

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-09
APPLICATION OF PALACE :
ENTERTAINMENT :

DECISION

I. FINDINGS OF FACT

1. Applicant is Palace Entertainment d/b/a Dutch Wonderland, 2249 Lincoln Highway East, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 2249 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located within the Commercial C-2 District, Conservation District and Floodplain District as shown on the Official Zoning Map of East Lampeter Township.
5. 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").
6. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on March 27, 2014.
7. Testimony at the hearing was stenographically recorded.
8. Dennis Gehringer appeared at the hearing and testified on behalf of Applicant.

9. The Property was the subject of previous zoning hearings and the Board takes administrative notice of its previous Decisions.

10. The Board made the following findings in the previous hearings regarding the Property:

The Property is and has been used for the Dutch Wonderland Family Amusement Park (the "Park").

The Park was first opened in 1963.

In 1963, the Park was located upon a tract of land containing 11 acres.

Since 1963, the Park added and replaced facilities.

An adjacent farm was purchased in 1965.

Over a 38-year period, the Park expanded in all directions.

The Park now occupies 57 acres.

East Lampeter Township adopted its initial Zoning Ordinance on November 10, 1970.

11. The Board has previously approved modifications to the Park.

12. In Case No. 2004-50, the Board found with regard to expansions of nonconforming uses and lot coverage within the Conservation and Floodplain Districts, the following table identifies the nonconforming use/lot coverage status:

Coverage reduction in accordance with Board's Decision in Case No. 95-25	13,791 square feet
Proposed coverage approved in accordance with Board's Decision in Case No. 95-25	13,273 square feet
Duke's Lagoon Phase 1 & 2	(15,000) square feet
Coverage increase in accordance with Board's Decision in Case No. 2000-15	(962) square feet

Net coverage reduction in accordance with Board's Decision in Case No. 2002-06	1,685 square feet
Net coverage reduction in accordance with Board's Decision in Case No. 2003-58	1,946 square feet
AVAILABLE AREA FOR NONCONFORMING USE LOT COVERAGE	14,733 square feet
Proposed current expansion of Duke's Lagoon	(6,700) square feet
REMAINING AVAILABLE LOT AREA FOR NONCONFORMING USE LOT COVERAGE	8,033 square feet

13. In Case No. 2006-30, Applicant requested special exceptions pursuant to Section 502.1 and Section 1509.3 of the Zoning Ordinance in order to expand nonconforming uses within the Floodplain District.

14. The Board, in Case No. 2006-30, granted Applicant's request to expand uses within the Floodplain District by 2,155 square feet.

15. After Case No. 2006-30, the remaining area available for nonconforming use lot coverage was 5,875 square feet.

16. In Case No. 2009-29, Applicant requested a special exception pursuant to Section 502.1 of the Zoning Ordinance (expansion of nonconforming uses), a special exception pursuant to Section 502.3 of the Zoning Ordinance (substitution of nonconforming uses), and a special exception pursuant to Section 1509.3 of the Zoning Ordinance (expansion and modification of nonconforming uses in the Floodplain District).

17. The Board, in Case No. 2009-29, granted Applicant's request. Applicant was permitted to relocate the Pennsylvania Turnpike ride along the Mill Creek and the north side of the existing canal. The proposal removed walkways, bridges and exhibit areas totaling 13,315

square feet of area and added 13,234 square feet of new lot coverage (a net reduction of 81 square feet).

18. After Case No. 2009-29, the remaining area available for nonconforming use lot coverage was 5,956 square feet.

19. Case No. 2009-39 (a subsequent case approving a rear yard setback variance) did not alter the amount of remaining area available for expansion.

20. Applicant has now requested: (i) a special exception pursuant to Section 502.1 of the Zoning Ordinance (expansion of nonconforming uses); (ii) a special exception pursuant to Section 502.3 of the Zoning Ordinance (substitution of nonconforming uses); and (iii) a special exception pursuant to Section 1509.3 of the Zoning Ordinance (expansion and modification of nonconforming uses in the Floodplain District).

21. Applicant proposes to remove structures and impervious areas associated with the Mini Ferris Wheel ride (i.e., ride structure, queue lines, shade structure, ride control area, 85 linear feet of picket fence and 8 linear feet of privacy fence), reduce black top associated with the Pennsylvania Turnpike ride, and remove several theme elements totaling 635 square feet.

22. Applicant proposes to install one fossil-dig area and fifteen dinosaur replicas.

23. Ten replicas are portable, life-size, animatronic dinosaurs. Their base is an open rectangular steel frame. The frame sits directly on the ground surface (unattached and supported only by the weight of the replica. No impervious base surface is installed for the replicas. Each replica will connect to the flood-protected electric service currently located on the island.

24. Four replicas are portable, life-sized birds attached to the large trees located along the existing pathway. The replicas will be at an elevation above the Floodplain District.

25. One replica is a portable, life size, animatronic dinosaur egg display. Two of the eggs provide a face through photo opportunity.

26. Other improvements include:

(i) A 12 foot square shade structure, mounted on a 5 inch pole and attached to an at grade footing, will be located in the area of the proposed land use.

(ii) Two manually operated sand scoops in the fossil-dig area, mounted on a 1.66 inch pole and attached to an at grade footing.

(iii) Two portable tables, approximately 2 square feet, each located in the fossil-dig area.

(iv) A single strand rope fence around ground level replicas.

27. All structures that are located within the floodplain corridor are protected from a high water condition by a Flood Preparation Plan that was established by prior Board approvals.

28. The Flood Preparation Plan for a major flood occurrence, is amended to include the following items associated with the proposed Prehistoric Pathway improvements:

(i) Relocate benches, trash cans, and tables above flood elevation.

(ii) Disconnect power.

(iii) Remove fence sections.

(iv) Remove signage.

29. David E. Hoglund, PE, Rettew Associates, Inc., reports in his letter, dated March 26, 2014, that with implementation the Floodplain Protection Plan, the subject structures will have

virtually no affect on the height of flood waters or increase the potential for flood damage on adjacent properties.

30. As shown on the plan, the subject nonconforming structures are located within 150 feet of numerous other attractions. The subject nonconforming structures represent a minor expansion of the park and the majority of the structures are portable and will be removed from the floodplain during peak storm events.

31. The park complex is serviced by public utilities. Historically, the use provides a significant source of income for public facilities with minimal service needs.

32. The special exception uses are located inside the established park area. These minor structures will not alter circulation, parking, buffering, and other elements of the existing use.

33. The requested expansion of a nonconforming use conforms to the Zoning Ordinance standards for a special exception within the Floodplain District, as stated in Section 1507.2 (A) through (N).

34. The nature of the proposed subject structures will:

- A. Not increase flood heights or velocities.
- B. Cause no, or a minimum of, floodwaters or materials to be swept onto other lands.
- C. Minimize the possibility of disease, contamination, and unsanitary conditions.
- D. Be uses that need waterfront or floodplain locations.
- E. Not have available alternative locations not subject to flooding.
- F. Be compatible with existing and anticipated development.

- G. Be consistent with the East Lampeter Township Comprehensive Plan and floodplain management program for the area.
- H. Provide safe access to the property in times of flood.
- I. Be compatible with the character of the expected floodwaters.
- J. Not unduly alter natural water flow or water temperature.
- K. Not degrade or destroy archaeological sites; historic sites; endangered or threatened species or plants; high quality wildlife habitats; scarce vegetation types; and other irreplaceable land uses.
- L. Conserve the natural, scenic, and aesthetic values of the site.
- M. Not cause danger, damage, or injury to adjoining properties.
- N. Not cause increase in flood heights, threaten public safety, generate public expense, cause a nuisance or conflict with local laws or ordinances.

35. No persons appeared in opposition to the application.

II. CONCLUSIONS OF LAW

1. An applicant for a special exception has the burden of proof 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. The applicant for a special exception bears the burden of proving that he will comply with all requirements of the zoning ordinance relative to the use intended. Ralph & Joanne's, Inc. v. Neshannock Township Zoning Hearing Board, 121 Pa. Commonwealth Ct. 83, 550 A.2d 586 (1988).

3. Applicant presented sufficient testimony to establish compliance with Section 502.1, Section 502.3 and Section 1509.3 of the Zoning Ordinance.

4. Applicant presented sufficient testimony to establish that the subject expansions/substitutions will not be detrimental to the public health, safety or welfare of the neighborhood.

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 special exceptions pursuant to Section 502.1, Section 502.3 and Section 1509.3 of the Zoning Ordinance to permit construction of Park modifications in accordance with the plans and testimony presented to the Board. The special exceptions 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. 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.

4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within twelve (12) months from the date of this Decision and does not complete construction of the improvements so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

5. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



Walter Siderio, Secretary



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.


