

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-22
APPLICATION OF IRONSTONE :
HOMES, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Ironstone Homes, LLC, 1480 Ironstone Drive, East Earl, Pennsylvania 17519 ("Applicant").
2. The property which is the subject of the instant application is 2040 Pine Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the equitable owner of the Property.
4. The record owners of the Property are David E. Kolb and Lexine D. Kolb.
5. The Property is located within the Residential R-1 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 August 27, 2015.

8. Testimony at the hearing was stenographically recorded.

9. Sidney Kime, Jr., of ELA Group, Inc., appeared at the hearing and testified on behalf of Applicant.

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

Todd Bartos
2138 Meadow Ridge Drive
Lancaster, PA 17601

Lou Distasi
2025 Meadow Ridge Drive
Lancaster, PA 17601

Brian Colosi
2156 Colleens Way
Lancaster, PA 17601

Chad Houck
2152 Colleens Way
Lancaster, PA 17601

Jennifer Braught
2114 Meadow Ridge Drive
Lancaster, PA 17601

John Fischer
2137 Colleens Way
Lancaster, PA 17601

11. Applicant has requested a variance from the terms of Section 804.3.B of the Zoning Ordinance.

12. Section 804.3.B of the Zoning Ordinance states that the minimum lot width for those lots served by both public sanitary sewer and public water facilities, or by public sanitary sewer

facilities only, shall be 60 feet at the street right of way line and 100 feet at the building setback line.

13. The Property contains 10 acres.

14. The Property is currently improved with a single family detached dwelling with barns.

15. Applicant desires to subdivide the Property into 8 lots.

16. The lots will be served by both public water and public sewer.

17. One of the lots (Lot 61) will contain the existing single family detached dwelling with barns.

18. Lot 61 will contain 3.56 acres, as more fully shown on the plans ("Plans") submitted by Applicant.

19. The remaining 7 lots (Lots 62 through 68) will be building lots for new single family detached dwellings.

20. Applicant proposes that Lot 67 and Lot 68 will be flag lots, as shown on the Plans.

21. Lot 67 will contain 1.78 acres.

22. Lot 68 will contain 1.94 acres.

23. The width of Lot 67 will be 40 feet at the street right of way line, as more fully shown on the Plans.

24. The width of Lot 68 will be 40 feet at the street right of way line, as more fully shown on the Plans.

25. The width of Lot 67 and the width of Lot 68 do not comply with the requirements of Section 804.3.B of the Zoning Ordinance.

26. The width of other lots (Lots 62 through 66) exceed 100 feet at the street right of way line.

27. Applicant testified that it desired lots larger and wider than the minimum size requirements set forth in the Zoning Ordinance so that the Property could be developed with larger homes.

28. Applicant could subdivide the Property and construct homes without requiring variances from the terms of Section 804.3.B of the Zoning Ordinance.

29. Applicant testified that, if the variances are not granted, the Plans will be reconfigured and the Property will be developed.

30. There are single family detached dwellings located immediately adjacent to and south of the Property.

31. Simply because there are two flag lots located within the development located to the south of the Property does not in and of itself support the granting of a variance for the Property.

32. Neighbors expressed concerns regarding storm water management issues, the number of driveways and their location in close proximity to one another, deed restrictions and other private development restrictions.

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. "To obtain relief in the form of a variance, the applicant must establish that: (1) there are unique physical circumstances or conditions; (2) causing unnecessary hardship in the form of an unreasonable inhibition of usefulness of the property; (3) the hardship is not self-inflicted; (4) the grant of the variance will not adversely impact public health, safety and welfare; and (5) the variance sought is the minimum that will afford relief." Township of East Caln v. Zoning Hearing Board of East Caln Township, 915 A.2d 1249, ___ (Pa. Cmwlth. 2007).

3. 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).

4. Potential economic loss from the inability to create an additional lot or an additional dwelling unit or maximum profit does not warrant the granting of a variance. Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001); Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. 2001).

5. "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).

6. "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).

7. 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).

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).

9. Where "the property is actually used for any purpose permitted by the zoning ordinance, the owner does not suffer unnecessary hardship for granting a variance." Patullo v. Zoning Hearing Board of the Township of Middletown, 701 A.2d 295, 300 (Pa. Cmwlth. 1997).

10. "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).

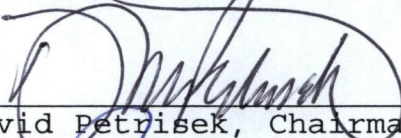
11. Applicant failed to meet its burden to establish by credible evidence that it cannot make a reasonable use of the Property without variances from Section 804.3.B of the Zoning Ordinance.

12. It is possible to reasonably develop the Property in compliance with Section 804.3.B of the Zoning Ordinance.

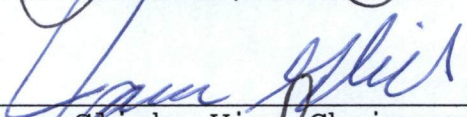
III. DECISION

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 Ironstone Homes, LLC, for a variance from the terms of Section 804.3.B of the Zoning Ordinance.

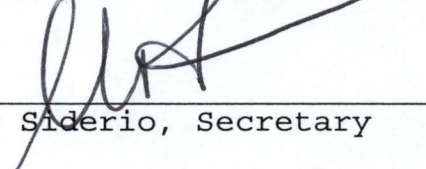
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed September 10, 2015, after hearing held on August 27, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to September 11, 2015.

Jana A. Hitchens