

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
 : No. 2020-18  
APPLICATION OF MCDONALD'S USA, :  
LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is McDonald's USA, LLC, c/o William Weisgerber, 110 North Carpenter Street, Chicago, Illinois 60607 ("Applicant").
2. The property which is the subject of the instant application is located at 68 East Towne Mall, East Lampeter Township, Lancaster County, Pennsylvania, which is typically associated with the address of 2090 Lincoln Highway East, Lancaster, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the C-3 Commercial 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 November 12, 2020.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Ambrose Heinz, Esquire.

9. Matt Chartrand, of Bohler Engineering, and Cliff Sovine, McDonald's consultant, appeared at the hearing and testified on behalf of Applicant.

10. The Property contains 0.56 acres and is presently improved with a McDonald's restaurant, as more fully shown on the plans (the "Plans") submitted by Applicant.

11. Applicant has requested:

(i) a variance from Section 10020.A.16 of the Zoning Ordinance to permit two drive-through service lanes, as shown on the Plans; and

(ii) a variance from Table 22160.1 of the Zoning Ordinance with regard to minimum required off-street parking spaces.

12. Section 10020.A.16 of the Zoning Ordinance states that restaurants with a maximum of one drive-through service lane are permitted within the C-3 Commercial District.

13. The term "drive-through service lane", as defined in Section 2020 of the Zoning Ordinance, provides in pertinent part as follows: "The portion of a drive-through service facility that accommodates a motor vehicle by which the operator is in an active

queuing position to order, purchase and pick-up the selected item without parking or leaving the vehicle".

14. Table 22160.1 of the Zoning Ordinance sets forth, among other things, the off-street parking requirements for restaurants. More specifically, Table 22160.1 of the Zoning Ordinance states that restaurant uses shall provide off-street parking as follows: 1 parking space per 4 seats plus 1 parking space per 100 square feet of common waiting area, bar area or social area, plus 1 parking space per employee.

15. Applicant proposes to upgrade the existing single drive-through service lane (described as tandem) into two drive-through service lanes (described as side-by-side).

16. Although there will be two side-by-side ordering points, there will be one pay/pickup point for both lanes, as shown on the Plans.

17. The drive-through service lane upgrade project will result in a reduction of available on-lot parking spaces. More specifically, Applicant will eliminate five (5) of the existing twenty-eight (28) on-lot parking spaces, as shown on the Plans (the existing McDonald's restaurant building is nonconforming with regard to required off-street parking spaces).

18. The resultant number of on-lot parking spaces will be twenty-three (23).

19. Under the terms of the current Zoning Ordinance, Applicant is required to provide thirty-seven (37) parking spaces.



20. Applicant testified that it holds an easement for the purpose of excess parking upon the adjacent shopping center lot. The easement parking is not restricted to any particular area upon the shopping center lot and is not limited as to the total number of spaces available.

21. Applicant believes (based upon a 2017 plan) that there are 1,065 parking spaces located on the shopping center property and that there are approximately 1,009 spaces required for the shopping center use, leaving an excess of 56 parking spaces.

22. Applicant testified that, during the COVID-19 pandemic, 90% of Applicant's business is performed by drive-through service (dining rooms are closed; however, there is carryout service available).

23. Prior to the COVID-19 pandemic, drive-through service accounted for 60-65% of Applicant's business.

24. Applicant further testified that it performed a parking study (Exhibit 6) which determined that the maximum observed parking demand on Wednesday November 3, 2020, and Thursday, November 5, 2020, is less than 37 spaces. Applicant therefore argued that it does not need 37 parking spaces.

25. Applicant testified that there are between 10 and 15 employees on a shift. Some employees take Uber ride sharing to work.

26. The Board is unable to determine the extent of parking which will be utilized and required once the COVID-19 pandemic ceases to affect Applicant's restaurant operations.

## II. CONCLUSIONS OF LAW

### A. VARIANCE FROM SECTION 10020.A.16

1. At the hearing, Applicant's counsel requested the Board make an interpretation of the Zoning Ordinance regarding Section 10020.A.16 and the definition of the term "drive-through service lane". Applicant argued that its proposal does not require a variance from Section 10020.A.16 of the Zoning Ordinance.

2. Section 909.1 of the MPC sets forth the jurisdiction of zoning hearing boards.

3. Section 909.1 of the MPC states that zoning hearing boards have exclusive jurisdiction to hear and render final adjudications in, among other things, the following matters: applications for variances; applications for special exceptions; appeals from the determination of the zoning officer; and substantive challenges to the validity of a land use ordinance.

4. The MPC does not authorize a zoning hearing board to render "interpretations".

5. The Applicant could have obtained a determination from the Zoning Officer with regard to Section 10020.A.16 and the definition of the term "drive-through service lane". The proper procedure would then have been an appeal by the Applicant from the Zoning Officer's determination.

6. The Board hereby denies Applicant's request for an interpretation of Section 10020.A.16 and the definition of the term "drive-through service lane" of the Zoning Ordinance.

7. Applicant has also requested a variance from the terms of Section 10020.A.16 of the Zoning Ordinance.

8. In order to qualify for a variance, an applicant must establish that: (i) an unnecessary hardship stemming from unique physical circumstances or conditions of the property will result if the variance is denied; (ii) because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (iii) the hardship has not been created by the applicant; (iv) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (v) the variance sought is the minimum variance that will afford relief. Worthington v. Zoning Hearing Board of New Britain Township, \_\_\_\_ Pa. Commonwealth Ct. \_\_\_\_, 669 A.2d 497 (1996), citing Laurento v. v. Zoning Hearing Board of the Borough of West Chester, 162 Pa. Commonwealth Ct. 226, 638 A.2d 437 (1994).

9. Applicant has presented evidence to satisfy the foregoing enumerated requirements for a variance from Section 10020.A.16 of the Zoning Ordinance, provided the drive-through service lanes are configured as side by side with one pay/pickup point serving both lanes, as shown on the Plans.



B. VARIANCE FROM TABLE 22160.1

1. Applicant has also requested a variance from the terms of Table 22160.1 of the Zoning Ordinance with regard to required parking.

2. As stated above, in order to qualify for a variance, an applicant must establish that: (i) an unnecessary hardship stemming from unique physical circumstances or conditions of the property will result if the variance is denied; (ii) because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (iii) the hardship has not been created by the applicant; (iv) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (v) the variance sought is the minimum variance that will afford relief. Worthington v. Zoning Hearing Board of New Britain Township, \_\_\_\_ Pa. Commonwealth Ct. \_\_\_\_, 669 A.2d 497 (1996), citing Laurento v. v. Zoning Hearing Board of the Borough of West Chester, 162 Pa. Commonwealth Ct. 226, 638 A.2d 437 (1994).

3. The Court further noted in Laurento that in order for an applicant to demonstrate an unnecessary hardship, the applicant must prove that either:

(i) the physical characteristics of the property are such that it could not in any case be used for any permitted purpose or

that it could only be arranged for such purposes at prohibitive expense, or

(ii) the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance . . . . The applicant must show that the hardship is unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on the entire district.

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 "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).

6. "To justify the grant of a dimensional variance, courts 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 zoning requirements and the characteristics of the surrounding neighborhood." Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43, 50 (1998).

7. In Camp Ramah in the Poconos, Inc. v. Zoning Hearing Board of Worcester Township, 743 A.2d 1019 (Pa. Cmwlth. 2000), Commonwealth Court held that the applicant was not entitled to a setback variance under Hertzberg. Commonwealth Court clearly



stated that even though Hertzberg reduced the standard for dimensional variances, standards still exist.

8. Dimensional variances are not "free fire zones" for which variances could be granted when the party seeking the variance has merely articulated a reason that it would be financially "hurt" if it could not do what it wanted to do with the property. Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. Ct. 2001).

9. When requesting a dimensional variance, the property owner is still required to prove an undue hardship or unnecessary hardship that is unique to the land. Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. Ct. 2001).

10. Some zoning ordinances permit a zoning hearing board to reduce parking requirements by special exception where evidence shows that it is not required (such is not the case, however, with regard to East Lampeter Township's Zoning Ordinance). However, parking regulations are written by the municipal governing body, not the zoning hearing board. While a showing of "no need" can prove that a variance will not injure the public interest, it cannot establish the unnecessary hardship that is at the core of variance law.

11. There are other provisions of the Zoning Ordinance which may be available to the Applicant. For example, Applicant may be able to reduce the number of on-site parking spaces in accordance

with the terms of Section 22160.F.3 of the Zoning Ordinance.

Section 22160.F.3 of the Zoning Ordinance states as follows:

Off-premises parking spaces at other locations within one thousand (1,000) feet of the principal use may be permitted in order to satisfy the requirements of off-street parking spaces, provided the landowner or applicant secures an agreement with the owner of the property, which will accommodate the additional demands for off-street parking. All off-premises parking areas shall consider safety, accessibility and convenience for pedestrians traveling between the points of destination within East Lampeter Township.

12. In addition, based upon Applicant's testimony that the drive-through sales represent 90% of Applicant's business, Applicant could reduce the number of seats, thus reducing the number of required parking spaces. Thus, even if it were assumed for the sake of argument that some relief from the Zoning Ordinance is necessary (which argument the Board specifically rejects), the variance requested by Applicant is not the minimum necessary to afford relief.

13. The Property itself is not subject to unnecessary hardship.

14. A variance is not necessary to allow reasonable use of the Property.

15. Applicant has failed to present evidence sufficient to satisfy the requirements for a variance from the terms of Table 22160.1 of the Zoning Ordinance.

### III. DECISION

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

(i) grants the application for a variance from Section 10020.A.16 of the Zoning Ordinance to permit two drive-through service lanes, provided the drive-through service lanes are configured as side by side with one pay/pickup point serving both lanes, as shown on the Plans; and

(ii) denies a variance from Table 22160.1 of the Zoning Ordinance with regard to minimum required off-street parking spaces. Applicant may, however, be able to reduce the required number of off-street parking spaces in accordance with the terms of Section 22160.F.3 of the Zoning Ordinance, if approved by the Township.

The variance which is 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 November 12, 2020.



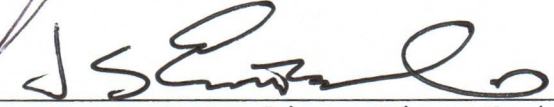
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

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 its successors and assigns.

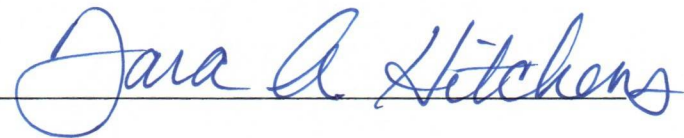
ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
\_\_\_\_\_  
James Glick, Chairman

  
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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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