

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-02
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 January 8, 2015.

8. Testimony at the hearing was stenographically recorded.

9. Applicant was represented at the hearing by Stacey R. MacNeal, Esquire, 345 East Market Street, York, Pennsylvania 17403.

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

11. Chris Venarchick, a registered landscape architect with RGS Associates, Inc., appeared at the hearing and testified on behalf of Applicant.

12. Jason T. Wheeler, a transportation planner with Traffic Planning and Design, Inc., appeared at the hearing and testified on behalf of Applicant.

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

Peter Scudner
2117 Waterford Drive
Lancaster, PA 17601

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

14. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 2014-27.

15. In Case No. 2014-27, the Board granted Applicant's request for a special exception pursuant to Section 1205.2.A and Section 1901 of the Zoning Ordinance in order to construct a hotel fifty-five (55) feet in height.

16. Applicant has now requested a special exception pursuant to Section 1205.2.A and Section 1901 of the Zoning Ordinance in order to construct a hotel sixty-two (62) feet in height.

17. 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.

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

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

20. The Property is currently improved with a building used (either currently or in the recent past) as and for a restaurant, including accessory parking.

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

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

23. The hotel will be 62 feet in height.

24. The hotel will contain 118 rooms.

25. The Plans indicate, among other things, that the hotel will comply with lot area, lot width, lot depth, front yard setback, rear yard setback, and side yard setback requirements.

26. 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), and will comply with the parking lot interior landscaping requirements.

27. 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, preserve existing mature trees, and reduce the amount of storm water runoff.

28. Applicant has discussed fire protection services with the fire company and the fire company has indicated that it has sufficient apparatus to serve Applicant's proposed hotel. Moreover, Applicant testified that there is sufficient area within the proposed parking lot and accessways upon the Property for emergency vehicles to maneuver.

29. Applicant's proposed use and the Plans are properly designed with regard to internal circulation, parking, buffering and all other elements of proper design.

30. Sufficient public sewer capacity is available for Applicant's proposed use.

31. The City of Lancaster provides public water to the Property. The City of Lancaster is currently undertaking a pump station project, with a projected completion date of March 15, 2015, which will provide sufficient water capacity/pressure for Applicant's proposed hotel.

32. If the City of Lancaster project is not completed, Applicant can provide an on-site pressure pump system for adequate capacity/pressure.

33. There are currently electric, cable tv and natural gas utilities serving the Property.

34. The East Lampeter Township Police Department has no concerns regarding its ability to provide adequate police service to the Applicant's proposed hotel.

35. Lincoln Highway East / Route 30 is an arterial street and the Property is located in a high intensity commercial area.

36. Applicant's transportation planner testified that there are approximately 15,000 trips daily on the applicable portion of Lincoln Highway East / Route 30.

37. Because of the proposed change in use of the Property, Applicant's transportation planner prepared a scoping meeting application (which is the first step in the Highway Occupancy Permit process).

38. The scoping meeting application, based upon the ITE Trip Generation Manual, indicates in part as follows with regard to

Applicant's proposed hotel and traffic to be generated: weekday a.m. peak hour is 63 total trips; weekday p.m. peak hour is 71 total trips; and Saturday midday peak hour is 85 total trips.

39. Applicant's transportation planner testified that he does not need to conduct a full traffic impact study based upon the trips generated by the proposed hotel use.

40. Applicant's proposed hotel use is a use permitted as of right in the Commercial C-2 District and Applicant's transportation planner testified that the extra building height does not affect the traffic generated by the proposed hotel use.

41. Applicant testified that the traffic impact will be approximately the same as a 7,500 square foot restaurant use.

42. The Board finds the testimony of Applicant's transportation planner to be credible. Applicant's proposed use will not materially increase traffic congestion on Lincoln Highway East / Route 30 or the street and highway systems within East Lampeter Township.

43. The two parties have property interests as follows:

(i) Peter D. Scudner is the owner of the lot known and numbered as 2280 Lincoln Highway East (to the east of the Property), which contains a dwelling. A billboard owned by the Strasburg Railroad Company is also located on the Scudner lot.

(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.

44. Mr. Scudner expressed concerns regarding sight lines and the existing house and billboard located on the Scudner lot.

45. Mr. Scudner's lot sits up on a hill and, when traversing from east to west, slopes downgrade.

46. To address Mr. Scudner's concerns, Applicant agreed that the hotel building will be located approximately as shown on Applicant's Plans.

47. In addition, Applicant has agreed to remove an existing restaurant sign containing 200 square feet of sign area. The existing sign obstructs the billboard located on the Scudner lot, as well as the Country Inn & Suites Hotel sign. Applicant will replace the sign with a much smaller hotel sign containing 80 square feet of sign area. It will not obstruct westbound traffic.

48. The Country Inn & Suites Hotel, located adjacent to the Property, is 5 stories tall.

49. The Country Inn & Suites Hotel, including the peaked roof, is 64.28 feet in height and is higher than Applicant's proposed hotel.

50. There are other hotels in the vicinity of the Property (for example, the Lancaster Host and Red Roof Inn).

51. The Board has knowledge that there are other hotels, five stories in height, in the Township.

52. The proposed hotel is not out of character with the surrounding neighborhood and will not substantially injure or

detract from the use of neighboring properties. The character of the neighborhood and the use of properties adjacent to the Property are adequately safeguarded.

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

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 62 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 62 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 January 8, 2015.

3. The hotel building shall be located approximately as shown on Applicant's Exhibit No. 3 and shall be generally in compliance with the testimony and exhibits presented to the Board in order to preserve sight line conditions for the Strasburg Railroad Company billboard and to minimize the sight line impact upon the Scudner dwelling.

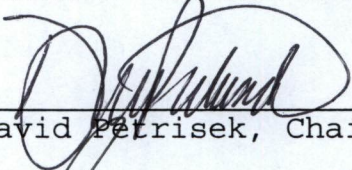
4. In the event that the City of Lancaster is not able to provide adequate water service and pressure for Applicant's proposed hotel, Applicant shall construct and use an on-site pressure pump system to provide adequate water service and pressure. The design of the pressure pump system must be approved by the Township and, if applicable, the City of Lancaster.

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.

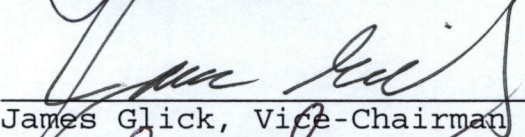
6. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within one (1) year from the date of this Decision and does not complete construction of the improvements so authorized and commence the use so authorized within two (2) years from the date of this Decision.

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

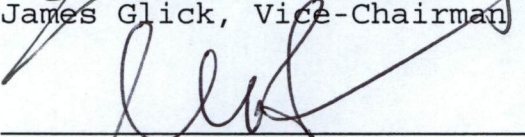
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed February 12, 2015, after hearing held on
January 8, 2015.

The undersigned certifies that a copy of this Decision was
served upon all parties on or prior to February 13, 2015.

