

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2018-16
APPLICATION OF DESTINY BUILDERS :
AND MANAGEMENT, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Destiny Builders and Management, LLC, 3738 Kennel Avenue, Columbia, Pennsylvania 17512 ("Applicant").

2. The properties which are the subject of the instant application are 2141 Lincoln Highway East, 2151 Lincoln Highway East and 30 Harvest Road, Lancaster County, Pennsylvania (collectively the "Property").

3. The owners of the Property are Angali, LLC, and Laxmi, Inc.

4. The Property (subsequent to a recent rezoning) is located within the C-2 Commercial District as shown on the Official Zoning Map of East Lampeter Township.

5. Notice of the hearing on the 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 26, 2018.

7. Testimony at the hearing was stenographically recorded.

8. Dave Bitner, of RGS Associates, Inc. appeared at the hearing and testified on behalf of Applicant.

9. Shakher Patel also appeared at the hearing and testified on behalf of Applicant.

10. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 2018-06.

11. In Case No. 2018-06, the Board, among other things, granted Applicant's request for: a variance from the terms of Section 9030.B.5 of the Zoning Ordinance; a variance from the terms of Section 22070.A.1 of the Zoning Ordinance; a variance from the terms of Section 220170.A.4 of the Zoning Ordinance; and a variance from the terms of Section 22240.B.3 of the Zoning Ordinance.

12. Section 9030.B.5 of the Zoning Ordinance states that the minimum rear yard setback shall be thirty (30) feet.

13. Section 22070.A.1 of the Zoning Ordinance states in pertinent part that no fence or wall shall be located within a storm water management facility or drainage easement.

14. Section 22070.A.4 of the Zoning Ordinance states in pertinent part that a retaining wall may be erected in the front yard if it does not exceed six (6) feet in height.

15. Section 22240.B.3 of the Zoning Ordinance states in pertinent part that dumpsters shall comply with the rear yard setbacks for principal uses (in this case, thirty (30) feet).

16. As testified in the previous case, Applicant intends to reconfigure the Property to create two lots, as more fully shown on the plans previously submitted by Applicant.

17. Lot 1 will contain 0.6692 acre and will be improved with a building containing 5,205 square feet of area. This lot and building will be used for commercial / retail purposes.

18. Lot 2 will contain 2.0136 acres and will be improved with a 4-story 90 room hotel.

19. Since the last hearing, Applicant has performed certain engineering and has determined that, because of the Property elevations, it will be necessary to construct an additional retaining wall along Route 30, as more fully shown on the plans (the "Plans") submitted by Applicant.

20. The retaining wall, including the required railing, will exceed six (6) feet in height.

21. Applicant has now requested a variance from the terms of Section 22070.A.4 of the Zoning Ordinance to erect the retaining wall, including the required railing, along Route 30 in accordance with the Plans.

22. Additionally, Applicant has requested an extension of the time limitations with regard to the previous Decision in Case No.

2018-06. Applicant has requested an extension until July 2020 to obtain the necessary permits.

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); Pennsylvania Municipalities Planning Code ("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. Applicant has presented 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.

4. Applicant is entitled to the variance requested.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby grants the application of Destiny Builders and Management,

LLC, for a variance from the terms of Section 222070.A.4 of the Zoning Ordinance. With regard to its Decision in Case No. 2018-06, the Board also grants the Applicant's request for a time extension until July 31, 2020, to obtain the necessary permits.

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 Pennsylvania Municipalities Planning Code:

1. Applicant shall obtain all approvals and permits required by applicable laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its 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 foregoing Decision shall be binding upon the Applicant and its successors and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



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.

