

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2019-23
APPLICATION OF SAMUEL A. FISHER :

DECISION

I. FINDINGS OF FACT

1. Applicant is Samuel A. Fisher, 182 Eastbrook Road, Smoketown, Pennsylvania 17576 ("Applicant").

2. The property which is the subject of the instant application is 180 Eastbrook 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 January 9, 2020, and February 27, 2020.

7. Testimony at the hearings was stenographically recorded.

8. Applicant was represented at the hearings by Nicholas Gard, Esquire.

9. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 2017-19.

10. In Case No. 2017-19, the Board granted Applicant a special exception to operate a dog kennel upon the Property. The kennel building which was approved was 8 feet by 36 feet for between 10 and 12 breeding dogs.

11. Applicant has now 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; and (ii) a variance from the terms of Section 23410.D.3 of the Zoning Ordinance which requires that the kennel building be located at least 100 feet from all water supply wells.

12. The Property contains approximately 57 acres.

13. The Property is actively farmed.

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

15. Applicant desires to expand his kennel business by converting an existing tobacco shed (with an addition) into an additional kennel building.

16. The converted building will contain 2,144 square feet of area, which will be in addition to the existing 288 square foot building.

17. Applicant intends to have up to 50 breeding dogs.

18. The kennel building will be located at least 500 feet from all street rights of way and property lines and all open areas at least 300 feet from all street rights of way and property lines.

19. The kennel will be located 66 feet from Applicant's on-lot well.

20. Applicant will install screening (landscape screening and privacy fence) of the kennel operation in accordance with the screening plan submitted by Applicant.

21. The kennel building will have attached runs.

22. 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.).

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

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.3 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 the variance from Section 23410.D.3 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 variance from the setback requirements of Section 23410.D.3 of the Zoning Ordinance.

9. Conditions must be attached to the grant of the special exception and variance 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 Samuel A. Fisher for: (i) a special exception pursuant to Section 3020.C.5 and Section 23410 of the Zoning Ordinance; and(ii) a variance from the terms of Section 23410.D.3 of the Zoning Ordinance. The special exception and variance 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 January 9, 2020, and February 27, 2020.


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

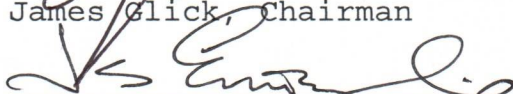
5. With regard to the special exception granted herein, the approval granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance.

6. 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 March 30, 2020, after hearings held on January 9, 2020, and February 27, 2020.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to March 31, 2020.

David Smojich