

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2015-29
APPLICATION OF CHRISTIAN A. STOLTZFUS, :
CHRISTIAN A. STOLTZFUS, JR., AND :
EPHRAIM J. STOLTZFUS :

DECISION

I. FINDINGS OF FACT

1. Applicants are Christian A. Stoltzfus, Christian A. Stoltzfus, Jr., and Ephraim J. Stoltzfus, 250 Maple Avenue, Bird-in-Hand, Pennsylvania 17505 ("Applicants").

2. The property which is the subject of the instant application is located along Maple Avenue, between 252 Maple Avenue and 264 Maple Avenue, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicants are the owners of the Property.

4. The Property is located partially in the Commercial C-2 District and partially in the R-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 November 12, 2015.

7. Testimony at the hearing was stenographically recorded.

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

9. Christian A. Stoltzfus also appeared at the hearing on behalf of Applicants.

10. Applicants have requested a variance from the terms of Section 1201 of the Zoning Ordinance.

11. Section 1201 of the Zoning Ordinance sets forth those uses permitted within the Commercial C-2 District.

12. The Property contains approximately 7.12 acres.

13. The Property is currently unimproved.

14. Applicants (through their entity, Carriage Machine Shop, LLC) propose to construct upon the Property a building, with accessory parking, as more fully shown on the plan ("Plan") submitted by Applicants.

15. The building would be located upon that portion of the Property located within the Commercial C-2 District (approximately one-half of the Property is located within the Commercial C-2 District and approximately one-half is located within the R-Rural District).

16. The building would contain 20,000 square feet of floor area.

17. Approximately one-half of the building would be used for manufacturing and the remaining one-half would be used for storage.

18. Applicants propose to assemble and manufacture carriages, as well as parts for carriages (such as wheels and undercarriages).

19. Applicants currently outsource machining of hubs, but want to perform machining in-house. In addition, Applicants desire to perform powder-coating operations in the future.

20. Applicants would also perform welding in the proposed facility.

21. Manufacturing uses are not permitted within the Commercial C-2 District.

22. Applicants currently operate the business as a nonconforming use on an adjacent property known as 250 Maple Avenue.

23. Applicants have expanded the nonconforming business on the 250 Maple Avenue property.

24. There are residences and a farmers market located across Maple Avenue.

25. There are residences and commercial establishments along Old Philadelphia Pike in the vicinity of the Property.

26. It is possible to use the Property in compliance with the use requirements set forth in Section 1201 of the Zoning Ordinance.

II. CONCLUSIONS OF LAW

1. Section 1201 of the Zoning Ordinance sets forth those uses permitted as of right within the Commercial C-2 District.

2. Applicants' proposed manufacturing use is not permitted within the Commercial C-2 District.

3. Moreover, Section 1204 of Zoning Ordinance further states that none of the following uses shall be permitted within the Commercial C-2 District:

(A) Any process of manufacture, assembly or treatment which is not clearly incidental to a retail business conducted on the premises

4. Applicants require a variance from the use provisions of Section 1201 and a variance from Section 1204 of the Zoning Ordinance.

5. 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.

6. "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).

7. 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).

8. 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).

9. 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).

10. 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).

11. "[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).

12. 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).

13. The Property can be used as zoned and in compliance with all use requirements.

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

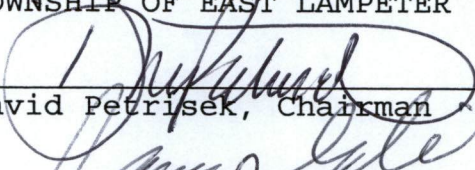
15. Applicants have not presented evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

16. Applicants are not entitled to the requested variances.

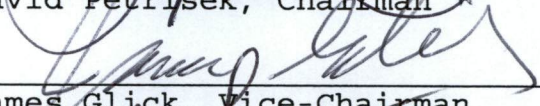
III. DECISION

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 Christian A. Stoltzfus, Christian A. Stoltzfus, Jr., and Ephraim J. Stoltzfus for a variance from the terms of Section 1201 of the Zoning Ordinance.

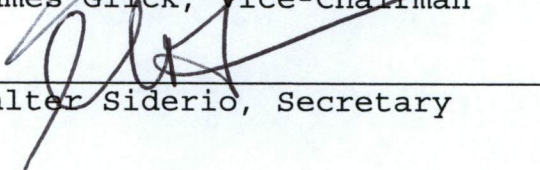
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed December 10, 2015, after hearing held on
November 12, 2015.

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

