

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of March 24, 2011

Members in Attendance

Richard Freeburn, Chairman  
Sara Jane Cate, Vice Chairperson  
Gregory Sirb  
David Dowling  
Jeffrey Staub

Also in Attendance

Dianne Moran, Planning & Zoning Officer  
James Turner, Solicitor

**Special Exception #11-01**

Applicant: Wayne William Clark

Address: 4565 Berkley Street

Property: 4565 Berkley Street

Interpretation: Guitar Lessons in a home is a Major Home Occupation Use  
Applicant proposes to give guitar lessons, and to perform simple repairs and maintenance of guitars in his home in the R-2, Medium Density Residential District

Grounds: Article 306.B.1, of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: February 22, 2011

Property Posted: March 15, 2011

Advertisement: Appeared in The Paxton Herald on March 9 & 16, 2011

The hearing began at 7:20 pm.

The following were sworn in: Wayne William Clark, applicant. Dianne Moran, Planning & Zoning Officer remained under oath from the previous hearing.

Mr. Freeburn stated it is customary for the Board to enter as exhibits the application and site plans. The applicants had no objection to its doing so.

Mr. Clark started to read the narrative to the Board, and Mr. Freeburn advised that he does not need to do that, because they received a copy of it prior to the meeting. He asked for any additional information. Mr. Clark stated the narrative describes his desired use of the property and the hours of use, parking and a description of how guitar lessons go. He noted there will be no interference or noise to persons outside and he thinks the use is within the ordinance.

Ms. Cate asked how many students will be there at a time. Mr. Clark stated there will be one student arriving and one departing every half hour. He noted he is an in-demand teacher and he has a full schedule at Forte Music now. If the Special Exception is granted, he would want to start teaching at home on Saturdays, and then by attrition, add students at his home schedule until he can phase out Forte Music. He noted he is in high demand, and there will be people seeking to study with him, up to 10-12 per day Monday through Thursday, a few on Friday, and 5-8 students on Saturday; topping out at about 45 students a week.

Mr. Clark stated he intends to use the property respectfully because it is what he pays the mortgage with and how he makes his money, so he would not jeopardize his livelihood by running a questionable operation.

Ms. Cate asked if lessons will be in the home or in the out building. Mr. Clark stated they will be in the bedroom. One picture shows the house and the neighbor's house, and the bedroom to be used is the back one along that side. They will play guitar through a practice amp, similar to a loud TV, in relation to decibel levels.

Mr. Staub clarified that this application is for a Special Exception, which has different criteria than a variance.

Mr. Staub asked if the Planning Commission reviewed the application. Ms. Moran stated they did, and they had no objection to it.

Ms. Cate asked if the applicant has spoken to the neighbors. Mr. Clark stated he has talked with the adjacent property owners. He assumed the neighbors were aware of the proposal since some have stopped and asked about how it will work and how noisy it will be. Mr. Clark explained to them that he as the teacher has to be able to talk to the student, so the volume is not loud and will not create a disturbance.

Ms. Cate stated she plays the guitar and noted that it is not very loud.

Mr. Staub asked if there will be sessions where there will be more than one student, such as a band. Mr. Clark stated he has recorded a demo for a student's band for free in the past, and there is nothing happier than a kid walking out with his own band on a CD. Regarding lessons, he teaches one student at a time. He has not done any kind of band coaching or anything like that or band rehearsals.

Mr. Clark stated that the ordinance speaks to a non-resident employee, and the only time he would have that is to substitute for him if he would have to take off a couple days. That is the only use he would have for a non-resident employee.

Mr. Staub was concerned about noise. He noted it is one thing to tolerate a neighbor's son who likes to play the drums. It is another issue all together to run a business in a residential district and have a potential problem with noise. Mr. Clark

stated it is a one-on-one lesson. Some are acoustic guitars which you will never hear, and some are with small practice amps that he speaks over. It is a pretty low volume activity. He added that he has tinnitus and he does not like sitting next to a loud amp.

Mr. Clark stated he would not even attempt to run afoul and risk a complaint and shut down his livelihood and ability to make a living.

Mr. Sirb stated his concern is the hours, not only the Saturday's but also till 9:00 pm everyday. That is an intrusion to a neighborhood. Mr. Clark stated that the hours are what he is stuck with in this line of business. Mr. Sirb stated he can appreciate that.

Mr. Staub asked how it would be handled if the Special Exception is granted, and the business gets to be a nuisance to the neighborhood. What recourse would the Township have. Mr. Turner stated the Township would not have one unless there are conditions placed on the decision.

Mr. Clark stated he thinks the issue is the traffic and if the neighborhood would tolerate a car coming and going every half hour from 3:00 to 9:00 pm. He noted there would be no noise from the lessons so the only disturbance would be a car coming and going. He does not want to put a sign up because he does not want to encourage walk-ins. He wants to maintain the residential character of the building and be allowed to do his job inside.

Ms. Cate asked if the applicant could cut his hours back to 8:00 pm. Mr. Clark stated he could, but it would be a serious setback because he would lose all that time not working. Lessons are about \$20 each, so he would lose about \$200 per week making it difficult to make a living.

Mr. Sirb stated he likes the attitude of Mr. Clark. If he is as in-demand as he says, he needs to take the leap and buy a building and maximize his income. He sees this as a business that will really take off. In the summer with the windows open the noise may travel outside on a Saturday at 9:00 pm. A year from now, if the business is getting really good, he will have to take the leap anyway. Mr. Clark stated that would be financially impossible, it just wouldn't happen. He is really stuck in his position. The owners of Forte' are getting up there in age and will eventually sell. No matter what assertions the current owners make, they cannot control the new owners. The risk of them replacing the staff is too great. The point of this hearing is to set up the business on his own, work up the clientele over time and then move into a commercial building and then be able to do the other things like offering recording services, band coaching and ensemble classes. Those things are the future of his business, an integrated approach to music education, where a student can do the ensemble class as well as one on one instruction and rehearsal time. These things are his plan for the future, but the only way to get that to happen is to establish a clientele that he can move with low overhead at first and then rent a commercial property and be able to go full scale. This involves several transitions.

Mr. Turner suggested, if the Board were so inclined, they could approve it for a period of time after which he would come back, and at that time the neighbors perspective could be considered. Mr. Sirb asked if it is legal to place a time limit on it. Mr. Turner stated the Board has never done it, but with a special exception the Board has the ability to place reasonable conditions.

Mr. Sirb stated the reasons he hesitates are the hours, and the style with which it will be done in a residential neighborhood. Mr. Freeburn asked if the last lesson would be done at 9:00 pm. Mr. Clark stated that is correct because he is not allowed to do anything after 9:00 pm.

Mr. Freeburn asked if there is a reasonable way to monitor the decibel level outside the house and he asked about the level of 70 decibels. Mr. Clark stated he was guessing on the decibels levels, but in order for it to be loud, there would have to be two electric guitars going and the amp all the way up; that wouldn't happen. He stated it might be as loud as a vacuum. That comparison is meant up close, and then the sound would have to get outside. Mr. Freeburn is looking for an objective way to monitor the noise so if a neighbor complains there is something clearly defined. Mr. Clark noted that there will just not be any sound outside. The only thing that might be an issue is traffic, and if the neighborhood can handle the traffic. Mr. Freeburn stated his biggest concern is not the traffic, it is the paragraph about providing other activities. The statement is very vague. His concern is a recording studio growing out of this small activity being applied for at this time. Mr. Clark stated he would just withdraw that paragraph from his request. He is trying to be as honest as he can be and describe things very accurately, but he does not want to do something he is not allowed to do either. Mr. Freeburn stated withdrawing that paragraph is helpful to him. Mr. Clark agreed to withdraw it, and noted he really just wants to teach guitar, and that maybe the narrative was too overreaching at this time.

Mr. Dowling stated the other issue is noise, but it has a simple remedy, which is to require soundproofing. Mr. Clark agreed that is easy to do.

Mr. Dowling stated he did not know how to remedy the traffic. Mr. Clark stated that every half hour a student will leave and another will come to the house.

Mr. Sirb liked the soundproofing, and he also liked the idea to limit the approval to one year. Mr. Turner stated he is not 100% sure it can be done, but the ordinance does say the Board can attach reasonable conditions and safeguards as it determines necessary. The ordinance is broad in that respect. Mr. Sirb stated that he will vote no if the time constraint cannot be attached to it.

Mr. Sirb stated he is willing to grant it for a year and then the applicant has to make the leap.

Mr. Clark suggested he could cut the hours back to 8:30, that way if a student is slow getting out, they will still be out before 9:00 comes.

Mr. Staub stated he has a problem with the level of intensity with what is proposed in a residential development. This is Mr. Clark's vocation, and in a setting like this an avocation would be more appropriate, such as a piano teacher or someone who does not rely on the work for their livelihood. Mr. Clark stated it was important to him to be up front about his intentions and not get in trouble for it down the road and get shut down for it.

Mr. Sirb questioned the conditions, and who will have to sit outside the house and measure decibel levels. He noted that sometimes the conditions can get ridiculous. He suggested giving him a year.

Mr. Freeburn called for comments from the audience.

Ms. Kim Vecchiolli, 6229 Spring Knoll Drive was sworn in. Mr. Freeburn questioned the location of her home in relation to Mr. Clark's property. Ms. Vecchiolli stated that she lives nowhere near him, but her daughter is a student of his. She stated that she sits two doors down in the hallway while the lesson takes place and she cannot hear the guitar. If she wants to hear the lesson, she has to actually be in the room. Mr. Freeburn asked if the daughter plays electric or acoustic guitar. Ms. Vecchiolli stated her 11-year-old daughter plays the electric guitar and she has taken lessons for two years. She did not think the business would be a hindrance to the neighborhood in anyway, and that one or two cars an hour is not anything big. She also noted that there are other instruments that are much noisier, because she can hear those instruments, and not the guitar when she is sitting in the hallway. She also stated that Mr. Clark is very good at what he does and her daughter really enjoys going to the lessons.

A resident from the Colonial Crest development came forward to speak. The resident questioned who enforces the decisions made by the Zoning Hearing Board. Mr. Freeburn answered the Zoning Officer. The resident asked if someone goes out to the property and enforce the regulations. Mr. Turner stated the zoning officer does that. The resident asked if it is done upon request or via complaint. Mr. Turner answered yes. Mr. Freeburn stated it could be a complaint, or it could just be that they are checking the neighborhood as well. The resident stated he has problems in his neighborhood and he has never seen anyone checking it out. Mr. Freeburn asked if he has notified the Township of the issues. He answered that he and his neighbors are reluctant to do that because of intimidation and threatening circumstances, so he was only wondering who enforces these things. Mr. Freeburn stated the zoning officer can address the complaints and he suggested that a caller can be anonymous. The resident stated the Township has caller-ID. Ms. Moran stated that the Township does ask that a complaint form be filled out including the complainant's name and address. This is important because when such a matter goes to the Magisterial Judge, that person is called upon to testify. If the neighbors do not show up to the hearing, the judge will not be able to help them. Mr. Sirb stated if the person has a problem, he needs to put his name on it. The resident noted the intimidation to his family. Mr. Sirb stated if there is a complaint with a neighbor, you

have to stand up and put your name to it. There are too many complaints with people hiding behind. He is firmly committed to that as a member of the Board. If you have a problem with a situation, you need to man up and put your name to it. The resident stated he should not be told to man up. Mr. Sirb stated that is how you do it. The resident asked Mr. Sirb's position with the Township and if he has ever experienced a situation like this. Mr. Sirb stated he is appointed to this Board, and yes the Board hears these things constantly. The resident asked if he personally has been intimidated. Mr. Sirb stated that every once in a while you feel uncomfortable. Mr. Dowling stated he can envision certain circumstances where it could be a problem. He stated that the answer to the resident's question is that the Township addresses complaints. The resident asked if it is the police who handle it. Mr. Dowling stated if the issue is criminal then they would be involved. Mr. Freeburn added that if it is a violation of the Zoning Ordinance then the Zoning Officer would address it. He noted that if it is a nuisance complaint, the matter could be handled in a civil case. The resident asked if the Township would not address a complaint unless the person gave his information. He asked if the Township would not address a complaint of a violation of the township ordinance. Mr. Freeburn suggested the Township would probably investigate it. The resident asked the procedure for doing that. Mr. Freeburn suggested the conversation continue after the meeting is over.

Mr. Clark asked if the complaint is related to him. The resident answered no, and asked if he is in a rush to get out of here. The resident asked that the solicitor be involved in the conversation. Mr. Freeburn stated there is a time and a place, and right now there is a matter on the table and the applicant has paid his fee to have his request considered by the Board. He requested that the comments about another matter wait till this hearing is over.

Mr. Freeburn called for additional comments from the audience regarding this application. There were none.

Mr. Freeburn made a motion to grant the application for guitar lessons, with the condition that they do not go beyond 8:30 pm and to permit the small repair of instruments. Ms. Cate questioned a condition about one year's time. Mr. Freeburn was not comfortable that it would hold up. Mr. Sirb suggested the condition could be worded that after one year the special exception shall expire; this would give a member of the community the opportunity to do what he likes and what he is good at. He suggested the Board is within its right to put a limit on the approval. Ms. Cate stated the applicant would have to come back for an extension. Mr. Sirb stated he could, but he would vote no. Mr. Dowling suggested that if it were found to be invalid, the special exception may be deemed approved as submitted. Mr. Turner stated it would run that risk. Mr. Staub asked if the decision could be worded that if a portion of the approval is found to be invalid then the whole approval is void. Mr. Turner cannot guarantee what a court would decide if the decision were challenged. He noted it could be drafted to say that the start of the business is consistent with a home occupation but as it matures it becomes inconsistent, which would provide the justification. Mr. Freeburn explained that even at full capacity with half-hour turnovers, this will not necessarily be so burdensome on the

neighborhood that it will be intolerable. If it is just for lessons and not related services, then all you will ever have is one car coming and one car leaving every half hour, which is not excessive. Mr. Sirb noted there is the issue of related work and repairs. Mr. Clark stated he does not currently do repairs but he has the skill to do so. A student who arrives by appointment would leave their instrument at the end of the lesson for repair and pick up at the next lesson. Mr. Freeburn stated it would not be an additional service on top of giving the lessons. Mr. Clark stated it is strictly for students only. He noted that being overly descriptive has created some confusion. Mr. Freeburn stated if the approval is limited to lessons only, then there is no problem. Repairing a student's guitar does not sound imposing. Mr. Clark noted that it may also take place during the lesson time.

Mr. Freeburn would also like to see a condition put on that there be no sign. Mr. Clark stated he will not have a sign.

Hearing no second to the motion, the motion failed.

Mr. Sirb made a motion to grant the application, with the conditions: time be limited to 8:30 pm, room be sound proofed, and the special exception shall expire in 12 months.

Mr. Clark stated he withdraws his application for Special Exception. He did not know he would get into the yearly limits and have to stop his business. He cannot guarantee that the economy will turn around or what will happen in one year. He cannot extend himself and just stop. He does not know what the economy will be or what kind of clientele he will have by then, or if he will be able to obtain credit for a commercial property. With all due respect, the yearly condition is just unfeasible and he withdraws his application. (Mr. Clark left the table) Mr. Turner asked him to wait since the motion has not been voted on. Mr. Clark apologized and noted he got upset.

Mr. Staub also noted that the time limit could be looked at that in 12 months he comes back for a renewal. Mr. Clark asked if Mr. Staub would risk his house on the potential of a renewal. Mr. Freeburn noted he needs economic certainty. Mr. Sirb stated you will not get that here. He stated you take the leap of faith and do it. Mr. Freeburn stated that lessons at \$20 an hour is not going to be feasible in a rented commercial property.

Mr. Staub seconded the motion.

Mr. Dowling stated he is very sympathetic to the situation and the economics of the issue, but a business in a residential area is a big deal.

Mr. Freeburn called for a roll call vote: Mr. Staub-No; Mr. Dowling-No; Mr. Sirb-Aye; Ms. Cate-No; and Mr. Freeburn-No. The motion does not carry.

Mr. Dowling made a motion to deny the application as submitted. Mr. Sirb seconded the motion. A roll call vote followed: Mr. Staub-Aye ; Mr. Dowling-Aye; Mr. Sirb-No; Ms. Cate-Aye; Mr. Freeburn-No.

The motion to deny the application carried.

The hearing ended at 8:10 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "MHiner", written in a cursive style.

Michelle Hiner  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
WAYNE WILLIAM CLARK : DOCKET NO. SE 11-01

**DECISION DENYING SPECIAL EXCEPTION**

The applicant seeks a special exception to operate a major home occupation in an R-2 Medium Density Residential District. A hearing on the application was held on March 24, 2011.

**Facts**

1. The applicant and owner of the property in question is Wayne William Clark of 4565 Berkley Street, Harrisburg, Pennsylvania 17109.
2. The property in question is located at 4565 Berkley Street and consists of a single family residence in the R-2 Residential zoning district.
3. The applicant proposes to offer guitar lessons at the property, along with associated maintenance and repair of guitars. Approximately 45 students per week would be seen. Each lesson is a one-on-one lesson and the noise generated would be between 50 and 70 db within the residence, the equivalent of a loud television set. Business hours would generally be in the later afternoon and evening. There would be no traffic generated in the neighborhood other than the coming and going of students. No band rehearsals would take place on the property.
4. The applicant has a three car wide driveway on the property which could accommodate the anticipated need for off-street parking generated by the business.
5. Notice of the hearing was posted and advertisement made as required by the ordinance.
6. In addition to the applicant, the parent of an existing student appeared to testify at the hearing. She testified that the noise generated by the lessons are not readily audible from two doors down the hallway within the existing location of the applicant's business.

**Conclusions**

1. Article 306.B.1 of the ordinance establishes major home occupations as a special exception within the R-2 Medium Density Residential District. Because the applicant's business involves customers coming to his location for lessons it constitutes a major home occupation.

2. Article 116.C of the ordinance grants to the Board the power to grant special exceptions where the conditions set forth therein are met by the applicant.

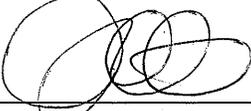
3. The Board finds that the proposed use is not compatible with the existing residential zoning of the district. The large number of students coming to the property will generate an excessive amount of traffic in a residential district. Further, the traffic will be primarily generated during late afternoon and evening hours which increases its disruptive impact. The coming and going of students on a regular basis throughout the evening hours 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 request for special exception to conduct a major home occupation should be and is hereby denied.

Date: 4/28/11

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
\_\_\_\_\_  
Jeffrey W. Staub

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

\_\_\_\_\_  
David B. Dowling

Board Chair Freeburn and Member Sirb dissent from the decision of the Board.