

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2020-06
APPLICATION OF AJ HOME SOLUTIONS :

DECISION

I. FINDINGS OF FACT

1. Applicant is AJ Home Solutions, 602 River Drive, Lancaster, Pennsylvania 17601 ("Applicant").

2. The property which is the subject of the instant application is located at 33 South Eastland Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the Medium Density Residential District R-2 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 July 9, 2020.

7. Testimony at the hearing was stenographically recorded.

8. Steven Gergely, of Harbor Engineering, Inc., appeared at the hearing and testified on behalf of Applicant.

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

10. The following persons completed entry of appearance forms and were recognized as parties to the hearing:

Matthew Bleacher, Esquire (on behalf of Dave Schaller)
Nikolaus & Hohenadel
212 North Queen Street
Lancaster, PA 17603

Chris Buckwalter
129 South Eastland Drive
Lancaster, PA 17602

James and Marianne Bachman
31 South Eastland Drive
Lancaster, PA 17602

11. Applicant has requested: (i) a variance from the terms of Section 6030.B.1.b of the Zoning Ordinance; and (ii) if necessary, a variance from the terms of Section 6030.A.4 of the Zoning Ordinance.

12. Section 6030.B.1.b of the Zoning Ordinance states that a lot containing a single family semi-detached dwelling shall have a

minimum lot width of 40 feet measured at the street right of way line and 55 feet as measured at the front yard setback line.

13. Section 6030.A.4 of the Zoning Ordinance states that the maximum lot size for a single-family dwelling shall be 12,000 square feet.

14. The Property contains 1.047 acres and is a narrow and long lot (approximately 100 feet wide and between 394 and 490 feet long), as more fully shown on the plan ("Plan") submitted by Applicant.

15. The Property is currently improved with a single family dwelling which is in disrepair.

16. The Property is currently nonconforming with regard to maximum lot size for a single family dwelling.

17. Applicant desires to raze the existing dwelling and subdivide the Property to create 3 lots, as more fully shown on the Plan.

18. Lot 1 will contain 8,145 square feet of area and will be approximately 40 feet wide at the street right of way line and 40 feet wide at the front yard setback line, as shown on the Plan.

19. Lot 2 will contain 8,003 square feet of area and will be approximately 40 feet wide at the street right of way line and 40 feet wide at the front yard setback line, as shown on the Plan.

20. Remaining lands/resultant Lot 3 will contain 29,440 square feet and will be a flag lot, as shown on the Plan.

21. Applicant desires to construct a single family semi-detached dwelling on Lot 1 and a single family semi-detach dwelling on Lot 2, as shown on the Plan.

22. Applicant desires to construct a single family dwelling on resultant Lot 3, as shown on the Plan.

23. The dwellings will be served with public water service and public sewer service.

24. Applicant testified that four townhouse units would be permitted upon the Property as of right.

25. Chris Buckwalter expressed concerns regarding storm water management and testified that the proposal was what he referred to as "overkill".

26. James Bachman testified that the surrounding neighborhood is comprised of single family homes and expressed concerns regarding the proposed semi-detached single family homes.

II. CONCLUSIONS OF LAW

A. VARIANCE FROM SECTION 6030.B.1.b

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. Common-

wealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

2. In determining whether unnecessary hardship has been established, zoning hearing boards should examine whether the variance sought is use or dimensional. To justify the grant of a dimensional variance, zoning hearing boards may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998); Talkish v. Zoning Hearing Board of Harborcreek Township, 738 A.2d 50 (1999).

3. When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations, Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

4. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use

variance, is sought. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

5. Section 6010 of the Zoning Ordinance states that the purpose of Medium Density Residential District R-2 is:

A. To accommodate residential uses at a density that provides for the efficient use of land in areas that have access to public sanitary sewerage disposal facilities and to public water supply facilities.

B. To create, establish and preserve pleasant residential neighborhoods characterized by a variety of dwelling types.

C. To maintain and implement growth boundary policies which have been established as part of the Comprehensive Plan.

6. With regard to Lot 1 and Lot 2, Applicant requires a variance from the terms of Section 6030.B.1.b of the Zoning Ordinance which requires a minimum lot width of 55 feet at the front yard setback line (Lot 1 and Lot 2 do comply with the 40 foot minimum width requirement at the street right of way line).

7. Applicant's proposal complies with and furthers the stated purposes of the Medium Density Residential District R-2.

8. The narrow and long shape of the Property warrants the granting of the variance requested.

9. There will be no adverse effect on the public health, safety or general welfare if the variance is granted.

10. The unnecessary hardship has not been created by the Applicant.

11. Storm water management issues can be addressed during the land development review and approval stage with the Township.

12. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

B. VARIANCE FROM SECTION 6030.A.4

1. The Property is currently dimensionally nonconforming with regard to maximum lot size (it does not comply with the current minimum lot size standards set forth in Section 6030.A.4 of the Zoning Ordinance).

2. Applicant's proposal will actually reduce (although not eliminate) the dimensional nonconformity with regard to the resultant Lot 3 and the Board would conclude that Applicant does not require a variance from Section 6030.A.4 for the size of resultant Lot 3.

3. However, to the extent it would be deemed necessary, the Board incorporates by reference Paragraphs 1 through 5, and 7 through 12, in Part A above.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter

hereby grants the application of AJ Home Solutions for: (i) a variance from the terms of Section 6030.B.1.a of the Zoning Ordinance; and (ii) to the extent deemed necessary, a variance from the terms of Section 6030.A.4 of the Zoning Ordinance. The variances granted herein shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the Pennsylvania Municipalities Planning Code:

1. Applicant shall obtain all approvals and permits required by applicable laws and regulations.

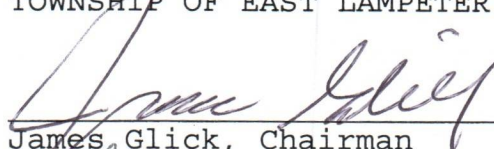
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its application and the evidence presented to the Board at the hearing held on July 9, 2020.

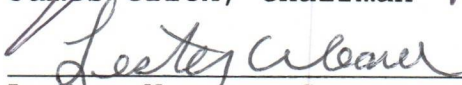
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

4. The approval granted by this Decision shall expire in accordance with the terms of Section 25060 of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicants and its successors and assigns.

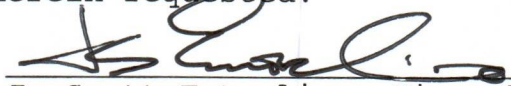
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER


James Glick, Chairman


Lester Weaver, Secretary

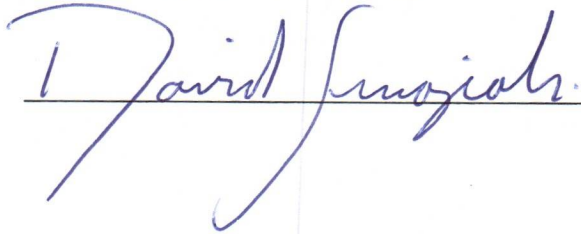
DISSENT:

I dissent from the foregoing Decision. I would deny the application and the variances therein requested.


J. Scott Enterline, Vice-Chairman

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.


David Juziats