

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2018-20
APPLICATION OF HARJIT SINGH :

DECISION

I. FINDINGS OF FACT

1. Applicant is Harjit Singh, 1819 Windrow Drive, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is 1819 Windrow Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the Medium Density Residential (R-2) 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. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on October 25, 2018.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. The following persons completed entry of appearance forms and were recognized as parties to the hearing:

Lisa DiGiamberdini
1821 Windrow Drive
Lancaster, PA 17602

Brian Reisinger
1832 Timothy Lane
Lancaster, PA 17602

Bradley J. Mealy
1834 Timothy Lane
Lancaster, PA 17602

10. Applicant has requested a special exception pursuant to Section 6020.C.14 of the Zoning Ordinance.

11. Section 6020.C.14 of the Zoning Ordinance states that tourist homes, as a principal or accessory use within a single family detached dwelling, are permitted in the Medium Density Residential (R-2) District by special exception, subject to the provisions set forth in Section 23110 of the Zoning Ordinance.

12. The Property contains approximately 0.25 acres and is improved with a single family detached dwelling.

13. The Property (and the dwelling located thereon) is served by public water and public sanitary sewer which are adequate for Applicant's intended use.

14. Applicant's in-laws (who are from India) sometimes reside in the dwelling.

15. At those times when Applicant's in-laws are not residing in the dwelling, Applicant proposes to utilize Airbnb to rent the dwelling as a tourist home.

16. Airbnb verifies guest backgrounds by ID process and Applicant testified that he will allow only such Airbnb approved persons to be guests.

17. Applicant testified that he lives approximately five minutes from the Property and is available if problems with guests arise.

18. The Property utilizes security cameras which can monitor guests.

19. Applicant testified and agreed that not more than eight guests would occupy the tourist home at any one time.

20. Applicant testified and agreed that the length of stay for any guest will not exceed one week.

21. The dwelling contains complete sanitary sewage disposal services, washing and bathing facilities, and a central kitchen to accommodate the guests.

22. All plumbing, heating, electrical, sanitary sewage disposal, water supply, storm sewer and similar facilities associated with the Property and the dwelling comply with applicable code requirements and Applicant agreed on the record to provide documentation to East Lampeter Township in support thereof.

23. The Property contains an attached two car garage and driveway which can accommodate an additional two cars.

24. Applicant testified and agreed that the guests will have use of such parking and that guests will be limited to a maximum of three cars.

25. The Property is located within a typical medium density residential district. There is nothing materially different between the area of this medium density residential district (the location of the Property) and other areas or properties zoned medium density residential within the Township.

26. Neighbors expressed concerns regarding the affect of the tourist home on their property values, as well as concerns regarding transient guests and the safety of children.

27. The Board finds the testimony of neighbors regarding the affect of the tourist home on their property values, as well as concerns regarding transient guests and the safety of children and other concerns, as speculative and without credible support or substantiation.

28. The tourist home use complies with the requirements of Section 25070 of the Zoning Ordinance and, without limiting the foregoing, will not adversely affect the general character of the neighborhood or the general health, safety and welfare of residents or property owners within the general neighborhood.

II. CONCLUSIONS OF LAW

1. "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).

2. "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).

3. "[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).

4. 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).

5. A special exception is a conditionally permitted use, allowed by the legislature if specifically listed standards are met. A special exception is thus not an "exception" to the zoning ordinance, but a use permitted conditionally, the application for which is to be granted or denied by the zoning hearing board pursuant to express standards and criteria. Where a particular use is permitted in a zone by special exception, it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety, and welfare and that such use comports with the intent of the zoning

ordinance. Thus, once the applicant for a special exception shows compliance with the specific requirements of the ordinance, it is presumed that the use is consistent with the promotion of health, safety, and general welfare. The burden then shifts to objectors to prove that the proposed use is not, in fact, consistent with the promotion of health, safety, and general welfare. *In re: Appeal of Brickstone Realty Corp.*, 789 A.2d 333, 340 (Pa. Cmwlth. 2001) (citations omitted).

6. Fears of neighboring residents and speculation of harm, without more, cannot sustain an objector's heavy burden; rather objectors must prove there is a high degree of probability that the proposed use will substantially affect the health and safety of the community. *East Manchester Township Zoning Hearing Board v. Dallmeyer*, 147 Pa. Commonwealth Ct. 671, 609 A.2d 604 (1992).

7. "Speculative testimony from concerned neighbors fails to establish a 'high degree of probability' of specific detrimental consequences to the public welfare." *Bailey v. Upper Southampton Township*, 690 A.2d 1324, 1327 (Pa. Cmwlth. 1997).

8. Because a tourist home is specified as a special exception in the Zoning Ordinance, it is presumed that the use comports with the public safety and welfare. In opposition to this presumption and Applicant's evidence, the neighbors have essentially introduced

nothing more than the supposition that the tourist home use will impact their property values, jeopardize the safety of their children, and otherwise negatively affect them.

9. Applicant has presented evidence to demonstrate that he has met the conditions for the issuance of a special exception under Section 6020.C.14, Section 23110, and Section 25070 of the Zoning Ordinance.

10. Conditions must be attached to the grant of the special exception 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 for a special exception pursuant to Section 6020.C.14 and Section 23110 of the Zoning Ordinance to operate a tourist home on property known and numbered as 1819 Windrow Drive, Lancaster, Pennsylvania. 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. 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 October 25, 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.

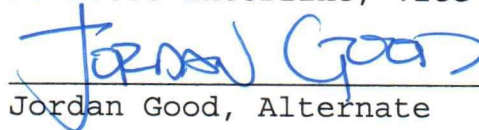
4. The approval granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance.

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

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



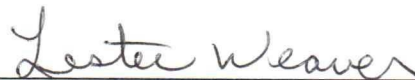
J. Scott Enterline, Vice-Chairman



Jordan Good, Alternate

DISSENT:

I dissent from the foregoing Decision. I would deny the request for a special exception to operate a tourist home on the Property.



Lester Weaver, Secretary

Dated and filed November 14, 2018, after hearing held on October 25, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to November 15, 2018.

A handwritten signature in blue ink, reading "Dana R. Hitchens". The signature is written in a cursive style and is positioned over a horizontal line.