

**LOWER ALLEN
ZONING HEARING BOARD**

IN THE MATTER OF: 3804 Lisburn Road
 Zone: Single Family Rural Residential District (R-2)
 Applicant/Owner: Lucky Bear, LLC
 Objectors/Parties: Nick Fox, Esq., and Cynthia Heasley
 Application No. 2025-03

REQUEST FOR: **APPEAL OF ZONING OFFICER DETERMINATION, AND
IN THE ALTERNATIVE, REQUEST FOR MULTIPLE
VARIANCES RELATED TO USES ON THE PROPERTY**

BEFORE: Moran, Chair
 Massott, Member

DECISION

Applicant filed an appeal to the Lower Allen Township Zoning Officer's determination pertaining to the permissible uses on the property located in a Flood Plain District within the Single Family Rural Residential (R-2) Zoning District. In the alternative, applicant requests multiple variances for the existing uses on the property, which include a golf driving range, a mini golf course, and a restaurant (accessory use). The appeal and application concern the property located at 3804 Lisburn Road, Mechanicsburg (property). The Lower Allen Township Zoning Hearing Board (Board) considered and decided Applicant's appeal and zoning relief requests at a hearing held on May 15, 2025¹.

EXHIBITS

B-1 Application packet including narrative, plans, letter requesting zoning determination, and zoning determination

B-2 Certificate of Service of public notice and written notice of hearing

A-1 Plans

¹ Richard Bonneville, Vice Chair of the Board, recused himself from the hearing due to a potential conflict of interest.

FINDINGS OF FACT

1. On or about April 14, 2025, Lucky Bear, LLC (Applicant) filed a timely appeal to the Township Zoning Officer's March 27, 2025 determination pertaining to the permissible uses on the property located at 3804 Lisburn Road, and, in the alternative, multiple variances for the golf driving range, mini golf course, and restaurant on the property that is in a Floodplain District within the R-2 Zoning District.

2. A hearing on the appeal and application took place on May 15, 2025.

3. Public notice of the hearing on the application was published in the Patriot News on April 29, 2025, and May 6, 2025. Notice of the hearing was placed on Applicant's property on April 30, 2025 and posted at the Lower Allen Township Municipal Building and on Township's website on May 2, 2025.

4. Notice of the hearing was mailed to Applicant and adjoining property owners on May 2, 2025.

5. No objections as to the method and timing of notice and advertising were raised.

6. No objections as to any of the exhibits submitted into the record at the hearing were raised.

7. The Applicant has standing to pursue the zoning relief requested as it is the owner of the property.

8. Testimony at the hearing was taken from Ben Haugh, with Altland House Hospitality Group, the general manager of property, Doug Parkins, Director of Land Development at E.G. Stoltzfus Homes, Lancaster, and Marcus Brandt, the Lower Allen Township Zoning Administrator. Ryan Haugh, with Altland House Hospitality Group provided public comment at

the hearing. Applicant was represented at the hearing by Jeremy Frey, Esq., from Barley, Snyder, LLC.

9. Nick Fox, Esq., and Cynthia Heasley qualified and participated as parties at the hearing².

10. The property is approximately 96 acres located partially in Upper Allen Township (77-78 acres) and partially in Lower Allen Township (18-19 acres).

11. Lisburn Road runs through the property dividing the Upper Allen parcel and the Lower Allen parcel (property).

12. Applicant intends to subdivide the property, sell the Upper Allen parcel, and retain the Lower Allen parcel.

13. The Upper Allen parcel features an 18 hole golf course; Liberty Forge Golf Course, and the Lower Allen parcel features a golf driving range, miniature golf course and restaurant³.

14. Applicant has entered into an agreement to sell the Upper Allen parcel to a developer (E.G. Stoltzfus Land, LLC) that intends to dismantle the golf course and construct multifamily dwelling units on the property.

15. Applicant seeks to maintain the present golf driving range, miniature golf course and restaurant uses on the Lower Allen parcel.

16. The golf driving range, miniature golf course, and restaurant have existed on the property since 2003.

17. The golf driving range consists of 30 hitting bays and a grass range closer to Yellow Breeches Creek with safety netting to restrict golf balls from exiting the property.

² Atty. Fox, 101 Foxfire Lane, Lewisberry, and Ms. Heasley, 1421 Wellgate Lane, Mechanicsburg, qualified due to their proximity to the affected property; 3804 Lisburn Road.

³ The uses on the Lower Allen parcel were accessory to the 18 hole Golf Course; the principal use on the property.

18. The miniature golf course is along Yellow Breeches Creek and has trees that screen the course from Forge Road.

19. The restaurant is named the Creekside Grill and serves a various foods and beverages including alcoholic drinks; i.e., wine, beer, mixed drinks etc.

20. The restaurant is the location to pay to use the miniature golf course and to purchase golf balls for the driving range⁴.

21. The golf driving range can continue to successfully operate independently of the Liberty Forge golf course.

22. Applicant requested a determination of the Township Zoning Officer that the driving range and mini golf course were permitted uses in the R-2 zoning district, and the restaurant an accessory use to the permitted uses. (See Ex. B-1, March 24, 2025 correspondence to Zoning Officer).

23. The Zoning Officer issued a response stating that the golf driving range, mini golf course and restaurant are accessory uses to an existing golf course, and are not permitted as principal stand-alone uses. (See Ex. B-1, March 27, 2025 correspondence from Zoning officer to Applicant).

24. Applicant timely appealed the Zoning officer's determination in conjunction with its application for a variance for the uses on the property.

25. The property is located in the Floodway Zone (FW) within the R-2 Zoning District.

26. Public and Private recreational uses and activities, including golf courses are permitted uses in the FW Zone. **Section 220-277(D)(1)(b).**

⁴ The golf balls are purchased through a machine and does not require a person to manage or supervise the sale.

27. The Lower Allen Township Zoning Ordinance (Zoning Ordinance) defines a golf course as “A tract of land improved with tees, greens, fairways and hazards for playing at least nine holes of the game of golf, that may include a clubhouse with dining facilities (excluding drive-through facilities), swimming pool, tennis courts, driving range, miniature golf and other customarily and incidental accessory uses and structures” **Section 220-6(C) – Definitions.**

28. The Zoning Ordinance defines a golf driving range as “A location, either at a golf course or at a separate location, where players can practice by hitting balls provided with their various clubs in order to improve or warm up.” **Section 220-6(C).**

29. It would be difficult to develop any type of use on the property due to its location in the FW Zone.

30. Applicant’s requested zoning relief will not result in any changes to the property, and the existing uses (golf driving range, miniature golf course, and restaurant) will continue in its present form and condition.

31. The existing uses on the property will not be expanded, enlarged, or increase in intensity.

32. No other uses will be added to the property.

CONCLUSIONS OF LAW

1. The Lower Allen Township Zoning Hearing Board has jurisdiction to hear the above-captioned zoning appeal and the variance application pursuant to Section 220-269(B)(3) & (5) of the Lower Allen Township Zoning Ordinance and 53 P.S. Section 10616.1 and 10909.1(a)(3) & (5) of the Pennsylvania Municipalities Planning Code.

2. Proper notice of the hearing was given to the public and to all interested parties.

3. Exhibits B-1 and B-2, and A-1 were properly admitted into evidence.

4. Applicant has sustained its burden of proof in its appeal of the Township's Zoning Officer's determination of permitted and/or accessory uses in the FW Zone within the R-2 Zoning District in accordance with the attached discussion and decision

5. Applicant has sustained its burden of proof for multiple variances to the Township Zoning Ordinance in accordance with the attached discussion and decision.

DISCUSSION

Applicant received a written determination from the Lower Allen Township Zoning Officer, Marcus Brandt, dated March 27, 2025 denying its request that the golf driving range, miniature golf course, and restaurant be deemed permitted uses on the property⁵. (See B-1) Applicant timely appealed the determination and, in the alternative, filed an application for a variance for the uses existing on the property. (See Ex. B-1)

APPEAL

Applicant has the burden of proof to establish that the golf driving range, miniature golf course, and restaurant are permitted uses on the property.

Applicant currently owns property that traverses Upper Allen Township and Lower Allen Township. The property is separated by Lisburn Road. The Upper Allen property has an 18 hole golf course, and the Lower Allen property has a golf driving range, a miniature golf course and a restaurant. Applicant has decided to subdivide the property and sell the Upper Allen Township property to a developer that intends to dismantle the golf course and construct multifamily dwelling units in its place. Applicant wants to maintain the existing uses on the Lower Allen property.

A golf course is a permitted use in the R-2 Zoning District and is defined as:

⁵ Applicant requested the golf driving range and miniature golf course be deemed principal uses and the restaurant be deemed an accessory use to the principal uses on the property.

GOLF COURSE

A tract of land improved with tees, greens, fairways and hazards for playing at least nine holes of the game of golf, that may include a clubhouse with dining facilities (excluding drive-through facilities), swimming pool, tennis courts, driving range, miniature golf and other customarily incidental accessory uses and structures. **Section 220—6(C).**

A golf driving range, miniature golf course and restaurant are accessory uses to a golf course, however, a golf driving range can be located at either a golf course or at a separate location. Also, a golf driving range has its own use regulations distinct from the golf course use regulations. **Section 220-164.** This means a golf driving range is an independent use that can be a principal use on a property.

The Zoning Ordinance does not list a golf driving range as a specifically permitted use in any zoning district, however, the Zoning Officer testified that a golf driving range and miniature golf course would be permitted in the C-2, C-3, C-4, I-1, and I-3 zoning district according to the North American Industry Classification System (NAICS) code 70⁶. (Notes of Testimony, p. 91, May 15, 2025). The NAICS Code for the different districts is very broad and general; the C-2, C-3, C-4 and I-3 list the category as 71 – Arts Entertainment and Recreation, and the I-1 is more specific with 7111 – Performing Arts, 7112 – Spectator Sports, and 7139 – Other Amusement and Recreation Industries. (Section 220-56, 64, 72, 80 and 97). The specific NAICS code for a golf course is 713910 and a golf driving range/miniature golf course is 713990 – All other amusement and recreation industries. Based on the NAICS codes for permitted uses in various zoning districts, it would appear that golf courses would be permitted in the same zones as golf driving ranges and miniature golf courses; as would many other unnamed amusement recreation industries.

⁶ The NAICS code identifies the permitted uses generally in a particular zoning district, but the R-2 zoning District does not use the NAICS codes.

It seems inconsistent to include the golf course use with golf driving range and miniature golf course together in 5 zoning districts (according to the NAICS codes), but not in the one zoning district that specifically includes golf courses.

The permitted uses in the FW District include public and private recreational uses and activities such as parks, day camps, picnic grounds, golf courses, boat-launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges and hunting and fishing areas. **Section 220-277(D)(1)(b).** Golf courses are permitted on the applicant's property located in the FW District.

The Board has an obligation to construe the words of an ordinance as broadly as possible to give the landowner the benefit of the least restrictive use when interpreting its own Zoning Code. *Albert v. Zoning Hearing Board of North Abington Township*, 578 Pa. 439, 854 A.2d 401, 405 (Pa. 2004) Any doubt must be interpreted in favor of the landowner. *Kissell v. Ferguson Township Zoning Hearing Board*, 729 A.2d 194, 197 (Pa. Cmwlth. 1999). Any ambiguity and conflict in the language of the ordinance must be resolved in favor of the landowner and the least restrictive use of the land. *Reihner v. City of Scranton Zoning Hearing Board*, 176 A.3d 396, 400 (Pa. Commw. 2017).

Based on the apparent conflict in the language of the zoning ordinance pertaining to the permitted uses in the Commercial and Industrial zoning districts, and the permitted uses in the Residential Districts, we find that a golf driving range and miniature golf course are similar to the golf course use and are permitted as principal uses in the FW District and R-2 Zoning District. The restaurant use is a permitted accessory use to the golf driving range and miniature golf course on-site and will be discussed later in this decision.

VARIANCE

In the alternative, applicant seeks variances for the existing golf driving range and miniature golf course which are not specific permitted uses in the FW District or the R-2 Zoning District. In reviewing the application requesting multiple variances, the Zoning Hearing Board must take into account the criteria as set forth in Section 220-269 of the Township Zoning Ordinance which states the following;

Section 220-269 Zoning Hearing Board

C. Variances.

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application and may require application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and represent the least modification possible of the regulation in issue. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter.

The majority of the property is located in the Floodway (FW) zone, and the remaining portion is in the floodplain. The FW zone is where the water from a flood is anticipated to come through. (N.T., p. 89, 5/15/25). Due to this unique physical condition, it will be very difficult to develop any particular use on the property. (N.T. p. 88).

The property has a golf driving range, a miniature golf course, and a restaurant. The purpose of the Floodplain Districts is:

§ 220-272. Purpose. The purpose of this article is to prevent the loss of property and life, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief and the impairment of the tax base of:

- A.** Regulating uses, activities and development which, acting alone or in combination with other existing or future uses, activities and development, will cause unacceptable increases in flood heights, velocities and frequencies.

Also, the Zoning Ordinance states the following regarding uses in the floodplain:

§ 220-277. District provisions.

B. Under no circumstances shall any use, activity or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch or any other drainage facility or system.

And for the FW District in particular:

D. Floodway District (FW). In the Floodway District (FW), no use, activity or development shall be permitted, except where the effect of such on flood heights is fully offset by accompanying stream improvements which have been approved by all appropriate local and/or state authorities as required above.

The zoning ordinance clearly indicates that the Floodplain zones are to be minimally disturbed to avoid increases to flood risks. The FW zone prevents the existing uses from being dismantled and replaced with a permitted use, without impacting the floodplain created by the Yellow Breeches Creek. The purpose of the floodplain district would best be served by maintaining the existing uses on-site without alteration, and allow the applicant to continue its reasonable use of the property.

Applicant did not create the FW District on the property. Although applicant may have sold the golf course property located in Upper Allen Township, the hardship is created by the physical condition of the property in the floodplain district. The location of the property prevents its development into another permissible use.

The variances for the golf driving range and miniature golf course will not alter the character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The uses on-site have

existed since 2003 and the public welfare will benefit from their continued operation without modification.

The variance granted will represent the minimum variance that will afford relief as there will be no change to the uses on-site.

We find that applicant has sustained its burden of proof for variances for the golf driving range and miniature golf course.

Applicant requests that the restaurant be considered an acceptable accessory use to the golf driving range and miniature golf course.

The Zoning Ordinance defines an accessory use as

ACCESSORY USE

A use customarily incidental and subordinate to the principal use of the main building or land and located on the same lot with such principal use or main building. **Section 220-6(C).**

“Customarily incidental” is best understood as invoking an objective reasonable person standard. Under this standard, we may look not only at how frequently the proposed accessory use is found in association with the primary use (if such evidence is available, it certainly is relevant) but also at the applicant's particular circumstances, the zoning ordinance and the indications therein as to the governing body's intent regarding the intensity of land use appropriate to the particular district, as well as the surrounding land conditions and any other relevant information, including general experience and common understanding, to reach a legal conclusion as to whether a reasonable person could consider the use in question to be customarily incidental. This approach respects the need for an understandable legal standard and the flexibility that is a necessary component of the analysis. *Aldridge v. Jackson Twp.*, 983 A.2d 247, 255-256 (Pa. Commw. 2009).

Golf courses and similar operations have incidental, subordinate restaurants on the same lot. This case is no different as people use the restaurant to purchase tickets or golf balls for the golf driving range and miniature golf course as well as for food and/or drink. We find that the restaurant on-site is a permissible accessory use to the golf driving range and miniature golf course on the property.

DE MINIMIS VARIANCE

The *de minimis* doctrine is an extremely narrow exception to the heavy burden of proof which a party seeking a **variance** must normally bear." *Swemley v. Zoning Hearing Board of Windsor Township*, 698 A.2d 160, 162 (Pa. Cmwlth. 1997) (quoting *King v. Zoning Hearing Board of the Borough of Nazareth*, 76 Pa. Commw. 318, 463 A.2d 505, 505 (Pa. Cmwlth. 1983)). "This exception may be applied where (1) only a minor deviation from the zoning ordinance is sought and (2) rigid compliance with the ordinance is not necessary for the preservation of the public interests sought to be protected by the ordinance." *Id.* "The determination of whether or not the *de minimis* doctrine applies requires careful consideration of both of these factors." *Id.* Where the *de minimis* doctrine applies, there is no need to resort to any other theory of relief. *Nettleton v. Zoning Board of Adjustment of City of Pittsburgh*, 574 Pa. 45, 828 A.2d 1033 (Pa. 2003). *Pequea Twp. v. Zoning Hearing Bd.*, 180 A.3d 500, 504 Typically, a *de minimis* standard applies to dimensional variance requests; which involves a request to adjust a zoning ordinance for purposes of using the property in a manner consistent with the applicable regulations, whereas a use variance [**9] involves a proposal "to use property in a manner that is wholly outside zoning regulations." *Hertzberg v. Zoning Bd. of Adjustment of Pittsburgh*, 554 Pa. 249, 721 A.2d 43, 47 (Pa. 1998). *Soland v. Zoning Hearing Bd.*, 311 A.3d 1208, 1213. However, a use variance can be *de minimis*. Zoning hearing boards have discretion to grant or deny a *de minimis* variance

where the variation requested is "minor and rigid compliance with the zoning ordinance is not necessary to protect public policy concerns." *Hawk v. City of Pittsburgh Zoning Bd. of Adjustment*, 38 A.3d 1061, 1066 (Pa. Cmwlth. 2012) In *Soland*, the de minimis variance doctrine was applied to a case in which the variance request was more technical than substantial.

De Minimis variance relief has no set criteria and the grant of a de minimis variance depends upon the circumstances of each case. *Soland*, p. 1213. Application of the de minimis doctrine to use variance requests should be rare and limited to extraordinary situations. *Id.* at p. 1214. The Board determines that this is such a situation and the de minimis variance doctrine is applicable to the instant case since the requested relief is the continuation of the uses that currently exist on-site. The public welfare is protected as the property will not be disturbed as it is located in the FW District.

We find that applicant is entitled to the zoning relief requested pursuant to the de minimis variance doctrine.

ORDER

In accordance with the above discussion, applicant's appeal of the Zoning Officer's determination is granted and the golf driving range, miniature golf course and restaurant (accessory use) are permitted uses in the FW District and/or the R-2 District.

Applicant's request for variances to maintain the golf driving range and miniature golf course on the property is granted. Applicant is authorized to have the restaurant on-site as an accessory use to the golf driving range and miniature golf course.

Applicant is entitled to a de minimis variance for the golf driving range, miniature golf course and restaurant on the property.

This order applies to the property located at 3804 Lisburn Road, Mechanicsburg, PA.

LOWER ALLEN TOWNSHIP ZONING HEARING BOARD

Date: _____ By: Ann Moran
Ann Moran, Chair

Any parties that are aggrieved by this Decision may appeal same within thirty (30) days to the Court of Common Pleas of Cumberland County.