

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2016-03
APPLICATION OF STEPHEN FISHER AND :
JOSEPH AND SADIE ESH :

DECISION

I. FINDINGS OF FACT

1. Applicants are Stephen Fisher, 12 Fernwood Drive, Paradise, Pennsylvania 17562, and Joseph and Sadie Esh, 2151 Forry Road, Lancaster, Pennsylvania 17601 ("Applicants").

2. The property which is the subject of the instant application is located at 2151 Forry Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicants Joseph and Sadie Esh are the owners of the Property.

4. Stephen Fisher is the contractor retained by Joseph and Sadie Esh.

5. The Property is located in the Rural 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 January 14, 2016.

8. Testimony at the hearing was stenographically recorded.

9. Applicant Stephen Fisher appeared at the hearing.

10. The Property is currently improved with a single family dwelling and other buildings, all as more fully shown on the aerial photograph submitted by Applicants.

11. Portions of existing buildings are located between approximately 28 feet and 38 feet from the centerline of Forry Road and are existing dimensional nonconformities.

12. Applicants propose to construct an addition to the existing dwelling.

13. The proposed addition will be located 46 feet from the centerline of Forry Road.

14. Section 705.5.A of the Zoning Ordinance states that the minimum building setback line from all streets shall be in compli-

ance with the requirements of Section 1810, provided however, that the minimum distance shall be 65 feet from the centerline of the street.

15. Applicants have requested a variance from the terms of Section 705.5.A of the Zoning Ordinance.

16. 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. Applicants require a minor dimensional variance from the terms of Section 705.5.A of the Zoning Ordinance.

7. The grant of the requested dimensional variance will not be contrary to the public interest.

8. Applicants have satisfied the requirements for a dimensional variance in order to construct the proposed addition.

9. 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 for a variance from the terms of Section 705.5.A of the Zoning Ordinance in order to permit the construction of an addition to the existing dwelling to be located 46 feet from the centerline of Forry Road. 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.

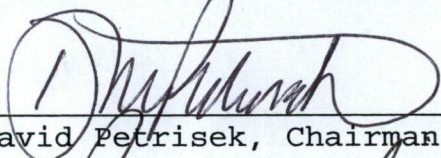
2. Applicants shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on January 14, 2016.

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.

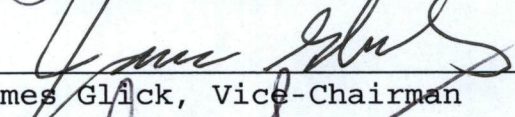
4. The approval granted by this Decision shall expire if Applicants do not obtain a zoning permit within three (3) months from the date of this Decision and do not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

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

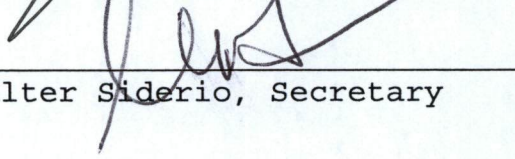
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed January 28, 2016, after hearing held on January 14, 2016.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to January 29, 2016.

