

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-15
APPLICATION OF SACK, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is SACK, LLC, 2007 Lincoln Highway East, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 2007 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the Commercial C-2 District and partially within the 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 May 14, 2015.
7. Testimony at the hearing was stenographically recorded.

8. William Helm appeared at the hearing and testified on behalf of Applicant.

9. The following person completed an entry of appearance form and was recognized as a party to the hearing:

William Horn
16 Debra Lane
Lancaster, PA 17602

10. East Lampeter Township was represented at the hearing by its Solicitor, Stephen M. Kraybill, Esquire.

11. The Property contains approximately 3.2 acres.

12. The Property is used as and for a business known as Volleyball Corner.

13. The Property is subject to an access easement in favor of East Lampeter Township (hereinafter the "Township").

14. The access easement is twenty feet in width and provides access to a sewer line located toward the rear of the Property.

15. With regard to the use of its access easement, the Township has placed gravel within the access easement.

16. That portion of the access easement containing the gravel is located within the foodplain.

17. Applicant desires to utilize a portion of the access easement area for employee parking.

18. The parking lot would not be striped or further improved.

19. Although Applicant submitted a plan showing perpendicular parking located outside of the access easement area, Applicant testified that the parking would be parallel and within the access easement area.

20. Between 2 and 10 employees would park within the access easement area.

21. Applicant's written application requested: (i) a special exception pursuant to Section 1507.1.B of the Zoning Ordinance (parking lots within the Floodplain); and (ii) a variance from the requirements of Section 1507 of the Zoning Ordinance.

22. At the hearing, Applicant testified that he did not think he was requesting a variance.

23. To the extent that the parking lot area is not water-permeably surfaced, Applicant requires a variance from Section 1507.1.B of the Zoning Ordinance.

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. Plans must demonstrate compliance with the zoning ordinance. Appeal of Neill, 160 Pa. Commonwealth Ct. 169, 634 A.2d 749 (1993). Commonwealth Court summarized this rule as follows:

In Edgmont Township v. Springton Lake Montessori School, Inc., 154 Pa. Cmwlth. 76, 622 A.2d 418 (1993), we stated:

To be entitled to receive a special exception it [is] incumbent on the [applicant] to come forward with evidence detailing how it was going to be in compliance with the requirements necessary to obtain a special exception to operate [its facility in the applicable zoning district]. . . . Evidence is not a 'promise' that the applicant will comply because that is a legal conclusion the Board makes once it hears what the applicant intends to do and then determines whether it matches the requirements set forth in the ordinance.

Id., 622 A.2d at 419.

Council Rock School District v. Wrightstown Township Zoning Hearing Board, 709 A.2d 453, 459 (Pa. Cmwlth. 1998) (footnote omitted).

4. The Board cannot grant a special exception if the Board is not able to determine that all specific requirements of the Zoning Ordinance will be met and the health, safety and welfare of the Township residents will not be jeopardized. See Appeal of Baird, 113 Pa. Commonwealth Ct. 637, 537 A.2d 976 (1988); Appeal of Melasecca from the Decision of the Colerain Township Zoning Hearing Board, Lancaster County Court of Common Pleas No. 2064 of 1987.

5. Section 1507.1.B of the Zoning Ordinance authorizes parking lots within the floodplain as a special exception, provided they are water-permeably surfaced.

6. Section 1507.2 of the Zoning Ordinance sets forth standards and criteria for special exceptions within the floodplain.

7. Applicant has failed to present credible evidence that the proposal satisfies the requirements of Section 1507, 1507.1.B, and Section 1507.2 of the Zoning Ordinance. In addition, Applicant failed to present credible evidence that its proposal is consistent with the provisions of Section 1508.13 of the Zoning Ordinance.

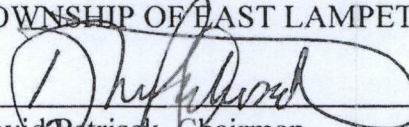
8. To the extent that Applicant has requested a variance from that portion of Section 1507.1.B of the Zoning Ordinance which requires the parking lot to be water-permeably surfaced, Section 1507.7 of the Zoning Ordinance sets forth standards for variances within the floodplain.

9. Applicant has failed to present credible evidence to demonstrate that he has met the requirements of Section 1507.7 of the Zoning Ordinance for the issuance of a variance from the aforesaid terms of Section 1507.1.B of the Zoning Ordinance.

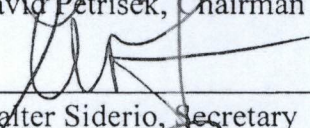
III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application of SACK LLC for: (i) a special exception pursuant to Section 1507.1.B of the Zoning Ordinance; and (ii) a variance from the requirements of Section 1507.1.B of the Zoning Ordinance that the parking area be water permeably surfaced.

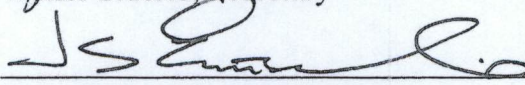
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



Walter Siderio, Secretary



J. Scott Enterline, Alternate

Dated and filed June 11, 2015, after hearing held on May 14, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to June 12, 2015.

Jana A Hitchens