

YORK TOWNSHIP

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York Township Zoning Hearing Board
Wednesday, December 26, 2007
6:00 p.m.

The December meeting of the York Township Zoning Hearing Board was called to order by Kenneth Silberstein, Chairman.

Those in attendance were:

Kenneth Silberstein, Chairman
Teri Hollway, Vice-Chair
Missy Gugino, Secretary
Jerry Kotek, Member
John Wimbley, Member
William Yanavitch, Alternate Member
Lisa Frye, Zoning Officer
Jeffrey Rehmeier, II, Esq., Solicitor

MINUTES AND DECISIONS OF NOVEMBER 27, 2007

The Zoning Hearing Board minutes and decisions of November 27, 2007, were approved.

HEARINGS

Appl.2007-38: Bruce Wallace, Congero Development, Inc. requests a Variance to regrade and eliminate steep slopes on property located at 2040 and 2050 South Queen Street in a Heavy and Highway Commercial (C-H) zone.

Present: Pat Hickey
Russell Bardolf

Information on the application was presented and after discussion the application was

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approved, pending a written decision.

Appl.2007-39: TTMT, LLC requests a Special Exception to establish a Strip Shopping Center Use on property located along the east side of Rosslaire Road at the intersection of Rosslaire Road and Belle Road in a Shopping Commercial (C-S) zone.

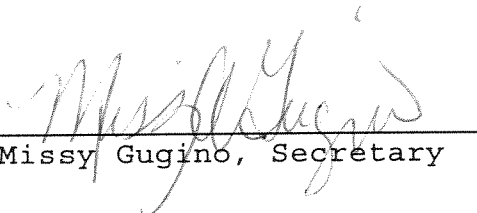
Present: John K. Murphy
Clyde Wilson
Timothy Smith

Information on the application was presented and after discussion the application was approved, pending a written decision.

ADJOURNMENT

This meeting adjourned at 8:25 p.m.

ATTEST:


Missy Gugino, Secretary

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2007-38

Hearing Date(s): December 26, 2007

Applicant(s): Bruce Wallace, Congero Development, Inc.

Property Owner(s): Max M. Shaull, Jr.

Property: 2040/2050 South Queen Street, York, PA 17403
UPI# 54000080023 & 54000080023A

Existing Zoning District: Heavy and Highway Commercial (C-H)

Relief Requested- Variance under the York Township Zoning Ordinance of 1996, as amended (the “Ordinance”) and pursuant to Section 265-34 thereof.

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) The Applicant was represented by Patrick Hickey of First Capital Engineering. He indicated that he went to Lehigh University and all work done on this project was supervised by a professional engineer.
- 3) Mr. Hickey provided evidence and testimony as follows:
 - a) The Applicant is seeking to disturb the man-made steep slope between the two properties
 - b) The Property 2050 South Queen Street was formally utilized by Blazenet and Shaull Oldsmobile prior thereto.
 - c) Information regarding the Property and the steep slope was shown utilizing photographs.
 - d) The steep slope area in question is eight feet tall and has a two to one slope.
 - e) There had been problems with vandalism at and around the building at 2050 South Queen Street.
 - f) Utilizing the photograph from 1939, it was confirmed that the steep slope was created when Shaull Oldsmobile was developed.
 - g) The proposed land development of the Property would be into the Queensgate Medical Campus.
 - h) The development would be done in phases, with the first phase intruding upon the steep slope area.
 - i) Retaining walls would be utilized.
 - j) It is likely that the volume of ground on the site would be sufficient to balance the site if it were allowed to be moved to various locations.

- k) The land development will not result in any new steep slopes being created.
 - l) The development will utilize an underground storm water detention system to manage the storm water that is now unmanaged.
 - m) Upon review the plans submitted with the Application, it was determined that half of the steep slope was prohibitive (25% or greater) and the other half was precautionary (15-25%) with the steep slope areas being indicated by shading.
 - n) The amount of steep slope area on the Property is relatively minimal given its entire size.
- 4) The Chair read into the record comments number 1 and 2 of the Township Engineer Dennis Henry, as set forth on a document entitled ZHB Application- Queensgate Medical Center L.D. Plan and dated 12/19/07 (the "Engineer's Comments").
 - 5) The Engineer's Comments were incorporated by reference.
 - 6) The Engineer's Comments included language regarding intrusions into the steep slopes.
 - 7) Russ Bardolf, Commercial Realtor with Rock Commercial Real Estate, testified further on behalf of the Applicant as follows:
 - a) The Property would be used as a medical facility but there would not be any overnight stays.
 - b) Facilities of this type represent the trend and utilization of commercial medical facilities.
 - c) The Property has been marketed for sale for over a year.
 - d) The Property is difficult for one user to develop .
 - e) Intrusion upon the steep slopes and grading of the Property is necessary to make it feasible to develop.
 - f) The Application is based upon Phase 1, and Phases 2 and 3 are at this time speculative.
 - 8) Vincent Iacono, owner of 2030 South Queen Street voiced concerns about protecting his property and the rock/retaining wall on the southern portion thereof. The Applicant indicated that any land development would be sensitive to and not interfere with Mr. Iacono's property.
 - 9) Mark Baxley, who owns the adjoining property at 401 Chancellor Road, provided a photograph from mapquest of the Property that was introduced as Exhibit A. He had questions with regard to the following:
 - a) He inquired if the Applicant would be utilizing a retaining pond, and the Applicant indicated that it would not.
 - b) He inquired about the steep slope at the rear of the Property where it adjoins his, and the Applicant indicated that it would utilize slopes and retaining walls.
 - c) Mr. Baxley inquired about retaining the existing trees, and the Applicant indicated that as many existing trees as possible would be retained and that further, there will be screening at both the bottom and top of any retaining walls, which screening would include evergreen plantings.
 - d) He inquired if the access drive between Taco Bell and the Car Wash would be used to provide access to the Property, and the Applicant indicated that it would after appropriate enhancements.
 - e) He also inquired with regard to the definition of a medical clinic, and the definitions in the Ordinance were referenced.

- 10) Mr. Dennis Ness, who resides at 235 Teila Drive inquired about the existing slope of the land other than the steep slopes, and he was provided an answer that the existing slope is 10-12%.
- 11) The Applicant provided a summary of the testimony to support the request for the variance pursuant to Section 265-167 as follows:
- a) The unnecessary hardship that exists for the Property is the man-made steep slopes that straddle 2040 and 2050 South Queen Street. These steep slopes interfere with the collective development of both properties, and the steep slopes were created as a result of prior land development that occurred approximately thirty years ago.
 - b) Because of such physical circumstances or conditions, there is no possibility that the Property can be developed in strict conformity with the provisions of the Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the Property, by allowing a comprehensive land development of both parcels.
 - c) The unnecessary hardship was not created by the Applicant, as it was a result of land development that occurred decades ago.
 - d) The variance, if authorized, will not alter the essential character of the neighborhood or the district in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property and not be detrimental to the public welfare because it will eliminate man-made steep slopes, allow the site to be rebalanced, and allow the redevelopment of the properties which involve multitude of site improvements, such as improved site access, storm water management, and additional landscaping.
 - e) The variance, if authorized, will represent the minimum variance that would afford relief, and represent the least modification possible of the regulations at issue because it involves repairing a small area of land upon which man made steep slopes are located.

CONCLUSIONS OF LAW

- 1) The Board finds the Applicant's witnesses to be credible.
- 2) The Board finds that the Applicant has met the requirements for a variance.
- 3) The Board finds that the grant of a variance would be appropriate subject to the imposition of certain reasonable conditions as follows:
 - a) The installation of a buffer of fifty (50) feet in width on the Property where it adjoins any residential uses to the rear (southwestern border).
 - b) Both parcels will be merged in to one property by appropriate, approved subdivision plan prior to land development.
 - c) The Township Engineer's Conditions be applied to any new retaining walls installed on the Property or any existing retaining walls on or adjacent to the Property, including, but not limited to the wall on the southern portion of 2030 South Queen Street.
 - d) All other comments of the Township Engineer's memo shall be addressed as part of the land development plan process.
 - e) The buildings on the Property shall only be used as a medical clinic/facility as those terms are defined by the Ordinance and as part of a Medical Campus.

(collectively the "Conditions")

Accordingly, Teri Hollway moved, and Missy Gugino seconded, to approve the variance pursuant to Application 2007-38, as proposed, and subject to the imposition of the Conditions and that no other portion of the Ordinance be waived or other relief be granted. The motion passed with a vote of 5-0, with all members voting in favor.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD

Lisa Luy

By: *Kenneth Silberstein*
Kenneth Silberstein, Chair 2007
1/18/08
Date

Lisa Luy

By: *Teri L. Hollway*
Teri L. Hollway, Chair 2008
1-22-08
Date

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2007-39
Hearing Date(s): December 26, 2007
Applicant(s): TTMT, LLC
Property Owner(s): TTMT, LLC
Property: East Side of Rosslaire Road
UPI # 54000390092

Existing Zoning District: Shopping Commercial (C-S)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Section 265-94 thereof.

FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments, are incorporated by reference.
- 2) The Applicant was represented by the following:
 - a) John Murphy from Alpha Consulting
 - b) Todd Wilson from Alpha Consulting
 - c) Timothy Smith, for TTMT, LLC
- 3) Mr. Murphy presented background information on the Property and the proposed strip shopping center that the Applicant would like to build.
- 4) Mr. Murphy provided testimony with regard to the specific special exception criteria of Section 265-94 as follows:
 - a) Lot area is sufficient to provide all necessary improvements and meet required setbacks and buffers, as well as the minimum lot acreage requirement within the C-S District.
 - b) The proposed building will be located 100 feet from the street line of Belle Road and Rosslaire Road, and beyond 50 feet of said rights-of-way as shown in Exhibit A.

- c) Buffer planting and screening shall be provided and designed in accordance with the requirements of the York Township Subdivision and Land Development Ordinances and are shown on Exhibit A.
 - d) 173 parking spaces are proposed for the development, which meets the minimum required rate of 1 per 200 square feet of building area (177 required).
 - e) The development will have direct access to Cape Horn Road and to Belle Road which are arterial streets.
- 5) The Applicant provided testimony in support of the general special exception criteria in Section 265-166 (D) as follows:
- a) The use will be in harmony with the orderly and appropriate development of the zoning district.
 - b) The location of the use is appropriate with respect to existing streets giving access to it.
 - c) The nature and intensity of the proposed use would be appropriate and in conformity with the neighborhood.
 - d) Adequate water, septic, storm drainage, and fire and police protection are available for use.
 - e) The use of the adjacent land and buildings would not be discouraged and the value of the adjacent land and buildings would not be impaired by the location, nature, and heights of the buildings, walls and fences.
 - f) The use will not create further traffic congestion, and a traffic light will be installed.
- 6) Chair Silberstein inquired as to the buffer width, the Applicant indicated that the buffer would be at least 40-45 feet and the Applicant would work with the staff as part of the Land Development process.
- 7) Board Member Yanovitch discussed the grading and fill, and the Applicant agreed that it would comply with all code compaction and soil loading requirements for structures and pavement improvements.

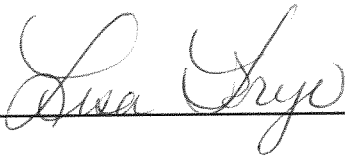
CONCLUSIONS OF LAW

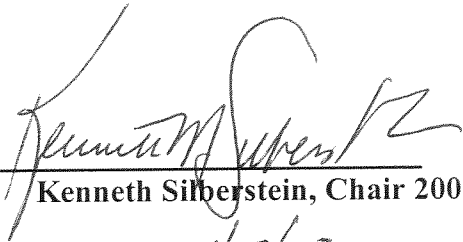
- 1) The Board finds that the Applicant has met the requirements for a special exception.

Accordingly, Teri Hollway moved, and John Wimbley seconded, to approve the special exception pursuant to Application 2007-39, as proposed, and that no other portion of the Ordinance be waived or other relief be granted and that no other portions of any prior decision for this Property be waived or otherwise modified unless specifically set forth herein.. The motion passed with a vote of 5-0, with all members voting in favor.


WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD



By: 
Kenneth Silberstein, Chair 2007
1/18/08
Date



By: 
Teri L. Hollway, Chair 2008
1-22-08
Date

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at a hearing or in writing, whichever comes first) pursuant to Sections 265-145 (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.