

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2017-16
APPLICATION OF JYOTSNA JIVANI :

DECISION

I. FINDINGS OF FACT

1. Applicant is Jyotsna Jivani, 103 Nevermore Circle, North Wales, Pennsylvania 19454 (hereinafter "Applicant").

2. The property which is the subject of the instant application is 2626 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the AG-Agricultural 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. Applicant was represented at the hearing by Judith Cassel, Esquire.

7. Anvil Jivani appeared at the hearing and testified on behalf of Applicant.

8. East Lampeter Township was represented at the hearing by Susan Peipher, Esquire.

9. Tara Hitchens, East Lampeter Township Director of Planning/ Zoning Officer, appeared at the hearing and testified on behalf of East Lampeter Township.

10. Applicant has requested a variance from the terms of Section 3020 and Section 23490 of the Zoning Ordinance.

11. Section 3020 of the Zoning Ordinance sets forth those uses permitted within the AG-Agricultural District.

12. Section 23490 of the Zoning Ordinance sets forth specific requirements for multi-family dwellings.

13. Applicant desires to use the Property for multi-family dwellings.

14. Multi-family dwellings are not a permitted use within the AG-Agricultural District.

15. The Township issued an Enforcement Notice to Applicant, dated July 27, 2017, alleging, among other things, that: (i) the Property was being used as and for multi-family dwellings; (ii)

multi-family dwellings are not a permitted use in the AG-Agricultural District; and (iii) no zoning relief had been granted for the Property for use as multi-family dwellings.

16. Applicant did not appeal the Enforcement Notice. Applicant did, however, file the instant zoning application and has requested a use variance to allow the multi-family dwelling use to continue.

17. Applicant acquired the Property in 2003.

18. Although Mr. Jivani's testimony was unclear, it appears that at the time of Applicant's purchase of the Property: (i) there were at most two residential units on the first floor of the building; (ii) the attic was "finished space" but there were not a separate residential living unit/apartment in the attic; and (iii) the basement was unfinished.

19. In 2004, Applicant obtained a permit to insulate and drywall the basement. The use and occupancy permit issued for the basement project specifically stated that the basement could be used for storage purposes only and that the basement could not be used as a living unit.

20. In violation of the use and occupancy permit and without obtaining Township approval, the basement was converted into two apartments.

21. Without obtaining Township approval, the attic was converted to an additional living unit/apartment.

22. There are currently five (5) dwelling units within the building (one in the attic, two on the main floor and two in the basement).

23. Applicant provided no credible testimony regarding Applicant's due diligence prior to completing purchase of the Property. More specifically, Applicant provided no credible testimony which would establish that Applicant contacted East Lampeter Township officials to determine the status of the Property and the use being conducted within the building.

24. The Township's records indicate that the residential building on the Property is a single family dwelling. There are no records of any approval for multi-family dwellings.

25. The Property also contains a travel plaza (Sunoco gas station and truck stop), which Mr. Jivani testified is the principal use of the Property.

26. There are commercial / retail uses in the vicinity of the Property.

27. To the rear of the Property are agricultural uses.

II. CONCLUSIONS OF LAW

1. Multi-family dwellings are not a permitted use in the AG-Agricultural Zoning District.

2. The Property is currently being used by the Applicant as and for five multi-family dwellings.

3. Applicant did not seek or obtain zoning approval to allow the Property to be used as and for multi-family dwellings.

4. The use of the Property as a five unit multi-family dwelling is illegal.

5. Applicant has requested a use variance in order to use the Property for multi-family purposes.

6. 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.

7. "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).

8. 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).

9. A variance is to be "granted only in exceptional circumstances." M & M Sunoco, Inc. v. Upper Makefield Township Zoning Hearing Board, 154 Pa. Commonwealth Ct. 316, 623 A.2d 908, 911 (1993).

10. 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).

11. "[T]he reasons underlying the grant of a variance must be substantial, serious, and compelling." Constantino v. Zoning

Hearing Board of the Borough of Forest Hills, 152 Pa. Commonwealth Ct. 258, 618 A.2d 1193, 1196 (1992).

12. 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).

13. Although denial of the variances may result in some economic loss, the Property can be used for a permitted purpose within the AG-Agricultural District. Applicant offered no credible evidence to the contrary and denial of the variances would not render the Property valueless.

14. Applicant has failed to prove unnecessary hardship.

15. Applicant has not sustained her burden of proof in establishing the right to variances, and the request for such variances must be denied.

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 Jyotsna Jivani for variances from Section 3020 and Section 23490 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick



J. Scott Enterline



Lester Weaver

Dated and filed October 26, 2017, after hearing held on
September 28, 2017.

The undersigned certifies that a copy of this Decision was
served upon all parties on or prior to October 27, 2017.


