

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2024-10
APPLICATION OF BSK REAL ESTATE LLC :

DECISION

I. FINDINGS OF FACT

1. Applicant is BSK Real Estate LLC, P.O. Box 309, Ronks, Pennsylvania 17572 ("Applicant").
2. The property which is the subject of the instant application is 2601-2603 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the Agricultural District as shown on the Official Zoning Map of East Lampeter Township.
4. 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").
5. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on July 11, 2024.
6. Testimony at the hearing was stenographically recorded.

7. Benuel King appeared at the hearing and testified on behalf of Applicant.

8. Applicant has requested a variance from Section 22230, Table 22230.1, of the Zoning Ordinance.

9. Section 22230, Table 22230.1, of the Zoning Ordinance indicates, in pertinent part, that: (i) monument signs are not permitted in the Agricultural District; (ii) freestanding signs are permitted in the Agricultural District; (iii) the maximum size of a freestanding sign in the Agricultural District is 16 square feet; and (iv) the maximum height of a freestanding sign in the Agricultural District is 6 feet.

10. The Property is used as and for a general construction business office and accessory warehouse space.

11. Applicant testified that a portion of the Property is used for the sale of flowers.

12. The Township Zoning Officer testified that use of the Property for the sale of flowers is not permitted.

13. The issue of whether the Property can be used for the sale of flowers is not before the Board and the Board makes no determination whether that use is permitted.

14. Applicant proposes to erect a monument sign on the Property.

15. The monument is approximately 16 feet 10 inches by 14 feet 2 inches.

16. The total sign area of the monument sign is just under 80 square feet.

17. Of the 80 square feet, the portion of the sign related to the general construction business is approximately 67.36 square feet. There is a bottom sign (containing the balance of the sign area) which Applicant desires to use for the farm name/selling of flowers.

18. Applicant argues that a monument sign is necessary for aesthetic purposes and that a freestanding sign is inadequate for aesthetic purposes. The Township, however, in enacting Section 22230, Table 22230.1, of the Zoning Ordinance, has determined that monument signs are not proper uses in the Agricultural District.

19. Applicant also argues that a monument sign containing 80 square feet of sign area is necessary in order to allow motorists to make safe and proper driving decisions.

20. Contrary to Applicant's bald assertion, it is not necessary to have a monument sign containing 80 square feet of area in order to allow motorists to make safe and proper driving decisions.

21. Applicant offered no credible testimony to the Board that the Zoning Ordinance imposes unnecessary hardship upon the Applicant.

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 grant-

ed 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); 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. "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. In order to warrant the grant of a variance, the hardship must be unique to the property and not one which is generally suffered by other properties in the district. D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, ___ Pa. Commonwealth Ct. ___, 585 A.2d 580, 583 (1991).

5. Circumstances unique to the user of a property and not the property itself do not constitute unnecessary hardship. See, e.g. Chrin v. Zoning Hearing Board of the Borough of Nazareth, 127 Pa. Commonwealth Ct. 279, 561 A.2d 833 (1989).

6. An applicant is not entitled to a variance if a conforming structure, albeit a less desirable one, can be erected. Greene Townes Financial Corporation v. Zoning Hearing Board of Lower Merion Township, ____ Pa. Commonwealth Ct. ____, 630 A.2d 492 (1993).

7. It is possible to reasonably and safely utilize the Property with signage meeting the requirements of Section 22230, Table 22230.1, of the Zoning Ordinance. A variance is not needed to allow reasonable use of the Property.

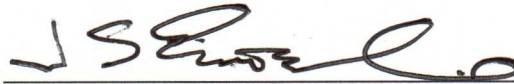
8. Even if it were assumed for argument sake that a sign in excess of 16 square feet is necessary, Applicant has failed to prove that an 80 square foot sign is the minimum necessary to afford relief.

9. Applicant has failed to demonstrate evidence sufficient to warrant the granting of the requested variance.

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 of BSK Real Estate LLC for a variance from the terms of Section 22230, Table 22230.1, of the Zoning Ordinance.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



J. Scott Enterline, Chairman



Jordan Good, Vice-Chairman

Scott Augsburger, Secretary

Dated and filed July 25, 2024, after hearing held on July 11, 2024.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to July 26, 2024.

