

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2026-03  
APPLICATION OF INCH & CO. :  
CONSTRUCTION :

DECISION

**I. FINDINGS OF FACT**

1. Applicant is Inch & Co. Construction, 2950 Lewisberry Road, York, Pennsylvania 17404 (hereinafter referred to as "Applicant").

2. The property which is the subject of the instant application is located at 2498 Old Philadelphia Pike and adjacent lot fronting Eastbrook Road (Tax Account Nos. 310-41500-0-0000 and 310-15301-0-0000), East Lampeter Township, Lancaster County, Pennsylvania (referred to as the "Property").

3. Applicant is the equitable owner of the Property.

4. The record owner of the Property is Smoketown Enterprises, LLC.

5. The Property is located within the Village General (VG) District as shown on the Official Zoning Map of East Lampeter Township.

6. 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").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on May 14, 2026.

8. Testimony at the hearing was stenographically recorded.

9. Applicant was represented at the hearing by Jason M. Hess, Esquire.

10. Joe Eisenhower, Applicant's Vice President of Development, appeared at the hearing and testified on behalf of Applicant.

11. The Township of East Lampeter was represented at the hearing by its Solicitor, Alexa Martin, Esquire.

12. The following persons completed Entry of Appearance forms and were recognized as parties to the hearing:

Chris King  
25 Meadow Lane  
Smoketown, PA 17576

Carolyn DeVerter  
2440 Old Philadelphia Pike  
P.O. Box 245  
Smoketown, PA 17576

Shirley Fritz  
2462 Old Philadelphia Pike  
Lancaster, PA 17602

Paige Marie Longenecker  
2478 Old Philadelphia Pike  
Lancaster, PA 17602

Dennis Riehl  
2494 Old Philadelphia Pike  
Smoketown, PA 17576

Les and Linda Baker  
2608 Old Philadelphia Pike  
Bird-in-Hand, PA 17505-9798

Brian A. Hawthorne  
199 Eastbrook Road  
Smoketown, PA 17576

Dan Habacivch  
2493 Impala Drive  
Ronks, PA 17572

Geraldine Whiteside  
200 Eastbrook Road  
Smoketown, PA 17576

Roger A. Glick  
2434 Old Philadelphia Pike  
Lancaster, PA 17602

Samuel A. Fisher  
180 Eastbrook Road  
Smoketown, PA 17576

Levi Stoltzfus  
2452 Old Philadelphia Pike  
Lancaster, PA 17602

Kathy Bootie  
3 Meadow Lane  
Smoketown, PA 17576

Bruce R. Deisinger  
7 Meadow Lane  
Smoketown, PA 17576

J. Ronald Braas  
66 Meadow Lane  
Smoketown, PA 17576

13. Applicant has requested: (i) a special exception pursuant to Section 375-18020.C.7 of the Zoning Ordinance; (ii) a variance

from the terms of Section 375-18030.A.5 of the Zoning Ordinance; and (iii) a variance from the terms of Section 375-18030.B.2.b of the Zoning Ordinance.

14. Section 375-18020.C.7 of the Zoning Ordinance states that, within the Village General (VG) District, multifamily dwellings are permitted by special exception, subject to the requirements set forth in Section 375-23490 of the Zoning Ordinance.

15. Section 375-18030.A.5 of the Zoning Ordinance states that the minimum lot size for multifamily dwellings shall be 3,500 square feet per unit.

16. Section 375-18030.B.2.b of the Zoning Ordinance states that the maximum front yard setback shall be 25 feet, as measured from the street right-of-way line.

17. The Property is comprised of two lots.

18. The lot known as 2498 Old Philadelphia Pike contains 0.96 acre and is improved with a single family dwelling. The second lot (adjacent to the lot known as 2498 Old Philadelphia Pike) is a flag lot containing approximately 8 acres and is used for agricultural purposes.

19. Applicant proposes to consolidate and join the two lots into one resultant lot containing approximately 8.96 acres (390,297 square feet), as more fully shown on the plans ("Plans") submitted

by Applicant. Upon consolidating and joining the two lots, the resultant lot will not be a flag lot.

20. Applicant proposes to construct upon the Property five 3-story apartment buildings, as shown on the Plans.

21. With regard to the location of the five apartment buildings on the Property, Applicant provided two plans, one which was described as an alternate plan with no buildings on the south side of the parking lot.

22. Three of the apartment buildings will each contain thirty apartment dwelling units. Two of the apartment buildings will each contain twenty-eight apartment dwelling units and recreational facilities.

23. The apartment buildings will thus contain a total of 148 apartment dwelling units.

24. Seventy-five of the apartments will be one-bedroom apartments.

25. Fifty-eight of the apartments will be two-bedroom apartments.

26. Fifteen of the apartments will be three-bedroom apartments.

27. Applicant testified that there is a need for smaller apartment units (for example, for seniors who have aged-out of their homes).

36. Applicant testified that it would be willing to provide a landscape screen around the perimeter of the Property. This can be further designed with Township input during the land development process.

37. Applicant testified that it would consider fencing of the project, which can be discussed with the Township during the land development process.

38. Applicant will provide open space and a walking path and will comply with all Township applicable requirements.

39. Access to the apartment community would be by way of Eastbrook Road, a state road, and must be approved by PennDOT.

40. Applicant stated that it will perform a traffic study during the land development review process. However, Applicant has spoken with a representative of PennDOT and believes left-out turning will be prohibited. Left-in, right-in and right-out may be permitted.

41. Applicant will remove the existing single family dwelling from the property known as 2498 Old Philadelphia Pike.

42. There is an existing 15 foot wide drainage easement across a portion of the Property, as shown on the Plans.

43. Protestants expressed concerns regarding, among other things, increases in traffic, increases in the population in the area surrounding the Property, and decreases in their property values and their privacy.

**II. CONCLUSIONS OF LAW**

A. REQUEST FOR VARIANCE FROM SECTION 375-18030.A.5 (AND SECTION 375-23490.D(1)(b))

1. Section 375-18030.A.5 of the Zoning Ordinance states that the minimum lot size for multifamily dwellings shall be 3,500 square feet per unit.

2. Section 375-23490.D(1)(b) of the Zoning Ordinance states that the minimum lot size for multifamily dwellings in the Village General (VG) District shall be 3,500 square feet.

3. The Property contains 390,297 square feet of area and Applicant's proposal of 148 apartment dwelling units requires a lot area of 518,000 square feet.

4. Applicant requires a variance from the terms of Section 375-18030.A.5 of the Zoning Ordinance and a variance from Section 375-23490.D(1)(b) of the Zoning Ordinance in order to construct 148 apartment dwelling units.

5. In order to qualify for a variance, an applicant must establish that: (i) an unnecessary hardship stemming from unique physical circumstances or conditions of the property will result if the variance is denied; (ii) because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (iii) the hardship has not been created by the

applicant; (iv) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (v) the variance sought is the minimum variance that will afford relief. Worthington v. Zoning Hearing Board of New Britain Township, \_\_\_\_\_ Pa. Commonwealth Ct. \_\_\_\_\_, 669 A.2d 497 (1996), citing Laurento v. v. Zoning Hearing Board of the Borough of West Chester, 162 Pa. Commonwealth Ct. 226, 638 A.2d 437 (1994).

6. The Court further noted in Laurento that in order for an applicant to demonstrate an unnecessary hardship, the applicant must prove that either:

(i) the physical characteristics of the property are such that it could not in any case be used for any permitted purpose or that it could only be arranged for such purposes at prohibitive expense, or

(ii) the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance . . . . The applicant must show that the hardship is unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on the entire district.

7. 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).

8. 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).

9. Applicant has cited Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998) in support of its variance requests. In Hertzberg, the Pennsylvania Supreme Court stated that the quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. "To justify the grant of a dimensional variance, courts 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 zoning requirements and the characteristics of the surrounding neighborhood." Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43, 50 (1998).

10. In Camp Ramah in the Poconos, Inc. v. Zoning Hearing Board of Worcester Township, 743 A.2d 1019 (Pa. Cmwlth. 2000), Commonwealth Court held that the applicant was not entitled to a setback variance under Hertzberg. Commonwealth Court clearly stated that even though Hertzberg reduced the standard for dimensional variances, standards still exist.

11. Dimensional variances are not "free fire zones" for which variances could be granted when the party seeking the variance has merely articulated a reason that it would be financially "hurt" if it could not do what it wanted to do with the property. Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. Ct. 2001).

12. When requesting a dimensional variance, the property owner is still required to prove an undue hardship or unnecessary hardship that is unique to the land. Society Created to Reduce Urban Blight v. Zoning Board of Adjustment of the City of Philadelphia, 771 A.2d 874 (Pa. Cmwlth. Ct. 2001); Yeager v. Zoning Hearing Board of the City of Allentown, 779 A.2d 595 (Pa. Cmwlth. Ct. 2001).

13. Applicant argued that the Property is subject to unnecessary hardship because of a 15 foot wide drainage easement located thereon. However, the Zoning Ordinance does not require that the area encompassed by the drainage easement be excluded from the total lot area used to calculate the number of permitted apartment dwelling units and, thus, has no impact on the number of potential units.

14. A variance is not necessary to allow reasonable use of the Property.

15. Applicant by special exception, can construct 111 apartment dwelling units on the Property.

16. The Property itself is not subject to unnecessary hardship.

17. Applicant has failed to demonstrate evidence sufficient to warrant the granting of the requested variances from Section 375-18030.A.5 of the Zoning Ordinance and Section 375-23490.D(1) (b) of the Zoning Ordinance.

18. Applicant also argued that these requested variances are de minimis in nature.

19. Commonwealth Court has specifically found the following not to be de minimis: 6% of minimum lot area was too large to be de minimis (Leonard v. Zoning Hearing Board of the City of Bethlehem, 136 Pa. Commonwealth Ct. 182, 583 A.2d 11 (1990)); a 9 foot variance from a 40 foot setback requirement for a satellite dish was too large to be de minimis (Hirsh v. Zoning Hearing Board of the Borough of Fox Chapel, 163 Pa. Commonwealth Ct. 296, 641 A.2d 32 (1994)); a variance of 20% from a requirement that a retaining wall not exceed 5 feet in height is not de minimis (Zoning Board of Adjustment of the City of Philadelphia v. Pasha, 118 Pa. Commonwealth Ct. 190, 544 A.2d 1101 (1988)).

20. Moreover, the Pennsylvania courts have, as a general matter, rejected the arguments of property owners who seek variances from dimensional requirements without establishing unnecessary hardship on the theory that the variance should be

granted because it will do no harm. Ottaviano v. Zoning Hearing Board of Adjustment of Philadelphia, 31 Pa. Cmwlth Ct. 366, 376 A.2d 286 (1977).

21. Applicant's lot size is 390,297 square feet.

22. Applicant's proposed lot size is approximately 24.6% below the required minimum required lot size.

23. Applicant's variance request cannot be considered a minor deviation from the zoning ordinance specifications.

B. REQUEST FOR VARIANCE FROM SECTION 375-18030.B.2.b

1. Section 375-18030.B.2.b of the Zoning Ordinance states that the maximum front yard setback shall be 25 feet, as measured from the street right-of-way line.

2. Applicant requires a variance from the terms of Section 375-18030.B.2.b of the Zoning Ordinance to construct the apartment dwelling units in excess of 25 feet from the street right-of-way line.

3. It is not reasonably possible for Applicant to comply with the maximum 25 foot front yard setback requirement.

4. Applicant has satisfied the requirements for a variance from the terms of Section 375-18030.B.2.b of the Zoning Ordinance.

C. REQUEST FOR SPECIAL EXCEPTION PURSUANT TO SECTION 375-18020.C.7

1. Section 375-18020.C.7 of the Zoning Ordinance states that, within the Village General (VG) District, multifamily dwellings are permitted by special exception, subject to the requirements set forth in Section 375-23490 of the Zoning Ordinance.

2. Applicant has requested a special exception pursuant to Section 375-18020.C.7 of the Zoning Ordinance, which is subject to compliance with the specific requirements set forth in Section 375-23490 of the Zoning Ordinance.

3. An applicant for a special exception bears the burden of presenting evidence that the proposed use is one allowed by special exception and that the proposed use complies with all of the objective requirements contained in the zoning ordinance. Abbey v. Zoning Hearing Board of East Stroudsburg Borough, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989); Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

4. Section 375-23490.D(1)(b) of the Zoning Ordinance states that the minimum lot size for multifamily dwellings in the Village General (VG) District shall be 3,500 square feet for a multifamily residential use.

5. Applicant's proposal fails to comply with the minimum lot size requirements set forth in Section 375-23490.D(1)(b) of the Zoning Ordinance and Applicant is failed to satisfy the

requirements for a variance from Section 375-23490.D(1)(b) of the Zoning Ordinance.

6. Applicant's proposal also fails to comply the minimum lot size requirements of Section 375-18030.A.5 of the Zoning Ordinance (which requires the same minimum lot size as Section 375-23490.D(1)(b) of the Zoning Ordinance) and Applicant has failed to satisfy the requirements for a variance from Section 375-23490.D.(1)(b) of the Zoning Ordinance.

7. Applicant has not satisfied the requirements for a special exception to construct 148 apartment dwelling units on the Property, and Applicant's request for a special exception to construct 148 apartment dwelling units is denied.

8. The Board, however, concludes that Applicant has presented evidence sufficient to warrant the granting of the special exception, provided Applicant limits the number of apartment dwelling units to a maximum of 111 apartment dwelling units, and the Board grants a special exception to construct a maximum of 111 apartment dwelling units.

10. "When, as here, an applicant for a [special exception] makes a *prima facie* case with respect to a provision of an ordinance, the application must be granted unless those opposing the application present sufficient evidence that the use would present a substantial threat to the community." Borough of

Perkasie v. Moulton Builders, Inc., 850 A.2d 778, 782 (Pa. Cmwlth. 2004).

11. Fears of neighboring residents and speculation of harm, without more, cannot sustain an objector's heavy burden; rather objectors must prove there is a high degree of probability that the proposed use will substantially affect the health and safety of the community. East Manchester Township Zoning Hearing Board v. Dallmeyer, 147 Pa. Commonwealth Ct. 671, 609 A.2d 604 (1992).

12. Concerning traffic increases: "speculative testimony from concerned neighbors fails to establish a 'high degree of probability' of specific detrimental consequences to the public welfare." Bailey v. Upper Southampton Township, 690 A.2d 1324, 1327 (Pa. Cmwlth. 1997).

### **III. DECISION**

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

(i) denies a variance from the terms of Section 375-18030.A.5 of the Zoning Ordinance and a variance from the terms of Section 375-23490D.(1)(b) of the Zoning Ordinance regarding required minimum lot size;

(ii) grants a variance from the terms of Section 375-18030.B.2.b of the Zoning Ordinance regarding maximum front yard setback;

(iii) denies a special exception pursuant to the terms of Section 18020.C.7 of the Zoning Ordinance to construct 148 apartment dwelling units; and

(iii) grants a special exception pursuant to Section 375-18020.C.7 of the Zoning Ordinance, provided the maximum number of apartment units is limited to 111.

The approvals 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 MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its application and the evidence presented to the Board at the hearing held on May 14, 2026.

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 in accordance with the applicable terms of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicant and its successors and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
\_\_\_\_\_  
J. Scott Enterline, Chairman

  
\_\_\_\_\_  
Jordan Good, Vice-Chairman

  
\_\_\_\_\_  
Edward R. Kennett, Member

Dated and filed June 11, 2026, after hearing held on May 14, 2026.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to June 12, 2026.

  
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