

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2016-27  
APPLICATION OF RAY LONG AND :  
TERESA LONG :

DECISION

I. FINDINGS OF FACT

1. Applicants are Ray Long and Teresa Long, 1861 Lincoln Highway East, Lancaster, Pennsylvania 17602 ("Applicants").

2. The property which is the subject of the instant application is 1861 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the Mixed Use 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 East Lampeter Zoning Ordinance of 2016 (the "Zoning Ordinance").

5. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on October 27, 2016.

6. Testimony at the hearing was stenographically recorded.

7. Applicant Ray Long appeared personally at the hearing.

8. Applicants have requested: (i) a special exception pursuant to Section 23370.D of the Zoning Ordinance; (ii) a variance from the terms of Section 15030.A.1 of the Zoning Ordinance; (iii) a variance from the terms of Section 15030.A.4 of the Zoning Ordinance; and (iv) a variance from the terms of Section 22230.1 of the Zoning Ordinance.

9. Section 23370.D sets forth the specific requirements for minimal impact home occupations, which are permitted by special exception within the Mixed Use District.

10. Section 15030.A.1 of the Zoning Ordinance states that the minimum lot size for single family dwellings is 10,000 square feet.

11. Section 15030.A.4 of the Zoning Ordinance states that the minimum lot size for multifamily dwellings is 3,500 square feet per unit.

12. Section 22230.1 of the Zoning Ordinance states that the maximum size of a home occupation sign shall be 4 square feet.

13. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 92-04.

14. In Case 92-04, the Board granted Applicant's request for: (i) a special exception to substitute a financial office in place of a nonconforming pottery manufacturing use; (ii) a special exception to convert an existing building into a one unit

apartment; and (iii) a variance from the minimum lot size requirements of the Zoning Ordinance.

15. The Property contains approximately 8,276 square feet of lot area.

16. The Property is improved with the following: (i) a single family detached dwelling, identified on the photograph submitted by Applicants as 1861-A; (ii) a semidetached building used as an apartment, identified on the photograph submitted by Applicants as 1861-B; (iii) a semidetached building which Applicants desire to use as an efficiency apartment, identified on the photograph submitted by Applicants as 1861; and (iv) a building used as a one-room office for financial planning services.

17. Applicants' son resides within the single family detached dwelling.

18. The dwelling contains at least 1,158 square feet of floor space.

19. Applicants propose to operate a financial services business as a minimal impact home occupation within the outbuilding shown on the photograph. The area to be used for the financial services business will be 225 square feet (15 feet by 15 feet).

20. The financial services business is similar in impact to those uses listed as minimal impact home occupations in Section 23370.D.2 of the Zoning Ordinance.

21. The Property and uses thereon are served by public sewer service and public water and are sufficient for Applicant's proposed use.

22. There will be no nonresident employees of the home occupation.

23. There are no retail sales at the Property.

24. The exterior appearance of the dwelling shall be maintained as a residence.

25. There will be no storage or display of goods which will be visible from outside the dwelling.

26. There will be no external storage of materials or products.

27. No explosive or highly combustible materials will be stored on the premises.

28. There are not deliveries of materials and goods.

29. The proposed use will not generate waste products or material of a quality or quantity not normally associated with a residential use.

30. There will be at least five (5) parking spaces located on the Property.

31. There are two existing signs on the Property. One is a building sign and one is a freestanding pole sign.

32. At the hearing, Applicants agreed to remove the building sign.

33. The freestanding pole sign is approximately 3 foot by 6 foot (18 square feet of sign area).

34. No persons appeared in opposition to the application.

## II. CONCLUSIONS OF LAW

1. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989); Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

2. Applicants have satisfied the requirements for a special exception pursuant to Section 23370.D of the Zoning Ordinance.

3. 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.

4. In determining whether unnecessary hardship has been established, zoning hearing boards should examine whether the variance sought is use or dimensional. To justify the grant of a

dimensional variance, zoning hearing boards may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998); Talkish v. Zoning Hearing Board of Harborcreek Township, 738 A.2d 50 (1999).

5. When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations, Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

6. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

7. Applicants have presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the ordinance.

8. Conditions must be imposed on the granting of the special exception and variances in order to preserve and protect the surrounding neighborhood and the purposes 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 grants the application of Ray Long and Teresa Long for: (i) a special exception pursuant to Section 23370.D of the Zoning Ordinance; (ii) a variance from the terms of Section 15030.A.1 of the Zoning Ordinance; (iii) a variance from the terms of Section 15030.A.4 of the Zoning Ordinance; and (iv) a variance from the terms of Section 22230.1 of the Zoning Ordinance. The special exception and variances 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. Applicants shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

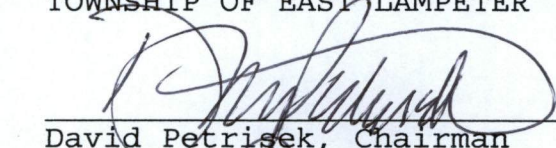
2. Applicants shall at all times comply with and adhere to the information and representations submitted with and contained in their application and the evidence presented to the Board at the hearing held on October 27, 2016.

3. Applicants shall remove the building sign from the Property.

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.

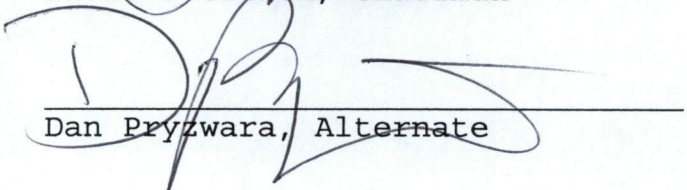
5. The foregoing Decision shall be binding upon the Applicants and their heirs and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER



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David Petrisek, Chairman



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Dan Pryzwara, Alternate



Dated and filed November 4, 2016, after hearing held on October 27, 2016.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to November 15, 2017<sup>16</sup>.

Jana A. Hitchens