

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2023-11
APPLICATION OF DIVYA :
MOTEL, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Divya Motel, LLC, 89 Silver Birch Drive, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is 170 Eastbrook Road, 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 and partially within the Floodplain Overlay 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 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 January 11, 2024.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Sheila O'Rourke, Esquire.

9. Dhaval Dadhanian, Applicant's principal, appeared at the hearing and testified on behalf of Applicant.

10. Keith Heigel, a registered land surveyor, of Light-Heigel Associates, Inc., also appeared at the hearing and testified on behalf of Applicant.

11. The Township of East Lampeter participated in the hearing and provided testimony through Colin Siesholtz, its Director of Planning/Zoning Officer, and Scott Hain, a professional engineer, with David Miller/Associates, Inc., the Township's consulting engineer.

12. Applicant initially requested: (i) a special exception pursuant to Section 21040.G.4 of the Zoning Ordinance regarding public utility facilities not under the exclusive jurisdiction of the Pennsylvania Public Utility Commission within the Floodplain Overlay District; and (ii) a special exception pursuant to Section 21040.G.9 of the Zoning Ordinance regarding uses within the Floodplain Overlay District similar to other uses permitted by special exception within the Floodplain Overlay District.

13. At the hearing, Applicant withdrew its request for a special exception pursuant to Section 21040.G.4 of the Zoning Ordinance.

14. The Property contains approximately 6.2 acres and is presently developed with a motel known as the Mill Stream Country Inn.

15. The motel was constructed in approximately 1970.

16. Applicant purchased the motel in February of 2023.

17. Around the time of purchase, Applicant hired a structural engineer to evaluate the motel structure on the Property.

18. Applicant's structural engineer identified gutters and downspouts as an existing issue which needed to be addressed.

19. At the time of the inspection, the gutters and downspouts discharged into the parking lot a few feet from the motel structure.

20. The parking lot is located almost entirely within the Floodplain Overlay District.

21. The 100 year floodplain runs very close to the rear of the motel structure.

22. The report prepared by Applicant's structural engineer stated:

[t]he discharge of water from gutters should be corrected to avoid any additional issues in the future. The water discharge can erode around the structure and cause future issues moving forward. The gutters and downspouts should be discharged at least 10 feet from the structure and the ground should be sloped away from the structure.

23. Applicant testified that water was puddling in the parking lot and water was pooling around the motel building.

24. In approximately June of 2023, Applicant's contractor

commenced work. Rather than allowing the gutters to discharge in the parking lot, Applicant began to install a piping system under the parking lot which would discharge stormwater to the rear of the parking area.

25. Applicant received an Enforcement Notice dated August 4, 2023, regarding, among other things, Applicant's failure to acquire property commercial zoning permits and stormwater plan approval.

26. Upon receipt of the Enforcement Notice, Applicant stopped work on the project.

27. Applicant proposes six (6) pipes which will encroach in and discharge into the Floodplain Overlay District.

28. Five (five) of the six (g) pipes are 6 inch pvc and the remaining pipe is a 10 inch pipe.

29. The discharge points of the pipes are at least 175 feet from Mill Creek.

30. Mr. Heigel testified that, with regard to the pipes which have already been installed, there has been no soil erosion at any discharge point.

31. Mr. Heigel testified that the project will not increase flood heights. There is no additional building or impervious coverage associated with the project. The stormwater runs where it has always ran (except that it no longer runs across the parking lot).

32. Mr. Heigel testified that Applicant has submitted a storm

water management plan to the Township.

33. Mr. Hain testified that landowners/developers typically provide him (as Township engineer) with a floodplain study.

34. The examples of the projects which Mr. Hain described as ones which floodplain studies were provided were projects involving building expansions, new bridge construction, and grading and installation of stone.

35. As previously stated, there is no additional building or impervious coverage associated with Applicant's project.

36. The Board finds Mr. Heigel's testimony to be credible and the proposal meets the "Standards and Criteria for Special Exceptions" set forth in Section 21040.H of the Zoning Ordinance.

37. The proposal meets the general standards for all special exceptions set forth in Section 25070 of the Zoning Ordinance.

II. CONCLUSIONS OF LAW

1. Applicant requires a special exception under Section 21040.G.9 of the Zoning Ordinance in order to place the proposed downspouts within the Floodplain Overlay District.

2. 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).

3. An 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).

4. Applicant has presented evidence to demonstrate that it has met the conditions for the issuance of a special exception under Section 21040.G.9 of the Zoning Ordinance.

5. Conditions must be attached to the grant of the special exception to protect and preserve 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 Divya Motel, LLC, for a special exception pursuant to Section 21040.G.9 of the Zoning Ordinance in order to permit downspouts to encroach within the Floodplain Overlay District, as more fully shown on the Plans. 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. 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 January 11, 2024.

3. 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.

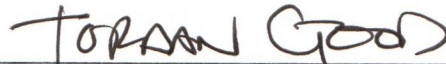
4. The approval granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance.

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

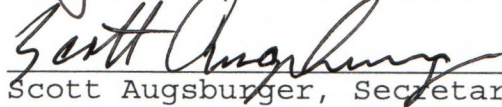
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Jordan Good, Vice-Chairman



Scott Augsburg, Secretary

Dated and filed January 29th, 2024, after hearing held on January 11, 2024.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to January 29th, 2024.

