

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2023-06
APPLICATION OF GOOD'S REAL :
ESTATE, LLC / GOOD'S MULCH :

DECISION

I. FINDINGS OF FACT

1. Applicant is Good's Real Estate, LLC / Good's Mulch, 1415 Lime Valley Road, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is 2448 Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located within the Village General 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. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on September 14, 2023.

7. Testimony at the hearing was stenographically recorded.

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

9. Austin Good appeared and testified at the hearing on behalf of Applicant.

10. The Township of East Lampeter was represented at the hearing by Susan Peipher, Esquire.

11. Colin Siesholtz, Director of Planning/Zoning Officer, appeared and testified at the hearing on behalf of East Lampeter Township.

12. Applicant has appealed the determination of the Township Zoning Officer regarding Applicant's proposed use of the Property for the retail sale of mulch and other landscaping materials and supplies. In the alternative, Applicant has requested a variance to permit such use.

13. Applicant has also requested a variance from the terms of Sections 22160.E and 22160.1 regarding off-street parking requirements.

14. The Property contains approximately 13 acres, as more fully shown on the plans ("Plans") submitted by Applicant as Exhibit A-2.

15. The Property is currently improved with a house, barn, and driveway. The southern portion of the Property is open fields.

16. Applicant currently operates a business on its family farm located at 1415 Lime Valley Road, Lancaster, Pennsylvania. The business involves the sale of various types of mulch, top soil,

wood chips, compost, and related landscaping materials and supplies.

17. Applicant purchased the Property intending to open a second location for its business.

18. Although Applicant's plans are in the preliminary stage, Applicant intends to utilize a building for its offices. Such building may also contain a small retail sales area for the sale of supplies (such as transportation tarps and straps). The preliminary size of the office building is 25 feet by 40 feet, as shown on the Plans.

19. Applicant will also construct a hoop building, loading shed and loading dock with two back-in-bays, all as more fully shown on the Plans. The preliminary size of the hoop building is 100 feet by 154 feet. The preliminary size of the loading shed is 220 feet by 50 feet. The preliminary size of the concrete loading dock is 220 feet by 40 feet.

20. Mulch, topsoil and other landscaping materials will be displayed and stored in the applicable proposed structures.

21. Applicant proposes to sell the mulch, topsoil and other landscaping materials on a retail basis. Applicant will not use the Property for wholesaling.

22. Applicant is not a contractor and does not provide landscaping contractor services or yard maintenance.

23. Approximately 80% of Applicant's customers are homeowners.

24. The remaining 20% of Applicant's customers are landscaping contractors.

25. Homeowner customers either pick up the landscaping materials using their own pickup truck or trailer or homeowner customers can have the materials delivered by Applicant to their residence.

26. Applicant utilizes cab over single-axle trucks to make deliveries to its customers (neither tractor trailers nor tri-axle trucks are used to make deliveries to customers).

27. Most landscaping contractor customers pick up materials utilizing their own trailer. Customers are prohibited from using tri-axle trucks or tractor trailers to pick up materials.

28. Applicant anticipates having five employees on-site.

29. Applicant proposes to provide off-street parking as follows: (i) one space for every 200 square feet of gross floor area (excluding the area of the hoop building, loading shed and loading dock); and (ii) at least one space for each employee. Applicant initially proposes twelve spaces based upon its preliminary plan, but this number is subject to change based upon actual building construction size.

30. The Township Zoning Officer has determined that Applicant's proposed use is not a Home Improvement and/or Building Supply Store, which is a permitted use in the Village General District.

31. The Township Zoning Officer has determined that Applicant's proposed use is a Contractor Storage Yard and Wholesale Distribution Center, a use which is not permitted in the Village General District.

32. At the hearing the Township Zoning Officer also testified that Applicant's proposed use is a Wholesale and Distribution Facility, a use which is not permitted in the Village General District.

33. The term "Home Improvement and/or Building Supply Store is defined in the Zoning Ordinance as follows:

A retail use established primarily for the display and retain sales of materials for the construction, repair, landscaping, remodeling, maintaining and furnishing of a building or property, including the rental of goods and products. This use shall include any areas devoted to outdoor storage of such goods and products. The supplemental regulations for a home improvement and/or building supply store are contained under Section 23360 of this Zoning Ordinance.

34. The term "Contractor Storage Yard" is defined in the Zoning Ordinance as follows:

Land and buildings utilized by a contractor for the storage of vehicles, equipment, tools, machinery, building materials, stone, soil, fuel, and/or similar items that relate to the normal operations of a contractor for off-site construction or improvement projects. The supplemental regulations for a contractor storage yard are contained in Section 23190 of this Zoning Ordinance.

35. The term "Wholesale and Distribution Facility" is defined in the Zoning Ordinance as follows:

A building or group of buildings primarily used for the sale and distribution of merchandise in large quantities or transactions of commodities to retailers, contractors, businesses and their agents. A portion of the operations may

include retail sales that are available to the general public. The supplemental regulations for a wholesale and distribution facility are contained under Section 23880 of this Zoning Ordinance.

36. With regard to Wholesale and Distribution Facilities, Section 23870.C.2 states in pertinent part that retail sales are only permitted as an accessory use and limited to 15% of the total gross floor area.

37. Applicant's proposed use meets the definition of a Home Improvement and/or Building Supply Store.

38. Applicant's proposed use is not a Contractor Storage Yard, as that term is defined in the Zoning Ordinance. Applicant is not a contractor and does not provide yard or landscaping services to customers. Applicant's business does not relate to the normal operations of a contractor for off-site construction or improvement projects. Moreover, Section 23190.C.6 of the Zoning Ordinance states that, with regard to a Contractor Storage Yard, retail sales are prohibited.

39. Applicant's proposed use is not a Wholesale and Distribution Facility, as that term is defined in the Zoning Ordinance. Applicant will not be selling mulch in large quantities and does not sell mulch as a commodity. There will be no tractor trailer or tri-axle sales or deliveries from the Property. Rather, the Property will be used primarily for making individual retail sales to homeowners who utilize the materials for their own purposes. While some sales will be made to local landscaping

contractors, they would be in similar quantities as those sales to homeowners. Moreover, Section 23870.C.2 only permits retail sales as an accessory use to a warehouse and distribution center. Applicant's use is principally a retail sales use.

II. CONCLUSIONS OF LAW

APPEAL OF ZONING OFFICER'S DETERMINATION

1. Applicant has appealed the determination of the Township Zoning Officer regarding Applicant's proposed use of the Property for the retail sale of mulch and other landscaping materials and supplies.

2. For the reasons set forth in this Decision, Applicant's proposed use meets the definition of a Home Improvement and/or Building Supply Store.

3. For the reasons set forth in this Decision, Applicant's proposed use is not a Contractor Storage Yard, as that term is defined in the Zoning Ordinance.

4. For the reasons set forth in this Decision, Applicant's proposed use is not a Wholesale and Distribution Facility, as that term is defined in the Zoning Ordinance.

5. The Zoning Officer's determination is erroneous and the Applicant's appeal is granted.

6. Applicant has requested a variance from the provisions of Sections 22160.E and 22160.1 of the Zoning Ordinance.

7. 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.

8. 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).

9. Applicant has established by credible testimony:

(i) that an unnecessary hardship exists which has not been created by the Applicant and which is caused by unique physical circumstances of the Property;

(ii) that the variance is needed to enable the Applicant's reasonable use of the property;

(iii) that the variance will not alter the essential character of the district or neighborhood, or substantially or permanently impair the use or development of the adjacent property such that it is detrimental to the public's welfare; and

(iv) that the variance will afford the least intrusive solution.

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 appeal and concludes that the proposed use is a home improvement and/or building and supply store, as that term is

defined in the Zoning Ordinance. In addition, the Zoning Hearing Board of the Township of East Lampeter hereby grants the application for a variance from the terms of Sections 22160.E and Section 22160.1 of the Zoning Ordinance regarding minimum number of off-street parking spaces. The variance 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 September 14, 2023.

3. Applicant shall provide off-street parking spaces in accordance with the requirements of this Decision.

4. Applicant shall not conduct any manufacturing on the Property.

5. Applicant shall not sell products or materials to other retail businesses.

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 25060 of the Zoning Ordinance.

8. 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

Jordan Good, Vice-Chairman

Scott Augsburg

Scott Augsburg, Secretary

Dated and filed September 28, 2023, after hearing held on September 14, 2023.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to September 29, 2023.

[Signature]