

**BEFORE THE BOARD OF SUPERVISORS OF
EAST FALLOWFIELD TOWNSHIP,
CHESTER COUNTY, PENNSYLVANIA**

In Re:

Application of Angela James : **No. C - 2 - 08**
& Robert James :
for Conditional Use Approval :

DECISION AND ORDER

AND NOW, this 24th day of June, 2008, the Board of Supervisors of East Fallowfield Township hereby grants, subject to the conditions specified hereinbelow, the application of Angela James and Robert James for conditional use approval pursuant to Sections 502.4.F and 1711 of the East Fallowfield Township Zoning Ordinance of 2002 (the "Zoning Ordinance") to allow a day care center on the property located at 2389 Strasburg Road, and enters the following factual findings, conclusions and discussions of reasoning in support of the grant of the Application.

I. Background of the Application

By application received Aril 22, 2008 ("Application"), Angela James and Robert James (collectively the "Applicant") requested approval by the Board of Supervisors of East Fallowfield Township ("Board" and the "Township" respectively) for conditional use approval to allow a day care center on Applicant's property located at 2389 Strasburg Road. The property consists of approximately 4.298 acres and is located within the R-1 Low Density Residential Zoning District. The property is also known as UPI (tax parcel) no. 47-5-12.3, and is known as Lot 2 of the Johnston Property Subdivision.

Notice of the scheduling of a public hearing for May 27, 2008, was published in the Daily Local News, a newspaper of general circulation in the Township, on May 5 and May 12, 2008, and the hearing was commenced and conducted as advertised.

At the conclusion of the hearing on May 27, 2008 the record was closed. The Applicant's case in support of the Application was presented to the Board through the testimony of Angela

James and Robert James; together with the presentation of certain documentary exhibits. Its Solicitor, Vincent M. Pompo, Esquire of the firm of Lamb McErlane PC, represented the Board.

The record in this matter consists of the transcribed notes of testimony taken at the public hearing conducted on May 27, 2008, together with the documentary exhibits marked for identification and admitted into the record by the Board. This Decision and Order is promulgated pursuant to Zoning Ordinance §§1902 & 1903.B. and the enabling provisions of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. §10101 et seq.

II. Findings of Fact

1. During the public hearing, the following exhibits were presented into the record:
 - B-1 - Public Notice;
 - B-2 - Proof of Publication;
 - B-3 - Letter from Vincent M. Pompo, Esq. to the Daily Local News dated May 2, 2008;
 - B-4 - Proof of posting of the property;
 - B-5 - Copy of the East Fallowfield Township Zoning Ordinance;
 - B-6 - Memorandum from Robert McLarmon of Keystone Municipal Services to the Board dated May 27, 2008;
 - B-7 - E-mail from Anthony Sirna to the Board with his recommendations to the Township regarding the proposed day care center;
 - A-1 - Application;
 - A-2 - Letter from Alice E. Brazzle dated May 21, 2008;
 - A-3 - Letter from Wayne Welty dated May 22, 2008.

2. The Applicant is Angela James and Robert James, the equitable owners of the property located in the Township of East Fallowfield at 2389 Strasburg Road (the "Property").

3. The Property consists of 4.298 total acres, and is located within the R-1 Low

Density Residential Zoning District.

4. The Applicant plans to construct their residence on the Property.
5. The Applicant is proposing to operate a day care center for a maximum of six (6) children within the planned residence.
6. The Applicant is proposing to operate the day care center between the hours of 6:00 AM and 7:00 PM.
7. The Applicant is proposing to construct an indoor and outdoor play area in compliance with the Zoning Ordinance. The proposed outdoor play area will be located at the rear of the residence, which shall be on the northeastern side of the residence.
8. The Applicant's residence will be served by a driveway, with the first five hundred (500) feet of the driveway being shared with adjoining parcel.
9. The Board considered this Application based in part on Applicant's personal experience in providing day care at another location and Applicant's proposed day care program.
10. Carole Boyer who resides at 2385 Strasburg Road presented testimony in opposition of granting conditional use approval for the day care center.
11. By the instant Application, the Applicant seeks to obtain conditional use approval to allow the Property to be used for a day care facility.

III. Conclusions of Law

1. The Board has jurisdiction of this Application for conditional use approval.
2. Approval of the Application as conditioned hereinbelow is consistent with

the evidence of record and the criteria and standards specified in Sections 1711 and 1903 of the Zoning Ordinance.

IV. Order

The Board finds and concludes that the Applicant will have met the requirements of the Zoning Ordinance for conditional use approval, if, and only if, the Application is amended and supplemented in accordance with the conditions specified hereinbelow. In granting the Application, the Board has relied upon the testimony, plans and exhibits presented by the Applicant in this proceeding and said testimony, plans, exhibits and documentary evidence are hereby incorporated as additional conditions of approval, the Applicant being strictly bound by all the representations made in the testimony, plans, and exhibits and documentary evidence.

The following conditions are imposed and attached pursuant to Section 603 (c)(2) of the Municipalities Planning Code and Zoning Ordinance Section 1902.E. and 1903.B. Any violation of the conditions during or following construction will be treated as a violation of the Zoning Ordinance. For the purpose of this Decision and Order, and specifically the following conditions, the term “Applicant” shall include the Applicant’s successors and assigns and interests with respect to the Property and the Application:

1. Any material deviation or change from the testimony, plans and exhibits presented on behalf of the Applicant, or from this decision and any conditions imposed hereby shall require an amendment to this decision and order by the Board of Supervisors following proper application and hearing.

2. At time of submission of Applicant’s building permit application, Applicant shall submit proof of ownership or a legally binding Agreement of Sale for the Property.

3. At the time of submission of Applicant’s building permit application, Applicant shall submit to the Township, for the Township Engineer’s review and approval, a site plan under seal of a certified professional engineer in the Commonwealth of Pennsylvania detailing

the placement and construction of the well, septic area, and stormwater management facilities and showing compliance with all Zoning Ordinance requirements, including but not limited to:

a. An indoor play area measuring a minimum of three hundred (300) square feet;

b. An outdoor play area measuring a minimum of six hundred (600) square feet, and shall not include driveways, parking areas or natural features or land unsuited by other uses for active play areas. Land unsuited by other uses shall include, but not limited to, wells, septic area, and stormwater management facilities;

c. A minimum of three (3) ordinance compliant off-street parking spaces for every one thousand (1,000) square feet of floor area;

d. The ingress/egress of the site;

e. Area for the discharge and pick-up of the children removed from both the parking and ingress/egress for the site; and

f. All applicable zoning setback requirements.

4. The fencing for the outside play area shall be a minimum of four (4) feet in height.

5. The use of the outside play area shall be limited to the hours of day light.

6. The operation of the day care center shall be limited to a maximum of six (6) children and between the hours of 6:00 AM and 7:00 PM.

7. The Applicant shall obtain all applicable approvals and certifications required by the Chester County Department of Health regulations for day care centers, and shall provide the Township with proof of any such approvals and certifications.

8. This approval is limited to the Applicant's use of the Property as a day care facility. No future owner or tenant of the Property shall be entitled to use the Property as a day care facility, unless the future owner or tenant submits a new conditional use application and comes before the Board for approval.

9. The Applicant shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Zoning Ordinance.

ADOPTED and ORDERED this 24th day of June, 2008.

**BOARD OF SUPERVISORS
EAST FALLOWFIELD TOWNSHIP**

George Broadbent, Chairman

Christopher Makely, Vice-Chairman

Garth Monaghan, Member

ATTEST:

Denise Miller, Secretary