

**APPLICATION OF CARLO FAILLA  
BEFORE THE ZONING HEARING BOARD  
CHARLESTOWN TOWNSHIP, CHESTER COUNTY,  
PENNSYLVANIA**

**NO. 01-21**

**DECISION**

The zoning application of Carlo Failla, hereinafter, "Applicant," was heard by the Charlestown Township Zoning Hearing Board at virtual public hearings held March 24, 2021 and April 7, 2021. The subject of said hearings was the denial of a permit to install a 32 square feet, illuminated sign on the wall of Failla's Pizzeria & Ristorante, situated on realty and improvements, owned by Julio Musso and Elvira Musso, located at 2669 Charlestown Road, Charlestown Township, Chester County, Pennsylvania. The building on said realty, previously known as the "Stables Bar," sold alcoholic beverages and food, a nonconforming use in the R-1, residential district, in which it was located.

At the close of testimony on April 7, 2021, the Zoning Hearing Board unanimously granted Applicant's request to install a partially illuminated sign, approximately 32 square feet in area on the front of Failla's BYOB Italian restaurant and pizzeria. The Zoning Hearing Board makes the following Findings of Fact and Conclusions of Law in support of its Decision and Order.

**FINDINGS OF FACT**

1. Julio and Elvira Musso, husband and wife, are the legal owners of realty and improvements, located at 2669 Charlestown Road, Charlestown Township, Chester County, Pennsylvania, (tax parcel 35-2E-7), hereinafter, "the subject property".
2. Carlo Failla was authorized by the legal owners of the subject property to present evidence and make representations on their behalf during the presentation of this zoning application.

3. Mr. and Mrs. Musso obtained ownership of the subject property by deed, dated February 25, 2019, from the Grantor therein, William Dungee, (Dungee Decision, Exhibit A-1)
4. William Dungee obtained ownership of the subject property from his father, Rudolph E. Dungee, by deed, dated December 17, 1982. (Dungee Decision, Exhibit A-2)
5. Rudolph E. Dungee owned and operated the Stables Bar prior to June 20, 1979, the enactment date of the Charlestown Township Zoning Ordinance, for many years prior to transferring title to his son. (Dungee Decision, Finding of Fact 4)
6. William Dungee continuously owned and operated the Stables Bar from December 17, 1982 through Fall, 2016. (Dungee Decision, Finding of Fact 6)
7. §27-1701.1 of the Ordinance provides: "Continuation. Any lawful building or other structure, or any lawful use of a building or other structure of land legally existing on the effective date of this chapter, which does not conform with the provisions of this chapter shall be considered a lawful nonconforming structure or use and may be continued, except as otherwise herein provided". (Ord. 6/20/1979, as amended, 9/18/2006)
8. §27-1701.3 of the Ordinance provides, in pertinent part, "Any lawful nonconforming use of a building or structure may be changed to another nonconforming use of the same classification".
9. Applicant's BYOB Italian restaurant and pizzeria use is of the same classification as the Dungees' Stables Bar use; accordingly, Applicant's proposed use may be continued as a lawful nonconforming use. (Dungee Decision, Conclusion 4)
10. Applicant testified that a free standing illuminated sign advertising the Stables Bar, previously existed proximate to the Stables Bar, at or near the corner of Charlestown and Coldstream roads.

11. During 2020, PENNDOT informed Linda Csete, Charlestown's Township Manager that the free standing Stables Bar sign had to be removed as it encroached upon a PENNDOT right of way; subsequent to said communication, the free standing Stables Bar sign was removed. (Judicial Notice).

12. Applicant has requested approval to install a 32 square feet wall sign, upon the front wall, above the entrance to the Italian restaurant and pizzeria. (Application).

13. Applicant's proposed sign will be comprised of three sections:

A. a top section containing the name, "Failla's," set forth in illuminated scripted red letters, in a rectangular area approximately 28" by 107";

B. a middle section containing illuminated blocked colors of the Italian flag (green, white and red) set forth in a rectangular area approximately 4.5" by 92"; and

C. a bottom section containing the designation, "Pizzeria & Ristorante," set forth in non-illuminated black PVC letters, in a rectangular area approximately 6.41" by 117.65". (Application)

\* The aforesaid sections may be set forth on one sign, containing three sections or a separate sign for each section, provided that the total area shall not exceed thirty-two square feet, which area shall include uncovered space between separate signs if the latter installation is selected.

14. Applicant testified that the proposed sign is slightly smaller in area than the area of the removed free standing Stables sign, and that it would be less illuminated than that of the removed existing free standing Stables sign.

15. Adjoining property owners: Brock Riffel, Stephanie and Donovan Robinson, and Jim and Dorothy Robinson attended and entered appearances in this zoning case at the March 24th hearing.

16. The March 24th hearing was concluded prior to decision so that the adjoining neighbors, interested board members, and Applicant could meet at the

subject property, to discuss, inter alia, concerns pertinent to illumination, size and position of the proposed wall sign, times of operation.

17. Following the site meeting, the Board, interested persons, including, Jim and Dorothy Wilson, and applicant reconvened on April 7th, the March 24th publicly announced rescheduling date.

18. On April 7th, Applicant proposed to the Board and public that illumination of the proposed sign would be limited to business hours and controlled by a dimmer switch during the following days and times: between dusk and 9 p.m. on Monday through Thursday, between dusk and 10 p.m. on Friday and Saturday, and no illumination on the remaining hours of the aforesaid days and Sundays.

19. The Robinsons reported that they and the Wilsons, the only neighbors who attended the site meeting, were in favor of granting Applicant approval for installation of said sign, in accord with Applicant's proposal.

20. The said neighbors noted that the proposed hours of illumination and installation of the said sign on the front wall of Applicant's pizzeria and restaurant would be considerably less offensive to adjoining neighbors than that of the Dungee Free standing sign.

21. §27-1405.1.B of the Ordinance, entitled, "Nonconforming Signs," provides, in pertinent part, "signs which, at the effective date of this chapter, are maintained in connection with and upon the same lot as a lawful nonconforming use may be maintained or repaired or replaced with signs similar in size and character so long as such lawful nonconforming use continues, but may not be enlarged or otherwise substantially altered (nor may the illustration or illumination thereof be changed) except in accordance with the regulations applicable to the District in which such use is located".

22. Notice of Hearing of the March 24, 2021 hearing was advertised in the Daily Local News on March 12, 2021 and March 16, 2021. (Exhibit B-1)

23. Daniel Wright, Charlestown Township's Zoning Officer, posted a timely Notice of Hearing on the subject property and said Notice was posted continually from the date of posting through the date of March 24, 2021.

24. Adjoining property owners were provided with written notice of hearing by regular U.S. mail, posted March 12, 2021. (Exhibit B-2); notice of the April 7, 2021, hearing was publicly announced at the conclusion of the March 24, 2021. In addition, Linda Csete, Township Manager, provided written notice of the rescheduled April 7 to proximate landowners on or about March 29, 2021.

### **CONCLUSIONS OF LAW**

1. The Dungee free standing illuminated sign was maintained on the same lot in connection with a lawful nonconforming use.

2. Applicant's proposed sign will be maintained on the same lot in connection with a lawful nonconforming use.

3. Applicant's proposed wall sign may replace the Dungee free standing sign which was removed, as Applicant's proposed wall sign is similar in size and character to that of the Dungee sign.

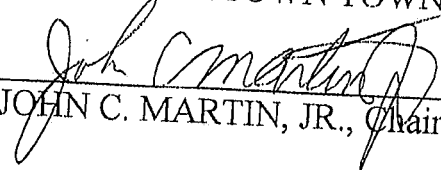
4. Applicant's proposed wall sign may replace the Dungee free standing sign as the hours of Applicant's operation, in combination with a dimmer controlled illumination, will be considerably more consistent with the R-1, residential provisions, in which said nonconforming use is situated than that of the removed Dungee sign.

5. Notice of hearing was properly made in accordance with statute and provisions of the Charlestown Township Zoning Ordinance.

**ORDER**

It is hereby Ordered this 13<sup>th</sup> day of April, 2021, that a nonconforming sign, the design and size of which shall comply with this Board's Finding of Fact 13 and information set forth on Applicant's Exhibit 1, provided said Exhibit 1 information is consistent with Finding of Fact 13 which finding shall prevail if there is any conflict between Finding of Fact 13 and Exhibit 1 is hereby granted Applicant in conjunction with a nonconforming pizzeria and restaurant use of a building situated at 2669 Charlestown Road, Charlestown, Chester County, Pennsylvania. Illumination of the sign shall comply with the following directives: the top and middle sections of the sign or the top sign and middle sign, if separate signs are opted, shall be limited to business hours and shall be controlled by a dimmer switch between dusk and 9 p.m. on Monday through Thursday, between dusk and 10 p.m. on Friday and Saturday, and no illumination on the remaining hours of the aforesaid days and Sundays. Installation and maintenance of the sign or signs shall comply with Charlestown Township's Zoning and Subdivision Ordinances; and shall be completed within six months of the date of decision. This Order shall be retroactively effective to April 7, 2021.

THE ZONING HEARING BOARD  
OF CHARLESTOWN TOWNSHIP

  
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JOHN C. MARTIN, JR., Chairman \*

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MICHAEL BOWELL, Vice Chairman

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JEAN BAUM, Member

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Gregory Nessor, Alternate Member

\*Chairman Martin reviewed the Application, including the attached proposed sign diagram, fully participated in the March 24, 2021 hearing, participated in communications among the members of the Board and Township officials regarding the Application, and partially attended the April 7, 2021 hearing. Notwithstanding his readiness to participate in the recorded public vote, due to technological difficulties, he was unable to do so.

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*Michael Bowell 4/13/2021*

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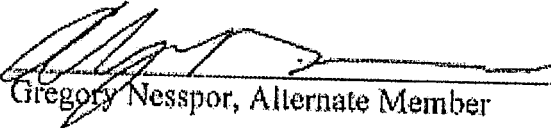
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