

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2017-26
APPLICATION OF TREEHOUSE PRIVATE :
BRANDS :

DECISION

I. FINDINGS OF FACT

1. Applicant is Treehouse Private Brands, 2060 Old Philadelphia Pike, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 2060 Old Philadelphia Pike, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the R-3 Residential 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. After, and in accordance with, a continuance request submitted by Applicant, a public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on June 14, 2018.

6. Testimony at the hearing was stenographically recorded.

7. Angela Allison, of Fastsigns, appeared at the hearing and testified on behalf of Applicant.

8. Bob Nasir, Applicant's representative, also appeared at the hearing and testified on behalf of Applicant.

9. Applicant has requested a variance from Section 22230.G and Table 22230.1 of the Zoning Ordinance.

10. Section 22230.1 and Table 22230.1 of the Zoning Ordinance state, among other things, that the maximum sign area permitted for incidental signs is four (4) square feet.

11. The Property is used for a business known as Treehouse Private Brands.

12. Truck deliveries are made to the Property.

13. Truck drivers (traveling along Old Philadelphia Pike) sometimes turn into the visitor and employee entrance along Old Philadelphia Pike, rather than using the designated truck entrance on Oak View Road.

14. Trucks that enter the wrong entrance have difficulty getting out.

15. Applicant proposes to install two signs along Old Philadelphia Pike to direct truck drivers to the Oak View Road entrance.

16. One of the signs would be located by the visitor/employee entrance and the other sign would be located near the intersection of Old Philadelphia Pike and Oak View Road.

17. Each of the signs would contain 12.5 square feet of sign area.

18. The sign to be located by the visitor and employee entrance would state the following:

VISITOR & EMPLOYEE ENTRANCE
NO TRUCKS PERMITTED
ALL TRUCKS & DELIVERIES
ENTER AT OAK VIEW ROAD

19. The sign to be located at the intersection of Old Philadelphia Pike and Oak View Road would state the following:

ALL TRUCKS & DELIVERIES
ENTER AT OAK VIEW ROAD

20. Although Applicant provided testimony with regard to the size of the sign letters and visibility, the Board finds such testimony insufficient to warrant the granting of such a substantial increase in allowable sign size.

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 utilize the Property with signage meeting the requirements of the Zoning Ordinance. A variance is not needed to allow reasonable use of the Property.

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

9. The Pennsylvania Supreme Court has expressly rejected the contention of a landowner that the requirements for the granting of a variance set forth in the MPC should not be applied to dimensional variances for signs. Beecham Enterprises, Inc. v. Zoning Hearing Board of Kennedy Township, 530 Pa. 272, 608 A.2d 117 (1992).

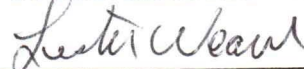
III. DECISION

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 Treehouse Private Brands for a variance from the terms of Section 22230.G and Table 22230.1 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

DISSENT:

I dissent from the foregoing Decision. I would grant the variances as requested.



James Glick, Chairman

Dated and filed July 12, 2018, after hearing held on June 14, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to July 13, 2018.

