

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2019-08
APPLICATION OF CASSIE KREIDER :

DECISION

I. FINDINGS OF FACT

1. Applicant is Cassie Kreider, 521 Willow Road, Lancaster, Pennsylvania 17601 ("Applicant").

2. The property which is the subject of the instant application is located at 521 Willow Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the AG 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 June 13, 2019.

7. Testimony at the hearing was stenographically recorded.
8. Applicant appeared personally at the hearing.
9. Applicant has requested a variance from the terms of Section 23410 of the Zoning Ordinance.
10. Section 23410 of the Zoning Ordinance states that, with regard to kennel operations, all open areas utilized as part of the kennel shall be located at least 300 feet from all street rights of way and property lines.
11. The Property contains approximately 64 acres and is improved with a building used as and for a dog kennel business known as Oscar's Pet Resort, as shown on the plan (the "Plan") submitted by Applicant.
12. Applicant desires to utilize an outdoor grass area as and for a dog play field.
13. The dog play field would be 120 feet by 225 feet and would be enclosed with a six foot high fence.
14. Although Applicant's written application stated that the dog play field would be located 80 feet from the street right of way, at the hearing Applicant testified that the dog play field would be located 50 feet from the street right of way.
15. Portions of the Property are actively farmed.
16. The dog play field could reasonably be located on the Property at least 300 feet from all property lines and street right of way.

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 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).

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. A variance is to be "granted only in exceptional circumstances." M & M Sunoco, Inc. v. Upper Makefield Township Zoning Hearing Board, 154 Pa. Commonwealth Ct. 316, 623 A.2d 908, 911 (1993).

5. 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).

6. The determination as to whether zoning regulations render a property valueless is to be made with reference to the property as a whole. Hansen Properties III v. Zoning Hearing Board of Horsham Township, 130 Pa. Commonwealth Ct. 8, 566 A.2d 926 (1989).

7. "[T]he reasons underlying the grant of a variance must be substantial, serious, and compelling." Constantino v. Zoning Hearing Board of the Borough of Forest Hills, 152 Pa. Commonwealth Ct. 258, 618 A.2d 1193, 1196 (1992).

8. The "failure of proof [to demonstrate the property cannot be used as zoned] is alone sufficient to deny the request for a variance." Smith v. Zoning Hearing Board of the Borough of Bellevue, 152 Pa. Commonwealth Ct. 427, 619 A.2d 399, 402 (1992); see also Beecham Enterprises v. Zoning Hearing Board of Kennedy Township, 556 A.2d 981 (1989).

9. The desire of a landowner to erect an accessory structure does not establish unnecessary hardship required for the granting

of a variance. Patullo v. Zoning Hearing Board of the Township of Middletown, 701 A.2d 295 (Pa. Cmwlth. 1997).

10. The Board, as fact finder, has the power to reject even uncontradicted testimony if the Board finds the testimony to be lacking in credibility. Vanguard v. Zoning Hearing Board of Smithfield Township, 130 Pa. Commonwealth Ct. 371, 568 A.2d 703, 707 (1989), appeal denied, 527 Pa. 620, 590 A.2d 760 (1990) (citations omitted).

11. "In zoning cases it is well-settled that the Board is the fact finder, with exclusive province over matters of credibility and weight to be afforded to the evidence." Manayunk Neighborhood Council v. Zoning Board of Adjustment of the City of Philadelphia, 815 A.2d 652, 658 (Pa. Cmwlth. 2003).

12. The Property can be used as zoned.

13. The applicable zoning regulations do not render the Property valueless.

14. Applicant has not presented credible 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.

15. Applicant is not entitled to a variance from the terms of Section 23410 of the Zoning Ordinance.

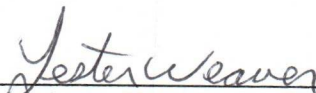
III. DECISION

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 of Cassie Kreider for a variance from the terms of Section 23410 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER

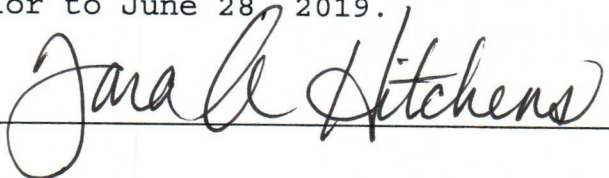

James Glick, Chairman


J. Scott Enterline, Vice-Chairman


Lester Weaver, Secretary

Dated and filed June 27, 2019, after hearing held on June 13, 2019.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to June 28, 2019.


Jara A. Hitchens