

**BEFORE THE ZONING HEARING BOARD**

**TOWNSHIP OF EAST LAMPETER**

IN RE: :  
: No. 2018-12  
APPLICATION OF ANIL JIVANI : (Request for Time Extension)

**DECISION**

**I. FINDINGS OF FACT**

1. Applicant is Anil Jivani, 103 Nevermore Circle, North Wales, Pennsylvania 19454 ("Applicant").

2. The property which is the subject of the current request is 2622 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. The Property was the subject of a previous zoning hearing held on July 26, 2018 (Case No. 2018-12).

4. In Case No. 2018-12, the Zoning Hearing Board of East Lampeter Township ("Board") granted Applicant's request for: (i) a special exception pursuant to Section 24030 of the Zoning Ordinance to expand the nonconforming use on the Property; and (ii) a variance from the maximum expansion limitations set forth in Section 24030.A.2 of the Zoning Ordinance. The approvals were subject to conditions.

5. Condition No. 4 imposed by the Board in its written Decision in Case No. 2018-12 states as follows:

4. The approvals granted by this Decision shall expire in accordance with the terms of Section 25070 of the Zoning Ordinance and Section 25060 of the Zoning Ordinance.

6. With regard to variance approvals, Section 25060 of the Zoning Ordinance requires that the applicant obtain the required permits within six (6) months from the date of the approval and complete the improvements within one (1) year of the date of the permit.

7. With regard to special exception approvals, Section 25070 of the Zoning Ordinance requires that the applicant obtain the required permits within one (1) year from the date of the approval and complete the improvements within one (1) year of the date of the permit.

8. Applicant did not obtain required permits for the expansion approved by Board within the time periods set forth in Sections 25060 and 25070 of the Zoning Ordinance. Moreover, Applicant failed to request an extension of those time periods prior to their expiration.

9. On February 2, 2022, Applicant's counsel, Sheila V. O'Rourke, Esquire, submitted a letter and exhibits to the Township Zoning Officer requesting that the Board grant an extension of time nunc pro tunc.

10. On March 10, 2022, the Board held a public hearing with regard to the time extension request.

11. Testimony at the hearing was stenographically recorded.

12. Sheila V. O'Rourke, Esquire, appeared at the hearing on behalf of Applicant.

13. Attorney O'Rourke stated that, throughout his project, Applicant, his agents and representatives communicated with Township staff and Code Administrators (a Township-approved third-party building code inspector), and that Code Administrators provided reviews and inspections.

14. Attorney O'Rourke further stated that, at no point did the Township suggest that the Applicant's ability to pursue the permit would be denied because of timeliness, and that Applicant has spent between \$10,000.00 and \$20,000.00 on professional and other fees relating to the project.

15. Applicant's architect, Kenneth Budd, testified at the hearing that he did not review the Board's decision and was unaware of the time constraints set forth therein.

16. The Township Zoning Officer issued a letter, dated January 3, 2022, denying the permit application because the Board approval expired.

17. The Township Zoning Officer testified that the Township was not aware work was occurring related to the project.

## **II. CONCLUSIONS OF LAW**

1. Applicant argues that the Board should grant an extension of applicable time requirements nunc pro tunc.

2. The Board is not aware of any statutory provisions or case law which clearly state that zoning hearing boards have the

authority to grant approvals / extensions of zoning ordinance time constraints nunc pro tunc.

3. However, for the sake of argument, the Board will assume that it has such authority.

4. Nunc pro tunc relief is warranted only in exceptional circumstances. Where an untimely filing is attributable to the own party's negligence or lack of due diligence, nunc pro tunc relief is not available.

5. Many land developments require multiple complex regulatory reviews and approvals. Notwithstanding Applicant's argument, there is nothing unique about Applicant's permitting process which would render it an "exceptional circumstance".

6. Neither the Township nor Code Administrators is obligated to advise an applicant of applicable expiration periods. Through the Board's Decision, the Applicant had actual notice of the time requirements contained in the Zoning Ordinance.

7. Applicant's architect stated at the hearing that he did not review the Board's decision regarding time constraints.

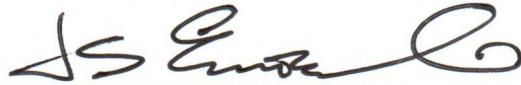
8. Applicant is not entitled to a time extension nunc pro tunc.

### **III. DECISION**

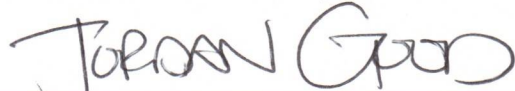
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter

hereby denies Applicant's request for an extension of time nunc pro  
tunc.

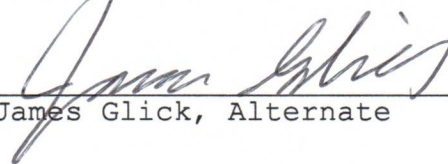
ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Jordan Good, Vice-Chairman



James Glick, Alternate

Dated and filed March 24, 2022, after hearing held on  
March 10, 2022.

The undersigned certifies that a copy of this Decision was  
served upon all parties on or prior to March 25, 2022.

