

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-15-03	:	HEARING DATE: June 25, 2015
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	:	
APPLICATION OF:	:	
Lower Providence	:	
Rod and Gun Club	:	
	:	
PROPERTY:	:	
2857 Egypt Road	:	
Audubon, PA 19407	:	
Parcel No. 43-00-03694-00-7	:	

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

The applicant Lower Providence Rod and Gun Club (hereinafter the “Applicant”) filed an application requesting a Special Exception pursuant to Section 143-27(A)(7)(b) of the Lower Providence Township Zoning Ordinance (hereinafter the “LPTZO”) to allow the expansion of its clubhouse and indoor shooting range facility by 4,840 square feet and to construct a 3,000 square foot multiple purpose building. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (hereinafter the “Board”) on June 25, 2015 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present. Robert Hardt recused himself from consideration of the matter citing the fact that he is a member of the Applicant club and maintains a long-time friendship with the Applicant’s President. Patricia Alzamora, alternate was designated to participate as a voting member of the Board. Also present were Keith McLennan, the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code enforcement and Paula Meszaros, the Court Reporter.

FINDINGS OF FACT

1. The Applicant is the Lower Providence Rod and Gun Club.
2. The Applicant is the owner of the subject property located at 2857 Egypt Road, Audubon, PA 19407 (hereinafter the "Property"). The parcel identification number of the Property is 43-00-03694-00-7.
3. The Applicant was represented by Michael E. Furey, Esquire of 1043 S. Park Avenue, Audubon, PA 19403.
4. Testimony was provided by William Cassidy, President of the Applicant, and Barry G. Stingel, Landscape Architect and Project Consultant.
5. No protestant(s) appeared at the hearing.
6. The Property is located within the R-2 Residential District.
7. The present use of the Property is as a private, members only, Pennsylvania non-profit corporation, providing an indoor and outdoor recreational firing range for a variety of shooting sports.
8. Applicant has approximately 1600 members spread over four (4) divisions including Rifle, Pistol, Archery, and Shotgun.
9. The Applicant commenced acquiring the Property in 1954.
10. The Property is approximately 47 acres.
11. The Property is served by public water and sewer.
12. The following exhibits were marked at the hearing:
 - A-1 Application and Narrative.
 - A-2 Zoning Officer Determination.

- A-3 LPRGC Non-Profit Corporation Information.
- A-4 Board of Assessment Records and Tax Map.
- A-5 Deeds to the Property.
- A-6 Curriculum Vitae of Barry Stingel, Landscape Architect.
- A-7 Curriculum Vitae of Kyle Fauth, Architect.
- A-8 Existing Conditions Plan for the Applicant from Advanced GeoServices dated May 5, 2015.
- A-9 Site Plan with proposed additions for the Applicant also from Advanced GeoServices dated May 5, 2015.

13. The non-profit recreational use predated the enactment of the Zoning Ordinance in 1955.

14. The application seeks expansion of the existing clubhouse and indoor range facility by 4,840 square feet and construction of a 3,000 square foot multiple purpose building.

15. The Clubhouse is used as a classroom and for regular and social meetings.

16. The proposed 3,000 square foot multiple purpose building will serve as storage, will accommodate the existing members and will not expand the outside range.

17. All dimensional and parking requirements have been met.

18. Applicant seeks a Special Exception pursuant to Section 143-27(A)(7)(b) of the LPTZO which provides that non-profit recreational uses are permitted by Special Exception in residential districts.

19. The proposed use will not be injurious to the public interest.

DISCUSSION

The Applicant has requested a Special Exception pursuant to Section 143-27(A)(7)(b) of the Lower Providence Township Zoning Ordinance, which provides that nonprofit recreational uses are permitted by Special Exception in all residential zoning districts upon approval by the Zoning Hearing Board. The request seeks approval of proposed plans to expand the existing clubhouse and indoor range facility by 4,840 square feet and to construct a 3,000 square foot multiple purpose building.

The Law of 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 thus not an exception to a zoning ordinance, but rather 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. Penridge Development Enterprises, Inc. v. Volovnik, 624 A.2d 674, 676 (Pa. Commw. 1993).

Establishing a Right to a Special Exception

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. LPTZO 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 groundwaters 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).

Moreover, a municipal board is permitted to impose reasonable conditions on the use of a property to mitigate any potential adverse impacts from the proposed use. Section 913.2 of the Pennsylvania Municipalities Planning Code, Feldman v. Board of Supervisors of East Caln Twp., 48 A.3d 543, 548 (Pa. Commw. 2012).

Applicant's Use

Applicant's use is consistent with the criteria established in the LPTZO at Section 143-27(A)(7)(b) as a nonprofit recreational use. The Applicant Club is a private members only club, and does not rent ranges or firearms as a for-profit facility would. Applicant has operated its club on the Property since 1954, and has a positive relationship with the surrounding neighbors. As this special exception will expand on the existing use of the property for the same purpose and has not been injurious to the public interest, the proposed expanded use, with its enhancements of indoor range noise reduction and continued focus on safety in club operations, will not be injurious to the public interest. The proposed use will benefit the public as it will reduce noise in its indoor range by improving the Property's sound absorption structures. In addition, William Cassidy, President of the Applicant testified that in order to reduce the impact on the public, the Applicant's policy is that "the outdoor ranges are not open until 11 o'clock Sundays and holidays" excepting: a) those occasions where there are "...out of state competitors and matches..." and the club board granted an early shoot at 9 o'clock, typically 3 times a year "...but has happened upwards of 5..." or b) steel matches on Sundays 2 times "...out of the whole entire year" which were finished for the

year.¹ The ordinance therefore permits the expansion of a nonprofit recreational use in a residential district as a special exception.

Accordingly, the Board grants the Special Exception requested by the Applicant.

CONCLUSIONS OF LAW

1. Applicant has standing to appear before the Board regarding the requested relief.
2. The proposed use will have no adverse effect on the public interest.
3. The relief requested should be granted because the proposed use is a permitted use by special exception as a nonprofit recreational use under Section 143-27(A)(7)(b) of the LPTZO.
4. The requested relief is necessary to enable the Applicant reasonable use of the Property.
5. The proposed expansion of the nonprofit recreational facility will not be injurious to the public interest and could benefit the public as it will reduce noise from the indoor range by improving the that range's sound absorption attributes.

DECISION

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

The application for a Special Exception pursuant to Section 143-27(A)(7)(b) of the Lower Providence Township Zoning Ordinance is GRANTED.

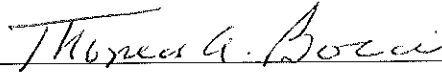
Dated: August 7, 2015

¹ The Board's approval was rendered based in part upon this testimony. The Board Chairman received a complaint from a resident on Sunday, July 12, 2015 that shooting occurred before 11 AM. Applicant's event schedule, posted on its website makes no reference to a competition or early shooting event on July 12th. The Board expects that to promote harmony in the community the Applicant will enforce its policy restricting shooting on the outside range before 11 AM on Sundays and Holidays consistent with the statement by the Applicant's president "...to be neighborly..." and to honor the Applicant's avowed intention that "...we want to be friendly with the neighbors, we love the neighbors and a lot of the neighbors are members."

ORDER

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

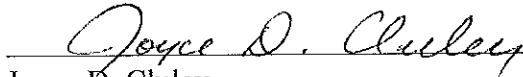
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



Thomas A. Borai, Chairman

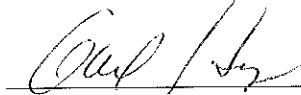


Kathie A. Eskie, Vice Chairwoman

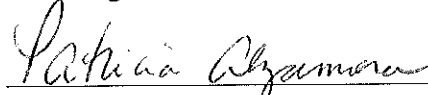


Joyce D. Chuley

Robert G. Hardt



Gail Hager



Patricia Alzamora, Alternate

Joseph Pucci, 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.