

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-01
APPLICATION OF MARK A. NIGRO :

DECISION

I. FINDINGS OF FACT

1. Applicant is Mark A. Nigro, 8 Landis Avenue, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is located at 8 Landis Avenue, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located partly in the Commercial District C-2 and partly in the Residential District R-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 January 8, 2015.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Vic Nigro also appeared at the hearing and testified on behalf of Applicant.

10. The Property is a narrow lot, approximately 50 feet in width, as shown on the plans ("Plans") submitted by Applicant.

11. The Property is improved with a single family dwelling, two detached garages and an additional detached shed, as more fully shown on the Plans.

12. One of the garages is located approximately 4 feet 6 inches from the side property line.

13. Applicant proposes to demolish/remove the existing garages and shed upon the Property.

14. Applicant proposes to construct one new garage, 36 feet by 40 feet, as shown on the Plans.

15. The new garage would be located 4 feet 6 inches from the one side property line and 9 feet 6 inches from the other side property line.

16. Section 1205.1 of the Zoning Ordinance states that, within the Commercial District C-2, all buildings intended for residential use shall comply with the regulations in the Residential District R-3.

17. Section 1005.3 of the Zoning Ordinance provides that the minimum side yard setback for accessory buildings within the Residential District R-3 shall be 8 feet.

18. Section 905.3 of the Zoning Ordinance states that, within the Residential District R-2, the minimum side yard setback for accessory buildings shall be 10 feet.

19. Applicant requires a variance from the terms of Section 1005.3 of the Zoning Ordinance for the setback from the one side property line.

20. Applicant requires a variance from the terms of Section 905.3 of the Zoning Ordinance for the setback from the side property line.

21. No one appeared at the hearing 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. 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).

3. 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).

4. 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).

5. The narrowness of the Property and the location of existing structures warrant the granting of the variances requested.

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

7. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the ordinance.

8. Conditions must be attached to a grant of the variances 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 Mark A. Nigro for variances from the terms of Section 1005.3 and Section 905.3 of the Zoning Ordinance in order to permit the construction of a new garage upon the Property, 4 feet 6 inches from the one side property line and 9 feet 6 inches from the other side property line, as more particularly shown on the Plans. The variances 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:

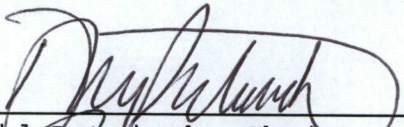
1. Applicant shall obtain all approvals and permits required by applicable laws and regulations.
2. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on January 8, 2015.
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall

be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

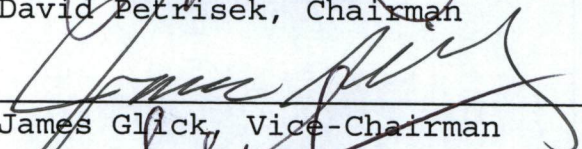
4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within three (3) months from the date this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

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

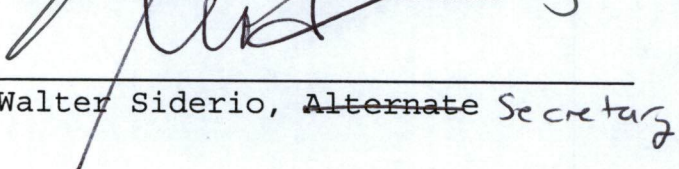
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, ~~Alternate~~ Secretary

Dated and filed January 22, 2015, after hearing held on January 8, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to January 23, 2015.

Jana A. Hitchens