

BEFORE THE BOROUGH OF MILLERSVILLE ZONING HEARING BOARD

IN RE: :
 :
APPLICATION OF : Case No. 1-2015
MILLERSVILLE UNIVERSITY :
FOR SPECIAL EXCEPTION :

DECISION OF THE ZONING HEARING BOARD

A. FINDINGS OF FACT

1. Applicant is Millersville University, P.O. Box 1002, Millersville, Pennsylvania 17551.
2. The property which is the subject of this application is located at 110 North Prince Street in the Borough of Millersville, Lancaster County, Pennsylvania.
3. Applicant is the record owner of the subject property.
4. On April 23, 2015, Applicant filed a request for a special exception to demolish the structure.
5. The property was posted and the application was duly advertised in a newspaper of general circulation.
6. A hearing was held May 28, 2015.
7. The hearing was stenographically recorded.
8. Applicant was not represented by counsel. Appearing at the time of the hearing on Applicant's behalf was Ronald E. Frisbie, Jr., the project manager for the construction project.
9. At the time of the hearing, Applicant submitted an exhibit detailing its proposal for demolishing the North Prince Street property. This exhibit, which was also used as a visual presentation at the time of the hearing, was marked as Applicant's Exhibit 2. Also marked and received into evidence at the time of the hearing was Applicant's Exhibit 1, a copy of the binder submitted by Applicant in support of its zoning application.

10. The binder consisted of "A through P" lettered tabs.

11. The contents of the binder included all of the requirements under Section 380-30.(D)(2) regarding the historic classification of the building, a report from a structural engineer, a report from the Borough code enforcement office, recent interior and exterior photographs, a statement of the proposed disposition of salvageable material, the ownership history of the property, the value of the land, and a certified property appraisal of the property.

12. As part of Applicant's case, Mr. Frisbie testified concerning the relevant chronology of this property and the present zoning ordinance.

13. In 1960, Applicant acquired 110 North Prince Street.

14. In 1997-1998 Applicant created its Master Plan identifying proposed development of the campus.

15. The 1997-1998 Master Plan proposed, among other improvements, the acquisition and demolition of the subject property.

16. In May 2012, the Borough of Millersville amended Section 380.30 of the zoning ordinance related to preservation of historic structures.

17. Tab F of Exhibit 1 was a structural inspection report dated January 10, 2003 prepared by a certified architect on behalf of Millersville University. The report was prepared after a visual inspection December 19, 2002.

18. The report showed that the property had suffered extensive termite infestation in the common wall between the original house and the addition. Also, one gable end of the covered porch showed extensive termite damage. Further damage was evident in the log walls on the front, side, and rear on the house, as well as in a number of floor joists. The property has severe termite damage to over 90% of its exterior walls.

19. The property has a stone foundation, and a number of the foundation stones were missing. The report indicated that, conservatively, 60-75% of the exterior walls would have to be replaced, and all the lathe and plaster removed and replaced. The report concluded that it would be cost-prohibitive to renovate the house to bring it into compliance with current structural codes. The estimated cost was over \$120,000.00.

20. The deteriorated condition of the property was further confirmed by Tab G, a Property Maintenance Code Inspection Notice dated September 24, 2014 indicating deteriorated roof shingles, structural damage to many of the walls, visible mold on plaster and wood surfaces throughout the house due to roof leaks, and termite damage throughout the house wherever the framing was exposed from past inspections.

21. The deteriorated condition of the property was further supported by Tab K, a series of photographs showing exterior and interior deterioration.

22. Based upon an appraisal performed July 29, 2014, the value of the property was \$25,000.00.

23. One adjoining resident spoke in opposition to the demolition.

24. Several members of council, speaking individually, stated that they recognized the need for demolition of the property but felt that the site should be marked with an appropriate historic marker after demolition. Additionally, should any items of historical significance be discovered or uncovered during the demolition of the building, it is requested that every effort be made to document and preserve any such item.

25. On May 4, 2015, Millersville Borough Planning Commission met to consider the demolition application presently before the Zoning Board. The Planning Commission made no recommendation regarding the special exception request.

26. Following the conclusion of testimony, the Board conducted an executive session with its solicitor.

27. Following the executive session, the Board resumed public session.

28. The Board conducted a roll call vote and voted 4 to 1 to approve the application as presented. The hearing was then concluded.

B. CONCLUSIONS OF LAW

1. The subject property is located within the Historic Preservation Overlay District.
2. The subject property is designated as a Class II structure.
3. The Historic Overlay District Ordinance was amended by the Borough in May 2012.
4. The present application is governed by the amended ordinance.
5. The old Historic Overlay District Ordinance established seven requirements for a special exception to demolish a Class II structure.
6. The amended Ordinance has five requirements.
7. The present ordinance provides that, in order to obtain a special exception for demolition of a Class II structure, the applicant should provide evidence that:
 - (a) There is no feasibility to continue the current use.
 - (b) Other uses permitted within the underlying zoning district, either as permitted uses, special exception uses, or conditional uses, have been denied or are not feasible.
 - (c) Adaptive use opportunities do not exist.
 - (d) The proposed new building structure or use of the property will not adversely affect the historic character or architectural integrity of neighboring historic properties, the neighborhood, or the community, and
 - (e) The applicant has not contributed to the existing conditions, either through neglect or prior renovation, conversion, alteration, or similar physical action.
4. The amended ordinance deleted two requirements, (1) that the applicant prove that the building proposed to be demolished did not provide a reasonable rate of return upon the initial investment; and (2) that the proposed demolition would not adversely affect the historic significance or architectural integrity of neighboring historic buildings or the historic character of the neighborhood or community.

5. Applicant's demolition application is in conformity with the Historic District Ordinance, as amended.

6. Applicant offered credible testimony as to the general and specific criteria necessary for the grant of a special exception.

7. No credible testimony was presented that demolition of the buildings on the subject properties would be adverse to the community health, safety or welfare.

C. DISCUSSION

This is an application for a special exception. Unlike an application for a variance, an application for a special exception should be granted if the board is satisfied that the criteria have been met. An applicant for a special exception need not prove hardship or unique physical conditions of the property which prevent the applicant from enjoying a reasonable use of the property.

The Historic District Overlay Ordinance establishes five requirements for a special exception. We will address them in turn.

The first requirement is that it is not feasible to continue the present use. The uncontradicted testimony established that the building is not fit for occupancy. The building has no use at this time as a structure. The building has not been used by the University for at least ten years. The Board is satisfied that the first requirement, there being no feasibility of using the building, has been met.

The second requirement is that no other use of the structure is feasible. The Board is satisfied that this requirement has been met as well. The subject property is an old wooden house in the middle of the University campus. The surrounding buildings and land uses are dissimilar to the existing structure. The subject property is surrounded by playing fields, parking lots, and various university buildings. The ground on which the structure sits can be used in furtherance of the University's overall plan, going back to 1997.

The third requirement is that there be no adaptive use possibilities. For reasons stated above, the Board is satisfied that this requirement has been met.

The fourth requirement is that the proposed new structure or use will not affect the historic character of neighboring historic properties, the neighborhood, or the community. Applicant's presentation met these criteria.

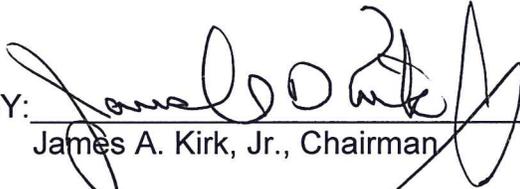
The fifth and last specific criterion is that the Applicant needs to show that it did not contribute to the existing conditions. We are satisfied that there is no evidence of active contribution on the part of the university, only the effects brought about by the passage of time.

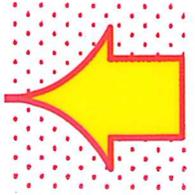
It is undisputed that, at the present time, the property is in a deteriorated condition. Indeed, it is structurally unsafe and has been condemned by the Borough.

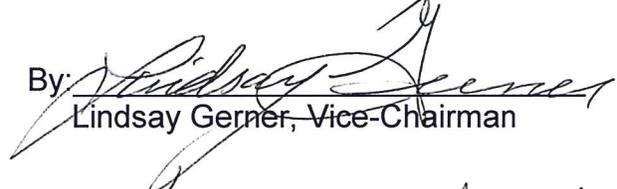
D. DECISION

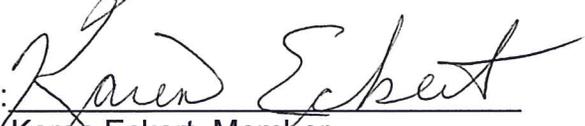
AND NOW, this 28th day of May, 2015, Applicant's request for a special exception to demolish the structure at 110 North Prince Street in the Borough of Millersville is hereby granted, subject to the condition that an appropriate marker be affixed to the site following demolition.

THE MILLERSVILLE BOROUGH
ZONING HEARING BOARD

BY: 
James A. Kirk, Jr., Chairman



By: 
Lindsay Gerner, Vice-Chairman

By: 
Karen Eckert, Member

By: 
Vickie Usciak, Member

James R. Sanchez, Member, dissented from this decision.