

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2019-06
APPLICATION OF LANCASTER TRAVEL :
PLACES, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Lancaster Travel Places, LLC, 2622 Lincoln Highway East, Ronks, Pennsylvania 17572 ("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 Anil Jivani, 2622 Lincoln Highway East, Ronks, Pennsylvania 17572.

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 June 13, 2019.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Micah R. Bucy, Esquire, and Judith Cassel, Esquire, of Hawke McKeon & Sniscak LLP, 100 North Tenth Street Harrisburg, PA 17101.

9. Anil Jivani appeared at the hearing and testified on behalf of Applicant.

10. Derek Harmer, of Accel Entertainment Gaming, also appeared at the hearing and testified on behalf of Applicant.

11. East Lampeter Township was represented at the hearing by Susan Peipher, Esquire.

12. Tara Hitchens, East Lampeter Township Director of Planning/ Zoning Officer, appeared at the hearing and testified on behalf of East Lampeter Township.

13. Applicant has requested variances from Sections 23530.A, 23530.C.1, and 23590.A of the Zoning Ordinance, or any other relief as deemed necessary, to operate a video gaming terminal room within the existing business building located upon the Property.

14. Section 23530.A of the Zoning Ordinance states, in pertinent part, that a gaming facility is permitted by conditional use in the C-3 Zoning District and is not permitted in the Agricultural District.

15. The C-3 Zoning District is a tourist commercial district containing uses such as shopping, retail, hotels and restaurants.

The C-3 district is approximately 2 miles in length measured west to east along Route 30.

17. The C-3 Zoning District currently contains an off-track betting facility owned and operated by Penn National.

18. The Property is located approximately ½ mile east of the C-3 Zoning District.

19. The Property is not located in any growth boundary for the Township. The growth boundary ends exactly at the C-3 district line close to the intersection of Routes 896 and 30.

16. Section 23530.C.1 of the Zoning Ordinance states that, with regard to a gaming facility, the principal use of the property shall be the gaming facility.

17. Section 23590.A of the Zoning Ordinance states that principal uses permitted in combination, as defined in Section 2020 of the Zoning Ordinance, shall be permitted as of right within the C-1, I-1, I-2, BP, MU, BH, VG and VC Zoning Districts. Principal uses permitted in combination are not permitted within the Agricultural District.

18. Applicant operates on the Property a facility which dispenses automotive and truck fuels, including a convenience store, as a nonconforming use. A dwelling and solar array are also located upon the Property.

19. 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), August 9, 2018 (Case No. 2018-12); and April 11, 2019 (Case No. 2019-02).

20. 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).

21. 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).

22. 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.

23. 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. Applicant sells diesel fuel and the shed was necessary to store required diesel fuel additives. The Board granted a variance from the maximum expansion limitations set forth in the Zoning Ordinance.

24. In Case No. 2019-02, the Board denied the request 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 (the propane filling station was erected on the Property without first obtaining Board approval).

25. At the time of the hearing in this case, the Property has two current zoning violations: (i) the permitted single-family dwelling unit has been converted to a five-unit apartment; and (ii) the installation of a non-permitted propane tank.

26. The primary customer base of Applicant's truck stop are truckers who use the station to fuel their trucks and park for rest (approximately 10 - 14 hours at a time).

21. Applicant proposes to install video gaming terminals (VGTs) at the truck stop for the truck drivers.

22. Applicant received conditional approval from the Pennsylvania Gaming Control Board to operate VGTs. Final approval is contingent on a site inspection after completion of the VGT room.

23. Applicant intends to install five VGTs in a portion of the existing station.

24. If approved, Accel Entertainment will be responsible for installing and maintaining the VGTs in working order, and handling the cash associated with the VGTs. Accel Entertainment and the State will provide training.

25. Applicant will be responsible for managing who is permitted inside the VGT room through the use of an ID scanner.

26. Applicant seeks relief so as to provide the same facilities as other truck stops.

27. Applicant has no idea of how many vehicles visit the truck stop per day.

28. Applicant believes the nearest truck stops are in Carlisle and along Route 41, but Applicant has no idea where the nearest truck stop to his location with VGTs is located or whether any of the truck stops in Carlisle or on Route 41 have pending licenses with the state.

29. Applicant is unsure whether VGTs at the Property might bring the truckers inside the store or whether VGTs will increase business.

II. CONCLUSIONS OF LAW

1. 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).

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. 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*, 645 A.2d 287, 289 (Pa. Cmwlth. 1994) (citations omitted).

4. 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*, 585 A.2d 580, 583 (Pa. Cmwlth. 1991).

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. Cmwlth. 279, 561 A.2d 833 (1989).

6. "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).

7. Generally, it is well-settled Pennsylvania law that "mere economic hardship will not of itself justify a grant of a variance" and "economic factors are relevant, albeit not determinative, in a variance assessment." *Marshall v. City of Phila.*, 97 A.3d 323, 330-31 (Pa. 2014).

8. "A variance will not be granted because a zoning ordinance deprives the landowner of the most lucrative and profitable uses." *Wilson v. Plumstead*, 936 A.2d 1061, 1070 (Pa. 2007).

9. Applicant has no knowledge of how many trucks frequent the Property on a daily basis or where the nearest truck stop with VGTs will be located. Furthermore, Applicant has no evidence to support a claim that business will increase with VGTs.

10. On the claim of a loss of a business opportunity (opportunity for increased business/profits), the Applicant does not meet the threshold for establishing an unnecessary hardship required for issuance of a variance.

11. With respect to the Applicant's claim regarding "expansion of business" for a valid non-conforming property, Pennsylvania Courts have held that "[t]he right to expand a nonconforming use to provide for the natural expansion and accommodation of increased trade 'is a constitutional right protected by the due process clause.'" *Jenkintown Towing Service v. Zoning Hearing Bd. of Upper Moreland Tp.*, 446 A.2d 716, 718 (Pa.Cmwlth. 1982) (quoting *Silver v. Zoning Bd. of Adjustment*, 255

A.2d 506-07 (Pa. 1969). Both *Silver* and *Jenkintown* involved dimensional variance requests (which were approved by the Courts), as opposed to the instant matter where the Applicant seeks a use variance. The Courts in *Jenkintown* and *Silver* clarified, however, that "the rights of a nonconforming use are not such as to give it any greater standing than a conforming use in the same district; either one will be allowed to go beyond ordinance dimensional limitations only if a variance is obtained." The Supreme Court in *Silver* further held that "[the right of expansion] is not unlimited, however. The contemplated expansion must not be detrimental to the public health, welfare and safety. We have never questioned the right of a municipality to impose reasonable restrictions on the expansion of a non-conforming use." *Silver v. Zoning Bd. of Adjustment*, 255 A.2d 506, 507 (Pa. 1969).

12. "In determining whether a variance is to be granted, what has to be taken into consideration are all of the factors, including the magnitude of the expansion of the non-conforming use as it relates to the zoning lot and its relationship to adjacent structures, as well as the surrounding neighborhood." *West Central Germantown Neighbors v. Zoning Bd. of Adjustment of City of Phila.* 827 A.2d 1283, 1288 (Pa.Cmwlth. 2003) (finding "we must balance the rights of the property owner against the effect such an expansion would have on the surrounding area"; and that the fact that the applicant was "in danger of being unable to compete in today's market" did not alone entitle the applicant to a variance). The

West Central court further found that the "proposal fails to comply with the City's requirements for setbacks, buffer areas and maximum building coverage, meaning that variances from those requirements would also be needed in order to accommodate the expansion. In effect, Property Owner is asking for more than a permitted use would have." Id.

13. Applicant seeks variances to locate a gaming facility in the Agriculture zone, allow a second principal use as a Gaming Facility, and allowing multiple principal uses at a single location. While the Applicant argues that the "expansion of business" doctrine applies, this matter is distinguishable from Jenkintown and Silver, where dimensional variances were sought to, in the literal sense, expand the dimensions of the business. Here, the Applicant seeks use variances, which, when considering all of the factors, are a significant departure from the Ordinance's requirements, and differ largely from the surrounding agricultural neighborhood. Applicant requests more than a permitted use would have, similar to West Central.


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

III. DECISION

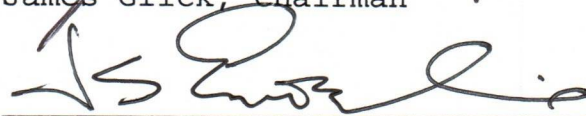
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application for variances from Sections 23530.A, 23530.C.1, and 23590.A of the Zoning Ordinance, and any and all

other and further relief requested, to operate a video gaming terminal upon the Property.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



J. Scott Enterline, Vice-Chairman



Lester Weaver, Secretary

Dated and filed July 11, 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 July 12, 2019.