

**FRANKLIN TOWNSHIP
BOARD OF SUPERVISORS
SPECIAL MEETING MINUTES
July 19, 2018**

CALL TO ORDER:

1. The July 19, 2018 BOS Special Meeting for the consideration to appeal Zoning Permit 14-18; Addition to existing structure at 430 Franklin Church Road, Dillsburg, Pennsylvania was called to order at 7:00 p.m. by Chairman Cummings.

ROLL CALL

Present:

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| Chairman Kevin Cummings | Solicitor Bret Shaffer |
| Vice Chairman David Sprigg | Secretary Teresa Adams |

Supervisor Naomi Decker

Supervisor Michael Ryan

ABSENT

Supervisor Eric Stonesifer

The Special Meeting was held at the Franklin Township Municipal Building, 150 Century Lane, Dillsburg, York County, PA. Visitors please refer to attached sign-in sheet.

PLEDGE OF ALLEGIANCE AND PRAYER

Pledge of allegiance and opening prayer were led by Chairman Cummings.

EXECUTIVE SESSION

Executive session was held beginning at 7:01 p.m.; the BOS returned from the session at 7:52 p.m.; no action was taken.

RETURN FROM EXECUTIVE SESSION

Upon return from executive session the Board called Zoning Officer Brian Fahey to the podium to answer a few questions. Supervisor Ryan asked if zoning officer Fahey knew the use of the proposed new building. Zoning officer Fahey he said it was for personal storage. Supervisor Ryan asked where the access to the building would be. Zoning officer Fahey answered it would be through the rollup door in the shop. Supervisor Ryan asked when zoning officer Fahey made his original decision of the in-home business, what part of the home consisted of the shop. Zoning officer Fahey he said it was the garage and the space below it, which was an assembly type area. Supervisor Ryan asked if both the upstairs and the downstairs equaled 1020 square feet. Zoning officer Fahey said he originally measured the square footage and wrote it down but didn't remember exact measurements. Supervisor Ryan said it was originally 580 square feet and later revised to 1020 square feet. Supervisor Ryan asked zoning officer Fahey if he could give him the size of the new building. Zoning officer Fahey said he could not, but that it is on the building application. Supervisor Ryan asked if it was at least 50% of the square feet of the existing building. Zoning officer Fahey said it is at least 50% of the square feet. Vice Chairman Sprigg asked zoning officer Fahey how he determined the use was for personal storage. Zoning officer Fahey he said that Mr. Keefer told him it was for personal use.

Chairman Cummings asked Mr. Keefer, per his application, the purpose of the new building was for personal use and not to be used by the business. Supervisor Ryan asked Mr. Keefer if he understood that he did not have to answer the questions as the meeting was not a hearing and the information Mr. Keefer provided was voluntary. Mr. Keefer said he did understand the information given was voluntary and said that he has 14 personal motorcycles that he would like to store in the new building. Chairman Cummings said he wanted to clarify that during the building of the motorcycles they were considered his own personal property until they were completed and sold. Mr. Keefer said the motorcycles were registered in his personal name and not the business during the building process and when the motorcycles were completed and ready for sale then they could be titled to the business. Supervisor Decker asked if the motorcycles were personal inventory. Mr. Keefer said no, they are his personal motorcycles, registered and insured under Thomas Keefer.

PUBLIC COMMENT

At this time Chairman Cummings opened the floor for public comment. Jim Diemler, attorney for the Brough's, next door to the Keefer's at 420 Franklin Church Rd said he had a couple of comments, the 1st thing he heard mentioned was the 50% concept that he and his clients think does apply, the benchmark of 1120 ft.² is not the 1120 but rather, the benchmark is what existed when the ordinance came into being. So, it would include the basement of the house which is what the prior solicitor indicated, but it's not just the one floor as there were Facebook comments stating the business is expanding to the bottom floor. Solicitor Diemler said the expansion makes it over the 1120 and the building is very commercial. Solicitor Diemler said this is an expansion of the commercial use building right next to his client's residents. Solicitor Diemler said clearly there needs to be a hearing for this building and if these questions are being raised then there clearly should be a hearing for the use. Solicitor Diemler said the only thing grandfathered is the home occupancy business and this building is clearly an expansion of the business. Solicitor Diemler said it is his opinion the businesses already expanded into the basement. Solicitor Diemler said there clearly needs to be a zoning hearing on the matter due to public pictures being posted stating the business was expanding and the proposed building is part of the expansion of the business.

Supervisor Ryan asked Mr. Keefer if he could tell him square footage of the garage space attached to his home. Mr. Keefer said it is 22 x 24 which equals 528 square feet.

Chairman Cummings said there is a usage permit from 2008 indicating 1020 square feet and any expansion of nonconforming use would need to go before the zoning hearing board. Under section 502 of the ordinance it cannot be expanded more than 50% of the nonconforming use, so, they may not be at 50% of the nonconforming use. Chairman Cummings said the application request is not to expand the nonconforming use but to expand the building for personal storage. Chairman Cummings said he needs to find in the zoning ordinance, the SALDO, labor and industry or somewhere, where it says that you cannot expand the building for personal use and unfortunately, he was unable to find that in here. However, if later down the road the use changes then it becomes an enforcement issue.

Supervisor Ryan asked Township solicitor Brett Shaffer what makes it nonconforming use, please explain. Solicitor Shaffer said, upon review of the file it is like tax returns were provided for a business that was conducted at the property in years prior to zoning and when the certification for the nonconforming use was applied for, the application was for a motorcycle repair facility and by providing the tax returns for zoning was effective, they demonstrated satisfaction to the zoning officer at the time that they were using it prior to zoning and therefore were entitled to continue using it for that type of use which, it doesn't say

commercial but does say motorcycle repair which indicates the idea that it's for profit. Supervisor Ryan asked if an addition on to a nonconforming use facility makes it a nonconforming use facility. Solicitor Schaefer said there's nowhere in the zoning that says when you have a resident or an attached garage that is used commercially that anything built there on is automatically part of that commercial use, he said it is his opinion that this leaves it open to a factual point but there is nothing in the zoning ordinance. Chairman Cummings said the application clearly indicates the building is to be used for personal use and not conditional use. Chairman Cummings said he is not finding anything in the zoning ordinance or the SALDO to indicate a new building is automatically conditional use. Supervisor Ryan said board is using zoning ordinance section 402 and section 502.B on nonconforming use as their guide for consideration to uphold the ordinance. Supervisor Ryan said ordinance falls short of what it should to make determination.

Discussion ensued on the original square footage prior to zoning that was used for the business. The business was detached and moved to a building 28 x 40 which is 2 stories, the 1st story is below the ground and the 2nd story is at ground level which is where the current business is located, and the square footage of the business equals 1120 square feet. Solicitor Schaefer clarified with Mr. Keefer the businesses is in a building with a bottom floor and a top floor. Mr. Keefer said, that is correct. Mr. Keefer said the business is located on the 2nd floor which is at ground level, when you drive down his driveway the business is located off the driveway. Supervisor Decker asked if anything was on the 1st floor, below ground level is used for the business. Mr. Keefer said no, there is a boat, some 4 wheelers and other personal items stored there.

A motion was made by Supervisor Decker to appeal the Zoning Officers decision based on the letter dated August 5, 2010, written by Solicitor McNeal, condition 11, indicating any additional change or expansion to the present Nonconforming use the applicant must go before the Zoning Hearing Board.

Second by Supervisor Ryan.

Discussion: Supervisor Ryan said the ordinance falls short, the rules are not clear enough as to what constitutes change of use or an addition, whether it's a commercial business onto a residence, upstairs or downstairs, we can't determine the use.

The motion was denied with a vote of 3 opposed and 1 in favor.

OTHER BUSINESS

Supervisor Ryan said he placed information regarding the equipment purchase and/or rental in each of the supervisor's mailboxes. Supervisor Ryan said he will be putting information in the mailboxes as he receives it. Chairman Cummings asked if the roller would be available until August 8, 2018.

1. Chairman Cummings gave an update on the YCPC review on steep slope, the YCPC staff report said the box was check marked for the municipality to adopt the amendment, under planning it was marked none suggested and under edit it was marked as none suggested, then under public comment there were several people present to speak and give dialogue to the YCPC among those were Chairman Cummings, Mark Wenrich from the Franklin Twp Planning Commission, who was present merely to observe the proceedings and gain knowledge, Mrs. Gingrich, Mr. Grove and another citizen. The YCPC recommended to strike in its entirety **section C**, which is **Uses Permitted by Right**, it goes through a description which sounds plausible but then it lists natural areas or wildlife refuges, passive Park and recreation areas, game farm and hunting preserve, agricultural, animal husbandry, campgrounds and facilities, commercial camps and resorts, golf courses. YCPC example was you don't want somebody having to apply for a garage but give a

golf course by right. Chairman Cummings said the other thing YCPC commented on was something the citizen in support of Mrs. Gingrich brought up, the Zoning Hearing Board hearing requires notification of adjoining properties and advertising where conditional use does not, the citizen requested the policy and procedure would be the same for conditional use where the adjoining properties would be notified, that is anything 15% or greater of steep slope, the adjoining properties need to be notified. Chairman Cummings asked the solicitor to decide on the best placement indicating the Conditional Use Hearing requires the adjoining properties to be notified and advertising of the Conditional Use Hearing in time for the next BOS regular meeting on August 8, 2018.

2. Supervisor Ryan said information from YCPC was received regarding Granny Flats and a copy of the letter was distributed to the supervisors.
3. Solicitor Shaffer clarified if the board is good with the language of the proposed ordinance change then the board will vote to advertise, the final draft must go to York County Law Library within 30 days before the public hearing.

EXECUTIVE SESSION

There was no Executive Session held at this time.

ADJOURNMENT

A motion to adjourn was made by Chairman Cummings at 8:53 p.m.

Second by Vice Chairman Sprigg.

The motion carried.

Respectfully submitted,

Teresa Adams

Franklin Township Secretary