

**Mt. Joy Township
Planning Commission Regular Meeting
Tuesday, June 13, 2023**

Meeting Minutes

Present: Kim Birkhead, Chairman; Kenneth Mutzabaugh; Chris Burne

Also Present: Susan Smith; Township Solicitor; Mitz Whatley, Assistant Treasurer/Administrative Assistant; Shannon Hare; Secretary/Zoning Officer/Code Enforcement Officer

Absent: Dan Moore, Vice-Chairman

The Mount Joy Township Planning Commission met this date, as publicly advertised, at the Mount Joy Township Building located at 902 Hoffman Home Rd., Gettysburg, PA 17325. In addition to being in person, the meeting was also accessible by remote ZOOM platform. Meeting was called to order at 7:10pm.

Public Comments-None

Approval of Minutes. Mr. Mutzabaugh moved, seconded by Mr. Burne to approve the minutes from April 11, 2023. Motion carried, unanimously.

Business.

Non-building waiver for 1790 Baltimore Pike – Jay Steckman Minor Final Subdivision Plan. Ms. Hare read an email provided by Township Engineer Erik Vranich recommending approval of the non-building waiver because the minor subdivision plan proposes the division of a single lot improved with two residences, each served by an existing septic system, into two lots, each with an existing house. There are no new sewage facilities proposed for this plan. Mr. Mutzabaugh moved, seconded by Mr. Burne to approve the Sewage Facilities Planning Non-Building Waiver and to authorize the Chair to sign the non-building waiver on behalf of the Planning Commission. Motion carried, unanimously.

170 Furney Rd request for variances from Section 110-302 Dimensional Requirements for the placement of a fence. The application was submitted in response to a zoning enforcement action for placement of the fence without a zoning permit. Solicitor Smith noted that the application requested a side variance of 5' to place the fence on the side, property line. She also noted that the application sought to place the fence 15' from the centerline of Furney Road, which would be, in the road right-of-way. Solicitor Smith explained that the fence cannot be located in the road right-of-way owned and maintained by the Township and intended for road use and related stormwater management, and that the Zoning Hearing Board has no authority to grant a variance for placement of a structure in the Township Road right-of-way. To place the fence on the outer edge of the road-right-of-way would need a 100% variance from the 30' front setback requirement. The Planning Commission discussed the two variance requests and expressed concern that, in order to make a recommendation, they were being called upon to make assumptions based on the information provided by the applicant. Mr. Burne moved, seconded by Mr. Mutzabaugh to make no recommendation based on the incomplete information provided in the application. Motion carried, unanimously.

Solicitor Smith provided an update on federal wetlands law. The United States Supreme Court, in overruling an EPA determination of jurisdictional wetlands in a case involving a couple's backfilling of a property for the construction of their home, rejected the EPA/Corps recently announced rule establishing a "substantial nexus" test. The Court established the following test for a jurisdictional wetland: To

establish wetlands jurisdiction, the wetland must be adjacent to a traditionally recognized water of the United States – stream, river, lake or ocean – and have a continuous surface connection with that water, making it difficult to determine where the water ends, and the wetland begins.

Adjournment. With no further business, Mr. Burne moved, seconded by Mr. Mutzabaugh to adjourn the meeting. Motion carried unanimously. The meeting adjourned at 7:56 p.m.

Respectfully submitted,

Shannon M. Hare