

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
APPLICATION OF JONAS B. KING : No. 2016-18
:

DECISION

I. FINDINGS OF FACT

1. Applicant is Jonas B. King, 406 Mount Sidney Road, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is located at 406 Mount Sidney Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the VR Village Residential 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 East Lampeter Zoning Ordinance of 2016 (the "Zoning Ordinance").

6. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on June 23, 2016.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Applicant has requested a variance from the terms of Section 20030.E.3 of the Zoning Ordinance.

10. Section 20030.E.3 of the Zoning Ordinance states that the maximum height of a residential accessory structure exceeding 120 square feet of gross floor area shall be 25 feet.

11. The Property contains 73,128 square feet of area.

12. The Property is improved with a dwelling, barn and garage, as shown on the plan (the "Plan") submitted by Applicant.

13. Applicant desires to remove the existing garage and barn (including lean-to areas) and construct one new barn, as more fully shown on the Plan.

14. The barn would be 40 feet by 64 feet, with a height of 28 feet.

15. Applicant testified that he wants a 28 foot high barn for more head space and a high pitch roof.

16. Applicant failed to provide credible testimony that it is not possible to construct a barn no higher than 25 feet in height.

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. "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).

3. 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).

4. "Zoning boards . . . are not entitled to substitute their concept of a better ordinance than the one enacted." Piscioneri v. Zoning Hearing Board of the Borough of Munhall, 523 Pa. 597, 568 A.2d 610, 611 (1990).

5. 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).

6. 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).

7. 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).

8. "[T]he reasons underlying the grant of a variance must be substantial, serious, and compelling." Constantino v. Zoning Hearing Board of the Borough of Forest Hills, 152 Pa. Commonwealth Ct. 258, 618 A.2d 1193, 1196 (1992).

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

see also Beecham Enterprises v. Zoning Hearing Board of Kennedy Township, 556 A.2d 981 (1989).

10. The desire of a landowner to erect an accessory structure does not establish unnecessary hardship required for the granting of a variance. Patullo v. Zoning Hearing Board of the Township of Middletown, 701 A.2d 295 (Pa. Cmwlth. 1997).

11. An applicant is not entitled to a dimensional variance if a conforming structure, albeit a less desirable one, can be erected. Greene Townes Financial Corporation v. Zoning Hearing Board of Lower Merion Township, ___ Pa. Commonwealth Ct. ___, 630 A.2d 492 (1993).

12. The Property can be used as zoned.

13. The applicable zoning regulations do not render the Property valueless.

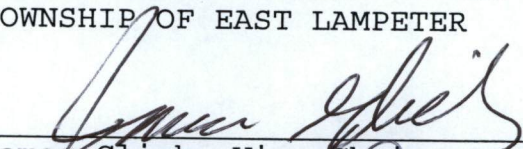
14. Applicant has not presented credible evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

15. Applicant is not entitled to a variance from the terms of Section 20030.E.3 of the Zoning Ordinance.

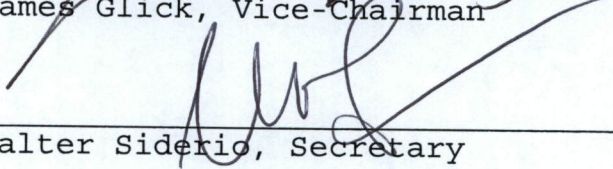
III. DECISION

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 Jonas B. King for a variance from the terms of Section 20030.E.3 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



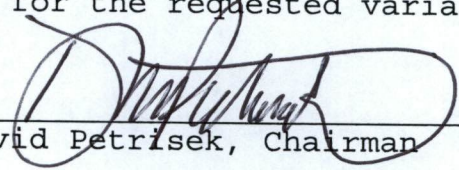
James Glick, Vice-Chairman



Walter Siderio, Secretary

DISSENT:

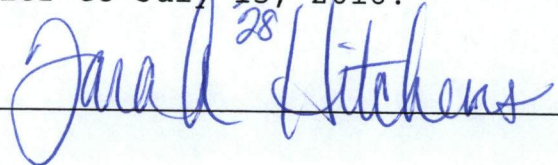
I hereby dissent from the foregoing Decision. I believe that Applicant has met the requirements for the requested variance.



David Petrisek, Chairman

Dated and filed July 14, 2016, after hearing held on June 23, 2016.

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



Sarah Hitchens²⁸