

IN RE: : BEFORE THE ZONING HEARING BOARD
: OF EAST HANOVER TOWNSHIP
APPLICATION FOR VARIANCE OF :
BNG ASSOCIATES : HEARING: January 5, 2017
: :
No. 2016.05 : DECISION: January 5, 2017
: :
: WRITTEN DECISION MAILED:
: February 16, 2017
:

DECISION OF THE ZONING HEARING BOARD

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted a properly advertised and properly posted public hearing on January 5, 2017, commencing at approximately 7:00 p.m., upon the Application for Variance of BNG Associates with respect to the property which was the subject of the hearing, to wit: 450 Station Road, East Hanover Township, Dauphin County, Grantville, PA, 17028. The owner of the property is the Applicant, BNG Associates (hereinafter "BNG").

Notice of the hearing was published in *The Sun* on December 15, 2016, and December 22, 2016, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with Section 603.1.1 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on December 16, 2016, on and about the tract of land which is the subject of the hearing. Jackie Wilbern, the East Hanover Township Zoning Officer, was present at the hearing and confirmed that the property had been posted with the hearing notice. Furthermore, Ms. Wilbern confirmed that she had provided written and mailed notices on December 19, 2016 to the Applicant and to property owners adjacent to the subject property.

All of the members of the Zoning Hearing Board being JoLynn Stoy, Chairman, Shirley Allison and Mark Stremmel, including alternate Kenneth Wolensky, were present throughout the hearing. Applicant, BNG, was present by its representative Garish Sheth, its engineer Ronald M. Secary, P.E. of Snyder-Secary & Associates, LLC as well as legal counsel Merritt C. Reitzel, Esquire, of Schiffman, Sheridan & Brown, P.C. All witnesses offering testimony in the course of the hearing were duly sworn.

FINDINGS AND DISCUSSION

The request for variances as submitted by the Applicant includes a detailed narrative dated November 18, 2016 provided by engineer Ronald M. Secary. Included with the application admitted as part of the record is a site plan detailing the proposed improvements and features of the subject property for which variance requests have been made. Also admitted into the record are the following exhibits which were submitted by the Applicant: (a) Special Warranty Deed dated September 3, 1999 from David M. Robinson and Linda B. Robinson to BNG Associates, a Pennsylvania general partnership; (b) excerpts of the 1999 East Hanover Township Zoning Ordinances; and (c) eight photographs with respect to the subject property. A photo of the posted hearing notice on the property has been admitted marked as Township Exhibit No. 1 and made part of the record. Board Exhibit No. 1 contains copies of the published notices of the hearing for the subject property supplemented with proofs of publication.

The subject property is located in an Interchange Commercial (IC) Zone and has a gross area of 2.24 acres. This lot is rectangular in shape and a corner lot at the intersection of Station Road on the north with Shells Church Road on the west. The lot is presently vacant and undeveloped. Adjoining this property to the east is a four-story Comfort Suites Hotel consisting

of ninety-six (96) rooms inclusive of a lower level which hotel has an area of approximately 80,000 square feet. Applicant is also the owner of the adjoining property.

The subject property was acquired on September 3, 1999 as one of two adjoining parcels. The owner of the property intended at the time to construct two hotels, however, upon subdivision of the tracts only one hotel was built adjoining the subject tract to the East.

In 1999, the East Hanover Township Zoning Ordinance in effect provided a permitted use for Hotels, Motels and residential Hotels in this zone then identified as Commercial-Highway. Also, lot coverage was a minimum of sixty (60%) percent with a minimum ten (10%) percent of plant material coverage; and, a building height was to be no greater than thirty-five (35) feet and no less than one (1) story. Height of a building could exceed thirty-five (35) feet by one (1) foot for each additional foot by which the width of each yard setback exceed minimum yard setback regulations. Coverage was defined as the percentage of lot area covered by the building area. Setbacks were established as follows: front yard – sixty (60) feet; side yard – ten (10) feet (except adjoining commercial uses allowed upon agreement of owners); and rear yard – thirty (30) feet.

The Board takes notice that the Zoning Ordinance was amended commencing at or after 2003. The area of this property was subsequently re-designated as Interchange Commercial and lot area and setbacks were modified. Hotels and Motels continued to be designated as permitted uses. In addition to other changes of note section 211.8 maximum lot coverage remained at sixty (60) percent but could be increased on application of section 326 transfers of development rights. No such development rights are available in the Township. Setbacks were changed to: front yard – thirty-five (35) feet from the right of way with parking setback a minimum distance of twenty

(20) feet; side yards – twenty-five (25) feet with parking a minimum of fifteen (15) feet from the right of way; and a maximum building height of thirty-five (35) feet.

The subject property is within a heavily traveled corridor between Indiantown Gap, Hollywood Casino, Route 81 and the Hershey Park area. BNG's hotel will be located approximately one-quarter mile from the Route 81 interchange.

BNG proposes to construct a hotel on the eastern corner of the intersection of Station Road and Shells Church Road. The proposed building shall have a height of fifty (50) feet and a total area of approximately 45,000 square feet. The building footprint shall be 10,950 square feet. No tenant or brand has been acquired. The property is served by public sewer. No public water is available in the Township nor are there any plans known to extend and make public water available.

The proposed hotel shall be four stories and contain ninety-five (95) guest rooms. Upon completion of the proposed structure, Applicant's lot coverage shall be approximately 78%; off-street parking area shall encroach the front yard parking setbacks by nineteen (19) feet; an encroachment of twenty-two (22) feet of the rear yard setback and an encroachment for a dumpster of twenty-two (22) feet into the rear yard dumpster setback requirement; the height of the hotel shall be increased to fifty (50) feet; and parking area shall encroach upon the landscape strip by twelve (12) feet along the rear property line and by three (3) feet for the dumpster within the rear yard setback area. As a result, Applicant's construction will not meet the minimum requirements of Section 211.8 (60% maximum lot coverage), Section 211.9.1 (20 feet front yard parking setback), Section 211.9.3 (25 feet rear yard parking setback and 35 feet rear yard dumpster setback), Section 211.10(a) (35 feet maximum height and conditions for exceeding

maximum permitted height) and Section 211.16 (15 feet front and rear yard landscape strips).

Therefore, variances shall be required.

Pennsylvania Courts have recognized that a dimensional variance involves the request to adjust zoning regulations to use a property in a manner consistent with overall zoning regulations, rather than a change of use from that allowed by the Zoning Ordinance. Hotels, motels and similar lodging facilities are uses permitted by right pursuant to Section 211.2.9 of the East Hanover Township Zoning Ordinance.

Applicant is not changing the use of the property, however, reasonable dimensional adjustments of the Zoning Ordinance regulations for this lot is being sought by the Applicant.

Therefore, a lesser amount of proof is required to establish hardship under the circumstances.

Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

Multiple factors are considered in this analysis, including economic detriment of the Applicant, financial hardship created by the work necessary to bring the structure and property into compliance with design requirements of the ordinance and the characteristics of the surrounding neighborhood. The Board recognizes that for dimensional variances an Applicant is not required to show that the property at issue is valueless without the variance or that it cannot be used for any permitted purpose. Marshall v. City of Philadelphia, 97 A.3d 323 (Pa. 2014).

The Board is persuaded that a hardship exists with respect to the size, shape and location of the property and imposition of the Zoning Ordinance requirements. BNG is confronted with a corner lot and two (2) front yard setbacks to accommodate. Given this scenario the Board finds that developable area of this lot is limited requiring relief from the ordinance. Applicant can accommodate and even exceed minimum building setbacks with an increased building height, but cannot facilitate parking area setbacks.

BNG's design proposes to meet Township driveway access requirements and provide one-way traffic flow on the property with angled parking to be able to provide a minimum of 101 parking spaces required, but all at the sacrifice of total lot coverage. The ordinance can allow up to seventy (70%) percent coverage if a transfer of development rights would occur. However, no such rights are available as no properties in the Township have been registered for this purpose. Shrinkage of the building size and parking areas cannot be accomplished to meet lot coverage requirements and allow a reasonable permitted use of the property for a hotel.

Upon even allowance of a lot coverage variance by reason of the foregoing, required parking areas and access impact the placement of same on the lot to meet required setbacks. Narrowness of the lot decreases the effective available lot area for placement of parking. The 1999 ordinance did not prohibit parking in front yards. This was done in fact with respect to the adjoining hotel based upon those ordinance provisions. Therefore, the current project encroachment in the front yard setbacks will be consistent in function and character. In order to accommodate off street parking quantities and dimensional requirement, setback encroachments are necessary but limited as much as possible by one-way traffic circulation and angled parking.

Upon turning to the rear yard area of the lot, Applicant is similarly faced with space limitation requiring encroachment into the rear yard setbacks. The decrease in area because of the Station Road thirty (30) foot right of way, results in BNG being unable to meet required off street parking and placement of the required dumpster without encroaching into the rear yard setback. With two front yards no dumpster can be positioned along Station Road or Shells Church Road sides of the property. The proposed location of the dumpster though will be obstructed visually due to the grade of the property, structure, landscaping and the substantial Route 81 right of way abutting the rear of this tract serves as a natural buffer in any event.

It is this natural buffer, however, which the Board believes will aide in reducing the encroachment along Shells Church Road. Screening is to be placed along Station Road to provide a full visual barrier to the parking spaces. BNG acknowledges that a small landscape “bump” as shown on the plan exists between the right of way and the parking spaces which can be removed resulting in a shift of the parking spaces to lessen the encroachment. Parking areas also can be shifted toward Route 81 by approximate four (4) feet. Seven (7) feet of space would only then be needed thus reducing the needed variance along Station Road to thirteen (13) feet.

Section 211.10 provides that to exceed a thirty-five (35) foot maximum building height the four (4) conditions of section 211.20(a) must be satisfied. BNG has sufficiently demonstrated that it is compliant with three of these requirements being (a)(i), (ii) and (iv). The building is set back fifty-seven and one-half (57-1/2) feet from Shells Church Road, being an additional thirty-five (35) feet in excess of what is required for the extra fifteen (15) feet of building height proposed. The building is set back thirty-two (32) feet along Station Road, exceeding by approximately seventeen (17) feet the required minimum. With respect to the thirty-five (35) foot rear yard building setback, the structure will be set back forty-one (41) feet, thus exceeding the minimum by twenty-six (26) feet. Lastly, the hotel structure will be equipped with a fire sprinkler system in accordance with NAFPA regulations.

Section 211.10(a)(iii) requires that impervious lot coverage must be reduced by three (3%) percent when a building has four (4) stories. As discussed previously in this decision regarding the variance requested for maximum lot coverage, the physical features of the lot prevent effective strict compliance and the Board is persuaded that even with a reduction of the structure size by one (1) story, would not be practical or economically feasible based upon the testimony presented.

With regard to the last variance requested for relief from section 211.16, the Zoning Ordinance requires that 101 spaces be provided. Again, due to the physical features and location of the lot as previously noted, no additional spaces can be added outside of the required overlapping landscape strip requirements. Therefore, an encroachment into the landscape strip is necessary as strict conformity with the ordinance requirement cannot be achieved.

The neighborhood and vicinity of the subject property contains various related types of hospitality and hotel facilities, including the adjacent hotel property. The setbacks, location, function and use of the proposed parking areas is consistent with the adjoining property constructed prior to adoption of the current ordinance. The Board is persuaded that the proposed use and variances will be consistent with the character of this zone and neighborhood, and shall not impair the appropriate use or development of adjacent properties or be detrimental to the public welfare.

Due to the physical features of the subject lot, the Board is further persuaded the proposed use cannot be developed in strict conformity with Ordinance requirements as identified herein and for which relief is requested. Applicant further has not created the hardship, but rather it is due to the physical lot features and imposition of the subsequent Zoning Ordinance requirements. Although BNG has presented several variance requests, the Board finds that the minimum variances will be granted under the circumstances presented and subject to the conditions hereinafter stated.

Applicant has adequately demonstrated that the reduction or elimination of any one variance results in additional variances or greater increase in the variances requested. Thus, BNG's requests are the least modification possible of the ordinance sections at issue to allow

relief and reasonable use of the property, therefore not impairing the integrity of the Township Comprehensive Plan.

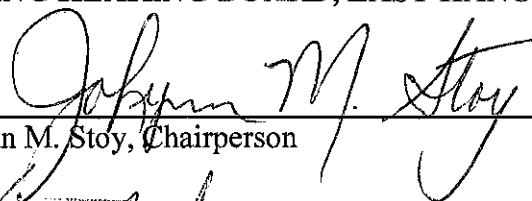
ORDER

By reason of all of the foregoing, the East Hanover Township Zoning Hearing Board finds that applicant BNG Associates has met the requirements for granting the variances requested with respect to the property located at 450 Station Road, Grantville, Pennsylvania, being Parcel No. 25-010-069 and said variances are hereby GRANTED from the following Zoning Ordinance provisions and subject to the conditions stated as follows:


- 1) Section 211.8 maximum lot coverage shall not exceed seventy-eight (78%) percent;
- 2) Section 211.9.1 parking area setback in the front yard along Station Road shall be no less than seven (7) feet;
- 3) Section 211.9.3 parking area setback in the rear yard shall be no less than three (3) feet, and the rear yard dumpster set back shall be no less than thirteen (13) feet;
- 4) Section 211.10(a) and 211.10(a)(iii) the height of the building shall be no greater than fifty (50) feet and lot coverage shall be no greater than seventy-eight (78%) percent as set forth in item No. 1 hereof; and
- 5) Section 211.16 parking shall encroach into the fifteen (15) foot landscape strip by no more than fourteen (14) feet within the front yard and encroach by no more than twelve (12) feet within the rear yard; and the dumpster shall not encroach more than three (3) feet within the rear yard landscape strip.

[Signature Page to Follow]

ZONING HEARING BOARD, EAST HANOVER TOWNSHIP



JoLynn M. Stoy, Chairperson



Mark Stremmel, Member

Shirley Allison, Member

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