

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2019-18
APPLICATION OF JAMES CRAIG :
CAMERON :

DECISION

I. FINDINGS OF FACT

1. Applicant is James Craig Cameron, 41 Glendale Drive, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 41 Glendale Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located within the Residential R-2 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 Township 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 October 10, 2019.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. The following person completed an Entry of Appearance form and was recognized as a party:

Jason Q. Uong
45 Glendale Drive
Lancaster, PA 17602

10. Applicant has requested a variance from Section 6030.B.3.a of the Zoning Ordinance.

11. Section 6030.B.3 a of the Zoning Ordinance states that a lot containing a single-family detached dwelling shall have a side yard setback of 10 feet.

12. The Property contains approximately 10,240 square feet of area and is improved with a single-family detached dwelling with one-car garage.

13. The garage of the current dwelling is located approximately 13 feet from the side property line.

14. Applicant desires to construct an addition to the existing garage (to convert it to a 2-car garage), as more fully shown on the plan (the "Plan") submitted by Applicant.

15. The garage addition would be approximately 7 feet in width and the proposed side yard setback would be approximately 5 feet 11 ½ inches, as shown on the Plan.

16. Mr. Uong, the owner of the lot immediately adjacent to the Property and the proposed garage addition, objected to the proposal.

17. Mr. Uong disputed the location of the common boundary line, but offered no credible evidence in support of this claim.

18. Mr. Uong expressed concerns that the proposed addition would come too close to his residence and the close proximity would create a fire hazard.

19. Mr. Uong also expressed concerns regarding the affect of the addition on the value of his property.

20. Applicant testified that another home in his development was granted a variance to convert a single car garage into a 2-car garage. No citation to a zoning decision or the property address was provided.

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. A variance, whether labeled dimensional or use, is appropriate only where the property, not the person, is subject to hardship. Yeager v. Zoning Hearing Board of the City of Allentown,

779 A.2d 595 (Pa. Commonwealth Ct. 2001). In Yeager, the Pennsylvania Commonwealth Court stated:

Ever since our Supreme Court decided Hertzberg, we have seen a pattern of cases arguing that a variance must be granted from a dimensional requirement that prevents or financially burdens a property owner's ability to employ his property exactly as he wishes, so long as the use itself is permitted. Hertzberg stands for nothing of the kind.

10. Applicant has not presented evidence to establish that Section 6030.B.3 a of 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.

11. Section 6030.B.3.a of the Zoning Ordinance does not render the Property valueless.

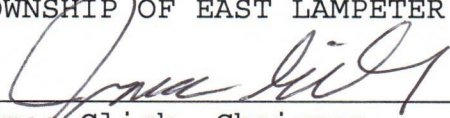
12. A reasonable use of the Property can and is being made.

13. With regard to Applicant's argument that a variance was granted to another property owner in close proximity, "a variance is not required to be granted merely because the [Board] previously granted a similar variance which may or may not be in error." East Torresdale Civic Association v. Zoning Board of Adjustment of the City of Philadelphia, 147 Pa. Commonwealth Ct. 35, 606 A.2d 1247, 1250 (1992).

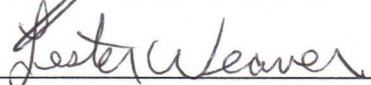
III. DECISION

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 James Craig Cameron for a variance from the terms of Section 6030.B.3.a of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



Lester Weaver, Secretary

Jordan Good, Alternate

Dated and filed October 24, 2019, after hearing held on October 10, 2019.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to October 25, 2019.

