

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
 : No. 2020-05  
APPLICATION OF ISMARAY GUEVARA :  
GONZALEZ :

DECISION

**I. FINDINGS OF FACT**

1. Applicant is Ismaray Guevara Gonzalez, 1709 Old Philadelphia Pike, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is 1709 Old Philadelphia Pike, 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 a resident on 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 July 9, 2020.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Applicant has requested a special exception pursuant to Section 6020.C.6 and Section 23370 of the Zoning Ordinance.

10. At the hearing, it was also determined that Applicant requires a variance from the terms of Section 23220.C.2 of the Zoning Ordinance.

11. Section 6020.C.6 of the Zoning Ordinance permits minimal impact home occupations by special exception subject to the provisions of Section 23370 of the Zoning Ordinance.

12. Section 23370 sets forth the specific requirements for minimal impact home occupations.

13. Section 23220.C.2 of the Zoning Ordinance states that a daycare that provides care to four persons or less may be permitted as a home occupation.

14. The Property is improved with a single family dwelling.

15. Applicant resides within the dwelling.

16. The dwelling contains approximately 1,218 square feet of floor space.

17. Applicant proposes to operate a child daycare business within a portion of the dwelling.

18. Applicant will utilize the living room and kitchen for the daycare use.

19. Applicant was uncertain of the square footage of the living room and kitchen.

20. The square footage associated with the daycare use can be no greater than 365 square feet (30% of the floor area of the dwelling).

21. The Property is to be served by public sewer service and public water service.

22. There will be no more than 2 nonresident employees of the home occupation.

23. There will be no retail sales at the Property.

24. The exterior appearance of the dwelling shall be maintained as a residence.

25. There will be no storage or display of goods which will be visible from outside the dwelling.

26. There will be no external storage of materials or products.

27. No explosive or highly combustible materials will be stored on the premises.

28. The use does not require deliveries of materials and goods by trucks larger than a standard panel truck.

29. The proposed use will not generate waste products or material of a quality or quantity not normally associated with a residential use.

30. There is sufficient parking on the Property for the dwelling and the daycare use.

31. No persons appeared in opposition to the application.

## **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. Section 6020.C.6 of the Zoning Ordinance permits minimal impact home occupations by special exception subject to the provisions of Section 23370 of the Zoning Ordinance.

3. With the exception of the requirements of Section 23220.C.2 of the Zoning Ordinance, with conditions Applicant has satisfied the requirements for a special exception pursuant to Section 6020.C.6 and Section 23370 of the Zoning Ordinance.

4. Applicant requires a variance from the terms of Section 23220.C.2 of the Zoning Ordinance in order to permit the daycare to offer services for up to six (6) children.



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

6. Applicant has satisfied the requirements for a variance from the terms of Section 23220.C.2 of the Zoning Ordinance.

7. Conditions must be imposed on the granting of the special exception and variance in order to preserve and protect the surrounding neighborhood and the purposes 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 Ismaray Guevara Gonzalez for: a special exception pursuant to Section 6020.C.6 and Section 23370 of the Zoning Ordinance; and (ii) a variance from the terms of Section 23220.C.2 of the Zoning Ordinance. This special exception and variance 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 her application and the evidence presented to the Board at the hearing held on July 9, 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.

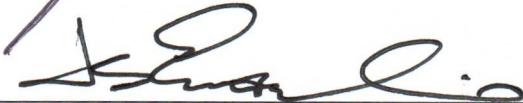
3. Applicant shall provide evidence to the Township that the daycare use shall occupy no more than 365 square feet of floor area of the dwelling.

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

5. The foregoing Decision shall be binding upon the Applicant and her heirs, personal representatives, successors and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

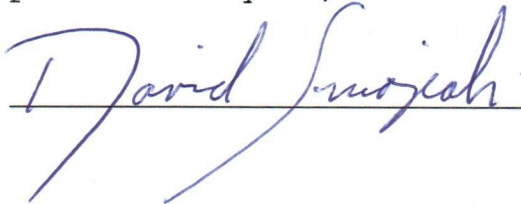
  
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James Glick, Chairman

  
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J. Scott Enterline, Vice-Chairman

  
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Lester Weaver, Secretary

Dated and filed July 23, 2020, after hearing held on July 9, 2020.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to July 24, 2020.

  
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