

# YORK TOWNSHIP

190 Oak Road, Dallastown, Pennsylvania 17313  
Phone (717)741-3861 Fax (717)741-5009

York Township Zoning Hearing Board  
Tuesday, August 28, 2007  
6:00 p.m.

The August meeting of the York Township Zoning Hearing Board was called to order by Kenneth Silberstein, Chairman.

Those in attendance were:

Kenneth Silberstein, Chairman  
Teri Hollway, Vice-Chair  
Missy Gugino, Secretary  
Jerry Kotek, Member  
William Yanavitch, Alternate Member  
Lisa Frye, Zoning Officer  
Dennis Henry, Township Engineer  
Jeffrey Rehmeyer, II, Esq., Solicitor

MINUTES AND DECISIONS OF JULY 24, 2007

The Zoning Hearing Board minutes and decisions of July 24, 2007, were approved.

## HEARINGS

Appl.2007-22: Larry and James Bortner requests a Variance on property located at 170 Crossway Drive

Legal argument was presented on the application, and after discussion the application was approved, pending a written decision.

Appl.2007-25: Timothy and Karen Salvatore request a Variance for reduction of setback requirement of pool

York Township Zoning Hearing Board  
Tuesday, August 28, 2007  
Page 2

deck on property located at 3 West Crestlyn Drive in a Residential Low Density (RL3) zone.

Present: Timothy Salvatore

Information on the application was presented and after discussion the application was approved, pending a written decision.

Appl.2007-26: TED Cuisine, Inc. requests a Special Exception to establish a warehouse use on property located at 2081 Springwood Road, Unit 20, in a Commercial-Shopping (C-S) zone.

Present: Kevin Kilishek  
Doug Campbell

Information on the application was presented and after discussion the application was approved, pending a written decision.

Appl.2007-27: Cape Horn Square Associates, LLC requests a Variance and Special Exception to establish a veterinary office with daycare on property located at 693 Lombard Street in a Commercial-Shopping (C-S) zone.

Present: Randon Feinsod  
Charles Corkum  
Stacey MacNeal, Esq.

Information on the application was presented and after discussion the application was denied, pending a written decision.

Appl.2007-28: William R. Bussang requests a Special Exception to construct a garage in excess of 900 square feet on property located at 349 West High Street in a Residential-Medium Density (RM5) zone.

Present: William R. Bussang


Information on the application was presented and after discussion the application was denied, pending a written decision.

York Township Zoning Hearing Board  
Tuesday, August 28, 2007  
Page 3

ADJOURNMENT

This meeting adjourned at 10:40 p.m.

ATTEST:

  
\_\_\_\_\_  
Missy Gugino, Secretary

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2007-22

**Hearing Dates:** July 21, 2007 (Evidence and Testimony)  
August 28, 2007 (Additional Closing Argument and Deliberation)

**Applicant:** Larry L. and Janice P. Bortner

**Property Owners:** Larry L. and Janice P. Bortner

**Property:** 170 Crossway Drive, York, PA 17402  
UPI #540003602110000000 (Parcel 211)

**Existing Zoning District:** Shopping Commercial (C-S)

**Relief Requested-** Variance under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Section 265-167 thereof.

---

## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) Additionally, a drawing that consisted of the Preliminary/Final Land Development Plan for 170 Crossway, LLC, Site Plan, dated February 19, 2007, Sheet #3, which was presented as an exhibit on July 21, 2007 and August 28, 2007 is also incorporated by reference ("Exhibit A").
- 3) Ron Perry, Esquire, James R. Holley P.E, and Jason Brenneman, E.I.T. were present on behalf of the Applicant.
- 4) The Property was also the subject of prior applications, including 2007-9 when relief was denied, and 2007-17, which was withdrawn.
- 5) Attorney Perry provided background information on the Property and the use proposed for it, which is a three story office building consisting of 30,000 square feet of usable space ("Office Building"), with the related facilities.

- 6) Attorney Perry stated that the main access drive for the Office Building has been adjusted further so that it was not within the steep slopes on the western portion of the Property, even though it would need to cut through the steep slopes on the northern portion of the Property at Crossway Drive. Attorney Perry explained that the steep slopes on the northern portion of the Property were manmade and resulted from the installation of Crossway Drive.
- 7) Attorney Perry summarized the purposes and intent of the Steep Slope Overlay District, which are to control storm water runoff, protect the water shed, preserve under story brush and trees, avoid destructing the stability of soils and natural vegetation, and prevent contribution to erosion both during and after construction. Attorney Perry suggested that the proposed variance in this case would not be contrary to those purposes, and in many instances, would be more beneficial to them.
- 8) Attorney Perry suggested that the variance request to disturb the steep slope in this instance was absolutely necessary as it represented the only means by which an access drive to the Property could be achieved along any road frontage on Crossway Drive.
- 9) Attorney Perry introduced Jason Brenneman, an Engineer in Training with James R. Holley Associates, Inc., and asked questions about his education and experience. Attorney Perry presented Mr. Brenneman as an expert witness in land development, and he was so accepted by the Board.
- 10) Mr. Brenneman provided information about the Property, the Office Building, and the variance as follows:
  - (a) Using the drawing referenced above in #2 as Exhibit "A", Mr. Brenneman highlighted the layout of the Property and the features on the Plan.
  - (b) He noted the 30,000 square foot Office Building, the parking facilities and the access drive.
  - (c) He highlighted the steep slopes along the front/northern portion of the Property, as well as those along the western portion of the Property beside Parcel 106.
  - (d) He highlighted the need for access through the front steep slopes at Crossway Drive.
  - (e) Mr. Brenneman spoke of the adequate utilities for the Property.
  - (f) He indicated that no other relief is being requested.
  - (g) Mr. Brenneman also noted the adjoining residential properties.
- 11) Upon cross examination by Attorney Charles Rausch, R. Brenneman answered the following:
  - (a) There would be a minimum 20 foot buffer, per the minimum in the Subdivision and Land Development Ordinance
  - (b) However, the Subdivision and Land Development Ordinance allows for up to a 50 foot wide buffer.
  - (c) The grade on the Property will be maintained generally, with changes in grading that are no more that 2 feet to accommodate the Office Building as set forth in Exhibit A.

- (d) The plan submitted with the Application provides for additional fill, up to 6 feet, but that grading will not be utilized.
- 12) Individuals and their counsel were present to protest against the variance, including Attorney Charles Rausch on behalf of and with Edwin and Colette Steiner, and Robert Pullo, Harold Warner, and Miss Sakay.
- 13) Attorney Rausch presented Christopher Beauregard and asked his questions about his education and experience.
- 14) Mr. Beauregard indicated that he was a civil engineer, with 13 years of experience, who serves as the engineer for Springettsbury Township, and is familiar with the Municipal ordinances.
- 15) Attorney Rausch presented Mr. Beauregard as an expert witness in Land Development, and he was so accepted by the Board.
- 16) In response to questions asked by Attorney Rausch, Mr. Beauregard testified as follows:
- (a) He reviewed the plans filed with the Application, although he was only reviewing Exhibit A for the first time as it was presented at the hearing.
  - (b) It was his opinion that a larger buffer would be better for the adjoining property owners.
  - (c) It was his opinion that a 50 foot buffer would be reasonable for this Property, its use as an Office Building, and the variance request.
  - (d) Mr. Beauregard testified that the imposition of a 50 foot wide buffer area would not eliminate building area.
- 17) Under cross examination, Mr. Beauregard provided the following answers:
- (a) He felt the parking and Office Building were a more intense use than the adjoining residential type uses, although the parking and Office Building were not necessarily more intense than other commercial uses, such as retail sales.
  - (b) That a buffer in the amount of 50 feet would be reasonable and appropriate.
  - (c) He was aware that there would be trees on the adjoining properties that would provide further buffering.
  - (d) He has seen photographs of the Property although he had not been there.
- 18) On redirect, by Attorney Rausch, Mr. Beauregard reaffirmed the purpose of the buffering, which is to screen and to protect the adjoining land uses.
- 19) Mr. Steiner provided testimony against the variance as follows:
- (a) He was concerned about privacy, noise, snow removal, and storm water.
  - (b) He resided at his property for 18 years
  - (c) He would request a 50 foot buffer on the Property. He further indicated that depending upon the grade, variations on the buffer size not to be less than 40 feet might be

acceptable in his opinion as a resident on the adjoining property

**20)** Robert Pullo presented comments, including his July 24, and April 24, 2007 letters, which were admitted as Exhibit “B” and “C”.

- (a) Mr. Pullo had questions as to whether or not there was a hardship, and if so, that it was not in fact self-inflicted.
- (b) Further, he questioned whether there had been sufficient effort to reduce the scope of development, which may alleviate some of the concerns.
- (c) Mr. Pullo stated his belief that smaller trees will not help with buffering.
- (d) He was concerned that the Office Building might be a nuisance.

**21)** Harold Warner spoke in opposition to the variance

- (a) He was concerned about insufficient buffering
- (b) He requested a buffer of at least 50 feet

**22)** Attorney Perry recalled Mr. Brenneman.

- (a) In response to questions, Mr. Brenneman indicated that the grade at the front of the Property is approximately 12 degrees.
- (b) He believed that buffering at the rear could be accomplished by adding vegetation to enhance the buffer, and that the use of deciduous trees and evergreen trees would serve buffering purposes.

**23)** Attorney Rausch moved for the admission of his exhibits, which included certain deeds in the chain of title for Parcel 211 (the Applicants’ parcel) and Parcel 106, to which Attorney Perry objected. Attorney Rausch also provided a Memorandum.

**24)** Attorney Rausch offered the following arguments in opposition to the variance:

- (a) There have been no substantial changes to the Property since the last application.
- (b) The Property and Parcel 106 have merged by virtue of prior joint use
- (c) That the use of the Property by virtue of the extension of the building to Parcel 211 indicated that the Property was in fact was being used and could be used without the request variance.
- (d) That there would be access to the Property without going through the steep slopes at the front of the Property, if, in fact, the steep slopes on the western edge of the Property were not created when the owners of Parcel 106 constructed the building thereon.
- (e) If the variance is granted, reasonable conditions should be imposed, to include buffering, retention of the existing trees, and requiring lighting to face inward.

**25)** Attorney Perry provided closing argument to support the variance as follows:

- (a) There is nothing in the record to substantiate the deeds that were authenticated.
- (b) There was no proof on record regarding the Bortner Brothers Building on Parcel 106

- (c) The current status of the Property as subdivided from Parcel 106 remains valid.
- (d) The denial of 2007-09 was because this variance was not the minimum variance, and that the variance request in the Application was in fact the minimum as the access drive to the Office Building was not in the steep slopes in the western portion of the Property
- (e) That the changes in this Application are in fact significant
- (f) The creation and installation of Crossway Drive created the steep slopes at the front of the Property, for which the variance is sought.
- (g) That any conditions imposed with the variance must be reasonable, and that conditions regarding the rear of the Property would not be reasonable
- (h) No other relief was being requested other than the variance for the steep slopes at the front of the Property.

**26)** In response to questions from the Board, Township Engineer Dennis Henry indicated the following:

- (a) That there could not be access to the Property without crossing the steep slope in front of it, which the variance was being sought.
- (b) That he has no objections to access through that steep slope so long as the following Conditions are imposed:

The design and implementation of the remediation of the steep slope disturbance shall be accomplished by a professional engineer with expertise in soil stabilization, structural soil design, and soil stabilization structure or by a certified soil scientist with similar expertise.

The remediation methods, construction, monitoring and certification shall be by the professional engineer or soil scientist with certification documentation provided to York Township as a condition of the building permit application and approval of the Township Engineer.

(the “The Township Engineer’s Conditions”)

**27)** In response from questions from the Board, Township Zoning Officer, Lisa Frye indicated that she had no objections to the variance, particularly when hearing the comments from the Township Engineer.

## **CONCLUSIONS OF LAW**

- 1)** The deeds submitted by Attorney Rausch were acceptable as Exhibits.
- 2)** A substantial change occurred relative to the Property and Application regarding it, such that the current Application was appropriately before the Board
- 3)** A merger of the Property and adjacent Parcel #106 has not occurred such that it would impact the Application.

- 4) Subject to reasonable conditions set forth in subsection (f) below, the Board determined that the criteria for the variance has been met as follows:
- (a) Unnecessary hardship does exist for the Property because of the unique physical circumstances, primarily upon the steep slopes at the front of the Property that were created when Crossway Drive was installed.
  - (b) That because of such physical circumstances, there is no possibility that the Property can be developed in strict conformity with the Ordinance and that the authorization of the variance is necessary to enable reasonable use of the Property, such that access to the Property could be obtained from Crossway Drive.
  - (c) That the unnecessary hardship has not been created by the Applicant, as it was a result of the installation of Crossway Drive.
  - (d) That the variance, as requested in the Application, would not alter the essential character of the neighborhood or the district in which the Property is located or permanently impair the appropriate use or development of the adjacent properties or be detrimental to the public welfare, when subject to the conditions below.
  - (e) The variance, as granted, would represent the minimum variance that would afford relief and represent the least modification possible to regulation at issue, as it would only involve the steep slopes in front of the Property and only for access purposes.
  - (f) The Board determined that the imposition of reasonable conditions and safeguards to the variance, as authorized by Section 265-167.C of the Ordinance, are necessary, appropriate, and required as follows:
    - (1) Implementation of the maximum buffering provided for by the York Township Subdivision and Land Development Ordinance (at least in terms of providing the maximum buffer width) for the Office Building use on this Property.
    - (2) There must remain a minimum 30 foot zone of no disturbance along the edges of the Property, beside adjoining residential uses, as part of the buffer, to preserve as many existing trees as possible; such zone will be coordinated with the other applicable buffer requirements.
    - (3) All lighting on the Property must be directed inward and in accordance with any applicable ordinances of York Township.
    - (4) A condition precedent to proceeding under the variance would be the approved subdivision of the Property and Parcel 106, to adjust the boundary around the building existing on Parcel 106.
    - (5) The Township Engineer's Conditions shall be followed when installing the access through the steep slopes.

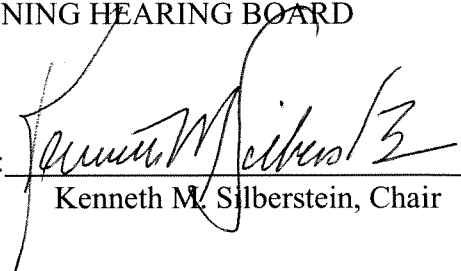
Accordingly, Teri Hollway moved and Jerry Kotek seconded, that the variance requested pursuant to Application 2007-22 be granted because the variance criteria were met, subject, however, to accepting, meeting, and fulfilling the conditions set forth above in 4(f) of the Conclusions of Law, and that no other portion of the Ordinance or requirements for this project be waived. The motion passed with a vote of 3-2, with Kenneth M. Silberstein, Teri Hollway, and Jerry Kotek voting in favor of the motion, and Missy Gugino and William Yanavitch voting against the motion.

WITNESS/ATTEST

  
\_\_\_\_\_

YORK TOWNSHIP  
ZONING HEARING BOARD

By:

  
\_\_\_\_\_

Kenneth M. Silberstein, Chair

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2007-25  
**Hearing Date(s):** August 28, 2007  
**Applicant(s):** Timothy and Karen Salvatore  
**Property Owner(s):** Timothy and Karen Salvatore  
**Property:** 3 West Crestlyn Dive, York, PA 17402  
UPI #54000020184A000000

**Existing Zoning District:** Residential – Low Density (RL3)

**Relief Requested-** Variance under the York Township Zoning Ordinance of 1996, as amended (the “Ordinance”) and pursuant to Sections 265-165.thereof.

---

## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) Attorney Timothy Salvatore was present as the Applicant.
- 3) The Applicant was seeking a variance of the side setback on the Applicant’s Property for a small portion of a concrete pool deck to support a diving board.
- 4) Attorney Salvatore provide testimony on the background of the situation as follows:
  - (a) The Applicant contracted to have a pool installed on the Applicant’s Property.
  - (b) The Applicant marked clearly the setbacks and worked with the contractor on specifications that would not violate them.
  - (c) However, the concrete decking around the pool and the pool itself were installed such that there had to be an intrusion in the amount of approximately 3 feet of width in the side setback.
  - (d) The Applicant and contractor worked together to minimize that intrusion along the end of the pool, except for a small area within which the diving board is to be installed.
  - (e) The diving board needs the concrete area for support, to counterbalance it.

- (f) Accordingly, a curved area of approximately 5 square feet of concrete pool decking is within the setback at a width of no greater than 3 feet.
  - (g) Beyond the concrete decking is installed a flowerbed type area, beyond which is a fence, and thereafter the Property Line.
- 5) The Applicant presented a letter from their neighbor, Erica Bergman, as an Exhibit, which indicated that Erica Bergman had “No problem with the pool deck extension for the diving board.”
- 6) Attorney Salvatore provided testimony to support the request for variance pursuant to Section 265-167 as follows:
- (a) Unnecessary hardship that exists for the Property is the need for a certain amount of decking around the diving board, which area has been minimized despite the mistake of the contractor.
  - (b) Because of such physical circumstances and conditions, the facility cannot be used reasonably without the variance.
  - (c) The unnecessary hardship was not created by the Applicant, as it was the contractor’s mistake that caused the problem.
  - (d) The variance if authorized, will not alter the essential character of the neighborhood or the district in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property and not be detrimental to public welfare because the intrusion is minor, and the adjoining property owner has consented to it.
  - (e) The variance, if authorized will represent the minimum variance that would afford relief, as efforts have been made to minimize the need for the variance before Application was made.
- 7) Further, Attorney Salvatore argued that the variance requested was De Minimis, because the amount of zoning relief required is very minor, and the grant of the variance would not be contrary to public policy concerns nor endanger the health, safety, or welfare of Township residents, such that rigid compliance with the Ordinance is not necessary.

## **CONCLUSIONS OF LAW**

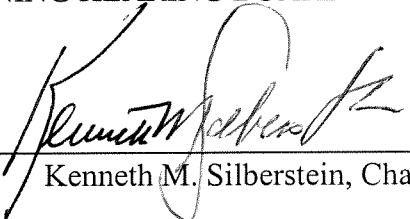
- 1) Based upon the unique facts of this case, the Applicant has met the standards for a variance.

Accordingly, Teri Hollway moved and Jerry Kotek seconded, that the variance requested pursuant to Application 2007-25 be granted and no other portion of the Ordinance be waived. The motion passed with a vote of 5 – 0, with all voting in favor.

WITNESS/ATTEST

  
\_\_\_\_\_

YORK TOWNSHIP  
ZONING HEARING BOARD

By:   
\_\_\_\_\_ Kenneth M. Silberstein, Chair

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2007-26  
**Hearing Date(s):** August 28, 2007  
**Applicant(s):** TEK Cuisine, Inc.  
**Property Owner(s):** Queensgate Associates, LLC  
**Property:** 2081 Springwood Road, Unit 20, York PA 17403  
UPI #54000110029C000000

**Existing Zoning District:** Shopping Commercial – (C-S)

**Relief Requested-** Special Exception under the York Township Zoning Ordinance of 1996, as amended (the “Ordinance”) and pursuant to Sections 5-166.D. thereof.

---

## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) The Applicant was represented by Doug Campbell, owner, Kevin Kilishek, operations manager, and Ray Markey, Jr., the plumber.
- 3) The Applicant desires to utilize the Property as a storage facility to support its catering business, which will be considered a warehouse type use.
- 4) The Applicant provided information about its operations at the Property as follows:
  - (a) A commercial dishwasher will be installed at the Property, and it will have a grease trap.
  - (b) There will be stored on the premises linens, dishes, china, silverware, baskets, table tops, and other items necessary to support the catering business.
  - (c) The Applicant anticipates the dishes utilized at events will be roughly cleaned at the event location and brought back to the Property, where they will be run through the dishwasher.
  - (d) It is anticipated that the dishes will be washed as soon as possible after they are brought to the Property, most likely during the next business day.

- (e) There will also be stored outside of the building, propane or butane tanks, similar to those used on a residential gas grill.
- (f) There will be approximately 30 of those tanks, and they will be securely stored in a storage container similar to those used at establishments that provide such tanks and in accordance with all applicable law.
- (g) There will be approximately 10 people working at the Property at maximum.
- (h) The proposed use will be less intense than the prior use.
- (i) Loading will occur at the rear of building, which is towards the existing commercial structures and away from any residential structures.

5) The Applicant presented testimony to support the request for the Special Exception pursuant to Section 265-166, that the proposed use will be in harmony with the orderly and appropriate development of the zoning district as follows:

- (a) The location of the use is adjacent to the appropriate streets and thereof commercial uses.
- (b) The nature and intensity of the operation involved will be similar to or less than other commercial establishments in the vicinity.
- (c) That there is adequate water, sewage, storm drainage, and fire and police protection for the Property.
- (d) That the use of adjacent lands and buildings will not be discouraged and the value of adjacent lands and buildings will not be impaired by the location, nature, and height of buildings, walls, and fences.
- (e) That the use will not cause traffic congestion or cause commercial and industrial traffic through residential streets.

## **CONCLUSIONS OF LAW**

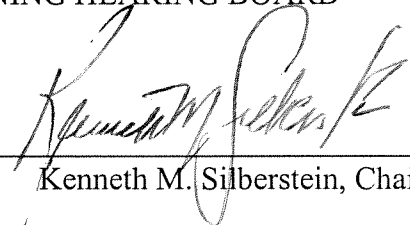
1) The Applicant has met the standards for Special Exception.

Accordingly, Bill Yanavitch moved, and Teri Hollway seconded, to grant the Special Exception for the proposed Warehouse use including the onsite dishwasher, with the condition that the fire department be notified of the outside storage of the propane/butane tanks and that no other provisions of the Ordinance be waived. The motion passed with a vote of 5 – 0, with all voting in favor.

WITNESS/ATTEST

  
\_\_\_\_\_

YORK TOWNSHIP  
ZONING HEARING BOARD

By:   
\_\_\_\_\_

Kenneth M. Silberstein, Chair

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2007-27  
**Hearing Date(s):** August 28, 2007  
**Applicant(s):** Cape Horn Square Associates, LLC  
**Property Owner(s):** Cape Horn Square Associates, LLC  
**Property:** 693 Lombard Street, Red Lion, PA 17356  
UPI #54000460200A000000

**Existing Zoning District:** Shopping Commercial – (C-S)

**Relief Requested-** Special Exception under the York Township Zoning Ordinance of 1996, as amended (the “Ordinance”) and pursuant to Sections 265-14 and 265-166.D. thereof, and the variance under Section 265-167 thereof.

---

## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) Attorney Stacey McNeal, Esquire represented the Applicant. Additionally, the Applicant had Charles Corkum, the Principle in the Applicant, and Randon Feinsid, a Doctor of Veterinary Medicine, present on behalf of it.
- 3) The Applicant desires to rent Unit N (the “Unit”) in the Cape Horn Square Shopping Center (the “Center”) to Mr. Feinsid so that he can operate a General Veterinary Office & an Animal Daycare.
- 4) Applicant’s counsel requested to present facts in support of all relief requested and legal argument thereafter.
- 5) In response to questions asked by Attorney McNeal, Mr. Corkum provided information as follows:
  - (a) The Property Owner has owned the Property for years and previously managed it before becoming the owner.

- (b) The Unit for which the variance is sought is Unit N, which consists of 6,000 feet of space in the main portion of the Center.
- (c) Unit N has been vacant for seven years.
- (d) Unit N had initially been used by Goodwill, but Goodwill moved to adjacent Unit L.
- (e) The Owner has been marketing the Unit for years.
- (f) It is his opinion that the Unit is vacant because it is an odd sized space, being larger than could be utilized by most smaller businesses but not large enough for the larger businesses.
- (g) The Unit has been listed with various brokers.
- (h) The adjoining renters have been approached about the Unit, but they have no interest.
- (i) If the zoning relief is granted, there would be action taken to insulate the use in Unit N from the restaurant in Unit O and the use of other portions of the Center.
- (h) Unit B will become a pet store in the near future, and that pet store will sell animals.
- (i) There is sufficient capacity for signage and parking at the Center.

6) In response to questions from Attorney McNeal, Dr. Feinsid provided the following information:

- (a) He is a Doctor of Veterinary Medicine
- (b) He would propose a veterinary office, and services there would include appointments, x-rays, ultrasound.
- (c) Further, he would like to offer Doggy Daycare, that would include training and rehabilitation services.
- (d) There would be no overnight boarding, unless necessary as a result of surgery.
- (e) He anticipates a maximum of 10 to 15 cages for the daycare and for recuperation following surgery.
- (f) He anticipates seeing 20 to 40 patients per day,
- (g) He anticipates the facility will utilize a staff consisting of 1 to 2 receptionists, 2 to 3 veterinary technicians and 1 to 2 people to help with the kennel operations.
- (h) He anticipates the hours of operation to be from 8:00 am to 6:00 pm, with extended hours on two days to 8:00 pm.
- (i) He anticipates that the daycare facility would provide for more exercise for dogs.
- (j) He anticipates that the use of Unit N would be divided approximately in half, with half being the veterinary office and the other half being the daycare.
- (k) He may offer overnight services.
- (l) He anticipates that he may provide drop off and pick up of animals at the rear of Unit N, at the back of the Center.
- (m) He believes Unit N is an appropriate site for the veterinary office & daycare because it is near a pet store and a well traveled location.

7) In response to questions from the Board, Dr. Feinsid provided the following information:

- (a) The animals will have the ability to relieve themselves inside Unit N.
- (b) To the extent that they relieve themselves outside, the employees at the facility would assist with cleanup.
- (c) Hazardous materials and wastes would be removed from premises by a contracted service and disposed at another location.
- (d) He felt that the facility could be operated without any outdoor grass areas, as is done in larger cities, such as New York, from which he would be coming.

8) In response to questions from citizens, the Applicant provided information as follows:

- (a) Animal waste would be cleaned up.
- (b) The facility would not be intended for overnight boarding as a primary function.
- (c) Liability would exist between the facility owner or Owner of the property if someone would be injured by an animal.

9) Attorney McNeal argued that the proposed uses, as a veterinary office and daycare should be allowed as a Special Exception pursuant to Section 265-14 in the Ordinance as follows:

- (a) The proposed uses are different than those contemplated by an Animal Hospital and a Commercial Kennel
- (b) There is a nearby medical clinic in the Center.
- (c) There is a pet store that will be opened in the Center
- (d) Any impact of the use will be mitigated, such as noise, odor will be mitigated.
- (e) There will be removal services for animal waste and biohazards
- (f) The Owner and tenant will consider utilizing rear access to Unit N.
- (g) There are no health, safety, or welfare issue regarding the proposed uses.
- (h) There should be no impact on the neighbors.

10) With regard to the request for the variance, under Section 265-167, Attorney McNeal argued the following:

- (a) The unnecessary hardship that exist for Unit on the property is the size of Unit N.
- (b) Because of the size on Unit N, it cannot be reasonably used as it has not been rented in 7 years.
- (c) The unnecessary hardship was not created by the Applicant, as the Unit size was determined when the Center was built.
- (d) The variance, if authorized, will not alter the essential character of the neighborhood, the district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property not be detrimental to the public welfare, because the proposed uses are similar to the incoming pet store and the existing medical center.

- (e) The variance, if authorized, will represent the minimum variance that would afford relief because the Owner has not found any alternatives.

**CONCLUSIONS OF LAW**

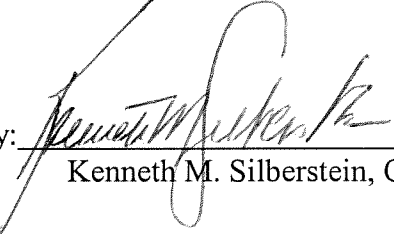
- 1) The Board finds that the proposed use as a veterinary office is an Animal Hospital pursuant to that definition in the Ordinance.
- 2) The Board finds that the proposed Animal Daycare is a Kennel (Commercial) pursuant to that definition in the Ordinance.
- 3) The Board finds that the Applicant has not met the criteria for a variance, including the existence of unnecessary hardship, the inability to utilize the property because of the hardship, and the fact that the variance if authorized may alter the essential character of the neighborhood and substantially or permanently impair the appropriate use of the adjacent property and be detrimental to the public welfare.

**Accordingly, Teri Hollway moved and Missy Gugino seconded, to deny granting the Special Exception because the proposed use constitutes an Animal Hospital with a Commercial Kennel and to deny the variance because the variance criteria have not met. The motion passed with a vote of 5 – 0, with all voting in favor.**

WITNESS/ATTEST

  
\_\_\_\_\_

YORK TOWNSHIP  
ZONING HEARING BOARD

By:   
\_\_\_\_\_ Kenneth M. Silberstein, Chair

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2007-28  
**Hearing Date(s):** August 28, 2007  
**Applicant(s):** William R. Bussang.  
**Property Owner(s):** William R. Bussang and Eleanor E. Carlton  
**Property:** 349 West High Street, Red Lion PA 17356  
UPI #54000GK03550000000

**Existing Zoning District:** Residence- (RM-5)

**Relief Requested-** Special Exception under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Sections 265-39 thereof.

---

## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) The Applicant and Property Owner are William R. Bussang and Eleanor E. Carlton
- 3) The Applicant desires to build an oversize garage (40 ft x 50 ft) to house a family car and truck, 2 collector cars, boat, riding mower, and lawn equipment, as these items are presently stored outside or off site. In addition, the area above the garage will be used for more storage space.
- 4) In response to questions, the Applicant confirmed that the size of the house is less than 900 square feet.
- 5) The Applicant argued that a Special Exception should be granted pursuant to Section 265-39 and 265-165 as follows:
  - (a) The Property is located at the end of an alley and surrounded by trees and vegetation on all sides with land elevation to the north.
  - (b) There is land to accommodate a structure of this size conveniently located off the driveway.

- (c) The garage will be located in an open area and no trees will need to be removed.
- (d) There will be no effect on the adjacent properties, since the oversize garage will front other garages, driveways, parked vehicles, backyard, and etc.
- (e) There will be no effect on traffic due to location
- (f) There will be no dust, fumes or noise other than the occasional entering and exiting of vehicles from the garage.
- (g) The structure will be built to blend in with the environment and be similar to the primary residence.

**CONCLUSIONS OF LAW**

- 1) The Board finds that the house on the Property is less than 900 square feet.
- 2) The Board finds that a garage greater than 900 square feet is therefore not authorized by Special Exception under the Ordinance, and that no case for a variance has been made.

**Accordingly, Missy Gugino moved, and Teri Hollway seconded, to deny the Special Exception as requested. The motion passed with a vote of 5 – 0, with all voting in favor.**

WITNESS/ATTEST



---

YORK TOWNSHIP  
ZONING HEARING BOARD

By: 

---

Kenneth M. Silberstein, Chair