

**DECISION OF THE ZONING HEARING BOARD  
OF THE TOWNSHIP OF SOUTH FAYETTE**

**IN RE:**

**APEX NEWBURY, LLC**

**APPLICATION NO. Z – 03 – 2022**

**HISTORY OF THE CASE**

On or about February 4, 2022, Apex Newbury, LLC (hereinafter the “Applicant”) filed an application to the Zoning Hearing Board of South Fayette Township (hereinafter the “Board”) requesting (1) a dimensional variance of one hundred fifteen (115) feet from the minimum perimeter setback of one hundred fifty (150) feet required by Article XVI, Section 240-88.B.(9) of the Zoning Ordinance to allow off-street parking no closer than thirty-five (35) feet to the property boundary (“Variance 1”); and (2) a dimensional variance of 454 feet and 3 inches from the requirement of Article XIV, Section 240-88.B.(7) of the Zoning Ordinance that the length of any residential building shall not exceed 240 feet (“Variance 2”) (Variance 1 and Variance 2 are collectively referred to as the “Variances”) (the “Application”).

The property which is the subject of the Application is located at Oakridge Road, having Block and Lot Nos. 256-E-50 and 256-E-75 (hereinafter the “Subject Property”). The Subject Property is located in the PED, Planned Economic Development District, of South Fayette Township (hereinafter, the “Township”).

On February 23, 2022, the Application was considered by the Board at a public hearing (the “Hearing”). Present at the Hearing for the Board were members Joseph Gagliardino, William Price, and Rick McConnell. Present at the Hearing on behalf of the Applicant were J.P. Morgan, Director

of Construction for Alpha Capital Partners LLC, Jide Famuagun, CEO for Alpha Capital Partners LLC, Mark Schmidt of Hampton Technical, Brian DiPietro of Rockit Architects, Kenneth C. Foltz, Sr., Esquire, counsel for Applicant, and Steven Chadwick, Esquire, counsel for Applicant.

Township residents Russell A. Timco, Jr., William Egan, Deekota Yadav, Kelly Barish, and Mike Barish (the “Objecting Residents”) were present at the Hearing and offered testimony in opposition to the Application.

Township residents Sue Cagni and Jeff Kellick were present at the Hearing and questioned the Applicant but did not offer testimony in support of or in opposition to the Application.

Also present at the Hearing were Gary Hartz, the Township Planning Director & Zoning Officer, and John Barrett, the Township Manager.

At the Hearing, the following Exhibits were marked and accepted into the record:

- Exhibit 1 - Application Packet Dated February 4, 2022
- Exhibit 2 - Letter Dated February 22, 2022
- Exhibit 3 - Apex Newbury Apartments Plans
- Exhibit 4 - Memorandum Dated February 23, 2022 from John M. Barrett, Township Manager to the South Fayette Zoning Hearing Board

At the conclusion of the Hearing, the Board voted 3-0 to approve the Variances conditioned upon Applicant’s strict compliance with the Application as supplemented before the Board.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Applicant requests variances from two sections of the Zoning Ordinance.
2. Pursuant to Section 240-132 of the Zoning Ordinance, a variance may be granted where an applicant offers testimony or evidence sufficient to prove or support that there are unique

physical circumstances or conditions peculiar to the Subject Property, that because of such unique physical circumstances or conditions, there is no possibility that the Subject Property can be used in strict conformity with the Zoning Ordinance, that a hardship exists and that it has not been created by the Applicant, that the variance will not be detrimental to the public welfare and that the variance represents the minimum relief and least modification of the Zoning Ordinance to allow the proposed variance.

3. The Applicant's first request (Variance 1) is for a dimensional variance from Article XIV, Section 240-88.B.(9) of the Zoning Ordinance to allow the Applicant to place off-street parking within the required perimeter setback of one hundred fifty (150) feet for a mid-rise apartment in the PED District.

4. Specifically, Applicant requests a maximum variance of one hundred fifteen (115) feet from the required perimeter setback of one hundred fifty (150) feet for a mid-rise apartment in the PED District to allow off-street parking to be located no closer than thirty-five (35) feet to the boundary of the Subject Property.

5. Pursuant to Section 240-88.B.(9) of the Zoning Ordinance, "In the PED District, no mid-rise or high rise apartment shall be located closer to the boundary of the open space design option development site than 150 feet... No accessory structure and no off-street parking shall be located in the required perimeter setback area."

6. Pursuant to Article II, Section 240-9 of the Zoning Ordinance, a mid-rise apartment is, "A residential building comprised of multifamily dwelling units containing at least four but no more than five stories."

7. The residential buildings proposed by Applicant contain at least four and no more

than five stories and are thus mid-rise apartments.

8. The Applicant's second request (Variance 2) is for a dimensional variance from Article XIV, Section 240-88.B.(7) of the Zoning Ordinance to allow the Applicant to exceed the maximum length of a residential building under the Open Space Design Option permitted by the Zoning Ordinance.

9. Section 240-88.B.(7) establishes that the "Maximum length of any residential building, including rows of attached townhouses or other multifamily buildings, shall not exceed 240 feet."

10. Applicant seeks a variance of 454 feet, 3 inches from the maximum building length to permit the construction of a building that is 694 feet, 3 inches in length.

11. Applicant offered testimony that there are unique physical conditions of the Subject Property that make it difficult to develop the Subject Property.

12. Mr. DiPietro testified on behalf of the Applicant that the Subject Property has a unique shape.

13. Mr. DiPietro also testified on behalf of Applicant that most of the Subject Property is unsuitable for building due to steep topography.

14. Specifically, Mr. DiPietro testified that the buildable area of the Subject Property makes up only 28.9% of the total area of the Property.

15. Mr. DiPietro further testified on behalf of the Applicant that the Zoning Ordinance's perimeter setback requirements reduce the buildable area even further.

16. Specifically, Mr. DiPietro testified that when the topographic and zoning restrictions are overlaid only 10.6% of the total area of the Subject Property is buildable for a four-story

building.

17. The Objecting Residents offered general testimony raising concerns that the proposed development would: (a) increase stormwater runoff from the Subject Property; and (b) increase traffic on Oakridge Road.

18. The Objecting Residents also offered general testimony raising concerns that the neighborhood where the development is being proposed is predominantly single-family homes and that the proposed development would alter the essential character of the neighborhood.

19. The Township did not oppose the request for Variances.

20. Pursuant to Section 240-132 of the Zoning Ordinance, all five enumerated elements for the grant of a variance must be met in order for the Board to grant a request for a variance.

21. As Pennsylvania courts have held, “The party seeking the variance bears the burden of proof.” *See Marshall v. City of Philadelphia*, 97 A.2d 323, 329 (Pa. 2014). Furthermore, “The burden on an applicant seeking a variance is a heavy one”. *See Singer v. Philadelphia Zoning Bd. of Adjustment*, 29 A.3d 144, 149 (Pa. Cmwlth. Ct. 2011).

22. The Board finds that Applicant offered sufficient testimony and evidence to establish that the Subject Property has unique physical circumstances or conditions.

23. The Board finds that the perimeter boundary or shape of the Subject Property is unique.

24. The Board finds that the steep slope covering a substantial portion of the Subject Property constitutes an exceptional topographical condition, which limits the buildable area of the Property.

25. Accordingly, the Board finds that sufficient testimony was offered to establish that

Applicant met its burden of proof for the Variances.

**DECISION**

1. Based on the findings and conclusions set forth above, the request for a dimensional variance of one hundred fifteen (115) feet from the minimum perimeter setback of one hundred fifty (150) feet from the minimum perimeter setback of one hundred fifty (150) feet required by Article XVI, Section 240-88.B.(9) of the Zoning Ordinance to allow off-street parking no closer than thirty-five (35) feet to the property boundary (i.e., Variance 1) is hereby GRANTED WITH THE FOLLOWING CONDITION: that the Applicant strictly complies with the Application as supplemented before the Board.

2. Based on the findings and conclusions set forth above, the request for a dimensional variance of 454 feet and 3 inches from the requirement of Article XIV, Section 240-88.B.(7) of the Zoning Ordinance that the length of any residential building shall not exceed 240 feet (i.e., Variance 2) is hereby GRANTED WITH THE FOLLOWING CONDITION: that the Applicant strictly complies with the Application as supplemented before the Board.

Copies of this Decision are being sent to:

Kenneth C. Foltz, Sr., Esquire  
Leech Tishman Fuscaldò & Lampl  
525 William Penn Place, Fl. 28  
Pittsburgh, PA 15219

Apex Newbury LLC  
c/o Alpha Capital Partners LLC  
44 Abele Rd., Suite 304  
Bridgeville, PA 15017

Russell A. Timco, Jr.  
1370 Oakridge Road  
McDonald, PA 15057

Bill Egan  
102 Petricca Drive  
McDonald, PA 15057

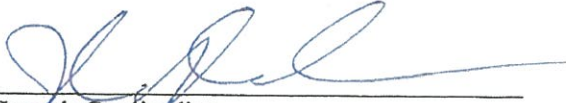
Deekota Yadav  
2003 Berkley Ridge Drive  
McDonald, PA 15057


Mike Barish  
507 Gene Drive  
McDonald, PA 15057

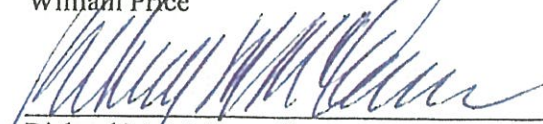
Kelly Barish  
507 Gene Drive  
McDonald, PA 15057

**MEMBERS OF THE SOUTH FAYETTE  
TOWNSHIP ZONING HEARING BOARD**

Dated: April 8, 2022

  
\_\_\_\_\_  
Joseph Gagliardino

  
\_\_\_\_\_  
William Price

  
\_\_\_\_\_  
Richard M. McConnell