

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2020-16
APPLICATION OF HARTMAN SHEAFFER :
REAL ESTATE, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Hartman Sheaffer Real Estate, LLC, 1128 Manheim Pike, Lancaster, Pennsylvania 17601 ("Applicant").

2. The properties which are the subject of the instant application are known as 220-222 Pitney Road, East Lampeter Township, Lancaster County, Pennsylvania (collectively the "Property").

3. The Property consists of three separate tax parcels: 310-02192-0-0000; 310-10131-0-0000; and 310-99178-0-0000.

4. The Property is located in the R-2 Residential District as shown on the Official Zoning Map of East Lampeter Township.

5. Applicant is the equitable 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 October 22, 2020.

8. Testimony at the hearing was stenographically recorded.

9. The following persons completed entry of appearance forms and were recognized as parties:

Ramona L. Whitcraft
230 Pitney Road
Lancaster, PA 17601

Barry E. Killian
509 Willow Lane
Lancaster, PA 17601

Jose O. Ruiz-Vazquez
517 Willow Lane
Lancaster, PA 17601

Mary Best
515 Willow Lane
Lancaster, PA 17601

10. Applicant was represented at the hearing by Matthew J. Creme, Esquire.

11. Thomas Delellis, Charles Hartman, Bart Sheaffer and Keith Good appeared and testified on behalf of Applicant.

12. Thomas Delellis and his wife are the current owners of the Property, and Thomas Delellis is the former owner of a business known as Conestoga Copiers.

13. Charles Hartman and Bart Sheaffer are principals of Hartman Sheaffer Real Estate, LLC.

14. Keith Good is a principal of CGA Architects, Inc.

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

16. The Property contains approximately 0.83 acre.

17. The Property is a corner lot, being located at the intersection of Pitney Road and Oak Grove Road.

18. Applicant proposes to consolidate the three separate parcels which make up the Property into one lot.

19. There are currently three buildings located upon the Property.

20. Applicant proposes to raze the building located nearest to the intersection of Pitney Road and Oak Grove Road (the building to be razed, along with porch areas, contains 1,035 square feet of floor area).

21. Applicant further proposes to construct a building connector (containing 532 square feet) which will connect the two remaining existing buildings.

22. There will be a net reduction of 503 square feet of building area.

23. The Property has been used in the past as and for a business known as Conestoga Copiers (which was sold by Thomas Delellis to an entity which he referred to as Xerox).

24. Mr. Delellis provided credible testimony that Conestoga Copiers/Xerox ceased operating on the Property in approximately March of 2020.

25. The business known as Conestoga Copiers/Xerox is a valid nonconforming use.

26. The Conestoga Copiers/Xerox business involved the sale and service of photocopiers, fax machines and printers. It included an administrative office, sales office, demonstration area, an area for parts and supply inventory, and an area for service. It was not a retail store.

27. Applicant seeks approval to operate its business on the Property as a substitution of a nonconforming use. More specifically, Applicant proposes to operate a business known as Lancaster Starter and Alternator upon the Property.

28. Applicant's business involves the storage and wholesale sale of motor vehicles parts, as well as the repair and rebuilding of starters and alternators.

29. Applicant's business does not involve the installation of starters or alternators and service is not performed on the Property. The forgoing notwithstanding, Applicant testified that it does perform diagnosis of vehicle alternators and batteries upon the Property if requested by a customer.

30. Applicant testified that, with regard to starter and alternator repairs, all work is performed inside the building and no noise will be audible outside of the building. No chemicals are used (just water-based solvents) and no smoke or vapors are generated. There are no special / hazardous wastes being generated.

31. Applicant testified that 90% of its business involves the delivery of parts to off-premises customers. Parts are delivered to customers by pickup trucks.

32. Applicant provided testimony comparing the Conestoga Copier/Xerox use with the proposed Lancaster Starter and Alternator use.

33. With regard to Conestoga Copiers/Xerox, when the business was operational: (i) there were 26 employees (8 or 9 service

department employees) and 12 company vehicles including a box truck and stretch van for deliveries; and (ii) there were on average 5 or 6 customers per week coming to the Property for product demonstrations.

34. With regard to Applicant's business, there will 10 full time and 3 part time employees, there will be 8 or 9 pickup trucks for Applicant to make deliveries; and (ii) typically, there will be 5 to 10 customers coming to the shop daily.

35. With regard to Applicant's business there will be 2 to 3 tractor trailer deliveries to the Property per month, as well as 1 box truck delivery to the Property each week. There will also be what Applicant described as "straight truck" deliveries of batteries. Straight trucks were described as being larger than normal box trucks.

36. With regard to tractor trailer and truck deliveries and unloading, neighbors expressed valid concerns regarding tractor trailers and trucks (those making deliveries to Applicant's business) parking and unloading on the side of the Property abutting Oak Grove Road and using their residential development as a turnaround.

37. The Board finds that the parking and unloading of tractor trailers and trucks adjacent to or along Oak Grove Road would

generate safety hazards beyond the boundaries of the Property and would be detrimental to the use and enjoyment of neighboring properties, the residential development and residential uses along Oak Grove Road, and motorists using Oak Grove Road.

38. With regard to a comparison of days and hours of operation, Conestoga Copiers/Xerox operated between the hours of 8:00 am and 5:00 pm, Monday through Friday, and occasionally on Saturday. Applicant will operate between 8:00 am and 5:00 pm, Monday through Friday, and between 8:00 am and 12:00 pm on Saturday.

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, among other things, the following specific requirements:

- i. The use proposed to be substituted shall not be more detrimental to the other uses within the zoning district than the existing nonconforming use.
- ii. The proposed use to be substituted shall not generate more traffic than the existing nonconforming use.

- iii. The proposed use to be substituted, if commercial or industrial in nature, shall not have longer hours of operation than the existing nonconforming use.
- iv. The proposed use to be substituted shall not generate higher levels of . . . safety hazards beyond the boundaries of the property than the existing nonconforming use.
- v. The proposed use to be substituted shall not be more detrimental to the neighboring properties and uses than the existing nonconforming use.
- vi. The existing nonconforming use shall be completely abandoned.
- vii. A nonconforming use, if changed to a conforming use, shall not thereafter be changed back to any nonconforming use.

3. An applicant for a special exception has the burden of proof 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).

4. The 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).

5. 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).

6. Of particular concern to the neighbors and to the Board is the parking and unloading of tractor trailers and trucks. If conducted on Oak Grove Road, such parking and unloading would generate safety hazards beyond the boundaries of the Property and would be detrimental to the use and enjoyment of neighboring properties, the residential development along Oak Grove Road, and motorists using Oak Grove Road.

7. Of additional concern to the Board is the proposed performance of diagnosis services outside of the building.

8. Provided all access for loading and unloading of trucks is restricted to the use of Pitney Road, and provided all diagnosis services are either performed inside the building or in a screened area behind the building (between the building and Route 30), the Board concludes that 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 Hartman Sheaffer Real Estate, 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 October 22, 2020.

3. There shall be no servicing of vehicles upon the Property. However, it shall be permissible for Applicant to perform diagnosis of vehicle alternators and batteries provided it is performed either within the building or in the area behind the building (between the building and Route 30) and such area is visually screened from neighboring residential properties.

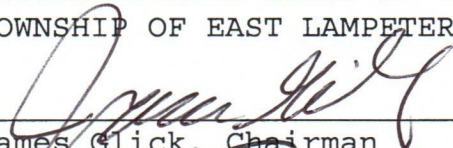
4. All delivery vehicles shall enter and exit the Property from Pitney Road and not from Oak Grove Road. Without limiting the foregoing, no delivery vehicles shall load or unload along or adjacent to Oak Grove Road.

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.

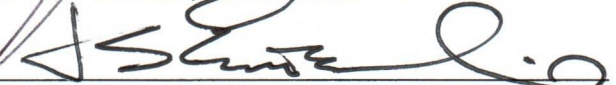
6. The approval granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance.

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

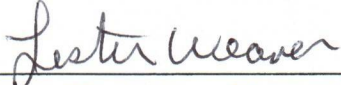
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

Dated and filed November 12, 2020, after hearing held on October 22, 2020.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to November 13, 2020.