

HANOVER TOWNSHIP ZONING HEARING BOARD
OF NORTHAMPTON COUNTY, PENNSYLVANIA

DECISION

Application of : Coleen & Jorge Alvarez
Application Received : September 17, 2020
Property : 4437 Kathi Drive

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, October 15, 2020, hereby grants a variance from the minimum setback provisions of the ordinance with respect to swimming pools to permit the construction of the applicants' swimming pool as per the application and plans submitted at the hearing.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: _____

Barbara A. Baldo, Chairperson

Dated: October 20, 2020

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Application of : Jaindl Land Company
Application Dated : February 25, 2020
Property : 90 Highland Avenue

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, September 24, 2020, on the Petition of Jaindl Land Company, and after approving the Petitioner's requested relief, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is titled in the name of 90 Highland, LLC, with an address of 90 Highland Avenue. It is located in the PIBD-Planned Industrial/Business Park District and has a tax parcel identification number of M6-15-10x-0214.

2. The Petitioner was represented at the hearing by Erich J. Schock, Esquire. During the course of the hearing he presented 8 exhibits, as follows:

A-1. Applicant's Petition to Zoning Hearing Board.

A-2. Aerial Image of Existing Structure.

A-3. Zoning Plan drawn by Bohler Engineering, Dated February 20, 2020.

A-4. "Lot Area Exhibit" Original Date February 20, 2020, Showing Land Attributed to Each of the Three Uses Proposed on the Property.

A-5. "Distance Exhibit" Original Date February 20, 2020, Showing Distances to the End of the Zoning District.

A-6. "Rendering" Original Date February 20, 2020, Showing the Parking and Traffic Flow Configuration Including Access Points.

A-7. Aerial Image Labeling Other Uses and Zoning Districts Surrounding the Subject Property.

A-8 Planning Commission Recommendation Dated May 6, 2020.

3. Testifying on behalf of the Petitioner via Zoom were Luke Jaindl, Michael Jeitner of Bohler Engineering, Peter Terry of Benchmark Civil Engineering, and Michael Spiegel of the Wawa Corporation.

4. Also testifying via Zoom was Rachel Osborn of the Friends Society. In addition, pursuant to the requirements of Act 15, authorizing hearings by telecommunication devices, the statement of Prasad Chalikonda submitted in advance of the hearing was read into the record. Mr. Chalikonda was in attendance at the first hearing and affirmed his written statement under oath.

5. The applicant did not present any testimony at the first hearing, but instead requested that the hearing be continued on that night and several times thereafter.

6. On Thursday, September 20, 2020, the applicant presented the testimony of its witnesses and its supporting exhibits.

7. Based on the same the applicant intends to remove the 26,000 square foot office building, construct a 25,000 square feet two-story medical office building, retain 6,000 square feet for retail bank services and construct a 5,500 square feet Wawa convenience store with 16 fueling stations; some of them offering diesel fuel. The plans also provide for 262 parking spaces.

8. Gasoline services are permitted by special exceptions pursuant to Section 185.35 E.(2). The specific requirements for gasoline services are set forth in Section 185.21.B. The Applicant contends through its testimony that it complies with all of the specific requirements for this special exception use.

9. Retail services are permitted in this district only as a conditional use. The specific standards for the same are as set forth in Section 185.54.E.(5)(b)(1) through (6). The Applicant's witnesses acknowledge that the lot does not meet the 1,000 foot requirement as set forth in Subparagraph (b)(1). They offer the explanation that it would be impossible to meet this requirement since the configuration of the neighborhood in the area has changed considerably from the time that this provision was placed in the ordinance. The Applicant's witnesses contend that the enforcement of this provision is therefore a hardship for which the Applicant is entitled to a variance.

10. Section 5(b)(3) of the conditional use requirements provides that there shall be no more than 2 access points. The Applicant proposes 5 access points. The witnesses testified however that given the total size of the lot and the fact that it fronts on 3 roads, that 2 access points would not be good planning and that 5 are necessary for smooth traffic flow and safe ingress and egress.

11. In addition, Section 5(b)(2) provides that the lot cannot be smaller than 2 acres nor greater than 5 acres. The Applicant's witnesses stated that while the total lot is 7.3 acres, that portion that is attributable to the Wawa facility where the retail sales will be taking place is approximately 2.19 acres and viewed that way, the application would be in compliance with this Section.

12. However, in the opinion of the Board, Section 185-54.E.13(b) is also applicable since this is a convenience store. This Section provides for a minimum of 3 acres. Viewing the portion just attributable to Wawa as the Applicant's witnesses suggest would mean that there is less than 3 acres and a variance would therefore be required.

13. The regulations for a convenience store also require that there not be more than 12 fueling stations and that none of them shall be diesel fueling stations.

14. In that regard, the Board is aware of the Summit Realty Advisors, LLC, case decided by the Board in 2008 interpreting the no diesel fuel requirement to be primarily an effort to be certain that the convenience store does not serve as a truck stop.

15. The testimony of the Applicant's witnesses in the present case is that this site is not laid out in a manner so as to be conducive to a truck stop. In addition, the diesel fueling stations are low-flow nozzles that would not be satisfactory to fill the large fuel tanks on tractor-trailer trucks.

16. With respect to the number of fueling stations, the Applicant's witnesses argue that failure to have an adequate number of fueling stations only means that there will be greater queuing of automobiles which will cause more traffic congestion and problems than if there are the additional 4 fueling stations.

17. As indicated, also testifying at the hearing was Rachel Osborn of the Friends Society. She referred to difficulties in traffic at their lot which is located somewhat north of the subject property. In addition, the statement of Prasad Chalikonda referred to above expressed concern about congestion, traffic safety and the possible overdevelopment of this property.

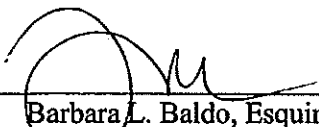
18. The Board believes that these traffic concerns can be adequately handled through the land development and PennDOT review process.

19. The Board after taking into consideration all of the testimony of the Applicant's witnesses and exhibits as well as the witnesses that expressed reservations concerning the development, believes that the variances are justified and will not be detrimental to the public welfare and therefore grants the relief as requested by the Applicant.

WHEREFORE, Hanover Township Zoning Hearing Board adopts the above Findings of Fact and Conclusions of Law and grants all the required variances.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: _____


Barbara L. Baldo, Esquire,
Chairperson

Dated: _____

October 20 2020