

BEFORE THE ZONING HEARING BOARD
OF
SCHUYLKILL COUNTY

RE: Application of Monica Williams for a Variance to Section 604 of the Schuylkill County Zoning Ordinance (hereinafter "Ordinance").

BEFORE: Eric Seitzinger, David Ambrose, and Daniel Daub, Members of the Schuylkill County Zoning Hearing Board (the "Board").

MINUTES OF HEARING

Name of Applicant	Monica Williams 455 Valley Street Tamaqua, Pa 18252
Location of Subject Property	23 East Centre Street Mahanoy City Schuylkill County, Pa UPI No. 48-04-0092.000
Owner of Property	Applicant
Zoning Classification	C-1 (Local Commercial District)
Date of Hearing	April 3, 2013
Place of Hearing	Commissioner's Board Room Schuylkill County Courthouse Pottsville, Pa
Appearance (for Board)	Christopher W. Hobbs, Esq.
Appearance (for Objectors)	Joseph Nahas, Esq.
Objectors	Karen Pangonis Flynn; Joanne Pangonis; Nathaniel Smith

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RE: Application of Monica Williams for a Variance to §604 of the Schuylkill County Zoning Ordinance (hereinafter "Ordinance").

FINDINGS OF FACT

After hearing all interested parties and consideration of the evidence presented, the Board finds as follows:

1. Monica Williams ("Applicant") is the owner of the subject property ("Property") which she purchased on December 17, 2012, is situate at 23 East Centre Street, Mahanoy City Borough, Schuylkill County, Pennsylvania and identified by UPI No. 48-04-0092.000.
2. The Property is located in a C-1 (Local Commercial) District under the Ordinance.
3. On February 13, 2013 the Applicant applied for a Zoning Permit to use the Property as a malt beverage distributor.
4. On February 22, 2013 Schuylkill County Zoning Officer Susan A. Smith denied the permit application which denial stated:

Applicant states loading will occur from both Centre and Railroad Sts. §604 of the Ordinance only permits loading along an alley. Railroad Street does not meet the definition of an alley listed in §202.
5. On March 4, 2013 the Applicant filed an Application for Hearing before the Zoning Hearing Board for "other" relief, specifically §604-Loading/Off Loading.
6. A hearing on the application was scheduled for April 3, 2013 at 7:00 p.m.
7. Public notice of the hearing was given by advertisement in the Pottsville Republican Newspaper on March 19, 2013 and March 25, 2013.
8. Notice was given by mail to the parties; the Notice being sent on March 18, 2013.
9. Notice was also posted on the property on March 18, 2013.
10. The application, notices, and initial Zoning Permit Application are part of the Board's file which was made part of the record.

11. A hearing was held on April 3, 2013 at 7:00 p.m. in the Commissioner's Board Room at which time the Applicant testified along with her husband and her architect, Gary Hitzemann, in support of the application.
12. Objectors Karen Pangonis Flynn, Joanne Pangonis, and Nathaniel Smith testified in opposition to the application and also presented the testimony of Mr. William Stokes as a fact witness.
13. The character of the neighborhood in which the Property is located is commercial.
14. Malt beverage distributors are permitted uses in C-1 Districts under the Ordinance.
15. §604 of the Ordinance requires commercial uses to have off-street loading, stating that:

Each use shall provide off-street loading facilities, which meet the requirements of this Section, sufficient to accommodate the maximum demand generated by the use and the maximum sized vehicle, in a manner that will not routinely obstruct traffic on a public street and traffic entering and exiting the lot. If no other reasonable alternative is feasible, traffic may be obstructed for occasional loading and unloading along an alley, provided traffic has the ability to use another method of access.
16. §202 of the Ordinance defines an alley as:

A motor vehicle accessway that provides access to two or more lots and which is typically located to the rear or a side of a lot, and which has right-of-way width of less than twenty feet.
17. The front of the Property does not have off-street loading and abuts Centre Street, a major thoroughfare in Mahanoy City.
18. The rear of the Property does not have off-street loading and abuts Railroad Street, a one-way, seldomly utilized secondary street that is 28' wide from the curb to curb (railroad wall).
19. Railroad Street does not constitute an alley because its width is in excess of 20'.
20. Had Railroad Street been less than 20' wide, the Zoning Officer could have approved the Zoning Permit administratively.¹

¹ The issues presented to the Board highlight a flaw in the Ordinance. The Property is located in a commercial district and is surrounded by commercial properties none of which comply with the off street loading requirement. While it is reasonable to exclude street loading on a major thoroughfare, these commercial establishments (which are located in a commercial district) are in violation of the Ordinance.

21. Although the Applicant requests "other" relief, she requests, as a matter of law, a variance to §604 of the Ordinance. The Ordinance defines a variance as:

The granting of specific permission by the Zoning Hearing Board to use, construct, expand, or alter land or structures in such a way that compliance is not required with a specific requirement of the Zoning Ordinance. Any variance should only be granted within the limitations of the Pennsylvania Municipalities Planning Code. See §111.²

22. The requested relief does not meet the criteria of a de minimus variance as defined in Appletree Land Development v. Zoning Hearing Board of York Township, 834 A.2d 1214 (Pa. Cmwlth. 2003); however, because the Board is not considering a use variance, the requirements are eased consistent with the Commonwealth Court's holding in Society Created To Reduce Urban Blight v. Zoning Hearing Board of the City of Pittsburgh, 771 A.2d 874, 877-878 (Pa. Cmwlth. 2001).

23. Although the standards may be eased, the Applicant still has the burden of satisfying the elements of Section 111(d)(3) which states:

a. The Board shall hear requests for variances filed with the County staff in writing.

b. Standards. The Board may grant a variance only within the limitations of state law. As of the adoption date of this Ordinance, the Municipalities Planning Code provided that all the following findings must be made, where relevant:

i) There are unique physical circumstances or conditions (including irregularity, narrowness, or shallowness of lot size or shape, or exception 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 Ordinance in the neighborhood or district in which the property is located.

ii) 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 the

Furthermore, the Ordinance allows an alley (which is significantly slimmer than a side-street) to be used loading but not a side street in excess of 20'. How an entire block where loading and unloading is required yet physically impracticable can be zoned commercial is a question for the framers of the Ordinance, not the Board.

² A malt beverage distributor is a permitted use in a C-1 District thus the application does not constitute a use variance but a variance to a specific requirement under the Ordinance.

variance is therefore necessary to enable the reasonable use of the property;

iii) Such unnecessary hardship has not been created by the appellant;

iv) 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

v) 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.

c. In granting any variance, the Board may attach such reasonable condition and safeguards as it may deem necessary to implement the purpose of this Ordinance.

24. There are unique physical circumstances or conditions peculiar to the Property that cause the Applicant a hardship.

Discussion:

The Applicant and her architect both testified that the physical circumstances of the Property do not allow for off-street loading. Both objectors Karen Pangonis Flynn and Joann Pangonis confirmed that none of the commercial establishments located in the neighborhood allow for off-street loading and unloading and agreed it would be an impractical change to physical characteristics of the buildings to allow off-street loading and unloading. Both Mrs. Flynn and Mrs. Pangonis (who own and operate a pharmacy and hardware store in the same block) use Railroad Street for loading for their respective businesses even though the Ordinance prohibits such conduct.

25. Because of the physical conditions of the Property, without the approval of a variance the Property cannot be developed as a commercial establishment under the Ordinance because off-street loading and unloading is required.
26. The Property is in the same condition as when purchased by the Applicant thus the Applicant did not create the hardship.
27. If authorized, the requested relief 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.

Discussion:

Objectors Flynn and Pangonis admitted that they currently use Railroad Street for loading for their respective businesses which are located in the same block as the Property and that tractor trailers provide such loading. Furthermore, both admitted that Railroad Street is a one-way street. It is clear from the testimony of all witnesses that Centre Street is a main thoroughfare and is readily available for traffic should Railroad Street be temporarily blocked by a tractor trailer.³

Technically, both Objectors Flynn and Pangonis are violating the Ordinance by permitting loading to their commercial establishments on Railroad Street yet what is acceptable for them does not seem to be acceptable for the Applicant. The Applicant testified that she has visited the Property in excess of twenty (20) times and that Railroad Street is seldom used for traffic. Furthermore, she testified that she would not receive more than one tractor trailer delivery per week and that the time for such delivery would be limited to one-half hour. Objectors Flynn and Pangonis attempted to distinguish their off-street loading use by stating their deliveries are not as long and no other properties would be blocked. However, they acknowledged that the District is commercial, none of the buildings would permit off-street loading or unloading, and the times in which their use would be interfered with is minimal at best. Railroad Street is not a main thoroughfare but is a one-way street and the only logical street for loading and unloading to the commercial establishments in that block. There is no argument that the block is not commercial in nature thus as commercial establishments, it is more than reasonable to expect tractor trailer deliveries to those commercial establishments during regular business hours. An additional tractor trailer delivery, even up to forty-five minutes, will have minimum impact and cause minimum inconvenience to the other commercial establishments and residents of the apartments within the block.

28. The requested relief will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Discussion:

The Applicant is only asking permission for what will account to one tractor trailer delivery in the rear of the building per week for a limited period of time.⁴ Should Railroad Street have been eight feet less, the Applicant could block that street as many times as she would have liked which, of course, appears to be a flaw of the Ordinance itself. If the Ordinance is going to provide commercial

³ Railroad Street would only be completely blocked by a tractor trailer should cars be parked along the railroad wall on the opposite side of the back of the Property. If the deliveries cause a major problem, the Borough can eliminate parking along Railroad wall of Railroad Street. This is a commercial district and it is entirely reasonable to expect deliveries by tractor trailers to commercial establishments by way of side streets such as Railroad Street.

⁴ The other deliveries Applicant will receive will be by van or smaller truck which will not cause Railroad Street to be completely blocked and thus should not cause an issue.

districts in areas where there is not off-street loading or unloading ability but has such requirements, the Ordinance, as a matter of law, prevents the use. But for a variance, this flaw cannot be remedied.

29. The Board finds that limiting the tractor trailer deliveries to the Property to forty-five (45) minutes and that such deliveries take place during normal business hours of 7:00 a.m.-7:00 p.m. are reasonable conditions that should further minimize disruption and inconvenience with neighboring properties. All other deliveries by other vehicles will not cause any interference or disruption and thus should be allowed on an unlimited basis throughout the week.
30. If approved, traffic on Railroad Street will not be routinely obstructed and if any lot on Railroad Street is obstructed, such obstruction will be random and for short periods of time.

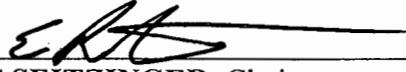
CONCLUSIONS OF LAW

1. The Board is empowered with exclusive jurisdiction to hear and render final adjudications in variance requests.
2. The Board finds the testimony of Monica Williams, her husband, and Gary Hitzemann credible.
3. The Board does not find the testimony of Karen Pangonis Flynn credible with regard to her statements that Railroad Street is heavily traveled and that the tractor trailer deliveries to the Property will alter the essential character of the District and substantially interfere with the use of her business, garages, and apartments.
4. The Board does not find the testimony of Joann Pangonis credible as it relates to Railroad Street and the possibility of the requested relief altering the essential character of the neighborhood and interfering with her business.
5. The Board does not find the testimony of Nathaniel Smith credible as he did not provide any substantive testimony but only agreed with the testimony provided by Objectors Flynn and Pangonis.
6. The Board finds the testimony of William Stokes partially credible as to the dimensions of a tractor trailer but did not find his testimony with regard to the traffic on Railroad Street or the amount of time required for deliveries credible. Furthermore, Mr. Stokes has an interest in a competing beer distributor.
7. The Applicant must satisfy the review criteria enumerated in §111(D)(3) of the Ordinance to be granted a variance.

8. The Board finds that the Applicant has satisfied the review criteria to justify the award of a variance and thus grants the variance request to §604 of the Ordinance with the condition that all tractor trailer deliveries be limited to forty-five minutes and take place between the hours of 7:00 a.m.-7:00 p.m. Monday through Friday. The Applicant can use Railroad Street for loading and unloading for all other deliveries on an unlimited basis.

DECISION

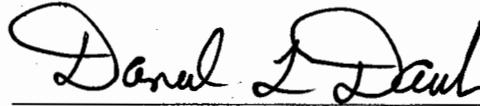
AND NOW, this 2nd day of May, 2013, the Board GRANTS the Applicant's request for a variance to §604 of the ordinance and thus permits the Applicant to use Railroad Street for loading and unloading consistent with the specific conditions aforementioned and directs the Zoning Officer to issue a permit consistent with this decision.



ERIC SEITZINGER, Chairman



DAVID AMBROSE, Member



DANIEL DAUB, Member