

**WEST MANHEIM TOWNSHIP ZONING HEARING BOARD
YORK COUNTY, PENNSYLVANIA
PUBLIC HEARING**

IN RE:

**Edward Gonzales, d/b/a
Gonzales & Sons, Management, LLC
Applicant**

**WEST MANHEIM TOWNSHIP
Zoning Hearing Board**

**SE
#01-01-30-2019**

Before:

Jeff Garvick, Chairman
Michael Hawkins, Vice Chairman
Holly Zumburum, Secretary
David Appleby, Member
Marc Woerner, Code Enforcement Officer
Joseph A. Kalasnik, Esquire, Solicitor

Date of Hearing: Tuesday, March 26, 2019, 7:00 p.m.

Place: West Manheim Township Municipal Building
2412 Baltimore Pike
Hanover, PA 17331

DECISION OF THE ZONING HEARING BOARD

This is the written decision of the West Manheim Township Zoning Board (hereinafter "Zoning Board") regarding the application of Edward Gonzales, d/b/a Gonzales and Sons Management LLC, 27 Eastwood Dr., Hanover, PA 17331. Applicant filed an application for a Zoning Board Hearing on or about January 30, 2019. That application pertains to a property at 2040 Baltimore Pike, West Manheim Township (hereinafter "the Property"). Applicant requests a special exception pursuant to Zoning Ordinance Section 270-7, Uses not regulated. Specifically, Applicant proposes to operate a rooming house at the Property.

A Zoning Board hearing regarding this application was held on Tuesday, March 26, 2019 commencing at 7:00 PM.

FINDINGS OF FACT

1. The Property is in the Commercial/Industrial zoning district and the proposed use is neither specifically permitted or prohibited in this district;

2. The Applicant described his requested proposed use as a "single room occupancy, rooming house, which is a use currently not regulated for this purpose."

3. The Applicant stated that background checks would be used to screen prospective tenants;

4. The Applicant stated that efforts would be made to rent to mature adults (preferably age 30 or older) rather than teenagers, young adults, or primarily elderly persons;

5. The Applicant stated that rooms would not be rented to families or persons with children; instead, each room would be rented to one adult only;

6. The Applicant stated that tenants would be subject to a list of house rules addressing, among other things, quiet times, safety rules, cooking procedures, smoking prohibitions, and trash removal;

7. The Applicant stated that the rooming house would have a live-in house manager on-site to enforce house rules, ensure regular maintenance, and help build good relationships with the neighbors;

8. The live-in house manager would not be Applicant's employee but would receive reduced rent as compensation for his services;

9. The Applicant stated that there are adequate public facilities available, such as public water and sewer, to serve the proposed rooming house;

10. The Applicant stated that the rooming house would be used by a maximum of 5 to 8 adults;

11. The Applicant stated that there is existing off-street parking for up to 10 cars and that one parking spot would be allowed for each tenant;

12. The Applicant stated that there would be no substantive changes, including exterior expansions or modifications, to the structure;

13. The Applicant stated that a fire plan and evacuation diagram would be posted inside every sleeping area, in the hallway, and in the kitchen;

14. The Applicant stated that there will be interconnected wireless smoke detectors and carbon monoxide detectors installed in the facility;

15. The Applicant stated that there are six exit doors and 26 windows in the facility;

16. The Applicant stated that the size of each bedroom will exceed 300 ft.², include two large closets, and have windows;

17. The Applicant stated that each tenant would have unobstructed access to the centralized kitchen and laundry room;

18. The Applicant stated that there will be three full bathrooms that include four showers and five toilets, all of which will be operational;

19. The Applicant stated that he would assist in property management but that he would be "in and out" of the facility;

20. The primary parking area consists of a combination of dirt and lawn;

21. A supplemental parking area consists of a carport which is an elevated concrete pad with a curb not necessarily designed for vehicle traffic;

22. The Applicant stated that the entire facility will be "handicap accessible."

23. The facility was previously used as a nursing home;

24. The Applicant stated that he would use a private entity to perform an online background check for all prospective tenants but would not contact the Pennsylvania State Police to get an official criminal history for prospective tenants;

25. The facility does not have a sprinkler system for fire suppression;

26. The Applicant stated that the live-in property manager would not have any authority over the facility's tenants but that his primary responsibility would be acting as the "eyes and ears" for the Applicant and reporting any necessary issues concerning the facility, tenants, etc. to the Applicant;

27. The Property shares its property line on two sides with the West Manheim Elementary School;

28. Testimony was provided by a non-party witness regarding the unknown character of the facility's tenants and his corresponding concern for the safety of his children given that the witness's residence is proximate to the Property;

STANDARD OF REVIEW

An application for a special exception for a proposed use which is not specifically regulated within the Zoning Ordinance (hereinafter "Ordinance") must meet all of the conditions, requirements, and standards included in and referenced by section 270-7 of the Ordinance.

Section 270-7 states as follows:

If a use clearly is not permitted by right, as a special exception use, or as a conditional use by this chapter within any zoning district, the use is prohibited, except that the Zoning Hearing Board may permit such use as a special exception use if the applicant specifically proves to the Zoning Hearing Board that all of the following terms would be met:

A. The proposed use would be equal to or less intensive in external impacts than uses that are permitted in the district;

B. The proposed use would be closely similar in external impacts and character to uses permitted in that district, considering

the standards in §270-180, Expansion or construction upon nonconformities;

C. The proposed use would meet the standards that apply under §270-233 of this chapter pertaining to special exception uses; and

D. The proposed use is not specifically prohibited in that zoning district.

Section 270-7 specifically references section 270-233 (Special exceptions.) as another section of the Ordinance to which the Applicant must demonstrate compliance. The pertinent part of section 270-233 states as follows:

D. General criteria. Each applicant must demonstrate compliance with the following:

(1) The proposed use shall be consistent with the purpose of the zoning district and intent of this chapter.

(2) The proposed use shall not detract from the use and enjoyment of abutting and adjacent or nearby properties.

(3) The proposed use will not substantially change the character of the subject property's neighborhood.

(4) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.).

(5) For development within the Floodplain Protection Overlay Zone, that the application complies with those requirements listed in Part 6, Article XI, Floodplain Protection Overlay District, of this chapter.

(6) The proposed use shall comply with those criteria and performance standards applicable to uses permitted in the Zoning District and those specifically listed in Part 7 of this chapter. In addition, the proposed use must comply with all other applicable regulations contained in this chapter.

(7) The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan.

The applicant bears the burden of producing evidence and persuasion to prove that the proposed use meets the special exception requirements particularly specific criteria in the Ordinance. Once the applicant's burden is satisfied, a presumption arises that the use is

consistent with the health, safety and welfare of the community. The burden then shifts to the objectors to prove that the proposed use will have a generally detrimental effect on the public health, safety and welfare.

OPINION AND CONCLUSIONS OF LAW

Ordinance Section 270-233 D. (1) states that "[t]he proposed use shall be consistent with the purpose of the zoning district and intent of this chapter." The Property lies within the Commercial/Industrial District. The purpose for this district is stated at Ordinance Section 270-36 which states that "[t]he purpose of this zoning district is to encourage and provide for a mix of commercial and industrial businesses and development..."

Although the Applicant presumably intends to collect rent and earn a profit from the tenants of the proposed rooming house, the proposed use both in terms of its practical function and its appearance is primarily residential. Therefore, the proposed use is not consistent with the stated purpose of the Commercial/Industrial District. The Applicant made bald assertions that the proposed use met this requirement but offered no rationale for this assertion. Nor did the Applicant explain why a residential use would be consistent with the purpose of the zoning district. Therefore, the Applicant failed to meet his burden of proof and persuasion for this requirement.

Additionally, the overarching purpose of the Zoning Ordinance is stated at Section 270-3 (Purpose; community development objectives.). This Section references Section 604 of the Pennsylvania Municipalities Planning Code which states, among other things, that a zoning ordinance should be designed "to promote, protect, and facilitate... safety, morals, and the general welfare [of the public]." This Section further states that "vehicle parking and loading space" are provisions which must be designed into a zoning ordinance. Therefore, vehicle

parking and loading space are issues which must be considered when contemplating the Applicant's proposed use. These issues and requirements are further addressed below.

Ordinance Section 270-233 D. (2) states that "the proposed use shall not detract from the use and enjoyment of abutting and adjacent or nearby properties." During the portion of the Zoning Board hearing when the Zoning Board heard testimony from non-party witnesses there was significant testimony offered by neighbors to the Property stating their concerns about future tenants possibly obstructing a private lane immediately adjacent to the Property or otherwise trespassing on adjacent property.

Additionally, the Property shares its property line on two sides with the West Mannheim Elementary School. This gave rise to concerns from Zoning Board members and non-party witnesses who are neighbors to the Property regarding the safety of children and staff at the school and children in the neighborhood given the unknown character of persons who will become the Applicant's tenants. The Applicant did attempt to address this issue not only for the benefit of non-party witnesses but for one or more Zoning Board members who remained skeptical of the tenant screening process and plan for supervision of tenants notwithstanding the efforts which the Applicant testified he would take to address the concerns. Of particular concern to the Zoning Board was Applicant's testimony that there would be no paid employee at the facility to manage it. Ultimately, the Applicant's testimony in this regard was unpersuasive to the Zoning Board.

Ordinance Section 270-233 D. (3) states that "[t]he proposed use will not substantially change the character of the subject property's neighborhood." In the light of information referenced above and below, the Zoning Board was unpersuaded by the Applicant's bald assertions that the proposed use will comply with this requirement.

Ordinance section 270-233 D. (6) states that "[t]he proposed use shall comply with those criteria and performance standards applicable to uses permitted in the Zoning District and of those specifically listed in Part 7 of this chapter. In addition, the proposed use must comply with all other applicable regulations contained in this chapter." This requires us to perform an analysis of these additional sections referenced in the Ordinance to determine if the proposed use complies with these specific requirements. These are specific criteria for a special exception for which the Applicant has the burden of proof and persuasion to demonstrate compliance.

Part 7 of the Ordinance includes Section 270-40 (Area regulations.). The Applicant failed to address this Section as it pertains to the Property. As such, the Applicant failed to meet his burden to show that his proposed use complies with this requirement for a special exception.

Part 7 of the Ordinance includes Section 270-41 (General requirement for all uses.). Subsection C states that "[i]n addition to other applicable sections of Part 7, Standards for Uses, all development or uses permitted within this zoning district shall comply with... (2) Article XVII, Specific Use Standards." The specific use listed in this Article which has the most similarity to the Applicant's proposed use is found at Section 270-139 (Group homes.) Therefore, although it may not be necessary to require Applicant to rigidly comply with all provisions for group homes because his proposed use is only similar but not identical to such facilities, it is nevertheless important to consider the Ordinance requirements for Applicant's proposed use to the extent that group homes as defined by the Ordinance are similar to rooming houses. At subsection C it states, "all floors above grade shall have direct means of escape to ground level." The Zoning Board interprets this provision to mean that the second floor of Applicant's proposed rooming house must have a means of emergency escape to the exterior ground level such as a fire escape. The Applicant failed to address this Section as it pertains to the Property. As such,

the Applicant failed to meet his burden to show that his proposed use complies with this requirement for a special exception or to demonstrate why this requirement does not apply to his proposed use.

Section 270-41 subsection E states that [a]ll parking areas shall be set back a minimum of 25 feet from all property lines and it shall be provided with buffering, landscaping and screening in accordance with Part 10 of this chapter." The Applicant testified regarding ten parking spaces he plans to allow for tenants and some trees that exist at the property line but otherwise failed to address this Section as it pertains to the Property. As such, the Applicant failed to meet his burden to show that his proposed use complies with this requirement for a special exception or to demonstrate why this requirement does not apply to his proposed use.

As indicated immediately above, uses similar to Applicant's proposed use must meet the Ordinance requirements Part 10 (Buffering, Landscaping, Screening and Lighting). Part 10 Includes Sections 270-211 (General requirements.), 270-212 (Minimum required landscaping.), 270-213 (Street trees), 270-214 (Maintenance plan.), 270-215 (Levels of screening.), 270-216 (Uses.), 270-217 (Maintenance.), 270-218 (General requirements.). The Applicant failed to address these sections as they pertain to the Property. As such, the Applicant failed to meet his burden to show that his proposed use complies with these requirements for a special exception or to demonstrate why they do not apply to his proposed use.

Part 7 of the Ordinance also includes Section 270-139 (Group homes.). This is a section providing for specific criteria to which group homes must adhere. The Zoning Board acknowledges that a rooming house is not exactly the same as a group home. However, the definition of group home in the Ordinance is sufficiently similar to the description provided by the Applicant for his proposed rooming house such that the Zoning Board would be remiss in its

duties by not giving some reasonable consideration to the specific requirements for group homes when considering Applicant's application for a special exception to operate a rooming house. Subsection F states that [t]he applicant shall furnish all license and approvals from applicable state and/or federal government agencies." The implication of this provision is that, to the extent there are regulations for the Applicant's proposed use promulgated by governmental authorities other than West Mannheim Township, the Applicant must demonstrate to the Zoning Board that he is in compliance with all such regulations.

For example, Pennsylvania Code Chapter 20 (Tenements, Lodging, and Boarding Houses) appears to regulate facilities such as the rooming house proposed by Applicant. Chapter 20.32 (Living and sleeping areas) regulates living and sleeping arrangements in facilities such as rooming houses. Chapter 20.33 (Bath and toilet areas) regulates bathroom and toilet arrangements in facilities such as rooming houses. The Applicant failed to address these regulations as they pertain to his proposed use. As such, the Applicant failed to meet his burden to show that his proposed use complies with this requirement for a special exception or to demonstrate why it does not apply to his proposed use.

Additionally, Pennsylvania Code Chapter 55 (Division C-2 Hotels, Motels, Apartment Buildings, Etc.) appears to include within its definition of residential dwellings subject to its regulations a use such as that proposed by the Applicant. Chapter 55 includes regulations governing means of egress, emergency lighting, fire extinguishers and sprinkler systems, and other matters pertaining to building safety. The Applicant failed to address these regulations as they pertain to his proposed use. As such, the Applicant failed to meet his burden to show that his proposed use complies with this requirement for a special exception or to demonstrate why it does not apply to his proposed use.

The Zoning Board acknowledges that many of the specific items of concern listed above were not raised by the Zoning Board during applicant's hearing. However, the Applicant is reminded that the burdens of proof and persuasion regarding all specific requirements he must meet to be granted a special exception are entirely his own. It is the Applicant's sole responsibility to determine all of the specific requirements he must meet and present sufficient evidence to the Zoning Board that the evidence demonstrates compliance with all requirements. Although the Township by its Zoning Officer or other staff may provide some direction as to the procedural requirements to present an application for a special exception to the Zoning Board, none of these persons or the Zoning Board may provide legal advice or direct assistance to the Applicant in his preparation or presentation of his application.

CONCLUSION

Given the Findings of Fact, and for the reasons stated above, the Zoning Board finds that the Applicant failed to meet his burden of proof to show that he has satisfied all of the specific and objective requirements for the special exception described in his application. As such, the Zoning Board must deny the application.

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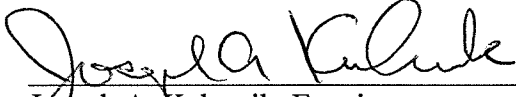
ORDER

AND NOW, this 30 day of April, 2019, it is **ORDERED** that the Application presented by the Applicant for a special exception is hereby **DENIED**.

Board members Jeffrey Garvick, Michael Hawkins, Holly Zumbrum, and David Appleby, all voting "Aye" on the motion for denial.

Respectfully submitted:

4 | 30 | 2019
Date of Mailing


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CERTIFICATE OF SERVICE

This 30 day of April, 2019, I, Joseph A. Kalasnik, solicitor for the West Manheim Township Zoning Hearing Board, do hereby certify that on April 30, 2019 a true and correct copy of the Decision of the Zoning Hearing Board in the Application of Edward Gonzales, d/b/a Gonzales & Sons Management, LLC was served as follows:

Edward Gonzales
d/b/a Gonzales & Sons Management, LLC
27 Eastwood Drive
Hanover, PA 17331
1st Class Mail

Marc Woerner
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Miriam Clapper
mclapper@westmanheimtwp.com

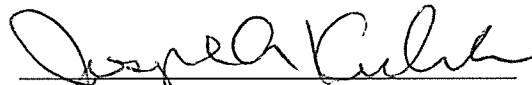
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4/30/2019
Date of Mailing


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