

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2016-04
APPLICATION OF VERNON GEIGLEY :
AND JANE GEIGLEY :

DECISION

I. FINDINGS OF FACT

1. Applicants are Vernon Geigley and Jane Geigley, 2285 Old Philadelphia Pike, Lancaster, Pennsylvania 17602 ("Applicants").

2. The property which is the subject of the instant application is 2285 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 January 14, 2016.

7. Testimony at the hearing was stenographically recorded.

8. Applicants were represented at the hearing by J. Dwight Yoder, Esquire.

9. The following persons were recognized as parties to the hearing:

James and Judy Rice
2302 Starlite Drive
Lancaster, PA 17602
(represented by Julie B. Miller, Esquire)

David and Barb Martin
350 Sunlite Circle
Lancaster, PA 17602

10. The Property was the subject of previous zoning hearings and the Board takes administrative notice of its Decisions in Case Nos. 90-44, 91-10, 97-14, 2001-10 and 2003-2.

11. In Case No. 91-10, the Board granted Applicants' predecessor in title a special exception pursuant to Section 502.3 of the Zoning Ordinance in order to substitute a coal and fencing business for a nonconforming fertilizer business and repair garage, subject to the following conditions:

- 1) Must erect a 7' fence with shrubbery on the exterior to enhance it.
- 2) No outside storage.
- 3) Working hours 7 A.M. to 6 P.M.
- 4) Operate only 5 ½ days per week with no operations on Saturday afternoon or Sunday.
- 5) No outside bell after 6 P.M.
- 6) A maximum of ten (10) employees with not more than four (4) working on the property at any one time.

12. The Township of East Lampeter recently issued an Enforcement Notice (dated November 5, 2015), regarding Applicants' current use of the Property.

13. Applicants appealed the Enforcement Notice and also requested that the Board modify Condition No. 2 imposed in Case No. 91-10 (the condition which prohibits outside storage).

14. At the hearing, the Township of East Lampeter, acting by and through Tara A. Hitchens, its Director of Planning/ Zoning Officer, retracted the Enforcement Notice.

15. Because the Enforcement Notice was retracted, the Board is not required to address the appeal of the Enforcement Notice. The Board will address Applicants' request for a modification of Condition No. 2 imposed in Case No. 91-10 (the condition which prohibits outside storage).

16. As background, in Case No. 2003-2 the Board made the following findings with regard to the nonconforming use history of the Property:

(i) David S. Beiler, Applicant's predecessor in title, operates on the Property a fence installation/coal delivery business as a valid nonconforming use.

(ii) The area originally devoted to the nonconforming use was 7,860 square feet.

(iii) Prior to the hearing held in Case No. 2001-10, David S. Beiler expanded the nonconforming use by a total of 1,290 square feet.

(iv) In Case No. 2001-10, the Board approved David S. Beiler's request to: (i) add a 30 x 40 foot shop building; (ii) remove a 14 x 60 foot mobile home; and (iii) add a 28 x 60 foot building.

(v) David S. Beiler added the 30 x 40 foot building but did not remove the 14 x 60 foot mobile home or add the 28 x 60 foot building.

(vi) David S. Beiler now proposes to remove the existing 14 foot by 60 foot mobile home and replace it with a building 26 feet by 60 feet, including a 26 foot by 26 foot basement.

(vii) The building will be used for an office, showroom and storage.

(viii) The proposed expansion, in addition to the previous expansions, will be an expansion of 49.5 % of the original nonconforming use.

17. Applicants purchased the Property from David S. Beiler (and his wife) by Deed dated June 29, 2010.

18. The Property contains approximately 2.5 acres.

19. The Property is improved with a dwelling and various outbuildings/sheds.

20. The Property is located next to, or in close proximity to, a residential neighborhood, a lumber supply company and Lancaster Mennonite School.

21. Applicants continue to operate the coal business.

22. The fence business was discontinued.

23. Applicants testified that, prior to purchasing the Property, it was being used for other businesses including an agricultural equipment business, a swing set business, a food preparation business, and an equipment storage business.

24. Applicants offered no credible evidence that Applicant's predecessor in title received any Township approvals for an agricultural equipment business, a swing set business, a food preparation business, and/or an equipment storage business.

25. Applicants' predecessor in title did not operate a mulch business upon the Property.

26. In addition to the coal business, Applicants began operating a mulch business (including the storage and sale of mushroom mulch) and a dog food manufacturing business upon the Property.

27. Applicants also began operating a business wherein they obtain used plastic agricultural planting trays, separate topsoil from the trays, and sell the remaining topsoil.

28. Although Applicants no longer obtain such used plastic trays, they continue to separate and sell topsoil from existing trays.

29. Applicants also allow persons to dump tree branches on the Property. Applicants then use a large grinder to grind the tree branches into mulch.

30. Although Applicants testified that they received verbal approval from Lee Young, the former Township Zoning Officer, to sell mulch and operate a dog food business upon the Property, such testimony is hearsay.

31. Even if the Applicants' testimony regarding verbal approval was not hearsay, the Board nevertheless finds such unsupported allegations to be not credible.

32. Applicants store piles of mulch outdoors/ outside on the Property for resale.

33. The height of the mulch piles is approximately 10 to 12 feet.

34. The length of the mulch piles could be up to 150 feet in length.

35. The Rices and Martins, who live adjacent to the Property, have a direct view of the mulch piles on the Property.

36. Applicants purchase and resell a type of mulch known as mushroom mulch.

37. As mushroom mulch ages, it gives off an unpleasant odor when scooped.

38. The Rices testified that the odor from the mushroom mulch prohibits them from using and enjoying outside / outdoor areas of their property. They have not been able to use their outside patio for the last three years.

39. In addition, the Rices testified that the mushroom mulch odor seeps into their house.

40. The Martins also testified that they are not able to eat outdoors because of the odor associated with the mushroom mulch.

41. The Rices testified that a mulch pile located upon the Property caught fire and began to create what the Rices described as "smoke". Whether or not the mulch pile actually caught fire, the "smoke" created by the mulch pile filled the Rice house.

42. The Rices and Martins testified that Applicant's use of the Property draws pests and rodents, including skunks, racoons, mice and rats.

43. The Martins have found dead rats in their yard.

44. Coal dust blows from the Property onto the Rice property and the Rices must often clean the coal dust their house.

45. Although Applicants testified that 90% of the coal is contained in storage sheds and 10% is stored on open cement slabs, there are photographs depicting large quantities of coal stored outside on the Property.

46. The Board finds that Applicants' testimony with regard to the amount / percentage of inside storage of coal is vague and not credible.

47. There is a fence located upon the Property which is in disrepair.

48. There are large gaps in the fence and Mr. and Mrs. Rice can view debris located upon the Property.

49. The Rices testified that plastic items and other junk items blow off the Property and onto the Rice property.

50. The outside storage on the Property, including the mulch piles, coal piles, and debris piles adversely affects the neighboring property owners and interferes with their ability to use and enjoy their properties.

II. CONCLUSIONS OF LAW

1. Conditions imposed by a zoning hearing board are presumed to be for the purpose of protecting the public interest. German v. Zoning Hearing Board of Adjustment, 41 A.3d 947, 950 (Pa. Cmwlth. 2012). When a party demonstrates a change in circumstances related

to the land at issue which indicates that the conditions are no longer appropriate for the protection of the public's interest, a zoning hearing board may re-evaluate the conditions it originally imposed. Id. If a party demonstrates a change in circumstances, then a reviewing body may proceed to consider whether the original conditions continue to serve the function of protecting the public's interest that gave rise to the particular conditions in the first place. Id. The question at the heart of the inquiry is what changes in circumstances render the conditions no longer appropriate. Id.

2. Alternatively, an applicant requesting a modification of a condition imposed by a zoning hearing board in a prior decision from which no appeal was taken has the same burden as that imposed upon the Applicant for a variance. Gazebo, Inc., v. Zoning Hoard of Adjustment of the City of Pittsburgh, 112 Pa. Commonwealth Ct. 37, 535 A.2d 214 (1987).

3. "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).

4. Applicants have argued that circumstances have changed since the imposition of Condition No. 2 regarding the prohibition of outside storage.

5. The only change in circumstances is Applicant's illegal uses of the Property.

6. Applicants have failed to establish by credible evidence that all approvals and permits were obtained from the Township to operate anything other than a coal and fence business upon the Property.

7. The operation by Applicants of the mulch business, dog food business, and any other businesses (exclusive of coal business) are illegal uses.

8. To the extent that Applicants argue that use of the Property for the mulch business, dog food business and any other businesses (exclusive of the coal business) are a natural expansion of the coal business, the Board concludes that such uses, and the condition of the Property, do not constitute natural expansion.

9. Applicants have failed to demonstrate a change in circumstances which indicates that the condition prohibiting outside storage is no longer appropriate.

10. In fact, the prohibition against outside storage at the Property is necessary in order to protect the public's interest. Without limiting the foregoing, outside storage substantially impairs the use of adjacent properties owned by the Rices and the Martins.

11. With regard to the variance standard and modification of conditions, 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.

12. "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).

13. 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).

14. 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).

15. Applicants have not presented evidence to establish that the Condition No. 2 imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

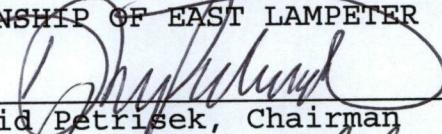
16. A reasonable use of the Property can be made in accordance with Condition No. 2.

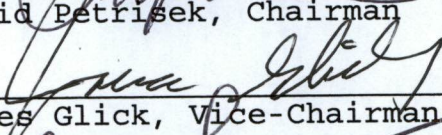
17. Applicants are not entitled to a modification of Condition No. 2.

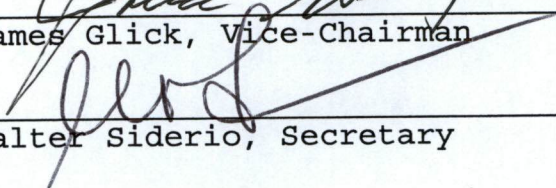
III. DECISION

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 Vernon Geigley and Jane Geigley.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER

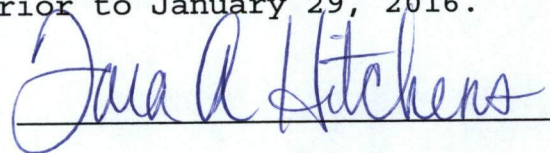

David Petrisek, Chairman


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.


Jana A. Hitchens