

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-11
APPLICATION OF TURKEY HILL MINIT :
MARKETS :

DECISION

I. FINDINGS OF FACT

1. Applicant is Turkey Hill Minit Markets, 257 Centerville Road, Lancaster, Pennsylvania 17603 ("Applicant").
2. The property which is the subject of the instant application is 2453 Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the C-2 Commercial 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 April 10, 2014.

7. Testimony at the hearing was stenographically recorded.

8. Phillip Saunders, of Sign Medix, appeared at the hearing and testified on behalf of Applicant.

9. Applicant initially requested: (i) a variance from Section 1604.8 of the Zoning Ordinance to replace a freestanding sign within the street right of way; and (ii) a variance from Section 1604.9 of the Zoning Ordinance with regard to signage within the clear sight triangle.

10. Applicant withdrew his request for a variance from Section 1604.9 of the Zoning Ordinance.

11. Section 1604.8 of the Zoning Ordinance states as follows:

No sign shall be located within a street right of way, except a government sign, a public utility sign, a sidewalk sign, a non-profit organization sign, or another sign approved by the Board of Supervisors or the Pennsylvania Department of Transportation.

12. The Property is improved with and used as a convenience store.

13. In addition, there is an existing freestanding sign located upon the Property, as more fully shown on the plans and materials presented by Applicant.

14. Although the sign was located outside of the PennDOT right of way when originally constructed, a PennDOT intersection widening and improvement project in 1999 caused the sign to be located within the PennDOT right of way.

15. Applicant is not aware of any approval it has received from PennDOT to maintain the sign within the PennDOT right of way.

16. Applicant desires to replace a damaged portion of the sign. More specifically, Applicant desires to replace the existing sign box with a LED sign box while maintaining the same sign size and location.

17. No persons appeared in opposition to the application.

II. CONCLUSIONS OF LAW

1. Section 1604.8 of the Zoning Ordinance provides in pertinent part that no sign shall be located within a street right of way.

2. 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.

3. The location of the existing sign structure warrants the granting of the variance requested.

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

5. With conditions, Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

6. Conditions must be attached to a grant of the variance in this case to preserve and protect 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 Turkey Hill Minit Markets for a variance from the terms of Section 1604.8 of the Zoning Ordinance. The variance 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. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on April 10, 2014.

3. Prior to issuance of a permit for repair/re-construction of the sign, Applicant shall provide the Township with evidence of PennDOT approval of the sign location within the PennDOT right of way. Such approval may be in the form of a letter from PennDOT or permit issued by PennDOT approving the location.

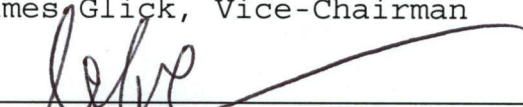
4. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

5. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within three (3) months from the date this Decision and does 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.

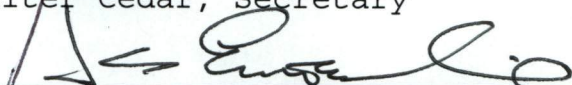
6. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER

James Glick, Vice-Chairman



Walter Cedar, Secretary



J. Scott Enterline, Alternate

Dated and filed April 24, 2014, after hearing held on April
10, 2014.

The undersigned certifies that a copy of this Decision was
served upon all parties on or prior to April 25, 2014.

