

HANOVER TOWNSHIP ZONING HEARING BOARD**OF NORTHAMPTON COUNTY, PENNSYLVANIA****FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Application of : BTC III Acquisitions LLC
Application Dated : April 28, 2020
Property : 6990 Steuben Road

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, June 25, 2020, on the Petition of BTC III Acquisitions LLC, and after denying the Petitioner's requested relief, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is a lot on the southwest corner of Township Line and Stueben Rd consisting of 14.620 acres situate in a PIBD – Planned Industrial/Business District and a SCD – Special Conservation District. According to the Petition, the property is presently vacant, and contains an abandoned quarry.

2. The Petitioner intends to construct a building on the property to be used for what it characterizes as a warehouse consisting of 176,750 square feet.

3. The Petitioner was represented at the hearing by Catherine E. N. Durso, Esquire. During the course of the hearing she presented 6 exhibits, as follows:

A-1. Letter of Authorization.

A-2. Concept Plan.

A-3. Site Photos.

A-4. Pervious Pavement Concept Plan.

A-5. Conceptual Grading Plan.

A-6. Geo-Technology Associates, Inc Letter of April 13, 2020.

A-7. Geo-Technology Associates, Inc Letter of February 6, 2020.

4. Testifying on behalf of the Petitioner via Zoom were Eric Helstrom, Executive Vice President of Black Creek Group, and Fidel Gonzales of Langan Engineering.

5. Numerous neighbors also testified via Zoom. In addition, Christopher T. Spadoni, Esquire, was also present via Zoom representing his clients, Matthew Kessack and Joseph Belchunes.

6. Pursuant to the requirements of Act 15, authorizing hearings by telecommunication devices such as Zoom, the statements of Patricia Miller, John Horn, Elaine Dilliard and Valerie Dilliard submitted in advance of the hearing were read into the record and marked as exhibits O-1 through O-4.

7. Based on the testimony of the Petitioner's witnesses and the exhibits, the site, in addition to the 176,750 square feet building will contain 196 parking spaces for cars, 28 spaces for trailers and 23 dock positions.

8. The Petitioner's witnesses testified that in their opinion the building will be used as a warehouse and not a truck terminal.

9. The relevance is that Section 185-35(B)(8), of the ordinance states that wholesaling and warehousing, but not storage buildings or truck terminals are permitted uses.

10. Unfortunately, the ordinance contains no definition of a warehouse. But because the dock positions will all be on the west side of the proposed building the Petitioner is requesting an interpretation of the term Truck Terminal which is defined in the ordinance as follows:

"Any building or structure whose exterior elevation view, as viewed from any side, contains more than 30% of the perimeter linear feet of wall as doors, at or near ground level and whose primary purpose is short-or long-term storing or warehousing or transferring of products or goods, primarily delivered by trucks".

11. However, in the present case the Board feels strongly that the decision as to whether to grant relief turns not on this interpretation but on its conclusion that, even if the building is considered a warehouse and is therefore a permitted use, the Petitioner has failed to meet its burden of proof for the grant of the required variances from the ordinance.

12. In particular the Petitioner failed to show why it is entitled to a variance to permit a the 176,750 square foot building together with the parking areas and loading docks as set forth in the application which greatly exceeds the maximum lot coverage provisions of the ordinance.

13. The maximum lot coverage in this zone is normally 70 percent as set forth in Section 185-35(F)(2) of the ordinance. However, when more than 25 percent of the total area of the lot is situated in a Special Conservation District, Section 185-39(B)(3) (a-c) reduces the maximum lot coverage by a factor of 60 percent. It is noted that in the present case approximately 60 percent of the lot is in the Special Conservation District.

14. This provision of the ordinance results in a maximum lot coverage of 42 percent. The Petitioner request a variance to permit 58 percent coverage, an additional 16 percent or more than 1/3 again of the maximum lot coverage permitted.

15. It is the unanimous opinion of the board that the Petitioner has failed to meet its burden showing that it has suffered a hardship in respect to this requirement.

16. In fact, on cross-examination the Petitioner's witness indicated that compliance with the maximum lot coverage provisions could be achieved if the building were reduced in size. The Petitioner did not present any testimony that this reduction in size would not be economically feasible.

17. In fact, the Petitioner presented no testimony showing why the requested variance was the minimum relief necessary.

18. The Petitioner did offer two letters from Geo-Technology Associates, Inc. However, since the writer of the letters was not present, he was not subject to cross-examination or additional questions that the Board or other interested parties might have with respect to his conclusions.

19. Moreover, the letter of February 6, 2020 after indicating that in effect the testing on the site is not complete, simply states that the "development of the site with the proposed building and site infrastructure is feasible...". Presumptively therefore a smaller building and infrastructure would also be feasible. In any event feasibility of the development does not address whether there a hardship or whether the variance requested is the minimum relief necessary.

20. The Petitioner also asks for relief from the provision as to locating structures in the Special Conservation areas of the lot.

21. Section 185-39(B)(4), of the ordinance poses a requirement that buildings and structures should be so sited on the lot to avoid land areas situated in a Special Conservation District.

22. The Board notes that no testimony was offered as to any efforts to take this section into consideration.

23. The Petitioner also asks for relief from the woodland provisions. In that regard the Petitioner's engineer testified that 40 percent of the property is woodlands. While he characterized the woodlands as mainly scrub brush, the neighbors who testified indicated that many of the trees were more than 30 feet tall and in their opinion were not scrub brush and should be preserved. The engineer then seemingly contradicted his own opinion by acknowledging the existence of trees more than 30 feet tall

24. Section 185-22(F)(4) provides that "Woodlands shall be preserved as undisturbed woodlands ..." Petitioner's plan says 22.9 percent of the woodlands will be preserved but it did not provide details as to how this would be accomplished and just where the preserved woodlands will be. From the contour plan submitted by the Petitioner it would appear that almost the entire lot will be disturbed.

25. In this case the Petitioner is seeking to build a building that exceeds the maximum building coverage by more than a third of what is permitted and the Board believes it is incumbent on the Petitioner to show that the grant of the variance will not be detrimental and in keeping with the woodland preservation provisions of the ordinance.

26. The neighbors who testified expressed concern as to possible light from the facility spilling onto their property, truck traffic and noise, particularly from the backing up of vehicles and water run-off created by such a large building and parking areas

27. As to the possible impact on the neighborhood the Petitioner indicated that the facility is expected to be open 7 days a week and 24 hours a day. Further, it was acknowledged by the Petitioner that no tenant for the "warehouse" building has been selected.

28. As to storm water runoff, the Petitioner's engineer discussed the use of permeable or porous paving services rather than traditional asphalt on certain portions of the lot.

29. However, there was no testimony from him as to exactly what the impact might be with respect to water run off by using this surface, and to what extent it mitigates water run off that would otherwise take place if it was an impervious surface.

30. The Petitioner argues that it has demonstrated a hardship because of the soil, the woodlands, and the slope of the property. It is noted that the soil conditions, are the very reason for reduced maximum coverage in the first place. The petitioner presented no testimony as to how these provisions as to reduced coverage in a Special Conservation District impact this lot differently than what was intended under the ordinance for Special Conservation Districts. Nor did the petitioner purport to show that the encroachment into these areas was minimal. Therefore, to suggest that these restrictions are the reasons why it is suffering a hardship is a classic bootstrap argument.

31. As to slopes the Petitioner failed demonstrate how the slopes on the property creates a hardship justifying the Petitioner covering a greater portion of the lot than otherwise permitted. This is not a set-back variance where for example the existence of steep slopes on one side might justify building closer to the boundary on the other side.

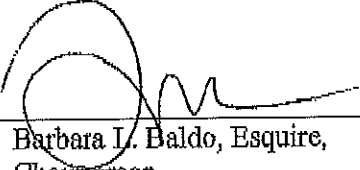
32. It is recognized that these residents did not present expert testimony with regards to their concerns, but very importantly it is not they who have the burden of proof with respect to these matters. If the Petitioner desires a variance, it is incumbent upon the Petitioner to demonstrate a lack of any detrimental impact by exceeding the maximum lot coverage in this Special Conservation District. In the opinion of the Board the Petitioner's testimony in this regard was woefully inadequate.

33. Therefore, regardless of whether the proposed building can be considered a warehouse, the Board believes that the Petitioner has failed to meet its burden of proof with respect to establishment of a hardship and the grant of a variance from the maximum lot coverage provisions and compliance with the Special Conservation District and Woodland Preservation provisions as indicated above.

WHEREFORE, Hanover Township Zoning Hearing Board denies the requested relief as set forth in the Petition.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: _____


Barbara I. Baldo, Esquire,
Chairperson

Dated: 7/22/20

HANOVER TOWNSHIP ZONING HEARING BOARD
OF NORTHAMPTON COUNTY, PENNSYLVANIA

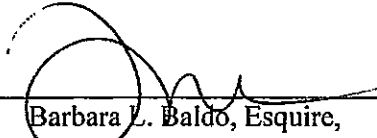
DECISION

Application of : George S. Nassif & Paraskeve I. Zumas
Application Dated : May 10, 2020
Property : 1202 Foxview Drive

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, June 25, 2020, hereby grants a variance from the 50 foot setback requirement from Stoke Park Road as it relates to swimming pools in order to permit the Applicants swimming pool to be located not less than 41 feet from Stoke Park Road as per the Application and Plans submitted at the hearing.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: _____


Barbara L. Baldo, Esquire,
Chairperson

Dated:

7-17-2020

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Application of : Brodhead Road Holdings, LLC
Application Dated : May 28, 2020
Property : 257 Brodhead Road

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, June 25, 2020, on the Application of Brodhead Road Holdings, LLC, and after granting the requested parking variance for 191 parking spaces, hereby makes its findings of fact and conclusions of law in support thereof, as follows:

1. The subject property is known as 257 Brodhead Road, and located in a PIBD – Planned Industrial/Business District.

2. The Applicant intends to convert the existing building from business offices to medical offices and seeks a variance from the minimum number of parking spaces as required for this change in use.

3. The Applicant was represented at the hearing by Erich J. Schock, Esquire, who presented three witnesses, Sue Kandil of Penn Technology Consulting, LLC, Mathias Fenstermacher, partner of Brodhead Road Holdings, LLC, and Jennifer Peters, Director of Real Estate for St. Luke's Hospital Network.

4. The witnesses indicated that the most recent user of the building was First Commonwealth Federal Credit Union which had business offices and some retail banking on this site. The intent would be to change the use to medical office for the sole tenant, St. Luke's Hospital Network.

5. Section 185-17 C. of the ordinance provides that medical office shall have .7 parking spaces per 100 square feet of building. To comply with this provision the applicant would need to provide 223 parking spaces. The parking lot presently has 139 parking spaces.

6. The witnesses indicated that St. Luke's believes that the appropriate number for their use is .5 parking spaces for every 100 square feet. Sue Kandil also testified that the ITE Standards for this kind of use is 4.6 parking spaces per 100 square feet.

7. Applicant's Exhibit A-3 depicts the parking lot configuration using the .5 parking spaces criteria. Exhibit A-4, depicts the proposed parking lot with .6 parking spaces and with .65 parking spaces. The applicant requested the board to grant a variance to permit the .6 parking spaces plan which has a total of 191 spaces. This proposed plan therefore provides 32 spaces less than required under the ordinance.

8. The Applicant also indicates that it could gain 16 additional parking spaces by tearing down a portion of the building as also depicted on Exhibit A-4. This would result in .65 parking

spaces per 100 square feet and would yield 207 spaces or 16 spaces less than required under the ordinance. According to applicant's testimony, providing the other 16 spaces to reach a total of 223 spaces would require eliminating some of the green space on the lot.

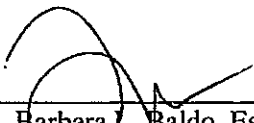
9. The Applicant's witnesses expressed the opinion that tearing down a portion of the building or eliminating green space was not justified since the additional parking was not necessary.

10. No one appeared at the hearing to oppose the Application.

11. The Board agreed with the proposition that providing the required number of parking spaces would impact the amount of green space on the lot and would require the Applicant to tear down portions of the existing building. The Board was satisfied that the additional parking spaces beyond the proposed 191 spaces were not necessary and therefore the grant of the variance would not be detrimental.

WHEREFORE, Hanover Township Zoning Hearing Board grants the variance from the number of parking spaces required under the ordinance for medical offices and approves the parking proposal of .6 parking spaced per 100 square feet of building yielding 191 parking spaces as depicted on Exhibit A-4.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: 
Barbara L. Baldo, Esquire,
Chairperson

Dated: 7-17-2020