

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2019-02
APPLICATION OF FERRELLGAS :

DECISION

I. FINDINGS OF FACT

1. Applicant is Ferrellgas, 13 Doe Run Road, Manheim, Pennsylvania 17545 ("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. The owner of the Property is Jyotsna A. Jivani, 2622 Lincoln Highway East, Ronks, Pennsylvania 17572 ("Owner").

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. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on March 14, 2019.

7. Testimony at the hearing was stenographically recorded.

8. Jim Harter, Mike Barnett and Anil Jivani appeared at the hearing and testified on behalf of Applicant.

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

10. The Property has been the subject of previous zoning hearings and the Board takes administrative notice of its Decisions dated November 10, 1988, June 22, 2006 (Case No. 2006-11), and August 9, 2018 (Case No. 2018-12).

11. In the Case dated November 10, 1988, the Board found that the total area involved in the original nonconforming use of the Property was 5,799 square feet of area (see Case dated November 10, 1988, Finding of Fact No. 21).

12. In the Case dated November 10, 1988, the Board further found that the area of the nonconforming use, as of November 10, 1988, had been increased to 10,525 square feet of area (4,125 square feet for the building, 3,600 for the rear pump canopy area and 2,800 square feet for the front fuel pump canopy area).

13. In the Case dated November 10, 1988, the Board concluded that the landowner had already been afforded the maximum expansion permitted by the applicable provisions of the zoning ordinance.

14. Most recently, in Case No. 2018-12, the Board again found that Applicant's predecessor in title already expanded the nonconforming use upon the Property in excess of the 50% expansion permitted by the Zoning Ordinance (see Case No. 2018-12, Finding of Fact No. 12). In that case, a small shed was placed upon an already impervious surface. Owner sells diesel fuel and the shed

was necessary to store required diesel fuel additives. The Board granted Owner / Owner's representative a variance from the maximum expansion limitations set forth in the Zoning Ordinance.

15. Applicant has now applied for a special exception pursuant to Section 24030.A of the Zoning Ordinance in order to expand the nonconforming use by adding a propane filling station.

16. Section 24030.A of the Zoning Ordinance states as follows:

A. Expansion of Non-Conforming Uses:

1. No expansion of a non-conforming structure or use . . . shall hereafter be made unless an appeal has been filed with the Zoning Hearing Board and such expansion has been approved, subject to Section 24030.J of this Zoning Ordinance.
2. The expansion of a non-conforming use shall be limited to a distance of 150 feet in any direction from the existing non-conforming use and to an area equal to 50% of the existing non-conforming use, whichever is lesser, or in the case of a building, expansion shall be limited to an area equal to 50% of the existing total usable floor area of the building.

17. Without obtaining Township approval, Applicant and Owner have already constructed a concrete pad area and installed a propane filling station on the Property.

18. The concrete pad area used for the propane filling station was placed over a previous pervious grass area.

19. Although specific lot coverage calculations were not submitted by Applicant, the lot coverage prior to installation of

the propane facilities already exceeded the maximum permitted lot coverage of 30% (see Zoning Ordinance Section 3030.B.5.b).

20. The concrete pad area is 8 feet by 24 feet (which added 192 square feet of additional impervious coverage).

21. Applicant and Owner placed a 1,000 gallon propane tank upon the concrete pad.

22. Bollards have been installed around the concrete pad and propane facility area.

23. Applicant owns the equipment and the Owner dispenses the propane to customers.

24. Owner testified that employees of the truck stop / convenience store are trained in the handling and dispensing of propane and the operation of a propane filling station.

II. CONCLUSIONS OF LAW

1. "[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).

2. 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).

3. Applicant's proposal does not comply with the requirements of Section 24030.A.2 of the Zoning Ordinance regarding maximum expansion limitations. The use of the Property has already been expanded in excess of that which is permitted pursuant to Section 24030.A.2.

4. Applicant's proposal does not comply with the requirements of Section 24030.A.1 of the Zoning Ordinance (which states that expansion is subject to the requirements of Section 24030.J of the Zoning Ordinance).

5. Section 24030.J sets forth additional standards for nonconforming uses.

6. Section 24030.J.5 states that the expansion shall not create any new nonconformities or increase existing nonconformities.

7. Applicant's proposed expansion would increase lot coverage, which already exceeds that which is permitted by Section 3030.B.5.b of the Zoning Ordinance.

8. Applicant has failed to satisfy the requirements for a special exception pursuant to Section 24030 of the Zoning Ordinance.

9. Applicant did not request variances from Sections 24030.A.1, 24030.A.1, 24030.J.5 and 3030.B.5.b of the Zoning Ordinance.

10. Even if Applicant requested variances from the aforesaid sections of the Zoning Ordinance, Applicant has failed to satisfy the requirements for such variances.

11. 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).

12. 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).

13. 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).

14. In order to warrant the grant of a variance, the hardship must be unique to the property and not one which is generally suffered by other properties in the district. D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, ___ Pa. Commonwealth Ct. ___, 585 A.2d 580, 583 (1991).

15. 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).

16. "The policy of the law [of nonconforming uses] is to restrict such uses closely and to strictly construe ordinance provisions providing for their continuance, so that they may be reduced to conformity as speedily as is compatible with the law and the constitution." South Coventry Township v. Zoning Hearing Board of South Coventry Township, 732 A.2d 12, 15 (Pa. Cmwlth. 1999).

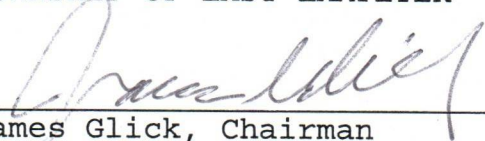
17. Owner has already expanded the nonconforming use beyond the limits permitted by the Zoning Ordinance. In addition, the proposed propane filling station would increase lot coverage, which already exceeds the maximum allowed by the Zoning Ordinance. The denial of a propane filling station, and a denial of the variances, will not render the Property practically valueless. Owner can and is making a reasonable use of the Property as and for a facility which dispenses automotive and truck fuels, including a convenience store.

18. Applicant has failed to demonstrate evidence sufficient to warrant the granting of the requested variances.

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 special exception pursuant to Section 24030.A of the Zoning Ordinance and any and all other and further relief, including, if deemed requested, variances from Sections 24030.A.1, 24030.A.1, 24030.J.5 and 3030.B.5.b of the Zoning Ordinance.

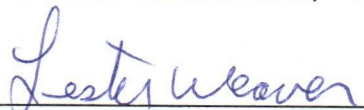
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

Dated and filed April 11, 2019, after hearing held on March 14, 2019.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 12, 2019.

