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RECEIVED
OCT 06 2017

ERECTED INTO A TOWNSHIP IN 1733
TOWNSHIP OF WORCESTER
AT THE CENTER POINT OF MONTGOMERY COUNTY
PENNSYLVANIA

1721 Valley Forge Road
P.O. Box 767
Worcester, PA 19490

Phone (610) 584-1410
Fax (610) 584-8901

THIS SECTION COMPLETED ONLY BY TOWNSHIP:

APPEAL NO. : 17-14 DATE FILED: 10/6 , 20 17

APPLICATION: BOARD OF SUPERVISORS
 ZONING HEARING BOARD

1. Date of Application: October 2, 2017

2. Classification of Appeal (Check one or more, if applicable):

- a. Appeal from the Zoning Officer's Determination
- b. Request for Variance
- c. Request for Special Exception
- d. Challenges to the Validity of Zoning Ordinance or Map
- e. Request for Conditional Use Hearing
- f. Request for Amendment to Zoning Map
- g. Request for Zoning Ordinance Amendment
- h. Request for a Curative Amendment
- i. Request for other relief within the Jurisdiction of the Zoning Hearing Board as established in Section 909.1(a) of the Pennsylvania Municipalities Code

3. Applicant:

- a. Name: Marcello DiGenova
- b. Mailing address: 1145 Valley Forge Road, Norristown, PA 19403
- c. Telephone number: 610-584-4364
- d. State whether owner of legal title, owner of equitable title, or tenant with the permission of owner legal title: Owner of legal title

Please attach Deed to prove ownership, an Agreement of Sale to prove equitable ownership, or an Affidavit allowing Tenant to apply for necessary relief. See attached.

4. Applicant's attorney, if any:

- a. Name: Eric B. Smith, Esquire
- b. Address: High Swartz LLP - 40 East Airy Street, Norristown, PA 19404
- c. Telephone number: 610-275-0700

5. Property Details:

- a. Present Zoning Classification: R-100
- b. Present Land Use: Single family detached residence
- c. Location (Street Address):
1145 Valley Forge Road, Norristown, PA 19403
- d. Parcel #: 67-00-00988-00-7
- e. Lot Dimensions:
 - (1) Area: _____
 - (2) Frontage: _____
 - (3) Depth: _____
- f. Circle all that apply in regards to the above specified property:
 - Public Water Public Sewer

 - Private Well Private Septic
- g. Size, construction, and use of existing improvements; use of land, if unimproved: **(Please submit as an attachment)**

6. Proposed Use(s):

- a. Proposed use(s) and construction: Please provide size, construction and proposed use(s). **(Please submit as an attachment)**

7. Legal grounds for appeal (Cite specific sections of Pennsylvania Municipalities Planning Code, Zoning Ordinance, Subdivision Regulations, and/ or other Acts or Ordinances). All sections that apply must be listed in which relief is required and an explanation provided. **(Please submit as an attachment)**

8. Has any previous appeal been filed concerning the subject matter of this appeal?
 Yes No

If yes: specify: **(Please submit as an attachment)**

9. Challenges please list requested issues of fact or interpretation:
(Please submit as an attachment)

10. Worcester Township to provide the list of names and addresses of all property within 500 feet of the perimeter of the subject property. **(REQUIRED: SECTION 150-224)**

CERTIFICATION

I (We) hereby certify that the above information is true and correct to the best of my (our) knowledge, information or belief.



Signature

Marcella Di Genova

Printed Name

Signature

Printed Name

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ : SS


The undersigned, being duly sworn according to law, deposes and says the he/she is the above names applicant, that he/she is authorized to and does take this affidavit on behalf of the owner, and foregoing facts are true and correct.



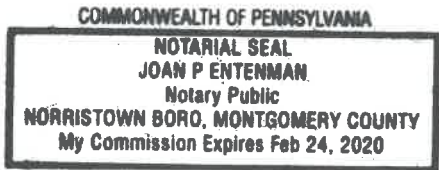
Applicant

Applicant

Sworn to and subscribed before me this 6th day of October, 2017



Notary Public



Date Received: 10/6/17



Zoning Officer

7. Legal Grounds for Appeal

The Township's letter of September 8, 2017 is in error for the following reasons:

- a. No Zoning Violation
 - i. Section 150-188 – Junkyard

Section 150-188 provides that: "No junkyards or auto graveyards shall be permitted within the confines of this Township."

The Zoning Code defines Junkyard as: "A lot, land or structure or part thereof used primarily for the collection, recycling, storage and sale of wastepaper, rags, scrap metal or discarded material; or for the collection, dismantling, storage and salvaging of machinery of vehicles not in running condition, and for the sale of parts thereof." Code at Sec. 150-9.

By the Township's own definition, there is not a "Junkyard" at the Property. First, the primary use is a residence, and not for any other thing. Second, "wastepaper, rags, scrap metal or discarded material" is not being collected, recycled, stored or sold at the Property. There are no wastepaper or rags present, nor is any of the actual material that is present "scrap" or "discarded." Third, there are no vehicles on the Property "not in running condition." Fourth, there is no "machinery of vehicles not in running condition" being collected, dismantled, stored or salvaged, or any parts thereof for sale, at the Property, or anywhere else, in connection with the DiGenovas. .

There is not a Junkyard being operated at the Property.

- ii. Section 150-67 – Accessory Use
 - a. There is no "Accessory Use."

The Township defines Accessory Use as: "A use customarily incidental and subordinate to the principal use of land or a building or other structure on a lot or portion thereof located on the same lot with such principal use." Code at Sec. 150-9.

There is no other "use of the land or a building or other structure" at the Property other than a personal residence. Absent some other such use, there can be no Accessory Use, whether or not permitted. A passive and personal hobby or interest, involving no livestock, third-parties, noise, sound or odor perceptible off-site, or traffic concerns, is not a violation of any zoning provision under the Township Zoning Code and is not an Accessory Use.

- b. Alternatively, if there is an Accessory Use, it is permitted.

Section 150-67 permits accessory uses in the R-100 district that are in compliance with Article XXIV of the Code. Article XXIV, Section 150-177, does not provide a list of permitted accessory uses for the R-100 district, nor does that article provide an exhaustive list of permitted accessory uses, nor does that article further define "Accessory Use." Rather, it provides for regulations for specific accessory uses, not a listing of permitted accessory uses.

The governing provision then, is Section 150-9, regarding the definition of an Accessory Use. The provision of a hobby or personal interest of a Township resident, if it is an accessory use at all, it is certainly “customarily incidental and subordinate” to ordinary residential use and not otherwise prohibited by any provision of the Zoning Code.

b. Citation of DiGenova under the Zoning Code for violation of the provisions of 150-9, 150-67 and/or 150-177, relating to Accessory Use, and the code provisions themselves, fails for vagueness and is unconstitutional.

c. The Township reached a settlement with DiGenova regarding the alleged violation and screening with fencing, which DiGenova performed, therefor barring further enforcement by citation as a result of the settlement. Despite DiGenova’s compliance with the settlement, the Township issued the instant citation.

d. DiGenova obtained vested rights and/or the citation and enforcement is barred by the doctrine of estoppel as a result of: 1

i. A fencing permit and the installation of same obtained and undertaken by DiGenova in connection with a resolution of the matters for which he is not being cited by the Township.

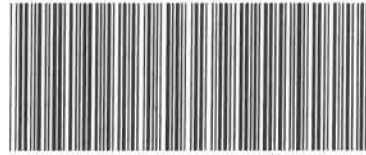
e. DiGenova currently has two permits for out-buildings before the Township. It is his intention to store the items of which the Township complains within those two structures and to put in place, if needed, appropriate screening.



RECORDER OF DEEDS
MONTGOMERY COUNTY
Nancy J. Becker

One Montgomery Plaza
 Swede and Airy Streets ~ Suite 303
 P.O. Box 311 ~ Norristown, PA 19404
 Office: (610) 278-3289 ~ Fax: (610) 278-3869

DEED BK 5796 PG 02813 to 02816
INSTRUMENT # : 2011031969
RECORDED DATE: 04/01/2011 09:01:27 AM



2538847-0010V

MONTGOMERY COUNTY ROD

OFFICIAL RECORDING COVER PAGE

Page 1 of 4

Document Type: Deed	Transaction #: 2456173 - 1 Doc(s)
Document Date: 02/24/2011	Document Page Count: 3
Reference Info: digenova	Operator Id: kleonard

RETURN TO: (Mail) MARO & MARO 1115 W MAIN STREET NORRISTOWN, PA 19401	SUBMITTED BY: MARO & MARO 1115 W MAIN STREET NORRISTOWN, PA 19401
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*** PROPERTY DATA:**
 Parcel ID #: 67-00-00988-00-7
 Address: 1145 VALLEY FORGE RD

 PA
 19403
 Municipality: Worcester Township (100%)
 School District: Methacton

*** ASSOCIATED DOCUMENT(S):**

CONSIDERATION/SECURED AMT:	\$1.00
FEES / TAXES:	
Recording Fee:Deed	\$65.00
Total:	\$65.00

DEED BK 5796 PG 02813 to 02816
 Recorded Date: 04/01/2011 09:01:27 AM

I hereby CERTIFY that
 this document is
 recorded in the
 Recorder of Deeds
 Office in Montgomery
 County, Pennsylvania.



Nancy J. Becker
 Nancy J. Becker
 Recorder of Deeds

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.

*COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

Certification signature by montgomery-county.rod@kofile.us, Validity Unknown

Certified and Digitally Signed

Validation may require Adobe 'Windows Integration'

eCertified copy of recorded # 2011031969 (page 1 of 4)
 Montgomery County Recorder of Deeds



RECORDER OF DEEDS
MONTGOMERY COUNTY

2011 APR -1 AM 8: 58

Prepared By: Robert A. Maro, Esquire
Maro & Maro, P.C.
1115 W. Main Street
Norristown, PA 19401
(610) 275-9600

Return To: Marcello DiGenova
1145 Valley Forge Road
Norristown, PA 19403

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
67-00-00988-00-7 WORCESTER
1145 VALLEY FORGE RD
DIGENOVA MADDALENA & MARCELLO
B 003 U 038 L 1101 DATE: 04/01/2011

\$10.00
JO

File No. **Marcello DiGenova - Accommodation Only**

Parcel No. 67-00-00988-00-7

THIS DEED, made the 24 day of February, 2011,

BETWEEN,

Maddalena DiGenova and Marcello DiGenova, (hereinafter called the Grantors) of the one part, and

AND

3/3

Marcello DiGenova, (hereafter called the Grantee) of the other part.

WITNESSETH that in consideration on One Dollar (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, the said Grantors do hereby grant and convey unto the said Grantee and assigns,

ALL THAT CERTAIN lot or piece of ground, Situate in the Township of Worcester, County of Montgomery and State of Pennsylvania, bounded and described in accordance with a survey made thereof by Will D. Hiltner, Registered Engineer in the month of July 1940 as follows, to wit:

****This is a transfer from a mother and son to son and is therefore tax exempt



BEGINNING at a pin the bed of Valley Forge or Fairview Road, which pin is at the distance of 183.33 feet on a course of North 59 degrees East from another pin marking an angle in said road, in line of land of Francena A. Heebner, wife of Ernest A. Heebner, of which this is a part; thence extending along said land, North 49 degrees 30 minutes West 776.58 feet to a stake; thence still long said land, the two following courses and distances; North 40 degrees 46 minutes East 171.98 feet to a stake and South 49 degrees 30 minutes East 839.28 feet to a point in the bed of the Valley Forge or Fairview Road, aforesaid; thence extending along said road and by land of Ernest A Heebner, South 60 degrees 46 minutes West 183.33 feet to the first mentioned point and place of beginning.

BEING Parcel No. 67-00-00988-00-7

BEING the same premises which Antonio G. DiGenova and Maddalena DiGenova, his wife, by Deed dated April 19, 1996 and recorded in Montgomery County, in Deed Book 5146, page 00130, April 29, 1996, conveyed unto Maddalena DiGenova and Marcello DiGenova, in fee.

UNDER AND SUBJECT to certain restrictions of record.

The Scrivener of this deed is in no way certifying the status of title of the above premises and has not searched the records pertaining thereto.

TOGETHER WITH all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever thereonto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor, in law, equity, or otherwise howsoever, of, in, and to the same and every part thereof.

TO HAVE AND TO HOLD the said lot or piece of ground above described, hereditaments and premises hereby granted, or mentioned, and intended so to be, with the appurtenances, unto the said Grantee, his heirs and Assigns, to and for the only proper use and behoof of the said Grantee, his heirs and Assigns forever.

AND the said Grantors do hereby covenant to and with the said Grantee that they, the said Grantors by these presents, Warrant and Forever Defend the herein above described premises, with the hereditaments and appurtenances, unto the said Grantee, his heirs and assigns, against the said Grantors and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof, by, from or under him, her, them or any of them.



IN WITNESS WHEREOF, the said Grantors have caused these presents to be fully executed, the day and year first above written.

SEALED AND DELIVERED

IN THE PRESENCE OF US:

[Signature]
WITNESS

Maddalena Di Genova
Maddalena DiGenova

[Signature]
WITNESS

[Signature]
Marcello DiGenova

~~COMMONWEALTH OF PENNSYLVANIA:~~
~~COUNTY OF MONTGOMERY~~ : SS.
NEW JERSEY
Gloucester

On this the 27 day of FEBRUARY, 2011, before me, the subscriber, a Notary Public, in and for the above county and state, the undersigned Officer, personally appeared **Maddalena DiGenova and Marcello DiGenova**, known to me (satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public
My commission expires

THOMAS J. FLETCHER
Notary Public
State of New Jersey
My Commission Expires Jul 22, 2014

The Address of the above named Grantee is:

[Signature]
1145 Valley Forge Road

Norristown, PA 19403
On Behalf of the Grantee

