

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2020-02
APPLICATION OF MILLCREEK FENCE :

DECISION

I. FINDINGS OF FACT

1. Applicant is Millcreek Fence, 2595 Old Philadelphia Pike, Bird-in-Hand, Pennsylvania 17505 ("Applicant").

2. The property which is the subject of the instant application is located at 232 Southridge Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The owner of the Property is Jenny Huynh, 232 Southridge Drive, Lancaster, Pennsylvania 17602.

4. The Property is located in the R-2 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. After continuances due to the COVID-19 coronavirus, a public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on July 9, 2020.

7. Testimony at the hearing was stenographically recorded.

8. Amos Beiler, of Millcreek Fence, appeared at the hearing and testified on behalf of Applicant.

9. Applicant has requested a variance from Section 22070.A of the Zoning Ordinance.

10. Section 22070.A of the Zoning Ordinance states, in pertinent part, that fences located within the front yard shall not exceed a height of 3 feet.

11. The Property is improved with a single family detached dwelling and driveway, as more fully shown on the photographs (the "Photos") submitted by Applicant.

12. The Property has road frontage on three sides (Windrow Drive, Southridge Drive and Millport Road), as shown on the Photos.

13. Because the Property has road frontage on three sides, the Property has three front yards (along Windrow Drive, Southridge Drive and Millport Road).

14. Without obtaining Township approval, Applicant constructed a fence, 6 feet in height, within the front yard along Southridge Drive and Millport Road, as more fully shown on the Photos.

15. Applicant testified that a former employee of Applicant who undertook this fence project did not contact or make inquiry of the Township in advance of installing the fence.

16. With regard to that portion of the fence along Southridge Drive, the 6 foot high fence can impair vision for vehicles backing out of the driveway onto Southridge Drive. Although Applicant testified he thought a 3 foot high fence (which would be permitted) would also impair vision, the Board rejects such testimony and finds that the fence 6 feet in height creates a dangerous condition for persons traveling along Southridge Drive.

17. The Township Assistant Zoning Officer testified that it may be possible for the Applicant to install a fence 6 feet in height around the existing patio, provided it is at least 30 feet from the street right of way. Applicant, however, presented no plan to make such determination.

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.

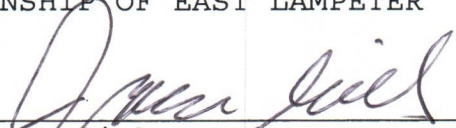
11. Applicant has not presented credible evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

12. Applicant is not entitled to the requested variance.

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 a variance from the terms of Section 22070.A of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



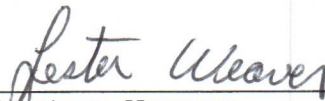
James Glick



J. Scott Enterline

DISSENT:

I dissent from the foregoing Decision. I would grant the requested variance.



Lester Weaver

Dated and filed July 23, 2020, after hearing held on July 9, 2020.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to July 24, 2020.

