

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2017-5
APPLICATION OF JORDAN BINKLEY :
AND LAURA BINKLEY :

DECISION

I. FINDINGS OF FACT

1. Applicants are Jordan Binkley and Laura Binkley, 256 Brook Farms Road, Lancaster, Pennsylvania 17601 ("Applicants").
2. The property which is the subject of the instant application is located at 256 Brook Farms 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 May 25, 2017.

7. Testimony at the hearing was stenographically recorded.

8. Applicants appeared personally at the hearing.

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

10. The following person completed an Entry of Appearance form and was recognized as a party to the hearing:

Harold Miller
254 Little Creek Road
Lancaster, PA 17601

11. The Property is a corner lot, being located at the corner of Brook Farms Road and Little Creek Road.

12. The Property is 31,082 square feet in size.

13. The Property is improved with a single family dwelling and attached two car garage, as more fully shown on the plans ("Plans") submitted by Applicants.

14. The dwelling contains approximately 2,700 square feet of floor area.

15. Applicants desire to construct an addition to the dwelling, as more fully shown on the Plans.

16. A portion of the addition will be used as and for a master bathroom.

17. The remainder of the addition would be an additional garage to be used for the storage of lawn and garden equipment.

18. The proposed addition would be located 23 feet from the right of way of Little Creek Road.

19. In accordance with Section 22280 of the Zoning Ordinance, corner lots have front yards located along both streets.

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

21. Applicants have requested a variance from the terms of Section 5030.B.2.a of the Zoning Ordinance in order to locate the addition 23 feet from the right of way line of Little Creek Road (being a 42.5% variance).

22. Harold Miller testified that homes within the surrounding development have 60 to 80 foot setbacks. He further expressed his opposition to the variance request.

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. "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. 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).

5. 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) (lack of sufficient space in dwelling to accommodate growing family does not constitute unnecessary hardship).

6. 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).

7. Where "the property is actually used for any purpose permitted by the zoning ordinance, the owner does not suffer unnecessary hardship for granting a variance." Patullo v. Zoning Hearing Board of the Township of Middletown, 701 A.2d 295, 300 (Pa. Cmwlth. 1997).

8. 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).

9. The desire of a landowner to erect an accessory structure such as a garage 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. "Financial hardship, short of rendering a property practically valueless, is insufficient to warrant the grant of a variance." Atlantic Refining and Marketing Company v. Zoning Hearing Board of Upper Merion Township, 133 Pa. Commonwealth Ct. 261, 575 A.2d 961, 963 (1990); King v. Zoning Hearing Board of Towamencin Township, 154 Pa. Commonwealth Ct. 109, 622 A.2d 435 (1993).

11. The Property is being used as zoned.

12. The applicable zoning regulations do not render the Property valueless.

13. Applicants have 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.

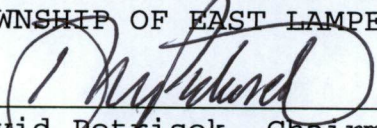
14. Even if it were assumed for argument sake that the Property is subject to unnecessary hardship, the variance requested by Applicants is not the minimum variance necessary to afford relief. For example, by removing the proposed master bathroom addition, the proposed garage addition would require a much smaller setback variance.

15. Applicants are not entitled to the requested variance.

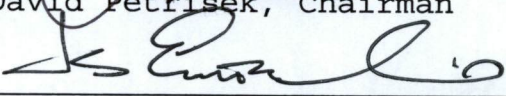
III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application of Jordan Binkley and Laura Binkley for a variance from the terms of Section 5030.B.2.a of the Zoning Ordinance.

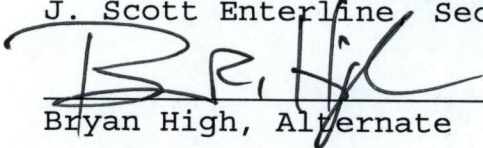
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



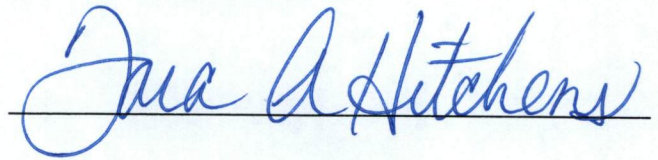
J. Scott Enterline, Secretary



Bryan High, Alternate

Dated and filed June 22, 2017, after hearing held on May 25, 2017.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to June 23, 2017.

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