

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, Chair.

Those in attendance were:

John Myers, Chair
James Barnes, Vice Chair
William Descar, Secretary
Glenn Myers, Asst. Secretary
Timothy Salvatore, Member
Kathleen Cronin, Alternate Member
Anthony Pantano, Alternate Member
Jeffrey Rehmeyer, Esquire, Solicitor
Lisa Frye, Zoning Officer

MINUTES OF AUGUST 28, 2018

The Zoning Hearing Board minutes of the August 28, 2018, meeting were approved.

DECISIONS OF AUGUST 28, 2018

The Zoning Hearing Board decisions of the August 28, 2018, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2018-12: Cape Horn Retail LP requests a Variance to establish a caretaker apartment as accessory to a Vertical Self-Storage Facility use on property located at 3100 Cape Horn Road, Red Lion, PA, in a Commercial Shopping (CS) District.

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

York Township Zoning Hearing Board
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Present: Stacey MacNeal, Esquire
 Paul Giulio

MOTION: On Application 2018-12, Cape Horn Retail LP requests a Variance to establish a caretaker apartment as accessory to a Vertical Self-Storage Facility use on property located at 3100 Cape Horn Road, Red Lion, PA, in a Commercial Shopping (CS) District, that the application be approved.

CONDITIONS: The apartment is for a caretaker only utilized only for someone that is providing managerial services for the vertical self-storage facility.

MOTION MADE BY: Glenn Myers
 SECONDED BY: William Descar
 MOTION PASSED UNANIMOUSLY

Application 2018-19: Specialized Education of Pennsylvania, Inc., requests a Variance of front setback requirements for a School, Commercial, College or University use on the property located at 2201 South Queen Street, York, PA, in a Commercial Office (CO) District.

Present: Paul Minnich, Esquire
 Edward McGlaughlin
 Rondale King

MOTION: On Application 2018-19, Specialized Education of Pennsylvania, Inc., requests a Variance of front setback requirements for a School, Commercial, College or University use on the property located at 2201 South Queen Street, York, PA, in a Commercial Office (CO) District, that the application be approved.

MOTION MADE BY: James Barnes
 SECONDED BY: William Descar
 MOTION PASSED UNANIMOUSLY

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Application 2018-20: York County School of Technology requests a Special Exception to allow for expansion of a legal nonconforming use (Public School) in order to construct a gymnasium addition in a Commercial-Office (CO) District on property located at 2179 South Queen Street, York, PA.

Present: Rhonda Lord, Esquire
Tim Cryer

MOTION: On Application 2018-20, York County School of Technology requests a Special Exception to allow for expansion of a legal nonconforming use (Public School) in order to construct a gymnasium addition in a Commercial-Office (CO) District on property located at 2179 South Queen Street, York, PA, that the application be approved.

MOTION MADE BY: William Descar
SECONDED BY: James Barnes
MOTION PASSED UNANIMOUSLY

ATTEST:



William Descar, Secretary

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2018-12
Hearing Date: September 25, 2018
Applicant: Cape Horn Retail, LP
Property Owner: Cape Horn Retail, LP
Property: 3100 Cape Horn Road
UPI: #54-000-HJ-0084-00-0000
Existing Zoning District: Commercial Shopping (CS)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-668.1.E. 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 was present as counsel for the Applicant.
3. Paul Julio was present on behalf of the Applicant.
4. The Applicant is seeking approval a Variance pursuant to Section 265-668.1.E. of the Ordinance, to allow for a Caretaker Apartment in a Vertical Self-Service Storage Facility (the "Use" or the "Facility").
5. The Applicant previously applied for and received a Special Exception for the Use as evidenced by Decision 2018-11. The Findings of Fact from Decision 2018-11 are incorporated by reference herein.
6. Application 2018-12 was initially set to be heard on July 24, 2018, but continuances were requested and granted on a monthly basis, which caused the Hearing to take place on September 25, 2018.
7. Attorney MacNeal questioned Mr. Julio on some background information concerning the Applicant as follows:
 - a. The Applicant owns seven (7) Vertical Self-Service Storage Facilities.
 - b. The Applicant will be opening its eighth (8th) Vertical Self-Service Storage Facility soon.
 - c. All of those Facilities have a Caretaker Apartment.
8. Attorney MacNeal questioned Mr. Julio with regard to the Caretaker Apartment and he answered as follows:
 - a. The Caretaker Apartment will allow the Applicant to have a representative, such as a Manager (the "Manager") on the Property.

- b. The Manager can facilitate a faster response to inquiries, aid in better maintenance of the Facility, improve security and enforce more effectively the restrictions imposed on the lease of spaces within the Facility.
 - c. In this instance, the Applicant is located some distance from the Facility and accordingly, the Manager has even greater value to the Applicant and adjacent property owners.
 - d. Based upon the questions and testimony presented pursuant to Application 2018-11, the Applicant in this case believes that a Manager in a Caretaker Apartment can also improve relationships with adjacent neighbors and minimize impacts on them and their properties.
9. In response to additional questions, from Attorney MacNeal, Mr. Julio answered as follows:
- a. The Manager will live on the Property, being present most hours of every day, thus allowing for availability most of the time.
 - b. The Manager is often selected via internal promotions.
 - c. All employees of the Applicant undergo criminal background checks and drug testing.
10. With regard to the Caretaker Apartment, the Mr. Julio testified as follows:
- a. It will be on the Southeast corner of the Facility.
 - b. It will be located on the second floor above the Office, which is on the first floor.
 - c. The Caretaker Apartment will be approximately 1200 square feet in size.
 - d. The Caretaker Apartment will have two or three bedrooms.
 - e. There will be two parking spaces for the Manager residing in the Caretaker Apartment.
 - f. The Caretaker Apartment will be separate from the Office below.
 - g. Only an employee of the Applicant who serves as Manager may reside in the Caretaker Apartment; it will not be rented to third parties.
 - h. There will not be security cameras for the Facility in the Caretaker Apartment, as they are located in the Office.
11. 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 location of the Property, it borders along the Residential High Density (RH) Zone, the nearby presence of many commercial properties and as many residential properties, and the layout of the land, 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, and is necessary for adequate and safe use.
 - c. The unnecessary hardship is not being created by the Applicant, particularly since a Caretaker Apartment would be available for a Self-Service Storage Facility pursuant to Section 265-668.B. of the Ordinance.
 - 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.
12. In response to questions, the Applicant confirmed as follows:
 - a. The Manager does not work 24 hours a day, 7 days a week.
 - b. There are limitations on the utilization of the Caretaker Apartment so it does not become a nuisance.
 - c. Rent does not necessary charge for the Caretaker Apartment, as it is a benefit of employment as Manager.
 13. There was no testimony for or against the Use.
 14. Lisa Frye, Zoning Officer for the Township, indicated no objection to the Variance.
 15. The Applicant agreed that the Caretaker Apartment could only be occupied by an employee of the Applicant (and that employee's partner or immediate family, to include children) and that the Caretaker Apartment could not be rented to any third party (the "Condition").

CONCLUSIONS OF LAW


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

1. The location of the Property, at the edge of the Commercial Shopping (CS) Zone along the Residential High Density (RH) Zone, as well as the questions and comments expressed at the Hearing for Application 2018-11, evidence unique circumstances.
2. The Applicant has met the criteria for a Variance.

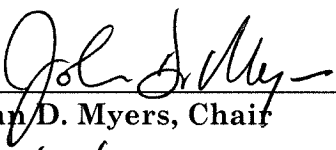
Accordingly, Glenn Myers moved, and William Descar seconded, to grant the Variance to establish a Caretaker Apartment as an accessory to a Vertical Self-Service Storage Facility, on the Property located at 3100 Cape Horn Road in a Commercial Shopping (CS) Zone subject to the imposition of the Condition. The motion passed unanimously with John D. Myers, Glenn Myers, William Descar, Jim Barnes and Timothy Salvator voting in favor of the Motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD



William Descar, Secretary

By: 

John D. Myers, Chair
10/23/18
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: 2018-19
Hearing Date: September 25, 2018
Applicant: Specialized Education of Pennsylvania, Inc.
Property Owner: Paragon Properties Group, LLC
Property: 2201 South Queen Street
UPI: #54-000-03-0011-00-00000
Existing Zoning District: Commercial Office (CO)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-665.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. Paul Minnich, Esquire was present as counsel for the Applicant.
3. Ed McGlaughlin and Randall King also appeared on behalf of the Applicant.
4. The Applicant is seeking a Variance to allow the existing parking area and existing front portion of the building to remain, as they violate the setbacks of the Ordinance for the Proposed Use of the Property.
5. Attorney Minnich presented to the Board a Memorandum of Law in support of Variance Application, which detailed the standards for both Dimensional and *De Minimis* Variances.
6. Attorney Minnich noted that the conditions on the Property, including the building structure and layout have existed for decades, explaining that the Property was previously an Easter Seals Center and a professional office.
7. The Applicant intends to operate a commercial school, providing specialized education and training to students with special needs (the "School").
8. Attorney Minnich called Mr. McGlaughlin, who testified as follows:
 - a. He is the Director of Instruction for the School.
 - b. He is involved with multiple schools of the Applicant.
 - c. He has a Bachelor of Arts and a Master of Science in Special Education and English as a second language.
9. In response to further questions from Attorney Minnich, Mr. McGlaughlin provided the following information about the School:
 - a. It will serve students in grades 1 through 12.
 - b. There will be a maximum of 60 students at the School.
 - c. The maximum number of students in any given classroom will be 12.

- d. Emotional support and learning support needs of students will be served by the School.
 - e. The students to be served by the School are now going to Harrisburg to get the needed services.
 - f. The students come to the School to get the assistance that they need and then return to their home school.
 - g. The School will be opened 180 days per year.
 - h. The hours of operation for the School will be approximately 8:00 am until 3:00 pm.
 - i. The Applicant also operates a similar school near the William Penn High School.
10. Attorney Minnich explained that Variances are necessary to allow the parking on the Property to stay as is, even though it does not comply with Section 265-665.B. of the Ordinance, as the parking is not setback a minimum of 25 feet from all Property lines, particularly to the front of the building, on its East side.
 11. Attorney Minnich also indicated that a Variance is necessary for the canopy on the front of the building, again on the East side, which canopy is not setback a full 50 feet from the Property line.
 12. Attorney Minnich noted that there will be no changes to the existing configuration of the building or the parking on the Property.
 13. In response to further questions, the Applicant provided the following:
 - a. There will be five teachers in the School.
 - b. There would also be a Program Director, Assistant Director and Guidance Counselor.
 - c. There will not be a School Resource Officer.
 - d. The School will provide lunch for the students.
 - e. Transportation would be provided by the nearby School Districts and those students would drive themselves to the School.
 14. There were no questions for the Applicant.
 15. There was no testimony for or against the Applicant.
 16. The Zoning Officer indicated that a resident called with some questions, but no objection.
 17. The Zoning Officer also indicated that the Township is not opposed to the Variances.
 18. 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 longstanding presence of the parking area and canopy on the building (which have caused no harm to date), 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, 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 building and parking on the Property are pre-existing structures, and the need for the Variance is necessitated only by a change in use of the Property from a professional office to a School.
- 2. The prior uses of the Property are similar to and its configuration is suitable for the School use as proposed.
- 3. The Applicant has met the criteria for a Variance.

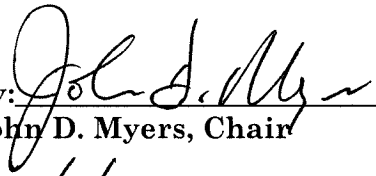
Accordingly, Jim Barnes moved, and William Descar seconded, to grant the Variance of front setback requirements for a School, Commercial, College or University use on the Property located at 2201 South Queen Street in a Commercial Office (CO) District. The motion passed unanimously with John D. Myers, Jim Barnes Glenn Myers, William Descar, and Timothy Salvatore voting in favor of the Motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD



William Descar, Secretary

By: 

John D. Myers, Chair
10/23/18
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: 2018-20
Hearing Date: September 25, 2018
Applicant: York County School of Technology
Property Owner: York County School of Technology Authority
Property: 2179 South Queen Street
UPI: #54-000-HI-0009-K0-00000
Existing Zoning District: Commercial Office (CO)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-901(A)(2) 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. Rhonda Lord, Esquire was present as counsel for the Applicant.
3. Tim Cryer of Marotta/Main Architects was present on behalf of the Applicant.
4. The Applicant is seeking a Special Exception to allow for the construction of a Gymnasium Addition (the "Addition") to an existing public high school (the "School").
5. Reference is made to Decision 2018-07, which granted a Special Exception for an addition to the School's Gymnasium, which addition proposed a different configuration.
6. The Findings of Fact from Decision 2018-07 are incorporated by reference herein.
7. The School is currently a Non-Conforming Use per the Ordinance.
8. Attorney Lord provide background information as follows:
 - a. Land adjacent to the School Property was purchased.
 - b. That additional land allowed for a reconfigured layout for the Addition.
 - c. There is a gymnasium currently located at the South Central portion of the School (the "Existing Gym").
 - d. The renovations proposed would create an additional gymnasium area to the South of the School building and to the East of the existing parking lot.
 - e. The Addition would allow all existing parking to remain.
 - f. The Applicant would add four additional handicapped-accessible parking spaces.
 - g. The Addition would be 26,300 square feet.
 - h. The existing square footage of the School (the "Footprint") is 315,000.
 - i. The Addition would have two floors.
 - j. The Addition would be tucked into the hillside.

- k. Access to the Addition on the top floor would be to the West and on the lower floor to the East.
 - l. The lower access to the Addition would help with circulation on the Property.
 - m. The Addition would be connected to the main School building itself via an internal hallway.
 - n. The Addition would cutoff access to go fully around the School, which would solve the problem of residential traffic going through the School property to access the adjacent shopping center.
 - o. The Existing Gym will continue to be utilized.
 - p. The Addition would increase the Footprint of the School by 26,300 square feet, which is slightly over 8 percent.
 - q. The Property consists of 53.1 acres.
 - r. The Property has public water and sewer services.
9. In response to the specific criteria in Section 265-901(A)(2) for expansion of a Non-Conforming Use, Mr. Wolfe offered the following:
- a. The Addition shall confirm to the height and yard regulations of the CO District.
 - b. The Addition shall be provided with off-street parking, loading spaces and other improvements as required by Article 8 of the Ordinance.
 - c. The Addition shall not replace a conforming use.
 - d. The Addition shall not be more than 25% of the Existing Non-Conforming Use or expanded to a distance greater than 150 feet in any direction from the Existing Non-Conforming Use.
 - e. Repairs and structural alterations, if any, will not constitute further expansion.
10. 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 Addition to the Use is consistent with the Township's development objectives as established in the Comprehensive Plan.
 - b. The proposed Addition to the 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 Addition to the 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, especially since the Addition adds to the School which has been operating for decades.
 - 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 Addition to the Use has adequate ingress, egress, interior circulation of pedestrians and vehicles, off-street parking and accessibility to the existing Township street system.
 - f. The proposed Addition to 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.
11. There were no questions of the Applicant.
12. There was no testimony for or against the Applicant.

13. On behalf of the Township, the Zoning Officer indicated no objection to the grant of a Special Exception.

CONCLUSIONS OF LAW

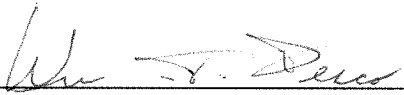
Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

1. The Applicant has met the specific criteria for expansion of the Non-Conforming Use in Section 265-901(A)(2).
2. The Applicant has met the general Special Exception criteria of 265-1009(C).

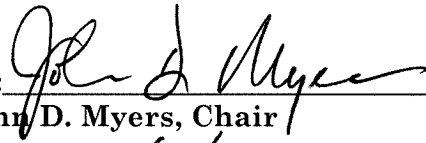
Accordingly, William Descar moved, and Jim Barnes seconded, to grant the Special Exception to allow for expansion for a legal non-conforming use (Public School) in order to construct a gymnasium addition, on the Property located at 2179 South Queen Street in a Commercial Office (CO) District. The motion passed unanimously with John D. Myers, Jim Barnes, Glenn Myers, William Descar and Timothy Salvatore voting in favor of the Motion.

WITNESS/ATTEST

**YORK TOWNSHIP
ZONING HEARING BOARD**



William Descar, Secretary

By: 

John D. Myers, Chair
10/23/18
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.