

IN RE: APPLICATION OF : BEFORE THE ZONING HEARING BOARD
THE WEST CHESTER : EAST BRADFORD TOWNSHIP
PUBLISHING COMPANY : CHESTER COUNTY, PENNSYLVANIA
: APPLICATION NO. - 1993

DECISION AND ORDER

This is the application of the West Chester Publishing Company (referred to herein as both the Applicant and the Newspaper), 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 District in which it is located. The Applicant seeks a special exception under Code Section 115-96.B. to enlarge its existing building by constructing a seventy two hundred (7,200) square feet addition (the "addition") to its existing facility, a variance from the latter section to the extent to which the proposed addition represents an expansion of more than twenty five (25%) percent of the building existing on the date the use first became non-conforming and a variance from the maximum lot or tract coverage limitation to the extent necessary to permit the construction of the addition. The East Bradford Township Zoning Hearing Board (the "Board"), consisting of William Plummer, 3rd, M.D., Chairman, Alfred A. Gollatz, Esquire and Anthony J. Biacchi, E.D.D., Members, conducted a public hearing with respect to this application on Monday, May 17, 1993 at 7:30 p.m. prevailing time at the East Bradford Township building. The Board was represented by its Solicitor, Ronald C. Nagle. The Applicant was represented by its attorney, John E. Good, Esquire, and East Bradford Township (the "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 himself and the Bradford Square Homeowners Association, both adjacent property owners, and both were granted party status by the Board. Public notice by legal advertisement was duly given on May 2 and May 9, 1993 in the Daily Local News, a newspaper of general circulation in the Township, the property was posted, and adjacent property owners notified, as required. The Board rendered its decision at its public meeting held on Monday, June 21, 1993 at 7:30 p.m. prevailing time at the Township building. From the testimony adduced and the 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 5.82 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, 22,089 square feet masonry building and a 1,500 square feet Butler pre-engineered building addition

constructed pursuant to the grant of a special exception by this Board on January 3, 1992.¹ The original one story 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. The property is also covered with 57,425 square feet of macadam parking area, access drives and concrete sidewalks. The previous 1,500 square foot addition did not add to the amount of lot coverage because it was constructed over an existing macadam area.

4. The existing lot coverage equals thirty two (32%) percent comprised of the building footprint and other impervious cover areas described in the preceding Finding. Construction of the addition on the property will increase the lot coverage to 33½%.²

5. The term "Lot or Tract Coverage" is defined as follows:

"The percentage of Lot or Tract Coverage covered by any and all impervious materials, such as buildings, paved parking areas, paved walks, terraces and similar surfaces which do not normally absorb rainfall." Code §115-6

¹ The Applicant filed a previous application with this Board for similar relief as is now sought in connection with the proposed expansion involving the construction of a 3,350 square foot building addition. The relief requested and the building addition was approved by the Board, but the Applicant elected to construct a building addition of only 1,500 square feet.

² The prior application submitted by the applicant expressly specified on the face of the plan that the existing building covered an area of 22,089 square feet. Applicant's present plan does not designate the area of the originally existing building. The application which the Newspaper has filed tells us that the originally existing building area was 22,312 square feet, which together with the previous addition totals 23,812 square feet. This Board's prior decision was predicated upon a finding that the originally constructed building was 22,089 square feet in area as represented by the Applicant in that prior proceeding and on its prior plan. Because the Applicant did not, in this proceeding, submit competent evidence explaining or justify the change in the building area, this Board finds as a fact that the correct size of the original building was 22,089 square feet, which, together with the 1,500 square foot addition yields an existing building footprint area of 23,589 square feet. It is noteworthy that the existing building is a one story structure.

The term "Building Coverage" is defined as follows:

"The ratio of the total ground floor area of all buildings on a lot to the total area of the lot on which they are located." Code §115-6

6. 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.

7. 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.

8. Applicant seeks a special exception under Code section 115-96.B. to enlarge its existing building by constructing a two story addition on a footprint of 40' x 100' to be located on the south side of the existing building at its southwest corner, as depicted on Exhibit A-1, a Site Plan dated December 10, 1992 prepared for the Daily Local News by Utilicon Commercial and Industrial Construction Company, 167 Bridge Street, Phoenixville, Pennsylvania 19460.

9. The proposed Butler pre-engineered addition is a steel sided building constructed on a reinforced concrete slab foundation, the exterior of which will match in color and construction materials the existing building addition. The addition will have a building height of 30 feet, a first floor area of 4,000 square feet and a second floor area of 3,200 square feet and will be sprinklered.

10. The first floor of the addition will contain the Newspaper's Production Department, and will also house a GMA/SLS 1000 Inserter, utilized in the assemblage of the newspaper. The second floor will house the Newspaper's circulation department, bathroom facilities, a kitchenette and break/lunch room. Construction of the addition will allow the Newspaper to eliminate 3,000 square feet of off-site newsprint storage area.³

11. As part of the construction of the addition, the Applicant intends to install and locate on its roof three new seven ton air conditioning units. The Applicant acknowledges that these units could as conveniently be installed at ground level at the side or to the rear of the addition, which would substantially reduce both noise pollution and visual intrusion upon the Applicant's neighbors residing in the adjacent Bradford Square development.

12. There will be no increase in the number of employees nor in the amount of traffic generated by the existing use as a consequence of the addition.

13. The Newspaper's exterior loading dock is presently located on the west side of the building immediately to the south of the 1,500 square foot previously constructed addition. Because the newspaper goes to press between the hours of 12:30 a.m. and 3:45 a.m. each morning, seven days a week, considerable activity occurs on the exterior loading dock during

³ Newsprint is the blank paper on which the newspaper is printed.

those night-time hours which is both audible and annoying to Mr. and Mrs. Barber and other residents of Bradford Square. Since the loading dock is surrounded by the west and south sides of the existing building, noises generated by those working on the loading dock are trapped by the buildings' walls, which act somewhat like an echo chamber, exaggerating and funnelling these noises into the adjacent Bradford Square development. The existing natural screening afforded by the coniferous trees planted on the south and west sides of the Applicant's property is insufficient to abate the resulting noise pollution.

14. The Bradford Square development is contiguous to and located immediately to the south of the Newspaper's property. The closest buildings in that development to the Newspaper's facility are approximately fifty (50') feet from the south property line. The Newspaper's neighbor immediately to the west is a commercial retail tire business, also located within the R-4 Residential District.

15. The Bradford Square development is partially shielded from the Newspaper's existing building by the natural contours of the Applicant's property, as more particularly depicted on Exhibit A-1. However, the two story addition will not be completely shielded by those contours, and its second story will be visible from that development. A stand of relatively mature evergreen trees now partially shields the Newspaper's property from both the tire center and Bradford Square. Because of the nature and intensity of the Applicant's use, maintenance of these natural contours, except as modified by the proposed construction, and enhancement of the natural screen provided by the existing stand of trees are necessary to buffer the adjoining Bradford Square development from the Newspaper's use.

16. No additional sanitary sewerage or water facilities are required in connection with the addition, nor will the extension of additional public services and facilities, such as public water and public sewer be necessary, and there will be no additional police or fire protection required.

17. 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 (25%) percent 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 structural 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."

18. The terminology "area of such building" is not defined in the Code. The term "floor area" is defined as the "sum of the area of the several floors of a building or buildings measured from the face of the exterior walls or from center lines of walls separating two buildings...." The 1,500 square feet addition, previously approved, when combined with the proposed addition, represents an increase of either 24.90% or 39% depending upon the construction given the foregoing terminology, given that the area of the Newspaper's building, as it existed "on the date it first became...a building of which a lawful non-conforming use is made..." was 22,089 square feet.

19. Although the Newspaper has occupied the previously constructed addition since its completion in July of 1992, it has never applied to the Township for or been issued the use and occupancy permit required by Code §115-109.D.

20. The Applicant's site plan calls for the construction of a stormwater management basin which it has agreed to install at the time of construction of the addition to control surface water runoff generated by the existing buildings, the addition and other impervious surfaces located on Applicant's property.

21. Subject to the Applicant's compliance with the conditions 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, except as herein noted, and that upon compliance with the conditions herein imposed, no undue annoyance to adjacent properties will result from the grant of the relief sought herein, nor will the same be contrary to the public health, safety and general welfare.

DISCUSSION

The Code permits the area of a building, housing a non-conforming use, to expand by twenty five (25%) percent, subject to compliance with the area and bulk regulations of the zoning district in which it is located, and the grant of a special exception by the Board. A special exception is neither "special" nor is it an "exception" to the ordinance. Ryan, Pennsylvania Zoning Law and Practice, §5.1.1. Rather, the grant of a special exception is a means by which a proposed use of property is specifically authorized by a zoning ordinance, so long as certain objective criteria are met. Once the applicant for a special exception proves compliance with these objective criteria, he is entitled to the grant of a special exception unless an objector thereto demonstrates that the use will adversely affect the community, including adjacent property. Dotterer vs. Zoning Hearing Board of Upper Pottsgrove Township, 138 Pa.

Cmwlth Ct. 615, 588 A.2d 1023 (1991); Lafayette College vs. Easttown Zoning Hearing Board, 138 Pa. Cmwlth Ct. 579, 588 A.2d 1323 (1991).

Mathematically, the proposed addition, taken in concert with the previously approved 1,500 square feet addition, constitutes either a 25% expansion or a 39% expansion of the original building, depending upon the construction placed upon the terminology "area of such building", specified in Code §115-96.B. As we have noted, that terminology is not defined anywhere in the zoning ordinance, although the term "floor area" is defined. Had the drafters of the ordinance substituted the words "floor area" for the word "area" in writing §115-96.B., we would be required to conclude that the proposed expansion represents a 39% increase, since the two floors of the addition would have to be calculated. However, that is not the language that the drafters used. Logic would ordinarily compel the conclusion that "area" should be interpreted to mean "floor area", since, if no height limitation were imposed by this ordinance, a sky scraper could be constructed and arguably result in only a 25% increase in the building's area, construing the latter term to mean "footprint". However, that absurdity cannot result within the context of this case since the R-4 District regulations impose a maximum height limitation of 35 feet. While the ordinance provides us with no definition of the term "area", recourse to the American Heritage Dictionary of the English Language, 10th Edition, tells us that the term means, among other definitions, "The measure of a planar region or of the surface of a solid." A planar surface is, of course, a one dimensional flat surface or plane. We are thus required to conclude that the term in question has a meaning separate and distinct from the term "floor area". For example, in City of Philadelphia vs. Angelone, 3 Pa. Cmwlth Ct. 119, 280

A.2d 672 (1971), an owner was restricted to construction of a single floor addition measuring 10% of the existing building where the ordinance restricted expansion of a non-conforming use by an amount that would not "cause the aggregate floor area of all additions to exceed 10% of the gross floor area of the structure when the use first became non-conforming". Where doubt exists as to the intended meaning of the language of the zoning ordinance, we are required to construe the ordinance in the manner which is most favorable to the applicant, and against any implied extension of the restriction. Pennsylvania Municipalities Planning Code, §603.1, 53 P.S. §10603.1. Here, that construction compels the conclusion that the 25% expansion limitation applies to the footprint area of the addition and not the floor area of the addition. Accordingly, since the addition is within that permitted limitation, no variance expanding the 25% limitation is required.

The second difficulty we encounter relates to the ordinance's requirement that the applicant comply with the area and bulk requirements of the R-4 District. The difficulty centers upon the fact that §115-23 of the Code establishes six different sets of area and bulk regulations depending upon the type of use permitted by that district's use regulations. Apropos to the facts of this case, the existing non-conforming lot coverage is 32%. The addition will increase that to 33½%. Permissible lot coverages in the R-4 District range from a maximum 20% to 40%, depending upon the use. Which are we to apply? If we apply those authorizing a 40% maximum, the Newspaper's existing tract coverage is not non-conforming at all, but its minimum lot area is rendered non-conforming. If, on the other hand, we apply any of the criteria authorizing maximum lot coverage not in excess of 25%, the Newspaper's lot remains non

conforming. We find that it is most logical to apply the area and bulk regulations of §115-23.F., which govern uses allowed by special exception in the R-4 District. This section specifies that "uses permitted by special exception in the R-2 (sic) District shall be subject to §115-15.C of this chapter".⁴ We reach this conclusion for two reasons. First, the various area and bulk regulations of the R-4 District applicable to permitted uses apply to specific types of residential dwellings, and have no logical or practical application to the applicant's use. Secondly, applicant's non-conforming use expansion is permitted only by special exception and is more consistent in character with the types of uses permitted by special exception in the R-4 District. The area and bulk regulations of §115-15.C. limit maximum lot coverage to 20%. Since the Newspaper's existing lot coverage of 32% is non-conforming, we regard the 1½% expansion increase in lot coverage as de minimis. The variance is small and rigid compliance with the ordinance is not required to protect the public policy concerns of the ordinance. The grant of a de minimis variance will not adversely affect public health, safety or general welfare. Appeal of Ressler Mill Foundation, 132 Pa. Cmwlth Ct. 569, 573 A.2d 675 (1990). Accordingly, the Applicant's request for a special exception will be granted, subject to the conditions herein imposed.

CONCLUSIONS OF LAW

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

⁴ We construe the reference to R-2 as a printing error in the text.

2. The Applicant has standing to bring this application.
3. The Township's Zoning Ordinance permits up to 25% expansion of a building housing a non-conforming use, and the Newspaper's application is within that limitation.
4. The area and bulk regulations which apply to the Applicant's existing use are provided for in §115-15.C. of the Township's Zoning Ordinance.
5. Applicant's property is now non-conforming in lot coverage, but the addition results in only a de minimis amount of additional lot coverage.
6. The application complies with the criteria established for special exceptions in Code §115-86.D.

ORDER

AND NOW, this 21st day of June, 1993, upon consideration of the testimony and exhibits, the Applicant's request 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 testimony, plans and specifications submitted in evidence to the Board by the Applicant, the payment of all application, building permit and zoning permit fees by the Applicant to the Township, compliance with all other applicable Township codes and ordinances, including filing of the required land development plan and its approval by the Supervisors and the following five additional conditions:

1. The three new air conditioning units shall not be located on the roof of the existing building, the previously constructed addition or the proposed addition. Such units shall be located on the ground, adjacent to the addition, and shall be shielded by the planting of appropriate landscaping.

2. An additional row of evergreen trees, having a minimum height of six (6') feet after planting and placed no more than eight (8') feet apart on center shall be added to the existing stand of evergreen trees on the south and west sides of the Applicant's property to form a double row of evergreen plantings, and shall be continually maintained as an effective screen buffer, with replacement of trees as and when necessary. These plantings shall extend beyond and to the east of the addition for a distance terminating at the face of the existing building as it fronts on North Bradford Avenue.

3. This double planted row of evergreen trees shall be perpetually maintained by the Applicant as a buffer, and tree replacement thereof shall be made as and when necessary to provide a solid screen, buffering the Applicant from the adjoining tracts on the south and the west.

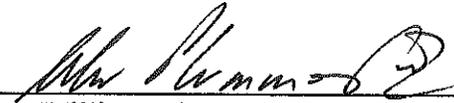
4. Applicant's two parcels shall hereafter be used and maintained as an integrated parcel to support the use of the property and to provide the required buffer area specified hereinabove.

5. Applicant shall construct and install a stormwater management basin as depicted on the site plan at the time of construction of the addition. The basin shall meet the design criteria of the Township's Subdivision and Land Development Ordinance or other applicable regulation and any additional design criteria required by the Township engineer.

6. Prior to the issuance of any building permit for the addition, the Applicant shall secure from the Township a use and occupancy permit for the previously approved addition, and prior to occupancy of the addition approved hereby, the Applicant shall obtain from the Township a use and occupancy permit. The Board notes for the benefit of the

Applicant and the Township that the expansion of this non-conforming use has reached the limits imposed by governing township regulations, and absent the grant of variances, no further expansion is warranted.

**ZONING HEARING BOARD OF
EAST BRADFORD TOWNSHIP**



Dr. William Plummer, 3rd, Chairman



Alfred A. Gollatz, Member



Anthony J. Biacchi, Member