

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-14
APPLICATION OF BILL SICKLER :

DECISION

I. FINDINGS OF FACT

1. Applicant is Bill Sickler, 2025 Creek Hill Road, Lancaster, Pennsylvania 17601 ("Applicant").
2. The property which is the subject of the instant application is located at 2025 Creek Hill Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The owner of the Property is Debra L. Miller, 2025 Creek Hill Road, Lancaster, Pennsylvania 17601.
4. The Property is located in the R-1 Residential 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 23, 2015.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Debra A. Miller also appeared at the hearing and provided testimony.

10. Applicant has requested a variance from the terms of Section 802.5 of the Zoning Ordinance.

11. Section 802.5 of the Zoning Ordinance states that the front yard minimum depth for accessory structures shall be 15 feet to the rear of the front face of the principal building.

12. The Property is improved with a dwelling, as shown on the plan (the "Plan") submitted by Applicant.

13. Applicant desires to construct a detached two-car garage within the front yard setback area, as more fully shown on the Plan.

14. The garage would be 24 feet by 24 feet, and no higher than 16 feet in height.

15. The garage would be located a total distance of 43 feet in front of the front face of the existing residence (beginning at 19 feet in front of the front face of the existing residence), rather than 15 feet to the rear of the front face of the residence.

16. Applicant thus requires a variance of 58 feet from the requirements of Section 802.5 of the Zoning Ordinance.

17. Applicant testified that he cannot reasonably locate the shed at least 15 feet to the rear of the front face of the dwelling because of bedrock issues.

18. Applicant, however, has not performed testing to determine the exact location and depth of bedrock. Applicant simply stated that some bedrock is visible, but does not know the bedrock depth in the entire area.

19. Moreover, Applicant failed to provide testimony that it is not possible to construct a garage on bedrock.

20. The Board finds any testimony regarding the inability to locate the garage in compliance with the setback requirements of the Zoning Ordinance because of bedrock to be not credible.

21. Although the proposed garage would be located between 550 and 650 feet from Creek Hill Road, the garage would be visible from Creek Hill Road.

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. 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).

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. 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).

5. 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).

6. 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).

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 desire of a landowner to erect an accessory structure such as a garage does not establish unnecessary hardship required for the granting of a variance. Patullo v. Zoning Hearing Board of the Township of Middletown, 701 A.2d 295 (Pa. Cmwlth. 1997).

10. The Board, as fact finder, has the power to reject even uncontradicted testimony if the Board finds the testimony to be lacking in credibility. Vanguard v. Zoning Hearing Board of Smithfield Township, 130 Pa. Commonwealth Ct. 371, 568 A.2d 703, 707 (1989), appeal denied, 527 Pa. 620, 590 A.2d 760 (1990) (citations omitted).

11. "In zoning cases it is well-settled that the Board is the fact finder, with exclusive province over matters of credibility and weight to be afforded to the evidence." Manayunk Neighborhood Council v. Zoning Board of Adjustment of the City of Philadelphia, 815 A.2d 652, 658 (Pa. Cmwlth. 2003).

12. The Property can be used as zoned.

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

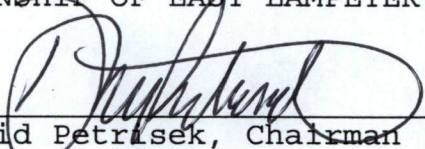
14. Applicant has not presented credible evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

15. Applicant is not entitled to a variance from the terms of Section 805.2 of the Zoning Ordinance.

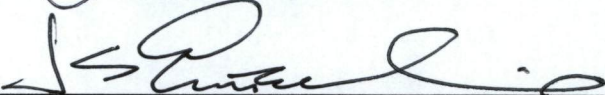
III. DECISION

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 Bill Sickler for a variance from the terms of Section 805.2 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



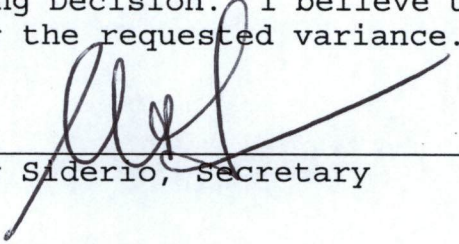
David Petrusek, Chairman



J. Scott Enterline, Alternate

DISSENT:

I hereby dissent from the foregoing Decision. I believe that Applicant has met the requirements for the requested variance.



Walter Siderio, Secretary

Dated and filed May 14, 2015, after hearing held on April 23, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to May 15, 2015.

