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November 1, 2007

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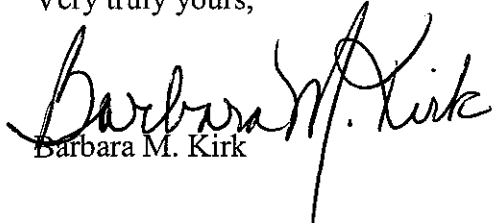
Steven Yula
30 Whitemarsh Avenue
Erdenheim, PA 19038

Re: **Springfield Township Zoning Hearing Board
Application of 9425 Stenton Partners, L.L.P.
Property: 9425 Stenton Avenue
Appeal No. 2007-10**

Dear Gentlemen:

Since both of you entered your appearance formally with the Springfield Township Zoning Hearing Board as parties in opposition to the application, you are entitled to a copy of the Board's written decision and Order, which is enclosed. In accordance with the Pennsylvania Municipalities Planning Code and other applicable regulations, should you wish to appeal the Board's decision, that appeal must be filed, in writing, within thirty days of the date of the decision with the Montgomery County Court of Common Pleas. Should you have questions regarding the appeal process or further proceedings in this matter, you should consult with an attorney of your choice.

Very truly yours,


Barbara M. Kirk

BMK/jmr

Enclosures

cc: Michael W. Cassidy, Esquire
Michael Savona, Esquire, Township Solicitor
Robert S. Dunlop, Springfield Township Zoning Officer

**COMMONWEALTH OF PENNSYLVANIA
ZONING HEARING BOARD OF SPRINGFIELD TOWNSHIP
MONTGOMERY COUNTY**

RE: 9425 Stenton Partners L.L.P.

APPEAL NO. 2007-10

PREMISES: 9425 Stenton Avenue, Erdenheim, Pennsylvania
Tax Parcel No. 52-00-16648-00-4

DECISION: October 15, 2007

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. HISTORY:

9425 Stenton Partners, L.L.P. (hereinafter referred to as "Applicant") filed its Zoning Petition on April 27, 2007 requesting zoning relief for the construction of a proposed three story building consisting of approximately thirty-five condominium units with underground parking spaces on the main ground level for the residents and visitors. Applicant intends to demolish the existing two structures at the subject property for the construction of the condominiums.

Specifically, Applicant sought the following relief: Variance from Section 114-61 to permit multi-family residential units at the subject property; variance from Section 114-62A to reduce the minimum lot size from the required 8,000 square feet per family dwelling for thirty-five condominium units; variance from Section 114-63 to reduce the minimum lot width from sixty feet to 50.67 feet for lot frontage on **Whitemarsh Avenue**; variance from Section 114-64B2(4) to reduce required side yard setbacks, variance from Section 114-131B2b to permit construction of three garage stalls consisting of twenty feet by sixty feet on the property located closer to the front building line than ten feet behind the main structure; and special exception under Section 114-138 to permit the expansion of an existing non-conforming use.

Of the relief requested by the Applicant, at the hearing of September 24, 2007, Applicant withdrew its request for a variance from the side yard setback requirements.

The Applicant's petition was advertised and posted for the regularly scheduled hearing of May 21, 2007, in accordance with the Township's Zoning Ordinance and in accordance with the Pennsylvania Municipalities Planning Code. However, at the Applicant's request, the hearing of May 21, 2007 was continued until September 24, 2007. The Applicant was present with counsel and presented evidence in support of the petition. Interested residents entered formal appearances and questioned Applicant's witnesses. Following the hearing of September 24, 2007, the Zoning Hearing Board (hereinafter referred to as "Board") closed all testimony and heard final closing

arguments by the Applicant's counsel and interested parties. The Board considered all of the evidence and publicly deliberated at the next Board bearing on October 15, 2007. The Board granted the requested relief, subject to certain conditions, and the Board announced its decision in public.

In support of its Application, Applicant submitted, and the Board accepted the following exhibits:

- A-1 Copy of five page deed of ownership of subject property
- A-2 Single sheet plan entitled "Proposed Site Layout – 9425 Stenton Avenue", prepared by Momenee and Associates, Inc., dated April 26, 2007
- A-3 Three 8 ½ x 11 color photographs of existing buildings architecturally similar to proposed building
- A-4 Four page black and white architectural rendering of proposed building
- A-5 Copies of letters dated April 17, 2007 from Applicant's representative to surrounding residents regarding proposed building and availability of proposed plan
- A-6 Photographs of existing building at the subject property (presented by computer presentation with copies to be submitted by Applicant) ,
- A-7 Three page traffic study report prepared by Applicant's traffic study engineer dated June 2007

The Board also admitted the following documents into evidence:

- B-1 Letter of May 25, 2007 from Applicant's attorney requesting continuance of the zoning hearing and waiver of time limitations on the application
- B-2 Five page list of affected residents or interested parties notified of the zoning hearing by the Township's Code Enforcement Officer

This Decision, with Findings of Fact and Conclusions of Law, is being submitted in accordance with the requirements of the Pennsylvania Municipalities Planning Code, 53 P.S. Section 10909(9).

II. FINDINGS OF FACT:

1. This Application and the hearings on the application were advertised as required by law and the property was adequately posted by the Township's Code Enforcement Officer to provide actual and constructive notice of the hearing to the public at large and to all interested parties.

2. Additional notice of the continued hearing of May 21, 2007 was properly advertised and further posted at the subject property with notice of the continued hearing mailed to all property owners within five hundred feet of the subject property by the Township's Code Enforcement Officer.

3. The subject property is located at 9425 Stenton Avenue and consists of approximately 1.76 acres of land, more or less. The property is located within the B-residential zoning district, and is owned by the Applicant.

4. The subject property currently consists of two structures, one being a four story "main" building and a carriage house consisting of two stories near the rear of the property.

5. The main building, consisting of approximately 30,802 square feet of land, more or less, contains several professional offices, eight offices on the main floor, one office on the lower level, and eleven residential apartment units on the upper level (or third floor). The fourth level, or attic area, is vacant.

6. The carriage house, consisting of approximately 4800 square feet of land, more or less, contains two levels, each consisting of approximately 2400 square feet. The main level houses two professional offices and the second level consists of four professional offices. No residential apartment units are situated in the carriage house.

7. Prior to the Applicant's acquisition of the property, the existing main building was constructed in the early 1900s. During the history of the building, it was used in the past as restaurants, health & fitness spa, a hotel, and its present mixed use of professional offices with residential apartment units.

8. Applicant's representative, Daniel J. Helwig, a licensed realtor and one partner of the Applicant's business enterprise, testified about the current condition of the existing structures at the subject property: limited access in accordance with the American with Disabilities Act, no individual bathrooms for many of the professional offices; heating and plumbing issues; substantial maintenance and repair to the exterior of the building, including the stucco façade; termite infestation; and other general maintenance issues that would require substantial financial investments for a limited real estate market.

9. In light of the residential area in which the subject property is located, and the current real estate market, Applicant proposes demolition of the existing structures and construction of a multi-level building that would house thirty-five upscale luxury condominium units with separate secure parking available on the lower level.

10. Applicant proposes three levels of residential condominiums with the second and third levels consisting of twelve units each, and the first level housing eleven units with a common courtyard area.

11. Each unit would consist of two bedrooms, with living and dining area, baths and kitchen areas. Access to each level will be available by interior staircases and elevator access for the physically disabled. All units are intended to be marketed as luxury condominiums.

12. The proposed building would be constructed of stone and stucco, or similar materials, and styled similarly to Spanish style building with a common first level courtyard area.

13. Parking would be available around the building along the existing impervious asphalt area, and three parking "sheds" similar in style to traditional horse **farm** sheds would be placed along the rear of the property for additional parking, and to minimize the impact of headlights into the adjacent existing homes along Gordon Lane. Each shed would be constructed in a "salt" box shape with a flat roof, and landscaping will be planted between the sheds to minimize the impact of the additional garage areas.

14. In order to construct the proposed building, Applicant requests several dimensional variances from minimum lot size, minimum lot width along Whitemarsh Avenue and minimum footage for placement of three parking sheds or stalls. Additionally, Applicant requires a variance to permit multiple dwelling units within the zoning district and special exception to increase the existing non-conformity of the subject property.

15. The subject property itself is triangular in shape, contains no streams or other environmentally protected natural resources, and is relatively flat except for two sloped areas.

16. As presented by Applicant's traffic engineer, traffic impact would not be negatively affected by the proposed use, and daily peak traffic trips would generate approximately twenty less trips during the morning peak hours of 7:00 a.m. to 9:00 a.m., and approximately seventeen less traffic trips during the evening peak hours of 4:00 p.m. until 6:00 p.m.

17. Although weekend traffic trips would increase by the proposed use, overall traffic trips during the seven day week would decrease approximately by two hundred fifty-eight trips for the proposed use than the general traffic trips generated by the current mixed professional and residential use.

18. Applicant, through its representative, believes that the residential condominium units would be more consistent with the residential character of the surrounding neighborhood, would enhance the subject property and would provide condominium units for interested residents since no condominium units are presently available in the Township

19. The proposed use would eliminate the mixed business and residential use of the subject property, and would not adversely affect the existing residential neighborhood.

20. Finally, Applicant, through its representatives, testified that the current buildings at the subject property cannot be reasonably renovated without substantial financial costs to bring the property into compliance with all applicable property codes.

III. CONCLUSIONS OF LAW

1. The subject property is zoned residential although the property is currently used for both residential and professional offices.

2. The subject property is situated on an irregular triangular shaped lot which presents unique physical characteristics that prohibit the reasonable use of the subject property in strict compliance with the zoning regulations.

3. The variances requested by the Applicant will not alter the essential character or nature of the surrounding neighborhood in which the subject property is located, nor will the proposed use substantially or permanently impair the continued use of the adjacent properties as residential dwellings, nor will the proposed use be detrimental to the public welfare.

4. The variances, as requested by the Applicant, represent the minimal variances that will afford relief and represent the least modification possible of the regulations at issue.

5. The special exception to expand the existing non-conforming residential use of the subject property does not detrimentally affect the safety, health, morals and general welfare of the surrounding neighborhood or the Township.

6. The proposed use of the subject property will provide alternative residential housing currently not available within the Township, and furthermore the expansion of the non-conforming residential use of the property is more consistent with the harmonious and orderly development of the zoning district where the subject property is located.

7. The proposed use of the subject property will not increase vehicular traffic and suitable off-street parking is available at the property to protect major streets from undue congestion and hazards.

8. The imposition of the conditions to reduce the impact of the number of proposed residential condominium units is appropriate and necessary, and will ensure that the impact of the increase residential use of the subject property is minimal.

N. DISCUSSION:

The Zoning Hearing Board has exclusive jurisdiction to hear and render final adjudications and requests for special exceptions and for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship on the applicant. Pennsylvania Municipalities Planning Code, 53 P.S. Section 10909.1(a)(5) and (6); Section 10910.2(a); Section 19012.1 and Section 114-165 of the Springfield Township Zoning Ordinance.

Under traditional concepts of zoning law, the Board may grant variances provided that the following findings are made where relevant to a specific case:

- a. That the subject property consists of unique physical circumstances or conditions that are peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;
- b. That because of such physical circumstances or conditions, the subject property cannot be developed in strict conformity with the provisions of the zoning ordinance and that a variance is necessary to enable the reasonable use of the property;
- c. That the unnecessary hardship has not been created by the appellant;
- d. That the variance, if authorized, will not alter the essential character of the neighborhood where the property is located nor will the variance substantially or permanently impair the appropriate use or development of adjacent properties nor be detrimental to public welfare; and
- e. That the variance, if granted, represents the **minimum** relief to the applicant and such variance represents the minimum modification possible of the regulation in issue. 53 P.S. §10910.2(1968).

When seeking dimensional variances, the quantum of proof to establish unnecessary hardship is less strict than seeking an use variance. Hertzberg v. Zoning

Board of Adjustment of the City of Pittsburgh, 721 A.2d 43, 48 (Pa. 1998). In considering whether or not to grant a dimensional variance, multiple factors are considered, such as economic hardship to the applicant, financial hardship to bring the property into compliance with local zoning regulations and characteristic of surrounding neighborhood. Id. at 50. A dimensional variance may be granted in limited situations where the proposed deviations are relatively minor. The decision of whether to grant or deny the variance is left to the discretion of the local zoning hearing board. Segal v. Zoning Hearine. Board of Buckingham Township, 771 A.2d 90, 95 (Pa. Cmwlth. 2001).

In this case, the Applicant intends to bring an existing non-conforming property and its current use more into compliance with the residential zoning and characteristic of the surrounding neighborhood. The requested relief from the minimum lot size, lot width along Whitmarsh Avenue and set back distance for the proposed parking sheds are dimensional variances that do not substantially impact the existing neighborhood. On the contrary, the existing lot width of the subject property does not currently comply with the zoning regulations. Furthermore, the proposed use and construction of the subject property will not increase any impervious surface coverage and will actually reduce other existing non-conformities at the subject property, such as rear yard setbacks.

Additionally, the proposed use of the subject property as wholly residential, although not specifically permitted under the current zoning regulations, will bring the property more into compliance with the spirit, intent and plan of the Township's zoning regulations. The increased usage of the existing residential non-conforming use of the property will eliminate a professional corporate use that is otherwise not permitted within the zoning district.

Moreover, the rehabilitation of an existing building that is deteriorated should be encouraged as a benefit to the Township and the surrounding residential neighborhood. The impact of traffic, as offered by the Applicant's traffic engineer, will be actually reduced, and off-street parking is more than adequate for the proposed use.

The Board fully considered the testimony and the comments from residents and interested parties about the impact of the proposed use upon them and the surrounding neighborhood. After consideration of all relevant evidence and testimony, the Board **determined** that the proposed use was appropriate for the subject **property**, and accordingly the requested variances and special exception were granted subject to the imposition of the limitation of the minimum lot size.

V. ORDER:

AND NOW, this 1st day of November, 2007, and pursuant to a public vote, three members voting in favor, the Zoning Hearing Board of Springfield Township does hereby formally **ADOPT** the above **FINDINGS OF FACT** and **DISCUSSION AND CONCLUSIONS OF LAW**. The Board further **RATIFIES** its Decision of October 15, 2007 and does hereby Order and Direct that the application of **9425 Stenton Partners, L.L.P.** is hereby granted as follows:

1. Variance from Section 114-61 to permit residential condominium units at the subject property;
2. Variance ~~from~~ Section 114-62A to permit lot size less than the required 8,000 square feet per dwelling unit provided that no more than thirty (30) residential units shall be constructed with an average lot size for each unit to be approximately 2,492 square feet;
3. Variance from Section 114-63 to permit the lot width along Whitemarsh Avenue to be less than the required sixty feet;
4. Variance from Section 114-131B2b to permit the placement of three open parking sheds, each consisting of 20 feet by 64 feet, on the subject property closer to the front building line than ten feet behind the main structure; and
5. Special exception in accordance with Section 114-138 to permit the expansion of an existing non-conforming use to a wholly residential use as presented by the Applicant.

THIS WILL SERVE AS THE REQUIRED WRITTEN NOTICE AND DECISION THAT YOUR APPLICATION HAS BEEN HEARD AND A DECISION HAS BEEN MADE BY THE SPRINGFIELD TOWNSHIP ZONING HEARING BOARD. IF YOU, OR ANY OTHER PARTY OF INTEREST, WISH TO APPEAL THIS DECISION, YOU MAY DO SO ACCORDING TO PENNSYLVANIA LAW, AND GENERALLY, YOU HAVE THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE TO FILE AN APPEAL WITH **THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA.**

SPRINGFIELD TOWNSHIP ZONING
HEARING BOARD

Daniel Clifford /bmk

DANIEL CLIFFORD, ESQ., Chairman

Edward Fox/ bmk

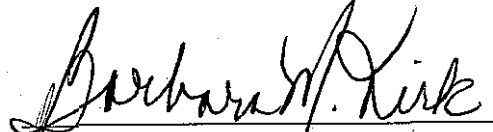
EDWARD FOX, ESQ., Member

Megan McDonough/bmk

MEGAN MCDONOUGH, ESQ., Member

CERTIFICATION OF DECISION:

I hereby certify that copies of the within Decision and Order were served upon Applicant, and his or her attorney by mailing a true and correct copy, by first class mail and certified mail, to the Applicant and his or her respective attorney on this 1st day of November, 2007.


Barbara M. Kirk, Esquire
Board Solicitor