

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2016-13
APPLICATION OF DON HESS :

DECISION

I. FINDINGS OF FACT

1. Applicant is Don Hess, 832 Willow Road, Lancaster, Pennsylvania 17601 ("Applicant").

2. The property which is the subject of the instant application is 832 Willow Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located partially within the Residential R-1 District and partially within the Conservation 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 April 14, 2016.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Gary Kunkle also appeared at the hearing and testified on behalf of Applicant.

10. The following person completed an entry of appearance form and was recognized as a party to the hearing:

John Kelsey
838 Willow Road
Lancaster, PA 17601

11. Applicant has requested a variance from the terms of Section 804.3.B of the Zoning Ordinance.

12. Section 804.3.B of the Zoning Ordinance states that the minimum lot width for those lots served by both public sanitary sewer and public water facilities, or by public sanitary sewer facilities only, shall be 60 feet at the street right of way line and 100 feet at the building setback line.

13. The Property contains 2.7 acres.

14. The Property is currently improved with, among other things, a single family dwelling with a detached garage and driveway.

15. Applicant desires to subdivide the Property into 2 lots.

16. One of the lots (Parcel 1) will contain the existing single family dwelling, detached garage and driveway.

17. Parcel 1 will contain 58,157 square feet, as more fully shown on the plan ("Plan") submitted by Applicant.

18. The other lot (Parcel 2) will be a building lot for new single family dwelling.

19. Parcel 2 will contain 58,500 square feet, as more fully shown on the Plan.

20. Parcel 2 will be a "flag lot". The width of Parcel 2 will be 20 feet at the street right of way line and 20 feet at the building setback line, as more fully shown on the Plan.

21. The Property (including proposed Parcel 1 and Parcel 2) is served by public water and public sanitary sewer.

22. Because of the location of existing improvements and the width of the Property, Applicant cannot reasonably comply with the minimum lot width requirements set forth in Section 804.3.B of the Zoning Ordinance.

23. There are other "flag lots" in close proximity to the Property with "flag poles" similar to that which is proposed by Applicant.

24. The Property is larger than other lots in close proximity.

25. The requested variance will not alter the essential character of the neighborhood or district, nor substantially or permanently impair the appropriate use or development of the adjacent properties, nor be detrimental to the public welfare.

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. Applicant requires a dimensional variance from the terms of Section 804.3.B of the Zoning Ordinance.

6. The location of the existing dwelling, garage, driveway, along with the width of the Property, warrant the granting of the variance requested.

7. The unnecessary hardship has not been created by the Applicant.

8. Applicant has 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.

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 Don Hess for a variance from the

terms of Section 804.3.B of the Zoning Ordinance. This variance 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.

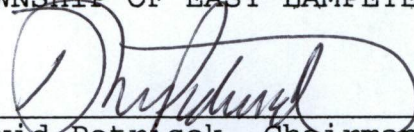
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing held on April 14, 2016.

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.

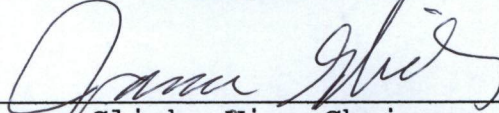
4. The approval granted by this Decision shall expire if Applicant does not obtain a permit within one (1) year from the date of this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within two (2) years from the date of the permit.

5. The foregoing Decision shall be binding upon the Applicant and his heirs and assigns.

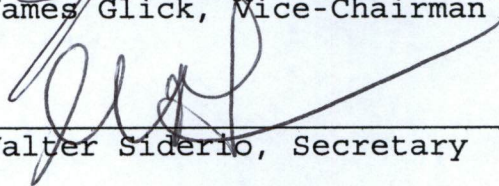
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrusek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed May 2, 2016, after hearing held
on April 14, 2016.

The undersigned certifies that a copy of this Decision was
served upon all parties on or prior to May 3, 2016.

