

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-23
APPLICATION OF PAUL ESCH :

DECISION

I. FINDINGS OF FACT

1. Applicant is Paul Esch, 2210 Creek Hill Road, Lancaster, Pennsylvania 17601 ("Applicant").
2. The property which is the subject of the instant application is 360 Mount Sidney Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the equitable owner of the Property.
4. The record owner of the Property is Robert Neff.
5. The Property is located partially within the Residential R-2 District and partially within the Rural District as shown on the Official Zoning Map of East Lampeter Township.
6. 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").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on August 14, 2014.

8. Testimony at the hearing was stenographically recorded.

9. Applicant was represented at the hearing by Nicholas T. Gard, Esquire.

10. Robert Neff also appeared at the hearing and testified on behalf of Applicant.

11. Applicant has requested: (i) a special exception pursuant to Section 502.3 of the Zoning Ordinance in order to substitute a metal fabrication business in place of a nonconforming feed mill and coal mill business; (ii) a special exception pursuant to Section 502.1 of the Zoning Ordinance in order to expand the nonconforming use; and (iii) a variance from Section 1705.7 of the Zoning Ordinance with regard to the location of a loading dock.

12. Section 502.3 of the Zoning Ordinance authorizes the substitution of a nonconforming use if the Board finds that the

proposed nonconforming use is not more detrimental to the District than the existing nonconforming use of the property.

13. Section 502.1 of the Zoning Ordinance states that a nonconforming use may be expanded by an area equal to fifty percent of the existing nonconforming use by special exception.

14. Section 1705.7 of the Zoning Ordinance states that no loading or unloading dock shall be located between the building and the adjoining street right of way.

15. The Property was the subject of previous zoning hearings and the Board takes administrative notice of its Decision in Case No. 2010-02 and its Decision in Case No. 2010-19.

16. In Case No. 2010-02, the record owner of the Property requested a special exception pursuant to Section 502.3 of the Zoning Ordinance to substitute a vinyl manufacturing business in place of the feed mill business and a special exception pursuant to Section 502.3 of the Zoning Ordinance in order to substitute a fence and farm systems business in place of the coal mill business.

The Board made the following findings in Case No. 2010-02:

The Property has been used since at least 1970 for a feed mill and coal mill.

The feed mill use is a valid nonconforming use.

The coal mill use is a valid nonconforming use.

The feed mill use encompasses a total of 19,742 square feet of building area.

The coal mill use encompasses a total of 6,464 square feet of building area.

Neither the feed mill use nor the coal mill use have been expanded since 1970.

17. In Case No. 2010-19, the record owner of the Property requested and was granted a special exception pursuant to Section 502.1 of the Zoning Ordinance to expand the size of the vinyl manufacturing business and fence and farm systems business.

18. Because of financial difficulties, the vinyl manufacturing business and fence and farm systems business never became fully operational on the Property.

19. The record owner of the Property has continued his intent to replace the feed mill and coal mill with other non-residential uses.

20. Applicant now proposes to substitute a metal fabrication business in place of the feed mill and coal mill and desires to expand the areas that had been used by the feed mill and coal mill.

21. Applicant's business, known as "Esch Manufacturing", involves the fabrication/manufacture of farm machinery, including

repairs and sales. There is also a small retail component with regard to the sale of farm machinery parts.

22. Applicant will remove an existing shed and will construct a building containing 21,500 square feet of floor area. One-half of the this building will be used for the manufacturing business and one-half of the building will be used for warehousing, offices and lunch room associated with the manufacturing business.

23. Applicant will also construct a building containing 2,400 square feet of floor area. This building will be used for storage.

24. Applicant proposes three outdoor storage areas, as more fully shown on the plan ("Plan") submitted by Applicant. Storage area "A" contains 2,424 square feet of area. Storage area "B" contains 1,800 square feet of area. Storage area "C" contains 4,486 square feet of area.

25. Applicant will construct a diesel shed containing 320 square feet of floor area.

26. The total area to be used for the proposed business will be 32,930 square feet.

27. The size of the proposed business represents an expansion of approximately 26% over the size of the feed mill and coal mill.

28. There is a loading/unloading dock to the front of the proposed 21,500 square foot building, as more fully shown on the Plan.

29. The loading/unloading dock has been located to the front of the building so that the manufacturing portion of the business can be located away from the neighboring residential properties along Mount Sidney Road.

30. In addition to Applicant and his father, there are five employees of the business.

31. Applicant's days and hours of operation are as follows: Monday through Friday, 6:00 a.m. to 6:00 p.m.; some Saturdays, 7:00 a.m. To 3:00 p.m.

32. All work will be performed inside the building.

33. There will be, on average, one delivery of raw materials to the Property per day.

34. There will be, on average, one shipment/delivery of finished product from the Property per day.

35. Applicant will install screening as shown on the Plan in order to protect adjacent residential uses.

36. The overhead door or doors of the main building will be located on the side of building facing the railroad tracks (south side of the building).

37. The substitution of use will not injure or detract from the use of neighboring properties.

38. The proposed use is not more detrimental to the Zoning District than the prior nonconforming uses.

II. CONCLUSIONS OF LAW

1. Section 502.3 of the Zoning Ordinance authorizes the substitution of a nonconforming use by special exception if the Board finds that the proposed nonconforming use is not more detrimental to the District than the existing nonconforming use of the property.

2. Section 502.1 of the Zoning Ordinance states the a nonconforming use may be expanded by an area equal to fifty percent of the existing nonconforming use by special exception.

3. 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).

4. Applicant has presented sufficient testimony to establish that the proposed use of the Property would not be more detrimental than the previous uses of the Property.

5. Applicant has satisfied the specific requirements of Section 502.3 and Section 502.1 of the Zoning Ordinance and the general requirements of Section 1901 of the Zoning Ordinance with regard to the proposed substitution and expansion.

6. With regard to the location of the loading/unloading dock, Applicant requires a variance from Section 1705.7 of the Zoning Ordinance.

7. 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.

8. The configuration of the Property warrants the granting of the variance requested.

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

10. 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.

11. Conditions must be attached to a grant of the special exceptions and 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 Paul Esch for: (i) a special exception pursuant to Section 502.3 of the Zoning Ordinance in order to substitute a metal fabrication business in place of a nonconforming feed mill business and coal mill business; (ii) a special exception pursuant to Section 502.1 of the Zoning Ordinance

in order to expand the nonconforming use; and(iii) a variance from Section 1705.7 of the Zoning Ordinance in order the locate the loading/unloading dock to the front of the proposed building, as more fully shown on the Plan. The special exceptions and variance 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.

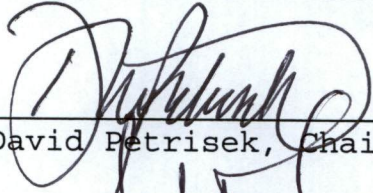
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing.

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.

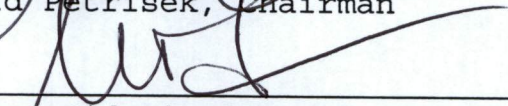
4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within nine (9) months from the date this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

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

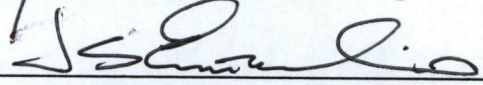
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



Walter Siderio, Secretary



J. Scott Enterline, Alternate

Dated and filed August 28, 2014, after a hearing held on August 14, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 29, 2014.

