

APPROVED

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
AUGUST 4, 2016**

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chairman
David Seiler
Sande Cunningham

ALSO IN

ATTENDANCE: John Luciani, Acting Zoning Officer
Jessica Fieldhouse, Director of Community Development
Gavin Markey, Solicitor
Sue Sipe, Stenographer

NOT PRESENT: John Schmitt
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. JUNE 2, 2016

MOTION MADE BY MR. SEILER TO APPROVE THE MINUTES OF JUNE 2, 2016 AS PRESENTED. 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

Att. Markey noted for informational purposes the decision for Case Z-16-08- Richard T. Smith from the June meeting, documents have been executed and are being distributed to the applicant.

Mr. Luciani introduced Jessica Fieldhouse as the new Director of Community Development as of September 2016.

4. NEW BUSINESS

A. Case Z-16-09 John Woodward

All witnesses were sworn in.

John Woodward, Applicant and Developer of Firehouse Shoppes, 3013 East Market Street
Eric Johnston, Johnston & Johnston Assocs.

General Case Summary:

§325-114. Parking facilities required by land use.

D. Minimum parking requirements shall be as stated in chart.

Personal Service Business: 3.5 spaces per 1,000 gross square feet

Retail/Commercial Use: 4.5 spaces per 1,000 gross square feet

Dental Office: 4 spaces per 1,000 gross square feet

Restaurant/Eating Establishment: 10 spaces per 1,000 gross square feet

Comments: Applicant is requesting a special variance to allow a deficiency of parking spaces. According to the Springettsbury ordinances, with the current tenant mix, 100 parking spaces are required. The applicant has only constructed 91 parking spaces in accordance with the project's approved Land Development Plan. The applicant also claims they were not aware of exact tenant mix. Staff has attached materials supplied by the applicant.

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. Johnston stated they recently completed construction at Firehouse Shoppes in the last year and prior to that had gone through land development with the Township and Staff to obtain necessary approvals to do the construction. He noted there are two buildings – the easternmost building and the westernmost building toward the intersection. Due to their parking situation at Firehouse Shoppes they are seeking a variance to §325-114.D in regards to the amount of parking necessary for this site. They have several different uses on the application summarized on Sheet 1 of 15. Currently there are two vacant spaces – one in the east building and one in the west building. They have a client, Primo Hoagies, interested in the vacant space in the west building. As they proceeded with the parking tabulation for the whole site in accordance with §325-114.D of the ordinance, the calculations for parking spaces indicated that 100 parking spaces would be necessary at the site. They have constructed 91 parking spaces as part of the land development plan. Mr. Johnston indicated that number was driven at the time with the expected use mixes during the development stage and at that point in time the exact users of each tenant space in the building was not known. As outlined on Sheet 2 of 15 they are requesting an allowance of the 91 spaces that have been constructed for the retail center.

Mr. Johnston provided a brief description of the specifications as outlined in the Ordinance.

- Nature of the unique physical circumstances or conditions peculiar to the property in question and not shared by other properties - they are not alleging there are any unique physical conditions at Firehouse Shoppes that are not shared by other properties in the vicinity. He outlined the spaces required for each business.
 - Personal service businesses 3.5 spaces per 1000 gross sq. ft.
 - Retail commercial use 4.5 spaces
 - Dental office 4 spaces
 - Restaurant eating establishment 10 spaces per 1000.
- Unnecessary hardship not created by the applicant - Exhibits B and C illustrate 10 parking spaces required per 1000 sq. ft.
- The variance will not alter the essential character of the zoning district or neighborhood. Mr. Johnston provided aerial photos taken in June (Exhibit E) which illustrate they have adequate parking. Additional photos were taken August 2 (Exhibit F) to show the number of vacant parking spaces taken at three different times of the day:
 - Morning when businesses are opening up - 10 parking spaces were occupied.
 - At 12:30 30 spaces were occupied.
 - 55 vacant spaces were observed at 5:30

Mr. Johnston indicated the anticipated parking density requirements for Primo Hoagies has been factored into the variance request.

Mr. Johnston noted on Sheet 3 of 15 for the other vacant space of 1226 sq. ft. they have limited the use to retail based on market interest. They used the requirement of 4.5 spaces per 1000 sq. ft. and made the assumption 6 parking spaces out of the 91 will be allocated to that vacant building.

Att. Markey stated from a legal perspective this is a dimensional variance in relation to permitted uses within that district therefore the applicant's burden is reduced according to existing case law. Secondly, in terms of the criteria for the granting of a variance some of the items cannot be satisfied by the applicant, however, according to the ordinance and the MPC there is predicate language which indicates where relevant the Zoning Hearing Board should consider all those items. There is flexibility in that analysis which weighs in favor of the applicant.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant. Hearing none, he called for a motion.

MS. CUNNINGHAM MOVED IN THE CASE OF Z-16-09 TO RECOMMEND APPROVAL FOR A VARIANCE OF §325-114 PARKING FACILITIES REQUIRED BY LAND USE DUE TO THE FACT THAT THE REQUEST WOULD BE CONSIDERED DIMINIMUS. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

B. Case Z-16-10 Diana Ackroyd – 139 Sylvan Drive

All witnesses were sworn in.

Diana Ackroyd
Andrew Ackroyd

General Case Summary:

§325-125. Livestock, poultry and animals

- A.** In the R-R District, operations involving the use of land or buildings for farming, stock raising, dairy, poultry and keeping of riding horses for personal use shall be subject to the following regulations:
- (1) All areas used for pasturing, grazing or exercise shall be securely fenced.
 - (2) All animals, poultry and livestock shall, except while pasturing, grazing or exercising, be housed in a building erected or maintained for sheltering animals.
 - (3) The building required by Subsection A (2) hereof shall not be located within 200 feet of any lot line.
 - (4) No ponds or pools of water, mud pools or wallows shall be permitted on any land, nor shall any natural stream or body of water be allowed to become an animal wallow. This subsection shall not prohibit a farm pond properly fenced to keep out animals.
 - (5) The accumulation and storage of manure or other odor-producing substances shall not be permitted within 200 feet of any lot line, and such accumulations and storage shall not be permitted beyond a reasonable period of time.
- B.** In the R-20 District, poultry and keeping of riding horses for personal use shall be subject to all of the regulations of Subsection A above and the following limitations on number of animals:
- 1) No more than two horses shall be allowed.
 - 2) No more than six poultry animals shall be allowed.

Comments: Applicant is requesting a special variance to allow poultry in an R-10 district. The Springettsbury ordinance states no livestock shall be allowed in an R-10. However, the applicant claims their poultry are considered pets and are used for therapy for the husband, Mr. Ackroyd. The applicant

claims they will not use their chickens for economic benefits. Staff has attached materials supplied by the applicant.

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.

Mrs. Ackroyd stated they moved into this property March 2016 which is a ¼ acre lot. She indicated her husband had a stroke in 2011 and has been hospitalized multiple times during that time for a condition called Hemiplegic Migraines. They looked into having chickens as a form of therapy. Mrs. Ackroyd stated she looked online to see if they were allowed chickens in their area and misunderstood, thinking they were allowed to have chickens on their property. They purchased 3 Rhode Island Reds and one white Leghorn as peeps in May. They kept them in the house and in June built a chicken coop outside and have them in a pen area in the yard. She indicated their doctor wrote a letter indicating the chickens are for therapy use for her husband and she noted they have helped him.

Mrs. Ackroyd indicated she went to the Township because someone in her neighborhood complained. She provided photos showing the chicken coop and pen area in her yard. A photo of the fence was shown separating her property from her neighbors. A shed is shown on the property. She noted the coop is movable.

The house is on the other side of the shed. The coop can be moved.

In reviewing the criteria for Section 325-125 it was noted one of the requirements is the building shall not be located within 200 ft of any lot line. Mrs. Ackroyd was asked if it would be possible to move the chicken pen 200 ft. away from all the lot lines. She indicated there is not enough space and could not.

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

All witnesses were sworn in.

Terry Holloway – 141 Sylvan Drive

Mr. Holloway stated he lives next door to the Ackroyds. He noted one corner of the chicken coop is next to his property. He indicated he does not hear anything from the chickens. He was of the opinion for the therapeutic reasons the chickens should be allowed.

Penelope Marston – 130 Sylvan Drive

She noted she could not see the chickens from Mr. Holloway's back porch and did not hear the chickens. She stated they are quiet and peaceful. She indicated the neighbors cannot see the chickens because of the vegetative growth on the fence, and they cannot see them on the other side because of the shed. They also cannot be seen from the road. She was of the opinion if they help Mr. Ackroyd they should be allowed.

In response to a question as to how cleanliness is maintained for the chicken house and the surrounding area, Mrs. Ackroyd stated they use pine shavings in the chicken coop and they clean it out once a week. In the run there is grass. She noted they are clean animals. She included an article showing photos of chickens brought into nursing homes. She noted their life expectancy can be up to 15 years. They are not planning to obtain additional chickens.

Julie Lower – 136 Sylvan Drive

Ms. Lower stated she is allergic to feathers. They have found feathers in the yard. She stated her concern

if this would be approved what would be next.

Tammy Wever – 133 Sylvan Drive

Ms. Wever stated she lives two houses down from the Ackroyds and is concerned about feathers in their yard which she felt could potentially carry diseases. She stated the feathers are landing in their pool. She was also concerned about attracting rodents.

In answer to a question if any of the four chickens are male, Mrs. Ackroyd indicated no.

Discussion was held as to whether the chickens should they be considered as pets in this situation, or categorized as therapy animals and whether they would be acceptable to the people in the neighborhood.

It was pointed out it would have been best for the applicant to check the ordinance before bringing chickens onto their property.

Att. Markey stated the application does not have a site plan attached to it to visualize the location of the buildings and the location of the coop. He agreed with Mr. Luciani that the coop where currently situated on the property is probably the best place it could be in terms of its visibility and its impact on surrounding properties, because if moved in the other direction it will have a more adverse impact. He indicated one of the other items to consider as the Zoning Board is the credibility determinations are within the purview of all Zoning Hearing Board members so any testimony believed credible or not credible can be weighed in deliberations. Att. Markey also addressed concerns raised in regards to other animals and what could next occur in this area. He stated each variance is determined on its own factual basis, so there would be no precedent created by the approval of the four chickens. Each application would be judged on its own merits. From a legal perspective, Att. Markey referred to the letter from the doctor indicating they believe the chickens are therapeutic to this applicant. Att. Markey recommended the following conditions:

1. No more than 4 chickens be permitted on the site with no roosters or males.
2. The chickens will not be used for any commercial use or purposes.
3. The transcript of testimony and affirmations of fact be binding conditions upon the approval.
4. This variance shall expire if the applicant no longer owns the property or if the variance is no longer needed for therapeutic purposes.

An Executive Session was called at 7:10 for quasi-judicial deliberation.

The session reconvened at 7:20 PM.

MOTION MADE BY MS. CUNNINGHAM REGARDING THE VARIANCE FOR §325-125 TO ALLOW CHICKENS AT 139 SYLVAN DRIVE WITH THE FOLLOWING CONDITIONS:

- **NO MORE THAN 4 CHICKENS - NO ROOSTERS OR MALES**
- **THE CHICKENS SHALL NOT BE USED FOR COMMERCIAL PURPOSES**
- **THE TRANSCRIPT OF TESTIMONY AND ALL AFFIRMATIONS OF FACT SHALL BE BINDING CONDITIONS UPON THE APPROVAL**
- **THE VARIANCE SHALL EXPIRE IF ANDREW ACKROYD NO LONGER NEEDS THE VARIANCE FOR THERAPEUTIC PURPOSES**
- **THE VARIANCE SHALL EXPIRE IF ANDREW ACKROYD NO LONGER RESIDES ON THE PROPERTY.**

SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

Charles Stuhre – 3681 Trout Run Road

Witness was sworn in.

Mr. Stuhre stated he is a member of the Planning Commission and formerly a member of this board. He indicated 4-5 years ago the Zoning Hearing Board approved a sign variance for two small signs for the Lutheran Church at 2164 Mt. Zion Road. He noted for the last month there has been a sign at the top of the hill sometimes with balloons advertising their daycare school which is tied to a telephone pole at the end of the road. He recommended the church should be contacted to enforce that variance granted at that time.

Att. Markey recommended to pass it on to Ms. Fieldstone to investigate and determine further action by issuing a citation of non-compliance.

Ms. Fieldhouse confirmed she will research the original variance and follow up with the church.

5. ADJOURNMENT

CHAIRMAN ACHENBACH ADJOURNED THE MEETING AT 7:30 P.M.

Respectfully submitted,

Secretary

/ses