

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

**In Re: Application of Rudy and Tara Lopez for a special exception pursuant to § 403(9) of the Longswamp Township Zoning Ordinance of 2015, as amended, for the property located at 10 Haydt Lane in Longswamp Township, Berks County, Pennsylvania, bearing Map Pin Nos. 549203420492 and 54206426417.**

**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 10 Haydt Lane in Longswamp Township, Berks County, Pennsylvania, and bearing Map Pin Nos. 549203420492 (hereinafter referred to individually as the “Rear Lot”) and 54206426417 (the Front Lot and the Rear Lot shall hereinafter referred to individually as the “Front Lot”), (hereinafter collectively referred to as the “Subject Property”).

2. The Applicants are Rudy and Tara Lopez of 7673 Chestnut Street in Zionsville, Pennsylvania, 18092 (hereinafter referred to as the “Applicants”).

3. The owner of the Subject Property is the Estate of Donald W. Haydt, formerly of 10 Haydt Lane in Longswamp Township, Berks County, Pennsylvania, (hereinafter referred to as the “Owner”).

4. The Subject Property is located in an area zoned “CONS” – Conservation 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 June 27, 2018, was timely advertised in the Reading Eagle, a newspaper of general circulation within Longswamp Township, on June 15, 2018 and June 20, 2018; adjacent property owners were timely notified of the hearing by mail on June 12, 2018; and the Subject Property was timely posted with notice of the hearing on June 12, 2018.

6. On or about March 9, 2018, the Applicants entered into a conditional agreement of sale for the purchase of the Subject Property. As a result, the Applicants possess equitable owner status and have standing to present this application.

7. On or about May 24, 2018, the Applicants filed a Zoning Hearing Board Application seeking relief in the form of an appeal from the actions of the Zoning Officer, variances, and/or special exceptions from § § 402, 403, 404, 405, 601 and 804 of the Zoning Ordinance.

8. At the start of the hearing on June 27, 2018, the Applicants, by and through counsel, narrowed their request for zoning relief to a single request for a special exception pursuant to § 403(9) of the Zoning Ordinance to use the Subject Property as a contractor's office or shop. All other relief sought by the Applicants in the application was withdrawn.

9. The Subject Property has previously been used for a trucking company with trailer storage.

10. There are multiple commercial structures, one (1) residence, electric service, water service, and three (3) approved septic sites on the Subject Property.

11. The Subject Property consists of two (2) parcels as follows:

- a. The Rear Lot consisting of 4.89 acres and bearing a general address of Haydt Lane; and

- b. The Front Lot consisting of 4.03 acres and bearing an address of 10 Haydt Lane.
12. The Rear Lot is a landlocked piece of land that is slightly irregularly shaped.
13. The Front Lot is a mostly rectangular shaped piece of land with access provided only by Haydt Lane.
14. The Applicant proposes to use the Subject Property for a landscaping business operated by RL Landscape and Design, Inc., (hereinafter referred to as the “Company”) together with temporary seasonal housing.
15. The Applicants are the owners of the Company. It is the Applicants’ intent to enter into a lease with the Company to use the Subject Property for its landscaping business.
16. The Company’s busy season runs annually from early March through early December. During its off season between early December and early March, the Company will provide snow and ice removal services as dictated by weather conditions.
17. During its busy season the Company will maintain approximately twenty (20) to twenty-five (25) employees. During its offseason, the Company will maintain approximately seven (7) to nine (9) employees.
18. Due to a lack of qualified applicants locally, the Company hires employees from outside the United States possessing H2-B work visas. By law, the employer is required to act as the sponsor for the H2-B visa employee and provide that employee with housing.
19. In light of the immigration requirements, the Applicants will provide temporary housing on the Subject Property for its H2-B visa employees.

20. Equipment will be used in the operation of the landscaping business including multiple trucks that do not exceed 26,000 pounds, skid loaders, trailers for hauling equipment, mini-excavators, and mowers.

21. The Subject Property is of sufficient size that facilities could be provided to store equipment indoors.

22. The Company will use a 500 gallon, double-walled tank to store diesel fuel, and two (2) 250 gallon double-walled tanks to store gasoline.

23. The Company will operate Monday through Saturday from 8:00 a.m. to 6:30 p.m. prevailing time.

24. The Company will employ a mechanic and a secretary who will be on-site regularly during business hours.

25. Adequate parking is available to serve the use at the Subject Property.

26. A suitable buffer yard is being provided along the side and rear property lines.

### **DISCUSSION**

After thorough and careful review of all the evidence presented, a majority of the Board finds the special exception is granted for the reasons outlined herein.

The analysis in this case centers upon the Applicants' request for a special exception pursuant to Section 403(9) to use the Subject Property as contractor's offices and shop. A "special exception" is not a true exception to a zoning ordinance. It is a use permitted conditionally, one to which an applicant is entitled unless it is determined according to standards set forth in the zoning ordinance that the proposed use would adversely affect the community. *Awacs, Inc. v. Zoning Hearing Board*, 702 A.2d 604, 607 (Pa.Cmwlt. 1997). A special

exception is a conditionally permitted use, allowed by the legislature if specifically listed standards are met. The application is to be granted or denied by the zoning hearing board pursuant to expressed standards and criteria contained within the zoning ordinance. *In Re Appeal of Brickstone Realty Corp.*, 789 A.2d 333, 340 (Pa.Cmwlth. 2001).

The Zoning Ordinance sets forth the following general standards that must be met to grant a special exception:

- a. Such use shall be one which is specifically authorized as a Special Exception Use in the Zoning District wherein the applicant seeks 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. In addition to the general standards, § 403(9) of the Zoning Ordinance requires compliance with the following specific standards of § 724 for a contractor's office or shop:

Contractor's office or shop in the Conservation and Rural Zoning Districts are subject to the following criteria:

1. Construction vehicles and equipment shall be stored within enclosed structures.<sup>1</sup>

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<sup>1</sup> Although during the testimony the Applicants expressed a desire to be relieved of this requirement, when the Applicants narrowed its requested relief at the start of the hearing it did not request a variance from this provision. Further, even if a variance was sought, no evidence was introduced indicating the physical circumstances at the Subject Property prevented compliance.

2. A 10-foot buffer yard, shall be provided along side and rear lot lines unless a larger buffer yard is required under other provisions of this Ordinance.

3. Off-street parking shall be provided in accordance with the requirements of Article VI.

4. Hours of operation on site shall be limited to minimize impacts on adjacent residential uses.

5. No outdoor storage of supplies inventory, or materials, used in the contractor's operation shall be permitted.

6. Any activities that produce noxious dust, odor, light, or noise, perceptible at the property line are prohibited.

See Zoning Ordinance §724.

In light of the evidence presented a majority of the Board finds the Applicants have or will meet the requirements of the Zoning Ordinance. Accordingly, the request for a special exception should be granted.

#### **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 exception 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 Applicants have met all of the requirements of § 1002 of the Zoning Ordinance to obtain the requested special exception.

## ORDER

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

1. The Applicants' request for a special exception pursuant to § 403(9) of the Zoning Ordinance to operate a contractor's office or shop at the Subject Property is GRANTED.

2. All other relief sought in the Zoning Hearing Board Application has been voluntarily withdrawn by the Applicants. As a result, no further decision is required.

The approval granted herein is subject to the following conditions:

- 1) The Applicant shall store no more than 500 gallons of diesel fuel in one (1) double-walled storage tank located at the Subject Property.
- 2) The Applicant shall store no more than 500 gallons of gasoline stored in two (2) separate double-walled storage tanks with an individual capacity of not more than 250 gallons located at the Subject Property.
- 3) All fertilizers and pesticides shall be stored in a manner that is in full compliance with regulations of the Pennsylvania Department of Environmental Protection and the United States Environmental Protection Agency.
- 4) The grant of the requested special exception is expressly conditioned upon the Applicants complying with all applicable township, state, and federal codes and ordinances relating to building, construction, zoning and land development as necessary.
- 5) The Applicants are bound by the testimony presented at the zoning hearing.

No zoning or occupancy permit shall be issued by the Township Zoning Officer unless all terms and conditions as set forth in this decision are complied with and upon any subsequent non-compliance, any said issued permits shall be immediately revoked.


Pursuant to § 1006 of the Zoning Ordinance, the variance approved herein shall expire if the Applicants fail to obtain a zoning permit, where required, within one (1) year from the date of issuance of the written decision.

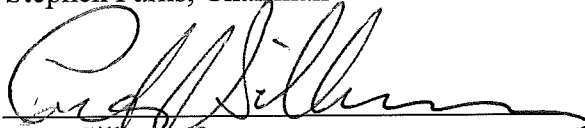
The signatures on the following page evidence this decision represents the majority opinion of the Zoning Hearing Board and the dissent of one (1) member of the Zoning Hearing Board.

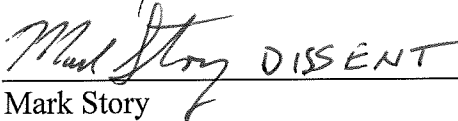
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Longswamp Township Zoning Hearing Board:

By:   
Stephen Parks, Chairman

By:   
Peter Silbermann

By:  DISSENT  
Mark Story

Date of Issuance of Written Decision: 7/5/18

**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.**