

BOARD OF ADJUSTMENT OF WHITE TOWNSHIP

Case #452

In the Matter of the Application of SAMA Properties, LLC, Block 28, Lot 2.

WHEREAS, an Application has been made to the White Township Board of Adjustment for an Interpretation pursuant to N.J.S.A. 40:55D-70(g) to determine the lawful uses of the subject property at the time that the first Land Use Ordinance was adopted in White Township, which Ordinance was adopted on or about April 1, 1977; and;

WHEREAS, a Public Hearing on this matter was held on January 19, 2012, a quorum of the Board being present and the applicant being represented by Richard Keiling, Esq; and,

WHEREAS, public notice was given wherein the Board had jurisdiction to hear the within matter.

NOW THEREFORE, Be It Resolved on this 16th Day of February 2012 that as a result of the application submitted and the Public Hearing, the Board makes the following finding of fact and conclusions of law:

1. Applicant is the owner of the subject property
2. The within application was "triggered" in part by letter dated April 8, 2011 and May 3, 2011 sent to the applicant by Thomas A. Bocko, the White Township Zoning Officer. These letters are annexed to the Resolution.
3. Applicant represents that some or all of the activities that are cited in the Zoning Officer's letters are activities that lawfully existed on the subject property prior to April 1, 1977 (the date of enactment of White Township's first Land Use Ordinance) and therefore are "lawful pre-existing, non-conforming uses".
4. The subject property is located in the "Industrial District". White Township Ordinance 160-172 which permits inter alia:
 - H. Warehouse or storage within a completely enclosed building...
 - O. Customary and conventional farming operations...

5. No Variance or Site Plan Application was heard by the White Township Board of Adjustments in conjunction with this application accordingly, the sole issue presented to this Board was limited to the lawful uses existing on the subject property on or before April 1, 1977.
6. Applicant produced the testimony of one witness, Tim Van Horn, to testify as to the uses of the subject property on or before April 1, 1977. In 1977 Mr. Van Horn who lived across the street from the property, was himself approximately 16 years old at the time, and, was on the subject property on an almost daily basis. Based upon his sworn testimony, Mr. Van Horn recalls the following uses of the property:

A. a Laundromat in its present location

B. a separate structure which was utilized for a machine shop and residential use/apartment. The machine shop was used by Mr. Van Horn and others to repair their own cars and cars of others. No more than five vehicles were on the property at any one time for repair. Welding and engine re-building also occurred. The machine shop was also used to repair farm implements and tractors from the subject property as well as from other farms. The car repair activities were more in the nature of "hobby/repair" of Mr. Van Horn and his friends. Although, some of the repaired cars were sold, a "formal/dedicated" car repair/restoration/sale business was not conducted on site. No signage or dealer licenses were utilized in the sale of vehicles.

C. One residential use of the property by the prior owners of the property

D. There was testimony concerning a second residence on the site. The testimony was that this second residence was subsequently totally destroyed by fire and no longer exists on the site.

E. Various agricultural uses were testified to. Since agriculture is presently a permitted use in the "I District" there is not a concern as to which agricultural uses were in existence on April 1, 1977.

F. The following numbers of vehicles were stored on the property:

1. Two (2) single axle flat bed trucks
2. Two pickup trucks
3. One box truck
4. Two "junk cars"

5. No more than 5 vehicles were on site at any one time which were being repaired by Mr. Van Horn and others
6. Three Model T cars were stored on site

G. There was some lumber stored on site outdoors consisting of the following:

1. Rafters in a pile which was approximately 5' high X 20' long X 8' wide
2. One 5' high pile of plywood
3. Three piles of lumber, of assorted dimensions. The piles were 10' long X 4' wide X 4' high

H. The Machine shop structure was utilized for welding and a wood shop for occasional use and incidental to the property's primary use as farming. As set forth above the machine shop was also used for the occasional and incidental use of car repair by local teenage boys.

I. The property was also utilized for the recreational non-commercial use of a "dirt track" for cars and motorcycles in the Northeast portion of the property.

J. Various items were stored indoors in the existing structures located on the property. In as much as "indoor storage" is presently a permitted use, the Board did not solicit extensive testimony as to the indoor storage activities on April 1, 1977.

7. The Board finds that the testimony of Mr. Van Horn to be credible taking into account that he was 17 years old in 1977.

8. William Bachmann, an adjoining property owner, who has lived next to this property since 1982 offered into evidence approximately 23 photographs which depict the "state" of the property over the last approximately one year. None of the photographs depict the property as it existed on April 1, 1977 or prior thereto. Additionally, much of what the photographs show as materials/equipment that were stored outside are no longer stored outside. Mr. Bachmann offered no testimony as to the use of the property on or prior to April 1, 1977.

9. No other member of the public or witnesses offered any testimony as to the use of the property on or before April 1, 1977.

NOW THEREFORE, Be It Resolved on the 16th Day of February 2012 as follows:

1. The uses and activities as detailed in fact finding No. 6 above consisting of items A-J are found by the White Township Board of

Adjustments to be the lawful, pre-existing, non-conforming uses of the property.

2. No Use or other Variances were applied for in conjunction with the present Interpretation. Accordingly, no other uses other than as permitted by the White Township Ordinance or the within Resolution are permitted lawful uses. Applicant, as are all property owners in White Township, is permitted by way of separate application, to request a Use Variance.
3. No Site Plan Application was submitted in conjunction with the present application.
4. Applicant must timely pay all required and requested Escrow Fees. The Board reserves the right to rescind any and all relief as set forth herein should applicant fail to timely pay Escrow Fees.

A copy of this Resolution shall be sent by the Board of Adjustment Secretary to: the Applicant by Certified Mail No. _____, Return Receipt Requested; the White Township Clerk; the Zoning Officer; and, the Building Inspector within ten (10) days of the date hereof.

JOSEPH MAGNINI, Chairman
White Township Board of Adjustment

I hereby certify the above to be a true copy of the Resolution adopted by the White Township Board of Adjustment at its regular meeting on February 16, 2012, and further certify that same is a true memorialization of the Official Action taken by the said Board at its regular meeting on January 19, 2012.

ALFIA SCHEMM, Secretary
White Township Board of Adjustment