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November 4, 2022

VIA CERTIFIED MAIL
RRR#: 7020 2450 0001 6265 2183

Joseph Clement, Esquire
Wisler Pearlstine, LLP
460 Norristown Road, Suite 110
Blue Bell, PA 19422

RE: Lower Providence Township Zoning Hearing Board
Applicant: J&M Pet Resorts, LLC
Z-22-16

Dear Mr. Clement:

In accordance with the Zoning Application filed on September 1, 2022, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board. Please note that if you have any objections to the Order, you have thirty (30) days from its date to file an appeal with the Court of Common Pleas in Norristown.

Yours very truly,



Keith B. McLennan

KBM/

Pc: George Ozorowski, Esq. Chairman
Joseph Pucci Vice Chairman
Kathie A. Eskie
Gail Hager

Christopher Gerdes
Randy Klein
Michael Mrozinski
Tina Blain

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-22-16	: HEARING DATE:	September 22, 2022
		:	
		:	
APPLICATION OF:		:	
J&M Pet Resorts LLC		:	
1156 William Penn Drive		:	
Bensalem, PA 19020		:	
		:	
PROPERTY:		:	
2550 Eisenhower Ave. Suite C210		:	
Lower Providence Township		:	
43-00-03724-00-4		:	

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

A public hearing on the application (“Application”) concerning the above captioned premises (the “Property” or “Subject Property”) was held on September 22, 2022 before the Zoning Hearing Board of Lower Providence Township (the “Board”) in the Township Administration Building, 100 Parklane Drive, Eagleville, PA, (the “hearing”) pursuant to notice as required by the Lower Providence Township Zoning Ordinance (the “Ordinance”) and the Pennsylvania Municipalities Planning Code (the “MPC”). After consideration of the Application and the testimony, exhibits and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

Procedural Matters

1. Application before Zoning Hearing Board

On September 1, 2022, J&M Pet Resorts LLC (“Applicant”) tenant of 2550 Eisenhower Ave., Suite C210 in Lower Providence Township filed an application seeking a Special Exception pursuant to 143-136.A of the Ordinance to authorize the use of the Property as a kennel in the IP Zoning District.

2. Notice and Hearing

The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on September 22, 2022, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the September 22, 2022, hearing were: Kathie Eskie, acting Chair and members Gail Hager, Chris Gerdes and Randy Klein.

4. Appearances of Counsel

a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.

b. Joseph Clement, Esq. of 460 Norristown Rd., Suite 110, Blue Bell, PA 19422 appeared for the Applicant.

5. Appearance of Other Party - No other party entered their appearance in the matter.

6. Also Present - Mike Mrozinski, the Community Development Director for Lower Providence Township and Paula D. Meszaros, the Court Reporter.

7. Witnesses

a. Madhu Mumthala the applicant’s authorized representative, testified in favor of the Application.

b. Kevin Tennant, Vice-president of franchise operations for K9 Resorts, testified in support of the Application.

c. Joseph Mongeluzi, the project engineer, testified in favor of the Application.

8. Exhibits

a. The Applicant submitted the following exhibits:

A – 1: The Application;

A – 2: A sketch of the fit-out plan which depicts the improvements that will be made to the property if Applicant is granted relief;

A – 3: Two google maps aerial photographs of the subject property.

b. The Board submitted the following exhibits at the hearing:

B – 1: The Certificate of Posting;

B – 2: Certificate of Notification;

B – 3: Letter Sent to Property Owners;

B – 4: Matrix of Addresses;

B – 5: Proof of Publication.

FINDINGS OF FACT

1. The Applicant is J&M Pet Resorts LLC, who is a lessee at the Subject Property located at Pinebrook Business Center II, 2550 Eisenhower Ave., Suite C210, Trooper, PA in Lower Providence Township.

2. The owner of the Subject Property is First Pinebrook Associates LLC c/o Nellis Corporation of 7811 Montrose Road, Suite 240 Potomac, MD 20854.

3. The Subject Property has a tax parcel number 43-00-03724-00-4 and is currently used as offices in a business park.

4. There are currently three buildings on the Property.

5. The Property is on a 5.62 acre lot located in the IP – Industrial Park Zoning District.

6. The Property is serviced by public water and public sewer.

7. There are no outstanding state or federal violations cited on this property at the time of the Application.

8. The Applicant is proposing to rent approximately 8,800 square feet in a building on the Subject Property.
9. The proposed use is classified as a kennel under the Ordinance.
10. Section 143-136.A permits the use of a property in the IP Zoning District to be used as a kennel if the Board grants a special exception under the Ordinance.
11. Applicant intends to make façade improvements, allow for lobby space, office space, dog boarding, two interior play yards, an outdoor group play space, an individual outdoor play space, and a grooming area.
12. Applicant will also provide daytime (non-overnight) daycare services for dogs.
13. The average overnight boarding is 3-7 days.
14. The proposed use would create 4-10 full-time jobs including a manager, front desk workers and pet care technicians.
15. The shifts change around 2:00 PM for front desk workers and 1:00 PM for pet care technicians.
16. The operation runs from 7:00 am to 7:00 pm Monday through Friday.
17. Employees would be at the facility before and after the open hours of the operation.
18. There are 20 parking spaces and Applicant seeks no relief in that regard.
19. Drop off and check-in generally occurs early in the morning.
20. Pickup generally occurs in the evening.
21. The maximum number of dogs would be 141.
22. There will not be staff in the building overnight.
23. There are internal cameras, ADT security, fire suppression (including sprinklers), and fire alarms in the building.

24. Applicant will have a relationship with an emergency veterinarian clinic.
25. The Applicant is required to have general liability insurance under the franchise agreement.
26. Solid waste is removed to a dumpster daily. The dumpster is removed 2-3 times per week.
27. The owner of the property has approved the proposed use.
28. Grooming is only provided for registered guests of the resort and not for the public.
29. There is a reservation system that allows for pre-planning to ensure that there is adequate staff on site for the number of dogs that will be on the premises.
30. Clients are required to pre-register so the drop off procedure is quick preventing any traffic backups in the parking lot.
31. Inside of the building, all the surfaces are non-porous for hygiene.
32. Applicant will use a hospital grade, hydrogen peroxide cleaner.
33. In the outdoor area, applicant will use forever grass which collects any fluids and drains into the ground. Those areas are sanitized with two different cleaners to eliminate bacteria.
34. Dogs are required to be vaccinated.
35. The facility will have additional infrastructure including air sanitation.
36. Each of the separate dog areas have separate air sanitation.
37. The building is designed to prevent dogs from leaving the facilities without authorization.
38. Mr. Tennant testified that they have businesses located in similar locations that have not caused any disturbances to adjacent properties.
39. There is no additional risk of fire or panic.

40. The Proposed Use will not increase traffic congestion in the streets surrounding the subject site.

41. The Proposed Use will not increase the risk of fire or panic or otherwise endanger the public safety.

42. The Proposed Use will not overcrowd the land or create undue concentration of population.

43. The Proposed Use will be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of the Ordinance.

44. The Proposed Use will not intrude upon the adequacy of natural light and air to adjoining properties.

45. The Proposed Use will not create extraordinary burdens on public, private or community water systems or upon ground water or wells within the neighborhood;

46. The Proposed Use will not overburden the public sanitary sewer system within the Township nor occasion environmental problems with on-site sanitary sewer installations.

47. The Proposed Use will not place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood.

48. The Proposed Use will not cause adverse effects to the appropriate use of adjacent properties in the neighborhood where the property is located.

49. The Proposed Use will not 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.

50. The Proposed Use will not otherwise adversely affect the public health, safety, morals or general public welfare of the community.

DISCUSSION

I. Statement of the Case

The Applicant is seeking a Special Exception pursuant to 143-136.A of the Ordinance to authorize the use of the Property as a kennel in the IP Zoning District.

II. Ordinance Subsections in Question

Section 143-136(A) permits the use of a property in the IP Zoning District to be used as a kennel if the Board grants a special exception under the Ordinance.

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).

Under §143-168D.(1) of the Ordinance, 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. When determining whether the grant of a special exception is contrary to the public interest, §143-168D.(3) of the Ordinance the Zoning Hearing Board must 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.

IV. Facts Applied to the Legal Standard.

The Applicant is seeking a Special Exception pursuant to 143-136.A of the Ordinance to authorize the use of the Property as a kennel in the IP Zoning District. Initially, Applicant has the burden to demonstrate that the proposed use falls within the provisions of the ordinance which accords to the Applicant the right to seek a special exception. Applicant has provided substantial evidence that it intends to provide kennel services in the Subject Property. Applicant provided detailed information about the operation of the services, the proposed buildout, and the various precautions and safety measures intended to be pursued. Therefore, Applicant has established that it intends to operate a kennel on the Property. Section 143-136.A permits the use of a property in the IP Zoning District to be used as a kennel if the Board grants a special exception under the Ordinance. Therefore, Applicant has met its burden to show that the Proposed Use falls within the provisions of the ordinance which accords to the Applicant the right to seek a special exception.

Following this, the Board must determine whether the exception will be contrary to the public interest. The Ordinance provides several criteria listed above to make this determination. Applicant has provided substantial testimony about the operation of the kennel, including the experience of the franchisor in other similar operations. This includes a sophisticated registration process to speed up pickup and drop off. Due to this, there will be less congestion during these time periods, and the parking space allocated to the property will be adequate to accommodate the business.

Further, the use will not increase the risk of fire or panic or otherwise endanger the public safety. In fact, there will be robust security and fire safety mechanisms that will diminish such risks. Similarly, the use of the property as a kennel will not overcrowd the land or create an undue concentration of population.

Based on the description of the property, the operation, and the testimony relating to

similar businesses, the Applicant has shown that the property is adequate for the Proposed Use, and it would be consistent with the spirit of and purpose of the chapter to grant the exception. There will be no additional intrusion upon light for the adjoining properties, and there will be no overly taxing uses of the water or sewer systems.

Finally, there was adequate testimony from the franchisor relating to the operation of similar businesses to show that there will be no adverse impact to the surrounding areas. Based upon this expertise and experience, the location of the proposed use is appropriate and will not be contrary to the public interest.

The Board finds and concludes that the Applicant's requested relief should be Granted.

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&M Pet Resorts LLC docket #Z-22-16 for a Special Exception under Section 143-136.A of the Lower Providence Township Zoning Ordinance to allow the use of the Subject Property as a kennel in the IP -Industrial Park Zoning District is GRANTED.

Dated: November 2, 2022

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

George Ozorowski

Joseph Pucci

Kathie Eskie

Gail Hager

Christopher Gerdes

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.

ORDER

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

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