

The regular meeting of the East Hempfield Township Zoning Hearing Board (ZHB) was held on Monday, November 20, 2023 at 7:00 p.m. at the Township Municipal Building, 1700 Nissley Rd, Landisville, PA. Members present were Mark Hansen, Greg Kile, John Bingham and Andrew Loose. Also present were ZHB Attorney Jason Hess, Zoning Officer Beth Graham, Township Manager Cindy Schweitzer and a court reporter. Present via Zoom was Elam Herr, Member and EHT Planning Director Nathaniel Sturgis.

The meeting was called to order at 7:00 p.m. by the Vice-Chairman Hansen, who led the Pledge of Allegiance.

Cases were properly advertised and posted.

Minutes

Mr. Herr made a motion to approve the minutes as presented. The motion was seconded by Mr. Loose. The motion carried 5-0 in favor.

New Business

Case No. 2468: Michael Walborn, 1213 Woodworth Dr., seeking a variance to front yard setback.

Present was Michael Walborn, 1213 Woodworth Dr.

Mr. Loose made a motion to approve the variance to section 270-3.5 (E) 2 to allow for a pool deck into the front yard setback with the following conditions: Cannot encroach more than 2.8' into the setback allowing for 27.2' setback. Mr. Bingham seconded the motion. The motion carried 5-0, in favor

Case No. 2469: Winters Investments, LLC, 1500 Wilson Ave., seeking a use variance.

Present was Michael Grab, Nikolaus & Hohenadel; Kevin Wilson, 1500 Wilson Ave.; Mel Winters, 3124 Nolt Rd.

Mr. Grab called Mr. Wilson to testify. Mr. Wilson confirmed that he purchased the property in 2017 and based on agreement of sale at the time he was under the understanding that it was zoned Commercial. The use at the time was a sub fundraising business downstairs and the upstairs was used for residential purposes that was leased to a tenant, with a lease agreement dated 2009. Mr. Wilson also purchased the fundraising business in a separate transaction at the time he purchased the property. Mr. Wilson continued running the business from the property and when the tenant moved out, Mr. Wilson made it his residence. Mr. Wilson also confirmed that a lease has been in place with the Kentucky Fried Chicken (KFC) prior to his purchase, allowing them to use the parking lot on the property. The lease expires in 2027.

Mr. Hess asked if Mr. Wilson was aware of a prior 1995 ZHB decision (Case 1005)? Mr. Wilson stated at the time of purchase he believed the property was in compliance with the township because there were leases in place. He became aware of the issues when he listed the property for sale and prospective buyers were calling the township to confirm zoning. Until that time Mr. Wilson believed the property was in full compliance with the zoning ordinance.

Mr. Hess asked if any changes were being proposed to the property? Mr. Grab stated there are no changes being proposed to the outside of the property. Only the interior and the use would change.

Mr. Grab called Mr. Winters to testify. Mr. Winters stated he currently operates his residential HVAC business of 8 years from 1007 Nissley Road. He confirmed he has an agreement of sale for the property located at 1500 Wilson and would use the bottom portion to store the HVAC equipment. The employees would load their vehicles in the morning and then leave for the day to their jobs and the upstairs would be used for office space. He stated he would have 7 employees with hours of operation being 8:30am – 4:30pm, Monday through Friday. They may work some Saturdays in the summer, 8:30am – 12:30pm. He confirmed there would be no outdoor storage of materials, but there would be a 7' x 14' trailer stored on the property

for transporting material to jobs. He also stated that deliveries are normally twice per week, by local suppliers, brought in by 28' box trucks. He confirmed there would be no negative impact to surrounding community and no night time activity and that the property has adequate parking for the proposed use. Mr. Wilson confirmed he has no plans to expand the building or impervious surfaces and that it is very conducive to the commercial operation he has and he is asking for the minimum variance relief for him to use the property.

Mr. Loose asked if there would be any customers coming to the location to which Mr. Wilson responded there would not be. He also asked how many parking spaces are currently on the property and if signs will be installed? Mr. Wilson answered there are 9 spaces, with additional space to create more lined parking areas and he will be putting up a building sign as well as a freestanding sign at the entrance on Conestoga Blvd.

Mr. Hansen took administrative notice of exhibits 1-7 and administrative notice of Cases 9, 568, 738, 991 & 1005.

Mr. Hansen made a motion to grant a variance to section 270-3.5 (D) to allow for a commercial use in a residential zone with the following conditions that the business hours will stay as testified to: Monday – Friday and Saturdays in the summer and that all existing conditions from previous cases will remain in effect unless overridden by the variance request this evening, the sign must be put on the building facing Conestoga Blvd. and the standard conditions. The motion was seconded by Mr. Loose. Mr. Herr added that although the property is zoned residential, Wilson Ave. separates the true residents from commercial properties that are facing Conestoga Blvd. And the lot in itself is probably not conducive to a residence and believes it is a justification for granting the variance. The motion carried 5-0, in favor.

Mr. Herr excused himself from the meeting temporarily.

Case No. 2470: Eric Wardrop & Tasha Plunket, 135 Root Road, seeking a modification of conditions.

Present was Matt Crème, Nikolaus & Hohenadel; Eric Wardrop & Tasha Plunket, 341 Spring Haven Dr.

Mr. Crème presented the case to the board informing them that it is request for the modification of condition that was imposed in a decision by the Zoning Hearing Board in 1996. The application at that time was for the approval of the quota of subdivision rights for single-family dwellings from an agriculture zoned property. As a consequence of approving the three subdivisions and three single-family dwellings, the board imposed a condition and directed that it be reflected in a plan note that no dwellings shall be erected and no additional residential lots should be created from the fourth lot which was designated as the remaining lands and that with the creation of lots 1, 2 and 3, the quota of residential dwellings and residential lots are exhausted. He stated that they are not asking that it be changed at all, they are not asking for the condition to be modified in any way to permit additional subdivisions and additional single-family dwellings on the subdivided lots. The request is to permit a dwelling as an accessory structure and use to the proposed agricultural operation for the remaining lands which meet the definition of the township for a farm parcel.

Mr. Wardrop informed the board that his wife, Tasha, runs a hunter-jumper business and the plan is to construct a high-end riding facility with 14-16 horse stalls, including an indoor ring, an ancillary building and the remaining would be pastures. They currently lease a barn that is 20-minutes from their home, making it difficult to manage the horse care. This property would allow them to build their custom setup, but they need the ability to have a dwelling on the property.

Mr. Hansen took administrative notice of Case 1051.

Mr. Hansen made a motion to grant a modification of condition #1 in Case 1051 to allow for a dwelling to be placed on the property of what was named as the remaining farmland and the following conditions: standard conditions, existing conditions in 1051 not affected by this decision and the property can no longer be subdivided. Mr. Bingham seconded the motion. The motion carried 4-0, in favor.

Mr. Herr re-entered the meeting via Zoom.

Case No. 2471: Acadia Real Estate Holdings, LLC, 3040 Industry Rd., seeking a special exception.

Present was David Tshudy, Troutman Pepper Hamilton Sanders, LLP; Matt Rice, Division President - Acadia Healthcare; Brett Lechleitner, Acadia Healthcare; Daniel Levensgood, Troutman Pepper Hamilton Sanders LLP & Jared Burns, Troutman Pepper Hamilton Sanders, LLP.

Mr. Tshudy presented the case. Mr. Tshudy informed the board that Acadia desires to use the property in part as an opioid treatment center and in part as an inpatient non-hospital residential treatment and rehabilitation & detoxification facility. The property is located in the Enterprise district and the Opioid Outpatient Center use is permitted by-right as a Professional, Scientific and Technical Office definition. The inpatient facility is neither permitted nor prohibited in any zoning district in the township. Acadia is requesting special exception to permit the use.

Mr. Hansen questioned if a Community Rehabilitation Facility is not what he is asking for to which Mr. Tshudy responded it is not what they are asking for. Mr. Hansen then stated that he believes a Personal Care Home or Shelter Care Home would fall within what they are asking for. Mr. Tshudy stated that the terms are not defined in the ordinance.

Mr. Tshudy called Mr. Rice to testify. Mr. Rice described the proposed facility as being a 10-female & 40-male that Acadia is a non-hospital-based drug & alcohol program including detox that is 24-hour nursing care with a 7-8 patient wing, residential which is two levels of care: rehabilitation and dual-diagnoses (drug/alcohol with some psychiatric issues such as depression/anxiety/bi-polar/mood disorders). He stated that they have 24-hour staff of nurses and behavioral health associates, plus therapists and counselors during the day and evening. Once clients are admitted they do not leave the facility to go to work. The hours of operation for the outpatient side would usually be 5:00am – 11:00am. Mr. Rice stated that they have a lot of governing bodies with the main license required to operate being the Department of Drug & Alcohol Programs. They are also governed by the Lancaster Single-County Authority, managed care organizations and the Department of Human Services and Acadia is nationally accredited by CARP.

Mr. Hansen asked why this location in the Enterprise zone is better than a Campus zone. Mr. Rice responded that an industrial area works out best because there is not a lot of cars driving by or foot traffic.

Mr. Hansen asked why this doesn't fit under a Community Rehabilitation Facility. Mr. Rice responded that the facility is similar to a nursing home or assisted living in that they usually have two people in a room with 24-hour nursing care, with physicians and psychiatrists coming in. Mr. Hansen then said that under the state definition this would fall under a Personal Care Home, making it an allowable use in the Campus zone. He believes that it also falls under a Community Rehabilitation Facility making it allowable in the Enterprise zone meaning he would then need a variance.

Mr. Tshudy stated that being limited to six clients is not at all close to the industry standard for this type of facility and it's a group living quarters, which is more of a group home, group living situation rather than an in-patient type of facility. Mr. Tshudy said that Personal Care Home is not a defined term under the township ordinance so they can't determine if it is that. It is an in-patient rehabilitation facility, as a in-patient non-hospital residential facility as that term is defined by the state regulatory court. Mr. Rice commented that a Community Rehabilitation Facility does not offer detoxification and Acadia has a detoxification wing with 24-hour nursing and doctors.

Mr. Hess asked if there was a request made to the township for a written determination. Mr. Tshudy responded stating that early on they had and the response was that it is a Community Rehabilitation Facility, without knowing the size and intensity of the program and after that there was a telephone discussion with the Planning Department where they said it was a use not provided for.

Mr. Hess asked that other than the limit of six beds, would what you're proposing be consistent with the definition of Community Rehabilitation Facility and also the criteria. Mr. Tshudy responded saying that it's consistent with the criteria with the exception of six-beds, but it's not consistent with the definition because the definition begins with group living quarters and this is an in-patient treatment facility.

Mr. Hess asked Mr. Rice if he is familiar with the state having a specific licensed use for a Personal Care Home. Mr. Rice responded saying that there are Half-Way Houses and Recovery Houses which are both six people who live together, with no nursing. There is some counseling during the day and it's usually a couple of groups per day and then they go to work. This is intense, 6-8 hours per day of therapy with 24-hour nursing, plus counseling and doctors and psychiatrists coming in. Mr. Hess asked if that what he described is what the state licenses as a Personal Care Home. Mr. Tshudy responded stating that a Personal Care Home is defined by the township ordinance. Mr. Rice stated that it would not be called a Personal Care Home.

Mr. Hansen said that the state does not dictate to the township exactly what they have to define, the township is responsible to define their own and at this point everything that has been described fits into either a Personal Care Home/those Shelter Home or a Community Rehabilitation Facility which are both allowable uses in the township. Mr. Tshudy responded saying it is none of those, it is something else. Mr. Hansen asked where should the township make the cut off for allowable uses. Mr. Tshudy answered by saying that it would be similar to sizes of houses, warehouses or any facility. It is limited by the land, size of building, parking, dimensional and performance criteria that sits with every other use.

Mr. Herr stated that following on the two arguments, if a large building becomes available the applicant could theoretically put 300 beds in that building and it would be an acceptable use no matter what the ordinance may say. Mr. Tshudy responded saying that provided it meets the other performance and licensing standards.

Mr. Hess asked if they said what the uses in the district this is similar and compatible with. Mr. Tshudy responded saying that other than the basic intent of being away from residential it is compatible with being Professional, Scientific and Technical Offices, municipal uses and although not the same as Community Rehabilitation Facilities and Professional Facilities all of which are permitted by-right or conditional use in the Enterprise zone. It is not compatible with residential and residential uses are not permitted in the Enterprise zone.

Mr. Bingham asked how a client is discharged from the facility. Mr. Rice answered that when the staff feels they've completed what is required discharge papers will be written. A client could discharge themselves. If a client leaves early and wants to come back they would be re-evaluated. Most clients are motivated to stay in the program.

Mr. Hess announced that the Personal Care Home/Shelter Care Home definition was found under Dwelling Unit Terms & Phrases. It is defined as "Personal care homes provide safe, humane, comfortable and supportive residential settings for adults who do not require the services in or of a licensed long-term care facility, but who do require assistance or supervision with activities of daily living or instrumental activities of daily living, or both. Residents who live in personal care homes receive the encouragement and assistance they need to develop and maintain maximum independence and self-determination".

Mr. Hansen took administrative notice applicants exhibits 1-7.

Mr. Herr motioned to take the 45-days allowable under the MPC to render a decision. Mr. Loose seconded the motion. The motion carried 5-0, in favor.

Mr. Tshudy asked if he could present a written memorandum of law on the issue. Mr. Hansen requested he submit it to the township next week and they will get it to the board.

There being no other business, Mr. Hansen motioned to adjourn the meeting at 9:06pm.