detail information with respect to the location of the proposed deck and type of various hardscape improvements which are proposed for the property. Applicants have also provided a brief narrative, plat map and photo page with their application. A photo of the notice posted by the Zoning Officer on the property has been admitted as part of the record as Township Exhibit No. 1. Copies of the publication of the notice in *The Sun* marked as Board Exhibit No. 1 have also been admitted and made a part of the record.

Located on the property is a two story single-family home with a two car garage. This single-family dwelling has an area of approximately 2,404 square feet and a paved driveway having an area of 958 square feet. Total impervious coverage of the lot is 3,417 square feet. The owners occupy and use the home as their primary residence. There are no other structures located on the property which has a total area of approximately 11,464 square feet.

The home is centrally located on the lot on a portion of Creek View Road which is a cul-de-sac. Construction of the home was completed within the original building envelope established by the subdivision plan setbacks. The rear of Applicants' home is set back a distance of 25.46 feet from the rear property line. The lot is irregular and generally triangular in shape.

The remaining homes on the Creek View Drive cul-de-sac have been built and are occupied as residences. Applicants' home was built in 2010 and purchased by them in 2015. The property is serviced by public sewer and a private well is located in Applicants' front yard.

Located generally to the east and between the rear of Applicants' property and the adjoining owner is an open green space. A walking trail currently exists around the development, but it does not specifically extend behind Applicants' property. The adjoining property to the south of Applicants' home has constructed a deck, pool and concrete patio. The property adjacent to the north likewise has constructed a deck, pool and patio with pervious pavers. Other single-family homes within the neighborhood have decks and various hardscaped areas with paving, stone and/or landscape walls generally adjoining the rear of these homes. Applicants' property, being also known as Dauphin County Tax Parcel No. 25-016-138, is located in the Residential Medium Density Zone (RMD) pursuant to Section 202 of the East Hanover Township Zoning Ordinance.

Presently, direct access to Applicants' rear yard from their home is only by means of a kitchen door which is presently barricaded out of necessity for safety. The home was originally constructed such that there is a seven foot drop and change in elevation between the kitchen door and the rear yard. This doorway was originally barricaded by the builder as no steps were installed. The basement of Applicants' split level home is finished with two windows facing to the east which provide the only direct egress to the rear yard at ground level.

Applicants propose to make several improvements and additions to the rear of their home and yard. Attached to the southeastern portion of the dwelling shall be a deck having dimensions of 12 feet by 20 feet to be positioned above the rear basement windows. The area underneath the deck shall be an impervious surface, such as pavers, and the windows will be converted to appropriate doors to provide direct access from the basement to the yard. Attached to the north end of the deck shall be six (6) foot wide steps descending to a landing area and an additional

yard setbacks not to exceed twenty-five (25) feet. Upon adoption of the present Zoning Ordinance, the zoning designation and use requirements for the subject property were modified to that of Residential Medium Density ("RMD") under Section 202 of the Zoning Ordinance.

The design standards for the RMD Zone require pursuant to Section 202.5 that all single-family dwellings without both public sewer and water are subject to a maximum lot coverage of twenty (20%) percent. The subject property is served by public sewer and private water the same as many other dwellings within this residential development. Therefore, the dwelling constructed by Keystone Homes, Inc., and ultimately purchased by the Applicants was originally authorized to be constructed with such lot coverage not to exceed forty (40%) percent inclusive of all structures, walkways, driveways, decks and other impervious surfaces such as the deck and hardscape area proposed by Applicants. Such dwelling was also originally authorized to be constructed having a rear yard setback not to exceed twenty-five (25) feet. According to Applicants' plan submitted as part of the application, that setback requirement was met as the rear of Applicants' home at its closest point is 25.46 feet from the easternmost rear property line.

Upon examination of the plot plan, it appears that the builder and original owners of the property positioned the home within the setbacks approved for the subdivision at that time. The dwelling purchased by Mr. and Mrs. Hengst was not designed by them, but either by the builder or the prior owner. The property was purportedly used as a corporate home and temporary residence for business executives.

It has been the position of the Township and Zoning Officer based upon the advice of respective solicitors that dwellings constructed by Keystone Homes, Inc., can lawfully be constructed having a lot coverage not exceeding forty (40%) percent nor a rear yard setback of twenty-five (25) feet in accordance with the previously approved Subdivision Plan in view of the fact that the preliminary plans for this development had been initially approved in accordance with the standards of the pre-existing zoning ordinance. However, upon completion and sale of a

finished home to a new owner, including the subject property, the protections afforded to the prior owner, developer, and builder ended and any subsequent extensions or expansions of the constructed dwelling, impervious surfaces as well as rear yard setbacks are required to comply with the present requirements of the Zoning Ordinance. Therefore, a twenty (20%) percent maximum lot coverage and forty (40) foot rear yard setback is applicable in this case with regard to the proposed construction of Applicants' deck and hardscaped patio areas.

Due to the shape of Applicants' lot, slopes and the lack of a rear entrance to the home, Mr. and Mrs. Hengst desire to provide a reasonable and viable exterior access from their dwelling into the rear yard. The lot topography declines from west to east with a pronounced change in elevation at the rear of the home. At the southernmost end of the extended kitchen area the drop to ground level is approximately seven (7) feet and on the northernmost end the drop in elevation is approximately five (5) feet six (6) inches.

The Board is persuaded that the property is subject to unusual and unique physical circumstances and conditions. Applicants' lot is located on a cul-de-sac, irregular in shape, subject to a slope and bordered by a few open areas. The physical conditions of Applicants' lot are dissimilar to those of neighboring properties within this community. All of the homes within this area have been built by Keystone Homes and many have attached patios, decks or other structures.

Given the existing conditions, the use of the property has already been maximized and no further encroachment of the current ordinance setback and lot coverage requirements is available. Since Applicants cannot take advantage of any further encroachments, the Board nevertheless finds that such hardship is present with respect to Applicants' need for reasonable and viable access on and about the property to the rear of their home. The Board is not unmindful that reasonable access is necessary for health, safety and welfare of the occupants as well as the community at large.

The Board is further persuaded and concludes that Mr. and Mrs. Hengst did not create this hardship. The home was overall created and constructed in accordance with the requirements then in effect as a result of the filing of a Preliminary Subdivision Plan. A deck, steps and a patio area are not unusual additions for a home in a residential neighborhood and are uses which promote and enhance outdoor activities as well as overall use of the property.

The Board finds however that the size of Applicants' proposed deck and hardscaped area would result in a substantial encroachment of the rear yard setback to a distance of only nine (9) feet from the rear yard property line. Furthermore, the addition of the impervious area would substantially increase the amount of coverage to 35.04% of the entire lot. The Board is not persuaded that such hardscaped area and deck of the sizes as proposed by Applicants are the minimum additions for which a variance could be granted and afford relief.

The Board is persuaded that construction of a deck is a reasonable use and extension of the property. By reason of the topography of the land and structure of the home, a hardscaped area is needed in order to install additional rear yard access from the basement of Applicants' home. Furthermore, the area underneath the deck regardless shall be considered impervious surface for purposes of the Zoning Ordinance. However, the Board is not persuaded that the entire proposed paved area is the minimum variance required in order to afford relief from the ordinance. Although construction of a retaining wall is necessary in order to install a door into Applicants' basement, the sitting walls, fire pit and surrounding areas are not a necessity or a result of the hardship. These areas can retain their natural condition, and still be functional to serve recreational and other outdoor activities associated with this property. The Board finds that accepting Applicants' deck of its current proposed size of twelve (12) feet by twenty (20) feet, that additional eighty-five (85) square feet can be allocated for steps and a landing to provide direct access to the rear yard would be appropriate. A total increase in impervious

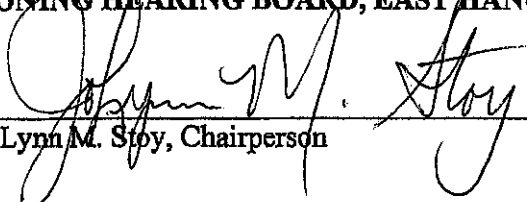
surface and lot coverage by 325 square feet would then be the minimum variance to provide relief.

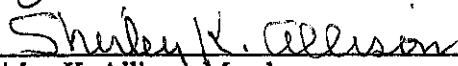
The Board finally is persuaded that construction of the deck and steps would not alter the essential residential character of this neighborhood in which the property is located. Many residential homes within the Bow Creek Development have decks providing access to essentially elevated homes. Applicants' home is incapable of any future residential development and no objection by potential interested neighbors or others have been made, after notice being duly published, a limited variance will be granted.

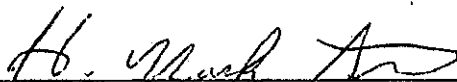
### **DECISION**

For the reasons previously set forth, the East Hanover Township Zoning Hearing Board does hereby GRANT Applicants' request for a variance from the rear yard setback requirements of forty (40) feet and a maximum lot coverage requirement of twenty (20%) percent as set forth in Section 202.5 of the Zoning Ordinance in order to construct a deck onto the rear of their home. Such variance is granted upon the condition that Applicants' deck, steps and landings shall not have an area exceeding 325 square feet, there shall be no hardscaped or impervious surfaces except those located directly under the deck to be constructed within the 325 square foot area, and the retaining wall along the southern portion of Applicants' home shall not extend past the end of Applicants' twelve (12) foot wide deck. It is a further condition of granting the variance that Applicants' deck and related improvements shall be set back a distance of no less than 17.46 feet from the rear property line.

**ZONING HEARING BOARD, EAST HANOVER TOWNSHIP**

  
JoLynn M. Stoy, Chairperson

  
Shirley K. Allison, Member

  
Mark Stremmel, Member