

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2018-04
APPLICATION OF SITE ENHANCEMENT :
SERVICES :

DECISION

I. FINDINGS OF FACT

1. Applicant is Site Enhancement Services, 6001 Nimitz Parkway, South Bend, Indiana 46628 ("Applicant").
2. The property which is the subject of the instant application is 2310 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the C-3 Commercial 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 April 12, 2018.
6. Testimony at the hearing was stenographically recorded.

7. Landon White appeared at the hearing and testified on behalf of Applicant.

8. Applicant has requested a variance from Section 22230 of the Zoning Ordinance.

9. Section 22230 of the Zoning Ordinance states that the maximum total permitted building sign area is 200 square feet.

10. The Property is being developed as and for a Longhorn Steakhouse Restaurant.

11. Applicant proposes signage containing 217 square feet of sign area, as more fully shown on the plans and materials submitted by Applicant (there are four proposed building signs and a separate freestanding sign).

12. Applicant testified that the signage is the prototypical signage for Longhorn Steakhouse.

13. The proposed sign (as shown on the right elevation) would contain the name of the restaurant and the steerhead logo.

14. It is possible to adequately operate the proposed business upon the Property with signage meeting the requirements of Section 22230 of the Zoning Ordinance.

15. Total building signage of 200 square feet of signage is adequate to allow Applicant to make reasonable use of the Property.

16. Contrary to Applicant's assertion, it is not necessary to have signage containing 217 square feet of area (including the steerhead logo) in order to allow motorists to make safe and proper driving decisions.

17. Applicant offered no credible testimony to the Board that the Zoning Ordinance imposes unnecessary hardship upon the Applicant.

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); MPC §910.2.

2. 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).

3. "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).

4. 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).

5. 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).

6. 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).

7. It is possible to reasonably and safely utilize the Property with signage meeting the requirements of Section 22230 of the Zoning Ordinance. A variance is not needed to allow reasonable use of the Property.

8. It appears that Applicant may also be arguing that the proposed variance is de minimis.

9. Commonwealth Court has specifically found the following not to be de minimis: 6% of minimum lot area was too large to be de minimis (Leonard v. Zoning Hearing Board of the City of Bethlehem, 136 Pa. Commonwealth Ct. 182, 583 A.2d 11 (1990)); a 9 foot variance from a 40 foot setback requirement for a

satellite dish was too large to be de minimis (Hirsh v. Zoning Hearing Board of the Borough of Fox Chapel, 163 Pa. Commonwealth Ct. 296, 641 A.2d 32 (1994)); a variance of 20% from a requirement that a retaining wall not exceed 5 feet in height is not de minimis (Zoning Board of Adjustment of the City of Philadelphia v. Pasha, 118 Pa. Commonwealth Ct. 190, 544 A.2d 1101 (1988)).

10. Moreover, the Pennsylvania courts have, as a general matter, rejected the arguments of property owners who seek variances from dimensional requirements without establishing unnecessary hardship on the theory that the variance should be granted because it will do no harm. Ottaviano v. Zoning Hearing Board of Adjustment of Philadelphia, 31 Pa. Cmwlth Ct. 366, 376 A.2d 286 (1977).

11. The Board concludes that Applicant's variance request cannot be considered a minor deviation from the zoning ordinance signage specifications. Applicant proposes a deviation of 8.5%.

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

III. DECISION

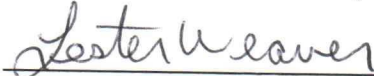
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application of Site Enhancement Services for a variance from the terms of Section 22230 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER

James Glick, Chairman



J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

Dated and filed May 10, 2018, after hearing held on April 12
2018.

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

