

DECISION
OF THE HONEY BROOK TOWNSHIP ZONING HEARING BOARD,
CHESTER COUNTY, PENNSYLVANIA

Re: Application of Vernon MacIntyre

No. 2023 - 8

Date of Application: July 5, 2023

Date of Hearing: August 21, 2023

FINDINGS OF FACT

1. The property which is the subject of this zoning application is located at 3376 Horseshoe Pike, Honey Brook Township, Chester County, Pennsylvania, in the Mixed Use Commercial (MUC) Zoning District and partially within the Floodplain Hazard (FH) District, being Tax Parcel Number 22-7-0077.0100 (the "Property").
2. The applicant is Vernon MacIntyre, the owner of the Property ("Applicant").
3. Applicant filed an Application to the Honey Brook Township Zoning Hearing Board on July 10, 2023, requesting a special exception pursuant to Section 27-802.F.(2) of the Honey Brook Township Zoning Ordinance, as amended (the "Zoning Ordinance") to permit the construction of a proposed driveway within the FH District; requesting a variance from Section 27-602.A. to permit a twin-family duplex residence as a principal use; requesting a second variance from Section 27-602.A. to permit two principal uses on the Property; requesting a variance from Section 27-603.A. to permit a minimum lot width at the building line of 122' when a lot width of 150' at the building setback line is required; and requesting a variance from Section 27-806.H.(1) to permit the construction of a driveway within the wetland margin.
4. The Applicant was represented at the hearing by Robert Jefferson, Esquire.
5. The Honey Brook Township Zoning Hearing Board was represented at the hearing by Christopher J. Hartman, Esquire.
6. Brynn A. Schaffer, a Professional Engineer in Pennsylvania, was certified as an expert in civil engineering and testified on behalf of Applicant.
7. The Property is in the shape of an elongated rectangle, with frontage along Horseshoe Pike.
8. The Property is currently improved with a residential dwelling which has been vacant for approximately five (5) years and is in a state of disrepair.

9. The majority of the Property is encumbered by a stormwater detention basin with associated drainage easements.

10. The area around the Property is a mixture of residential and commercial uses, with the adjacent property to the south having an agricultural use, the adjacent property to the west being a residential development, and the property to the northwest being used for a car wash and a church.

11. Applicant has been attempting to sell the Property for over five years without success.

12. Applicant had received offers from Dollar General and Dunkin' Donuts to purchase the Property; however, zoning issues prevented these sales from concluding.

13. Applicant intends to tear down the existing residential structure and replace it with two new residences in a twin unit arrangement, each residence being 26' by 60'. (See Applicant Exhibit 3)

14. Applicant will rent out each of the residences within the twin dwelling unit.

15. Section 27-602.A. of the Zoning Ordinance provides permitted uses within the MUC Zoning District.

16. Twin dwelling units are not listed as a permitted use within Section 27.602.A.

17. Applicant also proposes to use a portion of the Property for a 100' by 60' contractor's shop, which will be located behind the twin dwelling unit. (See Applicant Exhibit 6)

18. The design of the contractor's shop will be similar to the design of the car wash located northwest of the Property.

19. Section 27-602.A.(35) of the Zoning Ordinance permits contracting shops within the MUC Zoning District by right.

20. Section 27-202 of the Zoning Ordinance defines a contracting shop as "[a] commercial use involving offices and/or supply shops providing services and supplies relating to building, including cement, lumber, heating, masonry, roofing, painting, and similar uses."

21. The contractor's shop will not be used for retail, and is proposed to have one or two employees.

22. The contractor's shop and the twin dwelling unit will each operate as a principal use.

23. Section 27-602.A. the Zoning Ordinance permits one (1) principal use on a lot.

24. Section 27-602.A. of the Zoning Ordinance permits upper-level apartments above a commercial establishment by right.

25. The use of the contractor's shop and the twin dwelling unit on the Property is similar to a use for upper-level apartments above a commercial establishment.

26. Applicant desires for the apartment use and the commercial use to be separated because the separate structures better matches the character of the surrounding area.

27. The variance to permit two principle uses is the minimal variance to afford relief, as the result will be to separate a permitted use that would occur at one building into two principal uses in two separate buildings.

28. The contractor's shop will have a minimum lot width at the building setback line of 122'.

29. Section 27-603.A.(3) requires a minimum lot width at the building line of 150'.

30. The minimum lot width on the Property is a nonconforming deficiency which is the result of the unusual shape of the Property.

31. The nonconformity was created prior to Applicant's possession of the Property and was not created by Applicant.

32. The Property contains a driveway which provides access to the Property from Horseshoe Pike.

33. Applicant proposes to remove the driveway and replace it with a driveway that will permit two-way traffic.

34. The proposed driveway will not increase access; access will remain from Horseshoe Pike and there will only be one point of access.

35. A portion of the Property is located within the FH District due to the presence of alluvial soils.

36. A portion of the proposed driveway will encroach on less than 1,000 square feet of the FH District.

37. Section 27-802.F.(2) of the Zoning Ordinance provides that the construction of a driveway within the FH District is permitted by special exception.

38. The encroachment on the FH District will not result in flooding on the driveway.

39. Any potential flooding that would occur on the driveway would be limited to a small portion of the Property that vehicles would be able to safely avoid.

40. Additionally, Section 27-806.H.(1) of the Zoning Ordinance provides that no portion of the wetland margin shall be regraded, filled, built upon or otherwise altered or disturbed

41. A small wetland is located at the northeast corner of the Property.

42. The driveway will also encroach on less than 1,000 square feet of the wetland margin, in the same area as the FH District encroachment.

43. The driveway will not encroach on the wetland.

44. The driveway will not result in the disturbance of the wetland area.

45. The Applicant will install a privacy fence at the site of the dumpster located near the contractor's shop to screen it from adjacent properties.

46. The remainder of the Property has a natural landscape buffer between the Property and adjoining properties.

47. No outdoor storage for the contracting shop is planned on the Property.

48. At the hearing, Applicant requested relief from Section 27-1411, which states that, unless specified by the Zoning Hearing Board, a special exception or variance shall expire within six months from the date of authorization thereof if the applicant fails to obtain a building permit, a use and occupancy permit, or a subdivision and land development approval, and that the Zoning Hearing Board may extend the variance or special exception for an additional six-month period.

49. The unique circumstances and conditions of the Property prevents the Property from being used in conformity with the Zoning Ordinance, and several attempts by prospective purchasers to use the Property in conformity with the Zoning Ordinance were unsuccessful.

50. The variances will not alter the essential character of the neighborhood or have a detrimental or negative effect on the neighborhood or public welfare.

51. The variances are the minimum variances which will afford relief and represent the least modification possible.

52. The special exception is an appropriate use in the area and is consistent with the character and development of the surrounding area.

53. The special exception serves the health, safety, and welfare of the Township

54. Public notice of this hearing was duly advertised in the Daily Local, a newspaper of general circulation within Honey Brook Township on August 7 and August 14, 2023; adjacent property owners were notified of the hearing by mail on August 3, 2023; and the Property was posted with the notice of the hearing on August 9, 2023. (See Exhibits B-3 through B-5)

55. The Township Engineer submitted a letter, dated August 11, 2023, stating that the Board of Supervisors of Honey Brook Township approved a motion to take no position on the special exception request from Section 27-802.F.(2) and the variance requests from Sections 27-602.A., 27-603.A., and 27-806.H.(1) at the August 11, 2023 regular meeting of the Board of Supervisors. (See Exhibit B-6)

56. The Board provided opportunity for public comment, but none was presented.

57. After closing the testimony at the August 21, 2023 hearing, the Honey Brook Township Zoning Hearing Board announced its decision on the Application

CONCLUSIONS OF LAW

1. The Board has jurisdiction to decide this variance application pursuant to Section 27-1409 of the Zoning Ordinance and Section 909.1 of the MPC, 53 P.S. 10909.1.

2. The Board has jurisdiction to decide this special exception application pursuant to Section 27-1401 of the Zoning Ordinance and Section 912.1 of the MPC, 53 P.S. § 10912.1

3. Section 27-1409 of the Zoning Ordinance and Section 910.2 of the MPC, 53 P.S. § 10910.2 provide that no variance shall be granted unless the applicant can demonstrate to the satisfaction of the Board that:

- a. There are unique physical circumstances or conditions (including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Chapter in the neighborhood or district in which the property is located;
- b. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Chapter and a variance is therefore necessary to enable the reasonable use of the property;
- c. Such unnecessary hardship has not been created by the appellant;
- d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- e. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

4. The Board has determined that the Applicant has met the requirements for the grant of the variances requested under Section 27-1409 of the Zoning Ordinance.

5. Applicant has shown that there exist unique physical circumstances and/or conditions of the Property that create hardships and the variances are necessary to enable reasonable use of Property. The hardships have not been created by the Applicant.

6. Applicant has also established that the variances will not alter the essential character of the neighborhood or district in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

7. Section 27-1410.A. of the Zoning Ordinance provides that the Board shall hear and decide requests for special exceptions pursuant to the following standards and criteria:

- a. The size, scope, extent and character of the special exception request is consistent with the Honey Brook Township and Borough Multi-Municipal Comprehensive Plan and with the purpose and intent of the zoning district involved.
- b. The proposed special exception character and type of development constitutes an appropriate use in the area consistent with the character and type of development in the area surrounding the location for which the request is made and will not substantially impair, alter, or detract from the use of surrounding property or from the character of the neighborhood, the number, extent, and scope of nonconforming uses in the area, and the presence or absence in the neighborhood of conditions or uses which are the same or similar in character to the condition or use for which the applicant seeks approval.
- c. The proposed special exception serves the health, safety, welfare, and the best interest of the Township.
- d. The proposed modification is reasonable in terms of the logical, efficient and economical extension of public services and facilities, such as public water and sewers, police and fire protection, transportation and public schools.
- e. The proposed special exception shall comply with the Township Subdivision and Land Development Ordinance.
- f. The recommendations of the Planning Commission on the proposed development plan should be reviewed, where such plan is required. The Board shall not be bound by such recommendations, nor shall the Board be bound by the action of the Board of Supervisors in relation to the development plan.

- g. The proposed use shall limit the total number of new access points, reduce the need for on-street parking, and encourage the frontage of buildings on parallel marginal roads, or on roads perpendicular to the highway.
- h. The proposed special exception is suitable with respect to traffic on the roads or highways in order to protect streets and highways from undue congestion and provides for adequate access and off-street parking arrangements in order to protect major streets and highways from undue congestion and hazard.
- i. The natural features and processes characterizing the proposed site and its surroundings shall not suffer unmitigated degradation, that the management of stormwater, the provision of water or sewer service, and any other alterations to the site's predevelopment condition, shall be consistent with Township's goals, practices and plans in these regards, and that demand for water and energy by the proposed use shall be minimized to the optimal extent.
- j. All commercial or industrial parking, loading, access or service areas shall be illuminated at night while in use, in accordance with Part 9, General Regulations, and that such lighting, including sign lighting, shall be arranged so as to protect neighboring properties from discomfort or hazardous interference of any kind.

8. The Board has determined that the Applicant has met the requirements for the grant of the special exception requested under Section 27-1410 of the Zoning Ordinance.

9. Applicant has shown that the special exception is consistent with the Honey Brook Township and Borough Multi-Municipal Comprehensive Plan and is of the character and type of development appropriate to the area.

10. Applicant has shown that the special exception serves the health, safety, welfare, and the best interests of the Township.

11. The proposed special exception is suitable with respect to traffic on nearby roads and will not cause the site and its surroundings to suffer unmitigated degradation.

12. Section 27-2004.3 and Section 27-1410.A. of the Zoning Ordinance and Section 910.2(b) and Section 912.1 of the MPC, 53 P.S. §10910.2(b); 10912.1(b) provides that the Board may attach reasonable conditions and safeguards it deems necessary to implement the purposes of the MPC and the Zoning Ordinance.

13. The following conditions are necessary to implement the purposes of the MPC and the Zoning Ordinance:

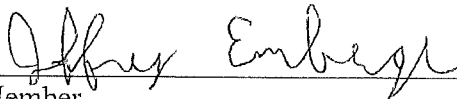
- a. No outdoor storage of equipment or materials is permitted as part of the contractor shop use.

- b. Applicant shall maintain the landscaping buffer on the north side of the Property, and shall maintain and replace the landscaping buffer as needed from time to time in order to provide a buffering effect.
- c. The use of the commercial structure shall be for a contracting shop as defined by Section 27-202 of the Zoning Ordinance.
- d. Applicant shall have nine (9) months for approvals to be obtained under Section 27-1411 of the Zoning Ordinance. Applicant can request an additional three (3) month extension before the Zoning Hearing Board if additional time for approvals is required.
- e. Applicant shall be bound by all testimony and evidence presented at the hearing held on August 21, 2023.
- f. Applicant shall comply with all other applicable Township Codes, Ordinances, and Regulations.

DECISION

AND NOW, this 21st day of August, 2023, the Zoning Hearing Board of Honey Brook Township, hereby APPROVES the request of Vernon MacIntyre for a variance from Sections 27-602.A.; 27-603.A.; 27-806.H.(1); and a special exception pursuant to Section 27-802.F.(2) of the Zoning Ordinance, to permit on the Property the use of a twin dwelling unit; to permit two principal uses on the Property; to permit a minimum lot width at the building line of 122' when a lot width of 150' is required at the building setback line is required; to permit the installation of a driveway within the wetland margin; and to permit the construction of a driveway within the FH District, subject to the following conditions:

- a. No outdoor storage of equipment or materials is permitted as part of the contractor shop use.
- b. Applicant shall maintain the landscaping buffer on the north side of the Property, and shall maintain and replace the landscaping buffer as needed from time to time in order to provide a buffering effect.
- c. The use of the commercial structure shall be for a contracting shop as defined by Section 27-202 of the Zoning Ordinance.
- d. Applicant shall have nine (9) months for approvals to be obtained under Section 27-1411 of the Zoning Ordinance. Applicant can request an additional three month extension before the Zoning Hearing Board if additional time for approvals is required.
- e. Applicant shall be bound by all testimony and evidence presented at the hearing held on August 21, 2023.
- f. Applicant shall comply with all other applicable Township Codes, Ordinances, and Regulations.


Member

Member

Date of Issuance of Written Decision: October 5, 2023.

ANY AGGRIEVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF CHESTER COUNTY WITHIN THIRTY (30) DAYS FROM THE DATE OF ISSUANCE OF THE WRITTEN DECISION.