

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-07
APPLICATION OF KING BROTHERS :
PROPERTIES RENTALS :

DECISION

I. FINDINGS OF FACT

1. Applicant is King Brothers Properties Rentals, 3888 Oregon Pike, Leola, Pennsylvania 17540 ("Applicant").

2. The property which is the subject of the instant application is 2836 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located within the Commercial C-2 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. Daniel King and Alvin King appeared at the hearing and testified on behalf of Applicant.

9. The following person completed an entry of appearance form and was recognized as a party to the hearing:

Lisa Maria Weaver
2832 Lincoln Highway East
Ronks, Pennsylvania 17572

10. The Property contains approximately 0.8 acre.

11. The Property is improved with a building used as and for a 4 unit apartment building.

12. The use of the Property as and for a 4 unit apartment building is a valid nonconforming use.

13. Applicant has requested: (i) a special exception pursuant to Section 502.1 of the Zoning Ordinance to expand the nonconforming apartment house use; and (ii) a variance from the maximum 50 % expansion limitations set forth in Section 502.1 of the Zoning Ordinance.

14. The existing apartment building has a footprint of approximately 28 feet by 60 feet, as shown on the plan ("Plan") submitted by Applicant.

15. Applicant proposes to construct an additional 4 unit apartment building on the Property.

16. The proposed apartment building would be slightly larger, with a footprint of approximately 32 feet by 60 feet, as shown on the Plan.

17. Each apartment would contain 2 bedrooms.

18. The apartment building would utilize an on-lot well and public sanitary sewer service.

19. Applicant has not performed any tests to determine whether the on-lot well can adequately serve the proposed apartment building.

20. Applicant testified that the apartment building could be, and would be, constructed in accordance with all setback requirements.

21. Applicant did not provide any testimony with regard to lot coverage and whether the proposal would meet the maximum lot coverage limitations of the Zoning Ordinance.

22. Applicant would provide a total of 16 parking spaces on the Property.

II. CONCLUSIONS OF LAW

1. Applicant has requested: (i) a special exception pursuant to Section 502.1 of the Zoning Ordinance in order to expand an existing nonconforming use; and (ii) a variance from the terms of Section 502.1 of the Zoning Ordinance in order to expand the nonconforming use in excess of 50%.

2. An applicant for a special exception has the burden of proof as to the specific criteria and standards of the zoning ordinance. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989); Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

3. The applicant for a special exception bears the burden of proving that he will comply with all requirements of the zoning ordinance relative to the use intended. Ralph & Joanne's, Inc. v. Neshannock Township Zoning Hearing Board, 121 Pa. Commonwealth Ct. 83, 550 A.2d 586 (1988).

4. With the exception of the maximum expansion limitations set forth in Section 502.1 of the Zoning Ordinance, Applicant has satisfied the requirements for a special exception pursuant to Section 502.1 of the Zoning Ordinance.

5. Applicant requires a variance from the terms of Section 502.1 of the Zoning Ordinance in order to expand the nonconforming apartment building use in excess of 50%.

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); Pennsylvania Municipalities Planning Code ("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 consider-

ations 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. 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).

11. The determination as to whether zoning regulations render a property valueless is to be made with reference to the property as a whole. Hansen Properties III v. Zoning Hearing Board of Horsham Township, 130 Pa. Commonwealth Ct. 8, 566 A.2d 926 (1989).

12. The "failure of proof [to demonstrate the property cannot be used as zoned] is alone 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); see also Beecham Enterprises v. Zoning Hearing Board of Kennedy Township, 556 A.2d 981 (1989).

13. The applicable zoning regulations do not render the Property valueless.

14. Applicant has not presented evidence to establish that the 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.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby: (i) grants the application for a special exception pursuant to the terms of Section 502.1 of the Zoning Ordinance to expand the nonconforming apartment building use up to a maximum of 50%; and (ii) denies the application for a variance from the terms of Section 502.1 of the Zoning Ordinance in order to expand the nonconforming apartment building use in excess of 50%. The special exception shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its

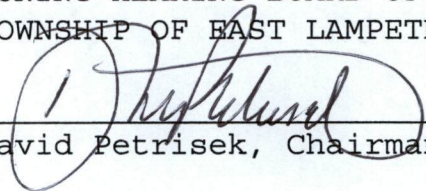
application and the evidence presented to the Board at the hearing held on March 13, 2014, subject to the 50% expansion limitation.

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 Applicant does not obtain a zoning permit within one (1) year from the date of this Decision and does not complete construction of the improvements so authorized and commence the use so authorized within one (1) years from the date of the zoning permit.

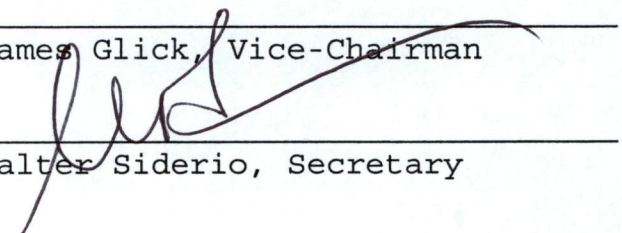
5. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

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 ~~27~~²⁸, 2014.

Jana A Hitchens