

APPROVED

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
SEPTEMBER 6, 2018**

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chairman
Sande Cunningham
John Schmitt
David Seiler
Chris Shuttlesworth
Mark Bair, Alternate

ALSO IN

ATTENDANCE: Jessica Fieldhouse, Director of Community Development
Raphael Caloia, Assistant Planner
Gavin Markey, Solicitor

1. CALL TO ORDER:

A. Pledge of Allegiance

Chairman Achenbach called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance. He introduced the members of the Board, noting that Mr. Bair is serving as an alternate member of the Board.

2. ACTION ON THE MINUTES

A. AUGUST 2, 2018

MOTION MADE BY MR. SEILER TO APPROVE THE MINUTES OF AUGUST 2, 2018 AS AMENDED. MR. SHUTTLESWORTH SECONDED. MOTION UNANIMOUSLY PASSED.

Chairman Achenbach asked if the cases were properly advertised. Mr. Caloia responded that notifications had been made.

3. OLD BUSINESS - NONE

4. NEW BUSINESS

Case ZHB-18-11 – 1101 Kalreda Road

All witnesses were sworn in.

Stephanie Etter
Patrick Cook

Mr. Caloia indicated the applicant is applying for a variance to S.325-121.A.of the Township Zoning Ordinance, requesting to construct a six (6) foot fence in the front yard. The property is located at the corner of Kalreda Road and Fineview Drive. Because of the way the lot was created they have frontage on one side of Kalreda Road and two sides on Fineview Drive, resulted in their property being exposed to the public right of way. The applicant is proposing to construct the six-foot fence along Fineview Road to the line directly parallel to the house and to Kalreda Road. The variance is standard in regard to the six-

foot fence and Township Staff has no issue with this application.

Ms. Etter indicated since she moved in to the property they have been harassed by the neighbor across from the location of the proposed fence. She provided examples of the harassment noting he was physically aggressive with Mr. Cook, resulting in calling the police and pressing charges. He did plead guilty to those charges.

She further noted there is an existing split fence so it is a decorative fence approximately 4 ft. high, which runs along the back side of the house. She pointed out the location of the neighbor's house across the street. She noted they have a patio on the side of the house which they cannot utilize because of this neighbor.

She indicated another reason for the fence is for their three dogs. She noted the fence will totally enclose the side of the yard. It will not be in the front of the house but the side and back will be enclosed. The neighbors with a pool have a fence that it will butt up to.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Attorney Markey stated this application is a straight forward case based on the staff's analysis of the case, irrespective of the issue with the neighbor.

MS. CUNNINGHAM MOVED IN THE CASE OF ZHB-18-11 TO GRANT THE VARIANCE FOR S.325-121.A FOR THE PROPERTY AT 1101 KALREDA ROAD TO PLACE A SIX-FOOT FENCE IN THE FRONT YARD OF THE CORNER PROPERTY LOCATED AT THE INTERSECTION OF KALREDA ROAD AND FINEVIEW DRIVE. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

B. Case ZHB-18-12 – 27 00 East York, LLC

All witnesses were sworn in.

Attorney, Stacey MacNeal
Eric Gordon, Frontier Development

Ms. Fieldhouse indicated the applicant is requesting to review a decision made by the township zoning officer with regards to abandonment of a parcel. Ms. Fieldhouse stated she received a request letter to identify whether or not a automobile service station could be located at the property of 2700 East Market Street. Previously, it was a service station which is a non-conforming use in the zoning ordinance. She noted normally another non-conforming use could locate in that location, especially one that was proposing the same use, however, the Township's zoning ordinance under S.325-193(F)1, non-conforming uses and structures, states if the non-conforming use of a building or land may cease for a period of one year or more, subsequent use of such building or land shall be in conformity with the provisions of this chapter. The property is in the Town Center Overlay. As a result she wrote a letter as the zoning officer outlining the zoning officer's determination which was sent and then a subsequent application for a zoning hearing board determination was submitted.

Ms. Fieldhouse indicated the property was the former location of Auto Zone. Because of the issues with that tract, primarily traffic and storm water, PennDOT specified the need to enlarge one of the driveways on East Market Street and remove the one on East Market Street closest to the intersection. She indicated the issue is there is a huge visible stormwater pipe which is corrugated metal. She pointed out with the current application, the applicants are not proposing a land development, but proposing to utilize the property as is with the condition of the stormwater pipe. She noted the Township owns the stormwater

pipe, consequently if it fails, it would be the responsibility of the Township to repair it. She noted it is functioning now and the Township does not see a need to replace it.

Attorney MacNeal concurred this is a legal issue related to abandonment of a non-conforming use. She provided the following exhibits showing the property is an existing facility:

Applicant's Exhibit #1 is a tax map to show the location of the property.

A-E #2 shows several exterior photos of the property as it currently exists.

A-E #3 shows two photos of the interior of the current property.

She noted this property was used for the business All Tune and Lube service station, as noted by the existing sign on the property. It was rezoned to mixed-use, at which time it became an existing non-conforming use. The All Tune and Lube has not occupied the building in excess of a year, which creates under the Township's ordinance a presumption of abandonment. Attorney MacNeal stated under the case law in Pennsylvania that is not sufficient for a non-conforming use to be abandoned. She indicated there has to be an affirmative action taken in order for abandonment to occur. It can occur in two ways - #1 – A permitted use for the property resulting in the non-conforming use going away. She asked Ms. Fieldhouse if since the All Tune and Lube has been at that location if there has there been a permitted use at this property. Ms. Fieldhouse indicated no there was not.

#2 – There can be a change to the physical structures on the property that show an affirmative intent for abandonment of the non-conforming use, i.e., with the Auto Zone, the destruction and demolition of the existing building could potentially have been an indication of abandonment of the use, or if someone had changed the structure so that it was no longer appropriate to be used as a service station, that would show an affirmative intent of the abandonment of the use. She noted the photos show it continues to have pass-through service bays and interior fixtures and lifts for purposes of servicing cars and so there has been no clear affirmative abandonment of the facility.

Attorney MacNeal asked Mr. Gordon to confirm that 2700 East York LLC which is under a contract to purchase the property, has entered into the contract to purchase the property with the specific intent of leasing it to a Mavis Tire which would be a combination sale of automobile parts as well as repairs and service on vehicles. Mr. Gordon confirmed.

Attorney MacNeal stated the intent continues to be to use it as a service station. She noted the zoning officer must go by the presumption that is in the ordinance with the applicant providing proof that no overt act of abandonment has occurred. She cited examples of other past similar cases presented. She noted there would be some aesthetic changes made to the façade of the building and some minor interior changes to the building, but otherwise there will be no other changes to the building or the property.

A question was raised as to whether the property was marketed since the prior used. Attorney MacNeal noted recently it was marketed by Bennet-Williams and prior to that it was marketed by Rock Commercial Real Estate.

A question as raised concerning outdoor storage. Attorney MacNeal indicated there are no plans for outdoor storage. She presented A-E #4 which was a statement of general operations from Mavis Tire to answer any operational questions. They specifically state no outside storage.

A question was raised regarding signage. Attorney MacNeal indicated there is an existing freestanding sign on the site for the All Tune and Lube. She discussed signing with Mavis Tire, noting they have not made a decision on signage.

Ms. Fieldhouse noted the case is only a determination and nothing has been sent to Staff in terms of a formal application. She noted she anticipated the applicant will propose to utilize the facility as is necessitating a Certificate of Occupancy application to be submitted to the Township at which time all the necessary variance reviews and safety inspections would occur.

Ms. MacNeal indicated she does expect a building permit application to be submitted for minor changes to the building.

A question was raised in regard to the sidewalk. It was noted the applicant would be responsible to repair the sidewalk along the property.

Ms. Fieldhouse noted the sidewalk is in an area where the stormwater pipe is located. She indicated she has documentation showing the Township took over operation and maintenance of the pipe in perpetuity. She noted fixing the sidewalk would be a combined effort between the applicant and the Township where the Township is 90% and the applicant 10%. This will necessitate installation of bridge culverts at the access points.

Discussion was held as to the terms of abandonment in Pennsylvania. Attorney Markey referred to the following pages of the continuance provision:

Page 3 indicates it creates a presumption of intent to abandoned use. Presumption is if it has not been utilized for a period of one year it is presumed the property owner desired to or has abandoned the pre-existing non-conforming use.

Page 4 indicates the appellate court specified the Pennsylvania law was clear - abandonment of a non-conforming use does require intent to abandon as well as actually abandoned. He indicated during the appeal it was indicated that Ms. Fieldhouse properly processed the denial and the appeal was made and then passed on to Attorney MacNeal to show there was never intent to abandon the operation.

Page 5 the appellate court citing the Supreme Court of Pennsylvania indicates the concession and intention of abandonment to abandon the establishment, the burden rests on the party serving the non-conformity.

Attorney Markey further noted Attorney MacNeal has provided evidence to show that although there was non-use for a period of one year, there was never an intention of the property owner of the previous occupants of the property to physically abandon the operation itself. It was continuously advertised for possible sale, no exterior changes to the property have been made.

It was noted that a previous property owner was proposing a bank for the property but due to compliance issues did not move forward with the project. It was questioned if that was an expression of intent by the property owner to abandon the use existing at that time.

Attorney MacNeal indicated that was not sufficient affirmative intent even if they came and made the request for an approval and even if they had an approval. They never moved forward with it. She noted it has to be demonstrable abandonment for that to be abandoned.

Attorney Markey concurred and indicated zoning law states that the utilization of property and reuse of a non-conforming use for a variance for special exception runs with the land not necessarily the ownership of the property. He noted continued focus on utilization of the land would weigh in favor of coming against any influence if someone tries to process an alternative application.

Attorney Markey stated from a legal perspective, he was convinced that with the existing case law he reviewed which was taken to the appeals court, the applicant is in line. He indicated if the Planning Commission would be inclined to consider the application for appeal favored towards the applicant, he recommended a motion to overrule the zoning officer's determination that the use presented here as abandoned, and to rule the use is a pre-existing, non-conforming use and is not abandoned. He recommended two conditions to be placed on the affirmation:

- 1 – The transcript and testimony in all affirmations of fact would be binding on the applicant.

2 – The applicant’s Exhibit #4 description of the operations and the conditions of the property are binding on the applicant.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Charles Stuhre – 3680 Trout Run Road

Mr. Stuhre indicated as a member of the Planning Commission this property came before the Planning Commission approximately a year ago. The applicant presented plans for a bank, however, there was a requirement in the Town Center Overlay which indicated no parking was permitted in the front of the building. Otherwise, if they had complied with our zoning ordinance they would have built a bank. They were abandoning it because of presenting it for a bank and did not want to comply with the parking restriction.

Attorney MacNeal reiterated although they may have had an intention to abandon it at that time and changed that intent when they found out what they would have to do to continue with the plan and so there was no actual abandonment. The second element of that analysis is not existing. If they had moved forward with the bank plan, then it would have been considered abandoned. However, since they did not move forward there was no actual abandonment.

Ms. Fieldhouse indicated Mr. Stuhre is correct there was a land development process that went through for an Integrity Bank, however, it was closer to 2-3 years ago. She noted this property has been sitting vacant in this condition without an open land development since 2016. The Integrity Bank plan was approved prior to that time. The last time this property was presented to the Planning Commission was as a sketch plan for an Auto Zone, which was automobile related retail.

MR. SEILER MOVED IN THE CASE OF ZHB-18-12, 2700 EAST YORK, LLC. TO OVERRULE THE ZONING OFFICER’S DETERMINATION THAT THE USE PRESENTED HERE WITHIN IS ABANDONED, AND RULE THE USE IS PRE-EXISTING, NON-CONFORMING USE AND IS NOT ABANDONED, WITH THE FOLLOWING CONDITIONS:

- 1 - THE TRANSCRIPT OF TESTIMONY SHALL BE BINDING ON THE APPLICANT**
 - 2 - THE APPLICANT’S EXHIBIT #4 DESCRIPTION OF THE OPERATIONS AND THE CONDITIONS OF THE PROPERTY BE BINDING ON THE APPLICANT.**
- SECONDED BY MR. SHUTTLESWORTH. MOTION UNANIMOUSLY PASSED.**

5. ADJOURNMENT

CHAIRMAN ACHENBACH ADJOURNED THE MEETING AT 7:00 P.M.

Respectfully submitted,

Secretary

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