

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2017-04
APPLICATION OF DAVID R. BUCKWALTER :
AND GAIL M. BUCKWALTER :

DECISION

I. FINDINGS OF FACT

1. Applicants are David R. Buckwalter and Gail M. Buckwalter, P.O. Box 74, Smoketown, Pennsylvania 17576 ("Applicants").
2. The property which is the subject of the instant application is located at 592 Millcross Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicants are the owners of the Property.
4. The Property is located in the Residential District R-1 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 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 March 23, 2017.

7. Testimony at the hearing was stenographically recorded.

8. Applicants appeared personally at the hearing.

9. Charlie Yohe, Applicants' architect, also appeared at the hearing and testified on behalf of Applicants.

10. The Property is a lot containing 1.627 acres.

11. The Property is currently undeveloped. It had previously been improved with a single family dwelling which was demolished.

12. Applicants propose to construct upon the Property a new dwelling, deck, garage, and driveway, all as more fully shown on the plans (the "Plans") submitted by Applicants.

13. The dwelling and garage will be located approximately 15 feet from the street right of way, as more fully shown on the Plans.

14. The dwelling will have a 1,875 square foot footprint, as more fully shown on the Plans.

15. Applicants have requested a variance from Section 5030.B.2.a of the Zoning Ordinance.

16. Section 5030.B.2.a of the Zoning Ordinance states that the minimum front yard setback shall be 40 feet from the street right of way.

17. The previous dwelling on the Property was located approximately on the street right of way line.

18. The Property contains extremely steep slopes and has a limited building envelope.

19. The Conestoga River is located to the rear of the Property and the Property slopes severely towards the river.

20. It is not reasonably possible to construct a dwelling on the Property in compliance with the front yard setback requirements.

21. Even with the variance requested by Applicants, only 75% of the dwelling can be set on buildable grade. The remainder must be constructed on the slope.

22. The house which is constructed on the lot to the west of the Property is approximately 10 to 15 feet from the street right of way.

23. No one appeared at the hearing 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. Common-

wealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

2. 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).

3. 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).

4. 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).

5. Applicants require a variance from the terms of Section 5030.B.2.a of the Zoning Ordinance in order to construct the proposed improvements.

6. Applicants have 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 ordinance.

7. Conditions must be attached to a grant of the variance in this case to preserve and protect 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 David R. Buckwalter and Gail M. Buckwalter for a variance from the terms of Section 5030.B.2.a of the Zoning Ordinance in order to permit the construction of the dwelling and garage approximately 15 feet from the street right of way line, as more particularly shown on the Plans. The variance granted herein shall be subject to the following conditions and safeguards which the Board deems necessary to implement the pur-

poses of the Zoning Ordinance and the Pennsylvania Municipalities Planning Code:

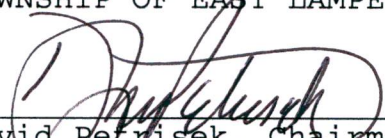
1. Applicants shall obtain all approvals and permits required by applicable laws and regulations.

2. Applicants shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on March 23, 2017.

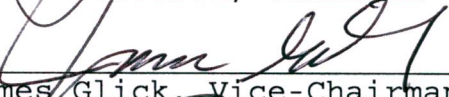
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

4. The foregoing Decision shall be binding upon the Applicants and their heirs, personal representatives and assigns.

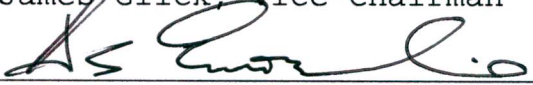
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



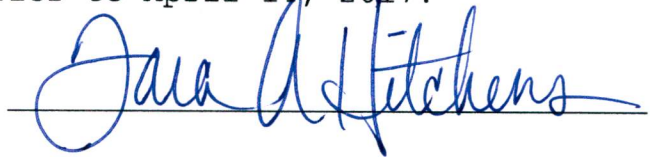
James Glick, Vice-Chairman



J. Scott Enterline, Secretary

Dated and filed April 13, 2017, after hearing held on March 23, 2017.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 14, 2017.

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