

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2021 – 05
:
G and Z Investments LLC :
:
:
: PREMISES LOCATION:
: Rear E McKinley Avenue
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of G and Z Investments LLC with regard to its property located at Rear E McKinley Avenue, Derry Township, Tax Parcel Nos. 24-006-060 and 24-006-282. A hearing in this matter was held on August 18, 2021, after proper advertising. At that time, the applicant’s managing member, David Garpstas, appeared with Rick Knauer and Angela Knauer, the owners of KK Lawn Care and Maintenance (“KK Lawn”), the prospective tenant of the property. All were sworn and testified at the hearing.

The application indicates that the subject property is located in the Palmdale Mixed Use zoning district. The property is currently vacant but was previously used by a construction company for storage of its equipment. The applicant proposes to have KK Lawn use the property for storage of its equipment. The applicant uses KK Lawn for landscaping at its investment properties. The application seeks a special exception to reestablish a discontinued nonconforming use or, in the alternative, a use variance to permit storage on the property.

Mr. Garpstas is a licensed real estate agent. He and his partners in G and Z Investments LLC find and purchase vacant and blighted properties with the intent of beautifying them, which he testified improves the neighborhood. G and Z Investments LLC bought the subject property

this year with the intent of improving it. The property was vacant when it was purchased. Because the property has two structures, it was thought that the property would be ideal for storage. When the applicant purchased the property, items such as trailers, tools, forklifts, and an air compressor were found at the property. Based on what he found at the property, Mr. Garpstas surmised that the structures were used for storage of the construction equipment and the items were bigger than any items that KK Lawn would store. Mr. Garpstas admitted he has not explored a conforming use for the property.

The property is trapezoidal shaped. The property had been used previously for storage for a construction company's storage for its equipment. The owner of the construction company lived adjacent to the subject property. There are currently two structures on the property. The first measures 25 feet by 25 feet, and the other structure measures 50 feet by 38 feet. Neither of the structures has insulation or running water. KK Lawn plans to install new, double-paned windows. The lights on the buildings do not work but will be fixed. KK Lawn would install a small sign to identify itself.

KK Lawn Care is a family owned business since 2012 that provides lawn care and maintenance services, snow removal, Christmas lighting, and pumpkin and Christmas tree sales. Mr. Knauer testified that the property would be used for storage of the KK Lawn equipment, including its trucks and trailers. None of the trucks are diesel. Most of the equipment would be stored in the buildings, but some materials may be stored outside on skids for a short period of time until that particular project starts. The employees would come to the property in the morning, get their equipment, leave to go to the job sites, and then return at the end of the day to

return the trucks, and drive their personal vehicles home. Currently, they have three full-time employees and may have part-time employees from time to time, particularly in the summer. They do not have seasonal employees, and all employees wear uniforms. The employees start work at approximately 7 – 8 a.m. and end at approximately 4 – 5 p.m., working mostly during daylight hours. They try not to work late on Fridays, but they do sometimes work on Saturdays. This would not be a retail location. Additionally, there would be no office at the property, but customers may stop by the property to view the work of KK Lawn. In addition, they may maintain their vehicles at the property. The business currently has two trucks and four trailers, but would like to purchase one more truck. Mr. Knauer testified that he intended to beautify the buildings by, among other things, building a decorative pergola between the buildings, landscaping, installing benches, and installing a fence at the rear of the property to shield the stored trailers.

Charleton Zimmerman, who resides at 119 N. Roosevelt Avenue, testified that he resided in Palmdale from 1954 to 1976, and has lived at his current residence since 2002. He testified that the prior owner of the subject property owned an excavating and contractor business and used the subject property to store his excavating and heavy duty commercial equipment. He confirmed there was no water or sewer on the property. He thought the property should be given an address to assist 911.

Randall Wright has lived at 1342 E. Derry Road since 1987. He asserted that the primary permitted use in the Palmdale Mixed Use zoning district is residential. Since his ownership, there has not been any vehicles or commercial activity at the property. According to Mr. Wright,

if KK Lawn's storage is permitted, the neighbors will experience seeing and hearing running vehicles, employees, maintenance on vehicles, and bulk deliveries, which they have not for more than 30 years. While a lawn care and landscaping business may be able to schedule work hours for daylight hours, snow removal hours are unpredictable and could be done in the middle of the night. He urged the Board to deny the requested relief and, if it was inclined to grant relief, to impose strict conditions to limit the number of employees and prohibit outdoor storage.

Pamela Fackler, 124 McKinley Avenue, testified that she has lived at her residence since 1988, and there has been no business activity at the property during that time. Her garage opens to the property's garage. She asked the Board to consider how the comings and goings at the property would affect the neighbors.

Sandra Arndt, 130 McKinley Avenue, testified she has resided at her home since 2005, and there has been no work activity at the property. She thought that the property could be used only for storage but could be used for storage of antique cars. She said this was a nice family neighborhood and wanted people who would live and care about the property. She was concerned about the children and people who walk because there was not room for big trucks. She questioned the quality of workers who would be at the property.

Where a nonconforming use has been discontinued for a period of more than one year, the Zoning Ordinance allows the Zoning Hearing Board to grant a special exception:

“to allow a nonconforming use to be reestablished when the applicant can demonstrate the following:

1. No action was taken to remove or replace the nonconforming use with a conforming one.

2. No action was taken that would have caused the use to be conforming or to otherwise modify or change the existing conditions of the nonconformity as it originally existed.
3. No zoning violations exist on the subject property.
4. The reestablished nonconforming use will be no more intense than what had originally existed.
5. The reestablished nonconforming use will operate under the same conditions and hours as the original nonconforming use.”

See Ordinance, §225-502.12.

The Board finds that the applicant is not entitled to the requested relief with respect to the use of the subject property. As this Board has often repeated, a special exception is neither special nor an exception. Instead, it is a permitted use provided the applicant can demonstrate compliance with the applicable criteria. In this case, the applicant did not demonstrate its compliance with the applicable criteria. The nonconforming use lapsed no later than 1987, more than 30 years ago. The applicant offered no testimony or evidence about the intensity of the original nonconforming use, namely the construction company’s storage of and access to its equipment. As a result, the Board cannot find that the proposed use by KK Lawn would be no more intense. Moreover, the applicant submitted no testimony or evidence on the prior construction company’s conditions or hours of operation. As a result, the Board cannot find that KK Lawn’s use would operate under the same conditions or hours of the construction company. Consequently, the Board finds that the applicant is not entitled to the requested special exception for the reestablishment of a discontinued nonconforming use.

The permitted uses in the Palmdale Mixed Use zoning district with no overlay do not include storage. *See* Ordinance, §225-314, Table 26.¹ The criteria for issuing zoning variances are set forth in §225-1007.9.A of the Derry Township Zoning Ordinance. The Zoning Board may grant a variance provided that all of the following findings are made where relevant:

1. There are unique physical circumstances or conditions of the lot in question, and due to these conditions, an unnecessary hardship results to the property owner;
2. That because of the physical circumstances, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance, and that the authorization of the variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the applicant;
4. The variance will not alter the essential character of the neighborhood or otherwise impair the appropriate use or development of adjacent property or be detrimental to the public welfare; and
5. That the variance if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

In this matter, although the Board finds that the property is unique because of its trapezoidal shape located between two alleys, the Board finds the proposed use of the property for commercial storage and operating a non-retail landscaping business will materially alter the

¹ The application erroneously references §225-315, Table 28, which sets forth uses in the Hershey Mixed Use zoning district.

essential character of the neighborhood and impair the appropriate use or development of adjacent properties. The property had not been used for an active commercial purpose since no later than approximately 1987. Therefore, because of the passage of time, the Board finds that this proposed use for a commercial business would have a detrimental impact on this residential neighborhood and the public welfare. The roads in the neighborhood are narrow and small, and the proposed tenant's use will impact the neighbors. As such, the Board finds that the relief granted will negatively impact surrounding properties. Finally, the Board finds that this relief does not represent the minimum variance necessary to afford relief and does not represent the least modification possible of the Ordinance.

Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 15th day of September, 2021:

1. The applicant's request for a special exception from §225-502.12 regarding reestablishing a discontinued nonconforming use is **DENIED**.

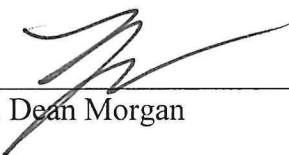
2. The applicant's request for a variance from §225-314, Table 26 regarding permitted uses in the Palmdale Mixed Use zoning district is **DENIED**.²



Steven Seidl



Sandra Ballard



F. Dean Morgan



Lindsay Drew

Michael Angello

² The application erroneously references §225-315, Table 28, which sets forth uses in the Hershey Mixed Use zoning district.