

YORK TOWNSHIP

190 Oak Road, Dallastown, Pennsylvania 17313
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The September meeting of the York Township Zoning Hearing Board was called to order by John Myers, Vice Chair.

Those in attendance were:

John Myers, Chair
James Barnes, Vice Chair
William Descar, Secretary
Timothy Salvatore, Member
Anthony Pantano, Member
Jeffrey Rehmeier, Esquire, Solicitor
Lisa Frye, Zoning Officer

MINUTES OF AUGUST 25, 2020

The Zoning Hearing Board minutes of the August 25, 2020, meeting were approved.

DECISIONS OF AUGUST 25, 2020

The Zoning Hearing Board decisions of the August 25, 2020, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2020-18: Nicholas D. and Alicia Freml request a Special Exception to construct a fence higher than 3' in a front yard on property located at 3031 Raylight Drive in a Residential Medium Density (RM) District.

Present: Nicholas Freml

MOTION: On Application 2020-18, Nicholas D. and Alicia Freml request a Special Exception to

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

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construct a fence higher than 3' in a front yard on property located at 3031 Raylight Drive in a Residential Medium Density District, that the application be approved.

MOTION MADE BY: Timothy Salvatore
 SECONDED BY: James Barnes
 MOTION PASSED UNANIMOUSLY

Applications 2020-19 and 2020-20: HMDT Associates LP c/o Denniston Family Limited Partnership requests 1) a Special Exception to establish a Multi-Family Dwelling use and 2) a Variance to allow reduction in front setbacks from 50 to 30 feet in certain portions of the property adjacent to existing office/commercial development and not to provide Type C buffer yard within that portion of the perimeter of the property that is covered by an existing 20' wide drainage and utility right-of-way and to provide alternate screening on the property adjacent to the right-of-way on property located at Gotham Place (UPI#54000HK00040000000) and Cape Horn Road (UPI#54000HK0003A000000) in a Residential High Density (RH) District.

Present: Stacey MacNeal
 John Runge

MOTION: On Application 2020-19, HMDT Associates LP c/o Denniston Family Limited Partnership requests a Special Exception to establish a Multi-Family Dwelling use, that the application be approved.

CONDITIONS: That the drawings be updated so that it meets the 30' setback with all buildings, and that approval of the Variance is granted.

MOTION MADE BY: James Barnes
 SECONDED BY: Timothy Salvatore
 MOTION PASSED 4-1, William Descar voted negatively

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MOTION: On Application 2020-20, HMDT Associates LP c/o Denniston Family Limited Partnership requests a Variance to allow reduction of buffer yard Type C on the property in the vicinity of the existing drainage easement, that the application be approved.

CONDITION: Reduction allowed to the least amount of distance from the southernmost buildings.

MOTION MADE BY: James Barnes
 SECONDED BY: Timothy Salvatore
 MOTION PASSED UNANIMOUSLY

Application 2020-21 and 2020-22: Thornton Investments LLC requests 1) a Special Exception to establish Vehicle Sales, Repair, Service and/or Inspection Facility and 2) a Variance to permit vehicle parking, display and/or storage within front setback area (up to ten feet), Section 265-514(A) 265-676(I), on property located at 2980 and 2996 Cape Horn Road in a Commercial Shopping (CS) District.

Present: Paul Minnich, Esquire
 Bill Thornton
 Robert Sandmeyer

MOTION: On Application 2020-21, Thornton Investments LLC requests a Special Exception to establish Vehicle Sales, Repair, Service and/or Inspection Facility, that the application be approved.

MOTION MADE BY: Timothy Salvatore
 SECONDED BY: James Barnes
 MOTION PASSED UNANIMOUSLY

MOTION: On Application 2020-22, Thornton Investments LLC requests a Variance to permit vehicle parking, display and/or storage within front setback area (up to ten feet), Section 265-514(A) 265-676(I), on property located at 2980 and 2996 Cape Horn Road in a Commercial Shopping

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 34 North George St., York, PA 17401 - (717) 854-0077

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(CS) District, that the applications be approved.

MOTION MADE BY: Timothy Salvatore
SECONDED BY: James Barnes
MOTION PASSED UNANIMOUSLY

ATTEST:



William Descar, Secretary

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2020-18
Hearing Date: September 22, 2020
Applicant: Nicholas D. and Alicia Fremi
Property Owner: Nicholas D. and Alicia Fremi
Property: 3031 Raylight Drive
UPI: #54-000-16-0180-00-00000
Existing Zoning District: Residential Medium Density (RM)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-513 thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. Nicholas D. Fremi was present representing himself as the Applicant.
3. The Applicant is seeking a Special Exception to install a fence (the "Fence"), a portion of which shall be on the area of the Property that is adjacent to Daylight Drive (a/k/a Novalight Drive). Thus, approval is necessary because that portion is considered to be subject to a front set-back (with such approval being the "Special Exception").
4. The Applicant provided, with the Application materials, a Plot Plan and testified as follows:
 - a. Based upon the Plot Plan, the Fence will connect at the rear of the Property, by the back porch overhang, and go East towards Daylight Drive. The Fence will end approximately 25 feet from the centerline of that Drive. The Fence will then go South along Daylight Drive towards the rear of the Property. The Fence will then come back across the rear of the Property to the West. The Fence will then go North along the side of the Property, to a point just beside the house. The Fence will then connect to the house.
 - b. The Fence is proposed to be six feet in height at all locations.
 - c. The Fence will be made of vinyl and white in color.
 - d. The Fence will not be constructed within the public right-of-way or within a required clear site triangle.
5. With regard to the specific criteria with regard to a fence in Section 265-513, the following was offered:
 - a. The Fence height will not be excessive, nor will it surround a tennis court.
 - b. The Fence shall not be constructed within the public right-of-way or within a required clear site triangle.

- c. The finished side of the Fence shall face public right-of-way.
 - d. There shall be no barbed wire or similar type wire utilized.
 - e. The Fence shall not be electrically charged.
 - f. The Fence shall not be located on any property line or right-of-way line, but inside thereof.
 - g. The Fence shall not obstruct drainage.
6. In response to the General Standards for a Special Exception in Section 265-1009, the following was provided:
- a. The intended purpose of the proposed Use shall be consistent with the Township's development objectives as established in the Comprehensive Plan.
 - b. The proposed Use shall be in the best interest of properties in the general area, as well as the community at large, when viewing the proposed Use in relationship to and its potential effects upon surrounding land uses and existing environmental conditions regarding the pollution of air, land and water, noise, potential of hazards and congestion, illumination and glare, restrictions to natural light and circulation.
 - c. The proposed Use is suitable for the Property in question and is designed, constructed and will be operated and maintained suitably for the anticipated activity and population served, numbers of participating population, frequency of use, adequacy of space and generation of traffic.
 - d. There are adequate and available utility services and facilities, such as sanitary and storm sewers, water, fire, police and other public facilities and the ability of the Township to supply such services.
 - e. The proposed Use has adequate ingress, egress, interior circulation of pedestrians and vehicles, off-street parking and accessibility to the existing Township street system.
 - f. The Use shall be in conformance with all applicable requirements of the Ordinance and, where applicable, in accordance with the Township's Subdivision and Land Development Ordinance.
7. There were no questions from the Zoning Hearing Board.
8. There were no questions from any public participants.
9. There was no testimony for or against the Applicant.
10. The Zoning Officer expressed no concerns with regard to the Fence on behalf of the Township.

CONCLUSIONS OF LAW


Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

1. The Applicant has met the specific criteria for the Fence in Section 265-513.
2. The Applicant has met the general criteria for a Special Exception in Section 265-1009(C).

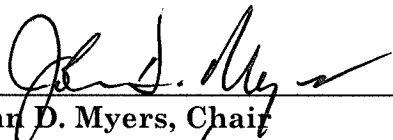
Accordingly, Timothy Salvatore moved, and Jim Barnes seconded, to grant the Special Exception to construct a fence higher than three feet in a front yard on the Property located at 3031 Raylight Drive in a Residential Medium Density (RM) District. The motion passed unanimously with John D. Myers, William Descar, Jim Barnes, Timothy Salvatore and Anthony Pantano voting in favor of the motion.

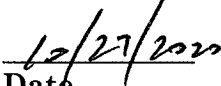
WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD



William Descar, Secretary

By: 

John D. Myers, Chair


Date

The Special Exception granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Special Exception, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2020-19

Hearing Date: September 22, 2020

Applicant: HMDT Associates, LP

Property Owner: HMDT Associates, LP c/o Denniston Family
Limited Partnership, Douglas A. and Kevin D. Brillhart

Property: Gotham Place
UPI: #54-000-HK-0004-00-00000
Cape Horn Road
UPI #54-000-HK-0003-A0-00000

Existing Zoning District: Residential High Density (RH)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-649 thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. Attorney Stacey MacNeal, of the law firm of Katherman and Perry, and John Runge, of Gordon L. Brown & Associates, Inc., were present on behalf of the Applicant.
3. The Applicant has applied for a Special Exception for the construction of Multi-Family Dwellings (the "Proposed Use") on the Property.
4. Attorney MacNeal provided background information as follows:
 - a. The Proposed Use was contemplated in the Application materials to consist of 55 Townhouse Units, but now only 54 are requested.
 - b. The Property was recently rezoned from Office/Commercial (CO) to Residential High Density (RH).
 - c. The Property consists of 2 parcels.
 - d. The 2 parcels will be combined for the Proposed Use.
 - e. The Property is currently vacant.
5. Attorney MacNeal introduced Applicant's Exhibits for the hearing, which included the following:
 - a. Exhibit 1 – Sketch Plan dated 9/22/20 for 54 Units by Gordon L. Brown & Associates, Inc., showing topography.
 - b. Exhibit 2 – Sketch Plan dated 9/22/20 by Gordon L. Brown & Associates, Inc., overlaid on aerial photograph.
 - c. Exhibit 3 – Aerial photograph focused on the Gotham Place Property.
 - d. Exhibit 4 – Aerial photograph focused on the Cape Horn Road Property.

- e. Exhibit 5 – Aerial photograph showing many properties in this vicinity for those for which the Proposed Use is sought.
 - f. Exhibit 6 – Aerial photograph showing the Property.
 - g. Exhibit 7A – Photograph of the nearby Post Office.
 - h. Exhibit 7B – Photograph of the nearby office building.
 - i. Exhibit 7C – Street level photograph of the Gotham Place Property.
 - j. Exhibit 7D – Photograph of the office building adjacent to the Gotham Place Property at the end of the Gotham Drive cul-de-sac.
 - k. Exhibit 7E – Photograph of the nearby funeral home.
 - l. Exhibit 7F – Photograph of the Cape Horn Road Property from Cape Horn Road.
 - m. Exhibit 8 – Letter to Gordon L. Brown & Associates, Inc. from Transportation Resource Group, Inc. consisting of a Trip Generation Evaluation of the Proposed Use, authored by Austin (Joe) Eberly, P.E., Senior Project Engineer, including its own exhibits.
6. Attorney MacNeal, with the assistance of Mr. Runge, provided information about the Properties as follows:
- a. The Gotham Place Property was created by subdivision in 1991, along with the other, adjacent properties on Gotham Drive.
 - b. The Gotham Place Property has challenging topography.
 - c. The Gotham Place Property is triangular in shape.
 - d. There exists along the Southeastern portion of the Gotham Place Property, a 20 foot wide drainage and utility right-of-way, beginning at Gotham Drive and going to the stormwater management facility on the lower (Southwestern) portion of the Gotham Place Property.
 - e. The Gotham Place Property has limited road frontage.
 - f. The Gotham Place Property falls in elevation from East to West.
 - g. Referencing Exhibit 4, the Cape Horn Road Property has a 25 foot wide panhandle that accesses Cape Horn Road.
 - h. The Cape Horn Road Property falls in elevation from East to West.
7. Reviewing Exhibit 1, Mr. Runge provided testimony about the Proposed Use as it relates to the specific criteria for Multi-Family Dwellings in Section 265-649 as follows:
- a. The Property has a total gross area of 6.418 acres and a net area of 4.415 acres, which exceeds the minimum 1 acre of net lot acre required. There are proposed 17 two bedroom units and 37 three bedroom units, which means a total lot area of 126,500 square feet is required. The net lot area proposed, in the amount of 192,338 square feet, exceeds that amount.
 - b. All buildings shall be setback a minimum of 50 feet from the property lines or street right-of-ways, except potentially along the Senior Center to the West (a Variance was requested pursuant to Application 2020-20. A buffer planting strip consistent with Type C of Section 610 of the Township Subdivision and Land Development Ordinance shall be planted within said 50 feet [except for the Southeastern portion of the Property because of the drainage and utility right-of-way (Variance requested in Application 2020-20)]).
 - c. The lot width is 218 feet at the building setback line.
 - d. The Proposed Use shall have 2 points of access from public streets, namely, Gotham Place and Cape Horn Road, with emergency access being proposed from Cape Horn Road.
 - e. There shall be 3,640 square feet of playground area provided, based upon the Units proposed. There must be 45,200 square feet of Open Space provided,

based upon the Proposed Use; however, there shall actually be 96,497 square feet of Open Area.

- f. The maximum building height shall be in compliance with the Ordinance.
8. Additionally testimony was provided about the Proposed Use as follows:
 - a. 130 parking spaces are required, calculated at 2 per Dwelling Unit, plus 20% for visitors, and there shall be 136 parking spaces provided.
 - b. The impervious coverage proposed will be 49.86% (95,841 square feet), but 60% (115,403 square feet) is actually allowed.
 - c. When viewing Exhibit 5, there are numerous uses nearby, many of which are commercial, and accordingly, the Proposed Use would serve as a buffer between the residential uses along the Northern and Western portion of the Properties and the commercial uses along the Southern and Eastern portion of the Properties.
 - d. When considering Exhibit 6, there is in the vicinity a Senior Center, a Post Office, Office Building, Funeral Home, Medical Office, and Chiropractic Office, as well as Equine Meadows, which is also Multi-Family housing.
 - e. Accordingly, the Proposed Use will blend in with nearby uses and provide a nice transition.
 - f. With regard to Exhibit 7F, it was noted that Cape Horn Road access is appropriate.
 - g. Any lighting for the Proposed Use would be accordance with applicable Township Ordinances.
9. With regard to traffic, the following was offered:
 - a. Per Exhibit 8, it is anticipate that the Proposed Use will generate average, daily weekday traffic in the amount of 375 trips.
 - b. Meanwhile, average daily traffic on Cape Horn Road in the vicinity of Gotham Place is 12,203 vehicles.
 - c. According to Engineer Eberly, the level of traffic generated by the Proposed Use will not create significant traffic impact on the Township road network.
 - d. A traffic impact study will be done during the land development phase, and the appropriate traffic impact fee shall be paid.
10. Additional information regarding the Proposed Use was provided as follows:
 - a. The Proposed Use could actually be denser.
 - b. Stormwater will be handled on the Property, in accordance with Township Ordinances, using the stormwater management facility already on the Property, which shall be enhanced as necessary to accommodate the Proposed Use.
 - c. Sewage will be accessed via the Red Lion Sewer Authority, which has adequate capacity.
 - d. A pump station will likely be put in place for the Proposed Use to pump sewage uphill to the East to Cape Horn Road.
11. In response to questions from the floor, the Applicant supplied the following answers:
 - a. It believes that it is aware of property lines, but they will be confirmed by a survey.
 - b. The dwellings in the Proposed Use will likely be rented.
 - c. The location of the Proposed playground area (on the Western portion of the Property adjacent to Winners Circle Drive) could be adjusted.
 - d. The Units will likely be 3 stories, with a lower level and then floors 1 and 2.
 - e. Stormwater runoff will be managed on the Property and protective of Mill Creek.
 - f. The pumping station should not make excessive noise.

12. The Zoning Officer indicated no specific concerns from the Township perspective.
13. Harold Miller indicated his opposition because of his concerns with regard to the impact of the Proposed Use to the public school system and traffic.
14. Joseph Hutchinson indicated his opposition because the Exhibits were not to scale and he is concerned that the 25 foot wide section of the Cape Horn Road Property is not actually 25 feet wide.
15. Michael Schmuck indicated his opposition because he was concerned with regard to the children in the Proposed Use and noise.
16. Mrs. Kim Smith indicated her opposition as well.
17. While the Board held an Executive Session and the hearing was recessed, the Applicant considered the relief that was requested and adjusted it as follows:
 - a. Applicant's request No. 1, which would have allowed for the Units on the Eastern portion of the Property to be setback approximately 45 feet (rather than the 50 required), was withdrawn, such that all Units along that row, as shown on the Applicant's Exhibit No. 1, would be setback 50 feet from the Property line.
 - b. The second Variance, to not provide a Type C buffer area within that portion of the perimeter of the Property that is covered by the existing 20 foot wide drainage and utility right-of-way, and to provide alternate screening on the Property was adjusted such that the buffer could be reduced to as little as 30 feet in width, adjacent to the 20 foot wide drainage and utility right-of-way, provided that the 80% coverage of the Type C buffering planting strip would still be maintained and further, that buffer width could be minimized when immediately adjacent to the Units at that portion of the Proposed Use.
18. In response to the General Standards for a Special Exception in Section 265-1009, the following was provided:
 - a. The intended purpose of the proposed Use shall be consistent with the Township's development objectives as established in the Comprehensive Plan.
 - b. The proposed Use shall be in the best interest of properties in the general area, as well as the community at large, when viewing the proposed Use in relationship to and its potential effects upon surrounding land uses and existing environmental conditions regarding the pollution of air, land and water, noise, potential of hazards and congestion, illumination and glare, restrictions to natural light and circulation.
 - c. The proposed Use is suitable for the Property in question and is designed, constructed and will be operated and maintained suitably for the anticipated activity and population served, numbers of participating population, frequency of use, adequacy of space and generation of traffic.
 - d. There are adequate and available utility services and facilities, such as sanitary and storm sewers, water, fire, police and other public facilities and the ability of the Township to supply such services.
 - e. The proposed Use has adequate ingress, egress, interior circulation of pedestrians and vehicles, off-street parking and accessibility to the existing Township street system.
 - f. The Use shall be in conformance with all applicable requirements of the Ordinance and, where applicable, in accordance with the Township's Subdivision and Land Development Ordinance.
19. There were 2 conditions proposed related to the Proposed Use, which the Applicant indicated would be accepted, to include the following:

- a. Submission of a revised drawing evidencing that the Proposed Use, and in particular, the Units on the Eastern portion thereof would be setback no less than 50 feet from the Property line.
- b. That the Applicant receive a Variance with regard to the buffer yard as modified herein and otherwise requested in Application 2020-20.
(Collectively the "Conditions")


CONCLUSIONS OF LAW

Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:


1. The Applicant has met the specific requirements for a Special Exception in Section 265-649.
2. However, Conclusion #1 is premised upon the first Condition with regard to submission of a revised drawing evidencing that the Proposed Use, and in particular, the Units on the Eastern portion thereof would be setback 50 feet from the Property line.
3. Further, Conclusion #1 is also premised upon the second Condition that the Applicant receive a Variance with regard to the buffer yard as modified herein and otherwise requested in Application 2020-20.
4. An emergency access is essential to Conclusion of Law #1 above, as it creates 2 points of access from public streets to the dwellings. In prior Decisions by this Board when granting approval for a Multi-Family Dwelling, the Board required that each points of access from the public street resulted in 2 means of ingress and egress to each and every dwelling in a Multi-Family Dwelling project.
5. The Applicant has met the general criteria for a Special Exception .

Accordingly, Jim Barnes moved, and Timothy Salvatore seconded, to grant the Special Exception to establish a Multi-Family Dwelling Use, subject to the Conditions, on the Property located at Gotham Place and Cape Horn Road in a Residential High Density (RH) District. The motion passed with John D. Myers, Jim Barnes, Timothy Salvatore and Anthony Pantano voting in favor of the motion and William Descar voting against the motion.

WITNESS/ATTEST


William Descar, Secretary

YORK TOWNSHIP
ZONING HEARING BOARD

By: 
John D. Myers, Chair

10/27/2020
Date

The Special Exception granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Special Exception, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2020-20

Hearing Date: September 22, 2020

Applicant: HMDT Associates, LP

Property Owner: HMDT Associates, LP c/o Denniston Family
Limited Partnership, Douglas A. and Kevin D. Brillhart

Property: Gotham Place
UPI: #54-000-HK-0004-00-00000
Cape Horn Road
UPI #54-000-HK-0003-A0-00000

Existing Zoning District: Residential High Density (RH)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-649(B) thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. The Findings of Fact and Conclusions of Law in Decision 2020-19 are hereby incorporated in this Decision as if set forth fully herein.
3. The Applicant requested 2 Variances, but 1 was withdrawn. Accordingly, the Applicant does not need a reduction in front setbacks from 50 feet to 30 feet on certain portions of the Property adjacent to existing Office/Commercial development. However, the Applicant does need a Variance with regard to the types of buffer yard required by Section 265-649(B).
4. In support of the Variance, the Applicant noted the following:
 - a. The Property is unique in terms of its triangular shape.
 - b. The Property is also unique because of its topography and sloping downward from East to West.
 - c. The Gotham Place Property is unique because it has minimal road frontage.
 - d. The existence of the 20 foot wide drainage and utility right-of-way creates challenges with regard to the 50 foot setback and a buffer planting strip consistent with Type C of Section 610 of the SALDO being planted within said 50 feet.
5. With regard to the Variance as requested, the Applicant indicated a willingness to:
 - a. Install a buffer planting strip consistent with Type C of Section 610 of the Township Subdivision and Land Development Ordinance within the 30 foot

area to the Northwest of and beside the 20 foot wide drainage and utility right-of-way.

- b. By stacking the right-of-way and the buffer area, there would be at least 50 feet of open space and/or a buffer plantings. And the buffer planting strip would be inserted in an area as wide as 30 feet that would be minimized at the point where the 20 foot wide drainage and utility right-of-way departs from the edge of the Property and moves toward the interior so that they can access the stormwater management facility on the Western portion of the Property. Regardless of the width of the buffer area, Applicant shall endeavor to install plantings sufficient in the strip to create the screen contemplated by the SALDO for a Type C buffering planting strip.
6. It was noted that many of the adjacent uses do not have their own buffer areas on them, including but not limited to Equine Meadows.
7. The opposition for Application 2020-19 also existed for Application 2020-20.
8. The Zoning Officer on behalf of the Township indicated no concerns with the Variance requested.
9. In response to the criteria for the Variance, the Applicant provided the following:
 - a. The unnecessary hardship that exists is due to unique physical circumstances or conditions includes the irregular shape of the Properties, the topography of the Properties, their location by a variety of nearby prior land development and such unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provision of this chapter in the neighborhood or district in which the Property is located.
 - 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 this Chapter and the authorization of a Variance is therefore necessary to enable the reasonable use of the Property, as the Variance is necessary for adequate and safe use.
 - c. The unnecessary hardship is not being created by the Applicant.
 - d. The Variance, if authorized, will not alter the essential character of the neighborhood or district in which the Property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.
 - e. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least modification possible to the regulation at issue.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

1. The Property does have a number of unique characteristics.
2. The Applicant has met the criteria necessary for a Variance.

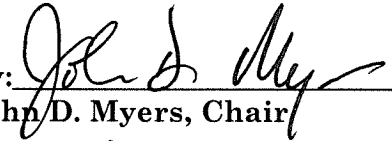
Accordingly, Jim Barnes moved, and Timothy Salvatore seconded, to grant the Variance to not provide the Type C buffer yard within that portion of the perimeter of the Property that is covered by an existing 20 foot wide drainage and utility right-of-way and to provide alternative screening on the Property adjacent to the right-of-way from the Property located at Gotham Place on the Property located at Gotham Place and Cape Horn Road in a Residential High Density (RH) District. The motion passed unanimously with John D. Myers, William Descar, Jim Barnes, Timothy Salvatore and Anthony Pantano voting in favor of the motion.

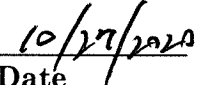
WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD



William Descar, Secretary

By: 

John D. Myers, Chair


Date

The Variance granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Variance, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2020-21

Hearing Date: September 22, 2020

Applicant: Thornton Investments, LLC

Property Owner: Thornton Investments, LLC

Property: 2980 Cape Horn Road
UPI: #54-000-HJ-0091-A0-00000

2996 Cape Horn Road
UPI #54-000-HJ-0091-00-00000

Existing Zoning District: Commercial Shopping (CS)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-676 thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. Attorney Paul Minnich of Barley Snyder was present on behalf of the Applicant.
3. Bill Thornton was present as the owner of the Applicant
4. Robert Sandmeyer was present on behalf of Site Design Concepts, the Land Development Consultant for the Applicant.
5. The Applicant is seeking a Special Exception to allow for the expansion of the existing Vehicle Sales, Repair, Service and/or Inspection Facility on the Property (the "Use").
6. Attorney Minnich called Mr. Thornton who provided testimony as follows:
 - a. The Property known as 2980 Cape Horn Road ("2980 Property") is currently utilized as a car dealership, representing Chrysler, Dodge, Jeep and Ram brands.
 - b. The Applicant purchased the Property and the dealership from Blaise Alexander a few years ago.
 - c. Prior to that time, the building and the Property at 2980 Cape Horn Road were used for Fishel Jeeps.
 - d. Mr. Thornton has been in the automotive business since 1983.
 - e. The 2980 Property itself has a design that is old, at least insofar as for use for the sale of motor vehicles.
 - f. In particular, it is hard to display all of the vehicles close to the roadway.
 - g. Additionally, the existing building on the 2980 Property, which has been in place for decades, is also too close to the road.

- h. The 2980 Property itself needs more parking on the Southern portion thereof.
- 7. With regard to the parcels of Property that are the subject to the Application, Attorney Minnich questioned Mr. Thornton who explained as follows:
 - a. When the opportunity arose to purchase 2996 Cape Horn Road ("2996 Property") and 2998 Cape Horn Road ("2998 Property"), he elected to proceed.
 - b. He desires to incorporate these Properties into the Use already in place on 2980 Property.
 - c. The parcel known as 2998 Property is not subject to this Application as it will be added to the 2980 Property, but used only for stormwater management purposes.
 - d. By incorporating the 2996 Property into the Use, additional display and parking areas can be obtained, to make the Property more efficient for the Use.
 - e. Mr. Thornton spoke to the owner of the Property to the North, Richard Peddicord. Mr. Peddicord has horses and desires more fencing and buffering.
 - f. Mr. Thornton indicated a willingness to address the desire for fencing and buffering, potentially continuing the existing fence on the Northern portion of the Primary Site.
- 8. With regard to the criteria in Section 265-676, Mr. Thornton offered the following:
 - a. All service, maintenance and/or repair activity shall be conducted within a completely enclosed building and shall be completely enclosed within the building.
 - b. There shall be no fuel dispensing islands.
 - c. Outdoor vending machines, if any, shall be located adjacent to the building.
 - d. Outdoor trash and recycling receptacles shall be provided at each public entrance/exit.
 - e. The access drives, which have been in place for decades, shall conform to the Township Subdivision and Land Development Ordinance (the "SALDO").
 - f. All wrecked vehicles, vehicle parts, dismantled vehicles and similar objects shall be stored out of sight within a building or in an area enclosed by a wall or opaque fence. Said area shall be to the rear of the principal building, must observe all yard requirement and shall be screened in accordance with the SALDO. The maximum limit for outdoor storage of any inoperable vehicle shall be sixty (60) days.
 - g. No materials shall be stored so as to create a fire hazard.
 - h. The Applicant shall not repair or store vehicles having three or more axles.
 - i. Areas for vehicle parking display and/or storage shall be paved in accordance with the SALDO and it shall not be permitted within any setback areas (except as might be authorized by Variance pursuant to Application 2020-22).
- 9. In response to the General Standards for a Special Exception in Section 265-1009, the following was provided:
 - a. The intended purpose of the proposed Use is consistent with the Township's development objectives as established in the Comprehensive Plan.
 - b. The proposed Use is in the best interest of properties in the general area, as well as the community at large, when viewing the proposed Use in relationship to and its potential effects upon surrounding land uses and existing environmental conditions regarding the pollution of air, land and water, noise, potential of hazards and congestion, illumination and glare, restrictions to natural light and circulation.
 - c. The proposed Use is suitable for the Property in question and is designed, constructed and will be operated and maintained suitably for the anticipated

- activity and population served, numbers of participating population, frequency of use, adequacy of space and generation of traffic.
- d. There are adequate and available utility services and facilities, such as sanitary and storm sewers, water, fire, police and other public facilities and the ability of the Township to supply such services.
 - e. The proposed Use has adequate ingress, egress, interior circulation of pedestrians and vehicles, off-street parking and accessibility to the existing Township street system.
 - f. The Use shall be in conformance with all applicable requirements of the Ordinance and, where applicable, in accordance with the Township's Subdivision and Land Development Ordinance.
10. Attorney Minnich called Robert Sandmeyer of Site Design Concepts who confirmed as follows:
- a. He has been involved in land development planning for 35 years.
 - b. He is the Chairman of the Spring Garden Township Planning Commission.
 - c. He oversaw the preparation of the plans that were submitted with the Application.
 - d. The facts presented by Mr. Thornton were true and correct.
 - e. In his opinion the general and specific criteria for the Special Exception for the Use have been met.
11. In response to questions from Richard Peddicord, Mr. Thornton answered as follows:
- a. The buffer area along the Northern portion of the Applicant's Property will be maintained.
 - b. The fencing will likely be continued.
 - c. These items will be addressed further during the land development phase.
12. On behalf of the Township, the Zoning Officer indicated no concerns.

CONCLUSIONS OF LAW

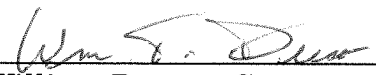
Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

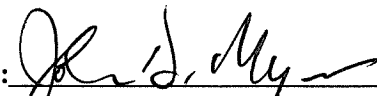
1. The Applicant has met the specific criteria for a Special Exception in Section 265-676.
2. The Applicant has met the general criteria in Section 265-1009(C).

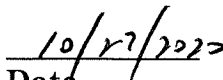
Accordingly, Timothy Salvatore moved, and Jim Barnes seconded, to grant the Special Exception to establish a Vehicle Sales, Repair, Service and/or Inspection Facility on the Property located at 2980 and 2996 Cape Horn Road in a Commercial Shopping (CS) District. The motion passed unanimously with John D. Myers, William Descar, Jim Barnes and Timothy Salvatore voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


William Descar, Secretary

By: 
John D. Myers, Chair


Date

The Special Exception granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Special Exception, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2020-22

Hearing Date: September 22, 2020

Applicant: Thornton Investments, LLC

Property Owner: Thornton Investments, LLC

Property: 2980 Cape Horn Road
UPI: #54-000-HJ-0091-A0-00000

2996 Cape Horn Road
UPI #54-000-HJ-0091-00-00000

Existing Zoning District: Commercial Shopping (CS)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-514(a) AND 265-676(1) thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. The Findings of Fact and Conclusions of Law in Decision 2020-21, as well as the definitions are hereby incorporated into this Decision as if set forth fully herein.
3. The Applicant is seeking a Variance to allow to display vehicles within the front setback of the Property along Cape Horn Road.
4. With regard to the Variance, the Applicant offered the following:
 - a. The building on the Property has been in place for a long time and is very much showing its age.
 - b. The location of the building is not ideal for the sale of vehicles.
 - c. The expansion granted in Decision 2020-21, and this Variance are critical to reposition the dealership moving into the future.
 - d. The dealership represents multiple franchises, namely 4 on-site as mentioned in Decision 2020-21, whereas previously it was typically 1 franchise (Jeep).
 - e. Display of new and used vehicles along Cape Horn Road, within the setback is necessary to encourage sales and allow continued, reasonable Use of the Property.
5. In response to the criteria for the Variance, the Applicant provided the following:
 - a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, including the antiquated building on the Property, the expansion of utilization of Cape Horn Road, the change in the vehicle sales model to

include multiple franchises, and such unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provision of this chapter in the neighborhood or district in which the Property is located.

- 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 this Chapter and the authorization of a Variance is therefore necessary to enable the reasonable use of the Property, as the Variance is necessary for adequate and safe use.
- c. The unnecessary hardship is not being created by the Applicant.
- d. The Variance, if authorized, will not alter the essential character of the neighborhood or district in which the Property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.
- e. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least modification possible to the regulation at issue.
- f. On behalf of the Township, the Zoning Officer indicated no concerns.


CONCLUSIONS OF LAW

Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:


- 1. The Applicant has met the general criteria for a Variance.
- 2. It is significant that the Property has been used as an automotive dealership for decades.
- 3. It is specifically noted that the industry has changed and accommodations are necessary for the Property to continue its reasonable use.

Accordingly, Timothy Salvatore moved, and William Descar seconded, to grant the Variance to permit vehicle parking, display and/or storage within the front setback area (up to 10 feet) on the Property located at 2980 and 2996 Cape Horn Road in a Commercial Shopping (CS) District. The motion passed unanimously with John D. Myers, William Descar, Jim Barnes and Timothy Salvatore voting in favor of the motion.

WITNESS/ATTEST


William Descar, Secretary

YORK TOWNSHIP ZONING HEARING BOARD

By: 
John D. Myers, Chair
10/27/2020
Date

The Variance granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Variance, pursuant to Section 265-1009. E. of the Ordinance.