

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
APPLICATION OF HIGH PROPERTIES : No. 2014-24
:

DECISION

I. FINDINGS OF FACT

1. Applicant is High Properties, 1853 William Penn Way, Lancaster, Pennsylvania 17605-0008 ("Applicant").
2. The property which is the subject of the instant application is located at 2194 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 Residential R-3 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 August 14, 2014.
7. Testimony at the hearing was stenographically recorded.
8. Applicant was represented at the hearing by Mark Stanley, Esquire.
9. Brad Mowbray, of High Properties, appeared at the hearing

and testified on behalf of Applicant.

10. Mark A. Johnson, of RGS Associates, also appeared at the hearing and testified on behalf of Applicant.

11. The following persons completed entry of appearance forms and were recognized as parties:

John and Lyla Walrath
150 Buckwalter Road
Lancaster, PA 17602

Dixie and Tom Colvin
162 Buckwalter Road
Lancaster, PA 17602

Stephen and Lisa Pidcock
161 Buckwalter Road
Lancaster, PA 17602

Mrs. William Eitner
2196 Old Philadelphia Pike
Lancaster, PA

12. Applicant has requested a variance from Article IV of the Zoning Ordinance with regard to the definition of term "apartment house".

13. Article IV of the Zoning Ordinance defines an apartment house as a dwelling which does not have a lot line between dwelling units and is designed to accommodate two or more dwelling units; however, the dwelling shall not exceed three stories in height nor contain more than twelve dwelling units per dwelling.

14. The Property contains approximately 4.838 acres, as more fully shown on the plan (the "Plan") submitted by Applicant at the hearing.

15. Applicant proposes to construct a residential development upon the Property in accordance with the Plan.

16. Applicant proposes to construct: (i) an apartment house containing 18 units; (ii) an apartment house containing 20 units; and (iii) 4 townhouse units.

17. There will be a total of 42 dwelling units.

18. The apartment house buildings will be no higher than 3 stories.

19. The apartment house buildings will be sprinklered for fire safety.

20. All dwelling units will be served by public water.

21. Applicant testified that the lot density requirements of the Zoning Ordinance would permit a maximum of 42 dwelling units to be constructed upon the Property.

22. Applicant testified that, because of the irregular shape of the Property, it is not possible to develop the Property to achieve the maximum density without either this variance or, if denied, other variances. Applicant did not state what other specific variances would be necessary.

23. Neighbors expressed concerns regarding, by way of example and not by limitation, traffic, impact upon residential wells, and the height of the apartment buildings.

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 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. McNally v. Bonner, ___ Pa. Commonwealth Ct. ___, 645 A.2d 287, 289 (1994) (citations omitted).

3. 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).

4. 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).

5. Potential economic loss from the inability to create an additional lot or an additional dwelling unit or maximum profit does not warrant the granting of a variance. Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001); Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. 2001).

6. "In order to establish that denial will result in unnecessary hardship an applicant for a variance must show more

than mere economic or personal hardship. The applicant must prove that the hardship is unique to the property, and that the zoning restriction sought to be overcome renders the property "practically valueless." Borough of Dormont v. Zoning Hearing Board of the Borough of Dormont , 850 A.2d 826, 828 (Pa. Cmwlth. 2004) (citations omitted).

7. 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).

8. 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).

9. "Financial hardship, short of rendering a property practically valueless, is insufficient to warrant the grant of a variance." Atlantic Refining and Marketing Company v. Zoning Hearing Board of Upper Merion Township, 133 Pa. Commonwealth Ct. 261, 575 A.2d 961, 963 (1990); King v. Zoning Hearing Board of Towamencin Township, 154 Pa. Commonwealth Ct. 109, 622 A.2d 435 (1993).

10. Although Applicant argued that the variance from the definition of the term "apartment house" was a dimensional variance, or similar to a dimensional variance, the Board concludes that the requested variance is a use variance. The limitation on the number of apartment units is contained in the definition itself

and apartment houses containing more than 12 units are not a permitted use under the Zoning Ordinance.

11. Whether considered a use or dimensional variance, Applicant is not entitled to a variance so that it can construct the maximum number of units permitted by density provisions. Maximum density is limited by the other provisions of the Zoning Ordinance.

12. Applicant can reasonably develop the Property utilizing apartment houses containing no more than 12 units per apartment house, even though this may result in less than 42 units on the Property. The Board concludes that any testimony presented by Applicant to the contrary is not credible.

13. Applicant has failed to present 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.

14. Applicant made numerous references to a previous Decision rendered by the Board in Case No. 2011-07. In Case No. 2011-07, the Board

15. "[A] variance is not required to be granted merely because the [board] previously granted a similar variance which may or may not be in error." East Torresdale Civic Association v. Zoning Board of Adjustment of the City of Philadelphia, 147 Pa. Commonwealth Ct. 35, 606 A.2d 1247, 1250 (1992).

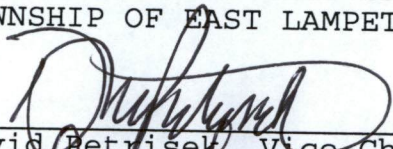
16. The variance granted by the Board in Case No. 2011-07 was in error and the Board is not required to grant the current

variance request merely because it was granted in error in another case involving another property.

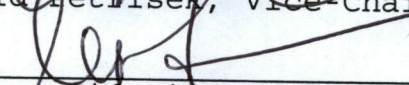
III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application for a variance from Article IV (definition of the term "apartment house").

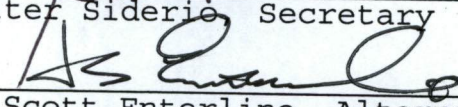
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Vice-Chairman



Walter Siderio, Secretary



J. Scott Enterline, Alternate

Dated and filed August 28, 2014, after 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.

