

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2017-9
APPLICATION OF WIDALYS RUIZ AND :
LUZ VALEZQUEZ :

DECISION

I. FINDINGS OF FACT

1. Applicants are Widalys Ruiz and Luz Valezquez, 2448 Ellendale Drive, Lancaster, Pennsylvania 17602 ("Applicants").

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

3. The Property is located in the Residential 2 (R2) District as shown on the Official Zoning Map of East Lampeter Township.

4. Applicant Luz Valezquez is the owner of the Property.

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 July 27, 2017.

7. Testimony at the hearing was stenographically recorded.
8. Applicants appeared personally at the hearing.
9. Applicants have requested a special exception pursuant to Section 6020.C.6 and Section 23370 of the Zoning Ordinance.
10. Applicants had also requested a variance from the terms of Section 23220.C.2, but that variance request was withdrawn at the hearing as unnecessary.
11. Applicants orally amended their application at the hearing to request a variance from the terms of Section 23370.D.3 of the Zoning Ordinance.
12. Section 6020.C.6 of the Zoning Ordinance permits minimal impact home occupations by special exception subject to the provisions of Section 23370 of the Zoning Ordinance.
13. Section 23370.D.3 of the Zoning Ordinance states that the maximum area devoted to the home occupation shall not be greater than 30% of the floor area of the dwelling or 750 square feet, whichever is less.
14. The Property is improved with a single family dwelling.
15. Applicant Luz Valezquez resides within the dwelling.
16. The dwelling contains approximately 2,288 square feet of floor space.
17. Applicants proposes to operate a child day care business within a portion of the dwelling. More specifically, the area of the dwelling to be used for the child day care business will be

limited to the basement area of the dwelling, exclusive of the garage area.

18. Applicants were not able to provide an exact square footage for the proposed child day care area, but it appears that it is more than 30% of the total floor area of the dwelling.

19. The Property is be served by public sewer service and an on-lot well. Both are sufficient for Applicants' proposed use.

20. Both Applicants will be involved in the business. There will be no other nonresident employees of the home occupation.

21. There will be no retail sales at the Property.

22. The exterior appearance of the dwelling shall be maintained as a residence.

23. There will be no storage or display of goods which will be visible from outside the dwelling.

24. There will be no external storage of materials or products.

25. No explosive or highly combustible materials will be stored on the premises.

26. There are no deliveries of materials and goods associated by with the use.

27. The proposed use will not generate waste products or material of a quality or quantity not normally associated with a residential use.

28. There is sufficient parking on the Property for the dwelling and child day care use.

29. There will be no more than four children at the day care who are not family members.

30. No persons appeared in opposition to the application.

II. CONCLUSIONS OF LAW

1. An applicant for a special exception has the burden of persuasion 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).

2. Section 6020.C.6 of the Zoning Ordinance permits minimal impact home occupations by special exception within the Agricultural District subject to the provisions of Section 23370 of the Zoning Ordinance.

3. With the exception of Section 23370.D.3, Applicants have satisfied the requirements for a special exception pursuant to Section 6020.C.6 and Section 23370 of the Zoning Ordinance.

4. Applicants require a variance from the terms of Section 23370.D.3 of the Zoning Ordinance.

5. 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.

6. 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).

7. The layout of the dwelling warrants the granting of the requested variance.

8. Applicants have presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

9. Conditions must be imposed on the granting of the special exception and variance in order to preserve and protect the surrounding neighborhood and the purposes 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 Widalys Ruiz and Luz Valezquez for: (i) a special exception pursuant to Section 6020.C.6 and Section 23370 of the Zoning Ordinance; and (ii) a variance from the terms of Section 23370.D.3 of the Zoning Ordinance. This special exception and a 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. Applicants shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicants shall at all times comply with and adhere to the information and representations submitted with and contained in their application and the evidence presented to the Board at the hearing held on July 27, 2017.

3. There shall be a maximum of four (4) non-family member children at the day care business.

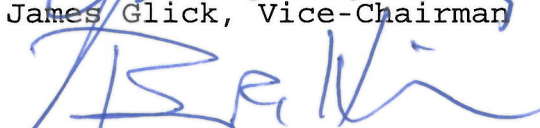
4. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

5. The foregoing Decision shall be binding upon the Applicants and their heirs and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Vice-Chairman



Bryan High, Alternate



Dan Przywara, Alternate

Dated and filed August 10, 2017, after hearing held
on July 27, 2017.

The undersigned certifies that a copy of this Decision was
served upon all parties on or prior to August 11, 2017.

