

**BEFORE THE ZONING HEARING BOARD**

**TOWNSHIP OF EAST LAMPETER**

IN RE: :  
: No. 2013-20  
APPLICATION OF DEBORAH S. HIGGINS :

**DECISION**

**I. FINDINGS OF FACT**

1. Applicant is Deborah S. Higgins, 2937 Lincoln Highway East, Gordonville, Pennsylvania 17529 ("Applicant").

2. The property which is the subject of the instant application is located at 2937 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the owner of the Property.

4. The Property is located in the Commercial District C-2 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 Revised Zoning Ordinance of East Lampeter Township - 1990 (the "Zoning Ordinance").

6. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on October 24, 2013.

7. Testimony at the hearing was stenographically recorded.

8. Applicant appeared personally at the hearing.

9. The Property is improved with a dwelling, a detached residential accessory building and a new detached residential accessory building (the "2013 Accessory Building").

10. Applicant obtained a permit to construct the 2013 Accessory Building at a height of 16 feet.

11. The 2013 Accessory Building as constructed is 22.5 feet in height.

12. Section 1205.1 of the Zoning Ordinance states that, within the Commercial District C-2, all buildings intended for residential use shall comply with the regulations in the Residential District R-3.

13. Section 1005.1 of the Zoning Ordinance provides that the maximum height for all accessory buildings within the Residential District R-3 shall be 20 feet.

14. Applicant requires a variance from the terms of Section 1205.1 and Section 1005.1 of the Zoning Ordinance.

15. The 2013 Accessory Building otherwise complies with the applicable requirements of the Zoning Ordinance.

16. No one appeared at the hearing 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. 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).

3. 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).

4. 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).

5. The location of existing structures warrant the granting of the variance requested.

6. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

7. Conditions must be attached to a 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 Deborah S. Higgins for a variance from the terms of Section 1205.1 and Section 1005.1 of the Zoning Ordinance in order to permit the 2103 Accessory Structure with a height of 22.5 feet. 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 hearing held on October 24, 2013.


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.

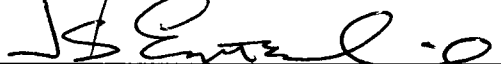
4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within three (3) months from the date this Decision and does not complete construction of the improvements, if any, so authorized and commence the use so authorized within twelve (12) months from the date of the zoning permit.

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

ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER

  
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David Petrisek, Chairman

  
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Walter Siderio, Secretary

  
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J. Scott Enterline, Alternate

Dated and filed November 14, 2013, after hearing held on  
October 24, 2013.

The undersigned certifies that a copy of this Decision was  
served upon all parties on or prior to November 15, 2013.

  
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