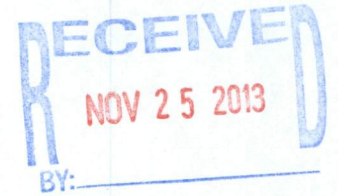


BEFORE THE ZONING HEARING BOARD
TOWNSHIP OF EAST LAMPETER



IN RE: :
: No. 2013-27
APPLICATION OF DONALD R. BRODERICK, II :

DECISION

I. FINDINGS OF FACT

1. Applicant is Donald R. Broderick, II, 2187 Lincoln Highway East, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 2908 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the Commercial C-2 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 November 14, 2013.
7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Melvin E. Newcomer, Esquire.

9. The following person(s) completed and entry of appearance forms and were recognized as parties to the hearing:

Glenn and Deb Hill
2906 Lincoln Highway East
Gordonville, PA 17529

10. Applicant has requested: (i) a variance from the terms of Section 1702.4 of the Zoning Ordinance; and (ii) a variance from the terms of Section 1702.5 of the Zoning Ordinance.

11. Section 1702.4 of the Zoning Ordinance states that parking facilities shall be paved with a hard all-weather surface.

12. Section 1702.5 of the Zoning Ordinance states that in all Commercial Districts there shall be a minimum 10 foot wide greenbelt provided between all lot lines and all parking areas, driveways and vehicular accessways within the lot, except where the lot is adjacent to a residential or rural district, in which case the width of the greenbelt along a side lot line next to said adjacent district shall be equal to the width of the required side yard of the lot, and the width of the green belt along a rear lot line next to said adjacent district shall be equal to the width of the required rear yard of the lot. Greenbelt areas shall be planted in grass, shrubbery, trees or other types of plant material, but in no case shall these areas be paved or covered with an impervious or semi-pervious surface.

13. The Property contains approximately 25,940 square feet of area.

14. Applicant proposes to use the Property as and for an automobile sales lot, including proposed office building and automobile parking area, as more fully shown on the plan ("Plan") submitted by Applicant.

15. As shown on the Plan, access to the Property is currently provided by a driveway which is located on a narrow sliver of land owned by Samuel and Melinda Stoltzfus.

16. The driveway also serves as access for the adjacent property located at 2914 Lincoln Highway East, which is owned by Caleb M. King.

17. Samuel and Melinda Stoltzfus do not use the driveway as access to their farm property because they have another access serving their farm.

18. The driveway abuts the eastern property line of the Property.

19. There is no benefit to the creation of a greenbelt along the eastern property line of the Property because it would not serve as a buffer. Rather, it would simply separate the parking area and driveway.

20. As part of the development of the Property, Applicant will be obtaining an easement from Caleb M. King to allow storm water to be diverted onto Mr. King's property.

21. As a result of this storm water management design, the Township Zoning Officer has determined that Applicant must also seek a variance of the greenbelt requirement for Mr. King's property. Mr. King has authorized Applicant to request a variance from Section 1702.5 of the Zoning Ordinance with regard to Mr. King's property.

22. There would be no benefit to the creation of a greenbelt along the western property line of the King property because it would not serve as a buffer.

23. With regard to Applicant's Property, the storm water design may require that a storm water management structure or structures be located within a portion of the rear yard greenbelt and Applicant has requested a variance from Section 1702.5 of the Zoning Ordinance to permit the storm water management structure or structures to be located within the rear yard greenbelt.

24. With regard to the King property, the storm water design may require that a storm water management structure or structures be located within a portion of the rear yard greenbelt and Applicant, on behalf of Mr. King, has requested a variance from Section 1702.5 of the Zoning Ordinance to permit the storm water management structure or structures to be located within the rear yard greenbelt.

25. Applicant proposes to use gravel (rather than a macadam surface) for the parking areas.

26. It is possible to use the Property in compliance with the paving requirements set forth in Section 1702.4 of the Zoning Ordinance.

II. CONCLUSIONS OF LAW

1. Applicant, and Caleb M. King, require a variance from the greenbelt requirements set forth in Section 1702.5 of the Zoning Ordinance. Applicant also requires a variance from the paving requirements set forth in Section 1702.4 of the Zoning Ordinance.

2. 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.

3. "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).

4. 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).

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. With regard to the greenbelt requirements of Section 1702.5 of the Zoning Ordinance, Applicant, on behalf of himself and Mr. King, has provided evidence that unnecessary hardship will result if the variances from Section 1702.5 of the Zoning Ordinance is not granted and that the grant of the proposed variances from Section 1702.5 of the Zoning Ordinance will not be contrary to the public interest.

11. With regard to the paving requirements of Section 1702.4 of the Zoning Ordinance, the applicable zoning regulations do not render the Property valueless. 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. Applicant can comply with the paving requirements and Applicant is not entitled to the requested variance.

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) grants the application for a variance from the terms of Section 1702.5 of the Zoning Ordinance with regard to greenbelt; and (ii) denies the application for a variance from the terms of Section 1702.4 of the Zoning Ordinance with regard to paving

requirements. The variance which is 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:

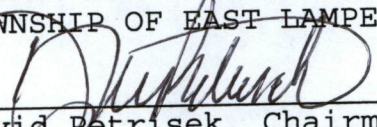
1. Applicant shall obtain all approvals and permits required by applicable laws and regulations.

2. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on November 14, 2003.

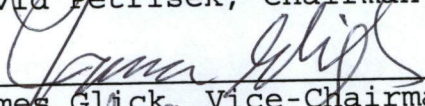
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

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

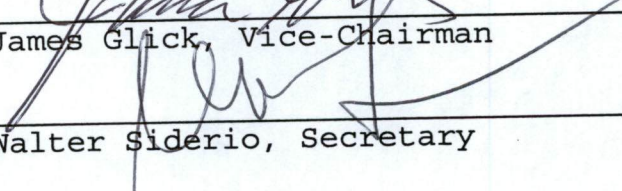
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed December 5, 2013, after hearing held on November 14, 2013.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to December 6, 2013.

Jana A. Hitchens