

APPEAL #10619 – STEVEN SCHAFFER, 124 E. MAIN ST. EMMAUS, PA 18049.
Applicant proposes to construct a residential garage and appeal a notice of violation regarding a shipping container on property. Applicant requests: 1) Appeal of denial of application to construct garage; 2) Interpretation that Z.O. 306.3.I permits garage as proposed; 3) Interpretation that Table of Area, Yard, Building Requirements of R-HO district apply to subject property; 4) Interpretation that Z.O 403.4.J(3) applies to residential districts; 5) Variance from Z.O.806.4.A(1) to allow nonconforming garage to be rebuilt beyond 18 months; 6) Appeal notice of violation dated 6/15/22. The property is located in the B-L Zoning District.

The applicant, Steven Schaffer, is represented by Attorney Mark Eastburn. Solicitor Corkery explained that the 1st item to be addressed is the appeal of the Notice of Violation dated 6/15/22. Attorney Eastburn stated that the position of the applicant is that Z. O. 403.4.J(3) only applies to residential districts, not to business districts and that is the reason for appealing the notice of violation letter. He also explained that under the theory of equitable estoppel Mr. Schaffer should be able to keep the storage container. Zoning Officer Hammond presented testimony. Solicitor Corkery asked Zoning Officer Hammond if he issued the Notice of Violation. Mr. Hammond answered affirmatively. Zoning Officer Hammond explained that on June 14, 2022, he observed a shipping container on the property located at 124 E. Main Street, Emmaus, PA 18049. He stated that he examined the property file and there was no permit issued for the shipping container. He stated that after examining the definitions in the Zoning Ordinance, he determined that the container is considered an accessory building and that the condition violates Z.O. 403.4.J(3) prohibiting accessory buildings in an excess of 1,000 sq. ft. of floor area and two accessory buildings per lot. He stated that he issued a Notice of Violation on June 15, 2022 giving the property owner 30 days to remove the shipping container or appeal the letter. Mr. Hammond stated that the applicant visited the office to apply to the Zoning Hearing Board. Attorney Eastburn presented several exhibits. Zoning Officer Hammond stated that he issued the Notice of Violation to the owners of the property, Neil and Sharon Schaffer. Attorney Eastburn stated that Neil Schaffer is the father of Steven Schaffer. Attorney Eastburn reviewed Z.O. 403.4.J(3). Zoning Officer Hammond referenced Chapter 25, page 56.2, the definition of a residential accessory structure. Mr. Schaffer explained that there is a residential property to the left and woods to the right, a street in front, a commercial business across the street, and woods behind the property. Attorney Eastburn asked Mr. Schaffer if he currently resides at the property. Mr. Schaffer responded that he does, and he has lived there for approximately 20 years. He stated that his parents purchased the property in 1992. Attorney Eastburn presented Exhibit 2; a picture of the storage container located on the property. Mr. Schaffer stated that he uses the storage container to store tools, a car, and other items that he cannot store outside. He stated that he put the storage container on the property in June 2021. He stated that he met with Zoning Officer Farnsworth in May of 2021. Mr. Farnsworth explained that the storage container would be considered an accessory use and would be prohibited. Mr. Schaffer stated that Mr. Farnsworth explained that if the storage container was located inside the “footprint” of the barn, it would be permitted. Mr. Schaffer stated that the container is in the footprint of the barn. He stated that the condition of the barn is not good, and the walls are missing on the side where the storage container is stored. Mr. Schaffer stated that he believes that he complied with Mr. Farnsworth’s directive. Mr. Schaffer explained that he met with Mr. Hammond upon receiving the violation letter. Attorney Eastburn presented Exhibit 5; a receipt for the storage container,

dated June 3, 2021, in the amount of \$4,609.80. Mr. Schaffer stated that it was a considerable expenditure, and he wouldn't have purchased it without Mr. Farnsworth's approval. Chairman Steinmayr asked Mr. Schaffer if the storage container is sitting on a foundation. Mr. Schaffer responded that it is not on a concrete foundation. Attorney Eastburn presented Exhibits 4 and 5, showing additional photos of the barn. Mr. Schaffer confirmed that there is a 357 sq. ft. shed, a 100 sq. ft. shed, a 2,304 sq. ft. barn, a 196 sq. ft. shed, a 96 sq. ft. shed, a proposed 1,200 sq. ft. garage, and to the right side of the barn, but contained within the footprint, is the shipping container. He stated that the house is 2,213 sq. ft. Attorney Eastburn presented Ellen Conklin for testimony. Ms. Conklin stated that she was present at the May 25, 2021 meeting with Mr. Farnsworth. Ms. Conklin stated that she was a Township Manager for 15 years. She stated that Mr. Farnsworth explained that the storage container would not be permitted per Borough Ordinance. She stated that she asked Mr. Farnsworth if the storage container would be permitted in the footprint of the barn. Zoning Officer Hammond stated that he did not see a foundation or walls when observing the storage container.

Solicitor Corkery explained that the garage permit application was denied because it didn't meet the 3 ft. side yard setback, it would exceed the permitted 1,000 sq. ft. off all accessory structures, and there are more than 2 accessory structures on the property. Zoning Officer Hammond confirmed that this is correct and the proposed garage crosses into Borough property. Attorney Eastburn asked Mr. Hammond if a survey has been done to determine the exact property lines. Mr. Hammond replied that a survey has not been done and the burden would be on the owner of the property to have a survey completed. Mr. Hammond explained that when Mr. Schaffer submitted his application, he stated that the old garage had crossed onto Borough property. Attorney Eastburn stated that it is the applicant's position that the garage is a non-conforming structure that has not been abandoned. Mr. Schaffer stated that the garage has been deteriorating for the past 20 years and the garage was torn down approximately 6 years ago to remove the hazard. He stated that the garage was used for storage and was unsafe to park cars in it. Solicitor Corkery reviewed Exhibits 1-7. Exhibit 1 is the application for the permit, Exhibit 2 is a copy of the deed, Exhibit 3 is the assessment records for the home, Exhibit 4 is different images of the property, Exhibit 5 are additional images of the property, and Exhibit 6 and 7 are copies of Zoning Ordinance, Chapter 27. Attorney Eastburn asked Mr. Schaffer if his intent was to abandon the garage and never rebuild it. Mr. Schaffer responded that he met with Mr. Farnsworth 20 years ago about taking down the existing garage and rebuilding it and was verbally denied. Mr. Schaffer states that he hopes to build the garage to use for storage and to park cars in it. Mr. Schaffer stated that he proposes to use the same footprint to build the garage. Mr. Schaffer stated that he is willing to obtain a survey and build a garage within the 3' side yard setback. Solicitor Corkery asked if the garage is permitted if the sheds will be taken down. Attorney Eastburn responded that the Zoning Ordinance applies to residential districts not commercial districts. Zoning Officer Hammond read Zoning Ordinance 401.1, which states that this Part establishes additional specific requirements for certain specific uses, in addition to the sign, parking, environmental and other general requirements of this chapter and the requirements of each district. Wherever two requirements conflict, the stricter requirement shall apply. Solicitor Corkery referenced permitted uses in the B-L Zoning District. He stated that a residential home is permitted in the B-L Zoning District. Solicitor Corkery entered Exhibit A-1 and A-2 into record. Attorney Eastburn stated that it is the municipalities burden to not just cite the landowner with the violation of the ordinance, but to also provide evidence of the violation of

the Zoning Ordinance. He stated that the only section that is noted in the violation letter is 403.4.J(3). He stated that subsection a and b is restricted to only residential districts. He stated that the B-L Zoning District is not in the residential district. He also stated that according to Mr. Hammond’s testimony, this property has been subjected to residential provisions. He stated that the interpretation of the ordinance is incorrect, and the landowner is entitled to a more liberal reading of the ordinance. Attorney Eastburn stated that section 401.1 was not referenced in the letter. Attorney Corkery responded that he does not believe the Zoning Officer needs to cite every provision in the Zoning Ordinance and this is an interpretation of 403.4.J(3). Attorney Eastburn stated that the 2nd argument is a variance by equitable Estoppel. Attorney Eastburn presented his closing argument on obtaining a permit for the garage and referenced case law of Money vs. Zoning Hearing Board, which deals with abandoned non-conforming use. He stated that Mr. Schaffer removed an unsafe structure and is not abandoning the use of the structure and believes that Mr. Schaffer was not made aware by the Zoning Officer that it was a nonconforming structure that needed to be rebuilt within 18 months.

The Zoning Hearing Board voted 3-0 that 403.4.J(3) applies to the B-L Zoning District and this property and the Notice of Violation is applicable.

Steinmayr yes Iobst yes Nickerson yes

The Zoning Hearing Board voted 2-1 to deny the variance to keep the shipping container by equitable Estoppel.

Steinmayr no Iobst no Nickerson yes

The Zoning Hearing Board voted 3-0 to grant the applicant a building permit to rebuild the garage subject to conditions.

Steinmayr yes Iobst yes Nickerson yes

The Zoning Hearing Board voted 3-0 that the garage would have to comply with all required setbacks.

Steinmayr yes Iobst yes Nickerson yes

The Zoning Hearing Board voted 2-1 to not require the removal of all other accessory structures.

Steinmayr no Iobst yes Nickerson no

The Zoning Hearing Board voted 3-0 that the garage cannot exceed 1,000 sq. ft.

Steinmayr yes Iobst yes Nickerson yes

The Zoning Hearing Board voted 3-0 to deny that the current structure is non-conforming.

Steinmayr no

Iobst no

Nickerson no