

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2018-25
APPLICATION OF LEISURE LIVING, INC. :

DECISION

I. FINDINGS OF FACT

1. Applicant is Leisure Living, Inc., c/o Ed Hollinger, P.O. Box 100, East Earl, Pennsylvania 17519 ("Applicant").

2. The property which is the subject of the instant application is 1728 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property is located in the Mixed Use District as shown on the Official Zoning Map of East Lampeter Township.

4. 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").

5. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on January 24, 2019.

6. Testimony at the hearing was stenographically recorded.

7. Applicant was represented at the hearing by John A. Mateyak, Esquire.

8. Todd Shoaf, of Pioneer Management, LLC, appeared at the hearing and testified on behalf of Applicant.

9. Ed Hollinger, the owner of Applicant, also appeared at the hearing and testified on behalf of Applicant.

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

11. The Township was represented at the hearing by Matthew J. Creme, Jr., Esquire, Township special counsel.

12. Applicant has requested:

(I) a special exception of Article 24, Section 24030.A for expansion of non-conforming use;

(II) a special exception of Article 24, Section 24030.B for continuation of non-conforming use;

(III) a variance of Article 15, Section 15030.B.2 minimum and maximum front yard setback;

(IV) a variance of Article 15, Section 15030.B.3.f for side yard setback;

(V) a variance of Article 22, Section 22160.1 for off-street parking;

(VI) a variance of Article 22, Table 22230.1 for maximum sign height;

(VII) a variance of Article 23, Section 23150.C.7 for width of landscaping strip;

(VIII) a variance of Article 23, Section 23150.C.10 for post washing and drying areas for a carwash;

(IX) a variance of Article 24, Section 24030.A.2 for maximum expansion of 50% for nonconformity;

(X) a variance of Article 24, Section 24030.B for continuation of non-conforming use;

(XI) a variance of Article 24, Section 24030.1 for expansion of dimensional nonconformity of west setback;

(XII) a variance of Article 24, Section 24030.J.2 for required build to line;

(XIII) a variance of Article 24, Section 24030.J.4 for buffers and screens along western building facade;

(XIV) a variance of Article 24, Section 24030.J.5 for creation of new non-conformities (front yard and side yard);

(XV) a variance of Article 25, Section 25060.F and 25070.F for time requirements for variances and special exceptions.

13. The Property contains approximately +/- 31,577 square feet (gross) of land (+/26,509 net).

14. The Property is located at the southwest corner of Lincoln Highway and Tennyson Drive.

15. The Property is more fully depicted upon the Zoning Plan submitted by Applicant.

16. The Property currently contains the following improvements:

(I) +/- 3,027 square foot building containing 1 automated wash bay, 5 self serve wash bays and a mechanical room ("Existing Building");

(II) 8 vacuum stations located to the rear of the Existing Building; and

(III) 1 vacuum station located in front of the Existing Building.

17. The Property has been operated as a car wash for over 47 years.

18. The Property was the subject of a zoning hearing in 1993. At that hearing, Applicant's request to add an extension to the western side of the Building was approved. The car wash operation is considered a pre-existing nonconforming use.

19. Applicant now seeks the approvals required to make necessary upgrades/modernization to the existing carwash facility.

20. Applicant desires to replace the Existing Building with a new expanded to accommodate two modern automated wash bays and mechanical room to accommodate the modern equipment necessary for automated facilities. Applicant is not seeking to add any additional wash bays.

21. Applicant proposes to replace the existing building with a +/- 4,509 square feet building with the 4 self serve bays and 2 automated bays ("New Building").

22. The expansion is necessary to accommodate modern automated equipment.

23. The expansion will not add any additional wash bays.

24. Along with the replacement of the Existing Building, Applicant proposes a number of other improvements/changes. These changes include:

(I) Removal of all vacuum stations to the rear of the Existing Building on the Property, and relocation to the front of the New Building;

(II) Reversing the flow of vehicles through the wash bays, so that vehicles will enter from the rear and exit the New Building on the Lincoln Highway side;

(III) Close the Property's driveways from Lincoln Highway and the neighboring property and directing all traffic to three existing access points on Tennyson Drive;

(IV) Installation of sidewalk along Lincoln Highway (which along with the New Building will improve the streetscape);

(V) Installation of new/refreshed landscaping along the rear and western property boundaries; and

(VI) Reduction of impervious coverage and installation of new storm water facilities.

25. Applicant requests a special exception under Section 24030.A. to expand the pre-existing nonconforming use by +/- 1482 square feet to 4,509 square feet. The expansion represents a 48.9% increase in the size of the current building, and an approximately 66% cumulative increase from the time of the Existing Building's original construction. Pursuant to Section 24040 of the Zoning Ordinance, prior expansions while non-conforming under prior zoning ordinances, would count against the limit available under the current ordinance. Applicant is also requesting a variance to this Section to permit the cumulative expansion above 50%. The expansion is primarily limited to the area of the automated wash bays and mechanical room as depicted on the exhibit. There is some minor expansion in the areas of the self serve wash bays. The expansion of the wash bays is necessary to accommodate modern equipment.

26. Because the proposal would include removal and replacement of the existing non-conforming structure with a new non-conforming structure, Applicant requests the Board's approval to replace the Existing Building with another similar New Building, and to continue the non-conforming use under Section 24030.B. (and to the extent necessary a variance to the same).

27. Section 15030.B.2. would require any structure within the Mixed Use District to have a 10 foot and 25 foot front yard

setback. Applicant is requesting a variance to this section, because the Applicant is removing the Existing Building and reconstructing the New Building on site. The New Building will be reconstructed slightly closer to Lincoln Highway (approx. 67.59 feet). Applicant is not relocating the east wall of the Building vis-à-vis Tennyson Drive. It is necessary to maintain the proposed setback to allow for proper traffic circulation out of the wash bays. Further, the proposed front yard setback is generally consistent with the other properties on this side of Lincoln Highway.

28. With regard to Section 15030.B.31 (15' Side Yard Setback), Applicant is requesting a variance to this section, because the Applicant is removing the Existing Building and reconstructing the New Building on site. While the New Building is a slightly longer building on the western side, it will not be located any closer to the property line. Applicant also requests a variance for 2 accessory structures located within the same side yard (i.e. the pay station and canopy and vacuum station).

29. Applicant requests a variance to the parking requirements of the Ordinance. Parking for automobile service stations is 4 spaces per service bay plus 1 space for each employee. Applicant does not have more than one on-site employee and with 6 bays, would require a total of 25 parking spaces. If the Board takes into account the parking space at each vacuum station, within each bay,

and the stacking for both the automated and self serve wash bays, Applicant is providing 28 parking spaces. Because these are not typical traditional parking spaces, Applicant is requesting the variance. The nature of business does not require typical traditional parking spaces, as most customers, after utilizing the wash bays, will drive away.

30. With regard to Article 22, Table 22230.1 (Maximum 16' high sign), Applicant is requesting permission to construct a sign that is 18.3' feet tall. The sign proposes two sign panels, the lower one being an LED changeable sign for advertisements. The upper sign panel would contain the name of the carwash and would not be changeable. Applicant admitted that it is possible to eliminate the lower sign panel (the LED changeable advertising panel) and construct a sign which complies with the maximum height limitations of the Zoning Ordinance.

31. With regard to Section 23150.C.7, 15' wide landscaping strip, Applicant requests a variance to the landscaping requirements applicable to stand alone car washes in other districts. Applicant is not materially changing the landscaping upon the property and will actually bolster the landscaping to the rear and western boundary. Applicant is requesting a variance to this section, because the Applicant is removing the Existing Building and reconstructing the New Building on site.

32. With regard to Article 23, Section 23150.C.10, Post-Washing and Drying Area, Applicant requests a variance to the post wash drying area and two spaces per bay applicable to stand alone car washes in other districts. Due to the limited size of Property, and the desire to reverse the flow of traffic away from the residential uses to the rear, and to close the Lincoln Highway entrances, these spaces are unavailable. If one were to count the vacuum station spaces as drying spaces, Applicant is providing 6 drying spaces.

33. With regard to Article 24, Section 24030.A.2, Maximum 50% Expansion of Existing Non-Conformity, Applicant requests a variance under Section 24030.A. to expand the pre-existing non-conforming use by an additional +/- 1482 square feet. The expansion represents a 48.9% increase in the size of the Existing Building, and an approximately 66% cumulative increase from the time of the Existing Building's original construction. The expansion is primarily limited to the area of the automated wash bays and mechanical room as depicted on the exhibit. There is some minor expansion in the areas of the self serve wash bays. The expansion is necessary to accommodate the installation of modern washing equipment.

34. With regard to Article 24, Section 24030.B. - Continuation of Non-Conforming Use, because the proposal would include removal and replacement of the Existing Building with the New Building, Applicant requests the Board's approval to replace the Existing

Building with the New Building, and to continue the non-conforming use under Section 24030.B.

35. With regard to Article 24, Section 24030.1, Expansion of Dimensional Non-Conformity of west setback, although Applicant is not moving the New Building any closer to either the western boundary or Tennyson Drive, it is lengthening the New Building along the western boundary, and requests a variance to the Section 24030.1. which prohibits the enlargement of a dimensional non-conformity, as part of the expansion of a non-conforming use.

36. With regard to Article 24, Section 24030.J.2, Required Build to Line provision for yards for non-conforming use, Subsection 24030.J.2 requires expansion of pre-existing non-conforming uses to comply with the required yards of the underlying district. Although Applicant is not moving the New Building any closer to either the western boundary or Tennyson Drive, it is lengthening the New Building along the western boundary, and requests a variance to this Section.

37. With regard to Article 24, Section 24030.J.4, Buffers and Screens along western building facade, Subsection 24030.J.4 requires expansion of pre-existing nonconforming uses to provide buffers or screens to adequately protect neighboring properties. Applicant proposes to bolster/expand the existing landscape barrier, however, given the limited width, the area lying immediately to west of the New building cannot support landscaping.

However, the neighboring property is also a commercial property and therefore the impact of the lack of screening should be minimal.

38. With regard to Article 24, Section 24030.J.5, Creation of New Non-Conformities (Front Yard and Side Yard), Subsection 24030.J.5 requires expansion of pre-existing non-conforming uses to not create additional non-conformities. The proposed expansion will create additional minimal non-conformities for the pay station, vacuum station, and the expanded building.

39. With regard to Article 25, Sections 25060.F & 25070.F, Time Requirements of Variance and Special Exception, these sections state that if a special exception or variance is granted, but other permits/approvals are required, the necessary permit shall be secured and the authorized action begun within 6 months after the variance and within 12 months after the special exception is finally granted. Subsequently, construction shall be completed within 12 months of said date. Applicant requests a time extension of 18 months to secure permits/approvals once the Zoning Hearing Board renders their decision. Upon receipt of the necessary permits/approvals, it is anticipated that construction will be completed within one year from the receipt of all other permits/approvals. Based on the processes associated with necessary permits/approvals, including possible PennDOT approval, it is our belief additional time will be needed greater than the 6 months allowed for by Sections 25060.F & 25070.F.

II. CONCLUSIONS OF LAW

1. With regard to Applicant's request for the aforementioned special exceptions, "to 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).

2. With the exception of certain sections of the Zoning Ordinance for which variances have been requested, Applicant has satisfied the requirements for the aforementioned special exceptions.

3. With regard to Applicant's request for the aforementioned variances, 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.

4. 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 Town-

ship, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922, 924 (1987); MPC §910.2(a)(5).

5. Except for Applicant's request for a variance from Article 22, Table 22230.1, of the Zoning Ordinance regarding maximum sign height, Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the ordinance.

6. With regard to Applicant's request for a variance from Article 22, Table 22230.1 of the Zoning Ordinance regarding maximum sign height, it is reasonably possible for Applicant to comply with the requirements of the Zoning Ordinance and construct a sign with a maximum height of 16 feet. An applicant is not entitled to a dimensional variance if a conforming structure, albeit a less desirable one, can be erected. Greene Townes Financial Corporation v. Zoning Hearing Board of Lower Merion Township, ___ Pa. Commonwealth Ct. ___, 630 A.2d 492 (1993). A variance from this Zoning Ordinance section is not needed to allow reasonable use of the Property.

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 special exceptions as more fully set forth herein; (ii) except for a variance from the terms of Article 22, Table 22230.1 of the Zoning Ordinance, grants the application for all other variances as more fully set forth herein; and (iii) denies the application for a variance from the terms of Article 22, Table 22230.1 of the Zoning Ordinance, regarding maximum height of sign. The special exceptions and variances which are 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 January 24, 2019.

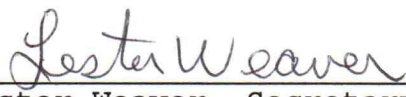
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

4. The foregoing Decision shall be binding upon the Applicant and its successor 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 February 14, 2019, after hearing held on January 24, 2019.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to February 15, 2019.

