

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2021-31
APPLICATION OF GIDEON SWAREY :
AND SYLVIA SWAREY :

DECISION

I. FINDINGS OF FACT

1. Applicants are Gideon Swarey and Sylvia Swarey 2761 North Cherry Lane, Ronks, Pennsylvania 17572 ("Applicants").
2. The property which is the subject of the instant application is 2761 North Cherry Lane, 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. Applicants are the owners 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. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on February 10, 2022.

7. Testimony at the hearing was stenographically recorded.

8. Applicants were represented at the hearing by Nicholas Gard, Esquire.

9. Applicants have requested 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.

10. The Property contains approximately 69.8 acres.

11. The Property is actively farmed.

12. Without obtaining Township approval, Applicants began operating a dog kennel business upon the Property and the Township issued an Enforcement Notice, dated December 16, 2021.

13. Applicants do not dispute the validity of the Enforcement Notice.

14. Applicants live on the Property and would be responsible for the daily operations and maintenance of the kennel.

15. Applicants have erected a 12 foot by 24 foot kennel building upon the Property. The kennel building has attached outside runs and, with the runs, the kennel is a 24 foot by 24 foot structure.

16. The Property and the location of the kennel are more fully shown on the plans and materials (collectively the "Plans") submitted by the Applicants.

17. The Property is served by an on-lot well and on-lot septic system.

18. Applicants have a K-2 Kennel License (which permits between 51 and 100 dogs per year).

19. Applicants testified that they will have 15 adult breeding dogs and that typically there are a maximum of 35 dogs (breeding dogs and puppies) on the Property at any one time.

20. The kennel building is located at least 500 feet from all street rights of way and property lines, as more fully shown on the Plans.

21. There are no non-resident employees of the kennel business.

22. Applicants anticipate that, on average, approximately two customers per week will come to the Property.

23. Applicants 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.).

24. Applicants testified that they 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. With conditions, Applicants have presented evidence to demonstrate that they have met the conditions for the issuance of a special exception under Section 3020.C.5 and Section 23410 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 Gideon Swarey and Sylvia Swarey for a special exception pursuant to Section 3020.C.5 and Section 23410 of the Zoning Ordinance. The special exception 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. Applicants shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicants shall at all times comply with and adhere to the information and representations submitted with and contained in their application and the evidence presented to the Board at the hearing held on February 10, 2022.

3. This approval is applicable solely for a K-2 license. If Applicants obtain seek a license other than a K-2 license, they shall be required to obtain prior zoning approval.

4. Applicants shall submit to the Township a plan for the disposal of animal waste, which plan must be acceptable to the Township.

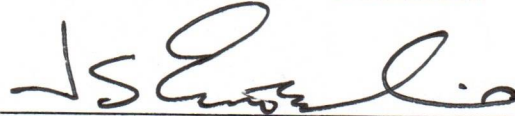
5. Use of the outdoor runs must comply with the hours of permitted use set forth in Section 23410 of the Zoning Ordinance (the dogs will be kept indoors between 9:00 p.m. and 7:00 a.m.).

6. 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.

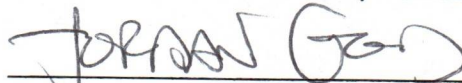
7. The approval granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance.

8. The foregoing Decision shall be binding upon the Applicants and their heirs and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Jordan Good, Vice-Chairman

Scott Augsburger, Secretary

Dated and filed March 10, 2022, after hearing held on February 10, 2022.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to March 11, 2022.