

BEFORE THE ZONING HEARING BOARD OF DICKINSON TOWNSHIP
CUMBERLAND COUNTY, PENNSYLVANIA

In re: Application of	: Docket No. 2012-02
Specialty Paints and Coatings, Inc.	:
	: Variances from
	: Sections 205-13.B
	: Use Variance

PRESIDING: Gerald Eby, Chairman;
PRESENT: Richard Cantor, Vice-Chairman
Michael Gennett, Member

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. A hearing was held on June 26, 2012, at 6:00 p.m. at the Dickinson Township Municipal Building, 219 Mountain View Road, Mount Holly Springs, PA 17065, with all notices provided as required by law.
2. The Applicant is Specialty Paints and Coatings, Inc. (hereinafter "SPC"), a Pennsylvania Corporation owned and operated by Max Crider.
3. Mr. Crider testified at the hearing in this matter that he has operated SPC from a leased facility located at 1878 West Trindle Road, Carlisle, for the approximately six years that SPC has been in business.
4. SPC proposes to relocate its operations to a parcel known as 10 Kuhn Drive, Dickinson Township, Carlisle, Pennsylvania, which parcel is approximately 1.63 acres in size and improved with a 6,600 square foot building.
5. 10 Kuhn Drive is presently owned by Enola Construction Company, Inc.

6. SPC is in the business of providing paint and stain to its customers both through wholesale and retail sales, and the sale of new spray painting equipment and the repair and service of painting equipment.

7. SPC currently employs four full-time employees and one part-time employee.

8. SPC operates from 7:30 a.m. to 4:30 p.m. Monday through Friday.

9. Mr. Crider intends to operate SPC in essentially the same manner at 10 Kuhn Drive as it presently operates at its existing location.

10. Mr. Crider's desires to relocate SPC in order to make an investment in the real estate at 10 Kuhn Drive and to enable SPC to be closer to Interstate 81, which is a frequently used roadway by SPC delivery trucks.

11. SPC typically receives one tractor-trailer delivery per week and UPS and Federal Express van deliveries daily. SPC delivers to its customers in delivery vans or cube trucks.

12. The building located at 10 Kuhn Drive was moved there from a different location by the present owner of the tract and the building has been unused since it was located there.

13. 10 Kuhn Drive is located in the Medium Density Residential-Office District (hereinafter "MDR-O"), and SPC's business use is not permitted by right in the MDR-O District.

14. Two nearby parcels in the MDR-O District are used in connection with business purposes by virtue of having been granted a Conditional Use permit by the Board of Supervisors; one such adjacent parcel is used in connection with an automobile detailing shop; the other is used as a laboratory.

15. A third nearby parcel in the MDR-O zone is used as a worship center.

16. William Shearer, Jr., a licensed real estate broker and appraiser in the Commonwealth of Pennsylvania, testified that the uses around 10 Kuhn Drive are largely industrial, in the nature of warehouses, in addition to some office and residential uses.

17. Mr. Shearer testified that the MDR-O District was relatively small and is surrounded by more intensive zoning districts.

18. Kenneth Graham has resided on Alexander Spring Road near 10 Kuhn Drive for approximately forty years and Mr. Graham's residence is approximately 500 feet from the building SPC proposes to operate from.

19. Mr. Graham expressed his opposition to SPC's request for a variance because he does not believe the business conducted by SPC is compatible with surrounding uses and is not permitted by the zoning ordinance.

20. Mr. Graham testified that there are approximately eleven other single family residences nearby his home.

21. The Applicant cites several justifications for the grant of a use variance, some of which include:

- a. The parcel in question is located near a great deal of industrial development;
- b. The MDR-O District is relatively narrow and sandwiched between two much larger B-1 Districts that support millions of square feet of warehouse space.
- c. The MDR-O is narrow, irregularly shaped and oddly positioned between two areas zoned B-1.
- d. Applicant believes there is an extremely remote possibility that the area in question will be developed as a residential area.
- e. No new construction will occur if the variance is granted.

f. A grant of the variance will not alter the essential character of the neighborhood given the number and nature of the uses of nearby properties.

g. The business operations of SPC will predominantly occur within the existing building.

CONCLUSIONS OF LAW

Applicant must meet the following criteria to in order for the Zoning Hearing Board to grant a variance:

- (1) That there are unique physical conditions peculiar to the property and that the unnecessary hardship is due to those conditions;
- (2) That because of the physical conditions, there is no possibility that the property can be developed in strict conformity with the zoning ordinance and that a variance is needed to enable reasonable use of the property;
- (3) That unnecessary hardship has not been created by the applicant;
- (4) That the variance is not detrimental to the public welfare; and
- (5) That the variance is the minimum variance that will afford relief and is the least modification of the regulation at issue.

In addition, in the context of use variances, the unnecessary hardship must be established by evidence that: (1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) that the property can be conformed for a permitted use only at a prohibitive expense; or (3) that the property has no value for any purpose permitted by the zoning ordinance. Hertzberg v. City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

The Board does not believe a hardship exists in this case as required by Pennsylvania Law. The Board did not find evidence that the nature of the uses of the properties nearby 10 Kuhn Drive create unique physical conditions peculiar to 10 Kuhn Drive such that a hardship arises, particularly in light of the requirements of the Hertzberg case. The Board also finds that

Applicant did not prove that there is no possibility that the property can be developed in strict conformity with the zoning ordinance. The evidence presented by Applicant focused more on surrounding uses instead of the limitations of 10 Kuhn Drive relative to permitted uses in the MDR-O District. Finally, the Board believed that granting the use variance would be detrimental to the public welfare in that granting a use variance would have a negative effect on nearby residential uses.

DECISION

On a motion by the Board (Gerald Eby moving and Richard Cantor seconding) to deny the application for a use variance, the motion passed with three votes in favor and none against.

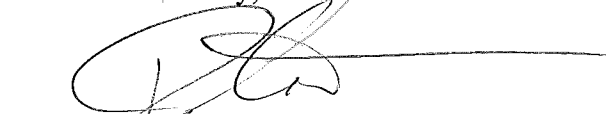
DICKINSON TOWNSHIP
ZONING HEARING BOARD

Date: 7-19-2012



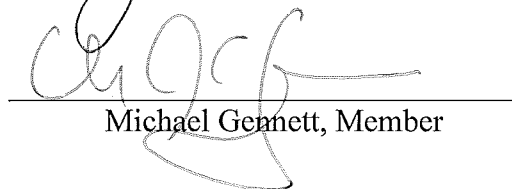
Gerald Eby, Chairman

Date: 7-23-2012



Richard Cantor, Vice-chairmen

Date: 7-16-2012



Michael Gennett, Member

ANY AGGRIEVED PARTY HAS THIRTY DAYS TO APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA.