

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2016-9
APPLICATION OF LEON MILLER :

DECISION

I. FINDINGS OF FACT

1. Applicant is Leon Miller, 279 Black Oak Drive, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is 279 Black Oak Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the Residential R-3 District as shown on the Official Zoning Map of East Lampeter Township.

4. Applicant is the owner of the Property.

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 March 24, 2016.

7. Testimony at the hearing was stenographically recorded.
8. Applicant appeared personally at the hearing.
9. Applicant has requested a special exception pursuant to Section 1002.7 and Section 1916 of the Zoning Ordinance.
10. Section 1002.7 of the Zoning Ordinance permits home occupations by special exception within the Residential R-3 District subject to the provisions of Section 1916.
11. Applicant has also requested a variance from the parking requirements set forth in Section 1916.10 of the Zoning Ordinance.
12. Section 1916.10 of the Zoning Ordinance states that there shall be 3 off-street parking spaces for the home occupation, in addition to those required for the dwelling.
13. The Property is currently improved with a single family dwelling.
14. Applicant resides within the dwelling.
15. Applicant propose to operate a business involving the sale of bagged coffee. More particularly, Applicant will obtain coffee which is already roasted and bagged off-site. Applicant will then re-bag the coffee (put it in smaller bags) and sell it by mail or by making local deliveries.
16. Applicant will use an area of the dwelling containing 195 square feet for the business.
17. There would be no nonresident employees of the home occupation.

18. The proposed home occupation will be incidental or secondary to the use of the Property as a dwelling and is an occupation which is customarily conducted within a dwelling.

19. No displays or alterations to the outside of the dwelling will indicate that the dwelling is being utilized for purposes other than a dwelling.

20. There will be no external storage of materials or products and there shall be no storage of materials or products in accessory structures.

21. No manufacturing, repairing or other mechanical work will be performed in any open exterior area.

22. No goods will be visible from outside the dwelling.

23. Although Applicant does not have five (5) parking spaces designed so that each vehicle may proceed to and from the parking space provided for it without requiring the moving of another vehicle, the existing parking spaces upon the Property are adequate for both the residential use and the home occupation use because customers will not be coming to the Property.

24. No persons appeared in opposition to the application.

II. CONCLUSIONS OF LAW

1. An applicant for a special exception has the burden of persuasion 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. Section 1002.7 of the Zoning Ordinance permits home occupations by special exception within the Residential R-3 District subject to the provisions of Section 1916 of the Zoning Ordinance.

3. With the exception of Section 1916.10, Applicant has satisfied the requirements for a special exception pursuant to Section 1002.7 and Section 1916 of the Zoning Ordinance.

4. Section 1916.10 of the Zoning Ordinance states that there shall be 3 off-street parking spaces for the home occupation, in addition to those required for the dwelling.

5. Applicant requires a variance from the terms of Section 1916.10 of the Zoning Ordinance.

6. 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.

7. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not grant-

ed, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

8. Conditions must be imposed on the granting of the special exception and variance in order to preserve and protect the surrounding neighborhood and the purposes 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 Leon Miller for: (i) a special exception pursuant to Section 1002.7 and Section 1916 of the Zoning Ordinance; and (ii) a variance from the requirements of Section 1916.10 of the Zoning Ordinance. This special exception and variance 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:

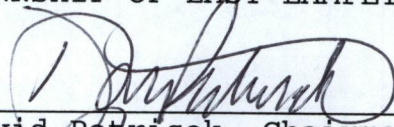
1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

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 March 24, 2016.

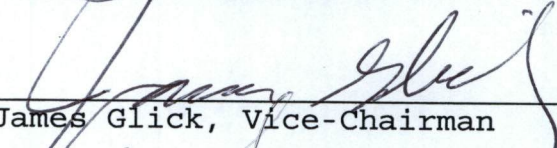
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

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

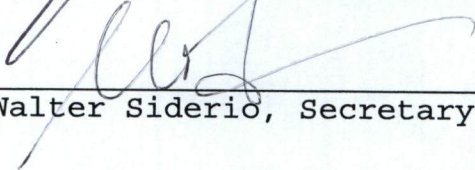
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed April 14, 2016, after hearing held on March 24, 2016.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 15, 2016.

