

RIDER TO APPEAL OF ZONING PERMIT RESCISSION
CHARLES FOULKE, JR. AND LENNY REALITY, LLC
1708 MARLTON PIKE WEST, 1313 WYNNWOOD AVE, 1315 WYNNWOOD AVE, 1205
CHAMBERS ST A/K/A BLOCK 137.01, LOTS 1-4
APPEAL OF ADMINISTRATIVE OFFICER'S DECISION

On January 19, 2021, the Cherry Hill Township Planning Board (the "Board") approved Application No. 18-P-0020 ("Approval"), in response to the application of Charles Foulke, Jr. ("Foulke"), one of the owners of Foulke Management Corp., t/a Cherry Hill Dodge, granting preliminary and final major site plan approval with bulk variance approval and lot consolidation to demolish the existing residential structures and consolidate 3 lots (Lots 2-4) into the primary lot (Lot 1), and develop 75 new employee parking spaces for the Cherry Hill Triplex at the property located at 1708 Marlton Pike West, 1313 Wynnwood Ave, 1315 Wynnwood Ave, 1205 Chambers St. A/K/A Block 137.01, Lots 1-4 (collectively the "Site"). All of the properties within the Site are located within the B-2 Business Highway Management Zoning District.

Within the vicinity of the Site, there are three car dealerships with frontage on Route 70 between Chambers Avenue and Mercer Street, with vehicle parking areas extending to Wynnwood Avenue. Nearby, at the corner of Haddonfield Road and Sherwood Avenue, there is another car dealership, with parking areas extending to Mercer Street. There is a block bounded by Mercer, Sherwood, Fulton and Wynnwood that is zoned O-1 for office use. Within the areas zoned as B-2 and O-1, there are several pre-existing, non-conforming residential uses. The areas north of Sherwood and north of the section of Wynnwood that is east of Fulton are zoned R-2 for residential use.

On December 21, 2022, the Township Zoning Officer issued Zoning Permit ZP-22-01649 for 1708 Marlton Pike West (Lot 1), for the work authorized under the Approval, but specifically required separate permits for demolition of the houses at 1313 Wynnwood (Lot 2) and 1315 Wynnwood (Lot 3). On December 22, 2022, the Township Zoning Officer issued Zoning Permit ZP-22-01668 for demolition of a single-family house and associated concrete, located at 1313 Wynnwood Ave (Lot 2) and on that same date, also issued Zoning Permit ZP-22-01669 for demolition of a single-family house and associated concrete located at 1315 Wynnwood (Lot 3). Demolition work commenced thereafter.

As indicated during the testimony presented in support of the Approval, the work authorized under the Approval and the Zoning Permits through the creation of 75 additional employee parking spaces is intended to improve Site operations and enable less frequent movement of vehicles throughout the parking lots. The present parking configuration results in the need to rotate vehicles around the Site more often.

Based on various statements made during the hearing before the Board, the Approval contains numerous conditions, including condition u, which prohibits the use of car horns or alarms to locate vehicles; condition z, which requires compliance with the Township Noise Ordinance; condition g, which prohibits parking in any drive aisles on Site; condition h, prohibiting off-site deliveries on Fulton Avenue; and condition j, which prohibits test drives for car repair tests in the surrounding neighborhood (collectively, the "Conditions").

Unknown to Foulke, at a Township Council Meeting on February 27, 2023, and at a Community Meeting with Locustwood Neighbors on April 17, 2023, there were allegations made that Foulke was not in compliance with the Conditions. Notice and opportunity to cure the alleged infractions was not provided to Foulke, nor was any enforcement action initiated by the Township Zoning Officer alleging any such non-compliance.

On April 20, 2023, the Township Zoning Officer issued a rescission of zoning permit "Demolition - Zoning Permit, ZP-22-0406," which was the application number for Zoning Permit ZP-22-01669, which authorized demolition of the house at 1315 Wynnwood (the "Rescission"). The house is in poor condition and with the demolition having commenced, removal needs to be completed expeditiously to prevent any unsafe conditions.

The Rescission alleges that Foulke failed to comply with the Conditions of the Approval, specifically u and z. The Rescission further indicates claims have been made by neighboring property owners that Foulke has violated conditions g, h, and j of the Applicant's Board approval. No evidence of any such non-compliance was provided with the Rescission.

Foulke previously addressed similar allegations that were previously raised at the time of the hearing on the Approval. Foulke testified that the additional parking would alleviate the frequency of car movement at the Site, by remediating the conflict between the employee parking and service parking, which would reduce site noise. In addition, Foulke testified that delivery trucks parked on the street often come from neighboring car dealerships and often deliveries are parked in front of his dealership but are not for his dealership. With a total of four operating car dealerships within the vicinity of the Site, the allegations of non-compliance are inaccurately leveled solely at Foulke.

Mr. Foulke also addressed test driving and shared the test drive route with the Board. He testified that any of his employees directing customers onto the neighboring residential roads would face repercussions. Furthermore, he testified that during COVID customers were allowed to test drive vehicles without an employee, in which he was not able to control where they went. Nonetheless he has made every effort to direct customers to take the appropriate test route, and has instructed employees not to take vehicles for repair test rides throughout the neighborhood.

Furthermore, as the work authorized by the Approval is intended to alleviate the issues complained of, the issuance of the Rescission frustrates the efforts being made by Foulke to improve the issues that gave rise to imposition of the Conditions in the first place. The Rescission hinders, rather than facilitates, any improvement of these issues.

Given the lack of any proof of non-compliance, and the frustration of the purposes that would be advanced by implementation of the Approval, the Rescission should be withdrawn and the Zoning Permit should be reinstated.

Rescission of the Zoning Permit here is further contrary to the Township Code relating to enforcement of permits, as set forth at Article XI, which states in pertinent part:

6. In the event any condition is found to exist in violation of any regulation, term or provision of this Article, the Zoning Officer shall confer with the Administrative Officer and thereafter issue a written order to immediately remedy or correct such violation or to stop work and/or prosecute the violation in the Municipal Court.

7. In the event the Zoning Officer shall receive a complaint or notice alleging the existence of a violation of the provisions of this Ordinance, she or he shall investigate the alleged violation. If a violation exists, action shall be taken as provided by this Ordinance.

Assuming *arguendo* that any violations of the Conditions allegedly existed, which is strenuously denied, the Township Code provides that any such allegations are to be the subject of a notice and investigation, with an order to remedy or correct such alleged violation to follow. If such a notice is issued, and compliance is not obtained, the matter is to be the subject of further action by way of prosecution in Municipal Court, where as the prosecuting entity, the Township Zoning Officer would have the burden of proving such violations exist.

In the present matter, this process was not followed, and the Township has sought to place the burden on Foulke of proving that the violations do not exist. This is neither consistent with the Township Code, nor with the requirements of due process.

By and through the Rescission, the Township has also placed on Foulke the obligation to seek re-issuance of a permit that has already been relied upon and utilized in part, in order to proceed with the work previously authorized under the Approval, which itself was the subject of lengthy public hearings, and which has now been undermined by a process to which Foulke was neither made aware of nor invited to participate in to rebut any claims of alleged violations, and to confront anyone accusing Foulke of such malfeasance. Such action cannot stand.

It is well-settled in New Jersey “that a municipality may not revoke a building permit granted to an applicant who, upon the faith of it, enters into contractual relations with respect thereto and expends moneys in the prosecution of the work, unless it appears that such permit was obtained by fraud or deceit.” Sun Oil Co. v. Clifton, 16 N.J. Super. 265,269 (App. Div. 1951). “If a valid permit is issued, then a vested right is acquired thereunder, which cannot be taken away.” Id. When deciding whether a permittee such as Foulke has acquired a vested right in a validly issued permit, the New Jersey Supreme Court has said that the fundamental question to be addressed is “at what point it can be said that an individual has performed acts which form the wellspring from which certain protectable interests may flow and create a countervailing force which will prevail over the normally paramount authority of the municipality to preserve the desirable characteristics of the community...” Tremarco Corp. v. Garzio, 32 N.J. 448,456 (1960). There is no doubt that, in this case, Foulke has crossed that threshold. Foulke has already commenced the work authorized by the Zoning Permit. There are no allegations

whatsoever that the Approval and Zoning Permits were obtained by fraud or deceit, and any such allegations would indeed be spurious and false. If any claims of non-compliance are to be brought forth, such claims must be adjudicated by way of the means set forth in the Township Code. Proper notice of any such allegations must be provided along with an opportunity to cure, and the full measure of due process must be accorded to Foulke if any allegations of non-compliance are asserted. It is indeed an issue of constitutional significance to provide citizens with procedural protections, such as notice and a hearing before termination of any entitlements. Any attempts to proceed otherwise would violate Foulke's vested rights and constitute arbitrary and capricious action.

Based on the above, the Rescission should be withdrawn, and the Zoning Permit should be reinstated.