

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

DAVID WIJAYA

vs.

WHITEMARSH TOWNSHIP BOARD OF SUPERVISORS

NO. 2019-16681

CIVIL COVER SHEET

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: CATHERINE M HARPER, Esq., ID: 34568

Self-Represented (Pro Se) Litigant

Class Action Suit Yes No

MDJ Appeal Yes No

Money Damages Requested

Commencement of Action:

Amount in Controversy:

Notice of Appeal

Case Type and Code

Civil Appeals:

Other

Other: WHITEMARSH TOWNSHIP BOARD OF SUPERVISORS

Case# 2019-16681-0 Docketed at Montgomery County Prothonotary on 06/28/2019 11:18 AM, Fee = \$294.25. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

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Attorney for Appellants,
David Wijaya and Lafayette Tobacco
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APPEAL OF DAVID WIJAYA AND : COURT OF COMMON PLEAS
LAFAYETTE TOBACCO OUTLET, INC., : OF MONTGOMERY COUNTY, PA
1812 S. 17TH STREET, PHILADELPHIA, PA :
19145, FROM THE WHITEMARSH TOWNSHIP : CIVIL DIVISION - LAW
BOARD OF SUPERVISORS' DECISION :
DATED JUNE 13, 2019, 616 GERMANTOWN :
PIKE, LAFAYETTE HILL, PA 19444 :
: NO.
:
: LAND USE APPEAL

NOTICE OF LAND USE APPEAL

COMES NOW, David Wijaya and Lafayette Tobacco Outlet, Inc., by and through undersigned counsel, to appeal from the Decision of the Whitemarsh Township Board of Supervisors on June 13, 2019 on the Application of David Wijaya and Lafayette Tobacco Outlet, Inc. for conditional use approval.

In support thereof, the Appellants aver as follows:

1. Appellants David Wijaya and Lafayette Tobacco Outlet, Inc. filed a Conditional Use Application with Whitemarsh Township on April 5, 2019 seeking approval under Section 116-290.C(1) to operate a tobacco retail shop selling cigarettes, cigars and vapes, in an existing shopping center located at 551 Germantown Pike, Lafayette Hill, PA 19444.

2. A hearing was held before the Whitemarsh Township Board of Supervisors on May 9, 2019 at 7:00 p.m., for which appropriate advertising and notice had not been done in accordance with the Pennsylvania Municipalities Planning Code.

3. A second hearing was held on June 13, 2019 pursuant to advertising and notice, and the Board of Supervisors voted on the Application that night, denying it.

4. No notice of the decision was sent to the Applicants as required by the Pennsylvania Municipalities Planning Code, but the Applicants were present on both of the hearing nights and did witness the vote.

5. The property is located in the VC-1 Zoning District, and "retail maximum building size of 10,000 square feet is permitted in the zoning district by conditional use approval." Whitemarsh Zoning Ordinance Section 116-290 Use Regulations C(1).

6. The Whitemarsh Township Zoning Ordinance does not specifically define what types of retail are permitted and what types are prohibited.

7. As a tenant in an existing small shopping center located on Germantown Pike in Whitemarsh Township, the Applicants/Appellants met all of the requirements of the Whitemarsh Township Zoning Ordinance Section 116-291.

8. The Applicants/Appellants met the requirements of Section 116-37 "Conditional Use Procedures" of the Whitemarsh Township Zoning Ordinance.

9. The Applicants offered a list of products legal to sell to the Board of Supervisors as a condition of approval.

10. The Township failed to meet the requirements of Section 116-37 "Conditional Use Procedures" in that it failed to "conduct a public hearing pursuant to public notice," as the term "public notice" is defined by the Pennsylvania Municipalities Planning Code, and accordingly the Application should be deemed approved. 53 P.S. §10908(9).

11. The Whitemarsh Township Board of Supervisors erred as a matter of law and abused its discretion in denying the Conditional Use Application in that:

(1) The Applicants/Appellants met all of the requirements in the Whitemarsh Township Zoning Ordinance for conditional use approval;

(2) No substantive evidence was introduced to rebut the presumption that the Applicants/Appellants were entitled to conditional use approval;

(3) The Whitemarsh Township Board of Supervisors erred in interpreting its own Zoning Ordinance to exclude certain types of retail like the Applicants' proposed tobacco shop when the zoning ordinance makes no such distinction; and

(4) The Whitemarsh Township Board of Supervisors abused its discretion in denying the Application in that the Applicants met all of the requirements of the Zoning Ordinance for approval.

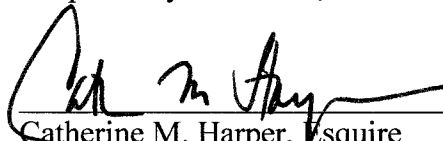
12. Under the Pennsylvania Municipalities Planning Code, a township may include conditional land uses within its Zoning Ordinance, but must conduct hearings pursuant to "public notice" as that is defined in the Pennsylvania Municipalities Planning Code.

13. In addition, Section 908 of the Pennsylvania Municipalities Planning Code requires that "a copy of the final decision, or where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the day following its date." To this date, the Applicants have not received a copy of the decision although a vote was taken by the Board of Supervisors to deny the Application on June 13, 2019, so the decision should be deemed approved.

14. For the foregoing reasons, Appellants/Applicants believe that the Whitemarsh Township Board of Supervisors committed errors of law and abused its discretion in failing to approve the Conditional Use Application that met the requirements of the Whitemarsh Township Zoning Ordinance.

WHEREFORE, the Appellants herein, David Wijaya and Lafayette Tobacco Outlet, Inc. respectfully request This Honorable Court will reverse the decision of the Whitemarsh Township Board of Supervisors and grant conditional use approval to the Application.

Respectfully submitted,



Catherine M. Harper, Esquire
Attorney for Appellants, David Wijaya and
Lafayette Tobacco Outlet, Inc.

Dated: 6-27-19

VERIFICATION

I, Catherine M. Harper, being authorized to do so, verify that the statements made in the foregoing Notice of Land Use Appeal are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.



CATHERINE M. HARPER

Dated: 6-27-19