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November 4, 2024

Re: Case No. 2024--1

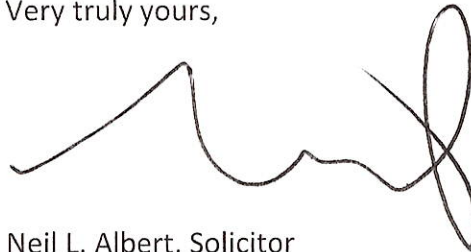
Kristen and Boyd Barley
261 LeTort Road
Millersville, PA 17551

Dear Ms. and Mr. Barley,

Enclosed please find the final decision of the Millersville Borough Zoning Hearing Board in this matter, which I have signed on behalf of the board. If no appeal is taken within thirty days of the date of this letter, the decision will become final.

A copy has been sent to your attorney for his information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Neil L. Albert', with a large, stylized loop at the end.

Neil L. Albert, Solicitor

cc: Borough Manager
Borough Codes Enforcement
Lynn Miller, Chair

8. The Board consisted of Lynn Miller, chair; members Vickie Usciak, William Hess, and W. David Sykes, and Edward Hersh, alternate.

9. The hearing was stenographically recorded.

10. At the beginning of the hearing the solicitor announced that the Board had conducted an executive session.

11. Robert Moyer, the zoning and codes enforcement officer, was sworn and testified that the agenda had been posted on the Borough website and on the Borough municipal building at least 24 hours before the hearing and that copies of the agenda were available for the public.

12. The subject property is completely paved and was used as a parking lot in conjunction with the former George Street Café. There are no permanent structures on the lot.

13. The property consists of 6,683 square feet, or 0.15 acres net. The gross area is 8,424 square feet, or 0.193 acres. The lot is slightly irregular in shape, with a length of 109.5 feet on one side and 101.1 feet on the other; and a width of 80.4 feet on one side and 80 feet on the other.

14. The property is a corner lot at the intersection of N. George Street and Cottage Avenue; vehicular access exists on both frontages.

15. For the last six years, Applicant has leased the right to maintain two farmstands on the property. The larger one consists of a wagon of 112 square feet, 16 feet in length, 7 feet wide, and 8 feet high. The smaller stand is movable, although it is not on wheels. It is 6.5 feet wide, 3.5 feet deep, and 6 feet tall. The two stands are

located in the positions identified in the application with red squares on the first page of the portion of the application labeled "Plans/Agreement of Sale/Images."

16. The stands offer produce that is grown on the family farm on Donnerville Road, and the operation is marketed as "Barley's Produce."

17. The stands are self-service and operate on the honor system; customers select the produce they want and place their money in a locked receptacle. There are no employees to assist with purchases.

18. Once in the morning and once at night, the stands are stocked with new produce and produce which is no longer suitable for sale is removed.

19. Although, in theory, the self-service business is available at all times when the stands are stocked, as a practical matter, most sales take place between 8:00 AM and 8:00 PM.

20. The property is illuminated by a corner streetlight. In addition, the large stand is illuminated with a string of solar powered lights. Applicant plans to add a similar string of solar powered lights to the small stand.

21. Applicant did not request any signage.

22. Applicant agreed to several conditions as a condition of approval, as follows:

- That the stands would be maintained in the same positions as identified in the application;
- That if the stands require replacement in the future, that the replacement stands would be no larger than the ones being replaced;
- That the stands will be kept clear of the clear sight triangle;

- That there would be no subletting for additional businesses or commercial uses; except for incidental renting out parking spaces in a way that would not interfere with parking necessary for the produce operation;

23. It was noted during testimony that the present owner has allowed a firewood sale operation on the property; this will be discontinued when Applicant takes ownership.

24. Applicant stated their intention to also sell Christmas trees and seasonal wreathes during the holiday season when the stand would be inactive. The trees would not come from the family farm, but rather from a wholesale source. Trees and wreathes would be brought to the property in the morning and ones left unsold would be removed at the end of each business day. The Christmas tree and wreath operation will require at least one employee to be on site during hours of operation. Applicant stated that the trees will be placed near one edge of the lot so that vehicle traffic would not be impeded.

25. The only other expansion planned is that Applicant may offer greenhouse flowers for sale, which would be available earlier in the growing season than regular produce.

26. Although several people were in attendance, no one else chose to speak to the application.

27. Following the close of testimony the Board voted unanimously to grant the requested variance relief, subject to the agreed-upon conditions.

B. CONCLUSIONS OF LAW

1. The property is located in the RP Professional Office District.
2. As a corner lot, the property is a dual-frontage lot.
3. The required minimum front yard setback from both frontages is 30 feet.
4. The required minimum rear yard setback is 20 feet.
5. The erection of a building of a useful size on a corner lot of this size would be challenging if not impractical.
6. The size of the lot was not created by the Applicant.

C. DISCUSSION

Applicant is requesting a dimensional variance from the front yard setback requirement to allow the stands to remain in their present locations, which are within the setback on the Cottage Avenue side. Dimensional variances are granted under a relaxed standard. The applicant need not prove that the property cannot be used without such relief; only that there are good reasons for the request arising from unique physical conditions on the property, and that the relief would not impair the community health, safety and welfare. Given that the stands have operated at the location for six years without giving rise to any public concerns, we find the Applicant met its burden.

The other question is the use variance. Such variances must be sparingly granted and only in clear cases. We find that this is such a case. The lot is not only small, it sits on a corner. The building envelope could accommodate only a tiny building, not one that would be suited to the allowed uses in the district. Applicant's use represents an imaginative utilization of a lot that otherwise would be fit for little more than a parking lot. The Board is satisfied that the produce stand has been a benefit to

the community and has not created any undue burden. Further, to the extent that the Board had concerns, they were addressed with the imposition of the conditions agreed to by the Applicant.

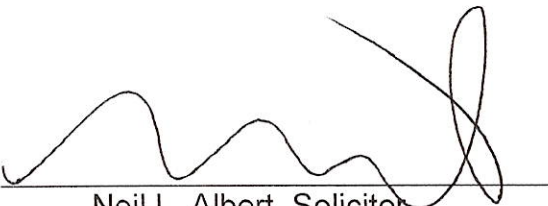
D. DECISION

AND NOW, this 24th day of October 2024, Applicant's application for variance relief in order to continue a self-service produce stand is granted, subject to the following conditions:

- The stands will be maintained in the same positions as identified in the application;
- If the stands require replacement in the future, the replacement stands would be no larger than the ones being replaced;
- The stands will be kept clear of the clear sight triangle;
- There would be no subletting for additional businesses or commercial uses; except for incidental renting out parking spaces in a way that would not interfere with parking necessary for the produce operation;
- Applicant shall operate the stand in accordance with the testimony offered and exhibits presented at the hearing.

THE MILLERSVILLE BOROUGH ZONING HEARING BOARD

November 4, 2024

by: 
Neil L. Albert, Solicitor