

COLLEGE TOWNSHIP COUNCIL

PUBLIC HEARING

OCTOBER 21, 1982

MEMBERS PRESENT: Donald E. Bailey, Gale L. Dargitz, J. Carroll Dean, Herbert W. Stewart, Dolores A. Taricani, Chairman

OTHERS PRESENT: C. Thomas Lechner, Township Manager

The meeting was called to order at 7:30 p.m. The first item on the Agenda was consideration of a request for a Curative Amendment to the Zoning Ordinance by W. E. Esber, Kathryn and Charles Rallis, and Nancy Dreibelbis.

Chairman Taricani outlined the council's procedure for public hearings (see attached sheet). An order of appearance was established, and it was ascertained that attorneys would be able to question witnesses. All persons intending to testify were asked to sign-in and were sworn-in. There were no objections to the proceedings being recorded.

James Rayback, Attorney for the Applicants, recited a brief history of the problem and stated the need to create a public record of the events in case of appeal. The petition he presented had been double amended. He identified and outlined the property in question on a map he had submitted for clarification.

W. E. Esber was the first applicant to present information, and led by Attorney Rayback's questioning, he testified to the following:

1. He ^{is} a resident of 445 W. Park Avenue, State College. He is a dealer in Persian and oriental rugs, and lately pianos, with his business located in College Township at 1001 E. College Avenue,
2. He purchased the land in question in 1978. He has spent over \$200,000 to improve the main building, including facing the building, remodeling the interior and exterior, fireproofing, adding a heating system and an aluminum roof, and paving the driveway. In addition, he contributed \$25,000 towards a sewer system for his lot.
3. He has one current tenant sharing the main building—PA Village Craft.
4. He has one office building in front, now vacant, but previously tenanted by a national consultant.

**OUTLINE OF PROCEDURE FOR
PUBLIC HEARINGS**

**IN ORDER TO GIVE EVERYONE AN OPPORTUNITY TO PARTICI-
PATE IN A PUBLIC HEARING AND TO AVOID CONFUSION, THE FOLLOW-
ING RULES WILL BE OBSERVED:**

- 1. IT IS REQUESTED THAT EACH PERSON WHO WISHES
TO TESTIFY SIGN THE SIGN UP SHEET AND BE
SWORN OR AFFIRMED UNDER OATH.**
- 2. A FACT SHEET WHICH INCLUDES A BRIEF OUTLINE
OF THE ISSUE WILL BE PROVIDED TO THE COUNCIL.**
- 3. IN REZONING MATTERS THE APPLICANT OR APPLICANT'S
REPRESENTATIVE SHALL HAVE THE FIRST OPPORTUNITY
TO PRESENT TESTIMONY. AN ATTEMPT SHOULD BE MADE
TO LIMIT THE PRESENTATION TO TEN MINUTES.**
- 4. THERE WILL BE NO DISCUSSION BACK AND FORTH DURING
ANY PRESENTATION, AND INTERRUPTIONS WILL NOT BE
TOLERATED.**
- 5. ~~ANY INDIVIDUAL WILL HAVE THE RIGHT TO RESPOND;~~
~~RESPONSES SHOULD BE LIMITED TO FIVE MINUTES, IF~~
POSSIBLE.**
- 6. ANY RULING ON PROCEDURE WILL BE MADE BY THE
CHAIRMAN.**

Re: Curative Amendment Request and Challenge filed by Charles and Kathryn B. Rallis, W.E. Esber, and Nancy J. Dreibelbis for premises located at 901, 1011, and 1101 E. College Ave.

To: College Township Municipal Council

Please enter our appearance for the Centre County Historical Society, adjacent adjoining landowner.

Please enter on the record the appearance of the Centre County Historical Society as an interested and/or aggrieved party in the action.

Request is hereby made by the Centre County Historical Society to participate and intervene in the proceedings as a party, to include the presentation of testimony, cross-examination of witnesses, and making of argument.

EISENSTEIN & BOWER

By: 
Virginia B. Eisenstein, Esq.
Attorney for Centre County
Historical Society

5. Previous to Esber, the building was occupied by the Furniture Exchange.
6. Present zoning of the land is University; his use of the land is considered non-conforming Commercial. Under present zoning, if his building were to burn down, he could only put up a museum or a lot of other things that would not prove profitable.
7. Esber feels that zoning should be changed to General Commercial as the land is presently, and for all practical purposes, being used as commercial; that nothing he is now doing is incompatible with the University; and that his main structure is not only compatible with the University, but with the Historical Society as well. Also, he has provided, upon request, carpeting and tapestry for University functions. In addition, if the zoning were changed, Esber would be assured of rebuilding, and secondarily, it would increase the value of his lot, which he now deems "useless" and "too noisy for a residence."
8. Benefits to the Township would include increased tax revenue generated from a business on a now unoccupied lot.
9. Esber himself had benefitted the Historical Society by allowing his land to be placed on the National Register and by bringing in PA Village Craft ("very much in keeping with the historical character"). He would also give his three historical outbuildings to the society; and he has plans to landscape his property to conform with that of the Historical Society.
10. Esber wants to sell his vacant lot to Cal Zimmerman who proposes to build a restaurant on the site. He contends that the restaurant will conform to the district. A plan of the proposed restaurant has been drawn up by Sweetland and submitted to Council on Esber's behalf.
11. In answer to Taricani's reading from the Zoning Ordinance that University zoning permits all the uses of the PSU and Rural Residential District, Esber stated that he was told by the Zoning Officer that this was not the case, that although the University has a cafeteria, he would not be able to put up a restaurant where food was to be consumed on the premises. He did not, however, apply for a building permit.
12. Esber declared that his lot is an asset to the community; it is on a main street; and it should not be allowed to stand idle.

At this point, Dargitz reiterated Chairman Taricani's comment that the Zoning Officer is only an issuer of permits. He stated that there is a whole set of appeal routes to follow upon disagreement with the Zoning Officer—first the Zoning Hearing Board, and then the various courts. It is not clear to Dargitz whether it has been firmly established that Esber cannot use the property for all the uses that PSU currently makes of their land. Had Esber followed the established appeal path, it may have been determined in fact that Esber

could make the same use of the property as PSU. Esber commented that he did not think it was "worth it"—that he was doing everything compatible with University Zoning which was the Ordinance's original intent.

Attorney Rayback stated that Esber and Rallis have been trying for over a year to get the zoning changed through the Planning Commission, and that the matter has not been handled expeditiously. Taricani stated again that the ordinance is enforced as written by the Zoning Officer; he is not given any latitude at all. It is not for Council to interpret the ordinance. Interpretation is the province of the Zoning Hearing Board. The applicants could have applied for a permit, but they did not. Taricani also stated that it was most unfortunate that so much time had gone by; that it serves no purpose to determine why or how, but the entire Council is in agreement that the applicants should have had a response.

Esber was then questioned by Virginia Eisenstein, the Attorney for the Centre County Historical Society. The following points were established:

1. The property was zoned University District when Esber purchased it in 1978 and subsequently improved upon the land and the buildings.
2. Esber's property was once all part of Centre Furnace land, and later, the Garver Tract.
3. Should the property be zoned General Commercial, there is a possibility of future incompatible use; however, the proposed purchaser, Cal Zimmerman, is a man of "honorable intent" and the plan he submitted of the restaurant is only "hypothetical."
4. Esber is not aware of any artifacts presently on his property.

Charles Rallis of 1101 E. College Avenue testified next. Under Rayback's questioning, he presented the following information:

1. He has lived in the area indicated on the map by Attorney Rayback since 1954. When he first purchased the property, it was known as the "swamp grounds" and had to be filled in before building could commence.
2. When Rallis first purchased the property from Garver it had not been zoned by the Township; however, it was subsequently zoned Commercial. Rallis never had a business on the property, and in 1965 the State began the process of condemnation of his lot and the land upon which his home was built. It was necessary for him to move his house, and he did so. After condemnation by the State, the land was rezoned to University, the State shelved its plans for building a road to the hospital, and Rallis' original lot was sold back to him. He estimates his loss from these procedures to be in excess of \$12,000.
3. Rallis stated that the land surrounding his property had been commercially used for at least 20 years. A swimming pool (erected by Garver), a roller rink (Esber's present building), and Garver's own filling sta-

tion across College Avenue were but some of the commercial enterprises in that area. In addition, the Garver mansion itself had rental apartments in back.

4. His property fronts on Rt. 26, a heavily-trafficked four-lane highway.
5. Since 1965, Rallis has wanted to erect a fruit stand and seafood market on his property.
6. In answer to Taricani's question whether he had applied for a permit for his business, Rallis stated he had not; in reply to Stewart's question whether he had talked with a Zoning Officer, Rallis stated that "circumstances" had kept him from so doing.
7. To Eisenstein's question whether the property was zoned University District when he re-acquired it, Rallis replied in the affirmative; the area surrounding that property was also rezoned to University.

Dave Sweetland of RD Port Matilda, Patton Township, testified next. He is a Consulting Engineer and prepared the plans for the proposed businesses for Esber and Rallis. Sweetland, who is an alternate engineer for College Township is not working for the Township on the case, and stated that there exists no conflict of interest between his public and private status. Under Rayback's questioning, Sweetland presented the following information:

1. He began work on the project for Rallis and Esber in September 1981. On September 24, 1981, the property owners wrote letters to the Township requesting a change to Commercial Zoning for their property. No definitive answer to their request has been received, although the Planning Commission had recommended to Council that the request be denied.
2. It is Sweetland's opinion that the uses of the Dreibelbis business and Esber's business are non-conforming commercial. Prior to Esber's acquisition, his property had been subject to various long-time commercial uses.
3. Sweetland explained how the general area around the property in question is presently zoned. (See attached)
4. He stated that the average daily traffic count is approximately 20,000 vehicles on that part of Rt. 26.
5. The plan he has prepared of the proposed business should be considered an "idea plan." Should that plan be accepted, it would benefit the Township by controlling access to the property and would establish a common tie between three separate commercial establishments which would aid traffic patterns.

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II. That the action of the Board of Supervisors constitutes illegal "spot-zoning" for the following reasons among others:

(a) The properties of Clark Motor Company, Inc. and Claster's, on the opposite side of Highway Route No. 26 (also known as the ^{E. Collins Co.} ~~P~~ Pike) are zoned for and are presently devoted to commercial uses (C-1 General Commercial), (automobile sales agency and building supplies sales), and have for a prior decade been used for commercial and industrial purposes, i.e. commercial greenhouse, artificial gas storage tanks, ice plant, and beverage distribution plant. The Hubbard property was in 1982, through the use of a curative amendment rezoned to C-1 General Commercial and is used as a professional office and is proposed to be used for a hotel. The zoning of properties on opposite sides of a main artery of travel in a different zoning classification has long been condemned in Pennsylvania as being confiscatory. Taylor v Haverford Township, 299 Pa. 402, 414.

(b) The properties adjoining the westerly side of the subject property are presently devoted to a gasoline station and roofing business. Historically their antecedent uses were also, for over one-half a century, of a commercial nature, i.e. a public dance hall and adjoining commercial swimming pool, later converted into a commercial roller rink, and a gasoline station next door.

(c) On the easterly side of the subject property there is a small section of land owned by The Pennsylvania State University, an instrumentality of the Commonwealth, over which the Township has no zoning power or control, and immediately beyond that section is a carpet and rug sales agency, which is zoned C-1 General Commercial.

6. In answer to Dargitz's question whether he had established if the proposed uses were allowable under University zoning, Sweetland answered that he ... not. He added that that was now a moot point as a Curative Amendment had been brought forward asking for a change in the zoning. The applicants are not asking for an interpretation: they are requesting a change in the zoning.
7. To Taricani's comment that there may, in fact, be no problem, he answered that there exists an interpretative problem, and a Curative Amendment would cure that. (Taricani then clarified that the Council has only dealt with the Historical Zoning issue—it has not dealt with the issue of one zoning over another.)

Attorney Eisenstein then questioned Sweetland, who testified that:

1. He had drawn up the original Subdivision of the Garver Tract, which was approved and recorded in 1977. Per Eisenstein's request, he outlined the extent of the former Garver Tract and agreed that its parameters are not confined to the Esber and Rallis property.
2. Although Garver had done some subdivision of his property prior to 1977, the original Garver Tract is all zoned University District extending to Puddintown Road.

Dean commented that a Curative Amendment is proposed where there is a flaw in the Ordinance and this has not been shown. A distinction must be made between commercial activities and commercial zoning—they are not synonymous. He stated that he has seen no evidence of any awareness of good planning criteria or procedure by the applicants; there has to be a compelling reason for the Township to add to its Commercial Zoning.

Attorney Rayback countered that the property should be zoned Commercial as it already is being used as commercial and there is commercial activity all along that area. Sweetland added that the dominance of heavy traffic adds to the commercial nature of that area, and brings in the issue of land use and how it relates to other properties in the area.

Dean allowed as there may be zoning errors in the Ordinance, but he does not believe that the Curative Amendment proposed addresses the problem fully.

Dennis Elpern, of the Centre Regional Planning Commission, asked Attorney Rayback to explain how his clients are being denied equal protection under the current Ordinance as claimed in the applicants' brief. Rayback stated that general feedback has been that under the current University Zoning, PSU can do anything it wants to do, while his clients are restricted in their uses. Everything from barns to nuclear reactors to retail sales outlets can be found on University premises; his clients are limited to a museum or rural residential uses (most of which have a commercial taint). It is unfair to treat private individuals differ-

ently from the University. If his clients are not treated the same, then they are denied equal protection under the law. A second interpretation of the zoning is that if his clients can make all the uses of the Penn State University, does that mean that anything that PSU does, they can do? The law is ambiguous, and thus unfair.

Attorney Rayback then summarized his clients' position, stating:

1. His clients could have taken one of two routes to change the present zoning—they could appear before Council for a Curative Amendment or they could appeal to the Zoning Hearing Board. His clients chose the former.
2. The matter has been pending for over a year—it is time for a decision now.
3. The present zoning of that property is, in effect, spot zoning. University Zoning of that property is neither logical or justified. Other properties in that area by Rt. 26 are all Commercial—they are commercial now, and have been commercial for 20 years.
4. It does not make sense to impose University Zoning on the private Garver Tract. The University can do anything it wants, and therefore the only area that is really being zoned is his clients' property, and that constitutes spot zoning.
5. In asking for a Curative Amendment, applicants must present a proposed plan; the plan his clients proposed was not definite ("it is not written in blood"), and the Council must believe in Rallis' and Esber's good faith.
6. His clients' property constitutes 600 ft. of frontage which they wish to integrate and coordinate. Here is the chance to do something with it—something good.

The Centre County Historical Society, represented by Attorney Eisenstein, then presented their opposition to the Curative Amendment. Jacqueline Melander, the President of the Society, began the testimony under Eisenstein's questioning.

According to Ms. Melander:

1. The Centre County Historical Society dates from 1904; its purpose is to arouse interest in the history of the County through various programs.
2. It is presently located at 1001 E. College Avenue on land acquired in 1978 at the bequest of David Garver. Current use of that land is for the Society's meetings and a variety of programs.

3. The building currently houses two tenants who act as caretakers.
4. The mansion itself, correctly known as the Centre Furnace Mansion, dates from approximately 1830. Also located on the property are a garage and about one-third of an outbuilding (use unknown).
5. The actual site dates from 1792; at that time the Centre Furnace area extended some 6-8000 acres. Currently, the core of the site is the mansion, the furnace stack, and some outbuildings.
6. The Society is in possession of two photographs, circa 1900. Ms. Melander outlined the approximate area depicted on these photographs on the map, and Ms. Eisenstein entered the photos as "intervenor's" Exhibits A & B.
7. The property now owned by the Centre County Historical Society, as well as the University-owned furnace stack and Esber's lot, are all entered on the National Historic Register. Attorney Eisenstein entered as "intervenor's" Exhibit C the packet of information nominating the above properties for placement on the Historic Register.
8. All the lands on the submission to the National Register are zoned University.
9. The Historical Society has not limited its concern to only that property now on the Historical Register. The entire area is significant and is a County and College Township asset. The area represents the beginnings of the iron industry in Centre County as well as the beginning of the Penn State University.
10. The Historical Society plans to develop a historic walk that would relate the Centre Furnace Mansion to the furnace stack. An interpretative landscape (Exhibit D) has been designed to show how the area could be developed into a living historic site, not just a museum.
11. An Archaeological Grant had been received by the Society for research to determine placement of historic buildings, etc.
12. Rezoning the area to Commercial would have adverse impact as the site is more than the mansion itself; it includes the whole character of the site. Commercial zoning allows for any use—not just for the current owner, but for future owners. There is a potential for future detrimental use of the area.
13. Between 1978 and the present the Historical Society has begun development of a historic walk, attempted to improve the house itself, and designed renovation plans for the house.
14. In response to Stewart's comment that Garver himself had begun commercialization of the area, Ms. Melander stated that in 1930 the public's sense of history was not as developed as it is at present.

15. In answer to Taricani's question about how the Historical Society deals with the present non-conforming commercial uses of the property, Ms. Melanzer stated that while the Society would like to acquire the land for itself one day, Esber's present use of the property is compatible with the Society's aims. Should the property be zoned Commercial, however, there is always the possibility of the addition of non-compatible "golden arches."
16. In response to Dargitz' question on whether University zoning diminishes the value of the applicants' land, she answered in the negative, that ultimately, land values could increase due to the influence of the historical nature of the area.

Philip Klein, a retired Professor of American History, recited, per Eisenstein's request, a brief synopsis of the history of the tract prior to Garver ownership, and outlined the uses to which it was put and its historical significance thereof.

He testified to the following:

1. In 1924 or 25, the President of PSU in conjunction with the PA Historical Commission, created a large bronze marker for the furnace stack.
2. Even before it owned the property, the Historical Society played a part in dissuading the State to go through with its highway plans.
3. The Centre Furnace area marks the beginning of the iron industry in PA—the transition from the wood age to the iron age. Between 1800 and 1850, Central PA produced 50% of all the iron in the U.S.
4. The site is significant for its iron industry, for the origins of PSU, and is also the area's tightest relationship with the Revolutionary War through General Miles and Patton.
5. In the first part of the 19th century, the entire Garver Tract was used for the iron furnace; it harbored the second iron furnace in PA west of the Susquehanna, and the area contained the richest iron ore in the country at that time. Later, in 1857, the area was used for a farm.
6. The buildings that were in the area during the iron furnace days were mostly on that property which is now owned by the University.
7. The preservation of the past is what makes a community live. It is necessary to save the good part of your heritage. If historical preservation is done right, it can be economically successful.
8. Professor Klein identified for Attorney Eisenstein an 1876 Pomeroy Atlas Map of Harris Township. The map depicts the Centre Furnace area, and he related those areas on the map to the corresponding areas of the Garver

Tract. He also identified two photographs depicting the Centre Furnace area (Exhibits F & G) circa 1912. The houses that appear in the photograph are gone.

9. At present, the furnace stack site itself is the most significant; the Centre Furnace Mansion is displayable. A reconstruction of the broader furnace area might have been significant had other structures survived, however, they did not.
10. One hundred years ago, the Centre Furnace area was the main component of Centre County.

(At this point council decided to table the rest of the Agenda and reschedule remaining items for the next meeting. It was agreed to continue the current meeting for one-half hour.)

11. Professor Klein stated he is not against progress; he is in favor of some mechanism by which you can take a "jewel and do it honor and full respect." The Centre Furnace site could bring both honor and money to the community.
12. In answer to Stewart's question on how close you can get to a historical marker and still preserve the area, and whether Klein feels the proposed commercial plan could be detrimental, Klein answered yes. Although the present owners have been respectful of where they are, down the road problems of poor usage could occur.

Christopher Hamilton was sworn-in and testified next. He is a Graduate Student in the Department of Anthropology and makes his living doing archaeological work.

Under Eisenstein's questioning he stated:

1. He was hired last year by the Centre County Historical Society to do field archaeological work on their tract, especially to look for the various outbuildings pictured in the previously exhibited photographs.
2. He uses surface collections and test pits as aids in determining where to research. In the particular case of the Garver Tract, he was fortunate to be able to rely upon existing photographs and maps. Also, the closer one is to known major structures, the more likely one is to find other structures and items of interest, ie. garbage pits, etc.
3. He believes that at one time there were probably items of historical interest on the property of Rallis and Esber. However, the area has undergone some construction changes, and there is no assurance that anything exists today. Indeed, and in answer to Sweetland's query, there is no positive way of knowing whether there were ever any structures on those two undeveloped lots.

ADDENDUM

Please add the following portion to the end of Page 9 and before the beginning of Page 10 of the Minutes of the Township Public Hearing held on October 21, 1982 which was erroneously omitted from the original copy:

"Attorney Eisenstein then summarized the Centre County Historical Society's opposition to the Curative Amendment:

1. The issue of spot zoning is not relevant in this case: the whole area surrounding this particular tract is also zoned University.
2. Current zoning of the Applicant's property is both logical and justified; it makes sense to treat their property the same as that of the surrounding area. There is a distinct historical connection between the Applicant's property, the land of the Historical Society, and the University itself.
3. Neither is there a question of denial of equal protection in this case. If the Zoning Ordinance is interpreted so that any use of the University can also be applied to that particular parcel, then there is no unequal protection. Conversely, if the Ordinance is interpreted the other way, that land is still not being treated any differently from any other land that is zoned University."

4. The proper avenue for the applicants to take is to apply for a permit—there may be no need for a Curative Amendment.
5. To change the zoning of that area would be detrimental to the intent of the Zoning Ordinance which attempts to promote a comprehensive plan for the Township.
6. Rezoning to General Commercial would have an adverse impact. Esber's present use of the property fits in both with the aims of the Historical Society and the uses of the University; General Commercial would not.

Marlowe Froke, Secretary of the College Township Planning Commission, asked to speak before the Council.

He was sworn in and testified to the following:

1. The Planning Commission has recommended to Council that the Curative Amendment be denied.
2. Addressing the applicants' claim of non-expedience in deciding the matter, he stated that the Planning Commission holds this area to be of major cultural, economic and political significance, and consideration of such a serious matter demands time. The gathering of testimony, obtaining information from the State, holding working sessions, and working with the Council itself to ensure that all parties had the opportunity to state their views were all time-consuming activities.
3. Mr. Froke is sure that a review of the Minutes of the Planning Commission will document that serious attention has been paid to the issues, and that the matter has been handled in an expeditious way.

Tom Songer, a Consulting Engineer representing the applicants in conjunction with Dave Sweetland, testified to the following:

1. The present Zoning Ordinance is unclear; his clients are within their rights to ask for a Curative Amendment, and, in so doing, will probably save a considerable amount of time if Council can make a decision in this matter.
2. The plan developed by Sweetland shows the good intentions of Rallis and Esber. Only two undeveloped lots are in question, the rest of the area has already been developed commercially.
3. Considering the contemporary architecture of the existing buildings on that property, the addition of any structures of a historical character would seem out of place.
4. Esber was single-handedly responsible for getting a sewer into the area via his \$25,000 capital contribution.

5. Land is supposed to be zoned for its best use, and commercial use is the best use for that area.
6. College Township has limited commercial land having public water and sewage—his clients' land would be a commercial asset.

Joan Hubbard, of 936 E. College Avenue, presented the following information:

1. In her opinion, the original commercial zoning of that property was rescinded because it was thought that a State highway was to come through that area and nobody knew what was going to happen.
2. The Centre Furnace Mansion has value in and of itself; it should be used as such; "what is left is left."
3. Roads came through that area in 1918, 1920, 1945, and 1960. She believes they must have covered every artifact. Whatever the roads have not covered, the gas station and paved roads would have covered.
4. She suggested that a certain historical part of the house be blocked off and designated as Historical or University Zoning, and that the rest of the property be rezoned Commercial.
5. She believes that commercial activity would benefit the house, and vice-versa.

After all those wishing to testify had done so, Attorney Rayback asked Council to take into account the Minutes of the Planning Commission and the Minutes of the Public Hearings dealing with the Historical Zoning when it decides the issue of the Curative Amendment.

Dean wanted to clarify the point that zoning neither takes nor gives—people may benefit or suffer disadvantage, but it is no property owner's right to a particular zoning. Taricani concurred, and added that zoning is not forever—zoning can be, and is often, changed.

Taricani stated that a decision on the matter would be made at the next public meeting. Dean moved that the Public Hearing be adjourned; Dargitz seconded. The meeting was adjourned at 10:30 p.m.

Respectfully submitted,

C. Thomas Lechner
Secretary