

IN RE: APPLICATION OF : BEFORE THE ZONING HEARING BOARD
THE WEST CHESTER : OF EAST BRADFORD TOWNSHIP
PUBLISHING COMPANY : CHESTER COUNTY, PENNSYLVANIA
: APPLICATION 11 - 1991

DECISION AND ORDER

This is the application of West Chester Publishing Company, the owner of property located at 250 North Bradford Avenue, East Bradford Township, Chester County tax parcel no. 51-5-86.2. The property is operated as a newspaper publishing facility known as the Daily Local News, which is a non-conforming use in the R-4 Residential Zoning District in which it is located. The applicant seeks a special exception or other zoning relief under East Bradford Zoning Code ("the Code"), section 115-96.B. to expand the non-conforming use by the construction of an addition to the existing building. The East Bradford Township Zoning Hearing Board ("the Board"), consisting of William Plummer, 3rd, M.D., Chairman, Alfred A. Gollatz, Esquire and Donald H. Lambert, Members, conducted a public hearing with respect to this application on Wednesday, November 20, 1991 at 7:30 p.m. prevailing time. The Board was represented by its Solicitor, Ronald C. Nagle. The applicant was represented by its counsel, William H. Mitman, Jr., Esquire, and East Bradford Township appeared in propria persona represented by its Codes Enforcement Officer, Brenden Beaumont. Mr. Donn W. Barber, 263 MacIntosh Road, West Chester, Pennsylvania 19382 appeared on behalf of the Bradford Square Homeowners Association, an adjacent property owner and was granted party

status by the Board. Public notice by legal advertisement was duly given on November 8 and November 12, 1991 in the Daily Local News, a newspaper of general circulation in East Bradford Township, the property was posted, and adjacent property owners notified, as required. At the conclusion of the hearing, the applicant asked leave to submit additional evidence to the Board by written communication, and it was agreed by the applicant that the Board would have forty five (45) days from the receipt of that information within which to render its decision. The additional written evidence was received by the Board on November 25, 1991. From the testimony adduced and exhibits presented, the Board makes the following:

FINDINGS OF FACT

1. West Chester Publishing Company is the owner of the subject property located at the southeast corner of North Bradford Avenue and Strasburg Road (Route 162), East Bradford Township, with a mailing address of 250 North Bradford Avenue, West Chester, Pennsylvania 19382.

2. The property consists of approximately six (6) acres, and was acquired by the applicant's predecessor in title, the Daily Local News Company of West Chester in two separate transactions as two separate parcels. On January 5, 1968, 3.793 acres was acquired and, thereafter, on March 25, 1980 an additional, contiguous tract containing 2.307 acres was acquired. Thereafter, the applicant acquired title to both parcels.

3. Improvements on the property consist of an existing one story twenty two thousand eighty nine (22,089) square feet masonry building and approximately fifty eight thousand nine hundred and twenty five (58,925) square feet of macadam parking area, access drives and concrete sidewalks. The existing structure was constructed in two phases beginning in 1968 and completed in May of 1970, with all such construction occurring on the 3.793 acre parcel, which is immediately contiguous to Route 162 and North Bradford Avenue.

4. At the time of construction of the existing facility, the property was governed by the East Bradford Township Zoning Ordinance adopted in December of 1955, and the parcel on which the construction occurred was at that time zoned "D" Commercial District. Section 601.6 of that ordinance permitted "newspaper or job printing" as a use of right in the "D" Commercial District, and building permits were issued by East Bradford Township for that construction.

5. In 1984, East Bradford Township amended its zoning map by rezoning the subject property R-2 Residential District, the use regulations of which do not permit "newspaper or job printing" or any use similar thereto. As a consequence, the applicant's use of the property as a newspaper publishing facility became a non-conforming use at that time. Thereafter, on March 21, 1988 East Bradford Township once again amended its zoning map by rezoning the

subject property to an R-4 Residential District classification. The newspaper publishing facility remains a non-conforming use under the latter zoning classification.

6. Applicant seeks a special exception under Code section 115-96.B to enlarge its existing building by constructing a proposed Butler pre-engineered building measuring fifty feet by sixty seven feet (50' x 67') representing a total addition area of three thousand three hundred and fifty (3,350) square feet equal to a 15.17% expansion.

7. The proposed Butler pre-engineered addition is a steel sided building constructed on a re-enforced concrete slab foundation, which will match in color the exterior of the existing building. The proposed addition will have a building height of twenty five (25) feet, consistent with the height of the existing building. In addition, the building will be sprinklered. The purpose for the addition is to house new equipment, identified as Enkel automated pasters, more graphically depicted on Exhibit A-4. The equipment is designed and functions to provide an automated, continuous production capability in the printing of newspapers without the need to interrupt the "presses" to reload paper during the publishing process. Implementation of this equipment will eliminate the equivalent of approximately seven hundred and fifty newspapers per day which are now wasted in the current production process. The size and configuration of this equipment is such that the building addition is needed to house two and one half of the new automated pasters.

8. Code section 115-96.B. provides in pertinent part as follows:

"....any building of which a lawful non-conforming use is made may be extended upon the lot occupied by such building and held in single and separate ownership on the effective date of this Chapter when permitted as a special exception by the Zoning Hearing Board subject to the provisions of Article XVI of this Chapter. The area of such building or buildings shall not be increased by more than twenty five percent (25%) of the area of such building or buildings existing on the date it first became....a building of which a lawful non-conforming use is made. Any structure alteration, extension or addition to existing buildings shall conform to all area, height, width, yard and coverage requirements for the district in which it is located."

9. Neither the applicant nor its predecessor in title has previously expanded the existing building since the original construction was completed in May of 1970.

10. The subject property consisting of the two contiguous parcels hereinabove described is held by the applicant in single and separate ownership.

11. The subject property complies with the area and bulk regulations specified in the R-4 Residential District (Code section 115-23) with the exception of subpart A.(4) thereof which limits lot coverage to a maximum of twenty percent (20%). The existing lot coverage, including building and impervious coverage, is thirty two percent (32%). However, because the proposed addition, located at the southwest corner of the existing building, will be constructed in an area which is now paved with impervious macadam

parking and loading area, there will be no additional impervious coverage added to the site as a result of the addition's construction. Thirty two percent (32%) lot coverage is an existing non-conformity relative to the R-4 Residential District regulations.

12. As a result of the proposed addition there will be no increase in the number of employees nor in the amount of traffic generated by the existing use.

13. The existing docking area, located on the west side of the existing building in the location on which the proposed addition is to be constructed will be moved to the west side of the new structure. The existing tractor trailer docking area on the northwest end of the existing building will be unaffected by the new construction. Required parking will be unaffected by the proposed addition.

14. In conjunction with reduced paper waste expected with the new equipment, the applicant will install an automated compactor dumpster, which will be located at the northwest corner of the building, as depicted on Exhibit A-5. Taken in combination with the waste reduction afforded by the automated pasters, the compactor is anticipated to reduce the number of trash truck pickups which are now necessary. Trash pick ups occur on occasion during the early morning hours and are audible and a source of disturbance to adjoining Bradford Square residents.

15. The Bradford Square residential development is contiguous to and located immediately to the south of the applicant's property. The closest buildings are approximately fifty feet from the applicant's southern boundary line. The contiguous property immediately to the west of the applicant's property now accommodates a commercial retail tire business, which is also zoned R-4 Residential District.

16. The Bradford Square Development is partially shielded from the applicant's existing and proposed building addition by the natural contours of the applicant's property as more particularly depicted on Exhibit A-5. A stand of relatively mature evergreen trees partially shields the applicant's property from both the tire center and Bradford Square. However, because of the nature and intensity of the applicant's use maintenance of these natural contours and the buffer shield provided by them and the existing stand of evergreens is necessary for the protection of the adjoining Bradford Square Development.

17. No additional sanitary sewage or water facilities are required in connection with the proposed addition, nor will it be necessary to extend any public services and facilities, such as public water, sewers, police and fire protection in conjunction with the proposed addition.

18. Subject to the applicant's compliance with the condition imposed in the following Order, the Board finds that the use of adjacent property is adequately safeguarded, all special

regulations, design standards and general standards are complied with, and that no undue annoyance or hazards to adjacent properties will result from the grant of this special exception, nor will the same be contrary to the public health, safety and general welfare.

19. In or about November 1986 the applicant or the applicant's predecessor applied for and on November 8, 1986 the Township issued a building permit for the construction of a five thousand (5,000) square foot addition to the existing building, together with a ten feet by one hundred feet (10' x 100') canopy both intended to be located at the exact location of the proposed addition sub judice. No construction was ever undertaken in reliance upon that permit, nor did this Board ever grant a required special exception as a condition precedent to its issuance. The Board finds that the permit is now void and superseded by the permit which is authorized to be issued by this Decision.

D I S C U S S I O N

Once an applicant for a special exception proves the proposed use complies with the specific standards in the zoning ordinance, he is entitled to the special exception unless an objector thereto demonstrates that the use will adversely affect the community, including adjacent properties. Dotterer vs. Zoning Hearing Board of Upper Pottsgrove Township, ____ Pa. Cmwlth Ct. ____, 588 A.2d 1023 (1991). That is so because a special exception is legally recognized as a conditionally permitted use, legislatively allowed where specific standards and conditions

detailed in the zoning ordinance are met. Lafayette College vs. Zoning Hearing Board of the City of Easton, ____ Pa. Cmwlth Ct. ____, 588 A.2d 1323 (1991).

Code section 115-96.B. authorizes this Board to grant a special exception to permit the extension of a building housing a non-conforming use, subject to the restriction that the area of any such extension shall not be more than twenty five percent (25%) of that area existing on the date the building first became non-conforming. Mathematically, the proposed addition is within the twenty five percent (25%) limitation, and the applicant has successfully demonstrated to the Board that with the exception of the existing lot coverage non-conformity, all the area and bulk limitations and design standards of the R-4 District will be complied with by the applicant in construction of the addition. Finally, the Board has judged this application by the special exception criteria established in Code section 115-86.D., and has determined that its allowance will not be contrary to the health, safety and general welfare of the community. Accordingly, as a lawfully existing and protected non-conforming use, the proposed building extension shall be approved and the special exception granted subject to the conditions imposed in the Order, which follows.

CONCLUSIONS OF LAW

1. The applicant's newspaper publishing facility is a lawful non-conforming use in the R-4 Residential Zoning District.

2. The application to extend the existing building housing the lawful non-conforming use complies with the requirements of Code section 115-96.B.

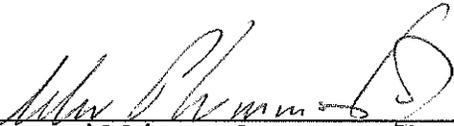
3. The application complies with the criteria established for special exceptions in Code section 115-86.D.

O R D E R

AND NOW, this 3rd day of January, 1992, upon consideration of the testimony and exhibits the application to extend the existing building housing a lawful non-conforming use by the construction of the proposed addition is granted, subject to and only in accordance with the plans and specifications submitted in evidence to the Board as Exhibits A-4 and A-5, the payment of all application and building fees by the applicant to East Bradford Township, and compliance with all other Township Codes and Ordinances, including the Subdivision and Land Development Ordinance. This special exception is further conditioned upon the perpetual maintenance of the existing evergreen trees buffer and tree replacement thereof as and when necessary to provide a solid screen between this and the adjoining properties by the applicant or successors in title for the purpose of buffering the applicant's use from the adjoining tracts on the south and west. Applicant's two parcels shall hereinafter be used and maintained as an integrated parcel to support the use of the property, and to

provide the required buffer areas specified herein. Upon compliance with the foregoing, the East Bradford Township Codes Enforcement Officer is authorized and directed to issue the necessary zoning and building permits.

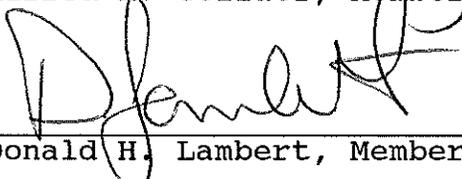
ZONING HEARING BOARD OF
EAST BRADFORD TOWNSHIP



Dr. William Plummer, Chairman



Alfred A. Gollatz, Member



Donald H. Lambert, Member