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October 6, 2021

**Via Certified Mail**  
**Return Receipt Requested**  
**No.7020 2450 0001 6269 2400**

M. Joseph Clement, Esquire  
Wisler Pearlstine, LLP  
460 Norristown Road  
Blue Bell, PA 19422

**Re: J&V Lawn Service, LLC**  
**Lower Providence Township Zoning Hearing Board Application #Z-21-16**

Dear Mr. Clement:

In accordance with the initial application filed on June 29, 2021, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board.

Yours very truly,



Keith B. McLennan

KBM/jds  
Enclosure

Pc: George Ozorowski, Esq. Chairman  
Joseph Pucci Vice-Chairman  
Kathie A. Eskie  
Gail Hager  
Tina Blain  
Joe Lulis

Patricia Alzamora  
Christopher Gerdes  
Randy Klein  
Michael Mrozinski

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO.	Z-21-16	:	HEARING DATE:	July 22, 2021 and August 26, 2021
		:		
APPLICATION OF:		:		
	J & V Lawn Service, LLC	:		
	PO Box 1473	:		
	Blue Bell, PA 19422	:		
		:		
PROPERTY:		:		
	3476 to 3480 Germantown Pike	:		
	Lower Providence Township	:		
	Collegeville, PA 19426	:		
	Parcel No. 43-00-05173-00-4	:		

**OPINION, DECISION AND ORDER OF THE  
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

On June 29, 2021, Applicant, J & V Lawn Service, LLC, filed an application requesting relief from Section 143-110 of Lower Providence Township Zoning Ordinance (the "Ordinance"), with an additional proposed use as a landscape and snow removal business headquarters which is the same general character as a garden supply center which is permitted by special exception. Applicant also proposes to provide vehicle garage and repair service to the general public. Applicant also seeks relief from Section 143-111 and Section 143-113 of The Ordinance pertaining to obtaining Conditional Use authorization. The property is located at 3476-3480 German Town Pike and is in the HC (Highway Commercial) Zoning District.

1. The application was properly advertised, and a public hearing began before the Lower Providence Township Zoning Hearing Board (the "Board") on July 22, 2021. The following members of the Board were present: Chairperson Joseph Pucci, members Kathie Eskie, Gail Hager, Chris Gerdes, and Randy Klein. Also present were Keith McLennan, Solicitor, and Mike Mrozinski, Community Development Director. Following the taking of testimony, the Board granted Applicant's request for a continuance to address certain legal

questions. The hearing reconvened on August 26, 2021. The following members of the Board were present: Chairperson George Ozorowski, Members Patricia Alzamora, Kathy Eskie, Gail Hager, and Chris Gerdes. Also present were Keith McLennan, Solicitor, and Mike Mrozinski, Community Development Director. George Ozorowski reviewed the recording of the proceedings from July 22, 2021, and there was no objection to him participating in the decision. Applicant amended its request to: (1) a special exception request to allow for the landscaping headquarters on the property; and (2) a special exception request to allow for a change in non-conforming use.

### **FINDINGS OF FACT**

2. The Applicant is J&V Lawn Services, LLC (“Applicant”).
3. The Applicant was represented by M. Joseph Clement, Esq.
4. The subject property is comprised of an approximately 2.5 acre parcel with tax parcel number 43-00-05173-00-4 located at 3476 to 3480 Germantown Pike (hereinafter the “Property”).
5. Applicant is the equitable owner of the Property.
6. The applicable zoning district is the HC (Highway Commercial).
7. Currently existing on the property are: (1) a warehouse and office building; (2) a repair shop and office building; (3) a communication tower; and (4) a parking lot.
8. The warehouse building is an expansion of an existing home and includes a partial basement, a one-bedroom apartment, a conference room, storage area, a warehouse, showroom, and office facilities. There is also a vehicle “wash bay” that is attached to the Warehouse Building.
9. There are currently three uses on the property: (1) the Mobile Lifts, LLC business; (2) the residential/apartment use; and (3) the communications tower use.

10. Applicant proposes two additional uses: (1) a landscape business; and (2) an auto repair business.

11. There is an existing business on the property known as Mobile Lifts, LLC which currently operates on the property.

12. Mobile Lifts, LLC is primarily comprised of the sale, service, and rental of new and used aerial lifting equipment and vehicles.

13. This business has been ongoing since 1969.

14. Applicant wishes to maintain the current uses and add a third use, the proposed landscaping and snow removal business use.

15. Applicant and its related business entities will primarily occupy the Shop Building.

16. Applicant will use the property as a business headquarters and to park equipment, trailers, and vehicles.

17. Applicant will have two work bays in the shop building designated for use by Mobile Lifts, LLC.

18. The vehicle wash bay will be used by both Applicant and Mobile Lifts, LLC to clean equipment.

19. Mobile Lifts, LLC has approximately 10 employees that come and go from the property.

20. The residential use will be an accessory to the landscape business and only used for employees or principles of the business.

21. The Property has over 100 parking spaces.

22. The current uses are pre-existing nonconforming uses.

23. Applicant generally has fifteen to twenty-five employees at any given time.

24. There is a similar landscaping business in the neighborhood.
25. The apartment and business use existing on the property are permitted under the Ordinance.
26. The communication tower use is permitted with special exception under the Ordinance.
27. Because there are three uses on the property, the zoning code requires a conditional use.
28. Therefore, the current uses are preexisting, non-conforming uses.
29. The landscape business is similar enough to a nursery yard to fall within the special exception uses.
30. Applicant amended its request to: (1) a special exception request to allow for the landscaping headquarters on the property; and (2) a special exception request to allow for a change in non-conforming use.
31. The Township asked for certain conditions to be included in the relief granted:
  - a. Installation of vegetative screening between the edge of pavement to the rear edge of utility pole from a spot opposite the northerly edge of driveway at 133 Anne Grange southerly to join the existing vegetative screening, and the second stretch between the fence and the rear edge of utility pole from the southmost edge of emergency access to the rear property line.
  - b. The emergency access gate is to be used for emergency response and very limited tractor trailer delivery (WB-50 or larger).
  - c. Prior to occupancy, the property owner will submit and have approved an outside storage plan and shall stripe the required parking spaces for each new

and proposed use in accordance with Township ordinances.

- d. After one year of operation, a site usage review and inspection will be conducted by the Township. Any fire safety, traffic or other code non-compliant issues shall be corrected within 30 days.
- e. Full circulation access around the building at 3476 Germantown is to be maintained for fire department function.

32. The following exhibits were included in the record of the hearing:

A – 1 Appeal Application and Addendum.

A – 2 Board of Assessment Record Map.

A – 3 Google Map of the Property.

A – 4 Sketch Plan.

B – 1 Letter of Notice.

B – 2 Matrix of Property Owners Notified by Mail.

B – 3 Certificate of Notification.

B – 4 Certificate of Posting.

B – 10 Letter of Conditions from Board of Supervisors.

## **DISCUSSION**

### **I. Statement of the Case**

Applicant requests a special exception under **§143-150** of the Lower Providence Township Zoning Ordinance to permit a change in use to include a landscape and snow plowing business akin to a garden supply center or nursery that is permitted in the Highway Commercial District under **§143-110.I**.

### **II. Highway Commercial District**

According to Section 143-111 of the Ordinance, “a combination of two or more Class One, Two or Three permitted uses may be permitted by The Board of Supervisors as a conditional use, meeting the standards of §143-113.” The Board of Supervisors has exclusive jurisdiction to grant such a conditional use. However, Section 143-150 of the Ordinance permits the zoning hearing board to grant a special exception to an applicant to change the existing non-conforming use on a property.

### **III. Special Exceptions**

A special exception is a conditionally permitted use, which the municipal legislative body has determined to be appropriate in the zoning district if specific standards set forth in the zoning ordinance are met. Mehring v. Zoning Hearing Bd. of Manchester Twp., 762 A.2d 1137, 1139 (Pa. Commw. 2000); In re Brickstone Realty Corp., 789 A.2d 333, 340 (Pa. Commw. 2001)(citing Bray v. Zoning Bd. of Adjustment, 410 A.2d 909, 911 (Pa. Commw. 1980)). A special exception is not an exception to a zoning ordinance, but rather it is an exception to a use, which is expressly permitted, absent a showing of a detrimental effect on the community. Greaton Properties, Inc. v. Lower Merion Twp., 796 A.2d 1038, 1045 (Pa. Commw. 2002); Freedom Healthcare Services, Inc. v. Zoning Hearing Bd. of City of New Castle, 983 A.2d 1286, 1291 (Pa. Commw. 2009); Morrell v. Zoning Hearing Bd. of Borough of Shrewsbury, 17 A.3d 972, 975 (Pa. Commw. 2011). A nonconforming use is converted into a permitted use by Special Exception once it is zoned for that use in the township zoning ordinance. Pennridge Development Enterprises, Inc. v. Volovnik, 624 A.2d 674, 676 (Pa. Commw. 1993).

To establish entitlement to a special exception, the applicant must initially prove that the proposed use complies with the specific, objective criteria set forth in the zoning ordinance. Mehring v. Zoning Hearing Bd. of Manchester Twp., 762 A.2d 1137, 1139 (Pa. Commw. 2000).

An applicant for a special exception has the burden of establishing by competent evidence and testimony both: (a) that the applicant's application falls within the provisions of the ordinance which accords to the applicant the right to seek a special exception; and (b) that the allowance of a special exception will not be contrary to the public interest. See Section 143-168(D).(1). When determining whether the grant of a special exception is contrary to the public interest, the Zoning Hearing Board will consider whether the application, if granted, will:

- (a) Substantially increase traffic congestion in the streets surrounding the subject site;
- (b) Increase the risk of fire or panic or otherwise endanger the public safety;
- (c) Overcrowd the land or create undue concentration of population;
- (d) Be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of this chapter;
- (e) Intrude upon the adequacy of natural light and air to adjoining properties;
- (f) Create extraordinary burdens on public, private or community water systems or upon ground waters or wells within the neighborhood;
- (g) Overburden the public sanitary sewer system within the Township occasion environmental problems with on-site sanitary sewer installations;
- (h) Place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood;
- (i) Cause adverse effects to the appropriate use of adjacent properties in the neighborhood where the property is located;
- (j) Cause risk or danger to the safety of persons or property by improper location or design of facilities for ingress and egress to and from the property in question; or
- (k) Otherwise adversely affect the public health, safety, morals or general public welfare of the community. LPTZO Section 143-168(D).(3).

#### **IV. Facts Applied to the Legal Standard.**

Applicant requests a special exception under §143-150 of the Lower Providence Township



Zoning Ordinance to permit a change in use to include a landscape and snow plowing business akin to a garden supply center or nursery that is permitted in the Highway Commercial District under §143-110.I.

#### **A. Current Non-Conforming Use**

The Property is zoned HC (Highway Commercial) which permits a variety of uses. Currently, the Property has three such uses which would be permissible under the Ordinance. These include the current business operating under the name Mobile Lifts, LLC, the residential apartment use, and the communication tower use. Under the Ordinance, the use of a communication tower would normally require a special exception, however, the communication tower was constructed prior to the establishment of the current Ordinance.

While all three current uses are separately permitted under the Ordinance, they would require conditional use relief under the Ordinance under Section 143-11 which states that “a combination of two or more Class One, Two or Three permitted uses may be permitted by the Board of Supervisors as a conditional use. . . .” Due to this, the existence of all three uses on this property that predate the current Ordinance constitute a preexisting non-conforming use.

As a preexisting non-conforming use, Section 143-150 of the Ordinance permits the Board to grant a special exception to Applicant allowing for a change of a non-conforming use. Based upon this, the Applicant in this matter amended and clarified its position to request such a change in non-conforming use.

#### **B. Special Exception**

Applicant first must establish a right to request the special exception under the zoning ordinance. Here, as discussed above, Applicant is requesting a change in non-conforming use that will not increase the number of uses on the Property. Applicant is seeking to add a use in the form

of a landscaping business that will replace the current residential use on the Property. The residential use would then become ancillary to the landscaping business through certain conditions placed on the relief granted. Therefore, Applicant has established the right to request a special exception under Section 143-150 of the Ordinance.

Second, the Applicant must show that allowing the special exception will not be contrary to the public interest. The relief granted along with the conditions set upon that relief are not contrary to the public interest. The requested relief will not substantially increase traffic congestion in the streets surrounding the subject site. There is adequate parking, and the traffic patterns in the area allow for such a business to operate. Further, the Property is already in commercial use that is substantially similar to the proposed use.

The fact that Applicant intends to use the existing structures on the property weigh heavily in favor of the Application. Due to this, there is no additional risk of overcrowding, intrusion upon natural light and air to adjoining properties, no additional burdens to public utilities or service, or additional risks of danger. The property also consists of a large parking area that would alleviate any potential concerns of parking congestion in the area. Finally, the proposed uses are all permitted in one form or another under the Ordinance in this district. The fact that they will all occur on the same property in the manner in which Applicant proposes will not adversely impact public health, safety, morals, the public welfare, or otherwise alter the character of the neighborhood.

### **CONCLUSIONS OF LAW**

(1) Applicant's application falls within the provisions of the ordinance which accords to the Applicant the right to seek a special exception.

(2) Allowance of a special exception will not be contrary to the public interest.

## **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

The Application of J&V Lawn Service, LLC docket #Z-21-16 for a special exception under §143-150 of the Lower Providence Township Zoning Ordinance to permit a change in use to include a landscape and snow plowing business akin to a garden supply center or nursery that is permitted in the Highway Commercial District under §143-110.I. is **GRANTED** subject to the following conditions:

1. Installation of vegetative screening between the edge of pavement to the rear edge of utility pole from a spot opposite the northerly edge of driveway at 133 N Grange southerly to join the existing vegetative screening, and a second stretch between the fence and the rear edge of utility pole from the southmost edge of emergency access to the rear property line.
2. The emergency access gate is to be used for emergency response and very limited tractor trailer delivery (WB-50 or larger).
3. Prior to occupancy, the property owner will submit and have approved an outside storage plan and shall stripe the required parking spaces for each new and proposed use in accordance with Township ordinances.
4. After one year of operation, a site usage review and inspection will be conducted by the Township. Any fire safety, traffic or other code non-compliant issues shall be corrected within 30 days.
5. Full circulation access around the building at 3476 Germantown is to be maintained for fire department function.

6. The two existing residential apartments shall be ancillary to the seasonal snow plowing business and used solely by employees or leadership of the Applicant not to exceed 4 individuals in each and not for leasing or use by the general public.

7. The existing nonconforming garage use shall not be accessible to or used to service the general public.

8. Should the Applicant wish to add or expand the nonconforming garage use or the property generally, it shall seek a conditional use approval under section §143-113 of the ordinance which under the Municipalities Planning Code 53 P.S. §10909.1.(b)(3) vests exclusive jurisdiction for same with the Lower Providence Township Board of Supervisors.

Dated: September 28, 2021

## **ORDER**

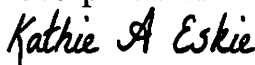
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

### **LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**



George Ozorowski

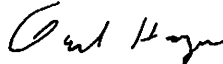
Joseph Pucci




Kathie Eskie



Patricia Alzamora



Gail Hager



Christopher Gerdes, Alternate

Randy Klein, Alternate

## **NOTICE TO APPLICANT**

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.