

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

**MONTGOMERY COUNTY, PA**

**APPLICATION OF HARPREET SALUJA**

**APPLICATION NO. 2023-10**

**PROPERTIES: 657, 665, and 671 S. GULPH ROAD**

**TAX PARCEL NOS. 58-00-17299-00-4; #58-00-17296-00-7; 58-00-17293-00-1**

**DECISION**

The Zoning Hearing Board of Upper Merion Township (“ZHB”) considered an application for variances to permit seven additional dwelling units and more than one driveway per parcel on applicant’s property. The applicant failed to prove entitlement to the grant of relief. The ZHB voted to deny the application.

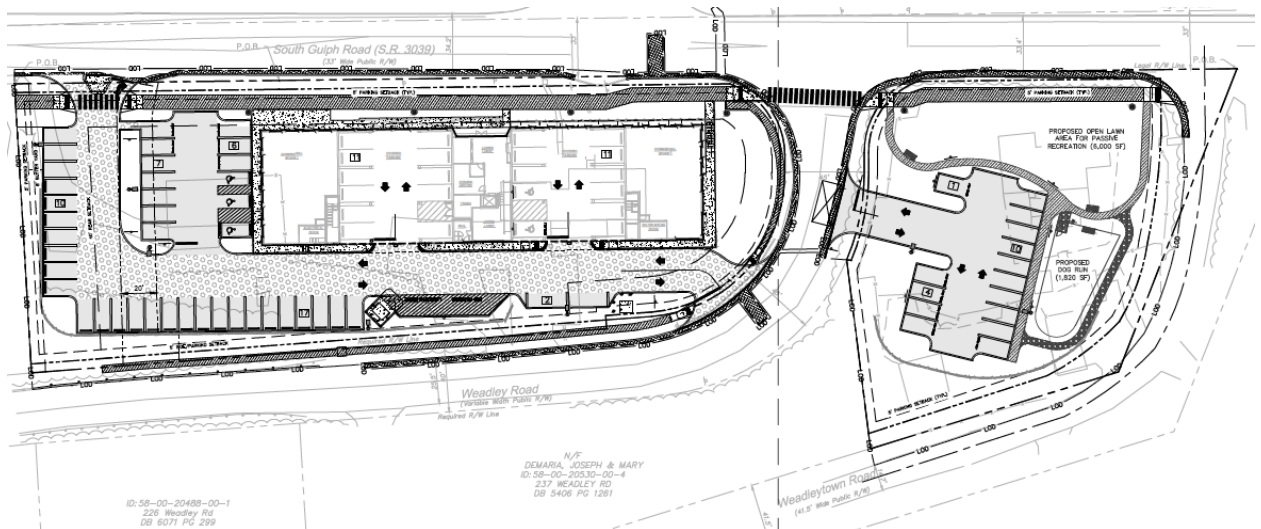
Harpreet Saluja (“Landowner”) is the record owner of three adjacent properties: 657 S. Gulph Road (“Parcel A”) tax parcel no. 58-00-17299-00-4; 665 S. Gulph Road (“Parcel B”), tax parcel no. 58-00-17296-00-7; and 671 S. Gulph Road (“Parcel C”), tax parcel no. 58-00-17293-00-1) (collectively the “Property”). [ZHB-14] The Property comprises a total of 2.2 acres and is located in the NMU Neighborhood Mixed-Use (“NMU District”) of Upper Merion Township (“Township”).<sup>1</sup> Parcels A and B are abutting. Parcel C is separated by a public road from Parcels A and B.

The below excerpt from Landowner’s site plan (ex. A-5) depicts Landowner’s proposal to consolidate the three parcels and develop on Parcel A and Parcel B a 3-story mixed-use building containing 4,927 sq. ft. of retail space on the first floor and 40 multi-

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<sup>1</sup> Parcel A is a 30,600 square foot lot, Parcel B is a 37,800 square foot lot, and Parcel C is a 38,700 square foot lot. (See ex. ZHB-14)

family dwelling units on the second and third floors. Parcel C will contain 15 parking spaces, approximately 11,000 sq. ft. of passive recreation and a dog park.



Section 165-122 of the Upper Merion Township Zoning Ordinance of 1942, as Amended (the “Zoning Ordinance”), provides that residential density shall not exceed 15 dwelling units per acre of lot size. Section 165-115.1(A) of the Zoning Ordinance provides that no more than one driveway access shall be permitted per parcel, unless the landowner can demonstrate that additional access is required for safety. Landowner requires variances from the maximum residential density to permit 40 dwelling units where 33 dwelling units are permitted and to allow three driveways on the Property.<sup>2</sup>

Landowner submitted a previous zoning application to the ZHB for the Property in the fall of 2022 requesting a variance from Section 165-122 to allow a density of 16.2 dwelling units on a 2.47 acre property, and a variance from Section 165-115(A) to permit

<sup>2</sup> In addition to the requested variances from section 165-122 and section 165-115.1(A), Landowner’s ZHB application requested variances from section 165-114.A(2) of the Zoning Ordinance to permit a sidewalk of four feet in width, and from section 165-195 of the Zoning Ordinance to permit one off-street loading space for a building with a gross floor area in excess of 40,000 square feet. By letter dated September 29, 2023 (Ex. ZHB-17), Landowner withdrew the request for variances from section 165-114.A(2) and section 165-195.

parking in the front yard. By decision dated October 3, 2022, the ZHB granted the variances subject to conditions (“October 2022 Decision”). Subsequent to the October 2022 Decision, Landowner proceeded with a survey of the Property which revealed the total area of the Property is 2.2 acres rather than 2.47 acres.

On August 16, 2023, and October 18, 2023, the ZHB held advertised public hearings on Landowner’s application. The following members of the ZHB were present at the hearings: Vivian Peikin, Esq., Chairperson; Mark S. DePillis, Esq., Vice Chairperson; Hedda Schupak, Secretary; M. Jonathan Garzillo, member; and Chiragi Raval, alternate member. The ZHB was represented by Marc D. Jonas, Esq. of the law firm of Eastburn and Gray, P.C. The applicant was represented by Robert L. Brant, Esq. of the law firm Robert L. Brant & Associates.

Upper Merion Township, represented by its solicitor John Walko, Esq., of the law firm Kilkenny Law, LLC, appeared in opposition to the application. Neighboring property owners, James Lyren, represented by George J. Ozorowski, Esq., of the law firm Hughes, Kalkbrenner & Ozorowski, LLP; Gretta Lamosa; and Thomas Pagnotti appeared in opposition to the application and were granted party status.

The hearings were duly advertised, notice was given in accordance with the requirements of the Zoning Ordinance, and the proceedings were stenographically recorded. Since the application was denied, the ZHB issues this decision with findings of fact, conclusions of law, and reasons.

After careful consideration of the evidence presented, the ZHB makes the following findings of fact and conclusions of law.

**A. FINDINGS OF FACT**

**BACKGROUND**

1. Landowner is the record owner of the Property. [Ex. A-2]
2. Parcel A is identified as tax parcel no. 58-00-17299-00-4; Parcel B is identified tax parcel no. 58-00-17296-00-7; and Parcel C is identified as tax parcel no. 58-00-17293-00-1. [Ex. ZHB-14]
3. The Property is located in the Township's NMU District. [Ex. ZHB-1]

**ZHB HEARING**

4. The ZHB marked the following exhibits:
  - a. ZHB-1 – application and addendum;
  - b. ZHB-2 – letters from the former property owners;
  - c. ZHB-3 – deed to 657 S. Gulph Rd. dated March 31, 2004, between Lisa A. Lee and Eva L. Eyth (grantors) and James and Lisa Lee (grantees), recorded in deed book 5505, page 01061;
  - d. ZBH-4 – deed to 665 S. Gulph Rd. dated September 5, 2008, between John Tallman, Jr., and Brock Riffel (grantors) and 665 S. Gulph L.P. (grantee), recorded in deed book 5706, page 02865;
  - e. ZHB-5 – deed to 671 S. Gulph Rd. dated December 20, 2018 between Stanley Hart (grantor) and Jourey and Joelle Newell (grantees), recorded in deed book 6121, page 01722;

- f. ZHB-6 – agreement of sale for 657 S. Gulph Rd. dated February 17, 2022, between James and Lisa Lee (sellers) and Hapreet Saluja (buyer);
- g. ZHB-7 – agreement of sale for 665 S. Gulph Rd. dated February 17, 2022, between 665 S. Gulph L.P. (seller) and Hapreet Saluja (buyer);
- h. ZHB-8 – agreement of sale for 671 S. Gulph Rd. dated February 17, 2022, between Jourey and Joelle Newell (sellers) and Hapreet Saluja (buyer);
- i. ZHB-9 – redacted addendum to agreement of sale for 657 S. Gulph Rd. dated November 15, 2022, between James and Lisa Lee (sellers) and Hapreet Saluja (buyer);
- j. ZHB-10 – redacted addendum to agreement of sale for 665 S. Gulph Rd. dated November 15, 2022, between James and Lisa Lee (sellers) and Hapreet Saluja (buyer);
- k. ZHB-11- redacted addendum to agreement of sale for 671 S. Gulph Rd. dated November 15, 2022, between James and Lisa Lee (sellers) and Hapreet Saluja (buyer);
- l. ZHB-12 – sketch plan entitled “Proposed Mixed-Use Development,” prepared by BL Companies, dated July 14, 2023;
- m. ZHB-13 – photographs of 657, 665, and 671 S. Gulph Road;
- n. ZHB-14 – MCBA property records and tax map;
- o. ZHB-15 – Google Maps aerial image;
- p. ZHB-16 – legal notice dated August 16, 2023;

- q. ZHB-17 – letter from Robert Brant, Esq. dated September 29, 2023;
- r. ZHB-18 – letter from Robert Brant, Esq. dated October 3, 2023;
- s. ZHB-19 – email from John Walko, Esq., solicitor for Upper Merion Township, regarding the application of Harpeet Saluja.

5. Landowner marked the following exhibits:

- a. A-1 – application;
- b. AA-1 – Google Maps aerial image;
- c. A-2 – deeds to Parcel A, Parcel B and Parcel C;
- d. AA-2 – letter dated September 29, 2023;
- e. A-3 – CV of Jose Lazo, P.E.;
- f. A-4 – CV of Cory H Greene, P.E.;
- g. A-5 – site plan;
- h. A-5(A) – sketch plan;
- i. A-6 – ZHB Decision and Order dated October 3, 2022;
- j. A-7 – Transportation Impact Study prepared by Kimley-Horn Associates, Inc.

6. Landowner testified in support of the application, in pertinent part, as follows:

- a. Landowner intends to develop the Property with a 3-story mixed-use building containing 4,927 sq. ft. of retail space on the first floor and 40 multi-family dwelling units on the second and third floors. [N.T. 8/16/2023, p. 13]

- b. Landowner previously submitted an application for variances to the ZHB, and by decision dated October 3, 2022, the ZHB granted a variance from section 165-112 to allow a density of 16.2 dwelling units per acre on a 2.47 acre property, and a variance from section 165-115(A) to permit parking in the front yard of the Property. [N.T. 8/16/2023, p. 13; Ex. A-6]
- c. Following the October, 2022, decision, a survey of the Property revealed that the Property was only 2.2 acres, rather than 2.47 acres, requiring additional zoning relief from the ZHB. [N.T. 8/16/2023, pp. 14-15]
- d. A condition of the October, 2022, decision was the consolidation of the three parcels. [N.T. 8/16/2023, p. 28; Ex. A-6]
- e. Consolidation of the parcels prompted the variance request to permit 3 driveways on the Property. [N.T. 8/16/2023, p. 28]
- f. Landowner testified, without evidence, that the 3 driveways are necessary for safety, traffic flow, and to allow access to the Property. [N.T. 8/16/2023, p. 28]
- g. The requested variances are partially attributed to Landowner's not obtaining a survey prior to the previous ZHB application for variances [N.T. 8/16/2023, p. 30], as well as Landowner's personal desire for greater residential density.
- h. The tenants of the retail spaces were not identified. [N.T. 8/16/2023, pp. 29-20]

7. Jose I. Lazo, the registered professional engineer for the project, testified on behalf on the Landowner as follows:

- a. Residents of the multi-use building on Parcels A and B would access Parcel C via a crosswalk across Weadley Road. [N.T. 8/16/2023, p.20]
- b. There will be a driveway access to Parcel A along South Gulph Road, a driveway access to Parcel B along Weadley Road, and a driveway access to Parcel C, also along Weadley Road. [N.T. 8/16/2023, p.35; Ex. A-5]
- c. The majority of traffic will maneuver in and out of the Property from South Gulph Road. [N.T. 8/16/2023, pp.42-43]
- d. Landowner's site plan complies with the condition imposed by the ZHB in its October, 2022, decision requiring that motorists may only turn right from South Gulph Road into the Property, and may only turn right from the Property onto South Gulph Road. [N.T. 8/16/2023, pp. 39, 43]
- e. Landowner will work with the Township' engineer to address safety issues related to access to and from the Property. [N.T. 8/16/2023, p.43]

8. Cory H. Greene, was qualified and admitted as an expert in traffic engineering and testified on behalf on the Landowner as follows:

- a. The site plan presented to the ZHB in 2022, similar to the site plan presented for this application, depicts 3 driveways. [N.T. 10/18/2023, p.22; Ex. A-5; Ex. A-5(a)]



- b. As a condition of approval of the variances granted by the ZHB in the October, 2022, decision, Landowner was to consolidate the Parcels A, B, and C into one parcel. [N.T. 10/18/2023, p.22; Ex. A-6]
- c. In compliance with the condition imposed by the ZHB in the October, 2022, decision, the driveway access along South Gulph Road will have limited turning movements, in that vehicles can only turn right into the Property and right out of the Property. The remaining two access driveways on Weadley Road will be full access driveways with no turn movement restrictions. [N.T. 10/18/2023, p.23]
- d. In Mr. Greene's opinion, the three driveways proposed are required for safe access, egress, and ingress to the Property. [N.T. 10/18/2023, pp. 23; 29]
- e. As a result of interaction with the Township engineer, the site plan submitted to the ZHB in 2022 was revised to shift the driveway along Weadley Road, giving access to Parcel B farther to the east in order to improve sight distance. [N.T. 10/18/2023, p. 25]
- f. Signage is proposed to encourage pedestrians to cross Weadley Road at a crosswalk in order to access Parcel C from Parcels A and B. [N.T. 10/18/2023, pp. 25; 40]
- g. Signage is also proposed to prevent vehicles from blocking the driveway access to Parcel C along Weadley Road when vehicles come to the traffic signal on South Gulph Road. [N.T. 10/18/2023, p. 25]

- h. Landscaping is proposed to discourage pedestrians from crossing Weadley Road near the driveway access to Parcel C. [N.T. 10/18/2023, p. 25]
- i. The sight distances from the driveways on Weadley Road meet the PennDOT sight distance requirements. [N.T. 10/18/2023, p. 26]
- j. If motorists block the driveway access to Parcel C along Weadley Road, it will cause problems for motorists' sight distance, for example, when someone attempts to make a left-hand turn off of Weadley Road toward South Gulph Road. [N.T. 10/18/2023, pp. 40-41]
- k. The proposed multi-use building on Parcels A and B will block the sight distance of motorists on Weadley Road. [N.T. 10/18/2023, p. 41]
- l. If the proposed multi-use building were smaller, there would not be a problem with the sight distance on Weadley Road. [N.T. 10/18/2023, p. 41]
- m. Motorists do not always follow traffic control devices or read signage. [N.T. 10/18/2023, pp. 41-42]
- n. Landowner's Transportation Impact Study concluded that the proposed 40 multi-family dwelling units will generate 38 p.m. peak-hour trips, whereas 36 multi-family dwelling units permitted by the October, 2022, decision would generate 34 p.m. peak-hour trips. [N.T. 10/18/2023, pp. 28-29; Ex. A-7]

o. In response to Mr. Brant's question, "In your opinion, is this difference of four peak-hour p.m. trips de minimis?" Mr. Greene stated "Yes, it is."

[N.T. 10/18/2023, p. 29]

p. The driveway which provides access to Parcel C is necessary to service the 15 parking spaces on Parcel C. [N.T. 10/18/2023, p. 45]

9. The Township raised concerns regarding the proposed density on the Property, since the multi-use building could be developed with less dwelling units.

10. The Township opposed the request for 3 driveways, since the driveway access to Parcel C is due to the proposed density of the multi-use building, and 3 driveways both create a danger to motorists and pedestrians and also adversely affect traffic. [N.T. 10/18/2023, pp. 73-79]

11. James Lyren who resides at 412 Weadley Road, objected to the proposed density of the multi-use building, as it can be developed with less dwelling units. [N.T. 10/18/2023, pp. 79-81]

12. Gretta Lamosa testified regarding the danger to pedestrians crossing Weadley Road to and from Parcel C, and the multi-use building being too large for the Property. [N.T. 8/16/2023, p.48]

13. Thomas Pagnotti objected to both variances, testifying that locating a parking area for the multi-use building across Weadley Road on Parcel C creates a danger for pedestrians crossing Weadley Road. [N.T. 10/18/2023, p. 82]

14. Neither Landowner, nor his witnesses offered evidence of unique physical conditions or characteristics on the Property or other unnecessary hardship requiring the

variance from the maximum density for the Property or the variance from the maximum number of driveways for the Property.

15. The hardship requiring a variance from the maximum density relates to Landowner's personal, economic-based objective to develop 40 multi-family dwelling units, as opposed to 33 multi-family dwelling units in compliance with the Zoning Ordinance. This hardship was created by the Landowner.

16. The hardship requiring a variance to permit 3 driveways on the Property relates to Landowner's need to provide access to parking on Parcel C in order to provide sufficient parking for 40 dwelling units. This also was driven by Landowner's desire to develop 40 multi-family dwelling units as opposed to less units in compliance with the Zoning Ordinance.

17. No evidence was offered by Landowner or his witnesses that the variances sought represented the minimum variance that will afford relief for a reasonable use of the Property.

18. Landowner did not demonstrate that the variances would not be detrimental to the public welfare, including, but not limited to the concerns relating to traffic, site access, and pedestrian safety.

## **B. DISCUSSION**

A zoning hearing board may only grant a variance where:

1. an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions peculiar to the property;

2. because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance and, therefore, a variance is necessary to enable the reasonable use of the property;
3. the unnecessary hardship was not created by the applicant;
4. the variance will not be detrimental to the public welfare; and
5. the variance sought will represent the minimum variance that will afford relief.

53 P.S. § 10910.2(a); Zoning Ordinance §165-251.B.2; *Cope v. Zoning Hearing Bd. of S. Whitehall Twp.*, 578 A.2d 1002, 1005 (Pa. Cmwlth. 1990).

The variance standard is a “high hurdle[ ]” *Omnipoint Comms. Ent. L.P. v. Zoning Hearing Bd. Easttown Twp.*, 331 F.3d 386, n\*11 (3d Cir. 2003). “[T]he reasons for granting the variance must be substantial, serious and compelling.” *Commonwealth v. Zoning Hearing Bd. Susquehanna Twp.*, 677 A.2d 853, 855 (Pa. Cmwlth. 1996). Variances are to be granted “sparingly and only under exceptional circumstances.” *Id.*; see also *Appeal of Lester M. Prange, Inc.*, 647 A.2d 279, 284 (Pa. Cmwlth. 1994); *Laurento v. Zoning Hearing Bd. of Borough of W. Chester*, 638 A.2d 437, 439 (Pa. Cmwlth. 1994). “[T]o establish unnecessary hardship, an applicant must show more than a mere economic or personal hardship.” *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 980 (Pa. Cmwlth. 2009); see also *Singer v. Phila. Zoning Bd. of Adjustment*, 29 A.3d 144, 150 (Pa. Cmwlth. 2011) (“It is well-settled that in order to establish unnecessary hardship for a dimensional variance an applicant must demonstrate something more than a mere desire to develop a property as it wishes or that it will be financially burdened if the variance is not granted.”); *Marple Gardens, Inc.*

*v. Bd. of Zoning Adjustment of Marple Tp.*, 303 A.2d 239, 241 (Pa. Cmwlth. 1973) (“a variance will not be granted solely because the petitioner will suffer an economic hardship if he does not receive a variance.”)

Landowner failed to satisfy the statutory requirements for establishing entitlement to the requested variances. Landowner failed to demonstrate an unnecessary hardship due to unique physical characteristics of the Property. The evidence established that the need for the variances was personal and self-created – Landowner’s desire to develop 40 multi-family dwelling units rather than 33 multi-family dwelling units in compliance with the Zoning Ordinance.

The proposed consolidation of Parcels A, B, and C would create a new parcel with a total area of 2.2 acres. Section 165-122 of the Zoning Ordinance permits a maximum of 15 dwelling units per acre, resulting in a maximum of 33 dwelling units on the 2.2 acre Property. Landowner presented no evidence demonstrating why the additional 7 dwelling units are necessary for the reasonable use of the Property, or a unique physical characteristic of the Property preventing Landowner from developing less than 40 dwelling units. An economic hardship resulting from strict compliance with the Zoning Ordinance is not sufficient to establish a legal hardship.

Landowner failed to demonstrate an unnecessary hardship requiring 3 driveways. The driveway access to Parcel C is necessary to serve the 15 parking spaces on that parcel. These are required due to the increased density pursuant to sections 165-191.A.2 and 165-191.B.1 of the Zoning Ordinance. There was no evidence presented showing that an access driveway to Parcel C would be required if no parking were located on Parcel C. There was credible evidence presented by the Township establishing that 3

driveway accesses on the Property would create a dangerous condition for pedestrians and would adversely affect traffic.

The testimony fell short of establishing an unnecessary hardship that prevents the reasonable use of the Property, or that the requested variances are the minimum variances necessary. Landowner's desire for increased density is the classic example of a personal articulation of a hardship, not unnecessary hardship as defined by the wealth of court decisions. See *Nettleton*, 828 A.2d 1040; *Angle*, 475 A.2d at 1371; *App. of Kline*, 148 A.2d at 915. Accordingly, the variances were denied.

### **C. CONCLUSIONS OF LAW**

1. The ZHB has jurisdiction under section 909.1(a)(5) of the MPC, 53 P.S. §10909.1(a)(5), and Zoning Ordinance §165-251.A(5).

2. Landowner has standing to seek the requested zoning relief as the owner of the Property.

3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.

4. Landowner requires a variance from section 165-122 of the Zoning Ordinance to construct 40 dwelling units on the 2.2 acre Property.

5. Landowner requires a variance from section 165-115.1(A) of the Zoning Ordinance to construct 3 driveways on the Property.

6. The ZHB may grant a variance provided that an applicant establishes that: (1) an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions peculiar to the property; (2) because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance and, therefore, a variance is necessary to enable the reasonable use of the property; (3) the

unnecessary hardship was not created by the applicant; (4) the variance will not be detrimental to the public welfare; and (5) the variance sought will represent the minimum variance that will afford relief.

7. Landowner failed to demonstrate an unnecessary hardship entitling him to the requested variances.

8. Any claimed hardship was self-created by Landowner's personal desire to construct 40 multi-family dwelling units on the Property rather than 33 multi-family dwelling units in compliance with the Zoning Ordinance.

9. Landowner failed to establish that the variances sought represents the minimum variance that will afford relief.

10. Landowner failed to prove that the variances sought will not be detrimental to the public welfare.

11. At the conclusion of the October 18, 2023, hearing, the ZHB voted unanimously to deny the application. On October 19, 2023, the ZHB mailed the following notice of decision to Landowner:

*This letter provides notice of the decision of the Upper Merion Township Zoning Hearing Board following the conclusion of the hearing on Wednesday October 18, 2023.*

*The Zoning Hearing Board voted to deny the application for variances from sections 165-112 and 165-115.1(A) seeking relief from the maximum density and number of allowed driveways to construct a mixed-use development at the properties located at 657, 665, and 671 S. Gulph Road.*

*Because the application was denied, the Zoning Hearing Board will issue a decision with findings of fact, conclusions of law, and reasons.*



This decision may be appealed to the Court of Common Pleas of Montgomery County within 30 days of the date of mailing.

ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP

A large, stylized handwritten signature in black ink, which appears to read "Vivian Peikin". The signature is written over a horizontal line.

Vivian Peikin, Esq.  
Chairperson