

IN RE: APPLICATION OF RESIDENCES AT : BEFORE THE ZONING HEARING
THE CANNERY, LLC. FOR SPECIAL : BOARD OF EXETER TOWNSHIP,
EXCEPTION AND VARIANCE FOR : BERKS COUNTY, PENNSYLVANIA
EXPANSION OF NONCONFORMING USE :

MEMORANDUM OF FINDINGS, OPINION AND ORDER

Residences at the Cannery, LLC, the Applicant, seeks to expand the existing nonconforming apartment use in buildings known as 410 and 416 Rugby Road, by improving the ground floor areas of 410, to add one additional apartment use to the existing building, and of 416, to add two additional apartment units to the existing building. Currently, each building contains two apartment units for a total of four apartments on the 16+ acre property. Applicant is the owner of the property, which is zoned SR1 - Suburban Residential. Apartment use is neither a permitted use nor a use by special exception or condition in the SR1 Zoning District. Therefore, Applicant's use is deemed a nonconforming use in this instance. Additionally, Applicant proposes to construct a 40' x 100' garage structure for vehicular parking and storage accessory to the apartment use, and storage for an off-site business.

A hearing on the application for a special exception, variance, and a determination that the size of the proposed garage building complies with the provisions of the zoning ordinance was held on March 27, 2012. Although Applicant conditionally withdrew the request related to the proposed garage at the end of the hearing, the Board, due to the condition attached to the withdrawal, will deal with the request in its decision.

The testimony submitted at the hearing was not precise as to both the total area occupied by the existing nonconforming use and the area of the proposed three apartment unit expansion. However, based upon the evidence that was submitted, it is clear that such proposed expansion will greatly exceed 50% of the current occupancy area.

§390-77.C. of the zoning ordinance prohibits the expansion of a nonconforming use unless such expansion has been approved as a special exception by the Zoning Hearing Board. §390-80. limits the expansion by special exception to 50% of the area occupied by the use.

The proposed garage, if approved and being accessory to the principal residential use of the property, would have to comply with §390-29.B.(2), which limits the length of any side of a garage serving a dwelling to 40'. But this dimension issue is moot for the reason stated hereinafter.

The issuance of special exceptions by the Zoning Hearing Board is governed by §390-96.H. of the zoning ordinance, which sets forth the following standards and criteria:

(a) Such use shall be one which is specifically authorized as a Special Exception Use in the zoning district wherein the applicant seeks a Special Exception.

(b) Such Special Exception shall only be granted subject to any applicable conditions and safeguards as required by this Chapter.

(c) Such use shall not adversely affect the character of the general neighborhood, or the conservation of property values, or the health and safety of residents or workers on adjacent properties and in the general neighborhood.

(d) Such use shall be of such size and so located and laid out in relation to its access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.

(e) Services and utilities shall be made available to adequately service the proposed use.

(f) The granting of the Special Exception shall be consistent with the Township Comprehensive Plan.

Variances are governed by the provisions of §390-96.G. of the zoning ordinance. In summary, one seeking a variance has the burden of showing that the provisions of the zoning ordinance inflict unnecessary hardship upon the Applicant's property, that there are unique physical circumstances or conditions peculiar to the property, that these circumstances or conditions are not

created by the provisions of the zoning ordinance, that because of such physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance, and that the variance, if authorized, will represent the minimum variance that will afford relief.

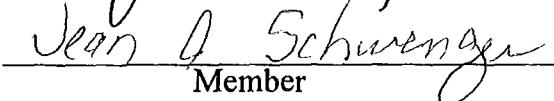
The Board is of the opinion that the special exception for the expansion of the nonconforming use be granted for two of the proposed apartments. To the extent the area of two of the proposed apartments exceeds the 50% expansion limit, a de minimis dimensional variance is granted. The requested variances for a third apartment and the garage are denied. Applicant has failed to meet its burden of showing the existence of a hardship. To the contrary, no hardship exists as the property already serves two buildings, each containing two apartments (by virtue of the special exception, the number of apartments may now be increased from four to six.) Applicant's testimony that the buildings were constructed or renovated to eventually accommodate additional units is not consequential because any such hardship is not on the land.

The request for a determination that the garage is permitted under the zoning ordinance is likewise denied. The proposed structure would clearly be accessory to the property's principal residential use, and therefore falls under the Board's denial of a variance from the 50% limit on expansion of the nonconforming use. Even if the garage would constitute another and different principal use on the property, such use, as explained by the Applicant, would not fit within any of the permitted, special exception, or conditional uses assigned for the SR1-Suburban Residential District.

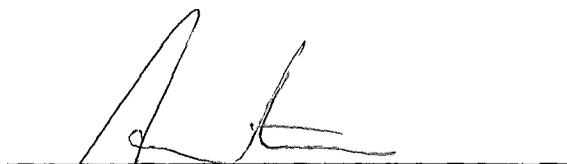
ORDER

AND NOW, this 25th day of April, 2012, on the application of Residences at the Cannery, LLC, regarding the property known as 410 and 416 Rugby Road, it is ORDERED as follows:

1. The application for a special exception and di minimis variance to increase the number of apartment units from four to six units within the existing buildings is granted; so long as there is no enlargement of the buildings;
2. The application for a variance for the addition of a third apartment unit is denied;
3. The application for a variance for the erection of a garage building is denied; and
4. The application for a determination that the proposed garage building meets the applicable zoning provisions is denied.


Chairman

Member

I dissent, as I would not grant the special exception and di minimis variance for the two additional apartments.


Member