

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2013-23
APPLICATION OF BEN ORTIZ :

DECISION

I. FINDINGS OF FACT

1. Applicant is Ben Ortiz, 1650 Lincoln Highway East, Lancaster, Pennsylvania 17602 (hereinafter referred to as "Applicant").

2. The property which is the subject of the instant application is located at 1658 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (referred to as the "1658 Lincoln Highway East Property").

3. Applicant is the owner of the Property.

4. The Property is located in the C-2 Commercial 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 October 24, 2013.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Jim Sanchez, Applicant's consulting engineer, also appeared at the hearing and testified on behalf of Applicant.

10. Applicant has requested a variance from the terms of Section 1702.5 of the Zoning Ordinance.

11. Section 1702.5 of the Zoning Ordinance requires that there be a minimum 10 foot wide greenbelt provided between all lot lines and all parking areas, driveways and vehicular accessways within the lot.

12. Applicant proposes to use the 1658 Lincoln Highway East Property for an auto sales business.

13. Applicant is the owner of the adjacent property, hereinafter referred to as the "1650 Lincoln Highway East Property".

14. Applicant currently uses the 1650 Lincoln Highway East Property for an auto sales business.

15. Applicant desires to have what he refers to as a "driveway area" within the required greenbelt area for a length of 54 feet between the 1658 Lincoln Highway East Property and 1650

Lincoln Highway East Property, as more fully shown on the plans submitted by Applicant.

16. The driveway area will allow the movement of cars between the two properties.

17. No persons appeared in opposition to the application.

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); MPC §910.2.

2. A variance, if granted, must be the minimum that will afford relief and will represent the least modification of the zoning ordinance. Rogers v. Zoning Hearing Board of East Pikeland Township, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922 (1987); MPC §910.2(a)(5).

3. There will be no adverse effect on the public health, safety or general welfare if the variance is granted.

4. The variance requested by Applicant is the minimum variances necessary to grant relief.

5. Applicant has satisfied the requirements for the requested variance.

6. Conditions must be attached to the granting of the variance to protect and preserve the surrounding neighborhood.

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 Ben Ortiz for a variance from the terms of Section 1702.5 of the Zoning Ordinance. The 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 evidence presented to the Board at the hearing held on October 24, 2013.

3. The variance granted herein shall remain applicable only if both the 1658 Lincoln Highway East Property and adjacent 1650 Lincoln Highway East Property are held in common ownership. If either of the two properties are sold separately such that both properties are not held in common ownership, both properties must immediately upon such sale be brought into compliance with the applicable greenbelt requirements of the Zoning Ordinance. The Township of East Lampeter shall have the authority to enforce this condition.

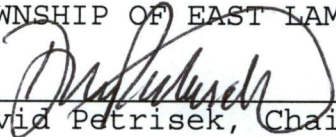
4. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

5. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within twelve (12) months 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 twelve (12) months from the date of the zoning permit.

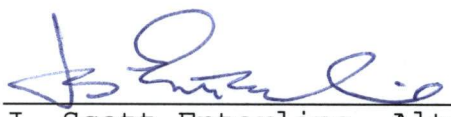
6. Applicant, at Applicant's sole cost and expense, shall record a copy of this Decision with the Lancaster County Recorder of Deeds prior to obtaining a zoning permit and shall provide evidence of recording to the Township Zoning Officer.

7. The foregoing Decision shall be binding upon the Applicant and his heirs, successors and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



J. Scott Enterline, Alternate

Dated and filed November 14, 2013, after hearing held on October 24, 2013.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to November 15, 2013.

A handwritten signature in blue ink, reading "Sara A. Hitchens", is written over a horizontal line.