

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

**RE:** Request for a Special Exception by Hans P. Scherer and Christine M. Scherer.

**BEFORE:** Daniel Daub, Scott Thomas, and Eric Seitzinger, Members of the Schuylkill County

Zoning Hearing Board (the "Board").<sup>1</sup>

**MINUTES OF HEARING**

Name of Applicant	Hans P. Scherer and Christine M. Scherer 407 West State Street, Apt. #E Media, PA 19063
Location of Subject Property	617 West Oak Street Frackville Borough Schuylkill County Pennsylvania U.P.I. 43-03-0380.000
Owner of Property	Estate of Harry Baney
Zoning Classification	C-1 Local Commercial District
Date of Hearing	October 2, 2014
Place of Hearing	Courtroom #5 Schuylkill County Courthouse Pottsville, PA
Appearances (for Board)	Shane H. Hobbs, Esq.
Appearances (Applicant)	Joseph Zerbe, Esq. Hans P. Scherer
Protestants	None

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<sup>1</sup>Having a quorum (or a majority of Board Members present) on October 2, 2014, the Board conducted a hearing and heard extensive testimony provided by the Applicants. At the conclusion of the hearing, on October 2, 2014, the Board voted and approved the zoning permit to the Applicants.

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**FINDINGS OF FACT**

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

1. Hans P. Scherer and Christine M. Scherer ("Applicants") initiated this hearing after their application for a zoning permit was denied by the Zoning Officer.
2. Applicants have an agreement of sale to purchase the subject property ("Property"), situate 617 West Oak Street, Frackville Borough, Schuylkill County, Pennsylvania, identified by UPI No. 43-03-0380.000.
3. The Property is vacant and is owned by the Estate of Harry Baney ("Owner").
4. The Property is located in C-1 Local Commercial District under the Schuylkill County Zoning Ordinance ("Ordinance").
5. The Property, prior to becoming vacant, was used primarily for business and has in it a separate, residential living quarters.
6. The Applicants desire to use a portion of the Property as a Micro-distillery, and to continue the use of the existing residential portion of the Property.
7. The Applicants are seeking relief from Article I, Section 105.B, of the Schuylkill County Zoning Ordinance ("Ordinance"): Uses Not Specifically Regulated. Additionally, or in the alternative, Applicants' request relief pertaining to Section 306.I. (1.) of the Ordinance: Permitted by Right Uses.
8. The Applicants' request, if granted, will allow them to use a portion of the Property as a Micro-distillery as defined and licensed by the Pennsylvania Liquor Control Board ("PLCB") and the Federal Alcohol and Tobacco Tax Trade Bureau ("FATTTB").
9. Public notice of the Hearing was given by advertisement in the Pottsville Republican Newspaper on September 15, 2014 and September 22, 2014.

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10. Notice of the Hearing was given by mail to the parties; the notice being sent on September 15, 2014.
  11. Notice was also posted on the property on September 12, 2014. Copies of the notice are being made part of the record, together with the original copy of the Application.
  12. Applicants' attorney, Joseph Zerbe, Esq., provided testimony regarding the relevant Federal and State regulations as it applies to the proposed use of the Property, and further testified how such use would be compliant with those regulations.
  13. Hans P. Scherer, the co- applicant, testified to the present condition and dimensions of the Property, the proposed use, and the characteristics of the surrounding neighborhood.
  14. Mr. Scherer further testified that a Micro-distillery will not alter the essential character of the neighborhood, nor will it create any problems with safety, odors, traffic, parking or noise.
  15. A Micro-distillery is defined by the PLCB as a distillery producing less than 100,000 gallons of spirits annually; Applicants will produce less than 5000 gallons annually.
  16. Applicants submitted several exhibits to the Board in the form of photographs and maps.
  17. The application, Zoning Board file, and all exhibits provided at the hearing were accepted and made part of the record.

## CONCLUSIONS OF LAW

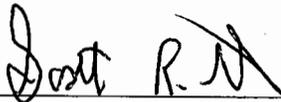
1. The Board is empowered with exclusive jurisdiction to hear and render final adjudications in Special Exception requests.
2. Pursuant to Section 105 ( C) of the Ordinance, “[t]he Zoning Officer shall literally apply the wording of this Ordinance...to particular applications.”
3. The term “micro-brewery” is mentioned in the Ordinance however the term “micro-distillery” is not mentioned.
4. Therefore, the Applicants’ burden is to prove by a preponderance of the evidence that the proposed use satisfies the criteria for a Special Exception under the Ordinance.
5. The testimony and supporting exhibits are consistent with the Applicants’ application.
6. The Applicants have satisfied the pertinent criteria outlined in the Ordinance to justify the award of a Special Exception.

## DECISION

AND NOW, this 13<sup>th</sup> day of October, 2014, the Board **GRANTS**<sup>2</sup> the Special Exception request by Hans P. Scherer and Christine M. Scherer and directs the Zoning Officer to approve its application consistent with this decision.



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**DANIEL DAUB**, Chairman



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**SCOTT THOMAS**, Vice Chairman

<sup>2</sup> The Board voted, by a majority of the quorum present, to grant the special exception during its hearing on October 2, 2014. Board Member, Eric Seitzinger, Abstained from voting.

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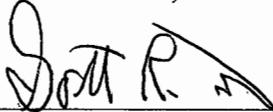
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DANIEL DAUB, Chairman



SCOTT THOMAS, Vice Chairman

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