

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2019-04
APPLICATION OF DIETER :
PROPERTIES, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Dieter Properties, LLC, 1837 William Penn Way, Lancaster, Pennsylvania 17601 ("Applicant").
2. The property which is the subject of the instant application is 680 Millcross Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The record owner of the Property is Millcross Properties, LLC, 680 Millcross Road, Lancaster, Pennsylvania 17601.
4. Millcross Properties, LLC, is also the holder of an easement upon a portion of an adjacent property (known as 671 Millcross Property) for parking purposes pursuant to the terms of a certain Easement, dated October 31, 2007, recorded at Document ID 5662764.
5. Applicant is the equitable owner of the Property.
6. The Property is located within the R-1 Residential District and the Floodplain Overlay District as shown on the Official Zoning Map of East Lampeter Township.

7. 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").

8. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on April 11, 2019.

9. Testimony at the hearing was stenographically recorded.

10. Applicant was represented at the hearing by Matthew J. Creme, Jr., Esquire, 212 North Queen Street, Lancaster, Pennsylvania 17602.

11. Mike Dieter appeared and testified at the hearing on behalf of Applicant.

12. Mike Geesey also appeared and testified at the hearing on behalf of Applicant.

13. The Township of East Lampeter was represented at the hearing by Susan Peipher, Esquire.

14. The following person was recognized as a party to the hearing:

Laura Hartlaub
671 Millcross Road
Lancaster, PA 17601

15. The Property was the subject of previous zoning hearings. Without limiting the foregoing, the Board takes administrative notice of its Decision in Case No. 2011-26 and, upon appeal, an

Agreement of settlement, dated March 2013, by and between Millcross Properties, LLC, and East Lampeter Township.

16. The Property has been used as a restaurant for many years (predating zoning) and is a valid nonconforming use.

17. Applicant has now requested a variance from Section 23590 of the Zoning Ordinance.

18. Section 23590 of the Zoning Ordinance states, in part, that principal uses in combination, as defined under Section 2020 of the Zoning Ordinance, shall be permitted within the C-1, I-1, I-2, BP, VG and VC Districts.

19. The term "principal uses permitted in combination" is defined in Section 2020 of the Zoning Ordinance as follows: Two or more principal uses combined on a single lot or parcel of land that complies with the minimum and maximum lot area requirements specified by the Zoning Ordinance. The permitted uses shall only include those principal uses that are allowed within the zoning district on which they are located. The supplemental regulations for principal uses permitted in combination are contained under Section 23590 of this Zoning Ordinance.

20. Applicant proposes to continue the restaurant use on the first floor of the existing building on the Property.

21. In addition to the restaurant use, Applicant proposes to use the second floor of the building as and for a financial services business office.

22. No expansions or exterior modifications of the building would be performed.

23. The restaurant and business office would have separate entrances.

24. Applicant currently operates its financial services business office at 1837 William Penn Way, Lancaster, Pennsylvania, and would move the office to the Property if approved.

25. The financial services business is operated by Mike Dieter (on a full-time basis) and two partners (who would not be on-site full-time). In addition, there is one full-time assistant who would be on-site.

26. Applicant meets with clients exclusively on an appointment basis.

27. Applicant would meet with clients either at the business office or at clients' homes.

28. With regard to clients who come to the business office, Applicant averages two clients per day.

29. Applicant's regular business hours with regard to the business office would be 8:30 a.m. until 5:00 p.m. There may be some evening hours, but clients would not be on the Property after 8:30 p.m. There will be no clients at the Property on weekends.

30. The increase in traffic to and from the Property associated with the business office will be minimal.

31. There are ninety-four (94) parking spaces currently available for the restaurant use, some of which are located upon

the Property and the remainder of which are located within the parking easement located upon the 671 Millcross property.

32. There are four (4) additional parking spaces located on the north side of the Property. It is unknown to the Board whether these four (4) parking spaces satisfy all of the applicable parking space requirements of the Zoning Ordinance (by way of example, it is not known whether all four of these parking spaces are arranged so that each may be used without moving other vehicles, as required by Section 22160.B.3 of the Zoning Ordinance).

33. The Property is served by public water and public sewer service.

II. CONCLUSIONS OF LAW

1. Applicant has requested a variance from the provisions of Section 23590 of the Zoning Ordinance.

2. 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.

3. 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).

4. Applicant has established by credible testimony:

(i) that an unnecessary hardship exists which has not been created by the Applicant and which is caused by unique physical circumstances of the Property;

(ii) that the variance is needed to enable the Applicant's reasonable use of the property;

(iii) that the variance will not alter the essential character of the district or neighborhood, or substantially or permanently impair the use or development of the adjacent property such that it is detrimental to the public's welfare; and

(iv) that the variance will afford the least intrusive solution.

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 Dieter Properties, LLC, for a variance from the terms of Section 23590 of the Zoning Ordinance. The variance 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 its application and the evidence presented to the Board at the hearing held on April 11, 2019.

3. Applicant shall at all times comply with the requirements of the Zoning Ordinance regarding off-street parking spaces for both uses of the Property. Without limiting the foregoing, Applicant shall reduce the number of restaurant tables/seats to the number necessary to maintain such compliance, all to the satisfaction of the Township.

4. To the extent that Applicant desires to use the restaurant portion of the Property for special events or anything other than a restaurant, it shall be necessary for Applicant to obtain the prior approval of the Board.

5. 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.

6. The approval granted by this Decision shall expire in accordance with the terms of Section 25060 of the Zoning Ordinance.

7. 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



J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

Dated and filed April 25, 2019, after hearing held on April 11, 2019.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 26, 2019.


