BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE:	:	
	:	No. 2015-30
APPLICATION OF DANIEL J. FISHER	:	
AND MARILYN F. FISHER	:	

DECISION

I. FINDINGS OF FACT

1. Applicants are Daniel J. Fisher and Marilyn F. Fisher, 2602 Old Philadelphia Pike, Bird-in-Hand, Pennsylvania 17505 ("Applicants").

2. The property which is the subject of the instant application is located at 2602 Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicants are the owners of the Property.

4. The Property is located in the Residential District R-2 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. Applicants appeared personally at the hearing.

9. John Kloppmann, Applicants's architect, also appeared at the hearing and testified on behalf of Applicants.

10. The Property is a narrow lot, 70 feet in width.

11. The Property is improved with a single family dwelling and detached garage, as more fully shown on the plan ("Plan") submitted by Applicants at the hearing.

12. The existing garage is located 3 feet from the side property line and is dimensionally nonconforming.

13. Applicants propose to construct an addition to the rear of the existing garage.

14. The addition will be 14 feet by 27 feet, as more fully shown on the Plan.

15. The new garage will be located 3 feet from the side property line, as more fully shown on the Plan.

16. Section 905.3 of the Zoning Ordinance provides that the minimum side yard setback for an accessory building shall be 10 feet.

17. Applicants require a variance from the terms of Section 905.3 of the Zoning Ordinance.

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. 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).

3. 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).

4. 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).

5. Section 905.3 of the Zoning Ordinance provides that the minimum side yard setback for accessory buildings shall be 10 feet.

6. Applicants requires a variance from the terms of Section 905.3 of the Zoning Ordinance.

7. The narrowness of the Property and the location of the existing improvements warrant the granting of the variance requested.

8. The unnecessary hardship has not been created by the Applicants.

9. Applicants have presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

10. Conditions must be attached to a grant of the variance in this case to preserve and protect 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 Daniel J. Fisher and Marilyn F. Fisher for a variance from the terms of Section 905.3 of the Zoning Ordinance in order to permit the construction of the garage addition, as more particularly shown on the Plan, 3 feet from the side property line. 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. 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 November 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 Applicants do not obtain a zoning permit within three (3) 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 twelve (12) months from the date of the zoning permit.

5. The foregoing Decision shall be binding upon the Applicants and their 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 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.