

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS
OF CONDITIONAL USE HEARING

BEFORE: Borough Council
Andrea Lage, President
Kathy Coy, Vice President
Joseph Hockersmith
Angie Facchinei
John Alosi
Kerri Burrows
Bruce Hockersmith, Mayor
Lance Hoover, Borough Manager

DATE: October 7, 2014, 7:00 p.m.

PLACE: Shippensburg Borough Office
111 North Fayette Street
Shippensburg, PA. 17257

TAKEN BY: Diana L. Sydnor
Court Reporter

APPEARANCES:

Samuel E. Wiser, Esquire, appears on behalf of
Shippensburg Borough Council.

00:00:02 1 COUNCIL PRESIDENT LAGE: We will, in fact, call
 00:00:04 2 this meeting to order, and we are starting it first with a
 00:00:08 3 conditional use hearing so, Donna, welcome. Do you want to
 00:00:10 4 get us started?
 00:00:12 5 MRS. SOMMERVILLE: Yes. I would like to state for
 00:00:14 6 the record that tonight's hearing was advertised in the New's
 00:00:16 7 Chronicle on September 23rd and September 30th.
 00:00:18 8 A notice of the hearing was posted at the front
 00:00:20 9 door of the borough office. A notice of the hearing was
 00:00:22 10 posted at the property, and each of the contiguous property
 00:00:24 11 owners also received notice of the hearing. Thank you.
 00:00:26 12 COUNCIL PRESIDENT LAGE: Thank you. We are
 00:00:30 13 hearing tonight Case No. 2014-03 from Irfan Mahmood. I'm
 00:00:32 14 sorry if I'm not pronouncing that correctly.
 00:00:34 15 He is here for the property located at 401 North
 00:00:36 16 Morris Street looking for a conditional use for the extension
 00:00:38 17 and structural alteration of a non-conforming use.
 00:00:40 18 All of those who would like to testify tonight if
 00:00:42 19 you would please stand. What we are about to do is swear you
 00:00:44 20 in so anyone that might wish to speak needs to stand. Do you
 00:00:46 21 swear or affirm that the testimony you give tonight will be
 00:00:48 22 the truth?
 00:00:50 23 MR. IRFAN MAHMOOD: Yes.
 00:00:52 24 COUNCIL PRESIDENT LAGE: Thank you. Okay, Donna,
 00:00:54 25 do you want to give us kind of a brief overview?

2
 Diana L. Sydnor
 Official Court Reporter

00:01:18 1 MRS. SOMMERVILLE: Sure. Mr. Mahmood owns the West
 00:01:20 2 End Mart on Morris Street, and part of that building was
 00:01:22 3 previously just unused space. He is expanding part of his
 00:01:24 4 business in to that space which will house storage tanks that
 00:01:26 5 will hold asphalt emulsion product, and there are garage
 00:01:28 6 doors that have been installed for delivery and distribution
 00:01:30 7 of that product.
 00:01:32 8 COUNCIL PRESIDENT LAGE: Okay.
 00:01:34 9 MRS. SOMMERVILLE: The additional space is less
 00:01:36 10 than 50 percent of the original footprint of the use.
 00:01:38 11 COUNCIL PRESIDENT LAGE: Okay. Thank you.
 00:01:40 12 Mr. Mahmood, would you like to say anything just as
 00:01:42 13 an introduction, and then I will just so you know is direct
 00:01:44 14 our solicitor to go through the series of questions that are
 00:01:46 15 part of the traditional conditional use.
 00:01:48 16 MR. MAHMOOD: I will answer any questions I guess.
 00:01:50 17 COUNCIL PRESIDENT LAGE: Okay. Sam, do you
 00:01:52 18 want to --
 00:01:54 19 BY MR. WISER:
 00:01:56 20 Q. Could we start off, could you provide us a general
 00:01:58 21 overview of what you propose to do, what you're asking the
 00:02:00 22 Borough Council tonight.
 00:02:02 23 A. Asking basically we just wanted to put a product
 00:02:04 24 that we have, it's a driveway sealer, which is a water based
 00:02:06 25 product, and we have permission from the state, from DEP.

3
 Diana L. Sydnor
 Official Court Reporter

00:02:54 1 They enforce whatever regulation. We did that and they gave
 00:02:56 2 us registration to having a tank in there.
 00:03:00 3 Q. I have some questions about the application. The
 00:03:02 4 application requests relief under Section 150-48.B. 150-48.B
 00:03:04 5 deals with non-conforming uses. The property is located in
 00:03:06 6 the R-1 Residential District and therefore is a
 00:03:08 7 non-conforming use at the current service station that it's
 00:03:10 8 located. 150-48 B requires that a non-conforming use of land
 00:03:12 9 or building shall not be extended or structurally altered;
 00:03:14 10 provided, however the Borough Council may as a conditional
 00:03:16 11 use authorize constructional alteration of a non-conforming
 00:03:18 12 building where such alteration is necessary for the building
 00:03:20 13 or the use of the building to conform as a requirement of the
 00:03:22 14 district in which such building is situated or, two, the
 00:03:24 15 extension of a non-conforming use of a portion of a building
 00:03:26 16 throughout the building, or the limited extension of a
 00:03:28 17 building which is devoted to non-conforming use on a lot,
 00:03:30 18 provided that -- there's three elements that we'll talk
 00:03:32 19 about. A, that it is clear that such extension is not
 00:03:34 20 materially detrimental to the character of the surrounding
 00:03:36 21 area or the interest of the Borough. B, the area devoted to
 00:03:38 22 the non-conforming use shall in no case be increased by more
 00:03:40 23 than 50 percent of the size of the footprint of the existing
 00:03:42 24 non-conforming structure, or C, that such extension shall
 00:03:44 25 conform to the area and height regulations of the district in

4
 Diana L. Sydnor
 Official Court Reporter

00:04:32 1 which it is situated. So first could you tell us a little
 00:04:34 2 bit about why you feel that your proposed use is not
 00:04:36 3 materially detrimental to the character of the surrounding
 00:04:38 4 area or the interests of the borough?
 00:04:40 5 A. It's -- I'm not sure I understood the question.
 00:04:42 6 Q. There's kind of two elements to the question. The
 00:04:44 7 surrounding area that the property is located in, so maybe
 00:04:46 8 you could tell us a little bit about the surrounding area.
 00:04:48 9 What's the neighborhood like, and how you feel your proposed
 00:04:50 10 use may impact or not impact that area?
 00:04:52 11 A. It's not going to impact. I mean, it's not going
 00:04:54 12 to increase any kind of foot traffic. These contractors,
 00:04:56 13 they are on a phone call, not like very heavy traffic if
 00:04:58 14 you're asking me, so basically they're not increasing any
 00:05:00 15 kind of foot traffic wise in to that store, and on the phone
 00:05:02 16 call they are not just walking in. It is on one side of the
 00:05:04 17 building.
 00:05:06 18 Q. The second part of that do you feel that it would
 00:05:08 19 be detrimental to the interests of the borough in general?
 00:05:10 20 A. No, I don't think so. I mean, it should be okay.
 00:05:12 21 Q. You mentioned contractors. Is that who you would
 00:05:14 22 be primarily selling the materials to?
 00:05:16 23 A. Yes.
 00:05:18 24 Q. And then the contractor would then resell it to?
 00:05:20 25 A. They would use it.

5
 Diana L. Sydnor
 Official Court Reporter

00:06:04 1 Q. They would use it in their business. The second
00:06:08 2 element, B, says the area devoted to the non-conforming use
00:06:12 3 shall in no case be increased by more than 50 percent of the
00:06:14 4 size of the footprint of the existing non-conforming
00:06:16 5 structure.
00:06:18 6 A. It's less than 50 percent.
00:06:18 7 Q. Okay. And C, such extension shall conform to the
00:06:22 8 area and height regulations of the district in which it is
00:06:26 9 situated?
00:06:26 10 A. We are not remodeling or anything like that, I
00:06:28 11 mean, the building is -- the way the building was except the
00:06:32 12 garage door, nothing else to improve it.
00:06:36 13 Q. So there's no structural addition to the building,
00:06:40 14 it's located within the existing structure?
00:06:42 15 A. Yes. It's the same building except garage door.
00:06:46 16 Nothing else has been changed.
00:06:48 17 Q. The second part of that I think we should just
00:06:50 18 address even though it wasn't a part of the application, but
00:06:52 19 based on the information Council should be aware of it.
00:06:54 20 150-48 C also deal with changes, and it says an existing
00:07:00 21 non-conforming use may be changed to another non-conforming
00:07:04 22 use when authorized as a conditional use by Borough Council.
00:07:08 23 However, Borough Council reserves the right to set conditions
00:07:10 24 on such use and the associated improvements required to
00:07:12 25 construct and operate the new use. Do you feel that the sale

6

Diana L. Sydnor
Official Court Reporter

00:07:16 1 of driveway sealer is a change in a convenient store use?
00:07:22 2 A. No.
00:07:28 3 Q. Then there's next some general criteria that the
00:07:30 4 applicant has to address, and I will go through those general
00:07:34 5 criteria with you quickly. This is in Section 150-93, and
00:07:38 6 each applicant for conditional use has to demonstrate
00:07:42 7 compliance with the following criteria. Is the proposed use
00:07:46 8 consistent with the purposes and intent of the zoning
00:07:48 9 ordinance?
00:07:48 10 A. Yes.
00:07:50 11 Q. Will the proposed use not detract from the use and
00:07:56 12 enjoyment of adjoining or nearby properties?
00:07:58 13 A. No.
00:08:00 14 Q. Will the proposed use effect a change in the
00:08:04 15 character of the subject property's neighborhood?
00:08:08 16 A. It's not going to effect.
00:08:10 17 Q. Excuse me?
00:08:10 18 A. It's not going to effect it.
00:08:12 19 Q. It won't effect it?
00:08:14 20 A. Yes. It's inside the building. It's not outside,
00:08:18 21 anything.
00:08:18 22 Q. D says are adequate public facilities available to
00:08:22 23 serve the proposed use. Generally that refers to is there
00:08:28 24 fire, police, ambulance protection available for the proposed
00:08:30 25 use or sewer or water available for the proposed use? Will

7

Diana L. Sydnor
Official Court Reporter

00:08:36 1 your proposed use require any additional services from the
00:08:40 2 borough?
00:08:40 3 A. No.
00:08:42 4 Q. Do you know if the property is currently located in
00:08:46 5 a floodplain zone?
00:08:48 6 A. I'm not -- I cannot give you that -- answer that
00:08:50 7 question. Maybe she knows more than me.
00:08:54 8 MR. CARL BERT: No.
00:08:56 9 MR. MAHMOOD: No.
00:08:58 10 BY MR. WISER:
00:08:58 11 Q. Does the proposed use comply with all other
00:09:00 12 regulations of the zoning ordinance?
00:09:02 13 A. Yes.
00:09:04 14 Q. And will the proposed use impair the integrity of
00:09:06 15 the Borough's Comprehensive Plan?
00:09:10 16 A. It's a gas station.
00:09:12 17 Q. Let me re-ask the question. Do you think the
00:09:14 18 proposed use will impair the integrity of the Borough's
00:09:18 19 Comprehensive Plan? Will it harm the integrity or
00:09:20 20 effectiveness of the Borough's Comprehensive Plan?
00:09:24 21 A. I don't think so.
00:09:24 22 MR. WISER: Okay. Those are the specific and the
00:09:28 23 general criteria. If Council has any follow-up questions now
00:09:32 24 would be a good time to ask.
00:09:34 25 COUNCIL PRESIDENT LAGE: Thank you, Sam. Joe.

8

Diana L. Sydnor
Official Court Reporter

00:09:34 1 BY MR. JOE HOCKERSMITH:
00:09:36 2 Q. Mr. Mahmood, the tanks have always been installed?
00:09:42 3 A. Yes.
00:09:42 4 Q. And the work has been done?
00:09:42 5 A. Yes.
00:09:44 6 Q. And the product that's in the tanks, does it have a
00:09:48 7 -- is there any odor involved?
00:09:50 8 A. No.
00:09:58 9 MR. JOE HOCKERSMITH: I question the order that
00:10:02 10 we're doing things in here, but --
00:10:06 11 COUNCIL PRESIDENT LAGE: Are there any other
00:10:08 12 questions of Mr. Mahmood?
00:10:08 13 MAYOR HOCKERSMITH: Is there anything dangerous to
00:10:12 14 the public health should any of this product leak from the
00:10:20 15 tanks?
00:10:20 16 MR. MAHMOOD: No. DEP is on me. They made me do
00:10:24 17 -- make a containment area with stainless steel walls. If
00:10:30 18 anything leaks out of those tanks it will stay in that area
00:10:34 19 and anything -- whenever it is going out, without an
00:10:40 20 attendant it cannot go outside.
00:10:42 21 MAYOR HOCKERSMITH: And it's water based?
00:10:44 22 THE WITNESS: It's water based.
00:10:48 23 MAYOR HOCKERSMITH: Thank you.
00:10:48 24 COUNCIL PRESIDENT LAGE: Are there any questions
00:10:50 25 for Mr. Mahmood. If there aren't then I would close

9

Diana L. Sydnor
Official Court Reporter

00:10:54 1 testimony so be sure to ask them if you have them.
00:10:58 2 MR. ALOSI: I don't have a question. I just -- I
00:11:00 3 thought we would be discussing it.
00:11:02 4 COUNCIL PRESIDENT LAGE: We will. I will just
00:11:02 5 close testimony and then we'll have discussion. That's how
00:11:06 6 that usually works.
00:11:08 7 MR. WISER: Does the applicant have anything
00:11:12 8 additional that you would like to offer for the Borough's
00:11:14 9 consideration?
00:11:14 10 MR. MAHMOOD: Not exactly, I mean, if you ask me a
00:11:18 11 question maybe I can answer you.
00:11:26 12 COUNCIL PRESIDENT LAGE: Okay, then at this point
00:11:26 13 we close testimony and begin discussion. Council.
00:11:34 14 MR. ALOSI: I thought a lot of the questions that I
00:11:36 15 would have had was answered in the minutes of the meeting by
00:11:42 16 the Shippensburg Borough Planning Commission.
00:11:44 17 I'm really concerned about the overflow if the tank
00:11:48 18 would leak, but it seems that that has been addressed.
00:11:54 19 There's a containment tank and there were other things that I
00:12:02 20 spotted as far as certain things that were unsatisfactory,
00:12:06 21 but it notes that all those deficiencies were corrected as of
00:12:10 22 August 21st, so with the modification -- so I feel that it's
00:12:26 23 going to meet the criteria.
00:12:30 24 MR. JOE HOCKERSMITH: I have some concerns here.
00:12:34 25 First of all, about the order of things because it seems to

10

Diana L. Sydnor
Official Court Reporter

00:13:46 1 COUNCIL PRESIDENT LAGE: Do we need a formal record
00:13:46 2 that we are, in fact, reopening testimony just for the
00:13:50 3 record?
00:13:50 4 MR. WISER: Yes, let's have a motion and a second.
00:13:52 5 MRS. COY: I'll make a motion.
00:13:54 6 MRS. BURROWS: I'll second.
00:13:54 7 COUNCIL PRESIDENT LAGE: We have a motion by Kathy
00:13:56 8 and a second by Kerri to reopen testimony. All those in
00:13:58 9 favor? All those opposed? Motion carries 6-0. All right,
00:14:00 10 guys fire away.
00:14:04 11 MR. JOE HOCKERSMITH: Do you want me to restate the
00:14:06 12 question?
00:14:06 13 MR. MAHMOOD: No, it's a two inch hose. It goes
00:14:08 14 directly in to that other person's tank.
00:14:12 15 MR. JOE HOCKERSMITH: Does it lock on?
00:14:12 16 MR. MAHMOOD: There's no lock on it. It's not --
00:14:16 17 MR. JOE HOCKERSMITH: It's like a big gas tank
00:14:18 18 hose, okay?
00:14:18 19 MR. MAHMOOD: Yes, but it's not -- it's open air.
00:14:22 20 It's not any odor you can see that, I mean, if you laid all
00:14:26 21 of that driveway sealer on the ground you will get some smell
00:14:32 22 out of that, but if you're talking about the five gallon
00:14:34 23 bucket, hose going in to that tank, there is not odor.
00:14:42 24 MR. JOE HOCKERSMITH: Okay. You're already
00:14:44 25 distributing the product?

12

Diana L. Sydnor
Official Court Reporter

00:12:38 1 me you didn't get good advice by going ahead and doing all
00:12:42 2 the work before you came to either the planning commission or
00:12:46 3 to us, but that aside I'm also concerned that as I remember
00:12:54 4 and I only ever sold five gallon buckets of asphalt emulsion
00:12:58 5 when I had a retail store, but there's a real odor to it and
00:13:02 6 that does concern me because how's that contained when you're
00:13:06 7 moving the product from your tanks to whatever vehicle is
00:13:12 8 hauling them -- how's the odor contained? Not spillage,
00:13:14 9 odor?
00:13:16 10 MR. MAHMOOD: Yes. I cannot say to you any --
00:13:22 11 COUNCIL PRESIDENT LAGE: Sam, can we do this?
00:13:22 12 MR. JOE HOCKERSMITH: Oh, I'm not allowed to ask
00:13:24 13 him questions?
00:13:24 14 MR. WISER: The record has been closed at this
00:13:26 15 point as far as testimony.
00:13:28 16 MR. JOE HOCKERSMITH: Okay. Can we reopen because
00:13:30 17 I would like to hear his answer?
00:13:32 18 COUNCIL PRESIDENT LAGE: I would too, but I don't
00:13:32 19 know whether --
00:13:32 20 MR. WISER: Sure. Let's reopen for testimony. It
00:13:34 21 appears there's some additional questions.
00:13:36 22 MR. JOE HOCKERSMITH: Well, that's the only other
00:13:38 23 question I have. How is that odor contained when you're
00:13:40 24 transferring product either in to your tank or back out of
00:13:44 25 your tank to the customer?

11

Diana L. Sydnor
Official Court Reporter

00:14:46 1 MR. MAHMOOD: THE WITNESS: Yes.
00:14:46 2 MR. JOE HOCKERSMITH: That's all the questions I
00:14:48 3 have.
00:14:50 4 COUNCIL PRESIDENT LAGE: Are there any other
00:14:50 5 questions? Think hard. If there are no more questions from
00:14:58 6 Mr. Mahmood we will once again close testimony --
00:15:02 7 MR. JOE HOCKERSMITH: I'm sorry about that.
00:15:02 8 COUNCIL PRESIDENT LAGE: -- and resume discussion.
00:15:06 9 All right. I'll actually say I am -- you know, the order
00:15:14 10 aside that is wrong. This is an R-1 neighborhood. R-1 is
00:15:20 11 the strictest zoning for residents. It has the least amount
00:15:26 12 of alternate use within that zone. If you buy a house in an
00:15:30 13 R-1 District you usually assume that the only thing in there
00:15:36 14 is housing.
00:15:38 15 The convenient store and gas station were an
00:15:40 16 existing non-conforming use. In my mind distribution of
00:15:46 17 asphalt to contractors which is not even the five gallon
00:15:50 18 buckets, it's large tanks of asphalt, are not what I as a
00:15:56 19 resident would expect to have coming in to my neighborhood.
00:16:02 20 I think that when you go against the nature of an
00:16:06 21 R-1 zone, you're really in danger of weakening of what you
00:16:12 22 think of for that. I mean, that is the -- again, that's the
00:16:16 23 zone that's sort of the most protected, the most uniform in
00:16:20 24 its use for residential. It's not a mixed use designation.
00:16:24 25 And, again, we recognize that there are some older

13

Diana L. Sydnor
Official Court Reporter

00:16:28 1 grandfathered things and, you know, it is nice to have a
00:16:30 2 neighborhood convenient store. It is nice to not have to go
00:16:32 3 real far to get your gas, but where do you draw the line as
00:16:38 4 you start to say, well, this is okay and this is okay and
00:16:42 5 this is okay. What I'm afraid of it's this incremental
00:16:46 6 change and when do you suddenly have the realization that you
00:16:52 7 let it go too far, and to me, again, this isn't the five
00:16:56 8 gallon buckets. This is a thousand gallon tank.
00:17:02 9 MRS. COY: Ten thousand.
00:17:04 10 COUNCIL PRESIDENT LAGE: Ten thousand gallon --
00:17:06 11 MR. JOE HOCKERSMITH: Two of them.
00:17:06 12 COUNCIL PRESIDENT LAGE: -- of asphalt, and I have
00:17:08 13 to set aside the order of which things are happening. It is
00:17:10 14 coming to us to decide whether this is appropriate. And I
00:17:14 15 think I live in an R-1 Neighborhood. I chose it because it
00:17:18 16 was an R-1 neighborhood. How would I feel if that came in
00:17:22 17 next to me. I wouldn't be very happy.
00:17:26 18 MR. JOE HOCKERSMITH: And I'm going to argue the
00:17:28 19 other side of this now too because we're placed in a
00:17:32 20 difficult position because money has already been spent on
00:17:38 21 making the building conform to whoever -- who was it, DEP
00:17:46 22 standards, yes, so that being said it is a gas station.
00:17:54 23 MRS. BURROWS: And a mechanic shop and a car wash.
00:17:56 24 MR. JOE HOCKERSMITH: But the mechanic shop if I'm
00:17:58 25 understanding this right is no longer in operation. The car

14

Diana L. Sydnor
Official Court Reporter

00:19:32 1 of what is already grandfathered in, it's not in my mind a
00:19:36 2 deviation.
00:19:38 3 COUNCIL PRESIDENT LAGE: It is an expansion. How
00:19:40 4 far do you let it expand and when do you say oh --
00:19:44 5 MR. JOE HOCKERSMITH: It is an expansion, but the
00:19:44 6 other thing that I'm going by is I don't see anybody here
00:19:48 7 speaking against it, and that, you know --
00:19:50 8 MRS. BURROWS: And it's a self contained operation.
00:19:52 9 MRS. COY: It's already in operation.
00:19:56 10 MRS. BURROWS: And it's a self contained expansion.
00:19:56 11 The expansion was not an expansion of the footprint. The
00:20:00 12 expansion was an expansion within the building, and I can
00:20:04 13 remember the car wash being put in because I have lived in
00:20:10 14 that neighborhood most of my life, so I can remember that
00:20:12 15 building being expanded. I drive by it everyday. I haven't
00:20:16 16 noticed any change. I see what you're saying.
00:20:20 17 COUNCIL PRESIDENT LAGE: Well, this to me this is
00:20:22 18 also the time to evaluate do you bring in whenever there's a
00:20:26 19 change, do you want to continue the use. Do you want to
00:20:28 20 expand the non-conforming nature of the use within that
00:20:32 21 neighborhood or if you look 10, 15 years down the line, how
00:20:36 22 do you want it to look? Do you want to see it contained. Do
00:20:38 23 you want to see it reigned in or do you want to see an
00:20:42 24 expansion of the kind of use and, again, that's more just a
00:20:44 25 general statement, right, of how the process works. This is

16

Diana L. Sydnor
Official Court Reporter

00:18:02 1 wash is. This building is where the --
00:18:06 2 MR. MAHMOOD: The car wash and garage both are
00:18:08 3 existing.
00:18:10 4 MRS. BURROWS: The garage is still there. It's my
00:18:12 5 neighborhood.
00:18:14 6 MR. JOE HOCKERSMITH: The garage is still there,
00:18:14 7 but, I mean, anyhow it's already a use that, I mean, this
00:18:18 8 isn't that far from that use, but I am really concerned about
00:18:22 9 the order of things that this was allowed to get this far
00:18:26 10 along before it ever came here, but I'm not willing to
00:18:30 11 penalize somebody because of that, so I just don't want it to
00:18:34 12 happen too many more times.
00:18:36 13 MRS. BURROWS: This is my neighborhood, and
00:18:42 14 although I understand what you're saying, Andrea, and I
00:18:44 15 wholeheartedly 100 percent agree with it. I go back to what
00:18:48 16 Joe said. This isn't a building that really the use is
00:18:56 17 changing, I mean, in all honesty tankers pulling up and
00:19:02 18 filling with sealant is no less of a takeaway than the tow
00:19:06 19 trucks or the vehicles that are sitting outside waiting to be
00:19:08 20 repaired, I mean, it's just -- it is what it is. I don't
00:18:12 21 know that it changes the dynamic of the existing structure,
00:19:16 22 the dynamic of the existing establishment as it stands.
00:19:20 23 I don't think it would have any negative effect on
00:19:22 24 the area residents because of the specific nature of what
00:19:26 25 already exist there, so I see what you're saying but because

15

Diana L. Sydnor
Official Court Reporter

00:20:48 1 a chance for Council to evaluate and think about trajectory
00:20:52 2 for that property.
00:20:54 3 MR. WISER: Do you mind if I read a couple
00:20:56 4 definitions just as background?
00:20:56 5 COUNCIL PRESIDENT LAGE: Sure.
00:20:58 6 MR. WISER: Convenient store is defined in the
00:21:00 7 zoning ordinance as any resale establishment offering for
00:21:04 8 sale prepackaged food products, household items, energy
00:21:06 9 products or other goods commonly associated with the same.
00:21:10 10 Convenient store may include the dispensing of
00:21:12 11 gasoline and other vehicular fuel products realizing that
00:21:16 12 there's kind of a combination of uses on the property.
00:21:18 13 There's also a definition for auto repair garage. Building
00:21:22 14 and/or land where major repairs of motor vehicles are
00:21:24 15 conducted. Use may also include retail sales of gasoline and
00:21:28 16 auto parts and the storage of vehicles being currently
00:21:32 17 serviced. Major repairs include major mechanic or bodywork,
00:21:36 18 straightening of body parts, painting, welding, storage of
00:21:38 19 automobiles not in operating condition or other work
00:21:42 20 involving noise, glare, fumes, smoke or other characteristics
00:21:44 21 to an extent greater than normally found in service stations.
00:21:46 22 For the purposes of this chapter, this shall also
00:21:48 23 include closely similar repairs of boats, so those are the
00:21:54 24 two kinds of uses that are along with the car wash too, but
00:21:58 25 the car wash is pretty self explanatory.

17

Diana L. Sydnor
Official Court Reporter

00:22:00 1 MRS. COY: Can I ask a question? Maybe I'm just
00:22:02 2 not remembering right, but I was -- is there something that
00:22:08 3 says that like -- I know there has been other gas stations
00:22:10 4 that have closed up and unless -- if they don't sell gas and
00:22:12 5 they just decide they want to use that lot for something
00:22:14 6 else, isn't their a timeframe that you can't do anything if
00:22:18 7 those things are --
00:22:20 8 MR. WISER: We do have a provision in the zoning
00:22:20 9 ordinance concerning abandonment of a non-conforming use, and
00:22:24 10 if it's not in operation for a year or more, then that
00:22:26 11 non-conforming use is abandoned and you cannot go back to
00:22:30 12 that use.
00:22:32 13 MRS. COY: But I was talking about in the ground
00:22:34 14 itself. If there's a tank, if there's a gas tank or
00:22:36 15 something in the ground, does that contaminate that ground
00:22:40 16 and you can't use that for like a couple of years? Am I
00:22:42 17 right on that?
00:22:42 18 MR. WISER: That would be a DEP requirement for
00:22:46 19 the underground storage tank regulations.
00:22:48 20 MR. HOOVER: That would come down to DEP and
00:22:54 21 monitoring.
00:22:54 22 MRS. BURROWS: These tanks aren't underground.
00:22:56 23 MRS. COY: No, but what I was -- no, I guess I was
00:22:58 24 referring back to Andrea then. It's already there. It's
00:23:00 25 been there for years, I mean, as long as I can remember

18

Diana L. Sydnor
Official Court Reporter

00:24:40 1 MR. MAHMOOD: Aside from the fact that because I
00:24:44 2 was thinking that maybe I need to go to DEP because those are
00:24:46 3 the tanks registered to them and I was not modifying any
00:24:50 4 building except the garage for the garage doors, I did come
00:24:54 5 here to get permission to do that installing of the doors.
00:24:58 6 MRS. BURROWS: Right.
00:24:58 7 MR. MAHMOOD: It's not -- kind of to me it's not
00:25:02 8 after the fact but to you guys it is after the fact.
00:25:04 9 MRS. COY: Sure.
00:25:06 10 COUNCIL PRESIDENT LAGE: Is there a motion?
00:25:12 11 MR. JOE HOCKERSMITH: I make a motion that we
00:25:12 12 approve the conditional use.
00:25:14 13 MRS. COY: I'll second it.
00:25:16 14 COUNCIL PRESIDENT LAGE: We have a motion by Joe
00:25:16 15 and a second by Kathy. Any further discussion? Hearing
00:25:24 16 none, all those in favor? Opposed?
00:25:30 17 COUNCIL PRESIDENT LAGE: Nay. Motion carries 5-1.
00:25:34 18 All right, Donna.
00:25:38 19 MRS. SOMMERVILLE: Mr. Mahmood, your conditional
00:25:42 20 use has been approved this evening. You'll receive a written
00:25:44 21 decision by mail. There is a 30 day appeal period during
00:25:48 22 which someone can appeal the decision and that appeal period
00:25:52 23 begins with the date of that written decision.
00:25:56 24 MR. MAHMOOD: I'm not appealing it. I'm okay I
00:25:58 25 guess.

20

Diana L. Sydnor
Official Court Reporter

00:23:02 1 really, and I don't really see anything ever -- I don't see
00:23:08 2 that that land would be -- if they did -- if, you know, they
00:23:12 3 would leave, I don't see that the land would be used for
00:23:16 4 awhile anyhow if they would sell gas, but I don't see that
00:23:20 5 the -- I don't see that the product that he's selling at this
00:23:24 6 point seems to be anymore hazardous than a gas tank pulling
00:23:28 7 up and loading -- loading gas in to the tanks, I mean, that's
00:23:32 8 -- especially with the school across the street. To me that
00:23:36 9 would be more harmful if that would explode than the asphalt
00:23:36 10 that was there.
00:23:40 11 Honestly that's how I feel, so my personal opinion
00:23:42 12 I have no problem with this even though I'm not pleased with
00:23:46 13 the way it came to us. It was after the fact. It should
00:23:48 14 have been handled in a different manner, but because it
00:23:52 15 wasn't I still don't have any problem with what's there now.
00:23:56 16 MR. ALOSI: Is there a way that we could emphasize
00:24:02 17 that in the future if anything like this comes about, a
00:24:08 18 proposal to change the usage, that before anything is done
00:24:14 19 that it come through the borough?
00:24:18 20 MR. WISER: That is a current requirement.
00:24:22 21 MRS. BURROWS: We kind of tripped upon this. He
00:24:24 22 was not given correct information about how he needed to
00:24:30 23 follow -- what procedures he needed to follow. The borough
00:24:34 24 kind of happened upon it in an accidental kind of way.
00:24:40 25 MR. ALOSI: Okay.

19

Diana L. Sydnor
Official Court Reporter

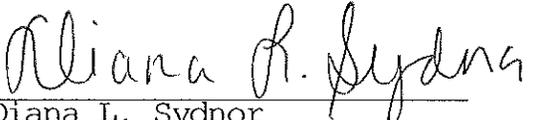
00:25:58 1 MRS. SOMMERVILLE: I'm sorry?
00:25:58 2 MR. MAHMOOD: As long as you're not appealing it
00:26:00 3 I'm okay.
00:26:02 4 MRS. SOMMERVILLE: Sam, is it appropriate to
00:26:06 5 remind --
00:26:08 6 MR. WISER: Yes.
00:26:10 7 MRS. SOMMERVILLE: I also would like to like to
00:26:12 8 state for the record that we are reminding you that any
00:26:14 9 changes you make to the building or to your business or
00:26:16 10 additions of any uses, you do need to come see me to find out
00:26:22 11 what process you need to go through and to be sure that it is
00:26:26 12 a permitted use, what have you.
00:26:28 13 MR. MAHMOOD: Thank you.
00:26:30 14 MRS. SOMMERVILLE: Thank you.
00:26:32 15 MR. WISER: Thank you.
00:26:34 16 COUNCIL PRESIDENT LAGE: All right, thank you.
00:26:40 17 (Thereupon, the hearing was adjourned at 7:29 p.m.)
18
19
20
21
22
23
24
25

21

Diana L. Sydnor
Official Court Reporter

10-9-14

1 _____ I hereby certify that the
2 foregoing is a true and correct transcript of testimony taken
3 by me in the above-entitled matter.

4 
5 Diana L. Sydnor
6 Official Court Reporter

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

22
Diana L. Sydnor
Official Court Reporter

SHIPPENSBURG BOROUGH COUNCIL

October 7, 2014

7:00 PM

**** There was a malfunction in the transfer of the sound recording****

Present at the Council Meeting: Andrea Lage
Joe Hockersmith
Kathy Coy
Kerri Burrows
Angie Facchinei
John Alosi
Lance Hoover
Bruce Hockersmith
Sam Wiser

Conditional Use Hearing for Irfan Mahmood @ 401 North Morris St.

INVOCATION: Kathy Coy -- Silent Prayer

PLEDGE OF ALLEGIANCE: COUNCIL

PUBLIC COMMENT:

Andrea Lage: Is there any public comment tonight?

Colin Bracken: I am here from the SU student center and I wanted to speak at the electronics drive. We are trying to raise awareness and get the word out. It will be November 1st, Saturday from 9am until 2pm. We take things that do not have Freon in it but it is electronics. We will be running a pick-up service.

Joe Hockersmith: What do you take?

Colin: The full list on the website and the flyer.

Sam Wiser: Do you have a limit of TV's somebody can bring?

Colin: Last year we had 87 pallets full. There was a large amount of recycling last year. The university will take care of the recycling.

Kerri Burrows: There are two social media pages; Shippensburg Info Page on Facebook and you know you are from Shippensburg when. This is not for borough residents only?

Colin: No, it is a community. As far as I know there is no limit from where you are coming from.

Kathy Coy: You do destroy the memory?

Colin: Yes, we will have a tech on site. We will be recruiting student volunteers to walk through the town and clean up trash. The night before is Halloween.

Joe Hockersmith: Maybe we could talk about adopt a block.

Colin: This is by the Pizza Man. That is on the flyer as well.

Mayor: I would like to comment that this is such a nice complement to Ship Shape Day. This is very good for the community and the area. I do have for you some gloves and vests from Ship Shape Day. Lance and I met with Colin.

Lance Hoover: If it is okay with Council, Kevin and I have talked and we would like to provide a dumpster for the trash as well and then dispose of it.

Andrea Lage: Sounds good. Thank you for coming in and it really is a great service!

CONSIDERATION TO APPROVE THE MINUTES FROM SEPTEMBER 16, 2014

Kathy Coy: So moved.
Kerri Burrows: Second.
Andrea Lage: Any further discussion? Motion carries 6-0.

CONSIDERATION TO APPROVE A STREET CLOSURE REQUEST FOR THE ANNUAL VETERANS DAY PARADE

LH: We were asked to close King St for the annual Veterans Day Parade on November 9th from 12:30 p.m. until approximately 2:45 p.m. All the conditions are the same as last year.
Kathy Coy: So moved.
Joe Hockersmith: Second.
Andrea Lage: Any further discussion? Motion carries 6-0.

CONSIDERATION TO APPROVE REQUEST FROM THE HEALTHY COMMUNITIES PARTNERSHIP REGARDING "RED RIBBON WEEK".

LH: What they would like to do beginning the week of October 13th is to tie red ribbon on the meters downtown and then they will also remove them.
AL: Is this new for us?
LH: I do think this is the first request.
JH: So moved.
KC: Second.
AL: Any further discussion? Motion carries 6-0.

CONSIDERATION TO APPROVE STREET CLOSURE REQUEST FROM THE DROP THE ANCHOR COMMITTEE.

KC: This looks like it is the same as last year?
LH: Yes.
KC: So moved.
JH: Second.
AL: Any further discussion? Motion carries 6-0.

CONSIDERATION TO ADVERTISE ORDINANCE NO. 14-908 "VACATING A PORTION OF LOCUST ST."

LH: This is the alley that we talked about in the previous meeting. This would be for advertisement only.
SW: There has been some discussion about the name of the alley.
JH: So, that becomes a private driveway then?
LH: Yes.
AL: Is the payment for this advertisement been negotiated.
Carl Bert: I think that they are aware of the cost.
AL: It was not our request so all cost should be borne by the requester.
SW: The motion should be to authorize the advertisement of the proposed ordinance # 14-908 subject to first receiving a signed indemnity agreement from the applicants as well as the applicants agreeing to pay all costs and expenses related to the advertisement and drafting of the ordinance.
JH: I will be glad to make that motion.
KC: Second.
AL: Any further discussion? Motion carries 6-0.

CONSIDERATION TO APPROVE RESOLUTION NO 14-017 "DESIGNATING HANDICAPPED PARKING ON MONTGOMERY AVE"

LH: This is in response from a topic from a previous meeting. It is my understanding that there may be another one coming and then there may be one to remove one. We cannot act upon that.

SW: No, Council can act on that.

LH: The thing that we are not certain of is that the person is still using the space?

KC: I thought that the person was deceased or moved into an assisted living space.

JH: The second one, do we need to send somebody out to verify?

AL: I think that would be nice and I thought we had already ascertained that already.

JH: If it is not warranted?

LH: We have not received anything official from anybody.

JH: I make a motion to approve the resolution 14-017.

KC: Second.

AL: I have discussion? So, we will need a formal resolution to remove a spot as well.

LH: Yes.

SW: The current ordinance calls out specific spaces? Let me check.

JH: We have been doing this by resolution for years now.

AL: Any further discussion? Motion carries 6-0.

DISCUSSION REGARDING THE 2015 BUDGET

LH: We did have a committee meeting last week. I am doing some basic revisions and my hope is to have a good draft to give to Council for discussion. I hope to have approval at the Town Hall meeting in November.

AL: That would be record time.

LH: Where we are and where we would like to head.

DISCUSSION REGARDING THE CUMBERLAND VALLEY RAIL TRAIL PROJECT

LH: I had a meeting last week with the gentlemen from the Cumberland Valley rail / trail. They did receive grant funding to design the rail/trail from Fort St. to Shippensburg Township Park so what they are asking us to do is have plans available for anybody to take a look. The parking area butts up against Fort St. They wanted to know if anyone has questions, etc.

JH: The trail runs?

Mayor: You start at Fort St and the parking area is the corner of Eckels Field.

AL: Is there any discussion about facilities.

LH: At this point there is not. I did remind them to talk to people about the water and sewer.

They would be required to connect within the water and sewer with the borough.

Mayor: This would be great to cooperate with this group and provide facilities for the triangle.

LH: We do have a full set of plans and numbers to contact with questions. They are saying March to April to get started. It will actually be constructed by PennDot.

KC: Will that be on the incline where the train tracks were?

LH: Yes.

Mayor: There is a sinkhole there.

CONSIDERATION TO APPROVE THE PURCHASE OF RECYCLING CONTAINERS

LH: I know that we have talked about that off and on. It has been sidetracked. What I am proposing ties with the contract that we did approve. They are going to supply 1200 containers as part of the contract. I would like some uniformity. I thought that we would continue on and from Council authorize to purchase 1000 from Parks. I think it will be easy for our staff to offload and collect material. I would like to order some of these too (the smaller containers) for people that may not have much or might be senior citizens that would like this one. Looking at that what I have proposed for consideration is 1000 of the 32 gallon with the lid and 200 of the 18 gallon style with the lid at a total cost of \$21,620.00. They would match color and logo of what is provided by Parks. The other containers should be on their way by next week.

JH: These are paid for with a grant?

LH: No, they are actually part of the contract that we just signed.

AL: If we get a grant we can use it to pay for these containers and educational materials.

LH: We do have the capital funding for the truck as well as the containers.

KC: I will make a motion to approve the purchase of the recycling containers in the amount of \$21,620.00.

KB: Second.

AL: Any further discussion?

KB: The only question that I have is that is 200 going to be enough of the 18 gallon ones? I see that the senior citizens that a lot of the rental units that we have also.

LH: As part of the budget there are some funds in there to purchase more if needed.

JA: These are in addition to the free ones?

LH: Correct.

AL: Any further discussion?

AL: Any way to distribute?

LH: Us. We will place educational materials in the container. Newspapers, etc. It should start the beginning of November.

AL: Motion on the table, any further discussion? Motion carries 6-0.

DISCUSSION REGARDING THE MEMORANDUM OF UNDERSTANDING REGARDING RECREATION AND PARK AUTHORITY

AL: Can we just go ahead and say it is a Park and Rec Authority if we are starting this out?

LH: Call it whatever we would like, yes.

JH: Are we the first ones see this?

LH: No, we are not. It was suggested that we develop a committee and it specifies who they are and what their function would be. As you see that committee would carry it through the development and the rules and regulations and developing the authority and bylaws to go with that as well. It has been provided to Shippensburg Township, Southampton/Franklin as well as ourselves. Shippensburg Township would have met on the 4th however I have not been informed either way what their action has been. Therefore, we would be #2 meeting in line to see this.

AL: There has been a strong desire at least at the Shippensburg Borough and the Southampton/Franklin to pursue this. Shippensburg Township has been interested but I am not sure if they are ready at this time to join so it is in question since we haven't heard from them.

LH: Should they choose not to then it would be to eliminate them and drop it down to us.

SW: That is how it should be when you authorize it tonight to authorize it in its current form.

JH: I see it as a win for the area. I will make that motion to enter in to this memorandum of understanding with Southampton/Franklin and Shippensburg Township and if Shippensburg Township does not want to then we agree to eliminate their name from the MOU and move on.

KC: Second.

AL: Any further discussion?

KC: Will others be able to join in?

JH: Yes.

SW: It is through the municipal authority process.

AL: Any other discussion? Motion carries 6-0.

CONSIDERATION TO APPROVE AND ADVERTISE TOWN HALL MEETING TUESDAY, NOVEMBER 18TH

LH: What we had last time is that we run two separate ads. What Nicole and I talked about this time is to run one ad and save some costs and the first part advertises the business meeting and then followed by the Town Hall portion of the meeting.

The topic is Meet Borough officials and management staff and discussion of the recycling improvements.

KB: I think we should add the snow and ice.

AL: Anything else?

KC: I will make the motion to approve the advertisement of the Town Hall meeting on November 18th.

JA: I will second that.

AL: Any further discussion? Motion carries 6-0.

Andrea Lage: We now have an executive session that could run for a very long time potentially. This is to discuss legal issues relative to construction contract, personnel and rental agreements.

SW: Pending litigation as well relating to the construction contracts.

Andrea Lage: Do we have any action coming out?

SW: Okay, potential action coming out relating to the construction issues.

Executive Session begins: 8:10 p.m.

Executive Session ends: 10:16 p.m.

AL: We are out of executive session during which we discussed rental agreements, personnel issues, potential litigation regarding the construction contracts and a developers issue regarding improvements to borough streets. Coming out we do have some action. There are two items.

Sam Wiser: Yes, the first one is that if Council is so inclined to authorize a submission of a process engineering report to DEP regarding the WWTP subject to addressing any and all Council, management and the solicitor and CFJMA.

JH: So moved.

KC: Second.

AL: Any further discussion? Motion carries 6-0.

SW: The second action by Council would be to authorize the execution of the proposal by Hazen and Sawyer and the revision by management and the solicitor as well as any comments from CFJMA.

KC: So moved.

JA: Second.

AL: Any further discussion? Motion carries 6-0.

Any Other Business

Andrea Lage: Sam? Joe?

JH: I just want to thank you all for bearing with my absences. Hopefully that is the end of it.

AL: Good to have you back.

Angie: My only thing is did the High school get back about the Football Field?

AL: Kathy? Kerri?

KB: Transportation committee met and we did discuss several things. We reviewed the snow and ice policy. Lance, Kevin and Chief Scott looked over the changes proposed. We requested that Lance put it on the next Council agenda. We thing there are some good changes.

LH: We talked about some potential options and addressed Stewart Place. We talked about either reducing or eliminating that island.

JH: You will get a fight about eliminating for sure.

Mayor: You can't cut those trees down.

KB: When it becomes a public safety issue? If the emergency vehicles cannot get to it. We have to address it.

AL: That would be a huge change to the character.

KB: We have two options. There are a number of questions, etc. We know that we have to do something.

JH: How wide is it?

LH: 46' or 47'

KB: Fort St. parking has been addressed as far as the snow and ice policy. The alley that runs behind Fort St., there was a suggestion that maybe we could approach the township to maintain that alleyway. This could potentially alleviate some parking issues.

JH: Keep in mind we have to have the support of the Fire Companies, etc. if we want to make a change at Stewart Place. Is there a parking issue there?

LH: No, it is mainly a snow issue.

KB: We also discussed talking about the inner loop/outer loop transportation thing. We thought it would be good for the Borough to spearhead this transportation thing. It is something that we should push forward sooner than later.

KC: I would be more than happy to talk to Jody again. If you get the inner loop set first and then go to the outer loop as the second phase then 90% of the traffic would stop at Giant?

KB: We have to continue to move forward.

AL: John?

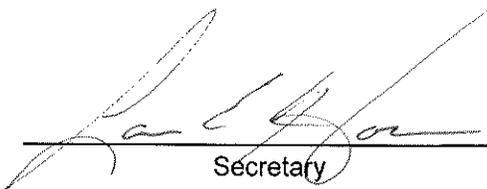
JA: I thought late this afternoon, I was thinking of the stadium. Has anybody from the Council attended the School Board meeting?

AF: I thought that they are all closed discussions?

JA: No, I am talking about how much money they would be talking about. Maybe we could ask to attend an executive session with them?

AL: Bruce? Nothing, thank you.

Kerri Burrows: Motion to adjourn. 10:55 p.m.


Secretary