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May 11, 1995

James L. Honberger  
122 Main Street  
Salunga, PA 17538

Dear Mr. Honberger:

Enclosed please find a Decision in regard to your application for a special exception and variance submitted to the Rapho Township Zoning Hearing Board.

Very truly yours,

  
Thomas L. Goodman

TLG/jg  
Enclosure  
cc: Galen R. Kopp  
L. Nevin Greiner  
Leon L. Martin

## I. FINDINGS OF FACT

1. The applicant is James L. Honberger, 122 Main Street, Salunga, Pennsylvania (hereinafter referred to as the "**APPLICANT**").
2. The property that is involved in this application for a special exception and variance is located at the intersection of South Chiques Road and Route 230 (hereinafter referred to as the "**PREMISES**").
3. The **PREMISES** is located entirely within the Industrial Zone (I).
4. The **APPLICANT** has requested a variance from Section 220.2 to construct a dwelling unit in the Industrial Zone (I).
5. The **APPLICANT** has also requested a special exception pursuant to Section 107 to establish a dwelling unit in connection with a permitted use in the Industrial Zone (I).
6. Section 107 provides that: "Whenever, under this Ordinance, a use is neither specifically permitted nor denied, and an application is made by an applicant to the Zoning Officer for such use, the Zoning Officer shall refer the application to the Zoning Hearing Board to hear and decide such request as a special exception".
7. A dwelling unit to be established in connection with an industrial use is not specifically provided for in the Rapho Township Zoning Ordinance (hereinafter referred to as the

"ORDINANCE").

8. The **PREMISES** contains 9.291 acres.

9. At the present time, a warehouse measuring sixty (60) feet by one hundred twenty-five (125) feet is located on the **PREMISES**.

10. The **APPLICANT** is proposing to construct a second building on the **PREMISES** which will measure one hundred thirty-six (136) feet by eighty-six (86) feet. That second building will contain a retail store and office.

11. Both a retail store and office are a permitted use in the Industrial Zone (I).

12. The **APPLICANT** has requested a special exception and/or variance to locate a dwelling unit on the second floor of the new building.

13. The **APPLICANT** intends to live in the dwelling unit.

14. The **APPLICANT** has owned the **PREMISES** since March of 1979. The warehouse was built in 1987.

15. The **APPLICANT** is in the business of providing swimming pool supplies and service.

16. The **PREMISES** is served by an on-site septic system and well water. Currently, public water and sewer are not available to the **PREMISES**.

## II. CONCLUSIONS OF LAW

A dwelling unit used in conjunction with a permitted use in the Industrial Zone (I) is not provided for in the ORDINANCE. The APPLICANT has indicated that he will occupy the dwelling unit and will not use the same for rental purposes. Additionally, the dwelling unit could, at some point in time in the future, be converted into offices which is a permitted use in the Industrial Zone (I).

Section 107 was inserted into the ORDINANCE to provide for situations that had not occurred when the ORDINANCE was drafted.

Although the various types of dwelling units have been provided for in the ORDINANCE, there is no provision for any dwelling unit utilized in connection with a permitted use in the Industrial Zone (I).

An applicant for a variance bears the burden of proving that an unnecessary hardship will result, if the variance is not granted, and that the grant of the proposed variance will not be contrary to the public interest. An unnecessary hardship can be established through demonstrating that the physical characteristics of the property are such that it could not be used for any permitted use or could only be so used at great expense or by proving that the property has no value or only distress value for any purpose permitted by the Zoning Ordinance.

The **PREMISES** is being used for a permitted use in the Industrial Zone (I). Currently, a warehouse is located on the **PREMISES**. Additionally, the **APPLICANT** will construct a second building to be used for offices and for a retail store which is also permitted in the Industrial Zone (I).

The **APPLICANT** has not presented any testimony with regard to any unique physical circumstances or conditions which are peculiar to the property which will result in any unnecessary hardship. In fact, the **APPLICANT** has not presented any testimony establishing, or attempting to establish, an unnecessary hardship. As the **PREMISES** is being utilized for a permitted use in the Industrial Zone (I), the **APPLICANT** is not entitled to a use variance from the requirements of Section 220.2.

III. DECISION

The **APPLICANT'S** request for a use variance ~~from~~ requirements of Section 220.2 is hereby denied.

The **APPLICANT'S** request for a special exception ~~from~~ to Section 107 to establish a dwelling unit in connection with a permitted use in the Industrial Zone (I) is hereby granted subject to the following conditions:

- A. The **APPLICANT** must comply with his plans and promises as presented to the Zoning Hearing Board.
- B. The dwelling unit must be owner-occupied. That is, it must be occupied by the owner of the **PREMISES**.
- C. The **APPLICANT** must provide the required number of off-street parking spaces for a dwelling unit as provided in the **ORDINANCE**.
- D. The **APPLICANT** must obtain a building permit from Rapho Township. If necessary, the **APPLICANT** must obtain land development approval from the Lancaster County Planning Commission.
- E. The **APPLICANT** must obtain a sewer permit from the Sewage Enforcement Officer.
- F. A violation of any of these conditions shall constitute a violation of the **ORDINANCE**.

DATED this

7 <sup>th</sup> of July 1988

RAPHO TOWNSHIP  
ZONING HEARING BOARD

Galen R. Kopp  
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L. Neyn Greiner  
L. Neyn Greiner

Leon L. Martin  
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