

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2018-06  
APPLICATION OF DESTINY BUILDERS :  
AND MANAGEMENT, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Destiny Builders and Management, LLC, 3738 Kennel Avenue, Columbia, Pennsylvania 17512 ("Applicant").

2. The properties which are the subject of the instant application are 2141 Lincoln Highway East, 2151 Lincoln Highway East and 30 Harvest Road, Lancaster County, Pennsylvania (collectively the "Property").

3. The owners of the Property are Angali, LLC, and Laxmi, Inc.

4. The Property (subsequent to a recent rezoning) is located within the C-2 Commercial District as shown on the Official Zoning Map of East Lampeter Township.

5. 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").

6. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on April 12, 2018.

7. Testimony at the hearing was stenographically recorded.

8. Dave Bitner, of RGS Associates, Inc. appeared at the hearing and testified on behalf of Applicant.

9. Shakher Patel also appeared at the hearing and testified on behalf of Applicant.

10. Applicant has requested:

(i) a variance from the terms of Section 9030.B.5 of the Zoning Ordinance;

(ii) a variance from the terms of Section 22070.A.1 of the Zoning Ordinance;

(iii) a special exception pursuant to Section 222070.A.4 of the Zoning Ordinance; and

(iv) a variance from the terms of Section 222.40.B.3 of the Zoning Ordinance.

11. Section 9030.B.5 of the Zoning Ordinance states that the minimum rear yard setback shall be thirty (30) feet.

12. Section 22070.A.1 of the Zoning Ordinance states in pertinent part that no fence or wall shall be located within a storm water management facility or drainage easement.

13. Section 22070.A.4 of the Zoning Ordinance states in pertinent part that a retaining wall may be erected in the front yard if it does not exceed six (6) feet in height.

14. Section 22240.B.3 of the Zoning Ordinance states in pertinent part that dumpsters shall comply with the rear yard setbacks for principal uses (in this case, thirty (30) feet).

15. Applicant intends to reconfigure the Property to create two lots, as more fully shown on the plans (the "Plans") submitted by Applicant.

16. Lot 1 will contain 0.6692 acre and will be improved with a building containing 5,205 square feet of area. This lot and building will be used for commercial / retail purposes.

17. Lot 2 will contain 2.0136 acres and will be improved with a 4-story 90 room hotel.

18. Because of the irregular shape of Lot 1, Applicant has requested a minimum 10 foot rear yard setback, as more fully shown on the Plans.

19. Moreover, because of the irregular shape of Lot 1, Applicant has requested the same minimum 10 foot rear yard setback for the dumpster.

20. There is an existing storm water line which will be relocated, as shown on the Plans.

21. Because of the Property elevations, it will be necessary to construct retaining walls, as more fully shown on the Plans.

22. With regard to the retaining wall along Harvest Road, the wall, including the required railing, will exceed six (6) feet in height. Applicant has requested permission for a wall and top railing not to exceed nine (9) feet in total height.

23. Because of the location of the proposed storm water drainage easements, Applicant has requested a variance to allow the retaining wall within the storm water easement area, as shown on the Plans.

## 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, 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. Applicant has 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.

4. Applicant is entitled to the variances requested.

### 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 Destiny Builders and Management, LLC, for:

(i) a variance from the terms of Section 9030.B.5 of the Zoning Ordinance;

(ii) a variance from the terms of Section 22070.A.1 of the Zoning Ordinance;

(iii) a special exception pursuant to Section 222070.A.4 of the Zoning Ordinance; and

(iv) a variance from the terms of Section 222.40.B.3 of the Zoning Ordinance.

The approvals 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. Applicant shall obtain all approvals and permits required by applicable laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its application and the evidence presented to the Board at the hearing held on April 12, 2018.

3. The maximum height of the wall and top railing shall be nine (9) feet.

4. 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.

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

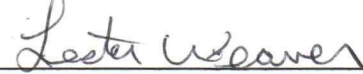
6. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

\_\_\_\_\_  
James Glick, Chairman



\_\_\_\_\_  
J. Scott Enterline, Vice-Chairman



\_\_\_\_\_  
Lester Weaver, Secretary

Dated and filed 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.

