

**DECISION OF THE ZONING HEARING BOARD OF
LONGSWAMP TOWNSHIP, BERKS COUNTY, PENNSYLVANIA**

In Re: Application of Longswamp Ventures, LLC for variances pursuant to § 757(2) and a special exception pursuant to § 413(14) of the Longswamp Township Zoning Ordinance of 2015, as amended, for the property located at 1160 State Street in Mertztown, Longswamp Township, Berks County, Pennsylvania, bearing Map Pin No. 5954831312055981.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Zoning Hearing Board of the Township of Longswamp (hereinafter referred to as the “Board”) finds as follows:

FINDINGS OF FACT

1. The property, which is the subject of this land use application, is located at 1160 State Street in Mertztown, Longswamp Township, Berks County, Pennsylvania, and bearing Map Pin No. 5954831312055981, (hereinafter referred to as the “Subject Property”).
2. The Applicant is Longswamp Ventures, LLC of 458 N. Oswego Street in Allentown, Lehigh County, Pennsylvania, 18109 (hereinafter referred to as the “Applicant”).
3. The owner of the Subject Property is Longswamp Ventures, LLC of 458 N. Oswego Street in Allentown, Lehigh County, Pennsylvania, 18109.
4. The Subject Property is located in an area zoned “R” – Rural District pursuant to a Longswamp Township Zoning Ordinance of 2015, as amended (hereinafter referred to as the “Zoning Ordinance”) and the Longswamp Township Zoning Map.
5. Public notice of the hearing of May 16, 2018, was timely advertised in the Reading Eagle, a newspaper of general circulation within Longswamp Township, on May 4, 2018 and May 9, 2018; adjacent property owners were timely notified of the hearing by mail on

May 2, 2018; and the Subject Property was timely posted with notice of the hearing on May 2, 2018.

6. The Subject Property is an irregular shaped lot of land consisting of a total of approximately 12.62 acres of land.

7. The Subject Property is adjacent to State Street – State Route 1035 in Longswamp Township, on the north side of the Subject Property.

8. The Subject Property is the site of a former elementary school and contains a single story, building containing approximately 31,915 square feet. At the time of the hearing the building was vacant.

9. In or about January of 2018, the Applicant presented a request to the Zoning Hearing Board for a use variance to use the Subject Property as a self-storage facility. This request was denied by the Board.

10. Approximately two (2) months later, on or about March 23, 2018, the Applicant submitted a zoning application seeking to use the Subject Property for a nursing, convalescent and retirement home use.

11. Munhel Makhoul, manager and a member of Longswamp Ventures, LLC, testified at the hearings on both the January application for a self-storage facility and the current application for a nursing, convalescent and retirement home use.

12. The Applicant offered a concept to convert the existing building into an seventy-eight (78) bed nursing/convalescent home.

13. The Applicant described its proposed clientele as being “elderly” without any further detailed description of who will receive services or the nature of the services to be provided.

14. Other than the general number of employees proposed to be working at the Subject Property, no evidence was presented regarding the employees qualifications.

15. Mr. Makhoul does not have experience or training in the operation of a nursing, convalescent or retirement home.

16. No evidence was presented as to who would be operating the nursing, convalescent, or retirement home or their training or qualifications, other than to state it would be another company formed by Mr. Makhoul.

17. Although a sewage system exists at the Subject Property, it was not inspected or tested to verify it was functioning or its current physical and operating condition.

18. No credible evidence was presented that an approved means of sewage disposal and water supply will be utilized.

19. Calculations submitted relating to sewage usage did not include calculations for employees nor was a credible explanation offered as to why employees should not be included in the calculations.

20. The proposed landscape screening identified by the Applicant goes across land not owned by the Applicant without evidence of legal authority to so place the landscape screen.

21. No credible evidence was presented regarding the services to be provided to clientele of the proposed nursing, convalescent or retirement homes, including nursing, dietary, and other similar services.

22. No credible evidence was presented establishing that the proposed use would not adversely affect the character of the general neighborhood, or the health of residents on adjacent properties and in the general neighborhood.

23. No credible evidence was presented that services and utilities are available to adequately service the proposed use.

DISCUSSION

After careful and thoughtful consideration together with a complete review of all evidence presented, the Zoning Hearing Board finds the credibility and weight of the evidence did not rise to the level necessary to conclude the Applicant has met, or will meet, the requirements of the Zoning Ordinance for obtaining a special exception. As a result, the request for a special exception will be denied. Since the variance requests were incidental to the special exception they will also be denied. To be clear, the Board, as the sole judge of the credibility of witnesses and the weight to be afforded to their testimony (see Hellam Township v. Hellam Township Zoning Hearing Board, 941 A.2d 746, 749 (Pa.Cmwlt. 2008)), was not convinced by the evidence presented that the Applicant has met, or will meet the standards of the Zoning Ordinance.

In addition to the content of testimony, credibility and weight are influenced by the demeanor of witnesses, how evidence is presented, and how questions are answered. During the course of the hearing the Board found the two (2) witnesses presented by the Applicant did not answer questions directly. The lack of direct answers was exasperated by counsel for the Applicant repeatedly interrupting the questions to argue Applicant's position and assert the Applicant will do whatever the law requires. Plainly, a promise to comply with the Zoning Ordinance and other laws, does not carry with it the same weight as substantive evidence demonstrating what will be done in detail to comply.

To be entitled to a special exception it is incumbent upon the Applicant to come forward with evidence detailing how it is going to comply with the requirements of the Zoning Ordinance is necessary. Edgmont Township v. Springton Lake Montessori School Inc., 145 Pa.Cmwlth 76, 79, 622 A.2d 418, 420(1993). Evidence is not a “promise” that the Applicant will comply. *Id.* The Applicant’s statement that it intends to comply with the law does not carry the Applicant’s burden. In re Appeal of SW Land Associates, LLC, 17 Pa. D. and C. 5th 141, 157 (2010). It was detail that was missing, preventing the Board from crediting what little evidence was presented.

Turning to the specific use request, pursuant to § 413(14) of the Zoning Ordinance, nursing, convalescent, and retirement homes are uses permitted by special exception in the Rural District. In order to be approved, the Applicant must demonstrate compliance with the following provisions of § 757 of the Zoning Ordinance:

1. Minimum lot size shall be five (5) acres.
2. All buildings shall be at least 100 feet from any street or lot line.
3. Access shall be to a road classified as an arterial or collector in the Township Comprehensive Plan.
4. The applicant shall furnish evidence that an approved means of sewage disposal and water supply shall be utilized.
5. Off-street parking lots and loading areas shall be screened from adjoining residentially zoned lands.
6. Sufficient exterior nighttime illumination of the parking area shall be required to provide convenience and safety. All such illumination shall be shielded from view of all surrounding streets and lots.

In addition to the foregoing, the following standards for special exceptions are set forth in the Ordinance:

The Zoning Hearing Board shall hear and decide requests for Special Exceptions in accordance with the standards and criteria set forth in this Ordinance. Decisions to grant or deny the request shall be subject to the following:

- a. Such use shall be one which is specifically authorized as a Special exception.
- b. Such Special Exception shall only be granted subject to any applicable condition and safeguards as required by this Ordinance.
- c. such use shall not adversely affect the character of the general neighborhood, nor the conservation of property values, nor the health and safety of residents or workers on adjacent properties and in the general neighborhood.
- d. such use shall be of such size and so located and laid out in relation to its access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.
- e. Services and utilities shall be made available to adequately service the proposed use.
- f. The granting of the Special Exception shall be consistent with the Township Comprehensive Plan.

See Zoning Ordinance, § 1002(5).

A special exception in a zoning ordinance is one allowable where facts and conditions detailed in the ordinance are found to exist. The function of the zoning hearing board when an application for a special exception is made is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the zoning ordinance and merit the granting of the special exception. Timber Place Associates v. Plymouth Township Zoning Hearing Board, 59 Pa. Cmwlth. 582, 585-586, 430 A.2d 403, 405 (1981).

Fundamentally, the Applicant must first establish what it is proposing to do actually qualifies as a nursing home, convalescent home, and retirement home. The Zoning Ordinance provides the following definitions for the use of nursing home and convalescent home:

Nursing Home – Establishment providing nursing, dietary, and other similar personal services to convalescents, invalids, or aged persons, but excluding mental cases, cases of contagious or communicable disease, surgery, or other treatments which are customarily provided in sanitariums and hospitals.

* * *

Convalescent Home – An establishment providing nursing, dietary and other similar personal services to convalescents, invalids, or aged persons, but excluding mental cases, cases of contagious or communicable disease, surgery, or other treatments which are customarily provided in sanitariums and hospitals.

See Zoning Ordinance, § 201. The phrase “retirement home” is not defined in the Ordinance.

Due to the vagueness of the application and the lack of detail as to what the Applicant will be doing at the Subject Property, the Board is unable to conclude what the Applicant proposes to do with the property is in fact a nursing home, convalescent home, or retirement home.

Turning to the criteria set forth in the Ordinance for nursing homes, convalescent homes, and retirement homes, the Board was not convinced by the evidence that § 757(4) relating to the sewage disposal and water supply will be satisfied. No credible evidence of any testing or inspection of the sewage disposal system was provided. Further, daily usage calculations were presented without accounting for employees to the satisfaction of the Board. Based again on the minimum evidence presented, the Board is not convinced an approved means of sewage disposal and water supply will be utilized.

In addition to the foregoing, the Board was not convinced the Applicant will meet the requirements of § 1002(5)(c) and (e) due to the vagueness of the application.

Finally, the Board is concerned that part of Applicant’s proposal and use involves another property without adequate or satisfactory explanation.

In sum, the weight of the evidence did not rise to the level necessary to grant relief. The only impression left upon the Board is that the Applicant is struggling to find a use for the Subject Property quickly. Although sympathetic, the Board can neither give weight to, nor grant relief on the scant evidence presented.

CONCLUSIONS OF LAW

1. The Zoning Hearing Board of Longswamp Township has jurisdiction to decide this land use application pursuant to the Longswamp Township Zoning Ordinance of 2015, as amended, and the Pennsylvania Municipalities Planning Code of 1968, P.L. 805, No. 246 as reenacted and amended, 53 Pa.C.S.A. §10901.1, *et seq.*

2. Pursuant to the Zoning Ordinance, the Board shall hear and decide requests for special exceptions and variances filed with the Board in writing, as provided for in the Zoning Ordinance and in accordance with all standards and criteria contained in the Zoning Ordinance.

3. The Applicant has not met all the requirements of § 1002(5) of the Zoning Ordinance to obtain the requested special exception, and all of the requirements of § 1002(4) of the Zoning Ordinance to obtain variances.

ORDER

AND NOW, the Longswamp Township Zoning Hearing Board, by a unanimous vote, hereby rules as follows:

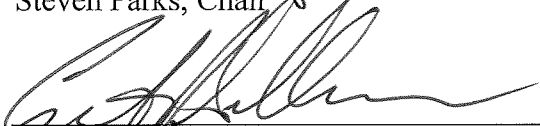
1. The Applicant's request for a special exception pursuant to § 413(14) of the Zoning Ordinance to operate a seventy-eight (78) bed nursing, convalescent, and/or retirement home is DENIED.

2. The Applicant's request for variances from § 757(2) of the Zoning Ordinance is DENIED.

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Longswamp Township Zoning Hearing Board:

By: 
Steven Parks, Chair

By: 
Peter Silberman

By: 
Mark Story

Date of Issuance of Written Decision: 5/22/18

ANY AGGRIEVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA, WITHIN THIRTY (30) DAYS FROM THE DATE OF THE ISSUANCE OF THIS WRITTEN DECISION.