

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2017-24
APPLICATION OF DONALD KAUTZ :
AND MARY BETH KAUTZ :

DECISION

I. FINDINGS OF FACT

1. Applicants are Donald Kautz and Mary Beth Kautz, 170 Hostetter Lane, Lancaster, Pennsylvania 17602 ("Applicants").
2. The property which is the subject of the instant application is located at 170 Hostetter Lane, 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-2 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 December 14, 2017.

7. Testimony at the hearing was stenographically recorded.

8. Applicants appeared personally at the hearing.

9. The following persons completed an entry of appearance form and were recognized as parties to the hearing:

Quan and Laura Nguyen
172 Hostetter Lane
Lancaster, PA 17602

10. The Property is a narrow lot.

11. The Property is improved with a single family dwelling and driveway, as more fully shown on the plan ("Plan") submitted by Applicants.

12. The existing driveway is located approximately at the side property line.

13. Applicants propose to construct a garage at the end of the existing driveway.

14. The garage will be 12 feet by 24 feet, as more fully shown on the Plan.

15. The garage will be located 6 feet from the side property line, as more fully shown on the Plan.

16. Section 3030.C.2.b of the Zoning Ordinance provides that the minimum side yard setback for an accessory building shall be 10 feet.

17. Applicants require a variance from the terms of Section 6030.C.2.b of the Zoning Ordinance.

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. 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).

3. 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).

4. 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).

5. Section 6030.C.2.b of the Zoning Ordinance provides that the minimum side yard setback for accessory buildings shall be 10 feet.

6. Applicants requires a variance from the terms of Section 6030.C.2.b of the Zoning Ordinance.

7. The narrowness of the Property and the location of the existing improvements warrant the granting of the variance requested.

8. The unnecessary hardship has not been created by the Applicants.

9. Applicants have presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to

the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

10. Conditions must be attached to a grant of the variance in this case to preserve and protect 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 Donald Kautz and Mary Beth Kautz for a variance from the terms of Section 6030.C.2.b of the Zoning Ordinance in order to permit the construction of the garage, as more particularly shown on the Plan, 6 feet from the side property line. 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. Applicants shall obtain all approvals and permits required by applicable laws and regulations.

2. Applicants shall at all times comply with and adhere to the information and representations submitted with and contained in their application and the evidence presented to the Board at the hearing held on December 14, 2017.

3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall

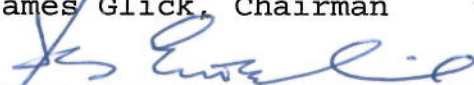
be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

4. The approval granted by this Decision shall expire in accordance with the terms of Section 25060 of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicants and their heirs, personal representatives and assigns.

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 hearing held on December 14, 2017.

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


David A. Fitchens