

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-29
APPLICATION OF ROY STACEY :
AND GENEVIEVE STACEY :

DECISION

I. FINDINGS OF FACT

1. Applicants are Roy Stacey and Genevieve Stacey, 2322 Old Philadelphia Pike, Lancaster, Pennsylvania 17602 ("Applicants").
2. The property which is the subject of the instant application is 2322 Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the R-Rural District as shown on the Official Zoning Map of East Lampeter Township.
4. Applicants are the owners of the Property.
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 October 9, 2014.
7. Testimony at the hearing was stenographically recorded.

8. Applicants appeared personally at the hearing.
 9. Applicants have requested variances from Sections 701 and 702 of the Zoning Ordinance.
 10. Sections 701 and 702 of the Zoning Ordinance set forth those uses permitted by right and by special exception within the R-Rural Zoning District.
 11. The Property is currently improved with a dwelling and detached accessory structures, as more fully shown on the plan (the "Plan") submitted by Applicants.
 12. Applicants reside within the dwelling.
 13. The dwelling contains approximately 2,800 - 3,000 square feet of floor space.
 14. Applicants propose to operate a lawn care and landscaping business upon the Property.
- Applicants also provide snow plowing services.

15. Applicants propose to store vehicles, equipment and tools on the Property relating to the proposed business. More specifically, Applicants would store the following:

- 1 dump truck (3/4 ton)
- 4 pickup trucks
- 3 trailers, 2 of which are enclosed and one of which is open (22 feet long, 16 feet long and 12 feet long)
- 1 skid loader
- 4 zero turn commercial-type riding mowers
- 3 push-type mowers
- Landscaping tools

16. Landscaping tools and other landscaping / lawn service business tools and equipment would be stored in a 25 x 21 foot building, as more fully shown on the Plan. This building would be used exclusively for the business.

17. The other three accessory buildings shown on the Plan (being identified as a 20 x 20 garage, a 10 x 20 accessory building, and a 24 x 12 shed) would be used for residential use storage purposes.

18. There is a 50 foot by 98 foot enclosed courtyard area located upon the Property, as more fully shown on the Plan.

19. Applicants intend to store the business vehicles and equipment within the enclosed courtyard area.

20. Applicants would use a 12 foot by 12 foot area of the dwelling as and for their business office.

21. Applicants have 2 nonresident employees.

22. The employees come to Property on work days, park their personal vehicle, and then travel to customer work sites in Applicants' business vehicles.

23. Applicants perform both commercial and residential services.

24. Applicants do not perform services on the Property (services are performed at the customer's site).

25. Applicants do not perform truck maintenance at the Property. They do change mower oil at the Property.

26. Applicants do not store flammable liquids on the Property.

27. Applicants purchased the Property under the mistaken belief that they could operate the business upon the Property.

28. When purchasing the Property, Applicants were told by the seller that he operated a ceramic business in a garage on the Property. The seller also told Applicants that, at one point in time in the past, excavating equipment was stored on the Property.

29. Applicants did not provide any evidence or proof that such uses were approved by the Township.

30. The Township Assistant Zoning Officer testified that he searched the Township's records and that no approvals exist with regard to these businesses.

31. To the extent that a ceramics and excavating storage business were conducted on the Property, such uses were illegal.

32. Applicants did not contact the Township prior to purchasing the Property to determine whether any businesses were conducted on the Property or whether they could operate their proposed business on the Property (Applicants provided no evidence of any such contact with the Township).

33. It does appear that, at some point in the past, a beauty salon was operated as an approved home occupation in the basement of the dwelling.

34. The lot adjacent to the Property (2324 Old Philadelphia Pike) is used for a residence.

35. The other lot adjacent to the Property (2320 Old Philadelphia Pike) is also used as a residence (identified as a rental unit).

36. A farmer's field is located to the rear of the Property.

II. CONCLUSIONS OF LAW

1. Applicants' proposed business use is not permitted as of right or by special exception within the R-Rural Zoning District.

2. Applicants require a use variance (variance from the uses permitted as of right and by special exception) from Sections 701 and 702 of the Zoning Ordinance.

3. 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. "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. Unnecessary hardship justifying a grant of a variance is shown where denial of the variance would render the property practically useless. Economic and personal considerations in and of themselves are insufficient to constitute hardship." McNally v. Bonner, ___ Pa. Commonwealth Ct. ___, 645 A.2d 287, 289 (1994) (citations omitted).

5. A variance is to be "granted only in exceptional circumstances." M & M Sunoco, Inc. v. Upper Makefield Township Zoning Hearing Board, 154 Pa. Commonwealth Ct. 316, 623 A.2d 908, 911 (1993).

6. 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).

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. "[T]he reasons underlying the grant of a variance must be substantial, serious, and compelling." Constantino v. Zoning Hearing Board of the Borough of Forest Hills, 152 Pa. Commonwealth Ct. 258, 618 A.2d 1193, 1196 (1992).

9. 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); see also Beecham Enterprises v. Zoning Hearing Board of Kennedy Township, 556 A.2d 981 (1989).

10. The Property can be used as zoned.

11. The applicable zoning regulations do not render the Property valueless.

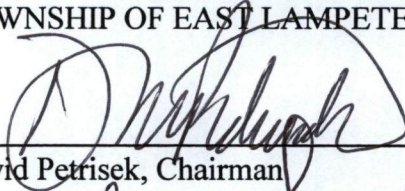
12. Applicants have not presented evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

13. Applicants are not entitled to variances from the terms of Sections 701 and 702 of the Zoning Ordinance.

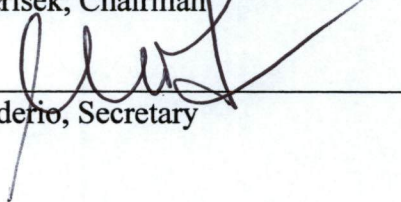
III. DECISION

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 of Roy Stacey and Genevieve Stacey for variances from Sections 701 and 702 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



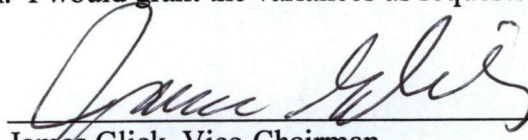
David Petrisek, Chairman



Walter Siderio, Secretary

DISSENT:

I dissent from the foregoing Decision. I would grant the variances as requested.


James Glick, Vice-Chairman

Dated and filed October 23, 2014, after hearing held on October 9, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to October 24, 2014.

