

IN RE: : BEFORE THE ZONING HEARING BOARD
: OF EAST HANOVER TOWNSHIP
APPLICATION FOR VARIANCE OF :
S.M.D. ENTERPRISES, INC. : HEARING: May 4, 2017
: :
No. 2017.05 : DECISION: May 4, 2017
: :
: WRITTEN DECISION MAILED: June 16,
: 2017
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DECISION OF THE ZONING HEARING BOARD

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted a properly advertised and properly posted public hearing on May 4, 2017, commencing at 7:00 p.m., upon the Application for a Variance of S.M.D. Enterprises, Inc., by its President, Damu Naren Patel, with respect to the property located at 226 Bow Creek Road, f/k/a 252 Bow Creek Road, East Hanover Township, Dauphin County, Grantville, Pennsylvania, 17028, also being Dauphin County Tax Parcel No. 25-011-088.

Notice of the hearing was published in *The Sun* on April 13, 2017, and April 20, 2017, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with Section 603.1.1 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on April 13, 2017, on and about the tract of land which is the subject of the hearing. Jackie Wilbern, the East Hanover Township Zoning Officer, was present at the hearing and confirmed that the notice was posted. Furthermore, Ms. Wilbern confirmed that she had provided and mailed on April 20, 2017, written notice of the hearing to those property owners adjacent to the subject property as identified in the Application for a Variance as well as to the Applicants.

Members of the Zoning Hearing Board were JoLynn M. Stoy, Chairperson, Shirley Allison, and Kenneth C. Wolensky, Alternate Member, who were present during the hearing. Applicant was represented by David Stone, Esquire, with respect to the presentation of the Application. In addition to representatives of the Applicant, Robert J. Fisher, of R. J. Fisher

& Associates, Inc., was present to provide testimony on behalf of the Applicant. All individuals who offered testimony during the course of the hearing were duly sworn.

FINDINGS OF FACT

The subject property has a total lot area of approximately 9.587 acres upon which two (2) hotels are presently constructed and operating. The subject property is located in a Highway Commercial Zone (HC) of Section 210 of the East Hanover Township Zoning Ordinance. Applicant is proposing to construct one (1) additional four (4) story hotel on the property, consisting of ninety-two (92) rooms.

The location and dimensions of the hotel are set forth on a Zoning Variance and Special Exception Plan ("Site Plan") which has been submitted as part of the Application and made a part of the record. The four (4) story proposed hotel shall be located to the south of an existing two (2) story hotel which has a forty-five (45) room capacity as well as to the south and west of the second two (2) story existing hotel having a fifty-five (55) room capacity.

The structure to be built shall be in accordance with Hilton's new brand of hotels called "Tru" Hotel. The style of hotel shall include a large public area, office space, entertainment and play area, properly equipped fitness room and swimming pool or spa areas. Hotel guests will be using guest rooms which are designed in the style of personal bedrooms. The floor plan of the property shall be designed so as to provide that hotel guest rooms are in closer proximity to designated activity areas.

A paved parking area shall surround the proposed building with a minimum of ninety-six (96) spaces being provided. Lighting for Applicant's property shall be provided in order to be dark sky compliant and the parking lot shall be serviced by LED overhead lights that are deflected downward. The two (2) hotels currently on the property respectively maintain fifty-nine (59) and sixty (60) dedicated parking spaces for each use as set forth on the Site Plan submitted as part of the record before the Board.

The proposed hotel will be served by public sewer. No public water is available within the Township at this time. However, private (well) water shall be provided. A sprinkler system shall be included within the building and serviced by the on-lot water source.

An overhead power line is located parallel to Bow Creek Road, traversing the property from northwest to the south as set forth on the Site Plan. The power line requires both vertical and horizontal clearance of thirteen (13) feet each. The width of the power line easement is approximately fifty-five (55) to sixty (60) feet. The power line is located within the center of the easement area set forth on Applicant's Plan.

Applicant's four (4) story hotel shall have a maximum height of 52.71 feet. The parking area shall be located a distance of approximately sixty (60) feet from the Bow Creek Road right-of-way. The property located to the south of the subject tract is vacant and undeveloped.

Access to the existing hotels on the property is by means of a macadam driveway directly from Bow Creek Road located along the northern portion of the lot. The proposed four (4) story hotel shall have a separate macadam access from Bow Creek Road to be located at the southwestern-most portion of the property. Applicant's property is subject to a change in elevation of approximately twelve (12) feet, increasing from Bow Creek Road to the proposed construction site of the hotel.

Within the vicinity of the subject property and in close proximity are other hotels currently operating. These include: a four (4) story Hampton Inn directly to the west of the existing property along Bow Creek Road; a four (4) story Comfort Inn and Suites, as well as a four (4) story Holiday Inn, both located to the north and west of the subject property and Interstate Route 81.

The two (2) existing hotels on the property are operating under the trade name of Days Inn. Signage for these properties include existing signage on each building so that they are visible from Bow Creek Road in addition to a single monopole sign that is located within the frontage of the property presently to the south of the existing macadam driveway. This existing sign is approximately twenty and one-half (20½) feet in height and has an area of eighty-two (82) square feet. The sign is non-conforming and has existed prior to adoption of the current Zoning Ordinance requirements. Additional signage shall be constructed on the proposed building front elevation, such sign being seventy-one (71) square feet in area. An additional sign being fifteen (15) square feet in area will be affixed on the rear of the building.

Applicant is proposing to relocate the existing monopole sign to the south of its present location by a distance of approximately one hundred and twenty (120) feet. The sign upon its relocation shall be dedicated to the use only of the Hilton Tru Hotel trade name. As Applicant shall be moving and modifying existing non-conforming structure, a special exception request has been filed to Docket No. 2017.06 and shall be addressed separately by the Board.

DISCUSSION AND CONCLUSIONS

In order for Applicants to construct and operate a four (4) story hotel, variances are requested from Sections 210.7 and 314.3 of the East Hanover Township Zoning Ordinance. Section 210.7 requires a maximum permitted height of thirty-five (35) feet for structures. Applicant shall exceed this requirement with the four (4) story hotel by 17.71 feet. Section 314.3 of the Zoning Ordinance with respect to outdoor signs requires that individual business signs shall have a maximum permitted sign area of one (1) square foot per five (5) lineal feet of lot frontage, not to exceed sixty-four (64) square feet per sign and the maximum height of free-standing signs is fifteen (15) feet.

As a general matter, a variance may be granted only where there is an unnecessary hardship. Even when there is a finding of an unnecessary hardship, a variance may be granted only if the Board finds, where relevant, that the standards as set forth in Section 604.4 of the Zoning Ordinance have been met. It is Applicant's burden of proof to establish that an unnecessary hardship exists. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462A2d. 637 (1987).

Both of the requested variances from the Zoning Ordinance provisions are only dimensional in nature as opposed to a change in the use of the property in a manner that is wholly outside of the zoning regulations. A distinction has been recognized by the Pennsylvania Supreme Court that the quantum of proof needed to establish an unnecessary hardship for dimensional variance is lower than for a change of use variance. Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A2d. 43 (1998). Multiple factors, including even economic detriment to the applicant and financial hardship created by work required to bring a structure into strict compliance with design requirements and characteristics of the surrounding neighborhood may be considered in determination for granting a dimensional variance. Id. The Board is persuaded that due to the dimensional

nature of Applicant's request, such a relaxed standard of proof as authorized by Hertzberg is applicable under the circumstances presented.

The Board is persuaded that an unnecessary hardship exists under this standard and that the property is subject to unique circumstances and conditions, topography and location. The location of the existing power line which divides Applicant property restricts the location and size of any new proposed building within the remaining available area. The topography of the property and existing buildings on the site, such as the change in elevation, location with respect to existing thoroughfares limit the placement of any new structures to any location other than is shown on the Site Plan that has been submitted as part of the record before the Board. The change in elevation however serves to obstruct the view of the proposed hotel enhancing the need for signage.

The Board is also persuaded that an unnecessary hardship exists with respect to the non-conforming sign. The Board finds that the unnecessary hardship for this property is due to such conditions, features and structures and that these conditions or circumstances are not generally created in this neighborhood or zone where the property is located. The Board also is persuaded that the unnecessary hardship has not been created by Applicant, but is due to the imposition of the Zoning Ordinance requirements on this site and the physical conditions of the property as previously stated.

The Board also finds that it is due to such physical circumstances and conditions that there is no possibility that the property can be developed in strict conformity with the height restrictions with respect to the Ordinance or the requirements due to the non-conforming monopole sign. Therefore, authorization of the variances is necessary to enable continued reasonable use of the property under the circumstances presented.

The variances, if granted, will not alter the essential character of the zone or neighborhood in which this property is located. Within this area and in proximity to Applicant's property, there are at least three (3) existing four (4) story hotel structures that are in operation. The Board finds that Applicant's proposed structure likewise will not substantially or permanently impair the appropriate use or development of adjacent properties and will not be detrimental in general to the public welfare. Furthermore, the Board is persuaded that the variances will represent the minimum variance which will afford relief and represent the least modification possible of the building height restrictions and

requirements with respect to maximum sign area and height requirements for the existing non-conforming sign located in the front of the property.

Signage proposed for this commercial operation is consistent with other businesses within the area. Such signs in the immediate area vary in size and the height. The Board is persuaded a variance for the additional signage to be attached to the building is needed to provide appropriate visibility to roadway traffic along Bow Creek Road and Interstate Route 81. Applicant's retention of the proposed size, type and location of the free-standing sign and wall signs upon the new structure are provided only as and where necessary to provide functional utility.

As a result of all of the foregoing, Applicant's proposed variances as requested and presented shall be consistent with the Township Comprehensive Plan for continued growth and development subject to the conditions hereinafter stated.

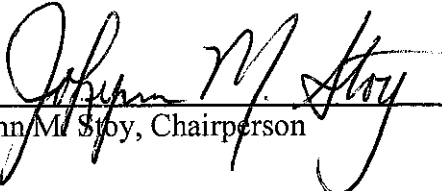
DECISION

For all the reasons previously set forth, evidence and testimony presented, the East Hanover Township Zoning Hearing Board does hereby GRANT Applicant's request for variance from Section 210.7 maximum structure height and Section 314.3 outdoor signs – specific sign requirements as presented, subject to the following conditions:

(1) Applicant's proposed hotel structure shall not exceed four (4) stories or a maximum height of 52.71 feet; and

(2) Additional signage as submitted shall not exceed seventy-one (71) square feet on the building front elevation and fifteen (15) square feet on the rear of the proposed structure.

ZONING HEARING BOARD, EAST HANOVER TOWNSHIP



JoLynn M. Stoy, Chairperson



Shirley Allison, Member

Kenneth C. Wolensky, Member

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