

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
TERRY STEELY : **YORK COUNTY, PENNSYLVANIA**
(S & S SHEET METAL LLC) : **DOCKET NO. 2014-07**

DECISION GRANTING A SPECIAL EXCEPTION
SUBSTITUTING A NON-CONFORMING USE
IN THE RESIDENTIAL MIXED USE DISTRICT

The Applicant applied to the Zoning Hearing Board for a permit¹ to locate his sheet metal duct work business at the premises at 651 Old York Road, Eters, PA 17319, in the Residential Mixed Use District of Fairview Township. The hearing was held on the application on August 21, 2014, at 7:00 p.m. at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, Pennsylvania 17070.

FINDINGS OF FACT

1. The Applicant is Terry Steely, 760 Garriston Road, Lewisberry, PA 17339. The applicant's business, which is the subject of this hearing, is S & S Sheet Metal, LLC, currently operated from the applicant's residence in Newberry Township, 760 Garriston Road, Lewisberry, PA 17339.
2. The property at 651 Old York Road is owned by Frederick and Ruth Wolf, 649 Old York Road, Eters PA 17319. It is located in the Residential Mixed Use District of Fairview Township. The property is under a contract for sale to the applicant, subject to zoning use contingencies.
3. The 651 Old York Road property is 1.02 acres in area with frontage on Old York Road. It is improved with a commercial building and a residence. The commercial building includes a loading dock, warehouse/storage space, and finished area useable for office space or other uses. There are parking

¹ The application requested a "variance to continue using the property as it has been used for 39 years based on previous practice" and cited "Article XI Nonconformities."

areas on both the north and south sides of the commercial building.

4. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.

5. Eric Wolf, 1877 NW 85th Drive, Coral Springs, FL 33071, testified to the historical uses of the property. It was purchased by the Wolf family in 1972 and was used as a restaurant and paper supply business until approximately 2005. During that period, custom drapery and window dressings were fabricated on site. The restaurant and paper supply business had a retail storeroom on the site and it was also the base for a wholesale supply business. There were routinely 10 to 20 retail customers daily and tractor trailer deliveries to the site twice a day, as well as 2 to 3 delivery trucks loading and delivering out from the site daily. There were up to 10 employees in the business. After the restaurant and paper supply business closed, a hotel furniture moving and renovation business, which included manufacture of light cabinetry, operated from the site until 2013. Continuously since 1972 there has either been commercial and light manufacturing business at the site or it has been held for sale for those purposes.

6. The uses of the property since 1972 establish that the commercial and light fabrication/manufacturing uses are lawful, non-conforming uses for the 1.02 acre parcel. The residential use of the home on the parcel is also a lawful second principal use of the site.

7. The applicant's business is described as a "light industrial business [which] fabricates sheet metal duct work by bending and folding sheet metal that is used in homes and businesses." The applicant currently employs 3 persons full time, in addition to himself, and plans to add another 3 full time employees in the foreseeable future. Mr. Steely wishes to locate to a larger facility, not adjacent to his residence, as is his current location. He testified that the existing commercial facilities at 651 Old York Road fit his business better than industrial park locations.

8. In terms of impact at the site, the applicant's business will not have retail traffic. There will be deliveries daily, usually one but a maximum of two. The deliveries are by 24 foot box trucks, no

tractor trailers. There will be no outside storage of materials. The 8 to 9 parking spaces on site will be more than adequate for all employees, vendors or occasional customers. Mr. Steely plans to insulate the existing doors for sound dampening. His bending and folding equipment does not generate substantial noise. A pneumatic hammering tool will be used 1 hour per day and the proposed insulation will limit any noise from that tool outside the building. No hazardous wastes are generated by the business. Exit vents from the fabrication equipment will be away from the residences. Paving of the parking area is planned for 2015.

9. There is shared driveway access for the business uses, to the residence on the site, and to an adjoining residence.

10. Ms. Denise Banks, 647 Old York Road, the neighboring resident to the north expressed concern for any traffic impact upon her residence.

DISCUSSION

This application was submitted as a Request for Variance and was advertised as such. However, the narrative of the application made clear that the intention is to take advantage of, and succeed to, the commercial and light fabricating uses that have taken place at the property since 1972. The Fairview Township Zoning Ordinance Section 1105 authorizes the Zoning Hearing Board to grant a Special Exception for a Change of Non-conforming Use when certain criteria are met. Since a Special Exception is a lesser deviation from the Zoning ordinance than a use variance, and the proposed use of the property has been expressly advertised in the Notice, suggesting a variance was requested, the Zoning Hearing Board may consider the applicant's request as one for a Special Exception to Change the Non-conforming Use. That Special Exception requires:

1. That the proposed use be in general conformity with the zoning district neighborhood and area;

2. That the external impacts associated with the use be equal to or less than the existing non-conforming use;
3. That the character of the use be similar to the character of the existing non-conforming use;
4. That the location not endanger the health or safety of the public nor deteriorate the environment nor create a nuisance condition;
5. That the applicant furnish evidence that any hazardous waste will be properly disposed of;
6. That the use will comply with all pertinent township requirements that it may be subject to;
7. That the hours of operation and management plan and other obligations under Parts 7 and 12 of the Zoning Ordinance be followed.

The testimony and evidence at the hearing clearly established that commercial and light fabrication/manufacturing has been a continuous use of this property since 1972, or that the property has been held for sale for such purposes during that time. Therefore, the non-conforming rights for the uses as a restaurant and paper supply business and a hotel renovations business are present. The applicant's proposed sheet metal duct work fabrication business will in several respects have less impact on the site and the neighborhood than the prior businesses did. The traffic, both truck and vehicular, to the business will be less than the paper and restaurant supply business had been. There will be little if any noise at the site. There are no hazardous wastes involved in the operation. Parking can be readily accommodated and the maximum number of employees planned by the applicant is lower than the number present at some times during the prior uses. On the basis of these findings, the Special Exception to Change the Non-conforming Use should be granted.

CONCLUSIONS

1. Changes of non-conforming uses are allowable as Special Exceptions under Fairview Township Zoning Ordinance Section 1105, provided the criteria set forth in the Ordinance are met. The Zoning Hearing Board may attach reasonable conditions to the grant of such Special Exceptions.

2. The applicant's proposed use meets the criteria established under the Ordinance in Section 1105 and therefore the application for a Special Exception should be granted.

3. The Special Exception should be subject to the following conditions:

(A) that the applicant's business hours of operation be between the hours of 7 a.m. and 5 p.m., weekdays, with occasional minimal weekend operation of fewer hours per day, in accordance with the modifications as described in the applicant's testimony;

(B) that the business be restricted to the one-acre tract devoted to the commercial activity; and

(C) in view of that fact that the driveway from Old York Road onto and through the property is used by multiple residences as well as the business use, parking spaces shall be delineated for employees and business use, leaving open a clearly defined area for ingress and egress to and from the two residences which use the property for access.

DECISION

On the basis of the foregoing findings and conclusions and on the basis of all the testimony and evidence presented at the hearing, the application for a Special Exception is granted subject to the following conditions:

(A) that the applicant's business hours of operation be between the hours of 7 a.m. and 5 p.m., weekdays, with occasional minimal weekend operation of fewer hours per day, in accordance with the modifications as described in the applicant's testimony;

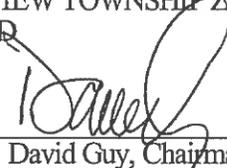
(B) that the business be restricted to the one-acre tract devoted to the commercial activity; and

(C) in view of that fact that the driveway from Old York Road onto and through the property is used by multiple residences as well as the business use, parking spaces shall be delineated for employees and business use, leaving open a clearly defined area for ingress and egress to and from the two residences which use the property for access.

The application was approved upon the motion of Mr. Guy, seconded by Mr. Shaffer, and adopted 3-0 by the Board members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING
BOARD

Dated: September 17, 2014

By: 
David Guy, Chairman

Distribution:
Applicant