

YORK TOWNSHIP

190 Oak Road, Dallastown, Pennsylvania 17313
Phone (717)741-3861 Fax (717)741-5009

York Township Zoning Hearing Board
June 27, 2017
6:00 p.m.

The June meeting of the York Township Zoning Hearing Board was called to order by John Myers, Chair.

Those in attendance were:

John Myers, Chair
William Descar, Secretary
Timothy Salvatore, Member
Kathleen Cronin, Member
Anthony Pantano, Alternate Member
Jeffrey Rehmeier, Esquire, Solicitor
Lisa Frye, Zoning Officer

MINUTES OF MAY 23, 2017

The Zoning Hearing Board minutes of the May 23, 2017, meeting were approved.

DECISIONS OF MAY 23, 2017

The Zoning Hearing Board decisions of the May 23, 2017, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2017-09: Martin Vermeilen, West Fields Real Estate LLC requests a Special Exception to establish a Multi-Family Dwelling use (townhouses on single lot) on property located at 245 Olney Road in a Residential High Density (RH) District.

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

York Township Zoning Hearing Board
Tuesday, June 27, 2017
Page 2

Present: Martin Vermeilen

MOTION: On Application 2017-09, Martin Vermeilen, West Fields Real Estate LLC requests a Special Exception to establish a Multi-Family Dwelling use (townhouses on a single lot) on property located at 245 Olney Road in a Residential High Density (RH) District, that a continuance be approved.

MOTION MADE BY: Timothy Salvatore
SECONDED BY: Kathleen Cronin
MOTION PASSED UNANIMOUSLY

Application 2017-10: Francesco Musso requests a Special Exception to establish an Accessory Unit, Single Bedroom, on property located at 400 West Howard Street in a Residential Medium Density (RM) District.

Present: Frank Musso

MOTION: On Application 2017-10, Francesco Musso requests a Special Exception to establish an Accessory Unit, Single Bedroom, on property located at 400 West Howard Street in a Residential Medium Density (RM) District, that the application be approved.

MOTION MADE BY: Kathleen Cronin
SECONDED BY: Anthony Pantano
MOTION PASSED UNANIMOUSLY

Application 2017-11: Jeff and Diane Mitchell request a Special Exception to construct a fence that exceeds 3' in height in a front yard on property located at 305 Cherry Street in a Residential Medium Density (RM) District.

Present: Diane Mitchell

MOTION: On Application 2017-11, Jeff and Diane Mitchell request a Special Exception to construct a fence that exceeds 3' in height in a front yard

York Township Zoning Hearing Board
Tuesday, June 27, 2017
Page 3

on property located at 305 Cherry Street in a Residential Medium Density (RM) District, that the application be approved.

MOTION MADE BY: Kathleen Cronin
SECONDED BY: William Descar
MOTION PASSED UNANIMOUSLY

Application 2017-12: Queen Street Investors LLC requests four (4) Variances: 1) to allow drive through lane less than 10' from a property line; 2) to provide less than 100' minimum stacking from order location; 3) from meeting all requirements of Section 265-661.C; and 4) to eliminate the requirement of a loading space on property located at 2054 South Queen Street in a Commercial Shopping (CS) District.

MOTION: On Application 2017-12: Queen Street Investors LLC requests four (4) Variances: 1) to allow drive through lane less than 10' from a property line; 2) to provide less than 100' minimum stacking from order location; 3) from meeting all requirements of Section 265-661.C; and 4) to eliminate the requirement of a loading space on property located at 2054 South Queen Street in a Commercial Shopping (CS) District, that the application be approved.

CONDITIONS: Loading would be required to occur before or after business hours.

MOTION MADE BY: TIMOTHY SALVATORE
SECONDED BY: KATHLEEN CRONIN
MOTION PASSED UNANIMOUSLY

ATTEST:



William Descar, Secretary

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2017-10
Hearing Date: June 27, 2017
Applicant: Franceso Musso
Property Owner: Franceso Musso
Property: 400 West Howard Street
UPI: 54-000-01 -0054-00-00000
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 265-402(c)(12)(a) and 265-602 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. Franceso Musso is the Applicant and he represented himself.
3. Mr. Musso is seeking a Special Exception to establish an Accessory Unit, single bedroom (the "Accessory Unit" or the "Use") pursuant to Section 265-402(c)(12)(a).
4. Mr. Musso provided information in support of the request as follows:
 - a. He is going to transform the existing garage into a dwelling for his Mother-in-law.
 - b. The garage has two doors, with garage space, but some living area to the side.
 - c. If the Accessory Use is not occupied by his Mother-in-law, it will revert to personal use by the Applicant.
5. In support of the specific criteria for an Accessory Unit as required by Section 265-602 of the Ordinance, the Applicant offered the following:
 - a. The habitable area of the Accessory Unit is expected to be 693 square feet and shall not exceed 720 square feet. The Accessory Unit shall have only one bedroom.
 - b. The Accessory Unit will be the only one on the Property, which is a single-family detached lot.
 - c. The Accessory Unit shall only be utilized while the principal dwelling is occupied by the Applicant, which occupancy shall be by the Applicant's Mother-in-law.
 - d. There are additional off-street parking spaces in front of the garage that will house the Accessory Unit, with no less than two in number.
 - e. The Applicant did submit a plan with documentation to establish compliance with the dimensional requirements.

- f. The Property is served by public sewer.
6. The Applicant presented two letters that were Exhibits.
 - a. The Property was purchased with the intent to build multiple units upon it.
 - b. Each letter was addressed to an adjoining property owner and explained that he desired to construct a single bedroom Accessory Unit on his Property for use by his Mother-in-Law.
 - c. Leslie D. Strayer, 422 West Howard Street, Dallastown, PA 17313 countersigned the letter indicating that she had no objection to the Use.
 - d. The occupant of 396 West Howard Street, Dallastown, PA 17313 countersigned the letter indicating that they had no objection to the Use.
7. 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.
8. The Zoning Officer indicated there was no opposition of the grant of the Special Exception from the Township perspective and there were no concerns.
9. There were no questions of the Applicant from the audience.
10. There was no testimony for or against the Application from the audience.

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 set forth in Section 265-602.
2. The Applicant has met the general standards for a Special Exception set forth in Section 265-1009(C).

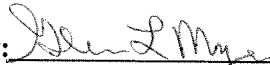
Accordingly, Kathleen A. Cronin moved, and Anthony Pantano seconded, to grant the Special Exception to establish an Accessory Unit, single bedroom, on the Property located at 400 West Howard Street in a Residential Medium (RM) Zone. The motion

passed with John D. Myers, William Descar, Timothy Salvatore, Kathleen A. Cronin and Anthony Pantano voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


William Descar, Secretary

By: 
John D. Myers, Chair
Glenn L. Vico
7/25/17
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: 2017-11
Hearing Date: June 27, 2017
Applicant: Jeffrey L. and Diane L. Mitchell
Property Owner: Jeffrey L. and Diane L. Mitchell
Property: 305 Cherry Street
UPI: 54-000-02 -0238-00-00000
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(A) 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. Diane L. Mitchell was present on behalf of the Applicant.
3. Mrs. Mitchell is seeking a Special Exception to allow for a Fence to be erected at a height of more than three feet on one of the front roads adjoining the Property, namely, Markey Street (the "Fence" or "Use").
4. In support of the Use, the Applicant provided the following information:
 - a. The Fence would be four feet in height.
 - b. The Fence would be black chain links.
 - c. The Fence would be installed behind the dwelling itself as well as adjacent to it, towards Markey Street, but behind the driveway that accesses the dwelling from Markey Street.
 - d. The Fence would not be in the Right-of-Way or required Clear Site Triangle.
 - e. Existing landscaping on the Property would shield the Fence on the sides and on the rear, such that it would only be visible from the Southeast corner of the Property, across a yardway and the driveway.
 - f. The Fence will not obstruct drainage.
 - g. The Fence will be used to contain dogs and children who are part of the family.
5. 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.
6. There were no questions of the Applicant from the audience.
 7. There was no testimony for or against the Application from the audience.
 8. The Zoning Officer indicated no objection to the grant of Special Exception on the part of the Township, nor highlighted any 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 for a Fence as set forth in Section 265-513(A).
2. The Applicant has met the general standards for a Special Exception set forth in Section 265-1009(C).

Accordingly, Kathleen A. Cronin moved, and William Descar seconded, to grant the Special Exception to construct a Fence that exceeds three feet in height in a front yard on the Property located at 305 Cherry Street in a Residential Medium (RM) Zone. The motion passed with John D. Myers, William Descar, Timothy Salvatore, Kathleen A. Cronin and Anthony Pantano voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


William Descar, Secretary

By: 
John D. Myers, Chair
Clerk L. Vico
7/25/17
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: 2017-12
Hearing Date: June 27, 2017
Applicant: Queen Street Investors, LLC
Property Owner: Queen Street Investors, LLC
Property: 2054 South Queen Street
UPI: 54-000-04-0033-B0-00000
Existing Zoning District: Commercial Shopping (CS)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-510.B; 265-501.E; 265-661.C. & 265-810.A 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. Ronald Perry, Esquire, of Katherman, Heim and Perry, of York Pennsylvania; John Pettit, Professional Engineer with The Pettit Group, LLC of Sewell, New Jersey; and Robert Nasuti, Associate Counsel for the Property Owner were present on behalf of the Applicant.
3. The Property is currently utilized for the operation of a Taco Bell Restaurant (the "Current Restaurant").
4. The Applicant is seeking four Variances under the Ordinance as follows:
 - a. A Variance from Section 265-510.B, to allow a drive-through less than ten feet from the Property line.
 - b. A Variance from Section 265-510.E, to allow a stacking lane less than 100 feet from the order location.
 - c. A Variance from Section 265-661C., which is for meeting all requirements of Section 265-510.
 - d. A Variance from Section 265-810.A, to eliminate the requirement of a loading space.
(Collectively the "Variances").
5. Attorney Perry provided background information as follows:
 - a. The Applicant desires to raze the Current Restaurant on the Property and replace it with a new Taco Bell Restaurant (the "Proposed Restaurant").
 - b. The Variances are necessary for the Proposed Restaurant, and they create less deviation from the requirements of the Zoning Ordinance than exist with the Current Restaurant.

- c. Accordingly, the request, while it seeks Variances, can also be viewed as a modification to the pre-existing conditions of the Property.
6. Attorney Perry called Mr. Pettit who testified in support of the Application as follows:
 - a. The Current Restaurant is 3,357 square feet.
 - b. The Proposed Restaurant will be 2,753 square feet.
 - c. The Proposed Restaurant will have an outside patio area with dimensions of 22 x 16.7 feet.
 - d. The Current Restaurant has 38 parking spaces on either side of it.
 - e. The Proposed Restaurant will have 32 parking spaces, between the Proposed Restaurant and South Queen Street.
 - f. The Proposed Restaurant will have 66 indoor seats, plus 11 outdoor seats on the patio.
 - g. The Proposed Restaurant will decrease impervious coverage on the Property by three percent.
 - h. The Current Restaurant has stacking for the drive-through lane of approximately 80 feet.
 - i. The Proposed Restaurant will have stacking of 90 feet.
 - j. Neither the Current nor the Proposed Restaurant have a dedicated loading space.
 - k. As part of the rebuild of the Proposed Restaurant, sidewalks will be installed on the front of the Property along South Queen Street, which will begin with an ADA ramp at the 35 foot private common access drive, and end to match existing sidewalk on the adjoining property, owned by WellSpan Properties, Inc.
 - l. With regard to deliveries, they will be accomplished by trucks that will arrive before or after business hours.
 - m. The truck driver will have a key to the building on the Property.
 - n. This delivery format has been used successfully with the Current Restaurant and will be continued with the Proposed Restaurant.
7. Attorney Perry called Attorney Nesuti who provided additional testimony as follows:
 - a. The Proposed Restaurant is one of the new, acceptable prototypes permitted by Taco Bell.
 - b. The Property owner and Applicant, as a franchisee, must follow requirements imposed by the franchisor with regard to such a Taco Bell Restaurant.
 - c. The Applicant owns a number of other Taco Bell Restaurants and is implementing similar changes.
 - d. The Applicant wants to continue to utilize the current Property for a Taco Bell Restaurant, but must comply with the requirements of the franchisor, which has necessitated the request for the Variances.
 - e. However, efforts were made to minimize the relief necessary, both for purposes of this Application and as a reduction relative to the Current Restaurant.
8. 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, which include the shape and size of the pre-existing lot, which has been in place for some time and the inability to change those dimensions because development all around the Property, including South Queen Street and franchisor demands, 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 redeveloped 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, which includes creating a more efficient restaurant, to provide better service to customers and to better comply with the Zoning Ordinance and is necessary for adequate and safe use.
 - c. The unnecessary hardship is not being created by the Applicant, as the lot has been in existence for some time, and the franchisor demands are recently imposed.
 - d. The Variances, 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. In fact, the Variances, if authorized, should improve the nature of the use of the Property and better its compliance with the Zoning Ordinance.
 - e. The Variances, if authorized, will represent the minimum Variances that will afford relief and will represent the least modification possible to the regulation at issue, and in fact, have less divergence from the Zoning Ordinance than the Current Restaurant.
9. To address the Variance of Section 265-810.A, to operate the Proposed Restaurant without off-street loading facilities, the Applicant has and will continue to require deliveries to be made before or after business hours, which it agrees is an acceptable Condition (the "Condition").
 10. There were no questions from the audience.
 11. There was no testimony for or against the Application from the audience.
 12. The Zoning Officer indicated that the Township has no complaints or concerns with regard to the Variances.

CONCLUSIONS OF LAW

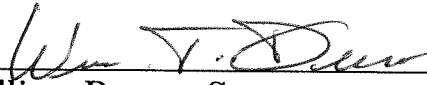
Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

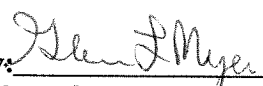
1. Receipt of the Variances would improve the efficiency, safety and utilization of the Property.
2. The continuation of the Use of the Property by the same Applicant and for the same purpose is desirable.
3. The requirements of being a Taco Bell franchisee, as imposed by the franchisor, are determinative.
4. The Variances will allow the Property to become more compliant with the Zoning Ordinance (decreasing the current amount of non-compliance in measurable ways).
5. The general standards for the Variances have been met.
6. The grant of Zoning relief shall be subject to the Condition.

Accordingly, Timothy Salvatore moved, and Kathleen A. Cronin seconded, to grant four Variances: 1) to allow drive through lane less than ten feet from the Property line; 2) to provide less than 100 feet minimum stacking from order location; 3) from meeting all requirements of Section 265-661.C; and 4) to eliminate the requirement of a loading space on Property located at 2054 South Queen Street in a Commercial Shopping (CS) District. The motion passed unanimously with John D. Myers, Williams Descar, Timothy Salvatore, Kathleen A. Cronin and Anthony Pantano voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


William Descar, Secretary

By: 
John D. Myers, Chair
Glenn L. Via
7/25/17
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.