

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-10
APPLICATION OF AMOS KING :

DECISION

I. FINDINGS OF FACT

1. Applicant is Amos King, 2479A Old Philadelphia Pike, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is located at 2479A Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner the Property.
4. The Property is located in the C-2 Commercial 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 March 12, 2015.
7. Testimony at the hearing was stenographically recorded.
8. Applicant appeared personally at the hearing.

9. The following persons completed entry of appearance forms and were recognized as parties to the hearing:

James N. Glick
(on behalf of Glick's Plant Farms, LP)
145 Witmer Road
Lancaster, PA 17602

John J. Bare
422 Millcreek Road
Bird-in-Hand, PA

10. The Property was the subject of previous zoning hearings and the Board takes administrative notice of its Decision in Case No. 2009-27 and its Decision in Case No. 2012-28.

11. In Case No. 2012-28, the Board approved in part and denied in part Applicant's request for a variance regarding the location of signage on the Property.

12. In Case No. 2009-27, the Board granted Applicant's request for (i) a variance from Section 1205.1 and Section 1004.2.B of the Zoning Ordinance; (ii) a variance from Section 1205.2.B.2 of the Zoning Ordinance; and (iii) a variance from Section 1702.5 of the Zoning Ordinance.

13. Section 1205.1 of the Zoning Ordinance states that all dwelling units within the C-2 Commercial District shall comply with the regulations set forth in the Residential R-3 District.

14. Section 1004.2.B states that the minimum lot area for dwelling units shall be 10,000 square feet when served by public sanitary sewer facilities.

15. Section 1205.2.B.2 of the Zoning Ordinance states that the minimum lot area for uses in the C-2 Commercial District (exclusive of dwellings) shall be 20,000 square feet per principal use when served by public sanitary sewer facilities.

16. Section 1702.5 of the Zoning Ordinance states that there shall be a minimum 10 foot

wide greenbelt between all lot lines and all driveways.

17. In Case No. 2009-27, the Board granted Applicant's request to construct a one-story building containing 5,000 square feet of floor area (50 feet by 100 feet) upon the Property, as more fully shown on the plan (the "2009 Plan") submitted by Applicant, to be used as a contractor's equipment storage building and office for Applicant's roofing business (the Property also contained an existing single family detached dwelling). Applicant's surveyor, Roger Fry, testified at the hearing held in Case No. 2009-27 that the Property would contain (post development) approximately 23,000 square feet of area.

18. Rather than constructing a one story building containing 5,000 square feet of floor area as approved by the Board and as shown on the 2009 Plan, Applicant constructed a two-story building containing 7,440 square feet of floor area.

19. Applicant did not obtain approval from the Board to construct a two-story building containing 7,440 square feet of floor area.

20. Applicant now desires to convert the second floor of the two-story building into a 5 bedroom dwelling.

21. Although Applicant initially asked for a variance from the terms of Section 1205.2.B.2 of the Zoning Ordinance (minimum lot area for other uses exclusive of dwellings) to permit the additional dwelling unit, it was determined at the hearing that Applicant requires a variance from Section 1205.1 and Section 1004.2.B (minimum lot area per dwelling unit) of the Zoning Ordinance.

22. Although Applicant testified that the Property contains 25,700 square feet of area, Applicant's surveyor previously testified that the Property contains approximately 23,000 square feet. Applicant has not performed a recent survey to support his claim that the Property contains 25,700 square feet.

II. CONCLUSIONS OF LAW

1. Because the Property does not contain a minimum of 40,000 square feet of area, Applicant requires a variance from Section 1205.1 and Section 1004.2.B of the Zoning Ordinance.

2. 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.

3. "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).

4. 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).

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. "[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).

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

9. The Property can be used as zoned.

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

11. Applicant has 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.

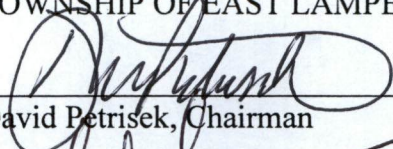
12. To the extent that Applicant constructed a larger structure than approved by the Board, any hardship is self-created.

13. Applicant is not entitled to the requested variances.

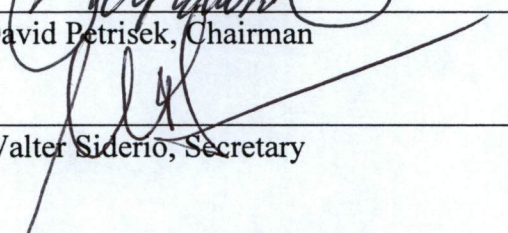
III. DECISION

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 Amos King for variances from Section 1205.1 and Section 1004.2.B of the Zoning Ordinance and any other relief requested by Applicant.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



Walter Siderio, Secretary

Dated and filed March 26, 2015, after a hearing held on March 12, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to March 27, 2015.

