

**BOROUGH OF CLARKS SUMMIT
304 SOUTH STATE STREET
CLARKS SUMMIT, PENNSYLVANIA 18411**

**ZONING HEARING BOARD
Tuesday, June 11, 2019
7:00 P.M.**

The Board of Zoning Appeals held a duly advertised meeting on Tuesday, June 11, 2019 at 7:00 PM. The Meeting was held in Borough Council Chambers, 2nd Floor, 304 South State Street, Borough of Clarks Summit, County of Lackawanna and Commonwealth of Pennsylvania.

Chair Mr. John Kazista called the meeting to order and recording secretary, Ms. Virginia Kehoe, called the roll.

Present: Mr. John Kazista, Mr. Geoff Brock, Solicitor Robert Sheils, Recording Secretary Virginia Kehoe, Code Enforcement Officer Jenn Basalyga, and Stenographer Nicole Pizarski. Mr. Joe Axtell and Mr. John Jeffrey were both absent from the meeting.

John Kazista stated that they have two board members but they typically have three. They can conduct the meeting with 2 people.

1. APPROVAL OF AGENDA:

2. APPROVAL OF MINUTES:

2/12/19

3. NEW BUSINESS:

1st Hearing:

2019-03 Request for Special Exception –

Keystone Independent Living, Inc, 320 Tulip Circle, Clarks Summit, PA
Ordinance 2002-01 Section 404.3 1102.0, 1108.3, 1108.7, 605.8 Group Home by
Special Exception
Tax ID #10016-010-01400

2nd Hearing

2019-04 Request for Appeal –

Jean Brown, 304 Primrose Drive, Clarks Summit, PA
Ordinance 2002-01 Section 404.3, Part 2 as amended by Ordinance 2017-01 Item
3, minimum lot width of 120'
Tax ID # 10016-010-015

For the first hearing: Keystone Independent Living, Jenn Basalyga was sworn in:

DATE: June 11, 2019

FROM: Jenn Basalyga

Code Enforcement Officer

TO: Zoning Hearing Board

RE: Keystone Independent Living, Inc

Owners – Keystone Independent Living, Inc., 100 Abington Executive Park, Suite B,
Clarks Summit, PA 18411

Applicant – Same

Location – 320 Tulip Circle

Tax Map # 10016-010-01400

Zoning District – R1

The hearing was advertised in The Scranton Times on May 29, 2019 and June 2, 2019.

All four corners of the property were posted on May 30, 2019.

Ordinance 2002-01 Section 404.3, 1102.0, 1108.3, 1108.7, 605.8 Group Home by Special
Exception

In an R-1 Low Density Residential District Schedule of Uses, A Group Home is listed as a Special Exception. In Section 912.1 Zoning Hearing Board Functions; Special Exception stated that where the governing body, in the zoning ordinance, has stated special exceptions to be granted or denied by the board pursuant to express standards and criteria, the board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the board may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Attorney Matt Barrett represents Keystone Independent Living. They are seeking a special exception. Laura Brown-Yadlosky, President and CEO of Keystone Independent Living was sworn in. She has been President and CEO for 5 years located at 100 Abington Executive Park. She stated the applicant seeking an approval for a special exception for a property located at 320 Tulip. They have already purchased the property. Ms. Brown-Yadlosky stated that they operate group homes for adults with intellectual disabilities and autism. They intend to serve those people in that home. They do the same at other homes in Lackawanna County. Attorney Barrett stated that years ago a lot of people were institutionalized, but as a society we moved away from that with the recognition that society in general and the folks they serve are better served by living in a community, not in a restricted environment. As a result a lot of folks live with their families in these communities; the school districts provide services to them up until the age of 21. Ms. Brown-Yadlosky stated that a typical admission to Keystone would be from a family, where a caregiver is no longer able to care for their child. Therefore, they are looking for a placement of their child in a community home. They operate 60 community homes and 99% of them are in Lackawanna County. They constantly have a

wait list for services. They are looking to place 4 residents/clients at 320 Tulip Circle. The staffing would be at least 1 staff on every shift, most have two, someone is there 24 hours 7 days a week. Staff members work, they do not sleep. The residents do not have driver's licenses because of their disability. So clients would not have vehicles, the staff would. They could accommodate the 1 or 2 staff members parking at the house. They are inspected every year by the Commonwealth of PA. The residents would become a part of the community. The home itself would not change on the outside. Solicitor Bob Sheils asked for a copy of their license to operate. They would provide that. They have a facilities team that maintains the home. John Kazista asked about federal requirements imposed on states or municipalities as to what the fed. govt. allows in situations like this. Attorney Barrett stated that The American's with Disabilities Act as well as the Federal Fair Housing Act, applies in this situation. They must be treated the same as everybody else. This is not a halfway houses and it is not associated with the criminal system where anyone is placed. It is not a place where people with chronic addition to drug or alcohol. These are people that are entitled to a waiver program due to their intellectual and developmental dishabilles. The residents would live there for the rest of their life. It is their life long home that is the intent of the service. These individuals either come from a school setting or their home. They are living with us and among us in society on a regular basis. There is no one there that would be considered a threat to the community. John Kazista stated that a group home is a permitted use they just have to go with the process as a special exception and voted as to whether or not it can be allowed and it is governed by laws that have nothing to do with Clarks Summit.

John Kazista asked if anyone at the meeting was there in favor of the group home. No one was there in favor of it.

Attorney Michael O'Brien spoke. He was there to represent the Tierney's. He referenced Section 1108.4, Standards and Criteria governing any special exception, any conditional use in Clarks Summit. It is up to the applicant to provide this information. Attorney O'Brien read from the borough ordinance 1108.4, no application should be approved unless it is found that in addition to complying with each of the standards enumerate above. 1108.4 F states that the applicant shall supply evidence regarding compliance with the express standards and criteria contained herein. They have not heard anything about a comprehensive plan as stated in the ordinance. The applicant needs to show that there is a community need at the site proposed. Attorney O'Brien stated that Attorney Barrett has not shown that the proposed location is not better suited as a single home. That was not addressed. Attorney O'Brien presented information on a case in the Pennsylvania Commonwealth Court vs the Children's Service Center in the city of Wilkes Barre ZHB. This was a case about an application for a special exception for a group home facility in an R-1 zone. In that case Children's Service Center, the ZHB determined that this particular proposed use was inconsistent with the zoning ordinance. In that case the applicant had a real estate appraiser who testified that this group home would not have an adverse impact on surrounding property values. Despite that the ZHB still said that it would be inconsistent with the standards and criteria governing special exceptions. They believed that it would substantially impair the values of the other properties in the neighborhood. It would have a negative effect on the marketability of

the neighboring properties. It would have an adverse effect on the neighboring properties. Attorney O'Brien stated that this applicant has not shown that this proposed use will not have an adverse impact on the property values of neighboring homes. He submits that not meeting every single one of the specific criteria, this application cannot be approved.

Solicitor Sheils asked if the decision stated above was appealed by Commonwealth Court. Solicitor O'Brien stated that this was a not published opinion, so it is persuasive in value, instead of precedent. He doesn't know if it was appealed but he knows that it wasn't over ruled. The vote on the ruling was 2-1. Attorney Barrett stated that this case is not controlling in Pennsylvania because it is an unreported decision also that was for a group home including 13-21 year olds, and there would be up to 8 people living in the home. Attorney Barrett stated that there seems to be some kind of suggestion that 4 disabled people living in a home can somehow negatively impact the values of the surrounding properties. He does not know why that inference or suggestion would be out there no more than if anyone else bought a house. Attorney Barrett stated that the American Disabilities Act clearly protects all persons with disabilities. The people that they are referring to are serviced because in fact they do have disabilities and as such they cannot be discriminated against and or treated any worse than the rest of us. The law doesn't allow the differential between 4 disabled vs 4 able bodied people living in a house. All people are to be treated equally. This falls within the Borough ordinance as within an acceptable number.

Jill Reeves, Winola Road was sworn in. She stated that she worked at Keystone and she enjoyed her job. Her daughter lives at 323 Tulip Circle. Abby Reeves lives at 323 Tulip Circle, was sworn in. She was concerned about the safety. How do they know the children are safe? Attorney Dave Brown was sworn in, he represents Jean Brown who lives at 308 Primrose Avenue. Her vacant lot adjoins the location in question. He is trying to sell his mother's home and vacant lot, he feels like the sale will be more difficult if this use is permitted in this location. This use will have a substantial and adverse effect on the character of the neighborhood. He stated that there has been no testimony to support community needed for this facility. There is a driveway at the home. It is a two car driveway. Presumably there will be other vehicles involved and where would they park. There would be enough parking for the employees. Brad Smith, 507 Tulip Circle was sworn in. Mr. Smith stated that the group home would decrease the property values in this mature neighborhood. There is a concern with the increased traffic with families visiting and deliveries. He is concerned about inadequate staffing at all times; this is essentially a business in a residential neighborhood. He is concerned about alarms if someone escapes. He would like reassurance from the borough that this will not lead to halfway homes etc. David Bei, 321 Tulip Circle was sworn in. The assessor's office lists 6 group homes in Lackawanna County as opposed to 60. Michael Rosiecki, 306 Primrose Drive was sworn in. Dr. Rosiecki lived in this house for 40-45 years. There are very few fences. The concern is a safety factor for the residents and grandchildren. He stated that the residents of the group home will sneak out of the house during the daytime maybe in the evening. He stated that it is impossible to watch them all the time. While he was on a walk in South Abington, Dr. Rosiecki stated that he saw mentally challenged

individuals with help. Every so often one would go their own way. Someone would have to run after them and bring them back. Dr. Rosiecki asked if one of them got out at night and was walking around and looking through the windows in your house. Also, there is a liability with pools. If they get over the fence and there is a catastrophe, the owner is liable. This is the nature of problems that could arise. He is concerned about his property value. Dr. Rosiecki stated that in one of Keystone's brochures, discussed one of the disabilities that can result in difficulties at home or in a residential setting. He doesn't want this in his neighborhood. Solicitor Sheils questioned Dr. Rosiecki asking him if the issue is that he doesn't want these people in his neighborhood because they have disabilities. Dr. Rosiecki stated that he thinks they have disabilities that they have a difficult time controlling. They can react a certain way if they get a little wound up which he states falls back to the safety issue. Solicitor Sheils stated that the Federal Government has enacted a certain amount of laws against discrimination and they are bound by those and the Borough ordinance. Cheryl Tierney, 514 Tulip Circle was sworn in. She stated that she has been a resident of the borough for over 40 years. She does not think having a group home is consistent with the character of the neighborhood and she thinks it will decrease the value of their home. The traffic will be increased, there are a lot of kids in the neighborhood and she is concerned about that. Also, she sees this as a business. Valerie Clark, 319 Tulip Circle, was sworn in. Ms. Clarks stated that she is an advocate for people with disabilities and she walked into the meeting with an open mind. She stated that it is not about a group home. It's about have we met the zoning law in Clarks Summit. Carol Rosiecki, 306 Primrose was sworn in. Ms. Rosiecki stated that she lives in very close proximity of the home. She is concerned about safety for her children and grandchildren. She asked if the number can increase in that home. The answer is no, and they would be supervised 24 hours a day, 7 days a week. She asked how many residents in the group homes walk out and wander around the neighborhoods. Ms. Brown-Yadlosky stated that there are door chimes that alert staff if someone is attempting to leave the home. You cannot hear the chimes outside. Then they have protocols in place to immediate respond. They always have a team on call 24 hours a day 7 days a week to respond. There are clinicians on call also. This is one of the least of their problems with residents. Vincent Lakatos, 410 Primrose Drive, was sworn in. He agrees with Attorney O'Brien and the other residents in the neighborhood. Natalie Smith, 502 Tulip Circle, was sworn in. She agrees that the criteria should be followed to the full extent for a special exception. Attorney Barrett asked Ms. Brown-Yadlosky about how many group homes are in Lackawanna County. She stated that in Keystone Community Resources is the parent company and they have 54 homes. Some homes are rented and some are owned. They have a facilities team that maintains the home. Tricia Honig, 504 Tulip Circle was sworn in. She asked what their biggest concern is with the residents in a group home. Ms. Brown-Yadlosky stated that the biggest concern is with the resident's diet issues. Many of the residents are on special diets so the staff is on top of this to make sure there aren't any choking is issues. Ms. Honig stated that she agrees with the neighbors and she is opposed to the group home. Attorney Barrett stated that the borough ordinance was passed in 2002. He stated that a group home is a permitted use subject to the criteria. Attorney Barrett said that when someone says that's not a family, a person with an intellectual or developmental disability doesn't necessarily have a family like you and I might have, but it's a family none the less. What they are talking

about is residential living in a residential neighborhood. Erin Lakatos, 410 Primrose was sworn in. She does agree with Attorney O'Brien, as it is business for profit in a small knit family neighborhood. She asked if they would petition for more residents to live in the house. Ms. Brown-Yadlosky stated that for this home the limit is 4. She stated that there was a petition that went around the neighborhood and they will submit it.

The ZHB took a brief recess

The meeting resumed. Solicitor Sheils stated that the ZHB is very concerned with the points and concerns that Attorney O'Brien has brought up regarding the granting of a special exception. They suggest that the meeting be continued to allow the applicant to address the 1108 concerns brought up. That is if the applicant would waive the 45 day limit on the opinion. Attorney Barrett stated that they can try to satisfy concern. He stated that there are many sections of 1108 that don't apply. Solicitor Sheils stated that specifically Ordinance 1108.4, Standards and Criteria Sections A-F need to be addressed. The board would like to avoid a hefty reapplication fee.

The board took a brief recess

The meeting resumed. Attorney Barrett stated that in response to Solicitor Sheils question, they would agree to a continuance until the next meeting, they will not hold the board to a decision within 45 days. They feel somewhat constrained by the idea that this residence which is a residence in a neighborhood is somehow different from a single family residence. They have grave concerns about what is being requested of them, but they understand the request. They can meet again on August 13, 2019.

2nd Hearing:

2019-04 Request for Appeal –

Jean Brown, 304 Primrose Drive, Clarks Summit, PA

Ordinance 2002-01 Section 404.3, Part 2 as amended by Ordinance 2017-01 Item 3, minimum lot width of 120'

Tax ID # 10016-010-015

Jenn Basalyga, Zoning Officer was sworn in.

DATE: 06/11/2019

FROM: Jenn Basalyga

Code Enforcement Officer

TO: Zoning Hearing Board

RE: Jean Brown

Owners – Jean Brown, 308 Primrose Drive, Clarks Summit, PA 18411

Applicant – Same

Location – 304 Primrose Drive

Tax Map # 10016-010-015

Zoning District – R1

The hearing was advertised in The Scranton Times on May 29, 2019 and June 2, 2019. All four corners of the property were posted on May 30, 2019.

2019-04 Request for Appeal: Ordinance 2002-01, Section 404.3, Part 2 as amended by Ordinance 2017-01, Item 3, minimum lot width of 120 linear feet.

Ordinance 2002-01 Section 911.1 Single Family Dwelling: "A single-family dwelling may be erected or expanded on any lawful non-conforming lot of record in any District, provided: (Adjoining Property) The lot owner does not own adjoining property, nor has owned such property within the 12 month preceding the effective date of this Ordinance, which can be combined to make the lot conforming." In this case, Jean Brown does own the adjoining lot at 308 Primrose Drive.

Ordinance 2017-01, Item 3: Amend Part 2 of the Schedule of Development Standards in 404.3 to read as follows. Where the minimum lot size required in Part 1 in square feet is 6,000-12,000 or more, the minimum lot width in feet must be 120'. The applicant is appealing the determination of the Code Enforcement Officer that the lot in question located on Primrose Drive, is not a buildable lot because the width on the street is 43.11 linear feet while the Zoning Ordinance requires 120'.

Attorney Dana Zlotucha was sworn in to represent Mr. Brown. They are seeking a determination based on a clear reading of the ordinance that the lot in question is a conforming lot and therefore a buildable lot. The ordinance requires a minimum of 120 feet in width. The ordinance defines width as the average between the width at the setback and the width at the rear property line. The width as defined in the ordinance does meet the 120 feet based on their survey map. Dave Brown was sworn in. He was there on behalf of Jean Brown his mother and power of attorney. They entered a document that shows the power of attorney. His mother lives at an assisted living facility, she is not able to make it to the meeting. He presented his appeal. Mr. Brown stated that his mother is trying to sell her home at 308 Primrose Drive along with her adjoining unimproved lot which would be 304 Primrose. He contacted the borough and he was informed that the road frontage didn't meet the ordinance. Lot Width is a defined term and it is different than the frontage. Lot width is defined as the average of the width of the lot at the building setback line and the rear lot line. It's the average of those two lines. For a lot with a 10,000 square foot designation, the minimum lot width changed with from 90 square feet to 120 square feet in the borough ordinance. Solicitor Sheils stated that when the Brown's purchased this property there were no ordinances. The first ordinance was in 1982. Mr. Brown's mother's property is in the R-1 district where the required lot width is 120 feet, 100 foot depth, square footage in 10,000 range. The actual street frontage is 43.11 linear feet. The minimum setback is 35 feet. The lot width is 75.23 feet. The average lot width for this property is 120.39. The square footage of the property is 13, 613 square feet. He stated that he believes he meets the requirements of the ordinance. John Kazista stated that Floral Park has been there a long time and most of the lots were built with similarly shaped lots.

The board had an executive session

The board returned from their executive session

The ZHB voted: John Kazista voted yes and Geoff Brock voted yes. The motion passed and the request was approved.

4. PUBLIC COMMENT/INPUT:

5. ADJOURNMENT:

Geoff Brock made the first motion to adjourn, seconded by John Kazista, vote was unanimous.