

WARWICK TOWNSHIP ZONING HEARING BOARD MINUTES

May 8, 2013

Chairman Gary Lefever convened the May 8, 2013 meeting of the Warwick Township Zoning Hearing Board at 6:30 p.m. Present were Board Members Gary Lefever, Scott Goldman, Dane St. Clair, Mark Will, Tom Matteson and Brent Schrock. Also present were Zoning Officer Thomas Zorbaugh, Zoning Hearing Solicitor Neil Albert, Court Reporter Brenda Pardun, Linda Woodard, Melvin Fahnestock, Tricia Zimmerman, Mark Fahnestock, Charles Suhr, Laura & Ray Bowman, Jeff & Alice Nelson, Ron Tropasso, Anthony Caponigro, Greg Lessig, Andrea Covey, Cain Austin, Dave Covey, Mike Swank, and Sally Austin.

MINUTES APPROVAL: On a motion by Matteson, seconded by Goldman, the Board voted unanimously to approve the minutes of the April 10, 2013 meeting as submitted.

POSTING, PROOF OF PUBLICATION AND NOTICE: The Zoning Officer confirmed the posting, notice and proof of publication of the cases to be heard at this evening's hearing.

HEARING PROCEDURES: For the benefit of those present, the Zoning Hearing Solicitor explained the procedure to be followed for the evening's hearing.

CASE #794, RODNEY WITMAN - SPECIAL EXCEPTION/VARIANCE (continuation): The Chairman explained that the case was continued from the Board's April 10, 2013 hearing. Rodney Witman, 2057 Main Street, Lititz, PA 17543 is seeking a Special Exception to the Warwick Township Zoning Ordinance under Section 340-14.C.(1), pertaining to a Home Occupation in a R-1 Residential Zoning District. The applicant would like to sell guns, gun parts and antiques from his home. A Variance of Section 340-78.F to allow the applicant to sell merchandise he does not produce is also requested.

The Chairman stated that since he was not present at last month's hearing, he will abstain from action on the plan.

The Zoning Hearing Solicitor stated that testimony remains open from last month's meeting. He noted that no specific testimony was anticipated for this evening.

The Chairman inquired whether or not Witman has additional testimony he would like to offer. Witman provided his current Federal Firearm's License for the Board's review.

The Zoning Officer explained that in addition to the Applicant, Laura Bowman, Ron Tropasso, Cain Austin, Linda Woodard, David Clark, Andrea Covey, and David Covey were sworn in at last month's meeting. He added that Laura Bowman, Ron Tropasso, David Clark, and Andrea & David Covey became a party to the case. The Chairman inquired whether anyone else wishes to provide testimony, or become a party to the case. Jeff & Alice Nelson were sworn in.

Witman stated that at last month's hearing, someone mentioned a firearm's incident at his property. He explained that the alleged incident occurred approximately 8 years ago, and although there was no proof or evidence of firearm discharge, he thinks he knows who it could have been, and that tenant no longer lives at the property.

Witman provided a photograph illustrating the type of firearm he restores and sells. He explained

that he has operated the business for approximately 7 years and added that this is his only source of income. He stated that he sells gun parts, C&R firearms and he restores M1 Garands. He stated that the ATF is now requiring zoning approval, which requires public notice; otherwise, individuals still would not be aware of the business. He noted there has been no history of issues with traffic problems, riff-raff, or security at his property. He said that a statement was made last month about an individual who was able to see firearms from his open window, and expressed concern that someone was on his private property looking inside of his home. He explained that all gun transfers are done in his foyer for occasional internet sales.

Witman testified that he has no plans to change his business plan to only provide sales through the internet, auctions and gun sales. He added that he does not intend to have retail customers at his home, with the exception of an occasional firearm pick-up resulting from internet sales. He added that he does not intend to have a sign, a storefront, or perform any modifications to his home relating to firearm sales. He explained that a firearms transfer takes approximately 20 minutes to complete including a background check. He stated that he would have no inventory on site and added that his personal firearms are kept locked and stored. Witman explained that all restoration is done in his basement and he stores M1 Garands in a locked safe. He noted that the basement has barred windows. He provided photographs of the basement windows for the Board's review.

Witman stated that gun transfers would be by appointment only and would be limited to 1 customer for 1 hour each week. He explained that this appointment would be between the hours of 10:00 a.m. and 4:00 p.m. He added that during these hours, one parking space would be reserved for the appointment. Witman stated that at last month's meeting, his neighbor stated that his tenants sometimes use their parking area. He explained that he was not aware of this and he spoke with his neighbor and they agreed to install "No Parking" signs on the neighbor's property.

Witman stated that he does not sell modern firearms such as an AR15 or AK47, or handguns such as a Glock. He added that he only deals in antiques and C&R collectibles. He explained that deliveries would be provided by standard box trucks such as UPS or USPS. He noted that he receives deliveries approximately once per month. He added that he generally packages and ships from a UPS store. He stated that he does not sell ammunition or high-capacity magazines.

Andrea Covey, 3 Picnic Woods Road, stated that she observed the firearm discharge. Witman stated that he objects to the statement since there was no proof provided and that the issue is irrelevant. The Zoning Hearing Solicitor stated that the Board has the right to exclude irrelevant testimony, and expressed the opinion that this issue is not relevant to whether there is compliance with the Zoning Ordinance tonight. The Chairman confirmed that there was no proof of the occurrence provided by the police report.

Laura Bowman, 2050 Main Street, stated that last month the Applicant testified that there would be 1-2 customers per month, and this evening he indicated 1 customer per week. She requested clarification of whether there would be 2 or 4 customers per month. Bowman stated that she also contacted the school district and Dr. Hershey confirmed that if the use is approved, the school bus stop in front of the Applicant's property would be moved. Bowman expressed concern that if the bus stop is moved, there could be an accident because there would not be a clear view for motorists of the bus stop. Bowman stated that Witman indicated he has 10-15 firearms on his property and she inquired whether or not they are for sale or his private property. Witman stated that they are his personal firearms. Bowman stated that the Applicant indicated this evening that he would be restoring guns; however, he did not mention this last month, and she expressed concern

over the discrepancy of testimony. Witman stated that he is simply trying to clarify the type of work he does at his home. He expressed the opinion that traffic along Main Street is more of a concern for children at the bus stop rather than any additional traffic he would generate. He noted that the bus stop was previously in front of the Rothsville Fire Hall. The Board members agreed that the school district would consider the children's safety in relocating the bus stop.

Ron Tropasso, 1 Picnic Woods Road, requested clarification of whether or not the Applicant would have a business sign on his property. Witman stated that he would not have a business sign. He noted that he does not want to operate a retail business from his home.

Alice Nelson, 2065 Main Street, inquired how they could be assured that the zoning requirements are not exceeded. The Zoning Officer stated that the Zoning Hearing Board can apply conditions to the approval; however, he is unable to provide continual verification that the conditions are being met at all times. He explained that the neighbors should contact him if the Applicant would not meet conditions of any approval. He added that he would issue a violation notice if any zoning conditions are not met. He noted that the Applicant would need additional zoning approval to expand the retail business beyond what would be approved this evening.

Witman stated that he does not want his neighbors to be concerned since he has no intentions of expanding the business beyond what he has been doing the past seven years which includes internet sales, auctions, and gun shows.

The Chairman inquired whether there is a protocol for internet buyers. Witman explained that firearms transfers have to go to a licensed dealer, and they have to perform a background check to verify whether or not the potential buyer is legally allowed to own a firearm. He explained that potential buyers have to fill out a form, show a drivers license, and complete a questionnaire. He added that he would contact the PA State Police to perform a background check.

The Zoning Hearing Solicitor requested that the copy of the Federal Firearms License and submitted photos be entered into the record as Exhibits 1 and 2 respectively.

Will stated that the Board spent time reviewing the Ordinance and discussing the case. He explained that the issue is retail sales of items not produced on the premises. He added that he would deny the Variance which is the basis for the request, and would subsequently deny the Special Exception. On a motion by Will, seconded by Matteson, the Board voted unanimously to deny a Special Exception under Section 340-14.C.(1), and to deny a Variance for Case #794.

CASE #795, MEL FAHNESTOCK - VARIANCE: The Chairman read the zoning hearing notice for the application received from Melvin Fahnestock & Tricia Zimmerman, 501 W. Orange Street, Lititz, PA 17543. The applicant is seeking a Variance to the Warwick Township Zoning Ordinance under Section 340-14.J, Design Standards for existing lots, pertaining to front yard setback in a R-1 Zoning District. The applicant would like to build a side load garage on the front of the house and will encroach into the required front yard setback by 8' 11".

Tricia Zimmerman and Melvin Fahnestock were sworn in. Fahnestock provided renderings of the design concept. He explained that he and Zimmerman purchased the property 18 months ago. He added that they have partially modified the home to accommodate their family. He stated that he works from home, and he would like to construct an addition that includes office space. He noted that he currently uses the bedroom for his office, and this area would be located beside the

bedroom.

Matteson inquired whether or not the 30' right-of-way as illustrated on the drawing submitted by the Applicant legally exists, or if it is proposed. He added that if the right-of-way is not formally established, then the Applicant would meet the guidelines of the Zoning Ordinance. Matteson inquired whether the property is served by public sewer. Fahnestock stated that the property is not served by public sewer and added that it is served by public water. The Zoning Officer stated that it appears the right-of-way is 40' and not 60' as indicated on the Applicant's drawing. Matteson inquired whether the Case should be continued until next month, or if sufficient evidence exists for the Board to act this evening. The Zoning Hearing Solicitor stated that if the Board deems it appropriate they could grant the Variance, noting that upon verification, it could be determined that the Variance is not needed.

The Chairman inquired whether anyone present wishes to become a party to the case. No one present indicated their desire to comment on the case.

On a motion by Matteson, seconded by St. Clair, the Board voted unanimously to grant a Variance under Section 340-14.J, to build a side load garage in accordance with the drawing that was submitted with the application for Case #795.

CASE #796, MCDONALD'S USA - VARIANCE: The Chairman read the zoning hearing notice for the application received from McDonald's USA, LLC, 801 Lakeview Drive, Suite 302, Blue Bell, PA 19422. The applicant is the tenant of the space located at 990 Lititz Pike, owned and operated by Warwick Devco, Kennett Square, PA. The applicant is seeking relief from the approved sign ordinance for The Shoppes of Kissel Village and a Variance to the Warwick Township Zoning Ordinance under Section 340-38.B.(1).(k), pertaining to signs in a Community Commercial Zoning District. The applicant would like to add signs on the existing McDonald's.

Anthony Caponigro, with Boehler Engineering, was sworn in. Attorney Charles Suhr, with Stevens & Lee, stated he is representing McDonald's USA, LLC. He explained that the company proposes to redesign the existing building to match the new look of other McDonald's restaurants as part of its re-imaging. He explained that although the Township granted a Waiver of the requirement to submit a land development plan for the project, the proposed signage requires zoning approval. The request is to allow 6 wall signs in lieu of the maximum 1 wall sign. He stated that the existing wall signage is nonconforming as to the number since there are currently 4 wall signs totaling 181.4 square feet. Although the project would increase the number of signs, the total area of the wall signage would decrease by 59.8 square feet, a 33% reduction in sign area.

Caponigro provided his engineering background for the benefit of the Board. He indicated the surrounding businesses for the benefit of those present (Starbucks/Salad Works, CVS, Target, Giant, etc.). He explained that the area across SR 501 from the site is agricultural in nature. The images of the existing building compared to the proposed building design were entered into the record as Exhibits. Caponigro explained that the building facade would be altered to match the new branding for McDonald's. He added that the construction would not be altered, and the building would remain a brick facade. He stated that the interior would have general interior upgrades and would be modified to accommodate ADA requirements. Caponigro stated that a side-by-side drive-through is also proposed to be more efficient and to reduce traffic back-up.

Caponigro described the existing and proposed signage at the site. He explained that the existing

McDonald's pylon sign would remain, as well as the two 9.6 square foot directional signs which consist of entrance and exit signs. The two existing 66.7 square foot McDonalds fascia signs would be replaced by two new 32.8 square feet signs; one facing Peters Road, and one facing SR 501. The two 24 square feet "M" logo signs would be replaced by four 14 square feet "M" logo signs; one on each side of the building. Caponigro stated that the roof line of the building would be modified as part of the new architecture imaging as well.

Caponigro stated that the signs are designed with the new building facade, and the additional signage is needed to ensure the building is adequately branded so individuals are aware of the McDonald's restaurant, in order to remain economically competitive. He expressed the opinion that the requested Variance would not alter the character of the area.

The Zoning Officer stated that the Shopping Center received approval for modified signage requirements. He explained that the McDonald's was permitted to have one sign per frontage, which would allow 3 wall signs (including the access drive). He stated that the "M" signs in the window were not formally approved. He added that the proposal would result in 3 additional signs. The Zoning Officer requested clarification of the size of the "Welcome" sign above the door since the Ordinance would limit directional signage to 2 square feet. Caponigro stated that the proposed "Welcome" signs are 2.8 square feet.

The Chairman expressed the opinion that the yellow "swoosh" above the McDonald's is part of the signage. Caponigro stated that since it is not lit, they consider it an architectural element similar to the red roof that was previously part of the McDonald's facade. Matteson stated that he would agree that it is simply an architectural element. The Chairman stated that the swoosh appears to be part of the McDonald's brand with their yellow color. Caponigro stated that the Township does not regulate color, which is evidenced since it did not regulate the red roof that is part of the current McDonald's brand. He added that the element is not part of the sign structure. The Chairman expressed the opinion that the 3 permitted wall signs along each frontage is sufficient to identify the restaurant. He added that the signage on the Starbucks side would be for circular traffic movement around the building and is not needed. The Zoning Officer explained that menu boards and the number of directional signs are not regulated as part of the shopping center sign package. He added that the size of the directional sign above the door would need to be reduced by .8 square feet, or the Variance request would need to be modified. Caponigro requested that the Variance be amended to include this additional .8 square feet for each Welcome sign. He noted that these Welcome signs are not lit. A Board member inquired whether the Applicant would consider modifying the application to include the yellow swoosh as part of the sign square footage. Caponigro stated that the Applicant would modify the application to eliminate the verbiage "McDonald's" under the swoosh which would reduce signage to 5 rather than 6 as requested.

The Chairman inquired whether or not anyone present wishes to comment on the proposal. No one present indicated their desire to comment on the proposal.

Matteson stated that he does not object to the swoosh design and requested clarification of the issue from the Chairman. The Chairman stated that the applicant was permitted 3 signs, and they are requesting 6. He stated that the precedent would allow Wendy's and other similar establishments to request additional signs. Matteson stated that the alternative is one large sign that meets the ordinance but would be less aesthetically pleasing.

Matteson motioned to approve the Variance as submitted and as modified with the Welcome sign

this evening, seconded by Schrock; however, the remaining Board members voted against the motion, and the motion failed to carry.

Th Chairman inquired whether the Applicant would like to further modify their request based on the decision by the Board. Caponigro requested that the application be modified to eliminate the "McDonalds" verbiage on the building facing Peters Road and facing SR 501 and to retain the "M" logos, as well as the .8 square footage for the Welcome sign above the door.

On a motion by Will, seconded by Matteson, the Board voted 4-1 to grant a Variance under Section 340-38.B.(1).(k), based on the modified application to eliminate the "McDonalds" verbiage on the building and to allow the modification of the Welcome sign for Case #796. St. Clair voted against the motion.

CASE #797, KELLER BROTHERS DODGE - VARIANCE: The Chairman read the zoning hearing notice for the application received from Dan & Sue Keller Family LP, 730 S. Broad Street, Lititz, PA 17543. The applicant is the owner of the property located at 395 N. Broad Street, Keller's Dodge. The applicant is seeking the following Variances to the Warwick Township Zoning Ordinance under Section 340-17.F.(1) to reduce a parking space setback; Section 340-35.D.(1) (a) & 340-17.M.(2) to reduce the required and eliminate the required landscaping and Section 340-37.B to eliminate further landscaping requirements.

Mike Swank, with Steckbeck Engineering, and Greg Lessig with Keller Brothers Doge, were sworn in. Swank explained that the proposal is to construct a 10' x 22' gravel display parking space at the corner of SR 501 and North New Street. He explained that the request is similar to Case #774 which was approved in March, 2012 for S&A Paint and Repair. Swank stated that the parking space would be 5' from the right-of-way line therefore the Variance of setback requirement and landscape strip would be needed, as well as Variance for a clear sight triangle since the parking space is intended to be seen from the road and not obscured by landscaping. He stated that the Board of Supervisors granted a modification of the clear sight triangle to allow one 150' leg and one 50' leg instead of two 100' legs. He explained that adequate site distance would exist for the proposal. Swank expressed the opinion that the proposal would not affect the character or safety of the surrounding neighborhood. The Zoning Officer inquired whether or not the space would be eliminated with the construction of sidewalk along SR 501. Swank expressed the opinion that adequate space would exist for sidewalk. He noted that the vehicle would not be elevated. The Zoning Officer explained that he observed the parking space on the property, which was not previously authorized at this location. Matteson stated that the S&A Paint and Repair request was an accessory to the site and there was no other location on the site for them to display vehicles. He added that this is a car dealership with adequate area for display. He expressed the opinion that there is no hardship as a basis for the Variance. He noted that the other location was along a local street and not an arterial roadway. Another Board member agreed and expressed concern over setting a precedent for other car dealerships that would want a similar display area. In addition, a display area is located to the north of the site. Lessig stated they would like the location to display a specialized vehicle so it would not be in a long line of display vehicles. Matteson expressed the opinion that the vehicles in the line could be elevated to highlight them, rather than to place them in the limited green space on the site. The other Board members agreed that the use could benefit sales, but there is no hardship to justify the number of requested Variances. On a motion by Goldman seconded by Matteson, the Board voted unanimously to deny the requested Variances for Case #797.

ADJOURNMENT: With no further business to come before the Board, the meeting was adjourned at 8:49 p.m.

Respectfully submitted,

Thomas Zorbaugh
Zoning Officer