

## **MINUTES OF THE ELIZABETHTOWN BOROUGH ZONING HEARING BOARD**

July 6, 2015

The Elizabethtown Borough Zoning Hearing Board held a public meeting on Monday, July 6, 2015 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 226-228 East Orange Street LP**

1. The Board heard a request from 226-228 East Orange Street LP for a Variance with regard to the Property located at 226-228 E. Orange Street, Elizabethtown Borough, Pennsylvania. In order to facilitate the proposed use of the Property, the Applicant sought the following relief from the Zoning Ordinance:

- §708.C ("Rear Yard Setback"); and
- §1905 ("Discontinuance").

The Property is located in the Residential (R-2) Zoning District.

At the time of the Hearing on February 2, 2015 the following individuals appeared and requested party status, and were granted party status by the Zoning Hearing Board:

Joseph Connovitch  
Anne Ketchum  
234 E. Orange St.  
Elizabethtown, PA 17022

Anjela Vago  
525 S. Spruce St.  
Elizabethtown, PA 17022

Travis Garver  
Jennifer Garver  
545 S. Spruce St.  
Elizabethtown, PA 17022

Jay R. Parrett, Jr.  
Tana Parrett  
306 E. Orange St.  
Elizabethtown, PA 17022

Jill Gebhart  
231 Arch St.  
Elizabethtown, PA 17022

Victoria Rowe  
225 Arch St.  
Elizabethtown, PA 17022

Tracey Groff  
POA/Agent  
208 E. Orange St.  
Elizabethtown, PA 17022

Jill Luziere  
226 Arch St.  
Elizabethtown, PA 17022.

The Applicant was represented at the time of the hearing by Eric L. Winkle, Esquire of Byler, Goodley & Winkle, P.C. Testimony was presented on behalf of the Applicant by Curt Tomlinson, managing member of the limited partnership, and Keith D. Good, President of Calabrese Good Architects, Inc.

In addition to the Zoning Application, and the documents submitted therewith (which are part of the record of this matter), the Applicant presented the following exhibits at the time of the Zoning Hearing:

1. Applicant's Exhibit "1": a budget estimate for conversion of the existing structure on the Property from a vacant 3-unit multi-family apartment to an 8-9 bedroom single family dwelling; and
2. Applicant's Exhibit "2": site plan/garage rendering for 226-228 East Orange Street prepared by CGA, Inc.

The testimony presented on behalf of the Applicant was as follows:

1. The Property which is the subject of the Application is located at 226-228 East Orange Street, and is also the subject of an Agreement of Sale dated May 7, 2015, identifying the Applicant as the proposed Buyer of the Property.
2. The Property is bounded to the North by East Orange Street, to the West by Olive Alley, to the South by Flint Alley and to the East by Squash Alley.

3. At the commencement of the Hearing, Applicant's legal counsel requested that the Zoning Hearing Board incorporate by reference the findings and conclusions set forth in its prior 2015 Zoning Hearing Decision for the Application of Keith Myer and Diana Myer, with regard to the history and prior use of the Subject Property as a 3-unit multi-family apartment dwelling.
4. The Applicant is seeking a variance from §1905 ("Discontinuance"), as well as a variance from §708.C ("Rear Yard Setback"), in order to provide additional parking on the Property to comply with the required number of parking spaces for the proposed use.
5. The Applicant proposes to improve and modify the existing garage located at the rear of the Property to accommodate five (5) parking spaces, and to provide an additional parking space located to the West of the garage, but immediately adjacent thereto.
6. The Applicant does not propose to move the existing garage any closer to the property line, nor any closer to Flint Alley.
7. There is adequate space within the existing garage to provide five (5) 9' x 18' parking spaces. The proposed additional parking space to be located to the West of the existing garage will comply with required side yard setbacks.
8. The existing garage will be substantially renovated, including the placement of new headers. An all-weather surface will be utilized for the additional parking space to be located to the West of the existing garage structure.
9. The Applicant proposes to renovate the existing dwelling structure on the Property, which has become an eyesore.
10. The Applicant presented an Exhibit itemizing the estimated cost to convert the Property to a single family dwelling unit. The total cost estimated to do so was \$217,493.98. The design/cost estimate was prepared by CGA, Inc.
11. The existing garage and proposed additional parking space to be located to the West of the garage will have a 10' setback from the rear property line.
12. The Applicant asserts that the costs to convert the existing property to a single family dwelling unit would exceed its sale value as a single family dwelling unit.

13. The Applicant asserts that the Property has unique physical circumstances and conditions, in that the Property has had 3 fully functioning and separated apartment units that have been in existence for an excess of twenty years, with no detriment to the community. The Applicant asserts that a single, one-unit dwelling of the size of the existing structure on the Property would be virtually impossible to rent or to sell as a profitable investment.
14. The Applicant asserts that, for a period in excess of twenty years, the Property was utilized as three-unit, including all issues related to such operation, such as parking and traffic.
15. The Applicant incorporated by reference the evidence presented to the Zoning Hearing Board in the matter of the Application of Keith Myer and Diana Myer with regard to the same property, that the Property has existed as a three-unit residential rental property for at least 25 years, and according to utility billing records, the Property was last used as a three-unit rental on or about December, 2013.
16. There are existing separate electric meters for each of the three units in the Property.
17. The Property has three units, with separate utilities, kitchens, baths and bedroom facilities. There are two egresses for each unit in the front/rear of the building. There are no common hallways, entrances/exits or accessibility between the units or from downstairs to upstairs.
18. Historically, mail has been delivered to three separate addresses at the Property (Unit Nos. 101, 201 and 202).
19. Unit 101 consists of three bedrooms, two baths, living room and kitchen.
20. Unit 201 consists of one bedroom, one bath, living room and kitchen.
21. Unit 202 consists of one bedroom, one bath, living room and kitchen.
22. The Applicant proposes to make substantial upgrades to the exterior of the Property to improve its appearance.
23. The most recent Borough rental inspection of the Property occurred in 2010. A mortgage foreclosure action by the Bank of New York was commenced on or about August, 2012.

24. The Property has been vacant for a period of over one year.

The various parties/objectors to the Application raised the following concerns during the course of the hearing, via cross-examination of the Applicant and Applicant's witnesses, or in direct testimony to the Zoning Hearing Board:

1. The objectors expressed concerns over the number of college students to which a three-unit dwelling might be rented.
2. Traffic flow and traffic safety issues for vehicular utilization of Olive Alley and Flint Alley to access the detached garage in the rear of the Property. The objectors stated that there are young children in the vicinity, who utilize and/or play in Olive Alley and Flint Alley.
3. Most, if not all, of the other rental units in the area are single-family dwelling rental units, and not multi-units.
4. Lack of parking on Orange Street, and in the vicinity, is a significant problem. The addition of a three-unit property to the neighborhood would create significant additional parking problems, particularly if all of the required parking, as set forth in the Ordinance, is not provided. Past tenants of the Property, when it was operated as a three-unit, would speed through Olive and/or Flint Alley, and would block the alleys by parking their cars. These problems did not cease until the occupation of the three units was discontinued. Allowing reversion of the Property back to a three-unit would negatively impact the character of the neighborhood, which primarily consists of single-family dwelling units.
5. The current zoning regulations in the R-2 Zoning District do not permit a three-unit dwelling. The zoning district clearly favors single-family dwelling units, and not multi-family units.
6. Permitting the use of the Property as a three-unit may increase noise and vandalism.
7. The provision in the Ordinance (§1905) providing for discontinuance of a non-conforming use as a procedural mechanism meant to maintain the integrity of the R-2 Zoning District.
8. Concerns were raised with regard to the responsibility for paving and maintenance of Olive Alley, Flint Alley and Squash Alley.
9. Objector Anne Ketchum testified that she and her husband have lived next door to the Property for a number of years, and that she conducted some research to attempt to ascertain the history of the use of the Property as a three-unit. Mrs. Ketchum testified that she was unable to find any

information from the County Assessment Office, Post Office or rental records. Mrs. Ketchum stated that she has lived in her property for 38 years and that there have been three owners of the Property since that time. Mrs. Ketchum believes that the Property has been utilized as a three-unit rental at most, since 2006.

In response to the Objectors testimony, the Applicant presented rebuttal testimony from Curt Tomlinson, Managing Member of the limited partnership. Mr. Tomlinson testified as follows:

1. Mr. Tomlinson has an extensive history of managing the properties which he and/or his partners own. They currently own and manage approximately 150-170 units.
2. The Applicant requires a detailed screening process for all potential tenants, including a criminal background check, credit history check and rental history check.
3. Mr. Tomlinson testified that the Subject Property, if approved as a three-unit by the Zoning Hearing Board, would be rented only to individuals with an annual income of at least \$60,000 and a 760 credit score, as well as a five year rental history.
4. Mr. Tomlinson owns and/or manages, together with his partners, four other properties in Elizabethtown Borough which are all single family dwellings, which have been converted.
5. Mr. Tomlinson stated that the Applicant will be willing to place "No Parking" signs to ensure that no parking occurs in Olive Alley, Flint Alley or Squash Alley, and would agree to insert provisions in any tenant lease agreement requiring that neither the tenant, nor their guests, park on the street or in the adjacent alleys.

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.

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".

Following the close of testimony, the Board deliberated in Executive Session. Following the Executive Session, the meeting was reconvened, and the following Motion was made:

1. Motion to approve the variance requests from §708.C and §1905, with conditions.

## **II. Application of Elizabethtown Borough School District**

1. The Board heard a request from Elizabethtown Borough School District, owner of the Property located at 800 East High Street, Elizabethtown Borough, Pennsylvania, for a dimensional Variance of 1', to permit the erection of a 4' fence in the front yard. In order to facilitate the proposed use of the Property, the Applicant sought the following relief from the Zoning Ordinance:

- §1302.5.1 ("Fences")

The Property is located in the Institutional Zoning District.

1. Testimony was presented on behalf of the Applicant by George Longridge, Business Manager for the Elizabethtown Borough School District.
2. The Subject Property is located at 800 E. High St., Elizabethtown Borough, and is located in the Institutional Zoning District.
3. The Applicant requests to install a 4' high fence instead of a 3' high fence as permitted by the Zoning Ordinance; the Applicant asserts that the added height will provide the needed safety in the area surrounding a parking lot and play area for elementary students.
4. The Applicant presented a schematic of the proposed fence, as well as photographs depicting the proposed location of the fence relative to High street and the existing parking area and basketball nets located on the subject Property. The increased height of the fence will provide additional safety for the students at the Elementary School, which enrolls Kindergarten through 3rd grade students, with a total enrollment of approximately 515 students.
5. The students which utilize the area range in age from 5 to 9 years, and during wet weather, the students utilize the parking lot for basketball and other recreational play.
6. The School District is concerned that a fence 3' in height would be insufficient, and would be a safety hazard, with students likely trying to hurdle the fence.
7. The proposed fence will be blacked covered vinyl chain link fence, and will be installed according to applicable code provisions.

8. Elizabethtown Borough was represented at the time of the 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.

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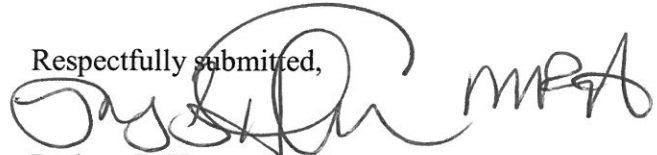
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Following the close of testimony, the Board deliberated in Executive Session. Following the Executive Session, the meeting was reconvened, and the following Motion was made:

1. Motion to approve the requested Variance of §1302.5.1 ("Fences"), to permit the erection of a 4' fence on the Subject Property, with conditions.

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

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Rodney L. Horton', followed by the letters 'MPA' in a stylized, bold font.

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