

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2016-08
APPLICATION OF HILLTOP FURNITURE, :
LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Hilltop Furniture, LLC, 310 South Groffdale Road, Gordonville, Pennsylvania 17529 ("Applicant").

2. The property which is the subject of the instant application is Lancaster County Tax Account No. 310-31917-0-000, also known as 2602-2604 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Although the Property has two street addresses, the Property consists of one tax account number, is described in one deed, and is one lot.

4. The Property is located in the Residential R-Rural District as shown on the Official Zoning Map of East Lampeter Township.

5. The record owner of the Property is Christiana Associates.

6. Applicant, as tenant, proposes to lease a portion the Property, as shown on the plans and materials presented by Applicant.

7. Applicant has requested a special exception pursuant to Section 502.3 of the Zoning Ordinance to substitute a nonconforming use for another nonconforming use. In the alternative, the Narrative attached to Applicant's written application requests a variance "to allow the use in the building to be operated by an entity other than the entity engaged in the sale of manufactured housing on the remaining portion of the property".

8. 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").

9. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on March 24, 2016.

10. Testimony at the hearing was stenographically recorded.

11. Applicant was represented at the hearing by Melvin Newcomer, Esquire.

12. Samuel Stoltzfus, the owner of Hilltop Furniture, LLC, appeared and testified on behalf of Applicant.

13. The Township participated in the hearing by and through its Director of Planning/Zoning Officer, Tara A. Hitchens, and its Assistant Zoning Officer, David Sinopoli.

14. Section 502.3 of the Zoning Ordinance authorizes the substitution of a nonconforming use if the Board finds that the proposed nonconforming use is not more detrimental to the District than the existing nonconforming use of the property.

15. The Property has been used as and for a modular home sales business known as Heritage Homes.

16. The modular home sales business operated by Heritage Homes is a valid nonconforming use.

17. A building on the Property, formerly a residence, has been used by Heritage Homes as a design center for the modular homes being sold by Heritage Homes.

18. At the hearing, the Township Zoning Officer testified that the use of the former residence by Heritage Homes as its modular home design center was not approved by the Township.

19. The Board finds that use of the former residence by Heritage Homes as its design center could be an accessory use to the sale of modular homes on the Property by Heritage Homes.

Otherwise, if the design center is considered a separate and distinct principal use, it would be an illegal use because no Township approvals were obtained to commence such use.

20. In either case, use of the former residence by Heritage Homes as its modular home design center is not a separate valid nonconforming use. It is either an accessory use to the principal modular home sales business or an illegal use.

21. Applicant desires to replace the modular home design center with what Applicant describes as a furniture design center.

22. The sale of modular homes would continue on the remainder of the Property.

23. Applicant proposes to display custom furniture and cabinetry within the former modular home design building.

24. Applicant's customers would be able to order furniture and cabinets at the design center and the furniture and cabinets would be manufactured off-site.

25. No manufacturing would take place at the design center.

26. At certain times, Applicant would offer floor samples for sale at the design center.

27. Applicant presented no credible testimony with regard to its request for a variance.

II. CONCLUSIONS OF LAW

1. Applicant has requested a special exception pursuant to Section 502.3 of the Zoning Ordinance.

2. Section 502.3 of the Zoning Ordinance authorizes the substitution of a nonconforming use by special exception if the Board finds that the proposed nonconforming use is not more detrimental to the District than the existing nonconforming use of the property.

3. It is the policy of the law to closely restrict nonconforming uses and to strictly construe provisions in zoning ordinances which provide for the continuance of nonconforming uses. Horninger v. Bethlehem Township Police Association, 301 A.2d 433 (Pa. Commonwealth Ct. 1973).

4. Section 502.3 of the Zoning Ordinance permits one engaged in a nonconforming use of land to, by special exception, change that use to another by discontinuing the first use and substituting the second. He may not continue the first use on part of the land and erect an additional use incompatible with the requirements of the zoning district. See Horninger v. Bethlehem Township Police Association, 301 A.2d 433 (Pa. Commonwealth Ct. 1973).

5. Applicant's proposal to use a portion of the Property for a furniture and cabinet design center is not a substitution of a nonconforming use. Rather, as indicated above, Applicant's

proposal would add an additional non-permitted use while retaining the modular home sales use.

6. With regard to Applicant's request for a variance, Applicant did not cite a particular section of the Zoning Ordinance. Moreover, Applicant provided no credible testimony in support of its variance request.

7. 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); MPC §910.2.

8. 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).

9. "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).

10. 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).

11. In order to warrant the grant of a variance, the hardship must be unique to the property and not one which is generally suffered by other properties in the district. D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, ___ Pa. Commonwealth Ct. ___, 585 A.2d 580, 583 (1991).

12. 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).

13. The "failure of proof [to demonstrate the property cannot be used as zoned] is 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).

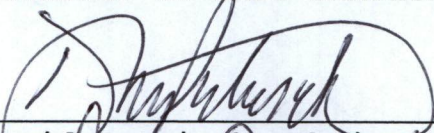
14. The Property can be used for one commercial business in accordance with the terms of the Zoning Ordinance (including the terms of the Zoning Ordinance relating to nonconforming uses). There are no physical conditions of the Property which make use in accordance with the terms of Zoning Ordinance impossible.

15. Applicant has failed to present 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 Zoning Ordinance.

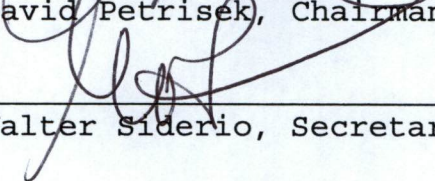
III. DECISION

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 Hilltop Furniture, LLC, for: (i) a special exception pursuant to Section 502.3 of the Zoning Ordinance; and (ii) a variance from the terms of the Zoning Ordinance as set forth in the Narrative of the application, and any and all other variance relief requested.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



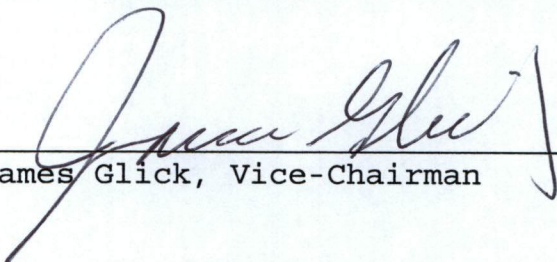
David Petrisek, Chairman



Walter Siderio, Secretary

DISSENT:

I dissent from the foregoing Decision. I would grant the special exception to substitute one nonconforming use for another as requested by Applicant.



James Glick, Vice-Chairman

Dated and filed April 14, 2016, after 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.

