

**BEFORE THE ZONING HEARING BOARD**  
**OF**  
**SCHUYLKILL COUNTY**

**RE:** Application of Michael Foran for a Special Exception and Variance.

**BEFORE:** Eric Seitzinger, David Ambrose, and Daniel Daub, Members of the Schuylkill County Zoning Hearing Board (the "Board").

**MINUTES OF HEARING**

Name of Applicant . . . . .	Michael Foran 1 North Sixth Street Minersville, Pa 17954
Location of Subject Property . . . . .	1 North Sixth Street Minersville Schuylkill County, Pa UPI No. 52-01-0011.001
Owner of Property . . . . .	Applicant
Zoning Classification . . . . .	R-3 (High Density Residential)
Date of Hearing . . . . .	June 6, 2013
Place of Hearing . . . . .	Commissioner's Board Room Schuylkill County Courthouse Pottsville, Pa
Appearance (for Board) . . . . .	Christopher W. Hobbs, Esquire
Appearance (for Applicant) . . . . .	pro se
Protestants . . . . .	None

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**RE:** Application of Michael Foran for a Special Exception and Variance.

**FINDINGS OF FACT**

After hearing all interested parties and consideration of the evidence presented, the Board finds as follows:

1. Michael H. Foran (the "Applicant") is the owner of the subject property (the "Property") situate at 1 North Sixth Street, Minersville, Schuylkill County, Pennsylvania and identified by UPI No. 52-01-0011.001
2. The Property is located in an R-3 (High Density Residential) District under the Zoning Ordinance for Schuylkill County (the "Ordinance").
3. The Applicant filed a request for special exception and dimensional variance seeking the expansion of a non-conforming, non-residential use consistent with §805.3 of the Ordinance and a dimensional variance to §306.3.h of the Ordinance limiting maximum percent impervious coverage of ninety percent for all uses.
4. A hearing on the application was scheduled for June 6, 2013.
5. Public notice of the hearing was given by advertisement in the Pottsville Republican Newspaper on May 20, 2013 and May 27, 2013.
6. Notice was given by mail to the parties.
7. Notice was posted on the Property.
8. The application and notices are part of the Board's file which is made part of the record.
9. At the hearing, the Applicant testified that he has improved the character or neighborhood where the Property is located by demolishing two (2) garages that were dilapidated, added a sidewalk and added four (4) parking places for neighbors.
10. The Applicant is currently operating a non-conforming auto repair facility which is not a permitted use in an R-3 District.

11. The current use is an existing non-conforming use as defined in the Ordinance.
12. The Applicant testified he would like to expand the current use more than 100% of its floor area as is only permitted by special exception under the Ordinance.
13. The Applicant also wishes to expand impervious coverage to 100% to create additional off street parking.
14. §306.3.h of the Ordinance limits maximum impervious coverage at 90% for all uses.
15. Protestants did not appear to contest the application.

#### CONCLUSIONS OF LAW

1. The Board is empowered with exclusive jurisdiction to hear and render final adjudications in special exception and variance requests.
2. §805.3 of the Ordinance states that a non-conforming use or building area used by a non-conforming use shall not be expanded except by special exception.
3. §116 of the Ordinance sets forth the special exception use process for the Board's consideration of special exception applications.
4. The Applicant has satisfied the applicable review criteria to be granted a special exception consistent with §116 of the Ordinance.<sup>1</sup>
5. The Applicant must satisfy the review criteria of §111(B)(3) to justify the award of a dimensional variance.
6. The Applicant has satisfied the pertinent review criteria to be awarded a dimensional variance to the impervious coverage requirements.

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<sup>1</sup> The Board notes that in general an applicant must prove that the proposed special exception use is a permitted special exception in that particular district. Of course, since it is acknowledged that the Applicant's auto repair facility is a legally existing, non-conforming use that can only be expanded past 100% of its floor area by special exception, it would be impossible for the Board to find that an auto repair facility is a permitted special exception in an R-3 District. For that reason, the Board does not find that the authors of the Ordinance intended for that element to be satisfied pursuant to §805.3 but only in those limited situations.

**DECISION**

AND NOW, this 11<sup>th</sup> day of July, 2013, after consideration of all evidence presented, the Board finds that the Applicant's requests for special exception and variance are **GRANTED** and directs the Zoning Officer to issue a permit consistent with this decision.



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**ERIC SEITZINGER, Chairman**



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**DAVID AMBROSE, Member**

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**DANIEL DAUB, Member**