

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2014-19  
APPLICATION OF FRANK D. CARANO :

DECISION

**I. FINDINGS OF FACT**

1. Applicant is Frank D. Carano, 1670 Lincoln Highway East, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is located at 1670 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the Commercial District C-2 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 26, 2014.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Steven Gergely, of Harbor Engineering, Inc., also appeared at the hearing and testified on behalf of Applicant.

10. The following persons completed entry of appearance forms and were recognized as parties to the hearing:

David Senseney  
1671 Susan Avenue  
Lancaster, PA 17602

Cheryl and Scott Behmer  
1675 Susan Avenue  
Lancaster, PA 17602

11. The Property was the subject of previous zoning hearings and the Board takes administrative notice of its Decision in Case No. 2005-40 and its Decision in Case No. 2006-26.

12. In Case No. 2005-30, the Board granted Applicant a variance from the minimum lot size requirements of the Zoning Ordinance in order to utilize the commercial building located on the Property for a dental office and two additional professional offices.

13. In Case No. 2006-26, the Board granted Applicant a 10 foot variance from Section 1705.6 of the Zoning Ordinance which requires that there be a 50 foot wide greenbelt provided between

all lot lines and all parking areas, driveways and vehicular accessways within the lot when located adjacent to a residential district.

14. The approval granted in Case No. 2006-26 has expired.

15. In 2005 or 2006, Applicant obtained land development approval from East Earl Township to construct a two-story building addition and recorded his Final Land Development Plan.

16. The approved and recorded Final Land Development Plan showed and required landscaping islands in the front yard parking lot area.

17. Applicant failed to install the required landscaping islands.

18. The Property is non-compliant with the Final Land Development Plan.

19. The Property contains approximately 40,030 square feet of area.

20. The Property is located adjacent to a residential district.

21. The second floor of the existing building located on the Property is used for a dental office and a chiropractic office.

22. The first floor of the existing building is vacant and has been vacant since the Board granted the minimum lot size variance in 2005. Although Applicant's current application indicated that a bakery intended to utilize the first floor of the

building, the owner of the bakery is no longer interested in the building or the Property.

23. Applicant has now requested: (i) a variance from Section 1705.6 of the Zoning Ordinance; and (ii) a variance from Section 1811.5 of the Zoning Ordinance.

24. Section 1705.6 of the Zoning Ordinance requires that there be a 50 foot wide greenbelt provided between all lot lines and all parking areas, driveways and vehicular accessways within the lot when located adjacent to a residential district.

25. Section 1811.5 of the Zoning Ordinance states that all parking lots containing 20 or more parking spaces shall be provided within interior landscaped area equal to 10 square feet for each parking space.

26. There is an existing paved area which encroaches into the required greenbelt, as more fully shown on the plans ("Plans") submitted by Applicant.

27. As found by the Board in a previous case, the paved area was installed by the previous owner of the Property without Township approval.

28. Applicant desires to retain a portion of the existing paved area within the required greenbelt, as more fully shown on the Plans. Other areas of the pavement within the required greenbelt will be removed, as more fully shown on the Plans.

29. The requested variance is 13 feet, resulting in a 37 foot greenbelt along the rear property line.

30. Applicant testified that the 13 foot variance is necessary to allow proper turnaround of vehicles in the rear parking area and to permit vehicular movement and maneuvering around existing garage columns.

31. Applicant testified that he would plant six (6) additional evergreen trees along the rear property line, as more fully shown on the Plans, to provide screening of the residential uses to the rear of the Property.

32. Applicant desires to eliminate the landscaping islands required by Section 1811.5 of the Zoning Ordinance and as shown on the Final Land Development Plan.

33. The parking lot contains approximately 35 spaces. 26 of the spaces are located to the front of the building and the remainder are located to the rear of the building.

34. Applicant testified that he intends to re-stripe the front parking spaces such that they are 9 feet wide, rather than the existing 10 feet wide.

35. There is no reason why Applicant cannot install the required interior landscape islands within the parking lot.

36. If the required number of parking spaces is an issue (number required for three professional offices, which is based upon the number of doctors and employees), by way of example and

not by limitation, the number of doctors and employees for the third professional office (and/or the existing two professional offices) can be adjusted accordingly.

## II. CONCLUSIONS OF LAW

### A. VARIANCE FROM SECTION 1705.6 OF THE ZONING ORDINANCE

1. Applicant requires a variance from the terms of Section 1705.6 of the Zoning Ordinance in order to encroach 13 feet into the required rear yard greenbelt.

2. Section 1705.6 of the Zoning Ordinance requires that there be a 50 foot wide greenbelt provided between all lot lines and all parking areas, driveways and vehicular accessways within the lot when located adjacent to a residential district.

3. In order to qualify for a variance, an applicant must establish that: (i) an unnecessary hardship stemming from unique physical circumstances or conditions of the property will result if the variance is denied; (ii) because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (iii) the hardship has not been created by the applicant; (iv) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (v) the variance sought is the minimum variance that will afford relief. Worthington v. Zoning Hearing Board of New

Britain Township, \_\_\_\_\_ Pa. Commonwealth Ct. \_\_\_\_\_, 669 A.2d 497 (1996), citing Laurento v. v. Zoning Hearing Board of the Borough of West Chester, 162 Pa. Commonwealth Ct. 226, 638 A.2d 437 (1994). 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.

4. The location of the existing structures and paving warrants the granting of the variance requested.

5. 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.

B. VARIANCE FROM SECTION 1811.5 OF THE ZONING ORDINANCE

1. Applicant requires a variance from the terms of Section 1811.5 of the Zoning Ordinance to eliminate the interior landscape parking lot islands.

2. In order to qualify for a variance, an applicant must establish that: (i) an unnecessary hardship stemming from unique physical circumstances or conditions of the property will result if the variance is denied; (ii) because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (iii) the hardship has not been created by the applicant; (iv) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (v) the variance sought is the minimum variance that will afford relief. Worthington v. Zoning Hearing Board of New Britain Township, \_\_\_\_\_ Pa. Commonwealth Ct. \_\_\_\_\_, 669 A.2d 497 (1996), citing Laurento v. v. Zoning Hearing Board of the Borough of West Chester, 162 Pa. Commonwealth Ct. 226, 638 A.2d 437 (1994).

3. The Court further noted in Laurento that in order for an applicant to demonstrate an unnecessary hardship, the applicant must prove that either:

(i) the physical characteristics of the property are such that it could not in any case be used for any permitted purpose or



that it could only be arranged for such purposes at prohibitive expense, or

(ii) the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance . . . . The applicant must show that the hardship is unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on the entire district.

4. 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).

5. 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).

6. The mere fact that a property may be used in a more profitable fashion is insufficient grounds to grant a variance. Oxford Corporation v. Zoning Hearing Board of Oxford Borough, 34 A.3d 286 (Pa. Cmwlth. 2011); Township of East Caln v. Zoning Hearing Board of East Caln Township, 915 A.2d 1249 (Pa. Cmwlth. 2000).

7. The inability to "maximize the development potential of the property" is not grounds for the granting of dimensional or use

variances. Singer v. Philadelphia Zoning Board of Adjustment, 29 A.3d 144, 150 (Pa. Cmwlth. 2011).

8. "To justify the grant of a dimensional variance, courts 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 zoning requirements and the characteristics of the surrounding neighborhood." Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43, 50 (1998).

9. In Camp Ramah in the Poconos, Inc. v. Zoning Hearing Board of Worcester Township, 743 A.2d 1019 (Pa. Cmwlth. 2000), Commonwealth Court held that the applicant was not entitled to a setback variance under Hertzberg. Commonwealth Court clearly stated that even though Hertzberg reduced the standard for dimensional variances, standards still exist.

10. Dimensional variances are not "free fire zones" for which variances could be granted when the party seeking the variance has merely articulated a reason that it would be financially "hurt" if it could not do what it wanted to do with the property. Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. Ct. 2001).

11. When requesting a dimensional variance, the property owner is still required to prove an undue hardship or unnecessary

hardship that is unique to the land. Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. Ct. 2001).

12. Applicant could satisfy the requirements of Section 1811.5 of the Zoning Ordinance.

13. The Property itself is not subject to unnecessary hardship.

14. A variance is not necessary to allow reasonable use of the Property.

15. Applicant has failed to present evidence sufficient to satisfy the requirements for a variance from the terms of Section 1203.D of the Zoning Ordinance.

## **II. 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 of Frank D. Carano for a variance from the terms of Section 1705.6 of the Zoning Ordinance; and (ii) denies the application of Frank D. Carano for a variance from the terms of Section 1811.5 of the Zoning Ordinance. The variance from Section 1705.6 of the Zoning Ordinance 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. Without limiting Condition No. 1 above, Applicant shall obtain land development approval and storm water management approval from East Lampeter Township.

3. Applicant shall install six (6) trees along the rear of the Property in accordance with the Plan.

4. The building shall only be used for professional offices in accordance with the Board's Decision in Case No. 2005-40.

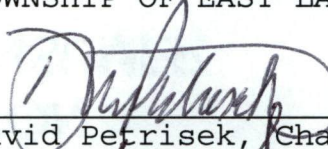
5. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on June 26, 2014.

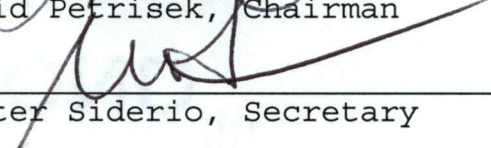
6. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

7. 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.

8. 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

  
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Walter Siderio, Secretary

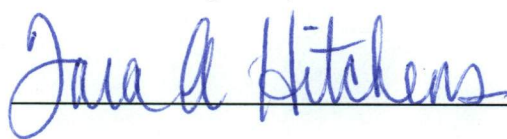
CONCURRING IN PART AND DISSENTING IN PART:

I concur with the grant of the variance from Section 1706.5 of the Zoning Ordinance with regard to the required greenbelt. I would also grant the requested variance from Section 1811.5 of the Zoning Ordinance with regard to interior landscaped areas in curbed island planters.

  
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James Glick, Vice-Chairman

Dated and filed July 10, 2014, after hearing held on June 26, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to July 11, 2014.

  
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