

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
APPLICATION OF ILVIA RODRIGUEZ-COELLO : No. 2013-14

DECISION

I. FINDINGS OF FACT

1. Applicant is Ilvia Rodriguez-Coello, 1666 Susan Avenue, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 1666 Susan Avenue, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the R-2 Residential District as shown on the Official Zoning Map of East Lampeter Township.
4. 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").
5. Written notice of the hearing on the within application was duly given to the Applicant.

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. 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).

5. 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).

6. 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).

7. "[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).

8. 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).

9. A variance, whether labeled dimensional or use, is appropriate only where the property, not the person, is subject to hardship. Yeager v. Zoning Hearing Board of the City of Allentown, 779 A.2d 595 (Pa. Commonwealth Ct. 2001). In Yeager, the Pennsylvania Commonwealth Court stated:

Ever since our Supreme Court decided Hertzberg, we have seen a pattern of cases arguing that a variance must be granted from a dimensional requirement that prevents or financially burdens a property owner's ability to employ his property exactly as he wishes, so long as the use itself is permitted. Hertzberg stands for nothing of the kind.

10. Applicant has not presented 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.

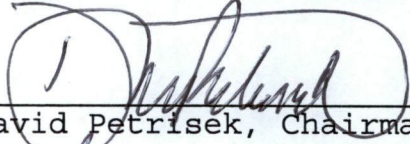
11. Section 904.5.A of the Zoning Ordinance does not render the Property valueless.

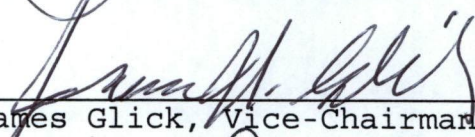
12. A reasonable use of the Property can be made in compliance with the Zoning Ordinance.

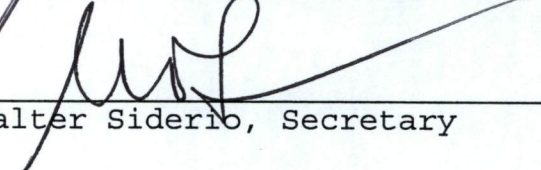
**III. DECISION**

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 Ilvia Rodriguez-Coello for a Variance from the terms of Section 904.5.A of the Zoning Ordinance, or for any other relief.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

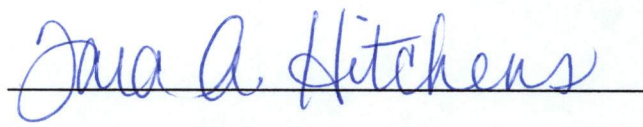
  
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David Petrisek, Chairman

  
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James Glick, Vice-Chairman

  
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Walter Siderio, Secretary

Dated and filed October 10, 2013, after hearings held on August 8, 2013, and September 12, 2013.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to October 11, 2013.

  
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Tara A. Hitchens