

BEFORE THE DERRY TOWNSHIP ZONING HEARING BOARD

IN THE MATTER OF: : NO. 2020 – 14
: :
Sweet Dreams Properties, LLC : :
: :
: PREMISES LOCATION:
: 1512 East Caracas Avenue
: Hershey, Derry Township, PA

MEMORANDUM, FINDINGS, OPINION AND ORDER

This is the application of Sweet Dreams Properties, LLC with regard to its property located at 1512 East Caracas Avenue, Hershey, Derry Township. A hearing in this matter was held on December 16, 2020, by video conference due to the COVID-19 emergency, after proper advertising and after proper notice to allow for public participation. At that time, Roger Brock, the principal of the applicant, appeared, with the applicant’s attorney, David Tshudy, was sworn, and testified at the hearing. In addition, the applicant’s realtor, Bob Fox, appeared, was sworn, and testified. No other members of the public testified.

The application indicates that the subject property is located in the Palmdale Mixed Use zoning district. The property is improved with a mixed use building. The applicant’s predecessor previously obtained relief from the Zoning Hearing Board to use the property as an office building. The current application seeks a special exception to substitute one nonconforming use for another.

The subject property is approximately 1.36 acres and is improved with a 17,500 square feet brick commercial building. The building was constructed in the 1990s and has been used as a commercial office building since its construction. The applicant purchased the property in

2007. There are 70 available parking spaces, which is believed sufficient even without knowing how many spaces will be required for the new occupant.

As of January 1, 2020, the building was occupied as follows:

<u>Tenant</u>	<u>Use</u>	<u>Space</u>
A. Free Spirit Yoga	Exercise and Fitness Center	2,110 sf
B. Whiting-Turner Contracting Com.	Business and Professional Office	1,844 sf
C. Cocoa Counseling	Healthcare Practitioner's Office	2,350 sf
D. Advocacy Alliance	Business and Professional Office	2,340 sf
E. Sleep Analysis Consultants ¹	Medical Related Research Facility	6,000 sf

Unfortunately, due to the COVID-19 pandemic, Sleep Analysis Consultants ceased operations in the spring of 2020 and vacated the building. The 6,000 square feet space is listed for lease with Bob Fox. Healthcare practitioners and chiropractors have shown an interest in the space, but no lease has been forthcoming. According to the applicant, such use by healthcare practitioners and chiropractors is similar to Cocoa Counseling, a current occupant. The applicant also argued that either healthcare practitioners or chiropractors would not be any real difference from a medical related research facility.

¹ Sleep Analysis Consultants has similar ownership to the applicant.

The Zoning Ordinance allows the Zoning Hearing Board to grant a special exception to substitute one nonconforming use of land, building, or structures with another nonconforming use of land, building, or structures if the applicant can demonstrate to the Zoning Hearing Board's satisfaction that the proposed nonconformity is no more detrimental to the area than the existing nonconforming use. *See* Ordinance, §225-603. In addition, the applicant must demonstrate that the proposed new nonconforming use will cause no other new nonconformities except for the use. *See* Ordinance, §225-603. Finally, the Zoning Hearing Board may attach reasonable conditions to the grant of a special exception to ensure that the new nonconforming use remains no more detrimental to the area than the existing nonconforming use. *See* Ordinance, §225-603.

The Board finds that the applicant is entitled to the requested relief with respect to the use of the approximately 6,000 square feet previously occupied by Sleep Analysis Consultants. As this Board has often repeated, a special exception is neither special nor an exception. Instead, it is a permitted use provided the applicant can demonstrate compliance with the applicable criteria. Here, the Board finds that the substitution of a healthcare practitioner's office or chiropractor's office is no more detrimental to the area than a medical related research facility. There is sufficient parking to accommodate either such use. There is no testimony in the record to indicate that the requested special exception would negatively impact surrounding properties. Consequently, the Board finds that the applicant is entitled to the requested special exception for the change in use of the 6,000 square feet previously occupied by Sleep Analysis Consultants to a healthcare practitioner's office or chiropractor's office.

In granting any special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of the Pennsylvania Municipalities Planning Code, and the Ordinance. *Ordinance*, §§225-603 and 225-1007.10.A.

Based on the Board's findings and conclusions, the Board adopts the following:

ORDER

AND NOW, this 20th day of January, 2021:

1. The applicant's request for a special exception from §225-603, regarding the substitution of one nonconforming use for another is **GRANTED**. The applicant may use the approximately 6,000 square feet of the property previously occupied by Sleep Analysis Consultants for a healthcare practitioner's office or chiropractor's office.

2. Any violation of any condition imposed herein shall be a violation of the Township Zoning Ordinance and shall be enforced as provided in the Ordinance.

Adopted by 4 – 0 vote as indicated by the Chairman's signature as authorized by the Zoning Hearing Board.



Steven Seidl, Chairman