# *Adams County*
# Legal Journal

Vol. 52 | September 10, 2010 | No. 17, pp. 106-117


## IN THIS ISSUE


FAISON GETTYSBURG CROSSING VS.
STRABAN ZHB ET AL

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers should send subscriptions directly to the business office. Postmaster: Send address changes to Adams County Legal Journal, 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313.

Business Office – 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313. Telephone: (717) 334-1553

Periodicals postage paid at Gettysburg, PA 17325.



CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on July 28, 2010, the petition of Sara Elizabeth Virden-Hines, nka Sara Elizabeth Hines, was filed in the the Court of Common Pleas of Adams County, Pennsylvania, by her parents praying for a decree to change her name to Sara Elizabeth Hines.

The court has fixed September 10, 2010 at 8:30am in Court Room 4 of the Adams County Court House, 111 Baltimore Street, Gettysburg, PA 17325, as the time and place for the hearing of the Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the petitioner's parents should not be granted.

Ami C. Virden and Brian R. Hines
Parents of Petitioner

9/10

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on July 28, 2010, the petition of Benjamin Jarod Virden-Hines, nka Benjamin Jarod Hines, was filed in the the Court of Common Pleas of Adams County, Pennsylvania, by her parents praying for a decree to change his name to Benjamin Jarod Hines.

The court has fixed September 10, 2010 at 8:30am in Court Room 4 of the Adams County Court House, 111 Baltimore Street, Gettysburg, PA 17325, as the time and place for the hearing of the Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the petitioner's parents should not be granted.

Ami C. Virden and Brian R. Hines
Parents of Petitioner

9/10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Names Act of 1982, 54 Pa.C.S. Section 301 et seq., that an application for registration of a fictitious name was filed in the office of the Secretary of Commonwealth of Pennsylvania at Harrisburg, Pennsylvania for the conduct of business in Pennsylvania, under the assumed or fictitious name, style or designation of: LEADING LAWNS with its principal place of business at: 1665 Route 194 North, East Berlin, PA 17316. The name of the persons owning or interested in said business are: Erik Waltz, 1665 Route 194 North, East Berlin, PA 17316. The certificate was filed on July 16th, 2010.

9/10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Names Act of 1982, 54 Pa.C.S. Section 301 et seq., that an application for registration of a fictitious name was filed in the office of the Secretary of Commonwealth of Pennsylvania at Harrisburg, Pennsylvania for the conduct of business in Pennsylvania, under the assumed or fictitious name, style or designation of: BEAR MOUNTAIN STICKERS with its principal place of business at: 53 Maryland Ave., Aspers, PA 17304. The name of the persons owning or interested in said business are: Heath H. Roney, 53 Maryland Ave., Aspers, PA 17304. The certificate was filed on May 20th, 2010.

9/10

# FAISON GETTYSBURG CROSSING VS. STRABAN ZHB ET AL

1. The standard of review of this Court is well-settled. Where the Court has taken no additional evidence, the sole consideration is whether the zoning hearing board abused its discretion or committed an error of law.

2. In determining whether an error of law has been committed, appellate authority offers clear guidance. It is fundamental that restrictions imposed by zoning ordinances are in degradation of the common law and must be strictly construed.

3. It is undeniable that when construing ambiguous zoning ordinances, courts must afford permitted uses the broadest interpretation so that a land owner may have the benefit of the least restrictive use of his or her land.

4. Courts ordinarily grant deference to the zoning board's understanding of its own ordinance because, as a general matter, governmental agencies are entitled to "great weight" in their interpretation of legislation they are charged to enforce.

5. Appellate authority recognizes the use of dictionaries as a source to determine the common and approved usage of a term.

6. Pennsylvania courts have long held that a municipality has no duty to ensure that its ordinance provides for shopping centers as a discrete use.

7. A shopping center constitutes simply a particular configuration of commercial uses, rather than a separate land use category in itself.

8. While it is true that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great deference and weight, that deference is not unlimited as an appellate court has the obligation to act where the agency's interpretation is plainly erroneous.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 09-S-844, FAISON GETTYSBURG CROSSING, LLC VS. STRABAN TOWNSHIP ZONING HEARING BOARD AND STRABAN TOWNSHIP

Bernard A. Yannetti, Jr., Esq., and George W. Broseman, Esq., for Appellant
Clayton R. Wilcox, Esq., for Zoning Hearing Board
Walton V. Davis, Esq., for Township

George, J., February 1, 2010

## OPINION

Faison Gettysburg Crossing, LLC ("Faison") appeals the decision of the Straban Township Zoning Hearing Board ("Board") denying Faison's application for approval of a shopping center as a permitted use by special exception in Straban Township's Economic Commercial Development ("EC-1") Zoning District. The appeal presents a number of legal issues centering on three aspects of the proposed plan: (1) access to the shopping center; (2) access to a proposed retail warehouse outlet/wholesale facility within the shopping

center complex; and (3) compliance with Straban Township Ordinance ("Ordinance") requirements for drive-thru facilities for a proposed building within the shopping center. Resolution of the issues largely depends upon Ordinance interpretation as the factual background is not in great dispute.

Faison proposes to build a shopping center on a 72-acre tract of land ("Property") located at the U.S. Route 15/30 interchange in Straban Township. The Property is bounded by Shealer Road to the west, U.S. Route 15 to the east, U.S. Route 30 to the south, and railroad tracks to the north. Both U.S. Route 15 and Route 30 are principal arterial highways as classified by Straban Township's Comprehensive Plan. Shealer Road classifies as a "rural minor collector" street under the plan.

The Property is located in the EC-1 District as established by the Ordinance. Shopping centers are a permitted use by special exception in the EC-1 District as the Ordinance recognizes the existing mixture of uses currently along the Route 30 corridor and seeks to provide for the continuation of a similar mixture including the development of shopping centers. Township Code ("Code"), Section 140-12(a). Faison's plan envisions 13 separate structures including a "retail warehouse outlet/wholesale store" and a bank with drive-thru facilities. The main access to the site is proposed from an intersection to be developed at the current junction of Shealer Road and Hull Drive. Hull Drive currently accesses a Wal-Mart Center on the west side of Shealer Road. The intersection would be controlled by a traffic light providing both ingress and egress to the Property directly opposite from the Hull Drive entrance to the Wal-Mart complex. The plan further envisions a separate 'entrance only' access to the Property to the south of Hull Drive but north of the intersection of Shealer Road and U.S. Route 30. A separate 'exit only' drive is proposed to the northern side of Hull Drive. The exit would permit a right turn only onto Shealer Road.

The standard of review of this Court is well-settled. Where the Court has taken no additional evidence, the sole consideration is whether the zoning hearing board abused its discretion or committed an error of law. *Twp. of Exeter v. Zoning Hearing Bd.*, 962 A.2d 653, 659 (Pa. 2009). An abuse of discretion occurs only where the board's findings are not supported by substantial evidence in the record.

Substantial evidence is that relevant evidence which a reasonable mind would accept as adequate to support the conclusion reached. *Id.* As mentioned, the factual background is not in dispute. Accordingly, this Court must determine whether the Board has committed an error of law in applying the Ordinance to the facts.

In determining whether an error of law has been committed, appellate authority offers clear guidance. It is fundamental that restrictions imposed by zoning ordinances are in degradation of the common law and must be strictly construed. *Fidler v. Zoning Bd. of Adjustment*, 182 A.2d 692, 695 (Pa. 1962). The permissive widest use of the land is the rule, and not the exception, unless specifically restrained in a valid and reasonable exercise of a municipality's police power. *Id.* Thus, it is undeniable that when construing ambiguous zoning ordinances, courts must afford permitted uses the broadest interpretation so that a land owner may have the benefit of the least restrictive use of his or her land. *Hafner v. Zoning Hearing Bd. of Allen Twp.*, 974 A.2d 1204, 1210 (Pa. Cmwlth. 2009). However, an overly broad interpretation of an ordinance in favor of the land owner is unwarranted where the words of the zoning ordinance are clear and free from any ambiguity. *City of Hope v. Sadsbury Twp. Zoning Hearing Bd.*, 890 A.2d 1137, 1143 (Pa. Cmwlth. 2006). Importantly, in weighing the meaning of an ordinance, a zoning hearing board's interpretation is entitled to great weight and deference. *Id.* Courts ordinarily grant deference to the zoning board's understanding of its own ordinance because, as a general matter, governmental agencies are entitled to "great weight" in their interpretation of legislation they are charged to enforce. *Broussard v. Zoning Bd. of Adjustment of Pittsburgh*, 907 A.2d 494 (Pa. 2006).

Although the Statutory Construction Act, 1 Pa. C.S. § 1501-1991, does not expressly apply to zoning ordinances, the principles contained therein are followed in construing a local ordinance. *Patricca v. Zoning Bd. of Adjustment*, 590 A.2d 744, 747 (Pa. 1991). Those principles include the instruction that words and phrases of the ordinance are to be construed according to their common usage in a sensible manner. *Steely v. Richland Twp.*, 875 A.2d 409, 414 (Pa. Cmwlth. 2005). In interpreting provisions of a zoning ordinance, unidentified terms must be given their plain, ordinary meaning, 1 Pa. C.S. § 1903(a), and any doubt must be resolved in favor of the land owner and the least restrictive use of the land. *Kissell v. Ferguson Twp. Zoning Hearing Bd.*, 729 A.2d 194, 197 (Pa. Cmwlth. 1999).

Appellate authority recognizes the use of dictionaries as a source to determine the common and approved usage of a term. *Fogle v. Malvern Courts, Inc.*, 722 A.2d 680, 682 (Pa. 1999). Courts, however, should not undertake clever semantical exercises when the words of an ordinance are clear as the letter of the ordinance is not to be disregarded in the pretext of pursuing its spirit. *Tobin v. Radner Twp. Bd. of Comm'rs*, 597 A.2d 1258, 1264 (Pa. Cmwlth. 1990).

In their appeal, Faison first argues that the Board erred in concluding that the shopping center plan failed to comply with Ordinance provisions addressing access. The Board determined that Faison's plan contained multiple accesses in violation of the Ordinance, Section 140-19L(5). That section, pertaining specifically to shopping centers, provides:

> (5) Access. One access point is permitted, containing both ingress and egress, having direct or indirect access onto an arterial street as identified in the Straban Township Comprehensive Plan.

Ordinance, Section 140-19L(5). The Ordinance defines "access point" as:

> ACCESS POINT -- One combined entrance/exit point, or one clearly defined entrance point separated from another clearly defined exit point. This term shall not include accessways or driveways that are strictly and clearly limited to use by only emergency vehicles.

Ordinance, Section 140-5.

Faison claims the Board erred in interpreting these provisions as limiting shopping center design to one combined entrance/exit point together with additional entrances only for emergency vehicles. Faison suggests that the language of Section 140-19L(5) is ambiguous at best and, as such, should be interpreted in favor of the land owner. In this regard, they suggest the Board erred by interpreting the language in a restrictive, rather than permissive, fashion in violation of controlling appellate authority. Faison suggests that the language "one access point is permitted" is language of authorization which does not preclude more than one access point to a shopping center complex. Faison further argues that even should the language of Section 140-19L(5) be interpreted to limit the shopping center to one "access point," the express language of the Ordinance makes the

limitation applicable only to combined entrance/exit points. Faison argues that any other interpretation renders the words "having ingress and egress" superfluous.

A reading of the Board's decision clearly indicates that the Board interpreted the relevant subsection as one of restriction intended to impose limitations on shopping center design. In essence, the Board concluded that the Ordinance **prohibits** any more than one combined entrance/exit to a shopping center. Without great explanation, the Board determined that "the words used…by any fair reading of the Ordinance are words of limitation." Board Decision, Discussion and Additional Factual Findings B(1). Apparently, the Board found no ambiguity in the language of the applicable section.

Certainly, as the Township suggests, an ordinance provision does not become ambiguous simply because a developer claims it to be ambiguous.[1] Nevertheless, it is indisputable that the language in Section 140-19L(5) is much less precise than the language used in the majority of other sections throughout the Ordinance. For instance, when the Ordinance seeks to mandate a requirement or limit a course of action, the Ordinance clearly uses restrictive language. See Section 140-15B(3) (access to buildings in a residential zone **shall** be provided from interior roads; Section 140-17B(3)(b) (overflow parking areas **shall** be accessible **only** from interior driveways for commercial or other recreation uses); Section 140-17A(8) (campgrounds **shall** have vehicular access to an arterial or major collector roadway); Section 140-21A(2)(c) (access **shall** be to a public street with a minimum easement of 20 feet in width). Undoubtedly, the current discussion would be moot if the Ordinance used similar language in the section currently being scrutinized. The clear legislative intent espoused by the Board would be self-apparent had the section simply provided that **only one access point shall be permitted** or that a shopping center **shall have no more than one access point**.

[1] Interestingly, there is support in the record that others, in addition to Faison, have interpreted the language in Section 140-19L(5) differently than the interpretation currently urged by the Township. The record includes a reference to nine review letters from the Township's traffic engineer. Although the correspondence, from inception, appear to thoroughly address all deficiencies in both the traffic study and concept plans, it wasn't until the final correspondence that the issue of access was first raised. One might reasonably conclude that the Township's traffic engineer did not recognize the plan's alleged deficiency related to access points until advised of the same by an unknown third party.

Turning to a dictionary for assistance does little to support the Board's interpretation. Merriam-Webster defines "permit" as to consent to expressly or formally; to give leave; authorize; to make possible; to give an opportunity; allow. Merriam-Webster Online Dictionary, 2009, 23 September 2009 <http://www.merriam-webster.com/dictionary/permitted.>[2] Thus, the literal language of Section 140-19L(5) is that one access point containing both ingress and egress and having direct or indirect access onto an arterial street is allowed. Although it is true that there are instances of common usage of the employed phrase which support the Board's decision, it is equally true, as demonstrated above, that common usage of the language in the Ordinance can be permissive in nature. There are a myriad of circumstances where common usage of the word "permitted" is intended to convey "in addition to" rather than "to the exclusion of" other alternatives. Often tone or inflection are critical to the interpretation. At other times, prefatory words provide guidance. Unfortunately, tone and inflection are not decipherable from the plain print of the Ordinance. Moreover, prefatory language is absent. The interpretation of the subject language is left to the predisposition of the person reading it.

One might question that if the language is not language of limitation, then why is it even included in the Ordinance. More precisely stated, if the Ordinance imposes no limit on the number of access points permissible, why specifically indicate that a single access point is permissible? This argument has legal support as interpreting the Ordinance to contain superfluous language is contrary to appellate authority. *Commonwealth v. McCoy*, 962 A.2d 1160 (Pa. 2009). Nevertheless, it lacks factual merit as the purpose of the language can be found when reading the phrase in context with other provisions of the Ordinance.

Shopping centers are permitted in the EC-1 District as specific exceptions. A special exception is a conditionally permitted use legislatively allowed where specific standards detailed in the zoning ordinance are met. *Mann v. Lower Makefield Twp.*, 634 A.2d 768, 770 (Pa. Cmwlth. 1993). Included among the specific standards for

[2] Similar definitions are found in the American Heritage Dictionary of English Language, 4th Edition, Copyright 2000, and the Collins Essential English Dictionary, 2nd Edition, 2006.

the grant of a special exception under the Straban Ordinance, an applicant must establish that adequate public facilities, including vehicular access, are available to serve the proposed use. Section 140-61E(4). Relying on this standard, it is plausible that opponents of a shopping center project may argue that a single point of access is inadequate. Thus, the language at issue has purpose as specifically evidencing a legislative intent that a single access point, containing both ingress and egress, is an adequate public facility for shopping centers.

As the foregoing discussion indicates, the language of the Ordinance is subject to varying interpretations. As such, the language does not provide adequate notice to the applicant of the requirements which need be met. More importantly, the language permits arbitrary application. Therefore, I conclude that the language is ambiguous.

Having found the language of the Ordinance to be ambiguous, I am compelled by appellate authority to interpret the language in favor of the land owner and the least restrictive use of the land. *Tobin v. Radnor Twp. Bd. of Comm'rs, supra*. As mentioned above, despite having the opportunity to do so, the Township did not draft prohibitory language in the subject section. Nevertheless, the Board arbitrarily supplied this omission through its interpretation contrary to statutory rules of construction. See *Kusza v. Maximonis*, 70 A.2d 329 (Pa. 1950). Accordingly, I find the Board committed an error of law in denying special exception status to the shopping center on the basis of the language contained in Section 140-19L(5).

I note that, with the exception of the access controversy, the plan satisfied all health and safety considerations. Specifically, the Board found that the shopping center is consistent with the purpose and intent of the Ordinance; will not substantially detract from the use or enjoyment of the adjoining or nearby properties; will not substantially change the character of the neighborhood; was supported by adequate public facilities; and will not substantially impair the integrity of the Township's Comprehensive Plan. Additionally, other than the issue related to the literal interpretation of access point under the Ordinance, the Township's engineer did not take issue with the internal traffic flow at the Property and, in fact, conceded that

having only one access point to the Property is not necessarily better than the proposed plan.[3]

Faison's second subject of dispute is whether the Board properly applied Ordinance provisions relating to retail warehouse outlet/wholesale facilities. Specifically, Faison takes issue with the Board's application of Section 140-19K(1) of the Ordinance which requires that a retail warehouse outlet/wholesale facility "shall have direct access to an arterial roadway as designated in the Straban Township Comprehensive Plan." There is no factual dispute as to the lack of direct access from a building within the shopping center complex identified as a BJ's Retail Wholesale Club ("BJ's"). Rather, the dispute rests upon the Board's application of "retail warehouse outlet/wholesale facility" criteria to a single building within a shopping center complex despite the applicant's compliance with the specific criteria set forth in the Ordinance for a "shopping center." More specifically stated, while the Ordinance requires retail outlets to have direct access to an arterial roadway, a shopping center is not required to have such direct access. Faison claims that their plan contains indirect access to an arterial roadway as required by the shopping center provisions of the Ordinance and, therefore, the direct access requirement for retail outlets is superseded.

Initially, I note that Pennsylvania courts have long held that a municipality has no duty to ensure that its ordinance provides for shopping centers as a discrete use. *Sultanik v. Bd. of Supervisors of Worchester Twp.*, 488 A.2d 1197 (Pa. Cmwlth. 1985). In reaching this conclusion, appellate authority recognizes that "a shopping center constitutes simply a particular configuration of commercial uses, rather than a separate land use category in itself." *Id.* at 1205; *East Marlboro Twp. v. Jensen*, 590 A.2d 1321, 1323 (Pa. Cmwlth. 1991). It logically follows, therefore, that where a shopping center is not identified by the ordinance as a separate land use category, the individual ordinance requirements on each of the particular uses within the shopping center would be applicable. This line of cases, however, does not speak to the current instance where the ordinance **does** specifically sets forth requirements for a shopping center as a

[3] Having found that the Board committed an error of law in denying the grant of a special exception based upon the language of Section 140-19L(5), it is not necessary to address Faison's issues concerning the action of the Board in denying a dimensional variance or de minimis variance from this Ordinance provision.

separate land use category. Not surprisingly, a diligent search has failed to uncover any appellate authority on this specific issue.

In reaching their decision, the Board applied the specific access standards applicable to both a shopping center, Ordinance, Section 140-19L, and retail warehouse outlet/wholesale facilities, Section 140-19K. I find the Board's application of both standards to Faison's plan to be internally inconsistent with the Ordinance and an error of law.

As previously mentioned, the Ordinance defines both "shopping centers" and "retail warehouse outlet" thereby treating each as a principal use. A "principal use" is defined by the Ordinance to be "the specific primary purpose for which a lot or site is used." Ordinance, Section 140-5. Nevertheless, and despite an Ordinance provision prohibiting more than one principal use on a single tract, see Section 140-6C(3), the Board treats the Faison plan as having two principal uses by applying two distinct use regulations to the single tract. Such an inherent contradictory construction of the ordinance clearly violates appellate instruction to give effect to all provisions of a zoning ordinance. *Tobin v. Radnor Twp. Bd. of Comm'rs*, 597 A.2d 1258 (Pa. Cmwlth. 1991).

This inherent contradiction presents more than a theoretical legal issue but rather has practical implications. The Board, in its interpretation, applies not only Ordinance standards for a shopping center but also the separate standards related to the specific commercial establishments comprising the shopping center. Therefore, a consistent interpretation would require each commercial use within the shopping center to comply with the respective individual use requirements. For an example of the practical nightmares stemming from such an interpretation, one need look no further than the general Ordinance provisions governing off-street parking. Section 140-46. That section provides a minimum number of parking spaces for a shopping center to be 4.5 spaces for every 1,000 square feet of gross floor area. Yet, a retail store requires one space for each 200 square feet of gross floor area plus one space for each employee on the largest shift. A 1,000 square foot retail store within a shopping center would therefore require at least five spaces (four plus at least one employee). A sit-down restaurant requires one space for every four seats of the maximum design capacity plus one space for every two employees on the largest shift. A quick fast food restaurant requires

one space for every two seats of design capacity or one space for every 50 square feet of gross floor area, whichever is larger, plus one space for every two employees on the largest shift. Under the Board's interpretation, the shopping center must not only meet the specific parking requirements for a shopping center but also for each individual use within the shopping center. As the criteria can be conflicting, an applicant can only guess as to which is controlling as the Ordinance provides no guidance on how to apply the contradictory requirements. The result is the arbitrary application of standards in some instances but not others. Such a result is clearly impermissible.

As proof of the arbitrary manner in which the Board applied the specific requirements for each primary use, one only look to the Board's application of the specific parking requirements instantly. Despite the plan's failure to identify the uses for each of the individual commercial establishments comprising the shopping center, Board Finding of Fact No. 11, the Board concluded that the applicant met the schedule of required parking spaces. Finding of Fact No. 30. If the Board was consistent in interpreting each individual commercial use within the shopping center as being a primary use subject to specific requirements, one can only wonder how specific parking requirements were met for unknown primary uses. The answer is that the Board did not do such an individual calculation but rather applied only parking criteria related to the primary use of "shopping center." Thus, in the instance of considering parking requirements, the Board applied specific requirements related to the primary use of "shopping center" yet, in regard to access requirements, the Board chose to apply specific requirements related to both the primary use of "shopping center" and the primary use of an establishment within the confines of the shopping center complex (i.e. "retail warehouse outlet/wholesale facility"). The inconsistency in the Board's application of Ordinance provisions is self-apparent.[4]

[4]Other examples where the application of the specific requirements for "shopping center" with the requirements for other "primary uses" within the shopping center will result in contradiction can be found in the provisions related to lot area, coverage and dimensional requirements. See Table 306-2. A cursory review of those requirements indicates that setback requirements for a shopping center are different to those which may be applicable to each individual commercial use comprising the shopping center.

As the Ordinance permits inconsistent interpretation, it is ambiguous as to which specific requirements an applicant must meet. Nevertheless, the Board, once again, has interpreted the Ordinance in the most restrictive fashion to require that both primary use access requirements be satisfied. The Rules of Statutory Construction demand otherwise. As previously mentioned, an ambiguity in the zoning ordinance must be resolved in favor of the land owner. *Cope v. Zoning Hearing Bd. of South Whitehall Twp.*, 578 A.2d 1002 (Pa. Cmwlth. 1990). When interpreting a zoning ordinance provision governing permitted uses, we must give the land owner the benefit of the interpretation least restrictive of his use and enjoyment of the property. *Laird v. City of McKeesport*, 489 A.2d 942 (Pa. Cmwlth. 1985). While it is true that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great deference and weight, *Arter v. Philadelphia Zoning Hearing Bd. of Adjustment*, 916 A.2d 1222 (Pa. Cmwlth. 2007), that deference is not unlimited as an appellate court has the obligation to act where the agency's interpretation is plainly erroneous. *Miller's Smorgasbord v. Dep't. of Transp.*, 590 A.2d 854, 856 (Pa. Cmwlth. 1991).

Notably, the Township had no obligation to provide appropriate space for shopping centers in its zoning districts. Rather, the municipality is free to hold the particular configuration of commercial use comprising the shopping center to the standards applicable to each individual use. *East Marlborough Twp. v. Jensen*, 590 A.2d 1321 (Pa. Cmwlth. 1991). The Township, however, in enacting its Zoning Ordinance, chose to designate shopping centers as a separate use with distinctive requirements. In doing so, had they chose to require that a shopping center comply with each of the individual regulations for the commercial uses comprising that shopping center, they could have expressly done so. However, they did not. The law does not now permit application of the requirements of several primary uses where the Ordinance has identified the commercial establishments comprising the shopping center as a single primary use.[5] As the

[5] The Ordinance defines shopping center as: "A group of commercial establishments planned, constructed and managed as a total entity, with joint customer and employee parking provided on site; provisions for goods delivery separated from customer access; aesthetic considerations and protection from the elements; and landscaping and signage in accordance with an approved plan."

Board committed an error of law in applying dimensional requirements for a retail warehouse use, when the proposed primary use is a shopping center as defined under the Ordinance, the Board committed an error of law.

Faison's final challenge relates to the Board's denial of a special exception for a drive-thru facility within the boundaries of the shopping center. The Board determined Faison failed to meet the specific criteria for the specific use of "businesses with drive-thru facilities" as designated under the Ordinance. Once again, the Board applies specific use criteria for a primary use, as designated by the Ordinance, in addition to the specific requirements for the primary use of "shopping center."[6] For the reasons set forth above, this was an error.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 1st day of February, 2010, the appeal of Faison Gettysburg Crossing, LLC is granted. The decision of the Straban Township Zoning Hearing Board is overruled. This matter is remanded to the Zoning Hearing Board for approval of Faison's application for special exception pursuant to the submitted plans.

[6]Had the Ordinance included provisions related to drive-thru facilities as a general requirement applicable to all uses, resolution of the current issue would be much different. Currently, however, the Ordinance identifies "businesses with drive-thru facilities" as a separate primary use. Section 140-19B.

## ESTATE NOTICES

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

### FIRST PUBLICATION

ESTATE OF BETTY JANE BOWERS, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executor: Hershey M. Bowers, Jr., 7275 Angle Road, Chambersburg, PA 17202

Attorney: Richard K. Hoskinson, Esq., Hoskinson & Wenger, 147 East Washington Street, Chambersburg, PA 17201

ESTATE OF SHERYL CRUIKSHANK a/k/a SHERYL CRUIKSHANK POLLARD, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administratrix, c.t.a.: Cheryl Lynn Winter, 2477 Fridinger Mill Road, Westminster, MD 21157-3257

Attorney: Amy E. W. Ehrhart, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MELVIN M. SHARRER, JR., DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Richard A. Sharrer a/k/a Richard R. Sharrer, 2582 Oxford Road, New Oxford, PA 17350; Daniel A. Sharrer, 4719 York Road, New Oxford, PA 17350

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF R. BRUCE ZOELLER a/k/a ROBERT BRUCE ZOELLER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: John J. Moran II, 109 East Market Street, York, PA 17401

Attorney: Keith A. Hassler, Esq., Attorney at Law, 9 North Beaver Street, York, PA 17401

### SECOND PUBLICATION

ESTATE OF MARY B. DEARDORFF, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HELEN M. GROFT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert J. Groft, 121 Frog Pond Hollow, Abbottstown, PA 17301

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

ESTATE OF MABEL C. HANKEY, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Dale A. Hankey, 940 Baltimore Road, York Springs, PA 17372; Helen Shultz, 152 Branch Circle, East Berlin, PA 17316

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF MARCELLA G. KESSLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Jane M. Bankert, 5030 Lehman Rd., Spring Grove, PA 17362; Marian E. Altland, 11 S. Water St., Spring Grove, PA 17362

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF CONNIE E. KNOX, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Wayne A. Weaver, 1799 Cold Springs Road, Fairfield, PA 17320

ESTATE OF BRIDGET LYNN SCOTT, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Eric E. Scott, P.O. Box 664, Fairfield, PA 17320

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 66 West Middle Street, Gettysburg, PA 17325

ESTATE OF RUTH ZIEL WEBER a/k/a RUTH Z. WEBER, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executors: Nancy W. Undercoffer and Kenneth D. Weber, c/o Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

### THIRD PUBLICATION

ESTATE OF ORA W. BOONE, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrices: Connie E. Boyd, P.O. Box 313, 128 W. King Street, Littlestown, PA 17340; Peggy J. Boone, 15 Spicer Drive, Abbottstown, PA 17301

Attorney: Judith K. Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF ANTHONY LETO, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: Joseph Leto, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF JOHN T. ZALOUDEK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Harriett Ann Fox, 1068 Bair Rd., Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

IN THE COURT OF
COMMON PLEAS
ADAMS COUNTY

CIVIL ACTION—LAW
No. 10-S-917

NOTICE OF ACTION IN
MORTGAGE FORECLOSURE

GMAC MORTGAGE, LLC, Plaintiff

vs.

TRACY L. LOWMAN & GEORGE W. LOWMAN, Mortgagors and Real Owners, Defendants

TO: TRACY L. LOWMAN & GEORGE W. LOWMAN, MORTAGORS AND REAL OWNERS, DEFENDANTS whose last known address is 3266 Hanover Pike, Hanover, PA 17331. THIS FIRM IS A DEBT COLLECTOR AND WE ARE ATTEMPTING TO COLLECT A DEBT OWED TO OUR CLIENT. ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THE PURPOSE OF COLLECTING THE DEBT.

You are hereby notified that Plaintiff, GMAC MORTGAGE, LLC, has filed a Mortgage Foreclosure Complaint endorsed with a notice to defend against you in the Court of Common Pleas of Adams County, Pennsylvania, docketed to No. 10-S-917, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 3266 Hanover Pike Hanover, PA 17331, whereupon your property will be sold by the Sheriff of Adams County.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claim in the Complaint of for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LEGAL SERVICES INC.
432 S. Washington St.
Gettysburg, PA 17325
717-334-7623

PENNSYLVANIA BAR ASSOCIATION
100 South Street
P.O. Box 186
Harrisburg, PA 17108
800-692-7375

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Suite 5000
Mellon Independence Center
701 Market St.
Philadelphia, PA 19106-1532
215-627-1322

9/10