

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2017-1
APPLICATION OF LIDL US OPERATIONS, :
LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is LIDL US Operations, LLC, 2005 Market Street, Suite 1010, Philadelphia, Pennsylvania 19103 ("Applicant").
2. The property which is the subject of the instant application is 2331 Lincoln Highway East, Tax Parcel No. 310-12376-0-000, as well as a portion of an adjacent property identified as Tax Parcel No. 310-63951-0-0000, East Lampeter Township, Lancaster County, Pennsylvania (collectively the "Property").
3. Applicant is the equitable owner of the Property.
4. The Property is located in the C-3 Regional 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 East

Lampeter Township Zoning Ordinance of 2016 (the "Zoning Ordinance").

6. A public hearing before the Zoning Hearing Board of East Lampeter Township ("Board") was scheduled for January 26, 2017.

7. At the request of Applicant, the hearing was continued from January 26, 2017, to February 23, 2017.

8. A public hearing was held before the Board on February 23, 2017.

9. Testimony at the hearing was stenographically recorded.

10. Applicant was represented at the hearing by Charles M. Suhr, Esquire.

11. David Kane, Applicant's Development Manager, appeared at the hearing and testified on behalf of Applicant.

12. Cornelius Brown, P.E., of Bowler Engineering, appeared at the hearing and testified on behalf of Applicant.

13. Mike McGrath, Applicant's Real Estate Manager, appeared at the hearing and testified on behalf of Applicant.

14. The Township of East Lampeter was represented at the hearing by its Solicitor, Stephen M. Kraybill, Esquire.

15. The following person completed an entry of appearance form and was recognized as a party:

Pete N. Skiadas
Skiadas & Keares
2291 Pullman Road
Lancaster, PA 17601

16. Applicant's application, executed on December 19, 2016, requested that the Board grant a variance from the terms of Section

22160.C.2.b of the Zoning Ordinance regarding the maximum size of parking spaces.

17. Subsequent to submission of the continuance request and prior to the hearing held on February 23, 2017, Applicant amended its application to request (in addition to a variance from Section 22160.C.2.b of the Zoning Ordinance) additional variances from: (i) Section 10030.B.4.a of the Zoning Ordinance regarding minimum required side yard setback; and (ii) Section 10030.B.6.c of the Zoning Ordinance regarding maximum impervious lot coverage.

18. At the hearing held on February 23, 2017, Applicant stated that it had revised its plan and no longer required: (i) the variance from Section 22160.C.2.b of the Zoning Ordinance regarding the maximum size of parking spaces; and (ii) a variance from Section 10030.B.6.c of the Zoning Ordinance regarding maximum impervious lot coverage. Applicant stated that its plan would comply with the requirements of the Zoning Ordinance for parking spaces and impervious lot coverage.

19. At the hearing held on February 23, 2017, Applicant stated that the only variance request necessary for the Board to act upon was the variance from Section 10030.B.4.a of the Zoning Ordinance regarding minimum required side yard setback.

20. The Property contains approximately 4.116 acres.

21. The Property is irregularly-shaped, as more fully shown on the plans ("Plans") submitted by Applicant.

22. The Property is currently used as and for a motel known as the Rodeway Inn. The add-on parcel located to the rear is currently used for agricultural purposes.

23. The Rodeway Inn is an older development.

24. One of the existing Rodeway Inn buildings is located approximately 13.4 feet from the eastern side property line, as more fully shown on the Plans. The building is dimensionally nonconforming.

25. Applicant intends to demolish the existing Rodeway Inn buildings.

26. Applicant proposes to construct a LIDL retail store upon the Property.

27. LIDL sells household products, food and other products. It is similar to a Target or Trader Joes.

28. The proposed building will contain 35,962 square feet of floor area, as shown on the Plans.

29. There will be a sidewalk and cart containment area along the west and south sides of the building.

30. The Property has an access drive which is shared in common with the adjacent properties and uses.

31. Applicant intends to maintain the existing common access drive as the sole access to the LIDL store.

32. A small portion of the proposed building will be located within the required side yard setback, as more particularly shown on the Plans (and, more specifically, Applicant's Exhibit 11).

33. Approximately 438 square feet of the 35,962 square foot building will be located within the required side yard setback, which represents approximately 75 lineal feet of the building.

34. At its closest point, the building will be located 13.4 feet from the side property line.

35. Applicant testified that the proposed building is Applicant's prototypical building and that the same building dimensions are being used by Applicant in fifty (50) new store projects in the United States.

36. The Township inquired whether the building could be modified in size, or its location moved upon the Property, so that the side yard setback requirements of the Zoning Ordinance could be met.

37. Applicant testified that the location of the building has been chosen to properly accommodate internal circulation and parking.

38. Applicant provided credible testimony that the building and appurtenances must be designed and located in accordance with the Plans and cannot reasonably be relocated or otherwise adjusted to comply with the setback requirements of the Zoning Ordinance.

39. The lands to the east of the Property are used for retail and agricultural purposes.

40. The lands located to the west of the Property are used for restaurant purposes.

41. The lands located to the north of the Property are used for agricultural purposes.

42. The granting of the variance as requested by Applicant will not be detrimental to the health, safety or welfare of the surrounding neighborhood.

43. The granting of the variance as requested by Applicant will not substantially injure or detract from the use of neighboring properties or from the character of the neighborhood.

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); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

2. 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).

3. 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, 554 Pa. 249, 721 A.2d 43 (1998).

4. An applicant seeking a dimensional variance may demonstrate entitlement to such variance by presenting evidence meeting the standards set forth in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

5. "To justify the grant of a dimensional variance, courts 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 zoning requirements and the characteristics of the surrounding neighborhood." Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43, 50 (1998).

6. "[T]he language of *Hertzberg* does not state that the relaxed standard for obtaining a dimensional variance applies only where an applicant is seeking to use an already existing building, and we decline to read it so narrowly." Talkish v. Zoning Hearing Board of Harborcreek Township, 738 A.2d 50, 53 (Pa. Cmwlth. 1999).

7. Applicant's proposal is a rehabilitation of the Property and the configuration of the Property warrants the granting of the requested variance.

8. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to

the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the Zoning Ordinance.

9. The unnecessary hardship has not been created by the Applicant.

10. Conditions must be attached to the grant of the variance in order 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 LIDL US Operations, LLC, for a variance from Section 10030.B.4.a of the Zoning Ordinance regarding minimum required side yard setback. 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.

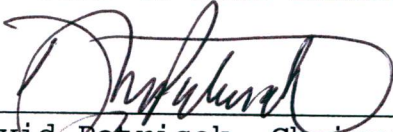
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its application and the evidence presented to the Board at the hearing held on February 23, 2017.

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 its successors and assigns.

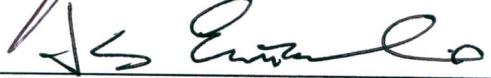
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



James Glick, Vice-Chairman



J. Scott Enterline, Secretary

Dated and filed March 9, 2017, after hearing held on February 23, 2017.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to March 10, 2017.