

**MOUNT JOY BOROUGH ZONING HEARING BOARD**  
**MINUTES of January 28, 2010**

The Zoning Hearing Board met in the Council Chambers of the Mount Joy Borough Offices, 21 E. Main Street, Mount Joy, on the above date. The meeting was called to order at 7:00 p.m. by Cindi Jerman. Board members present included Bob Marker, Shelby Chunko, and Ned Sterling. Borough officials in attendance included Stacie Gibbs, Zoning Officer. Court Reporter Brenda Hamilton and Zoning Hearing Board Solicitor, Tom Goodman, Esquire was also present.

Minutes of the August 27 2009, meeting of the Board were approved with corrections by Motion of Jerman, seconded by Chunko which passed unanimously.

**New Business:**

Reorganization – A Motion was made by Jerman and seconded by Marker to retain the same slate of officers in their current positions which passed unanimously.

Cindi Jerman read the Standard Board Procedures to all those present. There were no objections to the jurisdiction of the Zoning Hearing Board nor were there any challenges as to the personal or business interest of any member of the Board.

**Case No. 1**

1. The applicant, Spangler's Flour Mill, PO Box 175 Mount Joy, PA 17552, seeks a Variance per Section 307.B.3, to construct an 81'2" high grain bin and a 95' high bucket elevator on their property located at 9 N. Market St., Mount Joy, PA 17552, which will exceed the maximum height allowed of 40' because the proposed construction will be within 40' of a primarily residential use within a residential district. The property is in the Commercial Business District.

**EXHIBITS**

**APPLICANTS:**

- A-1 – Zoning Hearing Application and narrative.
- A-2 – Zoning Exhibit – Site plan showing existing silos and existing concrete pad with setbacks.

**BOARD:**

- B-1 – Legal Ad with Proof of Publication January 14th and January 21st, 2010.
- B-2 – Neighbor Notification Letters mailed January 12, 2010.
- B-3 – Public Hearing Posting – Borough Office and Property on January 20, 2010.
- B-4 – Zoning Hearing Board Decision dated March 17, 1988.
- B-5 – Black and White Photographs of applicants' lots taken by Zoning Officer, Stacie Gibbs on January 27, 2010.

**BOROUGH:**

- B-1 – Copies of emailed responses regarding applicant's proposal from John O'Connell Jr., Chief of Police, Mount Joy Borough.
- B-2 – Letter dated January 19, 2010, from Steven Johns, Assistant Fire Chief with the Fire Department of Mount Joy, in response to applicant's proposal.

B-3 – Copy of emailed response regarding applicant’s proposal from Tod and Tasha Dohl, residential property owners of 9 and 11 E. Main St., Mount Joy, PA 17552.

B-4 – Letter dated January 28, 2010, from Scott Hershey, Interim Borough Manager and Public Works Director in response to applicant’s proposal.

#### NEIGHBORS:

N-1 – Colored Photographs provided by Sue Sterling, 13 W. Main Street Mount Joy, PA 17552, showing the existing truck storage property, owned by the applicant, to the rear of her residence across Appletree Alley.

1. Stacie Gibbs, Zoning Officer, was sworn in and testified that the property was properly advertised and posted according to law.

#### TESTIMONY

1. Attorney Goodman noted for the record that the applicant is represented by Attorney Ron Cronin. Aaron Black, Director of Operations for Wilkens Rogers Inc. and the onsite Manager for Spangler’s Flour Mill was sworn in to give testimony. He advised that Spangler’s has a commitment to being in Mount Joy for a very long time. He advised that they have been here since 1856 and plan to be here for many more years. He advised that under his direction, they strive not only to do what is best for Spangler’s but what is best for the Borough and the community as well. In order to grow and expand as a business, they need to do what is necessary to maintain their competitiveness and maintain efficiency which in turn helps their profitability. Putting the grain storage bin back up will allow Spangler’s to maintain their edge and improve their profitability by maximizing the space in which they have. He advised that it is not possible to build multiple small bins because of the narrowness of the current lot. He advised that 7’ of the current property is being utilized for a wider alley way on Appletree Alley. They are able to take advantage of the economy and scale the same footprint of the previous bin and use it to go taller and this will allow them to use that for additional storage without increasing the footprint of the actual bin. The Variance for additional height of the bin and bucket leg will allow them to store more wheat in a narrow footprint and the leg height will allow the transfer of wheat from storage to the milling process in a quicker and more efficient manner than what they currently use. He advised that they can currently transfer roughly 1200 bushels per hour and the new leg will allow them to move over 6000 bushels per hour. He advised that they will reduce overtime, maintain good quality and improve their planning process. They do not anticipate any additional truck traffic with this new bin. Business dictates the wheat usage and subsequent need for additional wheat. Black advised that things such as wheat prices and seasonal harvest pressure are normally the drivers for additional truck traffic from time to time. They are also improving the use of the rail cars which allows the use of the rail cars to move wheat instead of trucks. They can unload 3300 bushels per rail car versus 900 per truck. They do not anticipate a change in parking, loading, noise or lighting with the erection of this bin. First, upon variance approval they would erect the bin and tie in to their current grain handling

system. The second phase would be the implementation or installation of the transfer leg which would increase the wheat efficiency in what they are currently using. Black advised that this Variance is very important to their business. The granting of this Variance will allow them to move forward and maintain their competitiveness in the flour mill market.

## **CINDI JERMAN OPENED THE FLOOR TO QUESTIONS AND TESTIMONY**

1. Cindi Jerman questioned the difference between a grain bin and a grain tank. Black advised that those are the same things and the terms are just used interchangeably. Attorney Goodman questioned if silo is the same as well. Black advised that a silo is also the same.
2. Attorney Goodman questioned the address of the property as being 9 N. Market Street. Black confirmed. Attorney Goodman questioned if this property is located within the Commercial Business District and Black confirmed. Black advised that the property is roughly 75' wide by 201' long. Black advised that there are currently 2 existing grain storage bins, or silos or tanks and an existing concrete pad from the previous silo and a transformer located on the property. Black advised that the silos are approximately 70' tall. Black advised that the previous silo was fine structurally and that the previous manager had an inexperienced, untrained employee in that area. There are 4 discharges located at the bottom of the bin. If two adjacent discharges are unloaded at the same time the bin will be pulled unevenly. The inexperienced, untrained employee pulled the two adjacent bin discharges at the same time and the grain shifted and caused the silo to shift and crumble. The bin was then removed. Black believes this happened in 1998. Black advised that the silo they are proposing to re-erect would be the same height as the previous silo which was 81' tall.

Ned Sterling advised that the previous bin was 58' 10" tall. Gibbs advised that is what was previously approved but believes that the bin erected was much taller. Black advised that he does not know if there were any changes after the decision that would have allowed the change in height and Gibbs advised that she has not located a permit or an approved permit for the erection of the larger bin.

3. Attorney Goodman advised that to his knowledge Spangler's owns four (4) properties in Mount Joy Borough which are 20 N. Market St. which has a warehouse, 19 N. Market St. which has a flour mill and weigh station, 8 Appletree Alley which is truck storage and 9 N. Market St. which contains the silos, transformer and concrete pad. Black confirmed that this is correct.

Ned Sterling advised that he has photographs showing the previous existing tank. Black also advised that Wilkens Rogers also owns the property adjacent to the warehouse on 22 N. Market St, which is currently an existing residential vacant house and accessory storage shed. Goodman questioned if this property is related to the application and Black advised that it is not. Sterling advised that his pictures shows the grain coming out of the bin onto Appletree Alley. The Board reviewed the pictures. Goodman asked that Sterling's photographs, taken approximately August 1998 be marked and entered and made a part of the record. Sterling

advised that these are his personal pictures and will allow copies to be made for the record.

4. Cindi Jerman questioned if there was an agreement or something that was agreed upon after the bin collapsed, as to the widening of Appletree Alley. Jerman remembered something taking place in regards to the widening of the alley. Black advised that to his knowledge there is nothing on record as to why 7' of their property is in Appletree Alley. Gibbs advised that there is no record of a 7' wide easement on their property.
5. Attorney Goodman questioned the applicability of the section which the Variance is being applied for to the property. Goodman advised that the section advises that the section is applicable to residential properties in a residential district. Goodman questioned how far is Spangler's property in relationship to the residential property located at 9 and 11 E. Main Street. Black advised that it is approximately 30'. Gibbs advised that 9 and 11 E. Main St. are owned by the Dohls. Goodman advised that after looking at the section and the properties in question, it appears that 9 and 11 E. Main Street are residential properties but they are within the Commercial Business District and not within a residential district. Goodman advised that the Variance does not apply and therefore the property does not have to comply with this section. Goodman advised that he figured this out tonight. Attorney Goodman questioned Attorney Cronin if he understood this and Attorney Cronin confirmed that he understood.
6. Ned Sterling advised that he has problems with the application under Zoning Section 805.C.1.a wherein it states that "the zoning officer shall permit a nonconforming structure to be reconstructed or expanded provided, (i) that such action will not increase the severity or amount of the nonconformity (such as the area of the building extending into the required yard) or create any new nonconformity." Sterling advised that they are increasing the size of the storage tank therefore they are in effect having a larger tank than what they were to have originally and therefore they are increasing the amount of the nonconformity which is increasing the severity of a nonconforming structure. Sterling advised that they are also creating a new nonconformity because there is nothing there now and that they are placing a storage tank there now in the Central Business District which does not permit food processing or an accessory storage bin would not fit the criteria.

Gibbs advised that such action would not increase or extend the building into the required yard. Gibbs advised that they are not increasing or extending into the required yard because they are meeting the side yard setback and there is no front yard setback requirement in the Commercial Business District. Therefore, there is no increase or extension into the required yard. Gibbs advised the structure would meet the maximum height requirement of 90'.

Shelby Chunko questioned how long has the concrete pad been empty and how long does it have to be empty before it will not be considered a replacement? Gibbs advised that the principal use was never abandoned and that the silos are existing accessory structures to the principal use and therefore the nonconformity was never abandoned.

Sterling advised that he sees this as being a tank that has been abandoned per Section 805.D which states, "a nonconforming structure that had been destroyed or damaged may be rebuilt in a nonconforming fashion only if: (a) the application for a building permit is submitted within 18 months after the date of the damage or destruction, (b) work begins in earnest within 12 months afterwards and continues, and (c) no nonconformity may be created or increased by any reconstruction. Sterling advised that this has gone past the 12 months and that this is a new use in the Commercial Business District because there is nothing there. Gibbs advised that the applicant continued to use the other remaining, existing storage bins on the property and therefore, the use continued to remain. Sterling advised that this is a new bin, a new structure, a new accessory use. Gibbs advised that her interpretation is that this would not be a new use or a new accessory use. Sterling advised that it would be new because it does not exist there now. Gibbs advised that there is a difference between a structure and a use. Gibbs advised that it is a structure and not a new use.

Gibbs advised that Sterling had previously mentioned Section 805.C.3 would also apply to the application. Gibbs advised that Sterling should address any questions relating to this section to the applicant. Gibbs advised that 805.C.3 would not apply to the application because they are not expanding more than 25% because they are not increasing the diameter, therefore not increasing the building floor area. The applicant advised that they will not be increasing or expanding the building floor area. Gibbs advised that Section 805.C.b would not apply because the reconstruction would be upon the same lot that the nonconformity existed.

Sterling advised that 805.C.1.a would apply because the applicant would be increasing the nonconformity because if they are putting a tank there that is not there now that does not belong in the Commercial Business District by right. Gibbs advised that she thought there may be some confusion between a structure and a use. Gibbs advised that the erection of the storage bin would not increase or expand into the required yard. Gibbs advised that if the applicant proposed to place a storage bin 52' in diameter, which means they would be increasing the structure in diameter and expanding into the required yard, then that would be a severe increase of a nonconforming structure because then they would be extending into the required yard. Sterling advised that he is not concerned about setbacks but concerned about the use not being permitted. Gibbs advised that number one is not about the use, but is about nonconforming structures. Sterling advised that a tank is a structure.

7. Goodman questioned where flour mills are permitted. Sterling advised that flour mills are permitted under industrial manufacturing and or bulk processing of the following, provided that manufacturing occurs only indoors. Sterling advised that he could not locate silos or storage areas so he could not figure out which zoning district might apply.
8. Gibbs questioned the Board in respect to her Zoning Memorandum, specifically item number 10 where 805.C is addressed with interpretation. Gibbs proceeded to read item 10 of her Zoning Memorandum which states, "Section 805.C permits the Zoning Officer to allow for expansions of a nonconforming structure provided that it meets those requirements listed. It is my interpretation that the proposal to re-erect the storage bin will not increase the area of the building because it is an accessory

structure and an accessory use to the principal use. It will also not extend into the required yard because the CBD does not have any required front yard setback and the side yard setback requirement is 5' which they will be in compliance with since the concrete foundation still exists.

9. Sterling advised that he disagreed with the interpretation of item number 10.
10. Goodman advised that the application is for a Variance and that is what is before the Board. Goodman came to the conclusion that they do not need a Variance with respect to the height in the Commercial Business District.
11. Bob Marker questioned the erection of the elevator as it pertains to height. Goodman advised the Board to review the definition of height in the ordinance as it pertains to height exemptions in section 802. Goodman advised that this height exception section is common in most ordinances. Goodman advised that this section specifically mentions that elevator shafts are exempt from height requirements. Goodman advised that he believes that this type of elevator is carrying grain and not people and therefore the bucket elevator mentioned in the application would be exempt from meeting height requirements. The applicant began to review the plan and show the Board details on the proposed bucket elevator.

#### **QUESTIONS FOR THE APPLICANT**

1. Sue Sterling, 13 W. Main St., Mount Joy, PA, does not understand how the erection of the grain bin will not increase truck traffic even with their use of the rail cars? Sterling advised that the prior Variance decision showed testimony from the previous manager of Spangler's in which he advised that the erection of the bin would increase truck traffic. Sterling advised that she lives across from the truck storage lot at 8 Appletree Alley, owned by Spangler's. Black advised that he would only have to bring in about 4 rail cars to bring in a days worth of wheat and because of this it would not generate more truck traffic. Black advised that at any given time the bins are barely half full. This does vary from time to time throughout the year. Sterling questioned if the bins are ever full? Black advised that certain times of the crop year they may be full. Sterling advised that some of the trucks that come in are sitting for several hours. Black advised that they have asked the trucks to be there at least 1 hour early so the product can be tested because this has been a really bad year for quality.
2. Ted Beck, owner of 15 and 19 E. Main St., which is directly across from the truck storage lot at 8 Appletree Alley, owned by Spanglers, questioned if all of the finished product is leaving by truck? Black advised that it does. Beck advised that the rail cars will be bringing the product in, but if they increase production of the product there will be more truck traffic to get the product out. Black advised that receiving and shipping of the product does not always coincide. Ted Beck advised that Appletree Alley is very narrow and that his concern is that the trucks use other properties to maneuver in the narrow alley.

## STATEMENTS UNDER OATH

1. Dan Jury, 15 E. Main St., Mount Joy, PA, was sworn in for the record. Jury advised that on March 17, 1988, a variance was granted and a zoning hearing board member advised that a 60' structure would be very imposing in the center of town. Jury advised that Brian Flaherty, who was the manager of Spanglers at the time, said, "the purpose of the additional storage bin is to keep the milling business a competitive and viable operation." Jury also advised that one of the zoning members also stated, "an economic hardship is not an acceptable criteria for granting a variance." Jury also advised that when the grain bin collapsed, he was made to vacate his property. He is concerned about his garage and home. Jury provided pictures for the board to view that showed the bin in its collapsing state.
2. Sue Sterling, 13 W. Main St., Mount Joy, PA was sworn in for the record. Sterling advised that her primary concern is the environment around the mill regarding the noise from the trucks idling for hours. She advised that is literally for hours. Sterling advised that on the west side of the mill there is a red truck that idles and rattles windows in her house. Sterling is also concerned about the pollution and cannot understand why they have to idle and believes that they are in violation of Act 124 which prohibits the idling of trucks for more than 5 minutes. She does understand that there is some kind of exemption until May 2010. She also understands that a generator of some kind exists that businesses can provide so that the trucks do not have to run their engines during the time that they have to sit. Sterling advised that she is also concerned about the truck traffic on Appletree Alley and provided the Board with pictures. Sterling advised that because Spangler's wanted to make it easier for the trucks to access the truck storage lot, a telephone pole was moved to directly behind her property. Sterling advised that when she backs out of her garage there is a truck back there, two way traffic and it is very unsafe. She advised that they did work with the mill and was told that the relocation of the pole on her property was the best option. Sterling showed a picture that showed that even though the pole was moved, trucks are still entering onto other people's property tracking dirt and dust and damaging the asphalt. She advised that moving the pole did not solve the problem.

Sterling also advised that she believes that Spangler's own a residential property which is also not in very good condition. It does not provide a very wholesome atmosphere. Sterling pointed out to the board where the trucks sit and idle for hours. Attorney Goodman advised that he is aware of the Act and advised that he believes the idling is a Police matter. Sterling believes that these are issues that impact the neighbors. She appreciates the operation of the mill rather than a vacant property but the mill has expanded and expanded and cannot understand why they waited 12 years to re-erect the grain bin. Sterling advised that we should all work together. Sterling advised that they cannot expect to keep expanding and not have an impact on neighboring residents. Attorney Goodman advised that the photographs provided by Sterling are primarily of the truck storage property on Appletree Alley. These photographs were marked and made a part of the record.

3. Shelby Chunko questioned that in the 12 years that the bin has been gone, why now is there a need to re-erect the bin. Chunko advised that this strikes her as a replacement, but there has been a fair amount of time that the bin has been gone. Chunko is questioning why the bin was not re-erected sooner if this is essential to the business and essential for Spangler's to remain competitive? Black advised that there were many times that they have tried over the past years to advise the owners that the bin needs to be re-erected, but the owners have felt that the capital of the company has been better used somewhere else and because they had other financial considerations.

**Statements and the taking of Testimony closed.**

1. Stacie Gibbs read statements from Borough Staff, Police Department, Emergency Responders and neighboring resident regarding application. These statements were marked and made a part of the record.
2. Attorney Goodman advised that the issue of the additional right-of-way on Appletree Alley has been discussed between the Borough and the applicant. The applicant advised that they are not opposing granting the Borough and additional right-of-way and this is subject to further discussions by the Borough and the applicant.

**ACTION BY THE BOARD**

The applicant withdrew their application and therefore, there was no action required by the Board.

**ADJOURNMENT:** There being no further business a Motion to adjourn was moved Cindi Jerman, seconded by Bob Marker at 9:45 P.M. The Motion was unanimously approved.

Respectfully submitted,

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2010

Stacie Gibbs, Zoning Officer

Ned Sterling, Secretary