

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-05
APPLICATION OF DANIEL FRITSCH :

DECISION

I. FINDINGS OF FACT

1. Applicant is Daniel Fritsch, 505 Willow Lane, Lancaster, Pennsylvania 17601 ("Applicant").

2. The property which is the subject of the instant application is located at 505 Willow Lane, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is a tenant and/or equitable owner of the Property.

4. The record owner of the Property is Robert Hasch, 414 Twin Elm Road, Strasburg, Pennsylvania 17579.

5. The Property is located in the Residential R-2 District as shown on the Official Zoning Map of East Lampeter Township.

6. Notice of the hearing on the within application was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and The Revised

Zoning Ordinance of East Lampeter Township - 1990 (the "Zoning Ordinance").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on February 27, 2014.

8. Testimony at the hearing was stenographically recorded.

9. Applicant appeared personally at the hearing.

10. Angie Myers, an owner of Empower, also appeared and testified on behalf of Applicant.

11. The Township participated in the hearing by and through its Zoning Officer, Tara A. Hitchens.

12. The following persons were recognized as parties to the hearing:

Paul Benham
507 Willow Lane
Lancaster, PA 17601

Nicholas Araya
502 Willow Lane
Lancaster, PA 17601

13. Mr. Benham was represented at the hearing by Jolee Van Horn, Esquire.

14. Applicant has requested a variance from the terms of Section 502.1, Section 901 and Section 902 of the Zoning Ordinance.

15. Section 502.1 of the Zoning Ordinance states, in pertinent part, that no expansion of a nonconforming use shall be made unless such expansion has been approved by the Board as a special exception.

16. Section 901 of the Zoning Ordinance sets forth those uses permitted as of right in the Residential District R-2.

17. Section 902 of the Zoning Ordinance sets forth those uses permitted by special exception in the Residential District R-2.

18. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 2005-2.

19. In Case No. 2005-2, the Board granted Robert W. Hasch a special exception pursuant to Section 502.3 of the Zoning Ordinance in order to substitute a plumbing and heating contractor's warehouse/office in place of a nonconforming printing business.

20. In 2012, Applicant requested permission from the previous Township Zoning Officer, Lee Young, to substitute his business, known as App-Techs, in place of the Hasch plumbing and heating contractor's warehouse/office. App-Techs performs installation, configuration and maintenance of video surveillance systems.

21. By letter dated April 5, 2012, the previous Township Zoning Officer, Lee Young, approved the substitution of the App-

Techs business in place of the Hasch plumbing and hearing contractor's warehouse/office.

22. In the letter dated April 5, 2012, the previous Township Zoning Officer stated as follows: "Also, because the original non-conforming commercial use of the property was for a single commercial business, no more than one (1) commercial business is allowed on site."

23. The previous Township Zoning Officer issued a notice of violation, dated January 27, 2012, to Robert Hasch. The notice of violation stated that there appeared to be three separate businesses operating on the Property (Hasch Plumbing, Empower Training Systems, and App-Techs).

24. At the hearing, it was determined that there are four separate businesses being operated on the Property.

25. Approximately one-half of the main floor of the building is being used by App-Techs. The remaining approximate one-half of the main floor of the building is being used by Empower. Empower is a personal training, exercise and fitness business.

26. The basement of the building is being used by two businesses. One of the businesses is the Robert Hasch plumbing and heating contractor business. The other business is known as Tim Kiely Home Improvement.

27. With regard to the Empower business, there are approximately 100 members who utilize the facility.

28. Empower's days and hours of operation are as follows:

Monday through Friday - 5:00 a.m. to 8:00 p.m.

Saturday - 7:00 a.m. to 11:30 a.m.

Sunday 7:00 a.m. to 8:00 a.m.

29. Empower has approximately 7 total employees, 3 or 4 of which are full-time.

30. In addition to normal personal training services and appointments, Empower conducts approximately 10 classes per week. Between 6 and 30 persons may attend each class.

31. Empower has in the past conducted "biggest loser" competitions which have been conducted outside of the building and along adjacent roadways.

32. Use of the Property for the Empower business generates substantial traffic and noise for a residential area.

33. App-Tech has 9 full time employees, 7 of which are stationed at the Property.

34. Robert Hasch has 2 part time employees. They come to the Property to pick up parts and tools and also park company vehicles on the Property (there are 4 such vehicles parked on the Property). They are on the Property on a daily basis.

35. Tim Kiely Home Improvement stores wood and other materials on the Property, as well as a table saw, a band saw and hand tools. This business also performs operations such as the cutting of lumber on the Property.

36. Neighbors complained of noise and traffic generated by the various businesses being conducted on the Property.

37. The neighborhood surrounding the Property is essentially residential. Applicant's proposed uses would alter the essential residential character of the neighborhood and would substantially impair use and enjoyment of adjacent and surrounding residential properties and would be detrimental to the public welfare.

II. CONCLUSIONS OF LAW

1. Applicant has requested a variance from Section 502.1 of the Zoning Ordinance. Section 502.1 of the Zoning Ordinance states, in pertinent part, that no expansion of a nonconforming use shall be made unless such expansion has been approved by the Board as a special exception. Applicant's proposal to add an additional non-permitted use or uses is not an expansion of the approved nonconforming use, but rather, as indicated, a proposal to increase the number of non-permitted uses. Section 502.1 of the Zoning Ordinance is not applicable to Applicant's request and Applicant requires a use variance (variance from the terms of Section 901 and

902 of the Zoning Ordinance) in order to add an additional non-permitted use or uses. To the extent, however, it would be deemed applicable, the Board denies Applicant's request for a variance from Section 502.1 of the Zoning Ordinance.

2. Applicant requires variances from the terms of Section 901 and 902 of the Zoning Ordinance (which sets forth the uses permitted as of right and by special exception within the Residential R-2 District) in order to utilize the Property for the Empower business (as well as the Robert Hasch plumbing and heating business and the Tim Kiely Home Improvement business).

3. It is the policy of the law to closely restrict nonconforming uses and to strictly construe provisions in zoning ordinances which provide for the continuance of nonconforming uses. Horninger v. Bethlehem Township Police Association, 301 A.2d 433 (Pa. Commonwealth Ct. 1973).

4. Section 502.3 of the Zoning Ordinance permits one engaged in a nonconforming use of land to, by special exception, change that use to another by discontinuing the first use and substituting the second. He may not continue the first on part of the land and erect an additional use incompatible with the requirements of the zoning district. See Horninger v. Bethlehem Township Police Association, 301 A.2d 433 (Pa. Commonwealth Ct. 1973).

5. Currently, use of the Property for the Empower business, Robert Hasch plumbing and heating business and Tim Kiely Home Improvement business are illegal uses.

6. An applicant for a variance bears the burden of proving that unnecessary hardship will result if the variance is not granted and that the grant of the proposed variance will not be contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983); Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282 (1988); MPC §910.2.

7. A variance, if granted, "must be the minimum that will afford relief and will represent the least modification of the ordinance." Rogers v. Zoning Hearing Board of East Pikeland Township, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922, 924 (1987); MPC §910.2(a)(5).

8. "A variance will be granted when a zoning ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the property and the unnecessary hardship is due to such conditions. Unnecessary hardship justifying a grant of a variance is shown where denial of the variance would render the property practically useless. Economic and personal considerations in and of themselves are

insufficient to constitute hardship." McNally v. Bonner, ___ Pa. Commonwealth Ct. ___, 645 A.2d 287, 289 (1994) (citations omitted).

9. A variance is to be "granted only in exceptional circumstances." M & M Sunoco, Inc. v. Upper Makefield Township Zoning Hearing Board, 154 Pa. Commonwealth Ct. 316, 623 A.2d 908, 911 (1993).

10. In order to warrant the grant of a variance, the hardship must be unique to the property and not one which is generally suffered by other properties in the district. D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, ___ Pa. Commonwealth Ct. ___, 585 A.2d 580, 583 (1991).

11. "A decision on whether to grant a variance must be based upon the factors set out in Section 912 [of the MPC now Section 910.2], not on the humanitarian goals of the Board. The focus . . . is primarily upon physical conditions of the property which make development in accordance with the Zoning Ordinance impossible or prohibitively expensive, and secondarily on whether the proposed use represents the minimal variance necessary to afford relief, while simultaneously protecting the existing neighborhood and the public interest." Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282, 1285 (1988).

12. Circumstances unique to the user of a property and not the property itself do not constitute unnecessary hardship. See, e.g. Chrin v. Zoning Hearing Board of the Borough of Nazareth, 127 Pa. Commonwealth Ct. 279, 561 A.2d 833 (1989).

13. The "failure of proof [to demonstrate the property cannot be used as zoned] is sufficient to deny the request for a variance." Smith v. Zoning Hearing Board of the Borough of Bellevue, 152 Pa. Commonwealth Ct. 427, 619 A.2d 399, 402 (1992).

14. The Property can be used for one commercial business in accordance with the terms of the Zoning Ordinance (including the terms of the Zoning Ordinance relating to nonconforming uses). There are no physical conditions of the Property which make use in accordance with the terms of Zoning Ordinance impossible.

15. Applicant has failed to present evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the Zoning Ordinance.

III. DECISION

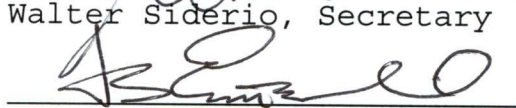
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter

hereby denies the application of Daniel Fritsch for variances from the terms of Section 901 and 902 of the Zoning Ordinance (and Section 502.1 of the Zoning Ordinance, if deemed applicable), and any and all other relief requested.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER


James Glick, Vice-Chairman


Walter Siderio, Secretary


J. Scott Enterline, Alternate

Dated and filed March 13, 2014, after hearing held on February 27, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to March 14, 2014.


Dana A. Hitchens