

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
APPLICATION OF CHRIS LUPOLD : No. 2020-17  
:

DECISION

I. FINDINGS OF FACT

1. Applicant is Chris Lupold, 96 Silver Birch Drive, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is located at 96 Silver Birch Drive, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the 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 November 12, 2020.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. Applicant has requested a variance from the terms of Section 6030.C.2.a of the Zoning Ordinance.

10. Section 6030.C.2.a of the Zoning Ordinance states that, with regard to unattached buildings for accessory uses that exceed 120 square feet of floor area, the minimum front yard setback line from all streets shall be 15 feet to the rear of the front facade of the principal building.

11. The Property is a lot located on a cul de sac street known as Silver Birch Drive.

12. The Property also has frontage along Greenfield Road.

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

14. Applicant proposes to construct an accessory storage building upon the Property.

15. The accessory storage building will be 38 feet by 26 feet, as more fully shown on the Plans.

16. Because the Property has frontage along two streets, the Property has two front yards.

17. Applicant proposes to locate the accessory storage building within that area identified as area "1" on the Plans.

18. Area "1" is within the front yard setback area and does not meet the requirements of Section 6030.C.2.a of the Zoning Ordinance.

19. Because of the location of existing improvements and the topography of the Property, Applicant is unable to reasonably comply with the required setback requirements.

## 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. 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. Applicant requires a variance from the terms of Section 6030.C.2.a of the Zoning Ordinance.

6. The location of the existing improvements and the topography of the Property warrant the granting of the variance requested.

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

8. 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.

9. Conditions must be attached to a grant of the variance in this case to preserve and protect 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 Chris Lupold for a variance from the terms of Section 6030.C.2.a of the Zoning Ordinance. The variance 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.

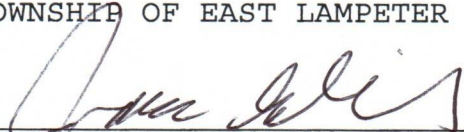
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing held on November 12, 2020.

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

  
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James Glick, Chairman

  
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Lester Weaver, Secretary


DISSENT:

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

  
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J. Scott Enterline, Vice-Chairman

Dated and filed December 10, 2020, after hearing held on November 12, 2020.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to December 11, 2020.

  
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