

THEODORE R. LEWIS
THOMAS L. WALTERS

MAILING ADDRESS:
P. O. BOX A
EASTON, PA. 18044-2099

LAW OFFICES
LEWIS AND WALTERS

46 SOUTH FOURTH STREET
EASTON, PENNSYLVANIA 18042-4532

(610) 253-6148
FAX (610) 253-5885

GEORGE F. COFFIN
1896-1937

GEORGE F. COFFIN, JR.
1928-1986

NAZARETH OFFICE:
BY APPOINTMENT ONLY
LIBERTY AND CENTER STREETS
NAZARETH, PA. 18064

April 26, 2010

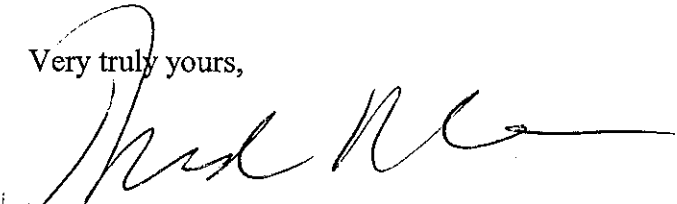
Daniel K. McCarthy, Esquire
Davison & McCarthy
1146 South Cedar Crest Blvd., Suite 200
Allentown, PA 18103

**Re: *Hanover Township Zoning Hearing Board –
Richard B. & Anne J. Hawkes***

Dear Attorney McCarthy:

Enclosed herewith please find a true and correct copy of the Findings of Fact and Conclusions of Law of the Hanover Township Zoning Hearing Board that I am sending to you as attorney for the petitioner in the above matter.

Very truly yours,



Theodore R. Lewis, Esquire

TRL/bn
Enclosure

cc: Yvonne D. Kutz, Zoning Administrator

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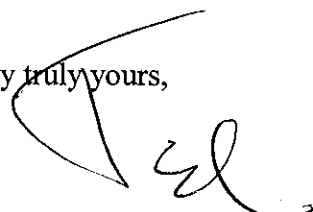
Hanover Township Engineering,
Zoning Officer
ATTN: Yvonne D. Kutz
Hanover Township Municipal Bldg.
3630 Jacksonville Road
Bethlehem, PA 18017

Re: Hanover Township Zoning Hearing Board –
Richard B. & Anne J. Hawkes

Dear Yvonne:

Enclosed herewith find copy of Findings of Fact and Conclusions of Law in the above matter, along with a copy of the cover letter enclosing the same.

Very truly yours,



Theodore R. Lewis, Esquire

TRL/bn
Enclosures

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Re : Richard B. & Anne J. Hawkes
Dated : January 26, 2010
Property : 3695 Kim Street

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, March 11, 2010, and rendering its oral decision that the proposed construction is not permitted under the nonconforming use provisions of the ordinance and denying the requested variance, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is located at 3695 Kim Street, in an R1-S – Residential Suburban District.
2. The subject property is owned by Richard B. and Anne J. Hawkes.
3. The applicant was represented at the hearing by Attorney Daniel K. McCarthy who called as his sole witness, the applicant, Richard B. Hawkes.
4. During the course of the hearing the applicant also introduced into the record Exhibit A-1, entitled "Neighborhood Plan", on which the applicant's lot is identified and the structures located thereon are depicted.
5. Attorney McCarthy also introduced Exhibit A-2, being an elevation of the proposed structure to be built upon the existing patio.
6. Accompanying the application was also a plan entitled, "Addition to Hawkes Residence".
7. The plan accompanying the application and the exhibits depict the existing residence and existing garage on the property, as well as the setbacks and dimensions of those structures together with the existing patio.
8. According to the testimony of Mr. Hawkes, the existing patio was in existence for a long period of time.
9. The Zoning Officer also corroborated that there is an indication in the records of the Township that the patio was in existence as early as 1965, and therefore predates the zoning ordinance.

10. Mr. Hawkes testified that he desired to enclose and roof the patio because without it being roofed bird droppings and leaves and other debris from the trees fall onto the patio area.

11. He stated that he would not be making the patio into an indoor room and he would not be utilizing it during the colder months of the year. He also testified that he did not believe it would have any adverse affect on the neighborhood.

12. Patios and decks are a permitted accessory use in an R1-S district and are regulated by Sect. 185-25.C.(5) of the ordinance.

13. Thus, while Sect. 185-26.F.(2) provides for a rear yard of 40 feet in this zoning district, Sect. 185-25.C.(5)(a)[2] permits patios to extend into that required rear yard, but not closer than 30 feet.

14. The applicant's existing patio encroaches into the 30 foot setback as depicted on the applicant's plan.

15. Subsection 5.(a)[4] provides that a patio that extends into any required rear yard must be uncovered and open to the sky, except retractable awnings shall be permitted to extend a maximum of 10 feet into a rear yard setback.

16. The applicant argues that enclosing the patio area and roofing it should be permitted as a natural expansion of a nonconforming use.

17. Nonconforming uses are regulated pursuant to Sect. 185-41 of the ordinance.

18. Subsection C thereof indicates that a nonconforming building or structure may be continued so long as they remain otherwise lawful, subject to the regulation that the nonconforming structure can be enlarged up to 25% and no such enlargement may be in the required side yard.

19. The applicant in the present case is not increasing the footprint of the patio. However, he is adding supporting posts with screened enclosures and a roof to the existing patio.

20. Moreover, roofing the patio is in direct violation of Sect. 185-25.C.5.(a)[4], so that the nonconforming patio will not remain otherwise lawful as required under Sect. 185-41.C.

21. The Board, therefore, does not believe that the proposed construction is permitted under these provisions with regards to nonconforming uses.

22. Further buttressing this opinion is the fact that Sect. 185-41.A.(4) sets forth that the general purpose for regulating nonconforming uses and structures is to permit them to remain, but to restrict further investment in uses or structures which are inappropriate to their location. (emphasis supplied)

23. While the Board may or may not agree as to whether roofed patios that encroach into the normal rear yard setbacks are appropriate, it is clear that the framers of the ordinance have determined that patios with roofs are not appropriate in these circumstances.

The Board therefore believes that to permit a further investment of this nonconforming structure would be not only in violation of the particular provisions of the ordinance, but also the general provisions relating to the purpose for these regulations.

24. The Board next considered whether the applicant had met the test for the grant of a variance from the provision prohibiting roofed patios. Variances are governed by Sect. 185-52 of the ordinance. Subsection D.3. thereof indicates that there must be proof of unique circumstances...which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in a neighborhood.

25. The Board believes that the stated reasons for constructing the roof over the patio in the present case are not unique or peculiar to this lot. Any open patio will be subject to bird droppings and debris from trees.

26. Subsection 3. also provides that the applicant must prove that such circumstances are such that the strict application of the provisions of the ordinance will deprive the applicant of the reasonable use of such land or building.

27. The Board believes that the applicant in having an unroofed patio while the same may not be the preference of the applicant is still a reasonable use of the premises and therefore the applicant has failed to meet the test for the grant of a variance.

WHEREFORE, the Hanover Township Zoning Hearing Board hereby finds that the proposed construction is not permitted under the regulations with respect to nonconforming uses, and hereby denies the variance from Sect. 185-25.C.5(a)[4] to permit the existing unroofed patio to be roofed.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: 
Paul A. Balla, Chairman

Dated: April 26, 2010