

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2017-21
APPLICATION OF WELSH STONE :
ESTATE, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Welsh Stone Estate, LLC, 5031 Diem Road, New Holland, Pennsylvania 17557 ("Applicant").

2. The property which is the subject of the instant application is 3056 Lincoln Highway East, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the partially within the Village Commercial District, partially within the Agricultural District, and partially within the Floodplain Overlay District as shown on the Official Zoning Map of East Lampeter Township.

5. The Property is located partially within East Lampeter Township and partially within Leacock Township.

6. Notice of the hearing on the 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").

7. Public hearings were held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on November 9, 2017, and December 14, 2017.

8. Testimony at the hearings was stenographically recorded.

9. John Pogue, of Landvision, LLC, appeared at the hearings and testified on behalf of Applicant.

10. Mervin Esh also appeared at the hearings and testified on behalf of Applicant.

11. Scott Hain, of David Miller/Associates, Inc., engineer for the Township of East Lampeter, appeared at the hearings and testified on behalf of the Township of East Lampeter.

12. The Township of East Lampeter was represented at the hearing held on December 14, 2017, by Stephen Kraybill, Esquire, Township Solicitor.

13. Applicant has requested:

(i) a variance from the terms of Section 3020 of the Zoning Ordinance;

(ii) a variance from the terms of Section 19020 of the Zoning Ordinance;

(iii) a variance from the terms of Sections 21040.J. 1, 2 and 3 of the Zoning Ordinance;

(iv) a special exception pursuant to Section 21040.G.2 of the Zoning Ordinance; and

(iv) a variance from the terms of Section 22150.C.3 of the Zoning Ordinance.

14. Section 3020 of the Zoning Ordinance sets forth uses permitted within the Agricultural District.

15. Section 19020 of the Zoning Ordinance sets forth uses permitted within the Village Commercial District.

16. Section 21040.J of the Zoning Ordinance sets forth uses which are specifically prohibited within the Floodplain Overlay District.

17. Section 21040.G.2 of the Zoning Ordinance states, in pertinent part, that parking lots, loading areas and driveways are permitted within the Floodplain Overlay District by special exception, if they are water-permeably surfaced and consistent with the provisions of the Zoning Ordinance.

18. Section 22150.C.3 of the Zoning Ordinance states that off-street loading facilities, driveways, access lanes and loading space areas shall be paved with an all-weather surface.

19. The Property contains approximately 3.7 acres, approximately 2 acres of which are located within East Lampeter Township. The balance of the Property is located within Leacock Township.

20. A portion of the Property was most recently used for a hex sign retail shop and accessory parking area (the remainder of the Property is an open area, with a woodland area leading to Pequea Creek).

21. Currently, all of the existing improvements are located within Leacock Township.

22. Applicant proposes to operate upon the Property a business involving the sale of landscaping stones, including flagstone.

23. Applicant would sell product to contractors and directly to the general public.

24. Applicant would also perform some stone cutting to reduce stone pieces in size.

25. Applicant's days and hours of operation would be Monday through Friday, 6:30 a.m. until 5:00 p.m.

26. Applicant proposes to construct an addition to the existing building, as more fully shown on the plans submitted by Applicant.

27. The building and building addition are/will be located within Leacock Township.

28. Applicant will store and display stone outdoors on pallets, as more fully shown on the plans.

29. A portion of the stone storage area is located within East Lampeter Township, as more fully shown on the plans.

30. Applicant will construct a loading area upon a portion of the Property located within East Lampeter Township, as more fully shown on the plans.

31. The outdoor storage area and loading area will occupy approximately 1/4 acre within East Lampeter Township.

32. The outdoor storage area and loading area are located approximately 200 feet from Pequea Creek.

33. Applicant initially proposed to remove trees located within the floodway. However, Applicant subsequently testified that it would revise its plans and would not remove any trees within the floodplain.

34. Applicant further revised its plans to relocate a proposed underground infiltration system (underground storage area), but it will still be located within the 100-year floodplain.

35. According to testimony provided by the Township's engineer, even if the underground infiltration system is relocated (as proposed by Applicant), the system will fill with flood water, will fail and will allow water to enter Pequea Creek.

II. CONCLUSIONS OF LAW

1. Applicant requires a variance from the use provisions of Section 3020 of the Zoning Ordinance in order to utilize the Property for a loading area within the Agricultural Zone.

2. Applicant requires a variance from the use provisions of Section 19020 of the Zoning Ordinance in order to utilize the Property for the sale of landscaping stone within the Village Commercial Zone.

3. Applicant requires a variance from the terms of Sections 21040.J, 1, 2 and 3 which prohibit Applicant's proposed uses in the Floodplain Overlay District.

4. Applicant has requested a special exception pursuant to Section 21040.G.2 of the Zoning Ordinance. This Section of the Zoning Ordinance provides that loading areas are permitted within

the Floodplain Overlay District, provided they are water-permeable surfaced.

5. Applicant requested, to the extent deemed necessary, a variance from the terms of Section 22150.C which provides that all off-street loading areas shall be paved with an all-weather surface.

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. 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. "[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).

10. 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).

11. 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).

12. 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).

13. The Property, as a whole, can be reasonably used without outdoor stone storage and loading areas in East Lampeter Township.

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

15. Applicant has 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.

16. Applicant is not entitled to the variances requested.

17. With regard to Applicant's request for a special exception, to be entitled to a special exception, an applicant must bring the proposal within the specific requirements in the zoning ordinance. Act I, Inc. v. Zoning Hearing Board of Bushkill Township, 704 A.2d 732, 735 (Pa. Cmwlth. 1997).

18. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. Shamah v. Hellam Township Zoning Hearing Board, 648 A.2d 1299 (Pa. Cmwlth. 1994); Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989).

19. Applicant has failed to satisfy the standards for a special exception pursuant to Section 21040.G.2 of the Zoning Ordinance. Applicant's proposed loading area is not water-permeably surfaced.

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 Welsh Stone Estate LLC for:

(i) a variance from the terms of Section 3020 of the Zoning Ordinance;

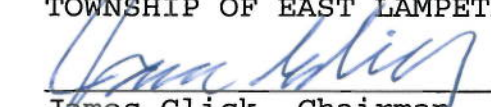
(ii) a variance from the terms of Section 19020 of the Zoning Ordinance;

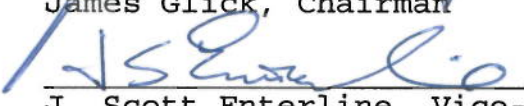
(iii) a variance from the terms of Sections 21040.J. 1, 2 and 3 of the Zoning Ordinance;

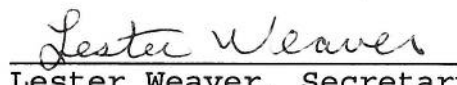
(iv) a special exception pursuant to Section 21040.G.2 of the Zoning Ordinance; and

(iv) a variance from the terms of Section 22150.C.3 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER


James Glick, Chairman


J. Scott Enterline, Vice-Chairman


Lester Weaver, Secretary

Dated and filed January 10, 2018, after hearings held on November 9, 2017, and December 14, 2017.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to January 11, 2018.


Dana A. Fitchens