OFFICE OF THE PROTHONOTARY
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Prothonotary
Bryan D. Walters

First Deputy
Elizabeth Doan

MAR 12 2010

Board of Supervisors of East
Fallowfield Township

Plaintiff

v.

The Zoning Hearing Board of East
Fallowfield Township
Defendant

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY, PENNSYLVANIA

Case Number 2010-02575

WRIT OF CERTIORARI

TO THE HONORABLE, THE JUDGES WITHIN NAMED:

The plea within mentioned, with all things touching the same so fully and entire, as before me they remain. I hereby respectfully certify and send, as within I am commanded, together with the writ.

Signature and Title Date

CHESTER COUNTY COURT OF COMMON PLEAS
CIVIL COVER SHEET

10 - 02575

Do not staple or attach on this side

2010 NOV -5 PM 4:10

1. CASE CAPTION: **IA. CASE NO.:**

BOARD OF SUPERVISORS
OF EAST FALLOWFIELD
TOWNSHIP V.
ZONING HEARING BOARD
OF EAST FALLOWFIELD
TOWNSHIP

2. PLAINTIFF(s): (Name, address)

BOARD OF SUPERVISORS OF EAST
FALLOWFIELD TOWNSHIP
2264 Strasburg Road
East Fallowfield, PA 19320

3. PLAINTIFF'S or (circle one)
DEFENDANT'S COUNSEL: (FILING ATTORNEY)
(Name, firm, address, telephone and attorney ID#)

Vincent M. Pompo ID 37714
Mark P. Thompson ID#86338
LAMB McERLANE PC
24 East Market St., P.O. Box 565
West Chester, PA 19381-0565
(610) 430-8000

4. DEFENDANT(s): (Name, address)

ZONING HEARING BOARD OF EAST
FALLOWFIELD TOWNSHIP
2264 Strasburg Road
East Fallowfield, PA 19320

5. ARE THERE, ANY RELATED CASES?
(see C.C.R.C.P. 200B)

☒ Yes ☐ No

IF YES, SHOW CASE NOS. AND CAPTIONS:

2009-14025-LU BOARD OF SUPERVISORS OF EAST FALLOWFIELD TOWNSHIP V. ZONING HEARING BOARD OF EAST FALLOWFIELD TOWNSHIP

6. IF THIS IS AN APPEAL FROM A DISTRICT JUSTICE JUDGMENT, WAS APPELLANT ☐ **PLAINTIFF OR** ☐ **DEFENDANT IN THE ORIGINAL ACTION?**

7. CASE CODE: ZU-L **DESCRIPTION:** (see reverse side) ZONING APPEAL

8. IS THIS AN ARBITRATION CASE? ☐ Yes ☐ No _____ **JURY TRIAL DEMANDED**
(Arbitration Limit is $50,000. See C.C.R.C.P. 1301. 1)

ARBITRATION CASES ONLY

An Arbitration hearing in this matter is scheduled for at in the Jury Lounge, Chester County Court House, West Chester, PA. The parties and their counsel are directed to report to the Juror's Lounge for an arbitration hearing in this matter on the date and time set forth above.

This matter will be heard by a Board of Arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial *de novo* on appeal from a decision entered by a judge.

NOTICE OF TRIAL LISTING DATE

Pursuant to C.C.R.C.P. 249.3, if this case is not subject to compulsory arbitration it will be presumed ready for trial twelve (12) months from the date of the initiation of the suit and **will be placed on the trial list one (1) year from the date the suit was riled** unless otherwise ordered by the Court.

To obtain relief from automatic trial listing a party must proceed pursuant to C.C.R.C.P. 249.3(b), request an administrative conference and obtain a court order deferring the placement of the case on the trial list until a later date.

FILE WITH: Prothonotary of Chester County, 201 West Market Street, Suite 1425 P.O. Box 2746 West Chester, PA 19380-0989

THIS COVER SHEET IS REQUIRED BY C.C.R.P. 1018.1 N AND MUST BE SERVED UPON ALL OTHER PARTIES TO THE ACTION IMMEDIATELY AFTER FILING. SUBMIT ENOUGH COPIES FOR SERVICE

SEE REVERSE SIDE FOR CASE CODES AND DESCRIPTIONS (DETACH PRIOR TO FILLING OUT)

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Attorneys for Appellant, Board of Supervisors of East Fallowfield Township

BOARD OF SUPERVISORS OF EAST FALLOWFIELD TOWNSHIP 2264 Strasburg Road East Fallowfield, PA 19320	:	IN THE COURT OF COMMON PLEAS
	:	CHESTER COUNTY, PENNSYLVANIA
Appellant,	:	
	:	CIVIL ACTION – LAND USE APPEAL
v.	:	NO.
ZONING HEARING BOARD OF EAST FALLOWFIELD TOWNSHIP 2264 Strasburg Road East Fallowfield, PA 19320	:	
	:	
Appellee.	:	

2010 MAR -5 PM 4:10
CHESTER COUNTY
PENNSYLVANIA

NOTICE OF LAND USE APPEAL

The Board of Supervisors of East Fallowfield Township ("Township" or "Appellant") hereby appeals the February 4, 2010 Decision and Order of the Zoning Hearing Board of East Fallowfield Township, attached as Exhibit "A", granting the Application of Andrew and Keighley Jeremias for a special exception pursuant to Section 702.3A of the East Fallowfield Township Zoning Ordinance for a Home Occupation as set forth in Section 1712.B of the Zoning Ordinance and further granting variance relief from the provisions of Section 1712.B of the Zoning Ordinance and in support of its appeal avers as follows:

I. Background

1. Andrew and Keighley Jeremias (the "Applicants") own and reside in a single family residence located on a property with an address at 125 Watch Hill Road, East Fallowfield, PA 19320 also identified as Tax Parcel No. 47-5-251. (the "Property").

2. The Property is located in the Providence Hill Residential Development.

3. The Applicants applied for a special exception pursuant to Section 702.3.A of the Zoning Ordinance to permit a Home Occupation in accordance with Section 1712.B of the Zoning Ordinance.

4. The Applicants propose to operate a Hair Salon known as Kiki's located in the finished basement of their single family dwelling.

5. Section 1712.B(7) of the Zoning Ordinance provides that Home Occupations shall have a minimum of two off-street parking spaces in addition to those required for the residence.

6. The Applicants' residence currently has a driveway with two off-street parking spots, which are required by Section 1806.B of the Zoning Ordinance.

7. The Applicants' property has no off-street parking other than the two parking spots in the driveway.

8. Applicants' Hair Salon use failed to meet the objective criteria for the grant of a special exception for a Home Occupation as set forth in Section 1712.B of the Zoning Ordinance.

9. After a hearing on the application, by letter Decision dated October 30, 2009, attached hereto, the Zoning Hearing Board voted at its meeting on October 28, 2009 to grant the Applicants the special exception and to permit the driveway to be used as two off street parking spaces indicating a supplemental opinion will be issued by the Zoning Hearing Board.

10. On November 25 2009, the Township filed a Land Use Appeal from the Zoning Hearing Board's October 30, 2009 letter Decision with Chester County Court of Common Pleas Docket No. 09-14025-LU.

11. Appellant specifically reserved the right to supplement its November 25, 2009 appeal based on further findings of fact and conclusions of law subsequently issued and as noted in the Zoning Hearing Board's letter decision dated October 30, 2009.

12. On February 4, 2010, the Zoning Hearing Board issued a Decision and Order with specific findings of fact and conclusions of law granting the Application for special exception for a Home Occupation as set forth in Section 1712.B of the Zoning Ordinance and further granting variance relief from the provisions of Section 1712.B of the Zoning Ordinance.

II. Issues On Appeal

13. The Township appeals the Zoning Hearing Board's Decision as being arbitrary, capricious, contrary to and unsupported by substantial evidence in the record and an error of law.

14. The Applicants failed to meet their burden to present evidence establishing compliance with the standards found in Section 1712.B and Section 2207.2 of the Zoning Ordinance for the grant of a special exception.

15. The Zoning Hearing Board erred as a matter of law by granting Applicants' special exception applicaion for a Home Occupation without record evidence of the proposed use's objective compliance with Section 1712.B of the Zoning Ordinance.

16. The Zoning Hearing Board's grant of special exception is contrary to the objective requirements for Home Occupations in the Section 1712.B of the Zoning Ordinance

17. The Applicants proposed Hair Salon use fails to comply with the criteria for granting a special exception in Section 2207.2 of the Zoning Ordinance.

18. By failing to apply the standards for for Home Occupations in the Section 1712.B of the Zoning Ordinance, the Zoning Hearing Board re-written the Zonign Ordinance and usurped the Board of Supervisors' role of enacting Zoning Ordinanc provisions governing land uses in the Township.

19. The Applicants failed to meet the requirements for the grant of a variance set forth in Section 910.2(a) of the Municipalities Planning Code, 53 P.S. 10910.2(a), and Section 2007.2 of the Township Zoning Ordinance for the grant of a variance from the provisions of Section 1712.B of the Zoning Ordinance.

20. The Zoning Hearing Board's Decision and Order is not supported by substantial evidence establishing compliance with the standards found in Section 910.2(a) of the Municipalities Planning Code, 53 P.S. 10910.2(a), and Section 2007.2 of the Township Zoning Ordinance for the grant of a variance from any provision of the Zoning Ordinance.

21. The Zoning Hearing Board erred as a matter of law by failing to apply the standards found in Section 910.2(a) of the Municipalities Planning Code, 53 P.S. 10910.2(a), and Section 2007.2 of the Township Zoning Ordinance for the grant of a variance.

22. There was no evidence in the record demonstrating compliance with the standards set forth in Section 910.2(a) of the Municipalities Planning Code, 53 P.S. 10910.2(a), and Section 2007.2 of the Township Zoning Ordinance for the grant of a variance.

WHEREFORE, the Board of Supervisors of East Fallowfield Township requests that this Court reverse the Decision and Order of the Zoning Hearing Board of East Fallowfield Township granting a special exception for a Home Occupation use pursuant to Section 1712.B of the Zoning Ordinance and granting variance relief from the provisions of Section 1712.B of the Zoning Ordinance in order to operate a hair salon Home Occupation without required parking.

Respectfully Submitted,

Date: 3/5/10

BY: _____

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SOLICITOR FOR EAST
FALLOWFIELD TOWNSHIP
ZONING HEARING BOARD

IN RE: APPLICATION OF ANDREW F. JEREMIAS and KEIGHLEY C. JEREMIAS	:	BEFORE THE ZONING HEARING
	:	EAST FALLOWFIELD TOWNSHIP
	:	CHESTER COUNTY, PENNSYLVANIA

DECISION AND ORDER

The Zoning Hearing Board of East Fallowfield Township, Chester County, Pennsylvania (hereinafter referred to as the "Board"), after proper advertisement, met at approximately 7:00 p.m. on September 23, 2009 to commence the hearing on the application of Andrew F. Jeremias and Keighley C. Jeremias (hereinafter referred to as the "Applicants"). The hearing was subsequently continued to October 28, 2009 for the purpose of rendering a decision.

The Applicants' sought relief in two areas. The first was the request for a special exception pursuant to Section 702.3A of the East Fallowfield Township Zoning Ordinance (hereinafter referred to as the "Ordinance") to operate a single chair hair salon in their home located at 125 Watch Hill Road, East Fallowfield, Pennsylvania 19320 (hereinafter referred to as the "Property"). The second relief sought was a variance from Section 1712 of the Ordinance which would have required two off street parking spaces to be constructed at the site.

EXHIBIT A

Present at the hearings were Board members, Peter Davis, Chris J. Rechenberg and Dennis O'Neill. Also present were the Applicants, Andrew F. Jeremias and Keighley C. Jeremias, who appeared without benefit of counsel. Mark P. Thompson, Esquire, Solicitor for East Fallowfield Township, was present on behalf of the Township. Other than the Township, no one entered their appearance as a party to this application.

FINDINGS OF FACT

1. The following exhibits were presented an accepted into evidence at the hearing:

B-1: Zoning Application

B-2: Photographs

B-3: Proof of Publication in Daily Local News on September 10, 2009 and September 16, 2009

B-4: List of adjacent property owners

B-5: Letter dated September 8, 2009 from Jeffrey R. Sommer to adjacent property owners regarding application and hearing.

B-6: Affidavit of Posting

The Code and the Zoning Map were incorporated herein by reference.

2. The Applicants are proposing to operate a single chair hair salon in their basement located at 125 Watch Hill Road, East Fallowfield, Pennsylvania.

3. Section 702.3A of the Ordinance permits the operation of a hair salon as an home occupation when such use is granted by special exception by the Zoning Hearing Board.

4. The Ordinance sets forth the criteria to be met by an applicant seeking the grant of a special exception.

5. The Applicant also sought relief from Section 1712 which requires two off street parking spaces.

DISCUSSION

The Ordinance contains language that empowers the Zoning Hearing Board to render both special exceptions and variances. The language that is contained in the Ordinance is a mirror of the language that is contained in the underlying enabling statute, the Pennsylvania Municipalities Planning Code (hereinafter referred to as the "MPC"). It is clear that the Ordinance permits a hair salon as an in-home occupation when approved by special exception. The law recognizes that a use permitted by special exception is a use that is legislatively permitted if it complies with the objective standards and criteria of the Zoning Ordinance. See, *Appeal of Lynch Community Homes, Inc.*, 123 Pa. Cmwlth. 278, 554 A.2d 155 (1989).

The Board considered the criteria that is set forth in the Ordinance and believes that the Applicants have demonstrated that they can objectively comply with the criteria except for that one area in which they have sought a variance. Once the objective criteria is met, the burden then shifts to any interested neighbor or party protestant to provide substantive evidence and possibly exhibits which would support the contrary position. In this particular case, the opposition was presented by the Township. It is a fair summation to say that the Township did not oppose the Applicants' request for the hair salon, but focused more directly on the grant of the variance.

The traditional standards for consideration of an Applicant's entitlement to a variance are set forth in Section 910.2(A) of the Code. This Board is authorized to grant variances provided it makes those findings <u>where relevant</u> in a given case. We find that

the findings required by the MPC or the Ordinance are not relevant findings which must be made in this particular case. The nature of the hardship under the facts of this case is different and is caused by an underlying belief of the Ordinance that multiple employees or multiple customers will be coming to the hair salon at the same time. The testimony of the Applicants was clear that it was their intention only to operate a single chair hair salon. The Applicants' testified that all clients were by appointment only and therefore, could be scheduled at the appropriate time convenient to Ms. Jeremias. The Applicants' testified that the bulk of the appointments would be at such a time where there is space available for that person to park, if they chose to, in the driveway. The Applicants testified that they would have no employees and therefore, there was no need for employee parking.

As a result, when the Board announced its decision in open session on October 28, 2009. The Board was very specific in imposing the condition that the operation of the single chair hair salon would be in accordance with all of the testimony presented at the hearing, there would be no additional employees and there would be no outside signage which would indicate that this was a commercial operation in the residential district. The Applicants indicated on the record that they would agree to and comply with all those conditions.

Therefore, to the extent the traditional standards for a variance are relevant, the particular circumstances and testimony with this application creates a hardship sufficient enough to the entitlement of a grant of a variance. In other words, the Ordinance grants the Applicants the right to operate a hair salon, yet then takes away the right to have anyone drive to the hair salon. One supposes that you could operate the hair salon with only walk in traffic, thus, obviating the need for the parking space. Given the agreement

ORDER

AND NOW this 4th day of February, 2010, upon consideration of the application, testimony and exhibits presented in support thereof, the application for the special exception is GRANTED and the application for the variance is GRANTED subject to the condition that the driveway is to be used as the off street parking space and that the home occupation will have no additional employees at this site. Further, there will be no outside signage indicating that the commercial operation is being conducted therein. These conditions imposed herein also require compliance with any other Township Ordinance, statutes and/or regulations of any regulatory authority having jurisdiction. Upon the Applicants' payment of all proper fees and the compliance with all conditions, if any, the Zoning Officer is authorized and directed to issue the necessary permits, if any.

EAST FALLOWFIELD TOWNSHIP
ZONING HEARING BOARD

Peter Davis, Member

Chris Rechenberg, Member

Dennis O'Neill, Member

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Attorneys for Appellant, Board of Supervisors of East Fallowfield Township

BOARD OF SUPERVISORS OF EAST FALLOWFIELD TOWNSHIP 2264 Strasburg Road East Fallowfield, PA 19320 Appellant,	:	IN THE COURT OF COMMON PLEAS CHESTER COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION – LAND USE APPEAL NO.
ZONING HEARING BOARD OF EAST FALLOWFIELD TOWNSHIP 2264 Strasburg Road East Fallowfield, PA 19320 Appellee.	:	

CERTIFICATE OF SERVICE

This is to certify that in this case, assigned to Judge _____, complete copies of all papers contained in Notice of Land Use Appeal have been served upon the following persons, by the means and on the date stated:

Name:	Means of Service:	Date of Service:
Andrew and Keighley Jeremias 125 Watch Hill Road East Fallowfield, PA 19320 *Pro Se Applicants*	First Class – Postage Prepaid	March 5, 2010
Jeffrey R. Sommer, Esquire Buckley, Brion, McGuire, Morris & Sommer LP 118 W. Market Street, Ste. 300 West Chester, PA 19382-440 *Attorney for Zoning Hearing Board of East Fallowfield Township*	First Class – Postage Prepaid	March 5, 2010

BY: _____

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