

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2022-12
APPLICATION OF WESTVILLE :
ASSOCIATES CO. / ASPEN HOME :
IMPROVEMENTS :

DECISION

I. FINDINGS OF FACT

1. Applicant is Westville Associates Co. / Aspen Home Improvements, 2653 Lititz Pike, Lancaster, Pennsylvania 17601 ("Applicant").

2. The properties which are the subject of the instant application are known as 220-222 Pitney Road / 500 Oka Grove Drive, 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 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 August 25, 2022.

8. Testimony at the hearing was stenographically recorded.

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

Leanne Schaller
503 Oak Grove Drive
Lancaster, PA 17601

Joseph C. Schaller
503 Oak Grove Drive
Lancaster, PA 17601

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

Mary Best
515 Willow Lane
Lancaster, PA 17601

Ramona L. Whitcraft
230 Pitney Road
Lancaster, PA 17601

Barry E. Killian
509 Willow Lane
Lancaster, PA 17601

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

11. David Adamson, Applicant's owner, appeared and testified on behalf of Applicant.

12. Keith Good, of CGA Architects, Inc., also appeared at the hearing and testified on behalf of Applicant.

13. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 2020-16.

14. Applicant has now requested: (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.A of the Zoning Ordinance to expand the substituted nonconforming use in excess of 50%; and (iii) a variance from Section 22230 regarding maximum signage.

15. The Property contains approximately 0.83 acre.

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

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

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

19. The three existing buildings contain 11,200 square feet of floor area in the aggregate.

20. The three existing buildings were previously expanded as follows: (i) 1,600 square feet of floor area in 1979; (ii) 720 square feet in 1981; and (iii) 2,400 square feet in 1984.

21. Applicant proposes to raze: (i) the building located nearest to the intersection of Pitney Road and Oak Grove Road (containing approximately 90 square feet of area); and (ii) the building fronting on Oak Grove Road (containing approximately 4,700 square feet of area).

22. Applicant further proposes to construct: (i) a second story addition to the existing/remaining building; and (ii) a one-story addition to the existing/remaining building (the addition will contain 2,300 square feet of floor area). The additions are more fully shown on the plans and materials submitted by Applicant.

23. Although Applicant initially proposed to construct a deck above the 2,300 square foot building addition, at the hearing Applicant testified that no deck will be constructed.

24. The total floor area of the building as expanded will be 13,500 square feet.

25. The Property has been used in the past as and for a business known as Conestoga Copiers.

26. The business known as Conestoga Copiers is a valid nonconforming use.

27. As the Board determined in Case No, 2020-26, the Conestoga Copiers 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.

28. Applicant seeks approval to operate a contractor's storage yard on the Property as a substitution of a nonconforming use. More specifically, Applicant proposes to operate a business known as Aspen Home Improvements upon the Property.

29. Applicant's business involves the sale and installation of windows, doors, roofing and siding.

30. Applicant's use of the Property is limited to storage and office use.

31. Windows, doors and accessory materials will be stored within the building. Siding and roofing materials are sent directly to the job site.

32. There will be no outside storage of building materials and/or inventory. Such storage shall be within the building.

33. There will be no showroom/retail sales on the Property.

34. Applicant performs all repair/construction work at customer locations and no such work will be performed on the Property.

35. Applicant provided testimony which permits the Board to compare the Conestoga Copier use with the proposed contractor's storage yard use.

36. 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.

37. With regard to Applicant's business, there will be approximately 18 business office employees. There will also be approximately 9 sales employees who come and go from the Property.

38. With regard to traffic, deliveries to the Property are made by box truck. There are no tractor trailer deliveries.

39. Deliveries take place approximately once a week (some manufacturers deliver twice a month).

40. Delivery vehicles will access the Property by way of a driveway off of Pitney Road and there are loading/unloading docks as shown on the Plan.

41. 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 Monday through Friday. Staff will come to the Property starting at 7:00 am.

42. Applicant will install curbs and sidewalks in accordance with and as shown on the Plan.

43. The exit drive onto Oak Grove Drive will be limited to right turn out only. Ingress is permitted as a left turn in from Oak Grove Drive.

44. Applicant will install a landscape screen/buffer as shown on the Plan.

45. Applicant will install a privacy fence (along the common boundary of the adjacent residential lot) which complies with all applicable provisions of the Zoning Ordinance, including maximum height.

46. Applicant proposes two building signs, each containing 38.5 square feet of sign area, and one sign containing 19 square feet of sign area on a proposed wall.

47. Applicant will prepare a lighting plan during the land development review process.

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. With the exception of the maximum expansion limitations set forth in Section 24030.A of the Zoning Ordinance, Applicant has satisfied the requirements of Section 24030.C of the Zoning Ordinance to substitute the proposed contractor's storage yard for the previous nonconforming use.

6. Applicant requires a variance from the terms of Section 24030.A of the Zoning Ordinance regarding maximum expansion.

7. Applicant also requires a variance from the terms of Section 22230 of the Zoning Ordinance regarding maximum signage.

8. 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.

9. Applicant has satisfied the requirements for variances from the terms of Section 24030.A and Section 22230 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 Westville Associates Co. / Aspen Home Improvements 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.A of the Zoning Ordinance to expand the substituted nonconforming use in excess of 50%; and (iii) a variance from Section 22230 regarding maximum signage. 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 August 25, 2022.

3. All delivery vehicles shall enter and exit the Property from Pitney Road and not from Oak Grove Road.

4. There shall be no outside storage of building materials and/or inventory.

5. There shall be no showroom/retail sales on the Property.

6. Applicant shall install curbs and sidewalks in accordance with and as shown on the Plan.

7. The exit drive onto Oak Grove Drive shall be limited to right turn out only. Ingress is permitted as a left turn in from Oak Grove Drive.

8. Applicant shall install a landscape screen/buffer as shown on the Plan.

9. Applicant shall install a privacy fence (along the common boundary of the adjacent residential lot) which complies with all applicable provisions of the Zoning Ordinance, including maximum height.

10. 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.

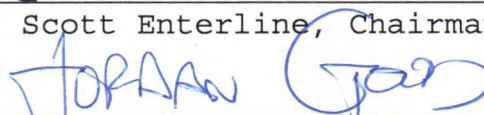
11. The approvals granted by this Decision shall expire in accordance with the terms of Section 25070 (special exception) and Section 25060 (variances) of the Zoning Ordinance.

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

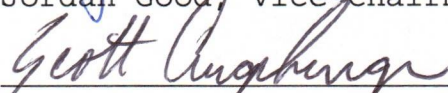
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Jordan Good, Vice-Chairman



Scott Augsbarger, Secretary

Dated and filed September 8, 2022, after hearing held on August 25, 2022.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to September 9, 2022.

