

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2014-27
APPLICATION OF CENTRAL PA :
EQUITIES 21, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Central PA Equities 21, LLC, 146 Pine Grove Circle, York, Pennsylvania 17403 ("Applicant").

2. The property which is the subject of the instant application is located at 2270 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the equitable owner of the Property.

4. The record owner of the Property is Duong & Nguyen, LLC, 343 Enterprise Drive, Bird-in-Hand, Pennsylvania 17505.

5. The Property is located in the Commercial C-2 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 September 25, 2014.

8. Testimony at the hearing was stenographically recorded.

9. Applicant was represented at the hearing by Ronald Perry, Esquire, 345 East Market Street, York, Pennsylvania 17403.

10. David H. Hogg, a member of Applicant, appeared at the hearing and testified on behalf of Applicant.

11. The following persons were recognized as parties to the hearing:

Matthew J. Creme, Jr., Esquire,
212 North Queen Street
Lancaster, PA 17603
on behalf of Peter D. Scudner

Caroline M. Hoffer, Esquire
126 East King Street
Lancaster, PA 17602
on behalf of Continental Ltd.

Helen L. Gemmill, Esquire
100 Pine Street
Harrisburg, PA 17101
on behalf of Shri Narayan Lancaster LP

Craig R. Lefever
301 Gap Road
Ronks, PA 17572
on behalf of Strasburg Railroad Company

12. Applicant has requested a special exception pursuant to Section 1205.2.A and Section 1901 of the Zoning Ordinance.

13. Section 1205.2.A of the Zoning Ordinance states that no building shall be erected to a height in excess of forty (40) feet unless authorized by special exception.

14. Section 1901 of the Zoning Ordinance sets forth the general provisions for special exceptions.

15. The Property contains approximately 3.2 acres (to the existing right of way line).

16. The Property is currently improved with a building used as and for a restaurant, including accessory parking.

17. Applicant proposes to develop the Property with a hotel, as more fully shown on the plans (the "Plans") submitted by Applicant.

18. The hotel will be a five-story building.

19. The hotel will be 55 feet in height.

20. The hotel will contain 118 rooms.

21. Applicant testified that it can comply with all other requirements of the Zoning Ordinance with regard the proposed hotel.

22. The Plans indicate, among other things, that the motel will comply with front yard, rear yard and side yard minimum setback requirements. The Plans further indicate that Applicant

will provide 128 parking spaces (one space per room plus one space for every employee on the Property at any given time).

23. The hotel will be set back slightly more from Lincoln Highway East than the existing restaurant.

24. Applicant testified that it could construct a four-story hotel, 40 feet in height, with 118 rooms. However, Applicant desires to construct a five-story hotel in order to preserve green space.

25. Applicant has not yet discussed fire protection services with the fire company. However, Applicant testified that there are other five-story hotels (in excess of 40 feet in height) in East Lampeter Township which are served by the fire company.

26. Applicant stated that it has been assured that adequate public water and public sewer service are available for Applicant's proposed use and the Board finds such testimony to be credible.

27. Applicant has not conducted a traffic impact study. Applicant testified that its proposed hotel use is a use permitted as of right in the Commercial C-2 District. Applicant further testified that the traffic impact will be approximately the same as a 5,000 square foot restaurant use. The Board finds such testimony to be credible.

28. The four parties have property interests as follows:

(i) Peter D. Scudner (represented by Attorney Creme) is the owner of the lot known and numbered as 2280 Lincoln Highway East (to the east of the Property).

(ii) Shri Narayan Lancaster LP (represented by Attorney Gemmill) is the owner of the lot known and numbered as 2260 Lincoln Highway East (located to the west of the Property) which is used for a Country Inn & Suites Hotel.

(iii) Continental Ltd. is the owner of the lot known and numbered as 2285 Lincoln Highway East (located across Lincoln Highway East) which is used for a hotel.

(iv) Strasburg Railroad Company (represented by Craig R. Lefever) is the owner of a billboard located on the aforesaid lot owned by Peter D. Scudner.

29. Attorney Creme expressed concerns regarding sight lines and the existing house and billboard located on the Scudner lot.

30. Mr. Lefever, on behalf of Strasburg Railroad Company, expresses similar concerns regarding sight lines.

31. Mr. Scudner's lot sits up on a hill and, when traversing from east to west, slopes downgrade. The slope and sight lines are shown on Applicant's Exhibit No. 1 and Exhibit No. 2.

32. To address Mr. Scudner's and Mr. Lefever's sight line concerns, Applicant agreed that it will not make current sight line conditions worse. Applicant will preserve sight lines in its land development plan approval and building code compliance procedures. The hotel building will be located approximately as shown on Applicant's Exhibit No. 1.

33. Attorney Hoffer expressed concerns regarding: the proposed hotel height of 55 feet and the Applicant's ability to construct an additional floor; the lack of a traffic impact study and potential traffic; and impact on the character of the area.

34. Rodney Gleiberman, an owner of Continental Ltd., testified that he does not know how Applicant's proposal will affect his hotel's general traffic flow (for example, left hand turns for his customers). He also testified that, in his opinion, a building 55 feet in height will affect the streetscape.

35. Attorney Gemmill expressed concerns regarding traffic impact, fire emergency service, water and sewage availability and building height.

36. The Country Inn & Suites Hotel, located adjacent to the Property, is 5 stories tall on 2 of the 4 sides. In viewing the Country Inn & Suites hotel directly from Lincoln Highway East, it has a retaining wall and 4 stories plus a peaked roof. The Country Inn & Suites Hotel, including the peaked roof, is higher than Applicant's proposed hotel.

37. There are other hotels, five stories in height, in the Township.

38. Applicant has provided the Board with sufficient plans, studies and other data to demonstrate compliance with all applicable regulations.

39. The proposed use will not substantially injure or detract from the use of neighboring properties or from the character of the neighborhood and the use of properties adjacent to the Property are adequately safeguarded.

II. CONCLUSIONS OF LAW

1. "A special exception is a misnomer in that it is really not an exception at all; it is a legislatively granted entitlement contained in a zoning ordinance." *McGinty v. Zoning Board of Adjustment of the City of Pittsburgh*, 717 A.2d 34 (Pa. Cmwlth. 1998) (en banc).

2. "[T]o be entitled to a special exception, an applicant must bring the proposal within the specific requirements in the zoning ordinance." *Act I, Inc. v. Zoning Hearing Board of Bushkill Township*, 704 A.2d 732, 735 (Pa. Cmwlth. 1997).

3. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. *Shamah v. Hellam Township Zoning Hearing Board*, 648 A.2d 1299 (Pa. Cmwlth. 1994); *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989).

4. Applicant has demonstrated compliance with the requirements for a special exception set forth in Section 1901 of the Zoning Ordinance.

5. A special exception (or conditional use) must be granted unless the protestants present sufficient evidence to establish that there is a high degree of probability that the use will cause substantial threat to the community. The evidence of the protestants cannot consist of mere bald assertions or personal

opinions and perceptions of the effect of the use on the community. Moreover, the degree of harm required to justify denial of the special exception (or conditional use) must be greater than that which normally flows from the proposed use. *In re: Appeal of Cutler Group, Inc.*, 880 A.2d 39, 43 (Pa. Cmwlth. 2005).

6. Fears of neighboring residents and speculation of harm, without more, cannot sustain an objector's heavy burden; rather objectors must prove there is a high degree of probability that the proposed use will substantially affect the health and safety of the community. *East Manchester Township Zoning Hearing Board v. Dallmeyer*, 147 Pa. Commonwealth Ct. 671, 609 A.2d 604 (1992).

7. With regard to traffic increases: "speculative testimony from concerned neighbors fails to establish a 'high degree of probability' of specific detrimental consequences to the public welfare." *Bailey v. Upper Southampton Township*, 690 A.2d 1324, 1327 (Pa. Cmwlth. 1997).

8. Protestants have failed to offer credible evidence that there is a high degree of probability that Applicant's proposed increase in hotel height from 40 feet to 55 feet will cause substantial threat to the community.

9. Conditions must be attached to the granting of the special exception to protect and preserve the surrounding 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 of Central PA Equities 21, LLC for a special exception pursuant to Section 1205.2.A of the Zoning Ordinance in order to construct a hotel 55 feet in height. The special exception 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 the application and the evidence presented to the Board at the hearing held on September 25, 2014.

3. With regard to impact on Mr. Scudner's house and the Strasburg Railroad Company billboard, Applicant shall not make current sight line conditions worse. Applicant shall preserve sight lines in its land development plan approval and building code compliance procedures. The hotel building shall be located approximately as shown on Applicant's Exhibit No. 1.

4. Applicant shall provide satisfactory evidence that Lafayette Fire Company (or other fire company which will provide fire service to the Property and proposed hotel) has adequate

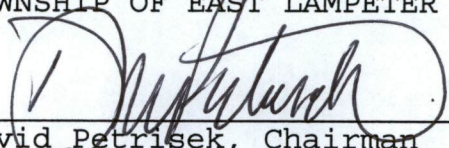
accessibility to the Property and proposed hotel and that it currently maintains apparatus which will reach the roof.

5. 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.

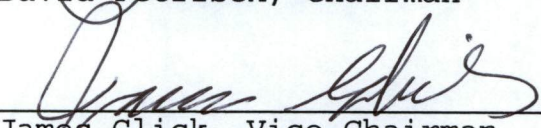
6. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within one (1) year from the date of this Decision and does not complete construction of the improvements so authorized and commence the use so authorized within two (2) years from the date of this Decision.

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

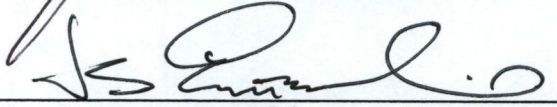
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



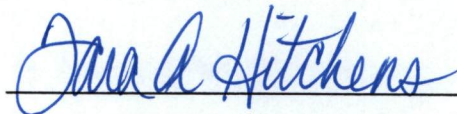
James Glick, Vice-Chairman



J. Scott Enterline, Alternate

Dated and filed October 23, 2014, after hearing held on September 25, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to October 24, 2014.

A handwritten signature in blue ink, reading "Jana A. Hitchens", is written over a solid horizontal black line.