LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Meeting of August 5, 2010

Members in Attendance
Jeffrey Staub, Chairman
Sara Jane Cate, Vice Chairperson
Richard Freeburn
Gregory Sirb

Also in Attendance
Dianne Moran, Planning & Zoning Officer
James Turner, Solicitor

Docket #1282

Applicant:	Barry L. Jenkyn
Address:	1253 Barley Corn Square
Property:	1253 Barley Corn Square
Interpretation:	The minimum rear yard setback is 30 feet. An unenclosed porch may encroach into the setback by 15 feet. The applicant proposes to construct a covered deck, which will encroach into the setback, in the R-1 Zoning District.
Grounds:	Section 307.A & C, of the Lower Paxton Township Zoning Ordinance pertains to this application.
Fees Paid:	June 28, 2010
Property Posted:	July 20, 2010
Advertisement:	Appeared in The Paxton Herald on July 21 & 28, 2010

The hearing began at 7:30 pm.

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

The following were sworn in: Barry L. Jenkyn, 1253 Barley Corn Square, Harrisburg, PA 17111; and Dianne Moran, Planning & Zoning Officer.

Mr. Staub stated the house looks like it is in the rear yard setback already. Ms. Moran agreed that it is, probably because the setback ordinances have changed over the years.

Mr. Jenkyn stated he has an existing 10x16 concrete patio, which is uneven and doesn't drain, and freezes in the winter. He stated his neighbor, Glen Knapp has a lot of trees so he gets a lot of tree dirt on the patio. He would like to build a little raised composite deck with a roof on it. He would like a decent place out his back door.

Mr. Jenkyn presented a letter from his neighbor saying he has no issues with the construction. Mr. Sirb asked if this is the neighbor directly behind and most affected by this proposal. Mr. Turner marked the letter as Applicant's Exhibit 1.

Mr. Freeburn asked about the deck being raised. Mr. Jenkyn stated it would be level with his kitchen floor.

Mr. Freeburn asked if a deck requires a permit at a certain height off the ground. Ms. Moran answered that a permit is not required unless the deck would be more than three feet off the ground. Mr. Freeburn asked if he needs a variance if it is less than three feet off the ground. Ms. Moran stated that a variance is required from the Zoning Ordinance, but no building permit is needed.

Mr. Freeburn asked about the proposed roof. Mr. Jenkyn stated it will be a peaked roof that will tie into the existing roof.

Mr. Freeburn asked if the applicant will come back someday asking for a variance to enclose the deck. Mr. Jenkyn answered no, he does not think so. Mr. Staub asked if it would require another variance. Ms. Moran answered that it would. Mr. Jenkyn stated he will not enclose it.

Mr. Staub asked about the driveway to the rear of the house. Mr. Jenkyn stated it belongs to Mr. Knapp. Mr. Staub asked if it encroaches into Mr. Jenkyn's property. Mr. Jenkyn stated he and the neighbor have been friends for years and they have no issues. He stated the driveway may or may not be, but he never cared enough to find out.

Ms. Cate asked about the fence. Mr. Jenkyn stated it was his because he had a dog some years ago.

Mr. Staub called for comments from the audience. There was none.

The Township had no position on the application.

Mr. Freeburn made a motion to grant the application as submitted. Ms. Cate seconded the motion and a role call vote followed: Mr. Freeburn-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

The hearing ended at 7:38 pm.

Mr. Jenkyn asked how he proceeds from here. Ms. Moran stated Mr. Turner will prepare the decision which the Zoning Hearing Board will sign at the following meeting. It will be given to the Township who will mail a copy to him. That is when the 30-day appeal period begins, which he must wait for, or he can waive.

Respectfully Submitted,

Michelle Hiner
Recording Secretary

IN RE:	: BEFORE THE LOWER PAXTON TOWNSHIP ZONING HEARING BOARD
APPLICATION OF	: DAUPHIN COUNTY, PENNSYLVANIA
BARRY L. JENKYN	: DOCKET NO. 1282

DECISION GRANTING VARIANCE

The applicant seeks a variance from rear yard setback requirements in connection with a proposed covered deck. A hearing on the application was held on August 5, 2010.

Facts

1. The applicant and owner of the property in question is Barry L. Jenkyn of 1253 Barleycorn Square, Harrisburg, Pennsylvania 17112.

2. The property in question consists of an irregularly shaped lot which is improved with a single family dwelling known as 1253 Barleycorn Square. The parcel is zoned Residential, R-1.

3. The applicant proposes to erect a 12 feet x 16 feet deck on the rear of the existing dwelling. Because of the irregular rear property line, the deck will be set back between 8 feet and 11 feet. The existing house is set back between 20 feet and 23 feet from the rear property line.

4. The deck elevation will be even with the first floor of the existing home and it will have a pitched roof which will tie into the roof of the existing home.

5. The applicant has discussed his project with the adjoining property owner who indicated his approval of the project.

6. Notice of the hearing was posted and advertisement made as required by the ordinance.

7. No one other than the applicant appeared to testify either in favor of or against the proposed variance.

Conclusions

1. Section 307.A of the ordinance establishes a minimum rear yard setback of 30 feet. Section 307.C allows an unenclosed deck to extend an additional 15 feet into the required setback. The proposed construction would violate these sections of the ordinance.

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 in question is burdened by a hardship not created by the owner consisting of the irregular shape of the property which severely limits the developable area in the rear of the existing dwelling..

4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The adjoining parcel is screened from the proposed deck and there is a large amount of space between the respective dwellings. The deck only encompasses a small portion of the back yard and the overall scale of the project is compatible with the neighborhood. The proposed deck will be barely visible to any other parties.

Decision

In view of the foregoing and having carefully 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 erection of a 12 feet by 16b feet covered deck in strict accordance with the plans and testimony submitted to the Board.

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Date: 8/26/10

Jeffrey W. Staub

Gregory P. Sirb

Sara Jane Cate

Richard E. Freeburn

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Meeting of August 26, 2010

Members in Attendance	Also in Attendance
Jeffrey Staub, Chairman	Dianne Moran, Planning & Zoning Officer
David Dowling	James Turner, Solicitor
Richard Freeburn	Amanda Mitchell, Codes Enforcement Officer
Gregory Sirb	Daniel Slatt, Building Inspector
Allan Hansen	

Docket #1283

Applicant:	Ken Schaffer, 1208 Wood Road, Hummelstown
Owner:	Gary Dobrinoff, 3920 Jonestown Road, Harrisburg
Property:	3920 Jonestown Road
Interpretation:	The minimum front yard setback is 50 feet. The applicant is requesting that the existing 29'6" setback be allowed to remain.
Grounds:	Section 307.A of the Lower Paxton Township Zoning Ordinance pertains to this application.
Fees Paid:	July 29, 2010
Property Posted:	August 17, 2010
Advertisement:	Appeared in The Paxton Herald on August 11 & 18, 2010

The hearing began at 7:04 pm.

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

The following were sworn in: Ken Schaffer, 1208 Wood Street, Hummelstown, PA 17036; and Dianne Moran, Planning & Zoning Officer. Mr. Schaffer is an architectural consultant, hired as a result of a problem at the site.

Mr. Schaffer stated that Gary Dobrinoff is the owner of the property and he started construction on some roofing in front of the building without a permit. He called Mr. Schaffer because he got a stop work order. Mr. Schaffer stated he performed a survey of the building and found out that his front yard setback was not within the parameters of the code. The building has been there since the early 1960's as a bar and lounge. The parking facilities have also been there since that time. It is almost impossible for the owner to conform with the requirements of the 2006 Zoning Ordinance. That is where it stands now, and he is asking for relief to allow the existing conditions to remain as they are.

Mr. Turner asked for a description of the proposed changes to the building. Mr. Schaffer stated that apparently the owner put some roofs over the front of the entrances. They didn't get a permit so a stop work order was issued. The right-of-way issue came up when the Township went to the site about the construction. Now there are two conditions: the right-of-way and the roofs.

Mr. Sirb asked about the Notice of Violation. Ms. Moran stated that the Notice of Violation is what prompted this hearing. In March, a letter was issued to stop the work being done because it did not meet code. She explained they are now asking forgiveness for what they have already constructed.

Mr. Sirb stated they did not get a permit for the new façade. Ms. Moran stated that is correct. Mr. Sirb stated that during the construction, it was discovered that there was also a setback issue. Ms. Moran stated that is correct. Mr. Sirb asked if the variance is for the setback and the construction. Ms. Moran stated the setback is the subject of this hearing, but also noted that if the setback variance is not granted, the façade must come down. Ms. Moran stated that the building department has concerns about the structure itself.

Mr. Turner stated the violation committed by starting work without a permit does not have anything to do with the Zoning Hearing Board. If the Township pursues that matter, it would go before the Magisterial District Judge. The hearing tonight is only to determine whether to grant the variance allowing the intrusion into the setback.

Mr. Dowling asked the status of the façade, or how far along the construction is. Ms. Moran stated it appears to be complete. Mr. Dowling asked if the façade itself encroaches into the 29'6". Ms. Moran stated the building itself is at the 29'6" line, and the façade protrudes an additional 6' into the setback.

Ms. Moran stated that she does not see marked parking spaces, but suggested that cars could park under the roof area.

The following were sworn in: Amanda Mitchell-Gourley, Codes Enforcement Officer, and Dan Slatt, Building Inspector.

Mr. Staub referenced the letter from Mr. Slatt to Mr. Dobrinoff, dated March 3, 2010, and stated he understood the first issue dealing with failure to obtain a building permit. He asked about the second issue, where the façade additions encroach even further into the front yard setback, from a building which is already nonconforming. He stated they are making a nonconformity even more nonconforming by adding the facades. Mr. Slatt stated that is correct.

Mr. Sirb stated the property is already nonconforming, and noted the building has been there for years. He asked if parking is being lost from the new construction. Mr. Slatt stated it will not affect parking. He added that he was told my Mr. Dobrinoff that the canopies were on the building before the fire, but he could not confirm that.

Mr. Slatt stated that working without a permit is what started this whole situation, and he will address that aspect of it. He stated the Zoning Hearing Board has to decide whether to allow the encroachment into the setbacks.

Mr. Dowling asked if the construction itself was questionable. Mr. Slatt stated that is something he will address.

Mr. Freeburn asked if anything would be permitted in that setback area, such as parking or other uses. Ms. Moran stated that parking is permitted. Mr. Staub stated that landscaping is also required now between a building and right-of-way line for properties along Route 22. He noted that the property is nonconforming, and there is no way to make it conforming without tearing down the building.

Mr. Sirb did not object to allowing the nonconformity to continue, but had serious concerns about the work being done with no permit. He felt that was a serious violation that needs to be dealt with.

Mr. Turner asked who the contractor is. Mr. Schaffer stated he assumed that the owner did the work himself. He noted, with all due respect, when he surveyed it, he had them reinforce the mounting bolts onto the wall and the centers of the mounting bolts will need some bracing. The way it stands now, it looks kind of shady, so if the Board is going to allow the completion of the porch roofs, they will all be reinforced to make them sound and secure. Mr. Turner stated that he wanted to make it clear that, should the Board decide to grant the variance, it is not acting on whether the existing work is or is not allowed. That will be handled by Mr. Slatt. If he says it has to come down because it is inadequately built, the owner has the right to appeal that decision, but the only thing being decided tonight is whether the owner may extend anything into the setback. Mr. Schaffer expressed his understanding.

Mr. Freeburn asked about the ordinance quote that says "...where there exists parking between the building and the street..." and if there is parking in that area. Ms. Moran stated there is parking. Mr. Turner stated it is paved right to the road. Mr. Freeburn asked if the stalls are painted, or if you could park there if you wanted to.

Mr. Dowling questioned the comment that there was a roof there prior to the fire. Mr. Slatt stated the owner told him the roof was there, but he did not know it for a fact.

Mr. Hansen asked why the owner wants the roof. Mr. Schaffer explained the parking has been there since the 1960's, and apparently they had roofs over the front of the building, although not the same as what is being put there now. Mr. Schaffer stated the owner is putting something there to "be more glitzy".

Mr. Sirb asked if you park under the awning. Mr. Schaffer stated that the way it is framed, it is not just a standard porch roof. It is secured to the wall with ledgers, and it is not adequate so it is being reinforced. There are some pyramid shapes and some diagonals and it will be done in a gold finish.

Mr. Sirb stated the six extra feet doesn't affect the parking, and he had no problem with granting a nonconforming use, but he was bothered by the working with no permit.

Mr. Freeburn stated there is 29.5 feet from the building to the street. Mr. Schaffer stated it is measured from the face of the building to the centerline of the utility pole. Mr. Freeburn stated if 6 feet were taken away, it leaves 23.5 feet between the edge of the awning to the telephone pole for parking which will have to be parallel parking, which would have to be at least 9 feet wide. Mr. Schaffer stated the roofs being put up will not affect the parking because there are no columns.

Mr. Freeburn suggested placing conditions about the aesthetics on the granting of the variance. He noted that garish gold and diamonds is not what he wants to see on Route 22. Mr. Schaffer stated he does not control that. Mr. Freeburn understood, but explained that the Board may place reasonable conditions upon variances. His concern is the idea of an unsightly, garish, Las Vegas style building on Route 22. He suggested the neighboring property owners wouldn't appreciate if the Board allowed such a thing. He was concerned that if you give a blanket variance, it will become Las Vegas on Route 22. Mr. Schaffer stated he was told by the owner that there will be no lights on the roof, but the shapes will be different than anywhere else. Mr. Turner stated it is reasonable to condition it upon no illumination.

Mr. Sirb stated he thought the issues with the Building Inspector should have been dealt with prior to the Zoning Hearing Board meeting, because the violation is egregious. Mr. Freeburn stated that without the variance there is no need to obtain a permit because he can't build it.

Mr. Staub asked how the service pole relates to the right-of-way line. Mr. Schaffer stated he did the measurement to the pole because it was the only fixed point on the property. The owner could not give him a site plan for the property or where the right-of-way is. Mr. Staub stated there are no property lines or right-of-way lines on the drawing submitted. Mr. Schaffer stated the only other thing out there is the curb. Mr. Staub stated the building may or may not be 29'6" from the right-of-way line. Mr. Schaffer stated he provided the dimensions as best he could with what was there.

Mr. Staub asked for the Township's position on the variance. Ms. Moran stated that, although not really part of this hearing, all of the signage on this propepty are troublesome to the neighbors, and the property is surrounded by residential houses. None of the signs are legal. None have permits and the Township has asked numerous times that they be taken down to the point that the District Justice has actually given up on trying to serve papers on them.

Mr. Turner asked if the signs are permanent. Ms. Moran stated they seem to have become signs, however, they have not been permitted. Mr. Turner wanted to know if they were banners. Ms. Moran stated they look like banners and are basically plastic stretched over something.

Mr. Slatt stated that the owner doing what he has done up to this point without permits speaks volumes.

Mr. Sirb wanted to know where Mr. Dobrinoff was and why he wasn't at the hearing. Mr. Schaffer stated he did request his company, but noted he is there alone. Mr. Sirb stated the Board does not usually make decisions without the owner present, but added that the property has violations up the ying-yang and the owner is asking for a variance. He stated that is incredible, and he wasn't sure how to handle someone that disrespectful. The owner's actions with regard to the signs and the work with no permit is just not being a good Township citizen.

Mr. Freeburn compared this situation to a string of pearls. The string is the credibility, and if the string breaks everything falls on the ground and you have nothing. He agreed that building something without a permit does speak volumes about the person's credibility. He is concerned about whether the Zoning Hearing Board will get compliance. Mr. Sirb agreed and was inclined to deny the application and let him start at square one. The Zoning Hearing Board can put any conditions it wants on the variance, but this guy will just say to heck with it and do what he wants. He noted he has never changed his mind so quickly. Mr. Sirb added that this gentleman is not being a proper Lower Paxton Township businessman.

Mr. Sirb made a motion to deny the application as submitted.

Mr. Staub stated there are a few more questions and procedural steps prior to a motion.

Mr. Staub asked Mr. Schaffer the purpose of the two canopies. Mr. Schaffer stated that he was told by Mr. Dobrinoff that he had roofs up there before and he is putting them back up. Mr. Staub asked if they will be identical. Mr. Schaffer stated he cannot answer that question because he does not know what, if anything, was there before. He supposed that the owner is putting them over the entrances to protect from weather. Mr. Schaffer stated that the owner unfortunately does this all the time without permits and then he gets pulled into it. So he is here to present it, for what it's worth.

Mr. Staub stated, in general, he is not inclined to increase nonconformities especially along Route 22.

Mr. Staub called for comments from the audience. There was none.

Mr. Dowling asked if the drawings submitted represent the way the façade was constructed or the way it was intended to be revised. Mr. Schaffer stated it is both the way it is constructed with the added mounting bolts, bracing to make it more secure. Mr. Dowling stated that the Township has indicated what is there may have to come down, so the Board does not really know what the structure will look like. Mr. Schaffer stated okay.

Mr. Sirb made a motion to deny the application. Mr. Hansen seconded the motion. Mr. Staub called for discussion on the motion. Mr. Dowling stated he had no problem with the concept of the 6' canopy, however he would have liked to see what it would look like before approving a variance; that would mean seeing some accurate

drawings. The testimony is just a guess and no one knows what Mr. Dobrinoff's intentions are. Mr. Freeburn stated that he agreed about not wanting to increase nonconformities. He also agreed with Mr. Dowling that he wanted to see the proposed canopy. Mr. Freeburn also had concerns about the owner's credibility. Mr. Schaffer agreed. Mr. Sirb stated he doesn't care what they look like, the owner doesn't take care of his responsibilities, and he will get another "no" vote from him. He noted it is ridiculous. He doesn't want to see him come to the Board again without taking care of other Township responsibilities before asking for relief.

Mr. Staub called for a role call vote: Mr. Hansen-Aye; Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; and Mr. Staub-Aye.

The hearing ended at 7:38 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary

IN RE:	: BEFORE THE LOWER PAXTON : TOWNSHIP ZONING HEARING BOARD
APPLICATION OF	: DAUPHIN COUNTY, PENNSYLVANIA :
KEN SCHAFFER	: DOCKET NO. 1283

DECISION DENYING VARIANCE

The applicant seeks a variance from front yard setback requirements. A hearing on the application was held on August 26, 2010.

Facts

1. The applicant and proposed contractor for the project is Ken Schaffer of 1208 Wood Road, Hummelstown, Pennsylvania 17036. The property is owned by Gary Dobrinoff of 3920 Jonestown Road, Harrisburg, Pennsylvania 17109.

2. The property in question consists of a rectangular parcel located on the north side of Jonestown Road. The property is improved with a building which is located 29 feet 6 inches from the curb line of Jonestown Road. There is parking between the front of the building and the street and along the east side of the property.

3. The property owner has erected without building permits an overhang over the entrance to the building which is 48 feet by 5 feet. This overhang extends over the existing parking spaces which adjoin the entrance on the west side of the front façade. A smaller 22 feet by 5 feet overhang was erected on the east side over a second entrance. The construction of these overhangs was defective and their removal has been ordered by the Township Building Inspector. The applicant proposes to repair and/or replace the overhangs.

4. The property owner has a history of zoning and/or building code violations on the property and has been uncooperative with past efforts to address violations.

5. Notice of the hearing was posted and advertisement made as required by the ordinance.

6. No one other than the applicant and township representatives appeared to testify either in favor of or against the requested variance.

Conclusions

1. Section 307.A of the ordinance requires a minimum front yard setback of 50 feet where off-street parking exists between the principal building and an arterial street. The proposed construction would violate this section of the ordinance.

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 no hardship exists which would justify the requested variance. The property is already being used and the absence of an overhang on the front façade does not prevent the reasonable use of the property. Further, the Board notes that the property owner has failed to provide to the applicant sufficient information regarding the finish and/or illumination of the façade to accurately assess its impact upon surrounding property owners or the overall neighborhood.

4. The property in question has no irregularities of shape, dimension or topography which would justify the requested variance or which prevent its reasonable development.

Decision

In view of the foregoing and having carefully 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.

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Date: 9/23/10

Jeffrey W. Staub

Gregory P. Sirb

David B. Dowling

Richard E. Freeburn

Allan Hansen

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Meeting of August 26, 2010

Members in Attendance	Also in Attendance
Jeffrey Staub, Chairman	Dianne Moran, Planning & Zoning Officer
David Dowling	James Turner, Solicitor
Richard Freeburn	Amanda Mitchell, Codes Enforcement Officer
Allan Hansen	Daniel Slatt, Building Inspector

Docket #1284

Applicant:	Holy Name of Jesus Parish
Address:	6150 Allentown Boulevard, Harrisburg
Property:	6150 Allentown Boulevard, Harrisburg
Interpretation:	Minimum rear yard setback is 30 feet Applicant proposes a rear setback of 12.5 feet Stormwater basin landscaping requirements of a minimum of two trees and ten shrubs per 100 lineal feet of basin perimeter Applicant is proposing to use existing natural landscaping buffer, and the basin is located adjacent to a rear yard landscape buffer, on the southern property line
Grounds:	Section 307.A. and 304.G of the Lower Paxton Township Zoning Ordinance pertain to this application.
Fees Paid:	July 29, 2010
Property Posted:	August 17, 2010
Advertisement:	Appeared in The Paxton Herald on August 11 & 18, 2010

The hearing began at 8:47 pm.

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

The following were sworn in: John DiSanto, parishioner and contractor; Jim Snyder, Snyder Secary & Associates; David Lupold, Gannett Fleming Architects and Engineers, 209 Senate Avenue Camp Hill; and Dianne Moran, Planning & Zoning Officer.

Mr. Hansen stated he is a member of Holy Name of Jesus (HNJ). Mr. Turner asked if there were objections to Mr. Hansen participating in the hearing. There were no objections.

Mr. DiSanto offered to discuss the layout of the plan. The Board felt it was not necessary.

Mr. Snyder stated that the front of the parcel is along Interstate-81, and it is adjacent to several other parcels under same ownership of the church. The plan is to build a 26,000 square foot, 1,400 seat church. The intent is to put the proposed building as close to the existing church as possible to create a campus feel, and interconnect the sidewalks. In the long term, the church intends to consolidate the lots into one, but there is an alleyway through the property, and it will take some time to get the rights extinguished and consolidate. He explained that the corner property is 12.5 feet from the property line. The second variance request is for landscaping around the detention basin. The basin is adjacent to the existing wetlands and the existing on-ramp to I-81. There will be a relatively large buffer and significant plantings in the are of the basin.

Mr. Dowling asked if the variance is for landscaping around the entire basin. Mr. Snyder explained that there is some duplication because the ordinance requires an average of 2 trees and 10 shrubs for every 100 lineal feet of basin perimeter. There will also be a landscape buffer along the residential use. There is a slope into the basin.

Mr. Dowling asked if they intend to plant along the east side of the basin. Mr. Snyder stated he is asking for a variance for the east and west sides, but they will also include plantings in the bottom of the basin.

Mr. Dowling asked if it is a matter of cost, and what the cost difference would be to comply with the ordinance. Mr. Snyder stated there is about 300' of perimeter, so 6 trees and 30 shrubs would be required. He noted it is next to a wetland area and the on-ramp. Mr. Hansen asked how visible the east side of the basin would be. Mr. Snyder stated the slope is about 4-5 feet, and you'd actually be looking over it. Mr. DiSanto stated the church will be 13 feet higher, and the plantings will provide no real benefit. Mr. Snyder stated the basin will be an infill basin and the water quality will require that the basin be heavily planted in the bottom.

Mr. Staub asked if any problems are anticipated with Keller Street. Mr. Snyder stated he does not anticipate any problems, but by design, they must stay out of that 20 foot area. They do plan to resolve that issue, hopefully this year.

Mr. Lupold stated the handicap accessible entrance will accommodate the large population of elderly members, and it is located near the day chapel.

Mr. Staub suggested that the variance is essentially a temporary variance, based upon the fact that the alley will be vacated and asked if the lots will be consolidated. Mr. Snyder stated the intent is to eradicate the private rights to the alley, and consolidate the lots. Mr. Staub asked for justification to grant a variance for the east side by the parking lot. Mr. Snyder stated the location is somewhat remote, and the side property line is along the interstate, and there will be buffering on both sides, as well as existing vegetation. The elevation of the basin is such that it will be 13 feet below the church. Mr. DiSanto stated the bushes will not be visible.

Mr. Freeburn asked if the plantings would be along the edge of the basin or down in it. Mr. DiSanto stated they would be along the edge, but with the infiltration requirements, the inside of the basin will be heavily planted.

The Township had no position on the application.

Mr. Staub called for comments from the audience. There was none.

Mr. Freeburn made a motion to grant the application. Mr. Hansen seconded the motion, and a roll call vote followed: Mr. Hansen-Aye; Mr. Freeburn-Aye; Mr. Dowling-Aye; and Mr. Staub-Aye.

The variance was granted.

The hearing ended at 9:09 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary

IN RE:	: BEFORE THE LOWER PAXTON
	: TOWNSHIP ZONING HEARING BOARD
APPLICATION OF	: DAUPHIN COUNTY, PENNSYLVANIA
	:
HOLY NAME OF JESUS PARISH	: DOCKET NO. 1284

DECISION GRANTING VARIANCE

The applicant seeks a variance from rear yard setback requirements and landscaping requirements in connection with a proposed building project. A hearing on the application was held on August 26, 2010.

Facts

1. The applicant and owner of the property in question is Holy Name of Jesus Parish of 6150 Allentown Blvd., Harrisburg, Pennsylvania 17110. The applicant was represented at the hearing by John DiSanto, contractor and church representative, and David Lupold, project engineer.

2. The property in question consists of a multi-acre, multi-parcel tract which is improved with a church and attached school building, a detached gymnasium and several modular classrooms. In order to accommodate growth in the parish and the school, the applicant intends to construct a new worship facility on the northern parcel. This parcel is separated from the parcel on which the existing church is located by a paper street which the applicant intends to acquire by quiet title at which time the parcels will be consolidated. The intent is to create a campus-like effect for the school and the worship facilities.

3. The proposed new church will be set back 12.59 feet from the common property line between the northern tract upon which the proposed church will be built and the southern tract upon which the existing church is built. Property setbacks in all other directions are met under the proposed plan.

4. The applicant proposes to create storm water detention facilities in the northeast corner of the property adjacent to Interstate 81. There is an existing natural buffer between the facility and I-81 to the north which the applicant proposes as the sole screening around the

facility. To the south, the facility abuts the southern property line and rear yard landscape buffer. The bottom of the detention facility will be planted with plants for water quality purposes.

5. Notice of the hearing was posted and advertisement made as required by the ordinance.

6. No one other than the applicant appeared to testify either in favor of or against the proposed variance.

Conclusions

1. Section 307.A of the ordinance requires a rear yard setback of thirty (30) feet. The proposed construction would violate this section of the ordinance. Section 804.G sets forth landscaping requirements of two trees and 10 shrubs per 100 feet of lineal perimeter for detention basins. The landscaping proposed would violate this section of the ordinance.

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 with respect to the building setback, the applicant faces a hardship in that the parcel is irregularly shaped with multiple tracts and internal boundary lines which serve no practical purpose. Maintaining an adequate parking plan and proper site circulation requires that the building be pushed to the front of the parcel. Adequate setbacks between the buildings are provided and the encroachment has no effect upon adjoining property owners. Once the parcels are consolidated the need for the variance disappears. From a practical standpoint, the internal property line which is encroached upon already has no significance.

4. With regard to the detention facility, its remote location adjacent to an interstate on-ramp mitigates the need for screening. The existing natural buffer adequately protects the general public. To the south, the required landscape buffering is in such close proximity to the facility that its presence would serve no practical purpose.

Decision

In view of the foregoing and having carefully considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variances requested should be and are hereby granted allowing the erection of a building within 12.59 feet of the common property line with their existing facility and waiving the required landscaping around the detention facility.

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Date: 9/23/10

Jeffrey W. Staub

Gregory P. Sirb

David B. Dowling

Richard E. Freeburn

Allan Hansen

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Meeting of August 26, 2010

Members in Attendance	Also in Attendance
Jeffrey Staub, Chairman	Dianne Moran, Planning & Zoning Officer
David Dowling	James Turner, Solicitor
Richard Freeburn	Amanda Mitchell, Codes Enforcement Officer
Gregory Sirb	Daniel Slatt, Building Inspector
Allan Hansen	

Docket #1285

Applicant:	Don & Kim Harnsberger
Address:	16 Rutherford Road
Property:	16 Rutherford Road
Interpretation:	Maximum number of accessory structures on a property is two. The applicant proposes more than two. Maximum area of an accessory structure is 1,000 square feet. Applicant proposes a structure that exceeds this. Maximum height of an accessory structure is 2 stories, or 25 feet, whichever is more restrictive. Applicant proposes a garage that is 2.5 stories in height.
Grounds:	Section 403.D.14.B.2. of the Lower Paxton Township Zoning Ordinance pertains to this application.
Fees Paid:	July 29, 2010
Property Posted:	August 17, 2010
Advertisement:	Appeared in The Paxton Herald on August 11 & 18, 2010

The hearing began at 8:04 pm.

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

The following were sworn in: Don & Kim Harnsberger, 16 Rutherford Road; and Dianne Moran, Planning & Zoning Officer.

Mr. Harnsberger stated he wanted to thank both Ms. Moran and Mr. Dan Slatt, who were both very helpful in this process.

Mr. Harnsberger stated the property has been in his family since 1865, and the house was built in 1860. The reason for the variance request, is the cinderblock building, known as the butcher shop is located one inch from the property line. It is in need of repair. The location of the garage/butcher shop was a non-issue because a family member owned the adjacent property, 14 Rutherford Road. The Harnsbergers have a great relationship with the Eshelmans who live there now, and they have no problem with the location of the garage. He is fearful that if the Eshelmans move away, the new property owner may not like that the garage is so close, and the roof overhang actually encroaches. That could create problems with future owners of both properties.

There are several proposals. One is to tear down the garage and relocate a 2.5 story garage, 30x30. The new garage would meet the setback requirements of five feet. The size of 30x30 would allow for the main level entrance from Rutherford Road to be where the cars are parked. The basement or lower level would enter from the opposite end from the back yard. That would provide space for garden equipment and tractors. The storage space would be the attic space.

Mr. Harnsberger stated he included a current plot plan, and the proposed changes. It shows the five-foot setback, and the rear of the garage would be 70-72 feet from the rear property line. He also included a plan, which is preliminary, meaning it is pending the decision of the Zoning Hearing Board and the Building Department.

Mr. Harnsberger stated he canvassed the neighborhood, and has their signatures of approval. He submitted the signatures as Applicants Exhibit #1. When he spoke with the neighbors, he showed them the drawings and put stakes in the ground so they could see where the proposed garage would physically be located. He stated it was important to talk to his neighbors to eliminate fears that they would be building houses in the back of the lot.

Mr. Staub stated the proposal is almost three times the area allowed, and the height is 9 feet more than allowed. He noted that two levels will be actively used, with a third for storage, when the ordinance allows one story plus one for storage. He noted it seems like it would be nice, but it may be imposing, and it is more than he envisioned on a property of this size. He would be looking for something more in line with the garage that is proposed to be demolished.

Mr. Harnsberger stated he realizes the proposal is larger than the ordinance allows. The code calls for 25 feet from grade to the top, and if the garage is viewed from the main level, from the street side, it would be at 25 feet or below. If you include the ground level, it is above the code. Mr. Harnsberger stated that a house is measured by taking an average of the grade, to an average of the peak.

Mr. Harnsberger explained that the house is already at 35-37 feet high. There is a special relationship. When you stand 70 feet away at the property line and view a 25 feet tall garage next to a 35 feet tall house, next to houses that are 30-40' away, on a natural grade, it is not as imposing as it may seem on paper.

With regard to the additional square footage, Mr. Harnsberger stated that, Mr. Harnsberger stated he wouldn't need a variance if he were building a garage that was less than 1,000 square feet. He explained that there is not enough room between the house and the location of the proposed garage to turn around. He noted on the plot plan there is a driveway, and there is an area to turn around to get to the existing structure. They would now be moving the structure back to the required setbacks, and then building a 30x30 1-story garage, leaving an inadequate area for turning around. This is the reason they would like the variance.

Mr. Dowling asked how moving the garage to the desired location will affect the turnaround. Mr. Harnsberger stated it won't but if they were to simply build a 30x30 garage on a pad they would not need a variance, just like he wouldn't need a variance to build it if it were less than 25 feet tall. Mr. Harnsberger explained that because of the grade, you can't just put in a slab; he will need to put in footers and foundation to support the structure. That will create dead space which is unusable and will involve the extra expense and time of footers and foundation. That does not make any sense to Mr. Harnsberger. Since the work has to be done anyway, why not make that space something usable. That would provide a place for equipment.

Mr. Dowling stated that eliminating the third level would eliminate one of the variance requests. Mr. Harnsberger asked if it was suggested to remove the attic/storage space. Mr. Dowling stated it might increase his chances of getting a variance.

Mr. Freeburn read from the ordinance: the maximum total floor area of all accessory buildings shall be 1,000 square feet. He asked if that is a total of all the accessory buildings. Ms. Moran stated that is how she interprets it. Mr. Freeburn stated that means if the barn and the smokehouse are already at 1,000 square feet, he would need a variance for square footage to add to that. Ms. Moran stated that she did advertise the variance for the maximum number of accessory structures as well as maximum area. Mr. Freeburn asked about the barn and smokehouse building. The barn is 1,200 square feet, and the smoke house is 50-60 square feet. The site has 1,260 square feet of out buildings already. Mr. Sirb stated that all the accessory buildings will be around 4,000 square feet. Mr. Harnsberger stated it could be, when you add them together, but he did not add them up since they have been there and are grandfathered in, as this is a property that was developed in 1860 when there were no building codes. He added that there were many buildings on the land that do not exist anymore: barn, hog pen, chicken coup, rabbit coup and an outhouse. Mr. Harnsberger stated he is proposing to not increase the number of buildings, by removing one and adding one.

Mr. Freeburn asked the size of the building being torn down. Mr. Harnsberger stated that garage is about 20x22. Mr. Freeburn stated it will be replaced with a 2-car garage with two separate bays. Mr. Harnsberger stated that is correct. Mr. Freeburn stated that a 20x22 garage is small. Mr. Harnsberger stated they have considered many options, including an attached garage. The inside of the house has been restored, and now they are working on the outside.

Mr. Sirb stated that even though the individual elements of the property may be grandfathered, by adding to it, all of the variances have to be considered. Ms. Moran stated that the conditions are pre-existing non-conforming. Mr. Dowling stated the property is about 1.4 acres. Mr. Harnsberger stated there is a discrepancy, so the property is either 1-1/3 acre, or 1.4 acres.

Mr. Staub stated he would not have an issue if the cinderblock building was being replaced in kind, but it is not the same size. Mr. Harnsberger asked if the issue is the new location. Mr. Staub stated it is the size of the new building, and would be okay with a new building at 24x24. Mr. Harnsberger stated that is a design they did consider, and he noted that a side door on the garage takes away 3 feet right off the top, leaving less room for two cars that are hopefully parked as they should be.

Mr. Freeburn asked if the height of a floor is 10 feet. Mr. Harnsberger stated it is 10 feet, but the actual clearance will be 8'4.25". Mr. Freeburn stated that if the height is 10 feet, plus 10 feet, plus 5 feet, it may not really need a variance. Mr. Harnsberger stated he can modify the plans as such. Mr. Freeburn stated he doesn't think the plans need modified, but he thinks they may be fine. Ms. Moran stated she advertised it to be on the safe side to avoid problems if it is discovered that a variance is indeed needed.

Mr. Staub asked if the Township had a position on the variance request. Ms. Moran answered no.

Mr. Staub called for comments from the audience.

Ms. Erica Eshelman, 14 Rutherford Road, was sworn in. Ms. Eshelman stated she appreciates that the Harnsbergers kept her completely informed through this process, which has taken well over a year, while they determine what is best for the property. With regard to the comments about the size of the building, she noted that it would not seem that big when on the land, it will be the best fit with the house that is there now. She noted that she thought it would look very nice, and they look forward to seeing it be built. She added that the one that is there now seems too small for the property; the proposed garage will fit much better.

Mr. Harnsberger stated that all of his neighbors are very nice, and when he spoke to them regarding his project, they offered comments: they appreciate the time he took to show them the proposal, and they were glad to hear he was not building more homes, which had been a rumor at one time, they would not feel infringed upon and to go ahead and build what you want.

Mr. Freeburn made a motion to grant the variance request regarding the number of accessory buildings, and total floor area of accessory buildings. The motion includes denial of the request for height, because it is not needed, and he doesn't want to grant more than is needed.

Mr. Harnsberger asked if he needs to resubmit plans with the new roof design. Mr. Freeburn stated he thinks it is in compliance. Mr. Turner thought the same thing.

Mr. Freeburn stated the property is a large property, and he did not want to parse between 24x24 and 30x30, and he thinks it would look better with the larger structure. He noted that with regard to the number of buildings, they are replacing one with one.

Mr. Sirb seconded the motion, and a role call vote followed: Mr. Hansen-Aye; Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; and Mr. Staub-no.

The variance was granted.

The hearing ended at 8:40 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary

IN RE:	: BEFORE THE LOWER PAXTON
	: TOWNSHIP ZONING HEARING BOARD
APPLICATION OF	: DAUPHIN COUNTY, PENNSYLVANIA
	:
DON AND KIM HARNSBERGER	: DOCKET NO. 1285

DECISION GRANTING VARIANCE

The applicant seeks a variance in conjunction with the proposed construction of an outbuilding. A hearing on the application was held on August 26, 2010.

Facts

1. The applicants and owners of the property in question Don and Kim Harnsberger of 16 Rutherford Road, Harrisburg, Pennsylvania 17109.

2. The property in question consists of a 1.4 acre square parcel with 250 feet of frontage on Rutherford Road. It is improved with an 1860 farmhouse with an attached summer kitchen and several outbuildings. The property is accessed by a driveway along the northern property line which provides access to an existing garage which marginally encroaches upon the property to the north. The parcel is zoned R-2 residential.

3. The applicant proposes to remove the existing encroaching garage and to replace it with a 30 by 30 two and one-half story garage which would be located 72 feet from the rear property line and five feet from the northern property line. Due to the slope of the property from Rutherford Road, the building will appear to be a one and one-half story structure with a height of 24 feet 2 inches. From the rear, the lower level will be exposed resulting in a height of 34 feet 2 inches. Height on the north and south faces will vary from 24 feet 2 inches to 34 feet 2 inches.

4. The existing farmhouse which is on the higher front portion of the property is 35 feet to 37 feet in height.

5. Eric Eshelman, an adjoining property owner, appeared before the Board to testify in favor of the proposed variance. He testified that the height and size of the building was in scale with the neighborhood. No one else appeared to testify either in favor of or against the proposed variance.

6. Notice of the hearing was posted and advertisement made as required by the ordinance.

Conclusions

1. Section 403.D.14.B(2) limits an applicant to two accessory structures in the R-2 zone. Because the existing garage is being removed and the summer kitchen is attached to the existing house, the proposed garage will not violate this section of the ordinance. Section 403.D.14.B(2) limits the area of accessory buildings to 1,000 square feet where the lot area is less than two acres. The proposed new garage would violate this section of the ordinance. Section 307.B.1 of the ordinance limits building height to 25 feet. Depending upon final measurements the proposed garage may or may not exceed maximum height regulations.

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 in question is burdened by a hardship consisting of its past size and use and large lot area which mandates additional storage areas than the typical residential lot. The applicant is attempting to preserve the original farmhouse character of the property which requires the storage of tractors and gardening equipment.

4. Granting the variance will not alter the essential character of the neighborhood. To the contrary, the applicant's use of the property and the preservation of the historic structure in the midst of suburbia adds to the character of the neighborhood. The garage, although oversize, is in scale with the existing home. It is set back far enough from adjoining properties so as to have no adverse effect. With regard to the height variance, the applicant has indicated to the

Board, and the Board finds, that with proper grading and by working with Township staff no height variance is necessary, and accordingly no relief is granted from this section of the ordinance.

Decision

In view of the foregoing and having carefully 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 erection of a 30 foot by 30 foot accessory building. Height of the building shall be in compliance with the ordinance. In all other respects, construction shall be in strict accord with the plans and testimony presented to the Board.

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Date: 9/23/10

Jeffrey W. Staub

Gregory P. Sirb

David B. Dowling

Richard E. Freeburn

Allan Hansen

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Meeting of August 26, 2010

Members in Attendance	Also in Attendance
Jeffrey Staub, Chairman	Dianne Moran, Planning & Zoning Officer
David Dowling	James Turner, Solicitor
Richard Freeburn	Amanda Mitchell, Codes Enforcement Officer
Gregory Sirb	Daniel Slatt, Building Inspector
Allan Hansen	

Docket #1286

Applicant:	Sergey Akimov
Address:	4844 Peterborough Road
Property:	4844 Peterborough Road
Interpretation:	Pigeons may not be kept on a lot of less than one acre. The applicant proposes to continue the keeping of pigeons.
Grounds:	Section 403.D.12.b.d. of the Lower Paxton Township Zoning Ordinance pertains to this application.
Fees Paid:	August 3, 2010
Property Posted:	August 17, 2010
Advertisement:	Appeared in The Paxton Herald on August 11 & 18, 2010

The hearing began at 7:39 pm.

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

The following were sworn in: Sergey Akimov, 4844 Peterborough Road; Mark Heldreth, 4727 Marblehead Street; and Dianne Moran, Planning & Zoning Officer.

Mr. Heldreth explained that Mr. Akimov does not speak well, so he asked him to speak for him. He explained that Mr. Akimov rescues pigeons or doves that are injured, and he has a pen in the backyard and there are trees all the way around it. When Mr. Heldreth looked at it, it did not appear to be a nuisance or eyesore. He explained that Mr. Akimov rescues them and they can come and go and he takes care of them and at night they are closed in so they are safe from predators.

Mr. Akimov apologized for not bringing a relative to the hearing, but his wife is sick and his son is in the military in Florida, so he asked Mr. Heldreth to come to the hearing.

Mr. Turner asked how many pigeons there are. Mr. Akimov stated he had 21 pigeons when he received the notice, but hawks attack pigeons, so today he has 12.

Mr. Turner asked the applicant to describe the pen, the size and what it is made of. Mr. Heldreth stated the pen itself is probably three feet wide and eight feet high and six feet wide. On the end of that there are two closed in fences. Mr. Turner asked about the materials. Mr. Heldreth stated he was not sure, but it has a screen on the front of it. He added that from what he can see, it doesn't seem real offensive.

Mr. Turner asked how pigeon droppings are disposed of. Mr. Akimov stated he has had pigeons since he was a little child and he totally cleans up every two weeks and disinfects. He stated he knows each pigeon by their face because he rescues them and heals them. He stated he got only one pigeon from a man, the others are rescued.

Mr. Turner asked what Mr. Akimov does with the waste from the pigeons, if it goes in the trash, or if it is used as fertilizer. Mr. Akimov stated it is very good for bushes and bamboo. Mr. Hansen asked if that means he uses it for fertilizer. Mr. Heldreth stated yes.

Mr. Staub asked if the birds ever leave the property, and if they do, how far do they go. Mr. Akimov stated pigeons are very afraid of hawks, and when he opens the door to the cage, they all go in to be safe from the hawks.

Mr. Staub asked if the testimony is that the birds never leave the property. Mr. Akimov stated pigeons are special birds, they know their home and will not seek out another home. He stated his house does not have pigeons, only the little bird house.

Mr. Sirb asked if complaints were received at the Township. Ms. Moran stated that she received several complaints. Mr. Sirb asked if they were similar complaints, such as noise, filth, or quantity. Ms. Moran stated most complaints were about the filth. She and Ms. Mitchell did several inspections of the property, and the birds fly over the pool and yard furniture. She noted that several neighbors came to the hearing.

Mr. Staub asked Ms. Moran if the birds were on other properties. Ms. Moran answered yes.

Mr. Sirb asked if a pigeon is an exotic bird, and if a variance could be requested. Ms. Moran stated that an exotic bird as defined in the Zoning Ordinance is kept inside a home. The first section of the ordinance says the use shall not cause nusances, health hazards or public safety hazards. If the bird was kept inside it probably would not come to the attention of the Zoning Office.

Mr. Sirb stated the issue is that the lot is less than one acre, the number of birds, and that they are housed outside. Ms. Moran stated there are also health concerns with the neighbors who experience the droppings in their yards. Ms. Moran stated that she included an article submitted by a neighbor that outlines the risks associated with

pigeons. Mr. Staub stated reading that article was frightening, like watching a commercial for medication.

Mr. Sirb asked hypothetically, if there were one or two pigeons inside the house, if it would result in a variance hearing. Ms. Moran stated the ordinance specifically calls out pigeons and requires an acre or more of land.

Mr. Staub asked if the Township has a position on the application. Ms. Moran answered no.

Mr. Staub called for comments from the audience.

Jeff Schwalm, 500 Nottingham Place, was sworn in. Mr. Schwalm stated the first thing that upset him was that his wife noticed that Mr. Akimov was bringing the pigeons around the fence to his (Mr. Schwalm's) bird feeder. He stated he does not have a problem with birds in general, but Mr. Akimov was training the birds to use the bird feeder in Mr. Schwalm's yard to eat. He noted that ticked him off. The bird crap is on the cars, the truck, patio, and it is a nuisance. Mr. Schwalm stated the birds do not stay in Mr. Akimov's yard, they fly and they go from their home to neighbor after neighbor. The birds are not just in Mr. Akimov's yard. They affect the rest of the neighbors.

Mr. Hansen asked how many times a day the birds circle. Mr. Schwalm stated that after he goes to work is when they start, but he did not know if they go out more than once a day or not. Mr. Sirb stated there is no question that they fly off Mr. Akimov's property. Mr. Schwalm stated he has pictures of the birds flying.

Mr. Dowling asked if the birds fly as a flock or individually. Mr. Schwalm stated they fly as a flock.

Mr. Staub asked if Mr. Schwalm was able to observe how many there are. Mr. Schwalm stated it could be five, it could be 14. He added that they are always flying, it is constant. He noted that Mr. Akimov does call them in at night. Mr. Schwalm noted there are odors, but could not say for sure what the odors are.

Mr. Dowling asked how many neighbors are represented by Mr. Schwalm, including those present and those not present. Mr. Turner asked where Mr. Schwalm lives in relation to Mr. Akimov. Mr. Schwalm answered about eight people, and that he lives on the corner, so Mr. Schwalm's back yard is Mr. Akimov's side yard.

Mr. Cary Davis, 588 Wellington Road, was sworn in. Mr. Turner asked where Mr. Davis' house is located in relation to Mr. Akimov's house. Mr. Davis stated he is eight houses away. Mr. Davis stated he has chased birds out of his yard, eight houses away, so they do circle, they do leave the property. There is a day care between his house and Londonderry Road and they go there as well. Mr. Davis felt that pigeons are rats with wings; they are filthy and carry fifty diseases. They sit in a cage and walk in their own crap. He and his wife walk at night, and he sees that there is crap on the street, on the cars, in the pool, and it is a mess. Mr. Davis stated it is ironic that Mr. Akimov has

no trespassing signs at his driveway, but these pigeons trespass and crap all over everyone else's properties.

Mr. Staub asked the time period that Mr. Davis has noticed the pigeons flying. Mr. Davis stated it has been a couple years that they have been chasing pigeons. He stated he assumed they came out of the city, but just this summer learned that they are being kept here (at Mr. Akimov's home).

Mr. Freeburn made a motion to deny the application. Mr. Dowling seconded the motion.

Mr. Staub called for discussion on the motion. Mr. Sirb stated that the applicant is from the Ukraine and probably Russian Orthodox, and it is a custom or tradition to have pigeons. Mr. Akimov stated that pigeons and doves represent celebration and peace. Everyone in his country loves them, including himself from a teenager, and he was happy to see the birds. He stated that seagull leaves droppings everywhere, and it is not the same as a pigeon, who is a very clean bird and only leaves droppings in a certain place. Mr. Sirb stated he wished the applicant would work with the neighbors. Mr. Sirb noted his father is from the Ukraine and tells him the same stories. But that is about one pigeon, not twenty. If he could work with the neighbors to agree to house one pigeon inside the house, but fifteen or twenty birds are well above "reasonable". That is why he thinks the request is being denied. Mr. Akimov stated right now there are only twelve. Mr. Sirb stated that one bird would be reasonable to him, but not more than one.

Mr. Staub called for a role call vote: Mr. Hansen-Aye; Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; and Mr. Staub-Aye.

The hearing ended at 8:02 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary

IN RE:	: BEFORE THE LOWER PAXTON
	: TOWNSHIP ZONING HEARING BOARD
APPLICATION OF	: DAUPHIN COUNTY, PENNSYLVANIA
	:
SERGEY AKIMOV	: DOCKET NO. 1286

DECISION DENYING VARIANCE

The applicant seeks a variance to allow the keeping of pigeons in a residential district. A hearing on the application was held on August 26, 2010.

Facts

1. The applicant and owner of the property in question is Sergey Akimov of 4944 Peterborough Road, Harrisburg, Pennsylvania 17109. The applicant was assisted at the hearing by Mark Heldreth due to language issues.

2. The property in question is located at 4944 Peterborough Road and consists of a residential parcel improved with a single family residence. The applicant has erected a 3 foot by 6 foot by 8 foot tall pigeon coop on his property. At the time of the hearing, the applicant had 12 pigeons in the coop although testimony indicated that up to 20 pigeons were kept at various times. The pigeons are free to enter and leave the coop during daylight hours and are closed in at night. The applicant testified that the pigeon waste is used on the property as fertilizer.

3. In addition to the applicant, several neighbors appeared at the hearing to testify in opposition to the requested variance. The neighbors testified that the pigeons constitute a nuisance in the neighborhood. They fly as a flock over adjoining properties depositing large amounts of waste.

4. Notice of the hearing was posted and advertisement made as required by the ordinance.

Conclusions

1. Sections 403.D.12(b) and (d) of the ordinance set forth standards for maintaining animals as an accessory use. Subsection (b) requires that they be maintained in a way as to not create a serious nuisance or health hazard and subsection (d) requires a minimum lot area of one acre.

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 no hardship exists which would justify the requested variance. The pigeon coop is not necessary for the reasonable use of the property. Granting the variance would be contrary to the public welfare and would alter the essential character of the neighborhood. The property is in a densely developed neighborhood, not a rural area. The presence of the pigeons are creating a nuisance in the neighborhood as testified to by the neighbors which is inconsistent with the residential character of the neighborhood.

Decision

In view of the foregoing and having carefully 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.

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD

Date: 9/23/10

Jeffrey W. Staub

Gregory P. Sirb

David B. Dowling

Richard E. Freeburn

Allan Hansen