

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No: 2015-06
APPLICATION OF JOSEPH ESH :

DECISION

I. FINDINGS OF FACT

1. Applicant is Joseph Esh, 2151 Forry Road, Lancaster, Pennsylvania 17601 ("Applicant").

2. The property which is the subject of the instant application is 2083 Forry Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the Rural 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 April 9, 2015.

7. Testimony at the hearing was stenographically recorded.

8. Henry Esh and Steven Fisher appeared at the hearing and testified on behalf of Applicant.

9. The Property contains approximately 56 acres and is actively farmed.

10. The Property is improved with, among other buildings, a single family detached dwelling.

11. The existing single family dwelling is located approximately 40 feet from the centerline of Forry Road and is dimensionally nonconforming with regard to front yard setback.

12. Henry Esh, Applicant's son, resides in the single family detached dwelling with his family.

13. Henry Esh intends on buying the Property from Applicant within the next three (3) years.

14. Applicant desires to construct an additional dwelling unit which will be attached to the existing dwelling unit.

15. The mother-in-law of Henry Esh, and her three children, will live in the additional dwelling unit.

16. The additional dwelling unit will contain approximately 961 square feet of floor area.

17. The additional dwelling unit will be located 53 feet from the centerline of Forry Road.

18. The additional dwelling will have a dedicated means of egress.

19. There is sufficient parking upon the Property for the additional dwelling.

20. Applicants have requested: (i) a special exception in accordance with Section 702.21 and Section 1931-A of the Zoning Ordinance; (ii) a variance from the terms of Section 1931-A.2 of the Zoning Ordinance; and (iii) a variance from the terms of Section 705.5.A of the Zoning Ordinance.

21. Section 702.21 permits the addition of one dwelling unit to a principal dwelling situated on a farm provided the unit is physically attached to the principal dwelling, subject to the requirements of Section 1931-A of the Zoning Ordinance.

22. Section 1931-A of the Zoning Ordinance sets forth the specific requirements for one-dwelling additions.

23. Section 1931-A.2 of the Zoning Ordinance states that the owner of the principal dwelling shall be the primary occupant of the principal dwelling.

24. Section 705.5.A of the Zoning Ordinance states that the minimum building setback shall be 65 feet from the centerline of the road.

25. No persons appeared in opposition to the application.

II. CONCLUSIONS OF LAW

1. An applicant for a special exception has the burden of persuasion 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).

2. Section 702.21 of the Zoning Ordinance states, in pertinent part, that the addition of no more than one dwelling unit to a principal dwelling situated on a farm is permitted by special exception provided the additional dwelling is physically attached to the principal dwelling and that no subdivision of the additional dwelling unit shall be permitted, subject to the provisions of Section 1931-A.

3. Section 1931-A of the Zoning Ordinance sets forth the specific requirements for the addition of one dwelling unit to a principal dwelling situated on a farm.

4. With the exception of Section 1931-A.2 of the Zoning Ordinance (which requires that the owner of the principal dwelling reside within the principal dwelling), Applicant has demonstrated compliance with the requirements of Section 702.21 and Section 1931-A of the Zoning Ordinance.

5. Applicant requires a variance from the terms of Section 1931-A.2 of the Zoning Ordinance.

6. Applicant also requires a variance from the minimum building setback requirements to construct the additional dwelling 53 feet from the centerline of Forry Road.

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. 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).

9. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances 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.

10. Conditions must be attached to a grant of the special exception and 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 Joseph Esh for: (i) a special exception in accordance with Section 702.21 and Section 1931-A of the Zoning Ordinance; (ii) a variance from the terms of Section 1931-A.2 of the Zoning Ordinance; and (iii) a variance from the terms of Section 705.5.A of the Zoning Ordinance. The special exception and variances 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.

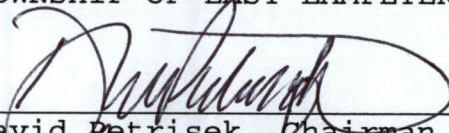
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in their application and the evidence presented to the Board at the hearing held on April 9, 2015.

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.

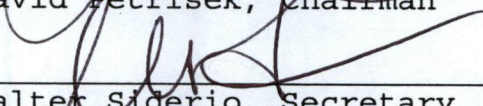
4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within three (3) months from the date of this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the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

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

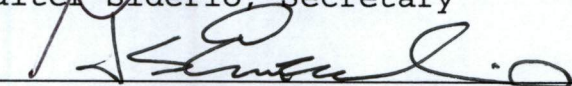
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



Walter Siderio, Secretary



J. Scott Enterline, Alternate

Dated and filed April 23, 2015, after hearing held on April 9, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 24, 2015.

