

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2018-12  
APPLICATION OF ANIL JIVANI :

DECISION

I. FINDINGS OF FACT

1. Applicant is Anil Jivani, 103 Nevermore Circle, North Wales, Pennsylvania 19454 ("Applicant").

2. The property which is the subject of the instant application is 2622 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner 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. After a continuance requested by Applicant, a public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on July 26, 2018.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Micah R. Bucy, Esquire.

9. Applicant operates on the Property a facility which dispenses automotive and truck fuels, including a convenience store, as a nonconforming use.

10. Applicant has now: (i) appealed a determination by the Zoning Officer (Applicant argues that Applicant's proposal to place a storage shed upon the Property is not an expansion of the nonconforming use); (ii) a special exception pursuant to Section 24030 of the Zoning Ordinance to expand the nonconforming use; and (iii) a variance from the maximum expansion limitations set forth in Section 24030.A.2 of the Zoning Ordinance (Applicant orally modified its application at the hearing to include this additional request).

11. The Property has been the subject of previous zoning hearings and the Board takes administrative notice of its Decisions dated November 10, 1988, and June 22, 2006.

12. As more fully set forth in the Board's previous Decisions, Applicant's predecessor in title has already expanded the nonconforming use upon the Property in excess of the 50% expansion permitted by the Zoning Ordinance.

13. Applicant desires to place an 8 foot by 12 foot shed upon the Property.

14. The shed will be placed on an existing macadam area.

15. Applicant will store additive for diesel fuel within the shed.

## II. CONCLUSIONS OF LAW

1. Applicant argued that, because the shed will be located on an existing macadam area, it is not an expansion of the nonconforming use. The Board rejects such argument and concludes that the increase in floor area used as part of the nonconforming use represents an expansion, whether on existing macadam or otherwise.

2. In the alternative, Applicant has requested: (i) a special exception pursuant to Section 24030 of the Zoning Ordinance to expand the nonconforming use; and (ii) a variance from the maximum expansion limitations set forth in Section 24030.A.2 of the Zoning Ordinance.

3. "[T]o be entitled to a special exception, an applicant must bring the proposal within the specific requirements in the zoning ordinance." Act I, Inc. v. Zoning Hearing Board of Bushkill Township, 704 A.2d 732, 735 (Pa. Cmwlth. 1997).

4. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. Shamah v. Hellam Township Zoning Hearing Board, 648 A.2d 1299 (Pa. Cmwlth. 1994); Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989).



5. With the exception of maximum expansion limitations set forth in Section 24030.A.2 of the Zoning Ordinance, Applicant has satisfied the requirements for a special exception pursuant to Section 24030 of the Zoning Ordinance.

6. Applicant requires a variance from the terms of Section 24030.A.2 of the Zoning Ordinance.

7. In order to be entitled to a variance, an applicant must demonstrate that the zoning ordinance inflicts an unnecessary hardship on the property. Goldstein v. Zoning Hearing Board of Lower Merion Township, 19 A.3d 565 (Pa. Cmwlth. 2011); In re: Appeal of Boyer, 960 A.2d 179, 183 (Pa. Cmwlth. 2008); Valley View Civic Association v. Zoning Board of Adjustment of the City of Philadelphia, 501 Pa. 550, 462 A.2d 637 (1983); MPC §910.2(a).

8. Applicant has presented evidence sufficient to warrant the grant 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: (i) denies the appeal and concludes that Applicant's proposal to place a storage shed upon the Property is an expansion of the nonconforming use; (ii) grants a special exception pursuant to Section 24030 of the Zoning Ordinance to expand the nonconforming use; and (iii) grants a variance from the maximum expansion limitations set forth in Section 24030.A.2 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 MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing held on July 26, 2018.


3. 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.

4. The approvals granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance and Section 25060 of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicant and his heirs and assigns.

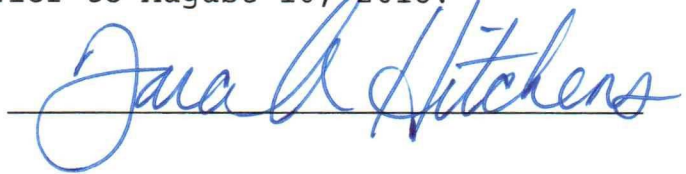
ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
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James Glick, Chairman

  
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Lester Weaver, Secretary

Dated and filed August 9, 2018, after hearing held on July 26, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to August 10, 2018.

  
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