

WARWICK TOWNSHIP ZONING HEARING BOARD MINUTES

October 10, 2012

Chairman Gary Lefever convened the October 10, 2012 meeting of the Warwick Township Zoning Hearing Board at 6:30 p.m. Present were Board Members Gary Lefever, Scott Goldman, Mark Will, and Tom Matteson. Dane St. Clair and Brent Schrock were absent. Also present were Zoning Officer Thomas Zorbaugh, Zoning Hearing Solicitor Neil Albert, Frank Stump, Glenn Hample, Roy Mace, Janette Mace, Harry G. Shaeffer, Jerry Savoca, Gloria Shaeffer, Janet Savoca, Karen Ressler, Ken Ressler, Elizabeth Bowlin, Steven Smucker, Jacob E. Smucker, Doug Pfautz, Lynn Thomas, William Poole, Tamara Pelsinski, Leonard Pelsinski, Albert Musser, Nancy Musser, Jess Reeder, and Jack Hess.

MINUTES APPROVAL: On a motion by Will, seconded by Goldman, the Board voted unanimously to approve the minutes of the September 12, 2012 meeting as submitted. Lefever abstained from action on the motion since he was not present at the meeting.

POSTING, PROOF OF PUBLICATION AND NOTICE: The Zoning Officer confirmed the posting, notice, and proof of publication of the cases to be heard at this evening's hearing.

HEARING PROCEDURES: For the benefit of those present, the Zoning Hearing Solicitor explained the procedure to be followed for the evening's hearings.

CASE #783, LITITZ RESERVE - SPECIAL EXCEPTION (continuation): The Zoning Officer explained that the Applicant has requested a continuance of the hearing until November 14, 2012. On a motion by Lefever, seconded by Will, the Board voted unanimously to continue Case #783 until their regularly scheduled meeting on November 14, 2012.

CASE #784, STEVEN SMUCKER - SPECIAL EXCEPTION/VARIANCE: The Chairman read the zoning notice received from Steven Smucker, 880 Creek Road, Leola, PA 17540. The applicant is the equitable owner of the property located at 231 Landis Valley Road, Lititz, owned by Leonard & Tamara Pelsinski. The applicant is seeking a Special Exception to the Warwick Township Zoning Ordinance under Section 340-14.C.(2), pertaining to noncommercial keeping of livestock in a R-1 Residential Zoning District. The applicant would like to keep a carriage horse on this property. The applicant is also seek a Variance of Section 340-87.B.(3)(a) to reduce the required setback.

Steven Smucker was affirmed. Smucker stated that he would like to place a barn on the property for his horse. The Zoning Officer explained that Smucker would like to place the barn along his driveway. He added that as illustrated on the plan submitted by Smucker, the barn would be 70' from the rear property line, and 65' from each side property line, instead of 75' as required by the Ordinance. He noted that the Applicant has indicated that the barn could be located elsewhere on the property to meet the setback requirement; however, he does not want it close to his home, and he does not want to tear up the driveway as a result of this other location. Smucker stated that the barn would be approximately 10' x 20' in size. He confirmed that the barn would be for only 1 horse.

The Zoning Hearing Solicitor inquired how manure would be handled. Smucker stated that he spoke with Jacob Smucker who lives along East Woods Drive, and he was advised that he can take manure to his property at any time. Steven Smucker estimated that he would remove manure

from the property every 3-6 months. Smucker confirmed that he has an approximate 1.25 acre property and that a pasture fence is proposed along the side and rear property lines that would meet the required 10' setback from property lines.

Matteson stated that the plan indicates a barn size of 10' x 25'. Smucker stated he would like to have a 25' wide barn. The Zoning Officer stated that the size would be based on the approved property setback. He stated that a 10' x 25' barn would fit in the area indicated on the plan, with the reduced 65' setbacks as requested.

Matteson inquired where the manure would be stored. Smucker stated that he could either keep it in the stall, or store it outside. Matteson expressed concern over the odor of the manure. Smucker stated that he could remove the manure from the property every 3 months rather than storing the manure outside.

The Chairman inquired whether anyone wishes to comment on the proposal, or to become a party to the case.

Leonard Pelsinski, Kenneth Ressler, Roy Mace, Glenn Hample, Elizabeth Bowlin, Jerry Savoca, Harry Shaeffer, and Frank Stump were sworn in.

Leonard Pelsinski (current property owner), 231 Landis Valley Road, was sworn in. Pelsinski stated that he discussed the issue with 2 adjoining property owners (Stump & Martin) and they are agreeable to the proposal, provided that manure is adequately stored on the property.

Kenneth Ressler, 233 Landis Valley Road, stated that he owns the home beside the property. He expressed concern about living next to a property with a horse. He requested whether other animals such as a cow or goat could be permitted on the property. The Chairman explained that the request is for only one horse, and no other animals. Ressler stated that he is also concerned about flies and the manure odor. Ressler stated that his other concern is over any type of motor providing power to the home, and the associated noise. Goldman stated that the issue is not relevant to the case before the Board. Ressler stated that he is concerned over excessive manure on the roads in the vicinity, and inquired whether church services would be held at the home. Smucker expressed the opinion that the property is too small to hold church services. Ressler stated that the excessive manure could end up on driveways and in garages of neighboring homes. The Zoning Officer inquired whether Ressler wishes to become a party to the case. Ressler responded in the affirmative.

Roy Mace, 236 Landis Valley Road, inquired whether the Township considered impervious coverage on a property (driveway, buildings, etc.), when they included a provision to allow a horse on a one-acre property. The Zoning Officer stated that since the property is served by public sewer and water, the Ordinance allows up to 35% of the property to be covered by impervious surface. Mace inquired whether a horse corral is permitted in a front yard. The Zoning Officer responded that he would not be permitted to have a corral in the front yard. He explained how front yards are defined in the Ordinance. Mace expressed the opinion that the front yard should not be included in the calculation because it can not be used for the proposal. The Zoning Hearing Solicitor explained that the Ordinance has a provision to allow a working horse on a one-acre property. He added that the Ordinance is passed by the Board of Supervisors and not the Zoning Hearing Board. Mace requested clarification of whether other livestock would be permitted on the property. The Chairman responded that no other livestock would be permitted. Mace noted that ducks are on the

property now. Mace stated that he would like to become a party to the case.

Glenn Hample, 235 Landis Valley Road, stated that he has an in-ground pool and he is concerned over flies and odor. He stated that flies are attracted to water, and he does not want children being bitten by horse flies. He added that this has not happened before, and he does not want it to happen now. Hample stated that he wishes to become a party to the case.

Elizabeth Bowlin, 2655 State Street (East Petersburg), stated that she has been working with the Applicant on the project. She stated that he would address the issues relating to manure, and would do whatever is requested of him.

Jerry Savoca, 232 Landis Valley Road, inquired whether all of the concerns expressed by Mr. Ressler this evening will be addressed individually. Matteson explained that some of the concerns are not within the jurisdiction of the Zoning Hearing Board. The Zoning Officer stated the concerns stated by Ressler pertain to the requirements of the Zoning Ordinance. Savoca stated that concerns regarding storage, odor and horseflies should be addressed. The Zoning Officer explained that, according to the Zoning Ordinance, "all animal wastes shall be properly stored and disposed of, so as not to be objectionable at the site's property line. All animals, their housing and their outdoor pasture/recreation areas shall be properly maintained so as not to become a nuisance to adjoining properties." He added that if the storage of manure becomes a problem, the Township will address the issue under its zoning requirements. Savoca inquired whether the horse manure along the road will be cleared since he does not want it in his garage. The Zoning Officer noted that horse & buggies currently travel along Landis Valley Road and there is no law requiring them to clean up after their horses.

Harry Shaeffer, 302 Fairview Drive, stated that he also has concerns regarding the noise of a motor that the Applicant would use, and also flies and odor related to manure.

The Zoning Hearing Solicitor asked the Applicant whether the bedding would be shavings or straw. The Applicant responded that he was thinking of using shavings and noted that he could use either. The Solicitor inquired whether the Applicant would be agreeable to providing a bin or covered area within the barn to store manure so flies and odor are not a problem. The Applicant testified that he will provide a covered bin to store manure within the barn. He added that he intends to install a high tensile fence around the pasture area. He explained that the fence would be similar to chicken wire on the outside, with high tensile on the inside. He testified that the fence would not be electric and that the horse would be in the rear yard, only.

An individual commented that he and his wife were taking a walk near a horse corral a few weeks ago, and the flies were attracted to the horses and not the manure.

A Board member inquired whether a written manure management standard exists regarding the removal of manure from a property. The Zoning Officer explained that manure management standards address pounds and acreage. An acceptable practice is to use a covered bin. He noted that shavings, which the Applicant intends to use, is better than straw since it absorbs odors. He noted that the frequency of manure removal would depend on the bin size. A Board member inquired what is the distance between the rear of the home to the existing driveway. The Zoning Officer explained that the distance is approximately 32' from the front edge of the driveway to the back of the house. The Board member stated that it seems that the barn could meet the setback requirements if it is located on the other side of the driveway closer to the home. Smucker stated

that he could place the barn at that location, but he would prefer the proposed location.

The Solicitor inquired whether Smucker would be agreeable to maintaining the pasture area to control flies and odor. Smucker stated that he will maintain the pasture area.

An individual inquired stated that this would address the Applicant's horse, but not visitors or church goers. The Chairman explained that the only issue before the Zoning Hearing Board is the horse proposed to be kept on the property.

Hample inquired how often the Applicant will be required to remove the manure. The Solicitor explained that the Applicant would need to ensure that the manure does not become a nuisance to the neighbors. He added that the Zoning Officer would enforce the issue, if needed.

Frank Stump, 303 Fairview Drive, stated that the ground slopes away from the Applicant's property and inquired how the runoff would be addressed. Goldman stated that the issue would depend upon the frequency of removal. He noted that if the manure becomes a nuisance, the Township will receive complaints. He added that the Zoning Officer will address these complaints. The Zoning Officer stated that the Zoning Hearing Board could place a condition stipulating a frequency for manure removal from the property.

Mace stated that the neighbors are concerned over the potential of noise from a diesel motor (generator). Smucker stated that he has no plans for diesel. He added that he would probably have a propane furnace and explained that the property is served by public sewer and public water, so a generator is not needed to pump water. The Solicitor stated that a generator is not the subject of this zoning hearing. The Zoning Officer explained that issues relating to noise are addressed by the Police Department.

The Chairman announced that the Board will recess to an Executive Session to discuss the case with the Solicitor.

Upon reconvening the meeting, the Chairman inquired whether residents of the adjoining Pennwick development in Lititz Borough were notified of the zoning hearing. The Zoning Officer explained that the property is posted, and an advertisement is placed in the newspaper in accordance with the requirements. He added that notices are not mailed to adjoining property owners. An individual stated that he spoke with a representative of the Pennwick development to let them know about the potential for runoff if a corral is located in the rear yard. The individual at Pennwick had advised that she was unsure how to handle the issue.

The Chairman inquired whether the property owner would object to Board members going to the property to see the layout. Goldman stated there are two issues before the Board this evening, a Special Exception request, and a Variance request. He recommended that the proposed barn location be modified to eliminate the Variance request.

The Zoning Hearing Solicitor stated that Kenneth Ressler, Roy Mace, Glenn Hample, Jerry Savoca and Frank Stump have requested party status. The Zoning Officer confirmed that each individual owns a property adjacent to the site. On a motion by Lefever, seconded by Matteson, the Board voted unanimously to grant party status to the stated individuals based on testimony provided.

The Zoning Hearing Solicitor stated that the Board has listened to the questions of the residents,

and the Board members have indicated that they wish to continue the case to their next regularly scheduled meeting in order to provide sufficient time for members to visit the property, and for Board members Dane St. Clair and Brent Schrock, who are not present this evening, to familiarize themselves with the case and to render a decision with the other Board members present. The Solicitor inquired whether the Applicant would object to the two Board members familiarizing themselves with the case to render a decision. The Applicant stated that he has no objections. The Solicitor inquired whether any of the individuals who were granted party status have objections to the two Board members familiarizing themselves with the case to render a decision. The individuals indicated they have no objections. On a motion by Lefever, seconded by Goldman, the Board voted unanimously to continue Case #784 to their regularly scheduled meeting on November 14, 2012.

CASE #785, ALBERT MUSSER - SPECIAL EXCEPTION: The Chairman read the zoning notice received from Albert Musser Jr., 523 Colonial Crescent, Lititz, PA 17543. The applicant is seeking a Special Exception to the Warwick Township Zoning Ordinance under Section 340-14.C(1), pertaining to a Home Occupation in a Residential Zoning District. The applicant would like to operate a boat restoration and repair business within the new garage being built.

Attorney William Poole, Jr. stated that he is representing the Applicant this evening. He explained that the Applicant appeared before the Zoning Hearing Board on July 13, 2011 with a similar zoning application, which was denied; however, the current application has been modified to address the concerns discussed at the previous zoning hearing. In addition, the Applicant is no longer seeking a Variance for the proposal.

Albert Musser, Nancy Musser, Jess Reeder, Lynn Thomas, and Doug Pfautz were sworn in.

The Zoning Hearing Solicitor stated that the Zoning Hearing Board will take administrative notice of its prior record including its prior decision regarding the Applicant.

Musser stated that he would like to work on boats at the property he owns at 523 Colonial Crescent. He explained that, with regard to restoration, he has restored two boats within the past 3 years. He explained that a restoration is no different than working with 2x4s or plywood. He added that he also performs repair and maintenance such as winterization, oil changes, and lube service. He explained that the largest job he did was to remove a drive and motor. He added that he does not rebuild motors and noted that this work is done by another business, and when the motor is returned to him, he installs it on the boat. Musser stated that he works on boats no larger than 23'. He explained that he works on boats in his shop located within the garage on his property.

Attorney Poole submitted color photographs of the property. Musser described the locations on his property where the photos were taken. Musser stated that 520 square feet of the garage area would be used for the business. He noted that this is slightly less than half the size of the garage. Attorney Poole stated that he is providing audio/video recording to address concerns from the previous hearing. He requested that Musser describe the audio for the benefit of those present. Musser explained that an audio meter was used to record base sounds throughout the development (cars, birds, wind), and also the sound of a boat motor (40hp, 2-stroke outboard motor) within the garage with the door open and the door closed. He added that the sound was measured from 4 locations on the property. He noted that although the sound is also measured with ½ - ¾ throttle, he would not use the throttle to this extent since the motors are run in a 55-gallon plastic tub filled with water.

The audio/video indicates a decibel level between 50-65 without a motor operating. It also provides 4 audio/video locations with the outboard motor at ½ throttle with the garage door open, and the same locations with the garage door closed. Musser explained that the sound of the motor at ½ throttle with the garage door closed is similar to the sound of an automobile driving by the site. Attorney Poole entered the CD of the audio/video into the record for the hearing. Musser stated that he intends to operate the home occupation with the garage door closed, and noted that he installed an air conditioner in the garage so he can work with the garage door closed in the summertime. He explained that the sound level is lower than the sound of his neighbor mowing his lawn.

Musser testified that he would run a motor for only 5-10 minutes due to the limited water source; he noted that he might run a 4-stroke motor for 15 minutes. Musser stated that he reviewed a decibel comparison chart online to ensure that he was using the audio device correctly. He stated that the loudest sound registered at 72 decibels with the garage door open. He noted that the majority of the sound occurred at the same level as normal conversation between two individuals (according to the chart).

Musser stated that the home contains approximately 2,208 square feet of habitable floor area. Based on this calculation, 552 square feet (25% of the habitable floor area) could be used for the home occupation. Musser stated that of the 1,060 square feet of the garage, approximately 520 square feet would be used for the home occupation. He stated that due to the available area to work, he would work on only one boat at a time. Attorney Poole submitted additional photographs of the home into the record for the hearing. Musser explained that he cannot work on boats taller than 9' in his garage and added that he does not intend to work on boats in the driveway. Musser addressed the specific criteria under "Home Occupations" (Section 340-78) in the Zoning Ordinance. He explained that he would be the only employee working at the business. He stated that he has a lot where individuals can store boats for transport to and from his property. He added that boats would not be stored on the property. He stated that the equipment he uses includes a mechanical lift crane, a floor jack, toolbox, work bench, a compressor, and a 3-ton press. He provided photographs that illustrate these tools. He added that he had these tools when he owned and worked on his own street rod. He described how the tools would be used as part of the business. Musser stated he does no manufacturing, and that he would not have retail sales as part of the business. He explained that customers would not come to his home to pick-up or drop-off boats. He noted that customers who might come to his home would park in his driveway. Musser stated that he would meet the sign requirements, if a sign is needed in the future. He expressed the opinion that any smoke generated by the proposal would dissipate before it reached his property line. He added that he does not work on high performance engines. Musser stated that the proposed hours of operation are 8:00 a.m. to 5:30 p.m. Monday through Friday (no Saturdays, Sundays or holidays). The Board discussed whether the loft within the garage would be calculated as part of useable area for the home occupations. Attorney Poole stated that the Applicant would be willing to accept a condition that the home occupation cannot exceed 25% of the useable floor area.

The Chairman inquired whether anyone present wishes to comment on the proposal or become a party to the case.

Doug Pfautz, 521 Colonial Crescent, stated he would like to become a party to the case. On a motion by Lefever, seconded by Matteson, the Board voted unanimously to grant party status to

Doug Pfautz for Case #785. Pfautz stated that the Applicant has been operating the business without zoning approval and noted that the Zoning Hearing Board denied his previous request to operate a business from the home. He explained that on one occasion he came home and an individual had his boat hooked up to their vehicle thinking it was their boat. On another occasion he came home and someone had parked their boat in his driveway. Also, an individual had dropped off a motor on his property, and this had caused a problem between Musser and him. He noted that he returned the motor to the owner directly instead of Musser. He added that Musser has workers who help him with the boats. He noted that he is unsure whether or not these individuals are paid. He explained that one individual was living with him, and was also helping with the boats.

Lynn Thomas, 521 Colonial Crescent, stated that although it appears the Applicant is addressing the issue of individuals coming through the development, parking in their driveway, dropping off boats, etc., the issue has been going on for over a year and that the Applicant needs a sign to direct individuals to his property.

A board member requested clarification of whether more than one boat has been stored at the property. Pfautz stated he could be working on 2 or 3 boats at any time, since he would need to wait for parts, and while one boat is in the shop, he could be working on 2 or 3 motors.

Thomas stated that in the past the Applicant did work in the driveway, and there was noise and smoke associated with this work. She inquired what would stop him from doing this again if the case is approved.

Attorney Poole stated that the Applicant would accept conditions that would prevent this type of work. The Chairman stated that if conditions are imposed, the Applicant would need to adhere to them, otherwise, the Zoning Officer would enforce the conditions.

Thomas stated that the Applicant would work on the boats while they were away, and when they came home, he would remove the boats from his driveway.

Attorney Poole inquired how long ago was the boat pulled into the Pfautz/Thomas driveway. Thomas stated that it was less than 6 months ago. Pfautz stated that it has been less than 6 weeks since an individual came to his home looking for Musser's property.

Musser stated that he spoke with other neighbors regarding this latest proposal and a new homeowner thought the property "with all the boats" was his, and it was his neighbors property. He added this homeowner indicated that she has no problem with the proposal. In addition, he spoke with other neighbors and they indicated they have no problem with the proposal.

Thomas presented a letter written by a neighbor regarding the proposal. The Court Reporter marked the letter, which was sealed, as an exhibit for the case. She presented the letter to Attorney Poole for his review. The letter is written by Ron Metzler, 614 Snyder Hill Road, Lititz.

Matteson stated that if there was no confusion regarding the location of the business, it seems that Thomas/Pfautz would be more agreeable to the proposal.

The Zoning Officer stated that if the Board is considering approval of the request, he would recommend a condition that the boats must be dropped-off and delivered to the off-site lot that Musser owns. In addition, only Musser should be permitted to bring boats to and from his home. He

added that Musser should also have a sign, because he was originally unaware which property was the Musser property as well.

Pfautz inquired how the issue of employees and helpers would be addressed.

Matteson explained that if the use is approved, the Zoning Ordinance states that "only residents of the dwelling may be engaged in the home occupation use". He clarified that this means that no other helpers, whether they are employees or not, can be engaged in the business. The Zoning Officer explained that the Board has been consistent in enforcing this provision. Musser inquired whether the boat owners could assist with the repairs. Matteson confirmed that they could not help, since they are not residents of the dwelling. Musser stated that he was under the impression that he could work on a friend's boat at his home when he is not operating the business. The Zoning Hearing Board stated that this would cause a problem because, for enforcement purposes, the Zoning Officer would not know when the repairs are part of the business or not. Matteson noted that if an individual lives at the property, they could assist with the business. Musser stated that the individual from New Jersey, who helped previously, lives with him from November until March 31st of each year. The Zoning Officer stated that an individual can sit and watch, but cannot help with boat repairs. Musser stated that he thought he could work on a friend's boat on a Saturday when he is not operating the business. The Zoning Hearing Board clarified that he would need to go to the individual's home to work on the boat. Musser confirmed that he would not operate the business on Saturdays.

On a motion by Matteson, seconded by Goldman, the Board voted unanimously to grant a Special Exception under Section 340-14.C(1), to allow the home occupation, contingent upon the Applicant adhering to Section 340-78 of the Zoning Ordinance pertaining to Home Occupations, upon the hours of operation being limited to Monday through Friday from 8:00 a.m. to 5:30 p.m., upon only one boat being onsite at any time, upon the garage doors being closed at any time an engine is being operated, upon no work being performed in the driveway, upon Musser being the only individual permitted to bring boats, motors or any item to be serviced or repaired to and from the property, and upon the Applicant installing a sign that meets the Ordinance that clearly identifies the business location. Matteson clarified that the motion excludes routine deliveries by UPS, USPS, Federal Express, or similar type deliveries.

CONSIDER REQUEST FOR A SIX-MONTH EXTENSION OF TIME FOR THOMAS R. SHUMATE & BILLY R. SHUMATE (AFFORDABLE PAVING): The Board reviewed the request. The Board noted that due to Act 46, extensions have been granted to 2016.

ADJOURNMENT: With no further business to come before the Board, the meeting was adjourned at 9:10 p.m.

Respectfully submitted,

Thomas Zorbaugh
Code and Zoning Officer