

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2014-08  
APPLICATION OF JEFFREY PRY, SR. :

DECISION

**I. FINDINGS OF FACT**

1. Applicant is Jeffrey Pry, Sr., 2037 Old Philadelphia Pike, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is 2435A Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is a tenant upon the Property.

4. The owner of the Property is Merv Stoltzfus.

5. The Property is located in the C-2 Residential District as shown on the Official Zoning Map of East Lampeter Township.

6. Notice of the hearing on the within application was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and The Revised Zoning Ordinance of East Lampeter Township - 1990 (the "Zoning Ordinance").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on March 27, 2014.

8. Testimony at the hearing was stenographically recorded.

9. Applicant appeared personally at the hearing.

10. Applicant has requested: (i) a special exception pursuant to Section 1202.5 and Section 1912 of the Zoning Ordinance in order to allow patrons to bring their own alcoholic beverages to Applicant's business for consumption therein; (ii) a variance from Section 1912.1.B of the Zoning Ordinance with regard to fencing or screening around the Property.

11. The Property contains approximately 2.124 acres.

12. The Property is improved with two buildings.

13. One building contains three businesses: (i) a restaurant - deli; (ii) a dentist office; and (iii) a post office.

14. The other building contains: (i) Applicant's business (on the first floor); (ii) a water treatment business office (on the first floor); and (iii) an apartment on the second floor.

15. There is shared parking on the Property for all of the businesses and dwelling use.

16. There are approximately 60 parking spaces on the Property.

17. Applicant operates a billiard hall known as Cross Corner Billiards.

18. Applicant began operations within the last two weeks.

19. Applicant's billiard hall contains 2,000 square feet of floor area.

20. Applicant has six pool tables. There are three chairs at each pool table.

21. There is a seating area with tables and chairs (25 chairs).

22. Applicant has a vending machine and microwave for food preparation. Patrons are also permitted to bring food into the premises for consumption.

23. Applicant operates from noon to midnight, seven days a week.

24. Applicant will host billiard tournaments and leagues.

25. Applicant desires to allow its patrons to bring their own alcoholic beverages to Applicant's billiard hall for consumption therein.

26. Applicant testified that either he or his wife will be on the premises at all times.

27. Applicant testified that he or his wife will card and require proof of age from all persons bringing alcoholic beverages to the billiard hall. All persons bringing alcoholic beverages to the billiard hall would be at least 21 years of age.

28. Applicant testified that only beer, wine and coolers will be permitted. No hard liquor/ spirits will be permitted. Further, no cases of beer would be permitted. Patrons would be limited to one six-pack or one bottle.

29. The Property is served by public sewer and public water service.

30. During tournaments or leagues, there could be 35 or more persons attending the billiards hall.

31. Although the Property currently contains the number of off-street parking spaces required by the Zoning Ordinance, parking is not reserved for the billiard hall use. When tournaments or leagues are held, Applicant's use may utilize parking spaces normally used by customers of the restaurant/deli (or other businesses on the Property).

32. Applicant's use will not emit obnoxious noise, glare, dust, vibration, or electrical disturbance.

33. With proper conditions, it is believed that Applicant's use will not cause any objectionable impact.

## **II. CONCLUSIONS OF LAW**

1. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989); Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

2. Except for the requirements of Section 1912.1.B, with proper conditions Applicant's proposal complies with the specific requirements of Section 1202.5 and Section 1912 of the Zoning Ordinance.



3. With proper conditions, Applicant has demonstrated compliance with the general requirements for all special exceptions set forth in Section 1901 of the Zoning Ordinance.

4. Applicant has requested a variance from Section 1912.1.B of the Zoning Ordinance, which requires that a fence or screen planting surround the lot.

5. An applicant for a variance bears the burden of proving that unnecessary hardship will result if the variance is not granted and that the grant of the proposed variance will not be contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983); Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

6. The Property contains additional businesses and it is not reasonably possible to screen the entire lot. There are no residential uses adjacent to the Property which would be negatively impacted by the lack of screening.

7. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum

that will afford relief and will represent the least modification of the ordinance.

### **III. DECISION**

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby grants the application for: (i) a special exception pursuant to Section 1202.5 and Section 1912 of the Zoning Ordinance in order to allow patrons to bring their own alcoholic beverages to Applicant's billiard hall for consumption therein; and (ii) a variance from Section 1912.1.B of the Zoning Ordinance with regard to fencing or screening around the Property. This special exception and variance shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its application and the evidence presented to the Board at the hearing held on March 27, 2014.

3. Patrons shall only be permitted to bring their own alcoholic beverages to Applicant's billiard hall for consumption therein after 8:00 p.m. Between Applicant's opening time and 8:00 p.m., patrons shall not be permitted to bring their own alcoholic beverages to Applicant's billiard hall.

4. Applicant, Jeffrey Pry, Sr., or his wife must be present at the billiard hall during all hours when patrons are permitted to bring alcoholic beverages to the billiard hall.

5. Applicant, Jeffrey Pry, Sr., or his wife must require proof of age from all persons bringing alcoholic beverages to the billiard hall. All persons bringing alcoholic beverages to the billiard hall must be at least 21 years of age.

6. There shall be no persons under the age of 21 permitted in the billiard hall during the hours in which patrons are permitted to bring alcoholic beverages. Without limiting the foregoing, all patrons under the age of 21 years who are in the billiard hall must leave the billiard hall during the hours in which patrons are permitted to bring alcoholic beverages.

7. Only beer, wine and coolers may be permitted. No hard liquor/ spirits shall be permitted.

8. On a daily basis, Applicant must remove all alcohol (including open or empty bottles, cans or other containers) prior to opening of the business the following day.

9. On a daily basis, Applicant must remove all alcohol (including open or empty bottles, cans or other containers) from the exterior of the billiard hall (by way of example and not by limitation, such items must be removed from the parking areas, walkways and common areas).

10. Applicant shall provide and maintain adequate exterior lighting of all parking areas used by patrons of the billiard hall.

Adequacy of such exterior lighting shall be determined or approved by the Township, in its sole discretion.

11. Consumption of alcoholic beverages of any kind shall be prohibited on those portions of the Property outside the of billiard hall. Without limiting the foregoing, there shall be no consumption of alcoholic beverages of any kind in the parking areas, walkways and common areas.


12. Applicant shall post and maintain adequate signage in all parking areas, walkways and common areas used by patrons of the billiard hall prohibiting loitering. Adequacy of such signage, including size, number and location, shall be determined or approved by the Township, in its sole discretion.

13. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

14. The foregoing Decision shall be binding upon the Applicant and his personal representative, heirs, successors and assigns.



ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
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David Petrisek, Chairman

  
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Walter Siderio, Secretary

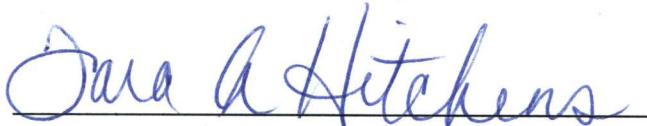
DISSENT:

I dissent from the foregoing Decision. I do not believe that Applicant has met the requirements for the requested special exception and variance.

  
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J. Scott Enterline, Alternate

Dated and filed April 10, 2014, after hearing held on March 27, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 11, 2014.

  
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