

PETERS TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: Audia Group Investments, LLC. &
 Rod and Danielle Andy Belusko
 450 Racetrack Road
 Washington, PA 15301

APPEAL No.: **843-2011**
DATE: March 15, 2011

A request by Audia Group Investments LLC for a variance on required number of parking spaces and a six (6) foot buffer area encroachment variance for a funeral home.

DECISION OF THE ZONING HEARING BOARD

I. CASE SUMMARY

By the timely notice of application, Rod and Danielle Andy Belusko (the "Applicant") applied for a parking variance to provide the required parking as determined by use rather than gross floor area and a variance to encroach six (6') feet into a required Buffer Area C.

A public hearing with respect to this Application, upon proper advertisement and notice given, was held before the Zoning Hearing Board on March 15, 2011, at which time all persons were afforded an opportunity to present evidence. Present at the hearing in addition to nonparticipating spectators were: James Federlein, Chairman, John Thacik, Board Member, Jeffrey Zeffiro, Board Member, Stacey Noble, Board Member, Grant Shiring, Planning Intern, Emily Moldovan, Zoning Officer, Ed Zuk, Planning Director, Rod and Danielle Andy Belusko, the Applicants, Tammy Ribar and Mary-Jo Rebelo, attorneys for the Applicants, and Jeff Ross, consultant for the Applicant. In addition, several Protestants appeared and offered opposition to the proposed variances. Evidence was received by this Board at the March 15, 2011 hearing and based upon a review of that evidence; we make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. The subject property is the former La-Z-Boy building located at 3287 Washington Road. It is a 1.67-acre lot in the C-1 General Commercial Zoning District. Status of the Applicant is agreement of sale.
2. The Applicants are proposing to renovate the existing La-Z-Boy building and convert 10,190 sq. ft. of the 26,000 sq. ft. building into a funeral home. Of the 10,190 sq. ft., 7,500 sq. ft. will be finished for offices, viewing rooms, etc. and 2,690 sq. ft. will be a

garage and storage. The remaining area will be vacant or possibly used as additional storage.

The Zoning Ordinance requires commercial buildings larger than 10,000 sq. ft. to provide parking spaces determined by a ratio of the gross floor area. Commercial buildings between 25,000 sq. ft. and 99,999 sq. ft. are required to provide 4.5 spaces per 1,000 sq. ft. of gross floor area. Therefore, the building would require one-hundred and seventeen (117) spaces. Commercial uses with less than 10,000 sq. ft. are required to provide parking spaces based on ratios provided for the specific use. Funeral homes uses are required to provide one (1) space per three (3) seats in a viewing room.

The Applicants are asking for a variance to allow the parking to be calculated by use rather than as a commercial center above 10,000 sq. ft. The reasons for the request are the site cannot accommodate the amount of parking required as determined by gross floor area and the Applicants are proposing to use 7,500 sq. ft. of the 26,000 sq. ft. as finished space. Therefore, the occupied space is below 10,000 sq. ft.

3. The Applicants are also requesting a variance for five (5) parking spaces to encroach into a required buffer area. The Zoning Ordinance requires a ten (10) foot Buffer Area C along any property line where a non-residential use adjoins a public right-of-way. (§310. Buffer Areas) In this case, the Buffer Area C is required along Washington Road (Route 19). Approximately one-hundred and seventy-four (174) feet of frontage along Washington Road is required to be buffer. Of the one-hundred and seventy-four (174) feet, forty-nine (49) feet will be affected by the variance request. Within the forty-nine (49) feet of affected area, the parking spaces will encroach a maximum amount of six (6) feet and minimum amount of four and six-tenths (4.6) feet into the required buffer. The Buffer Area C, which is one (1) tree and ten (10) shrubs planted for every thirty-five (35) linear feet of frontage (See §310.B(c)) will be installed along the entire frontage of Washington Road even though the parking spaces will encroach into a portion of the required buffer. This will be enforced during the final site plan approval process.
4. The Applicants argue that a unique hardship exists because the building was originally designed as a furniture showroom in accordance with the requirements of an earlier version of the Ordinance that did not contain the parking requirement for large commercial buildings. Furniture showrooms are generally large buildings with minimal parking spaces because they do not generate large amounts of traffic. When furniture stores vacate their locations, they leave severely restricted sites for the next occupant.

Since the site cannot accommodate the parking required as determined by the gross floor area and the Applicants are using 7,500 sq. ft. of the 26,000 sq. ft. as finished space, the Applicants are requesting to provide the required amount of parking spaces as determined by use. A funeral home must provide 1 space per 3 seats in each viewing area. The Applicants are proposing one-hundred and thirty (130) seats which would require forty-four (44) parking spaces. They are proposing to exceed the requirements and provide sixty-three (63) parking spaces.

5. All property owners within three hundred (300) feet from the subject property were notified of this hearing. Seven (7) people did speak in opposition of the proposed variances. Names and addresses of the Protestants are of record and all were provided the opportunity to be heard. The primary reasons for opposition were individuals did not believe a hardship exist, there will not be enough parking for the funeral home, and there will be traffic issues. No credible evidence was introduced to establish an adverse impact upon traffic different from that existing. Protestants also offered that the Applicant be required to raze the existing structure and construct a smaller structure to conform to the existing parking spaces. There does not appear to be any legal requirement, be it the statutes of the Commonwealth, or of the Ordinances of Peters Township, which would mandate such action. Lastly, Protestants questioned how the variances and proposed conditions would be enforced. The procedure of investigation and enforcement was explained by the Board and Zoning Officer.

III. CONCLUSIONS OF LAW

1. The Applicant is properly before the Zoning Hearing Board of Peters Township and jurisdiction rests therein.
2. The Zoning Hearing Board reviewed the request for the variances and determined that they meet the criteria for granting a variance at this time. The Board considered that any use that chooses to occupy the building will require a variance because of the hardship created by the former use (furniture store) of the building, the change in the Ordinance requirement and current amount of parking spaces required for buildings over 10,000 sq. ft.
3. An unnecessary hardship, not of the Applicant's making exists due to the unique physical circumstances and conditions. The existing building was originally a furniture showroom and as such is non-conforming because it does not, and cannot, meet current regulations for 117 parking spaces. A funeral home is a permitted use in a C-2 District. Because of the existing building, the existing lot and applicable zoning, it would be impossible for any business to meet parking requirements based upon square footage.
4. Due to the size of the lot and of the existing building, there is no possibility that the property can be developed in strict conformance to the Ordinance.
5. The hardship was not created by the Applicant. While suggested by Protestants, there is nothing which legally requires the Applicant to tear down the existing building and re-build to merely conform to existing number of parking spaces.
6. The variances will not alter the essential characteristics of the neighborhood or zoning district. The variances will not substantially nor permanently impair the appropriate use or development of adjacent lots, nor will they be detrimental to the public welfare. Surrounding areas of the subject property are also of a commercial use creating traffic and activity along Rt. 19. Establishment of a funeral home is

consistent with the purpose and character of the C-2 area and the requested variances do not impact this purpose.

7. The Variance is the minimum variance to afford relief. Compliance with the Ordinance provision of one (1) parking space for three (3) seats requires forty-four (44) parking spaces. Applicants exceed this requirement by providing sixty-three (63) spaces, thus meeting the minimum variance, but providing more than required by the Ordinance.
8. The buffer area variance is de minimis and does not adversely impact or detract from the character and purpose of the District. No safety issues will be created from the grant of the variance. A significant buffer, between the property encroaching into the parking spaces and Rt. 19/Washington Road, will remain.
9. Credible evidence was presented to support the granting of the variances.
10. The Zoning Hearing Board, under authority of the laws of the Commonwealth and the Ordinances of Peters Township, may impose any such reasonable conditions as deemed necessary to implement the purpose of such laws and Ordinances.

IV. DECISION

For the reasons stated heretofore, it is the determination of the Zoning Hearing Board that the Applicant has met the requirements and the intent of the Ordinance for the granting of both variances in this case. Therefore, it is the decision of this board that the VARIANCE to require parking as determined by use, as well as allowing encroachment into the Buffer Area C, be GRANTED subject to the following conditions:

1. That only 10,190 sq. ft. of the building be used for the purposes of the Applicants business. The remaining square footage shall only be used for storage. Should the Applicants choose to expand at a later date, the amount of additional space allowed shall be 189 total seats (130 proposed + 59 additional). The amount is determined by the number of seats able to be serviced by the parking spaces currently provided. (63 Spaces provided x 1 space/3 seats = 189 seats); and
2. A monument style sign shall be constructed and be no greater than fifty (50) square feet in size; and
3. The floor plan submitted be revised to state "1 parking space/3 seats in viewing area" rather than "1 parking space/3 occupants"; and
4. Final site plan approval be obtained by the Planning Commission; and
5. That the variance will expire if the Applicant fails to properly apply for all necessary permits within one (1) year from the date of this decision, or fails to begin the permitted activity within six (6) months from the date such permits are granted.
6. Compliance with all other applicable Ordinances of Peters Township

A motion to grant the variances was made by John Thacik with a second by James Federlein, and carried by a vote of 2-1.

Decision Dated: 4/18/11



James Federlein, Chairman
Zoning Hearing Board