

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2022-02
APPLICATION OF AR UNITED, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is AR United, LLC, 2812 Westerham Road, Downingtown, Pennsylvania 19335 ("Applicant").

2. The property which is the subject of the instant application is 2501 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the Regional Commercial (C-3) District as shown on the Official Zoning Map of East Lampeter Township.

4. Applicant is the equitable 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 Township 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 March 10, 2022.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by J. Dwight Yoder, Esquire.

9. Dwight Wagner, a commercial real estate broker, appeared and testified on behalf of Applicant.

10. Applicant initially: (i) appealed a determination made by the Township Zoning Officer regarding Applicant's proposed use of the Property as a convenience store; (ii) in the alternative, requested variances from Section 10020 or Section 24030.B of the Zoning Ordinance to use the Property as a convenience store; and (iii) in the alternative, raised the principles of equitable estoppel and vested rights to use the Property as a convenience store.

11. Applicant withdrew its initial application requests (without prejudice) and amended its application to request: (i) a special exception pursuant to Section 24030.C of the Zoning Ordinance to substitute one nonconforming use for another nonconforming use; (ii) a variance from Section 24030.C.2 of the Zoning Ordinance regarding levels of traffic; (iii) a variance from Section 24030.C.3 of the Zoning Ordinance regarding hours of operation; and (iv) an extension of the time constraints set forth in Sections 25060 and 25070 regarding permits.

12. The Property contains approximately 2.8 acres.

13. The Property was originally approved and developed in 1996 as a Wawa convenience store.

14. The Wawa convenience store building contained approximately 5,500 square feet of floor area. In addition, there were two canopies with fuel pumps.

15. When the Wawa convenience store was approved and developed, the Property was located in the General Commercial (C-2) District. Convenience stores are permitted uses in the General Commercial (C-2) District.

16. Wawa operated its convenience store until approximately 2010, at which time another owner operated the convenience store (known as Lancaster Gas and Food). Lancaster Gas and Food ceased operations in approximately 2013.

17. The underground storage tanks and gas pumps have been removed from the Property.

18. On July 13, 2013, a zoning permit was issued to Harold E. Feerar, a new tenant on the Property, to operate an automobile sales and service business.

19. In 2016, the Property was rezoned to Regional Commercial (C-3).

20. In 2020, the Zoning Ordinance was amended such that convenience stores were no longer a permitted use in the Regional Commercial (C-3) District.

21. Applicant desires to substitute a convenience store for the nonconforming automobile sales and service business.

22. No expansion of the store building is planned. Improvements will be cosmetic only.

23. Applicant will utilize the existing gas pump canopies and will install tanks and pumps. The number of gas pumps will be the same as those used by Wawa.

24. Applicant's proposed convenience store will generate more traffic than the automobile sales and service use. However, the Property was designed as and for a convenience store use and the Property and adjacent streets can accommodate traffic generated by a convenience store.

25. Applicant proposes to operate the convenience store 24 hours a day, which is in excess of the hours of operation of the automobile sales and service business, but typical for a convenience store.

26. Applicant will not permit overnight truck parking on the Property.

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:

1. The use proposed to be substituted shall not be more detrimental to the other uses within the zoning district than the existing nonconforming use.
2. The proposed use to be substituted shall not generate more traffic than the existing nonconforming use.
3. The proposed use to be substituted, if commercial or industrial in nature, shall not have longer hours of operation than the existing nonconforming use.
4. 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.
5. The proposed use to be substituted shall not be more detrimental to the neighboring properties and uses than the existing nonconforming use.
6. The existing nonconforming use shall be completely abandoned.
7. 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. With the exception of Sections 24030.C.2 and 24030.C.3, Applicant has complied with the requirements of Section 24030.C of the Zoning Ordinance.

5. Applicant requires variances from Sections 24030.C.2 (traffic) and 24030.C.3 (hours of operation) of the Zoning Ordinance.

6. 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.

7. 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).

8. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the ordinance.

9. Conditions must be attached to a grant of the special exception and variances in this case to preserve and protect 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 AR United, LLC, for: (i) a special exception pursuant to Section 24030.C of the Zoning Ordinance to substitute one nonconforming use for another nonconforming use; (ii) a variance from Section 24030.C.2 of the Zoning Ordinance regarding levels of traffic; and (iii) a variance from Section 24030.C.3 of the Zoning Ordinance regarding hours of operation. 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 March 10, 2022.

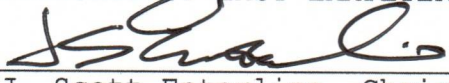
3. Applicant shall not permit overnight truck parking upon the Property.

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 if Applicant fails to obtain a zoning permit within eighteen (18) months from the date of this Decision and does not complete the site improvements and construction activities within twelve (12) months from the date of the zoning permit.

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

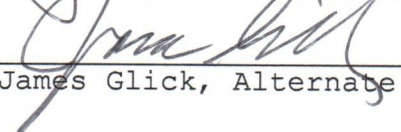
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Jordan Good, Vice-Chairman



James Glick, Alternate

Dated and filed March 24, 2022, after hearing held on March 10, 2022.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to March 25, 2022.

