

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
 : No. 2015-24  
APPLICATION OF THOMAS WRIGHT, :  
III, AND DAISY R. WRIGHT :

DECISION

I. FINDINGS OF FACT

1. Applicants are Thomas Wright, III, and Daisy R. Wright, 1945 Millport Road, Lancaster, Pennsylvania 17602 ("Applicants").

2. The property which is the subject of the instant application is 1945 Millport Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicants are the owners of the Property.

4. The Property is located within the R-2 Residential 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. Applicants were represented at the hearing by Bradley Zuke, Esquire.

9. Applicant Thomas Wright, III, and Allon Lefever appeared at the hearing and testified.

10. Applicants have: (i) appealed a determination of the Township Assistant Zoning Officer; (ii) requested a special exception pursuant to Section 502.1 of the Zoning Ordinance in order to expand a nonconforming use; and (iii) in the alternative, requested a variance by estoppel to operate and expand a landscaping business.

11. Applicants filed an application with the Township to construct a 66 foot by 40 foot by 20 foot addition to an existing building upon the Property.

12. By letter dated June 17, 2015, the Township Assistant Zoning Officer denied Applicants' application to construct a 66 foot by 40 foot by 20 foot addition to an existing building upon the Property based upon noncompliance with Section 502.1 of the Zoning Ordinance.

13. Section 502.1 of the Zoning Ordinance provides as follows:

Expansion of Non-Conforming Uses. No expansion of a non-conforming structure or use . . . shall hereafter be made unless an appeal has been filed with the Zoning Hearing Board and such expansion has been approved by such Board as a special exception; provided, however, that the expansion of the non-conforming use shall be limited to a distance of 150 feet in any direction from the existing non-conforming use and to an area equal to 50% of the existing non-conforming use, whichever is lesser, or in the case of a building, expansion shall be limited to an area equal to 50% of the existing total usable floor area of the building.

14. The Property contains approximately 4.3 acres.

15. The Property has been held within generations of the same family since 1856.

16. In approximately 1856, Applicants' predecessors in title commenced operation of a business involving the growing and sale of carnations (including the use of greenhouses).

17. Zoning initially became effective within East Lampeter Township on November 10, 1970.

18. Pursuant to the zoning map and terms of the November 10, 1970 zoning ordinance, the Property was located within the Rural zoning district.

19. Applicants testified that, as of the effective date of the initial Township zoning ordinance, the core business being operated upon the Property was the growing and sale of carnations.

Applicants' predecessors in title also: (i) grew house plants and provided plant installation; and (ii) offered snow plowing in the winter season.

20. In May of 1990, the Township enacted a revised zoning ordinance.

21. Pursuant to the zoning map and terms of the 1990 zoning ordinance, the Property was located within the R-2 Residential zoning district.

22. Because of a downturn in the sale of carnations, the business transitioned over the years to the growing and installation of plants, along with providing advice to customers on plant care and maintenance.

23. Applicants purchased the Property in 1999.

24. Applicants' landscaping business is known as "Season's Image".

25. Applicants' landscaping business involves, among other things, lawn maintenance, landscape and hardscape installation (including paver patio installation).

26. Applicants' landscaping business is a natural continuation of the original nonconforming use.

27. The area of all structures originally devoted to the nonconforming use is 24,191 square feet.

28. Applicants propose to expand the existing barn by 2,750 square feet.

29. The proposed expansion will be an expansion of approximately 11% of the original nonconforming use.

30. The proposed expansion will not alter the existing traffic or noise generated by the nonconforming use.

## II. CONCLUSIONS OF LAW

1. Applicants have filed an appeal of the Township Assistant Zoning Officer's determination and letter, dated June 17, 2015, denying Applicants' application pursuant to Section 502.1 of the Zoning Ordinance.

2. To the extent that Applicants' are arguing that they do not need zoning approval for an expansion of the landscaping business, Applicants' appeal from the June 17, 2015, letter is denied.

3. With regard to Applicants' request for a special exception pursuant to Section 502.1 of the Zoning Ordinance, a nonconforming use may be expanded by an area equal to fifty percent of the existing nonconforming use by special exception.

4. 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).

5. Section 1901 of the Zoning Ordinance sets forth the standards applicable to the granting of all special exceptions and specifically places the burden of proof upon the Applicant to demonstrate that the proposed use will not be detrimental to the public health, safety or welfare of the neighborhood.

6. Applicants presented sufficient testimony to establish that the proposed expansion will not be detrimental to the public health, safety or welfare of the neighborhood.

7. Applicants have met the requirements of Sections 502.1 and 1901 of the Zoning Ordinance.

8. With regard to Applicants' request in the alternative for a variance by estoppel, Applicants' request for a variance by estoppel is moot. However, to the extent deemed necessary, the Board concludes as follows with regard to the variance request.

9. Commonwealth Court has established the standards for a variance by estoppel as follows:

A. A long period of municipal failure to enforce the law, when the municipality knew or should have known of the violation, in conjunction with some form of active

*acquiescence in the illegal use. However, a mere showing that a municipality has failed to enforce the law for a long period of time is insufficient in itself to support the grant of a variance.*

B. Whether the landowner acted in good faith and relied innocently upon the validity of the use throughout the proceedings. *But in assessing whether a landowner's reliance upon municipal inaction is reasonable, a landowner is duty bound to check the property's zoning status before purchase.*

C. Whether the landowner has made substantial expenditures in reliance upon his belief that his use was permitted.

D. Whether the denial of the variance would impose an unnecessary hardship on the applicant, such as the cost to demolish an existing building.

Skarvelis v. Zoning Hearing Board of the Borough of Dormont, 679 A.2d 278, 281 (Pa. Cmwlth. 1996) (emphasis in original).

10. Applicants did not contact the Township to discuss the zoning status of the Property and the use of the Property prior to purchase.

11. The mere fact that Applicants submitted a proposal to the East Lampeter Township Authority to provide lawn mowing services is not "active acquiescence" of the landscaping use by the Township.

12. Applicants have failed to satisfy all of the requirements to obtain a variance by estoppel.

### **III. DECISION**

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby: (i) denies the appeal of the Township Assistant Zoning Officer's determination; (ii) grants the application for a special exception pursuant to Section 502.1 of the Zoning Ordinance to expand the existing nonconforming use in accordance with the testimony presented to the Board; and (iii) denies the application for a variance by estoppel. The special exception 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. Applicants shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations. Without limiting the foregoing, Applicants shall obtain land development and storm water management plan approval for expansion of the barn building.



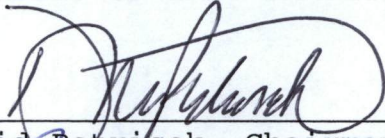
2. Applicants shall at all times comply with and adhere to the information and representations submitted with and contained in their application and the evidence presented to the Board at the hearing held on August 13, 2015.

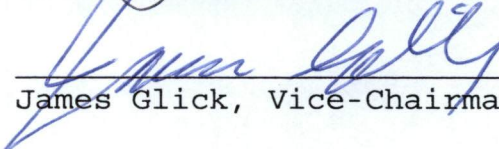
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

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

5. The foregoing Decision shall be binding upon the Applicants and their personal representatives, heirs and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
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David Petrisek, Chairman

  
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James Glick, Vice-Chairman

CONCURRING AND DISSENTING OPINION:

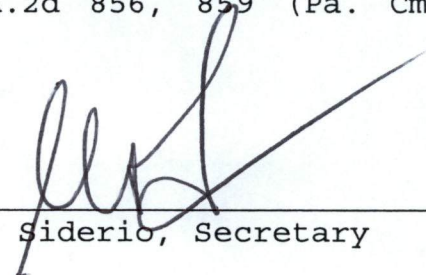
I hereby concur with that portion of the foregoing Decision which: (i) denies Applicants' appeal from the determination of the Township Assistant Zoning Officer; and (ii) denies the application for a variance by estoppel. I dissent from that portion of the foregoing Decision which approves the application for a special exception pursuant to Section 502.1 of the Zoning Ordinance to expand a nonconforming use. I would deny the application for a special exception pursuant to Section 502.1 of the Zoning Ordinance and, in support of such denial, conclude as follows:

(i) "In order to establish a prior nonconforming use the landowner is required to provide objective evidence that the land was devoted to such use at the time the ordinance was enacted." Heyman v. Zoning Hearing Board of Abington Township, 144 Pa. Commonwealth Ct. 167, 601 A.2d 414 (1991).

(ii) The burden of proving the existence of a nonconforming use rests with the landowner. Collier Stone Company v. Zoning Hearing Board for the Township of Collier, 710 A.2d 123 (Pa. Cmwlth. 1998).

(iii) Applicants have failed to met their burden of proof to establish the existence of a valid nonconforming use. The core business being operated upon the Property at the time of enactment of the Township's first zoning ordinance was the growing of carnations. The landscaping business is a separate and distinct use commenced after enactment of the Township's zoning ordinance and is not a permitted use in this District. The landscaping use is, therefore, an illegal use.

(iv) "[M]ere lack of any objection at the hearing does not justify approval." Teazers v. Zoning Board of Adjustment of the City of Philadelphia, 682 A.2d 856, 859 (Pa. Cmwlth. 1996).

  
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Walter Siderio, Secretary

Dated and filed September 10, 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 September 11, 2015.

  
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