

## **EAST WASHINGTON ZONING HEARING BOARD**

IN RE APPLICATION OF:

**REBECCA J. SOHN**  
**206 Victoria Lane**  
**McMurray, PA 15317**

On January 5, 2024 a Hearing was held before the East Washington Zoning Hearing Board regarding Applicant, Rebecca Sohn's appeal from the Decision of the Zoning Officer and request for Use Variance. After testimony and evidence, the Board, at an open public session, rendered its Decision. Finding of Facts and Conclusions of Law to said Decision follow.

### **FINDING OF FACTS**

1. Applicant is Rebecca J. Sohn, an adult individual who lists an address of 206 Victoria Lane, McMurray, Pennsylvania 15317.
2. The subject real property is located at 705 East Beau Street, Washington, Pennsylvania 15301.
3. The subject real property is Zoned R-1.
4. The current owner of the property is Jonathon and Tanya Marshall. Ms. Sohn established standing to present the Application. Applicant testified and offered Exhibit A to establish that she had an agreement with the owners to purchase the property and that finalization of the sale was pending upon the determination of the Board.
5. Owner, Jonathan Marshall appeared and testified that he executed Exhibit A. He further testified that he provided permission to Ms. Sohn to present the Application and seek the requested relief.
6. Applicant appears before the Zoning Hearing Board and challenges the Decision of the Zoning Officer in denying a Zoning Permit and, in the alternative, requests a use variance.
7. Applicant testified and offered evidence that the proposed use of the subject real property is to establish a Family Institute of Horticultural Therapy (FIHT). Horticultural Therapy would be offered to families who have suffered the loss of a child.
8. The subject real property is situate upon approximately 1.35 acres. A single family residence is located upon the property. A portion of the property consists of a garden or natural landscaped area.
9. Applicant testified that she wishes to allow FIHT to utilize the non-residential portions of the property to conduct the therapy sessions.

10. The non-residential area would be restored to create a “place of solace, reflection and using the restorative powers of nature for healing,” and to create a space “where client services will be delivered.” (Exhibit D)
11. Ms. Sohn is the founder and executive director of FIHT. (Transcript Page 14)
12. FIHT is a non-profit, 501c 3 entity. (P. 14).
13. Ownership of the real property will initially be with Ms. Sohn. She intends to reside upon the property. As owner, she will pay all taxes imposed upon the subject real property . (P. 25-27.)
14. Ms. Sohn anticipates that three (3) cars will be at the property. (P 27)
15. Ms. Sohn does not anticipate any signage, solid waste or sewage associated with the activity, nor any noise, vibrations, glare, fumes or odors. (P.28-29)
16. Ms. Sohn does not anticipate any overnight stays by the “clients” or client’s family. (P 38),
17. It is anticipated that there will be no group therapy. All therapy is anticipated to be “one on one.” (P,38-39).
18. However, Applicant also testified that a “group” would consist of a Family. (P 39-40).
19. Applicant testified that interns would associate with the use. Interns would be required to have 480 hours of on the job training and thus would be present at the subject real property during times when services would be provided to clients.(P. 40-41)
20. Applicant anticipates that initially there may be five (5) individuals, which includes one or two clients, at the subject real property at any one time. (P 45).
21. All clients are scheduled to participate by appointment. (P. 45-46). A client is scheduled for therapy once a week. (P 45-46). Multiple family are not scheduled for session on the same day (P 45-46).
22. Applicant anticipates that “probably five years out,” there would be an executive director, a registered horticultural therapist, a director of development and an administrative staff. (P 46).
23. Five years out, fully staffed, Applicant anticipates that there could be “up to ten” persons at the real property. (P. 47)
24. Applicant introduced into evidence, a letter dated July 21, 2023 from Mr. Jarrod D’Amico, Zoning Officer for East Washington Borough. (See Exhibit E).

25. The letter and decision of Mr. D'Amico, in his capacity as Borough Zoning Officer, states that the use presented to him by Applicant, does not appear to be a use permitted in the R-1 Zoning District.
26. The public was given a full and fair opportunity to speak to the Application. Public comments, in opposition to the requested relief, centered upon Ordinance Definitions, Approved Uses provided in the Zoning Ordinance, requirements for a variance as provided in the Zoning Ordinance and Commonwealth Municipalities Planning Code and payment or non payment of taxes issued to the subject real property.
27. While the Board listen attentively to all comments submitted by members of the public, the Board did not consider irrelevant statements when rendering its Decision.
28. The Hearing was properly advertised.
29. The Subject Real Property was properly posted.

#### CONCLUSIONS OF LAW

1. The Board has authority and jurisdiction to act on the subject Application and requested relief.
2. The Board finds that Applicant, Rebecca Sohn, has standing to present the Application and seek the requested relief.
3. The Board finds that the statements issued by members of the public to be of a nature that such is irrelevant to the requested relief, inapplicable to the matter before the Board, or is of a legal nature involving the Zoning Ordinance and laws of the Commonwealth. The exception to this Conclusion to be specifically addressed, is the issue raised concerning payment of taxes imposed upon the subject real property. Applicant provided testimony that she intends to reside upon said property and will pay all such taxes, specifically real estate taxes imposed upon said property. As such the proposed owner is an individual and not a Non-Profit FIHT. The issue of imposition of real estate taxes is, at this time, moot.

However, the issue of ownership, involvement of a non-profit entity and the imposition of taxes is relevant from the standpoint of intent, credibility, use and requested relief. In the Memorandum Letter submitted on January 12, 2024 and made part of the Record as Applicant Exhibit F, Applicant indicates that she is willing to accept as a "reasonable condition" that:

**"The property owner will not seek a property tax exemption in the first five years of ownership."**

The Board finds that such statement is in contravention to testimony at Hearing submitted by Applicant that she will pay all taxes imposed upon the property. No restriction as to a five year time period was introduced. The five year offering is peculiarly the same as testimony provided

by Applicant that "probably five years out" (P 46) it is anticipated that the use and FIHT involvement would be fully operational because, as Applicant testified " That would be where I would be going."

Applicant maintains that she is appealing the decision of the Borough Zoning Officer that her proposed use is not permitted in the R-1 District (See Record and Applicant Exhibit F)

Applicant offers that her proposed use is "more consistent with a Minor Home Occupation." (Zoning Ordinance Section 309.9). **HOME OCCUPATION** is defined as:

**An accessory business that is conducted entirely within a dwelling or one accessory building, or administered from a dwelling, and which is clearly incidental and accessory to the dwelling.**

**MINOR HOME OCCUPATION** is defined as:

**A Home Occupation that meets the additional standards for a Minor Home occupation as provided in Article V.**

Applicant testified and provided Exhibits that her proposed use would **not** be conducted in the dwelling. The proposed use would **not** be conducted in an accessory building. Applicant's proposed use would occur in the outside garden area.

Therefore, the definition of **HOME OCCUPATION** is not met.

Section 309.9 (B), provides that **MINOR HOME OCCUPATION** requires all of the regulations of a **NO IMPACT HOME BASED OCCUPATION** be met. Section 309.9 A 2 requires that:

**"The business shall employ no employees other than family members residing in the dwelling."**

Applicant's testimony is that a some point up to ten individuals, who are not Applicant's family members, will have some form of employment relationship at the subject real property.

Section 309.9 A 7 states that:

**"The business activity shall be conducted only within the dwelling and may not occupy more than twenty five (25) percent of the habitable floor area.**

Applicant repeatedly testified that the proposed use will **not** take place within the dwelling and is proposed to occur outside. In fact, Applicant testified that during winter months, the proposed outside activity will likely not occur, at all, due to weather conditions. (P. 68-69)

Thus the requirements for a **MINOR HOME OCCUPATION** have not been met.

Applicant suggests that the proposed use is an "urban garden." Urban garden, while not defined

within the Zoning Ordinance is a permitted use in the R-1 District. When a term is not defined within a Zoning Ordinance, it is allowable to refer to its common definition or examine examples of its definition. Although Applicant's Exhibit F offers that:

**“ Land that is gardened by a group of individuals sharing responsibility for the site either independently or under the auspices of a public or non-profit organization, is an accepted definition by other municipalities,”**

there is no authority cited for such a conclusion. Examples from other municipalities are not provided. There is nothing in the record to indicate a group of individuals will share responsibility for the site,

The Zoning Hearing Board, after examination of the Zoning Ordinance, believes that an urban garden is one located in an urban area, such as a city or town. It can take many forms such as a container on a balcony or a community garden. The Borough, by its Ordinance, is not restricting Applicant from having an urban garden. The restriction arises from Applicant's proposed use for the area; a use which is not permitted in an R-1 zoned area, but which Applicant attempts to "shoe horn" into an urban garden.

In the alternative, Applicant requests a "use variance." Where a land owner seeks a use variance, he is seeking to use the property in a manner that is totally outside the local zoning regulation. *SPC Company v ZBA of the City of Philadelphia*, 773 A. 2d 209, (Pa Cmwlth 2001). The party seeking the variance has the burden of proof. *Marshall v City of Philadelphia*, 97 A. 3d 323, (Pa 2014). The burden is on an Applicant therefore to prove justification for the grant of a variance. *Richman v Philadelphia Zoning Board of Adjustment*, 137 A.2d 280, (Pa 1958).

An Applicant's burden is "heavy" and a request for a variance should be granted sparingly and only under exceptional circumstances. *Appeal of Lester M. Prange, Inc*, 647 A.2d 279 (1994)

The Borough Zoning Ordinance mirrors the Commonwealth Municipalities Planning Code which requires that a variance may not be granted unless:

**A. There are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances and conditions generally created by the provisions of this Chapter in the neighborhood or district in which the property is located.**

**B. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.**

**C. Such unnecessary hardship has not been created by the applicant.**

**D. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.**

**E. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.**

**(Zoning Ordinance at Section 1307.4; MPC at Section 910.2)**

In a request for use variance, all of the requirements set out above, must be met. {A party seeking a use variance must comply with the variance requirements set forth in the MPC. *Laurel Point Assoc. v. Susquehanna Township ZHB*, 887 A2d 796 Pa CmwltH 205, appeal denied 903 A.2d 1235 (2006).}

In the matter before the Board, Applicant failed to prove the requirements necessary for the grant of a use variance. The record is strikingly devoid of any evidence to establish "unnecessary hardship." The mere fact that an applicant wishes to conduct an activity, and such is not permitted in a zoning ordinance, does not create an unnecessary hardship.

It is well established that personal considerations are not sufficient grounds upon which to base the grant of a variance. *Bamash v. Zoning Board of Adjustment*, 313 A.2d 370 (1974). *Szmigiel v. Zoning Board of Adjustment*, 298 A.2d 629 (1972). It is the property that must be subject to the hardship and not the person. *Szmigiel, supra*. See: *Borough of Latrobe v. Sweeney*, 17 Pa. Commw. 356, 359 (Pa. Cmmw. Ct. 1975)

Applicant failed to show that because of "unique physical conditions" an unnecessary hardship due to such physical conditions exist, warranting the grant of the Variance. In fact, Applicant's testimony was to the contrary in that the condition of the outside area was such that it created an ideal location for the proposed use.

Applicant's evidence consistently referred to the proposed use as a "business." (See Applicant's Exhibit F).

The subject real property is located in an R-1 District. The Zoning Ordinance provides that an R-1 District has an intent and exists to:

**...provide and protect single family residential development in established neighborhoods."**

Applicant testified that she intends to live in the situate residential structure.

As such, it is clear that the property can be developed, and has existed in conformity with, the Zoning Ordinance. It is a residence and Applicant intends to use it as a residency. The proposed use, as presented by the Applicant is not an accessory use to the residence.

Even if an unnecessary hardship was established, the hardship is of the Applicant's making. For all of the foregoing reasons, the requested use variance is denied

**DECISION**

**Upon Motions made, duly seconded and passed by members of the Zoning Hearing Board, the decision of the Zoning Officer is upheld and the Appeal denied and, the Variance requested by Applicant is Denied.**

**Respectfully submitted**

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**Thomas A. Lonich, Esquire  
Solicitor and Hearing Officer**