

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2016-28
APPLICATION OF NICHOLAS A. SCHUCKER :

DECISION

I. FINDINGS OF FACT

1. Applicant is Nicholas A. Schucker, 355 Palamino Drive, Lancaster, Pennsylvania 17601 ("Applicant").

2. The property which is the subject of the instant application is 355 Palamino Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the R-1 Residential District as shown on the Official Zoning Map of East Lampeter Township.

4. Applicant is the owner of the Property.

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 November 10, 2016.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Julie B. Miller, Esquire.

9. The following persons completed entry of appearance forms and were recognized as parties to the hearing:

Dwight and Robyn Smoker
2155 Thoroughbred Lane
Lancaster, PA 17601

Susan Horst
2151 Thoroughbred Lane
Lancaster, PA 17601

Sidney R. Eachus
350 Palamino Drive
Lancaster, PA 17601

Donald Fichtner
2075 Thoroughbred Lane
Lancaster, PA 17601

10. Applicant initially requested: (i) a variance from the terms of Section 5030.B of the Zoning Ordinance to maintain a patio and play set area in the front yard; and (ii) a variance from the terms of Section 5030.C of the Zoning Ordinance to maintain a shed within the required side yard setback.

11. At the hearing, Applicant corrected its application. Instead of a variance from Section 5030.B of the Zoning Ordinance to maintain a patio and play set area in the front yard, Applicant modified his application to request a variance from Section 5030.C of the Zoning Ordinance to maintain a patio and play set area in the front yard.

12. Section 5030.C.3.b of the Zoning Ordinance states that the minimum side yard setback for buildings for accessory uses exceeding 120 square feet of area shall be 15 feet.

13. Section 5030.C.2.a of the Zoning Ordinance states that the minimum front yard setback for residential accessory uses shall be 15 feet to the rear of the front facade of the principal building.

14. The Property contains 17,424 square feet of area.

15. The Property is a corner lot (corner of Palamino Drive and Thoroughbred Lane).

16. The Property is a typical corner lot with two front yards.

17. Applicant and his family live on the Property within a single family detached dwelling.

18. Applicant contacted Township officials to determine whether the Township would require him to obtain a permit to replace an existing shed.

19. Applicant was advised that a permit would be required to replace the existing shed.

20. Without obtaining a permit, Applicant replaced an existing shed.

21. The shed which was replaced: (i) was approximately 6 feet by 10 feet; (ii) was located approximately 2.7 feet from the side property line; and (iii) was in disrepair.

22. Applicant's new replacement shed is 12 feet by 24 feet and is also located approximately 2.7 feet from the side property line.

23. Without obtaining prior Township approval, Applicant also: (i) installed a concrete patio within the required front yard setback; and (ii) installed a playset/play area within the required front yard setback.

24. The patio is 30 feet by 16 feet.

25. The play area is 28 feet by 28 feet (including the border).

26. The patio and play area were constructed so close to the street that they are located within the street right of way.

27. The play area is also located within the required side yard setback.

28. The Township Assistant Zoning Officer issued an enforcement notice, dated August 10, 2016, and a final enforcement notice, dated September 13, 2016.

29. Applicant did not appeal the enforcement notices. Applicant has, instead, requested variances from the Zoning Ordinance.

30. Applicant testified that he will remove a portion of the patio so that it is 5 feet from the front property line. It will still not, however, comply with the front yard setback requirements of the Zoning Ordinance.

31. Applicant further testified that the playset/play area will be adjusted so that they are 5 feet from the front property line. They will still not, however, comply with the front yard setback requirements of the Zoning Ordinance.

32. As shown on the plan submitted by Applicant, it is possible for Applicant to locate the playset/play area in compliance with the front yard setback requirements of the Zoning Ordinance.

33. It would also be possible for Applicant to locate the patio in compliance with the front yard setback requirements of the Zoning Ordinance.

34. Applicant does not want to move or relocate the playset/play area and the patio because he wants to be able to play sports with his children in the remaining portions of the yard.

II. CONCLUSIONS OF LAW

A. SHED

1. With regard to the shed, Applicant requires a variance from Section 5030.C.3.b of the Zoning Ordinance which states that the minimum side yard setback for buildings for accessory uses exceeding 120 square feet of area shall be 15 feet.

2. Because the shed is replacing a previous shed (which was dimensionally nonconforming with regard to side yard setback) and is located no closer to the side yard than the previous shed, the Board concludes that Applicant has satisfied the requirements for

a variance from the terms of Section 5030.C.3.b of the Zoning Ordinance.

B. PATIO AND PLAY SET / PLAY AREA

1. With regard to the patio and play set / play area, Applicant requires a variance from Section 5030.C.2.a of the Zoning Ordinance which states that the minimum front yard setback for residential accessory uses shall be 15 feet to the rear of the front facade of the principal building.

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); MPC §910.2.

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 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).

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. In order to warrant the grant of a variance, the hardship must be unique to the property and not one which is generally suffered by other properties in the district. D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, ___ Pa. Commonwealth Ct. ___, 585 A.2d 580, 583 (1991).

7. "A decision on whether to grant a variance must be based upon the factors set out in Section 912 [of the MPC now Section 910.2], not on the humanitarian goals of the Board. The focus . . . is primarily upon physical conditions of the property which make development in accordance with the Zoning Ordinance impossible

or prohibitively expensive, and secondarily on whether the proposed use represents the minimal variance necessary to afford relief, while simultaneously protecting the existing neighborhood and the public interest." Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282, 1285 (1988).

8. 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).

9. 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).

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

11. 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.

12. "Economic loss occasioned by owners who build structures which do not comply with the zoning requirements does not justify a variance." D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, ___ Pa. Commonwealth Ct. ___, 585 A.2d 580, 583 (1991).

13. Applicant has not presented evidence to establish that Section 5030.C.2.a of 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.

14. Section 5030.C.2.a of the Zoning Ordinance does not render the Property valueless.

15. A reasonable use of the Property can be made in accordance with the setback requirements of the Zoning Ordinance.

16. Applicant has failed to present evidence sufficient to establish 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.

17. Even assuming for the sake of argument that the Property is subject to unnecessary hardship, Applicant failed to establish by credible evidence that the variance as requested is the minimum necessary to afford relief.

II. 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 of Nicholas A. Schucker for a variance from Section 5030.C.3.b of the Zoning Ordinance to permit the shed no closer than 2.7 feet from the side property line; and (ii) denies the application of Nicholas A. Schucker for a variance from the terms of Section 5030.B of the Zoning Ordinance to maintain a patio and play set area in the front yard. The variance which has been 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 MPC:

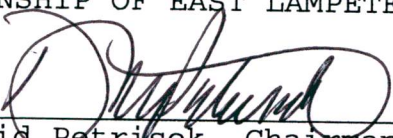
1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing held on November 10, 2016.

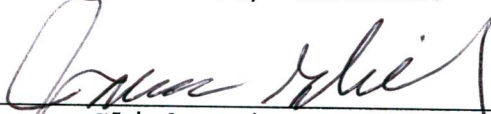
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

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

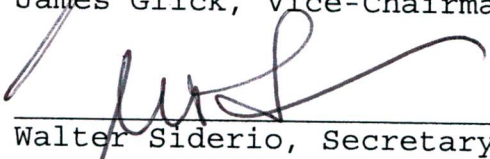
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



Walter Siderio, Secretary

Dated and filed December 8, 2016, after hearing held on November 10, 2016.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to December 9, 2016.

