

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2017-7
APPLICATION OF ALLEN STOLTZFUS :

DECISION

I. FINDINGS OF FACT

1. Applicant is Allen Stoltzfus, 2402 Stumptown Road, Bird-in-Hand, Pennsylvania 17505 ("Applicant").
2. The property which is the subject of the instant application is located at 2400 Stumptown Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the VR Village Residential 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 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 July 27, 2017.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Applicant has requested a variance from the terms of Section 20030.B.2.b of the Zoning Ordinance.

10. Section 20030.B.2.b of the Zoning Ordinance states that the maximum front yard setback shall be 25 feet.

11. The Property is currently improved with a dwelling, barn/garage, and shed as shown on the plan (the "Plan") submitted by Applicant.

12. The existing dwelling is located approximately 25 feet from the street right of way.

13. Applicant desires to remove the existing dwelling and shed and construct a new dwelling, as more fully shown on the Plan.

14. Applicant proposes to construct the new dwelling 44 feet from the street right of way.

15. Applicant desires to construct the dwelling 44 feet from the street right of way so that his children, while playing on the front porch, will be further from the street. In addition, Applicant stated that placing the dwelling further back will alleviate an existing line of sight problem.

16. Homes within the vicinity of the Property have varying setbacks, and many have setbacks greater than 25 feet.

17. No persons appeared 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. Commonwealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

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. 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. There will be no adverse effect on the public health, safety or general welfare if the variance is granted.

8. The variance requested by Applicant is the minimum variance necessary to grant relief.

9. Applicant have satisfied the requirements for a dimensional variance from Section 20030.B.2.b of the Zoning Ordinance in

order to construct the dwelling 44 feet from the street right of way.

10. Conditions must be attached to the granting of the variance 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 Allen Stoltzfus for a variance from the terms of Section 20030.B.2.b of the Zoning Ordinance. The variance 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 Pennsylvania Municipalities Planning Code:

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

2. Applicant shall at all times comply with and adhere to the evidence presented to the Board at the hearing held on July 27, 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 his heirs, personal representatives and assigns.

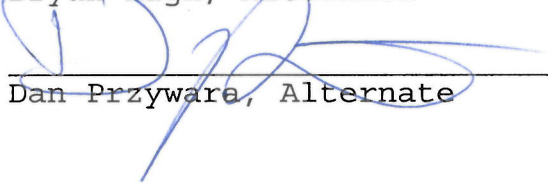
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Vice-Chairman



Bryan High, Alternate



Dan Przywara, Alternate

Dated and filed August 10, 2017, after hearing held on July 27, 2017.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 11, 2017.

