

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-25
APPLICATION OF ELI S. KING :

DECISION

I. FINDINGS OF FACT

1. Applicant is Eli S. King, 501 Strasburg Pike, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is located at 431 Strasburg Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in 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 September 24, 2015.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. The Property is currently improved with a dwelling and detached garage/barn building.

10. Applicant desires to remove the existing detached garage/barn building and construct a new horse and carriage barn upon the Property.

11. The horse and carriage barn will be 44 feet by 28 feet.

12. Although Applicant initially proposed that the height of the new horse and carriage building would be 22 feet, at the hearing it was determined that the building may be a maximum of 24 feet in height.

13. The horse and carriage barn will comply with all applicable setback provisions of the Ordinance.

14. Applicant has requested a variance from the terms of Section 706.1 of the Zoning Ordinance.

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

16. The height is necessary in order to: (i) provide clearance for the horses and for storage; and (ii) utilize a peaked roof.

17. 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 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. 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 have satisfied the requirements for a dimensional variance from Section 706.1 of the Zoning Ordinance in order to construct the horse and carriage barn at a maximum height of 24 feet.

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 Eli S. King for a variance from the terms of Section 706.1 of the Zoning Ordinance in order to permit the construction of a horse barn at a maximum height of 24 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 September 24, 2015.

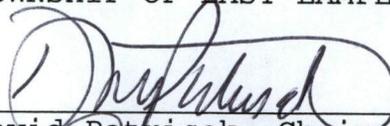
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

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

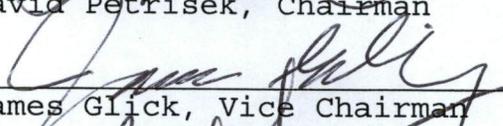
of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

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

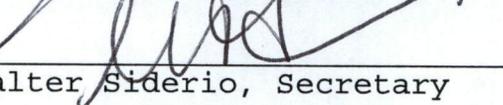
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice Chairman



Walter Siderio, Secretary

Dated and filed October 22, 2015, after hearing held on September 24, 2015.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to October 23, 2015.

