

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2020-21
APPLICATION OF LANCASTER :
LINCOLN, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Lancaster Lincoln, LLC, 4 Caufield Place, Suite 102, Newtown, Pennsylvania 18940 (hereinafter referred to as "Applicant").

2. The property which is the subject of the instant application is located at 2246 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (referred to as the "Property").

3. The record owner of the Property is ADF Lincoln Holdings, LLC.

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 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 December 10, 2020.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Claudia Shank, Esquire.

9. Chris Venarchick, of RGS Associates, Inc., appeared at the hearing and testified on behalf of Applicant.

10. Erika Reed also appeared at the hearing on behalf of Applicant.

11. Applicant initially requested: (i) a variance from Section 24060.A of the Zoning Ordinance; (ii) a variance from Section 10030.A.1 of the Zoning Ordinance; (iii) a variance from Section 10030.B.2 of the Zoning Ordinance; (iv) a variance from Section 10030.B.3.a of the Zoning Ordinance; (v) a variance from Section 22240 of the Zoning Ordinance; (vi) a variance from Section 22230.D.8 of the Zoning Ordinance; and (vii) a variance from Section 22230.I.1 of the Zoning Ordinance.

12. At the hearing, Applicant withdrew its request for variances from Section 22230.D.8 and Section 22230.I.1 of the Zoning Ordinance.

13. Section 24060.A of the Zoning Ordinance states that a nonconforming lot may be developed for any use permitted within the district provided such development complies with all setback, coverage, bulk, height and other requirements.

14. Section 10030.A.1 of the Zoning Ordinance states that the minimum lot area shall be 2 acres.

15. Section 10030.B.2 of the Zoning Ordinance states that the minimum lot depth shall be 300 feet.

16. Section 10030.B.3.a of the Zoning Ordinance states that the minimum front yard setback shall be 30 feet from the street right of way line.

17. Section 22240 sets forth certain setback requirements for dumpsters used for solid waste disposal.

18. The Property is improved with a building (previously used as and for a Pizza Hut restaurant), a dumpster, and accessory parking.

19. The Property currently contains approximately 0.45 acre and is a nonconforming lot.

20. The lot depth is less than 300 feet and is dimensionally nonconforming.

21. The current lot coverage is 86% and is dimensionally nonconforming.

22. Applicant testified that, in the 1970's, the then owner of the Property was granted variances for front yard setback and location of a dumpster in the rear yard. No plans are available to show the exact location and therefore Applicant has now requested variances for these setbacks.

23. Applicant proposes to use the Property for a Popeye's restaurant with single drive through lane.

24. Applicant intends to raze a portion of the existing building and construct a drive through window and lane, as more fully shown on the plans and materials submitted by Applicant.

25. The existing building contains 3,000 square feet of floor area and the building as proposed will contain 2,450 square feet of floor area.

26. The proposed post construction lot coverage is 85%, a slight reduction from the existing lot coverage.

27. Applicant proposes to place its dumpster upon the Property 5 feet 5 inches from the rear property line.

28. The current dumpster is located 5 feet 2 inches from the rear property line.

29. 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); MPC §910.2.

2. A variance, if granted, must be the minimum that will afford relief and will represent the least modification of the zoning ordinance. Rogers v. Zoning Hearing Board of East Pikeland Township, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922 (1987); MPC §910.2(a)(5).

3. An applicant is entitled to a variance if: there is unique hardship to the property; there will be no adverse effect on the public health, safety or general welfare; and the variance represents the minimum variance that will afford relief. See East Torresdale Civic Association v. Zoning Hearing Board of Adjustment of Philadelphia County, 639 A.2d 446 (1994).

4. The Property is subject to hardship due to its relatively small size and the location of the existing improvements.

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

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

7. 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 for: (i) a variance from Section 24060.A of the Zoning Ordinance; (ii) a variance from Section 10030.A.1 of the Zoning Ordinance; (iii) a variance from Section 10030.B.2 of the Zoning Ordinance; (iv) a variance from Section 10030.B.3.a of the Zoning Ordinance; (v) a variance from Section 22240 of the Zoning Ordinance. The variances shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in

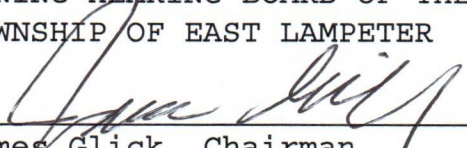
its application and the evidence presented to the Board at the hearing held on December 10, 2020.

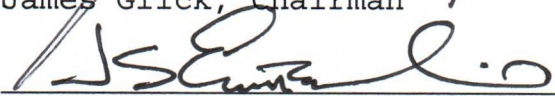
3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

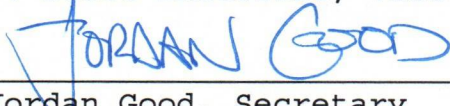
4. The approval granted by this Decision shall expire in accordance with the terms of Section 25060 of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicant and his, her, its or their heirs, personal representatives, successors and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER


James Glick, Chairman


J. Scott Enterline, Vice-Chairman


Jordan Good, Secretary

Dated and filed January 14, 2021, after hearing held on December 10, 2020.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to January 15, 2020.

Jana A Hitchens