

HEIDELBERG TOWNSHIP ZONING HEARING BOARD
York County, Pennsylvania

NOTICE OF DECISION

NAME OF APPLICANT: HERBERT H. STERNER

ADDRESS: P.O. BOX 7791, YORK, PA 17404

APPLICATION NO. 99-01

REASON FOR APPLICATION: Special Exception - Club room and grounds

LOCATION OF PROPERTY: Southeast corner of Menges Mill Rd. & Colonial Rd.

ZONING DISTRICT: Agricultural

Notice is hereby given that the Heidelberg Township Zoning Hearing Board conducted hearings on February 23, 1999, and March 24, 1999, on the above application, and after giving due consideration to all of the facts, the Zoning Hearing Board has made the following decision:

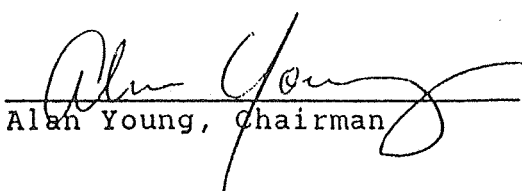
Special Exception DENIED for the following reasons:

1. Applicant has failed to demonstrate that the activity to be engaged in is a club rather than a commercial use.
2. Activity to be engaged in is a nuisance as defined by statute and is prohibited by Section 605(c) of the Zoning Ordinance.
3. Applicant has failed to provide adequate information for the Board to determine whether the application meets the general standards for a special exception set forth in Section 503.6 of the Zoning Ordinance.

Any construction or use carried out in violation of the decision, or in violation of any of the conditions or safeguards which may be attached thereto, shall be considered a violation of the Heidelberg Township Zoning Ordinance, subject to the penalties provided therein.

April 27, 1999

Date of Notice


Alan Young, Chairman

HAND DELIVERED

EXHIBIT "A"

HEIDELBERG TOWNSHIP ZONING HEARING BOARD

APPLICATION NO. 99-01 OF HERBERT H. STERNER
FOR SPECIAL EXCEPTION

This matter is presently before the Zoning Hearing Board of Heidelberg Township, York County, Pennsylvania, and was heard on February 23 and March 24, 1999, at 7:00 P.M. on both evenings.

FINDINGS OF FACT

1. The Applicant is Herbert H. Sterner of P.O. Box 7791, York, PA 17404.
2. The Applicant is the owner of a tract of land consisting of approximately 41 acres with various improvements, located on the southeast side of the intersection of Menges Mill Road and Colonial Valley Road in an Agricultural zoning district.
3. The Hearing in this matter was properly advertised and notice given to interested parties and posted on the property in accordance with the provisions of the Zoning Ordinance.
4. Those present at the Hearing were:

Alan Young, Chairman
Marie Hawk, Member
Anje Lybarger, Member
William G. Baughman, Esq., Solicitor
Judy Greenholt, stenographer
Andy Richardson, Heidelberg Township Permit Officer
Herbert H. Sterner, Applicant (February 23, only)
John H. Mooney, Esq., for the Applicant
Glenn C. Vaughn, Esq., for the Applicant
Peter D. Solymos, Esq., for Heidelberg Township
Steven McKonly, Esq., for Heidelberg Township
Tammy Smith
Paul Van Noord
Timothy Roth
Christopher Norris

Sue Moul
Mearl Riley
Missy Rohrbaugh

Numerous other individuals also attended, who are identified on the formal appearance sheets that will be made a part of the record in this matter.

5. The Applicant's residence is located on the subject property, along with a barn and various outbuildings. In 1991 or thereabouts, the Applicant constructed a large addition to his residence to be used in conjunction with what has been described as "The Farm Travel Club". The Applicant now seeks a Special Exception to operate The Farm Travel Club in this addition.
6. The uses "club room, club grounds, or meeting hall" are permitted in the Agricultural Zoning District by Special Exception.
7. The Farm Travel Club has been in operation for at least seven years, but the Applicant did not seek a Special Exception for its operation in the Agricultural Zoning District until after having been challenged by the Township Permit Officer in 1997.
8. The precise size and nature of the addition is unknown because the applicant did not provide a scale drawing of the addition as required by the Application for Zoning Hearing. He did provide testimony describing part of the addition. It is clear that the addition includes an outdoor pool and patio, a volleyball court, and an indoor dining room and ballroom. The addition contains a second floor, as to which no details were provided other than to state that it included five bedrooms. There was insufficient evidence for the Board to compare the size of the addition to the size of the original residence.
9. The Applicant did not obtain a building permit for the addition, and there are no building plans on file with the Township. The Applicant did not obtain a "use certificate" or

“occupancy permit” for the addition when it was constructed.

10. The subject property is served by an on-lot septic system. There was no testimony presented as to the size and design of the system. The Applicant testified that he did have the system inspected at some time prior to the hearing and that no malfunctions were evident at that time.
11. The Applicant testified that The Farm Travel Club consists of between 300 and 3000 members who come to the subject property on weekends for social gatherings that include meals and music. The precise activities were not described by the Applicant, but he did state that “adult entertainment” was provided. The Applicant stated that the organization had by-laws, but he was unable to produce them. He was unable to state whether the club membership had annual meetings, and failed or refused to identify any of the officers or directors of the club. He testified that the attendance at one function was forty or sixty people, but he was evasive when asked about attendance at other events.
12. From 1991 to 1998, The Farm Travel Club also provided on-site retail sales of lingerie, on site camper hook-ups, and overnight accommodations for guests. The Applicant testified that these activities stopped in January of 1999, within a month after he applied for this Special Exception. The Board specifically finds that the Applicant’s testimony is not credible in this regard.
13. The Farm Travel Club charges members an annual fee of \$25 per single male, \$10 per single female, and \$20 per couple. The Applicant described these payments as “membership dues”. The club newsletter (Township Exhibit 4) describes these payments as a membership fee “for those of you that did request a newsletter”. A separate letter (Township Exhibit 3) identifies these payments as a membership fee that is charged “To maintain our private club

status". The newsletter does not state that the activities promoted therein are limited to club members.

14. The Farm Travel Club advertises in a monthly publication called "Pennsylvania Connection", copies of which were introduced as Township Exhibits 11 and 12. This publication is sold to the public. The advertisements in this publication do not indicate that the services advertised are limited to members.
15. The Farm Travel Club is not organized as a corporation, partnership, or association, but is a "sole proprietorship" owned by the Applicant. Operational and management decisions are made by the Applicant or by persons appointed by the Applicant. The only qualification for "membership" identified by the Applicant was his personal approval.
16. The services advertised in the newsletter and in the "Pennsylvania Connection" carry various fees and charges. The Applicant testified that these were treated as "voluntary donations". The Board specifically finds that this testimony is not credible given the context in which the fees and charges are described in the various advertisements.
17. The "Pennsylvania Connection" is a magazine dedicated to the "hedonistic" life style. It contains numerous "personal ads" from individuals and couples seeking sex partners. Many ads are accompanied by photographs that many would find objectionable if not obscene. A large number of the photographs depict male and female genitalia in various stages of sexual arousal. The articles describe the hedonistic life style as involving unfettered sexual activity, usually extra-marital, and frequently in group settings. They also use the term "swinging" as a synonym for hedonism.
18. Based on the testimony presented and the context of the various ads for The Farm Travel Club, the Board specifically finds that the major purpose of The Farm Travel Club is to

provide a setting in which groups of individuals can engage in unrestrained sexual activity, including dressing in sexually provocative costumes, engaging in sexually provocative games, and participating in extra-marital sexual intercourse, including explicit sexual activities with multiple partners, albeit of a consensual nature.

19. Most of the activities of The Farm Travel Club are conducted indoors or in the pool and volleyball areas, which are surrounded by a vision blocking fence.
20. Parking for the Applicant's guests is provided off Colonial Valley Rd. in a parking area that is shared with various other activities conducted on adjacent lands owned by the Applicant. There is no evidence that there is any formal easement or other agreement to provide for continuation of this arrangement if the Applicant should sell one of the two parcels, although it would appear that a portion of the shared parking area is located on the tract that is the subject of this Application.
21. The addition does not have a fire suppression system and has not been inspected by the Department of Labor and Industry, nor has it been approved by any state or local agency as a place of public accommodation.
22. The Applicant's property is bordered on the west by the village of Menges Mills, which is a residential area consisting of older homes on small lots. This Board finds that the proposed use of the Applicant's land as a club room for up to 3000 members would not be in harmony with the orderly and appropriate development of this district.
23. The Board is unable to make a finding as to the adequacy of public facilities for this use, since the existing facilities were not described, specifically with regard to water supply and sewage treatment. The Board notes that the property is not served by a public sewage system, so there are serious questions about the design of the on-lot system being used.

These questions were not answered by the Applicant.

24. The Board finds that the operations to date have not had an adverse effect on the use and value of adjacent land and buildings, primarily because activities not conducted outside the privacy fence that has been erected.
25. The Board finds that the operations to date have not created traffic or parking problems and sees no reason to believe that this situation would change in the future.
26. The Board finds that the proposed use constitutes a public or private nuisance based on the provisions of 68 P.S. Section 467.

DISCUSSION

Evidentiary matters. Two letters were offered in evidence at the hearings in this matter. One was from Garber's Mennonite Church opposing the application and the other was from a photographer who appears to have been involved in the "caped lady" incident. The Board has ruled both letters inadmissible because both involve serious hearsay issues and neither is germane to the Board's decision. The letter from the church group was written prior to any testimony being produced and did not, therefore, address the testimony that was heard by the Board. The Board considered the "caped lady" incident to be isolated and not indicative of the overall activities of the Applicant or his guests because most of the activities of the group appear to be conducted either indoors or within the fenced area.

The Farm Travel Club is not a "club" for purposes of the Zoning Ordinance. The Applicant seeks a Special Exception to authorize the continued operation of The Farm Travel Club as a "club" as that term is used in Section 605 of the Heidelberg Township Zoning Ordinance. The term "club" is not defined in the ordinance, and the case law is less than helpful in that regard. It is clear from prior cases, however, that the nature of the use, as opposed to its intensity, is important

in determining whether a specific use is a "club" or a "business". See Limley v. Zoning Hearing Board of Port Vue Borough, 533 Pa. 340, 625 A.2d 54 (1993). The Applicant has the burden of proving that his proposed use meets the requirements of Section 605.

In the present case, the use of the addition since 1991 has been in the nature of a commercial enterprise. Specific prices have been set for specific services, which have been advertised to the general public. Membership fees are charged, but the advertisements do not limit services to members who have paid the fee. One publication refers to the fee as a subscription for the newsletter and another candidly describes the fee as the *sine qua non* for maintaining status as a private club. In other words, the Applicant appears to admit that, but for charging this fee, his operation would be a commercial enterprise.

There is no clear line between a club and a commercial enterprise. The Limley case is instructive because it involved the efforts of the court to distinguish between a private club that provided meals and entertainment and a public restaurant that provided meals and entertainment. The court concluded in that case that there was no substantial distinction in the use.

The Applicant in this case argues that his use is not unlike the VFW or the Eagles, Elks, Odd Fellows, etc., in that those organizations are clubs that serve food and alcohol and provide entertainment for their members. This argument is not wholly without merit, but the Board has rejected it after careful consideration. In the present case, it is apparent from the intensity of the Applicant's operation and his exclusive maintenance of control over its activities that the primary purpose of this organization is commercial and that the use of the word "club" to describe it is a mere fiction in which the Applicant engages for the purpose of attempting to find a niche in the Zoning Ordinance into which he can fit.

Even if this were not the case, however, the Board must consider whether the proposed use

would "fit in" with the neighborhood. Again, the case of **Limley** is instructive. In that case, the court held that the former private club was entitled to grow into a substantial commercial enterprise under the theory of natural expansion. *See also* Whitpain Township v. Whitpain Township Zoning Hearing Board and Wings Associates, 121 Pa. Commonwealth Ct. 418, 550 A.2d 1355 (1988). This Board must consider the future effect of natural expansion if this use is approved. The Applicant has refused to tell this Board how large is membership is at present, but the number 3000 does appear in the newsletter. Under the theory of natural expansion, this alleged "club" could someday number in the tens of thousands and a substantial portion of the 41 acres would need to be devoted to the club's activities. It is obvious that such a large operation could not fit in with the rural residential neighborhood in which it is located.

The Applicant has failed to meet his burden of coming forward with evidence. Assuming for the sake of argument that the Applicant had established that his operation fit the definition of a "club", this Board would still be required to reject the application because of the Applicant's failure to provide adequate information about the physical facilities that he is providing, and his refusal to permit inspection of the premises by the Township Zoning Officer. The Board cannot determine whether the sanitary facilities are sufficient for even the forty to sixty people that the Applicant claims come to the various events, let alone the 300 or 3000 members that the club may have. Similarly, the Board cannot determine whether the Township can provide adequate fire protection for the structure. Therefore, the Board is unable to make the findings necessary for approval of this Application.

The proposed facility a nuisance as defined by statute. Finally, the Board must consider the requirements of Section 605(c) of the Zoning Ordinance. That section prohibits any use that constitutes a public or private nuisance. While the Applicant's testimony as to the activities of the

club was vague, there is ample circumstantial evidence in this record to support the Board's findings that the club activities include extra-marital sex and overt sexual behavior. The legislature of the Commonwealth of Pennsylvania has determined that any place used for purposes of fornication or lewdness is nuisance, *per se*. Act of June 23, 1931, P.L. 1178, 68 P.S. Section 467. The terms "fornication" and "lewdness" are not defined in the statute, but the dictionary definition of "fornication" includes extra-marital sex and the definition of "lewdness" includes overt sexual behavior. The conduct that takes place at The Farm Travel Club clearly satisfies these definitions of the terms "fornication" and "lewdness". Therefore, the proposed fits the statutory definition of a nuisance and may not be approved under Section 605(c).

CONCLUSIONS OF LAW

1. The Applicant is properly before this Board seeking a Special Exception.
2. The Applicant has not demonstrated that his proposed use is a "club room, club grounds, or meeting hall".
3. The Applicant's proposed use is a commercial activity rather than a private club.
4. The Applicant has failed to provide sufficient information for the Board to make necessary findings under the Zoning Ordinance, particularly with respect to the sewage treatment and fire safety.
5. The proposed use is a nuisance by operation of 68 P.S. Section 467, and may not be approved pursuant to Section 605(c) of the Zoning Ordinance.
6. The application should be DENIED.

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May 7, 1999

GLENN VAUGHN, ESQ.
22 S. BEAVER ST.
YORK, PA. 17401

RE: Heidelberg Township Zoning Hearing Board
Application No. 99-01 of Herbert Sterner

Dear Mr. Vaughn:

Enclosed please find the Findings of Fact and Conclusions of Law issued by the Heidelberg Township Zoning Hearing Board with reference to its decision in this matter.

Sincerely,
Heidelberg Township Zoning Hearing Board



William G. Baughman, Esq., Solicitor

WGB/hs

enc: 9 pages

cc: Norman Markle
Peter Solymos, Esq.

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March 2, 1999

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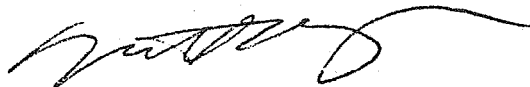
RE: Heidelberg Township ZHB
Application of Herbert Sterner
Hearing of Feb. 23, 1999

Gentlemen:

As announced at the conclusion of testimony on February 23, 1999, the hearing in this matter has been continued until Wednesday, March 24, 1999, commencing promptly at 7:00 P.M. at the Porter's Fire Hall. Mr. Solymos will begin to present testimony in opposition to the application.

You have both requested a transcript of the February 23 hearing. I suggest that you contact the reporter, Judy Greenholt, to determine the cost and arrange to split it between you. She can be reached at the office of the Court Administrator, 771-9234. I am sending her a copy of this letter so that she will expect your calls.

Sincerely,



William G. Baughman, Solicitor
Heidelberg Twp. Zoning Hearing Board

WGB/hs
cc: Norma Markle, Judy Greenholt