

Hanover Borough Council Conditional Use Public Hearing, March 23, 2022

President Reichart convened the public meeting of Hanover Borough Council for a Conditional Use Public Hearing on Wednesday, March 23, 2022 at 6:15 PM in the Hanover Borough Council Chamber, 44 Frederick Street, Hanover, PA, as advertised.

The meeting was conducted in person and via Zoom Webinar with video presentation.

President Reichart called the meeting to order and asked all those in attendance to recite the Pledge of Allegiance followed by a moment of silence.

On roll call the following answered as present: Mrs. Funk, Mrs. C. Greenholt, Mr. G. Greenholt, Mr. Hegberg, Mr. Kress, Mr. Lockard (*via audio*), Mr. Reichart, Mr. Roland, and Dr. Rupp; Mayor Whitman; Solicitor Shultis; Manager Dunford; and Secretary Felix. Councilor Mr. Fuentes was not in attendance due to medical reasons.

President Reichart made the following statement:

“This is the time set for a conditional use hearing regarding an application filed by 213 Primrose LLC for conditional use approval of a short-term rental use at property located at 209 and 213 Primrose Lane, Hanover Borough, York County, Pennsylvania.

We will be following a particular order for this hearing – copies of which are located at the entrance by the door where you came in.

At this point, I will turn the hearing over to Solicitor Shultis.”

Solicitor Shultis made the following statement:

“As the Chairman indicated, we will be following a particular order for tonight’s hearing. Because this is a legal proceeding, and so that everyone who wishes to participate may do so, it is important that we follow a particular order or outline for the hearing. The order or outline is printed and is located over near the door if you do not have one. The basic outline for tonight’s hearing is as follows:

- *Identification of Parties to Hearing (Solicitor)*
- *Identification of Other Parties to Hearing (Solicitor)*
- *Outline of Procedures to be Followed During Hearing*
 - *Borough Solicitor Presents Administrative Exhibits on Behalf of the Borough Council*
 - *Borough Zoning Officer Presents Application and Facts as Presented to Borough*
 - *Applicant’s Presentation of the Case*
 - *Parties Cross-Examine Applicant and/or Applicant’s Witness(s)*
 - *Council Questions Applicant and/or Applicant’s Witness(s)*
 - *Parties’ Presentation of the Case*
 - *Applicant Cross-Examines Party and/or Party’s Witness(s)*
 - *Council Questions Party and/or Party’s Witness(s)*
- *Other Testimony and Evidence*
- *Concluding Remarks and Decision or Notice of When Decision is Expected to be Made*
- *Adjournment of Hearing*

A few words about parties and standing to participate as a party in this hearing:

The Municipalities Planning Code (MPC) states that, in addition to the applicant, parties to the hearing are the Borough and any person who is affected by the application in a

substantial, direct or immediate way and who has made an appearance of record. As a party to the hearing, you have the right to present your own evidence as to the application (either through testimony of witnesses, exhibits, or both). You have the right to cross-examine all adverse witnesses and otherwise to fully participate in the hearing process. As a party, you have the right to be represented by an attorney. In order to qualify as a party, you must be affected by the application. And so, what this means in basic terms, if your property abuts the property which is the subject of the application, or if your property abuts 209 and 213 Primrose Lane, you would qualify as a party. However, the further your property is from the subject property, the less likely you would qualify as a party. In addition to location of your property a person seeking to become a party should be prepared to establish how they are affected by the application:

- *In what way does the application have an effect particular to your property interests as opposed to a general effect applicable to all citizens?*
- *In what way does the application cause a direct, identifiable and concrete consequence to your property interests as opposed to an indirect and hypothetical consequence?*
- *In what way does the application have an immediate consequence to your property interests as opposed to a more remote consequence?*

In order to qualify as a party, we will follow a process. First, we ask that you complete an entry of appearance form and bring it to me at the appropriate time. Those forms are likewise on the table adjacent to the door.

Second, once I collect all of the forms, we will call upon each person individually to answer some questions relating to the qualifications. The applicant also has a right to ask questions.

Third, after the questioning, the Borough Council will decide who has established party status and who has not. Council may recess to an executive session to discuss this matter with its Solicitor.

Please understand that you do not have to have party status in order to provide comment on the application. Toward the end of the hearing, Council will give all those wishing to make a statement about the application an opportunity to do so.

A few ground rules for the hearing:

Please know that a verbatim transcript is being made of tonight's hearing. Deb Zepp is our court reporter. She cannot record what she cannot hear or understand, nor can she record when more than one person speaks at a time. So, if you wish to speak, please first ask to be recognized by the Chairman. You can seek to be recognized at the appropriate time of the hearing. Once recognized, please state your name and address. Speak clearly, deliberately and loud enough to be heard. If you are to make a statement or if you are going to provide testimony, we will ask that you be sworn in. The reason for this is that the Council cannot consider your statements or testimony unless it is sworn."

Solicitor Shultis identified the following parties to the hearing:

- Stacey MacNeal of Barley Snyder representing the applicant 213 Primrose LLC.

Solicitor Shultis invited all other persons seeking to apply for party status to complete an application and return it to him to be considered.

Solicitor Shultis identified the following citizen who returned the form desiring to be designated as a party to the hearing:

- Mr. Peter Keriazes, 409 Barberry Drive – Mr. Shultis marked the party form from Mr. Keriazes as Borough Exhibit 6.

Mr. Keriazes was sworn in by Court Reporter Deb Zepp.

Solicitor Shultis asked Mr. Keriazes how far his residence at 409 Barberry Drive is from 213 Primrose Lane.

Mr. Keriazes stated his house is 1 ½ blocks northeast of the applicant's address, and there are 3 houses in between.

Attorney MacNeal asked Mr. Keriazes in what manner he believes the applicant's property will have an impact on his property, different from the other properties in his neighborhood.

Mr. Keriazes stated he built his home in an R-1 area, and he doesn't believe a special exception was ever meant for new construction. He felt it was meant for older properties to change an existing use from residential.

Attorney MacNeal noted the application is for conditional use, and asked Mr. Keriazes how this would impact his house, and how it is different from his neighbors' house.

Mr. Keriazes stated if Council approves the conditional use, then what is to stop him from turning his house into a restaurant.

Attorney MacNeal asked if he feels his house is impacted differently than other homes in the area.

Mr. Keriazes stated he feels the approval will harm the value of his property, and the approval will set a precedent.

Attorney MacNeal objected to Mr. Keriazes designation as party status.

Solicitor Shultis asked if Council would like to adjourn to an executive session to discuss party status of Mr. Keriazes. Council agreed to go to executive session.

Council Members and Solicitor Shultis left the meeting for an executive session at 6:29 PM.

Council Members and Solicitor Shultis returned to the meeting at 6:37 PM.

President Reichart asked for a motion for Mr. Keriazes to be a party to the hearing.

It was moved by Mr. Roland, seconded by Dr. Rupp to approve the party status for Mr. Keriazes to be designated as a party to the hearing. Motion carried.

Solicitor Shultis identified the following Administrative Exhibits on behalf of Borough Council:

- Borough Exhibit 1: Application and Cover letter from Attorney MacNeal dated 2/14/22
- Borough Exhibit 2: Proof of publication of tonight's hearing
- Borough Exhibit 3: Notice to applicant and corrected notice to applicant
- Borough Exhibit 4: Notice to nearby residents and corrected notice to nearby residents
- Borough Exhibit 5: Proof of posting of the property
- Borough Exhibit 6: Entry of Appearance Form for Mr. Keriazes

Solicitor Shultis asked if there were any objections to the exhibits.

Attorney MacNeal stated she had no objections.

Mr. Christopher S. Miller, Hanover Borough Zoning Officer and Codes Manager was sworn in by Court Reporter Zepp.

Mr. Miller stated the application was received by the Borough on February 4, 2022 for a hearing to be held within 60 days as required, which brings us to today's date. The hearing was advertised on March 6, 2022 and March 13, 2022; the property was posted by Mr. Miller with the dates on the exhibits as required.

Attorney MacNeal stated she had no questions at this time for Mr. Miller.

Attorney Shultis asked Attorney MacNeal for the applicant's exhibits which she distributed, stating she had extra copies available.

Attorney MacNeal called Mr. P. Eric Mains for questioning, and he was sworn in by Court Reporter Zepp.

When questioned by Attorney MacNeal, Mr. Mains stated his full name as Paul Eric Mains, Director of Planning and Engineering for The Borough of Hanover. He is a licensed registered engineer in Pennsylvania and Maryland. His work experience involves private consulting and municipal engineering. Mr. Mains stated he has worked for the Borough for approximately 2 years; he is no longer the Zoning Officer. He stated he is aware of the proposed project, and was first made aware of it when the application was sent to the Borough.

The Borough was in the process of adopting a new zoning ordinance and Mr. Mains' involvement was to assist the Planning Commission and Council through the process.

Attorney MacNeal asked if the ordinance specifically allowed for conditional use.

Mr. Mains stated there was no specific use defined for short term rentals before this ordinance.

Mr. Mains is currently working on a draft for a short term rental policy which also addresses parking.

Attorney MacNeal presented Applicant's Exhibit 1 and questioned Mr. Mains on this document.

Mr. Mains stated the document looks to be the draft zoning ordinance amendment, which includes the draft short term rental policy, and includes provisions for parking.

Mr. Mains explained the process to develop the short term rental policy in the zoning amendment. Most of the information was gathered from model ordinances of other communities.

Mr. Mains stated he is currently working on other amendments to the Borough's zoning ordinance in conjunction with the Planning Commission which will address a variety of items.

Attorney MacNeal asked why the short term rental amendment is being done separately.

Mr. Mains explained this policy moved forward to address the conditional use applications that were received.

Attorney MacNeal asked how many other conditional use applications for short term rentals that the Borough received.

Mr. Mains stated there were two other conditional use applications received from the same applicant as the one before us this evening.

Solicitor Shultis asked if Council had any questions for Mr. Mains.

Solicitor Shultis asked Mr. Keriazes if he had any questions for Mr. Mains.

Councilor Funk asked Mr. Mains about the site drawing regarding parking. She also asked for an explanation as to how the proposed use of the property and the required setbacks would not detract from the character of the neighborhood. She asked for a clarification of the definition of a front setback.

Mr. Mains clarified that in zoning terms the "front setback" is defined as the area that exists between the street right of way and the front of the structure, or the front yard. Anything beyond that is considered either the side or rear setback.

Solicitor Shultis asked where Applicant Exhibit 1 is in regard to the adoption process.

Mr. Mains stated that the York County Planning Commission recently recommended the draft for adoption and then it will go back to the Hanover Borough Council and the Planning Commission. The draft ordinance is not in effect today.

Attorney MacNeal called Zoning Officer Miller to be questioned, and he responded to Attorney MacNeal as follows.

Mr. Miller has worked for the Borough as Codes Officer since December 13, 2021.

He has 30 + years work experience in public safety and 20 + years in code enforcement. He holds a building code official certification, as well as fire inspector, and a commercial and industrial building inspector certification.

Mr. Miller stated that he worked as the Borough of Camp Hill Zoning Officer for over 10 years.

Attorney MacNeal presented Applicant's Exhibit 2, and asked Mr. Miller when he first recalled seeing this document. Mr. Miller answered that he viewed the document shortly after he began his employment with the Borough, and he verified that the document was a letter from Attorney MacNeal requesting a parking determination related to short term rentals.

Attorney MacNeal presented Applicant's Exhibit 3 and asked Mr. Miller if he recognized the document.

Mr. Miller stated it was a letter with an answer to a response for a parking determination request, signed by himself, dated January 21, 2022. Mr. Miller stated he consulted with the Borough Solicitor and DPE Director Mains in writing the response letter.

Attorney MacNeal asked Mr. Miller if he reviewed both decisions on the prior conditional use applications before writing the letter. Miller stated that he reviewed the decisions with Mr. Mains and legal counsel.

Attorney MacNeal presented Applicant's Exhibit 4 and asked Mr. Miller if it was the decision for a conditional use application dated August 10, 2021.

Mr. Miller responded that the document appears to reference the findings of the hearings.

Attorney MacNeal referenced highlighted text on page 8, section 5, and asked Mr. Miller if he recalled reviewing the language before he issued the January 2022 letter:

“Short-term rentals are not listed in the use table, but the most proximate use, a Bed and Breakfast; Hotel or Motel, requires 1 space per rentable guest space.”

Mr. Miller replied affirmatively.

Attorney MacNeal referenced the highlighted text on page 15 at the top, and asked Mr. Miller if he recalled reading this section before issuing his letter:

“Additionally, 140-511C.1. requires 1 space per rentable guest space as the most proximate use from the use table (a Bed and Breakfast; Hotel or Motel).”

Mr. Miller replied affirmatively.

Attorney MacNeal commented that despite this determination by Borough Council in a decision of 2021, that Mr. Miller determined that a bed and breakfast was not the most approximate use to a short term rental for purposes of parking, is that correct?

Solicitor Shultis objected that Attorney MacNeal was mischaracterizing the letter. It is not based on Decision #1 only; it is based on both Decision #1 and #2.

Attorney MacNeal questioned Mr. Miller regarding the fourth paragraph of Mr. Miller's letter, if he determined that in reference to a hotel use and bed and breakfast use, rental of rooms occur on a daily basis by individuals. And that a short term rental is a rental of a dwelling or a building. Since a hotel or bed and breakfast is rented by the room, isn't it likely that each room would be rented by a different person? And if a short term rental is rented by the dwelling, if Mr. Miller felt it was true that only 1 person could rent a short term rental.

Mr. Miller replied that more than one person could be at the short term rental, even if only one person signed as the responsible party.

Attorney MacNeal discussed differences between a hotel and a bed and breakfast with Mr. Miller in regard to his personal experiences.

Solicitor Shultis objected to Attorney MacNeal's questioning in regard to Mr. Miller's personal life experiences with hotels and bed and breakfasts.

Attorney MacNeal placed an objection of record with formal objection of Solicitor Shultis appearing to act as legal counsel for Mr. Miller.

Council President Reichart objected to Attorney MacNeal's lack of decorum in her questioning.

There was more questioning from Attorney MacNeal to Mr. Miller regarding how Mr. Miller came to the determination that a short term rental use would increase vehicular traffic in a residential area.

Solicitor Shultis asked Council for questions to Mr. Miller.

Councilor Funk asked if what Mr. Miller was trying to say was that if many people stay in the short term rental, even if one person signs for the rental on behalf of the group, all of the other people would still have their own financial contribution and vehicles.

Attorney MacNeal objected that Councilor Funk may be testifying instead of asking a question.

Mr. Miller referenced page 3 of Exhibit 4 which states “retail sales of small sewing supplies, etc.” would be offered to the guests. This would indicate possible in and out traffic and sales, which would in turn increase traffic.

Councilor Funk agreed that all the individuals are all separate parties even if one person is responsible.

Mr. Miller agreed with Councilor Funk in her interpretation.

Mr. Keriazes addressed Mr. Miller, noting if there is a possibility of 10 guests, that would constitute 30 meals per day, and he asked if there would be a provision for grease traps, etc., as for a food establishment, and if a fire system would be required.

Mr. Miller stated he could not make that determination, only that the use would have to meet current codes. Until specific plans are received by the Borough, he would not be able to answer these questions.

Mr. Keriazes asked if space was allocated for a dumpster, and if there was an area on the lot for stacking snow.

Mr. Miller stated there is a 5 foot turning space/radius where snow could be piled. Mr. Miller stated he was not aware of a dumpster pad.

Solicitor Shultis asked if Attorney MacNeal would offer Exhibit 16; she replied she intends to offer the Exhibit in the hearing at a later time.

Attorney MacNeal asked Mr. Miller if he was aware that Applicant's Exhibit 4 was a denial of the first conditional use.

Mr. Miller answered affirmatively.

Attorney MacNeal asked Mr. Miller if he realized that the proposed retail uses and classes in the original application were not considered part of the short term use, and were part of the reason for denial.

Mr. Miller answered affirmatively.

Councilor Hegberg asked Mr. Miller if the services intended to be provided in the original short term rental submittal would need to be considered under a separate application.

Mr. Miller replied that in his opinion they would not need a separate approval, if they were included in the intended use.

Mr. Hegberg asked if there could be additional services that would need to be considered under a separate zoning approval.

Mr. Miller noted that if it was determined that the additional services were not provided for in the short term rental approval, then they would need to be handled under a separate application.

Attorney MacNeal asked Mr. Timothy Staub to come forward and he was sworn in by Court Reporter Zepp.

Mr. Timothy J. Staub stated his address as 169 North Oxford Street, York, PA.

Attorney MacNeal referenced Applicant's Exhibit 6, and asked Mr. Staub if this was his current resume.

Mr. Staub replied affirmatively.

Attorney MacNeal asked Mr. Staub to describe his educational background.

Mr. Staub replied he has a bachelor's degree in Parks and Recreation Management and a master's degree in Geography and Regional Planning. He is also a certified planner through the American Institute of Certified Planners. He stated he has 25 years experience as a community planner in the Commonwealth of Pennsylvania. He is currently employed by Herbert Rowland and Grubic where he serves as Assistant Vice President in the York Office. He served on the Springettsberry Township Planning Commission for 5 years, and is the current chairman.

Attorney MacNeal asked for Mr. Staub to be admitted as an expert witness.

Solicitor Shultis asked for objections to Mr. Staub being admitted as an expert witness in land use planning.

President Reichart asked Mr. Staub if he had any experience in Hanover, and if so, please describe in detail.

Mr. Staub replied he has never worked in the Borough of Hanover.

President Reichart asked Mr. Staub if he had experience in working in a municipality that is Hanover's size?

Mr. Staub replied affirmatively, and stated he worked with Phoenixville and New Cumberland, as examples. In addition, he has worked in many other cities, boroughs and towns in Pennsylvania.

Solicitor Shultis asked Mr. Keriazes if he had objections to Mr. Staub being admitted as an expert witness.

Mr. Keriazes replied he had no objection.

Solicitor Shultis stated there were no objections to Mr. Staub as an expert witness.

Attorney MacNeal questioned Mr. Staub about Mr. Miller's determination letter, and his interpretation.

Attorney MacNeal presented a short term rental study from New Orleans, LA and discussed with Mr. Staub. This study determined that the most similar use to a short term rental would be a bed and breakfast use.

Mr. Staub agreed with Mr. Mains that the zoning ordinance is a document that needs to be periodically updated in relation to current trends and laws.

Solicitor Shultis asked Council if they had any questions for Mr. Staub.

There was discussion with Mr. Staub regarding short term rental studies from New Orleans, LA and the studies in Cumberland Township and Gettysburg Borough.

Mr. Staub noted in Cumberland Township adjacent Gettysburg Borough that the bed and breakfast use had more stringent regulations and had to pay the hotel tax, which was different from the short term rentals, which were not subject to the tax. The bed and breakfasts were also subject to ADA requirements and at that time the short term rentals were not.

Mr. Hegberg asked if New Orleans City used a blanket parking policy.

Mr. Staub replied they did not, and that parking policies varied throughout the community.

Mr. Hegberg asked how parking was defined for a short term rental in a comparable R-1 district in the New Orleans Study.

Mr. Staub replied that the requirement was 1 space for 2 guest rooms for the New Orleans study.

President Reichart thanked Mr. Staub for his testimony as an expert witness.

President Reichart noted his concurrence with Mr. Mains that the zoning ordinance is a living, changing document. President Reichart asked Mr. Staub if he thought that opinions of the residents should be taken into consideration.

Mr. Staub stated every planning document should take into consideration the feeling of the residents.

Mr. Staub verified that the short term rental concept is very new, and policies are currently being developed nationwide, and it is difficult to evaluate similarities among current short term rental policies until they have been in place for some time.

Attorney MacNeal discussed the Hanover Zoning Ordinance with Mr. Staub.

Solicitor Shultis asked Mr. Staub if he was asked to do a parking study for the applicant in this case.

Mr. Staub replied he was not asked to perform a parking study in this case.

Attorney MacNeal asked Mr. Staub if the current zoning ordinance in Hanover requires different parking regulations in different zoning districts for bed and breakfasts.

Mr. Staub referred to page 85, and responded that Hanover's current Ordinance does not have different parking regulations in different zoning districts for bed and breakfasts.

Mr. Shultis asked if there were any objections for Mr. Staub being excused for the remainder of the hearing. There were not objections.

Former Hanover Borough 1st Ward Councilor Heath Chesney, 321 Spring Avenue was called to be questioned by Attorney MacNeal and sworn in by Court Reporter Zepp.

Solicitor Shultis reminded Mr. Chesney that if he intends on testifying regarding conversations within executive session that they are protected under attorney client

privilege, and he should have the opportunity to consult with his own counsel before he testifies on conversations held in executive session.

Mr. Chesney stated he would decline to comment on conversations held in executive session, in order not to breach attorney client privilege, and asked to be excused.

Mr. Chesney was excused from the hearing.

Attorney MacNeal called upon Mr. Brandon Bishard, Hanover Land Services, Project Designer to testify, and he was sworn in by Court Reporter Zepp.

Attorney MacNeal stated that she intentionally skipped Applicant's Exhibit 8, due to the witness's inability to testify this evening due to illness.

Attorney MacNeal referenced Applicant's Exhibit 9, the excerpt from the draft zoning ordinance, referencing short term rentals.

Mr. Bishard testified that he prepared the drawing in Applicant's Exhibit 10, for the proposed conditional use application.

Attorney MacNeal discussed Exhibits 9 and 10 with Mr. Bishard. Mr. Bishard confirmed that the parcel meets minimum lot requirements in the R-1 and R-5 Zoning District. The applicant's plans were discussed. Mr. Bishard confirmed that he felt the plans were in conformity with the Borough's ordinances and stormwater regulations.

Solicitor Shultis asked Council for questions of Mr. Bishard.

Vice-President Roland questioned the entrance and exit to the property, and the placement of the dumpster. He questioned what the effect would be on the impervious surface since a dumpster pad was not included on this drawing.

Mr. Bishard stated that he assumed there would be regular residential trash pickup.

Mayor Whitman asked if there would be additional sidewalk other than what is on the plan to accommodate ADA compliance as a pathway to the pool area; if more sidewalk is necessary, this would add to the impervious area.

Councilor Funk asked if the high impact flooding in the neighborhood was taken into consideration.

Mr. Bishard stated the property is not located in a flood plain. There is an existing stone swale that will be maintained.

Councilor Hegberg asked if a building permit was obtained for the property.

Mr. Bishard replied he was not certain.

Mr. Bishard stated there were test pits done before the subdivision approval was completed and that stormwater approval was given beforehand for a previous plan for a proposed residence on the same property. He noted that lot coverage was less on the prior plan than on the current plan.

Mr. Keriazes noted that if a dumpster pad was added on an impervious surface, the plans would have to be altered. Businesses cannot use residential pickup.

Attorney MacNeal objected to the statements being made instead of questioning.

Solicitor Shultis added that Mr. Bishard was unable to answer Mr. Keriazes question about the garbage service.

When questioned by Attorney MacNeal, Mr. Bishard stated he thought the plan would meet the Borough's Stormwater regulations.

Solicitor Shultis asked if a stormwater management study or plan was completed for this property.

Mr. Bishard stated that a stormwater management study or plan was not yet completed for this property.

Attorney MacNeal asked if it is common practice to apply for a stormwater management plan prior to a zoning approval?

Mr. Bishard stated he was not sure.

Attorney MacNeal stated that Mr. Forbes of Bon Ton Builders was also scheduled to offer testimony this evening, but he is unwell and could not attend.

The applicant Ms. Hypes also intends to offer testimony.

President Reichart recommended a recess and a new date to continue the hearing, so that all witnesses could be heard.

Attorney MacNeal recommended that if Council members who are not present would like to participate in the future, they would need to review the transcript from this evening.

President Reichart asked if the witnesses that testified this evening would be able to return at the continuation.

Attorney MacNeal stated that Mr. Staub and Mr. Chesney have been dismissed; Mr. Bishard would need to be contacted if he would be able to attend.

Solicitor Shultis stated the need to continue the hearing on another night, and the date will need to be advertised. The time limit to continue is 45 days.

The hearing recessed at 8:22 PM.

Respectfully submitted,

Dorothy C. Felix
Borough Secretary