

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
APPLICATION OF WILMER ESCH : No. 2014-06

DECISION

I. FINDINGS OF FACT

1. Applicant is Wilmer Esch, 365 Lynwood Road, Bird-in-Hand, Pennsylvania 17505 ("Applicant").

2. The property which is the subject of the instant application is located at 2638 Siegrist Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

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

5. 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").

6. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on March 13, 2014.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Applicant has requested: (i) a variance from the terms of Section 905.1 of the Zoning Ordinance; and (ii) a variance from the terms of Section 905.2 of the Zoning Ordinance.

10. Section 905.1 of the Zoning Ordinance states that the maximum height of accessory structures shall be 20 feet.

11. Section 905.2 of the Zoning Ordinance states that the minimum building setback from all streets for accessory structures shall be 15 feet to the rear of the front face of the principal building.

12. The Property is currently improved with a house, as more fully shown on the plan ("Plan") submitted by Applicant.

13. Applicant desires to construct a horse barn upon the Property, as more fully shown on the Plan.

14. The height of the horse barn will be 24 feet.

15. Applicant testified that he requires a horse barn 24 feet in height in order to provide a hay storage area on the second floor.

16. Applicant desires to construct the horse barn at the same front yard setback as the existing house (which is approximately 50 feet from the street right of way).

17. Applicant testified that he is not able to locate the horse barn 15 feet to the rear of the front face of the dwelling because of the location of an existing on-lot septic system, which is shown on the Plan.

18. No persons appeared in opposition to the application.

II. CONCLUSIONS OF LAW

1. 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); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

2. 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).

3. In determining whether unnecessary hardship has been established, zoning hearing boards should examine whether the

variance sought is use or dimensional. To justify the grant of a dimensional variance, zoning hearing boards may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998); Talkish v. Zoning Hearing Board of Harborcreek Township, 738 A.2d 50 (1999).

4. When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations, Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

5. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

6. The location of the existing septic system and the need for second floor hay storage warrant the granting of the variances requested.

7. The unnecessary hardship has not been created by the Applicant.

8. Applicant has presented 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 ordinance.

9. Applicant has satisfied the requirements for variances from the terms of Section 905.1 and Section 905.2 of the Zoning Ordinance.

10. Conditions must be attached to the granting of the variances to protect and preserve the surrounding neighborhood.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby grants the application of Wilmer Esch for: (i) a variance from the terms of Section 905.1 of the Zoning Ordinance in order to permit the construction of a horse barn with a height of 24 feet; and (ii) a variance from the front yard setback requirements of

Section 905.2 of the Zoning Ordinance to permit construction of a horse barn at the same setback as the existing house. The variances granted herein shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the Pennsylvania Municipalities Planning Code:

1. Applicant shall obtain all approvals and permits required by applicable laws and regulations.

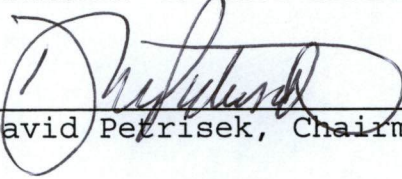
2. Applicants shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on March 13, 2014.

3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

4. The approval granted by this Decision shall expire if Applicants do not obtain a zoning permit within three (3) months from the date of this Decision and do not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

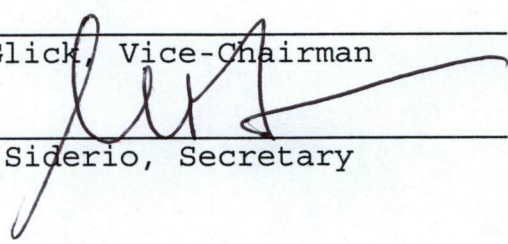
5. The foregoing Decision shall be binding upon the Applicant and his heirs, personal representatives and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman

James Glick, Vice-Chairman



Walter Siderio, Secretary

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

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to March 28, 2014.

