

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2019-17
APPLICATION OF JOHN R. FISHER :

DECISION

I. FINDINGS OF FACT

1. Applicant is John R. Fisher, 163 North Ronks Road, Ronks, Pennsylvania 17572 ("Applicant").

2. The property which is the subject of the instant application is located at 163 North Ronks Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the Village Residential 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 August 22, 2019.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Applicant's father, Benuel Fisher, also appeared at the hearing and testified on behalf of Applicant.

10. The following person completed entry of appearance form and was recognized as a party:

Steve Gribble
127 North Ronks Road
Ronks, PA 17572
(as owner of property located at 167 North Ronks Road)

11. Applicant has requested a variance from the terms of Section 23380.C.1 of the Zoning Ordinance.

12. Section 23380.C.1 of the Zoning Ordinance states that, for a horse barn for transportation, the minimum lot size shall be 20,000 square feet.

13. The Property contains 18,295 square feet of area.

14. The Property is improved with a dwelling.

15. Applicant desires to erect a horse barn for transportation upon the Property.

16. The horse barn would be 20 feet by 32 feet and would be for the keeping of one horse.

17. The horse barn would be located 20 feet from the side property line, as more fully shown on the plan ("Plan") submitted by Applicant.

18. The horse barn would be located 53.5 feet from the cartway of Harvest Drive, as more fully shown on the Plan.

19. The horse barn would be built off-site and the delivered to the Property.

20. Applicant testified that the horse barn would not have a floor under the horse stall - it would be placed on the ground.

21. The dwelling located upon the Property is served by on-lot well.

22. The well is located adjacent to the location of the proposed horse barn.

23. Applicant submitted a manure management plan (prepared by Dennis Eby of the Lancaster County Conservation District).

24. The manure management plan states that a single driving horse will produce approximately 55 pounds of manure per day (10 tons on an annual basis).

25. The manure management plan states that manure spreading is restricted for a distance of 100 feet from the on-lot well.

26. It does not appear that a horse barn without a floor would comply with the manure management plan as manure would be located on the ground within the 100 foot setback area.

27. Although the manure management plan indicates that manure will be removed from the barn and moved to a neighboring farm to be spread on crop fields, Applicant did not provide definitive credible testimony with regard to the time period or frequency of removal.

28. There are residential uses located adjacent to and within the vicinity of the Property.

29. Based upon the limited and unclear testimony of the Applicant, the Board is unable to confirm that residences located in close proximity would be protected from the associated odors, flies and mosquitos which accompany the storage of manure.

30. Based upon the limited and unclear testimony of the Applicant, the Board is unable to confirm that the horse barn on this Property would not be detrimental to the public welfare.

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 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).

4. 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).

5. 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).

6. "[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).

7. 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).

8. 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).

9. The Property can be used as zoned.

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

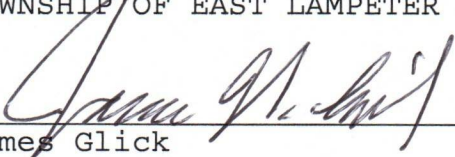
11. Applicant has not presented credible evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

12. Applicant is not entitled to a variance from the terms of Section 23380.C.1 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 John R. Fisher for a variance from the terms of Section 23380.C.1 of the Zoning Ordinance.

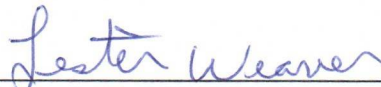
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick



J. Scott Enterline



Lester Weaver

Dated and filed September 27, 2019, after hearing held on August 22, 2019.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to September 27, 2019.

