

**BEFORE THE ZONING HEARING BOARD**

**TOWNSHIP OF EAST LAMPETER**

IN RE: :  
: :  
APPLICATION OF TANGER PROPERTIES : No. 2015-17  
LIMITED PARTNERSHIP AND 501 :  
HOSPITALITY MANAGEMENT, LLC :

**DECISION**

**I. FINDINGS OF FACT**

1. Applicants are Tanger Properties Limited Partnership, 311 Stanley K. Tanger Boulevard, Lancaster, Pennsylvania 17602 ("Tanger") and 501 Hospitality Management, LLC ("Hospitality").
2. The properties which are the subject of the instant application are located at: (i) a portion of 2300 Lincoln Highway East which is being added to 311 Stanley K. Tanger Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Tanger Property"); and (ii) 2250 Lincoln Highway East (the "Ramada Inn Property").
3. Tanger is the owner of the Tanger Property.
4. Hospitality is the owner of the Ramada Inn Property.
5. The Tanger Property and the Ramada Inn Property are both located in the C-2 Commercial District as shown on the Official Zoning Map of East Lampeter Township.
6. 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").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on July 9, 2015.

8. Testimony at the hearing was stenographically recorded.

9. Applicants were represented at the hearing by Michael Davis, Esquire.

10. Brian Spray, of Rettew Associates, Inc., and Charles Worsham, a representative of Tanger, appeared at the hearing and testified on behalf of Applicants.

11. Tanger operates upon the Tanger Property a shopping center known as Tanger Outlet Center.

12. Tanger has recently completed the purchase of an adjacent parcel of land, containing approximately 13 acres, which is being added to its current shopping center lands.

13. The Tanger Property, upon addition of the adjacent parcel, will contain approximately 39.91 acres.

14. Hospitality operates upon the Ramada Inn Property a hotel known as the Ramada Inn.

15. The Ramada Inn Property contains approximately 5.85 acres.

16. Applicants have requested:

(i) a variance from the terms of Section 1205.2.F of the Zoning Ordinance (for the Tanger Property);

(ii) a variance from the terms of Section 1936.1.G of the Zoning Ordinance (for the Tanger Property);

(iii) a variance from the terms of Section 1205.2.H of the Zoning Ordinance (for the Tanger Property);

(iv) a variance from the terms of Section 1936.1.I of the Zoning Ordinance (for the Tanger Property);

(v) a variance from the terms of Section 1605, Table 1, of the Zoning Ordinance (for Tanger);

(vi) a variance from the terms of Section 1702.1 of the Zoning Ordinance (for both the Tanger Property and the Ramada Inn Property);

(vii) a variance from the terms of Section 1702.5 of the Zoning Ordinance (for side yard and rear yard greenbelt requirements associated with a portion of the Tanger Property and for the side yard greenbelt requirements associated with a portion of the Ramada Inn Property);

(viii) a variance from the terms of Section 1814 of the Zoning Ordinance (for the Tanger Property);

(ix) a special exception pursuant to the terms of Section 1702.8 and Section 1704.1 of the Zoning Ordinance (for the Ramada Inn Property);

(x) a variance from the terms of Section 1607 of the Zoning Ordinance (for the Ramada Inn Property);

(xi) an extension of the time limitations set forth in Section 1901.2.F of the Zoning Ordinance; and

(xii) an extension of the time limitations set forth in Section 2107.14 of the Zoning Ordinance.

17. Tanger proposes to expand its shopping center onto the 13 acre parcel.

18. The expansion will require conditional use approval from the East Lampeter Township Board of Supervisors.

19. Tanger has submitted a sketch plan for the expansion to East Lampeter Township.

20. Applicants testified that the sketch plan incorporates components of the recently adopted Lincoln Highway Streetscape Plan (the "Streetscape Plan").

21. The Streetscape Plan recommends transportation, land use and design improvements along Lincoln Highway (between Strasburg Pike and Pa Route 896).

22. Applicants have now presented the sketch plan, identified as the Zoning Plan (hereinafter "Plan"), to the Board for purposes of the zoning hearing.

23. The expansion area is located to the east of the existing shopping center.

24. Access to the expansion area will be from: (i) the existing signalized entrance to the shopping center located on Lincoln Highway East; (ii) the entrance located off of Millstream Road (which will extend through the existing shopping center and the expansion area and will provide for a future expansion to the adjoining property); and (iii) a new primary entrance and access road on the Ramada Inn Property.

25. The new access drive will be aligned with the Dutch Wonderland signalized intersection.

26. The new access drive will be located within an easement granted to Tanger by Hospitality and will be constructed by Tanger.

27. Section 1205.2.F of the Zoning Ordinance states that not more than 70% of the area of a lot shall be covered with impervious surface. However, this maximum lot coverage may be increased to 75% of the area of the lot where more than one-half of all parking spaces within the lot are located behind the front building line.

28. Section 1936.1.G of the Zoning Ordinance also states that not more than 70% of the area of a lot shall be covered with impervious surface. However, this maximum lot coverage may be increased to 75% of the area of the lot where more than one-half of all parking spaces within the lot are located behind the front building line.

29. With regard to the Tanger shopping center, more than one-half of the parking spaces are located behind the front building line.

30. The current lot coverage of the existing shopping center is 75.47%.

31. Tanger proposes to remove two existing buildings (containing approximately 25,000 square feet of area) and construct approximately 145,000 square feet of new retail space. The net increase in retail space will be approximately 120,000 square feet.

32. Certain storm water management facilities will be removed and replaced.

33. The proposed lot coverage subsequent to all proposed improvements will be 78.5%.

34. Section 1205.2.H of the Zoning Ordinance states that not less than 30% of the area of a lot shall be covered by vegetative materials. However, this minimum landscape area may be decreased to 25% of the area of the lot where more than one-half of all parking spaces within the lot are located behind the front building line.

35. Section 1936.1.I of the Zoning Ordinance also states that not less than 30% of the area of a lot shall be covered by vegetative materials. However, this minimum landscape area may be decreased to 25% of the area of the lot where more than one-half of all parking spaces within the lot are located behind the front building line.

36. The current area of the shopping center covered by vegetative materials is 24.53%.

37. The proposed area of the shopping center to be covered by vegetative materials subsequent to all improvements will be 21.5%.

38. Section 1605, Table 1, of the Zoning Ordinance states in pertinent part that billboards are permitted in the C-2 Commercial District, provided (among other things) that each billboard must be 1,200 feet from any other billboard.

39. Tanger desires to install a sign within the access easement area on the Ramada Inn Property in order to identify the Tanger shopping center and access thereto.

40. Because the proposed sign will be off-premises, it is considered a billboard pursuant to the terms of the Zoning Ordinance.

41. The proposed off-premises sign does not meet the separation distance requirements of the Zoning Ordinance for billboards (must be at least 1,200 feet from another billboard).

42. Applicants testified that Tanger would construct the proposed off-premises sign to meet the requirements of a "center sign" set forth in Section 1605, Table 1, of the Zoning Ordinance.

Without limiting the foregoing, the sign would be a maximum of 80 square feet in size, a maximum of 25 feet in height, and at least 10 feet from the street right of way.

43. Section 1702.1 of the Zoning Ordinance states that the size of a parking space shall not be less than 180 square feet.

44. Applicants propose to construct the new parking spaces with dimensions of 9 feet by 18 feet (162 square feet). This is the size of the existing Tanger shopping center parking spaces.

45. Section 1702.5 of the Zoning Ordinance states in pertinent part that there shall be a minimum 10 foot wide greenbelt provided between all lot lines and all parking areas, driveways and vehicular accessways within the lot, except where the lot is adjacent to a Rural District, in which case the width of the greenbelt along a real lot line next to said adjacent district shall be equal to the width of the required rear yard of the lot.

46. The Tanger Property is located adjacent to a Rural District.

47. The required rear yard greenbelt is 50 feet.

48. The required side yard greenbelt is 10 feet.

49. Applicants desire to utilize a 10 foot wide greenbelt along a portion of the rear property line of the Tanger Property, as more fully shown on the Plan.

50. Applicants desire to utilize a 5 foot wide greenbelt along the new access drive, as more fully shown on the Plan.

51. Applicants testified that Tanger would install a pedestrian and bike trail, as more fully shown on the Plan. The proposed pedestrian and bike trail adjoining the new access drive (which trail will be approximately 12 feet wide) reduce the area available for the required greenbelts.

52. Section 1814 of the Zoning Ordinance states in pertinent part that the front facade of all buildings containing commercial uses shall have a minimum four foot horizontal break within said facade at least every 100 feet.

53. The new buildings will be similar to the buildings in the existing Tanger shopping center and will provide architectural relief through variations in canopies and roof lines rather than using horizontal breaks. The Board granted a similar variance for a previous Tanger shopping center project in Case No. 2000-7.

54. Section 1702.8 of the Zoning Ordinance states that all parking spaces shall be provided on the premise except that after zoning hearing board approval, all or part of the required spaces may be provided on a separate lot within 500 feet from such premises, provided such separate lot is located within the same zoning district and provided adequate pedestrian access from the off-site parking to the premises to be served is provided.

55. Section 1704.1 of the Zoning Ordinance states that if the required parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, the Board may, as a special exception, permit such spaces to be provided on another lot. Such off-lot spaces shall not thereafter be reduced or encroached upon in any manner. The same off-lot space may not be claimed by more than one user for use at the same time.

56. Because existing parking spaces on the Ramada Inn Property will be removed when the access drive is constructed, Tanger and Hospitality propose to relocate the eliminated Ramada Inn parking spaces onto the Tanger Property. As shown on the Plan, the parking area to be provided will be located immediately adjacent to the Ramada Inn Property, will have direct pedestrian access, and will be specifically designated for use by Ramada Inn customers only. Tanger will provide an easement to Hospitality for use of the parking spaces.

57. Section 1607 of the Zoning Ordinance states that nonconforming signs may continue to be displayed as long as there is compliance with the following limitations and conditions: (1) there may be no expansion or increase in the nonconformity in any way; (2) maintenance and repair of the sign are permitted - if necessary, up to 50% of the entire area of a sign and its supporting structure may be replaced in the event of damage - any such replacements must be completed within 6 months of the damage occurring; and (3) the sign must be brought into conformity if, for a period of at least 3 months, the message has no longer applied to an activity on the premises.

58. If the nonconforming Ramada Inn sign is removed, replacement of the sign is not permitted unless Applicants obtain a variance from Section 1607 of the Zoning Ordinance.

59. The main panel of the Ramada Inn sign contains 124 square feet of sign area. There is also an additional sign panel, but Applicants were not able to provide testimony regarding the size of the additional panel.

60. The existing Ramada Inn sign is approximately 21 to 22 feet in height.

61. Applicants testified that PennDOT will require a right-turn lane for the proposed access drive which will require removal of the existing Ramada Inn sign.

62. Applicants propose to move the existing sign to the other side of the existing sidewalk to comply with setback requirements.

63. Applicants provided no testimony regarding why a sign conforming as to size and height could not be constructed for the Ramada Inn.

64. It is reasonably possible to erect a new sign for the Ramada Inn which conforms to the current maximum size and maximum height requirements of the Zoning Ordinance.

65. Section 1901.2.F of the Zoning Ordinance states that, unless otherwise specified by the Board, a special exception approval shall expire if the applicant fails to obtain a zoning permit within



one year from the date of authorization by the Board, of if the applicant fails to complete any erection, construction, reconstruction, alteration or change in use within 2 years from the date of authorization by the Board. For reasonable cause shown, the Board may extend the approval for an additional period up to 1 year.

66. Section 2107.14 of the Zoning Ordinance states that if a variance is granted, the necessary permit shall be secured and the authorized action begun within 3 months after the date which the variance is finally granted and the building shall be completed within 12 months of said date. For good cause, the Board may extend either the 3 or 12 month period.

67. Because Applicants obtain conditional use and land development approval, Applicants have requested that any approvals granted by the Board expire if Applicants do not obtain a zoning permit within eighteen (18) months from the date the Board's Decision and do not complete construction of the improvements so authorized and commence the use so authorized within thirty-six (36) months from the date of the Board's Decision.

## **II. CONCLUSIONS OF LAW**

### **A. VARIANCES FROM SECTIONS 1205.2.F, 1936.1.G, 1205.2.H, 1936.1.I, 1605 (TABLE 1), SECTION 1702.1, SECTION 1702.5, AND SECTION 1814 OF THE ZONING ORDINANCE**

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, 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. Applicants have presented evidence sufficient to establish that unnecessary hardship will result if variances from Sections 1205.2.F, 1926.1.G, 1205.2.H, 1936.1.I, 1605 (Table 1), 1702.1, 1702.5, and 1814 are not granted, that the grant of these proposed variances will not be contrary to the public interest, and that these variances requested are the minimum that will afford relief and will represent the least modification of the Zoning Ordinance.

B. VARIANCE FROM SECTION 1607 OF THE ZONING ORDINANCE

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, 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. "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 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. In order to warrant the grant of a variance, the hardship must be unique to the property and not one which is generally suffered by other properties in the district. D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, \_\_\_ Pa. Commonwealth Ct. \_\_\_, 585 A.2d 580, 583 (1991).

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. "Financial hardship alone will not justify the grant of a variance." Goodman v. Zoning Board of Adjustment of the City of Philadelphia, 132 Pa. Commonwealth Ct. 298, 572 A.2d 848 (1990).

9. "Diminution of profitability has long been considered as legally insufficient to justify a variance." Atlantic Refining and Marketing Company v. Zoning Hearing Board of Upper Merion Township, 133 Pa. Commonwealth Ct. 261, 575 A.2d 961, 963 (1990).

10. "Financial hardship, short of rendering a property practically valueless, is insufficient to warrant the grant of a variance." Atlantic Refining and Marketing Company v. Zoning Hearing

Board of Upper Merion Township, 133 Pa. Commonwealth Ct. 261, 575 A.2d 961, 963 (1990); King v. Zoning Hearing Board of Towamencin Township, 154 Pa. Commonwealth Ct. 109, 622 A.2d 435 (1993).

11. A variance is not needed to allow reasonable use of the Ramada Inn Property.

12. Applicants can remove the existing Ramada Inn sign and replace it with a sign which complies with the current requirements of the Zoning Ordinance.

13. Applicants have failed to demonstrate evidence sufficient to warrant the granting of the requested variance from Section 1607 of the Zoning Ordinance.

C. SPECIAL EXCEPTIONS PURSUANT TO SECTIONS 1702.8 AND 1704.1 OF THE ZONING ORDINANCE

1. An applicant for a special exception bears the burden of presenting evidence that the proposed use is one allowed by special exception and that the proposed use complies with all of the objective requirements contained in the zoning ordinance. Abbey v. Zoning Hearing Board of East Stroudsburg Borough, 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. Applicants have presented evidence sufficient to warrant the granting of the special exceptions as requested.

D. EXTENSIONS OF TIME LIMITATIONS SET FORTH IN SECTIONS 1901.1F AND 2107.14 OF THE ZONING ORDINANCE

1. Applicants have presented evidence sufficient to warrant the granting of the requested time extensions.

**II. DECISION**

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby:

- (i) grants a variance from the terms of Section 1205.2.F of the Zoning Ordinance (for the Tanger Property);
- (ii) grants a variance from the terms of Section 1936.1.G of the Zoning Ordinance (for the Tanger Property);
- (iii) grants a variance from the terms of Section 1205.2.H of the Zoning Ordinance (for the Tanger Property);
- (iv) grants a variance from the terms of Section 1936.1.I of the Zoning Ordinance (for the Tanger Property);
- (v) grants a variance from the terms of Section 1605, Table 1, of the Zoning Ordinance (for Tanger);
- (vi) grants a variance from the terms of Section 1702.1 of the Zoning Ordinance (for both the Tanger Property and the Ramada Inn Property);
- (vii) grants a variance from the terms of Section 1702.5 of the Zoning Ordinance (for side yard and rear yard greenbelt requirements associated with a portion of the Tanger Property and for the side yard greenbelt requirements associated with a portion of the Ramada Inn Property);
- (viii) grants a variance from the terms of Section 1814 of the Zoning Ordinance (for the Tanger Property);
- (ix) grants a special exception pursuant to the terms of Section 1702.8 and Section 1704.1 of the Zoning Ordinance (for the Ramada Inn Property);
- (x) denies a variance from the terms of Section 1607 of the Zoning Ordinance (for the Ramada Inn Property);
- (xi) grants an extension of the time limitations set forth in Section 1901.2.F of the Zoning Ordinance; and
- (xii) grants an extension of the time limitations set forth in Section 2107.14 of the Zoning Ordinance.

The variances and special exceptions 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. Applicants shall obtain all approvals and permits required by applicable laws and regulations.

2. Applicants shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on July 9, 2015.

3. Tanger shall design and construct the proposed new shopping center buildings substantially in accordance with the rendering submitted by Applicants and the architectural designs shown thereon (the rendering is designated as "Model View 5, dated 6.12.2015)

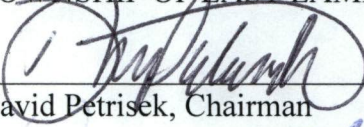
4. Applicants shall install clearly visible signage which designates the Ramada Inn Off-Premises Parking Spaces solely for patrons of the Ramada Inn Property. In addition, the Ramada Inn Off-Premises Parking Spaces shall be accessible solely from the new access drive and not from the main parking area to be located upon the 13 acre addition to the Tanger Property.

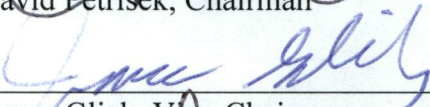
5. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

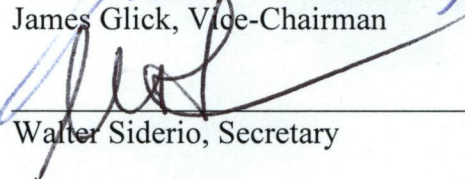
6. The approval granted by this Decision shall expire if Applicants do not obtain a zoning permit within eighteen (18) months from the date this Decision and do not complete construction of the improvements, if any, so authorized and commence the use so authorized within thirty-six (36) months from the date of this Decision.

7. The foregoing Decision shall be binding upon the Applicants and their successors and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

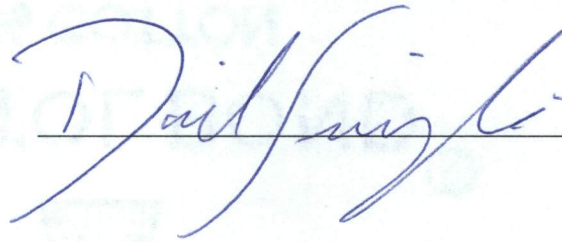
  
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David Petrisek, Chairman

  
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James Glick, Vice-Chairman

  
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Walter Siderio, Secretary

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

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

  
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