

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of June 26, 2008

Members in Attendance

Jeffrey Staub, Chairman  
Sara Jane Cate, Vice Chairperson  
David Dowling

Also in Attendance

James Turner, Solicitor  
Dianne Moran, Planning & Zoning Officer  
Steven Stine, Township Solicitor

**Docket # 1246**

**Appeal of a Revocation of a Conditional Use Permit**

Appellant: Stephen Kessler  
Address: 4411-A Locust Lane  
Property: 4413 Locust Lane, Harrisburg, PA  
Interpretation: Appeal of the Zoning Officer's decision to revoke a conditional use permit for a used car lot located at 4413 Locust Lane.

The following were sworn in: Stephen Kessler, Appellant; and Dianne Moran, Lower Paxton Township Planning and Zoning Officer. Attorney Richard Wix was also present on behalf of Mr. Kessler.

Mr. Wix asked if Ms. Moran's decision dated April 25, 2008 is the basis of the appeal. Ms. Moran answered yes.

Mr. Wix stated that by letter dated April 25, 2008, Ms. Moran revoked Mr. Kessler's permit under the variance to operate his business. Ms. Moran stated that is correct. Mr. Wix stated that was in response to visits to the property on March 24 and 25, 2008. Ms. Moran stated it was those dates, as well as other various dates. Mr. Wix stated those dates were the basis of the decision. Ms. Moran stated those dates were part of several dates. Mr. Wix asked if on March 25<sup>th</sup> Ms. Moran took photographs. Ms. Moran stated that is correct. Mr. Wix asked if she had copies of those photographs. Ms. Moran stated she has photographs from 2006 through 2008. Mr. Wix was only interested in the ones from March 25<sup>th</sup>. Ms. Moran presented copies of the photos from that date. Mr. Wix stated that based on what she observed on that day, that Ms. Moran revoked the variance. Ms. Moran stated no, not necessarily. Ms. Moran stated she has been gathering information, not only on that one day, but rather based on the cars on the lot for several years. Mr. Stine stated that the Conditional Use permit was revoked, not the variance. Mr. Wix stated that Ms. Moran provided him with pictures from March 25, 2008 and he understood that they were the basis of the revocation, even though that may have occurred on more than one day, that there were more than 8 cars on the property. Ms.

Moran stated that the reason the conditional use was revoked is because there were more than 8 cars.

Mr. Wix asked if someone requested the inspection of the site on that date. Ms. Moran answered yes. Mr. Wix asked who. Ms. Moran answered Mr. Wolfe. Mr. Wix asked why. Ms. Moran stated there were too many cars on the lot and there were complaints from the residents, so that Mr. Wolfe asked that Ms. Moran photograph the situation. Mr. Wix asked if anyone complained to Ms. Moran personally. Ms. Moran stated that complaints come through the receptionist in the office, so she does not personally take the complaints. Mr. Wix asked if that meant that no one besides Mr. Wolfe personally complained to Ms. Moran. Ms. Moran stated that she did not speak to anyone else personally. Mr. Wix asked if the Township keeps a record of complaints received. Ms. Moran answered no. Mr. Wix asked if Ms. Moran does not know the names of anyone who purportedly made a complaint. Ms. Moran stated that she has a list of names of people that signed a petition which was recently submitted to the Township, which she presented to Mr. Wix. Mr. Wix stated Ms. Moran handed him something dated June 17, 2008, which is obviously after the revocation letter, and he asked for anything predating June 17<sup>th</sup>. Ms. Moran did not have anything. Mr. Staub asked if the petition should be marked as an exhibit. Mr. Turner asked if either party intends to offer it as an exhibit. Mr. Stine did not think it was admissible as an exhibit. Mr. Wix asked to mark the photographs as an exhibit. Mr. Stine asked if Mr. Wix wanted the entire packet of many photos, or just the ones from March 25<sup>th</sup>. Mr. Wix asked for the ones from March 25<sup>th</sup>. Mr. Turner marked the photos as Joint Exhibit #1.

Mr. Wix stated that Joint Exhibit #1 has three pages, the first of which is dated March 24, 2008. Ms. Moran agreed. Mr. Wix stated that the top photo shows a line of cars. Ms. Moran stated that is correct. Mr. Wix asked if those are on Mr. Kessler's lot. Ms. Moran answered that the top row of cars is not on Mr. Kessler's lot. Mr. Wix stated that Ms. Moran counted those cars in the number of cars on the lot. Ms. Moran stated that is correct. Mr. Wix asked when Ms. Moran realized that those cars are not on Mr. Kessler's lot. Ms. Moran answered when she counted them she realized they were not on his lot. Mr. Wix asked how many cars were on the lot on March 24<sup>th</sup>. Ms. Moran counted 14 cars. Mr. Wix asked if Ms. Moran determined who owned the vehicles. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined which of the vehicles were for sale. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined how many of the vehicles, if any, had registration plates. Ms. Moran answered no.

With regard to the top photo on Page 2 of Joint Exhibit #1, Mr. Wix asked if the cars pictured are not on Mr. Kessler's lot. Ms. Moran stated that is correct. Mr. Wix asked if Ms. Moran determined who owned the vehicles. Ms. Moran answered that she attempted to, but most of the vehicles were out of inspection and/or had no license plates, and/or the registration had expired. She stated that the only way she knows whose they are is that the owner of 3 Gloucester Street, who also received an enforcement notice, told her...Mr. Wix objected. Mr. Wix asked if Ms. Moran knows for a fact who owns the vehicles. Ms. Moran answered no.

With regard to the photo at the bottom of the page dated March 25, 2008, Mr. Wix asked if Ms. Moran determined who owned the vehicles. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined which of the vehicles were for sale. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined how many of the vehicles, if any, had registration plates. Ms. Moran answered no.

With regard to the photo at the top of page 3 dated March 25, 2008; Mr. Wix asked if the vehicles pictured were on Mr. Kessler's lot. Ms. Moran answered no. Mr. Wix asked if the bottom photo shows Mr. Kessler's property. Ms. Moran answered yes. Mr. Wix asked if Ms. Moran determined on that date, March 26<sup>th</sup>, who owned the vehicles. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined which of the vehicles were for sale. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined how many of the vehicles, if any, had registration plates. Ms. Moran answered no.

Mr. Wix stated these are the only photos he has seen, but understands there are additional photos. Mr. Wix asked if Ms. Moran determined on any of those other dates, who owned the vehicles. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined which of the vehicles were for sale. Ms. Moran answered no. Mr. Wix asked if Ms. Moran determined how many of the vehicles, if any, had registration plates. Ms. Moran answered no.

Mr. Wix asked if someone told Ms. Moran that she should issue the revocation letter, and who. Ms. Moran stated that Mr. Wolfe told her to do so. Mr. Wix asked if it was the Township Manager's decision and not the Zoning Officer's. Ms. Moran stated she was instructed to revoke the conditional use. Mr. Wix stated it was his decision, not hers. Ms. Moran stated that based on the information she had gathered, and the fact that there were cars on the lot; she was instructed that it was time to revoke the conditional use. Mr. Wix asked if it was Mr. Wolfe's decision rather than her own. Ms. Moran stated that she was instructed that it was time so she sent the enforcement notice with her signature saying that it was her interpretation that Mr. Kessler was in violation of his conditional use.

Mr. Wix asked if Ms. Moran was aware that people have abandoned vehicles on Mr. Kessler's property. Ms. Moran was not. Mr. Wix asked if she was aware that he went to the Lower Paxton Township Police Department to seek their aid in having abandoned vehicles removed from the property. Ms. Moran stated that no one shared that information with her.

Regarding Joint Exhibit 1, Mr. Stine asked if the top picture on page 1 is not Mr. Kessler's property, and asked who does own it. Ms. Moran stated that is correct, and that the owner is Jeanne Allison and Robert C. Secord, Jr. Mr. Stine asked what the purpose of the picture was if the vehicles are not on Mr. Kessler's property. Ms. Moran stated those cars...Mr. Wix objected because it is not Mr. Kessler's property, and the issue is

the variance this Board gave Mr. Kessler for his property. Mr. Stine felt the answer is relevant to show why the picture is included. He noted that this is a joint exhibit that Mr. Wix agreed to submit, so Mr. Stine felt he should be allowed to have testimony on a joint exhibit that Mr. Wix submitted. Mr. Turner stated the answer to the question will show whether it is relevant or not. Mr. Wix stated that if it is based on some hearsay then he would further object. Mr. Turner instructed Ms. Moran to answer the question. Ms. Moran stated that this picture is shown because it is an expansion of Mr. Kessler's car lot. Mr. Wix objected. Mr. Wix stated that Ms. Moran already said that she didn't know who owned the cars or if they were registered, so she cannot say if they were an expansion of his lot. Ms. Moran stated that she tried to answer that question earlier, that the gentleman at 3 Gloucester Street... Mr. Wix objected, citing hearsay. Mr. Dowling felt that if the cars are under Mr. Kessler's control even if they are not on his property, he is still in violation of the variance. Mr. Wix stated they are not under his control. Mr. Dowling stated that is what they are trying to find out. Mr. Wix stated the Board is trying to find out from a witness who says she doesn't know who owned them, who they were registered to, and if they were held for sale. Ms. Moran stated she couldn't know that because the cars on that lot do not have plates on them, or current registrations and had expired inspection stickers. She further stated that the man from that property came in and said...Mr. Wix objected, citing hearsay.

Mr. Stine asked if the bottom picture is of Mr. Kessler's property. Ms. Moran answered yes. Mr. Stine asked if there were 14 cars pictured. Ms. Moran answered yes. Mr. Stine asked if any of those cars are customers or employees of the car lot. Ms. Moran answered not to her knowledge. Mr. Stine asked if the car lot was open at the time of the photo. Ms. Moran didn't believe so since there were no people on the car lot.

Mr. Wix called Mr. Kessler. Mr. Wix asked if the cars at the top of the photo are on his property. Mr. Kessler stated no. Mr. Wix asked if they are his vehicles. Mr. Kessler answered no. With regard to the photos at the bottom of page 1 and 2, Mr. Wix asked if those cars are on his property. Mr. Kessler answered yes. Mr. Wix asked if some of those cars belong to employees. Mr. Kessler stated the red truck next to the building belongs to a customer who wanted to see what it was worth as a trade. The Isuzu Trooper is an employee, and the red Jeep belongs to Jose Colon, Mr. Kessler's partner.

Mr. Wix asked if there were just eight vehicles for sale on the property. Mr. Kessler answered yes.

Mr. Wix asked if Mr. Kessler has had a problem with abandoned vehicles on his property. Mr. Kessler answered yes. Mr. Wix asked what was done when that problem arose. Mr. Kessler stated he had the police run the tags, to try to get them removed.

Mr. Wix presented Appellant's Exhibit 1 and asked Mr. Kessler to identify it. Mr. Kessler stated it is what the Officer gave him on a red BMW on his lot. The BMW was abandoned on his lot and they couldn't figure out who owned it since the number listed

on the car was no longer any good. Mr. Wix asked if it was on the lot when the pictures were taken. Mr. Kessler answered yes. Mr. Wix asked if it belonged to him. Mr. Kessler answered no. He asked if the police hauled it away. Mr. Kessler stated they made the owner come get it.

Mr. Wix asked about the top photograph on Exhibit 2, and if some of those vehicles have registration plates on them. Mr. Kessler answered yes. The black Chevy four-door truck belonged to a friend of his who is now deceased. The silver four-door truck belongs to Joseph Lilly. Mr. Wix asked if those vehicles belonged to Mr. Kessler. Mr. Kessler answered no. Mr. Stine asked which picture was being discussed. Mr. Wix answered the top photo on page 2 of Joint Exhibit 1. Mr. Wix asked if there were not more than eight vehicles on the property for sale at the time the photo was taken. Mr. Kessler stated that is correct.

With regard to the bottom photo on page 1 of the Joint Exhibit, Mr. Stine asked about the following vehicles and Mr. Kessler gave the following responses:

Red Isuzu Trooper	Employee car
Rodeo	Employee
Red Truck	dropped off for trade value
Blue Car parallel to the building	Jose Colon's son's car, parked there to carpool to the sale
Cars to the west of the blue car	didn't know (the only customer car is the black Saturn on the 25 <sup>th</sup> .)
Silver van	for sale
Car next to the van	wasn't sure, but didn't think it was for sale
Red Jeep	Jose's car
Saab next to red jeep	in for repairs, not yet for sale
Red BMW	abandoned

Mr. Stine asked about the abandoned vehicle. Mr. Kessler stated that someone parked it in his lot with a for sale sign on it and a phone number to call for information.

Silver car next to the red BMW	for sale
Silver Subaru	for sale
White Mercedes	someone put money down on it but never came back for it, was for sale
Green Grand Cherokee	employee, parked there to carpool to the sale
Honda accord	Jose Colon's brother, Rivera, parked there to visit Jose, or carpooling to the sale
Red Nissan Sentra	Trade in vehicle, awaiting pick up by the junk man

Mr. Stine noted that car appears to have "sold" written on the back window. Mr. Kessler stated that it says "wholesale" or it might say sold written by the dealer he bought it from. That car went to the junk yard, and Mr. Kessler has documentation.

Black car Saturn	already sold, customer was on the lot to speak to Jose
Red car by the Saturn	wasn't sure
Dodge Neon	maybe a customer's car, Mr. Kessler wasn't sure, but did know he hadn't sold that car

Mr. Wix asked if the vehicle going to the junk man or the vehicle being considered for a trade in were for sale. Mr. Kessler answered no.

With regard to the history of this property, Mr. Dowling stated this began as a variance request, which was granted on September 26, 2002. After that date, there were violations of that variance. Mr. Dowling asked if that was correct. Mr. Kessler agreed that the variance was granted, but would not say that there were violations, because there has never been anybody that came to the property to speak to him to see what is for sale or what isn't for sale. He didn't think he should be held accountable to police his lot as he is not there all day. When he is in New Jersey he cannot control what takes place on his lot.

Mr. Dowling stated he is looking at the consent agreement signed in October 2006. Mr. Wix objected, this is material that has not been marked as evidence yet. Mr. Dowling asked if the Township intends to mark it as an exhibit. Mr. Stine answered yes. Mr. Wix further stated that the consent agreement does not have legal validity in terms of changing the variance. The Zoning Hearing Board is an independent body, and changes to its actions have to come from the same body. Mr. Wix stated the only matter that can be looked at in this case is the original variance decision, which sets a limit of 8 vehicles for sale.

Mr. Dowling stated that if that is the case, any action or violation by Mr. Kessler from the date of the variance decision is justification to revoke the variance. Mr. Wix answered no, because he wasn't cited.

Mr. Wix stated the reason for tonight's hearing is based upon what was purportedly there on March 24, 2008. Mr. Dowling saw nothing in the letter restricting the violation to March 24<sup>th</sup> or 25<sup>th</sup>. Mr. Wix didn't think anyone other than the Zoning Hearing Board can change the terms of the variance. Mr. Stine stated the consent agreement didn't change the variance. Mr. Turner stated the consent agreement dealt with the conditional use permit. Mr. Stine agreed. Mr. Stine stated that the reason for the consent agreement is to legally allow his employees and customers to park on the property.

Mr. Staub stated the conditional use permit was consistent with the variance. Mr. Stine agreed.

Mr. Dowling asked if the violation is for dates other than March 24 and 25, 2008. Mr. Stine stated that Ms. Moran already testified that those two dates were dates that she

looked at the property, but she also looked at the property on other dates as well. Mr. Stine noted that the letter does not say that the violation occurred on only those two dates. Mr. Dowling asked the Township's position, whether it is only March 24 and 25, 2008, or if it is those plus other days.

Mr. Dowling asked if the variance was granted by the Zoning Hearing Board and the conditional use was granted by the Board of Supervisors. Mr. Kessler answered yes. At least according to the consent agreement, Mr. Dowling stated there were violations of the conditional use and the variance between October 2002 and October 2006 (the date of the consent agreement). Mr. Kessler disagreed. He stated that no one has ever proved that he has had more than eight cars for sale on that lot. He cannot control who visits while he is out of town. For example, his mother and father and in-laws and an aunt visit, then Mr. Wolfe decides to take pictures, Mr. Kessler is in violation. Mr. Dowling stated the consent agreement was signed for some reason. Mr. Kessler stated it was the easiest way out at the time, in order to avoid what he is going through right now. He was told by counsel to sign it and be in compliance so he wouldn't have any more problems. That is the only reason why he signed the letter.

Mr. Dowling asked if anyone has ever come out to the business and asked to be shown which cars on the lot are for sale. Mr. Kessler answered no. Mr. Dowling asked if Mr. Kessler has ever volunteered the information. Mr. Kessler stated that Ms. Moran has been to the shop before and there was never an issue, and no one ever asked. There is nowhere to park off of Locust Lane, and you can't park on Locust Lane. The side street has room for only two cars.

Mr. Dowling asked if, from the date of the variance to April of this year, there were never more than eight cars for sale. Mr. Kessler stated that he has not had more than eight cars for sale. Mr. Dowling asked if there are ever cars there for consignment. Mr. Kessler answered no, and noted that that is not allowed in the state of Pennsylvania.

Mr. Dowling asked about the abandoned BMW. Mr. Kessler stated that it was owned by a lady that lived in the City and she didn't speak English. She eventually came to pick it up. Mr. Kessler offered the police report regarding the incident.

Mr. Dowling asked if this was the only abandoned vehicle Mr. Kessler has dealt with. Mr. Kessler stated that there have been other vehicles left, and he has taken them to the junk yard.

Ms. Cate asked how many times abandoned vehicles have been found on the property. Mr. Kessler stated that when he bought the property, there were three. It took almost three years to get rid of those. Ms. Cate asked what was done about them. Mr. Kessler stated that you can sign an affidavit to say you've had them more than 6 months or a year; a junk yard will take them. Ms. Cate asked if he called the police about the vehicles. Mr. Kessler stated he called the police about the vehicles in 2000, but was told there was nothing they could do.

Ms. Cate asked the number of employees. Mr. Kessler answered four. She asked what they do. Mr. Kessler stated that there are four that work in the shop daily. There are about three that will transport vehicles from auctions.

Ms. Cate asked about the vehicles in the garage. Mr. Kessler stated they are cars that they are repairing. Ms. Cate asked if they are cars they are repairing to sell. Mr. Kessler stated they are. Ms. Cate asked if there are frequently two cars in the garage being repaired to sell. Mr. Kessler answered yes. Ms. Cate noted the two in the garage are in addition to the ones for sale in the lot. Mr. Kessler stated the cars in the garage are not for sale, they are being repaired. Ms. Cate added ...to sell. Mr. Kessler agreed they are being repaired to see, and stated they are not yet for sale, they will need inspections. They are not for sale. Ms. Cate asked if Mr. Kessler does inspections. Mr. Kessler answered no.

Mr. Stine called Ms. Moran for testimony. He asked if she has been familiar with the Kessler used car sales since the time of the variance decision. Ms. Moran stated she is aware of a violation letter in 2002, but it was not sent by her. It was brought to her attention in 2005. She is familiar with the car lot.

Mr. Stine presented a copy of the decision granting variance. Ms. Moran identified the variance decision as granting the property at 4413 Locust Lane a use variance for a car lot across the street from the R-1, Low Density Residential District. Mr. Stine asked about conditions associated with this variance. Ms. Moran stated the applicant must limit the number of sale vehicles on the lot to eight. Mr. Stine asked if it said anything about ownership of the vehicles. Ms. Moran answered no.

Mr. Stine presented a document marked Township's Exhibit 2, and asked Ms. Moran to identify it. Ms. Moran stated it is Mr. Kessler's conditional use certificate that was granted to him by an action of the Board of Supervisors on October 1, 2002. Mr. Stine asked about conditions of the conditional use. Ms. Moran answered that it had the same conditions placed on it as the variance as granted by the Zoning Hearing Board. Ms. Moran read the letter. Mr. Stine marked the letter issuing the conditional use permit as Exhibit 2A.

Mr. Stine presented Township Exhibit 3 and asked Ms. Moran to identify it. Ms. Moran stated it is a notice of violation to Mr. Kessler dated December 9, 2003 from Lori Wissler, Planning and Zoning Officer. For the record, Mr. Wix objected to the admission of past violations which have been previously resolved. Mr. Stine stated that the testimony given by Mr. Kessler is that he was never in violation of any of the requirements of the variance or conditional use. Mr. Wix stated Mr. Kessler said he never had more than eight vehicles for sale. Mr. Stine stated that Mr. Kessler said he was never in violation. Mr. Turner allowed the testimony, noting Mr. Wix's objection.

Mr. Stine asked what the notice of violation was for, to the best of her knowledge. Ms. Moran stated that the second inspection on December 9<sup>th</sup> revealed that there were fourteen cars on the lot. Mr. Stine asked if this notice of violation was ever appealed. Ms. Moran stated that to her knowledge, it was not.

Mr. Stine presented Township Exhibit 4, and asked Ms. Moran to identify it. Ms. Moran stated it is a consent agreement dated October 17, 2006, between Stephen Kessler and Lower Paxton Township. Mr. Stine asked what was involved in the consent agreement. Ms. Moran stated that it basically stated that the defendant agreed to comply with all provisions of the zoning ordinance with regard to his conditional use. Mr. Stine asked if the consent agreement resolved the notice of violation (Township Exhibit 3). Ms. Moran answered yes.

Mr. Stine presented Township Exhibit 5, and asked Ms. Moran to identify it. Ms. Moran stated it is a notice of violation dated February 7, 2005. Mr. Stine asked what the notice involved. Ms. Moran stated that a site inspection was made February 2, 2005 and revealed 14 vehicles on the lot. Mr. Stine asked if this notice was ever appealed. Ms. Moran answered that it was not.

Mr. Stine presented Township Exhibit 6, and asked Ms. Moran to identify it. Ms. Moran stated it is a violation notice to Stephen Kessler dated February 9, 2006. Mr. Stine asked if this involved 4411, not 4413, Locust Lane. Ms. Moran agreed that it is for 4411 Locust Lane, citing that there appears to be a used car facility being operated at that address. Mr. Stine asked what 4411 Locust Lane is. Ms. Moran stated it is the property next to 4413 Locust Lane. Mr. Stine asked if that is the property...Mr. Wix objected, on the basis that these alleged violations took place 3 years ago. Mr. Turner asked the relevance of the violation on 4411. Mr. Stine stated it shows yet another violation for a similar act that has not been appealed. Mr. Stine explained that if a notice of violation is not appealed to the Zoning Hearing Board, they become binding; they are not just allegations anymore.

Mr. Stine presented Township Exhibit 7, and asked Ms. Moran to identify it. Ms. Moran stated this is a notice of violation for 4413 Locust Lane dated February 6, 2008 regarding the number of cars on the lot (the letter says 4411, but that is a typographical error, the letter is regarding 4413). Mr. Stine asked if it is for the number of vehicles on the property. Ms. Moran stated that there were 24 cars on the lot. Mr. Stine asked if the notice was ever appealed. Ms. Moran answered no.

Mr. Stine presented Township Exhibit 8, and asked Ms. Moran to identify it. Ms. Moran stated that this is an enforcement notice to Stephen Kessler dated April 25, 2008, revoking his conditional use certificate. Mr. Stine asked if this is the reason for tonight's hearing. Ms. Moran agreed.

Mr. Stine asked if Ms. Moran visited the site prior to issuing the revocation, on March 24, 25 as well as what other dates in 2008. Ms. Moran stated she was there on

March 24, 25, as well as March 26, April 1, April 10, April 14, April 15, and April 23, and April 21.

Mr. Stine asked how many cars were on Mr. Kessler's lot on March 24. Ms. Moran answered 17. Mr. Stine asked how many cars were on Mr. Kessler's lot on March 26. Ms. Moran answered 14. Mr. Stine asked how many cars were on the lot on April 1<sup>st</sup>. Ms. Moran answered 16. Mr. Stine asked how many cars were on the lot on April 10<sup>th</sup>. Ms. Moran answered 7 cars on the front lot and other cars on the other lot. Mr. Stine asked how many cars were on Mr. Kessler's lot on April 14. Ms. Moran answered 7, plus 4 on the side (11). Mr. Stine asked how many cars were on Mr. Kessler's lot on April 23. Ms. Moran answered 9, plus 3 on the side (12). Mr. Stine asked how many cars were on Mr. Kessler's lot on April 21<sup>st</sup>. Ms. Moran answered 11.

With regard to the notices that were sent out that were not appealed, Mr. Wix asked if the Township actually did something after that. Ms. Moran stated that is correct. Mr. Wix stated there was nothing for him to appeal from, other than a letter.

Mr. Wix asked the dates Ms. Moran visited the site, and the number of cars found.

March 24	17	April 14	7
March 26	14	April 23	12
April 1	16	April 15	11
April 10	7	April 21	11

Mr. Wix asked how the maximum was interpreted. Ms. Moran stated that her interpretation is that there is an expansion of the car lot use onto the property behind the subject property, but noted that is objectionable to the attorney, however, on each of those days, there is an excess of 10 cars on that other lot. Mr. Wix stated that that property is owned by someone else, and Ms. Moran does not know the ownership of the vehicles on that lot. Ms. Moran stated that was correct. Mr. Wix stated he is only interested in Mr. Kessler's property, and asked how many vehicles he is permitted on his property. Ms. Moran stated that the consent agreement dated October 2006 states that the defendant may have no more than 8 cars for sale on the subject property, 3 cars for customers, and one for an employee on the subject property. Mr. Wix asked if that meant 8 cars held for sale, 3 cars for customers, and one for each employee. Ms. Moran stated only one employee car is permitted, not one for each employee. Mr. Wix assumed that April 10, 14, 23, 15 and 21<sup>st</sup> were not in violation. Mr. Stine objected. Mr. Wix stated he is cross-examining. Mr. Stine stated that the assumption of facts is what he objects to, stating that the 12 cars may be for sale, or there may be 7 employees and 5 cars for sale. Mr. Wix stated that Ms. Moran did not know which cars were for what. Ms. Moran agreed, and read further from the agreement "the defendant shall identify by appropriate signage the parking spaces reserved for customer and employee parking, and said spaces shall not be used to park or store any other vehicles."

Mr. Wix stated that someone could pull off the road onto his property, putting him in excess of 8, which would put him in violation. Mr. Wix stated someone parked a vehicle on the property without his permission, and he went to the police department to have it removed, and this is one vehicle that is counted against him. Ms. Moran agreed.

Mr. Wix asked if Ms. Moran knew if any neighbors parked on his property without his permission. Ms. Moran answered no.

Ms. Cate asked if the appellant does not have control over the property and anyone can just park there. Mr. Kessler stated it is not as bad since the high school moved, but anytime there was an event at the school people parked all over his property. He noted that there is nothing he can do, and he has called the police and put barricades.

Ms. Cate asked about the apartments. Mr. Kessler stated there are townhomes behind his lot, and that is where his employees park so that they are not on the lot.

Ms. Cate asked what the lot is behind Mr. Kessler's lot. Mr. Kessler stated it has a building on it, and it was just sold.

Ms. Cate asked why there are employees' cars in the photos if they are parking elsewhere. Mr. Kessler stated he doesn't want the employees to park on the lot because of the blatant picture-taking where nobody stops to ask about the cars. Because of that, he has told them to park down Gloucester. There are always 3-4 cars or more parked there in the morning.

Ms. Cate stated when she visited the property, she observed cars parked on Gloucester at the lot. Mr. Kessler agreed. Ms. Cate asked if they were parked within 30 feet of the right-of-way. Mr. Kessler agreed. Ms. Cate asked about a rule regarding how close you can park to a corner. Mr. Kessler stated he doesn't know what else to do.

Mr. Staub asked about the property behind Mr. Kessler's property. He asked if the testimony was that those vehicles do not belong to Mr. Kessler or he does not own them. Mr. Kessler stated that not all of them were not his. The ones that have plates were people that worked for Mr. Kessler, but he didn't know why they were parked there. Mr. Staub asked if customers parked back there. Mr. Kessler stated that sometimes they did because he didn't allow them to park out front. Mr. Staub asked if any of the cars were for sale. Mr. Kessler answered no. He further stated that the only cars on that lot that are for sale have buyers guides in them. He has never been in violation with the State or the Attorney General's Office, and they check on them all the time. He explained that in the state of Pennsylvania, you are required to have buyer's guides, stating if the car is as is, or comes with a warranty, in the car.

Mr. Staub asked about the two blue cars with no license plates, in the bottom photo on page 1 of Joint Exhibit 1. Mr. Kessler agreed they were employees' cars, and stated that he has had problems with people stealing cars and dealer plates, so he does not

let employees keep dealer plates on their cars. Mr. Kessler stated he has a police report from Williamsport where a car was found on Route 220 with his dealer plate on it.

Mr. Staub stated the consent agreement says that signage was to be installed for customer and employee parking. Mr. Kessler stated he did mark the pavement and Ms. Moran documented that. Ms. Moran agreed with the statement. Mr. Kessler stated that it is impossible to police who parks there if he is busy doing something.

Mr. Dowling asked about 4411 Locust Lane. Mr. Kessler stated that is the house he lives in, adjacent to the car lot property. Mr. Dowling asked if there are ever vehicles on that property that were purchased at auction. Mr. Kessler stated only him and his wife park there, as well as the tenant to the rear.

Mr. Dowling asked if there are no cars on 4411 that are for sale or will be for sale. Mr. Kessler stated there are none, and there never has been; he runs the garden center out of that.

Mr. Dowling asked how the appellant differentiates between the cars with the sticker that someone can buy and the cars that are not yet for sale. Mr. Kessler stated that if the car has the buyer's guide it is available for sale; if it doesn't, it is not for sale. It is against the law to sell a vehicle without a buyer's guide and an inspection.

Mr. Dowling asked if there would be cars on the lot that are not ready for sale, but will someday be for sale. Mr. Kessler agreed that could happen.

Mr. Dowling asked if a car can be bought at auction and put right up for sale. Mr. Kessler stated he will buy cars at a sale, when he has four or five, he and some employees will go pick them up, and three go to Colonial Auto, and three to Affordable Auto. Mr. Kessler's shop is not a full-service shop. He doesn't have employees fixing cars.

Mr. Dowling asked how many cars are in the garage that are not at the moment for sale, but are being worked on to prepare for sale. Mr. Kessler answered one. Mr. Dowling asked the most that can be in that state. Mr. Kessler stated he has a two-bay garage. Mr. Dowling asked if the appellant ever stores cars on the other lot from auction that are not being reconditioned. Mr. Kessler stated that they go right to a mechanic. He noted there is no sense having a car on the lot that people can see but can't buy.

Mr. Dowling asked for a description of the process, starting at the auction. He asked how many vehicles the appellant could buy at the auction at a time. Mr. Kessler stated he does not bring the cars from the auction to his lot, he takes them to Colonial Auto or Affordable Auto. He stated he probably has 10 cars at Affordable Auto, and about 5 at Colonial Auto right now.

Mr. Dowling asked what the cars are that are in the garage. Mr. Kessler stated they are cars he is working on, himself. Mr. Dowling asked if those cars are for sale. Mr.

Kessler stated they will be when he gets parts for them. Mr. Dowling asked if they came from the auction. Mr. Kessler stated they came from Sutliff. Mr. Dowling asked if cars bought wholesale are brought from a dealer to the lot.

Mr. Dowling stated the testimony is that there are never more than eight cars with the sticker in the window that the public can buy. Mr. Kessler agreed. Mr. Dowling stated there could be other cars on the lot that aren't for sale. Mr. Kessler stated the only cars on the lot that are not for sale are ones that have a sales agreement, someone who has put money down on a vehicle.

Mr. Dowling asked if cars come from the auction to the lot. Mr. Kessler stated no. Mr. Dowling asked if cars never come from the auction to be cleaned and waxed in the garage. Mr. Kessler stated that cars are washed on the lot. Mr. Dowling asked for a straight-forward answer. Mr. Kessler stated that cars are brought to the lot after they are inspected to be washed.

Mr. Dowling stated the appellant can have eight cars for sale, and two in the garage with no sticker. He asked if it is Mr. Kessler's opinion that the cars in the garage that do not have a sticker are not for sale. Mr. Kessler stated they are not for sale.

Mr. Kessler stated he does not go over eight cars for sale. He has received 50 certified letters, and feels there is a vendetta against him. There has never been a photo taken at 7pm when there is nobody there. The pictures are taken from the window of a car, which is absurd.

Mr. Dowling asked what document would show how many vehicles are for sale on any given day. Mr. Kessler stated there is no such document. In the state of Pennsylvania, you can have as many as you want as long as they are inspected and have a folder. Mr. Dowling stated Mr. Kessler is allowed eight, and asked what documentation can be produced to prove to the Zoning Hearing Board that there are only eight cars for sale. He asked if Mr. Kessler had titles to show what is for sale. Mr. Dowling asked if the Township asked to see the titles, would that be one way to see what is for sale. Mr. Kessler answered no, because he has a stack of titles for cars that some are on the lot, some are at a sale waiting to be picked up, or elsewhere.

Mr. Dowling asked about the photographs. Mr. Kessler stated he has not been there when the photos were taken, but Jose Colon was there.

Mr. Dowling asked if the Township has ever come to the lot and asked to see the cars with stickers. Mr. Kessler answered no.

Mr. Dowling asked why people pick this lot to abandon cars. Mr. Kessler wished he knew, and noted that he has two cars stolen too. Mr. Dowling stated it seems like this lot is for thieves or people that want to abandon their car. Mr. Kessler stated the police told him this area has had a lot of problems, and they were not surprised. Mr. Kessler

stated that AutoMax has a car now too that someone left there that they can't find the owner. Mr. Dowling asked why a car can't simply be towed away if it is left there. Mr. Kessler stated the police have to be called, or a certified letter be sent to them, and it has to be abandoned for a certain number of days. Mr. Turner suggested you just have to post a sign that says private parking, and he used to have people towed a lot. Mr. Kessler stated he was told to call the police so that is what he does.

Mr. Staub asked if Ms. Moran counted the cars in the garage. Ms. Moran answered that she did not count those. It is her understanding that the cars in the garage bays were not a part of the agreement. Mr. Staub asked if that meant those two cars didn't count as part of the eight for sale, the one employee or the three customer cars. Ms. Moran stated that is her understanding.

Mr. Staub called for comments from the audience.

Mr. Tom O'Donnell, owner of 3 Gloucester Street, was sworn in. He is buying the property with the purpose of opening a store, and eventually a beer stein museum. He noted he has 5,000 beer steins and hopes to pass away and leave the proceeds to the Humane Society. He has had the property for 10 months and has had a lot of people leave cars on his property, as well as park there for the school functions. He doesn't question who parks there because his business is not open. He noted that people sometimes park there to go to the pizza shop. Mr. O'Donnell didn't know the purpose of the hearing, whether it was to do with the agreement made, or to limit a person who is trying to do business that has spaces for 25 cars, to only eight. He suggested there is a logical way to resolve this matter, rather than just semantics. He noted there are a lot of cars coming and going in that neighborhood all the time. He noted that people park in the alleyway to get to the apartments, and that is also out of control. Mr. O'Donnell noted that Sonny's Garage has 35 cars parked, plus 10 parked next door, with 20 with no tags. There are ten other lots that have the same scenario, and suggested that Mr. Kessler is being singled out. Mr. O'Donnell suggested that Mr. Kessler signed an agreement that is impossible to prove what is what.

Mrs. Lisa Kessler, 4411 Locust Lane, was sworn in. Mrs. Kessler reminded the Board that families are attached to this operation. Her husband works to provide for his family while she is at home caring for the two young children. Jose also provides for his family. They have done their best to clean up the property to make it look respectable, and grow the business. She stated that they feel that whoever jogs by their house or drives by the lot is discriminating. She was not aware of any other business that the Township drives by or jogs by to count cars to determine if the lot is appropriate. She stated the property is well kept, and supportive neighbors. It is their right to run the business and provide for their families. She added that it is not their intention to be in blatant violation of the rules of the Township.

Mr. Jose Colon, 1137 S. 19<sup>th</sup> Street, was sworn. Mr. Colon stated he is an ex-banker and went into partnership with Mr. Kessler about four years ago, and as Mrs. Kessler stated, he and Mr. Kessler use this opportunity to care for their families.

Mr. Colon stated he is at the shop everyday, and sees Mr. Wolfe jog by everyday. He suggested that Mr. Wolfe has it out for them, and has something up his sleeve. Mr. Colon has tried to get his attention when he sees him, but gets no response. He stated they are trying to run an honest legal business and care for their families. They are not harming anyone else.

Mr. Dowling asked both attorneys to address the question if having cars on the property or adjacent to the property that have been purchased by Mr. Kessler for sale, but not yet ready for sale, violates the spirit of the agreement.

Mr. Stine stated it is the Township's position that it does. When the conditional use was initially granted, the thought was that Mr. Kessler would have a maximum of eight cars on the lot. Then when the consent agreement was entered into, the Board agreed he should have some parking for customers and employees, so they came up with 3 for customers and one for an employee. They envisioned a maximum of 12 cars on the lot. The Township's position is that there are cars there, that even though they do not have a sticker identifying it for sale, that maybe they shouldn't be there.

Mr. Wix stated that a car that is for sale, is a car that is for sale, not for something that will be for sale in the future. A car inside the building isn't even counted, as testified by Ms. Moran.

Mr. Dowling stated that someone could stock pile cars on the lot without stickers, until a car is sold making an open spot on the lot. Mr. Wix stated that is not the situation. Mr. Dowling stated that situation needs to be resolved somehow, so that there are 8 cars on the lot for sale, and there are not 8 more waiting for a sticker. Mr. Wix stated the same could be said if there were four customers on the lot at once.

Mr. Turner asked if the appellant would agree that there shouldn't be more than 12 cars on the lot at a time. Mr. Wix answered no that he couldn't agree with that. There was a situation where somebody parked illegally on his property. Mr. Turner agreed that one instance is a "gimme". He asked, in the absence of trespassing or some extraordinary set of events, that under the agreement that Mr. Kessler signed, that there should be a maximum of 12 cars. Mr. Wix stated if there is only one car for one employee, then maybe. Mr. Turner stated that the agreement provides for one employee space, and the agreement may have been a bad deal, but the appellant agreed to it.

Mr. Wix stated that most of the dates pictured are in compliance, counting 12 or less cars.

Regarding April 10, 14, 15, 21 and 23, Mr. Turner asked the Township if there was any evidence that he was violating the terms of the agreement. On those days there were no more than 12 cars on the lot. Ms. Moran agreed that there were no more than 12 cars, on 4413 Locust Lane.

Mr. Turner stated that on two occasions in March and on April 1<sup>st</sup>, it looks like he was somewhat over the number of cars allowed. Mr. Wix stated the problem is that there is no break-down of cars on the lot. On April 1<sup>st</sup> there could have been some event.

Mr. Dowling asked about the burden of proof in such a case. Mr. Wix was unsure. Mr. Stine stated any administrative proceeding is based on substantial evidence. Mr. Turner asked if the burden of proof lies with the Township to prove the violation occurred. Mr. Stine thought it was. Mr. Dowling asked what is the burden and whose burden is it. Mr. Stine thought the Township has the burden of showing substantial evidence.

Mr. Turner asked if either attorney looked at any case law to determine the appropriateness of the revocation of a conditional use. Mr. Stine stated he did not research it, but there is a provision in the zoning ordinance. Mr. Wix did not research it.

Mr. Dowling asked the attorneys for closing remarks.

Mr. Stine didn't have anything further to add.

Mr. Wix stated that Mr. Kessler stated he has never had more than 8 cars for sale, in accordance with the variance. He noted they have explained the situations that may have more than 12 cars. Mr. Wix felt it was important to note that this was not the zoning officer's decision, she was simply instructed to drop the bomb. He suggested the Township is seeking to punish the appellant by putting him out of business, far in excess of what is appropriate, even if there were violations, which has not been proven.

Mr. Dowling asked if the question is if the Township has met the burden of proof, by producing substantial evidence. Mr. Turner agreed that is the first question. The second would be the appropriateness of the remedy. Mr. Dowling asked if there is an intermediate step instead of revoking the permit for the violation. He noted there were fines imposed. Mr. Kessler stated fines were never imposed. Mr. Turner stated the consent agreement says there was a \$500 fine. Mr. Kessler stated he never paid that. Mr. Stine was unaware of the fine.

With regard to the variance, Mr. Turner didn't see any definitive testimony that there were more than eight vehicles for sale, which was the only condition in the variance.

Mr. Staub asked if Mr. Stine found there to be more than eight vehicles for sale. Mr. Stine stated he found 4-5 employee vehicles for sale in one of the photos, but that has no bearing on the variance, only the conditional use and the consent agreement.

With regard to the conditional use as modified by the consent agreement, Mr. Turner read Section 103.F, “the zoning officer shall revoke a permit under conditional use in the case of one or more of the following: any work being accomplished in such a way that does not comply with this ordinance and the approved site plan or approved permit application, or any other just cause set forth in the ordinance”.

Mr. Wix stated this is quasi criminal in the sense that a man’s right is being taken away to operate should be attributable to something he did or he permitted. If there are abandoned vehicles, that should not be counted against him. The issue should be that there is more than 3 customers, more than 1 employee. Mr. Dowling stated there has been testimony that there has been more than one employee. Mr. Wix agreed.

Mr. Staub asked for a role call vote on if the Township has sustained its burden of proof. An aye vote says the Township has met the burden of proof, a nay says they have not met the burden of proof. Mr. Dowling-“still thinking”; Ms. Cate-“still thinking”; Mr. Staub-no answer.

Mr. Turner called for additional discussion on the issue.

With regard to the variance from 2002, Mr. Staub stated his intent for voting for the use variance was based on the applicant’s position of hardship, because the property was formerly a service station, and could not be developed without relief, so a used car dealer was an ideal compromise when limited to 8 vehicles. The variance also took into consideration that the property was adjacent to the R-1 zone. Mr. Staub never envisioned that the facility would be used to the extent that it is today, in and around the site. Mr. Staub stated that was his mistake. The conditional use was based on 8 vehicles, and there is no way to know if there are 8 vehicles for sale or not.

Ms. Cate stated that vehicles for sale are also those that are being prepared for sale; there is a very fine line between sale vehicles and vehicles on the lot being prepared for sale. Her interpretation is that if there are “pre-sale” that is across the line.

Mr. Dowling agreed with Ms. Cate. He added that even though there is no sticker in the window, the actions violate the spirit of the variance. With or without the sticker, Mr. Kessler owns the cars and they will be for sale.

Mr. Dowling asked if Mr. Staub felt the Township has not met the burden of proof. Mr. Staub didn’t think there was any way for the Township to demonstrate if there were more than 8 vehicles for sale.

Mr. Dowling stated that while he suspects that there was a violation, he doesn't think the Township has proven it to the degree required, particularly in light of the consequences. For that reason Mr. Dowling voted that they have not met the burden of proof.

Mr. Dowling suggested that the Township could go to the owner periodically and ask to be shown the titles and stickers, walk the lot and demand to know who owns each vehicle. If the Township is intent on proving the violation, it could be done.

Ms. Cate stated she has no doubt that they have violated the conditional use, however, she doesn't think the Township has proven that. She would also like to make certain that cars that are kept for sale are counted as cars that are for sale.

The hearing ended at 9:27 pm.

Respectfully Submitted,

Michelle Hiner  
Recording Secretary

**Docket # 1247**

Applicant: Sears Express/Valvoline  
Address: 3499 Blazer Parkway, Lexington, KY 40609  
Property: 4600 Jonestown Road  
Interpretation: Maximum number of wall signs for a single tenant in a planned center is 2.  
Applicant proposes 3.  
Maximum area of a wall sign is 32 square feet.  
Applicant proposes 45 square feet.  
Grounds: Section 714.A, of the Lower Paxton Township Codified Ordinances pertains to this application.

Being that there was nobody present on behalf of the variance application, Ms. Cate made a motion to table the hearing until the following month. Mr. Dowling seconded the motion, and a roll call vote followed: Mr. Dowling-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

The hearing ended at 9:29 pm.

Respectfully Submitted,

Michelle Hiner  
Recording Secretary