

**MOUNT JOY BOROUGH ZONING HEARING BOARD  
MINUTES of December 21, 2017**

The Zoning Hearing Board met in the Council Chambers of the Mount Joy Borough Offices, 21 E. Main Street, Mount Joy, on the above date. The meeting was called to order at 7:00 p.m. by Cindi Jerman. Board members present included Ned Sterling, Robert Marker, Shelby Chunko, George Leyh and Alternate Michael Melhorn. Borough officials in attendance included Stacie Gibbs, Zoning Officer. Zoning Hearing Board Solicitor, Joseph Kenneff, Esquire, was present. Michelle Parke, court stenographer was also present.

**Minutes of June 23, 2016, meeting of the Board was approved as amended on a Motion by Jerman and a second by Chunko which passed unanimously 5-0.**

**NEW BUSINESS**

Cindi Jerman read the Standard Board Procedures to all those present. There were no objections to the jurisdiction of the Zoning Hearing Board nor were there any challenges as to the personal or business interest of any member of the Board.

Stacie Gibbs, Zoning Officer was sworn in.

**CASE NO. 1**

The applicant, S.R. Holdings of Mount Joy, LLC, 242 N. Market Ave., Mount Joy, PA, is requesting a *de minimus* Variance of §270-46 to permit the commercial use of the shed and Variance of §270-46 to permit up to six unrelated individuals to live in the house located on the subject premises as to opposed to four otherwise permitted, at their property located in the Medium Density Residential Zoning District.

**EXHIBITS**

**APPLICANTS:**

A-1-8 – Pictures  
A-9 – Email dated October 15, 2015 and September 15, 2015, from Stacie Gibbs  
A-10 - Memorandum from Stacie Gibbs to the Zoning Hearing Board, letter from Borough Solicitor dated October 30, 2017, emails from Gibbs dated October 15, 2015 and September 18, 2017, Violation letters dated September 18, 2017, email from Gibbs dated December 5, 2017.

**BOARD:**

B-1 – Legal Ad with Proof of Publication.  
B-2 - Neighbor Notification Letters.  
B-3 – Zoning Enforcement Notice dated September 18, 2017.

**BOROUGH:**

Borough –1- Final Plat/Plan for Clarence and Dorothy Lehman dated June 14, 1979.  
Borough – 2- GIS Map for 242 N. Market Avenue.

Mel Hess, Attorney for applicant was sworn in.  
Astin Jordan Melhorn, Applicant was sworn in.

**QUESTIONS AND TESTIMONY**

1. Attorney Mel Hess asked Astin Melhorn to provide his professional address. Melhorn responded 1010 W. Main Street, Mount Joy.
2. Hess advised that the applicant is SR Holdings LLC, and requested the applicant explain the relationship between 1010 W. Main Street which is Melhorns Trucking Sales and Service, and SR Holdings LLC. Astin advised that SR Holdings is an entity for his real estate.
3. Hess requested that Astin explain to the board the business of Melhorn sales, service and trucking. Hess advised that for the purpose of this hearing, he will refer to 1010 W. Main Street as Melhorn. Astin advised that they transport live poultry for egg processing and not meat processing. They have crews to load and unload the trucks in the Northeastern United States. Astin informed the Board, Melhorn has been there since 1973.
4. Hess advised that they are here because of the property Astin owns at 242 N. Market Avenue. Hess asked when Astin became the owner of this property. Astin advised he purchased the property in August of 2015.
5. Hess asked if Astin could tell the Board about the Bio-Security issues that Melhorn must deal with on a regular basis. Astin advised they transport poultry that goes in production. Their birds are in production for over a year, and diseases they are exposed to during the transportation process can greatly hinder their customer's asset if the bird is compromised. Astin advised this issue was magnified in the Spring of 2015 when Avian flu hit the Midwest.
6. Hess asked who comes up with the bio security regulations. Astin advised the PA Department of Agriculture has regulations, and each customer has their own sets of rules and guidelines that they are to follow to protect their assets from being exposed to unnecessary diseases.
7. Hess asked if because of the bio security concerns, for example, are the trucks washed daily. Astin advised all equipment is washed daily. Hess then asked if the bio security regulations require the employees to wear certain types of uniforms when they work. Astin advised they provided the truck drivers and the crews an outer garment to protect them from diseases and to protect the next customer because the garment is washed before they go to the next house.

8. Hess asked if they provide any other garments. Astin advised they provide boots, hair nets, gloves and suits.
9. Hess asked if the property at 242 N. Market Avenue was purchased because of bio security concerns. Astin advised that when they purchased the property it was initially for the housing of the crew. Hess asked if employees live in there. Astin advised employees live in the home at 242 N. Market Avenue.
10. Hess asked how many bedrooms are in the home. Astin advised there are 6 bedrooms now in the home. Hess advised he is going to walk through the exhibits. Hess advised Astin to identify the first page. Astin advised it is an aerial shot of the rear of the house and the front of the shed in the back.
11. Hess asked Astin what the next page is. Astin advised that is a picture of the shed prior to them purchasing the property.
12. Hess asked what was done to the shed since they purchased it. Astin advised they redid the outside of the shed, altered the garage door to become a 2-bay instead of a 1-bay, they added a door on the side and they updated the electric. And they also added a heating and air conditioning unit, so they have a comfortable place to get dressed in the morning.
13. Hess advised that Exhibit 4 and 5 again show the shed and the work that was done. Hess asked Astin to explain to the board how the shed is used. Hess then asked Astin to identify Exhibit 6. Astin advised that indicates the dimensions of the shed. Hess asked if the shed is 25' high. Astin advised that it is.
14. Hess asked with respect to Exhibits 7 and 8, asked Astin to explain to the board how the building is used. Astin advised that when the Avian Flu hit, it became apparent to many of their customers that their protocols for protecting their assets were not efficient. Astin advised they have one customer named Highline, who is a breeder company, so the offspring becomes the commercial layers that they move. The breeding stock is very expensive and very delicate. The breeding stock cannot be exposed to diseases that the commercial birds can have and still lay eggs. So, there are a few diseases out there the breeder stock cannot be exposed to.
15. Hess asked how old is the breeder stock that they move. Astin advised they are 16 to 18 weeks old.
16. Hess asked because of the unique circumstances of this customer, the breeding stocks and the need to move them to other houses, what does this customer require. Astin advised they must have their own vans used for their jobs, their own outer garments, their own lunch boxes, and a separate location for the crew to put their specialized equipment and specialized vans. This is one more barrier for this breeder customer to protect his asset from the commercial birds they haul every day to these specialized breeder chickens that cannot be exposed to diseases the commercial birds are exposed to daily.
17. Hess asked if Astin could identify Exhibits 7 and 8. Astin advised Exhibit 7 is the bottom of the garage, and they park the two vans specifically used for the customer

in that area. Exhibit 8 is upstairs where the crew goes to get dressed and transfer their lunch boxes to the special lunch boxes.

18. Hess asked Astin if these items are at a separate location because the one customer requests this. Astin advised this is correct.
19. Hess asked if the vans are owned by Astin. Astin advised the vans are owned by Melhorn and only used for this customer and cannot be parked at the other location.
20. Hess asked if there are four employees currently residing in the home at any given time. Astin said that is correct.
21. Hess asked Astin if he was asking the Board at this time for permission to have six employees live in the home. Astin advised that is correct.
22. Hess asked if they are all male. Astin advised they are all male.
23. Hess asked why there are more than four uniforms being stored in the garage. Astin advised they have about 57 members on their crew as of right now. Astin advised that each member of the crew has a uniform for when they go to the standard commercial customers, and they also have a uniform kept at this facility for when they do work for Highline. Astin advised there are 51 uniforms kept at this location.
24. Hess asked if there are 51 employees coming to this location every day. Astin advised there are not 51 employees coming to this location.
25. Hess asked how many days per week would they work for this customer. Astin advised the average is two days per week. Astin further advised there are some weeks they are not there at all, and some weeks they could be there up to four days.
26. Hess asked on those two days, the four employees come out and get their uniforms, and the other employees are brought in to get their vehicles, and there are vans parked inside to take this employees to the customer. Astin advised that is correct.
27. Hess asked if they are not working for this customer, are the vans not used. Astin advised that is correct.
28. Hess asked that no one would come to get these uniforms if they are not working for the customer. Astin advised that is correct. Astin advised the only other time they would need to come to this location is to put the uniforms back in the shed after they have been laundered.
29. Hess asked on a typical day when they do come in, what time do they come in. Astin advised the crews leave Mount Joy anywhere from 4:30AM to 10:00PM. Hess asked if it would be sometime between 5AM and 10PM. Astin advised that is correct.

30. Hess asked if when they come back they “shed” these uniforms. Astin advised that is correct.
31. Hess asked if the four residents who stay in the house walk to the house and the rest are taken back to the primary location. Astin advised they are taken back to their homes.
32. Hess asked if on average it could be two, to three days there could be no need to even access the shed. Astin advised that is correct, except to put their laundry back.
33. Hess asked since Astin has been there have any neighbors complained about any of their activity. Astin advised that he is not aware of any complaints. Astin advised he would be happy to address them.
34. Hess asked if he has talked to any of the neighbors. Astin advised that he has talked with two of the neighbors. Hess asked if they voiced any complaints. Astin advised not about the process. Hess asked if they were upset because he enhanced the property. Astin advised the two neighbors he talked to were very happy about how the shed looks now versus what it did before.
35. Hess asked if those two neighbors he did talk to lived close to the property. Astin advised one lives to the South of them and the other one lives across the street to the east.
36. Jerman asked what prompted Astin to talk to the neighbors if there were no complaints. Astin advised when they were doing the project, the one neighbor came up and asked what they were doing, so he explained to them. Astin advised the neighbor was happy because they live right next door. Astin advised that they put in a retaining wall which makes the mowing much easier for the neighbor because the stones no longer go into his yard and into his mower. Astin advised he asked the neighbor across the street, to see if they had concerns about the project. Astin advised that neighbor did not have concerns about the project.
37. Chunko asked if Astin could tell her when Highline imposed these requirements of the segregation. Astin advised it was the very end of 2015. Astin advised his company had been using another facility to do this, and that lease was up, and they had to move. Astin advised the end of May 2017, they had three months to move out of the facility because the owner had another use for the facility.
38. Hess advised that they are asking the board for relief of the number of unrelated individuals that can reside in the home. Hess asked Astin is this relief being requested because the house can accommodate for six bedrooms. Astin advised this is correct.
39. Hess asked if they lost Highline as a customer, or if they ever gave up on the demand of isolating the vans and uniforms, would he have a need to use the shed for the same purpose. Astin advised he would not.
40. Hess asked if the vans and uniforms could be moved back to the primary location. Astin said they could be moved. Hess asked if he would agree to a condition

regarding this. Astin advised he would agree to this condition if the Board granted his requests.

41. Hess asked how many other customers they currently have that don't require these stringent conditions. Astin advised that they move about 35 million birds a year, and this customer makes up for 2 million of the 35 million.
42. Hess asked other than the activity that Astin already explained, is there any other commercial activity on the property. Astin advised there is no other commercial activity going on than what he described.
43. Hess asked if Astin is responsible for the tenants that live on the premise. Astin advised that is correct.
44. Jerman asked how many employees go to Highline. Astin advised 15 fit in a van. Jerman asked if the four that live there always work for or go to Highline. Astin advised they are not always part of that crew. Jerman asked if sometimes no residents of the home would go to Highline. Astin advised that could happen.
45. Sterling asked if the residents who are living there are not always the drivers of the vans. Astin advised that is correct. Astin further advised that the people that live there do not drive the vans. Astin advised they have foremen who do not live in his houses that drive the vans.
46. Hess asked if the vans are kept there because they cannot be kept at Melhorns. Astin advised that is a stipulation of the breeding customer.
47. Jerman asked if the people that live there must sign a lease. Astin advised they do sign a lease. Astin advised any employee that works for them can live in one of their houses and they sign a lease.
48. Jerman asked how many people are currently signed on leases for that house. Astin advised there are four.
49. Hess asked since Astin owned that home, has he ever been aware of any activities at the house, by the employees resulting in police activity. Astin is not aware of any activity of this kind at this house.
50. Hess asked if any neighbors complained about the employees at this house. Astin advised he is not aware of any neighbor complaints regarding employees at this house.
51. Leyh asked when your employees show up at this house on any given day, how many people could be there besides the four residents. Astin advised the crew size for these jobs can be as big as 22 to 24 people. Leyh asked if every day 24 people are going to congregate at this site in a residential community. Astin advised when they use the facility the crew size is generally one van per crew which is 15. Astin advised there are times when they have larger moves and they need to send more people to get the job done. Leyh asked if there can be as many as 15. Leyh advised he wants to get a rough picture of what is the everyday traffic of people to this site, and then trafficking away to do business because what this site becomes

is a terminal of sorts. Leyh further advised that Astin is operating the site as a transportation function. Leyh advised they must come here because the uniforms are here. Astin advised that it varies. Astin advised that generally it will be one van per crew and there could be two crews per day. Each van holds 15 guys and sometimes two vans go out together, and sometimes you will see 24 people because of the two vans there at the same time.

52. Chunko asked how they would get there. Astin advised they would come there in the commercial blue vans. They come to the facility, and the crew gets out of the blue vans. The blue vans are parked in the facility and the crew gets into the white vans.
53. Jerman asked after they come back what happens with the dirty uniforms. Astin advised when the crew comes back, the uniforms are placed into the blue bags that are hanging. They take the blue bags with them. They drop the blue bags off right at the laundry. Jerman asked what happens with their shoes. Astin advised there are two boots. A rubber boot which goes through the washing machine. The work boot is under the rubber boot and the work boot is also cleaned and disinfected. Jerman asked if they go home in their socks. Astin advised they wear shoes to work and transfer into their boots at this facility. They come back through to the facility and drop off their boots and get their normal shoes. Jerman asked if this occurs at this facility. Astin advised this takes place at the end of the day. Jerman asked then there are up to 24 people changing clothes at this facility and changing out boots. Astin advised it is about a ½ hour process in the morning.
54. Jerman asked how long the changing clothes process takes. Astin advised approximately ½ hour in the morning and ½ hour in the evening. Jerman asked if there could be up to 24 people at 4:30-5:00AM in the morning congregating on the property. Astin advised that is correct.
55. Jerman asked where the employees are when this is occurring. Jerman asked are they inside, outside, or having a cigarette or something. Astin advised they are inside getting dressed. Astin advised they can institute a condition that the vans pull inside the building before anyone gets out. Jerman advised she is trying to get an idea of what this looks like.
56. Hess asked if they go in, change, come out and get in the van. Hess asked if Melhorn can pay them to hang around smoking cigarettes. Astin advised there are daily incentives for their foremen to keep their timeline. The foreman is there to make sure the guys get changed and get in the vans.
57. Hess asked Astin again how many days a week this is taking place. Astin advised two days a week.
58. Marker asked if this was early in the morning around 4:30-5:00AM, and what time they return. Astin advised they could come back at noon or 8:00PM. Astin advised it varies on the size of the job.
59. Josele Clearly, Esquire intervened to make a point that Mr. Melhorn just nodded. Clearly advised that nods do not get in the record. Clearly advised that Marker

asked Astin if it was 4:30AM in the morning and she wants to make sure that gets on the record. Astin advised they do arrive as early as 4:30AM.

60. Jerman asked if the end of the day could be as late as 8PM. Astin advised that it could be as late as 8:00PM.
61. Marker advised Astin said noon, then 8:00PM. Marker wants to know if there is a second shift. Astin advised if they are unloading pullets, they will have a crew that loads and unloads the trucks. The crew that unloads the trucks can get back significantly later.
62. Sterling asked what prompted him to buy this property in the Borough. Sterling advised that he has several properties in the Borough already. Astin advised that is correct. Sterling advised he has employees living at those properties already. Astin advised that is correct. Sterling asked if Astin new this was a Medium Density Residential District. Astin advised they purchased the property for the house, and when they were given three months to find a new location, they thought this building would be suitable.
63. Jerman asked if at that point they came to the Borough to find out if they were within the regulations. Astin advised they did not. Jerman asked why they did not. Astin advised he did not think it was a concern and he is sorry.
64. Chunko asked when they imposed these restrictions in 2015, why he did not start planning to create something at his commercial property that they own. Astin advised they have a quarantine area on the commercial property. The customer wants this to be done off the commercial property. Astin advised this is part of the stipulation for them to do this work.
65. Jerman asked if he has any other properties that he owns that are not in a residential neighborhood that might be zoned better suited for his needs. Astin advised the only commercial property that SR Holdings owns is on W. Main Street. He advised that the other properties that he owns are residential.
66. Chunko advised that Astin advised in his narrative that the use of this shed may be temporary, and that Astin anticipates that in the future he may create this facility at the commercial property on W. Main Street. Chunko further advised that Astin just told her that the company requires the facility to be located on another site. Astin advised that if the company ever pulls back these guidelines, they will not need this facility. Chunko asked then it seems to be dependent on the client and not him creating the facility on the existing commercial property. Astin advised that is correct.
67. Sterling asked if the Borough knows whom Astin's mother talked to from the Borough, that would have told her she could have more than four people in the home, as he read that. Gibbs advised that she does not. Hess advised that was not his testimony tonight. Sterling advised that it was in the written correspondence. Hess asked who the written correspondence was to. Sterling advised he does not know without looking at it. Hess asked if it was something in his packet. Sterling advised it was in the packet. Hess asked who it was provided by. Sterling said probably by Gibbs. Sterling advised it was an email. Hess asked if he could see a



copy of what that email was provided by the Borough. Attorney Kenneff was not sure if he had it. Gibbs advised it was an email from 2015. Gibbs advised that in 2015 she emailed Mr. Melhorn when she received his rental information and told him that he had too many people living in there and what the code was. Gibbs advised Mr. Melhorn's email response was that she would have to talk to his mother because she was told that six people could live in there. Gibbs advised she responded via email to Mr. Melhorn to have his mother call her. Gibbs advised that is the email she provided to the Board. Gibbs asked the email to be forwarded over to be given to Attorney Hess as he requested.

68. Sterling advised that the County GIS data indicates the property has three bedrooms. Sterling asked if he converted other rooms to bedrooms. Astin advised it has six bedrooms. Astin advised when they purchased the property, there were more than three bedrooms.
69. Jerman asked what kind of renovations were done to the house when he bought it. Astin advised they painted and replaced the boiler. Astin advised those are the two big items that were done inside the house. Gibbs advised that the rear deck was removed. Astin confirmed that the deck was removed and happened this year.
70. Attorney Kenneff asked if he had more testimony to present. Hess advised that he like to call another witness.
71. Attorney Kenneff then asked Attorney Josele Cleary, representing the Borough if she had any questions.
72. Cleary asked when SR Holdings purchased the property, was the house being used as a single-family dwelling. Astin advised he is not sure what the property was being used as. Cleary asked if it was his testimony that he did not ask the Borough before he purchased it what the uses were that it could be put to. Astin advised that is correct.
73. Cleary entered a Final Plot/Plan for Clarence and Dorothy Lehman dated June 14, 1979 as Borough Exhibit 1. Cleary asked if the property is located at the intersection of Water Street and North Market Avenue. Astin agreed that the property is located at that intersection.
74. Cleary asked if the plan depicts a 2 ½ story frame dwelling. Astin agreed that it does show a 2 ½ story frame dwelling.
75. Cleary asked if that is the location where the dwelling is which we are discussing. Astin advised that is correct.
76. Cleary asked if the plan showed a 1 ½ story framed barn. Astin agreed that it does show the barn. Cleary asked if that is the structure which we are talking about tonight. Astin advised that is correct.
77. Cleary asked if the plan shows the lot is 12,000 square feet. Astin agreed that the plan does show the lot is 12,000 square feet.

78. Hess asked if he was reading the plan correctly because he said it shows the lot is 18,000 square feet. Cleary advised that the plan shows 12,000. Cleary advised that is what the Deed says and that is what the site plan indicated that his client submitted as part of the building code application. Jerman asked where that was, and if it was part of the packet.
79. Cleary advised that the building code application is not part of the packet. Hess advised that it could be 12,000 square feet. Jerman advised that it shows 12,000 square feet on the information that was provided to the Board.
80. Cleary entered a GIS Map as Borough Exhibit 2. Cleary asked if the applicant would argue that Borough Exhibit 2 is a representation of where the lot is in the neighborhood. Astin agreed that is a correct representation.
81. Cleary asked if the applicant agreed as he testified, that SR Holdings made substantial changes to the barn. Astin agreed that is correct.
82. Cleary asked the applicant if the substantial changes were done without submitting permits to the Borough.
83. Hess objected that is a totally different issue and irrelevant to the Borough tonight. Hess advised they have dealt with that and a permit has been issued. Hess advised this has nothing to do with zoning. Cleary advised his testimony had nothing to do with zoning. Hess said they can agree to disagree.
84. Attorney Kenneff overruled the objection.
85. Cleary asked if it was correct that there is nothing preventing the property from being used as a single- family dwelling, other than Melhorn's desire to use it as something else. Hess asked to stipulate to that. Cleary advised so the property can be used for a purpose allowed by the zoning board. Hess advised that is correct, and they never suggested otherwise.
86. Cleary asked Astin Melhorn to testify what hardship relates to the property. Astin Melhorn advised that he is not sure what she is asking.
87. Cleary asked if it was true that it is only Melhorn's desire to use the property in a way that violates the zoning ordinance, and that is the reason we are here. Hess advised that it has already been a stipulation that the property may be used in conformity with the ordinance. Hess advised that it is true.
88. Attorney Kenneff asked if he could have Astin Melhorn answer the questions if he can.
89. Astin Melhorn advised that it can be used as a single-family home.
90. Cleary advised that Astin testified that four of Melhorn's employees live in the dwelling. Astin advised that is correct. Cleary asked if a van comes to the property every day to pick them up to go somewhere. Astin agreed that is correct when they are working.

91. Cleary advised then that their average of two times per week that a van comes to the property is incorrect because that two times per week was for Highline. Astin advised that is correct. Attorney Hess advised this his testimony was that two times a week these vans were used. Cleary asked if a blue van will come to the property every day that Melhorn is in operation. Astin advised that is correct. Cleary asked if that would be six days per week. Astin advised that it can be six days per week. Cleary then advised six days per week there will be a blue van coming to this property at 4:00 or 5:00AM in the morning. Astin agree that is correct. Cleary then asked if there would be a blue van returning six times per week to the property sometime in the evening. Astin agreed that is correct.
92. Cleary asked what time the blue vans arrive in the morning, and how long are they there. Astin answered that they are there for 5 minutes maybe. Cleary asked if there are days where Astin is there. Astin advised that there are times that he is in the blue vans. Cleary asked if he was on the property. Astin advised that he is on the property. Cleary again wanted to confirm that the blue van is only there for 5 minutes. Astin advised that when the blue van is only there to pick-up the crew or "swap out" the white van it can be there for a day or so.
93. Cleary asked what type of vehicle comes there for the laundry that Astin testified is brought to the property. Astin advised that they have two employees that are responsible for the laundry. He advised the one drives a black jeep, and the other one drives a brown Ford.
94. Cleary asked if that is what is used to transport all the freshly laundered, secured uniforms, and shoes and such. Astin answered that is correct.
95. Cleary asked how long these vehicles are there loading and unloading. Astin advised he has never done that process. Astin advised he would say 15 to 20 minutes. But, he advised he cannot say for sure.
96. Cleary advised every day they have a blue van that comes at least twice. Other times there are blue vans bringing people there to do things an average of 2 times per week Cleary stated according to Astin's testimony. Then Cleary advised there are other people coming there delivering boots, and laundry and thing. Astin advised that is correct. Jerman asked how many days a week that would happen. Astin advised the laundry would come the same amount of days the white vans would come. Jerman asked so if it is four days, the laundry would come four days. Astin advised that is correct.
97. Marker asked if on the days when they are not using the white vans, the blue vans are showing up to pick up 4 or 5 guys and dropping them off in the evening. Astin advised that is correct.
98. Cleary asked if Astin filed a rental registration form with the Borough. Astin advised that he did file that form. Cleary asked if that form required Astin to identify his tenants. Astin advised it does. Cleary then asked if Astin listed 5 people on that form. Astin advised since he talked with the Borough they removed a guy from the house. Cleary asked if he updated the records with the Borough after he removed the tenant. Astin advised he was not aware he had to. Cleary advised that is what the form tells you to do anytime there is a change in tenant, or with the people

residing in the Borough. Hess asked if this is supposed to happen when a tenant leaves. Cleary advised that is correct. That the identity of the tenants must be disclosed to the Borough. Hess advised that if one person leaves he is no longer a tenant. Astin advised they can start doing that.

99. Cleary advised that Astin stated he talked to two neighbors and he talked to the one neighbor when work was being done on the barn. Astin advised that is correct. Cleary asked if Astin talked to this neighbor before vans started arriving at the property at 4:00AM. Astin advised that is correct. Cleary asked when Astin talked with the other neighbor. Astin advised he spoke with the other neighbor approximately two weeks ago. Cleary asked if all the time that vans have been showing up at 4:00AM, there was only one person that Astin spoke with. Astin advised that is correct.
100. Cleary advised that was all the questions she had for the witness Astin Melhorn.
101. Attorney Kenneff asked if there were any follow-up questions for this witness. Hess advised he did not have any.
102. Hess asked for another copy of the email previously provided to the Board and to Attorney Hess and it was marked as Exhibit 9. The email is two sided and dated October 15, 2015 and the other side is September 18, 2007
103. Hess then advised he would like to call Gibbs on cross examination.
104. Hess asked Gibbs if she is responsible for putting together the packet that goes to the Board. Gibbs advised that she is.
105. Hess asked what else was provided to the Board other than the application and exhibits. Gibbs advised she provided a Memorandum. Hess asked who it was prepared by. Gibbs advised she prepared the Memorandum.
106. Hess asked that the Memorandum from Gibbs to the Board be marked as Exhibit A10. Gibbs then advised that she provided a copy of a letter from Attorney Josele Cleary to Borough Council to the Board. Hess then asked that the letter from Attorney Cleary to Council be marked as Exhibit A10.
107. Hess asked if Gibbs understood that Attorney Cleary is Council for the Board. Gibbs responded that Cleary is not Council for the Board. Hess asked if Gibbs routinely provide letters to the Board from the Borough Solicitor. Gibbs advised that she did not find any reason not to provide a copy of the letter to the Board. Hess advised that Attorney Cleary is part of the Borough which is a party to the Board. Gibbs advised that she understands that. Hess advised the Board is like a judge. Gibbs advised that she did not know she could not send it.
108. Attorney Kenneff asked Ms. Cleary if she has any questions. Cleary advised she does not know what was provided to the Board.
109. Kenneff asked if there were any objections to the applicants A1 through A10 as part of the record.

110. Kenneff asked if Attorney Hess was done with questions. Attorney Hess did not have any other questions.
111. Attorney Cleary did not have any testimony.
112. The Board did not have any other questions.
113. Attorney Kenneff asked if anyone from the public had any questions for the applicant.
114. Barbara Helm, 821 Water Street, Mount Joy, PA, asked the applicant if he does background checks on employees. Astin advised they do not perform background checks on employees, they hire by references. Helm asked if there were criminal background checks.
115. Hess objected to the line of questioning. Kenneff allowed this line of questioning.
116. Helm asked if they do backgrounds checks not only on the people that live in the house but the people that come in and out of the vans. Astin advised they do not perform any background checks.
117. Helm asked why there are security cameras on the barn. Hess objected and said the question is totally irrelevant and informed his client not to answer the question. Attorney Kenneff overruled and advised Helm could asked the question. Astin advised the customers request it so they can monitor and be shown that Astin is following the rules for that customer.
118. Denise Sensenich, 228 N. Market Avenue, Mount Joy, PA asked the applicant if they foresee expanding the number of times this will be happening as it relates to vans coming to the barn in the morning and afternoon. Astin advised he does not see that number growing.
119. Helm asked if Astin is aware that there is a truck or van at the property at 10PM. Astin advised that is very possible that there is a van there at 10PM.
120. Jim Sensenich, 228 N. Market Avenue, Mount Joy, PA asked if any of the diseases transferable to humans. Astin advised to his knowledge it is not transferable to humans. Sensenich asked if they are transferable what does that do to the community. Astin advised that it does not transmit to human beings. Astin advised the disease is transferable from bird to bird.
121. Jerman advised that earlier Astin testified that the vans could return as late as 8PM. Jerman now asks if Astin is changing his testimony as he just answered the vans could return at 10PM. Astin advised the white vans are typically done at 8PM. The operation of dropping off and picking up for the other customers can happen at any time of the day or night because those jobs are on different schedules. Jerman asked if it could even be later than 10PM. Astin advised that is correct.
122. Attorney Kenneff advised that at this point, it is time for public comment.
123. Barbara Helm 821 Water Street, Mount Joy, PA, was sworn in.

124. Helm advised that everything that Astin said is accurate. However, her residence is directly across the street from the barn. Helm advised that what Mr. Leyh said is correct, in that it has become a terminal for vans in and out at any day like Sundays. She advised she has seen them drive in and out 5, 6 and 7 times. Helm further advised that it could be there at 6AM, back at 6:30AM, then back at 8AM. Helm advised that it is sometimes late at night, and 10PM to her is late at night. Helm advised that every time the vans pull in and out over the gravel drive makes noise. Helm said doors opening and closing make noise. Helm advised there is an occasional chatter among workers. She advised it is not that much and they are a well-behaved group. Helm advised this all makes noise. Helm advised during the summer they woke her up 4 to 5 times a week at 5AM. Helm advised she was sleep deprived basically all summer. She advised she was going to wait to see what happens with this. Finally, Helm said she called Gibbs to complain. She advised she was not going to confront other people. She said there are many people in and out. She advised, one day the garage door was open and there was a lot of noise and she said they are a small residential community. Helm advised Water Street is a very narrow street. She advised it barely accommodates two cars. She advised that there are some days when there are two blue vans in the driveway dropping off people, white vans are pulling up getting people, there are more vans in the street. She advised that sometimes the vans are towing trailers and the trailers make more noise. She advised there have been days where her neighbors have not been able to go to work because Water Street has been blocked. She advised this is insane and the rules and regulations are clearly available online. She advised that we either need to enforce the law, and she expects them to be enforced, or they are merely guidelines and suggestions that all of us can decide what to do with our properties. She told the Board they must decide if they are going to enforce the law as written. Or, if the Board is going to let everyone conduct commercial activities on residential properties or, alter their properties however they see fit and disturb whomever they want to. Helm hopes they choose to enforce the law which is their job or, it's a free-for-all in her neighborhood.
125. Helm advised this is major disruption to her life. She advised that she is the one right there and she has been dealing with all of this.
126. Denise Sensenich, 228 N. Market Avenue, Mount Joy, PA, was sworn in.
127. Sensenich advised that she hears what her neighbor is saying. She advised that she lives a few houses down. She said she hears the drop off vans and workers periodically. She advised the back of her home abuts two apartment buildings. She advised there is a lot of noise, trash cans lying around every day of the week. They are not picked up. The property manager must pay someone to help clean up leaves. She advised that she complained to Ms. Gibbs in the past. She advised there is a paved alley way in between and any time of the day or night, they are speeding through there. She advised she understands the frustration her neighbor has with the noise. Because she has it with a residential property. She advised that if we are concerned with noise from a commercial property, she does not think the residential noise is any better or less of a problem. But, she does not hear the 4AM noise. She advised she would like the light toned down a little bit because it does shine in her bathroom. She advised that the men that she sees that live there do

not drive and do not have vehicles. She advised that is a plus because they do not use parking around the neighborhood. She advised they have always been polite and quiet. Sensenich advised there are other things about the neighborhood that she has concerns about.

128. Jerman asked if there are trailers trailing behind the vans. Jerman wanted to know if that was accurate. Astin advised in the summertime they do have trailers that they tow behind the vans.
129. Jerman asked if they sit in the street and block traffic. Astin advised when they first started using the building, they would sit in the street. Astin advised he has instructed them not to. They now go in the driveway, drop the trailer and switch vans. He said that did happen and he would not deny that at all. Astin advised that started using the parking lot to pick up the crew just to keep vans off the street.
130. Jerman advised she noticed he used the term parking lot. Jerman advised this is a residential lot. Jerman asked if the correct term is driveway.
131. Jerman advised that she is concerned with the number of times of day vans are coming and going. She thought there was only one pick up and one drop off. Jerman asked if it was true that it could be 8, 9 and 10 vans in and out all-day long. Astin advised that it correct. Astin advised that was part of their process before. The 5 or 6 times a day would be the blue vans picking up and dropping off the employees who live in the house.
132. Jerman advised that could be 8 trips a day if they were all on a different crew. Jerman further advised that if it was a day they were doing the white vans it could be another 4 trips. Jerman advised there could be up to 12 trips that day. Astin advised that is correct.
133. Jerman advised doesn't Astin feel that impacts the character of the neighborhood. Astin advised that 8 of those time of the 12 trips scenario has been happening since they purchased the property because their employees that live in the house are being picked up. Astin advised what he is talking about is the use of the shed which adds the additional 4 trips. Jerman advised they all go together. Attorney Hess advised they are permitted to have four people live in the home.
134. Attorney Kenneff asked Counsel for brief arguments.
135. Attorney Cleary advised that the Borough is opposed to the application and this is a dwelling in a residential neighborhood on a small lot. The applicant has stipulated there is no hardship. Cleary advised if there is no hardship, there is are no grounds for a variance. Cleary advised there are no grounds for a second use variance to allow the dwelling to be used for something other than a family. A family is not more than four unrelated individuals. Cleary advised they are asking for 6 unrelated individuals. Cleary advised they are asking to change the use of the single-family dwelling to something else, and they are asking to confirm this use of the shed as a second principal use that really has nothing to do with the dwelling. Cleary advised it has to do with commercial storage and as a terminal. Cleary advised the applicant has not even requested all the variances they need for that because they have two principal uses on a lot which is not permitted in a residential

district. Cleary advised they have a dwelling use, and the storage of uniforms terminal use. Cleary advised there is absolutely no hardship and they stipulated to that.

136. Cleary advised that with the testimony of the neighbors, this is not a de minimus use variance. Cleary advised that even if we were to think it was de minimus, Commonwealth Court has held that there is no de minimus use variance. Cleary advised any use variance needs hardship and hardship is related to the property at issue and not Melhorn's business. Cleary advised if you look at Section 910.2a of the PA Municipal Planning Code, which sets forth the standards for a variance is hardship related to the property. Melhorn's relationship with its customer has nothing to do with this property. Cleary advised that she has the case which she handed to Attorney Hess and to Attorney Kenneff which states a use variance cannot be considered a de minimus variance. Cleary advised that on Mr. Hess's stipulation there is no hardship on this property, and this property can be used as a single-family dwelling and therefore the request should be denied.
137. Attorney Hess advised even if the shed was not being used in the manner it is, there would still be the other traffic coming in and out to pick up and drop off the 4 employees that live in the home. Those four people can keep uniforms in the shed and can get picked up. Hess advised if the Board wants to place conditions on time that would be fine as it relates to early morning or late at night.

**On a motion by Jerman and a second by Sterling, the taking of testimony was closed. *Motion carried 5-0.***

#### **ACTIONS BY THE BOARD**



**A motion was made by Sterling and seconded by Chunko, to deny the application made by S.R. Holdings of Mount Joy, LLC, 242 N. Market Ave., Mount Joy, PA, requesting a *de minimus* Variance of §270-46 to permit the commercial use of the shed and a Variance of §270-46 to permit up to six unrelated individuals to live in the house located on the subject premises as to opposed to four otherwise permitted, at their property located in the Medium Density Residential Zoning District. *The Motion passed by a 5-0 vote***

### **ADJOURNMENT**

**On a motion by Jerman and a second by Sterling, the meeting was adjourned. *Motion carried 5-0.***

Respectfully submitted,

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2018

Stacie Gibbs, Zoning Officer

Ned Sterling, Secretary