

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2020-07
APPLICATION OF WILMER A. ESCH :

DECISION

I. FINDINGS OF FACT

1. Applicant is Wilmer A. Esch, 365 Lynwood Road, Bird-in-Hand, Pennsylvania 17505 ("Applicant").
2. The property which is the subject of the instant application is located at 346 Lynwood Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in 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 July 9, 2020.

7. Testimony at the hearing was stenographically recorded.

8. Brian Masterson, of Register Associates, Inc., appeared at the hearing and testified on behalf of Applicant.

9. Applicant has requested variances from the terms of Sections 3030.B.3 and 3030.B.4 of the Zoning Ordinance.

10. Section 3030.B.3 of the Zoning Ordinance states that the minimum side yard setback shall be 20 feet.

11. Section 3030.B.4 of the Zoning Ordinance states that the minimum rear yard setback shall be 50 feet.

12. The Property contains 40,105 square feet of area and is long and narrow (130 feet wide by 308.5 feet in depth).

13. The Property is currently improved with a dwelling, as shown on the plans (the "Plans") submitted by Applicant.

14. The existing dwelling is located approximately 12.47 feet from the side property line and is dimensionally nonconforming.

15. The existing dwelling is located approximately 39.63 feet from the rear property line and is dimensionally nonconforming.

16. The existing dwelling is in disrepair and Applicant desires to raze the building.

17. Applicant proposes to construct a new dwelling, as more fully shown the Plans.

18. The new dwelling will be located approximately 13.35 feet from the side property line and 34.37 feet from the rear property line.

19. No persons appeared in opposition to the application.

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, 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. 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).

4. 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).

5. 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).

6. There will be no adverse effect on the public health, safety or general welfare if the variances are granted.

7. The variances requested by Applicant are the minimum variance necessary to grant relief.

8. Applicant have satisfied the requirements for the requested dimensional variances.

9. Conditions must be attached to the granting of the variances to protect and preserve the surrounding neighborhood.

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 Wilmer A. Esch for variances from the terms of Sections 3030.B.3 and 3030.B.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 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.

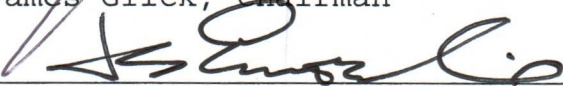
4. The approval granted by this Decision shall expire in accordance with the terms of Section 25060 of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicant and his heirs, personal representatives and assigns.

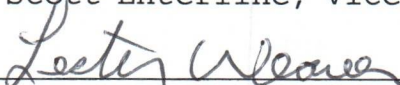
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick, Chairman



J. Scott Enterline, Vice- Chairman



Lester Weaver, Secretary

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.

