

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2016-07
APPLICATION OF HORM PROPERTIES, :
LP :

DECISION

I. FINDINGS OF FACT

1. Applicant is Horm Properties, LP, 296 South Belmont Road, Paradise, Pennsylvania 17562 ("Applicant").
2. The property which is the subject of the instant application is located at 1717 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the C-2 Commercial 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 March 24, 2016.
7. Testimony at the hearing was stenographically recorded.
8. Applicant was represented at the hearing by Sheila O'Rourke, Esquire.

9. Omar Fisher testified on behalf of Applicant.
10. Applicant desires to convert an existing single family dwelling into a two unit apartment house.
11. At the hearing, it was determined that Applicant requires the following: (i) a special exception pursuant to Section 1804 of the Zoning Ordinance; (ii) a variance from Section 1804.1 of the Zoning Ordinance; (iii) a variance from Section 1804.3 of the Zoning Ordinance; and (iv) a variance from Section 1205 of the Zoning Ordinance.
12. Section 1804 of the Zoning Ordinance states that conversion of a building which existed as of November 10, 1970, into an apartment house is permitted, provided the Applicant satisfies certain requirements.
13. Section 1804.1 of the Zoning Ordinance states that there shall be no extension of the building other than as may be required for access or for safety.
14. Section 1804.3 of the Zoning Ordinance states that conversion of a building which existed as of November 10, 1970, into an apartment house is permitted, provided the lot area per dwelling unit shall be a minimum of 6,000 square feet.
15. Section 1205 of the Zoning Ordinance sets forth, among other things, required minimum side yard setbacks.
16. The Property contains 8,593 square feet of area.
17. The Property is served by public water and public sanitary sewer.
18. The existing single family dwelling constructed prior to November 10, 1970.
19. Applicant desires to convert the existing dwelling into one apartment on the first floor and one apartment on the second floor.
20. Applicant will construct a small addition to the dwelling to "square off" a corner (adding

approximately 19 square feet to the dwelling).

21. The dwelling encroaches slightly into the required side yard.
22. There is adequate parking on the Property for the residential uses.
23. The Property shares a joint use driveway with the adjoining property.
24. Applicant is also the owner of such adjoining property.
25. Applicant agreed to record a permanent easement across the driveway on the adjoining property for the benefit of the Property.

II. CONCLUSIONS OF LAW

1. An applicant for a special exception has the burden of proof as to the specific criteria and standards of the zoning ordinance. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989); Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

2. The applicant for a special exception bears the burden of proving that he will comply with all requirements of the zoning ordinance relative to the use intended. Ralph & Joanne's, Inc. v. Neshannock Township Zoning Hearing Board, 121 Pa. Commonwealth Ct. 83, 550 A.2d 586 (1988).

3. Section 1804 of the Zoning Ordinance permits the conversion a building which existed as of November 10, 1970, into an apartment house, provided certain conditions are met and with the approval of the Board .

4. With the exception of Section 1804.1 and Section 1804.3 of the Zoning Ordinance, Applicant complies with the requirements for a special exception pursuant to Section 1804 of the Zoning Ordinance.

5. Applicant requires variances from Section 1804.1 and Section 1804.3 of the Zoning Ordinance.

6. 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.

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 zoning hearing board may grant a dimensional variance where it is de minimis in nature even if traditional grounds for a variance have not been met. Marlowe v. Zoning Hearing Board of Haverford Township, 52 Pa. Commonwealth Ct. 224, 415 A.2d 946 (1980).

9. With regard to Applicant's request for a variance from Section 1804.1 of the Zoning Ordinance, the variance requested by Applicant is de minimis.

10. There will be no adverse effect on the public health, safety or general welfare if the variance from Section 1804.1 of the Zoning Ordinance is granted.

11. With regard to Applicant's request for variances from Section 1804.3 and Section 1205 of the Zoning Ordinances, Applicant is entitled to the variances requested in order to make a reasonable use of the Property.

12. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the ordinance.

13. Conditions must be attached to the grant of the special exception and variances in this case to preserve and protect the surrounding neighborhood.

III. DECISION

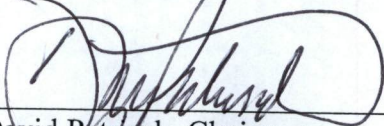
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby grants the application of Omar Fisher for: (i) a special exception pursuant to Section 1804 of the Zoning Ordinance; (ii) a variance from Section 1804.1 of the Zoning Ordinance; (iii) a variance from Section 1804.3 of the Zoning Ordinance; and (iv) a variance from Section 1205 of the Zoning Ordinance. The special exception and variances 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 MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing held on March 24, 2016.
3. Applicant shall execute and record in the Lancaster County Recorder of Deeds Office a permanent easement across the driveway on the adjoining property for the benefit of the Property.
4. 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.
5. 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 so authorized and commence the use so authorized within twelve (12) months

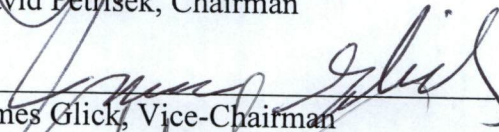
from the date of the zoning permit.

6. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

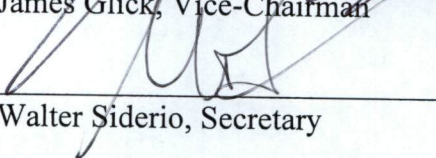
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed April 14, 2016, after a hearing held on March 24 , 2016.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 15, 2016.

