

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2021-11  
APPLICATION OF JESSE SMUCKER :

DECISION

**I. FINDINGS OF FACT**

1. Applicant is Jesse Smucker, 2110 Rockvale Road, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is located at 2110 Rockvale Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The owner of the Property is David Smucker, Jr., Applicant's father.

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 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 July 8, 2021.

7. Testimony at the hearing was stenographically recorded.

8. Applicant and David Smucker appeared at the hearing.

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

Lorna Long Mentzer  
2103 Rockvale Road  
Lancaster, PA 17602

Stephen J. Shaw  
2103 Rockvale Road  
Lancaster, PA 17602

Patricia Lewis  
2117 Rockvale Road  
Lancaster, PA 17602

John S. Lewis  
2117 Rockvale Road  
Lancaster, PA 17602

10. Applicant has requested a variance from the terms of Section 23710.E.2 of the Zoning Ordinance regarding the maximum size of a roadside stand.

11. Section 23710.E.2 of the Zoning Ordinance states that the total display or sales area of the agricultural and/or agricultural products sold at a roadside stand shall be limited to 500 square feet.

12. The Property is used for agricultural purposes (a produce farm).

13. In the Spring of 2020, Applicant erected a roadside stand upon the Property.

14. The roadside stand contained 500 square feet of area and complied with the requirements of the Zoning Ordinance.

15. Without obtaining Township approval, Applicant thereafter erected a greenhouse approximately 20 feet to the rear of the 500 square foot initial roadside stand building.

16. The greenhouse structure is a "hoophouse" and is approximately 38 feet by 21 feet (798 square feet), with an attachment / connection to the initial roadside stand building.

17. The greenhouse is used in connection with, and as part of, the roadside stand.

18. Applicant grows flowers on another portion of the Property and then sells the flowers, potted plants, hanging plants and vegetable plants in the greenhouse.

19. The flowers, potted plants, hanging plants and vegetable plants are stored and displayed in the greenhouse and customers enter the greenhouse to view and purchase the flowers.

20. Although Applicant stated that the greenhouse is only used between April and July, he would like to maintain the greenhouse year round.

21. Applicant testified that 90% of what is sold at the roadside stand is produced on the Property.

22. Applicant's days and hours of operation are Monday through Saturday, 8:00 a.m. until 6:00 p.m.

23. Neighbors expressed concerns regarding: (i) the size of the roadside stand; (ii) the hours of operation (there was testimony that it seems the roadside stand is open 24 hours a day, with some manned hours and some self-serve hours); and (iii) dust created by vehicles utilizing the driveway on the Property.

24. The Township Zoning Officer testified that the greenhouse would need to comply with the building code and that provisions of

the Township storm water management ordinance are triggered by the greenhouse.

## 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 will be granted when a zoning ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the property and the unnecessary hardship is due to such conditions. Unnecessary hardship justifying a grant of a variance is shown where denial of the variance would render the property practically useless. Economic and personal considerations in and of themselves are insufficient to constitute hardship." McNally v. Bonner, \_\_\_ Pa. Commonwealth Ct. \_\_\_, 645 A.2d 287, 289 (1994) (citations omitted).

3. The determination as to whether zoning regulations render a property valueless is to be made with reference to the property as a whole. Hansen Properties III v. Zoning Hearing Board of Horsham Township, 130 Pa. Commonwealth Ct. 8, 566 A.2d 926 (1989).

4. "[T]he reasons underlying the grant of a variance must be substantial, serious, and compelling." Constantino v. Zoning

Hearing Board of the Borough of Forest Hills, 152 Pa. Commonwealth Ct. 258, 618 A.2d 1193, 1196 (1992).

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); see also Beecham Enterprises v. Zoning Hearing Board of Kennedy Township, 556 A.2d 981 (1989).

6. 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).

7. 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).

8. The Property can be used as zoned.

9. The Property could be used as a roadside stand containing a maximum of 500 square feet of area.

10. The applicable zoning regulations do not render the Property valueless.

11. Applicant has not presented evidence to establish that the Zoning Ordinance imposes an unnecessary hardship because of unique physical circumstances or conditions peculiar to the Property and the unnecessary hardship is due to such conditions.

**III. DECISION**

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application of Jesse Smucker for a variance from the terms of Section 23710.E.2 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Vice-Chairman



Jordan Good, Secretary

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Alex Reedy, Alternate

Dated and filed July 22, 2021, after hearing held on July 8, 2021.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to July 23, 2021.

