

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

MONTGOMERY COUNTY, PA

APPLICATION OF STEPHANIE MOBLEY and WILLIE MARKS

APPLICATION NO. 2024-03

PROPERTY: 756 CROOKED LANE

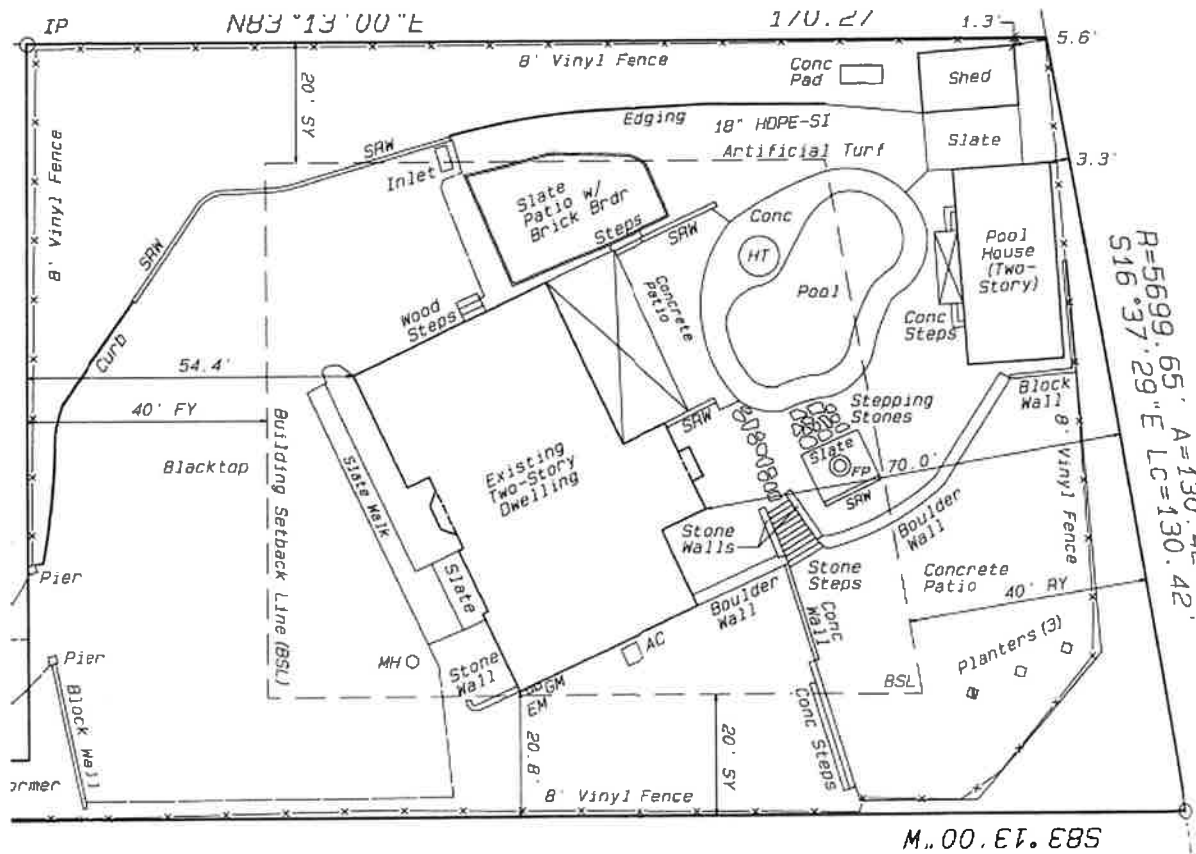
TAX PARCEL NO. 58-00-04900-02-8

DECISION

Landowners constructed a 2-story accessory pool house without required permits. The Zoning Hearing Board of Upper Merion Township (“ZHB”) considered an application for numerous variances seeking relief from the required rear yard setback, maximum impervious surface coverage, maximum building height for an accessory structure, and maximum height for a fence on landowners’ property. Landowners did not prove entitlement to the grant of extensive zoning relief.

Stephanie Mobley and Willie Marks (“Landowners”) are the owners of the property located at 756 Crooked Lane, tax parcel no. 58-00-04900-02-8 (the “Property”). The Property is located within the R-1 Residential zoning district (“R-1 District”) of Upper Merion Township (the “Township”).

The Property is improved with a single-family residence, a swimming pool, driveway, slate patio, two concrete patios, a shed, and a two-story pool house depicted on Landowners’ plot plan which was introduced into the record before the ZHB as Exhibit ZHB-6:



The pool house is shown in the below photograph which was included with Landowners' application:



[Ex. ZHB-1]

The pool house was constructed by Landowners without receiving the required permits from the Township. On February 12, 2024, the Township issued to Landowners a notice of violation (“Notice of Violation”) for violation of section 165-23, *Area, width and yard regulations*, of the Upper Merion Township Zoning Ordinance of 1942, as Amended (the “Zoning Ordinance”).

In response to the Notice of Violation Landowners submitted an application to the ZHB for the following variances for the pool house:

- A variance from section 165-23.A to permit the pool house to be located 3.3 feet from the rear property line where accessory structures are required to be set back 10 feet from the rear property line;

- A variance from section 165-23.A to permit the 27-foot, 10 inch, two-story pool house where the maximum permitted height of an accessory building is 14 feet, not exceeding one story; and,
- A variance from section 165-23.A to permit the pool house to add an additional 2% of impervious coverage to the Property which exceeds the maximum impervious coverage of 25%.

Landowners subsequently amended their application to request a variance from section 165-208 to allow an 8-foot fence they had already installed on the Property where the maximum permitted height for a fence is 6 feet.

On October 16, 2024, the ZHB held an advertised public hearing on Landowner's application. The following members of the ZHB were present at the hearing: Mark S. DePillis, Esq., Chairperson; John M. Tallman, Jr., Vice Chairperson; Chiragi Raval, Secretary; Vivian Peikin, Esq., member; and M. Jonathan Garzillo, member. The ZHB was represented by Marc D. Jonas, Esq., of the law firm Eastburn and Gray, P.C. Applicant was represented by Robert M. Tucker, Esq. of the law firm MacElree Harvey Ltd. Neighboring property owners Annette Stein, Steve Ostroski, and Ranjit Singh Bindra ("Objectors") appeared as parties in opposition to the application.

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

A. FINDINGS OF FACT

BACKGROUND

1. Landowners are the owners of the Property. [Ex. ZHB-4]
2. The Property is identified as tax parcel no. 58-00-04900-02-8. [Ex. ZHB-2]
3. The Property is located within the R-1 Residential Zoning District. [Ex. ZHB-

2]

ZHB HEARING

4. The ZHB marked the following exhibits:
 - a. ZHB-1 – application;
 - b. ZHB-2 – Montgomery County property records;
 - c. ZHB-3 – tax map;
 - d. ZHB-4 – deed dated March 22, 2023 between Stephanie Mobley (grantor) and Stephanie Mobley, Willie Marks and Tiffany Malina (grantees), recorded in deed book 6355, page 00338;
 - e. ZHB-5 – Google map;
 - f. ZHB-6 – plot plan entitled “Boundary and Topographic Survey Plan” prepared by Joseph M. Estock, dated May 10, 2024;
 - g. ZHB-7 – legal notice of 7/11/2024 hearing;
 - h. ZHB-8 – letter from Landowners;
 - i. ZHB-9 – legal notice of 10/16/2024 hearing; and
 - j. ZHB-10 – amendment to the application.
5. Landowners offered the following exhibits:
 - a. A-1 – application;

- b. A-2 – email dated October 2, 2024;
- c. A-3 – deed dated March 22, 2023 between Stephanie Mobley (grantor) and Stephanie Mobley, Willie Marks and Tiffany Malina (grantee), recorded in deed book 6355, page 00338;
- d. A-4 – photographs;
- e. A-5 – map;
- f. A-6 – C.V. of Joseph M. Estock;
- g. A-7 – plot plan entitled “Boundary and Topographic Survey Plan” prepared by Joseph M. Estock, dated May 10, 2024;
- h. A-8 – calculation of impervious surface coverage.

6. Objector, Ranjit Singh Bindra offered the following exhibits:

- a. Bindra-1 – photograph
- b. Bindra-2 – photograph
- c. Bindra-3 – photograph
- d. Bindra-4 – photograph
- e. Bindra-5 – photograph
- f. Bindra-6 – photograph
- g. Bindra-7 – photograph
- h. Bindra-8 – photograph
- i. Bindra-9 – photograph
- j. Bindra-10 – photograph
- k. Bindra-11 – photograph

7. Landowner, Stephanie Mobley, testified in support of the application as follows:

- a. Landowners purchased the Property in August 2020. [N.T. 10/16/2024, p. 22]
- b. Landowners commenced construction of the pool house in or around March, 2023. [N.T. 10/16/2024, p. 50]
- c. Landowners did not receive a building or zoning permit from the Township prior to constructing the pool house. [N.T. 10/16/2024, p. 49]
- d. Landowners' contractor did not inform Landowners that permits were required from the Township prior to constructing the pool house. [N.T. 10/16/2024, p. 32]
- e. Landowners' contractor is based out of Philadelphia and is not licensed to work within the Township. [N.T. 10/16/2024, pp. 39-41]
- f. Landowners did not hire an architect to design the pool house prior to construction. [N.T. 10/16/2024, p. 37]
- g. Landowners constructed the pool house to provide space for family members to gather and provide protection from the sun for family members while using the pool area. [N.T. 10/16/2024, p. 23]
- h. The swimming pool existed on the Property at the time Landowners purchased the Property. [N.T. 10/16/2024, p. 26]
- i. The Township had not performed an inspection of the pool house as constructed. [N.T. 10/16/2024, pp. 50-51]
- j. The rear of the Property abuts railroad tracks. [N.T. 10/16/2024, p. 27]
- k. Landowners installed an 8-foot fence in the rear yard to replace an existing 6-foot fence to prevent their grandchildren from accessing the

abutting railroad tracks and to provide privacy. [N.T. 10/16/2024, pp. 28-29]

l. Landowners were aware of the railroad tracks when they purchased the Property. [N.T. 10/16/2024, p. 33]

m. Landowners added significant areas of impervious surface coverage on the Property by enlarging the driveway over the front yard, enlarging a concrete patio in the back yard, and installing astro turf in the back yard. [N.T. 10/16/2024, pp. 56-64]

n. Landowners failed to disclose to the ZHB when the additional impervious surface was added, or the scope of these improvements.

8. Joseph M. Estock was accepted as an expert in civil engineering and testified on behalf of Landowners as follows:

a. The pool house is two stories and measures 27 feet, 10 inches in height. [N.T. 10/16/2024, p. 15]

b. The pool house is approximately 1,000 square feet. [N.T. 10/16/2024, p. 97]

c. The pool house is located 3.3 feet from the Property's rear property line. [N.T. 10/16/2024, p. 101]

d. The Property is nonconforming with the maximum impervious coverage regulations. [N.T. 10/16/2024, p. 87]

e. Prior to construction of the pool house, the Property's impervious surface coverage was 51.7% where a maximum of 25% impervious surface coverage is permitted. [N.T. 10/16/2024, pp. 19-20]

- f. The Property's impervious surface coverage with the pool house is 53.8%. [N.T. 10/16/2024, pp. 19-20]
- g. The pool house caused a 2.1% increase of the Property's impervious surface coverage. [N.T. 10/16/2024, pp. 19-21]
- h. Mr. Estock only included the pool house in his calculation of the amount of impervious surface installed by Landowners. [N.T. 10/16/2024, p. 54]
- i. Mr. Estock did not include the enlarged driveway or the enlarged concrete patio installed by Landowners in his calculation of new impervious surface on the Property. [N.T. 10/16/2024, p. 54]
- j. Landowners installed 1,015 square feet of impervious astro turf in the rear yard. [N.T. 10/16/2024, pp. 76-77]
- k. Mr. Estock did not know the total amount of impervious surface area that Landowners have added to the Property since purchasing the Property. [N.T. 10/16/2024, pp. 77-78]

9. Objector, Annette Stein, who owns the property located at 185 Pine Tree Road, expressed concerns with the height of the pool house interfering with views from her property. [N.T. 10/16/2024, pp. 111-115]

10. Objector, Steve Ostroski, who owns the property located at 760 Crooked Lane, opined that variances should not be granted for a structure constructed without the required permits from the Township. [N.T. 10/16/2024, pp. 115-116]

11. Objector, Ranjit Singh Bindra, who owns the property located at 754 Crooked Lane, objected to the size of the pool house, stated that lights installed on top of the 8-foot fence create a nuisance for his property, and expressed concerns regarding

increased stormwater runoff on his property due to the amount of impervious surface Landowners installed on the Property. [N.T. 10/16/2024, pp. 117-141]

12. Landowners offered no competent evidence of any unique physical conditions or characteristics of the Property or any resulting unnecessary hardship requiring the numerous and significant variances.

13. The reason for requiring the variances solely relates to Landowners' illegal construction of an oversized pool house without regard for applicable Township regulations and their personal desire for a pool house.

14. No competent evidence was offered by Landowners of an unnecessary hardship and that the variances sought represent the minimum variances that will afford relief for a reasonable use of the Property. Landowner did not volunteer any measure that would reduce the scope of the zoning relief needed to legitimize the pool house. A reference to possible buffering was not supported by a plan or landscaping details.

15. No credible evidence was offered Landowners that the variances will not impair the appropriate use of adjacent properties or be detrimental to the public welfare.

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.”).

The Commonwealth Court in *Pequea Twp. v. Zoning Hearing Board of Pequea Twp.*, 180 A.3d 500 (Pa. Cmwlth. 2018) summarized the standard applied to requests for dimensional variances:

Although *Hertzberg* sets forth a more relaxed standard for a dimensional variance, it does not stand for the proposition that “a variance must be granted from a dimensional requirement that prevents or financially burdens a property owner’s ability to employ his property *exactly as he wishes*, so long as the use itself is permitted.” *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595, 598 (Pa. Cmwlth. 2001) (emphasis in original); see also *Singer* (quoting *Yeager*). Additionally, it has been the law of this Commonwealth that the mere desire for more space does not establish the requisite unnecessary hardship for a variance. See *Larsen v. Zoning Board of Adjustment of City of Pittsburgh*, 543 Pa. 415, 672 A.2d 286, 290 (1996) (ruling that the zoning board erred as a matter of law in granting a dimensional variance where the applicants sought a variance to construct a 400–square foot deck in order to provide a play area for their child, because the “mere desire to provide more room for a family member’s enjoyment fails to constitute the type of ‘unnecessary hardship’ required by the law of this Commonwealth”); see also *McClintock v. Zoning Hearing Board of Fairview Borough*, 118 Pa.Cmwlth. 448, 545 A.2d 470 (1988) (denying a dimensional variance where the property could be used for a one-car garage instead of a two-car garage); *Vito v. Zoning Hearing Board of Borough of Whitehall*, 73 Pa.Cmwlth. 270, 458 A.2d 620 (1983) (finding no hardship to grant a dimensional variance to build an addition to an existing two-car garage where the property was useable in its present condition).

Pequea Twp., 180 A.3d at 507–08.

To support a request for a dimensional variance, the applicant must establish that any hardship requiring a variance was not self-created. *Goldstein v. Zoning Hearing Bd. of Lower Merion*, 19 A.3d 565, 569 (Pa. Cmwlth. 2011). In *Goldstein*, a landowner constructed a pool house within the side yard setback without receiving a permit. Subsequently, landowner constructed an addition to the residence on the property which further encroached into the side yard setback. After construction the landowner applied for a variance from the required setback, and argued that “the necessity of extensive

reconstruction or demolition of a building constitutes a physical condition unique to the property that is sufficient to establish unnecessary hardship” *Id.* at 568. The court rejected that argument and denied the variance because the hardship was self-created by landowner when he knowingly constructed the addition within the setback, and because landowner did not offer any evidence that unique physical conditions of the property resulted in unnecessary hardship. *Id.* at 568.

In *Goldstein*, the fact that the relocation or demolition of the pool house would be expensive was held to be “of no moment.” *Id.* at 569. See also *D’Amato v. Zoning Bd. of Adjustment of City of Philadelphia*, 585 A.2d 580, 583 (Pa. Cmwlth. 1991) (holding that any economic hardship occasioned by owners who build structures without first obtaining variances which do not comply with the zoning requirements to be self-created and do not justify a variance. .

The Pennsylvania Supreme Court has held that a “personal articulation of hardship cannot constitute the ‘unnecessary hardship...which is caused by unique physical circumstances of the property’ required to justify a zoning variance.” *Nettleton v. Zoning Bd. of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1040 (Pa. 2003) (quoting *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 286, 288 (Pa. 1996)). See also *Angle v. Zoning Hrg. Bd. of Borough of Dormont*, 475 A.2d 1371 (Pa. Cmwlth. 1984) (holding that personal family needs could constitute a sufficient hardship basis for a variance); *App. of Kline*, 148 A.2d 915 (Pa. 1959) (holding there was no basis for allowing a variance to permit a porch to be enclosed where the hardship was based on purely personal needs - an attempt to ameliorate the respiratory complaints of members of his family).

In the matter now before the ZHB, Landowners failed to satisfy the statutory requirements for establishing entitlement to the requested variances: they failed to demonstrate an unnecessary hardship due to unique physical characteristics of the Property. The evidence established that the need for the variances stems solely from a self-created hardship – the illegal and unpermitted construction of an oversized pool house located within the rear yard setback and a complete disregard for zoning regulations.

When asked why the pool house was constructed, Landowner, Stephanie Mobley stated:

COUNSEL FOR LANDOWNER: The pool house, the decision to construct it, what went into that?

LANDOWNER: So two things. The first was my neighbor at 754 has a beautiful one, and I thought what a great idea. Because I have a family member that has lupus and loves, loves, loves to be outside with us. My family is very close. We're always together, and she can't sit out in the sun. So the objective of the pool house was still to have her there.

[N.T. 10/16/2024, p. 23]

ZHB CHAIRMAN: What was the thought process of building a two-story pool house?

....

LANDOWNER: It's not for anything besides the fact that I watch design shows all day long. I wanted to design something nice.

[N.T. 10/16/2024, p. 36]

Landowners failed to present any evidence that a smaller, legally compliant pool house could not have been constructed on the Property farther from the rear property line. Rather, the design and location of the pool house satisfied Landowners' personal preference without consideration of Township regulations or neighbors.

Regarding the 8-foot fence, Landowners testified that it was necessary due to family safety and privacy concerns. However, this is not related to any unique physical circumstance or condition that necessitate the requested relief for a reasonable use of the Property. Landowners did not explain the need for the lighting on top of the fence, nor did Landowners consider the impact of the taller fence and lighting on their neighbors.

Objectors' testimony regarding the adverse impacts of the pool house and increased impervious surface on the Property was deemed credible, in contrast to the responses of Landowner. The credible evidence established that since purchasing the Property, Landowners installed significant amounts of impervious surface on the Property without receiving permits from the Township. This additional impervious surface was not disclosed by Landowner at the hearing, nor was it addressed by Landowners' engineer. Landowners failed to credibly disclose and explain when, how, and the scope of certain improvements, such as a large driveway expansion, installed on the Property. Objectors testified that these improvements, including the oversized pool house, have negatively impacted the use and enjoyment of their properties.

The testimony and evidence of Landowner never attempted to prove an unnecessary hardship that prevents the reasonable use of the Property. The basis for the requested variances were purely personal reasons. This is the classical example of the personal articulation of a hardship and 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 extensive variance relief was 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. Landowners have standing to seek the requested zoning relief as the owners of the Property.

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

4. Landowners require a variance from section 165-23(A) of the Zoning Ordinance to locate the pool house 3 feet from the rear property line.

5. Landowners require a variance from section 165-23(A) of the Zoning Ordinance to permit the pool house to be two stories with a height of 27 feet, 10 inches.

6. Landowners require a variance from section 165-23(A) of the Zoning Ordinance to permit the pool house to add an additional 2% of impervious coverage to the Property which exceeds the maximum impervious coverage of 25%.

7. Landowners require a variance from section 165-23(A) of the Zoning Ordinance to permit a fence to be 8 feet in height.

8. 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.

9. Landowners failed to demonstrate an unnecessary hardship entitling them to the requested variances.

10. Landowners' application for relief was required by Landowners' illegal construction of an oversized pool house without regard for typical zoning regulations.

11. Landowners failed to establish that the variances sought represent the minimum variances that will afford relief.

12. Landowners failed to establish the variances sought will not be detrimental to the public welfare.

At the conclusion of the October 16, 2024, hearing, the ZHB voted unanimously to deny the application. On October 17, 2024, the ZHB mailed the following notice of decision to Landowners:

This letter provides notice of the decision of the Upper Merion Township Zoning Hearing Board following the conclusion of the hearing on Wednesday, October 16, 2024.

The Zoning Hearing Board voted to deny the application for variances from sections 165-23(A) and 165-208 of the Upper Merion Township Zoning Ordinance of 1942, as Amended, to permit a pool house that was constructed without permits and violated the regulations governing height, setback, impervious coverage, and fence height.

Because this 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**

Signed by:

Mark S. DePillis

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Mark S. DePillis, Esq.
Chairperson