

MINUTES OF THE ELIZABETHTOWN BOROUGH ZONING HEARING BOARD

September 12, 2016

The Elizabethtown Borough Zoning Hearing Board held a public meeting on Monday, September 12, 2016 at 7:00 P.M. at the Elizabethtown Borough Office, 600 South Hanover Street, Elizabethtown, PA. The meeting was attended by a quorum of the members of the Zoning Hearing Board.

The following matter was heard and oral decision rendered or other action taken:

I. Application of Peach Alley Commons, LLC

A. The Board heard a request from Peach Alley Commons, LLC with regard to the Property located at 448 S. Market Street, Elizabethtown Borough, Pennsylvania, and the Property located at 440 S. Peach Alley, Elizabethtown Borough, Pennsylvania. In order to facilitate the proposed use of the Property, the Applicant sought the following relief from the Zoning Ordinance:

- Special Exception pursuant to § 1903.1.d (“Extension or enlargement of non-conforming building occupied by a conforming use);
- Variance from § 1603.7.b to permit parking on a separate lot not located in the same zoning district;
- Variance from § 1903.2.A to permit enlargement of a non-conforming building more than Thirty Three and One-Third Percent (33 1/3 %), and to increase the established non-conforming side-yard setbacks;
- Variance from § 807 for required lot area.

448 S. Market Street is located in the R-3 Zoning District. 440 S. Peach Alley is located in the Open Space – Conservation Zoning District.

The Applicant was represented by legal counsel, Frank J. Vargish, III of Blakinger Thomas, P.C. Testimony at the time of the hearing was presented by Mr. Jon Sheppard, a member of Peach Alley Commons, LLC.

At the time of the zoning hearing, the Applicant, through legal counsel, requested that the Application be amended to include an assertion by the Applicant that the existing parking spaces located on 440 Peach Alley constitute an existing, non-conforming use; the Applicant also requested, to the extent necessary, a variance from the definition of “apartment, conversion” in the Zoning Ordinance, to permit the substantial alteration of the exterior of the building at 448 South Market Street, without jeopardizing the non-conforming status of the current use. The Board allowed each of the requested amendments to the Application.

At the Hearing, the following individuals requested and were granted party status by the Zoning Hearing Board:

Steve Strickler
434 S. Market St.
Elizabethtown, PA 17022

Michael Barton
526 S. Market St.
Elizabethtown, PA 17022

Daniel Mikula
518 S. Market St.
Elizabethtown, PA 17022

Shawn Hostetter
548 S. Market St.
Elizabethtown, PA 17022

Kelly Hostetter
548 S. Market St.
Elizabethtown, PA 17022

Barbara Hernley
529 S. Market St.
Elizabethtown, PA 17022

Prior to the commencement of the hearing, the Borough received email correspondence from Bernie Hernley, 529 South Market Street and Teresa Mullhausen, 510 South Peach Alley, voicing objections to the Application. The email correspondences were collectively marked as Board Exhibit "2".

1. The Applicant presented five (5) exhibits during the course of testimony, as follows:
 - a. Applicant's Exhibit "1": Entry of Appearance for Mr. Vargish, copy of Zoning Application and building plans.
 - b. Applicant's Exhibit "2": Letter dated 8/8/16 from R. Horton regarding the proposed use.
 - c. Applicant's Exhibit "3": Real Estate Pictorial Directory prepared by the Applicant showing parking and current conditions for the 400-500-600 block of South Market Street and the Peach Alley area in Elizabethtown (dated September 12, 2016).

- d. Applicant's Exhibit "4": Lancaster County Traffic Volume Map for 2014 (published December, 2015).
 - e. Applicant's Exhibit "5": Elizabethtown College residency agreement regarding off-campus housing.
2. During the course of testimony, Objector Mikula presented photographs which were collectively marked as Objector Mikula No. 1, depicting current conditions and trash at 448 South Market Street.
 3. Peach Alley Commons, LLC is the owner of the properties located at 440 Peach Alley and 448 South Market Street, Elizabethtown Borough.
 4. 440 Peach Alley is a large open lot, which has been recently cleared of debris and trash by the Applicant. 440 Peach Alley also contains an existing paved parking area with various parking spaces, located immediately adjacent Peach Alley.
 5. 448 South Market Street is an existing four-unit apartment, which is a permitted use (apartment, conversion) in the R-3 Zoning District.
 6. The Applicant proposes renovating and expanding the residence by constructing an addition on to the rear of the premises to create a total of eight (8) apartment units with three (3) bedrooms per unit (hereinafter, the "Project").
 7. The scope of the Project includes removal of an existing garage and impervious stone located at the rear of the residence, removal of the existing out buildings and the existing rear addition on the residence, whole renovation of the residence and the construction of the addition on to the rear of the residence.
 8. The apartment units will each contain three (3) bedrooms, a common living area, a kitchen and two (2) bathrooms. The Applicant did not provide any additional details with regard to the construction or layout of the proposed apartments.
 9. The Applicant proposes to place three (3) parking spaces at the rear of the Property on 448 South Market Street, including a handicapped parking space. The Applicant proposes to provide the balance of the proposed parking spaces (21 spaces) on the Property located at 440 Peach Alley, which is immediately adjacent to Peach Alley.
 10. The Project would comply with required parking requirements for the number of parking spaces, but requires the granting of a variance to permit

certain spaces to be located on an adjoining property in a different zoning district (Open Space-Conservation).

11. Upon completion of the Project, the Applicant intends to rent the residence to any qualified tenants. The Applicant specifically asserted that not all of the proposed tenants would likely be Elizabethtown College students, due in part to a recent modification of the Elizabethtown College off campus living requirements policy, as set forth in the College Student Handbook (Applicant's Exhibit "5").
12. If each of the proposed bedrooms is occupied by two tenants, the Project could result in the addition of 48 residents at the Property. The Applicant testified that the proposed Project will greatly improve the appearance of the building and will provide adequate means of parking, ingress and egress.
13. The Applicant testified that an onsite manager's office will be placed in the Residence, to provide for full-time monitoring of the tenants of the Project.
14. The proposed renovation and addition for the Project represents a 315% increase in the area of the non-conforming building (see Applicant's Exhibit "1", Zoning Drawings, Sheet Z102).
15. The proposed Project will increase the degree or extent of the existing side-yard setback non-conformity for the Property at 448 South Market Street.
16. The Applicant testified that the general neighborhood area (400-500-600 block of South Market Street), is a heavily traveled, heavily congested area, consisting primarily of multi-unit dwellings. The Applicant testified that a number of properties in the immediate vicinity of the Project appear not to comply with required parking regulations set forth in the Zoning Ordinance (with regard to the number of required parking spaces). The Applicant did acknowledge that the Applicant's survey of the number of required parking spaces was not scientifically conducted. (See Applicant's Exhibit "3").
17. The Applicant testified that the addition of the new dwelling units as proposed by the Project will not negatively impact or essentially alter the character of the neighborhood; on the contrary, the Applicant testified that the proposed Project will provide adequate parking, and will improve the aesthetic appearance of 448 Market Street.

18. The Applicant testified that the unnecessary hardship warranting the requested variances is that the cost of the Project (approximately 1.6 million dollars) requires the establishment of at least eight 3 bedroom units on the Property in order to adequately recover the cost of the Project.
19. In addition to renovating and adding to the Residence, the Project also includes paving and striping of 21 parking spaces to be located in the open space lot across Peach Alley on 440 Peach Alley. In addition, the Applicant will provide split rail fencing as a divider between the parking spaces and the balance of the vacant lot at 440 Peach Alley, in order to discourage trespassing and/or parking on the unpaved areas of the vacant lot. The Applicant will also issue parking permits to the tenants of the Project to ensure the parking spaces are used only by the actual residents.
20. The parking spaces would be accessed via Peach Alley.
21. Peach Alley is designated as a one way roadway, whereby traffic is only permitted to travel westbound.
22. A parking lot is not a permitted use within the Open Space – Conservation Zoning District.
23. The Applicant has owned and managed other rental properties within the Borough, including a property adjacent to the Properties which are the subject of the Application.
24. The Elizabethtown Borough Planning Commission did not review the Application, nor did the Planning Commission make a recommendation with regard to the Application.
25. The various parties/objectors to the Application raised the following concerns via cross-examination of the Applicant, or in direct testimony to the Zoning Hearing Board:
 - a. The Objectors expressed concerns over the number of tenants which could occupy the Project, including concerns regarding occupancy of the project by Elizabethtown College students and the current behavior of college tenants in the neighborhood.
 - b. The Objectors specifically complained of the noise, trash, inappropriate language, increased need for police involvement and public intoxication exhibited by college students within the vicinity of the properties, occurring every Friday, Saturday and frequently Sunday nights.

- c. The Objectors believe these problems will increase significantly through the completion of the Project;
- d. The Objectors are concerned with traffic flow on Peach Alley, which is one way, and traffic safety issues for accessing the Property and parking.
- e. The existing lack of parking in the area, and in the immediate vicinity of the Subject Property is a significant problem, and the possible addition of up to 48 additional tenants in the area would create significant additional parking needs and problems, notwithstanding the Applicant's compliance with zoning requirements for the required number of parking spaces.

Greg Gobrecht, Borough Code Enforcement Officer, testified that the Property was posted in advance of the Hearing, and notice of the hearing was published and mailed to adjoining property owners. The proof of publication, proof of posting and copies of correspondence to adjoining property owners were collectively marked as Board Exhibit "1".

Elizabethtown Borough was represented at the time of the Zoning Hearing by Rodney L. Horton, M.P.A., Planning and Zoning Director. Mr. Horton testified that the Borough took no position either in favor of, or in opposition to, the zoning request.

Following the close of testimony, the Board deliberated in Executive Session. Following the Executive Session, the meeting was reconvened, and the Board voted to deny the requested variances. Because the Board voted to deny the variances, the Board did not need to reach or address the issue of the requested special exception.

At the conclusion of the Hearing, the meeting was adjourned.

Respectfully submitted,



Rodney L. Horton, MPA
Elizabethtown Borough
Planning and Zoning Director