

BEFORE THE CITY OF GREENSBURG ZONING HEARING BOARD

In the matter of:  
Mr. and Mrs. John Lizza

Special Exception  
Section 265-129

Property Location:  
Rear 306 Harrison Avenue

Hearing Date:  
October 15<sup>th</sup>, 2008

PROCEDURAL BACKGROUND

The application dated September 10<sup>th</sup>, 2008 by Mr. and Mrs. John Lizza of Greensburg, PA. 15601, are requesting that a determination be made by the Zoning Hearing Board for property they own at Rear 306 Harrison Avenue, Greensburg, Pa. 15601 related to a student housing Zoning Violation Notice issued on August 8<sup>th</sup>, 2008. The request is for the City's Zoning Hearing Board to determine that the subject property is a Special Exception, under the City code, Chapter 265 Section-129 or they would like the Zoning Hearing Board to consider a Variance to the City Code, Section 265-128, and/or they are also appealing the decision of the Zoning Officer related to the Violation Notice. Subject property is zoned R-2 General Residence District.

Members of the board present: Charlotte Kuhns, Chairwoman, Anita Simpson, Mary Clymer, Patsy Iapalucci and Marilyn Crimboli.

Also Present: Lou DeRose, Solicitor and Barbara J. Ciampini, Planning Director.

There were no objections to advertising or procedure at the hearing. Patsy Iapalucci made a motion to deny the request of the Variance and the Special Exception and to uphold the decision of the Zoning Office based on the distance requirement. Marilyn Crimboli seconded the motion. All were in favor.

## DISCUSSION

The property is located at Rear 306 Harrison Avenue, City of Greensburg. Mr. and Mrs. John Lizza of Greensburg, Pa. 15601 are requesting a determination to be made by the Zoning Hearing Board for property they own at Rear 306 Harrison Avenue, Greensburg, Pa. 15601, related to a student housing Zoning Violation Notice issued on August 8<sup>th</sup>, 2008. The request is for the City's Zoning Hearing Board to determine that the subject property is a Special Exception, under the City Code, Chapter 265 Section-129 or they would like the Zoning Hearing Board to consider a Variance to the City Code, Section 265-128, and/or they are also appealing the decision of the Zoning Officer related to the Violation Notice issue. Subject property is zoned R-2 General Residence District.

Lou DeRose: Before we begin Charlotte if I may, let the record show that there are three separate challenges and requests before the Board. The Special Exception, the Variance and the Appeal of the decision of the Zoning Officer. By special agreement worked out with the property owners, they have taken an appeal of the Zoning Officers decision and we have agreed to include their two other requests along with that hearing so they only had to take the one appeal sort of speak, and pay only one fee. That seemed to be the right thing to do given the unusual nature of the thing.

John Scales: Mr. DeRose, so it is correct we appreciate very much the City willing to handle it that way.

Barbara Ciampini: We since have amended the application so it specially states that each check mark means an additional fee. Thanks for pointing that out.

Lou DeRose: The appropriate way to begin for Mr. Scales to say anything on behalf of his client is for Barbara Ciampini to tell us very briefly the circumstances that led to the zoning violation that was given on August the 8<sup>th</sup>, 2008., would you do that Barbara?

Barbara Ciampini: At some point on or before July 28<sup>th</sup>, 2008 we were notified that the property owner was allegedly housing students at the property known as 306-308 Harrison Avenue, owners being Mr. and Mrs. John Lizza. Mrs. Lizza called our office on August 4<sup>th</sup>, 2008 and informed us that the students were actually residing in Rear 306 Harrison Avenue and that she wanted an amended, Zoning Violation Notice, of which I did. There is a property in the front and a property in the back and that is where the confusion is. The students are actually

in the back property, Rear 306. I apologize for the confusion. I did reissue a new violation on August 4<sup>th</sup>, 2008 and Mrs. Lizza sent another letter in, it's in your History that have. She sent in a letter stating that they weren't housing students in the front and that the front property is vacant and that she was renting to students in the rear. She also asked for a twenty-five (25) day extension because Mr. Scales was out of town and I did grant her extension to September 11<sup>th</sup>, 2008. We received the application to appear before the Zoning Hearing Board within that thirty (30) day period on September 11<sup>th</sup>, 2008.

Lou DeRose: I take it that the primary motivation was that the property at rear 306 Harrison Ave. which is housing students is 193 feet.

Barbara Ciampini: That is correct; it is 193 feet from a registered student home at 218 North Pennsylvania Avenue.

Lou DeRose: Okay, very good. I think that sets the stage for you.

John Scales: We would stipulate what Barbara indicated is correct and what Mr. DeRose indicated is correct. There are actually four (4) apartments. 306 and 308 Harrison Avenue front and 306 and 308 Rear and the only one occupied by students is 306 rear Harrison Avenue. We would stipulate that there are students living in that particular location they are Seton Hill students and we stipulate to what has been placed on record in order to lay the foundation for the case. My suggestion is and tell me if I am wrong is that I think I can outline all of our claims without the necessity of prolonging this by calling Jack Lizza as a witness if we could stipulate that his is what his testimony would be if that would make sense to the chair and to the Solicitor. I can outline all of our claims. I would like to make sure that is all in the record, if you wish me to call Mr. Lizza to verify all those things I would be happy to do that.

Lou DeRose: That wouldn't be necessary for you to do that, just tell us what his testimony would be and then upon hearing it and will stipulate to you what he would have said.

John Scales: I would offer into evidence an appeal form in it's entirety because it sets forth all of the contingences that we're making and some of the background for the property which also includes the deed to the property which shows that Mr. and Mrs. Lizza purchased the property in 1992. The deed is recorded, deed book 2421, page 556 and there is also a map attached to our appeal which shows the specific location and it is in an R-2 classification. We would also state for the record and stipulate that the property is in good condition and the 306 rear where the students are living is in fine condition. The property has been rented for years and years and years to various people including students over a period of 20 years and probably beyond even before Mr. and Mrs. Lizza owned the property. Many of those students have been Seton Hill students. The students that are involved in this particular case happen to be seniors. Their lease begins

in January of 2008 before the citation ever occurred in this case and runs through a period of one year until January of 2009. I have a copy of the lease which I will submit to you. I think the actual termination date is January 31<sup>st</sup>, 2009. The students will be graduating of course in May of 2009 and they are both scholarship students and they are football players and they have paid their rent regularly and in fact at some point in the year have paid their rent in full. They are prepaid until the end of January of 2009 which is the end of their current lease. They have caused no problems, they are serious students and are focused on their schooling and education and they have been modeled tenants. Our position in the case is that the ordinance is unconstitutional and violates both the Federal and State constitution for a number of reasons. Number one is that the Ordinance profiles people without a substantial reason for excluding them from being able to rent. Number two, we see no evidence and there is nothing in the Ordinance that indicate that there were any studies or investigations or to justify that students are a problem. I am not aware of anything unless you show some type of a scientific study and that an examination has been made either here or nationally to determine that somehow there is a need to exclude students from living within 500 feet of each other. Number three, we think the ordinance creates an unlawful priority to landlords in one section of the City, naming the downtown area at the expense of landlords and other sections of the City and that is a discriminatory feature of the ordinance. Next it creates a race to City Hall, the ordinance creates an unfair advantage for those people who happen to get to City Hall first and register and somebody else who are 400 feet away happens to get there 10 minutes later, that seems such an arbitrary way of deciding who should have a right to rent and who should not. We see no rational for the distance of 500 feet. Why not 600 feet why not 1,000 feet or 200 feet. We see nothing in the ordinance or any other documents that we've been able to discover to show any kind of a rational reason for using 500 feet. Next item is that by its very nature the ordinance depreciates the value of properties without just compensation that may constitute a defect on taking by prohibiting certain uses for properties that has been used for those purposes over a long period of time. If necessary Mr.Lizza is prepared to testify as an expert Real Estate Appraiser who has in fact been relied upon the City of Greensburg as to the detrimental affect on the fair market value of properties once there restricted in the way this ordinance restricts them in terms of use and that may well constitute a defective taking and entitle him to damages. Another item is the lack of uniform enforcement. We understand that exceptions, Special Exceptions or Variances or nonconforming uses or whatever they want to be called had been granted to other people or are within 500 feet and in fact Mr. Lizza is prepared to testify and we would so state for the record by stipulation that there are in fact properties close to him were three different groups of students are all living well within 500 feet, not counting his. Another item is we believe that the Ordinance has not been probably enforced as far as off street parking, that is a concern. This permits one permit place and up to a maximum of four (4) off street parking spaces. Mr. Lizza knows of properties where they have no off street parking and he has in fact inside parking on his property will therefore qualify because he has three (3) or

four (4) spaces in the rear that can be used to keep people off the streets with parking. Another item that we are concerned about is the definition of a student home. The way I read the definition it would include, if my wife and I were living in one of these R-2 areas and had three or four children of our own and living at home with us who happen to be going to Seton Hill we couldn't have them living there because that would come under the definition of a student home if we happen to be less than 500 feet from somebody else that has students also going to Seton Hill. The student home definition we think creates a constitutional problem with the ordinance. The profiling is a concern, I am 75 years old and there is no age restriction in this ordinance and what if I decide to become a full time student at Seton Hill and I am living in this area and I am less than 500 feet I wouldn't be allowed to live there based on any strict interpretations of the ordinance. It's not just young people, there are no age restrictions that I can see in the ordinance and it would be very discriminatory in that sense. I assume that the purpose of the ordinance is because the City thinks that students are too close together. What would prevent the City from prohibiting too many old people living in a certain section of the City, because they perhaps would cause a fire hazard and extra burden on the hospital because of medical needs? Maybe they are poor drivers and there could be a variety of reasons. What about prohibiting people with children, children are noisy would that be valid? I think not. I don't think any of those things would be valid. What about lawyers, why not just prohibit lawyers because they are a bad influence on the neighborhood. This is profiling in the extreme to pick on students, we all know and it's a fact that there are huge number of students who are perfectly responsible and do not cause trouble and who are good tenants and on the other hand we know there are a lot of non students who are involved with crime, drugs, no connection with a University and yet they are undesirable quote unquote in the community. Our position is the way to attack problems, if we are concerned about crime, theft or noise attack those problems directly not by profiling a category of people like students that may or may not be involved in those activities. Were as there are all kinds of other people who are not being profiled and who are clearly involved in those illegal and improper activities. Definition of family is interesting, in the ordinance it says family or persons related by blood or marriage living together, that's our case, these are two brothers; the two students in the Lizza property are brothers. Page 4 of the Zoning Ordinance excludes student homes from that definition so presumably we have a family so therefore we would be okay. Page 13 of the Zoning Ordinance states under permitted uses, of course R-1 and R-2 are the same, R-2 uses are the same as permitted in R-1 uses. Permitted uses are one family dwelling that is one category. Another category is student homes, which require the 500 feet distance. We think we qualify as the one family dwelling because these are brothers, two brothers and that makes it a family under your definition of the ordinance and therefore we qualify as a one family dwelling, well were not, we come in under the student homes and under the 500 foot problem. The act of the ordinance also permits special exceptions it permits conditional uses, page 75 of the ordinance and page 14 special exceptions. Page 84 also defines special exceptions as well and the act also on page 94 allows an

amendment that would take care of the situation. Without belaboring all the issues in further detail that outlines our contingency. If you wish Mr. Lizza is prepared to testify as to any of those things we've talked about and will answer any questions you might have. We are asking, what we are asking and suggesting is that the Ordinance be declared invalid as far as the Lizza property is concerned. The alternative, we see no reason why a nonconforming use could not be declared for this property, why it could not be grandfathered in, in terms of the history of the property and the situation with these two particular students. We see no reason why a Special Exception either permanently or at least to the end of the school year. I could not be given in this particular case or any of the other requests we've made in our appeal. We do believe this is a hardship, I know that your Special Exception rules talk about making sure it's not going to create a serious problem. Those are all solutions that we see; we are seriously concerned about the constitutionality of this matter.

Lou DeRose: Can you tell us for the record first whether you disagree under the theory that we've cited you that the property is approximately 193 feet from a registered student home?

John Scales: I have not measured it but we certainly will not argue with you over whether or not it's less than 500 feet. That's correct. Second we don't know however if that property is in conformity even though it may have received a license we don't know if there is any off street parking and it's also within less than 500 feet from another student home.

Lou DeRose: The homeowners do acknowledge that there is a registered home there that for our purposes is closer than the 500 feet from this property?

John Scales: That's what we are assuming.

Lou DeRose: The lease to the brothers who are renting the Lizza home, when did that go into affect?

John Scales: John do you have a copy of the lease? Sometime in January of 2008. These two particular students.

Lou DeRose: These students are new as of January 2008?

John Scales: Let me ask John Lizza to respond to that. Was that the first time these two students rented the property?

John Lizza: Yes, the lease was actually in affect I believe the beginning of December sometime. It didn't take affect until January 1<sup>st</sup>, 2008, it's a year lease and they are paying monthly on it and when they got their school grant for this year they paid for the full semester.

Lou DeRose: I assume what happened is they moved in somewhere around the first of the year of 2008?

John Lizza: Yes that is when the lease took affect.

Lou DeRose: Immediately prior to their moving in at the end of December or the beginning of January was the property occupied by other tenants?

John Lizza: No. It's a townhouse type, it's a single family.

Lou DeRose: How long was it empty?

John Lizza: About a year.

Lou DeRose: Prior to that one year did you have tenants in there from time to time since you owned the property in 1982, am I right about that?

John Lizza: That's correct.

Lou DeRose: You say that some of those persons where students some where not.

John Lizza: That's correct.

John Scales: Lou the actual date on the lease is January 23<sup>rd</sup>, 2008, I have it in the front of me and it expires January 31<sup>st</sup>, 2009. If you would like a copy we can have a copy made for you.

Lou DeRose: It wouldn't hurt to make that part of the record if you don't mind Mr. Scales. If the last tenant to be in the property prior to these brothers, these students at Seton Hill would almost have to be back in 2006, is that right?

John Lizza: Yes.

Lou DeRose: Did they have a lease whoever was in there then?

John Lizza: Right.

Lou DeRose: And where they students?

John Lizza: No they were not.

Lou DeRose: If I can take you back before 2006 into 2005. Was it occupied by another tenant or tenants for about a years lease throughout 2005?

John Lizza: Basically it was a one year lease and a couple of them stayed a little bit longer but mostly it was a turn over situation.

Lou DeRose: In 2005 were they students or non students?

John Lizza: I don't know.

Lou DeRose: But 2006 were not?

John Lizza: 2006 were not students.

Lou DeRose: In regard to the parking I thought I heard Mr. Scales say that you had ample parking for the tenants for this rear property?

John Lizza: There are two garages on this property which can house four (4) cars. Although I don't think these students have a car and that's the reason they are local to Seton Hill because I think they walk to school.

Lou DeRose: Did I also hear that the front property is a completely separate rental unit for you, is that right?

John Lizza: That's correct.

Lou DeRose: And it's vacant?

John Lizza: At the current time, yes.

Lou DeRose: Has it been vacant during all of 2008?

John Lizza: Actually I tried to sell the property in 2007 so I was fixing it up as far as repainting and new carpeting and things like that and I couldn't find a buyer for it and it's been really hard to rent.

Lou DeRose: This property however on Harrison whether it's front or rear has it been subdivided?

John Lizza: No it's one parcel in which there is actually 3 home improvements on it and up and down stairs apartment in the front house which was a conversion from a single family and on the rear of the property is two townhouses and underneath the townhouses, basement area are two garages.

Lou DeRose: The other thing I wanted to clarify is that the lease ends at the end of January 2009 and yet I heard Mr. Scales say that the students won't be graduating until May 2009 and is it the thought that you would extend the lease for a few more months?

John Lizza: They already asked to extend the lease but I didn't want to put them in that position.

Lou DeRose: You may not be able to answer the question.

John Scales: Right, under the circumstances.

Lou DeRose: That wouldn't be for a year renewal and that will be until they graduate?

John Lizza: Yes graduation is in late May.

John Scales: I think the lease is a month to month renewal.

Lou DeRose: Nobody says anything it just goes month to month?

John Scales: Correct.

Lou DeRose: I think that is all I have right now. Did either one of you have anything to add to the record on your end?

John Scales: No.

John Lizza: Actually it's rather difficult to find any space at all for tenants because of the regulation of the 500 feet and there are many other students in this area and they walk to school. It's very difficult for them to find another place to move to.

John Scales: I mentioned before that he is aware of situations were there where other cases where students are closer then 500 feet that have been permitted and one of those I believe is on Kenneth St. and another one is right near this property. Can you comment on that John?

John Lizza: I heard from one of the property owners that he was less then 500 feet and he was given the okay to stay as a student home within the 500 feet.

Lou DeRose: Mr. Lizza, he may have been the gentleman who was a preexisting use before the ordinance was created and therefore the ordinance would not have prohibited from continuing to use that as a student house. That is my recollection of one near you.

Barbara Ciampini: That is absolutely correct and that property is at 433 Harrison Avenue. We have provided the information that Lou DeRose was trying to get from your client. He had leases prior to November 2005 which was the actual date that Mayor and Council adopted the Student Housing Ordinance. He did provide that clear back to 2001 during ownership that students had been in and

out of his property during that time frame prior to November of 2005 which then entitled him to a grandfathering.

John Scales: Would it be helpful if Mr. Lizza could locate leases before 2005?

Lou DeRose: The only way it would be helpful but Mr. Lizza has already indicated that the tenants in 2006 which are the tenants proceeding the brothers that live there now, where not students, so he has broken that chain.

John Lizza: It's been continuous over the years with students and non students.

Lou DeRose: On that matter it's not useful to get any other leases.

John Scales: The nonconforming use situation that Barbara had mentioned and of course that is why we suggested other possibilities such as Special Exceptions or a cure of amendment or some other means of solving this problem.

Barbara Ciampini: I would like to address the other property that you brought up. For 34 Kenneth St., this board did grant a Variance and they were 89 feet short of the 500 feet. It was 411 feet away and they did grant the Variance and since the time that the granting has occurred the house that was registered at 434 N. Main St. has abandoned the student home use; so that argument is no longer valid. It is now a justified student home at 34 Kenneth St.

John Scales: I gather you did grant a Variance even though it was 411 feet?

Barbara Ciampini: That's correct.

John Scales: I guess as a Lawyer I am obligated to suggest that there is no magic in 411 compared to 410 or 403 or 189.

Marilyn Crimboli: Can I ask you about the garages? You said there are two garages under the two townhouses, are those only for the use of those two townhouses? Or are they for all four units?

John Lizza: It depends on which tenants I have in there. I let people from the front use them because the people in the back didn't want them. But the priority of choose is for the people in the back because it's their basement.

Barbara Ciampini: I also want to point out for the record; I don't know if Mr. Scales has a copy of the amended ordinance that was adopted in July 2008 by Mayor and Council which amends the definition of a "student home", I'd like to read that.

John Scales: I took one off the internet and I printed 144 pages of the ordinance, would that include that?

Barbara Ciampini: It would include the new definition. A student home includes: any residence located off-campus from any higher education facility or trade school. Student Home does not include the family members of an existing single family home. Two or less graduate students are not considered a Student Home. Graduate students living with undergraduate students and/or trade school students or any combination of the aforementioned living in the same dwelling units is a Student Home. So your argument about you and your wife and kids being students that would be fine and not a violation.

John Scales: That was not the one on the internet.

Barbara Ciampini: It should have been. This is the newest one and I apologize for that. The other issue that you mentioned that I have to address is when the City's Solicitor Tim McCormick and I were putting this together in regards to the 500 foot rule we based our ordinance on an ordinance, which had been challenged in the courts in West Chester Borough, and the 500 foot has been challenged. I believe Indiana PA. uses that distance requirement as does California PA. and Morgantown WV.

Patsy Iapalucci: I think Southwest has approved it or getting ready to approve it.

Barbara Ciampini: I just wanted to mention that for the record. We found an ordinance that was tested and it was challenged on a discriminatory basis too!.

Marilyn Crimboli: You did mention that the graduate students-

Barbara Ciampini: No they're not, two or less graduate students do not have to register. In the fall of 2009 we are going to receive 104 LECOM Medical Students in the City of Greensburg which is a wonderful thing and as long as they live two or less they will not be considered a student home.

John Scales: If he goes to graduate school he can stay?

Barbara Ciampini: If they go to graduate school, they have to find interim housing, but you're on the right track. The reason the City did this was not to discriminate against you but to try to preserve the neighborhood as it exists and its also done for the safety of the students.

John Scales: I understand. What we are saying is this is not a constitutional way to do it. My understanding is it's never gone up to any of the Appellant Courts. There might be some local court they might have upheld it.

Lou DeRose: As far as we know that's right, none of the Appellant Courts have weighed in on the topic and the Commonwealth is the only one that would. This matter challenging the ordinance much like you did today has been before us

several times and so we've heard all of these arguments before and that is why we're not engaging in as many questions as we might. We understand the various levels of challenge you've made and in our findings and of course the board is free to take any of the remedies you've suggested or come up with some of their own. In our findings we will try to incorporate a specific as to why we always felt that this is what the City has done. We have to assume the Ordinance is valid until somebody challenges it. We've sustained the Ordinance many times and unless there is something new, and there is nothing, I assure you. It's the same argument, and the City has chosen to go this route.

John Scales: That is why I suggested some solutions less than complete unconstitutionally and eliminating the ordinance. There are other solutions that could satisfy this problem without declaring it to be unconstitutional. (Can we go off the record for a second?)

Lou DeRose: Sure. Back on Vicky. Any constitutional challenge we take very seriously and we've examined this before and we felt that the City was within its bounds to do that next to the ruling of at least one court. If this board goes against the applicant on some or all of the challenges maybe the case will get heard again.

Barbara Ciampini: I just have one other thing to say for the record, I know it's been stated that it's hard to rent properties. There are students out there. There are properties too that are still available in the City of Greensburg that meet the 500 foot distance. I have a very small list here of registered student homes and if you don't mind I will read those.

John Scales: Those are all within the Historic District?

Barbara Ciampini: No they are not, I am going to read them; 218 N. Pennsylvania Ave. is the one that is affecting yours. 426 Concord Ave. 107 Liberty Ave., 203 Center Ave. which by the way is next door to Vicky, 110 Talbot, 215 W. Second St., 433 Harrison Ave. that is the nonconforming use, grandfathered property, 51 E. Pittsburgh St. that one is in the downtown district and so far he has two units 3E and 3W, 34 Kenneth St. that is the one we spoke about earlier, 328 W. Third St., 125 W. Second St., 711 Highland Ave which is up in the 8<sup>th</sup> ward, 201 Brown Ave, 306 Kenneth St. which is directly across the street from my home, 39 Madison Ave. 324 Euclid Ave., 217 N. Lincoln Ave. another one at 51 E. Pittsburgh St and 329 Brown Ave.

John Lizza: Those are all registered Student Homes?

Barbara Ciampini: Yes.

John Lizza: So they got registered before?

Barbara Ciampini: Before what? They've been registered in the last two ½ years.

John Lizza: They don't have students in them?

Barbara Ciampini: These are all occupied student homes. If there are homes that anyone knows about and you alluded to that there are some close to you, we need to know about that.

John Lizza: Barbara the list that you read how many are vacant?

Barbara Ciampini: Of this list? None are vacant.

John Lizza: So it's pretty hard to find student housing

Barbara Ciampini: That's your concern but I'm saying this is all we have and there are other properties out there in that same neighborhood. There are numerous properties for sale that might meet the 500 foot regulation that is what I am trying to say. There are very few student homes registered.

John Scales: Barbara we appreciate that, that is all well and good except it doesn't help the person who has invested his money in a home or has fixed it up and put his work into it.

Barbara Ciampini: I understand that but that same person should have contacted my office.

John Scales: He's shot down because of the ordinance.

Barbara Ciampini: But had he placed a phone call, come in, where it properly should have come into our office in regards to that, we would have guided Mr. Lizza and guided him in another direction so he wouldn't have been in violation. The ordinance has been in effect since 2005. There have been newspaper articles. We've sat through numerous hearings and you're aware of all of those things. The issue is here and we have been trying to do this as amenable as possible. We never heard from your client. He just did it.

Lou DeRose: We don't want to cut short anything you want to say on the record under the procedures we have if there are persons out there in the public sitting here that want to speak for or against the matters you've asked for, not so much against the challenge to the zoning violation but the other matters, we have to listen to them and we would like to give them that opportunity now.

John Scales: Thank you. If someone can make a copy of the lease.

Barbara Ciampini: We can do that.

Charlotte Kuhns: Is there anyone here tonight that would like to speak for or against it?

Christine Farina: I own the property at 219 Harrison Avenue. I took possession of it in October of 1984. I've been in that neighborhood for the past 24 years. During the time of my living on Harrison Avenue I've had a great deal of experience with absentee landlords and the challenges that they bring to that neighborhood. I believe that the property at 306 Harrison Ave. has never had anyone parking in the rear; people have always parked on the street. The last time the front unit was inhabited was sometime in 2005 and the rear in some time 2006. The people that vacated that were adults in their 30's and 40's and since then the properties have been empty. I would like to say that I am in opposition to giving this Variance simply because the difficulty with the parking in that neighborhood remains a concern, there are four (4) units within that one lot and all of them are parking on the street on Harrison Avenue. I also think that the ordinance was an attempt to try to make the neighborhood welcome students and live as responsible neighbors to each other. Thank you.

Gerri Dorundo: I live at 304 Harrison Ave. To the best that I can see, the house is right next to me, actually there are three students in the back that live there. The people who lived in that apartment before were Leslie and Katie; it was a mother and daughter. Neither were a student. Right next to them was a family and they were not students. I've never seen college students in any of the units until now. I am also in opposition just because if you change it for one person you would have to change it for everybody. There have been articles in the paper about parties and the police have to show up. The kids are pretty good guys I don't have a problem with them. They do get sometimes a little loud.

Lou DeRose: Let me ask you a question. You indicated there were some allegations about parties and the police being called, you're not talking about this property are you?

Gerri Dorundo: No. I've just seen it in the paper.

Lou DeRose: Would you be able to comment on whether or not as a next door neighbor if the police have ever had to come to this house?

Gerri Dorundo: I would say no. They seem like very nice guys.

Lou DeRose: The other thing you said you thought there was three (3) students there?

Gerri Dorundo: Correct. To the best of my knowledge I see a third person there very often and one weekend there was probably about six (6) guys staying there but usually it's just three (3).

Lou DeRose: So it's not the two (2) brothers we've heard about?

Geri Dorundo: No, as far as I can tell I always see a third person who is there quite often. He seems to live there.

Lou DeRose: Is the third person a male?

Geri Dorundo: Yes.

John Scales: There are just two (2) students there, however it's possible they are both running backs and they have some big tough lineman that they bring home to feed every so often.

Lou DeRose: John, are there only two (2) students there?

John Lizza: Yes, and they never cause any trouble.

Lou DeRose: Everyone seems to agree with that. Does anybody else want to speak? Is there anything else that the board would like to inquire of the applicant?

Patsy Iapalucci: How many cars do those two (2) have?

John Lizza: I don't believe they have cars. They walk to school, but if they do park on the street that is their choice.

Lou DeRose: Is it correct John that you don't require the tenants to park in the garage? You just offer it.

John Lizza: It's the same thing, if you have a garage but want to park on the street to carry your groceries then you can do that.

Dee Dorundo: I live at 304 Harrison Avenue. As far as cars, there are cars there all the time and I think they've even been ticketed. I am opposed to this, I've lived there since 1987 and really the property was always in bad shape. I don't know if you guys care about that or not. Whenever they passed the student home ordinance they decided to start to fix up the properties and I just feel that it's, it's good because they are fixing up the properties but I don't want to live near a unit where there could be 8 students living there at one time because they do make noise. I've been woken up several of times in the middle of the night and I don't call the Police but maybe I need to for the record. I am opposed to it and I feel if it's passed then everybody can. Thank You.

Lou DeRose: For the record I now have the residential lease agreement dated January 23<sup>rd</sup>, 2008 between Mr. and Mrs. Lizza and the two Mr. Ackrams and we will admit that for the record.

Barbara Ciampini: Somebody mentioned about Police calls and you may have seen the Police Chief come in here before we got started. That's because I asked him for that information. For the record there was a traffic incident at this property in September 2005 and some hazardous condition occurred in April of 2006 and an illegal parking problem in June of 2007 and some other non criminal activity that occurred in January of 2005.

Lou DeRose: If the board is ready to make a decision on the matter, the matter before you is a request for a Special Exception to the ordinance that would allow the student house to exist also a request for a Variance really to accomplish the same thing and an appeal of the decision of the Zoning Officer where as she sited them for violating the ordinance. So you have three (3) matters before you and you should make a determination on all three of those as to what your motion might be one way or the other. If I neglected to do this recently let me again caution you that all of you, it doesn't matter who you are, I say this to all the boards and commissions, all of you have an obligation to vote one way or the other either for or against the motion. You cannot abstain unless there is a conflict that you have with the particular applicant in front of you. Just because it might be a tough decision you don't have the luxury of a court that says we're not going to take this appeal. You must handle the appeal and we must vote on it one way or the other.

Anita Simpson: We're not really entering into discussion as to whether or not it's constitutional or any of that because the ordinance is the ordinance and we follow the law. So it's not like we can sit up here and listen to constitutional talk and ask for any kind of change in that matter.

Barbara Ciampini: And for those of you who are not aware. Dr. Kelly appeared before us several months ago and did appeal your decision. So we do have a case in litigation. So you're asking for three (3) motions?

Lou DeRose: You can make them all in one. You just have to cover all three of them.

Patsy Iapalucci: So you can say I'd like to cover all three of these when making a motion? If you say you would decline what their after that would consider for all three (3)?

Lou DeRose: Well Patsy you just can't say it that way. For example, to take your point of view if you wanted to deny the Variance and the Special Exception you would then uphold the decision of the Zoning Officer for sighting them if you want to go the other way just reverse what I just said. Let me say just one other think in case someone was thinking about it. We have a situation here where Mr. Lizza has indicated that the students are in there for another seven (7) months and then their gone. If it occurred to any of you, gee if we could just fix this for seven

months wouldn't that be nice, unfortunately the granting of a Special Exception or the Variance doesn't do that. That runs with the land so once you make the determination that you want to grant the Variance or grant the Special Exception that property holds that grant for as long as it's being used in this fashion.

John Scales: You could table the matter for the remaining term of the lease?

Lou DeRose: If the board would consider deferring the determination to make an exception, a special exception that would require the property owner, the applicant to also weigh in the statutory rights he has in regard to us making a decision. So that is another possibility if the board wanted to consider it.

Anita Simpson: I'm sorry can you repeat that?

Lou DeRose: If the board wanted to try and fix the problem by deferring a decision on any of the three items here tonight, that motion would not be affected without Mr. Lizza's waving their statutory rights to certain time frames we have in making a decision of the matter before us. So they would have to state on the record if you want to delay this until January or until May they would have to say, look, we're waving any rights for you to make that decision within the time frame that the statutes gives us. We're under some constraints too to make a determination about the matter before us.

Anita Simpson: Let's have a couple minutes here off the record.

Patsy Iapalucci: Are we ready?

Lou DeRose: You can talk among yourselves, we can take a recess.

Patsy Iapalucci: Why do we have to? I think we should just make the decision now. I'm all for it for making the decision right now.

Marilyn Crimboli: I'm okay with that.

Anita Simpson: Then you make the motion then.

Patsy Iapalucci: I make the motion to deny the Variance and the Special Exception and uphold the decision of the Zoning Officer based on the 500 foot distance.

Lou DeRose: Is your motion to deny both the Variance and the Special Exception and uphold the decision of the Zoning Officer?

Patsy Iapalucci: Yes.

Marilyn Crimboli: I second the motion.

VOTE:

Marilyn Crimboli	Yes
Anita Simpson	Yes
Mary Clymer	Yes
Patsy Iapalucci	Yes
Charlotte Kuhns	Yes

All were in favor.

John Scales: We would like to thank you for your consideration, it's a difficult problem. Will we be getting a formal copy of the decision?

Barbara Ciampini: Yes you will.

John Scales: Also we need a copy of the entire transcript.

Barbara Ciampini: Yes you will.

Charlotte Kuhns: Within thirty (30) days of the date of the decision by this Board, this decision may be appealed to the Court of Common Pleas of Westmoreland County. It is important that you understand that the person(s) requesting action may take an appeal if the decision of this Board is against him, but those opposed to his or her request may also take an appeal within the thirty (30) day period. If an action of this Board results in an approval of the request or an individual no work may proceed on the property until the thirty (30) day appeal period has expired. Any person wanting a copy of this decision please leave your name and address with the Secretary.

Anita Simpson: I make a motion to adjourn.

Marilyn Crimboli: I second the motion.

Meeting adjourned at 5:15 PM