

IN RE: APPEAL OF WALGREEN EASTERN CO., INC.

DECISION AND ORDER

Pursuant to notice and advertisement, the Zoning Hearing Board of the Borough of Quakertown (Members McDermott, Guise and Roth present) met in public session on May 30, 2013, to consider the Application of Walgreen Eastern Co., Inc., 41 and 47 South West End Boulevard, Quakertown, PA 18951 for variances from Chapter 27 Section 311.7 (set back requirements); Section 401 (number of uses on a single lot) and Section 603.B(4)(c) (driveway entrance and exit width at the street line).

Notes of Testimony were taken by Robert Harley.

The Applicant was represented by Christine G. Pionzio, Esquire. Testimony was received from Gary Kulp, Robert L. Hoffman and Robert Kapusta, all of whom supported the application. No one appeared in opposition to the request. Exhibits 1-10 were sponsored by the Applicant and will be made part of the record.

The appeal will be granted in its entirety.

FINDINGS OF FACT

1. Walgreen Eastern Co., Inc. ("Applicant") has entered into ground leases with Tepco, LLC, owner of Tax Parcel No. 35-002-018-1 ("Tepco Property") and Patricia A. Keller, William S. Haag and Linda C. Knutson, owners of Tax Parcels 35-002-018 and 35-002-018-003 ("Keller properties").

2. Tepco and Keller have entered into a separate Management Agreement relating to the joint development of their respective parcels by Applicant.

3. The parcels abut each other and are located at the intersection of Route 309 and West Broad Street. Route 309 is a major highway through the Borough and the properties together create a desirable commercial corner.

4. Applicant intends to lease the Tepco and Keller properties; to demolish portions of existing buildings and construct a Walgreen's drug store together with a drive up/drop off pick-up window; loading areas; off street parking spaces and on site landscaping. The leases are for a term of twenty (20) years with extension options extending to forty (40) years. The proposed Walgreen building will straddle the Tepco-Keller property lines. Applicant's proposed development of the properties would be a visual and functional improvement of the corner.

5. The Tepco property and the Keller properties are irregular in configuration.

6. The Management Agreement provides that Tepco and Keller retain ownership of their respective parcels, but for so long as the Walgreen building straddles their common property line, the parcels will be treated as one parcel.

7. As a result of the unchanged ownership interests, zoning relief is necessary from the required side yard set backs. The specific set backs and the zoning requirements are:

- a. TMP 35-2-18: 10 feet side yard required, none proposed (westerly and southern boundaries).
- b. TMP 35-2-18: 25 feet rear yard required, none proposed (southerly boundary).
- c. TMP 35-2-18-1: 10 feet side yard required, none proposed (northern boundary).
- d. TMP 35-2-18-1: 25 feet rear yard required, none proposed (southern boundary).

All side and rear yard set back requirements relate to the internal common property line area and do not affect any adjoining properties owned by others.

8. Applicant proposes also to increase the driveway entrance-exit widths from the 24 feet set forth in the Ordinance to 30 feet. There is one driveway with access from Route 309 and a driveway on West Broad Street. The increase width results from meeting and discussions with PennDOT and will facilitate an easier turn into and out of the site.

9. As shown on the exhibits, PennDOT also is requiring an additional right turn along the Route 309 frontage, leading into West Broad Street. This improvement will be funded by Applicant and will be beneficial to the community at large.

10. If all the properties were in one ownership, the only variance needed would be the variance for the driveway width.

11. Currently, the properties are virtually 100% impervious surface. The proposed landscaping will reduce the impervious surface and serve to improve the appearance of the site.

The variance requests will be granted.

DISCUSSION

Two adjoining property owners, each retaining title to their respective properties, have agreed to allow for the construction of a Walgreen's Pharmacy to be built in such a position that the building will straddle a shared property line. Without consolidation, the properties will be used as one property so long as the Walgreen's building is on the property. The parties have entered into lease agreements for the Walgreen's use with an initial term of 20 years with renewal options for an additional 20 years.

The "combination" of the properties creates rear yard and side yard zoning violations. The present application seeks variances to address these violations.

As shown on the exhibits presented, the proposed building straddles a common boundary line in the interior of the combined tracts. No adjoining property is affected by the reduction of the set backs. No other boundary set backs are affected and will not be altered or reduced.

Under Section 704 of the Zoning Ordinance, the Zoning Hearing Board can grant variances when unique physical circumstances or conditions affect a property and the requested variance relief will not alter the essential character of a neighborhood. The Board is to consider whether the variance is the minimum variance needed to afford relief.

The only unique fact in this matter is the concept that the Tepco property and the Keller properties will be developed as if the parcels were combined in one ownership when, in fact, each owner will retain ownership of their respective tracts. From all appearances, the parcel will seem to be one unit. The Tepco-Keller Management Agreement requires the Walgreen building to be demolished if the Walgreen use is discontinued. The parcels would then revert to the owners unburdened by any agreement or leases and the variances granted now (except for driveway entrance width) would effectively disappear and become void.

The proposed development will improve the properties and beautify the corner. The road and driveway improvements will be an asset to the properties and traffic in general. The increased driveway width will result in safer ingress and egress.

For all of the above reasons, the variances will be granted.

ORDER

AND NOW, this 30th day of May, 2013, confirming and ratifying an oral vote taken on May 30, 2013, the Zoning Hearing Board of the Borough of Quakertown (Members McDermott, Guise and Roth participating and voting), by a vote of three in favor of approval and none opposed, grants to Walgreen Eastern Co. Inc. variances from Chapter 27, Section 311.7 relative to set back requirements to allow for rear and side set backs of zero feet as shown on the exhibits submitted; from Section 401 for multiple uses on the property and from Section 603.B (4)(c) to allow for driveway widths to be enlarged to 30 feet on the Route 309 and West Broad Street driveways, all in conformity with the testimony and exhibits presented and all relating to Tax Parcel Nos. 35-002-018, 35-002-018-3 and 35-002-018-1.

The grant of the variances shall automatically expire and be deemed null and void if: (1) within one (1) year of the date of this Order granting the variances no building or use permit has been issued therefore; or (2) within four (4) months of the date of the issuance of a permit, no substantial amount of work has been performed in reliance thereon.

BOROUGH OF QUAKERTOWN ZONING HEARING BOARD

By: James Roth
Secretary