

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2019-12  
APPLICATION OF 2439 OLD :  
PHILADELPHIA ASSOCIATES, LP :

DECISION

**I. FINDINGS OF FACT**

1. Applicant is 2439 Old Philadelphia Associates, LP, 1518 East Chocolate Avenue, Hershey, Pennsylvania 17033 ("Applicant").

2. The property which is the subject of the instant application is known as 2439 Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the Village General 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 Township 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 July 12, 2019.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Bernadette Hohenadel, Esquire.

9. Perry Mehta appeared and testified on behalf of Applicant.

10. Mark Magrecki, of PennTerra Engineering, Inc., also appeared at the hearing and testified on behalf of Applicant.

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

Mel Glick  
Box 7  
Smoketown, PA 17576

Merv and Jan Stoltzfus  
2435B Old Philadelphia Pike  
Smoketown, PA 17576

Ronald R. Kritzer  
17 Quarry Road  
Leola, PA 17540

12. Applicant has requested: (i) a special exception pursuant to Section 18020.C.7 of the Zoning Ordinance to operate an extended stay hotel; (ii) a variance from the terms of Section 18030.B.1.e of the Zoning Ordinance regarding minimum lot width; and (iii) a

variance from the terms of Section 18030.B.2.b of the Zoning Ordinance regarding maximum front yard setback.

13. Section 18020.C.7 of the Zoning Ordinance states that extended stay hotels are permitted in the Village General District subject to the requirements set forth in Section 23400 of the Zoning Ordinance.

14. Section 18030.B.1.e of the Zoning Ordinance states that a lot containing a permitted non-residential building and use shall have a minimum lot width of 75 feet as measured at the street right of way line and front yard setback line.

15. Section 18030.B.2.b of the Zoning Ordinance states that the maximum front yard setback requirement shall be 25 feet, as measured from the street right of way line.

16. The Property currently contains approximately 3.14 acres and is improved with a motel facility known as Spruce Lane Cottages, including a lodge building, residential structure and garage.

17. Applicant proposes to subdivide the Property into two separate lots, as more fully shown on the plans ("Plans") submitted by Applicant.

18. Lot 1 will be approximately 67,812 square feet in size and will contain the Spruce Lane Cottages use.

19. Applicant will remove the lodge building, residential structure and garage from Lot 1.
20. There will be 22 cottages remaining on Lot 1.
21. Lot 1 will also contain parking areas, which will be used in combination with Lot 2.
22. Lot 2 will be approximately 67,305 square feet in size.
23. Applicant proposes to construct an extended stay hotel, including accessory parking, on Lot 2.
24. The hotel will contain 75 rooms.
25. The maximum length of stay permitted will be six months.
26. The hotel will be served by public water and public sewer.
27. There may be a small meeting room within the hotel. There will be no entertainment or bar.
28. The hotel will have a manager on-site 24 hours a day.
29. There will be no exterior microphone or intercom associated with the hotel.
30. The hotel will have a height of 43.5 feet (4 stories).
31. The height of the building complies with all applicable height restrictions set forth in the Zoning Ordinance.
32. Airport Road will not be used as an access road.



33. The current access to Old Philadelphia Pike will be eliminated.

34. Access to Lot 2 and Lot 1 will be limited to a shared drive from Mount Sidney Road.

35. The drive from Mount Sidney Road will cross properties owned by 9 New Philadelphia Associates and Mervin and Janet Stoltzfus, as more fully shown on the Plans.

36. With regard to Lot 2, the lot width measured at the street right of way line and front yard setback line is approximately 49 feet, which is an existing condition.

37. With regard to Lot 1, the front yard setback (distance from Airport Drive to the existing cottage) is approximately 48.76 feet, which is an existing condition.

38. There will be 117 parking spaces (combined) for Lot 1 and Lot 2, as shown on the Plans.

39. Merv Stoltzfus, who owns property adjacent to the Property, expressed concerns regarding persons / pedestrians from the hotel and/or cottages crossing his property to shop at the nearby Sheetz convenience store.

## **II. CONCLUSIONS OF LAW**

1. An applicant for a special exception has the burden of proof as to the specific criteria and standards of the zoning ordi-

nance. 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. An applicant for a special exception bears the burden of proving that he will comply with all requirements of the zoning ordinance relative to the use intended. Ralph & Joanne's, Inc. v. Neshannock Township Zoning Hearing Board, 121 Pa. Commonwealth Ct. 83, 550 A.2d 586 (1988).

3. With conditions, Applicant presented sufficient testimony to establish compliance with Section 18020.C.7, Section 23400 and Section 25070 of the Zoning Ordinance.

4. Applicant requires: (i) a variance from the terms of Section 18030.B.1.e of the Zoning Ordinance regarding minimum lot width; and (ii) a variance from the terms of Section 18030.B.2.b of the Zoning Ordinance regarding maximum front yard setback.

5. 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. Common-

wealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

6. A variance, if granted, "must be the minimum that will afford relief and will represent the least modification of the ordinance." Rogers v. Zoning Hearing Board of East Pikeland Township, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922, 924 (1987); MPC §910.2(a)(5).

7. Applicant has satisfied the requirements for the variances as requested.

8. 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 2439 Old Philadelphia Associates, LP, for: (i) a special exception pursuant to Section 18020.C.7 of the Zoning Ordinance to operate an extended stay hotel; (ii) a variance from the terms of Section 18030.B.1.e of the Zoning Ordinance regarding minimum lot width; and (iii) a variance from the terms of Section 18030.B.2.b of the Zoning Ordinance regarding maximum front yard setback. The special exception and variances



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 July 11, 2019.

3. Applicant shall obtain and record a permanent access easement across the adjacent Stoltzfus property and property owned by 9 New Philadelphia Associates, LP (all as shown on the Plans) in form and content acceptable to the Township.

4. Applicant shall obtain and impose a permanent shared parking and access easement for the location of the joint parking upon Lot 1 and Lot 2, in form and content acceptable to the Township.

5. Applicant shall install and maintain a fence or other barrier which will prevent hotel and cottage guests from walking through the adjacent Stoltzfus property. The size, location and form of such fence or barrier must be acceptable to, and approved by, the Township.



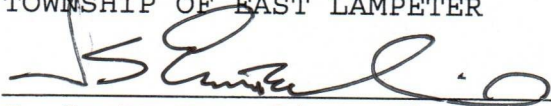
6. Applicant shall provide evidence to the Township that the local fire company serving the location of the Property has adequate fire fighting and rescue apparatus to safely provide service to a four story building at a height of 43.5 feet.

7. 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.

8. The approval granted by this Decision shall expire in accordance with the applicable terms of the Zoning Ordinance.

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

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
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J. Scott Enterline, Vice-Chairman

  
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Lester Weaver, Secretary

DISSENTING OPINION:

I dissent from the foregoing Decision. I do not believe that Applicant has satisfied the requirements of Section 25070 of the Zoning Ordinance which apply to all special exception applications. Without limiting the foregoing, I do not believe Applicant has satisfied the requirements of Section 25070.5 of the Zoning Ordinance which states that "such use shall not adversely affect the general character of the neighborhood and/or property values of the adjacent uses". I also do not believe that Applicant has satisfied the requirements for the requested variances. I find and conclude as follows:

1. There are no other four-story buildings in Smoketown, the location of the proposed hotel.

2. A four-story hotel would tower over all other buildings in Smoketown.

3. When questioned about the height of the hotel and its affect on the character of the Smoketown area, Applicant pointed to other multi-story buildings along Route 30, an area completely different than Smoketown.

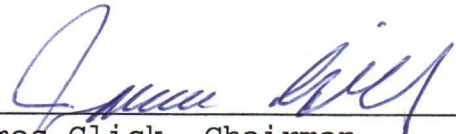
4. No testimony was provided with regard to the appearance of the hotel.

5. Adjacent uses vary. There are residences directly across the street from the Property.

6. The sheer size of the building will change the character of the neighborhood.


7. The request to subdivide the Property into two separate lots is an attempt to circumvent the maximum number of units (75) for a hotel in the VG District. This is demonstrated by the fact that the lot containing the cottages does not have adequate frontage on any existing street. The only way it can continue to be used is by accessing it through the lot with the proposed 75 unit hotel. There will be no separate office, maintenance or other administrative functions for the cottage units. Parking requirements are combined in the application based upon the number of guests and employees for both the hotel and cottages. This is in essence a 100 unit hotel with an arbitrary lot line drawn

through it so that the Applicant can exceed the maximum hotel unit limitations of the VG District.

  
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James Glick, Chairman

Dated and filed August 8, 2019, after hearing held on July 11, 2019.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 9, 2019.

  
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