

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2020-09
APPLICATION OF DANIEL R. KING :

DECISION

I. FINDINGS OF FACT

1. Applicant is Daniel R. King, 3501 White Oak Road, Paradise, Pennsylvania 17562 (hereinafter "Applicant").

2. The property which is the subject of the instant application is 2481 Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the Village General (VG) District as shown on the Official Zoning Map of East Lampeter Township.

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. Applicant appeared personally at the hearing.

7. Kevin Engel, of Engel Architects, LLC, appeared at the hearing and testified on behalf of Applicant.

8. The following person completed an Entry of Appearance form and was recognized as a party to the hearing:

Jim Glick
145 Witmer Road
Lancaster, PA 17602

9. Applicant has requested: (i) a special exception pursuant to Section 18020.C.8 of the Zoning Ordinance; (ii) a variance from the terms of Section 18030.B.3.e of the Zoning Ordinance; (iii) a variance from the terms of Section 18030.B.4.b of the Zoning Ordinance; (iv) a variance from the terms of Section 18030.B.5.c of the Zoning Ordinance; and (v) a variance from the terms of Section 23490.C.2 of the Zoning Ordinance.

10. Section 18020.C.8 of the Zoning Ordinance states that multi-family dwellings are permitted by special exception within the Village General (VG) District subject to the provisions specified in Section 23490 of the Zoning Ordinance.

11. Section 23490 of the Zoning Ordinance sets forth specific requirements for multi-family dwellings.

12. Section 18030.B.3.e of the Zoning Ordinance states that the minimum side yard setback for multi-family dwellings with more than four units shall be 20 feet.

13. Section 18030.B.4.b of the Zoning Ordinance states that the minimum rear yard setback for multi-family dwellings with more than four units shall be 20 feet.

14. Section 18030.B.5.c of the Zoning Ordinance states that if more than 50% of the required off-street parking spaces are located behind the front yard setback line, the maximum lot or impervious coverage may be increased to 80% (otherwise the maximum lot or impervious coverage shall be 70%).

15. Section 23490.C.2 of the Zoning Ordinance states that the following principal and accessory uses shall be permitted within developments containing multi-family dwelling units:

Accessory uses within developments containing multi-family dwelling units shall be limited to administrative offices; a community center; open space; private or restricted recreation uses; first floor retail use containing no more than 5,000 square feet; and/or other similar uses. The accessory uses shall directly benefit the residents of the multi-family dwelling units.

16. Applicant purchased the Property in September of 2019.

17. The Property contains 37,905 square feet of area and is improved with three buildings and accessory parking areas, as more fully shown on the plans (the "Plans") submitted by Applicant.

18. Applicant was unable to find any occupancy permits issued for any of the three buildings located on the Property.

19. The main building (which is located in the center/front of the Property along Old Philadelphia Pike) is a two-story structure which is approximately 100 years old.

20. The main building (hereinafter referred to as "Main Building") contained a restaurant on the first floor. The restaurant is no longer in operation.

21. The second floor of the Main Building contains three apartments.

22. The second building (which is located on the eastern/front portion of the Property along Old Philadelphia Pike) may have been constructed in approximately 1944.

23. The second building (hereinafter referred to as the "Second Building") is a two-story structure.

24. The first floor (or a portion thereof) of the Second Building is or was used for a business known as Smoketown Flooring.

25. The second floor of the Second Building contains two apartments.

26. The third building (which was referred to as a garage and is located at the eastern rear corner of the Property and is

hereinafter referred to as the "Third Building") is used as warehouse space for Smoketown Flooring.

27. The current lot / impervious coverage is 91%, which is dimensionally nonconforming.

28. The Second Building is located approximately on and along the eastern side property line (zero side yard setback) and is dimensionally nonconforming.

29. The Third Building is located approximately on and along the rear property line (zero rear yard setback) and is dimensionally nonconforming.

30. Applicant was unable to provide accurate testimony with regard to the square footage of the Main Building and Second Building. Applicant testified that the Third Building is 40 feet by 45 feet.

31. Applicant proposes to convert the first floor of the Main Building into three apartment units (for a total of six apartment units within the Main Building), as shown on the Plans.

32. The apartments will be one bedroom apartments.

33. There are 38 off-street parking spaces located upon the Property.

34. James Glick is the owner the adjoining property (known as 2489 Old Philadelphia Pike).

35. James Glick expressed concerns regarding the lack of usable green space on the Property. Tenants of the existing apartments walk their pets on Mr. Glick's property and children of the tenants utilize his property for a play area.

36. James Glick also questioned Applicant regarding parking on the Property (and specifically relating to the Smoketown Flooring use).

37. Applicant testified that he would be agreeable to creating additional green space (in the vicinity of the rear corner dumpster area). The area (or a portion of the area) is currently stone and Applicant would create a 60 foot by 60 foot green space area.

38. Although Applicant initially requested a variance from the terms of Section 23490.C.2 of the Zoning Ordinance to authorize other principal uses in conjunction with the multi family dwellings on the Property, Applicant at the hearing withdrew such request as it relates to any use other than the existing Smoketown Flooring use. Without limiting the foregoing, although Applicant testified as to a potential future café or similar use, Applicant withdrew his request for approval of such use. Any additional use shall require further Township and, if applicable, Board approval.

II. CONCLUSIONS OF LAW

1. Applicant has requested a special exception pursuant to Section 18020.C.8 of the Zoning Ordinance subject to the provisions specified in Section 23490 of the Zoning Ordinance.

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. "[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).

5. 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).

6. With conditions, Applicant has satisfied the requirements for the aforementioned special exception.

7. With regard to variances, Applicant requested: (i) a variance from the terms of Section 18030.B.3.e of the Zoning Ordinance; (ii) a variance from the terms of Section 18030.B.4.b of the Zoning Ordinance; (iii) a variance from the terms of Section 18030.B.5.c of the Zoning Ordinance; and (iv) a variance from the terms of Section 23490.C.2 of the Zoning Ordinance.

8. Although Applicant initially requested a variance from the terms of Section 23490.C.2 of the Zoning Ordinance to authorize other principal uses in conjunction with the multi family dwellings on the Property, Applicant at the hearing withdrew such request as it relates to any use other than the existing Smoketown flooring use. Without limiting the foregoing, although Applicant testified as to a potential future café or similar use, Applicant withdrew his request for approval of such use. Any additional use shall require further Township and, if applicable, Board approval.

9. 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.

10. 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).

11. Applicant has presented evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

12. Applicant is entitled to the aforementioned variances; however, with regard to the request for a variance from Section 23490.C.2 of the Zoning Ordinance to authorize other principal uses in conjunction with the multi family dwellings on the Property,

such variance approval is limited to the existing Smoketown Flooring use. Any additional or other use shall require further Township and, if applicable, Board approval.

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 for: (i) a special exception pursuant to Section 18020.C.8 of the Zoning Ordinance; (ii) a variance from the terms of Section 18030.B.3.e of the Zoning Ordinance; (iii) a variance from the terms of Section 18030.B.4.b of the Zoning Ordinance; (iv) a variance from the terms of Section 18030.B.5.c of the Zoning Ordinance; and (v) a variance from the terms of Section 23490.C.2 of the Zoning Ordinance (which is limited to the existing Smoketown Flooring use and no other use).

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 23, 2020.

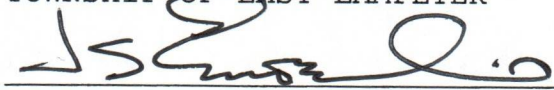
3. Prior to commencement of the uses approved herein, Applicant shall create additional green space (in the vicinity of the rear corner dumpster area) such that the green space will be a 60 foot by 60 foot green space area.

4. 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.

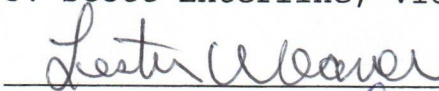
5. The approval granted by this Decision shall expire in accordance with the applicable terms of the Zoning Ordinance.

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


ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Vice-Chairman



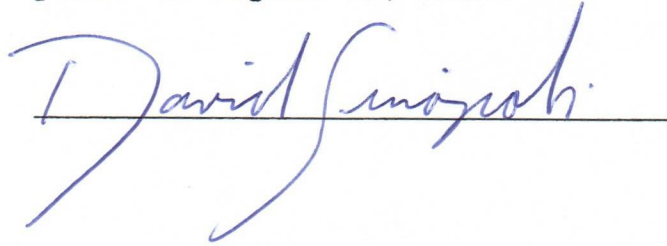
Lester Weaver, Secretary



Sarah Yocum Rider, Alternate

Dated and filed August 27, 2020, after hearing held on July 23, 2020.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 28, 2020.

A handwritten signature in blue ink, reading "David S. Smith", is written over a horizontal line. The signature is cursive and stylized.