

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF
GARY AND JAMIE BERG**

**NO. 2021-01
APPLICATION FOR
VARIANCES**

DECISION

I. BACKGROUND

The Applicants, Gary and Jamie Berg, were issued an Enforcement Notice regarding zoning violations on January 5, 2021, with respect to their operation of a drug and alcohol recovery group home for the housing of individuals recovering from drug and alcohol addiction, at the property located at 2816 Morris Road, Worcester Township, in the LPD – Land Preservation Zoning District.

Public hearings on the above Application were held on April 27, 2021 at the Methacton Elementary School, and on June 7, 2021 at Worcester Community Hall, pursuant to Notice as required by the Worcester Township Zoning Ordinance, as amended (hereinafter “Zoning Ordinance”), and the Pennsylvania Municipalities Planning Code.

The Applicants appealed the Enforcement Notice and requested variances from the definition of “Family” under Section 150-09, and the use provisions under Section 150-110.22 of the Zoning Ordinance, so as to permit the operation of a drug and alcohol recovery house (commonly referred to as a “group home”) on the property for twelve (12) residents.

A quorum of the Zoning Hearing Board participated in the public hearings and conducted a vote in accordance with law. The Applicant was represented by John Benson, Esquire. The Township Solicitors, Robert Brant, Esq. and Blake Dunbar, Esq. entered appearance on behalf of Worcester Township. Lauren Gallagher, Esq. and Nathaniel Costa, Esq. entered appearance on behalf of Upper Gwynedd Township, the township adjoining the property at 2816 Morris Rd.

The following neighboring property owners elected to enter appearance as parties:

Worcester Township Residents:

Nancy and Thomas Byron
(with daughter Rudi Byron)

Premal and Trusha Patel

Upper Gwynedd Township Residents:

Glenn Barco
Geoff and Ann Birkmire
Timothy J. Gallagher
Katelyn Holstein
David G. Miller
Huu Nguyen
William Sacony
Christopher Silvotti
Matthew Ung

The witnesses were duly sworn or affirmed and Notes of Testimony for the hearings were transcribed and are hereby made a part of this record.

At a public meeting on June 22, 2021, after public discussion, the Board voted to uphold the Enforcement Notice of zoning violations, and grant the application for variances in part and deny the application for variances in part. The Board issues Findings of Fact and Conclusions of Law in support of the Decision and Order.

II. FINDINGS OF FACT

1. The Applicants, Dr. Jamie Berg, a licensed psychologist, and her husband, Gary Berg ("Applicants"), are the legal owners of the property located at 2816 Morris Road, Worcester Township, Montgomery County, PA ("Property"), in the LPD ~ Land Preservation Zoning District. (N.T. 04/27/21, pp. 41-42)

2. The following Exhibits were marked and duly admitted into evidence:

BOARD EXHIBIT:

B-1 Public Notice - Proof of Publication

TOWNSHIP EXHIBITS:

- T-1 Township Manager's Letter to Applicants dated December 18, 2020
- T-2 Zoning Officer's Notice of Zoning Violation dated January 5, 2020 (sic) and related determinations issued January 5, 2021
- T-3 Applicant's counsel's letter dated February 11, 2021
- T-4 Zoning Application dated February 22, 2021 filed March 1, 2021
- T-5 Excerpt from Worcester Township Zoning Ordinance Section 150-9

APPLICANTS' EXHIBITS:

- A-1 Policies and Procedures Handbook
- A-2 Photos
- A-3 Floor Plans
- A-4 Letters of Support
- A-5 Dr. Berg's License
- A-6 Drug and Medication List
- A-7 Lease
- A-8 Septic System Invoice
- A-9 Parking Calculations with Aerial Photos

OBJECTORS' EXHIBITS:

- O-1 Listing Contract
- O-2 Montgomery County Assessment Record
- O-3 Photographs
- O-4 Letters with attachments from Objectors (and spouses): Glenn (and Kristine) Barco, Timothy (and Donna) Gallagher, Katelyn Holstein, David G. Miller, William (and Denise) Sacony, Matthew (and Lida) Ung
- O-5 Letters from same residents noted above

- O-6 Letters from same residents noted above
- O-7 Letters from same residents noted above
- O-8 Letters from same residents noted above
- O-9 Letter from Nancy and Thomas Byron
- O-10 Letter from Nancy and Thomas Byron

3. Dr. Berg and her husband purchased the Property in question in October 2020. (N.T. 04/27/21, p. 51)

4. The Property, as a whole, measures approximately three (3) acres, fronting on Morris Road, with the Pennsylvania Turnpike to the rear, currently occupied by a single-family residence and accessory structures. (N.T. 04/27/21, pp. 51, 99)

5. The Property has been used a single family residence since its construction in the mid-1800s. (N.T. 06/07/21, pp. 149-152, Exhibit O-2)

6. Although the Bergs presented the testimony of their real estate agent that the agent had recommended an inspection of the septic system, the Bergs had decided not to conduct such an inspection. (N.T. 06/07/21, pp. 50-51)

7. The Bergs did not cause the water well of the Property to be tested to determine whether the water was potable. (N.T. 06/07/21, pp. 103-104)

8. The Bergs decided not to perform any inspections of the Property, including a home inspection, septic or well inspection. (N.T. 06/07/21, p. 61, 80-81)

9. Mr. Berg could not recall whether he and Dr. Berg discussed whether the Property was unusable when considering the purchase of the Property. (N.T. 06/07/21, pp. 109-111)
10. After purchasing the Property, the Bergs made renovations and changes to the interior of the house; although Dr. Berg originally testified that the only alterations of the Property were paint and carpet, and installation of an ADA accessible shower in one of the bathrooms, the evidence shows that the Bergs made other changes to the Property. (N.T. 04/27/21, pp. 51- 52, 73)
11. Dr. Berg testified that no change was made to the number of bedrooms since purchasing the Property. (N.T. 04/27/21, p. 52)
12. Mr. Berg originally testified that there were no alterations of the rooms and no new rooms were created. (N.T. 04/27/21, pp. 119-121)
13. However, Mr. Berg testified, and documentary photographs showed, that circular steps were removed and new steps were installed to the third floor. (N.T. 04/27/21, pp. 122-123)
14. Mr. Berg admitted at the June 7, 2021 hearing that an existing wall and existing staircase were replaced, and that no permits were obtained for that work. (N.T. 06/07/21, p. 65)
15. Mr. Berg admitted that he had electrical work performed, but such work had not yet been inspected as of the June 7, 2021 hearing. (N.T. 06/07/21, pp. 79-80)
16. No permit was obtained to install the ADA shower. (N.T. 04/27/21, p. 81)
17. The Township was not aware of any renovations to the building, and no application for permits for any renovations had been submitted to the Township over the last year prior to the April 27, 2021 hearing. (N.T. 04/27/21, p. 27, 33)

18. The Township has not yet had occasion to inspect the Property since the Applicants had submitted no applications for permits. (N.T. 04/27/21, pp. 27-28)
19. Upon purchasing the Property, the Bergs intended to operate a group home, but did not inform the Township of their intent. (N.T. 04/27/21, pp. 27, 33)
20. Neither of the Bergs has any experience as an operator of a group home, or leasing residential real estate, this being their first such endeavor. (N.T. 04/27/21, p. 88, 90, 96)
21. The Bergs never lived on the Property and their primary residence is in Chalfont, Pennsylvania, at least 20 minutes away from the group home, by Dr. Berg's estimation. (N.T. 04/27/21, p. 107)
22. Gary Berg is not a trained medical professional, but rather a landscape contractor. (N.T. 04/27/21, p. 107)
23. Mr. Berg admitted that he did not review the Zoning Code before purchasing the Property, other than to look for provisions governing "group homes", and not finding those words in the Code, apparently decided to look no further, make no inquiry of the Township, and seek no legal advice on the matter; thus purchasing the Property and opening the group home to residents after making virtually no inquiry as to the Township requirements for same. (N.T. 06/07/21, pp. 127-128)
24. In December 2020, the Bergs began to rent rooms in the house to various residents to begin their operation of a group home, including renting out rooms in the house to as many as four (4) unrelated individuals. (N.T. 04/27/21, p. 103)

25. A resident had reported the use to the Township in mid-December, 2020, and the Township Manager/Zoning Officer Tommy Ryan, contacted the Applicant, Dr. Berg, and spoke with her along with the Assistant Zoning Officer, attempting to explain the Township's requirements for the operation of a group home, but Dr. Berg abruptly terminated the conversation. (N.T. 04/27/21, pp. 19-21, Exhibit T-1)

26. When the Applicants were contacted by the Township in December 2020, they had already started operating the group home with four (4) residents, one (1) of which was a manager, and as of the April 27, 2021 hearing, the group home had six (6) residents, two (2) of which were managers. (N.T. 04/27/21, p. 103)

27. Mr. Ryan followed the phone conversation with a letter dated December 18, 2020, marked as Exhibit T-1. (N.T. 04/27/21, p. 21- 22)

28. The Township Manager/Zoning Officer, Mr. Ryan, testified that the definition of "Family" in the Zoning Ordinance has a limitation of no more than two (2) persons unrelated by marriage, blood or adoption living in a single-family residence. (N.T. 04/27/21, p. 23)

29. The Township Manager/Zoning Officer, Mr. Ryan, who has extensive experience in zoning matters, testified that under federal law, specifically the Fair Housing Act, individuals recovering from drug and alcohol addiction should be treated like a traditional family, and the Township must provide reasonable accommodation under the law for drug and alcohol recovery group homes to be located in residential districts. (N.T. 04/27/21, p. 23)

30. There was no evidence, either alleged or shown, that the Worcester Township Zoning Ordinance discriminates on the basis of whether a single-family residence is used as a drug and alcohol recovery group home or as a traditional family home.

31. In fact, the Zoning Ordinance provides that up to two (2) persons unrelated by blood, marriage or legal adoption may live in a single housekeeping unit by right, and, recognizing that group homes are a legitimate use in a residential district, the Zoning Ordinance further provides that up to four (4) such unrelated persons may live in a single housekeeping unit by Special Exception granted by the Zoning Hearing Board. (Zoning Ordinance Section 150-09; N.T. 04/27/21, p. 23)

32. The Applicants could have sought a Special Exception as per the Zoning Ordinance for up to four (4) unrelated residents, but they chose not to do so.

33. Since the Applicants had obtained no prior approval from the Zoning Hearing Board, and the number of unrelated persons living in the house exceeded the number provided in the Zoning Ordinance, the Zoning Officer determined that, in his opinion, the Property was being used in violation of the Zoning Ordinance. (N.T. 04/27/21, pp. 20-24, Exhibit T-2)

34. Other group homes operate in Worcester Township and have been approved by this Board; one in 2016 by Special Exception. (N.T. 04/27/21, p. 35)

35. The Township issued an Enforcement Notice on January 5, 2021 to the Applicants, preceded by a letter dated December 18, 2020. (N.T. 04/27/21, pp. 20-23, Exhibits T-1 and T-2)

36. The Enforcement Notice was received by the Applicants on January 9, 2021. (N.T. 04/27/21, p. 37, Exhibit T-2)

37. The Applicants' attorney, John Benson, Esq. wrote a letter to the Township dated February 11, 2021, and the Zoning Application (dated February 22, 2021) was filed on March 1, 2021. (N.T. 04/27/21, p. 22-23)

38. The appeal of the Zoning Officer's determination was not filed within thirty (30) days of the Notice of Violation and, therefore, the Applicants' appeal of the Zoning Officer's determination should be denied as untimely under Section 914.1(b) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10914.1(b). (N.T. 04/27/21, p. 37-39)

39. Even apart from the late appeal of the Enforcement Notice, the Board also finds that the Zoning Officer was correct in his interpretation of the Code as stated in the Enforcement Notice; and no credible evidence was offered or presented by the Bergs to contest any of the statements in the Enforcement Notice at the hearings.

40. Therefore, the Zoning Officer's determinations and Enforcement Notice should be upheld.

41. Even following the phone call with the Township Manager and Assistant Zoning Officer in December, the receipt of the Township's letter dated December 18, 2020, and the Enforcement Notice issued on January 5, 2021, the Applicants, though their corporation, nevertheless, continued to operate their group home at the Property.

42. The name of the drug and alcohol recovery group home which the Applicants operate at the Property is Recover and Renew Homes, Inc. ("R&RH") (N.T. 04/27/21, p. 42)

43. Dr. Berg and her husband are the shareholders of the corporation R&RH, which is a for-profit corporation. (N.T. 04/27/21, pp. 84-85, 90)

44. The Bergs, as the legal owners of the Property, have a lease with "R&RH" with reference to the Property, but have no formal leases with the residents other than the rules established by a Policies and Procedures Handbook. (N.T. 04/27/21, pp. 134-135, Exhibits A-1 and A-7)

45. Dr. Berg is a clinical psychologist, receiving her degree from LaSalle University in 2019, and has been working throughout the mental health community in the Philadelphia area over the last several years. (N.T. 04/27/21, pp. 42–43)

46. Dr. Berg primarily works with people suffering from addictions to alcohol, drugs and controlled medications. (N.T. 04/27/21, p. 43).

47. With respect to the recovery from a drug and alcohol addiction, a group home can, if properly run, provide a safe environment for individuals seeking sustained recovery from their addictions. (N.T. 04/27/21, p. 44)

48. The first line of treatment is to undergo inpatient hospitalization and then, to avoid the high risk of relapse, the patient would be discharged to a set structure in a drug and alcohol recovery group home, to potentially create a safe environment for recovery. (N.T. 04/27/21, pp. 44–45)

49. The concept of the group home is to monitor sobriety, holding the patient accountable for sobriety, and providing a safe place where drugs and alcohol will not be entering the home. (N.T. 04/27/21, pp. 44–45)

50. Group homes can serve as an integral part of the success of the treatment of an individual suffering from substance addiction, and the Board recognizes this as an important and vital service offered to such individuals. (N.T. 04/27/21, p. 45)

51. However, some group homes can fail, and Dr. Berg identified many issues with reference to the failure of group homes, such as a lack of oversight, lack of prioritizing treatment, and lack of presence and involvement by medical professionals. (N.T. 04/27/21, p. 45)

52. Policies and procedures are important in the oversight attendant to group homes. (N.T. 04/27/21, p. 46)

53. Dr. Berg indicated that when a group home places priority to the residents working and paying rent, over treatment, such emphasis leads to failures in the group home experience. (N.T. 04/27/21, pp. 47-48)

54. Dr. Berg indicated that she purportedly prioritizes treatment over the collection of rent for the residents of the group home, but the Board notes that there is no medical, psychological or other treatment offered at the house, and none is offered or provided by R&RH; so while the Board credits Dr. Berg in her undoubted commitment to drug and alcohol rehabilitation, the actions by the Applicants proposing to over-occupy the house with twelve (12) residents, in the manner in which they proceeded, and under the procedures and practices that they intended to employ, surely test the bounds of this assertion. (N.T. 04/27/21, p. 66)

55. Many group homes are not operated by medical professionals according to Dr. Berg. (N.T. 04/27/21, p. 48)

56. In an effort to demonstrate the prioritization of treatment, Dr. Berg indicated that she considers herself a “clinical liaison” for the house, and was putting her license “.... on the line should anything go wrong”; but there was confusing, conflicting and contradictory testimony from Dr. Berg on this subject. (N.T. 04/27/21, p. 49, 85, 138)

57. For instance, Dr. Berg indicated that she has an ethical obligation as a provider to make sure that the house maintains a safe environment for the individuals coming under her care, and that fines, suspension or revocation of her license could result from failing to do so. (N.T. 04/27/21, p. 49)

58. Yet, Dr. Berg does not consider the residents as her patients because she is not providing any direct therapy or any medical, clinical or psychological treatment in the home, she has no medical provider/patient relationship with them, and there is no medical or psychological care, or drug or alcohol treatment performed at the house, all such treatment occurring off-site. (N.T. 04/27/21, pp. 58, 79, 85-87, 98).

59. The evidence leads the Board to the conclusion that the Applicants are acting more like landlords of a boarding house, delegating to the house managers, who are tenants/residents themselves, the tasks of overseeing the day-to-day operations of the house, monitoring the sign-in and sign-out sheets, shopping for groceries for all residents, making sure that the residents attend 12-step programs, and supervising and enforcing any rules against the other residents. (N.T. 04/27/21, pp. 64-65).

60. Dr. Berg and her husband do not live at the house, and instead of the Bergs enforcing R&RH's landlord obligations and rights, managing the house and collecting the rent themselves, the Bergs intend to have the house managers collect rent from the other tenant/residents. (N.T. 04/27/21, p. 90).

61. Instead of providing any type of licensed, trained or even experienced oversight or management of the house and the residents, the Applicants have instituted corporate policies and procedures to leave to the house managers the tasks of requiring urinalysis drug tests of the other

residents, monitoring and supervising all drug use by, and dispensing medication to, the other residents, even though none of the house managers are trained in such critical operations. (N.T. 04/27/21, pp. 113-115)

62. The managers are not medical professionals, but rather residents who achieved a “higher phase” in residency at the house and purport to exhibit certain undefined leadership qualities. (N.T. 04/27/21, p. 89)

63. The Board finds these operational issues problematic, and would encourage a modification to such procedures, but from a zoning standpoint, these operational issues would only be amplified with the intense occupancy as proposed by the Applicants.

64. The residents are not related members of a family in a non-transient nonprofit single housekeeping unit in the traditional sense, but rather unrelated individuals living together in a single housekeeping unit, for up to one (1) year on a rotating basis, very similar to tenants living in what is commonly referred to as a boarding home.

65. Because no medical professional resides in the home, the Board finds that the indication in the filed Application that the proposed twelve (12) residents would “...receive support services in a supervised environment...” was not a credible representation in that the “supervisors” are recovering addicts who are not trained, and have neither the education nor experience to perform any of these roles; in fact, there are no professional “support services” provided by anyone at the house.

66. As of the April 27, 2021 hearing in this matter, the Commonwealth of Pennsylvania’s Department of Drug and Alcohol Programs had not finalized the licensing and certification requirements for drug and alcohol recovery houses anticipated by a statute governing

same adopted in 2018, but it is anticipated that such licensure or certification will soon be available. (N.T. 04/27/21, p. 50; See also 71 P.S. §§613.11-613.14)

67. Dr. Berg testified that it is her intention to seek such licensure or certification from the Commonwealth of Pennsylvania with reference to the operation of the drug and alcohol recovery group home, when such licensure/certification is available. (N.T. 04/27/21, p. 50)

68. The license or certification to be issued to the drug and alcohol recovery group home under the statute cited above would be issued to Recover and Renew Homes, Inc., and in view of the operational issues identified in this Decision, the Board will impose same as a condition of any approval of such use as a group home on this Property. (N.T. 04/27/21, p. 84)

69. Dr. Berg has contacts with certain inpatient and intensive outpatient programs who refer prospective residents to the group home. (N.T. 04/27/21, p. 53)

70. As a condition to entering the group home, the prospective residents have to pass a drug test and have had seven (7) days of sobriety. (N.T. 04/27/21, p. 54).

71. There is no lease with any of the residents; rather, Dr. Berg, or a house tenant who was selected by R&RH to act as a “manager”, reviews a Policies and Procedures Handbook with each new tenant/resident. (N.T. 04/27/21, p. 54, Exhibit A-1)

72. The handbook provides rules for residency in the home as well as emergency procedures. (N.T. 04/27/21, pp. 56-57, Exhibit A-1)

73. The handbook is designed to give informed consent to all associated with the group home. (N.T. 04/27/21, p. 55)

74. If a tenant/resident violates a policy or procedure contained in the handbook, the resident is subject to possible dismissal from the home, according to Dr. Berg, however, there are no enforcement mechanisms outlined for “dismissal” from the house, and there is no written lease with the tenant/residents. (N.T. 04/27/21, pp. 57-58, Exhibit A-1)

75. Dr. Berg does not believe that her position as a clinical psychologist licensed in Pennsylvania, and also serving as a landlord for these residents, is a conflict of interest. (N.T. 04/27/21, pp. 95-96)

76. Dr. Berg and her husband attend, at a minimum, every other weekly house meeting, but do not appear to provide significant oversight in the day-to-day operations of the group home. (N.T. 04/27/21, p. 102)

77. Dr. Berg testified that she plans to mainly rely upon the residents themselves, with assistance from the house managers, to enforce the rules of the house. (N.T. 04/27/21, p. 94)

78. Dr. Berg also testified that if a tenant causes a problem with the community or other tenants, instead of personally resolving the potentially threatening issue, she anticipated that the other tenants would create an inhospitable environment for the non-complying resident, which would lead to a resolution of any disputes or disagreements among the residents. (N.T. 04/27/21, pp. 94-99)

79. It is doubtful that this type of dispute resolution would be successful and it does not seem to lend itself to a “sense of community”, but in view of zoning inquiry at hand, the increased occupancy as proposed by the Applicants would surely lead to more conflict among the residents.

80. A new resident is required to attend 12-step group meetings and will be chaperoned for the first 45 days when leaving the home, for example, shopping for necessities. (N.T. 04/27/21, p. 59)

81. The house is designed with a dedicated orientation room accommodating up to three (3) individuals with its own bathroom; in Dr. Berg's opinion, this living arrangement supposedly fosters "a sense of community" for new residents during the first 30 to 45 days in residence. (N.T. 04/27/21, p. 60)

82. It was not explained how this "sense of community" cannot be achieved with two (2) new residents in the room, or merely from the new residents living in the home with others; this seems to just offer a justification for three (3) residents to share a room in order to maximize the occupancy.

83. Upon completing the initial phase of residence, the resident then would be able to move to a different room, and leave the house unchaperoned. (N.T. 04/27/21, pp. 60-61)

84. The goal is for the resident to then eventually be able to leave the home permanently, and be reintroduced into the community, most likely within a year of taking up residence in the home. (N.T. 04/27/21, pp. 62, 79)

85. Dr. Berg explained that certain "oversight" is provided by exterior cameras around the Property including monitoring the front door and the parking lot area; but surely such measures are not as effective as having a full-time professionally trained manager living in the house, or a rotating professional staff on site, with experience overseeing the operations of a group home. (N.T. 04/27/21, pp. 63-64)

86. The concept is that food money is deducted out of rent and most dinners are shared among the residents of the house. (N.T. 04/27/21, p. 104)
87. The handbook establishes a nightly curfew from 10:00 p.m. to 7:00 a.m. at the group home. (N.T. 04/27/21, pp. 76-77, Exhibit A-1)
88. During the initiation period lasting approximately 45 days of initial occupancy, the resident is not permitted to have visitors, but may have visitors thereafter. (N.T. 04/27/21, pp. 66-67)
89. Dr. Berg originally proposed to have twelve (12) adult male residents in the house. (N.T. 04/27/21, pp. 68, 92-93)
90. There may be up to two (2) residents/tenants who act as house managers for R&RH at the Property. (N.T. 04/27/21, p. 60)
91. However, the managers, who are not employees of R&RH, and have no training supervising a group home, will not be on site 24 hours a day, as the managers are working outside jobs, so there will be no full-time on-site management of the house, or supervision of the residents. (N.T. 04/27/21, pp. 68-69)
92. The Applicants submitted photographs and floor plans for the house. (N.T. 04/27/21, p. 70, Exhibits A-2 and A-3)
93. The first floor consists of a living/great room used for common use by the residents and intake sessions with Dr. Berg or the house managers, a kitchen, a laundry room, the orientation room designed for three (3) residents, with full bath containing an ADA shower, another bedroom designed for double occupancy, and a third bedroom for single occupancy; the latter two (2)

bedrooms do not have direct access to a bathroom, other than through the three-person bedroom, or utilizing the full bathroom on the second floor. (N.T. 04/27/21, p. 70, Exhibits A-2 and A-3)

94. On the second floor, there are two (2) bedrooms designed for single occupancy, a full bath and a den. (N.T. 04/27/21, p. 70, Exhibits A-2 and A-3)

95. The third floor was proposed to have four (4) bedrooms for single occupancy, but three (3) of the bedrooms would not have independent egress routes, and are accessible only by passing through another bedroom; there is no bathroom on the third floor. (N.T. 04/27/21, p. 70, Exhibits A-2 and A-3)

96. The third floor of the house is not a full floor, but rather a gabled roof attic room that has been partitioned into various rooms, with no permanent fire escape ladders leading from these bedrooms. (Exhibits A-2 and A-3)

97. The photographs and testimony show that the windows in the third floor are small, double-hung windows with sills located at floor level, or within a few inches of the floor, with restricted access and lack of headroom due to the sloping gable roof. (N.T. 06/07/21, pp 86-87; Exhibits A-2 and A-3)

98. Mr. Berg testified that the third floor rooms, which he called "bedrooms," would be serviced by fire ladders for emergency egress. (N.T. 04/27/21, p. 137)

99. The plan by R&RH is for one manager to live on the first floor and one manager on second floor, each occupying the single occupancy rooms on each floor. (N.T. 04/27/21, p. 74)

100. The drug and alcohol recovery group home was currently operating at the time of the hearing on April 27, 2021 with six (6) residents, two (2) of which were house managers. (N.T. 04/27/21, pp. 78, 87)

101. Dr. Berg maintains that when she and her husband purchased the Property, the house contained three (3) stories and seven (7) bedrooms; however, as explained herein, virtually all of the evidence, and all credible evidence, shows that the Property contains a 2.5 story house with four (4) bedrooms. (N.T. 04/27/21, p. 51)

102. The sales listing description for the Property, and the official Montgomery County property records, show that the Property consists of a 4-bedroom, 2.5-story house. (N.T. 06/07/21, pp. 31-33, 53, Exhibits O-1, O-2)

103. The Applicants presented the testimony of a real estate agent. (N.T. 06/07/21, p. 23)

104. The real estate agent represented the buyers (the Bergs) in the transaction, and testified that the listing for the house on the market was for a four (4) bedroom house; however, the real estate agent maintained that there were seven (7) bedrooms in the house in her opinion. (N.T. 06/07/21, pp. 24-25, Exhibits O-1, O-2)

105. The real estate agent was not advised by the Bergs as to their intentions with reference to the use of the house. (N.T. 06/07/21, p. 26)

106. The real estate agent could not recall whether a Use and Occupancy Permit was required from the Township, or whether one was obtained in this transaction. (N.T. 06/07/21, p. 48)

107. The real estate agent indicated that her understanding of residential construction codes was that in order to qualify as a bedroom, a room need only have a closet; she was not familiar with egress or any other code requirements for a room to constitute habitable bedroom space. (N.T. 06/07/21, pp. 27-28)

108. The real estate agent also indicated that she did not exactly recall, but believes that there were only two (2) or three (3) “bedrooms” on the third floor when she sold the Property. (N.T. 06/07/21, p. 29)

109. The real estate agent was not offered as an expert in code compliance with respect to use of rooms as habitable space for bedrooms, and the Board finds that the agent does not possess the experience or qualifications to offer such expert testimony.

110. As a result, the Board determines that the real estate agent’s testimony, with reference to whether the rooms on the third floor qualify as bedrooms, was not credible.

111. Mr. Berg arranged for a review of the house by a member of a fire department in another township with reference to the emergency egress, but obtained no report as to whether emergency egress complies with Worcester Township Ordinances. (N.T. 06/07/21, pp. 76–77)

112. Mr. Berg was not aware of the requirements of the applicable construction code with regard to the window configuration, size and location required to establish a legal egress so that the rooms on the third floor could qualify as bedrooms; and oddly enough, even though such issues were raised at the April 27, 2021 hearing, the Applicants chose not to present any competent evidence to such issues at the June 7, 2021 hearing. (N.T. 06/07/21, pp. 86–87)

113. There is no sprinkler system in the house, but fire extinguishers are maintained on every floor, and the house has smoke and carbon monoxide detectors. (N.T. 04/27/21, pp. 82, 109)

114. Worcester Township has adopted uniform construction codes, the provisions of which are public record; therefore, the Applicants could have availed themselves of the information to determine and present proof to the Board that the third floor rooms could be occupied as bedrooms in accordance with such codes, and simply failed to do so. (N.T. 06/07/21, pp. 147–148)

115. The Applicants presented no competent testimony or evidence whereby the Board could conclude that the rooms on the third floor of the house would qualify as bedrooms for overnight accommodation under the Township's construction code or in accordance with emergency egress requirements.

116. Not only did the Applicants fail to provide any competent testimony or evidence that the windows and room configurations provide code-required emergency egress, but rather, all of the testimony and evidence presented only support a conclusion that the third floor is not habitable for overnight accommodations.

117. In any event, the third floor need only be used if the Applicants were permitted to over-occupy the house for the use, and therefore, use of the third floor for overnight accommodations is not necessary.

118. The Applicants actually intend to use the Property with nine (9) bedrooms, three (3) on the first floor, two (2) on the second floor, and four (4) on the third floor. (Exhibit A-3)

119. The Board determines that the Applicants' contention that the house contains seven (7) bedrooms, or may be used for nine (9) bedrooms as proposed, is not credible based on the testimony presented and the documentary evidence provided during the hearings, and, as noted herein, all evidence pointed to the contrary.

120. The house can surely be used as a group home for six (6) residents as permitted herein, and there is no hardship justifying the granting of the variance to allow the Property to be overcrowded with twelve (12) residents.

121. From a financial standpoint, collecting rent from six (6) residents (five (5) of whom would be at \$200 per week, and \$100.00 per week from the manager), would result in income of \$4,620.00 per month, as against the Applicants' testimony that the cost of running the group home is approximately \$3,000.00 per month (a 34% operating profit), which affords the Applicants the ability to viably operate the group home, and represents a reasonable accommodation to do so - (even with two (2) managers, it is financially feasible to operate the group home). (N.T. 06/07/21, p. 15; N.T. 06/22/21, pp. 17-18)

122. The Board finds that the assertion in the Application that the Property is "unusable" is not credible, and certainly does not justify the granting of a variance to allow twelve (12) residents in the group home; the home can viably be used as a drug and alcohol recovery group home for six (6) residents as permitted herein. (N.T. 06/07/21, pp. 114-115)

123. One of the objectors, Mrs. Byron, testified that she has lived in the area for decades and testified that the subject Property has been used as a single-family residence for decades; a prior Decision of this Board also recognized this fact. (N.T. 06/07/21, pp. 149-152; ZHB No. 20-13)

124. With each resident and one (1) visitor per day, each entitled to have a car, it is possible that 24 cars would be on site at any one time, if the use were approved as requested. (N.T. 04/27/21, p. 93)

125. There is sufficient parking area on the Property to accommodate the cars for the six (6) residents and their visitors. (N.T. 06/07/21, pp. 70–74, Exhibit A-9)

126. At the April 27, 2021 hearing, Mr. Berg testified that a van is maintained on-site for transportation of the residents who work in his landscaping business, but also a dump truck associated with his business is parked overnight on the Property at times. (N.T. 04/27/21, p. 142)

127. At the June 7, 2021 hearing, Mr. Berg admitted that he was parking two (2) crew cab dump trucks and a van associated with his landscaping business on the Property; such vehicles are not required to be on the Property for the intended use, and the van alone can surely provide transportation for the three (3) residents in the home who also work for Mr. Berg's landscaping company. (N.T. 06/07/21, p. 112)

128. At the June 7, 2021 hearing, Mr. Berg agreed to the condition that no landscaping or snowplowing equipment or material would be stored on the Property. (N.T. 06/07/21, pp. 122-123)

129. Mr. Berg also agreed on the record to use the Property in accordance with the maximum occupancy established by the Zoning Hearing Board, and in accordance with all ordinances governing trash, recycling, noise, signage and other Township regulations. (N.T. 06/07/21, pp. 122-123)

130. Dr. Berg committed to complying in the future with all ordinances of the Township with regard to trash, recycling, noise, signs and other regulations, and also agreed to not have any other commercial storage of equipment on the premises. (N.T. 04/27/21, p. 104)

131. Dr. Berg does not intend to have a sign associated with the group home. (N.T. 04/27/21, pp. 69, 75)

132. Dr. Berg indicated a willingness to require criminal background checks on the individuals entering the home, if required for approval, or if required by treatment providers referring residents to the group home. (N.T. 04/27/21, pp. 97, 98, 132)

133. Dr. Berg agreed to provide emergency contact numbers to the Township. (N.T. 04/27/21, p. 104)

134. Mr. Berg agreed on the record to apply for any permits required with regard to the renovations, allow the Township to inspect the work, and to provide to the Township a 24-hour contact name and number. (N.T. 06/07/21, pp. 123-124)

135. Mr. Berg also agreed to have the septic system inspected, repairs or replacement performed, and if not possible, to connect to the public sewer. (N.T. 06/07/21, p. 124)

136. The Board finds that the Applicants' proposal to operate the group home with twelve (12) residents would fundamentally alter and harm the zoning scheme for the area, and would result in a use more similar to an extended-stay hotel or boarding house, which uses are not permitted in this Zoning District, rather than a single-family residence.

137. The Board finds that allowing up to twelve (12) unrelated individuals to reside in this house will fundamentally alter and harm the essential character and the nature of the community.

138. The Board finds that the Township has always been willing to work with the Applicants to provide reasonable accommodations for a group home.

139. It would also be prudent that, in order to avoid harm to the residents of the house on the Property, as well as the neighboring properties, that the septic system and water well on the Property are tested.

140. With reference to the use variances requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following:

- (A) There are no unique physical circumstances or conditions peculiar to the particular Property justifying the use of the Property for twelve (12) residents, however, since six (6) residents are currently occupying the Property, a reasonable accommodation to allow two (2) more residents than allowed by Special Exception under the Zoning Ordinance would justify granting the use variances so as to permit six (6) residents recovering from drug and alcohol addiction to occupy this particular home, on the basis of hardship.
- (B) The Property can be reasonably used as a group home for six (6) residents, and therefore, the authorization of the use variances for twelve (12) residents is not necessary to enable the reasonable use of the Property.
- (C) The alleged hardship to accommodate twelve (12) residents has been created by the Applicants by proposing to use the Property greatly in excess of the reasonable and legal occupancy of the Property, but a reasonable accommodation to the Applicants requires the Board to recognize a hardship so as to permit the six (6) residents currently living in the home to

remain, and for occupancy to continue for up to six (6) residents, in order for the Applicants to have the financial ability to continue to operate the group home on the Property.

- (D) The granting of the variances, as limited in this Decision, will not alter the essential character of the neighborhood, nor would the relief granted substantially impair the use or development of adjacent property, or be detrimental to public welfare. On the other hand, granting of variances to permit twelve (12) residents in the home would fundamentally alter the essential character of the neighborhood, would represent a substantial and unjustified departure from the zoning scheme anticipated by the Zoning Ordinance, would substantially impair the use or development of adjacent property, and would be detrimental to public welfare.
- (E) The variances requested to allow twelve (12) residents are not the minimum variances to afford relief under the circumstances, however, the variances granted to allow six (6) residents are the minimum variances to afford relief.

141. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the variances to permit the occupancy by twelve (12) residents would be contrary to the public interest, would significantly alter the fundamental zoning scheme and character for the Property and the surrounding properties, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship, to require the granting of variances to that extent.

142. However, granting the variances to permit the occupancy by six (6) residents would not be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance would result in unnecessary hardship, if such a reasonable accommodation were not granted.

143. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action, and determines the following facts:

(A) The Property is not suitable for the use by twelve (12) residents, which use would be contrary to the spirit, purpose and intent of the Zoning Ordinance. However, if the Applicants comply with the conditions set forth in this Decision, the Property would be suitable for use by six (6) residents, and therefore, the limited variances granted are consistent with the spirit, purpose and intent of the Zoning Ordinance.

(B) The relief for the use by twelve (12) residents will injure or detract from the use of neighboring property and from the character of the neighborhood, and considering the intensity of the proposed use, the neighboring properties will not be adequately safeguarded. However, if the Applicants comply with the conditions set forth in this Decision, the use by six (6) residents will not injure or detract from the use of neighboring property or from the character of the neighborhood, and the neighboring properties will be adequately safeguarded.

(C) The proposal for use by twelve (12) residents will not serve the best interest of the Township, the convenience of the community, and the public welfare. But, the use

by six (6) residents will serve the best interest of the Township, the convenience of the community, and the public welfare.

(D) There will not be an adverse impact upon the public services of police and fire protection by the proposed use if the use is limited to six (6) residents, provided the Applicants comply with the conditions imposed herein.

(E) This limited residential use would provide for the proper disposal of waste.

(F) This limited residential use would not cause runoff water or drainage problems injurious to adjacent or nearby properties.

(G) This limited residential use would not cause congestion or hazard on any streets in the Township.

(H) If relief were completely denied, the application of the provisions of the Zoning Ordinance would deprive the Applicants of the reasonable use and development of such Property for the legitimate use as a group home.

(I) The circumstances for which the variances are sought, whereby a reasonable accommodation should be granted, do not result from general conditions in the zoning district in which the Property is located.

144. The provisions of the Zoning Ordinance do not impose an unnecessary hardship to provide for twelve (12) residents, but to deny relief so as not to reasonably accommodate six (6) residents, would cause an unnecessary hardship, and, therefore, the variances should be denied as requested, but granted to the limited extent as set forth in this Decision.

III. DISCUSSION

There are two types of variances, a "dimensional" variance and a "use" variance. Differing standards apply to use and dimensional variances. One who advances a dimensional variance seeks to adjust zoning regulations so that the property may be used in a manner consistent with the zoning regulations. In contrast, a use variance seeks to use the property in a way that is inconsistent with the zoning regulations. In Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Supreme Court of Pennsylvania determined that, in evaluating a hardship for a dimensional variance, the Zoning Hearing Board should consider various factors, including economics, and the characteristics of the surrounding neighborhood, in determining whether a variance would be appropriate. The Court also held that, when considering a dimensional variance, a Zoning Hearing Board should adopt a somewhat more relaxed standard of scrutiny than when the Board is considering a use variance.

In Marshall v. City of Philadelphia and Zoning Board of Adjustment, 626 Pa. 385, 97 A.3d 323 (2014), the Supreme Court recognized that a property does not have to be valueless in order to obtain a use variance. The Court further indicated that economic considerations may be considered in a use variance case, if the property can only be brought into conformance at a prohibitive expense. The Supreme Court reiterated in the Hertzberg and Marshall cases, that an Applicant need not prove that the property cannot be used for any other permitted use in order to be entitled to a variance.

An applicant seeking a variance must prove that unnecessary hardship will result if the variance is denied, and must also prove that the proposed use is not contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983).
"The burden on an applicant seeking a variance is a heavy one, and the reasons for granting the

variance must be substantial, serious and compelling.” Singer v. Zoning Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth. 2011). Even though economic considerations are now appropriate for variance cases under Hertzberg and Marshall, the applicable case law still holds that variances cannot be granted for solely economic reasons, and economic considerations alone cannot support even a dimensional variance, let alone a use variance. Dunn v. Middletown Township Zoning Hearing Board, 143 A.3d 494 (Pa. Cmwlth. 2016)

The pertinent portion of Section 150-110.22 of the Zoning Ordinance governing uses in the LPD Zoning District provides as follows:

Land in the LPD Land Preservation District may be used for the following purposes:

A.

Single-family detached dwellings, in accordance with one of the following development alternatives:

(1)

In accordance with the regulations of the AGR Agricultural District as specified in § 150-11B.

The pertinent portion of the definition of “Family” as set forth in Section 150-9 of the Zoning Ordinance provides as follows:

FAMILY

Any number of individuals living together as a single, nonprofit housekeeping unit and doing their cooking on the premises, provided that not more than two of such number are unrelated to all others by blood, marriage or legal adoption. As a special exception, the Zoning Hearing Board may interpret the term "family" to include:

A. *A group of individuals, not exceeding four, not related by blood, marriage or legal adoption, living and cooking together as a single housekeeping unit...*

(Subsection B provides for what is commonly known as an in-law’s quarters for two nonprofit housekeeping units in a single-family residence.)

The Worcester Township Zoning Ordinance provides for drug and alcohol recovery group homes by Special Exception for up to four (4) residents in the home, but the Applicants requested variances so as to have twelve (12) residents in the home. Therefore, the Applicants in this case are requesting use variances, which require a heightened level of scrutiny. Society Hill Civic Association v. Philadelphia Zoning Board of Adjustment, 42 A.3d 1178 (Pa. Cmwlth. 2012). As there was no testimony presented by the Applicants that the housing of twelve (12) residents, versus the current six (6) residents in the house, has any therapeutic benefit to the recovery of the residents, the only conclusion the Board could draw from the proposal to house twelve (12) residents is that such a request is based purely on economics. As reflected in the case law noted above, economic hardship alone cannot justify the granting of a variance. But, at the same time, the Applicants are entitled to a reasonable accommodation to operate the group home for the residential housing of persons recovering from drug and alcohol addiction.

As the Pennsylvania Commonwealth Court recently noted in City of Clairton, PA v. Zoning Hearing Board of the City of Clairton, PA, 246 A.3d. 890 (Pa. Cmwlth. 2021):

*The Fair Housing Act defines "handicap" as a person who has "a mental or physical impairment which substantially *910 limits one or more of such person's major life activities." 42 U.S.C. § 3602(h)(1); Evans v. Zoning Hearing Board of Borough of Spring City, 732 A.2d 686, 692 n.6 (Pa. Cmwlth. 1999). Neither party seems to dispute that recovering addicts are considered to be handicapped under the Fair Housing Act. With regard to the same Property at issue, the Third Circuit Court of Appeals has concluded that*

[t]he [Fair Housing Act] defines handicap as "a physical or mental impairment which substantially limits one or more of such person's major life activities ... but such term does not include current, illegal use of or addiction to a controlled substance." 42 U.S.C. § 3602(h). The [Fair Housing Act], therefore, provides that current addicts are not a protected group. However, we have held, consistent with other courts, that recovering addicts are. See Lakeside Resort Enterprises, LP v. [Board of Supervisors] of Palmyra [Township], 455 F.3d 154, 156 n.5 (3d Cir. 2006) ("We note that at least two other courts have held that recovering alcoholics and drug addicts are handicapped, so long as they are not currently using illegal drugs.").

Cornerstone Residence, Inc., 754 F. App'x at 91. Relying on *Lakeside Resort Enterprises, LP*, 455 F.3d at 156 n.5, this Court in *Bernstein v. City of Pittsburgh Zoning Board of Adjustment (Pa. Cmwlth., No. 1565 C.D. 2010, filed May 5, 2011)* 2011 WL 10845847 (unreported),⁷⁹ contemplated the same. Here, it seems that the individuals which will be residing on the Property are handicapped as defined by the Fair Housing Act. Cornerstone's application explains that in order to qualify, "individuals must be in recovery from drug or alcohol addiction [and] must not be currently using drugs or alcohol. ..." (R.R. at 16a) (emphasis added). The determination of whether an individual meets this criterion is to be made by a licensed professional. *Id.* Moreover, Cornerstone's application indicates that its role is to ensure all residents are in recovery and are meeting residence standards. *Id.*

The Zoning Officer and the Board recognize that federal law, specifically the Fair Housing Act, prohibits discrimination on the basis of a "handicap", with a "handicap" having essentially the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities, and that individuals recovering from drug and alcohol addiction would be considered as having a disability. If that is shown to be the case, then those individuals may be treated like a traditional family, and the Township must provide reasonable accommodation under the law for drug and alcohol recovery group homes to be located in residential districts. The Board commends the Applicants in their pursuit to provide residential housing to individuals recovering from drug and alcohol addiction. But, to allow overcrowding of the residence is not justified upon consideration for a variance on a hardship basis. With due consideration for a reasonable accommodation, six (6) residents are currently residing in the home, and while with Board surely does not condone the Applicants proceeding to operate the group home without zoning approvals, requiring a reduction in the current residency of the Property would cause an unnecessary hardship, not only to the residents who would have to vacate the home, but also considering the impact on the Applicants regarding the economic viability of the

group home. At the same time, the Applicants provided information regarding the operation of the business of the home, and occupancy by six (6) residents, even with house managers paying reduced rent, will afford the Applicants sufficient income to cover all expenses of the operation of the home, and, at the same, time, recognize an economic benefit and incentive for the owners to continue to operate the home. Therefore, even though the Zoning Ordinance already provides reasonable accommodation to the use of a residential property for the operation of a drug and alcohol recovery house as required by the Fair Housing Act, the relief granted herein is justified, based on the unique economic circumstances of operating this particular group home.

A Zoning Hearing Board is the sole determiner of the credibility of witnesses. Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807 (Pa. Cmwlth. 2005), Tri-County Landfill, Inc. v. Pike Township Zoning Hearing Board, 83 A.3d 488 (Pa. Cmwlth. 2014). The Zoning Hearing Board has discretionary power to determine whether a party has met its burden of proof. Broussard v. Zoning Board of Adjustment, 831 A.2d 764 (Pa. Cmwlth. 2003), affirmed on appeal @ 589 Pa. 71, 907 A.2d 494 (2006), Cohen v. Zoning Board of Adjustment of the City of Philadelphia, 276 A.2d 352 (Pa. Cmwlth. 1971) The Board determines that the Applicant met its burden of proof only to the extent determined by the Board, and such determination is surely within the discretion of the Board.

IV. CONCLUSIONS OF LAW

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application.
2. The Applicants are the legal owners of the Property in question.

3. The Applicants and the subject matter are properly before the Board. The Applicants have standing to submit the Application. The Objectors have standing to oppose the Application

4. Hearing notices were duly published and posted in accordance with law, by advertisement in the newspaper and posting on the Property.

5. The appeal of the Zoning Officer's determination was not filed within thirty (30) days of the Notice of Violation and, therefore, the Applicants' appeal of the Zoning Officer's determination was untimely under Section 914.1(b) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10914.1(b), as a matter of law, and is therefore properly denied.

6. The Zoning Officer was correct in his interpretation of the Code, the Applicants did not contest that fact at the hearings, and, therefore, the Zoning Officer's determination and Enforcement Notice are properly upheld as a matter of law.

7. With reference to the use variances requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following as a matter of law:

- (A) There are no unique physical circumstances or conditions peculiar to the particular Property justifying the use of the Property for twelve (12) residents, however, since six (6) residents are currently occupying the Property, a reasonable accommodation to allow two (2) more residents than allowed by Special Exception under the Zoning Ordinance would justify granting the use variances so as to permit six (6) residents recovering from

drug and alcohol addiction to occupy this particular home, on the basis of hardship.

- (B) The Property can be reasonably used as a group home for six (6) residents, and therefore, the authorization of the use variances for twelve (12) residents is not necessary to enable the reasonable use of the Property.
- (C) The alleged hardship to accommodate twelve (12) residents has been created by the Applicants by proposing to use the Property greatly in excess of the reasonable and legal occupancy of the Property, but a reasonable accommodation to the Applicants requires the Board to recognize a hardship so as to permit the six (6) residents currently living in the home to remain, and for occupancy to continue for up to six (6) residents, in order for the Applicants to have the financial ability to continue to operate the group home on the Property.
- (D) The granting of the variances, as limited in this Decision, will not alter the essential character of the neighborhood, nor would the relief granted substantially impair the use or development of adjacent property, or be detrimental to public welfare. On the other hand, granting of variances to permit twelve (12) residents in the home would fundamentally alter the essential character of the neighborhood, would represent a substantial and unjustified departure from the zoning scheme anticipated by the Zoning Ordinance, would substantially impair the use or development of adjacent property, and would be detrimental to public welfare.

(E) The variances requested to allow twelve (12) residents are not the minimum variances to afford relief under the circumstances, however, the variances granted to allow six (6) residents are the minimum variances to afford relief.

8. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the variances to permit the occupancy by twelve (12) residents would be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship, as a matter of law, to require the granting of variances to that extent.

9. However, granting the variances to permit the occupancy by six (6) residents would not be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance would result in unnecessary hardship, as a matter of law, if such a reasonable accommodation were not granted.

10. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action, and determines the following as a matter of law:

(A) The Property is not suitable for the use by twelve (12) residents, which use would be contrary to the spirit, purpose and intent of the Zoning Ordinance. However, if the Applicants comply with the conditions set forth in this Decision, the Property would be suitable for use by six (6) residents, and therefore, the limited variances granted are consistent with the spirit, purpose and intent of the Zoning Ordinance.

(B) The relief for the use by twelve (12) residents will injure or detract from the use of neighboring property and from the character of the neighborhood, and considering the intensity of the proposed use, the neighboring properties will not be adequately

safeguarded. However, if the Applicants comply with the conditions set forth in this Decision, the use by six (6) residents will not injure or detract from the use of neighboring property or from the character of the neighborhood, and the neighboring properties will be adequately safeguarded.

(C) The proposal for use by twelve (12) residents will not serve the best interest of the Township, the convenience of the community, and the public welfare. But, the use by six (6) residents will serve the best interest of the Township, the convenience of the community, and the public welfare.

(D) There will not be an adverse impact upon the public services of police and fire protection by the proposed use if the use is limited to six (6) residents, provided the Applicants comply with the conditions imposed herein.

(E) If relief were completely denied, the application of the provisions of the Zoning Ordinance would deprive the Applicants of the reasonable use and development of such Property for the legitimate use as a group home.

(F) The circumstances for which the variances are sought, whereby a reasonable accommodation should be granted, do not result from general conditions in the zoning district in which the Property is located.

11. The provisions of the Zoning Ordinance do not impose an unnecessary hardship to provide for twelve (12) residents, but to deny relief so as not to reasonably accommodate six (6) residents, would cause an unnecessary hardship, and, therefore, the variances should be denied as requested, but granted to the limited extent as set forth in this Decision.

V. OPINION

Upon consideration of the evidence and testimony presented regarding the Application, the Zoning Hearing Board of Worcester Township determines that the Application should be granted in part and denied in part. The Board therefore enters the following Order.

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF
GARY AND JAMIE BERG**

**NO. 2021-01
APPLICATION FOR
VARIANCES**

ORDER

(1) The appeal of the Zoning Officer's Notice of Zoning Violation and related determinations dated January 5, 2020 (sic), issued January 5, 2021 and received by the Applicants on January 9, 2021 is **DENIED**, and the Zoning Officer's Notice and related determinations are upheld, for two (2) reasons:

(A) The Applicants failed to file an appeal of such Notice and related determinations within thirty (30) days as required under Section 914.1(b) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10914.1(b).

(B) The Zoning Officer's Notice and related determinations were correct on a substantive basis in accordance with the provisions of the Worcester Township Zoning Ordinance.

(2) The variances requested from the definition of "Family" under Section 150-09, and the use provisions under Section 150-110.22 of the Zoning Ordinance are **DENIED** in part to the extent that the variances requested would have allowed for twelve (12) residents in the home, but **GRANTED** in part so as to permit the operation of the drug and alcohol recovery group home on the Property limited to six (6) residents.

This Decision is subject to the following conditions:

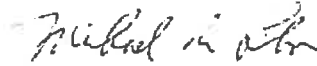
1. The Applicants shall apply for and obtain all applicable Township, County and State permits, and approvals, relative to the use in a timely manner.
2. All use and development permitted by this Decision and Order shall conform to the exhibits and testimony presented by the Applicants, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
3. Within thirty (30) days of this approval, the Applicants shall submit applications to the Township for permits for any work performed on the Property in order to adapt the use of the Property to a group home, allow the Township to inspect the work performed, comply with all requirements of the Township regarding such work and permits, including installing any electrical upgrades and/or fire safety measures as required, and obtain all required permits from the Township for the use. The Applicants shall also provide proof to the Township that the well on the Property produces potable water sufficient for the occupancy permitted, within thirty (30) days of this approval.
4. Within sixty (60) days of this approval, the Applicants shall apply for and obtain all approvals related to the good operation of the onsite septic system for the occupancy permitted in compliance with all current regulations, follow testing protocols regarding percolation rates under the guidance of a soils scientist, and under the supervision of the Department of Health, make upgrades and improvements as required, and provide proof of same to the Township. If the septic

system fails to be so certified, the Applicants shall cause the Property to be connected to public sewer.

5. As soon as available, the Applicants shall seek, obtain, and maintain in good standing licensure, certification and/or applicable credentials from the Commonwealth of Pennsylvania for the operation of a drug and alcohol recovery house, and provide a copy of such license, certification and/or credentials to the Township.
6. The operation of the group home shall be limited to adults, minimum 18 years of age, recovering from alcohol and drug addiction. The Applicants shall, at all times, limit the maximum occupancy at the Property to a total of six (6) residents, including house managers.
7. There shall be no occupancy of the third floor, the basement of the house, or any accessory buildings on the Property for overnight accommodations.
8. The Applicants shall provide to the Township a 24 hour/7 day emergency contact name and number, as well as secondary contact name and number.
9. The Applicants shall not operate any other business from the Property, and shall not use, store or keep any business vehicles, equipment, or materials associated with the Applicants' landscaping business (or any other business) on the Property, other than one (1) passenger van, to be used for transportation by any residents of the house employed by the Applicants' landscaping business.
10. To the extent permitted by law, the Applicants shall obtain and maintain a criminal history record for the residents prior to commencing residency in the house.
11. There shall be no outdoor activities on the Property from 11:00 PM until 6:00 AM.

12. There shall be no sign(s) posted on the Property visible to the public indicating that the use of the Property is for a group home, nor shall there be any sign(s) posted on the Property visible to the public with the "Recover and Renew Homes, Inc." name or any other name by which the Applicants operate the group home, or any other business the Applicants operate, such as the landscaping business.
13. Except as permitted by this Decision and prior Decisions of this Board, the use of the subject Property shall otherwise comply with the Worcester Township Code, including, but not limited to, all storm water management, trash, recycling, storage, fencing, setback, parking, lighting, sign, and noise regulations, and all other codes, regulations and ordinances of Worcester Township.
14. This approval shall be subject to the expiration provisions of Section 150-225 of the Worcester Township Zoning Ordinance.

WORCESTER TOWNSHIP ZONING HEARING BOARD



Michael Libor, Chair

Caesar Gambone, Vice Chair



John D'Lauro, Secretary

Alternate

Bradford Smith

Order Entered:

7/19/21

Circulation Date:


7/19/21

This Decision and Order of the Board is final and any appeal of it must be filed with the Court of Common Pleas of Montgomery County within thirty (30) days following the Circulation Date set forth above.

The Board reserves the right to supplement these Findings of Fact and Conclusions of Law in support of this Decision if an appeal is filed.

WORCESTER TOWNSHIP ZONING HEARING BOARD

Michael Libor, Chair



Caesar Gambone, Vice Chair

John D'Lauro, Secretary

Alternate
Bradford Smith

Order Entered: _____

Circulation Date: _____

This Decision and Order of the Board is final and any appeal of it must be filed with the Court of Common Pleas of Montgomery County within thirty (30) days following the Circulation Date set forth above.

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