

Memo

To: Radnor Planning Commission
From: Mary Eberle
CC: Steve Norcini; John Rice
Date: May 4, 2019
Re: Wawa **Confidential Attorney Client Privileged**

Background and Relevant Zoning District Use Requirements

As your staff, we always hope to speak to you with one voice and to express one recommendation or opinion to help you make your recommendation to the Board of Commissioners. With regard to the Wawa project, we thought it appropriate to supplement the Zoning Officer's preliminary zoning review dated April 27, 2018. We do not take issue with Mr. Kochanski's methodology, but reach a different conclusion.

The properties upon which the Wawa would be located are zoned C-2 and are currently in use as a service with gas fuel pumps and a carwash with fuel pumps. The Applicant proposes to demolish the existing structures and build a convenience store with fuel dispensers.

Our zoning ordinance, which is very old, distinguishes between an automobile service establishment and a motor vehicle repair shop. In context, the automobile service station seems to refer to the combined service stations/gas stations which were universal decades ago, when the ordinance was adopted. Facilities dedicated strictly to motor vehicle repair are a separate use. Automobile service establishments are permitted by right in the C-3 zoning district, the motor vehicle repair facility is permitted by special exception in the C-3 zoning district. Neither use is permitted in the C-2 zoning district.

The zoning ordinance permits the following uses in the C-2 Zoning District:

- A. *Any use permitted in the C-1 Local Commercial Districts. (for our purposes, the only relevant use is the retail store use)*
- B. *Retail store, including department store, variety store, furniture store, specialty shop or any other retail store or shop designed primarily to service an area larger than the immediately surrounding neighborhood.*

(The ordinance then lists 9 additional uses which are not relevant to this analysis)

The ordinance permits several uses in the C-2 district by special exception, including any use of the same general character as any of the above-permitted uses so long as the use is not a use permitted for the first time in the C-3 zoning districts. Included in the uses permitted for the first time in the C-3 district is the “Drive-in or automobile service establishment as follows: motor vehicle service station (not to include a repair shop or car wash establishment as a main use)...”

In his preliminary review, the zoning officer stated the following:

- a. Retail uses are permitted in the C-2 zoning district;
- b. The zoning ordinance requires all uses in the C-2 district to be located completely within an enclosed structure, but the outdoor gas pumps are an existing non-conformity which is being reduced; and
- c. The zoning ordinance requires that no goods shall be displayed or offered for sale beyond the front lines of a building, but this, too, is an existing non-conformity.

The ordinance does not address convenience stores, with or without gasoline sales, but we agree with the zoning officer’s classification of a convenience store as a retail use.

Mr. Kochanski correctly notes that all uses in the C-2 Zoning District must be located within an enclosed building (§280-49.A and §280-53) so we know that a convenience store with gas pumps would not be permitted by right in the C-2 Zoning District.

Nonconformities

The question then becomes the role that nonconformities play in an analysis of this plan. Township records show that the property at 302 Lancaster Avenue registered as a nonconforming use in 1956, in this case, an ESSO station.

Article XX, §280-101 is the subject of this memo and the basis of our legal opinion to you. Pennsylvania law and §280-101 distinguish between nonconforming uses and nonconforming structures.

The zoning officer notes that the gas pumps, which are not enclosed within a building, are an existing nonconformity. The preliminary zoning review does not clarify whether the nonconformity is a nonconforming structure or a nonconforming use.

If the nonconformity is a structural nonconformity, §280-101.B allows that only nonconforming structures destroyed by fire or other casualty may be reconstructed; there is no provision to allow the reconstruction of nonconforming structures if they are destroyed voluntarily. Voluntary destruction of a building is an abandonment of the building. If the nonconformity to which the preliminary review refers is a nonconforming structure, the Applicant must seek variance relief from the Zoning Hearing Board to pursue this application

If the unenclosed gas pumps are a nonconforming use, Zoning Ordinance Section 280-101.A states that “Any change in nonresidential occupancy shall be deemed to be a change of use for purposes of §280-101.A(1). §280-101.A(1) requires that a *“nonconforming use may be changed to another nonconforming use only upon determination by the ZHB, after public hearing, that the proposed new use will be no more detrimental to its neighborhood and surroundings than is the use it is to replace.”*

The last prong of the preliminary zoning review notes that Zoning Ordinance Section 280-49.D requires that “...no goods shall be displayed or offered for sale beyond the front lines of a building” , but states that the sale of goods beyond the front line of a building is an existing nonconformity. This nonconformity is a dimensional nonconformity, which ceases when the buildings on the property are razed. Variance relief would be required to allow the sale of goods beyond the front line of a building.

The Zoning Ordinance and Pennsylvania law direct that Zoning Hearing Board relief is required in order for this application to proceed. The Applicant can offer an additional extension while the relief is pursued. The current extension run only until May 13, so if the applicant declines to provide an additional extension, it is our recommendation that the Planning Commission recommends denial of this plan.