

ALLEGANY COUNTY BOARD OF ZONING APPEALS

IN RE: APPLICATION OF : **CASE NO. 935**
PEARSON BECKHAM REALTY, INC.
FOR A SPECIAL EXCEPTION : **Hearing Date: 12/4/13**
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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the "Board") upon Pearson Beckham Realty, Inc.'s application for a special exception for the conversion of a residential structure to a commercial use (i.e., a Dollar General Store) in the "G2" - General Urban Development Zoning District in accordance with Section 360-82.B(2)(c) of the Allegany County Code (the "Code")¹.

A field inspection of the subject property was conducted by the members of the Board on December 2, 2013. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and as to whether the proposed use would be constructed in compliance with the terms of the Code's zoning provisions.

At the hearing on December 4, 2013, the Board considered the attached list of exhibits which consisted of information gathered by the Secretary of the Board and information provided by other agencies and individuals.

The Dollar General Store building will measure approximately 70 feet x 130 feet in dimensions, and it will be a one story structure. The exterior of the structure will be constructed

¹ Unless stated otherwise herein, all references to sections shall mean sections in the Allegany County Code.

of split face block and metal paneling. The proposed use will consist of general merchandise retail sales.

The proposed use will be located on the eastern side of Morningside Drive between its intersections with Tam Ric Way and Naves Cross Road. The front of the structure will face Naves Cross Road.

The property upon which the use is proposed to be located consists of two lots, each of which includes a residence. The Applicant plans to demolish the residences in order to erect the Dollar General Store building. Both properties are under contract.

The Board considered testimony presented at the hearing in order to ascertain whether the proposed use would meet the standards and criteria of the Code's zoning provisions. The Board's findings are as follows:

1. A conversion of a residential structure to a commercial use is a special exception use in the "G2" Zoning District in accordance with the requirements of Section 360-82.B(2)(c).

2. The lot size is approximately 39,508 square feet, satisfying the requirements of Section 360-86.

3. The lot is in excess of 174.35 feet wide throughout, satisfying the minimum lot width requirements of Section 360-86.

4. The lot has 174.35 feet of frontage on Tam Ric Way, approximately 225 feet of frontage on Morningside Drive and more than 200 feet of frontage on Naves Cross Road. Morningside Drive and Naves Cross Road are publicly dedicated rights of way. The lot upon which the proposed use will be located will have direct vehicular access to Morningside Drive and Naves Cross Road, both of which are publicly maintained. Access to Morningside Drive

and Naves Cross Road will be constructed to commercial entrance standards. Therefore, the requirements of Sections 360-101.A(2) and 360-103.A & B will be met by the Applicant.

5. The structure of the proposed use will be set back more than 50 feet from any neighboring residences, satisfying the requirements of Section 360-88.

6. The setback is approximately 80 feet from the right of way line and 100 feet from the center line of Morningside Drive, 44 feet from the right of way line and 54 feet from the center line of Tam Ric Way¹, and 105 feet from the right of way line and 125 feet from the center line of Naves Cross Road, satisfying the setback requirements for all other streets and roads in urban districts of Section 360-87.

Two opponents testified that the site plan did not show the proper location for Tam Ric Way. They asserted that Tam Ric Way should be located south of where it is shown on the plat. One of the opponents stated it should have been located 5 feet south of where it was shown on the plat. The Board elected to rely upon the representations regarding the location of Tam Ric Way as shown on the site plan as it was certified by a licensed professional engineer and prepared by a licensed surveyor and the opponents testimony was insufficient to show that the location of Tam Ric Way was other than as set forth on the site plan.

7. The yard on the side of the structure facing Morningside Drive, one of the side yards, is approximately 105 feet wide. The yard on the eastern side of the structure, the other side yard, is 36.3 feet wide. The rear yard, i.e. the yard between the structure and Tam Ric Way is

¹ At the hearing, the Board noted that the set back from the right of way line of Tam Ric Way was 30 feet and it was 44 feet from the center line. Those measurements were erroneously based on the measurement from the structure to the property lot line rather than the boundary lines of Tam Ric Way. The correct measurements relative to the setbacks from Tam Ric Way are set forth in the text above. Notwithstanding the foregoing, even if the erroneous measurements are used, the setback and yard size requirements of the Code would be met by the Applicant.

approximately 44 feet wide.² Therefore, the yard requirements, as set forth in Section 360-86, shall be satisfied.

8. The structure will be approximately 18 feet high, in compliance with the maximum height requirements of Section 360-86.

9. As required by Section 360-101.A(3), the buildable site has a slope less than 25 percent.

10. There are no streams within 50 feet of the site upon which the proposed use will be located. Therefore, the Applicant shall comply with Section 360-101.A(4).

11. There are no designated wetlands or habitats for threatened or endangered species within 50 feet of the site where the proposed use will be located. Therefore, the Applicant shall comply with Section 360-101.A(5).

12. The Applicant proposes placing 30 parking spaces and 1 loading space on the site. Each parking space is 200 square feet in dimensions and is accessible by an aisleway. The aisleways are greater than the required minimum 20 foot width. With the exception of the requirements relative to the number of parking spaces, the Applicant will comply with the requirements of Section 360-106.

13. Section 360-106 requires 1 parking space per 200 square feet of usable floor space. The Applicant represented that 7,276 square feet of the building would constitute usable floor space. Therefore, under the terms of the Code, 36 parking spaces are required. Although the County has granted administrative variances relative to the parking space requirements, Section 360-73.B, the Code section relative to administrative variances, does not include provisions allowing for such administrative variances. In light of the foregoing and since an administrative

² See footnote 1.

evidence regarding site-specific adverse impact, it does not constitute a sufficient basis for denial of an application for a special exception.

2. There is a school bus stop at the corner of Morningside Drive and Naves Cross Road. While this did present a concern for the Board, other than unsupported conclusory statements, there was no evidence regarding how this proposed use would present an appreciable danger to children being picked up and dropped off from this bus stop.

3. Two issues were raised relative to a private water line which runs down the length of Morningside Drive starting at Naves Cross Road. Opponents expressed concern over who would be responsible for repairing the line when it broke and what affect the proposed use would have on area water pressure. As to the former issue, the Board found the testimony to be speculative in that there was no evidence to suggest that there was a reasonable likelihood the water line would break as a result of traffic travelling to and from the proposed use. As to the latter issue, the Board considered that the Applicant will be tapping into the public water main on Naves Cross Road east of the location where the private water line ties into that main and that that the proposed use, therefore, will not be drawing water from the private line. Additionally, the evidence presented was largely, if not entirely, conclusory in nature and was insufficient to show that there would be a reasonable likelihood that that proposed use would adversely affect water pressure for area residents.

4. At least one opponent expressed concerns relative to the effect the proposed use would have on property values. The Board determined that the evidence was insufficient to show that the proposed use would cause property values to increase or decrease in the vicinity of the site for the proposed use. Notwithstanding the foregoing, it is reasonable to expect that development will affect property values in some manner regardless of where such development

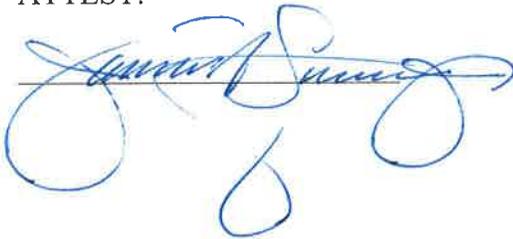
is located in a particular zone. Therefore, affects on property values, generally, do not constitute site-specific adverse impacts.

5. One opponent expressed concern relative to his belief that the proposed development would adversely affect the bike lane on the south side of Naves Cross Road. From the testimony presented, the Board was not able to ascertain what adverse impact the proposed development could have on this bike lane

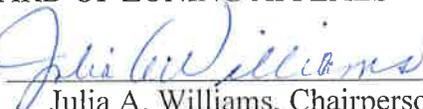
CONCLUSIONS

Based upon the findings set forth above, at the December 4, 2013 hearing, the Board voted 3-0 in favor of denying the Applicant's request for a special exception for the conversion of a residential structure to a commercial use in the "G-2" Zoning District based on the Applicant's failure to comply with the parking standards, as addressed previously herein. Having considered the issue of site-specific adverse impact, the Board determined by a vote of 3-0 that the evidence presented was insufficient to show any site-specific adverse impact.

ATTEST:



BOARD OF ZONING APPEALS

By: 
Julia A. Williams, Chairperson

12/14/13
Date

Copies to: See Attached List