

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2021-21
APPLICATION OF LEGACY MANOR, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Legacy Manor, LLC, 45 Riverside Avenue, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 441 Mount Sidney Road (Tax Parcel ID 310-21190-0-0000), East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the Village Residential (VR) District as shown on the Official Zoning Map of East Lampeter Township.
4. Applicant is the owner of the Property.
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 August 26, 2021.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Reilly Noetzel, Esquire.

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

Jane King
439 Mount Sidney Road
Lancaster, PA 17602

Susan Snyder
435 Mount Sydney Road
Lancaster, PA 17602

10. Applicant's owner, Gideon Fisher, appeared at the hearing and testified on behalf of Applicant.

11. Jeff Bowlby, of Trimble Surveyors, also appeared at the hearing and testified on behalf of Applicant.

12. Applicant has requested:

(i) a variance from the terms of Section 20020.A.10 of the Zoning Ordinance;

(ii) a variance from the terms of Section 2020 relating to the definition of the term "tourist home";

(iii) a variance from the terms of Section 23110.F.1 of the Zoning Ordinance;

(iv) a variance from the terms of Section 23110.F.2 of the Zoning Ordinance; and

(v) a variance from the terms of Section 23110.F.3 of the Zoning Ordinance.

13. Section 20020.A.10 of the Zoning Ordinance states that tourist homes, as a principal or accessory use within a single family detached dwelling, subject to the provisions of Section 23110, are permitted as of right within the Village Residential (VR) District.

14. Section 2020 of the Zoning Ordinance defines the term "tourist home", in pertinent part, as follows:

Tourist Home. A single family detached dwelling, where the accommodations are rented to a maximum of ten (10) guests on a daily basis for a period of time not exceeding thirty (30) consecutive days.

15. Section 23110.F.1 of the Zoning Ordinance requires that the tourist home be contained within a single-family detached dwelling that is either an owner-occupied dwelling unit or non-owner occupied dwelling.

16. Section 23110.F.2 of the Zoning Ordinance states that the tourist home shall not be occupied by more than ten (10) guests.

17. Section 23110.F.3 of the Zoning Ordinance states that the principal use or single family detached dwelling shall contain

complete sanitary sewerage disposal services, washing and bathing facilities, and a central kitchen to accommodate the occupants and guests.

18. The Property contains approximately 0.8185 acre (net).

19. The Property is improved with a dwelling and accessory parking, as more fully shown on the plan identified as Applicant's Exhibit No. 1 (the "Plan").

20. The dwelling is served by an on-lot well and public sanitary sewer.

21. The dwelling contains approximately 6,200 square feet of floor area.

22. The dwelling contains 5 bedrooms and a large living area.

23. There are 8 separate entrances to the dwelling.

24. Applicant proposes to convert the dwelling into 5 separate and distinct living units, each with its own kitchen, bath, bedroom(s) and living area.

25. Applicant stated that: (i) unit 1 will contain 4 bedrooms; (ii) unit 2 will contain 2 bedrooms; and (iii) units 3, 4 and 5 will contain 1 bedroom each.

26. There will be a washer/dryer in each unit.

27. Applicant desires to use the units for tourist home purposes.

28. The manager of the tourist home will reside in one of the one-bedroom units. The manager will oversee the guests and perform property maintenance.

29. Applicant proposes that there be a maximum of 2 guests per bedroom. Based upon a total of 8 bedrooms, there will be a maximum of 16 guests on the Property.

30. All changes to the existing dwelling will be internal. There will be no exterior changes to the dwelling.

31. Although testimony regarding parking spaces was unclear, it appears that there are 11 or 12 parking spaces located on the Property.

32. Check-in time will be 3:00 p.m. and check-out time will be 10:00 a.m.

33. No alcohol will be permitted on the Property.

34. The Property is located in a residential area. However, there is a greenhouse business, school and fire house in the vicinity of the Property.

35. Applicant testified that because of the size and layout of the dwelling, it can no longer be used as and for a single family detached dwelling.

36. Applicant testified that, because of the COVID-19 pandemic, it is difficult to operate a bed and breakfast because of the requirement for shared common space.

37. Residential neighbors expressed concerns regarding the impact of the proposed use on their wells and water supply. More specifically, neighbors testified that there is a history of low water issues in the area and one neighbor testified that her well went dry when the middle school was constructed.

38. Applicant was unable to provide testimony regarding the existing well on the Property, the water flow / yield of the well, or the impact of Applicant's proposed use on neighbors' wells.

39. Residential neighbors also expressed concerns regarding noise and traffic.

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. The unique features of the existing structure warrants the granting of the variances requested.

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

5. With conditions, Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the ordinance.

6. Conditions must be attached to a grant of the variances 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 for:

(i) a variance from the terms of Section 20020.A.10 of the Zoning Ordinance;

(ii) a variance from the terms of Section 2020 relating to the definition of the term "tourist home";

(iii) a variance from the terms of Section 23110.F.1 of the Zoning Ordinance;

(iv) a variance from the terms of Section 23110.F.2 of the Zoning Ordinance; and

(v) a variance from the terms of Section 23110.F.3 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 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 August 26, 2021.

3. Applicant shall provide credible evidence to the satisfaction of the Township (including a well draw-down or similar test) to substantiate that Applicant's proposed use will not negatively impact the wells located on properties owned by parties to the hearing.

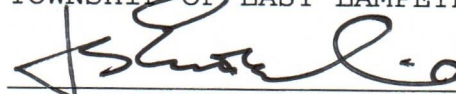
4. Applicant shall prohibit outside music and loudspeakers on the Property.

5. 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.

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

7. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



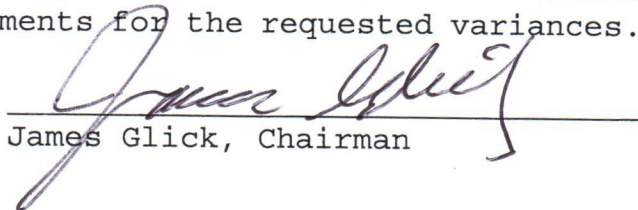
J. Scott Enterline, Vice-Chairman



Jordan Good, Secretary

DISSENTING OPINION:

I hereby dissent from the foregoing Decision. I do not believe that the Applicant has presented sufficient credible testimony to satisfy the requirements for the requested variances.



James Glick, Chairman

Dated and filed September 9, 2021, after hearing held on August 26, 2021.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to September 10, 2021.

