

IN RE: : BEFORE THE ZONING HEARING BOARD  
: OF EAST HANOVER TOWNSHIP  
APPLICATION FOR VARIANCE OF :  
JOHN WHISTON, JR., CLAUDIA : HEARING: April 27, 2017  
WHISTON, TOM WHISTON AND :  
BRIAN WHISTON : DECISION: April 27, 2017  
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No. 2017.03 : WRITTEN DECISION MAILED: June 9, 2017  
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**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 April 27, 2017, commencing at 7:00 p.m., upon the Application for a Variance of John Whiston, Jr., Claudia Whiston, Tom Whiston and Brian Whiston, with respect to the property located at 339 Crooked Hill Road, East Hanover Township, Dauphin County, Hummelstown, Pennsylvania, 17036, also being Dauphin County Tax Parcel No. 25-020-009.

Notice of the hearing was published in *The Sun* on April 6, 2017, and April 13, 2017, 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 April 11, 2017, 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 notice was posted. Furthermore, Ms. Wilbern confirmed that she had provided and mailed on April 10, 2017, written notice of the hearing to those property owners adjacent to the subject property as identified in the Application for a Variance as well as to the Applicants.

Members of the Zoning Hearing Board were JoLynn M. Stoy, Chairperson, Shirley Allison, and Mark Stremmel, as well as Kenneth Wolensky, Alternate Member, who were present during the hearing. Applicants were represented by Richard H. Wix, Esquire, of Wix, Wenger & Weidner, with respect to the presentation of their Application. East Hanover Township was represented by E. Lee Stinnett, II, Esquire, of Salzman & Hughes, P.C. In addition to the Applicants, various members of the public were also present offering testimony and cross-examination of witnesses presented by the Applicants. All individuals who offered testimony during the course of the hearing were duly sworn.

### FINDINGS OF FACT

The subject property has an area of approximately 4.9 acres upon which is constructed a two-story home with an attached 2-car garage. The property is located in a Rural Agricultural Zone (RA) pursuant to Section 201 of the East Hanover Township Zoning Ordinance.

Applicants have operated a barbeque business on a seasonal basis from this property since 1998. The business has involved outdoor grilling and smoking of meat products on the premises, which are transported off-site to pre-arranged private or public events for sale and consumption. The owners of the subject property are John Whiston, Jr., and Claudia Whiston, who have joined in the request for variances. Applicants are requesting five (5) variances from various provisions of Section 201.2.12(G) as hereinafter discussed in order to be able to continue their operations.

At the hearing of the matter, the following exhibits were admitted as part of the record:

Board Exhibit No. 1.	Photograph of posting of Notice of Hearing
Board Exhibit No. 2.	Proof of publication – Notice of Hearing – <i>The Sun</i>
Township Exhibit No. 1.	Google Earth aerial photo of subject property
Applicants Exhibit No. 1.	Photographs (6) of subject property]
Applicants Exhibit No. 2.	Written statement of Lou Ann Benedict
Applicants Exhibit No. 3.	Delivery date and time list

Stan Bruzglis, Jr. Exhibit No. 1. Site drawing  
Stan Bruzglis, Jr. Exhibit No. 2. Photograph  
Stan Bruzglis, Jr. Exhibit No. 3. September, 2016 Calendar of Events

The subject property is a long tract of land but varying in width and irregular in shape with a substantial wooded area along its western property line. Single family residential uses abut and surround the subject property and are predominant in this neighborhood. A two (2) story residence with an attached two (2) car garage are set back an estimated distance of approximately 200 feet from Crooked Hill Road.

A stone driveway provides access from Crooked Hill Road to the property. The driveway at its entrance from Crooked Hill Road is approximately 18 feet wide and thereafter widens to allow parking for at least four (4) vehicles. Directly behind the home at its southwest corner is a small barn, which at one time was used for horses; however, the barn is no longer in such use. A sand mound septic-system is located also to the rear of the home and barn. The barn and septic system substantially inhibit access to a substantial portion of Applicants' property located to the south. The setback between the barn and the property line is approximately ten (10) feet at its widest point. Along the west side of the home between the driveway and the barn is an open area within which to park or operate Applicants' smoker units.

Applicants operate Blazing Swine Barbeque, which is essentially a catering business engaging in the preparation, grilling and smoking of fresh processed meats. The business specializes in off-site private, corporate, non-profit and community events such as county fairs, carnivals, fundraisers, weddings, retirement parties, graduations, family and other social or formal gatherings. No such events, however, take place on the subject property. No restaurant is operated on the premises, and no walk-in, take-out or other sales of Applicants' food products are conducted on the property. No business signs are located on the property.

Cooking and preparation of foods is done on-site by the use of four transportable, wheel-supported smoker units, being respectively 3,500 lbs., 5,000 lbs., 7,000 lbs. and 10,000 lbs. in weight. Applicants utilize two (2) pick-up trucks (Ford F-250) for towing of the smokers to the destination of scheduled events and transportation of the barbeque products. Each smoker unit is a closed chamber, wood-base system that cannot be utilized inside a structure. No refrigeration units are installed or utilized on-site with respect to the business. Individual small travel coolers are used for the temporary storage and transportation of food products. Storage and cleaning of catering equipment takes place in the existing garage on the premises.

No smoking and cooking takes place within any structure on the property. The four (4) smoker units that go out to event sites are parked in front of Applicants' garage and utilized in Applicants' existing driveway. Most pre-arranged events are scheduled during weekends, and cooking of the products usually begins the day before or the morning of an event. Applicants' busy time of year is the third quarter from approximately July through September. Deliveries of meat and bread products are received approximately three times per week by means of the respective supplier's box truck. Trucks delivering supplies now park on Crooked Hill Road rather than back onto Applicants' property. Delivery of products takes place during the evening hours typically between approximately 2:30 a.m. and 5:00 a.m. Applicants propose to arrange future hours of delivery to take place only after 6:00 a.m.

Smokers are cleaned within the driveway and employees are utilized on-site to assist with the cleaning of equipment, transportation of smoker units and loading of trucks for a scheduled event. Cooking and smoking of products is done by the Applicants, Thomas and Brian Whiston. Employees park their vehicles on the premises as they use the business vehicles to transport the smokers and other product to and from scheduled events. Many events, such as county fairs,

typically require a minimum travel time of one (1) to one and one-half (1-1/2) hours each direction. Applicants and their workers typically do not return from events until late evening, approximately 10:00 p.m., due to the distance that they are required to travel.

Waste oils that are collected from the smoking process are stored in fifty-five (55) gallon drums on the property. These drums are located in outside storage area between Applicants' home and the adjoining residence to the east. Recycle and trash bins are also located in this area which are maintained for both personal and business use. Waste and trash storage is partially obstructed from view by existing shrubbery being approximately six (6) feet in height from the adjoining property to the east. Trash generated at each event is disposed of at the location of that event.

The adjoining property to the east is set back a distance of only approximately one foot from its common property line with the subject property. Applicants' driveway, garage and smoking activities are visible from the adjoining property. This adjoining neighbor, Stan Bruzglis, Jr., has testified to the location of the smokers and that the prevailing winds are from west to east, causing a distraction to the use of his property. Mr. Bruzglis moved into his property after it was acquired in approximately 2003. He has raised concerns about the amount of smoke, collection of waste oil and trash on the premises, noise generated by deliveries during the early morning hours, and questioned the extent of Applicants' operations as being more of a daily basis rather than limited to weekend-only activities. Other neighbors, such as Ed Neiswender and Jason Halbleib, who live in the vicinity of the property have likewise provided testimony about the area, the cleanliness of the property, their familiarity with the operations taking place and having no objection thereto.

## DISCUSSION AND CONCLUSIONS

In order for Applicants to continue their operations, five (5) variances are being requested from Section 201.2.12(G) of the Zoning Ordinance. These variances include the following: 201.2.12(G)(b) to provide the ability to perform grilling outdoors; 201.2.12(G)(e) to be able to not screen all the parking spaces on Applicants' property; 201.2.12(G)(f) to not have parking and equipment storage behind the principal residence and screened from adjoining roads and properties; 201.2.12(G)(j) to allow up to four (4) non-residents on-site; and, lastly, 201.2.12(G)(k) to allow hours of operation from 6:00 a.m. to 10:00 p.m. daily with respect to Applicants' seasonal barbeque business.

As a general matter, a variance may be granted only where there is an unnecessary hardship. Even when there is a finding of an unnecessary hardship, a variance may be granted only if the Board finds where relevant that the standards as set forth in Section 604.4 of the Zoning Ordinance have been met. Upon consideration of all of the evidence and testimony presented, the Board is persuaded that such conditions are present and the requirements of Section 604.4 of the Ordinance have been satisfied.

Section 201.2.12(G)(b) specifically provides in relevant part that:

"A rural occupation shall only be conducted within one completely enclosed outbuilding that satisfies at least one (1) of the following:

- i. The building shall remain the same size and in the same location as it existed on the effective date of this Section; and/or
- ii. The building is limited to one (1) story in height or fifteen feet (15'), whichever is less, is no larger than the square footage that comprises the principal residence, and is set back at least fifty (50) feet from any side or rear lot lines. All applicants are required to design buildings that are compatible to the residential settings.

Applicants' home had been acquired and utilized substantially prior to the adoption of the East Hanover Township Zoning Ordinance requirements as currently amended. Applicants'

have been operating smokers outdoors on the premises and conducting their operations continuously since at least 1998 to the present. To this extent, the Board is persuaded that Applicants' use is non-conforming due to its establishment prior to the existing ordinance requirements therefore creating a hardship. Despite the prior non-conforming use, cooking and use of the smokers by Applicants within any existing structure on the premises cannot be safely accomplished. Such structures are not large enough and cannot readily accommodate the equipment.

Section 201.2.12(G)(e) specifically requires that: "All off-street parking and loading spaces shall be screened from adjoining roads and properties." Applicants have a unique and irregular shape to their property. Applicants' home is located and consolidated in the front third of Applicants' property at its narrowest point. The location of the existing barn and septic field at the rear of the home precludes Applicants from readily accessing the remaining area of their property transporting their smokers to this location for parking and providing the required screening. Therefore, the activity regarding Applicants' business operations takes place within the front of the home within the existing driveway area. No other parking area is available on the property which is accessible other than in Applicants' existing driveway and an open area along the west side of the home and garage to the north of the barn. Use of this side yard area for the smokers will provide a visual obstruction for properties located to the east. Vegetative screening and a tree line abuts this area to the west and provides a further visual obstruction for properties located to the west. No other location on the property is accessible or available for parking vehicles of Applicants and their employees other than the existing driveway.

Section 201.2.12(G)(f) specifically requires that: "No outdoor storage or display shall be permitted except that one commercial truck of not more than 11,000 lbs. gross vehicle weight

may be parked behind the principal residence, so long as it is screened from adjoining roads and properties.”

As stated previously, due to the narrowness and irregular shape of Applicants’ lot, access to the rear of the property in order to provide additional parking and storage for Applicants’ smokers, vehicles and other equipment so as to be screened from adjoining roads and properties cannot be accomplished. Due to the location of the existing home, garage, barn, septic and other features of Applicants’ irregular property, which have existed prior to the current Ordinance requirements, the Board is persuaded that the business operations are non-conforming with respect to the use and storage of the smoker units. The Board finds, therefore, that a variance is necessary to allow continued reasonable use of the property with respect to the non-conforming operations, subject to the conditions of the property.

Section 201.2.12(G)(j) requires that only up to two non-residents of the site may be employed in the rural occupation. Cooking and food preparation is initiated and performed by the Applicants on-site. The Board is persuaded from the testimony presented that up to two but no more than four non-residents are temporarily on-site for purposes only of loading vehicles and cleaning equipment for short periods of time so that the smokers and prepared products can be moved to the scheduled events. This occurs typically at the beginning and end of each scheduled event day. This has been the nature of Applicants’ operation since prior to adoption of the existing ordinance requirements and is also non-conforming but needed for continued operation of the business.

Section 201.2.12(G)(k) specifically provides that rural occupations must be conducted only between the hours of 6:00 a.m. and 9:00 p.m. Applicants have requested a minor deviation from these hours to allow the extension of their business until 10:00 p.m. During the summer



months and peak times, Applicants must travel greater distances for their events and are required to return their equipment back to the property for proper cleaning and setup for future events. Applicants' hours of operation have for some time well exceeded this 9:00 p.m. provision of the Ordinance, both as part of their ongoing business as a result of returning from events and also by means of late-night deliveries which have occurred on a regular basis during the early morning hours. The Board finds that curtailing these late-night activities, subject to the conditions hereinafter stated, would be appropriate to provide a nominal deviation and the minimum variance from the Ordinance.

The Board is persuaded that an unnecessary hardship exists and that the property is subject to unique circumstances and conditions, topography and location. This includes irregularity, narrowness and shallowness of the lot size and shape, which are peculiar to this particular property. The Board finds that the unnecessary hardship is due to such conditions, location of existing features and structures, which existed prior to adoption of the current Ordinance requirements. These are not conditions or circumstances that are generally created in this neighborhood or zone where the property is located.

The Board further finds that it is due to such physical circumstances and conditions that there is no possibility that the barbeque business operations and property can continue to be developed and used in strict conformity with the provisions of the Ordinance, and therefore authorization of the variances is necessary to enable continued reasonable use of the property. This unnecessary hardship has not been created by the Applicants, but rather by the imposition of subsequent zoning ordinance requirement upon pre-existing operations and a non-conforming use.

Applicants are not expanding or changing the nature of their operations from that which existed prior to the adoption of the Ordinance. The variances therefore, if authorized, will not alter the essential residential character of the zone or neighborhood in which the property is located nor substantially and permanently impair the use or appropriate development of adjoining properties, subject to the conditions hereinafter stated. As a result, the Board finds that the minimum variances shall be granted and afford relief to represent the least modification possible of the Ordinance sections at issue.

Section 604.4(9) of the Zoning Ordinance provides that the Zoning Board in approving variance applications may attach conditions considered necessary to protect the public welfare and the purposes of the zone, including those conditions which are even more restrictive than those established for other uses in the same zone. It is of concern to the Board that, although there is limited areas within which Applicants can conduct their operations, the Board is not unmindful of the impact which it has on adjoining properties. Although Applicants cannot move their equipment and smokers to the rear of their property or build additional structures to accommodate them, and there is no other location but within the driveway and west side area of Applicants' property to continue such operations. The Board is persuaded under the circumstances and conditions presented that such conditions are necessary, reasonable and the minimum conditions required to ensure that the minimum variance is granted and that the essential character of the zone and neighborhood is not altered.

The Board is persuaded that the proposed use shall be compliant with the specifications of Section 201 of the Zoning Ordinance as set forth and prescribed in the Applications, testimony and submitted exhibits as part of the record before the Board. As a result of all the foregoing,

Applicants' proposed use as presented shall be consistent with the Township Comprehensive Plan for continued growth and development subject to the conditions hereinafter stated.

### **DECISION**

For all the reasons previously set forth, evidence and testimony presented, the East Hanover Township Zoning Hearing Board does hereby GRANT Applicants' request for variances subject to the following conditions:

(1) All smoker units used in the operation of the business shall be relocated to the western side of Applicants' existing single-family residence and no further forward than the front of the existing attached garage;

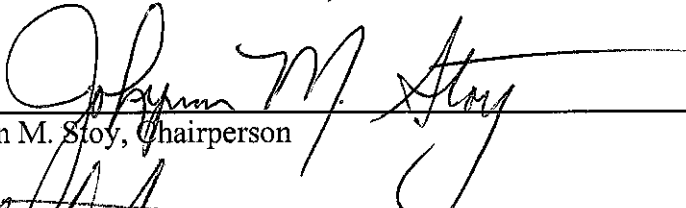
(2) All trash and waste shall be properly contained and disposed of, with all trash and waste receptacles fenced, enclosed and screened at a distance of no less than twenty-five (25) feet from Applicants' property lines;

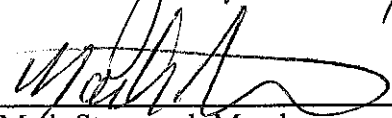
(3) Applicants' hours of operation shall not exceed 6:00 a.m. to 10:00 p.m., including all deliveries;


(4) No more than four (4) non-residents shall be on the premises during operational hours; and

(5) Employee parking may be retained on the premises, including the existing driveway.

**ZONING HEARING BOARD, EAST HANOVER TOWNSHIP**

  
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JoLynn M. Stoy, Chairperson

  
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Mark Stremmel, Member

  
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Shirley Allison, Member