

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2018-14  
APPLICATION OF JASON ANNIBALI :

DECISION

I. FINDINGS OF FACT

1. Applicant is Jason Annibali, 482 Royer Drive, Lancaster, Pennsylvania 17601 ("Applicant").
2. The property which is the subject of the instant application is located at 2294 Coach Light Lane, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The owners of the Property are Mike and Heather Heim, 2294 Coach Light Lane, Lancaster, Pennsylvania 17601.
4. The Property is located in the R-1 Residential 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. Applicant and Mike Heim appeared at the hearing.

9. Applicant has requested a variance from Section 5030.B.5.b of the Zoning Ordinance.

10. Section 5030.B.5.b of the Zoning Ordinance states that no more than 40% of the lot shall be covered by building and other impervious surfaces.

11. The Property is improved with a dwelling, driveway and paver patio.

12. The Property contains 14,679 square feet of area.

13. Applicant desires to erect a pool and concrete decking upon the Property, as more fully shown on the plan submitted by Applicant.

14. Applicant would remove 400 square feet of the existing paver patio and install 600 square feet of concrete decking.

15. The project would result in an additional 6,908 square feet of lot coverage.

16. The proposed lot coverage would be 47%.

## II. CONCLUSIONS OF LAW

1. Applicant requires a variance from the maximum lot coverage limitations set forth in Section 5030.B.5.b of the Zoning Ordinance.

2. Section 5030.B.5.b establishes a maximum permitted lot coverage of 40%. Applicant's propose a lot coverage of 47%, well in excess of the permitted maximum coverage.

3. Applicant argued that, because the Township's Zoning Ordinance maximum impervious coverage limitations changed subsequent to their purchase of the Property, they should be entitled to a variance to construct the pool and deck.

4. There is no guarantee that zoning regulations will not change subsequent to the purchase of property.

5. 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.

6. "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).

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. 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).

10. "[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).

11. 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).

12. 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).

13. "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).

14. The Property can be used as zoned.

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

16. Applicant has 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.

17. Applicant is not entitled to 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 for a variance from the terms of Section 5030.B.5.b of the Zoning Ordinance.

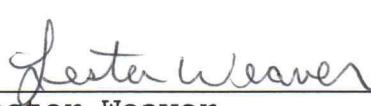
ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
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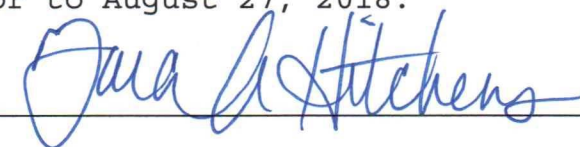
**DISSENT:**

I dissent from the foregoing Decision. I would grant the requested variance.

  
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Lester Weaver

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.

  
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