

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-23
APPLICATION OF CHET LAPP / :
INTRA GROUP, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Chet Lapp / Intra Group, LLC, 1159 Ranck Road, Hew Holland, Pennsylvania 17557 ("Applicant").

2. The property which is the subject of the instant application is located at 2806-2808 Irishtown Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner Property.

4. The Property is located in the Residential R-2 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 August 13, 2015.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Mark Campbell, of Axios Consulting, LLC, also appeared at the hearing and testified on behalf of Applicant.

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

Claudette Korzniecki
99 North Ronks Road
Ronks, PA 17572

11. Applicant has requested: (i) a special exception pursuant to Section 902.12 and Section 1929 of the Zoning Ordinance in order to operate a roadside stand on the Property; and (ii) a variance from Section 1929.2 of the Zoning Ordinance with regard to required front yard setback.

12. The Property contains approximately 2/3 acre and is improved with two dwellings (2806 Irishtown Road and 2808 Irishtown Road).

13. Without obtaining zoning approval, in 2009 Applicant's tenant erected and commenced operating a roadside stand upon the Property.

14. The roadside stand is approximately 12 feet by 18 feet.

15. The roadside stand is located approximately 3 feet from the street right of way.

16. Applicant intends to relocate the roadside stand such that it will be 15 feet from the street right of way, as more fully shown on the plan submitted by Applicant.

17. There is currently a parking area (2 to 3 cars) for the roadside stand located to the rear of the dwelling known as 2808 Irishtown Road.

18. Applicant testified that not all products sold at the roadside stand are agricultural products produced on the Property. For example, straw hats, crafts and canned goods are being sold.

19. Applicant intends to subdivide the Property into two separate lots. The roadside stand and the dwelling known as 2806 Irishtown Road will be located on one lot, and the dwelling known as 2808 Irishtown Road will be located on a separate lot.

20. If and when subdivided, Applicant will provide 3 parking spaces for the roadside stand to the rear of the dwelling known as 2808 Irishtown Road.

21. Applicant will replace an existing illegal on-premises sign with one which fully complies with the size and other requirements of the Zoning Ordinance. Any off-premises signs will be removed.

II. CONCLUSIONS OF LAW

1. Section 902.12 of the Zoning Ordinance provides that roadside stands are permitted in the Residential R-2 District by special exception, subject to the provisions of Section 1929.

2. Section 1929 of the Zoning Ordinance provides that roadside stands for the sale of agricultural products, where permitted by special exception, are subject to the following conditions:

1. All agricultural products for sale shall have been produced on the same premises where offered for sale.
2. No building or structure shall be placed between the street and the building setback line.

3. Adequate parking area is provided to permit cars to pull off the driving lane portion of the street cartway without creating a traffic hazard.

3. Section 904.5(A) of the Zoning Ordinance states that the minimum building setback line from all streets shall be in compliance with the requirements of Section 1810.

4. Section 1810.4.A.2 of the Zoning Ordinance states that the minimum building setback shall be 25 feet from the edge of the existing street right of way line.

5. "[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).

6. 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).

7. With the exception of Section 1929.1 and Section 1929.2, Applicant has satisfied the requirements for a special exception.

8. The Board will address noncompliance with Section 1929.1 of the Zoning Ordinance by way of condition.

9. Applicant requires a variance to the requirements for a special exception contained in Section 1929.2 of the Zoning Ordinance and the corresponding setback requirements set forth in Section 1810.4.A.2 of the Zoning Ordinance.

10. An applicant for a variance bears the burden of proving that unnecessary hardship will result if the variance is not granted and that the grant of the proposed variance will not be contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983); Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

11. Applicant has presented credible evidence of unnecessary hardship which warrants the granting of the setback variances requested. Granting of the proposed variances will not be contrary to the public interest.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby approves the application of Chet Lapp / Intra Group, LLC for: (i) a special exception pursuant to Section 902.12 and Section 1929 of the Zoning Ordinance in order to operate the roadside stand on the Property; and (ii) a variance from Section 1929.2 and Section 1810.4.A.2 of the Zoning Ordinance to permit the roadside stand to be located 15 feet from the street right of way. 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 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 his application and the evidence presented to the Board at the hearing held on August 13, 2015.

3. All items offered for sale at the roadside stand shall be agricultural items produced on the Property. The sale of any other products is strictly prohibited.

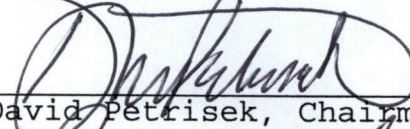
4. Parking for at least 3 vehicles shall be provided on the property upon which the roadside stand is being operated and the parking spaces shall be designed and located such that vehicles can pull-out front forward rather than back-out onto the street.

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.

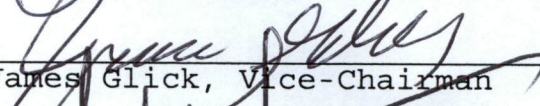
6. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within three (3) months from the date of this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

7. The foregoing Decision shall be binding upon the Applicant and his heirs and assigns.

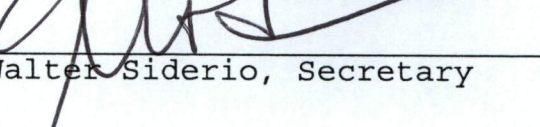
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



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.

