

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
 : No. 2023-02
APPLICATION OF SMOKETOWN :
ENTERPRISES, LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is Smoketown Enterprises, LLC, 452 Mount Sidney Road, Lancaster, Pennsylvania 17602 ("Applicant").

2. The property which is the subject of the instant application is located at 2498 Old Philadelphia Pike, including an unaddressed property identified as Lancaster County Tax Parcel 310-15301-0-0000, East Lampeter Township, Lancaster County, Pennsylvania (collectively the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the Village General 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 Zoning Ordinance of 2016 (the "Zoning Ordinance").

6. After a continuance requested by the Applicant, a public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on April 27, 2023.

7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Nicholas T. Gard, Esquire.

9. David Beiler appeared at the hearing and testified on behalf of Applicant.

10. Applicant has requested: (i) a variance from Section 18020.A.13 of the Zoning Ordinance; and (ii) a variance from Section 23450.D.11 of the Zoning Ordinance.

11. Section 18020.A.13 of the Zoning Ordinance states, in pertinent part, that manufacturing uses are permitted within the Village General District, provided that the manufacturing use is located along a public road owned and maintained by East Lampeter Township.

12. Section 23450.D.11 of the Zoning Ordinance states, in pertinent part, that a manufacturing use located within the Bird-in-Hand Zoning District, Village General District and Village Commercial District shall be located along a public road owned and maintained by East Lampeter Township.

13. The Property contains a total area of 9.1 acres, more or less, and is improved with a single family detached dwelling, as more fully shown on the plans and materials submitted by Applicant.

14. The Property has road frontage on Old Philadelphia Pike (SR-0340) and Eastbrook Road (SR-0896), both state roads.

15. Neither Old Philadelphia Pike (SR-0340), nor Eastbrook Road (SR-0896), are owned and maintained by East Lampeter Township.

16. Applicant desires to construct two buildings upon the Property.

17. The two buildings will have a combined floor area of 30,000 square feet.

18. Applicant will construct an access drive from the area of the Property containing the two buildings onto Old Philadelphia Pike.

19. Applicant proposes to operate a manufacturing business involving the fabrication of vinyl fencing, including the associated storage of raw materials and equipment. In addition, a portion of the building will be used by a separate fence and deck installation company known as Millcreek Fence.

20. Applicant will have a small retail showroom utilizing approximately 1,400 square feet of floor area.

21. Applicant and Millcreek Fence will have a combined total of 23 employees.

22. Applicant's days and hours of operation are as follows: Monday through Friday, 6:30 a.m. to 5:00 p.m.; and Saturday, 8:00 a.m. to 12:00 p.m.

23. Raw materials will be delivered to the Property by 18 wheel tractor trailer. Such tractor trailer deliveries will take place once per week.

24. Pick up trucks and trailers are used to take materials to job sites. Between 3 and 4 employee work crews and between 3 and 4 subcontractor work crews will depart from the Property every workday morning.

25. Applicant anticipates that 2 to 3 retail customers will come to the Property per day.

26. Counsel for Applicant argued that there are no properties within the Village General District located adjacent to a Township road which could be used for manufacturing.

27. The Township Zoning Officer, however, testified that there are 5 properties (each between 2 acres and 10 acres in size) within the Village General District which are located adjacent to a Township road and which could be used for manufacturing. More specifically, Township Exhibit No. 1 identifies properties (within the Village General District) along Gehman Lane and Airport Road which could be used for manufacturing.

II. CONCLUSIONS OF LAW

1. Applicant requires variances from Section 18020.A.13 of the Zoning Ordinance and Section 23450.D.11 of the Zoning Ordinance.

2. 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.

3. "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).

4. 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).

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. It is clear to the Board that the Township, in enacting Section 18020.A.13 and Section 23450.D.11 of the Zoning Ordinance, seeks to protect state roads within certain areas of the Township (including properties within the Village General District) from the negative impact of the type of vehicular traffic generated by manufacturing uses.

7. There is nothing unique about the Property which would justify variances to permit Applicant's proposed manufacturing use at this particular location.

8. The Property can be used as zoned and the applicable zoning regulations do not render the Property valueless.

9. Applicant has not presented credible 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.

10. Applicant is not entitled to the requested variances.

III. DECISION

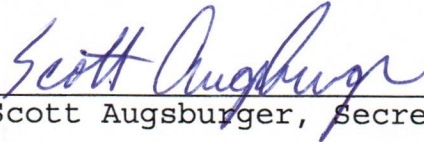
Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby denies the application for: (i) a variance from Section

18020.A.13 of the Zoning Ordinance; and (ii) a variance from Section 23450.D.11 of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



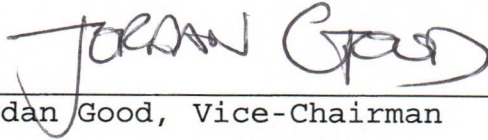
J. Scott Enterline, Chairman



Scott Augsburg, Secretary

DISSENT:

I dissent from the foregoing Decision. I would grant the requested variances.



Jordan Good, Vice-Chairman

Dated and filed May 25, 2023, after hearing held on April 27, 2023.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to May 26, 2023.

