

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
WILLIAM L. HOLJES and : **YORK COUNTY, PENNSYLVANIA**
KRISTEN M. HOLJES : **DOCKET NO. 2020-02**

DECISION GRANTING A SPECIAL EXCEPTION FOR A USE NOT OTHERWISE PROVIDED FOR IN THE RESIDENTIAL MIXED-USE DISTRICT

The Applicants applied to for a variance from Section 300-20, Permitted Uses, or in the alternative a special exception under Section 300-4, Interpretation and Uses Otherwise Not Provided For, to utilize the property for their landscaping business at 844 Fishing Creek Road, New Cumberland, PA 17070, in the Residential Mixed-Use District of Fairview Township. A hearing on the application was held on June 18, 2020, at 6:30 p.m., at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.¹

FINDINGS OF FACT

1. The Applicants are William L. Holjes and Kristen M. Holjes, 8 Cypress Place, Camp Hill, PA 17011. Phillip Payne is the legal owner of the 2.145-acre parcel of land located at 844 Fishing Creek Road, New Cumberland, PA which is the subject of the hearing. The aforesaid parties entered into an Agreement of Sale dated November 19, 2019, which gives Applicants the legal right pursuant to the Pennsylvania Municipalities Planning Code to request

¹ The hearing was originally scheduled, and public notice was made for March 19. The hearing could not be held at that time, however, in view of the coronavirus pandemic and the Emergency Orders of the Governor and the Fairview Township Board of Supervisors limiting public meetings. The Board therefore continued the hearing until April 16, May 21, and finally June 18 when it could be held in accordance with the Governor's modified emergency orders and pursuant to Act 15 of 2020 which authorized local governmental meetings using approved telecommunications devices. A supplemental public notice, providing for the Act 15 procedures, was made for the June 18 hearing date and time.

the instant hearing as parties with a contractual interest in the property which is the subject of the application.

2. 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.

3. The Applicants were represented by Ronald Lucas, Esquire, *Stevens & Lee*, 17 N. Second Street, 16th Floor, Harrisburg, PA 17101. Witnesses testifying on behalf of the Applicants were: William L Holjes; Diane Ramp, *Re/Max First Advantage*, 6375 Mercury Drive, 101, Mechanicsburg, PA 17050; James Helsel, Jr., *Helsel, Inc., Realtors*, 3438 Trindle Road, Camp Hill, PA 17011; and Phillip Payne of 468 Ridge Road, Lewisberry, PA 17339.

4. The subject property is in the Residential Mixed-Use District of Fairview Township. The property is located at the southwestern quadrant of a four-way intersection formed by Lewisberry Road (west and north), Fishing Creek Road and Ironstone Road. Coming from the west, Lewisberry Road makes a 90-degree curve to the north. Ironstone Road intersects with this 90-degree curve at an acute angle and Fishing Creed Road curves in from the east and intersects at the same point forming a “K” shape. Traffic heading northbound on Lewisberry Road is not required to stop and southbound traffic on Lewisberry Road is subject to a left-turn stop only.

5. Fairview Township Codes Administration Director and Zoning Officer, Stephen Waller, testified to the history of the property under township zoning ordinances. Prior to being placed in the “Residential Mixed-Use” zoning district in 2013 with adoption of the current zoning ordinance, the subject property had since 1968 been zoned in the Commercial or Commercial Neighborhood District and it had been for many years used as a restaurant. However, the restaurant went out of business prior to the purchase by the current owners and the

principal building was demolished. Consequently, the nonconforming commercial use was extinguished, although two accessory buildings used in the commercial business remain on the property.

6. Mr. Holjes testified to his landscaping business and his plans for the property. He intends to use the property for the storage of mulch, stone, salt, and other materials used for landscaping/hardscaping projects. He further indicated that during the winter months, the business would be providing snow removal services. There will be no retail business conducted at the property. Equipment used in the landscaping and snow removal businesses will be housed on the site. Hours of operation will be from 7:00 am – 5:00 pm, Monday through Friday and occasionally on Saturdays depending upon the weather. Employees will arrive in the morning, gather supplies and materials, and then return in the evening. However, the business offices and administrative support for the landscaping business will not be at this location.

7. Mr. Holjes intends to improve the two (2) existing structures on the property by enclosing them so that they can be used as garages for equipment and supplies. He also proposes to construct bins on the site which will be used for storage of materials.

8. The proposed site plan prepared by Akens Engineering Associates, Inc., was presented as Applicants' Exhibit A-5 and is attached to and incorporated in this decision. The plan shows the addition of tree screening along Fishing Creek Road except in areas where the existing driveways to and from the property are located; tree screening along Lewisberry Road where an existing structure is presently located; and vegetative screening. Additional aerial and ground-level photos were presented as Applicants' Exhibits A-1 through A-4.

9. Diane Ramp, the listing real estate agent, testified that the property was listed in October 2019 and immediately afterwards, she received several inquiries for potential commercial uses for the property including HVAC, tree/forestry contractors, and other

landscapers, none of which uses are expressly allowed under the Ordinance. She did not receive any inquiries relating to the permitted residential use. Ms. Ramp testified that the property is not attractive for residential use because of the noise from traffic on the extended road frontage of the property, as well as the lights that come through with traffic.

10. Phillip Payne, the current owner of the property, testified that in 2014, after acquisition, the principal building on the site which had been the tavern and restaurant, was demolished. He further testified that the property was subdivided into two (2) separate parcels in 2017 with the intention to use both parcels for residences. He now wishes to sell the subject property for the proposed commercial use.

11. James Helsel, Jr., the buyer's real estate agent, testified as an expert witness in real estate use and valuation. He opined that the property could not be economically developed for the uses expressly permitted under the Ordinance, residences in particular, and that the proposed use as a staging location for the landscaping business was a very appropriate use of the property given its location and characteristics.

DISCUSSION

The application to allow the use as the staging location for the Applicant's landscaping service business is based on two alternative legal theories: (1) a request for a special exception for a use not expressly allowed or excluded by the Ordinance pursuant to Section 300-4.B of the Ordinance; or (2) a use variance under Section 300-20, Table 5-2.

The Applicants contend, and have stated in their hearing application, that they are entitled to a special exception under Section 300-4.B because "the Zoning Ordinance does not provide for a specific principal use that is limited only to storage of materials for a business primarily being conducted at another site by the same owner." While the Zoning Ordinance does define

the use of “landscaping service,” the definition includes references to offices as part of the use. Consequently, in the unique circumstances of this application, the discrete, limited use proposed is a use “not otherwise provided for” under the Ordinance and therefore allowable by special exception from the Zoning Hearing Board.

The Applicants testimony and evidence addressed all of the criteria required under Section 300-4.B for a special exception, including the criteria for special exceptions in 300-99.E. To meet those criteria and support the special exception definition, the Applicants’ business will need to operate strictly as proposed and testified to. Therefore, the following conditions are applicable to the special exception:

1. The use shall be strictly limited to the accessory function of material and equipment storage;
2. There shall be no retail business conducted at the site;
3. No new buildings shall be constructed. The existing structures may be improved as proposed and storage bins as proposed may be added; and
4. The development and use of the site shall be in conformity with the proposed site plan admitted at the hearing as Exhibit A-5, attached hereto and incorporated herein.

The request for a use variance need not be considered in view of the grant of the special exception. The Board does note, however, that the subject parcel was created by the owner through subdivision and the owner will be using the remainder of the original parcel for a residence which is a permitted use.

CONCLUSIONS

1. The Applicant has the burden of establishing entitlement to the requested special exception and demonstrating that all requirements of the Fairview Township Zoning Ordinance are met.

2. On the basis of the testimony and documentary evidence presented, the Board hereby concludes: the request for a special exception finding that the use is not provided for under the Ordinance should be granted, subject to the conditions hereafter stated. The request for the use variance is moot. The conditions to the special exception are:

1. The use shall be strictly limited to the accessory function of material and equipment storage;
2. There shall be no retail business conducted at the site;
3. No new buildings shall be constructed. The existing structures may be improved as proposed and storage bins as proposed may be added; and
4. The development and use of the site shall be in conformity with the proposed site plan admitted at the hearing as Exhibit A-5, attached hereto and incorporated herein.

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 Board hereby concludes, as follows: the request for a special exception finding that the use is not provided for under the Ordinance should be granted, subject to the conditions hereafter stated. The request for the use variance is moot. The conditions to the special exception are:

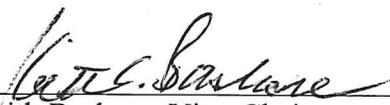
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2. There shall be no retail business conducted at the site;
3. No new buildings shall be constructed. The existing structures may be improved as proposed and storage bins as proposed may be added; and
4. The development and use of the site shall be in conformity with the proposed site plan admitted at the hearing as Exhibit A-5, attached hereto and incorporated herein.

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

FAIRVIEW TOWNSHIP ZONING HEARING
BOARD

Dated: July 16, 2020

By: _____


Keith Bashore, Vice-Chairman

Distribution: Ronald Lucas, Esquire, *for Applicant*



BOARD of SUPERVISORS
Dr. Larry Cox, *Chairman*
Korey Leslie, *Vice-Chairman*
Christopher L. Allen, *Supervisor*
John W. Jones, *Supervisor*
Mario D. Pirritano, *Supervisor*

MANAGER
Donald F. Martin, III

The Fairview Township Zoning Hearing Board will hold a Public Hearing on Thursday, **March 19, 2020, at 6:30 p.m.**, at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070, to discuss the following:

Docket No. 2020-02: William L. and Kristen M. Holjes, 8 Cypress Place, Camp Hill, PA 17011. The Applicants are requesting a Variance to Fairview Township Zoning Ordinance §300-20 – Permitted Uses, Residential Mixed Use District or a Special Exception pursuant to Ordinance §300-4 – Interpretation and uses not otherwise provided for, for the purpose of operating a landscaping service business at the property located at 844 Fishing Creek Road, New Cumberland, PA 17070, which is in the Residential Mixed Use Zoning District.



ZONING HEARING BOARD APPLICATION
YORK COUNTY, PENNSYLVANIA

❖ Part 1:

APPLICANT(S)/EQUITABLE OWNER

Name: William L. and Kristen M. Holjes
Address: 8 Cypress Place
Camp Hill, PA 17011
Phone: 717-737-6960

EXISTING OWNER OF PROPERTY:

Name: Phillip Payne
Address: 468 Ridge Road, Lewisberry, PA 17339

PROPERTY LOCATION:

Address: UP#27-000-QF-0045-00-00000
844 Fishing Creek Road
Lot Size: 2.145 acres
Date Purchased: Agreement of Sale
Location: south corner of intersection of Fishing Creek
Road and Lewisberry Road

PRESENT USE OF PROPERTY:

None

EXISTING ZONE: Residential Mixed Use (RMU)

❖ Part 2:

ZONING REQUEST (Identification of the applicable request(s)):

- SUBSTANTIVE CHALLENGE
- SPECIAL EXCEPTION
- VARIANCE
- APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):

variance from Section 300-20 (Table 5-2) Permitted uses in RMU District
in the alternative special exception under Section 300-4

❖ Part 3:

DESCRIPTION OF REQUEST:

See attached Narrative

NARRATIVE ATTACHMENT

WILLIAM L. & KRISTEN M. HOLJES

The Applicants, William L. & Kristen M. Holjes, are married individuals (collectively, "Holjes"), residing at 8 Cypress Place, Camp Hill, PA 17011. Holjes owns a landscaping business doing business as Louis Landscaping.

Holjes is the equitable owner, under an agreement of sale, of an approximate 2.145 acre parcel of land (TPI No. 27000QF0045) located at the southern corner of a four-way intersection formed by Lewisberry Road (S.R. 114) (western leg), Lewisberry Road (S.R. 114) (northern leg), Fishing Creek Road (S.R. 262), and Ironstone Road (T-999) (the "Property"). The above-described intersection forms a sideways "K" shape. The western leg of Lewisberry Road makes a 90-degree turn to the north; Ironstone Road intersects with this 90-degree curve at an acute angle, and Fishing Creek Road curves in from the east and intersects at the same point. The intersection is controlled with stop signs at Fishing Creek Road and Ironstone Road. However, there is no stop for northbound traffic on Lewisberry Road, and southbound traffic on Lewisberry Road is subject to a left turn stop only.

An aerial photograph showing the Property and adjacent road network is included with this Application. Ground level photographs showing the intersection are also included with the Application.

The Property is currently zoned as part of the Fairview Township Residential Mixed Use (RMU) District pursuant to the Township Zoning Ordinance (the "Ordinance"). Under the prior zoning ordinance the Property was located in the Commercial Neighborhood District.

The Property was previously improved and used as a restaurant with associated outbuildings and parking areas. However, the restaurant went out of business, and the principal building has since been demolished. The other existing accessory structures associated with that use including exterior sheds, parking areas, and a sand mound, will remain on the site as is. A Site Plan exhibit showing the existing structures on the Property is included with the Application.

Holjes desires to utilize the Property for its landscaping service business. The nature of the proposed use will be for the storage of plants, materials, and equipment utilized by the landscaping business. As depicted on the Site Plan, the only new structures proposed on the site would be material storage bins. The two existing accessory buildings are to remain, but no additional buildings are proposed at this time. There will be no retail sales of plants or other products offered from this site, and there will be no actual business services conducted by the landscaping business on site.

The Zoning Ordinance defines "landscaping service" as:

An establishment engaged in providing off-site landscape care and maintenance services and/or installing trees, shrubs, plants, lawns, or gardens along with the design of landscape plans and/or the

construction (i.e., installation) of walkways, retaining walls, decks, fences, ponds, and similar structures and may involve seasonal snow plowing, including the buildings, structures, offices, and equipment and material storage customarily incidental and accessory to the principal use. § 300-11.¹

Pursuant to Zoning Ordinance, § 300-20 (Table 5-2), “landscaping service” is not permitted in the RMU. The stated purpose of the RMU Zoning District is for use as “moderate density residential with a compatible mixture of smaller, less intense commercial businesses and related uses.”

The proposed use only envisions utilizing the Property for the accessory portion of the described landscaping service use, as the actual landscaping business will be conducted at another site. As described, the use is limited to storage of materials and equipment for a use by a landscaping service business that is located at another property. The described use does not appear to fall within any listed use category under the Zoning Ordinance.²

Accordingly, this Application requests the following relief:

I. VARIANCE FROM § 300-20 (TABLE 5-2) (PERMITTED USES - RMU DISTRICT) – TO USE THE PROPERTY AS A LANDSCAPING SERVICE BUSINESS

Holjes requests a variance from the provisions of § 300-20 (Table 5-2) (Permitted Uses-RMU District) to use the Property as a landscaping service business. Holjes is entitled to a variance pursuant to Zoning Ordinance § 300-99.E(4) and the Pennsylvania Municipalities Planning Code, as follows:

(a) *There are unique physical circumstances or conditions other physical conditions peculiar to the particular property.*

As described above, the Property has unique characteristics. Specifically, the Property is irregularly shaped and is located directly adjacent to a unique intersection of two major State roads running through the Township (SR 114 and SR 262). The ground-level photograph of the Property included with the Application shows that the road system forms a U-shape around the Property which creates challenges related to access and renders the Property unusable for the uses allowed in the RMU District.

Specifically, due to the 90-degree curve on Lewisberry Road (SR 114) directly in front of the Property, the limited frontage on Lewisberry Road, and the fact that traffic on Lewisberry Road (northbound and southbound) does not stop at this intersection (except if turning on S.R. 114), PennDOT will not permit a new driveway access to the Property on the Lewisberry Road frontage.

¹ The proposed use does not meet the definition of “Greenhouse/plant nursery” because it will not be offering garden products at retail. In any event, that use is also not permitted in the RMU District.

² The storage contemplated here does not meet the definition of “outdoor storage,” as that use is described as providing for storage for someone other than the owner of the property. Here, the materials and equipment being stored are owned by the owner of the Property.

Likewise, while the Property does have a driveway access on Fishing Creek Road (SR 262), the significant curve approach to the intersection with Lewisberry Road, limited available frontage, and other conditions of the intersection, mean that a second access on that road is also not possible.

In addition, the Property has existing structures, including a large parking area and accessory structures, but no principal building with indoor usable space. As such, the Property as it currently exists, could not be utilized for any of the uses permitted in the RMU District (except for public or semi-public uses) without redevelopment.

The above-described unique conditions of the Property result in unnecessary hardship in using the Property as permitted in the RMU District. These conditions relate to the Property itself and are not created by the provisions of the Zoning Ordinance for that district.

(b) Due to the above described conditions, the Property cannot be used or developed in strict conformity with the RMU District use limitations and a variance is necessary to enable reasonable use of the Property.

The unique physical characteristics prevent the use of the Property in strict conformity with the RMU District limitations. The location of the Property adjacent to the intersection, the limited available access to the Property, and the existing physical conditions of the Property, prevent its reasonable use for any permitted residential use. Specifically, the Property could not be used as an apartment conversion, group home, mobile home park, multi-family, single-family, or two-family dwelling, as there are no existing usable buildings on the Property, and the Property cannot reasonably be developed with access to the surrounding road network for such uses. Moreover, the traffic volumes associated with multi-family use could create an unsafe condition at the only access to the site on Fishing Creek Road.

For similar reasons, the Property cannot be practically used for the commercial uses permitted in the RMU. Specifically, banks, commercial recreation facilities, convenience store, copy shop, craftsman/artisan studio, food service, golf course, laundry and dry cleaning, office, business and professional and medical, personal service, restaurant, retail, school, therapeutic massage business, or veterinary office, as all of these uses involve regular customer visits to the Property. The limited access to the Property and location of the single driveway along an existing curve approaching the intersection, makes use of the Property for these commercial retail uses impractical. In addition, there is insufficient area on the site to allow for “commercial recreation” (§ 300-71.G), golf course (§ 300-71.J) or any other large use of the Property.

The Zoning Ordinance does not permit any industrial uses on the Property. For the same reasons that a retail- or customer-oriented commercial use would not be appropriate, the Property cannot be used for any of the allowable private institutional uses: community center, continuing care retirement community, commercial day care, place of worship, and school. The Property is too small to be usable for an agricultural operation and has no commercial grade timber. There has been no interest in the Property for a telecommunications signal site. The uses that would require the owner to turn the Property over for public use (e.g., municipal uses, community gardens) are not reasonable uses for this private land.

(c) *The unnecessary hardship was not created by the applicant.*

The Applicant did not create the hardship caused by the unique conditions related to this Property, all of which relate to the existing adjacent road system or existing structures on the site.

(d) *The variance, if authorized, will not alter the essential character of the zoning district or neighborhood, nor substantially impair the appropriate use or development of adjacent property.*

The proposed use of the Property is a low-intensity landscaping service business. The Property will principally be used as a staging area for Applicant's landscape business with associated storage of materials, equipment and plans. There will be no retail sales of materials or goods from the site. There are also no new proposed buildings associated with the use. The only new proposed structures are the material storage bins. The existing sheds on the Property will be used for equipment storage only. As shown on the Site Plan, the Applicant is proposing to provide additional landscaping along the entire frontage of the Property to screen all on-site activity. Accordingly, the proposed use will not have an adverse impact on surrounding uses or change the character of the district. In fact, the proposed use is less intensive and will have less of an impact on surrounding uses than many of the uses permitted by right or special permission on the Property.

(e) *The requested variance, if authorized, will represent the minimum variance that will afford relief and the least modification possible of the regulations at issue.*

The proposed use is for a low-impact business with no retail sales and no new buildings. The requested variance represents the minimum variance that will afford relief. In fact, the proposed use is less intensive and will have less of an impact on surrounding uses than many of the uses permitted by right or special permission on the Property.

(f) *The use complies with the Floodplain Overlay Zoning District.*

Not applicable to the Property.

(g) *Filing requirements.*

A scaled Site Plan showing all existing and proposed conditions is included with the Application. The Site Plan details the floor plan of all existing structures. There are no new buildings associated with the proposed use. A list of names and addresses of adjoining property owners is included with the Application.

II. IN THE ALTERNATIVE, SPECIAL EXCEPTION UNDER § 300-4.B, FOR A USE NOT PROVIDED FOR.

As described above, the proposed use of the Property does not meet the definition of "landscaping service," because the actual business services associated with the landscaping business will not be conducted on the Property. The proposed use here will be limited to the accessory functions of storage and staging of equipment, materials, and plants related to the

business. No new buildings are proposed to house offices in which to conduct business, and there will be no retail sales from the site. The Zoning Ordinance does not provide for a specific principal use that is limited only to storage of materials for a business primarily being conducted at another site by the same owner.

As such, in the alternative to granting a variance, the Zoning Hearing Board may approve the proposed use by special exception as “a use not provided for” pursuant to Zoning Ordinance § 300-B, subject to the following criteria:

1. *The proposed use is similar to and compatible with the permitted uses in the district, not permitted in any other zoning district, and does not conflict with the general purposes of the chapter or the zoning district.*

As noted in the discussion on the requested variance, the proposed use is compatible with the zoning district. The storage use is not specifically provided for in any zoning district (See Table 5-2). The proposed use will be less intensive than many of the commercial uses that are permitted by right or by special permission in the RMU District. The “smaller, less intense commercial business” proposed here is entirely consistent with the purposes of the RMU District.

2. *The external impacts associated with the proposed use would be equal to or less intensive than the external impacts associated with other uses that are permitted in the zoning district.*

As described above, the use will be less intensive than many of the uses permitted in the RMU District.

3. *The location of the proposed use would not endanger the public health and safety, or deteriorate the environment or general nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration.*

The use will not create any adverse impacts or endanger the public health and safety, deterioration of the environment, or other general nuisance.

4. *The proposed use shall comply with Township and other applicable local, state, and federal laws and requirements.*

The proposed use will comply with all such codes and regulations.

5. *The proposed use will meet the special exception standards of Article XII.*

The proposed use meets the requirements of § 300-99.E(3) related to special exceptions. Applicant shall provide details relate to hours of operation and management of the use at the time of the hearing.

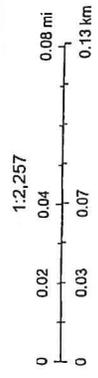
Tax Parcel Information



2/17/2020, 8:44:00 AM

Image

- Tax_Parcel
- Red: Band_1
- Green: Band_2
- Blue: Band_3



Imagery: 2018/Parcel Updated: 01/31/20, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Web AppBuilder for ArcGIS
Earthstar Geographics | Imagery: 2018/Parcel Updated: 01/31/20 | Earthstar Geographics |





New Cumberland, Pennsylvania



Street View



Google





Lewisberry Rd
Cumberland, Pennsylvania
Google
Sat View





rd, Pennsylvania

View



Google



