

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2023-01
APPLICATION OF HPW PROPERTIES, :
LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is HPW Properties, LLC, P.O. Box 291, Lititz, Pennsylvania 17543 (“Applicant”).
2. The property which is the subject of the instant application is 2637 Old Philadelphia Pike in East Lampeter Township, Lancaster County, Pennsylvania (the “Property”).
3. Applicant is the owner of the Property.
4. The Property is located in the Village 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, as amended (the “Zoning Ordinance”).
6. A public hearing was held before the Board on this application on March 23, 2023.
7. Testimony at the hearing was stenographically recorded.
8. Applicant was represented at the hearing by its counsel, Reilly Noetzel, Esquire.
9. Randy Dautrich, Scott Wiglesworth and Mark Will appeared at the hearing on behalf of Applicant.

10. The following persons completed entry of appearance forms and were recognized as parties:

Don Beachy
2634 Old Philadelphia Pike
Bird-in Hand, PA 17505

John Dienner
376 Enterprise Drive
Bird-in-Hand, PA 17505

11. The Property is a lot containing 30,645 square feet of area.

12. The Property is improved with a dwelling and a detached garage building, as shown on the plans and materials (collectively the "Plans") presented by the Applicant at the hearing.

13. Applicant has requested: (i) a variance from the terms of Section 22130.C.1.d of the Zoning Ordinance; (ii) a variance from the terms of Section 20030.B.2.b of the Zoning Ordinance; and (iii) a special exception pursuant to Section 20020.C.8 of the Zoning Ordinance.

14. Section 22130.C.1.d of the Zoning Ordinance states that single family detached dwellings are the only type of permitted use on a flag lot.

15. Section 20030.B.2.b of the Zoning Ordinance states that the maximum front yard building setback for a principal use shall be 25 feet as measured from the street right-of-way line.

16. Section 20020.C.8 of the Zoning Ordinance states that townhouses are permitted by special exception within the Village Residential District, subject to the requirements of Section 23830 of the Zoning Ordinance.

17. Applicant proposes to subdivide the Property into two lots.

18. Lot 1 will contain 16,455 square feet of area.

19. Lot 2 will contain 14,190 square feet of area.

20. The existing dwelling will be located on Lot 1.

21. Lot 2 will be a flag lot.

22. Applicant proposes to construct four (4) townhouses on Lot 2, including access thereto and parking, as shown on the Plans.

23. The existing garage will be demolished.

24. Applicant testified that the existing dwelling is located close to the street right-of-way and that the rear yard of the Property is underutilized.

25. Although Applicant did not provide specific testimony with regard to the actual setback, it appears from the plans that the front porch of the existing dwelling is located approximately 11.5 feet from the street right-of-way and the dwelling structure itself is further set back.

26. The intent of the Village Residential District is to support the continued viability of the traditional residential village areas within the Township. In particular, as stated previously, Section 20030.B.2.b of the Zoning Ordinance establishes a 25 foot maximum front yard building setback in the Village Residential District. The existing dwelling on the Property complies with the maximum front yard setback.

27. Applicant argues that the front yard setback of the existing dwelling creates a hardship. However, the existing setback complies with the requirement set forth in Section 20030.B.2.b of the Zoning Ordinance and is in keeping with the nature of a traditional residential village.

28. Each of the four townhouses will contain three (3) bedrooms.

29. Each townhouse will have two (2) parking spaces, one within a garage and one in a driveway area in front of the townhouse.

30. Although Applicant was uncertain of the height of the proposed townhouses, Applicant testified that they could be more than twenty-eight (28) feet in height but, in any case, would be less than forty (40) feet in height.

31. The townhouses would be served by public sanitary sewer service.

32. Applicant testified that public water service is not available to serve the Property and that water will be provided by on-lot well.

33. Applicant testified that the townhouses will have sprinklers for fire protection.

34. Neighbors to the rear expressed concerns regarding four townhouses and the impact on their privacy.

II. CONCLUSIONS OF LAW

A. VARIANCE FROM SECTION 22130.C.1.d

1. Applicant has requested a variance from Section 22130.C.1.d of the Zoning Ordinance.

2. Section 22130.C.1.d of the Zoning Ordinance states that single family detached dwellings are the only type of permitted use on a flag lot.

3. In order to be entitled to a variance, an applicant must demonstrate that the zoning ordinance inflicts an unnecessary hardship on the property. *Goldstein v. Zoning Hearing Board of Lower Merion Township*, 19 A.3d 565 (Pa. Cmwlth. 2011); *In re: Appeal of Boyer*, 960 A.2d 179, 183 (Pa. Cmwlth. 2008); *Valley View Civic Association v. Zoning Board of Adjustment of the City of Philadelphia*, 501 Pa. 550, 462 A.2d 637 (1983); MPC §910.2(a).

4. The mere fact that a property may be used in a more profitable fashion is insufficient grounds to grant a variance. *Oxford Corporation v. Zoning Hearing Board of Oxford Borough*, 34 A.3d 286 (Pa. Cmwlth. 2011); *Township of East Caln v. Zoning Hearing Board of East Caln Township*, 915 A.2d 1249 (Pa. Cmwlth. 2000).

5. The inability to “maximize the development potential of the property” is not grounds for the granting of dimensional or use variances. *Singer v. Philadelphia Zoning Board of Adjustment*, 29 A.3d 144, 150 (Pa. Cmwlth. 2011).

6. Potential economic loss from the inability to create an additional lot or an additional dwelling unit or maximum profit does not warrant the granting of a variance. *Cardamone v. Whitpain Township Zoning Hearing Board*, 771 A.2d 103 (Pa. Cmwlth. 2001); *Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia*, 771 A.2d 874 (Pa. Cmwlth. 2001).

7. “In order to establish that denial will result in unnecessary hardship an applicant for a variance must show more than mere economic or personal hardship. The applicant must prove that the hardship is unique to the property, and that the zoning restriction sought to be overcome renders the property “practically valueless.” *Borough of Dormont v. Zoning Hearing Board of the Borough of Dormont* , 850 A.2d 826, 828 (Pa. Cmwlth. 2004) (citations omitted).

8. 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).

9. 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).

10. Even if a hardship exists, an applicant must demonstrate that the requested variance is the minimum variance necessary to afford relief. *Somers v. Stroud Township Zoning Hearing Board*, 913 A.2d 306 (Pa. Cmwlth. 2006).

11. The Property can be used, and is currently being used, for a use permitted within the Village Residential District. The Property contains only 30,645 square feet of area, is improved with a single family dwelling and garage, and is not subject to hardship.

12. Without limiting the foregoing conclusions, even if it were assumed that the Applicant is entitled to subdivide the Property creating a flag lot, it is possible to construct a single family dwelling upon the flag lot. A variance from Section 23130.C.1.d is not necessary.

13. Applicant has failed to satisfy the requirements for a variance from Section 23130.C.1.d of the Zoning Ordinance and the variance is denied.

B. VARIANCE FROM SECTION 20030.B.2.b

1. The Conclusions of Law set forth above are incorporated by reference. The Property can be used, and is currently being used, for a use permitted within the Village Residential District. The Property is improved with a single family dwelling and garage, and is not subject to hardship.

2. Moreover, because the Board has denied Applicant's request for a variance from the terms of Section 23130C.1.d of the Zoning Ordinance, the request for a variance from Section 20030.B.2.b is moot.

3. Applicant has failed to satisfy the requirements for a variance from Section 20030.B.2.b of the Zoning Ordinance and the variance is denied.

C. SPECIAL EXCEPTION

1. Applicant has requested a special exception pursuant to Section 20020.C.8 of the Zoning Ordinance.

2. Section 20020.C.8 of the Zoning Ordinance states that townhouses are permitted by special exception within the Village Residential District, subject to the requirements of Section 23830 of the Zoning Ordinance.

3. Section 23830 of the Zoning Ordinance sets forth the specific requirements for townhouses.

4. “[T]o be entitled to a special exception, an applicant must bring the proposal within the specific requirements in the zoning ordinance.” *Act I, Inc. v. Zoning Hearing Board of Bushkill Township*, 704 A.2d 732, 735 (Pa. Cmwlth. 1997).

5. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. *Shamah v. Hellam Township Zoning Hearing Board*, 648 A.2d 1299 (Pa. Cmwlth. 1994); *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989).

6. Applicant’s proposal fails to comply with the requirements of Section 23830.C.3 of the Zoning Ordinance.

7. Section 23830.C.3 of the Zoning Ordinance states that townhouses shall be serviced by public water supply facilities

8. Applicant proposes an on-lot well to serve the four (4) townhouses and Applicant’s proposal does not comply with Section 23830.C.3 of the Zoning Ordinance.

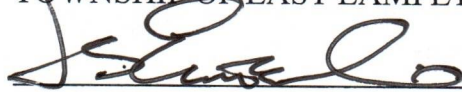
9. Applicant could construct a single family dwelling on the proposed flag lot utilizing an on-lot well.

10. Applicant has failed to satisfy the requirements for a special exception pursuant to Section 20020.C.8 of the Zoning Ordinance and the special exception is denied.

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 for: (i) a variance from the terms of Section 22130.C.1.d of the Zoning Ordinance; (ii) a variance from the terms of Section 20030.B.2.b of the Zoning Ordinance; and (iii) a special exception pursuant to Section 20020.C.8 of the Zoning Ordinance.

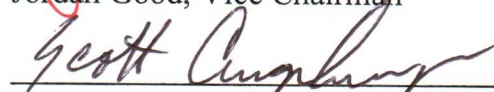
ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Jordan Good, Vice Chairman



Scott Augsburg, Secretary

Dated and filed April 27, 2023, after hearing held on March 23, 2023.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to April 28, 2023.

