

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2017-10
APPLICATION OF THE ABRAM S. HORST, :
JR. FAMILY LIMITED PARTNERSHIP :

DECISION

I. FINDINGS OF FACT

1. Applicant is The Abram S. Horst Jr., Family Limited Partnership, with an address of 205 Granite Run Drive, Suite 280, Lancaster, PA 17601 ("Applicant").
2. The property which is the subject of the instant application is 1929 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the Mixed Use (MU) District as shown on the Official Zoning Map of East Lampeter Township.
4. 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").
5. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on August 10, 2017.

6. Testimony at the hearing was stenographically recorded.

7. Applicant was represented at the hearing by Sarah Yocum Rider, Esquire.

8. Rob Hess, John Roche, Mark Gebhard and Beth Grossmann appeared at the hearing and testified on behalf of Applicant.

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

10. Tara Hitchens, East Lampeter Township Director of Planning and Zoning Officer, and David Sinopoli, East Lampeter Township Assistant Zoning Officer, appeared and testified at the hearing.

11. Applicant has appealed the determination of the Assistant Township Zoning Officer with regard to the minimum lot area required for Applicant's existing and proposed uses upon the Property. In the alternative, Applicant has requested a variance from the terms of Section 15030.A regarding minimum lot area.

12. Applicant has requested a variance from the terms of Section 22160 regarding off-street parking requirements (more specifically, the minimum number of required spaces).

13. Applicant has requested a variance from the terms of Section 23070.C.1.a regarding the maximum number of accessory apartments.

14. Applicant has requested a variance from the terms of Section 22230.1 Table regarding the maximum number of signs.

15. The Property contains approximately 1.4 acres (61,000 square feet).

16. The Property is known as Garden Spot Square and is located at the intersection of Lincoln Highway East and Highland Drive.

17. The Property is improved with two buildings and accessory parking areas.

18. The building located along (closer to) Lincoln Highway East was identified by Applicant as Building "A".

19. The building located to the rear of the Property (the northwest side of the Property) was identified by Applicant as Building "B".

20. Building "A" contains approximately 10,300 square feet of floor area.

21. Building "B" contains approximately 12,100 square feet of floor area.

22. The tenants in Building "A" are as follows: (i) Oasis Studio of Hair Design (bottom floor); (ii) Seasons Spa Boutique (bottom floor); (iii) All Phase Construction (bottom floor); and (iv) St. Joseph Children's Dental and Behavioral Health Center (hereinafter "St. Joseph") (top floor).

23. The current tenants or uses in Building "B" are as follows: (i) St. Joseph (administrative); and (ii) one two-bedroom apartment (top floor). A portion of the top floor is currently vacant.

24. Applicant desires to convert current unused commercial space on the top floor of Building "B" to three one-bedroom apartments. The existing two-bedroom apartment would remain on the top floor of Building "B".

25. The Assistant Township Zoning Officer determined that the proposal would not comply with the minimum lot area requirements set forth in Section 15030.A of the Zoning Ordinance.

26. More particularly, the Assistant Township Zoning Officer determined that the St. Joseph use contained two separate and distinct nonresidential uses (dental clinic use and behavioral clinic use).

27. Considering the St. Joseph use as two separate uses, the Assistant Township Zoning Officer determined that the minimum lot area required for all existing and proposed uses on the Property would be 64,000 square feet (four apartments and 5 nonresidential uses).

28. If the St. Joseph use were considered one use, the Property would satisfy the minimum lot area requirements for existing and proposed uses.

29. The St. Joseph dental clinic and behavioral health clinic share the same reception desk, the same waiting area and the same restrooms. All staff offices are shared and the uses are

considered as one clinic, not two. There is one Board of Directors for the entire clinic use.

30. The Board finds that the St. Joseph use is one commercial use, not two, and Applicant does not require a variance with regard to minimum lot area.

31. There are 76 parking spaces located upon the Property.

32. Pursuant to calculations made and submitted by Applicant, 85 parking spaces are required in accordance with Section 22160.E of the Zoning Ordinance for Applicant's existing and proposed uses.

33. However, Section 22160.F of the Zoning Ordinance allows for a 20% reduction in the number of required parking spaces if the applicant can demonstrate that common or shared off-street parking spaces are capable of accommodating the peak demands for employees and patrons.

34. Applicant also testified that patients of St. Joseph use public transportation services which are easily accessible.

35. Applicant demonstrated by credible evidence that there are common shared off-street parking spaces on the Property which are capable of accommodating the peak demands for employees and patrons.

36. Applicant does not require a variance with regard to the minimum number of off-street parking spaces for the existing and proposed uses.

37. With regard to Building "B" and the proposed additional three one-bedroom accessory apartments (and the existing two-

bedroom apartment), Section 23070.A.1.b states that no more than two apartment units shall be permitted as part of a non-residential use.

38. Applicant is only permitted to have a maximum of two accessory apartments within Building "B".

39. Applicant could have a maximum of two accessory apartments within Building "A" and a maximum of two accessory apartments within Building "B", but Applicant desires to have all four within Building "B".

40. Applicant's witness testified that it has been difficult to lease the top floor of Building "B" for commercial purposes. However, Applicant's witness admitted that even if the three proposed additional accessory apartments are not approved, the center and use of the Property as a whole is still viable.

41. In addition, the currently unused floor space could be converted to a single two-bedroom apartment. This would permit Applicant to use the space and have two accessory apartments within Building "B".

42. With regard to signage, Applicant has requested a variance from the terms of Section 22230.1 Table regarding the maximum number of signs.

43. There is currently a center sign located on that portion of the Property fronting Lincoln Highway East. The center sign includes (or with reconfiguration could include) the names of all tenants upon the Property.

44. There had been an additional nonconforming sign along Lincoln Highway East (and located within the clear sight triangle).

45. The nonconforming sign related to previous uses upon the Property and had been there for a long period of time.

46. During the sign permitting process for St. Joseph, Applicant removed the nonconforming sign.

47. Applicant presented a timeline of events/actions during the permitting process.

48. The Assistant Township Zoning Officer testified that the permit processing took a long time because necessary information was missing from the application.

49. The Assistant Township Zoning Officer testified that at no time did he discuss with Applicant or St. Joseph's representatives the then-existing sign or removal of the then-existing sign.

50. The Board concludes that the then-existing sign was removed of Applicant's (or St. Joseph's) own volition. Nothing that the Assistant Township Zoning Officer did, or didn't do, establishes a right to replace the then-existing sign.

51. Applicant desires to erect an additional freestanding sign containing 36 square feet of sign area along Lincoln Highway East to be used solely by St. Joseph.

52. Applicant testified that it desires its own freestanding sign to direct patients where to go.

53. Applicant has current door signage on its space but Applicant believes it to be insufficient.

54. The Assistant Township Zoning Officer stated that there are many centers within the Township and that if each tenant were entitled to its own separate signage the Township would be overwhelmed with signage.

II. CONCLUSIONS OF LAW

A. LOT AREA REQUIREMENTS

1. Applicant has appealed the determination of the Assistant Township Zoning Officer with regard to the minimum lot area required for Applicant's existing and proposed uses upon the Property. In the alternative, Applicant has requested a variance from the terms of Section 15030.A regarding minimum lot area.

2. The Board concludes that the St. Joseph use is one use, rather than two separate uses as initially determined by the Assistant Township Zoning officer. As such, Applicant does not require a variance from the terms of Section 15030.A regarding minimum lot area.

B. PARKING REQUIREMENTS

1. Applicant has requested a variance from the terms of Section 22160 regarding off-street parking requirements (more specifically, the minimum number of required spaces).

2. Applicant provided credible testimony that the terms of Section 22160.F.2.b regarding reduction in required parking spaces is applicable.

3. The Board concludes that Applicant has established it is entitled to a parking space credit in accordance with and pursuant to the terms of Section 22160.F.2.b of the Zoning Ordinance. As such, Applicant does not require a variance from the terms of Section 22160 regarding the minimum number of off-street parking spaces.

C. ACCESSORY APARTMENTS

1. Applicant has requested a variance from the terms of Section 23070.C.1.a regarding the maximum number of accessory apartments.

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 Town-

ship, 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. 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).

6. 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).

7. An applicant is not entitled to a dimensional variance if a conforming structure, albeit a less desirable one, can be erected. Greene Townes Financial Corporation v. Zoning Hearing Board of Lower Merion Township, ___ Pa. Commonwealth Ct. ___, 630 A.2d 492 (1993).

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. It is possible to reasonably utilize the Property as a whole without a variance. A variance is not needed to allow reasonable use of the Property.

10. Applicant has failed to demonstrate evidence sufficient to warrant the granting of the requested variance.

D. MAXIMUM NUMBER OF SIGNS

1. The Board hereby restates Conclusions of Law Nos. 1 through 8 above.

2. The Pennsylvania Supreme Court has expressly rejected the contention of a landowner that the requirements for the granting of a variance set forth in the MPC should not be applied to dimensional variances for signs. Beecham Enterprises, Inc. v. Zoning Hearing Board of Kennedy Township, 530 Pa. 272, 608 A.2d 117 (1992).

3. It is possible to adequately operate the center and businesses upon the Property with signage meeting the requirements of Section 22230.1 Table of the Zoning Ordinance.

4. Signage in accordance with Section 22230.1 Table of the Zoning Ordinance is adequate to allow Applicant to make reasonable use of the Property and the Board concludes that any testimony to the contrary is not credible.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law:

1. The Board hereby concludes that the St. Joseph use is one use, rather than two separate uses as initially determined by the Assistant Township Zoning Officer. As such, Applicant does not require a variance from the terms of Section 15030.A regarding minimum lot area.

2. The Board hereby concludes that Applicant has established it is entitled to a parking space credit in accordance with and pursuant to the terms of Section 22160.F.2.b of the Zoning Ordinance. As such, Applicant does not require a variance from the terms of Section 22160 regarding the minimum number of off-street parking spaces.

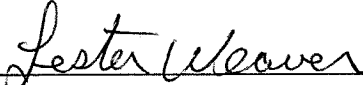
3. The Board denies Applicant's request for a variance from the terms of Section 23070.C.1.a regarding the maximum number of accessory apartments.

4. The Board denies Applicant's request for a variance from the terms of Section 22230.1 Table regarding the maximum number of signs.

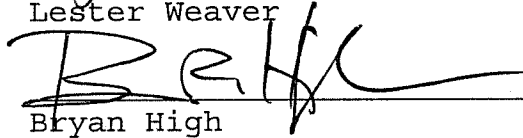
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline



Lester Weaver



Bryan High

Dated and filed September 14, 2017, after hearing held on August 10, 2017.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to September 15, 2017.

