

JAMES NEVANT, II
ATTORNEY AT LAW

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November 18, 2021

Suzanne Kepple, Zoning Administrator
Sharon Zoning Hearing Board
155 West Connelly Blvd.
Sharon, PA 16146

RE: Appeal No. 21-03

Dear Ms. Kepple:

Enclosed for your files and safekeeping find the written decision for Appeal No. 21-03.

I trust you will find all to be in order, but of course, should you have any questions or require any further information do not hesitate to contact me.

Very truly yours,



James Nevant II

JN/cjg
Enclosure

APPEAL 2021-03

Appellant's Name: Marty Goldin, DBA
DLZ Capital LLC
25 8th Avenue
Brooklyn, NY 11217

Appellant's Agent: Chester B. Scholl, Esquire
32 Shenango Avenue
P.O. Box 673
Sharon, PA 16146

Type of Request: Appellant seeks a variance relating to the property at 1330 Kimberly Road as a nonconforming use, per Zoning Ordinance Section 401 et seq., in order to sell the property to a potential buyer to establish a hotel/restaurant, and to allow continued commercial activity at said situs, which is located in a R-1, Residential Low Density, District.

Published Public Hearing Date: Thursday, October 14, 2021

Site of Hearing: Council Chambers - Sharon Municipal Building, 155 West Connelly Blvd., Sharon, Mercer County, PA 16146

Legal Notices published in: The Herald Newspaper (September 29, 2021 and October 6, 2021 , two dates)

Proof of Publication on file: Yes

Notices Posted: Yes Where posted? Situs/Municipal Building in a timely fashion per testimony of Zoning Officer

Copies of Notices delivered to: Appellant, City Clerk, City Code Officer and Zoning Board Members, Solicitor, and affected neighbors and/or parties in interest per testimony of Zoning Officer

Hearing held on: Thursday, October 14, 2021, at 6:00 P.M., in the Sharon Municipal Building.

Recorded By: Melissa Keating, Court Reporter

Attendance Noted:

Zoning Board Members Present	-	Joseph J. Nichols, Robert Means, David Gloss, Gary Byers, and Courtney Sailor, (quorum met)
Zoning Board Members Absent	-	None
Zoning Board Solicitor	-	James Nevant II, Esquire (Present)

Entry of Appearance and Exhibits: a list of individuals whose appearance was entered is incorporated herein by reference as if more fully set forth; copies may be obtained upon request to the City Zoning Officer. Also, the copies of exhibits entered into evidence are not included herein, but are also on file at the Municipal Building for viewing or copying, and are similarly incorporated herein by reference as if more fully set forth.

Location of Property: Property located at 1330 Kimberly Road, Sharon, PA 16146, in a R-1 - Residential Low Density District.

All witnesses sworn under oath.

Summary of Request: Appellant requests an interpretation that the property is a pre-existing non-conforming commercial use and, legally, has not been abandoned; or, in the alternative, a variance to use this building for commercial purposes in a R-1 zoning district per Section 401(E), or a special exception per Table 306.10 of the Zoning Ordinance.

Findings of Fact:

1. The Appellant has standing in this matter as he is the title owner of the property.
2. The property began its commercial usage in, or about, the early 1950's as a hotel, and continued its commercial function for many years thereafter in various manifestations.
3. The property would be classified as a pre-existing non-conforming use under Article 4 of the current City of Sharon Zoning Ordinance.
4. Pursuant to Section 401(C), if a non-conforming use ceases for a period of one (1) year, such non-conforming use shall not be resumed.
5. The non-conforming use of the situs at issue has ceased for more than one (1) year.
6. Appellant presented testimony on its behalf that the proposed sale to a third party for the re-establishment of a hotel is equally appropriate to the zoning district and neighborhood as previous uses, particularly its original use as a hotel; and in any event is more beneficial than its current state of abandoned usage.
7. As part of his ongoing efforts to develop the property, Appellant has now secured the interest of Danilo Borelli, or his assigns, and they have entered into a Sales Agreement for the sale of commercial real estate, for a consideration of \$500,000.00 dollars, contingent on zoning approval resolving the issue of commercial usage under the Ordinance.
8. In the alternative, Appellant argues that they should be granted a variance as a special exception under Table 306-10 of the Ordinance, applicable to an R-1 District.
9. The Appellant called the "Buyer", Borelli, who testified through an interpreter, that he owns and operates a number of hotels in Kansas and Florida, and has several more planned, including the situs at issue.
10. Borelli indicated through the interpreter that he will be able to finance the purchase and renovation of the "Shenango Inn", to an approximate amount of 1.3 million dollars, but was not prepared to verify same at the hearing with a letter of credit, financing statement, business plan, etc.

11. Borelli testified that he intended, in due course, to establish a restaurant at the hotel; that the hotel and restaurant would be quality establishments but was unable to establish a specific room rate etc at this juncture.
12. Numerous citizens asked questions of Appellant and Borelli which can be characterized as: challenging the likelihood of a quality establishment given the lack of specifics presented by Goldin and Borelli; the need for a hotel in any event; and the perceived detrimental impact on the R-1 District at issue, and the generality of the material information presented.

CONCLUSIONS OF LAW

That the appeal for a variance in this case is consistent with a plain interpretation of the language of the relevant code sections, and it met the statutory mandates required for a variance(s). The granting of a variance to allow the development, and commercial usage, of the property, etc relative to the requirements in the R-1 - District would not be violative of the substance of the legislative function reserve for the municipal body in zoning matters, as well as substantive issues of law and fact as presented hereinabove. Consequently, the Board, having by separate vote, denied granting relief under Section 401, et seq. of the Ordinance; based on the testimony, exhibits and law presented, issued the following pursuant to a vote on the alternative request:

DECISION

Therefore it is the decision of the Zoning Board by a vote of 3-2, to **GRANT** the Appellant's request for a variance for a special exception, per Tab 306.10 of the Zoning Ordinance for the situs at 1330 Kimberly Road, Sharon, PA 16146.

Duly resolved, votes taken, request for variance(s) granted and results announced at said public hearing on October 14, 2021, accordingly to wit:

VOTES TO GRANT:

Joseph J. Nichols, Robert Means, David Gloss


VOTES TO DENY:

Gary Byers and Courtney Sailor

(See Attached roll call of Votes taken and recorded for each separate issue voted upon, which are incorporated herein and made a part hereof dated October 14, 2021, and applicable to Appeal - 2021-03)

Respectfully Submitted,

Dated: November 13, 2021



James Nevant II, Solicitor, Sharon Zoning
Hearing Board of Appeals

City of Sharon Zoning Board of Appeals Hearing Agenda

October 14th, 2021

Required Supporting Documents: Legal Notices, Permit Application, Denial Letter, Appeal Application/Request Forms, Plot Plans, relevant documents & correspondence

Requested Board Members: Joe Nichols, Gary Byers, Robert Means, Dave Gloss, Courtney Saylor, Cynthia Byers

Solicitor: James Nevant

Stenographer: Melissa Keating

- 1) Pledge of Allegiance
- 2) Call to Order-Roll Call
- 3) New Business
 - a. 741-765 S Irvine Ave – Levio Baldarelli Appeal *2021-02*
 - b. 1330 Kimberly Rd – Shenango Inn – Marty Goldin Appeal *2021-03*

The Sharon Zoning Hearing Board will hold two Public Hearings at their meeting on October 14, 2021 at 6:00 PM at City Council Chambers in the Sharon Municipal Building, 155 W. Connelly Blvd Sharon, PA 16146. The first Public Hearing is regarding an appeal from Levio Baldarelli, appealing the property at 741-765 S Irvine Ave as a non-conforming commercial use, Zoning District R-2; appealing Zoning Ordinance Section 401. The request is to sell the property to a potential buyer to establish a retail food service, most likely a pizza restaurant. The second Public Hearing will immediately follow the first Hearing, and is regarding an appeal from Marty Goldin of DLZ Capital LLC, appealing the property at 1330 Kimberly Rd as a non-conforming commercial use, Zoning District R-2; appealing Zoning Ordinance Section 401. The request is to sell the property to a potential buyer to establish a hotel and restaurant.

BOARD MEMBER	APPROVE	DENY
Joe Nichols	✓	
Gary Byers		✓
Robert Means		✓
Dave Gloss	✓	
Courtney Saylor		✓
Cynthia Byers (alternate if needed)		✓

*In Re: 2021-03
Golden Appeal
M.C.U.*

*Roll Call vote for:
ISSUE # ①*

Denied

(4)

City of Sharon Zoning Board of Appeals Hearing Agenda

October 14th, 2021

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BOARD MEMBER	APPROVE	DENY
Joe Nichols	✓	
Gary Byers		✓
Robert Means	✓	
Dave Gloss	✓	
Courtney Saylor		✓
Cynthia Byers (alternate if needed)		

In Re: 2021-03
Golden APPEAL
VARIANCE

Roll Call vote for:
Issue # (2)

(4)

Approved

CERTIFICATE OF SERVICE

I, James Nevant, II, Esquire, hereby certify that a true and correct copy of the foregoing APPEAL 2021-03, has been served this 18th day of November, 2021, upon the respective parties, by U.S. first-class mail, postage prepaid:

Suzanne Kepple, Zoning Administrator
Sharon Zoning Hearing Board
155 West Connelly Blvd.
Sharon, PA 16146

Marty Goldin, DBA
DLZ Capital LLC
25 8th Avenue
Brooklyn, NY 11217

William J. Madden, Esquire
Sharon City Solicitor
165 Euclid Avenue
Sharon, PA 16146

Chester B. Scholl, Esquire
32 Shenango Avenue
P.O. Box 673
Sharon, PA 16146

JAMES NEVANT, II, Attorney-at-Law



James Nevant, II, Esquire
Solicitor - Sharon Zoning Hearing Board