

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2014-17  
APPLICATION OF TERI YARNELL :

DECISION

I. FINDINGS OF FACT

1. Applicant is Teri Yarnell, 2274 Gondola Drive, Lancaster, Pennsylvania 17601 ("Applicant").

2. The property which is the subject of the instant application is located at 2274 Gondola Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the R-1 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 June 12, 2014.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Bradley High also appeared at the hearing and testified on behalf of Applicant.

10. The Property was the subject of two previous zoning hearings and the Board takes administrative notice of its Decision in Case No. 2003-06 and its Decision in Case No. 2008-38.

11. The Property is a corner lot (corner of Coach Light Lane and Gondola Drive) and is currently improved with a single family dwelling.

12. In Case No. 2003-06, the Board granted Applicant a variance to construct a proposed dwelling 25 feet from the rear property line, 50 feet from the centerline of Gondola Drive, 50 feet from the centerline of Coach Light Lane and 42 feet from the side property line, as shown on the plan submitted by Applicant.

13. In Case No. 2008-38, the Board granted Applicant a variance from the terms of Section 904.8 of the Zoning Ordinance in order to construct an addition to the existing patio and to enclose

a portion of the patio as a screened porch, all as more fully shown on the plan submitted by Applicant (the enclosed porch would come no closer to the rear property line than 18 feet).

14. Applicant has now requested a variance from Section 904.8 of the Zoning Ordinance to construct a patio addition, with a sitting wall, columns and fire pit.

15. Section 904.8 of the Zoning Ordinance states that the minimum rear yard setback shall be 35 feet.

16. Applicant proposes to overlay an existing 54 square foot concrete pad with pavers. The setback of this area will be approximately 16 feet from the rear property line, as more fully shown on the plan identified as Exhibit # 1.

17. Applicant also proposes to install an additional 396 square foot patio area. The setback of this area will be approximately 18 feet from the rear property line, as more fully shown on the plan identified as Exhibit # 1.

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. Applicant requires a minor dimensional variance from the terms of Section 904.8 of the Zoning Ordinance.

7. The grant of the requested dimensional variance will not be contrary to the public interest.

8. Applicant has satisfied the requirements for a dimensional variance in order to construct the 396 square foot patio addition and the overlay paver addition as shown on Exhibit # 1.

9. Conditions must be attached to a grant of the variance in this case to preserve and protect the surrounding neighborhood.

### III. DECISION

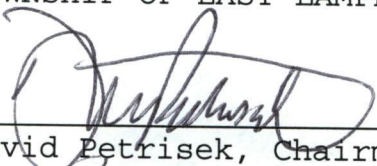
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby grants the application of Teri Yarnell for a variance from the terms of Section 904.8 of the Zoning Ordinance in order to construct the 396 square foot patio addition and the 54 square foot overlay paver addition, as more fully shown on Exhibit # 1. 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:

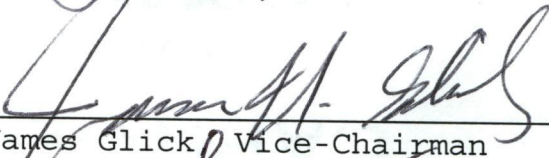
1. Applicant shall obtain all approvals and permits required by applicable laws and regulations.
2. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on June 12, 2014.
3. Any violation of the conditions contained in this Decision shall be considered 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 Applicant does not obtain a zoning permit within twelve (12) months

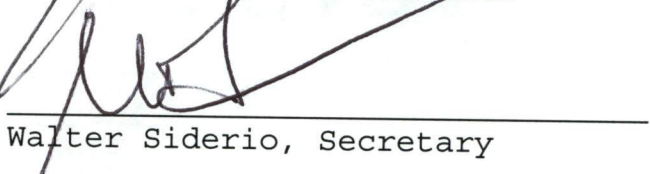
from the date of this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

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

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

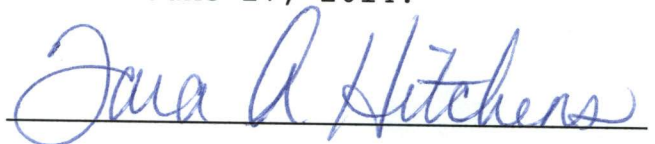
  
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David Petrisek, Chairman

  
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James Glick, Vice-Chairman

  
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Walter Siderio, Secretary

Dated and filed June 26, 2014, after hearing held on June 12, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to June 27, 2014.

  
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Jana A. Hitchens