

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of December 5, 2013

Members Present

Greg Sirb  
Jeff Staub  
Sara Jane Cate  
Richard Freeburn  
David Dowling  
Alan Hansen  
Watson Fisher

Also in Attendance

James Turner  
Dianne Moran

**Docket 1346**

Applicant: M& Z Carpet  
Address: 620 Yorkshire Drive  
Carlisle, Pennsylvania 17013  
Property: 4747 Jonestown Road  
Harrisburg, Pennsylvania 17109

Article 6 - OFF STREET PARKING AND LOADING

Required Number of Parking Spaces

Article 601. A Overall Requirements

Each use that is newly developed, enlarged, significantly changed in type of use, or increased in number of establishments shall provide and maintain off-street parking spaces in accordance with Table 6.1 and the regulations of the Off-Street Parking Article.

The Applicant proposed to create a new retail space to occupy the remaining 3,500 square feet on the east end of the building. M&Z Capet is requesting a parking variance to lease the east side of the building to a third party who needs ten (10) or fewer parking spaces. M&Z Carpet currently has twenty-two (22) parking spaces.

Grounds: Section 601  
Fees Paid: November 4, 2013  
Property Posted: November 24, 2013

Advertisement:                    Appeared in The Paxton Herald on November 20, 2013 and  
November 27, 2013.

The hearing began at 7:25 p.m.

Mr. Freeburn swore in Steve Macdonald, 620 Yorkshire Drive, Carlisle, Pennsylvania, 17013. Mr. Macdonald stated that he is the President of M&Z Carpets.

Mr. Jeff Staub noted that he had to reclude himself from this hearing as he has a business relationship with the application. Mr. Freeburn noted Mr. Staub's recusal. Mr. Turner explained that Mr. Hansen will be voting on this application.

Mr. Freeburn questioned if the appropriate fees were paid for this application and if the property was posted. Ms. Dianne Moran advised that the appropriate fees were paid on November 4, 2013. The proper advertisements appeared in The Paxton Herald on November 20, 2013 and November 27, 2013. The hearing notices were posted on November 24, 2013.

Mr. Freeburn questioned what variance the applicant was seeking for Docket 1342. Ms. Moran answered Article 6 OFF STREET PARKING AND LOADING: Required Number of Parking Spaces. Article 601. A Overall Requirements: Each use that is newly developed, enlarged, significantly changed in type of use, or increased in number of establishments shall provide and maintain off-street parking spaces in accordance with Table 6.1 and the regulations of the Off-Street Parking Article. She noted that the Applicant proposed to create a new retail space to occupy the remaining 3,500 square feet on the east end of the building. M&Z Capet is requesting a parking variance to lease the east side of the building to a third party who needs ten (10) or fewer parking spaces. M&Z Carpet currently has twenty-two (22) parking spaces.

Mr. Freeburn questioned if the applicant agrees to submit a copy of the site plan and application to the Township as exhibits. Mr. Macdonald answered yes.

Mr. Freeburn requested counsel to identify himself. Mr. Christopher Rice stated that he was with the Martson Law Offices, located at 10 East High Street, Carlisle, Pennsylvania, 17013.

Mr. Freeburn noted that the Zoning and Hearing Officer for Lower Paxton Township, Dianne Moran was previously sworn in.

Mr. Freeburn requested Mr. Rice to explain what his client intends to do.

Mr. Rice explained that along with the application, he submitted a decision granting a variance from a hearing held on September 1, 2005, one at which many of the current Board members were present. He explained that he hopes his letter will help those Board members to recall the decision provided at that time.

Mr. Rice noted in 2005, a similar proposal was made by M&Z Carpet located in a 50,000 square foot building. He noted that they asked to segregate east and west sides to have two separate rental units. He explained, based upon the decision granted in 2005, the Board allowed

for the one side of the building to be segregated into a separate unit, made up of 3,000 square feet. He noted that the Board eliminated the request for retail space on the east end of the building until a parking history could be established. He noted that the applicant had presented a request for a minimum variance which will afford relief. He noted that the applicant has 22 parking spots; however, according to the Township's requirements the applicant needs to have 31 parking spaces. He stated that his client does not believe that he has a parking issue and the Board decision was granted for a variance for the one unit, allowing his client to come back after he had established a history. He noted that his client is now coming back, eight years later, which has been a good time to establish a parking history. He noted that currently the tenant on the west side only utilizes a maximum of five spaces, and M&Z Carpet, located in the center of the building uses seven parking spaces to include the employees. He noted that leaves twelve parking spaces used, which based on the 22 parking count leaves ten parking spaces left.

Mr. Rice explained that he is proposing what was done before, that when his client finds a tenant to come into that spot, he would ask the zoning officer to approve a type of use that would not require more than ten parking spaces to include its employees.

Mr. Rice noted that he has the plans that were submitted with the application and could provide them to the Board again, but he suggested that they may not be as relevant now as a result of the prior variance situation. He noted that he also submitted copies of the Zoning Hearing Board order from the 2005 decision and the letter submitted back in 2005. Mr. Freeburn noted that the Board has copies of those documents.

Mr. Rice explained, at this time, he would have his client testify to the accuracy of his statements and the documents that were submitted.

Mr. Rice questioned Mr. Macdonald if the letter dated October 31, 2013 that was submitted with the application was true and correct. Mr. Macdonald answered yes.

Mr. Rice questioned Mr. Macdonald if he was proposing to have the variance granted for three separate units at the location of 4747 Jonestown Road. Mr. Macdonald answered yes.

Mr. Rice questioned Mr. Macdonald if one unit is developed at 3,000 square feet. Mr. Macdonald answered yes.

Mr. Rice questioned Mr. Macdonald what tenant is in that location. Mr. Macdonald answered that it is an AT&T Wireless retail store that sells cell phones and products.

Mr. Rice questioned Mr. Macdonald if based upon his experience with AT&T as a tenant, what is the maximum amount of spaces that they need to include their employee parking spaces. Mr. Macdonald answered there are usually two employees at the most and two or three customers.

Mr. Rice questioned Mr. Macdonald how long his business has been at that location. Mr. Macdonald answered that it has been there since 1963.

Mr. Rice questioned Mr. Macdonald, based upon his history, how many parking spaces does M&Z Carpet currently use. Mr. Macdonald answered that the business, in today's climate, has two or three employees and maybe three or four customers.

Mr. Rice questioned Mr. Macdonald if he has had any parking issues in the past ten years. Mr. Macdonald answered no.

Mr. Rice questioned Mr. Macdonald if he believed the ten parking spaces would be sufficient. Mr. Macdonald answered yes, but most of the time he is not using all the spaces so there are additional spaces available.

Mr. Rice questioned Mr. Macdonald if the decision statements granting the variance on September 29, 2005 are still accurate today. Mr. Macdonald answered

Mr. Rice questioned Mr. Macdonald if the Board has any questions to ask the applicant at this time.

Mr. Sirb questioned if there would be three retail businesses at that location. Mr. Rice answered yes. Mr. Sirb noted that it would be AT&T, M&Z Carpet and a third one. Mr. Rice explained that he does not have a tenant at this time for the third part of the building. He noted that he did not have a tenant in place when the first application was submitted. Mr. Sirb noted that M&Z Carpet has been at that location for a long time; he has never viewed a parking issue at that location. He explained that he gets a little concerned when he is voting on something in the gray area depending on who the tenant may be. He questioned if we would vote on it once we know who the tenant is. Mr. Rice noted that he was not the attorney when the first decision was rendered, but based upon the decision back then it was conditioned upon the zoning officer confirming that it was a business that would not utilize more than x amount of parking spaces. He noted that his client is okay with that. He explained that he would like that to occur again with the zoning officer approving the client for parking issues. Mr. Sirb noted that it would be a condition that would be put on the variance.

Mr. Dowling noted that it is funny that you would raise that issue, because when this was discussed the last time he made a motion to grant the application with the condition that there only be two tenants in the building, one would be M&Z Carpets and there would be a tenant on the western part of the building. He noted that is only reason the variance was granted then. He questioned how many parking spaces are required for the site. Mr. Rice answered that the decision states that it is 31, but it was concluded that there were 22 parking spaces from the decision signed September 29, 2005.

Mr. Dowling noted that the interpretation states that the number of spaces required are 40 and the zoning officer determined that there were 22 in September of 2005. He noted that you will still only have 22 parking spaces, correct. Mr. Rice answered yes, noting that he was going off of what was decided back in 2005 that there were 22 parking spaces and he is present not, after establishing a parking history to allow for the third tenant.

Mr. Dowling noted that the whole issue of a parking history is a little vague to him as he is not sure how you can establish a parking history for a tenant who is not there yet. He noted that you have established a parking history for M&Z Carpet. Mr. Rice answered that is correct and for the current tenant. Mr. Freeburn noted as he reads it was conditioned upon establishing a parking history for M&Z and the tenant on the western part of the building and based upon your experience at some point if M&Z would come back to relate to the Board what your experience has been by which time it would be a history. He noted that it is now a history then you could inform the Board what it has been, that he used five parking spaces for the western end of the building and seven in the middle providing ten spaces that are historically not being utilized and assuming that there is a 3,500 square foot unit on the eastern end. He noted with the type of tenant that would not typically proposed an overuse of spaces then we would consider that.

Mr. Sirb noted that most of the Board members were here in 2005 and the whole premises was the parking history for one tenant. He noted that now we are talking about an additional tenant. Mr. Freeburn noted that the parking history for M&Z and the tenant on the western side. Mr. Sirb noted that it was the eastern end in 2005, and now we are talking about; it was basically a parking history to allow one additional tenant. He noted that we already have that tenant now.

Mr. Rice noted that the decision states by eliminating, we had a request for east and west tenants, and when we came to you folks, there was a concern for how to know, knowing M&Z's history, now we need to determine the history on the west side, so we eliminated the east side request and we will give you the west and come back later. He noted now you have M&Z and the west, tell us what your parking history is and then we will decide if the Board would allow M&Z to have the east side tenant.

Mr. Freeburn noted that he understands that but we now have a history, we have eliminated the east because we were concerned that these two tenants by themselves might take up all the parking spaces so; therefore, we were not willing to grant the east at that point, and to have him come back later to let us know what the history was. He noted if the history has been no over demand for parking spaces, the Board might consider the east. He noted that is what he is coming to us for now.

Mr. Rice noted that M&Z does not want a parking issue as they want a place for their customers to park all the time. He noted that they would not allow a tenant to come in who would affect their business. Mr. Freeburn noted if you would bring in a tenant who would use 15 parking spaces, your customers will be very unhappy.

Mr. Freeburn noted that it would rule out any food use as it would be the most demanding from a parking standpoint. Ms. Cate questioned if Mr. Rice was looking at a retail space. Mr. Rice answered that he would not want to commit because he does not know who will approach Mr. Macdonald and he does not know how the economy would change but it would be someone who does not use more than ten parking spaces.

Ms. Cate questioned if there are any parking spaces in the rear. Mr. Rice answered that he feels that there are, but the Township does not agree. Ms. Cate noted that it can get very narrow back there.

Mr. Sirb noted that his issue is how many retail spaces can be put in that building. He noted that now the applicant wants to put a third retail unit and the issue is parking but traffic is an issue as it is right on the road. He noted when a car pulls out of that area; you are smack, right in the traffic. He noted that we are predicting another retail space, three in that area and he questioned Ms. Moran if he would need any other variance to add a third retailer. Ms. Moran answered no.

Mr. Freeburn noted that it is almost half of what the ordinance requires, noting that it requires 40 and there are 22 parking spaces with three tenants. Mr. Freeburn noted that it is an unusual site because it is so narrow along Route 22. He noted that he has other concerns that he has not voiced at this point but if you decide to put up this building and it has more space than we have parking for, and the building is causing the hardship he would have a hard time, but it seems to him that it is a weird site. Mr. Rice noted the plan that he submitted that was very old showed 40 parking spaces on the plan, but he is going with what the Zoning Officer determined as 22 parking spaces. He noted that he will not do anything that would jeopardize the application. He explained if the applicant had issues with parking he would know.

Mr. Freeburn noted that his concern is that M&Z Carpet has been there since 1963 but it may not be there forever. He noted whatever business comes in after M&Z Carpet is going to have the benefit and they may not be such great citizens and we might have people parking throughout the neighborhood or on other people's parking lot and jumping over curbs and doing other kinds of dangerous things. He noted that his concern is that granting the application does not limit it to M&Z Carpet but for whoever owns the building.

Mr. Sirb questioned what would happen if AT&T splits and if you have another customer come in who needs more parking spaces. He noted that Mr. Macdonald would want to rent that spot and he can understand that but he might need another 20 parking spaces. Mr. Turner suggested that the solution would be a condition on the variance that any change of tenant would require a new verification by the Zoning Officer. Mr. Sirb questioned if that is the owner of the property or the tenant. Mr. Turner suggested that it would be for any use. Mr. Sirb noted if M&Z goes out of business, another business would come in... Mr. Freeburn noted that Mr. Macdonald could decide that he is doing such a great business and that he needs to relocate to a bigger location in a different spot with more space although he has great visibility along Route 22. He noted that the sign has been there forever, and everyone knows where you are. He noted that we can't guarantee who would move into that location if you decided to move from it. He noted if we could do that, it would squash his concern.

Mr. Rice questioned if a new person would have to come to the Township for any consideration. Ms. Moran noted they would need a change in occupancy permit. Mr. Rice noted whether you conditioned it or not, a new tenant would have to come to the Township. Mr. Sirb questioned if it would concern AT&T, M&Z Carpet or the third tenant. Ms. Moran noted if any retail space change, a change of occupancy would have to occur. Mr. Sirb noted as long as the

zoning officer had the final say then it would soften his opinion a little bit. He noted that he is not thrilled about this because of the location of the store. He noted that there is no place to go. Mr. Rice noted that is his hardship.

Mr. Freeburn questioned if the property is causing the hardship or if the person who is building causing the hardship and for this case it is a weirdly configured lot and it has been there forever and the only practical way to use it is by granting the variance. He noted that it has to be reasonable since we don't want to burden your neighbors with people parking on their lots and putting people in danger noting that people are jumping over barriers and things like that to get into your parking lot since you don't have enough parking. He noted that we want to make sure that everyone is a good citizen.

Mr. Dowling questioned if the AT&T store was the first tenant that occupied that space after the previous variance. Mr. Macdonald answered yes. Mr. Dowling noted when you testified at the previous hearing you stated that you were looking for a tenant that would be compatible with the carpet business. He suggested that it might be a paint or furniture store. Mr. Macdonald noted that is what he wanted originally but it is hard to pick your tenants. He noted that he had a serious prospect of an Amish furniture store and a mattress place was also another consideration but AT&T signed the contract.

Ms. Cate questioned if the space was already located there or will it be built out. Mr. Macdonald noted that he has not built it out yet but it is within the building. He noted that he needs to put up a divider. Ms. Cate questioned if he was currently occupying the space. Mr. Macdonald answered yes. He noted that it is just extra warehouse space for empty storage bins and it is not being utilized.

Mr. Sirb questioned if any board members had any additional questions.

Mr. Sirb questioned if anyone in the audience wished to comment on Docket 1343. No response was heard.

Mr. Sirb noted that the Board has 45 days to render a decision and questioned if the Board would like to make a motion on Docket 1346.

Mr. Sirb noted that he is not too thrilled about this application, but he will make a motion to approve the Docket No. 1346 with the condition that the variance, any change to any of the occupants must be approved by the Zoning Officer particularly for parking or any other variances that may come up. He noted that he wants to keep it a little open ended as it may be for other things. He noted that he doesn't want it to say just for parking. He noted that it has to be a compatible use for that area. He noted that we gave Mr. Macdonald a variance for parking and we are doing that by throwing another store there. He noted that it doesn't add up to him but he understands the situation.

Mr. Freeburn questioned if it is a permissible condition. Mr. Turner noted that any other variance would require them to come back to this Board. Mr. Sirb noted that a change in variance could be for something other than parking as we don't know who the tenant is. Ms.

Cate questioned if they would be required to come back to this Board. Mr. Freeburn noted that he is concerned that we don't make the condition so broad as to invalidate it by saying that we are going to retain the right to approve the type of use that goes in there. He questioned if we have the right to do that; we may have the right to condition it upon approval of the zoning officer or the initial tenant or any new tenant in the future with regard to parking but not because we don't approve of the type of tenant it might be. He noted that any portion of your condition that would be deemed invalid by the court would not invalidate the rest of it.

Mr. Sirb noted that any change in the tenants, if Ms. Moran feels that it is not good for the parking, they should not be allowed. He noted that Ms. Moran still has that option. He noted that it doesn't matter if it is a paint store or an Amish Store or an AT&T store. He noted if there is a problem with the parking Ms. Moran can say no. Mr. Freeburn noted that he has no problem with that.

Mr. Freeburn noted when he was listening to Mr. Sirb's condition, he was hearing if you didn't like the type of tenant it was, for example, if they wanted to put in a massage parlor or something that you did not like, that we could deny it because we did not like the type of business that it was. He noted that he would not want to do that. He noted if you give Ms. Moran the right to condition the variance on the basis that the proposed tenant would create two great a demand on parking, he has no problem with that.

Mr. Dowling noted that it was a condition for the applicant in 2005. He noted that he never heard that the zoning officer approved the AT&T store. He noted that there was another condition that was followed. He questioned how you would have the zoning officer go out and determine that the tenant needs eight or ten spaces other than by square footage.

Mr. Sirb noted that he would be firm with his motion on the condition that any change in tenant must be approved by the zoning officer is she feels that it causes a hardship with parking. Mr. Freeburn seconded the motion.

Mr. Freeburn called for a roll call vote: Mr. Hansen, nay; Mr. Dowling, nay; Mr. Sirb, nay; Mrs. Cate, nay; and Mr. Freeburn, aye.

Mr. Freeburn questioned if anyone wanted to make an additional motion.

Mr. Dowling questioned how many square feet are we talking about in this little area. Mr. Rice answered that it is 3,500 square feet. Mr. Dowling noted that he would feel a lot better if he knew who the tenant was to have a better feel for what kind of parking would be needed. He noted that you will probably build out the area anyway, but you could lease it subject to the issue of zoning. He noted in 2005, he approved the variance for only two tenants. He noted that you had 22 spaces and 40 were required. He noted that it is inconsistent in his mind to allow three tenants and still the same amount of parking. Mr. Sirb noted that is it in a nut shell. He noted that adding another tenant to this parking issue is not the answer. Mr. Dowling noted that the ordinance may be a little out of sync for this site and he understands that but asking for a variance for a third tenant is pushing it. He noted that you could sell the M&Z building and someone could divide that too then we would have more tenants. He noted that it would be easier

for him to find this to be acceptable if he had a feel for the tenant or the kind of business to have a better ideas for traffic and parking. He noted that some businesses may only require two or three parking spaces but others may require a lot.

Mr. Macdonald noted that almost all the time there is 70% of the spaces are vacant in front of the store and when he had Victor Segina do the plot plan when he built the building in the 1960's he showed 40 parking spaces having cars park parallel against the building around the back and currently, our installers do that as they park the van in the back. He noted that there are actually more places to park on the property beside the 22 parking spaces that are currently in the code. He noted he has more spaces than that in the front of the building that are lined according to the old eight foot standard for parking. He noted that it is closer to a realistic number of 30 parking spaces including parallel parking in the back.

Mr. Turner suggested that the applicant could table it until such time that the applicant requests that we put it back on the docket and you could come in with a tenant; that way you would not need to pay \$600 or \$700 application fee all over again. Mr. Sirb noted that he does not have a problem with that as it makes sense to do that. He noted that he is not saying that he will vote for it but it would be something tangible that he can look at to say that this tenant would only use one or two parking spaces and it will not cause a hardship. He noted that this building is located in a very high traffic area and that is what concerns him. He noted that Jonestown Road is just flowing day and night. He noted that putting three tenants in that location and not having the required parking makes him nervous. He noted if the Board wants to do that he has no problem with that. Mr. Freeburn suggested that it is a reasonable solution. Mr. Turner questioned if the Board would be willing to waive the requirement that we meet within 60 days. Mr. Rice answered yes. Mr. Turner noted that we would reschedule it within 45 days of the request of the Board. Mr. Rice answered yes.

Mr. Dowling noted that he would feel better if he had some good persuasive testimony from the tenant about the minimum and maximum parking needs. He noted that you will not have a tenant unless the tenant is comfortable with the parking. He noted that Mr. Macdonald would not accept a tenant if his overflow impacted his business parking. Mr. Sirb noted that it puts too much pressure on the zoning officer.

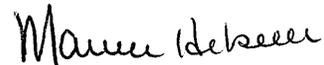
Mr. Freeburn noted, at that time, he would be looking at a condition that if any change in tenant occurs it would require the approval of the zoning officer. Mr. Sirb noted that it puts too much pressure on the zoning officer when it should be on the Zoning Board as we should be the one that decides who the tenant is. Mr. Freeburn noted that he is putting the pressure back on Ms. Moran that even if he came in with a proposed tenant, that he would still want a condition that any change in tenants would require the approval of the zoning officer. He noted his concern is not with M&Z Carpet or AT&T store or with regard that you would least to who you would want to make sure that they do not overburden the parking lot. He noted that his concern is for who own the property in the future and what they might do. He noted that we can't vouch for them or if they will be good citizens as we don't know who they will be at this point. He noted that he is putting the burden back on the zoning officer for any future tenants.

Mr. Sirb made a motion to table Docket No. 1346. Mr. Freeburn questioned if Mr. Macdonald would provide his consent to this. He noted that counsel mentioned that Mr. Macdonald would consent to this. Mr. Dowling seconded the motion. Mr. Turner conducted a roll call vote: Mr. Hansen, aye; Mr. Dowling, aye; Mr. Sirb, aye; Mrs. Cate, aye; and Mr. Freeburn, aye.

Mr. Rice noted if six months from now we determine that we have a client, we should contact the zoning officer. Mr. Sirb noted that she would schedule a hearing at that time. Mr. Turner noted that we will put you back on the docket at that time.

The hearing ended at 8:02 p.m.

Respectfully submitted,

  
Maureen Heberle  
Recording Secretary

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of December 5, 2013

Members Present

Richard Freeburn  
Jeff Staub  
Sara Jane Cate  
David Dowling  
Greg Sirb  
Alan Hansen  
Watson Fisher

Also in Attendance

James Turner  
Dianne Moran

**Docket 1347**

**Applicant:** Kurt and Lacey- Hoffman Ehrenfeuchter

**Address:** 5001 Virginia Avenue  
Harrisburg, PA 17109

**Property:** 5001 Virginia Avenue  
Harrisburg, PA 17109

Section 403.D.8.c.(1)(a) Front yard fences located in the minimum front yard of a lot in a residential district shall be an open-type fence (such as picket, wrought iron, vinyl post, chain link, or split rail) with a minimum ratio of 1:1 of open to structural areas; and

Section 403.D.8.c.(1)(b) Front yard fences located in the minimum front yard of a lot in a residential district shall not exceed four feet in height.

Section 403.D.8.c.(2) On a corner lot, a fence or wall shall meet the same requirements along both streets as would apply within a minimum front yard. However, a fence that only extends behind the rear of a dwelling may have a maximum height of 6.5 feet along on of the streets, other than the street that is along the front of the dwelling.

The Applicant seeks a variance to construct a fence that exceeds the four-foot height limitation. The applicant also seeks to construct a closed type fence.

**Grounds:** Section 403.D.8 Fences and Walls

Fees Paid: October 31, 2013

Property Posted: November 26, 2013

Advertisement: Appeared in The Paxton Herald on November 20, 2013 and November 27, 2013.

The hearing began at 8:02 p.m.

Mr. Freeburn swore in Kurt and Lacey-Hoffman Ehrenfeuchter, 5001 Virginia Avenue, Harrisburg, PA 17109.

Mr. Freeburn noted that Ms. Dianne Moran, Zoning and Hearing Officer for Lower Paxton Township was previously sworn in.

Mr. Freeburn questioned if the appropriate fees were paid for this application and was the property posted. Ms. Dianne Moran advised that the appropriate November 20, 2013 and November 27, 2013. The hearing notices were posted on November 26, 2013.

Mr. Freeburn requested Ms. Moran to explain the reason for the variance request. Ms. Moran explained that the variance request is for Section 403.D.8.c.(1)(a) Front yard fences located in the minimum front yard of a lot in a residential district shall be an open-type fence (such as picket, wrought iron, vinyl post, chain link, or split rail) with a minimum ratio of 1:1 of open to structural areas; and Section 403.D.8.c.(1)(b) Front yard fences located in the minimum front yard of a lot in a residential district shall not exceed four feet in height; and Section 403.D.8.c.(2) On a corner lot, a fence or wall shall meet the same requirements along both streets as would apply within a minimum front yard. However, a fence that only extends behind the rear of a dwelling may have a maximum height of 6.5 feet along on of the streets, other than the street that is along the front of the dwelling.

Ms. Moran explained that the applicant seeks a variance to construct a fence that exceeds the four-foot height limitation and also seeks to construct a closed type fence.

Mr. Freeburn questioned if the applicant agreed to submit a copy of the site plan and application to the Township as exhibits. Mr. Ehrenfeuchter answered yes.

Mr. Ehrenfeuchter explained that he and his wife reside at 5001 Virginia Avenue and have two dogs, one is a boxer mastiff mix and the other, a pit bull; both are very friendly but with the current three foot chain fence around the property they have a hardship in containing the dogs in their yard. He noted that he has concerns for the safety of the animals as he resides on Prince Street and if the dogs were to get away from the yard for any reason they could easily jump the fence and into an adjacent neighbor's property. He noted that he detains the dogs on leashes and use a stake in the yard but the Mastic is over 100 pounds and stands six feet tall when he stands up. He noted that he is only 5'9" and the dog looks him right in the eyes. He noted that

there have been instances when his wife had to take the dogs out and they has gotten excited when they see someone along the street and pulled her across the yard against her will.

Mr. Ehrenfeuchter noted that he sees this as a concern for his animals as they do startle many people walking by. He noted that the dogs are very gentle but very protective of the property and they like to greet people, tend to bark and jump up on the fence. He noted that pedestrians avoid their side of the street when the dogs are out as they startled the pedestrians. He noted that he also has a concern with the potential liability if anything would happen or is someone would cross the property or hop the fence, that they could injure the dogs. He noted if one of the dogs got away from them and jumped the fence and ran out into Prince Street they could be in a car accident and cause great liability for him as a homeowner. He noted that they do want to start a family soon and being on a busy street they would like to construct a higher closed in fence for protection of their future children.

Mr. Ehrenfeuchter explained that he applied for a permit to build a fence and it was denied as it was in violation of the ordinances. He noted that he was told that he could appeal the decision and even though he understands that there is an ordinance he is asking for the exception for the safety of their dogs and the community and for the liability of himself as a homeowner.

Mr. Ehrenfeuchter explained that he spoke with the neighbors and asked them to sign the petition that they were okay with what they wanted to do. He explained that he shares a fence with a neighbor in the property behind their home and to the left. He noted that both property owners that he shares the fences with are perfectly fine with their request as they are familiar with their pets as well. He noted that he also spoke with members of adjacent property for his home who also signed the petition that were provided with the application.

Mr. Ehrenfeuchter noted that he is seeking approval to construct the fence on their property.

Mr. Freeburn questioned if the Board members had any questions.

Mr. Sirb questioned for the height and privacy, what is the issue that the Township sees. Ms. Moran noted that any front yard fence must be an open-type fence even though this is on a corner lot, the street that is not the primary frontage street may have a higher height but it still needs to be an open-type fence. Mr. Sirb questioned if there is a reason for this so that people can see into the property. Ms. Moran answered that she thinks so. She noted if you could picture riding along road frontage and seeing all privacy fence.

Mr. Freeburn noted that even though it says that the fence is along the front side of the street, it is actually on the rear side if you are on Virginia Avenue. Mr. Ehrenfeuchter answered yes. Mr. Ehrenfeuchter questioned that with the Township as well and he was advised that any street serves as a front.

Mr. Freeburn questioned if the front door is located on Virginia Avenue. Mr. Ehrenfeuchter answered yes. Mr. Freeburn noted that the back door is to the neighbor behind you and the west side of the property is Prince Street. He noted that the fence is entirely in the rear of the house if you think of the rear door as being the rear of the house. He noted that it does not begin at the front plane of your house or even in the front if you were looking from the front door. Mr. Ehrenfeuchter explained that the fence starts at the back corner of the house, if you are looking at the front of Virginia, the back side of the property.

Ms. Cate questioned if Mr. Ehrenfeuchter wants to move it forward. Mr. Ehrenfeuchter answered that he wants to replace the existing three foot chain fence with a six foot vinyl privacy fence. Mr. Staub noted that the drawing doesn't show that. Mr. Turner noted that he wants to clarify that as the drawing does shows the fence as starting in the middle of the side of the house but Mr. Ehrenfeuchter's testimony is that the closest the fence will be to Virginia Avenue is the rear plane of your house. Mr. Ehrenfeuchter answered that was correct. Mr. Turner questioned what kind of fence it would be. Mr. Ehrenfeuchter noted that his door is on the side of the house and not the back; he does not want to move the fence any closer to the corner of that intersection; he want to replace the fence exactly where it is now. He noted that the fence is set in a little bit on the west side of the home. Mr. Turner questioned how far. Mr. Ehrenfeuchter answered, without measuring, maybe ten feet. Mr. Turner questioned if that is only on the west side of the house. Mr. Ehrenfeuchter answered that was correct. Mr. Turner questioned if on the east side of the house the fence is lined up with the rear plane of the house. Mr. Ehrenfeuchter answered yes. Mr. Freeburn noted that the drawing shows the proposed fence sort of in the middle of the house for both east and west sides. Mr. Ehrenfeuchter noted that it was a generic outline provided by the contractor.

Ms. Cate questioned, on the map, where it would be for the one side of the house. Mrs. Ehrenfeuchter stated that that side it comes off the back of the house.

Mr. Turner requested the applicant to come forward to mark Township Exhibit 1. He suggested that the west side of the property is on Prince Street and Virginia is on the north side of the property so the east side of the property, the fence will begin on the back corner and follow the same line as the rear of the house, but for the west side it would be inset approximately ten feet, no closer than the existing fence. Mr. Ehrenfeuchter stated that was correct. Mr. Turner questioned if the drawing was accurate for what Mr. Ehrenfeuchter proposed. Mr. Ehrenfeuchter answered yes.

Mr. Fisher questioned which part is the privacy fence. Mr. Turner answered that it is all a proposed privacy fence. Mr. Staub questioned if it would all be 6.5 feet in height.

Mr. Dowling questioned if a pet or two pets are ever a reason to grant a variance. Mr. Sirb suggested that it is not a hardship.

Mr. Freeburn noted that he has a problem when the property is not causing the hardship... Mr. Dowling noted that the fact of the matter is that the fence will outlive the applicant, house and dogs. He noted at some point the needs for the variance, the dogs

will cease, but there will still be a stockade around the front and side of the house. Mr. Freeburn noted that it is permanent for any future use. Mr. Dowling noted that he is very sympathetic for issues for fences but he questioned if this really is a hardship when the other solution could be something else. He noted that he could understand the need for a fence for children as Prince Street as it is a very busy street but he is not sure that would get a 6.5 foot fence and a privacy fence around the entire area. He noted in Mr. Ehrenfeuchter letter he stated that the dogs bark at people that they can see through the fence, but questioned if he needed to control the dogs more.

Mr. Ehrenfeuchter noted that the dogs can pull the stake out of the ground. Mr. Dowling noted that it is not a good thing to stake a dog. Mr. Ehrenfeuchter explained that is another reason why he wanted that variance granted and the reason for the privacy is when passerby's walk through the sidewalk and the dogs get very excited, they jump up on the current fence and have caused damage to the fence as well. He noted that he was hoping to eliminate the see through aspect for the dogs so they wouldn't damage the fence. He noted that the quote to build the fence on the property was \$6,000 and he didn't want to invest in the fence if the dogs could continue to jump up on it and damage it.

Mr. Dowling noted that the ordinance allows for a four foot fence in the front yard. Ms. Moran answered that was correct and a 6.5 foot fence on the one side that is not the front of the property. Mr. Dowling noted that would not be the Prince Street side. Mr. Freeburn noted that Prince Street is front as well as Virginia Street. Ms. Moran explained that Virginia Street is the true front.

Mr. Dowling questioned if the dogs could jump a four-foot fence. Mr. Ehrenfeuchter answered that the mastiff stands six foot against the four foot fence, and if it saw a pedestrian walk by, it could easily extend over that and reach into the throughway.

Mr. Freeburn noted that the variance would survive Mr. Ehrenfeuchter, his dogs and it would be available to any future owners. He noted that any other person who comes forward and wants a variance can use your variance as a precedent for what we have done in the past. He noted that he would like to see an unusual condition of the property give rise to the variance rather than an unusual use of the property. He noted that you are saying that you have unusual dogs so therefore an unusual use of the property should justify a variance. He noted that is backwards, as it should be an unusual use of the property that is giving rise to what we would grant a variance for. He noted that he is very sympathetic to people who have private property and their right to use it as they wish but within the realm of being a good citizen and good neighbor to everyone else. He noted that the Board is not the legislative branch that made the ordinances and it may grant exceptions to those ordinances when there is some justification based upon some unusual condition of the property.

Mr. Ehrenfeuchter noted that we have control of our animals but it is more about people who are not animal friendly and not comfortable around dogs; his cause for concern is should the dog ever get away from his wife, noting that normally he takes them out as he can control them. Mr. Dowling noted that everyone is sympathetic to the situation. Mr. Ehrenfeuchter noted that he would be willing to explore other options as maybe it doesn't need to be six feet the whole way

around but at least on the street side to make sure they don't get over that portion of the fence. He noted that he would be open to negotiating or accepting an option.

Mr. Sirb noted that his Saint Bernard dog is about 175 pounds and he has some of the same concerns. He suggested that he could get an electric fence and put it inside the perimeter of the fence and get a general leader. He noted that he can't walk his Saint Bernard and he is a puppy but when I put that general leader on it is a different story. He noted if you give an electric fence a three-foot gap inside the fence, it will work perfect. He noted that they still bark and get excited but the neighbors get a little more comfortable as the dog does not come up to the fence at full speed.

Ms. Cate questioned if many people walk in that area. Mrs. Ehrenfeuchter answered yes. Mr. Ehrenfeuchter noted that there is a school bus stop in that area.

Ms. Cate suggested that an electric fence is a great idea. Mr. Ehrenfeuchter explained that he considered that but he was trying to train the dogs not to bark and run and he had electric collars for the dogs but found that they were ineffective. Mr. Sirb noted that the electric collars are ineffective, but an electric fence would take a little while for the dog to get used to due to the dog's size but it does work and suggested that the cost would probably be about the same.

Mr. Sirb noted that there is not hardship to the property.

Mr. Staub noted that the neighbor to the municipal building opposite the driveway has a fence around their yard, about four feet high. Ms. Moran agreed that was the height. Mr. Staub noted that there use to be a large dog at that house that we called Marmaduke because it was so large, but the fence was adequate. Ms. Moran noted that they never let the dog off of its leash.

Mr. Ehrenfeuchter noted that he appreciates the Board's time and understands the logic for the property but it does put a hardship on he and his wife and creates a liability for him as accidents do happen and if his dogs would get away he would hate to see an accident.

Mr. Freeburn noted that he is sensitive to public safety, your safety, and the safety of the dogs.

Mr. Freeburn questioned if anyone in the audience wished to be heard in regards to the application. No response was heard.

Mr. Freeburn noted that the Board has 45 days to render a decision with respect to this application and he questioned if any members of the Board wish to take action at this time on Docket 1347.

Mr. Sirb made a motion to deny the variance for Docket #1347. Mr. Dowling seconded the motion. Mr. Dowling noted as long as the applicant understands that he can put a four foot fence along the street in the front of the yard and a six foot privacy fence... Ms. Moran noted that it can't be a privacy fence; it can be a 6.5 foot on the other frontage. Mr. Staub noted that the

Zoning Hearing Board

Docket 1347

Page 7 of 7

six foot fence would be the Prince Street side. Ms. Moran answered yes. Mr. Turner noted that it must be open and behind the rear plane of the home.

Mr. Freeburn requested Mr. Turner to conduct a roll call vote: Mr. Staub, aye; Mr. Dowling, aye; Mr. Sirb, aye; Mrs. Cate, aye; and Mr. Freeburn, aye. Mr. Freeburn noted that the application has been denied.

The hearing ended at 8:25 p.m.

Respectfully submitted,

Maureen Heberle  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
: :  
KURT EHRENFEUCHTER and : DOCKET NO. 1347  
LACEY HOFFMAN :

**DECISION DENYING VARIANCE**

The applicants seek a variance from fence regulations. A hearing on the application was held on December 5, 2013.

**Facts**

1. The applicants and owners of the property in question are Kurt Ehrenfeuchter and Lacey Hoffman of 5001 Virginia Avenue, Harrisburg, Pennsylvania 17109.
2. The property in question is located on the southeast corner of Virginia Avenue and Prince Street and consists of a rectangular lot approximately 96 feet wide and 84 feet deep. The parcel is zoned Residential R-2.
3. The property is improved with a single family dwelling which faces and is accessed from Virginia Avenue.
4. The applicants propose to erect a 6.5 feet tall privacy fence around their entire property. The fence would begin in the middle of the Prince Street side of the house and then run to Prince Street, thence running parallel to Prince Street to the rear of the property. It would then follow the rear and side property lines to a point adjacent to the rear plane of the house, then run to the rear corner of the house. The fence is proposed as 6.5 feet in height and it would be a solid privacy fence.
5. The applicant proposes a solid fence at the proposed height because of a desire to shield two dogs from passersby and to prevent the dogs from jumping over the

4. Granting the variance would be detrimental to the public interest by creating a fortress-like impression, entirely blocking the street view along Price Street.

This would alter the essential character of the neighborhood.

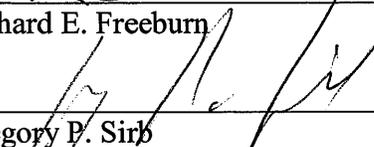
**Decision**

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby denied.

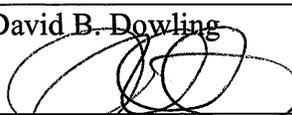
Date: 1/9/14

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
\_\_\_\_\_  
Richard E. Freeburn

  
\_\_\_\_\_  
Gregory P. Sirb

  
\_\_\_\_\_  
Sara Jane Cate

David B. Dowling  
  
\_\_\_\_\_  
Jeffrey W. Staub

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of December 5, 2013

Members Present

Greg Sirb  
Jeff Staub  
Sara Jane Cate  
Richard Freeburn  
David Dowling  
Alan Hansen  
Watson Fisher

Also in Attendance

James Turner  
Dianne Moran

**Docket 1348**

Applicant: Jeffrey Mauch  
Address: 1421 Crums Mill Road  
Harrisburg, Pennsylvania 17110  
Property: 6073-6075 Linglestown Road  
Harrisburg, Pennsylvania 17112

Section 306.B.2 Allowed Uses in Primarily Business Zoning Districts

Assembly or Finishing or Products Using Materials Produced Elsewhere is not a permitted use in the Village Zoning District

Distribution as a principal use is not a permitted use in the Village Zoning District

Food and Beverage Products processing and bottling is not a permitted use in the Village Zoning District

A "Limited Winery" is not a permitted accessory use in the Village Zoning District

The Applicant proposed a limited winery for the sole purpose of commercial production of wine. No tastings, tours or retail will be associated with the building.

Grounds: Section 306  
Fees Paid: November 4, 2013

Property Posted: November 26, 2013

Advertisement: Appeared in The Paxton Herald on November 20, 2013 and November 27, 2013.

The hearing began at 8:26 p.m.

Mr. Freeburn swore in Aaron Hoke, 7747 Manada Creek Drive, Harrisburg, Pennsylvania, 17112, who explained that he is a partner in this business venture. Mr. Steven Kurtz, 322 Buckwheat Drive, Harrisburg, Pennsylvania, 17112, also explained that he is a business partner as well. Mr. Jeffrey Mauck, 1421 Crums Mill Road, Harrisburg, Pennsylvania, 17110 is the property owner and a business partner with Mr. Hoke and Mr. Kurtz.

Mr. Freeburn questioned if the appropriate fees were paid for this application and was the property posted. Ms. Dianne Moran advised that the appropriate fees were paid on November 4, 2013. The proper advertisements appeared in The Paxton Herald on November 20, 2013 and November 27, 2013. The hearing notices were posted on November 26, 2013.

Mr. Freeburn questioned what variance the applicant was seeking for Docket 1342. Ms. Moran answered that it was for Section 306.B.2 Allowed Uses in Primarily Business Zoning Districts: Assembly or Finishing or Products Using Materials Produced Elsewhere is not a permitted use in the Village Zoning District: Distribution as a principal use is not a permitted use in the Village Zoning District: Food and Beverage Products processing and bottling is not a permitted use in the Village Zoning District; and A "Limited Winery" is not a permitted accessory use in the Village Zoning District.

Ms. Moran noted that the applicant proposed a limited winery for the sole purpose of commercial production of wine; no tastings, tours, or retail will be associated with the building.

Mr. Freeburn questioned if the applicant agreed to submit a copy of the site plan and application to the Township as exhibits. Mr. Mauck answered yes.

Mr. Freeburn requested counsel to identify himself. Mr. Andrew Enders of Gradyenders LLP located at 1120 East Chocolate Avenue, Hershey, Pennsylvania. He explained that he was recently retained by Mr. Mauck and his business partners to represent them.

Mr. Freeburn noted that Dianne Moran, Planning and Zoning Officer for Lower Paxton Township was previously sworn in.

Mr. Freeburn requested Mr. Enders to explain what he intends to do. Mr. Enders presented color prints to the Board members.

Mr. Enders noted that it was 80 years ago today that prohibition was repealed.

Mr. Enders explained that Mr. Mauch owns the property, two properties located at 6073 and 6075 Linglestown Road. He noted that there is a small garage, 960 square feet located to the rear of the property that would be 50 yards south from the rear of the house. He noted that Mr. Mauck used the garage as a wood shed and storage facility for his own personal goods. He noted that it has not been used by either set of tenants who live at 6073 or 6075 Linglestown Road.

Mr. Enders noted his clients are proposing to put together a business which will be called Lucky Cask Winery. He noted that the three business partners have applied and received permission to form a Limited Liability Company in Pennsylvania. He noted that their next step is to find a location to produce the wine. He noted at the same time they must also make an application to the Liquor Control Board (LCB). He noted that a precursor to doing this application is having that site. He explained that they identified Mr. Mauck's garage located to the rear of 6073 and 6075 Linglestown Road as a prime location for production of the wine. He noted that subsequent to opening the production facility, under the laws of the LCB Limited Winery License, they would be permitted up to five retail locations. He noted that their end goal with all of this is to open a retail tasting room within the Village of Linglestown.

Mr. Enders noted that these three entrepreneurs want to help put Linglestown on the map and increase the economic activity within the Village. He noted that is what they are trying to do here. He noted at this time a limited winery is not a permitted use within the Village District. He is arguing that this will be a very small production facility, no mechanical production, no stainless steel, more like food grade plastic on a very small level. He noted that a limited winery license permit only allows for up to 200,000 gallons of wine per year. He noted that is a lot of wine. He noted that these three gentlemen have no intention of producing 200,000 gallons of wine; however if they could, they would continue to produce their wine at their primary business location which is 322 Buckwheat Drive in West Hanover Township, the address on file for their Limited Liability Company.

Mr. Enders noted that the LCB tells us that they are not permitted to produce wine for public consumption for sale within their house; they have to do it at another location or an ancillary building. He noted that this garage is an accessory building to the primary building at 6073 and 6075 Linglestown Road.

Mr. Enders questioned if a limited winery fits within the context and would be good for the Village of Linglestown. He noted that his argument is yes, opening up a small family-owned business, noting that these three gentlemen have known each other for a long time, and all three have strong connections to this area. He noted as they were putting together their business plan, they identified Linglestown as an underserved area as there are no other wineries in Linglestown.

Mr. Enders noted if you look at the growth of wineries within the Commonwealth of Pennsylvania, it is now the 7<sup>th</sup> largest producer of wine in the country. He noted since 1981, it has grown from 23 to just over 150 wineries. He noted that the State has not reached market saturation as there is room for more wineries within the business. He noted that adding this winery to Linglestown would be a positive and it would spur economic activity.

Mr. Enders noted that there will be no tasting room so there will be no foot traffic or even street traffic in and out of their building, it will only be utilized by these three partners. He explained that they are not hiring any employees as they will be the ones producing the wine. He noted that all of the business aspects of this endeavor will take place at their primary place of business under the LLC which is in West Hanover Township. He noted within one to five years they would anticipate opening a tasting room with the goal of a location somewhere in the Village.

Mr. Enders noted that he would like to ask Mr. Mauck some questions to verify what he has spoken to.

Mr. Enders requested Mr. Mauck to identify the property that he owns. Mr. Mauck explained that it is a combined address, two addresses on one deed, 6073 and 6075 Linglestown Road.

Mr. Enders questioned how long Mr. Mauck has owned the property. Mr. Mauck answered that he purchased it with his wife in 1992 and then built the garage as he did some construction work and ran his subcontracting business out of that building. Mr. Enders questioned when the garage was built. Mr. Mauck answered that it was built in 1993 after he moved in and remodeled the two addresses.

Mr. Enders questioned what the size of the garage is. Mr. Mauck answered that is 960 square feet, 24 X 40 with a ten foot ceiling.

Mr. Enders questioned why type of construction is the building. Mr. Mauch answered that it is frame construction.

Mr. Enders questioned if it is currently being used. Mr. Mauch answered that he is using it for storage. Mr. Enders questioned who is using it for storage. Mr. Mauch answered that he and his ex-wife are using it.

Mr. Enders questioned if the building is ready to be utilized by Lucky Cask Winery. Mr. Mauch answered if he is granted permission to proceed with this project; he will have to install a water line noting that a sewer line is already serving that building.

Mr. Enders noted that he would open it up to questions from the Board.

Mr. Freeburn questioned what the dimensions were for the building. Mr. Mauck answered that the footprint is 24 x 40. Mr. Freeburn questioned what the height was. Mr. Mauck answered that it was ten feet.

Mr. Enders noted that the level of production that they are anticipating will not require any commercial vehicles coming in and out of the property as there is direct access to this building from the alleyway that runs perpendicular to Linglestown Road. He noted that any raw materials that they need to produce the wine will be brought in by private passenger vehicle or

pickup truck. He noted that they will not need anything larger than that and as they deliver their wine to any number of restaurants locally, they would do so by private passenger vehicle.

Ms. Cate questioned if there is any heat or fire needed to develop the wine. Mr. Enders answered no. He noted that there will be no open flames or heat needed for this process as they have been able to establish how they produce their wine. He noted that it does not use a large scale open fire or heating coils or devices of that sort.

Mr. Freeburn questioned within a twelve month period, what you would envision in terms of the operation of your business at this site. Mr. Allen Hoke answered that he will pick up juice from a vineyard. Mr. Freeburn questioned what time of the year would you do that. Mr. Hoke answered that typically it would happen in the fall between August and November. He noted that is the best harvest season. He noted that he would get the juice in the fall and start the process. He noted that there are some other juice concentrates that they have been able to work with for the production method, to include additives and other ingredients to the wine, so he can produce in the off season.

Mr. Freeburn questioned what quantities of juices you use. Mr. Hoke suggested that he would make 4,000 to 6,000 gallons of wine per year. Mr. Freeburn questioned how would it be delivered and stored. Mr. Hoke answered that it would be stored in a 55-gallon container, noting that an image of the container is shown in the documents. He noted that sugars and yeast are added at this time to ferment the juice and then it is transferred to a secondary fermentation devise for aging such as a wooden barrel but normally it would be a plastic barrel. He suggested that it would be fermented for six to eight weeks until it would be bottled.

Mr. Freeburn questioned if you are talking about 80 or more barrels. Mr. Hoke answered that he anticipates having 12 barrels as a start up.

Mr. Hansen questioned how many bottles would it produce. Mr. Hoke answered that each barrel produces about 250 bottles of wine.

Mr. Freeburn questioned if the barrels are delivered with the juice in them. Mr. Hoke answered no, they are empty. He explained that they are purchased in Hershey and he will pick them up. He noted once they are filled, they are not moved. He noted that he has the various juices delivered to his home as he has been making wine for years. He noted that now he is looking forward to be able to sell his wine as up to this time he was unable to do so without approval from the LCB which requires that he have an ancillary building for production. He noted that his home was not acceptable nor the other two partners residences.

Mr. Freeburn questioned how the juice is delivered. Mr. Hoke answered that it comes in 2.5 gallon containers. Mr. Sirb noted that it is very concentrated. Mr. Freeburn questioned if it is mixed with water. Mr. Hoke answered that he mixes it with water, sugar, and yeast.

Mr. Freeburn questioned if he would have a water supply to this building. Mr. Mauch answered that there is currently no water supply to the building but he put two connectors for water at either end of the property and that is one possibility. He noted that the property is serviced by a well and if he was to use that water there would be additional water quality testing done. He noted if something would happen with the well he could have United Water make the connections to the lines that he installed. Mr. Freeburn questioned if Mr. Mauck plans to extend water lines to the building. Mr. Mauck answered yes. Mr. Freeburn questioned if he would extend a water line from the road or drill a well. Mr. Mauck answered yes or he would use the existing well water supply.

Mr. Sirb questioned if he would use well water to make the wine. Mr. Hoke noted that he would have to add some minerals to do that. Mr. Mauck noted that he has options for a water supply but did not want to make a decision for it until he passed this step.

Mr. Freeburn questioned if he added 2.5 gallon of concentrate and then fill the remained of the 55 gallon barrel with water. Mr. Hoke answered that it depends on the level of concentration for the type of wine. He noted that he does not always have to get concentrates as there are other times when he could use straight juice and then he would not add water. He noted that many of the local vineyards have been very flexible for what we need. He noted that he would use his own containers to pick up juices if needed.

Mr. Freeburn noted that you would be bringing the juice in August and the Fall and place it in the 55 gallon drums. He questioned if he had to keep the building at a certain temperature. Mr. Hoke answered that the building is no different than a climate controlled building somewhere between 60 degrees and 80 degrees is where he needs to keep it. Mr. Freeburn questioned if it is currently heated. Mr. Mauch answered that it is not climate controlled at this time. Mr. Freeburn questioned if he would be installing a heat source. Mr. Mauch answered yes. Mr. Freeburn questioned if he would be heating the entire building. Mr. Mauch answered that he did not think that he would be heating all 960 square feet, only the area where the products needs to be in a controlled environment. He noted in the process there is a lot of time when you have a container full of liquid and mother nature is doing what it needs to do as long as you control the temperature in that area. He noted that there would no 55-gallon drums wall-to-wall in this space.

Ms. Cate questioned if they plan to start with 3,000 bottles of wine a year. Mr. Hoke suggested that it would be about 4,000 gallons of wine.

Mr. Freeburn questioned how long the stuff has to sit in the barrels. Mr. Hoke noted that it would be four to eight weeks and another two to four weeks in the secondary fermentation devise, and after that if it is barrel aged or bottled, in about eight weeks he could be moving to bottle the wine.

Mr. Freeburn questioned where Mr. Mauch would store the bottled wine. Mr. Hoke answered in the same building in cases, noting that he has some folks who are interested in purchasing their wine.

Ms. Cate questioned if you need a special piece of equipment to bottle wine. Mr. Hoke answered that it is siphoned by gravity into the bottles and he is not looking at using electric equipment. He noted that he may be using an electric drill to stir the product.

Ms. Cate questioned if there would be an aroma. Mr. Hoke noted that we don't heat the wine, as it is fermenting there could be an aroma if left unsealed. He noted that the barrels are sealed with an air lock but you would not be able to smell anything from the gases that are escaping. Ms. Cate noted that she was concerned as the building is located next to Koons Park. Mr. Hoke answered that you would have to walk into the building and stand next to it to get a whiff of it. He noted that you will not be able to smell anything from outside the building. He noted that he has produced this at home and you can't smell it.

Mr. Enders noted at no point during the production will there be any heavy equipment running or machinery. He noted that there will be no bottling lines; it is all done by hand by these three gentlemen.

Mr. Sirb noted in the proposal the ultimate goal is to open a wine tasting place. He questioned why not go to that right now. Mr. Hoke noted that we don't have enough wine. He explained if he leases space for a tasting, he has no product and it could be a year until he has enough product to do that. He noted that we need a place to start producing the wine before we can provide a place for testing.

Mr. Freeburn questioned what the building is constructed of. Mr. Mauch answered that it is a frame building with vinyl siding. Mr. Freeburn questioned what about doors and windows. Mr. Mauch answered that it is a steel door, one window needs to be repaired and he is in the process of doing that as he removed overgrown trees from around it. He noted that there are two glass windows in the building.

Mr. Freeburn questioned if there was a concern about security. Mr. Enders explained that the partners have already contacted Knights Security who provided an estimate, Exhibit D. He noted that they indicated that they could secure the building with a system and they have contacted a local insurance agency to come out and inspect the property and provide recommendations with regards to ingress and egress and the condition of the property. He noted that one of the first things that he mentioned that was very important is that they will not have any signage on the property. He noted that he does not want to incentivize anyone to break in. He noted that they are very cognizant of the location of Koons Park and they don't want to provide an opportunity for people to know what is going on inside the property. He noting that removing the brush from the property would deter anyone from hiding or looking in; he feels that they should be able to secure the property. He noted that there are two tenants that would be located at either end of the lot.

Mr. Freeburn noted in the handout there was site plan for parking. He questioned what that was for. Mr. Enders answered in anticipation of the Zoning Board meeting he wanted to alleviate any fears with regard to parking. He noted since there are residences located on this property, he is required to have two parking spaces and he was able to identify that there is more

than enough room to provide four parking spaces for the two residences and at least three additional parking spaces. Mr. Freeburn questioned if the applicant was proposing to create a parking lot or just show the Board that the capacity is there for the requirements. Mr. Enders answered that he is showing the capacity and that the tenants that reside at this location have permission to park on the gravel lot. He noted that there are at least two public parking spaces along Linglestown Road in front of this location. Mr. Freeburn questioned if there were any plans to construct a parking lot. Mr. Enders answered no.

Mr. Freeburn questioned if there is any lighting outside the building. Mr. Mauck noted that there are two halogens lights on the northwest corner of the building. He noted that they are not on a motion detector but they could be. He noted that he can't recall having an incident with the building since he has owned it or any incidents of break-in.

Mr. Enders noted that it is not a dark area; just to the east of the property is another office complex and their parking lot is lit as well.

Mr. Freeburn questioned if the building color would be changed as you have already indicated that you will not be putting up any signage. Mr. Enders answered that it will remain a plain white vinyl siding building.

Ms. Cate questioned if the applicants have spoken to the neighbors about this. Mr. Enders answered that they have engaged in discussions with several folks in the community and at least one person is here tonight to speak as to the conversation for this planned operation. He noted that they has not received any negative feedback from the folks that they spoken to.

Mr. Sirb questioned if Section 306. B.2, states that a limited winery is not permitted. Ms. Moran answered that it is not listed as a use, so it is not a permitted use. Mr. Staub noted that he found the distribution and food and beverage included.

Mr. Staub questioned if a tasting room is permitted in the Village District. He noted that they don't allow taverns or BYOB. Ms. Moran answered no. Mr. Enders noted for a time along Linglestown Road there was a winery that had a tasting room within the building that was the flower shop. He noted that they had what was considered a tasting room within another store which is permitted under the limited winery license. He noted within the last ten years there has been a tasting room within the Village of Linglestown. Mr. Staub suggested that one of the restaurants, the Italian Restaurant in the former church is a BYOB. Mr. Sirb answered that it was. Mr. Staub questioned how that came to pass. Mr. Enders noted that we may have some competition for that space.

Mr. Freeburn questioned if anyone in the audience wished to comment on Docket 1348. Mr. Freeburn swore in Bill Bostic who lives at 6204 Elmer Avenue, in the Village of Linglestown near Koons Park. He stated that he walks by the property in question in question every day. He noted that he is speaking in support of the project; noting that what the Board heard will have a very low commercial impact that once it is up and running you will not even know it is there. He noted that life will be the same based upon what he understands. He noted

that the positive for this is the beginning of development in the Village. He noted that we do have a micro-brewery in the "Blue" Section of our area and there was a tasting event that was hosted at the Saint Thomas Roasters and it was very popular. He noted that moving into wine is the beginning of something that might generate some business and interest in our area and bring in some commerce that is a positive thing. He urged the Board to approve this application.

Mr. Freeburn noted that the Board has 45 days to render a decision and questioned if the Board would like to make a motion on Docket 1348.

Mr. Dowling made a motion to grant the application with the following conditions: 1) property is insured for both property and liability insurance; 2) no heavy equipment or machinery is allowed; 3) bad batch disposal be approved by the Pennsylvania Department of Environmental Protection; 4) security monitoring system for the property 24 hours a day, seven days a week; 5) no signage on the property; and 6) no retail sales from the property.

Mr. Enders requested a point of clarification, he questioned if the security system is only for the 960 square foot to the rear of the property. Mr. Dowling answered for the area where the wine is stored.

Ms. Cate questioned what would happen if they decided to enlarge the winery or property or reduce the other buildings that are on the property. Mr. Enders noted from speaking with his clients it is his understanding that if they would need to increase production they would look for a larger building and not expand the current structure as it would not be able to handle it. He noted that Mr. Mauck does not want to give up the rental income.

Mr. Staub questioned if the handout is part of the exhibit. Mr. Turner answered yes.

Mr. Sirb noted that he is always a little leery in the Village as it is such a nice quaint place and you drive through there and it is kind of cool. He stated that he understands that they want commerce and revitalized and more traffic in the area. He noted that it is a tough seesaw for where you keep it the cool spot and yet revitalize it a little to provide for some economic income. He noted that he does not want Linglestown lot and part is because there is no traffic. He noted that it can be a headache for parking. He questioned if that is what you want in the square.

Mr. Dowling noted that the real decision for this Board will come when they decide to ask the Board to approve a tasting room. He noted that it is a garage business now. Mr. Sirb noted that he sees it coming and that is why he asked the question in the beginning. Mr. Dowling noted that he sees it coming too. Mr. Sirb noted that is the best way to get your product out by having a wine tasting room.

Mr. Enders suggested that it is a compliment that they chose Linglestown as a place to do it. He noted that every bottle that they produce will have a label and it will have Linglestown on it and it is not a bad thing. He suggested that it will be a positive referring back to the initial plan generated by the Village of Linglestown Committee; they want to increase the quality of life, small town experience. He noted up and down New York, many small towns have wineries. He

explained that he has been to Napa and Sonoma, small towns with many more wineries of much larger scale. He noted that it increases economic activity and provides for an attractive streetscape. He suggested when we get to the tasting room it will not detract from the streetscape. He noted what we are here for tonight is to provide the three entrepreneurs the first step that they need to take the next step and rather than detract from the current culture and environment in Linglestown, they think it will enhance it. He noted that right now you will not even know that they are producing.

Mr. Sirb questioned Mr. Mauch if he thought it would change the characteristic of that neighborhood. Mr. Mauch answered not at all. Mr. Sirb asked Mr. Bostic the same question. Mr. Bostic answered that he testified to the fact that it will not change Linglestown at all.

Mr. Freeburn noted having grown up in Linglestown he has seen all kinds of enterprises come and go. He noted that there were sewing factories, small grocery stores, and all kinds of little businesses and enterprises, a post office on Mountain Road and another post office on Linglestown Road, and the old Hitching Post that used to be along Linglestown Road. He noted that all the buildings behind there used to be old horse barns and they still had the stakes from the horse and carriages. He noted that putting something back into the Village would get great but he agreed with Mr. Bostic that in terms of the impact it is going to be a very low impact in terms of change with traffic or anything of that nature.

Mr. Enders noted that these three gentlemen are dedicated to the community and have been involved in the community. He noted that prior to the meeting Mr. Mauch told him that he had lived in Lower Paxton Township his entire life except for one year. He noted that all three are graduates of Central Dauphin High School and have lived in this community their entire lives. He noted from a social aspect, they are committed to this community and want to see Linglestown thrive. He noted that is why they chose this site as their primary place for operations.

Mr. Staub questioned if Ms. Moran received any comments regarding this application. Ms. Moran answered no.

Ms. Sirb seconded the motion. Mr. Dowling questioned if the conditions are too restrictive. Mr. Sirb answered that the conditions are exactly what should be there. He noted that the end point is a tasting room and it has to be. He noted that it will evolve, and if it is allowed under the Village Ordinance or LCB grants it, so it will be a two-step process, maybe even a three-step process.

Mr. Enders noted that his client has no objections to the six restrictions and he can meet all of them very quickly.

Mr. Dowling noted from the testimony, the tasting room is at least a year away and this would provide a probation period for if this year works out with no complaints and all of the conditions are met. Mr. Enders noted that the LCB will very closely monitor any new license that they grant. He noted that there are monthly reporting requirements that the applicants will

Zoning Hearing Board

Docket 1348

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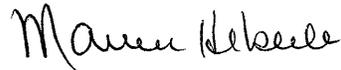
have to meet and the LCB will also be out to inspect the property, so even if he has the variance granted he still needs the approval of the LCB. He noted that has not happened yet.

Mr. Freeburn suggested that it is a one-step above a hobby wine type activity.

Mr. Turner conducted a roll call vote: Mr. Staub, aye; Mr. Dowling, aye; Mr. Sirb, aye; Ms. Cate, aye; and Mr. Freeburn, aye.

The hearing ended at 9:10 p.m.

Respectfully submitted,



Maureen Heberle  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
JEFFREY M. MAUCK : DOCKET NO. 1348

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance to allow a limited winery in the Village Zoning District. A hearing on the application was held on December 5, 2013.

#### **Facts**

1. The applicant and owner of the property in question is Jeffrey M. Mauck of 1421 Crums Mill Road, Harrisburg, Pennsylvania 17110.
2. The property in question consists of a wood shop located in the rear of the properties known as 6073 and 6075 Linglestown Road in the Village Zoning District. The shop is 24 feet by 40 feet with 10 foot ceilings and is of frame construction.
3. The applicant proposes to use the property for the production of wine. The process involves no heavy machinery or equipment. There would be no signage on the property and there would be no retail customers. The only persons working at the facility would be the three partners in the business. There would be no odors emanating from the building. No truck deliveries would be required.
4. The facility is anticipated to produce up to 4,000 gallons of wine per year.
5. The property has sufficient existing parking to accommodate the needs of the business as well as the residential tenants in the dwellings in the front of the property.
6. Notice of the hearing was posted and advertisement made as required by the ordinance.
7. In addition to the applicant, Bill Bostic, a neighboring property owner, testified that he had no opposition to the requested variance.

### **Conclusions**

1. Section 306.B.2 sets forth the permitted uses in the Village District. The processing of beverage products and a limited winery are not permitted uses.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property is burdened by a hardship in that there are limited permitted uses suitable for the existing building.

4. Granting the variance will not alter the essential character of the neighborhood nor adversely affect surrounding property values. The use will be barely noticeable and will have very little impact beyond the premises. If the business is successful it could lead to the establishment of a tasting room in the Village which would be very compatible with the overall purpose of the Village District.

### **Decision**

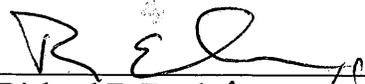
In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby granted allowing the establishment of a limited winery on the subject premises upon the following conditions:

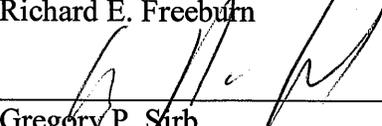
- (a) the applicant shall maintain liability insurance and provide evidence of same upon request of the Township;
- (b) no heavy equipment or machinery shall be installed;
- (c) any waste generated on site shall be disposed of in accordance with DEP requirements;
- (d) a monitored security system shall be installed;
- (e) no signs shall be erected;
- (f) no retail sales shall be conducted on site;
- (g) there shall be no expansion of the building or the business operation beyond that presented to the Board.

In all other respects, the applicant shall develop the property and conduct the business in strict conformity with the plans and testimony submitted to the Board.

Date: 1/9/14

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
Richard E. Freeburn

  
Gregory P. Sirb

  
Sara Jane Cate

David B. Dowling

  
Jeffrey W. Staub