

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2016-14  
APPLICATION OF SUZANNE H. SUTTON :  
AND LUZVMINDA LAGRIMAS :

DECISION

**I. FINDINGS OF FACT**

1. Applicants are Suzanne H. Sutton and Luzvminda Lagrimas, 1136 Mandela Court, El Paso, California 94303 (collectively "Applicant").

2. The property which is the subject of the instant application is located at 93 Strasburg Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located partially within the R-3 Residential District, partially within the S-Conservation District, and partially within the FP- Floodplain Overlay 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 28, 2016.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by John A. Mateyak, Esquire.

9. The Township participated in the hearing by and through its Zoning Officer, Tara A. Hitchens.

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

William P. Weeber  
102 Heritage Road  
Lancaster, PA 17602

Guy and Linda Benner  
99 Strasburg Pike  
Lancaster, PA 17602

11. Applicant has requested:

(i) as a primary request, with respect to the dwelling located upon the Property, a special exception pursuant to Section 502.3 of the Zoning Ordinance to substitute a nonconforming use;

(ii) in the alternative, with respect to the dwelling located on the Property, a use variance from the terms of Articles X, XIV and XV of the Zoning Ordinance (permitted uses in the R-3 Residential District, S-Conservation District and FP-Floodplain Overlay District);

(iii) as a primary request, with respect to the barn located on the Property, a use variance from the terms of Articles X, XIV and XV of the Zoning Ordinance (permitted uses in the R-3 Residential District, S-Conservation District and FP-Floodplain Overlay District);

(iv) to the extent deemed necessary by the Board, dimensional variances from Articles X, XIV and XV of the Zoning Ordinance to permit the continued use of the existing structures and parking areas; and

(v) to the extent deemed necessary by the Board, variances from Section 1905.1 and Section 1905.8 of the Zoning Ordinance.

12. 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.

13. Article X of the Zoning Ordinance sets forth, among other things, those uses permitted as of right and by special exception in the R-3 Residential District.

14. Article XIV of the Zoning Ordinance sets forth, among other things, those uses permitted as of right and by special exception in the S - Conservation District.

15. Article XV of the Zoning Ordinance sets forth, among other things, those uses permitted as of right and by special exception in the Floodplain Overlay District.

16. Section 1905.1 of the Zoning Ordinance states that, with regard to boarding houses, the owner and operator of the boarding house shall be the primary occupant of the boarding house.

17. Section 1905.8 of the Zoning Ordinance states that, with regard to boarding houses, all parking areas shall be setback a minimum of 25 feet from all lot lines.

18. The Property contains approximately 0.9 acres.

19. The Property is improved with the following:

(i) a two-unit dwelling containing approximately 2,016 square feet of floor area;

(ii) a barn containing approximately 672 square feet of floor area; and

(iii) a gravel parking area.

20. With regard to the two-unit dwelling, one rental unit is located on the first floor and one rental unit is located on the second floor.

21. Applicant currently leases both rental units within the dwelling on a month to month basis.

22. The dwelling was constructed in 1861 and the two-unit dwelling is a valid nonconforming use.

23. The dwelling is served by public sanitary sewer (two units) and a private well.

24. Applicant proposes to utilize the existing dwelling as follows:

(i) Applicant will continue to use the first floor unit as one long term rental unit;

(ii) Applicant will use the second floor unit as Applicant's residence when not traveling (it will be used as Applicant's residence approximately 40% of the time); and

(iii) Applicant will use the second floor unit as a boarding/tourist house when traveling (it will be used as a boarding/tourist house approximately 60% of the time).

25. Applicant proposes to use the barn for a one unit boarding/tourist house.

26. Without obtaining Township approval or permits, Applicant's predecessor in title made interior improvements to the barn and converted it into an office.

27. The barn has electric service but does not currently have water or sewer service.

28. Applicant desires to complete the conversion of the barn into living space and use is as a second boarding/tourist house unit.

29. There are five off-street parking spaces available on the Property.

30. One of the parking spaces is located within the required minimum 25 foot setback (it is located within 25 feet of Strasburg Pike).

31. William P. Weeber expressed concerns regarding the additional traffic to be generated by the proposed uses and the safety of children who utilize an adjacent bus stop.

## II. CONCLUSIONS OF LAW

### SPECIAL EXCEPTION PURSUANT TO SECTION 502.3 OF THE ZONING ORDINANCE TO SUBSTITUTE A NONCONFORMING USE

1. With respect to the existing two-unit dwelling, 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 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. "[T]o be entitled to a special exception, an applicant must bring the proposal within the specific requirements in the zoning ordinance." Act I, Inc. v. Zoning Hearing Board of Bushkill Township, 704 A.2d 732, 735 (Pa. Cmwlth. 1997).

4. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. Shamah v. Hellam Township Zoning Hearing Board, 648 A.2d 1299 (Pa. Cmwlth. 1994); Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989).

5. Applicant's proposal to continue to use the first floor unit of the dwelling as one long term rental unit, use the second floor unit as Applicant's residence when not traveling, and use the second floor unit as a boarding/tourist house when traveling is not more detrimental to the applicable zoning districts than the existing use of the two-unit dwelling.

6. Applicant has offered credible testimony to satisfy the requirements of Section 502.3 of the Zoning Ordinance to use the dwelling as set forth herein.

7. Because Applicant has satisfied the requirements for a special exception pursuant to Section 502.3 of the Zoning Ordinance, the Board need not address Applicant's alternate request for a use variance with regard to the two-unit dwelling.

USE VARIANCE (VARIANCE FROM ARTICLES X, XIV AND XV) TO USE THE BARN AS A BOARDING/TOURIST HOUSE

1. Applicant has requested a variance from Articles X, XIV and XV of the Zoning Ordinance to use the barn as a one-unit boarding/tourist house.

2. Applicant's proposed use of the barn is not a permitted use within the R-3 Residential District, S-Conservation District and FP-Floodplain Overlay District.

3. Applicant requires a use variance from the terms of Articles X, XIV and XV of the Zoning Ordinance (which set forth the uses permitted as of right and by special exception within the R-3 Residential District, S-Conservation District and FP-Floodplain Overlay District) in order to utilize the barn for a boarding/tourist house.



4. In order to be entitled to a variance, an applicant must demonstrate that the zoning ordinance inflicts an unnecessary hardship on the property. Goldstein v. Zoning Hearing Board of Lower Merion Township, 19 A.3d 565 (Pa. Cmwlth. 2011); In re: Appeal of Boyer, 960 A.2d 179, 183 (Pa. Cmwlth. 2008); Valley View Civic Association v. Zoning Board of Adjustment of the City of Philadelphia, 501 Pa. 550, 462 A.2d 637 (1983); MPC §910.2(a).

5. The mere fact that a property may be used in a more profitable fashion is insufficient grounds to grant a variance. Oxford Corporation v. Zoning Hearing Board of Oxford Borough, 34 A.3d 286 (Pa. Cmwlth. 2011); Township of East Caln v. Zoning Hearing Board of East Caln Township, 915 A.2d 1249 (Pa. Cmwlth. 2000).

6. The inability to "maximize the development potential of the property" is not grounds for the granting of dimensional or use variances. Singer v. Philadelphia Zoning Board of Adjustment, 29 A.3d 144, 150 (Pa. Cmwlth. 2011).

7. Potential economic loss from the inability to create an additional lot or an additional dwelling unit or maximum profit does not warrant the granting of a variance. Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001); Society Created to Reduce Urban Blight v. Zoning Board of

Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. 2001).

8. "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).

9. The determination as to whether zoning regulations render a property valueless is to be made with reference to the property as a whole. Hansen Properties III v. Zoning Hearing Board of Horsham Township, 130 Pa. Commonwealth Ct. 8, 566 A.2d 926 (1989).

10. Where "the property is actually used for any purpose permitted by the zoning ordinance, the owner does not suffer unnecessary hardship for granting a variance." Patullo v. Zoning Hearing Board of the Township of Middletown, 701 A.2d 295, 300 (Pa. Cmwlth. 1997).

11. 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).

12. A reasonable use of the Property can and is being made in accordance with the terms of the Zoning Ordinance (including the terms of the Zoning Ordinance relating to nonconforming uses).

13. Applicant has failed to present evidence sufficient to establish that unnecessary hardship will result if the use variance is not granted.

14. Applicant is not entitled to a variance to use the barn as and for a boarding/tourist house.

REMAINING DIMENSIONAL VARIANCE REQUESTS

1. Applicant has requested, to the extent necessary, dimensional variances from Articles X, XIV and XV of the Zoning Ordinance.

2. In addition, Applicant has requested, to the extent necessary, variances from Section 1905.1 and Section 1905.8 of the Zoning Ordinance.

3. To the extent such variances are deemed necessary, the Board concludes that Applicant has satisfied the requirements for the dimensional variances, including variances from Section 1905.1 and Section 1905.8 of the Zoning Ordinance, to use the existing dwelling as proposed. This approval does not apply to Applicant's request to use the barn as a boarding/tourist house, which request is denied.

### III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby:

(i) with respect to the dwelling located upon the Property, grants a special exception pursuant to Section 502.3 of the Zoning Ordinance to substitute a nonconforming use;

(ii) with respect to the barn, denies the application for a use variance from the terms of Articles X, XIV and XV of the Zoning Ordinance;

(iii) to the extent deemed necessary, grants dimensional variances from Articles X, XIV and XV of the Zoning Ordinance to permit the continued use of the two-unit dwelling and parking areas with respect to the boarding/tourist house to be operated within the two-unit dwelling; and

(iv) to the extent deemed necessary by the Board, grants variances from Section 1905.1 and Section 1905.8 of the Zoning Ordinance with respect to the boarding/tourist house to be operated within the two-unit dwelling.

The approvals 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. Applicant shall obtain all approvals and permits required by applicable laws and regulations.

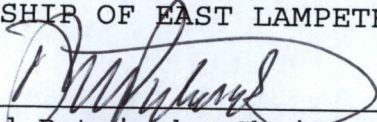
2. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on April 28, 2016.

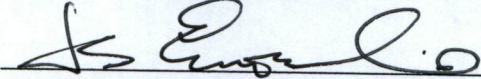
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within twelve (12) months from the date this Decision and does not 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 Applicant and her heirs, personal representatives and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
\_\_\_\_\_  
David Petrisek, Chairman

  
\_\_\_\_\_  
J. Scott Enterline, Alternate

Dated and filed May 12, 2016, after hearing held on April 28, 2016.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to May 13, 2016.

Jana A Hitchens