

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 202~~2~~11
APPLICATION OF DANIEL M. BEILER :

DECISION

I. FINDINGS OF FACT

1. Applicant is Daniel M. Beiler, 634 Willow Road, Lancaster, Pennsylvania 17601 ("Applicant").
2. The property which is the subject of the instant application is located at 624 Willow Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the R-2 Medium Density Residential 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. Public hearings were held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on August 11, 2022, and October 13, 2022.

7. Testimony at the hearings was stenographically recorded.

8. Applicant appeared personally at the hearings.

9. Adam Keller, of TeamAg, Inc., also appeared at the hearings and testified on behalf of Applicant.

10. Applicant has requested a variance from the terms of Section 23030.E.3 of the Zoning Ordinance.

11. Section 23030.E.3 of the Zoning Ordinance provides that manure storage facilities shall not be located within 150 feet of any property lines or street right-of-way line.

12. The Property is currently improved with a dwelling, barns and other structures, as more fully shown on the plan ("Plan") submitted by Applicant at the hearing.

13. The Property is used for agricultural purposes.

14. Applicant propose to construct upon the Property a new larger manure storage pit.

15. The proposed manure storage pit will be located no closer than 87 feet from the property line, as more fully shown on the Plan.

16. Because of the location of the barn and because Applicant will be relying on gravity flow rather than electrical pumps, it is necessary to construct the manure storage pit 870 feet from the property line.

17. 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); 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. In determining whether unnecessary hardship has been established, zoning hearing boards should examine whether the variance sought is use or dimensional. To justify the grant of a dimensional variance, zoning hearing boards 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 the zoning requirements and the characteristics of the surrounding neighborhood. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998); Talkish v. Zoning Hearing Board of Harborcreek Township, 738 A.2d 50 (1999).

4. When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

5. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use

variance, is sought. Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (1998).

6. The grant of the requested dimensional variance will not be contrary to the public interest.

7. Applicant has satisfied the requirements for a dimensional variance from Section 23030.E.3 of the Zoning Ordinance in order to construct the manure storage pit as indicated on the Plan.

8. Conditions must be attached to the grant of the variance 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 of Daniel M. Beiler for a variance from the terms of Section 23030.E.3 of the Zoning Ordinance in order to permit construction of a manure storage pit no closer than 87 feet from the property line. The variance 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 hearings.

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 if Applicant does not obtain a zoning permit in accordance with the terms of Section 25060 of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicant and his heirs, personal representatives and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Scott Augsburg, Secretary

Dated and filed October 16, 2022, after hearings held on August 11, 2022, and October 13, 2022.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to October 14, 2022.

