

MONROE TOWNSHIP ZONING HEARING BOARD

IN RE: :
 :
Application of : APPEAL NO. 2020-01 ZHB
MMRS Properties LLC :
Premises: 22 Sinclair Road :
Mechanicsburg, PA 17055 :

DECISION

This case comes before the Monroe Township Zoning Hearing Board (“Board”) pursuant to the provisions of §604.3 of the Monroe Township Zoning Ordinance (hereinafter referred to as the “Ordinance”), the same being an application for a special exception by MMRS Properties LLC (“Applicant”) to permit the expansion of a nonconforming use, as authorized under §503 of the Ordinance. The special exception is sought to permit the removal of the existing principal mobile home structures on the premises and to authorize the erection of a total of six new similar structures as a future continued nonconforming use.

Pursuant to notice duly given, as required by the provisions of the Ordinance, a hearing was held before the Board at the Monroe Township Municipal Offices, 1220 Boiling Springs Road, Mechanicsburg, Pennsylvania, on Monday, February 17, 2020, beginning at 6:00 p.m. The matter was heard by Paul Rast, Vice-Chair of the Board, member Greg Sheffer and alternate member Cass Gibson.

In accordance with the provisions of the Ordinance, notice of said hearing was given to the Applicants and to adjoining property owners. A Proof of Publication of public notice is also made a part of the Record.

Testimony at the hearing was offered on behalf of the Applicant by Richard Esposito, principal owner of MMRS Properties LLC, and by Eric Dffenbaugh of Dffenbaugh Wadel Inc., the Surveying and Engineering Firm that prepared the Application on behalf of the Owner. Testimony on behalf of the Township was offered by Gregory R. Rogalski, the Township Zoning Officer. A public comment period was held, with several adjoining property owners offering remarks. The Application with attached drawings, supportive documents, photographs and a narrative explanation filed by the Applicant was admitted into evidence as Board Exhibit 1. No intervening party objectors appeared at the hearing to register any formal opposition to the requested special exception.

At the conclusion of the evidentiary hearing of February 17, 2020, the Board in open meeting conducted a formal discussion of the matter and took formal action.

The Record consists of the aforesaid Notice of Public Hearing, Proof of Publication, and letters of notification of neighboring property owners, together with the original Application filed by the Applicant (Board Exhibit 1) and the Transcript of the hearing, as prepared by Premier Reporting, LLC.

FINDINGS OF FACT

After a review of the testimony and the documents included in the Record of this case, the Board makes the following Findings of Fact:

1. On January 3, 2020, MMRS Properties LLC (“Applicant”), the owner of the property located at 22 Sinclair Road, Mechanicsburg, Cumberland County, Pennsylvania, caused to be filed a Zoning Hearing Board Application, seeking a special exception that would allow for the renovation of an existing nonconforming residential use in an R-1 Zone. The Application

included supporting documents and drawings and a narrative explanation of and justification for the requested special exception, which has been received into evidence, together with the testimony offered on behalf of the Applicant.

2. Applicant sought a special exception, on the recommendation of the Township Zoning Officer, in order to make the renovations needed to remove the existing residential mobile home structures on the premises and to replace them with similar new structures in a configuration that differs from the location of the existing structures.

3. The proposed renovations include the removal of existing structures, the siting of replacement structures and the creation of parking areas in proximity to the new structures.

4. The Township Zoning Officer testified that, in his opinion, a special exception is appropriate in order to grant permission for the expansion of an existing nonconforming use, within the limits on such expansions as stated in Section 503 of the Ordinance.

ADDITIONAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW

When determining whether or not to grant a special exception in any given case, this Board must take into consideration the provisions of the Ordinance setting forth the criteria for the granting thereof. Accordingly, this Board must be guided by the provisions of Section 604.3 of the Ordinance, which provides in pertinent part as follows:

604.3. Special Exceptions, as provided for in this Ordinance and subject to all applicable requirements, including, but not limited to:

1. Filing Requirements - In addition to the required zoning permit information (See Section 701) each special exception application shall include the following:

A. Ground floor plans and elevations of proposed structures. This requirement shall not apply for proposed single family dwellings.

B. Names and address of adjoining property owners including properties directly across a public right-of-way;

C. A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,

D. A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance;

2. General Criteria - Each applicant must demonstrate compliance with the following:

A. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;

B. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;

C. The proposed use will not substantially change the character of the subject property's neighborhood;

D. Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);

E. The proposed use complies with the Monroe Township Floodplain Ordinance.

F. The proposed use shall comply with those criteria specifically listed in Article 4 of this Ordinance. In addition, the proposed use must comply with all other applicable regulations contained in this Ordinance; and,

G. The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan;

3. Conditions - The Zoning Hearing Board in approving special exception applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. The conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in Article 7; and

4. Site Plan Approval - Any site plan presented in support of the special exception pursuant to Section 604.3.1. shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with the submitted site plan; therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved site plan, shall require the obtainment of another special exception approval.

In addition, in order to expand an existing nonconforming use, the criteria set forth in §503 of the Ordinance must also be satisfied:

Section 503 Expansion or Alteration

503.1. Any nonconforming use may be expanded or altered through the acquisition of a special exception and subject to the following criteria, and those contained in Section 400:

1. Expansion of the nonconformity shall be confined to the lot on which it was located at the time the use became nonconforming;

2. The total of all such expansions or alterations of use shall not exceed an additional fifty percent (50%) of the area of those buildings or structures or land devoted to the nonconforming use as they existed on the date on which the use of such buildings, structures or land first became nonconformities. The applicant shall furnish conclusive evidence as to the extent of the nonconformity when it was created;

3. Provisions for vehicular access, off-street parking and off-street loading shall be consistent with standards required by this Ordinance.

4. Provisions for yards, building height and building area shall be consistent with the standards required for permitted uses in the zone in which the nonconformity in question is located;

5. Appearance should be harmonious with surrounding properties; this feature includes but is not limited to landscaping, enclosure of principal and accessory uses, height control, sign control, architectural control and maintenance of all improvements and open spaces;

6. Buffers and screens shall be provided as necessary to adequately protect neighboring properties. This includes but is not limited to fences, walls, plantings and open spaces;

7. The expansion shall not create new dimensional nonconformities or further increase existing dimensional nonconformities;

8. No expansion of a nonconforming structure or a nonconforming use located outside of a structure existing on the effective date of this Ordinance shall be permitted in an area subject to regulation by the Monroe Township Floodplain Ordinance;

9. Excluding expansion, any modification, alteration, repair, reconstruction or improvement of any kind to a nonconforming use or structure located in an area subject to regulation by the Monroe Township Floodplain Ordinance shall comply with the Floodplain Ordinance;

503.2. Any dimensional nonconformity may be reduced by permitted use. The extension or enlargement of a dimensional nonconformity may also be permitted by right; however, such extension or enlargement shall be limited to a total of a ten percent (10%) increase of the dimensional nonconformity when it was originally created.

503.3. Where a dimensional non-conforming setback exists, expansion of the structure may occur to the face of the dimensional non-conformity by right, subject to the overall dimension of the non-conformity not being reduced.

503.4. The construction of an accessory structure to an existing non-conforming residential use is permitted by right, subject to the area dedicated to the accessory use being no greater than 50% of the area

of the existing principal dwelling unit and meeting the requirements for accessory structures in the nearest residential zone.

503.5 The expansion of an existing conforming structure or use that is permitted by Conditional Use, located on a lot created by Conditional Use approval, or existing at the time of Ordinance adoption, shall be permitted by right.

Inasmuch as the proposed alterations on the property will not exceed the maximum allowable amount of area permitted for expansion of a nonconforming use under Section 503 of the Ordinance, the written submission made by the Applicant, together with the supporting oral testimony offered on behalf of the Applicant and by Zoning Officer Rogalski (all of which are incorporated herein by reference) amply demonstrated that the Application, as submitted and as explained via oral testimony, meets all of the above-quoted criteria specified in the Ordinance.

It is to be specifically noted that the Applicant is still required to secure all necessary construction and occupancy permits needed in order to erect the proposed structures and create the proposed parking areas on the property. In addition, since the proposed expansion is very close to the maximum allowable, permission is not hereby granted for the erection of any additional accessory buildings on the property. It is also noted that, as a condition of the granting of the requested special exception, the Owner must create all required screenings on the property and receive the approval of the entity that owns the gas line situated on the property in order to erect the proposed structures at the locations specified in the Application.

Therefore, based on the foregoing discussion and analysis, the Board grants the Applicant's request for a special exception with respect to the removal and replacement of the residential structures on the premises.

The Board also notes, and so admonishes the Applicant, that all other requirements of applicable Township Ordinances are to be complied with by the Applicant in the completion of the proposed project.

ALL MEMBERS CONCUR.

MONROE TOWNSHIP ZONING HEARING BOARD

By: Paul Rast

Paul Rast, Vice-Chair

Dated: March 4, 2020