

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2018-13
APPLICATION OF ABNER S. KING :
AND ARIANNA F. KING :

DECISION

I. FINDINGS OF FACT

1. Applicants are Abner S. King and Arianna F. King, 619 West Lincoln Avenue, Lititz, Pennsylvania 17543 ("Applicants").

2. The property which is the subject of the instant application is 2020 Horseshoe Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicants are the owners of the Property.

4. The Property is located within 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 July 12, 2018.

7. Testimony at the hearing was stenographically recorded.

8. Applicants appeared personally at the hearing.

9. Sidney Kime, of ELA Group, Inc., also appeared at the hearing and testified on behalf of Applicants.

10. The Property was the subject of previous zoning hearings and the Board takes administrative notice of its previous decisions.

11. Applicants have now requested: (i) a special exception pursuant to Section 24030.C of the Zoning Ordinance; and (ii) a modification of conditions imposed by the Board in previous cases which prohibited outside storage.

12. Section 24030.C of the Zoning Ordinance states that no nonconforming use may be changed to any other nonconforming use unless the Board shall, in granting a special exception, find that the proposed nonconforming use is no more detrimental to the district than the existing nonconforming use and shall not increase any dimensional aspects of the nonconformity. Specific additional requirements for the substitution are further set forth in Section 24030.C of the Zoning Ordinance.

13. Applicants now desire to substitute a gazebo assembly business for a tobacco warehouse use.

14. The area of the building to be used for the gazebo assembly business contains 7,866 square feet of floor area, as shown on the plans and materials (the "Plans") submitted by Applicants.

15. There will be four to six employees.

16. Applicants anticipate that one to two trucks may access the Property during the normal work week. In addition, the use could generate one to two cars or small trucks per day.

17. There will be no retail sales upon the Property.

18. The typical days and hours of operation will be Monday through Friday, 6:00 a.m. to 5:00 p.m.

19. All manufacturing and assembly will take place within the building.

20. Applicants also desire to have an outside storage area for finished gazebos. The outside storage area would contain 2,000 square feet of area, as shown on the Plans.

II. CONCLUSIONS OF LAW

1. Applicants have requested: (i) a special exception pursuant to Section 24030.C of the Zoning Ordinance; and (ii) a modification of conditions imposed by the Board in previous cases which prohibited outside storage.

2. An applicant for a special exception has the burden of proof as to the specific criteria and standards of the zoning ordinance. Abbey v. Zoning Hearing Board of the Borough of East

Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989);
Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48
Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

3. An applicant requesting the modification of a condition imposed by a zoning hearing board in a prior decision from which no appeal was taken has the same burden as that imposed upon the applicant for a variance. Gazebo, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 112 Pa. Commonwealth Ct. 37, 535 A.2d 214 (1987).

4. 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.

5. "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).

6. 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).

7. 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).

8. 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).

9. "[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).

10. 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).

11. At the hearing it was determined that the nonconforming use of the Property has previously been expanded by an aggregate total of 70%.

12. Provided there is no outside storage, Applicants presented sufficient testimony to establish that the proposed substitution will not be detrimental to the public health, safety or welfare of the neighborhood.

13. Outside storage, in contravention of the previous conditions, would cause further increase of the nonconforming use of the Property, which has been expanded well beyond the 50% expansion which is permitted by Section 24030 of the Zoning Ordinance. Even if the outside storage weren't considered an expansion, Applicants have failed to meet the requirements to approve a modification of the conditions prohibiting outside storage. Applicants can use the Property without outside storage.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby: (i) grants the application for a special exception under Section 502.1 of the Zoning Ordinance; and (ii) denies the application for a modification of the Board's previously-imposed condition regarding the prohibition of outside storage. The special exception shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the MPC:

1. Applicants shall obtain all approvals and permits required by applicable federal, state and Township 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 July 12, 2018.

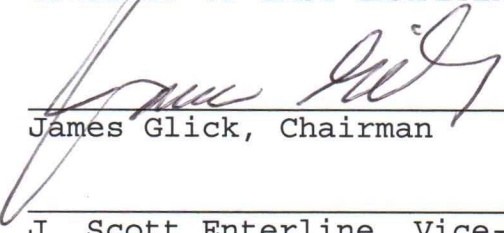
3. There shall be no outside storage.

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 25070 of the Zoning Ordinance.

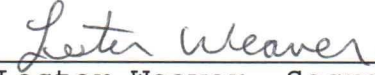
6. The foregoing Decision shall be binding upon the Applicants and their heirs and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman

J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

Dated and filed August 26, 2018, after hearing held on July 12, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 27, 2018.

