

IN RE: : BEFORE THE ZONING HEARING BOARD
: OF EAST HANOVER TOWNSHIP
APPLICATION FOR VARIANCE OF :
DOBSON FAMILY PARTNERSHIP : HEARING: July 1, 2015
:
No. 2015.01 : DECISION: July 1, 2015
:
: WRITTEN DECISION MAILED:
: August 14, 2015
:

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 July 1, 2015, commencing at approximately 7:00 P.M., upon the Application for a Variance of the Dobson Family Partnership, with respect to the property which was the subject of the hearing, to wit: 9899 Jonestown Road, East Hanover Township, Grantville, PA, 17028.

Notice of the hearing was published in *The Patriot News* on June 16, 2015, and June 23, 2015, 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 June 17, 2015, 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 notice was posted. A photograph of said posting has been admitted as Township Exhibit No. 1 as part of the record. Furthermore, Ms. Wilbern confirmed that she had provided written and mailed notices on June 15, 2015, of the hearing to those property owners adjacent to the subject property as identified in the Application for a Variance as well as to the Applicant.

All members of the Zoning Hearing Board were present throughout the hearing. Testimony was provided on behalf of the Applicant by Phillip Dobson and Nora Combs. In addition, Township Manager Ronald Reeder was present and the Township was represented by Kurt Williams, Esquire. Various residents opposed the Application and testimony was provided primarily by Deana Baker and Douglas Baker, as well as Jamelyn Parks. All witnesses were duly sworn who offered testimony during the course of the hearing.

FINDINGS OF FACT

Applicant, the Dobson Family Partnership, is the owner of the subject property which is located at 9899 Jonestown Road, Grantville, PA, 17028. This property is identified as County Tax Parcel No. 25-012-027 and has an area of approximately three (3) acres. It is located in a Village Residential (VR) Zone and generally configured in the shape of a flag lot.

Located on the subject property along Jonestown Road is a two (2) story single family dwelling. Accessory buildings are located on the rear of the lot which include a barn, a fifteen (15') foot by twenty (20') foot wood frame shed and a single story five (5) bay garage of masonry and block construction. The single family dwelling is leased and currently occupied as a residence. Applicant has also leased the five (5) bay garage as well as the wood frame shed to a landscaping business known as C&E Lawn Care and Landscaping, Harrisburg, Pennsylvania. Applicant's lease specifically provides that these two structures are not intended for any residential use. Applicant proposes that they are to be used for commercial storage.

Applicant is also the owner of another property also along Jonestown Road being Parcel No. 25-012-028. This property also contains a two (2) story single family dwelling which is leased and currently occupied as a residence. This second tract abuts the subject property along Jonestown Road. Primary access to the garage and shed leased to C&E Lawn Care and

Landscaping is by means of the driveway from Jonestown Road across adjoining Parcel No. 25-012-028. This driveway connects to form a loop with a narrower driveway between the subject residence and adjoining lot to the west. Adjoining Parcel No. 25-012-028 was not included in Applicant's request for a variance to allow a commercial use on the subject property.

Additional residential uses are located to the east and west of the subject property. An apartment building is located to the north across Jonestown Road from the subject property. A cemetery borders the subject property to the south.

On March 31, 2015, an Enforcement Notice was issued by the Township Zoning Officer, Jackie Wilbern, a copy of which has been admitted as part of the record marked Township Exhibit No. 2. This notice was issued as a result of complaints received from residents that a landscaping business is being operated from an accessory structure on the subject property. Upon inspection by the Zoning Officer a vehicle advertising a landscaping company was observed on the premises. Complaints of noise, lack of restroom facilities and other nuisances were likewise received. The Enforcement Notice included a directive to cease and desist operation of the landscaping business on the property.

Applicant has proffered that the accessory building rental to the landscaping business is for storage and maintenance of equipment consistent with a grass mowing business, such as, lawn mowers, trucks, weed trimmers, tools, bobcat and certain other items. A three person crew arrives and leaves from the premises daily according to Applicant and employee vehicles remain parked in a large crushed stone area located behind the garage. No tanks or known gasoline storage occurs on the premises. Medium sized pickup trucks are used to tow various trailers and equipment.

A hardware store was operated on the property prior to its acquisition by Applicant three years ago, but such operations had ceased. No certificates of occupancy however have been issued by the Township for any commercial use on the property.

The garage is served only by electric. Public sewer services the residence together with a private well to supply water. Other than the electric, no other utilities are separately provided to the leased garage.

Protestants to the Application have identified various nuisances and a more extensive commercial use of the property than storage as proposed by Applicant. These include substantive daily operations and the presence of a front end and/or skid loader, diesel trucks, and both open and boxed trailers. A dumpster, both unsecured and unenclosed, was placed on the property by the tenant landscaping business. Numerous items of equipment and personal property are observed outside and around the garage such as pallets, barrels, ladders, wheel barrows, landscaping materials, plows, wood piles, dirt and mulch piles, tires, and various trash and debris which are indicative of an operation greater than mere storage.

Vehicles and equipment are operated daily starting in the very early morning hours when the landscape business employees arrive and return throughout the day. Since no restroom facilities exist in the garage for the operation, employees of the business are regularly observed in acts of public urination on site.

Various exhibits have been admitted as part of the record by the objecting residents.

These include:

Parks Exhibit Nos. 1 through 17 – individual photographs of the subject property, condition and use.

Parks Exhibit No. 18 – July 1, 2015, e-mail of Lynn Vastyan, Realtor.

granting of a variance could not exist where the property can be reasonably used for and conform to permitted purposes. Berger v. Zoning Hearing Board of Cheltenham Township, 54 Pa. Cmwlth. 405, 422 A.2d 219 (1980).

In the context of use variances unnecessary hardship can be established by evidence that: (1) physical features of the property are such that it cannot be used for a permitted purpose; (2) that the property cannot be conformed for a permitted use only at a prohibitive expense; or (3) that the property has no value for any purpose permitted by the Zoning Ordinance. Allegheny West Civil Council, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 547 Pa. 163, 689 A.2d 225 (1997).

Furthermore, in order to grant a variance Applicant must not only demonstrate compliance with the general criteria of Section 604.4 but also the specific requirements of Section 701.2 for a zoning permit. Upon consideration of all the evidence and testimony presented, the Board is not persuaded that Applicant has not met its burden of proof and the conditions for granting of a variance have been met.

The variance application presented for consideration lacks various applicable information as required by Section 701.2(1) of the Zoning Ordinance. For example, insufficient information has been provided by Applicant with respect to: an adequate scaled drawing or plan with actual dimensions and shape of lot; exact location and dimensions of all structures; details of all off-street currently unmarked parking and loading spaces; size of structures; number of employees; highway occupancy or driveway permits that have been issued; prior Township Board of Supervisors or Zoning Hearing Board approvals; and Pennsylvania Department of Labor and Industry approvals, where applicable or a demonstration that such is not applicable.

It is undisputed that since acquisition of the property it supports and has been actively used for residential purposes. Single family dwellings are uses permitted by right in a Village Residential Zone, but commercial storage operations are not. (See Section 204.2.1).

Pursuant to Section 604.4 of the Zoning Ordinance, the Board is not persuaded that there are unique physical circumstances or conditions, irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other features peculiar to this property to create an unnecessary hardship sufficient to require a commercial storage use on the property. Furthermore, Applicant has not adequately demonstrated that because of these conditions there is no possibility the property cannot be developed in accordance with the uses enumerated in Section 204.2 or 204.3 of the Zoning Ordinance. As noted above, the property is presently used for residential purposes.

Applicant has actively leased a portion of the subject property to a commercial entity. No testimony or evidence has been submitted from that tenant. From the evidence that has been presented the extent of the operations are greater than the mere storage use as represented by Applicant. Insufficient evidence has been presented about the lawn care and landscaping tenant for the Board to be persuaded that the business is managed and operated other than primarily on or from the subject property.

The variance requested is that of a permanent change in use and not dimensional in nature. Adequate public facilities and utilities have not been adequately demonstrated to be provided for this use or that such facilities otherwise would not be required. It is clear from the complaints of objecting residents that the lack of available restroom facilities provides a frequent nuisance and unhealthy impact upon adjoining properties. Care and maintenance of the landscaping equipment purportedly takes place on the property, which would require public

facilities and utilities, however inadequate information has been supplied as to the nature, extent and location of these activities on the premises.

The Board is not persuaded that Applicant has demonstrated that an unnecessary hardship exists for the requested variance. Applicant has further not met its burden of proof that the unnecessary hardship is due to circumstances or other physical conditions peculiar to this particular property and not circumstances or conditions which are generally created by the provisions of the Zoning Ordinance in this neighborhood and zone.

The Board further finds that Applicant has not satisfied its burden of proof that it is because of the unnecessary hardship, physical circumstances and conditions that there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and therefore authorization of the variance is necessary to enable reasonable use of the property. Furthermore, as Applicant has provided for the commercial leasing of the existing property, the Board is not persuaded that an unnecessary hardship, if established, has not been created by the Applicant.

The area where the property is located is residential in nature. Pursuant to Section 204.1 of the Zoning Ordinance the purpose of a Village Residential Zone includes an intent to accommodate a mixture of land uses and limited businesses to provide convenient access to nearby residents and commuters. The Board is not persuaded that the commercial storage use of the property as described by Applicant preserves that small town character as referenced in Section 204 so as not to alter the essential character of the zone and neighborhood where this property is located.

As a result, the Board cannot find that the commercial storage use advocated by Applicant with the rental of the property would not substantially or permanently impair the

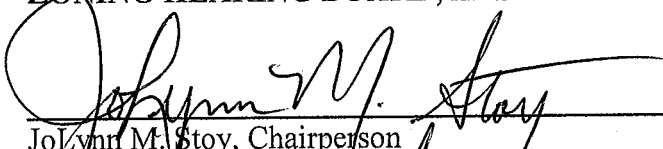
appropriate use or development of adjacent properties and consequently not be detrimental to the public welfare.

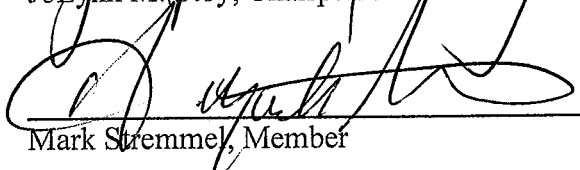
Lastly, upon consideration of all the foregoing, the Board is not persuaded that the variance if granted would represent the minimum variance which would afford relief and represent the least modification possible of the Zoning Ordinance provisions at issue.

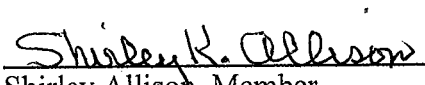
DECISION

For all the reasons previously set forth, the East Hanover Township Zoning Hearing Board hereby determines that the Application filed by the Dobson Family Partnership for a variance from the requirements of Section 204.2 to allow a commercial/retail use on the property of a commercial storage facility in an accessory structure as presented is hereby DENIED.

ZONING HEARING BOARD, EAST HANOVER TOWNSHIP


JoLynn M. Stoy, Chairperson


Mark Stremmel, Member


Shirley Allison, Member

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