

APPROVED

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
OCTOBER 3, 2013**

The Springettsbury Township Zoning Hearing Board held a regularly scheduled meeting on the above date at the Township offices located at 1501 Mt. Zion Road, York, Pennsylvania 17402.

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chair
Sande Cunningham
David Seiler
Kevin Hevner

ALSO IN

ATTENDANCE: Gavin Markey, ZHB Solicitor
Trisha Lang, Zoning Officer
Angela Liddick, Director of Community Development
Sue Sipe, Stenographer

NOT PRESENT: James Deitch
John Schmitt
Michael Papa

1. CALL TO ORDER:

Chairman Achenbach called the meeting to order at 6:00 p.m. He introduced the members of the Board. It was noted that Mr. Hevner and Mr. Seiler will be filling in as voting members for this meeting. .

Chairman Achenbach led the Pledge of Allegiance.

2. ACTION ON THE MINUTES:

A. September 5, 2013

MOTION MADE BY MR. SEILER, SECONDED BY MS. CUNNINGHAM TO APPROVE THE MINUTES OF SEPTEMBER 5, 2013 AS AMENDED. MOTION UNANIMOUSLY CARRIED.

Chairman Achenbach asked Ms. Lang if all cases were properly advertised. She responded that notifications had been made.

3. OLD BUSINESS

A. Case Z-13-07 Pawel and Melanie Ochalski

Attorney Jeffrey Lobach

All witnesses were sworn in.

- 325-159. Accessory Dwelling Unit for additional family members
- 325-22. Permitted Uses in R-20 Large Lot Single-Family Residential
 - A. Permitted Principal Uses.
 - (1) Detached single-family dwelling

- (2) Detached single-family dwelling under an open space preservation option (subject to the requirements of §325-24)
- (3) Semi-attached single-family dwelling under an open space preservation option (subject to the requirements of §325-24)
- (4) Group home (subject to §325-122)
- (5) House of worship
- (6) Public or Private School (subject to §325-129)
- (7) Library
- (8) Public Parks and Playgrounds
- (9) Public utility facilities (subject to §325-130)

Comments: The applicant is requesting that the list of accessory uses in the R-20 zone [§325-22.B] be amended to include a new use: Accessory Building inclusive of a Guest Room (this is an ordinance amendment, not a variance) Additionally, the applicant identifies the desire to obtain a variance of the section specifying the criteria associated with the grant of a special exception for an “accessory single-family dwelling unit for additional family members”. It appears again as though the applicant is requesting that this section be modified to include the use: Accessory Building inclusive of a Guest Room. (this is also an ordinance amendment, not a variance).

It is noted that the addendum to the application does not indicate a desire to revise the content of the application; only to supplement it. However, this supplement contains a request that was not identified in the revised application or the prior application. Identified with the number 4., this portion of the addendum seeks an interpretation of the ordinance as an alternative to granting the relief related to the other requests. The text here asks that the Board recognize that what the applicant proposes meets the definition and criteria for an accessory building (as included below and in the addendum) and therefore does not require the prior requested relief.

The ordinance does not currently recognize or define “accessory building inclusive of a guest room” in any section. Therefore, the ordinance would need to be amended to include such use. “Accessory Building” is defined as “a building subordinate to and detached from the main building on the same lot and used for purposes customarily incidental to the main building, but not including utility sheds.” [§325-5] Article XXVII is dedicated entirely to the regulation of Accessory Uses which, by default, includes Accessory Structures. Both Accessory Uses and Accessory Structures are permitted in every zoning district as long as they remain “normal, incidental, and subordinate” to a permitted use in that zone and meet any additional criteria provided within Article XXVIII. All accessory structures must meet the criteria set forth in §325-134 which stipulate location, bulk, height, and ownership. The applicant’s proposal appears to be in compliance with each of these standards.

An explanation of the requested variances/ordinance amendments is tortuously complex and thankfully does not need further evaluation. Staff could not recommend granting either of these requests unless a formal application for an ordinance amendment was submitted so that a proper analysis could be completed. Staff does concur with the recognition that the proposed use set forth by the applicants, as more completely described in the addendum, is wholly consistent with the definition and criteria established for Accessory Use/Structure under the existing ordinance. As a result, it would not appear that any relief from the regulations is necessary.

Because the determination that the proposal can be considered an accessory use is heavily dependent on compliance with the seven “conditions” identified in the addendum, staff would recommend that these be attached in some manner to this decision. This is necessary not only to ensure that these are enforceable on this site but, also to ensure that this “interpretation” is not misapplied to future proposals. If it is not possible to include these “conditions” then staff would have to recommend that Article XXVIII be amended to include a new section [§325-143] incorporating these items as criteria for an Accessory Structure that includes any form of living area that does not constitute an actual dwelling unit.

Attorney Lobach stated this case was carried over from the August 2013 meeting. He presented the plan of the applicant's property which is approximately 10 acres along the south side of Ridgewood Road. The plan shows the existing home and the location of the proposed pool house. The 10-acre property is a single family residence. It was constructed in 2006 and Township approved the plans. The swimming pool and the pool house were included in the approval but the former owner did not complete it. The current owner acquired the property in 2012 and they would like to complete the project. The foundation for the pool house was constructed in 2006. Attorney Lobach referred to Exhibit #2 which are the plans for the 2 story pool house with a bathroom and a bedroom. He noted there is no intention for this to be a dwelling unit and the applicants have offered to agree to conditions imposed on the request, as listed in Exhibit #4. Two options were offered for relief: the first for a variance and the second as an interpretation. Attorney Lobach recommended that the Township go with the variance theory and permit this use in the R-20 zone as an accessory to a swimming pool and a dwelling, provided that this accessory building is not included as a dwelling unit. The applicants would accept the conditions to make sure that does not occur.

Discussion was held regarding issues raised at the previous meeting by the Board with the use of the pool house. It was noted those concerns were that it would become an accessory building used for living quarters for periods of time with no ability for the Township to oversee or enforce.

Attorney Markey concurred and noted at the previous meeting he suggested if the Board was inclined to look favorably on the request, one way to alleviate those concerns would be to implement conditions placed upon the approval in utilizing the property. He noted he met with Attorney Lobach to discuss the case and update him on that suggested approach. Attorney Markey also concurred that the option for an approval should be the variance subject to the conditions as enumerated in Exhibit #4. He stated the interpretation concept would potentially create a precedent and could also create a definition regarding family members that would not be advantageous. He also recommended incorporating the transcripts of both proceedings as part of the overall approval of the variance and consequently deny the interpretation request.

Attorney Lobach addressed the concerns that were raised regarding the septic system, noting that after the Ochalski's moved in they replaced the existing septic system. A permit was obtained for a 5 bedroom house with the current residence a 3 bedroom house. He presented a permit issued by the SEO for a 2000 gallon tank. Ms. Cunningham reviewed the permit and confirmed it was in order.

Discussion was held regarding the Ordinance sections that would apply to the variance request. Attorney Lobach indicated the variance is from the section of the Ordinance §325-22 Permitted Uses in the R-209 Zone. Attorney Markey confirmed the granting of this variance is from the language relative to an accessory building as identified in Articles §325-22 and §325-134 respectively.

Discussion was held regarding proposed condition #1. "No portion of the Accessory Building would be occupied continuously or on a full-time basis but would be utilized only by transient family guests", as to whether a time limit should be placed as to how long an individual could occupy the dwelling. It was determined it would be difficult to enforce.

Discussion was held regarding proposed condition #7. It was thought that the wording was confusing and unclear. It was decided that this condition should be amended to state "In the event that the principal residence of the subject premises is no longer owner occupied, this variance is null and void."

It was also determined that the Zoning Officer would be responsible to be alert to the use of the property, without intrusion, but apply the conditions if there were any reported problems.

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

MOTION MADE BY MS. CUNNINGHAM TO APPROVE THE VARIANCE FOR §325-134 AND §325-5 (DEFINITIONS) – THE DEFINITION OF GUEST ROOM IS WHAT TIES IT TO THE PRINCIPAL DWELLING AND DOES NOT AT THIS PRESENT TIME ALLOW IT AS AN ACCESSORY BUILDING. THIS APPROVAL IS SUBJECT TO THE CONDITIONS ENUMERATED IN EXHIBIT #4, WITH CONDITION #7 MODIFIED AS FOLLOWS: “IN THE EVENT THAT THE PRINCIPAL RESIDENCE OF THE SUBJECT PREMISES IS NO LONGER OWNER OCCUPIED, THIS VARIANCE IS NULL AND VOID.” IN ADDITION THE TRANSCRIPTS OF BOTH PROCEEDINGS SHALL BE INCORPORATED IN THE APPROVAL FOR FUTURE ENFORCEMENT PURPOSES. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

MOTION MADE BY MS. CUNNINGHAM THAT ANY OTHER OUTSTANDING REQUESTS FOR RELIEF ARE HEREBY DENIED. MR. SEILER SECONDED. MOTION UNANIMOUSLY PASSED.

4. NEW BUSINESS

A. Case Z-13-10 Spirit Halloween

Jordon Reese, District Sales Manager

Witness was sworn in.

325-108. Temporary Signs.

B. Temporary signs in the C-H, G-I and F-D districts and F-O overlay.

(1) A single cloth, vinyl, or fabric temporary banner shall be permitted up to four (4) times per year, with each use consisting of consecutive days and no more than an aggregate of twenty-eight (28) days in a calendar year. A banner must be firmly attached to the front façade of the building. No other support structure is permitted. When any banner becomes torn, damaged or disfigured, it must be removed immediately.

(2) Total area of temporary signage, not including a banner as permitted in subsection “1” above, shall not exceed five percent (5%) of the area of the building front up to a maximum of forty-eight square feet. In the case of vacant land, no signage in addition to that provided under “Permanent Signs” shall be permitted.

(3) With the exception of a banner as permitted in subsection “1” above, no one sign may be greater than twenty-four (24) square feet.

(4) With the exception of a banner as permitted in subsection “1” above, no more than four (4) temporary signs are permitted.

Comments: The applicant is requesting to extend the amount of time that a temporary banner can be installed on the building located at 2559 E. Market Street (in the Giant shopping center). The ordinance allows for the installation of only one (1) temporary banner which must be firmly attached to the front façade of the building for an aggregate of 28 days in a calendar year. The Spirit Halloween store is seasonal and is requesting to allow the sign to be installed until November 3, 2013 which would create a total of 75 days.

A previous request was granted by the ZHB at their September 1, 2011 meeting for the Spirit Halloween store that was then located at 2980 Whiteford Road. A copy of those meeting minutes is attached for review.

Mr. Reese stated he is requesting a variance for a temporary sign permit §325-108 for the building at 2559 East Market Street., which is the location of the previous Hollywood Video. Currently the Ordinance states that a temporary sign is only allowed for 28 days. Mr. Reese stated this is for a Halloween store which is open through the months of September and October. He noted the signs are essential for the public to locate the store. They are requesting to extend the timing until November 3, 2013 at which time the signs will be taken down. He noted this would be for two signs –one the front of

the building and one on the side. He noted they have temporary sign permits for each of those vinyl signs.

Mr. Reese stated the store applied and received approval for outdoor signs at the location of the former Circuit City building two years ago. He noted last year their location was inside the York Galleria Mall and did not require a sign permit.

Chairman Achenbach stated the minutes from the meeting where it was previously approved two years ago were made available. He noted concerns about the manner in which the signs are anchored to the building in relation to safety issues, i.e., blowing in the wind, coming loose, etc. It was noted that situation did not occur with the previous signs allowed.

Mr. Reese indicated the signs are attached with screws and washers. Also, an existing vinyl real estate sign was removed before they attached their sign.

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

Charles Stuhre

Mr. Stuhre observed that since this situation has occurred on several occasions, it should be the subject of a plan review process by the Planning Commission.

Attorney Markey replied to Mr. Stuhre's comments stating that while it would not be appropriate for the Board to review at this point in time, it would be within the prerogatives of the Township to bring it to the attention of the Planning Commission. Ms. Lang stated she will provide an update to the Planning Commission.

It was clarified that the application does include the request for the two signs – one on the front of the building and one on the side. Ms. Lang stated that the permits have already been issued and the signs are up. The variance approval would allow the signs to remain up until the store is closed.

MOTION WAS MADE BY MR. SEILER TO APPROVE THE VARIANCE AS PRESENTED FOR §325-108 FOR THE TWO SIGNS. THE SIGNS WILL BE TAKEN DOWN ON NOVEMBER 3, 2013. SECONDED BY MR. HEVNER. MOTION UNANIMOUSLY PASSED.

5. ADJOURNMENT

Chairman Achenbach adjourned the meeting at 7:00 p.m.

Respectfully submitted,

Secretary

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