

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2017-27
APPLICATION OF JOHN SPEICHER, SR., :
AND FANNIE SPEICHER :

DECISION

I. FINDINGS OF FACT

1. Applicants are John Speicher, Sr., and Fannie Speicher, 1402 Graber Avenue, Sarasota, Florida 34239 ("Applicants").

2. The property which is the subject of the instant application is located at 536 Mount Sidney Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicants are the owners of the Property.

4. The Property is located in the 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. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on February 8, 2018.

7. Testimony at the hearing was stenographically recorded.

8. Brian Masterson, of Register Associates, Inc, and John Speicher, Jr., Applicants' son, appeared at the hearing and testified on behalf of Applicants.

9. Applicants have requested: (i) a variance from Section 3030.B.5.b of the Zoning Ordinance; (ii) a variance from the terms of Section 23380.C.1 of the Zoning Ordinance; (iii) a variance from the terms of Section 23380.C.2 of the Zoning Ordinance; and (iv) a variance from the terms of Section 23380.C.3 of the Zoning Ordinance.

10. Section 3030.B.5.b of the Zoning Ordinance states that no more than 30% of the lot shall be covered by building and other impervious surfaces.

11. Section 23380.C.1 of the Zoning Ordinance states that, for a horse barn for transportation, the minimum lot size shall be 20,000 square feet.

12. Section 23380.C.2 of the Zoning Ordinance states that, for a horse barn for transportation, the minimum setback shall be 20 feet.

13. Section 23380.C.3 of the Zoning Ordinance states that, for a horse barn for transportation, the minimum setback for the horse grazing area shall be 10 feet.

14. The Property is improved with a dwelling and detached garage.

15. The Property contains 11,527 square feet of area.

16. Applicants desire to erect a horse barn for transportation upon the Property.

17. The horse barn would be 26 feet by 36 feet and would be for the keeping of one horse.

18. The horse barn would be located approximately 14.81 feet from the side property line and 18.2 feet from the rear property line. Applicants did, however, testify that the location of the horse barn could be adjusted slightly to eliminate one of these setback variance requests.

19. Applicants propose to have a fenced-in horse grazing area which will come within 2 feet from the side and rear property lines.

20. The proposed lot coverage will be 38.7%.

21. Applicants testified that manure would remain in the stall until removed from the Property.

22. The manure would be disposed of approximately once every two months. It would be hauled off-site and would be spread on a farm field.

23. There is a residential property located adjacent to the Property.

24. The owner of the adjacent residential property did not express any concerns regarding the proposed horse barn.

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. "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).

3. 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).

4. 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).

5. 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).

6. "[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).

7. 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).

8. The desire of a landowner to erect an accessory structure does not establish unnecessary hardship required for the granting of a variance. Patullo v. Zoning Hearing Board of the Township of Middletown, 701 A.2d 295 (Pa. Cmwlth. 1997).

9. "Lack of an objection has never been the basis for the allowance of a variance." Polonsky v. Zoning Hearing Board of Mt.

Lebanon, 139 Pa. Commonwealth Ct. 579, 590 A.2d 1388 (1991); Vanguard Cellular System, Inc. v. Zoning Hearing Board of Smithfield Township, 130 Pa. Commonwealth Ct. 371, 568 A.2d 703 (1989).

10. "Zoning boards . . . are not entitled to substitute their concept of a better ordinance than the one enacted." Piscioneri v. Zoning Hearing Board of the Borough of Munhall, 523 Pa. 597, 568 A.2d 610, 611 (1990).

11. The Property can be used as zoned.

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

13. Applicants have not presented credible 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.

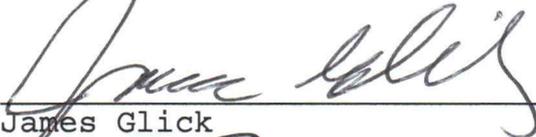
14. Applicants are not entitled to the requested variances.

III. DECISION

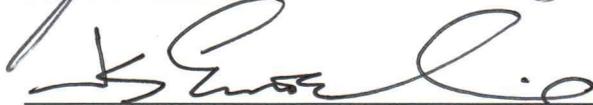
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application of John Speicher, Sr., and Fannie Speicher for: (i) a variance from Section 3030.B.5.b of the Zoning Ordinance; (ii) a variance from the terms of Section 23380.C.1 of the Zoning Ordinance; (iii) a variance from the terms of Section

23380.C.2 of the Zoning Ordinance; and (iv) a variance from the terms of Section 23380.C.3 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick



J. Scott Enterline

Lester Weaver

Dated and filed February 22, 2018, after hearing held on February 8, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to February 23, 2018.

