

**MOUNT JOY BOROUGH ZONING HEARING BOARD
MINUTES of NOVEMBER 18, 2020**

The Zoning Hearing Board met in the Council Chambers of the Mount Joy Borough Offices, 21 E. Main Street, Mount Joy, on the above date. The meeting was called to order at 7:00 p.m. by Bob Marker. Board members present included George Leyh, Ned Sterling, Michael Melhorn and Bruce Haigh. Borough officials in attendance included Stacie Gibbs, Zoning Officer. Zoning Hearing Board Solicitor, Joseph Kenneff, Esquire, was present. Michelle Parke, court stenographer was also present.

MINUTES

Meeting minutes of September 23, 2020 were approved as corrected on a Motion by Melhorn and a second by Haigh which passed unanimously 5-0.

Marker reminded the group there were 2 openings on the Board for January 1, 2021. He advised there was an alternate position to fill a term and a member position. He told the Board there were a couple interested persons. Haigh advised that he submitted his letter of interest to serve again for a full five years. Melhorn advised Mrs. Hair submitted her letter of interest and Mark Heister and seem well qualified.

NEW BUSINESS

Bob Marker read the Standard Board Procedures to all those present. There were no objections to the jurisdiction of the Zoning Hearing Board nor were there any challenges as to the personal or business interest of any member of the Board.

Stacie Gibbs, Zoning Officer was sworn in.

CASE NO. 1

The applicants, Shawn R. and Jill E. Erb, 221 W. Henry Street, Mount Joy, PA, 17552, requested a Special Exception of §270-115.C.(3)(a), to expand their existing nonconforming storage building by more than 25% in total building floor area located at 104 Rear Fairview Street, Mount Joy, PA 17552, and the applicants requested Variances of the following Sections: §270-47.A for setbacks, lot area, and building coverage; §270-83.E.(2) for required parking areas to be surfaced with asphalt, concrete or paving blocks; §270-113.D.(2)a.(1) for a buffer yard to be provided; §270-113.D.(4)(c) for a fence in a buffer yard be provided on the inside of required plant screening. The property is in the Conservation District.

EXHIBITS

BOARD:

- B-1 – Zoning Hearing Board Application
- B-2 – Legal Ad with Proof of Publication.
- B-3 - Neighbor Notification Letters.

APPLICANT:

A-1- Revised set of building plans.

Brian Cooley with DC Gohn and Associates was sworn in, and Shawn Erb was also sworn in.

QUESTIONS AND TESTIMONY

1. Attorney Kenneff asked what the address is of the property. Erb advised the address is 104 Rear Fairview Street, Mount Joy.
2. Kenneff asked if the property is located in the Conservation District. Erb confirmed it is in the Conservation District.
3. Kenneff asked what buildings are currently on the property. Cooley advised there is an existing business on the lot used by Erb.
4. Kenneff asked if there is business conducted on the lot or is it just storage. Cooley advised it is just used for storage.
5. Kenneff asked if the lot is approximately 220,000 sf. Cooley confirmed that was correct.
6. Kenneff asked how long the business has been there. Erb advised since 2008. He advised he rented it for 5 years then purchased it in 2013.
7. Kenneff asked if the applicant is here tonight because he wants to expand the building. Erb advised that was correct.
8. Kenneff advised it looks like he wants to renovate and expand 934sf to the west of the existing building and 135sf to the east of the building which is currently an overhang. Cooley confirmed that is correct and it is under roof with no sides.
9. Kenneff asked what the plans are for the building. It looks like from the plan storage is going to continue. Erb confirmed that is correct.
10. Kenneff asked how much equipment is proposed to be stored in the building. Erb advised he has dump trailers and stuff. He wants to close in the building to keep kids out. He found bottles in the dump trailer like the kids were hanging in there.
11. Kenneff advised the applicant is asking for a Special Exception and several variances. Cooley confirmed.
12. Kenneff advised the Special Exception is for expanding a nonconforming use more than 25%. Cooley confirmed. Kenneff asked if they are looking to expand 33%. Cooley confirmed.
13. Kenneff asked if they are removing part of the existing building that cuts into a railway encroachment. Cooley advised there is southern portion of the existing building that is on the railway that is being removed as part of this plan.
14. Kenneff asked if they are looking to fully enclose the building. Cooley advised it will be fully enclosed and under roof.
15. Kenneff asked if all the extensions of the building are over areas that are already impervious. Cooley confirmed that is correct.
16. Kenneff asked if they see the extensions of the building having any impact on the neighbors or the surrounding community. Erb advised there is no impact as it is behind the railroad and he meets people at his garage location on W. Henry Street.
17. Kenneff asked if they were anticipating a traffic increase. Erb advised no increase in traffic and he stores materials in there like plywood, salt, plow trucks, and tow motors.
18. Kenneff asked how much activity takes place on the lot. Erb advised there is no activity unless he is going there. Kenneff asked if he is meeting there each morning. Erb advised he meets at his other property at 221 W. Henry Street, Mount Joy.

19. Kenneff advised it appears this renovation and expansion will increase the aesthetics. Erb advised it is run-down and it will be nice to see from Main Street.
20. Kenneff asked what the neighboring properties are. Kenneff asked if there are vacant lots to the west and the north. Cooley advised it was the Lions Club Pool and a majority is gravel or macadam. On the East side is Brady's Alley and some residential units and on the south side is the existing rail line.
21. Kenneff asked if it is connected to public water and sewer. Cooley confirmed.
22. Kenneff advised the applicant is asking for variances of setbacks, lot area and building coverage.
23. Haigh advised in the application it states the building increase is 33% based upon the entire life of the nonconformity. Haigh wants to know what it is based on. Cooley advised it is based on the existing buildings square footage. Haigh asked if the attic space is being counted as part of the existing nonconformity. Cooley advised he is counting the first and second floor of the existing building.
24. Haigh asked Gibbs if that is a nonconformity. Haigh advised if attic space is included under the definition under total floor area and if it is potentially habitable and the wall is 6 1/2'. Haigh advised the existing walls are 4 1/2'. Haigh asked when this became nonconforming was that included as part of the nonconformity. Gibbs advised this has been nonconforming for decades. Gibbs advised the second floor is to be used as storage and not to be habitable. Haigh asked if it counts towards the existing nonconformance. Haigh advised it changes the amount of increase from 33% to 46% which is still below the 50%. Haigh advised he is looking under the definition of floor area total.
25. Haigh advised he checked the deeds, and it is not listed. The only document he saw was a subdivision plan done in 2001 which listed it as a one-story building. Gibbs asked if Haigh is defining the second floor as attic space under the definition of floor area that is potentially habitable and has a minimum head clearance of 6 1/2'. Haigh advised Cooley included the first and second floor as part of the existing. Cooley advised on the site plan on the bottom right-hand side there are building area calculations and it shows the 5,403 sf and they are removing 221 sf. Cooley advised the building area on the first floor is 1,536sf which is the dark shaded area on the site plan and in addition there is 467sf of the second floor on the front portion of the expansion. Cooley advised that total 2003 sf proposed increase minus the 221sf being removed is 1,782sf of the building increase divided by the 5,403sf gives the 33% building increase.
26. Haigh advised the question he still has is the second floor existing. Marker advised if you take it into consideration as existing it reduces the amount they are adding. Haigh advised if it's not counted then his increase is 46% which is still within the 50%.
27. Kenneff advised the ordinance requires 30' front, 10' side yard setbacks and a 40' rear yard setback. Cooley advised that is correct. Kenneff asked if the existing building will encroach into the side yard setback as it exists to the south. Cooley confirmed. Kenneff asked if a portion of it is in the front yard. Cooley confirmed.
28. Kenneff asked how far the expansion will go into the setback on the west. Kenneff asked how far the building will be from the property line. Cooley advised 2'.
29. Cooley advised they are encroaching an additional 10' on the west side.
30. Kenneff asked if the expansion of the building on the south increases the encroachment into the setback. Cooley advised it will increase about 12' to the south towards the rail line. Cooley advised on the southern side it will be up to the property line.
31. Kenneff asked if there is a railroad to the south. Cooley confirmed.

32. Kenneff asked if they are able to expand the building in a manner that would allow the storage without encroaching into the setbacks. Cooley advised it would not be possible.
33. Kenneff advised it appears the south east corner of the building expansion proposal is right up to the property line. Cooley advised the existing building and overhang encroaches into the railway. Cooley advised there is about 6' that goes to the north located in the front yard setback.
34. Cooley advised they cannot expand without encroaching into setbacks because the building itself does not accommodate construction vehicles and their needs. Cooley advised the purpose of it is to be able to back the equipment in and have everything under roof. Kenneff asked if they could do the expansion to the North where they are not encroaching anymore in the setbacks. Cooley advised they cannot increase further north because of equipment storage, and it becomes inefficient if they have to move a piece of equipment to get to another piece.
35. Kenneff asked if this is a fairly, narrow lot. Cooley confirmed.
36. Kenneff asked if 1 acre is required and they only have ½ acre. Cooley confirmed. Kenneff asked if they created the lot size. Cooley advised they did not.
37. Kenneff asked if the lot size is nonconforming. Cooley confirmed.
38. Marker asked if there is a variance for lot size. Kenneff advised they are asking for lot area.
39. Kenneff asked if the max of building coverage is 10%. Cooley confirmed. Kenneff advised the application states the building as it exists is already at 18 ½%. Cooley confirmed. Kenneff asked if the expansion will result in 24.6% building coverage. Cooley confirmed. Kenneff advised it is an increase of 1341 sf. Cooley confirmed.
40. Kenneff asked what the hardship is. Cooley advised the hardship it is a maximum of 10% and it is already at 18 ½% so it is already over the 10%. The building expansion is necessary to house the construction equipment. As the business continues to grow, the building needs to be able to accommodate the construction equipment and materials.
41. Haigh advised he has been at the site 3 or 4 times. Haigh advised the only thing that is being stored there is a trailer for Floral Design. Haigh asked if they need the storage for a business expansion or equipment because he wanted to know where the equipment is currently being stored. Erb advised the equipment is currently being stored at his other shop. He advised his current shop is full. Haigh advised he assumes the two bays on the west side will be for equipment or materials. Erb advised he would like to place his plow trucks in there ready with plows.
42. Kenneff asked if they reduced the expansion and did not go as far into the setbacks, would there be enough space to house the equipment. Erb advised he would not have enough space. Erb advised this is the minimum needed to meet his needs.
43. Marker asked how he would access if there would be a fence installed. Erb advised he would install a gate to access. Erb advised people drive down through there and use his property. He said he will place the fence in a way that folks can get out of their parking spaces in the rear. He said if he placed a fence on his property line, they would not be able to back out.
44. Kenneff asked if they are requesting a variance for parking surface. Erb advised he normally does not park there. But the ordinance requires 2 spaces. Kenneff asked if it was compacted and is an appropriate parking surface. Erb confirmed.
45. Kenneff asked if they need a variance from a buffer yard because there are residential uses across the alley. Cooley confirmed there is a 5' buffer that is required around the front, sides and rear yard. Cooley advised if there is a buffer required, some residents would not be able to back out of their parking areas. Cooley further advised there

- would be no reason to screen an existing parking lot. Cooley advised there is a grass strip between the existing and proposed building along the rail line.
46. Kenneff advised a buffer would only be required along side and rear of a property. Kenneff advised he interprets the buffer is not required along the front of this property. Therefore, a variance for a buffer would not apply to this front yard. Kenneff advised it appears the front buffer variance would not be required along Brady's Alley. Marker advised the rest of the property does not border any residential. Kenneff advised they would need a variance from the side and rear buffers.
 47. Sterling advised we do not know who is going to develop the Lions Club Property, why would we not want a buffer.
 48. Kenneff advised the applicant is asking for a variance of fence being placed within the interior of the landscape strip. Kenneff asked if there is a landscape strip now. Cooley advised there is not a landscape strip.
 49. Kenneff advised if the board grants a variance not to provide buffer yards then the fence variance is moot. Haigh asked if a fence is required. Cooley advised a fence is not required.
 50. Leyh asked if the Board can get clarity on where the gate is to be located so it does not impact traffic coming through the alley. Erb showed the board the where the gate might be located off the east corner. Erb also showed another location that is possible. He said that is why he did not show the exact location.
 51. Leyh asked if the board is going to except the plans when there is not clarity on where the gate is going to be located. Kenneff advised this is not going to be public property with other folks coming in and out.
 52. Haigh advised they want to make sure residents that need to use the alley can without the gate causing problems. Gibbs advised she does not believe that is the boards job to determine the gate location. Marker advised that would be discussed and/or addressed during the building permit review if there were to be an issue.
 53. Gibbs asked how long Erb has been in business in the Borough. Erb advised 28 years.
 54. Kenneff advised there was another variance for street trees. Gibbs advised the applicant removed that variance and submitted a revised page for the application. Kenneff advised street trees are required for the construction of a new principal nonresidential building and would not apply to this project. Gibbs advised it was not advertised as part of this case.
 55. Kenneff asked if the placement of the existing building and the fact that it is already over the setbacks makes the expansion a hardship. Cooley confirmed.
 56. Kenneff asked if either of them created the lot size or if they constructed the building in this manner. Cooley advised his client did not.
 57. Haigh asked who did the boundary survey. Cooley advised his firm did. Haigh advised he checked the deed from 1929 and he has the survey at north 18 degrees and the deeds have it north 26 degrees. Haigh advised the deeds do not match at all with what they have on the boundaries. Haigh asked if Cooley really knows where the corner pins are. Cooley advised 2 iron pins were found on the 2 north corners and on the one south corner there was mag pin found and on the south west corner there was an iron pin found. Haigh advised he did not see the mag pin on the south. Haigh advised he is concerned because if they are showing the building as 2' from the property line and the survey does match the deed that is a problem. Cooley testified that his professional land surveyor surveyed the property and the property shown on the plan is accurate per his signature and seal.
 58. Leyh asked if there will be any lighting on the building and how much lighting will be appropriate and how much lighting will disturb the neighbors. Erb advised there will be some down lighting on the garage doors. Erb advised he is not going to have big flood

lights. Leyh asked if there will be lights on any posts. Erb advised there may be some on a post or two. Gibbs advised the lighting will have to be shielded and diffused in accordance with the ordinance.

59. Marker asked if we knew how long the Conservation District has been in existence. Gibbs believes it goes back to 1999 and perhaps further than that.
60. Marker asked if he knew when he bought it was in the Conservation District. Erb advised he was not aware.
61. Marker advised the Conservation District is to provide areas of open space and recreation. He said if you look on the zoning map it appears there is a connected between this property and the parks and there is potential for a green belt around Mount Joy. Marker advised the reason we have special exceptions for non-conforming uses like this is to protect this particular kind of zoning. Marker has a concern because this is such a big expansion for a non-conforming use.

Attorney Kenneff opened the meeting up for public questions.

1. Brad Barnes, 104 Fairview Street, Mount Joy, PA, asked if Erb wanted to build a wall along the alley way side. Erb confirmed. Barnes advised 6 times a year he takes his RV out and makes a U-turn on Shawn's property because he cannot get out the alley on the railroad side. Shawn advised deliveries have to come in and go back out the same way. Barnes wanted to know if the fence would impede any of this. Erb advised the fence is going where the corner post is right now.

Attorney Kenneff opened the meeting up for public comment.

Attorney Kenneff closed the taking of public comment and question. Attorney Kenneff asked if there were any additional comments.

ACTIONS BY THE BOARD

A motion was made by Sterling and seconded by Melhorn to grant the application made by Shawn R. and Jill E. Erb, 221 W. Henry Street, Mount Joy, PA, 17552, for a Special Exception of §270-115.C.(3)(a), to expand their existing nonconforming storage building by more than 25% in total building floor area located at 104 Rear Fairview Street, Mount Joy, PA 17552, and for Variances of the following Sections: §270-47.A for setbacks, lot area, and building coverage; §270-83.E.(2) for required parking areas to be surfaced with asphalt, concrete or paving blocks; §270-113.D.(2)a.(1) for a buffer yard to be provided; and §270-113.D.(4)(c) for a fence in a buffer yard be provided on the inside of required plant screening ***The Motion passed by a 5-0 vote***

ADJOURNMENT

**On a motion by Leyh and a second by Melhorn, the meeting was adjourned.
*Motion carried 5-0.***

Respectfully submitted,

Adopted this ____ day of _____, 2020

Stacie Gibbs, Zoning Officer

Ned Sterling, Secretary