

MINUTES
WEST MANCHESTER TOWNSHIP
PLANNING COMMISSION
DATE: February 14, 2017

The meeting was called to order by Patrick Hein at 7:00 P.M. Members present: Fred Walters, Richard Gordon, Ron Stare and Alternate Brenda Brown. Others present: Monica Love, Township Zoning Officer.

REORGANIZATION

MOTION: by Patrick Hein to nominate Richard Gordon for Chairman.

SECONDED by: Ron Stare

ACCEPTED BY: Richard Gordon

MOTION PASSED: Unanimously (4-0)

MOTION: by Patrick Hein to volunteer as Vice-Chairman.

SECONDED by: Fred Walters

MOTION PASSED: Unanimously (4-0)

MOTION: by Fred Walters to volunteer as Secretary.

SECONDED by: Rich Gordon

MOTION PASSED: Unanimously (4-0)

Approval of Minutes:

MOTION: by Ron Stare to approve the December 13, 2016 meeting minutes.

SECONDED by: Fred Walters

MOTION PASSED: Unanimously (4-0)

ZONING HEARING BOARD CASES

ZHB Case 17-02 Vincent & Julie Lauer & Patricia Lauer, 51 N. Emig Mill Road,

Special Exception of Section 150-9 of the Zoning ordinance, Section 150-9 Uses not Specifically Permitted, and/or a variance of Section 150-118 to permit a rooming house in the Professional-Office zone.

Mr. Doug Myers of MPL Law Firm described the request, and noted that the property is unusual in a couple ways. The lot is zoned Professional-Office and is surrounded by Local Commercial General Industrial, R-3 and R-4 Residential properties, which allow for multi-family uses by right. Also, the building has been used as it is for approximately 30 years. It is an old school house of approximately 5,000 s.f. Renovations were done beginning in 1987 to create livable space. The Lauers live in 1/3 to 1/2 of the building, and the remainder has been set up as rentable rooms with a common area where light cooking is allowed. The rooms are rented on month to month leases, and have been since the late 1980s.

It is Mr. Myers and the applicant's opinions that a rooming house is not a use permitted within the Zoning Ordinance, in any district and compare it to a nursing, rest and retirement home, which is permitted within the Professional Office. The property can meet the majority of the requirements of a nursing, rest and retirement home, with the exception of the public sewer connection.

Mr. Myers additionally believes that the rooming house is excluded from the Zoning Ordinance and therefore qualifies the property for a variance, if the special exception isn't granted. Vince Lauer and Robert Lettridge, the original owner of the property were available for questions by the members.

Mr. Lauer explained the layout of the building. Currently 7 people live in two (2) residences in the building as one (1) family. There are four bedrooms in addition to the two residences and three of those are currently rented out. The fourth is used more as a guestroom. Mr. Lauer's request is to allow seven (7) rentable rooms that he can possibly expand them after his mother and stepfather pass away.

Mr. Clair Markey owns the property at the corner of Emig Mill Road and Market Street, he has nothing against the property, but stated that it needs to be cleaned up.

John Herrold, Solicitor for West Manchester Township is in opposition to the application, on behalf of the Board of Supervisors. In regards to the special exception request, in the Zoning Ordinance, Section 150-5, under the definition of DWELLING, boarding, rooming and lodging houses are specifically excluded. There are zones within the Township where a rooming house is permitted, and therefore Section 150-9 is not applicable. Within the Zoning Ordinance 150-101, which list the permitted uses for the Highway Commercial District, Hotels, Motels and *similar lodging facilities* are permitted, ...within the Mixed Use zone, the same uses Hotels, Motels and similar lodging are permitted, therefore Section 150-9 is not applicable.

With respect to the Variance, the applicant has argued that the use has been existing for 30 years, the records of the Township reflect that they were here in 1992 and requested the variance to operate a rooming house on the premises. That was denied by the Zoning Hearing Board, since that time there have been no applications made to the Township which would have allowed the use. To the extent that they are currently renting 3 rooms, we have an illegal use not known until December of 2016 when the Zoning Department was made aware. The Lauers put this into effect after the variance was denied, and unbeknownst to the Township the illegal use continued. In order to have a variance by Estoppel, an applicant must show that there was a failure by the municipality to enforce the ordinance for a long period of time where it knew or should have known of the violation, coupled with some form of active acquiescence in the illegal use. There has to be good faith by the landowner - an innocent reliance in the validity of the use. While the definition of family includes the allowance of 3 unrelated people living 'as a family' it does not include 3 people paying to rent rooms.

Mr. Herrold noted there are numerous possible uses that the building could be converted into which are permitted by the ordinance and in fact, prior to the Lauers' ownership, the building was used as a commercial office and before that as a day school.

Monica Love read through the current requirements and permitted uses within the Professional-Office zone, and reviewed previous variance applications as requested by the commission members.

Mr. Myers disagreed, the rooming house is not like a hotel or motel but more like the semi-permanent residence of a nursing or retirement home. He further denied that the Lauers were operating the rooming house in some underhanded way. They have operated it openly for 30 years.

Brenda Brown asked if the rooming house was being operated as a business, like a nursing home, is it registered as a business and paying business taxes? Mr. Lauer answered that he reports revenue from the rent, but is not registered as a business.

Rich Gordon asked construction and code questions. Monica Love explained that part of the issue with enforcement is to have safety measures assured. Was the electric properly installed, are the exits illuminated, are there proper fire extinguishers etc. Inspections will need to be performed, and are scheduled prior to the Zoning Hearing meeting.

Ron Stare made a motion to recommend the Zoning Hearing Board not approve the application. The motion died for lack of second.

The members asked further questions of the Zoning Officer and Township Solicitor and supplementary discussion occurred.

MOTION: by Richard Gordon to recommend that the Zoning Hearing Board decline the request for Special Exception of Section 150-9.

SECOND: by Ron Stare

2 members voted aye, Patrick Hein and Fred Walters abstained

MOTION by: Patrick Hein to recommend that the Zoning Hearing Board reject the variance request of Section 150-118

SECOND by: Richard Gordon

MOTION PASSED: (3-0) Fred Walters abstained

NEW BUSINESS

The Zoning Officer distributed the first draft of the re-write of Zoning Ordinance, Article II DEFINITIONS, and the list of permitted and special exception uses, with the request that the members review the definitions and uses listed and make notes of any to be added, removed or reworded.

Meeting adjourned at 9:13 pm