

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2018-15
APPEAL OF GRANNY-N-POPS :
PLACE, LLC :

DECISION

I. FINDINGS OF FACT

1. Appellant is Granny-N-Pops Place, LLC, 5919 Wind Mill Road, Gap, Pennsylvania 17527.

2. The property which is the subject of the instant appeal is 2929 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Appellant is the owner of the Property pursuant to a Deed, dated December 21, 2016, and recorded in the Lancaster County Recorder of Deeds' Office at Document No. 6307785.

4. The Property is located in the Village Commercial (VC) District as shown on the Official Zoning Map of East Lampeter Township.

5. Notice of the hearing on the within appeal was duly advertised and posted in accordance with the provisions of the

Pennsylvania Municipalities Planning Code 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 appeal on July 12, 2018.

7. Testimony at the hearing was stenographically recorded.

8. Appellant was represented at the hearing by Lee A. Stivale, Esquire.

9. East Lampeter Township (the "Township") participated as a party in this proceeding.

10. The Township was represented at the hearing by Melvin E. Newcomer, Esquire, Township special counsel.

11. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 93-43.

12. In Case No. 93-43, the Board granted Appellant's predecessor in title a special exception to convert the single family dwelling located upon the Property into two (2) dwelling units.

13. With regard to the appeal currently before the Board, the Township issued an Enforcement Notice to Appellant, dated May 14, 2018, alleging that two (2) apartments were constructed upon the

Property in an accessory building without zoning approval. The Enforcement Notice further alleged that the apartments are in violation of the East Lampeter Township Zoning Ordinance of 2016, Article 23, Section 23070.C.1.b, which reads as follows: No more than one (1) apartment unit shall be permitted on a lot with a single-family use.

14. Appellant filed a timely appeal of the Enforcement Notice. More specifically, on or about June 6, 2018, Appellant filed a zoning application with the Board, signed by Appellant's counsel on Appellant's behalf, which application: (i) appealed the Enforcement Notice issued by East Lampeter Township for the Property; (ii) requested a special exception for a multi-family use containing four (4) residential units in two (2) structures; and (iii) in the alternative, and in conjunction with a request for a variance by estoppel and special exception, requested variances to permit a multi-family use of four (4) units within two (2) structures, each containing two (2) units, and variances from area, bulk and dimensional restrictions for such uses.

15. Further, with regard to Appellant's application (in the section entitled "Request for Special Exception"), Appellant identified the nature of the special exception request as four (4) residential uses in two (2) structures. Appellant further

indicated in such section of the application that "[t]he use has existed for several decades"

16. In order to meet its burden of proving Appellant violated the Zoning Ordinance provisions set forth in the Enforcement Notice, the Township presented the testimony of its Assistant Zoning Officer, David Sinopoli.

17. Mr. Sinopoli testified that the administrative assistant for the Township initially received a verbal complaint, by telephone call, from a female resident on the Property indicating that there were two (2) residential units in an accessory building on the Property.

18. Mr. Sinopoli investigated the complaint, which investigation included a drive-by inspection of the Property.

19. During the inspection of the Property, Mr. Sinopoli observed that the accessory building had been improved with siding and windows. Mr. Sinopoli further observed that there were cars parked out front of the accessory building. Mr. Sinopoli testified that "[i]t definitely was not a garage for storage. It was living space." (N.T. 10).

20. In addition to the drive-by inspection, Mr. Sinopoli personally spoke with the resident of the Property who made the

original complaint and confirmed in that conversation that two (2) dwelling units existed in the accessory building. (N.T. 15-16).

21. The Township's file for the Property does not contain any zoning approvals for the two (2) dwelling units in the accessory building. (N.T. 11-12).

22. No building permits were issued for the two (2) dwelling units in the accessory building. (N.T. 12).

23. Upon presentation of the Township's case in support of the Enforcement Notice, Appellant rested its case without presentation of any testimony or other evidence. Further, Appellant withdrew its request for any other relief which was set forth in its application.

24. The Township, through its Assistant Zoning Officer, David Sinopoli, presented credible evidence that Appellant violated Article 23, Section 23070.C.1.b, of the Zoning Ordinance through its conversion and use of the accessory building for unauthorized dwelling units.

II. CONCLUSIONS OF LAW

1. Appellant's application was timely filed, advertised and the Property posted as required by law.

2. Because this hearing is on an appeal from an Enforcement Notice issued by the Township, the Township has the burden of proof in establishing the violation identified in the Enforcement Notice.

3. The Board must be convinced that the Township has submitted credible evidence to prove its case.

4. Mr. Sinopoli's testimony that the Township received a complaint by a resident of the Property, that he spoke with the resident who identified the existence of the two (2) dwelling units in the accessory building, that he performed a drive-by inspection of the Property and observed that the accessory building had been improved with siding and windows and that there were cars parked out front of the accessory building, taken together represent substantial credible evidence to support the Enforcement Notice. And, although not necessary to support this conclusion, the Appellant admitted to the violation by stating in its application that the use has existed for several decades.

5. The Board concludes that the Township has met its burden of proof.

6. Appellant presented no evidence in support of its appeal and withdrew its requests for any and all additional relief.

7. The use of the accessory building as and for two (2) dwelling units is in violation of Article 23, Section 23070.C.1.b, of the Zoning Ordinance and is an illegal use.

8. The Enforcement Notice issued to Appellant by the Township is valid, and the appeal of the Enforcement Notice is without merit.

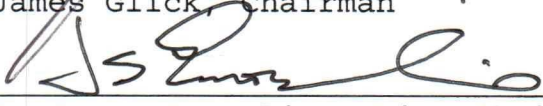
III. DECISION

Based on the testimony presented at the hearing, the Board upholds the validity of the Enforcement Notice dated May 14, 2018, issued to the Appellant by East Lampeter Township for property located at 2929 Lincoln Highway East, Gordonville, Pennsylvania 17527, and denies and dismisses Appellant's appeal of such Enforcement Notice. Because Appellant withdrew its requests for other relief, including a special exception, variance by estoppel and other variances, it is not necessary for the Board to take any action on such requests.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



J. Scott Enterline, Vice Chairman



Lester Weaver, Secretary

Dated and filed August 9, 2018, after a 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 10, 2018.