

**APPROVED**

**SPRINGETTSBURY TOWNSHIP  
ZONING HEARING BOARD  
APRIL 7, 2016**

**MEMBERS IN**

**ATTENDANCE:** Dale Achenbach, Chairman  
John Schmitt  
Sande Cunningham  
David Seiler

**ALSO IN**

**ATTENDANCE:** John Luciani, Acting Zoning Officer  
Gavin Markey, Solicitor  
Sue Sipe, Stenographer

**NOT PRESENT:** James Deitch

**1. CALL TO ORDER:**

**A. Pledge of Allegiance**

Chairman Achenbach called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance. He introduced the members of the Board.

**2. ACTION ON THE MINUTES**

**A. MARCH 3, 2016**

**MOTION MADE BY MR. SEILER TO APPROVE THE MINUTES OF MARCH 3, 2016 AS CORRECTED. MS. CUNNINGHAM SECONDED. MOTION UNANIMOUSLY PASSED.**

Chairman Achenbach asked Mr. Luciani if the cases were properly advertised. He responded that notifications had been made.

**3. OLD BUSINESS – None**

**4. NEW BUSINESS**

**A. Case Z-16-04 Advent Lutheran Church**

All witnesses were sworn in.

John Snyder, RGS Associates

Rev. David Ritterpush, Pastor, Advent Lutheran Church

Attorney Gilbert Malone, Solicitor for the Advent Lutheran Church

General Case Summary:

§325-116 Design Standards

C. Parking spaces may be located on a lot other than that containing the principal use as a Special Exception.

T. Access to the public highway or street shall be controlled in the interest of public safety. The off-street parking, loading and service areas shall not be within any yard area other than those specified by this article.

Comments: Applicant is requesting a special exception and variance to allow the demolition of an existing residence at 54 North Oxford Avenue (Map 46-01, Parcel 292) and the construction of a parking lot. The parking lot would be an accessory use to the principal use location at 1775 E. Market Street (Map 46-01, Parcel 266). The special exception has been filed by the equitable owner in the (R-7) Small Lot Single-Family Residential zoning district.

Recommendations: If the Findings of Fact and Conclusions of Law meet with the approval of the Board, staff would not oppose the applicant's request.

Mr. Snyder provided three exhibits, labeled Applicant's Exhibit #1, #3 and #4. He noted the church is located at 1775 East Market as shown on Exhibit #1. The church is in contract to buy a piece of property located at 54 North Oxford Street at the corner of North Oxford Street, East Philadelphia Street and North Hills Road. The church was built in the 1920's and was expanded in the 1940's and 1950's and is a landmark of the community. As such it does not meet current codes, one of which is handicapped access. The population of the church is aging. There are two separate levels in the church and due to the aging population of the church is in need of handicapped access. Mr. Snyder indicated that studies were done and it was determined to accomplish this, they will need to add a small addition onto the back of the church which will result in the loss of some parking, which will need to be replaced.

Mr. Snyder stated the property is not contiguous and under the requirements of the ordinance would be permitted a special exception to allow parking on adjoining properties. He outlined the sections of the zoning ordinance for obtaining a special exception:

- The intended purpose must be consistent with the comprehensive plan. The future land use maps of the Township have the church property delineated as public or institutional lands and all the surrounding property is low to medium density residential. House of Worship is considered a permitted use within any of those districts so it is consistent with the Township's comprehensive plan.
- Compatibility – the proposed land use shall be in the best interest of the properties in the general area as well as the community at large. He noted this project for additional parking will not create any issues. They will be required to handle storm water through the land development process but they are not proposing any permanent lighting.
- Suitability – the proposed use shall be suitable for the property and designed, constructed, operated and maintained for the activities presented including frequency of use and generation of traffic. They are proposing a parking lot on the property so they will not be generating traffic to serve the needs of the church next store.
- Part D addresses serviceability. This project will not require any sewer or water services so they meet that requirement.
- Accessibility – the proposed use shall provide adequate ingress/egress and circulation which will be covered during land development as well as the zoning variances.
- Part F is conformity that the application needs to be in conformance with applicable standards. They do have two variances they are requesting and will explain why they are necessary. Will need to go through land development for all of the engineered documents. The last condition was that the Zoning Hearing Board may present any reasonable condition.

The second set of standards for the special exception is in Article 29 entitled House of Worship, specifically §325-174 which has two requirements; public water and sewer shall be provided. Since the request is for a parking lot that would not be required. Secondly, the House of Worship should be located on a street designated as an arterial collector in Springettsbury Township, and it does meet that requirement.

Mr. Snyder presented Applicant Exhibit #4 which is a detailed plan for the parking lot. He noted they are requesting a variance from §325-116.T which indicates that parking in a residential zone is not allowed within the required setbacks, other than for driveway entrances. He stated they have two driveway

entrances proposed which will be a one-way configuration. The entrance will be closest to the corner of East Philadelphia and North Hills Road. The exit will be on North Oxford Street. The property in question is 50 ft. in width by approximately 168 ft. in length. It is a triple frontage property because it is a corner lot. There is a front yard off of North Hills, a front yard off of North Oxford and a front yard off of East Philadelphia Street. The minimum front yard is 20 ft. The side yard has 10 ft. setback. Out of the 50 ft. wide lot, 30 ft. are setbacks which would only allow a developable area for a parking lot of 20 ft., and would not accommodate a driveway and parking space.

Mr. Snyder indicated when they designed the parking lot they kept the 10 ft. side yard consistent since they did not want to infringe on the neighbor's property and to allow for screening and bushes. Consequently, they pushed the necessary variance toward East Philadelphia Street. The paved section would require reduction of the parking setback from 20 ft. to 4 ft. along the East Philadelphia Street side. The exhibit shows that East Philadelphia Street has a wider right of way in that area resulting from the edge of parking to the sidewalk approximately 14 ft. Although it is not legal property, the variance will give the appearance that it is set back further than what it is and will allow the 4 ft. to plant screening and shrubbery for headlights and other buffering.

Mr. Snyder explained the second variance is from the same section but from along the North Hills Road frontage. In order to gain 9 spaces they need to infringe on the setback for 11 ft. They are reducing the setback from 20 ft. to 9 ft. for the one corner of the angled parking. Mr. Snyder noted this was the most efficient parking method they could get in the little space provided.

Under Article 32, §325-190.F.3 Mr. Snyder presented the standards for variances, noting the five criteria to be met:

1. Unique physical circumstance, conditions, hardship, etc., not due to provisions – the hardship is the property only being 50 ft. in width.
2. Due to physical circumstances there is no possibility the property can be developed in conformity with the chapter and the variance is necessary to enable the use of the property. Mr. Snyder confirmed there is no way to get parking on this property without these variances.
3. The hardship was not created by the applicant – Mr. Snyder indicated Advent Lutheran did not create this lot.
4. If authorized it will not alter the essential characteristics of the neighborhood. Mr. Snyder stated across the street there is a small storm water system and the remainder of Advent Lutheran's parking. The parking will primarily be used Sunday mornings and for events. He did not believe nine spaces will not alter the character of the neighborhood.
5. The variance if authorized will represent the minimum that will afford relief and represent the least modification. Mr. Snyder noted with the one way parking aisle, angled parking and some minimum cross section for parking, this represents the minimum relief they are requesting.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Attorney Markey stated Mr. Snyder provided a comprehensive presentation covering the special exception as well as the variances. He noted because it is a special exception the variances are combined with a permitted use and therefore the burden of proof is slightly reduced in terms of granting the variance under existing case law. Attorney Markey recommended the Board consider a condition that the new parking lot shall not be rented out or used for commercial purposes.

Attorney Malone indicated they were in agreement with the condition and also pointed out that the church is a polling location for voting.

It was noted that there would be signs to identify the parking lot as private parking for the church only.

**MS. CUNNINGHAM MOVED IN THE CASE OF Z-16-04 TO APPROVE THE REQUEST FOR THE SPECIAL EXCEPTION FOR THE PARKING LOT ON AN ADJACENT PROPERTY AS NOTED IN §325-116C OF THE ZONING ORDINANCE, WITH THE CONDITION THE PARKING LOT SHALL NOT BE RENTED OR USED FOR COMMERCIAL PURPOSES. MR. SEILER SECONDED. MOTION UNANIMOUSLY PASSED.**

**MR. SEILER MOVED IN THE CASE OF Z-16-04 TO APPROVE THE VARIANCE FOR EAST PHILADELPHIA STREET WITH THE CONDITION THE PARKING LOT SHALL NOT BE RENTED OR USED FOR COMMERCIAL PURPOSES. MR. SCHMITT SECONDED. MOTION UNANIMOUSLY PASSED.**

**MR. CUNNINGHAM MOVED IN THE CASE Z-16-04 TO APPROVE THE VARIANCE FOR NORTH OXFORD STREET WITH THE CONDITION THE PARKING LOT SHALL NOT BE RENTED OR USED FOR COMMERCIAL USE. MR. SEILER SECONDED. MOTION UNANIMOUSLY PASSED.**

**B. Case Z-16-05 Roberts Oxygen Company, Inc.**

Mark Kitzinger  
Attorney Craig Sharnetzka, CGA

General Case Summary:

§325 Zoning - Article XIV C-H Commercial Highway District - 42 Permitted Uses

Comments: Applicant is requesting a variance to allow the sale of welding supplies and the sale and storage of compressed gases for wholesale, welding and other applications. The primary use location is Map 46-JI, Parcel 23K at 2121 Industrial Highway. The variance has been filed by the proposed tenet in the (C-H) Commercial Highway zoning district.

Recommendations: The sale of welding supplies and related safety equipment is permitted in the Flexible Development District and the General Industrial District and stated as such by the following.

Sales of industrial hand tools, industrial supplies such as safety equipment and welding equipment, that are products primarily sold wholesale to other industrial firms or industrial workers.

In addition to the welding supplies, the applicant intends to sell compressed gases. The applicant has not officially identified or quantified the compressed gases to be stored and sold. Among the gases the applicant has suggested may be sold and stored are propane, oxygen, helium, nitrogen, and carbon dioxide. An attached product list was provided by the applicant. The application documents claim the gases are to be sold for a variety of home based needs. The application documents fail to mention that some of these gases are necessary in certain types welding and other industrial activities.

The applicant is not permitted to store the compressed gases inside the building per the 2009 International Fire Code. As such the applicant has proposed to store the compressed gases outside the leased space. The applicant has not provided any plans or documents that specify the exact location or size of the storage area. The tight nature of the site presents challenges to locating the storage area.

The zoning officer's determination is that the proposed use is not consistent with the Zoning Ordinance.

Attorney Sharnetzka stated there are two applications. One is an appeal of the zoning officer's interpretation concerning the proposed use. Attorney Sharnetzka handed out exhibits, noting Applicant's Exhibit #1 shows the total area of 2101-2127 Industrial Highway. Unit 2121 is the proposed location

consisting of approximately 3400 sq. ft. which is a portion of the total building of approximately 7,000-8,000 sq. ft. The property is in the Commercial-Highway zone. Attorney Sharnetzka referred to the packet labeled as Applicant's Exhibit #2, noting Tab #1 is the application submitted for use and occupancy of the property. Tab #2 contains excerpts from the Springettsbury Township zoning ordinance relating to the provisions at issue. This includes a definition of retail sales and wholesale businesses. Two items refer to allowed uses in the C-H district - #16 - appliances, small equipment sales and repairs. Also #27 – retail sales as well as excerpts from the Industrial District. Attorney Sharnetzka noted when their application for use was denied by the zoning officer, he referred to §325-70 indicating it was his opinion the use of the property followed this definition. Attorney Sharnetzka stated it was their position the proposed use is more applicable to the two allowed uses in the C-H district as shown on Tab #2.

Through testimony by Attorney Sharnetzka, Mr. Kitzinger provided the following information:

- His position with Reynolds Oxygen is VP of sales and he has been with the company since 1975.
- The proposed use of RO at this location is to service walk-in customers with cash, credit card and accounts.
- No assembly, repairs or demonstration of products will be done at this location, it will be retail sales with walk-in customers. Product will be shipped to the store, stored and sold through retail sale walk-in.
- Products will not be sold for purposes of wholesale and delivery to any other location.

It was noted that a critical issue in the zoning officer's interpretation, i.e., the distinction between retail and wholesale should be addressed. Attorney Sharnetzka indicated the definition of the use identified in §325-70 refers to differences between products primarily sold wholesale to industrial farms or industrial workers. He noted they are attempting to explain what the proposed use is, what the proposed products are and who their customers are and draw similarities to other retailers who sell similar products.

Attorney Sharnetzka established the following information with Mr. Kitzinger:

- They will sell to anyone who comes into the store. He compared that to stores such as Home Depot, who will sell to a consumer, or a contractor, and to whoever else comes into their store for whatever items they might need.
- Mr. Kitzinger identified the photos in Applicant's Exhibit #3 noting the first photos shows fittings related to compressed gases as well as bags of balloons. He noted they sell helium and balloon filling equipment used for parties. The second photo shows on the back wall, jackets for welding and welding helmets. Also shown are boxes of electrodes and clamps, as well as various items related to compressed gases, welding, brazing, heating and soldering. The last photo shows gloves, braces, sanding equipment. Below the counter is aerosol spray cans of galvanized cleaners. He confirmed these are all products purchased by retail consumers and illustrates a sampling of the interior of the store as far as presentation of the product including shelving to display the product.
- This store is a new location in York. He noted they have a walk-in store in Hanover and a distribution location in Lancaster. The Lancaster store will deliver to this store. The Lancaster branch delivers to various sites, such as nursing homes and other small business. He confirmed the York store would not be making deliveries.
- Roberts Oxygen has a total of 45 retail locations, most of which are walk-in locations like this in commercial areas including a store in downtown Annapolis with the same products, also Glen Burnie and Hunt Valley.

Attorney Sharnetzka stated they understood the Township has issues with some of the gases which would be sold at the proposed store. He referred to Applicant's exhibit #2 – Tab 3 noting this is a listing of the different gases that would sold in addition to other products. He asked Mr. Kitzinger to explain the contents of the list:

- The first group of items listed under Oxygen is an oxidizer non-flammable gas, consisting of mostly small cylinders used for brazing, soldering, and cutting.
- Nitrogen used for filling tires and purging lines. Some grades of nitrogen are for wine systems.

- Argon – welding for small welding machines
- Argon CO2 - welding
- Nitrogen CO2 mixture – for beverage dispensing supplied to a local bar for Guinness beer
- Helium Argon for welding
- Below the Helium are various sizes for balloons.
- Compressed air for plasma cutting or breathing air masks
- CO2 – small cylinders beverage dispensing for malt beer, refrigerator keg systems
- Carbon Dioxide - larger cylinders for beer dispensing, also welding and dry ice.
- Acetylene – soldering, heating, cutting
- Propane for barbeque grills, heating and fork lift trucks.
- These are all items purchased by consumers at retail.
- They do not exchange tanks but will refill on site.
- The tanks would be stored outside the building.

Attorney Sharnetzka referred to Applicant's Exhibit #2, Tab 4 and asked Mr. Kitzinger to explain where the tanks would be kept in relation to the retail location. Mr. Kitzinger indicated they are proposing to use regulations under NFPA55. The cylinders would be stored in the area marked oxidizing inert and flammable gases which would be kept in an enclosed pad with firewalls as needed, outside of the building. The exhibit illustrates the location of the showroom inside the building with a counter and possibly an office area. Tanks would be stored to the side of the building, not the rear of the building.

Attorney Sharnetzka handed out Applicants Exhibit #4 and #5. He noted #4 provides search results for items sold at Tractor Supply, who is a direct competitor of the applicant and sell similar gases. Mr. Kitzinger described items sold at Tractor Supply that are similar to the products sold by Roberts Oxygen.

Mr. Kitzinger described products from Applicant's Exhibit #5 and also from Applicant's Exhibit #6 which are products sold at Sears similar to their products.

Discussion was held concerning the enclosure for the gases. Mr. Kitzinger indicated it is undecided at this point as to whether the enclosure would be besides the building or behind the building. He noted if the Township is in accordance with NFPA55 code, they would only require a fence with a cinderblock wall in the back and sides to provide a two-hour firewall. They would also need a separation which is a line of sight with a 5 ft. firewall to separate the oxidizers from the flammable. No roof would be required.

Attorney Sharnetzka stated whatever the Township and the code would require, Roberts would do in regards to storing the gases. Mr. Kitzinger explained each township has the capability to choose whatever codes they deem appropriate. He noted that generally what they use in their industry is NFPA55, which was presented to the Township. He also indicated there are some parts of the international building code that are used and they can either comply with the codes that the Township uses for the storage or if that will not be possible they would have to surrender the site.

The following questions were address:

How will the tanks or canisters which are stored outside be protected from degradation by weather and other factors that cause rust and corrosion?

Mr. Kitzinger indicated the cylinders are either steel or aluminum and are painted. The cylinders are all compliant with DOT so they have a cylinder cap. The smaller cylinders are not required to have a cap. The larger cylinders are stored interlocking.

Is the safety of the inventory examined and assured?

Mr. Luciani stated the applicant is proposing a fenced in location so it is protected there. If they are successful in obtaining this relief, once they received their certificate of occupancy, those inspections are up to the individual owner. The township does not have any mandate to inspect it. For any new installation YAUFRR does coordinate with property owners about materials and how to handle in case of a

fire.

Are there federal or state regulations requirements, including inspections?

Mr. Kitzinger indicated because these are small cylinders and small quantities there is no DOT regulation as far as inspection.

What percentage of sales are devoted to the gases and the oxygen vs. the internal sales of products and accessories?

Mr. Kitzinger stated 10 to 30% of store sales is the projection for compressed gases.

What is the delivery mechanism?

Mr. Kitzinger stated their delivery truck from Lancaster comes in with a cylinder strapped to the side with a lifting gate that comes down. The driver takes the cylinders onto a cart because the store is at ground level. He will bring them down and roll them in with the cart and roll the empties back out to the truck. The truck is approximately 30 ft. long.

Mr. Luciani was asked if he was satisfied with the way the storage is proposed. He indicated in a commercial zone outdoor storage is a permitted use but the amount of outdoor storage is limited. Under accessory uses, the location must be to the rear of the principal building, as noted in 325-134.B. Location of Accessory Building or Structure. In his opinion a fenced in area meets the definition of a structure. The rear setback shall be 10 ft.

Mr. Kitzinger indicated they have looked into placing the enclosure in the rear of the building and based on where the property line is located he did not know if it would be possible. There is a grassy area in the rear and also the railway is behind the building. The property line is also very close to the rear of the building which is potentially another issue. He noted they may not be able to work around and comply with all the codes.

Mr. Kitzinger in response to a question indicated that a customer could order a shipment from their store that would be delivered to them from their Lancaster location.

Attorney King, Solicitor for the Township led a cross examination addressing the following questions to the applicant:

One of the quantities for carbon dioxide is listed as 50 lbs. Is that considered a large quantity?

Mr. Kitzinger indicated it is the largest they sell and also confirmed it would likely be sold to a restaurant or a business.

Will this facility sell compressed industrial medical and specialty gases, cryogenic gases?

Mr. Kitzinger stated no - medical gases would require the store to be FDA registered, and also cryogenic gases are too large to be in the store. The tanks are approximately 5 ft. high, 2 ft. wide or larger and they hold liquid compressed gas. Specialty gases that are used by various types of business would not be picked up at a store.

The website indicates that Roberts Oxygen is a member of the Industrial Gas Suppliers Alliance. What is that?

Mr. Kitzinger explained it is an LLC they formed approximately 15 years ago for customers who wanted to be able to pick up product at multiple locations or be serviced across the country. The Alliance handle those types of delivery customers. These customers are less than 1% of their business.

Is the Hanover store location at 790 High Street in an area that is zoned Industrial?

Mr. Kitzinger said yes, it is on the main highway.

Mr. Kitzinger also confirmed the West Chester location on West Town Road is also a retail store located in a strip mall area.

Discussion was held in regards to the zoning for the store. Mr. Luciani stated he evaluated the zoning ordinance to determine what zone would be appropriate for this use. He noted that while it appears it should be in a retail space, other facilities that are in PA and other states are mostly in Industrial areas. The zoning ordinance substantiates that welding supply areas are allowed in the general Industrial zone and the Flexible Development zone. He noted at this point the Township believes that based on the research done it does not appear that it is an allowed use in the commercial highway zone.

It was noted that because of safety issues the gas storage is a concern.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Brian Waltersdorf – Owner of Comix Store West located at 2111 Industrial Highway

Mr. Waltersdorf indicated his store is located approximately 100 yards from the area in question. His concern is the safety issue with the location of the storage of the gases. He noted that a sidewalk is located in the back of the building which extends out to the side of the location of the proposed store. He noted that the facility next to him is a bridge club and those customers use that area for overflow parking. He was concerned about some of those customers who smoke as they walk out to their car with the gases stored in that area.

Attorney King indicated there are some legal arguments with respect with retail sales and the definition as noted in Tab #2 of the applicant's package. Attorney King referred to the definition "the selling of goods to consumers usually in small quantities not for resale" noting the Township's issue is the definition for small quantities. He also referred to Exhibit #2 – Tab 2 §325-70 which refers to the general industrial district. "Sales of industrial hand tools, industrial supplies, such as safety equipment and welding equipment that are products primarily sold wholesale to other industrial firms or industrial workers." He noted the Township's position is if that were to read **exclusive** wholesale then the applicant would very likely be granted the certificate of use and occupancy. But because it reads **primarily** sold that does not exclude retail sales.

Attorney Sharnetzka indicated this is an interpretation issue is dealing directly with what is in the statute. He pointed out that §325-70 does not say exclusively sold wholesale, but states products primarily sold wholesale. On behalf of the applicant Attorney Sharnetzka was of the opinion the Township's definition is not what they propose to do, clarifying they propose to sell retail products, the products as identified, and these are not products primarily sold wholesale to industrial firms or industrial workers. Retail sales are permitted in the C-H district. Attorney Sharnetzka stated the applicant fully understands from a safety standpoint they will have to comply with any outdoor storage requirements from the Township. The applicant did testify from a safety standpoint that they will meet safety requirements.

Attorney Markey stated the Board will need to focus on the definition of retail sales and the definition in §325-70.D, as highlighted by the Township to determine the use type described by the applicant or as further defined by the Township is a retail sales within the meaning of the selling of goods to consumers usually in a small quantity and not for resale, or if the use type described is more akin to the sale of industrial hand tools, industrial supplies, such as safety equipment and welding equipment that are products primarily sold to other industrial firms or industrial workers.

In regards to conditions, Attorney Markey indicated the only condition to be placed on the approval, if ruling in favor of the applicant, the applicant would have to agree to those conditions. There is another option since public safety is a primary concern raised by the Township. A question could be asked of the applicant and the Township whether there would be any reason to continue and withhold a decision and

have the Township work with the applicant to see if satisfactory conditions could be crafted and agreed upon by both parties and that they would agree to impose them should the board approve, which would overrule the zoning officer's determination resulting in a request for a variance from that provision.

Attorney Sharnetzka stated with the safety concerns that have been raised, his client would agree to a continuance to the next meeting to allow time to work with the Township.

Attorney Markey stated the Township would meet with the applicant and his attorney in an attempt to agree upon conditions that would satisfy the Township's concern regarding the safety of the containment of the gases. If the applicant is in agreement and the Township is satisfied with the conditions agreed upon, the applicant would come back at the next regularly scheduled meeting. The ZHB would then sustain the interpretation of the applicant's attorney and the applicant would agree to those conditions as part of that approval.

Attorney King added if the conditions could not be reached, the applicant could still come back and seek the original interpretation that this is a permitted use without the conditions. Attorney Markey concurred.

Both Attorney King and Attorney Sharnetzka agreed to continue the proceedings until the next regularly scheduled meeting.

**MR. SEILER MOVED IN THE CASE OF Z-16-05 TO CONTINUE THE PROCEEDINGS UNTIL THE NEXT REGULARLY SCHEDULED MEETING. MS. CUNNINGHAM SECONDED. MOTION UNANIMOUSLY PASSED.**

## **5. ADJOURNMENT**

**CHAIRMAN ACHENBACH ADJOURNED THE MEETING AT 8:00 P.M.**

Respectfully submitted,

Secretary

/ses