

**ZONING HEARING BOARD OF WARWICK TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Docket No. 17-04

Applicant: Sundar Manoharan
519 Deborah Court
Warrington, PA 18976

Owners: Sundar Manoharan & Dhivya Brahmadesam
519 Deborah Court
Warrington, PA 18976

**Subject
Property:** Tax Parcel No. 51-003-094, which is located at 2070 Meetinghouse
Road, Jamison, PA 18929.

**Requested
Relief:** The Applicant requests a special exception, pursuant to §195-85 of
the Warwick Township Zoning Ordinance (“Ordinance”) to permit
the resumption of a nonconforming single-family detached dwelling
use on the Subject Property when that use has been considered
abandoned pursuant to this ordinance section.

**Hearing
History:** The application was filed in Warwick Township on June 29, 2017.
The hearing was held on August 1, 2017 at the Warwick Township
Administration Building, 1733 Township Greene, Jamison, PA
18929.

Appearances: Applicant, Pro Se'

Mailing Date: August 24, 2017

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Warwick Township (ZHB) met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. The Applicant is one of the Owners of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. During the hearing held August 1, 2017, the ZHB marked the following exhibits:

ZHB Exhibits:

- ZHB-1: Application dated June 26, 2017, received by the Township on June 29, 2017, with attachments that include:
 - list of notified property owners;
 - Ordinance provision at issue (§195-85); and
 - GIS – aerial photograph of the Subject Property.
- ZHB-2: Proof of publication of notice of the August 1, 2017 hearing;
- ZHB-3: Proof of posting the notice of hearing;
- ZHB-4: Proof of mailing the notice of hearing;
- ZHB-5: Agreement of Sale, dated May 14, 2017 reflecting Sundar Manoharan and Dhivya Brahmadesam as buyers; and
- ZHB-6: Deed to Subject Property as recorded on July 28, 2017, identifying Dhivya Brahmadesam and Sundar Pradeep Manoharan, as Grantees.

4. The Subject Property is located in the C3, Commercial/Multifamily Residential Zoning District of Warwick Township. It is .28 acres in size and accommodates a single-family detached dwelling structure with typical residential access walkways and a driveway.

5. The Applicant intends to utilize the property as a single-family residential dwelling.

6. Warwick Zoning Officer, Ashley Thompson, testified that Warwick Township considers the property a preexisting nonconforming residential property in the

nature of a single-family dwelling. The Certificate of Nonconformity has not been filed with the Township for greater than one year. Accordingly, consistent with §195-85 of the Ordinance, the nonconforming use has been considered abandoned due to language within the Ordinance indicating that, “Cessation of use for the period of one year shall raise a presumption of abandonment or discontinuance, and no use which has ceased for one year shall be resumed except upon special exception by the Zoning Hearing Board, which shall only be given when the Board is satisfied that the Applicant has overcome the presumption of abandonment or discontinuance.”

7. A nonconforming use is defined at Ordinance §195-82, as follows: “NONCONFORMING USE – A use, whether of land or of structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment.”

8. Mr. Manoharan testified that he purchased the property one month prior to applying for zoning relief (see Agreement of Sale dated May 14, 2017). He purchased the property under the impression that the structure was built as a single-family dwelling some 70 years ago, and was used as a single-family dwelling thereafter. However, the property fell into foreclosure for several years prior to his purchase.

9. In order to obtain a special exception, the Applicant is required to satisfy the Board that the lack of occupancy as a single-family dwelling and lack of filing a Certificate of Nonconformity with the Township, by the previous property owner, did not reflect abandonment of the preexisting nonconforming use. The Board is so satisfied, for the following reasons:

- a. The Township concedes that the use was a preexisting nonconforming use.
- b. The Applicant has credibly testified that the property has been in foreclosure.
- c. The Board is mindful that simply vacating or discontinuing the use does not represent “abandonment” of a preexisting nonconforming use. In that the property is preexisting and nonconforming, and the Board logically concludes that the property was vacated or discontinued as a result of involuntary circumstances leading to foreclosure, the Board finds that the property Owners had no intent to abandon the preexisting nonconforming use.

The Board considers its conclusion consistent with case law of the Commonwealth, including Metzger v. Bensalem Township Zoning Hearing Board, 165 Pa.Cmwlt. 351, 645 A.2d 369, 371 (1994) (where discontinuance of a use occurs because of events beyond the Owners’ control, such as financial inability, there is no actual abandonment).

10. The Zoning Officer, Ashley Thompson, indicated that the last rental certificate, for the property was in the year 2014. Ms. Thompson was not aware of what occurred in 2014 to cause the cessation of filings with the Township of Warwick.

11. During the hearing, Warwick Township took the position that, should the special exception be granted, certain conditions should be imposed.

12. One resident, Ms. Capp Kelly, 1342 School House Lane, inquired as to the nature of the application and the standards to be applied. Ms. Kelly did not oppose the application.

CONCLUSIONS OF LAW:

1. The Subject Property is a preexisting nonconforming B1 single-family detached dwelling which is permitted by special exception within the C3, Commercial/Multifamily Residential Zoning District of Warwick Township.

2. The property at issue is a preexisting nonconforming B1 single-family detached dwelling, residential use within the C3 Zoning District. The Township of Warwick considered the preexisting nonconforming use abandoned, raising a rebuttable presumption under §195-85 of the Ordinance.

3. Based upon the testimony offered by the Applicant, as indicated within the Findings of Fact, in conjunction with testimony of the Zoning Officer, as contained within the Findings of Fact above, the Board finds and concludes that the property may have been vacated for a period of time, but there was no intent to abandon the preexisting nonconforming use status.

4. The Board concludes that the standards required for special exception approval have been met.

6. Accordingly, the Warwick Township Zoning Hearing Board voted 2-0 to GRANT the Applicant's request for relief as is set forth and conditioned hereafter¹. Applicant did agree to the conditions imposed.

¹ Board Member Lorraine Sciuto-Ballasy was unavailable for this hearing and did not participate in the Decision.

ORDER

Upon consideration and after hearing, the Warwick Township Zoning Hearing Board hereby GRANTS a special exception, pursuant to §195-85 of the Warwick Township Zoning Ordinance in order to permit the resumption of a nonconforming single-family detached dwelling use on the Subject Property when that use has been considered abandoned pursuant to this ordinance section.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations and specifically conditioned upon the following:

1. Before any permanent use and occupancy certificate is issued, the property Owner will need to provide documentation showing that the existing septic system & well are in good working condition; and
2. That the Applicant provide the Township with the necessary right-of-way to construct a 5' concrete sidewalk:
 - the current half width ROW of Meetinghouse Road is approximately 25'. The house at 2070 Meetinghouse Road sits approximately 44' from the centerline. The adjacent Warwick Village Commons development granted an easement for 23.5' of additional ROW along Meetinghouse Road. A similar dimension should suffice for the purposes of sidewalk installation.
 - the property Owner will be responsible for maintenance, including snow removal.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

/s/ Kevin J. Wolf
Kevin J. Wolf

/s/ Dave Mullen
Dave Mullen

IMPORTANT NOTE: Pursuant to §195-115 and §195-116 of the Warwick Township Zoning Ordinance, variances or special exceptions granted by the Zoning Hearing Board shall expire one (1) year from the date of the Decision, unless the applicant or owner or successor in interest has commenced construction within that time. Construction will be deemed commenced upon the issuance of a building and/or zoning permit for the approved use.