

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-16
APPLICATION OF STEPHEN S. ESH :

DECISION

I. FINDINGS OF FACT

1. Applicant is Stephen S. Esh, 2810 Old Philadelphia Pike, Bird-in-Hand, Pennsylvania 17505 ("Applicant").
2. The property which is the subject of the instant application is located at 2395 Stumptown Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located within 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 June 11, 2015.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. The Property is currently improved with a single family dwelling and a 12 foot by 32 foot shed, as more fully shown on the plan ("Plan") submitted by Applicant.

10. Applicant desires to remove the 12 foot by 32 foot shed and construct a horse and carriage barn upon the Property, as more fully shown on the Plan.

11. The horse and carriage barn will be 48 feet by 36 feet and 26 feet in height.

12. Applicant had requested a variance from the terms of Section 706.1 of the Zoning Ordinance.

13. Section 706.1 of the Zoning Ordinance states that the maximum height of accessory structures shall be 20 feet.

14. Applicant testified that he required a horse barn 26 feet in height in order to provide proper headroom clearances and roof pitch.

15. No persons appeared 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 grant-

ed 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, 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).

3. 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).

4. 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).

5. 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).

6. There will be no adverse effect on the public health, safety or general welfare if the variance is granted.

7. The variance requested by Applicant is the minimum variance necessary to grant relief.

8. Applicant has satisfied the requirements for a dimensional variance from Section 706.1 of the Zoning Ordinance in order to construct the horse and carriage barn.

9. Conditions must be attached to the granting of the variance to protect and preserve 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 Stephen S. Esh for a variance from

the terms of Section 706.1 of the Zoning Ordinance in order to permit the construction of a horse and carriage barn with a height of 26 feet. The variance 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.

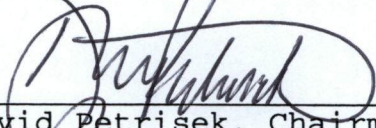
2. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on June 12, 2015.

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.

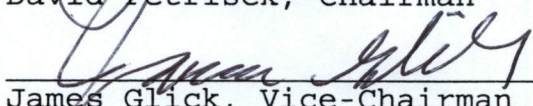
4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within three (3) months from the date of this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the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

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

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman

J. Scott Enterline, Alternate

Dated and filed July 9, 2015, after hearing held on June 11,
2015.

The undersigned certifies that a copy of this Decision was
served upon all parties on or prior to July 10, 2015.

