

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2006-32

Hearing Date(s): December 27, 2006

Applicant(s): Subhas Muzumdar

Property Owner(s): RHHY LLC

Property: Queen Street and Pauline Drive, York, PA 17402, UPI 540000400490000000

Existing Zoning District: Commercial Shopping (C-S)

Relief Requested- Variance to install more than two business signs on a property located in a Commercial Shopping (C-S) zone.

FINDINGS OF FACT

- 1) The foregoing information and the Application are incorporated by reference.
- 2) David Herbert was present on behalf of the Applicant.
- 3) Mr. Herbert indicated that the Application was filed because the tenant on the Property has determined that relief is needed.
- 4) Mr. Herbert testified that the tenant operates a Dunkin Donuts and Baskin Robbins business on the Property.
- 5) Mr. Herbert testified that a business sign was placed on the building facing Pauline Drive because of the pending roadway improvements
- 6) Mr. Herbert stated that a freestanding sign was placed in front of the building along South Queen Street.
- 7) Mr. Herbert indicated his belief and that of the tenant, that an additional sign, on the front of the building facing South Queen Street would improve business.
- 8) Mr. Herbert testified that the tenant spoke to customers of the business who indicated that access to the Property was a problem.

- 9) Mr. Herbert testified that sales were less than expected.
- 10) Mr. Herbert voiced concerns about the signs for the Property competing with signs on nearby properties.
- 11) Mr. Herbert indicated that the additional sign was important to enhance the convenience of the Property, as it is not a destination use.
- 12) Mr. Herbert testified that he believed that many customers did not view South Queen Street as the front of the Property.
- 13) Mr. Herbert indicated that the tenant and Property Owner were seeking a forty square foot internally illuminated sign to evidence the front of the Property along South Queen Street.
- 14) Mr. Herbert admitted that the Property Owner and the tenant were aware of pending improvements to Pauline Drive during the arrangement of the lease for the Property and the construction of the tenant improvements.
- 15) Mr. Herbert indicated that his opinions were based upon experience but no definitive study has been completed.
- 16) Mr. Herbert offered for the sign to be utilized and taken down if it did not solve the alleged problem.
- 17) Mr. Herbert provided testimony in support of the variance criteria of Section 265-167 of the Ordinance as follows:
 - a) Unique physical circumstances of the Property include the median strip recently constructed on Pauline Drive;
 - b) Because of the median strip and unique access issues, there are problems with utilization of the Property;
 - c) The median was not constructed by the Applicant and accordingly, the Applicant did not create the unnecessary hardship;
 - d) The sign requested will not alter the central character of the neighborhood;
 - e) The sign size is sought to be kept at a minimum at 6 feet 8 inches by 8 feet.
- 18) The Board questioned whether the sign would actually help the situation.
- 19) Mr. Herbert admitted that he did not know if there was an entrance sign along South Queen Street designating the point of access to the Property.
- 20) Mr. Herbert was questioned by Attorney J. Robert Katherman, who appeared on behalf of the owner of Maple Donuts. He agreed that there is a pylon sign on South Queen Street, and a sign above the door on the front of the building need not say "Dunkin Donuts" and that it could say "front" or "entrance", that more signs are typically better than less for a business,

and that part of the reason the variance had been requested was because of lower than expected sales at the facility, which Mr. Herbert argued were a result of access.


- 21) Additionally, Mr. Herbert admitted upon questioning that the Property Owner and tenant knew about the placing of the median, that there were no additional studies, that they were aware of Maple Donuts on St. Charles Way, that Maple Donuts might be a factor affecting the sales at this Property, and the goal of the sign is to encourage more people to utilize the Queen Street entrance to the Property.
- 22) Additionally, Attorney Katherman testified that the Property had been traffic challenged before, that the Applicant should have known of those difficulties, that repeat customers would understand how to access the site, and that any minimum signage should say "front" or "entrance".
- 23) Attorney Katherman argued that the variance criteria were not met, specifically in that the Property was being reasonably utilized now as the business was operating on the Property and that the variance as requested is not the minimum because a sign on the front of the building stating the business name would not effectively designate that as the front entrance.

CONCLUSIONS OF LAW

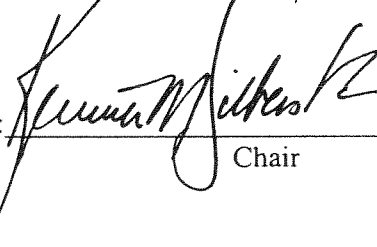
- 1) The Applicant has not met the general standards for a variance.
- 2) There are other alternatives that may solve the problems complained of by the Applicant.
- 3) Safety remains a concern but is not unique to this Property, nor does it justify the variance as requested.
- 4) The Applicant knew or should have known of some of the challenges that it would face with this site, as it is in a high traffic area.

Accordingly, Mr. Tateosean moved, and Mr. Kotek. seconded, that a variance requested pursuant to Application 2006-32 be denied because the variance criteria were not met, especially Section 265-167 B(1.)(b) and (e). The motion passed with a vote of 4-1.

WITNESS/ATTEST



YORK TOWNSHIP
ZONING HEARING BOARD

By: 
_____ Chair

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2006-36

Hearing Date(s): December 27, 2006

Applicant(s): A&E Construction, LLC

Property Owner(s): A&E Construction, LLC (Equitable Owner Pursuant to a written Agreement of Sale)

Property: 680 Chapel Church Road (54000HJ0085D000000) and 3100 Cape Horn Road (54000HJ00840000000), Red Lion, PA 17356

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 265-125 (Drive-through facility) thereof.

FINDINGS OF FACT

- 1) The foregoing information and the Application are incorporated by referenced.
- 2) The Applicant was represented by J. Robert Katherman, Esquire.
- 3) Dave Rudisill provided additional information on behalf of the Applicant, including his resume.
- 4) Mr. Rudisill provided testimony that the special exception criteria of Section 265-125 of the Ordinance, Drive-through facility for a commercial bank, would be met as follows:
 - a) The Property fronts on arterial or collector roads, namely Chapel Church and Cape Horn Roads.
 - b) Trash receptacles shall be provided and routinely emptied so to prevent the scattering of litter pursuant to a working plan for the clean up of litter.
 - c) The drive-through window lane shall have sufficient space to stack vehicles waiting to transact business and shall be separated from the parking lots interior driveways by the use of curbs and/or planting islands.
 - d) The exterior speaker/microphone system shall be arranged and/or screened to prevent objectionable noise impact on adjoining properties.
 - e) There shall be no exterior seating/play area.


- 5) Additionally, Mr. Rudisill testified that the general variance criteria as set forth in Section 265-166.D.(1)(a) would be met to ensure harmony with the orderly and appropriate development of the zoning district, as follows:
 - a) The location of the use, with respect to existing streets giving access to it;
 - b) Nature and intensity of the drive-through would be consistent with other uses in the area;
 - c) That adequate facilities and services would be available for the use, namely water, sewage, storm drainage, fire and police protection;
 - d) Use of the adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature, and height buildings, walls, and fences; and
 - e) Ttraffic associated with the use will not create traffic congestion or cause commercial or industrial traffic to use residential streets.
- 6) Mr. Rudisill indicated that the utilization of the drive-through would be consistent with the information in the Application but that the utilization of the ATM could be at any time, consistent with commercial practice.
- 7) The Applicant indicated that all signage, lighting, and land development would comply with applicable Township ordinances and that no other variances, waivers, or other relief would be requested.
- 8) The Township Zoning Officer, Lisa Frye, indicated that she had no objections to the special exception as requested by the Applicant, provided that all other ordinance requirements were met.
- 9) In response to a question asked by a citizen in the audience, the Applicant indicated that the refuse areas could be adjusted as set forth on the Exhibits provided to the Board so long as such adjustments could be completed in accordance with the applicable land development ordinances of York Township.

CONCLUSIONS OF LAW

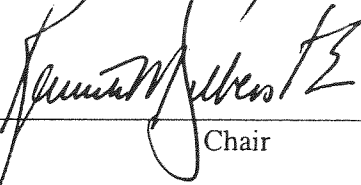
- 1) The Board finds the witnesses to be credible.
- 2) The Board finds that the Applicant has demonstrated compliance with the special exception criteria of Sections 265-125 and 265-166 of the Ordinance for a drive-through facility, based upon the information in Application, and the evidence provided at the hearing.
- 3) The only relief granted by this Decision is that of the special exception for the drive-through facility as specifically requested.
- 4) Other than as set forth in or referenced by this Decision, there are no special conditions attached to this Decision

Accordingly, Mr. Tateosean moved, and Mrs. Hollway seconded, that special exception for a drive-through facility for a commercial bank be granted pursuant to Application 2006-36 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 voting in favor.

WITNESS/ATTEST



YORK TOWNSHIP
ZONING HEARING BOARD

By: 
_____ Chair

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.

- 5) Additionally, Mr. Rudisill testified that the general variance criteria as set forth in Section 265-166.D.(1)(a) would be met to ensure harmony with the orderly and appropriate development of the zoning district, as follows:
 - a) The location of the use, with respect to existing streets giving access to it, would be in harmony with adjacent development;
 - b) Nature and intensity of the drive-through would be consistent with other uses in the area;
 - c) That adequate facilities and services would be available for the use, namely water, sewage, storm drainage, fire and police protection;
 - d) Use of the adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature, and height buildings, walls, and fences; and
 - e) Traffic associated with the use will not create traffic congestion or cause commercial or industrial traffic to use residential streets.
- 6) The Applicant indicated that all signage, lighting, and land development would comply with applicable Township ordinances and that no other variances, waivers, or other relief would be requested.
- 7) The Township Zoning Officer, Lisa Frye, indicated that she had no objections to the special exception as requested by the Applicant, provided that all other ordinance requirements were met.
- 8) In response to a question asked by a citizen in the audience, the Applicant indicated that the refuse areas could be adjusted as set forth on the Exhibits provided to the Board so long as such adjustments could be completed in accordance with the applicable land development ordinances of York Township.
- 9) In response to questions of the Board, the Applicant assured the Board that it would be utilizing the Starbucks signage package which would alleviate any issues with regard to traffic and the drive-through lanes.
- 10) Applicant's counsel indicated that a seating/play area would not be utilized unless permissible and in accordance with Township ordinances.
- 11) The Township Zoning Officer, Lisa Frye, indicated that she had concerns with regard to traffic at the rear of the building and emphasized the need for the appropriate sign package and striping plan.

CONCLUSIONS OF LAW

- 1) The Board finds the witnesses to be credible.

- 5) Additionally, Mr. Rudisill testified that the general variance criteria as set forth in Section 265-166.D.(1)(a) would be met to ensure harmony with the orderly and appropriate development of the zoning district, as follows:
 - a) The location of the use, with respect to existing streets giving access to it, would be in harmony with adjacent development;
 - b) Nature and intensity of the drive-through would be consistent with other uses in the area;
 - c) That adequate facilities and services would be available for the use, namely water, sewage, storm drainage, fire and police protection;
 - d) Use of the adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature, and height buildings, walls, and fences; and
 - e) Traffic associated with the use will not create traffic congestion or cause commercial or industrial traffic to use residential streets.
- 6) The Applicant indicated that all signage, lighting, and land development would comply with applicable Township ordinances and that no other variances, waivers, or other relief would be requested.
- 7) The Township Zoning Officer, Lisa Frye, indicated that she had no objections to the special exception as requested by the Applicant, provided that all other ordinance requirements were met.
- 8) In response to a question asked by a citizen in the audience, the Applicant indicated that the refuse areas could be adjusted as set forth on the Exhibits provided to the Board so long as such adjustments could be completed in accordance with the applicable land development ordinances of York Township.
- 9) In response to questions of the Board, the Applicant assured the Board that it would be utilizing the Starbucks signage package which would alleviate any issues with regard to traffic and the drive-through lanes.
- 10) Applicant's counsel indicated that a seating/play area would not be utilized unless permissible and in accordance with Township ordinances.
- 11) The Township Zoning Officer, Lisa Frye, indicated that she had concerns with regard to traffic at the rear of the building and emphasized the need for the appropriate sign package and striping plan.

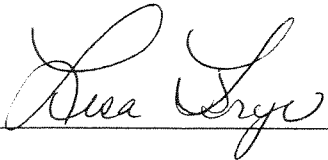
CONCLUSIONS OF LAW

- 1) The Board finds the witnesses to be credible.

- 2) The Board finds that the Applicant has demonstrated compliance with the special exception criteria of Sections 265-125 and 265-166 of the Ordinance for a drive-through facility, based upon the information in Application, and the evidence provided at the hearing.
- 3) The only relief granted by this Decision is that of the special exception for the drive-through facility as specifically requested.
- 4) If any seating is placed in front of the store, then a railing would be put at the edge of the sidewalk between the sidewalk seating area and the drive-through lane to protect customers, which outdoor seating and railing must be approved by the Township Engineer.
- 5) The signage and striping package for the drive-through lane must be presented to and approved by the Township Engineer as part of the land development process.

Accordingly, it was moved, and seconded, that special exception for a drive-through facility for a Starbucks Store be granted pursuant to Application 2006-37, and to the extent that outdoor seating is implemented such outdoor seating plan must include a railing, both of which must be approved by the Township Engineer, and further that the signage and striping package for the drive-through facility be provided in the Land Development Plan and approved by the Township Engineer, and that no other portion of Ordinance be waived or other relief be granted. The motion passed with a vote of 5-0, with all voting in favor.

WITNESS/ATTEST



YORK TOWNSHIP
ZONING HEARING BOARD

By: 

Chair

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: 2006-38

Hearing Date(s): December 27, 2006

Applicant(s): OSS Realty

Property Owner(s): OSS Realty

Property: 1855 Powder Mill Road, York, PA 17402

Existing Zoning District: Office Professional (O-P)

Relief Requested- Special exception under the York Township Zoning Ordinance of 1996, as amended, (the "Ordinance") and pursuant to Section 265-88 (Hospital) thereof.

FINDINGS OF FACT

- 1) The foregoing information and the Application are incorporated by reference.
- 2) Dr. Steven Groff was present on behalf of the Applicant.
- 3) Dr. Groff explained that the construction of the Orthopedic Specialty Hospital ("OSH") was delayed because of a federal moratorium on such facilities.
- 4) Dr. Groff explained that the OSH would be beneficial in that it would allow for patients to stay at the facility following orthopedic surgery.
- 5) Dr. Groff reminded the Board that a special exception was previously approved, but it had expired during the moratorium (see Application 2003-50, which was granted in December of 2003)
- 6) The Applicant provided testimony that it would meet all requirements for the special exception, including the special criteria of Section 265-88, as follows:
 - a) The OSH would be constructed and operated in accordance with all applicable laws of the Commonwealth of Pennsylvania;
 - b) The OSH would have frontage on Powder Mill Road;
 - c) The OSH would be on a lot with the size in excess of one acre;
 - d) The OSH would be on a lot with a width in excess of 200 feet;

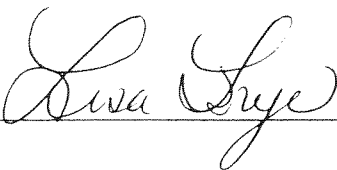
- e) The OSH and all other buildings on the Property would be set back at least 50 feet from the street or all property lines.
- 7) Dr. Groff indicated that adequate parking would be provided.
- 8) Dr. Groff indicated that there would be no emergency room nor helicopter pad.
- 9) Lisa Frye, the Township Zoning Officer, indicated that she had no objections or concerns to the special exception application.
- 10) Citizens entered their appearance and provided questions and testimony evidencing concerns with regard to traffic and set back issues.
- 11) The Applicant provided information to support the meeting of the general standards for the special exception.

CONCLUSIONS OF LAW

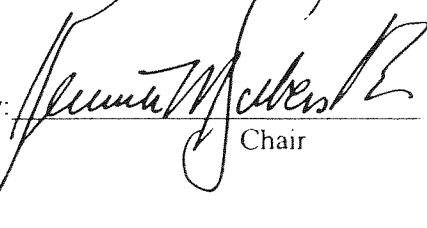
- 1) The Board found the Applicant's witness to be credible.
- 2) The Applicant met the specific standards for the special exception and the general standards for the special exception.

Accordingly, it was moved, and seconded, that a special exception for a hospital be granted pursuant to Application 2006-38. The motion passed with a vote of 5-0, with all voting in favor.

WITNESS/ATTEST



YORK TOWNSHIP
ZONING HEARING BOARD

By: 
_____ Chair

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.