PUBLIC NOTICE

The Township has granted a request received from the applicant's representative for an indefinite continuance of the previously scheduled ZHB meeting on October 19 2023 at 6:00pm. This extension was requested so that the applicant could explore a possible text amendment to the Zoning Ordinance. You will received a new public notice should the applicant decide to move forward.

The Fairview Township Zoning Hearing Board will **NOT** be holding a Public Hearing on Thursday, **October 19, 2023**, at 6:00pm, at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070, to discuss the following:

Docket No. 2023-10: The applicant, Jeffrey Swackhammer, Sr. seeks the following zoning relief: (i) an Appeal of the Zoning Officer's Notice of Violation dated August 9, 2023 to applicant in which the Zoning Officer determined the applicant was illegally using the subject property as a short term rental; or alternatively (ii) a Special Exception pursuant to Section 300-4(B) – Uses not otherwise provided for in order to use the subject property as a short term rental (of less than 30 days). The subject property is located at 656 Hunters Lane, Lewisberry, PA 17339, within the Single Family Residential (RS) Zoning District.

INSTRUCTIONS AND RECOMMENDATIONS TO APPLICANTS WHO ARE APPLYING TO THE ZONING HEARING BOARD

The following **recommendations** are made by the Zoning Office to applicants who are applying to the Zoning Hearing Board.

1. The applicant should consider using Legal Counsel to assist in completing the application and appearing before the Zoning Hearing Board.

2. The applicant must fill out all portions of the application and be sure to identify the portion of the Zoning Ordinance which pertains to your case.

3. The applicant, or a representative, must identify the surrounding property owners by using the tax map information available from the Zoning Office or the York County Tax Assessment data.

4. The Zoning Ordinance outlines the jurisdiction and procedures of the Zoning Hearing Board. The applicant should review and become familiar with these sections of the Zoning Ordinance. The Fairview Township Zoning Ordinance is available on-line at www.twp.fairview.pa.us. There will be a link to the Zoning Ordinance on the home page. Hard copies of the ordinance are also available in the Township office.

5. The Zoning Hearing Board appreciates as much detail (plot plans, pictures, building elevation drawings, etc) as possible concerning the property, to be submitted with the application. The Board, at its own discretion, may visit the site prior to the meeting.

6. The applicant or an authorized representative MUST appear at the hearing to present the case. Lack of attendance may result in denial of the application.

7. Applications must be received in the Zoning Office thirty (30) days prior to the hearing (which is the 3rd Thursday of the month), so as to allow for proper notification of nearby property owners and to meet legal advertising requirements. These advertising requirements are outlined by the Pennsylvania Municipalities Planning Code and the Fairview Township Zoning Ordinance.

8. See the current Township Fee Schedule for the required application fee. Fees must be received with all applications.

9. Zoning Hearing Board Applications will be read into the record at the first Planning Commission meeting after the application is received. The Planning Commission meeting is held on the first Tuesday of the month. The applicant may attend this meeting, but it is not required.

10. **AN APPLICATION THAT IS NOT COMPLETE WILL NOT BE ACCEPTED. THERE WILL BE NO EXCEPTIONS!**

DIRECTIONS TO APPLICANT

PART 1

APPLICANT: Enter the applicants' name, address, and phone number. Under the Pennsylvania Municipalities Planning Code, the applicant must be the landowner which is defined as "the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land." If the applicant is not the landowner as defined above, the application will be rejected by the Zoning Officer.

OWNER OF PROPERTY: Enter the name, address and phone number of the current property owner.

PROPERTY: Enter the property address, the size of the lot in square feet, the date the property was purchased, and a brief location of the property.

PRESENT USE: Such as a single family dwelling, multi-family dwelling, commercial use, industrial use, agricultural land or vacant lot.

PART 2

INDICATE THE TYPE OF REQUEST:

SUBSTANTIAVE CHALLENGE: The language, requirements or a procedure within the Zoning Ordinance has been found to be defective in nature.

SPECIAL EXCEPTIONS: A use which is outlined in the Zoning Ordinance that may be permitted by satisfying specific criteria as outlined in the Ordinance.

VARIANCE REQUESTS: A variance is a request to use or construct on a property in a way that is not permitted by the Zoning Ordinance.

APPEALS: Any decision made by the Zoning Officer or their representative can be appealed to the Zoning Hearing Board.

INDICATE THE ZONING ORDINANCE SECTION(S) AND SUB-SECTION(S) RELATIVE TO THE REQUEST: Section(s) of the Zoning ordinance that relief is being requested from MUST be indicated on the application or the application will be deemed incomplete.

* The Zoning Officer will be a PARTY present at the hearing and will be presenting ordinance requirements or justification of the decision that was made. Due to this, the Zoning Office CANNOT give advice or direction on the completion of the application outside of general information. It is the responsibility of the Applicant to make the determination of what type of relief is being requested. SEE Recommendation #1.

PART 3

DESCRIPTION OF THE REQUEST: The applicant should state the justification associated with the request.

PART 4

List and identify all property owners within 200 feet of the furthest extents of the perimeter of the property. Identify the use of the surrounding properties, i.e., single family dwelling, multi-family dwelling, commercial use, industrial use, agricultural land or vacant lot. *This information can be obtained from the York County Tax Assessment Website which is http://gis.york-county.org, following the Tax Assessment menus.*

OTHER: The following items/information may be submitted with the application:

1. A plot plan or sketch showing the shape and dimensions of the property existing and proposed buildings and depicting intended uses.
2. Photographs which will support the request.
3. Drawings, industry standards, literature which may be necessary or helpful in understanding the nature of the intended request.

ZONING HEARING BOARD APPLICATION

YORK COUNTY, PENNSYLVANIA

❖ ***Part 1:***

APPLICANT(S)/EQUITABLE OWNER
Name: Jeffrey Swackhammer, Sr.
Address: 811 Washington Ave.
Carnegie, PA 15106
Phone: 412-855-6190

EXISTING OWNER OF PROPERTY:
Name: Jeffrey Swackhammer, Sr.
Address: 811 Washington Ave.
Carnegie, PA 15106

PROPERTY LOCATION:
Address: 656 Hunters Lane, Lewisberry, PA 17339
UPI No. 27-000-QF-0111.D0-00000
Lot Size: .67 Acres
Date Purchased: June 30, 2023
Location: Fairview Township

PRESENT USE OF PROPERTY:
Single-family residence

EXISTING ZONE: RS- Single Family Residential

❖ ***Part 2:***

ZONING REQUEST (Identification of the applicable request(s)):

( ) SUBSTANTIVE CHALLENGE

(X) SPECIAL EXCEPTION

( ) VARIANCE

(X) APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):
Section 300-4(B) - Uses not otherwise provided for.

❖ ***Part 3:***

DESCRIPTION OF REQUEST:
See attached narrative.

❖ ***Part 4:***

PROPERTY OWNERS WITHIN 200'

UPI No. & Address	Owner	Mailing Address
27-000-QF-0111.C0-00000 654 Hunters Lane	Sean Torrey and Kit Mayari	654 Hunters Lane Lewisberry, PA 17339
27-000-QF-0110.M0-00000 659 Hunters Lane	Vivian C. Faircloth	659 Hunters Lane Lewisberry, PA 17339
27-000-QF-0110.N0-00000 661 Hunters Lane	Shanika I. Jobson and Jonathan S. Bugbee	661 Hunters Lane Lewisberry, PA 17339
27-000-QF-0110.P0-00000 663 Hunters Lane	Maynard L. and Judith L. Diehl	663 Hunters Lane Lewisberry, PA 17339
27-000-QF-0110.Q0-00000 690 Doe Lane	George E. Seaton IV and Lynnore K. Seaton	690 Doe Lane Lewisberry, PA 17339
27-000-QF-0110.U0-00000 691 Doe Lane	Rick W. and Jodi L. Harner	691 Doe Lane Lewisberry, PA 17339
27-000-QF-0110.T0-00000 693 Doe Lane	Susan Hishman and Jody Anne Weidenhammer	693 Doe Lane Lewisberry, PA 17339
27-000-QF-0110.V0-00000 669 Hunters Lane	Craig S. and Theresa R. Reiter	669 Hunters Lane Lewisberry, PA 17339
27-000-QF-0201.00-00000 603 Black Powder Drive	Edward R. and Cynthia J. Visker	603 Black Powder Drive Lewisberry, PA 17339
27-000-QF-0110.W0-00000 671 Hunters Lane	Joseph R. Barris and Nicole C. Mazzella	671 Hunters Lane Lewisberry, PA 17339
27-000-QF-0111.E0-00000 658 Hunters Lane	Douglas C. and Pamela A. Dyer	658 Hunters Lane Lewisberry, PA 17339
27-000-QF-0111.F0-00000 660 Hunters Lane	Monica A. Green	660 Hunters Lane Lewisberry, PA 17339
27-000-QF-0110.Z0-00000 650 Hunters Lane	Brian M. and Randi L. Gross	650 Hunters Lane Lewisberry, PA 17339
27-000-QF-0111.B0-00000 652 Hunters Lane	Joseph P. and Jodi L. Diminick	652 Hunters Lane Lewisberry, PA 17339
27-000-QF-0110.L0-00000 681 Deer Court	Lori Yawger Vanhouten and Lori E. Oomen	681 Deer Court Lewisberry, PA 17339

❖ ***Part 5 For office use only:***

ZONING HEARING BOARD CHECKLIST

Application Received:_____

Property Zoned:_____

Asking for Special Exception, Variance or Appeal:_____

Case No.:_____

Fees Paid:_____

Hearing Date:_____

Draft Public Notice sent to Attorney for review:_____

Notice sent to Newspaper:_____

Notice Published in Newspaper:_____

Notice Mailed to Property Owners in 225ft. Buffer:_____

Public Notice Posted on Property:_____

ZHB Packets Mailed and Emailed:_____

I. BACKGROUND

The Applicant, Jeffrey Swackhammer, Sr., is the owner of 656 Hunters Lane, Lewisberry, PA 17339, situated in the RS – Single Family Residential Zoning District (the "**Property**"). The Applicant desires to use the Property as a short-term rental.

The Applicant entered into a contract for the purchase of the Property intending to use it as a short-term rental. The Property was advertised and marketed as a short-term rental, as it is conveniently located in close proximity to a number of local tourist attractions and is well suited as a short-term rental given that it is a six-bedroom, four-bathroom house situated on an approximate .7 acre lot.

Accordingly, prior to purchasing the Property, the Applicant, through his due diligence, met with the Zoning Officer to determine whether the Property could be used as a short-term rental under the Township's Zoning Ordinance. In response to the Applicant's inquiry, the Zoning Officer answered in the affirmative and confirmed during that discussion that the Property could be used for the Applicant's intended purpose of a short-term rental. In reliance on the Zoning Officer's statements and representations, the Applicant proceeded with the purchase of the Property and consummated the transaction for a sales price of $749,900 on June 30, 2023, a price the Applicant would not have paid had he known the Property could not be used as a short-term rental.

II. APPEAL FROM ACTION OF ZONING OFFICER

On August 9, 2023, the Fairview Township Zoning Officer issued a Notice of Violation with respect to the Property, a copy of which is enclosed with this attachment. The Applicant appeals the Notice of Violation for the following reasons:

In the Notice of Violation, the Zoning Officer charges the Applicant with a violation of the Ordinance because the Property is being "used as a short-term rental property…." However, this determination is in direct conflict with the Zoning Officer's assurances and representations made to the Applicant prior to his purchase of the Property just a few months before the issuance of the Notice of Violation.

The doctrine of estoppel is an equitable remedy that may be asserted against the Commonwealth or one of its political subdivisions. Storms ex rel. Storms v. O'Malley, 779 A.2d 548 (Pa. Super. 2001); Borkey v. Township of Centre, 847 A.2d 807 (Pa. Commw. Ct. 2004). In order to apply the doctrine of equitable estoppel to the Commonwealth or one of its political subdivisions, the party to be estopped: (1) must have intentionally or negligently misrepresented some material facts; (2) know or have reason to know that the other party would justifiably rely on the misrepresentation; and (3) must have induced the party to act to his or her detriment because of a justifiable reliance upon the misrepresented facts. Borkey, 847 A.2d 807; Teazers, Inc. v. Zoning Bd. of Adjustment of City of Philadelphia, 682 A.2d 856 (Pa. Commw. Ct. 1996); Bernie Enterprises v. Hilltown Tp. Zoning Hearing Bd., 657 A.2d 1364 (Pa. Commw. Ct. 1995).

In this case, while not intentional, the Zoning Officer negligently misrepresented that the Property could be used as a Short-Term Rental, a material fact in this case. Additionally, the Zoning Officer knew or had reason to know that the Applicant would rely on his representations because the Applicant met with the Zoning Officer in the context of his due diligence prior to purchasing the Property, a fact known to the Zoning Officer. Finally, the Applicant justifiably relied upon the Zoning Officer's assurances to the Applicant's ultimate detriment. Accordingly, the principles of estoppel direct a finding that the Township be estopped from enforcement action under the Notice of Violation, as the Applicant reasonably relied upon the Zoning Officer's authority, assurances, and statements to the Applicant's detriment.

III. SPECIAL EXCEPTION REQUEST

In the alternative, in order to operate the proposed use, the Applicant requests a Special Exception pursuant to Section 300-4(B) of the Ordinance. Section 300-4(B) of the Ordinance provides that uses not otherwise provided for in any zoning district under the Ordinance are authorized by Special Exception subject to the following criteria.

A. The proposed use is in general conformity with the most recent version of the Fairview Township Comprehensive Plan, and/or other applicable plans adopted by Fairview Township, and in harmony with the zoning district, neighborhood, and area in which it is proposed.

The Township's Comprehensive Plan recognizes that "[t]ourism is one of Pennsylvania's larges [sic] industries" and tourist destinations such as the Township's fishable waters located in proximity to the Property "is an asset worth exploring." Comp. Plan. p. 9. The proposed use is in harmony with the RS – Single Family Zoning District in that it contemplates the use of the Property as a residential retreat, primarily appealable to families given the layout and location of the Property.

B. The proposed use is:

(a) Similar to and compatible with the permitted uses in the zoning district in which the subject Property is located;

The exclusive purpose of the proposed use is for the purpose of residential housing accommodations.

(b) Not permitted in any other zoning district under the terms of this chapter; and

The proposed use is not permitted in any other zoning district under the Ordinance in that no provision of the Ordinance permits short-term rentals of an entire dwelling for a term of less than 30 days.

(c) In no way conflicting with the general purposes and intent of this chapter or the zoning district in which the subject Property is located.

The proposed use in no way conflicts with the general purposes and intent of the Zoning Ordinance or the RS – Single Family Residential Zoning District in that the proposed use is for the exclusive purpose of residential housing accommodations. Notably, the RS – Single Family Residential Zoning District allows houses to be rented for more than 30 days. Applicant wishes to use his Property for similar rental purposes—the only distinction being rentals of less than 30 days.

C. The external impacts associated with the proposed use would be equal to or less intensive than external impacts associated with other uses that are permitted in the zoning district in which the subject Property is located.

The external impacts of the proposed use are equal to or less intensive than external impacts associated with other uses that are permitted in the RS – Single Family Residential Zoning District. Specifically, the Property historically hosts families, given its location and layout, who travel together either by vehicle or without the use of a vehicle at all, and rely upon ride shares like Uber and Lyft to travel around. Additionally, the Property is surrounded by wooded land and has landscaping and features of the type commonly found on other properties in the neighborhood. Furthermore, the Property would be subject to a number of rules and regulations that if violated, would result in immediate termination of the rental agreement. For instance, the Applicant would not permit parties or other events in or on the Property, no street parking would be allowed, quiet hours would be instituted from 10:00 PM to 7:00 AM, and a local property manager would be available 24/7 for enforcement of such rules.

D. The location of the proposed use would not endanger the public health and safety, and the use will not deteriorate the environment or generate nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration.

The location of the proposed use is in the RS – Single Family Residential Zoning District, which does not endanger public health or safety. The proposed use likewise will not deteriorate the environment or generate nuisance conditions in that the Property historically hosts families who travel together either by vehicle or often without the use of a vehicle at all. Additionally, the proposed use will not generate noise above and beyond that which is typically found in homes of a similar nature in the neighborhood or otherwise beyond that, which is permitted in the Township's noise ordinance. Again, no parties or events would be permitted or allowed on the Property and such parties or events would result in immediate termination of the rental agreement, no street parking would be permitted, quiet hours would be instituted, and a local property manager would be available 24/7 for enforcement of such rules.

E. The proposed use shall comply with Township building, health, housing, rental, safety, property and other applicable local, county, state, and federal code and licensing requirements. All such licenses, certificates, and permits shall have been obtained and presented to the Township, or shall be a condition of approval.

The Applicant will comply with all applicable federal, state, county, and local licensing requirements.

F. The proposed use would meet the standards that apply under Article XII of this chapter relating to special exceptions.

As set forth at length below, the proposed use meets the general criteria under Article XII of the Zoning Ordinance.

G. The applicant shall provide:

1. The information required in Article VII of this chapter relating to hours of operation and management plan. This information is required for both residential and nonresidential uses.

The Property's hours of operation are 24/7; however, the Applicant will institute quiet hours from 10:00 PM to 7:00 AM. The Applicant also proposes the services of a local 24/7 property management company that will be available at all times to assist renters, as well as to enforce the rules imposed upon the Property.

2. A detailed description of how the proposed use and development complies with Subsection B(1) through (6) of this subsection.

See above.

3. Plot/site plans required in Article XII of this chapter relating to applications for zoning permits.

See attached Tax Map.

4. A schematic architectural drawing of the principal building(s) front facade(s).

The Applicant has enclosed photographs of the Property. As it is an existing house, the Applicant does not have proposed schematic architectural drawings of the Property.

IV. APPLICANT MEETS THE ZONING ORDINANCE'S GENERAL CRITERIA FOR SPECIAL EXCEPTIONS

The Zoning Ordinance requires that in addition to the above-mentioned special exception criteria, that an applicant also demonstrate compliance with the Zoning Ordinance's general criteria established in Article XII, Section 300-99. As set forth below, the Applicant satisfies the Zoning Ordinance's general criteria:

A. The proposed use shall be consistent with the purpose and intent of this chapter.

The proposed use shall be consistent with the purpose and intent of this chapter in that it, among other things, promotes and facilitates the general welfare of the public. Specifically, the Property is most appealable to families, given its location and layout. Additionally, the Township's Comprehensive Plan recognizes that "[t]ourism is one of Pennsylvania's larges [sic] industries" and tourist destinations such as the Township's fishable waters located adjacent to the Property "is an asset worth exploring." Comp. Plan. p. 9.

B. The proposed use shall not detract from the use and enjoyment of adjacent or nearby properties.

The proposed use will not detract from the use and enjoyment of adjacent or nearby properties. Again, the Property is most appealable to families given its size and location. Additionally, the proposed use will not generate noise above and beyond that which is typically found in homes of a similar nature in the neighborhood or otherwise beyond that, which is permitted in the Township's noise ordinance.

C. Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.)

Adequate public facilities are available to serve the proposed use. In particular, the Property is served by public sewer and water, and such use will not be greater than that other uses in the RS – Single Family Residential Zoning District.

D. The proposed use complies with this Article VI of this chapter relating to Floodplain Overlay Zoning District (FPO) and Chapter 151, relating to floodplains.

The Property is not located in a floodplain.

E. The proposed use shall comply with those criteria specifically listed in Article X of this chapter, relating to specific and supplemental regulations for specific uses. In addition, the proposed use shall comply with all other applicable regulations contained in this chapter.

The proposed use complies with the criteria specifically listed in Article X, as set forth at length above. Likewise, the proposed use is in compliance with all other applicable regulations contained in the Ordinance.

F. The proposed use will not substantially impair the integrity of the most recent version of the Fairview Township Comprehensive Plan, and/or any other applicable plans adopted by the Township of Fairview.

The proposed use is consistent with the Township's Comprehensive Plan as discussed above.