

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

9. Steve Gergely, of Harbor Engineering, also appeared at the hearing and testified on behalf of Applicant.

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

11. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 2015-15.

12. In Case No. 2015-15, the Board denied Applicant's request for a special exception pursuant to Section 1507.1.B of the Zoning Ordinance (parking lot for Applicant's employees within the Floodplain), and a variance from the requirements of Section 1507 of the Zoning Ordinance which requires that parking lots within the Floodplain be constructed with an impervious surface.

13. Applicant has now requested a special exception pursuant to Section 1507.1.B of the Zoning Ordinance (parking lot for Applicant's customers within the Floodplain), and a variance from the requirements of Section 1507.1.B of the Zoning Ordinance which requires that parking lots within the Floodplain be constructed with an impervious surface.

14. The Property contains approximately 3.2 acres.

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

16. The Property is subject to an access easement in favor of East Lampeter Township and/or its sewer authority (hereinafter collectively the "Township").

17. The access easement is twenty-four feet in width and provides access to a sewer line located towards the rear of the Property.

18. With regard to the use of its access easement, the Township has placed millings within the access easement.

19. That portion of the access easement containing the millings is located within the Floodplain.

20. Applicant desires to utilize a portion of the access easement area, as well as an area outside of the access easement, for customer parking, as more fully shown on the plan (the "Plan") submitted by Applicant.

21. The parking area ("Parking Area") is located entirely within the Floodplain.

22. Applicant testified that, as it goes through the land development process, it would be agreeable to changing the location of the access easement so that no parking spaces would be located within the actual access easement.

23. There would be 19 parking spaces located within the Parking Area.

24. The Parking Lot would be constructed of macadam and would not be constructed with a water-permeable surface.

25. The Parking Lot would be striped. However, Applicant would not stripe or otherwise mark the location of the access easement within the Parking Lot.

26. The Parking Lot would be open to Applicant's customers.

27. Applicant testified that there would be no monitoring by Applicant or its staff to make certain that Applicant's customers do not park in or otherwise block the access easement.

28. The Township expressed concerns that Applicant's customers would park in or otherwise block the access easement.

29. Applicant testified that it included 7,000 additional square feet in its storm water management calculations and designed its storm water management facilities accordingly. Thus, lot coverage of the entire Parking Lot is included in the original storm water management calculations and the storm water management facility design and construction.

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. Section 1507.1.B of the Zoning Ordinance authorizes parking lots within the floodplain as a special exception, provided they are water-permeably surfaced and provided they are consistent with the provisions of Section 1508.13 of the Zoning Ordinance.

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

5. With the exception of the requirement that parking lots be constructed with a water permeable surface, with conditions Applicant has presented credible evidence that the proposal satisfies the special exception requirements of Section 1507.1.B and Section 1507.2 of the

Zoning Ordinance. In addition, with conditions Applicant presented credible evidence that its proposal is consistent with the provisions of Section 1508.13 of the Zoning Ordinance.

6. Applicant requires a variance from that portion of Section 1507.1.B of the Zoning Ordinance which requires the parking lot to be water-permeably surfaced.

7. Section 1507.7 of the Zoning Ordinance sets forth standards for variances within the floodplain.

8. Although there appeared to be little evidence of any exceptional hardship, the Board feels that the variance requested involving pervious versus impervious surface is, under the circumstances of this application and on this site, de minimis.

9. Applicant has presented credible evidence to demonstrate that it 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 grants 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. The special exception and variance granted herein shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the Pennsylvania Municipalities Planning Code:

1. Applicant shall obtain all approvals and permits required by applicable laws and regulations.

2. Except as may be modified by the conditions herein, Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on August 13, 2015.

3. Because the Board is concerned about the need to provide absolutely unfettered access to the sewer access easement so that, at any time and under any circumstances, Township personnel (and its Authority personnel) can have access to address any emergency or other circumstances which develop with the sewer system, the Board imposes the following conditions:

(i) That the bollards and chain be moved to the rear of the proposed turn around area and explicitly marked to state that the easement area not be blocked wholly or partially by any vehicle or other obstruction so that access to emergency vehicles can be obtained at any time, night or day.

(ii) That signs be placed at the entrance which state that the isle be marked "Do Not Block Drive Isle, Tow Away Zone at Owner's Expense."

(iii) That the Applicant expressly acknowledge responsibility to obtain all applicable permits for excavating within a floodplain area in form and content satisfactory to the Township.

(iv) That the Applicant limit the parking to employees first during larger events and then allow overflow parking.

(v) That the applicant develop and implement a plan for employees to supervise the expanded parking area and to address any obstructions immediately in form and content acceptable to the Township.

(vi) That the Applicant acknowledge full responsibility for the maintenance of the parking area in form and content acceptable to the Township.

(vii) That all parking spaces within the Parking Lot be adequately striped to the satisfaction of the Township.

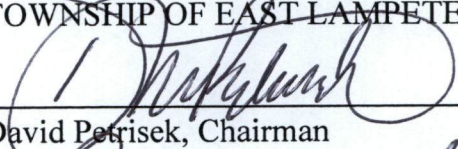
(viii) That a large "X" be painted within the access easement area of the Parking Lot to adequately designate the "no parking" area, all to the satisfaction of the Township.

4. 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.

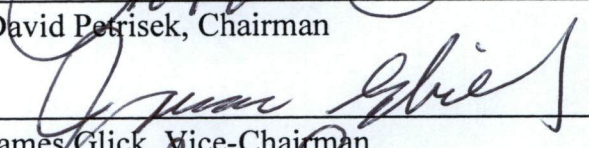
5. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within (12) months from the date this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of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

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

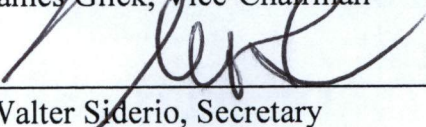
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed August 27, 2015, after hearing held on August 13, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 28, 2015.

Jana A Hitchens