

**BEFORE THE ZONING HEARING BOARD**

**TOWNSHIP OF EAST LAMPETER**

IN RE: :  
: No. 2018-11  
APPLICATION OF BENJAMIN KING :

**DECISION**

**I. FINDINGS OF FACT**

1. Applicant is Benjamin King, 2253 Rockvale Road, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is 2253 Rockvale Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the AG - Agricultural 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 East Lampeter Zoning Ordinance of 2016 (the "Zoning Ordinance").

6. Public hearings were held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on June 14, 2018, and August 9, 2018.

7. Testimony at the hearings was stenographically recorded.

8. Applicant appeared personally at the hearing.

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

Kari Eshleman  
19 Pleasant Drive  
Lancaster, PA 17602

10. The Property contains 56 acres and is improved with a dwelling and farm outbuildings.

11. The Property is actively farmed.

12. Applicant has requested: (i) a special exception pursuant to Section 3020.C.5 and Section 23410 of the Zoning Ordinance to operate a dog breeding kennel upon the Property; (ii) a variance from the terms of Section 23410.D.1 of the Zoning Ordinance which requires that the kennel building be located at least 500 feet from all street and property lines; and (iii) a variance from the terms of Section 23410.D.2 of the Zoning Ordinance which requires that all open areas utilized as part of the kennel be located at least 300 feet from all street and property lines.

13. Applicant lives on the Property and would be responsible for the daily operations and maintenance of the kennel.

14. The kennel building will be 12 feet by 30 feet with a peaked roof.

15. The kennel building will be located behind a pole barn and beside a heifer barn.

16. The kennel operation shall be adequately screened in accordance with any applicable requirements of the Zoning Ordinance.

17. The kennel building will have attached runs enclosed by a 6 foot high fence.

18. Applicant testified that use of the outdoor runs will be comply with the hours of permitted use set forth in Section 23410 of the Zoning Ordinance (the dogs will be kept indoors between 9:00 p.m. and 7:00 a.m.).

19. The kennel building and runs will be located approximately 1,600 feet from the rear property line (of the closest residential neighbor to the rear).

20. The kennel building and runs will be located approximately 296 feet from the street right of way (Rockvale Road).

21. Applicant will be responsible for the daily operations, activities and maintenance of the kennel.

22. Applicant will house ten (10) breeding dogs within the kennel.

23. Applicant will regularly clean up manure (on a daily basis from the kennel to the tobacco shed, and on a weekly basis from the tobacco shed and off the Property). The waste will be removed from the Property and will not be spread on Applicant's farm fields.

24. Applicant has applied for the necessary kennel license from the Pennsylvania Department of Agriculture and will comply with the regulations promulgated pursuant to the Pennsylvania Dog Law.

25. Kari Eshleman expressed concerns regarding noise generated from the kennel.

26. To address noise concerns, Applicant testified that the kennel walls are constructed of 2 x 4 studs with 3.5" fiberglass insulation and double bubble foil faced radiant insulation. The interior of the walls are lined with PVC Truss Core liner and the exterior is sheathed with 29 gauge steel. The roof/ceiling is insulated within 5.5" fiberglass insulation and covered within 29 gauge steel ceiling and roofing. The individual kennel spaces



within the building are built with PVC panels and are 5 feet high around each enclosure.

27. Applicant provided a letter from Timbertech Engineering. Timothy R. Royer, a Professional Engineer with Timbertech Engineering, opined, among other things, the predicted sound from the kennel, at a distance of 200 feet from the kennel, will be 67dBA, which is comparable to the level of sound of normal conversation of a small group of people.

28. The Board finds that noise from the kennel will not detract from the use and enjoyment of neighboring properties.

29. There will be 2 non-resident employees for the kennel business.

## 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. "The most important characteristic of a special exception is that it is a conditionally permitted use, legislatively allowed if the objective standards of the ordinance are met." Abbey v.

Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107, 109 (1989); Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

3. "A special exception is a misnomer in that it is really not an exception at all; it is a legislatively granted entitlement contained in a zoning ordinance." McGinty v. Zoning Board of Adjustment of the City of Pittsburgh, 717 A.2d 34 (Pa. Cmwlth. 1998) (en banc).

4. An applicant who does not meet the specific requirements of the zoning ordinance on the grant of a special exception shall be entitled to such a special exception if the zoning hearing board grants a variance from those requirements. Omiridis v. Zoning Hearing Board of the City of Chester, 110 Pa. Commonwealth Ct. 247, 531 A.2d 1196 (1987).

5. With the exception of the setback requirements of Section 23410.D.1 and Section 23410.D.2 of the Zoning Ordinance, Applicant has presented evidence to demonstrate that he has met the conditions for the issuance of a special exception under Section 3020.C.5 and Section 23410 of the Zoning Ordinance.

6. With regard to variances from Section 23410.D.1 and Section 23410.D.2 of the Zoning Ordinance, the quantum of proof

required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

7. An applicant seeking a dimensional variance may demonstrate entitlement to such variance by presenting evidence meeting the standards set forth in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

8. Applicant has satisfied the requirements for dimensional variances from the setback requirements of Section 23410.D.1 and Section 23410.D.2 of the Zoning Ordinance.

9. Conditions must be attached to the grant of the special exception and variances to protect and preserve the surrounding neighborhood.

### **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 Benjamin King for: (i) a special exception pursuant to Section 3020.C.5 and Section 23410 of the Zoning Ordinance; (ii) a variance from the terms of Section 23410.D.1 of the Zoning Ordinance; and (iii) a variance from the

terms of Section 23410.D.2 of the Zoning Ordinance. The special exception and variances 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 hearings held on June 14, 2018, and August 9, 2018.

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. Use of the outdoor runs must comply with the hours of permitted use set forth in Section 23410 of the Zoning Ordinance. The dogs must be kept indoors between 9:00 p.m. and 7:00 a.m., and the dog doors to the runs must remain closed during such time period.

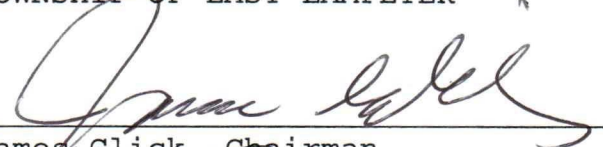
5. With regard to the variances granted herein, the approval granted by this Decision shall expire in accordance with the terms of Section 25060 of the Zoning Ordinance.



6. With regard to the special exception granted herein, the approval granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance.

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

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER



---

James Glick, Chairman



---


J. Scott Enterline, Vice-Chairman

---

Lester Weaver, Secretary

Dated and filed August 23, 2018, after hearings held on June 14, 2018, and August 9, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 24, 2018.



---