

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2018-22
APPLICATION OF BACKYARD :
CONSTRUCTION, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Backyard Construction, LLC, 69 Williams Run Road, Christiana, Pennsylvania 17509 ("Applicant").
2. The property which is the subject of the instant application is known as 2602-2604 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Although the Property has two street addresses, the Property consists of one tax account number and is one lot.
4. The Property is located in the Agricultural District as shown on the Official Zoning Map of East Lampeter Township.
5. Applicant is the owner of the Property.
6. 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 Township Zoning Ordinance of 2016 (the "Zoning Ordinance").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on December 13, 2018.

8. Testimony at the hearing was stenographically recorded.

9. Applicant was represented at the hearing by Nicholas Gard, Esquire.

10. Michael Zook, the owner of Backyard Construction, LLC, appeared and testified on behalf of Applicant.

11. Applicant has requested a special exception pursuant to Section 24030.C of the Zoning Ordinance to substitute a nonconforming use for another nonconforming use.

12. The Property has been used in the past as and for a modular home sales business known as Heritage Homes.

13. The modular home sales business operated by Heritage Homes was a valid nonconforming use.

14. Heritage Home ceased operating in approximately March of 2016. It removed all but one of the modular homes from the Property.

15. One of the modular homes still remains on the Property.

16. Applicant began operating its business on the Property soon after Heritage Homes vacated the Property.

17. Applicant now seeks approval to operate its business on the Property as a substitution of a nonconforming use.

18. Applicant sells sheds, gazebos, garages, pavilions and pergolas and displays them on the Property.

19. The products have been placed where the modular homes had been located.

20. Applicant's customers would be able to view the products, place an order, and the products would be manufactured off-site.

21. No manufacturing would take place at the Property.

22. Occasionally, Applicant would offer one of the display samples for sale at the Property (when Applicant is rotating inventory).

23. Although Applicant initially discussed the possible future sale of "tiny" homes, Applicant agreed that it would not display or sell "tiny" homes from the Property.

24. Applicant's days and hours of operation are Monday through Friday, 8:00 a.m. to 5:00 p.m., and Saturday from 10:00 a.m. to 3:00 p.m. There would be no Sunday operations.

25. Only one employee would be working on the Property at any one time.

26. In the summer time, there are typically 3 to 5 customers (vehicles) per day. In the winter, there are less.

27. There are approximately 12 parking spaces on the Property, which is sufficient for Applicant's use.

28. There is a single family dwelling located on the Property which is used for residential purposes.

II. CONCLUSIONS OF LAW

1. Applicant has requested a special exception pursuant to Section 24030.C of the Zoning Ordinance.

2. Section 24030.C of the Zoning Ordinance authorizes the substitution of a nonconforming use by special exception if the Board finds that the proposed nonconforming use is not more detrimental to the District than the existing nonconforming use of the property and that the proposed nonconforming use complies with the specific requirement set forth therein.

3. It is the policy of the law to closely restrict nonconforming uses and to strictly construe provisions in zoning ordinances which provide for the continuance of nonconforming uses. Horninger v. Bethlehem Township Police Association, 301 A.2d 433 (Pa. Commonwealth Ct. 1973).

4. Section 24030.C of the Zoning Ordinance permits one engaged in a nonconforming use of land to, by special exception, change that use to another by discontinuing the first use and

substituting the second. He may not continue the first use and erect an additional use incompatible with the requirements of the zoning district. See Horninger v. Bethlehem Township Police Association, 301 A.2d 433 (Pa. Commonwealth Ct. 1973).

5. Provided Applicant does not use the Property for the display and sale of modular, manufactured or "tiny" homes (other than for sale of the existing modular home), Applicant has complied with the requirements of Section 24030.C 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 Backyard Construction, LLC, for a special exception pursuant to Section 24030.C of the Zoning Ordinance. The special exception 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 its application and the evidence presented to the Board at the hearing held on December 13, 2018.

3. Except for the sale of the modular home which currently exists on the Property, there shall be no future display or sale of modular or manufactured homes on the Property.

4. There shall be no display or sale of "tiny" homes on the Property.

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.

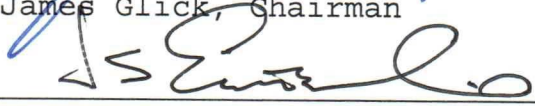
6. The approval granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance.

7. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

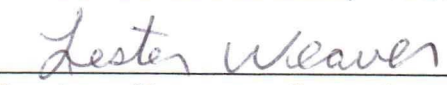
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

Dated and filed January 10, 2019, after hearing held on December 13, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to January 11, 2019.

Jana A Hitchens