

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2017-6
APPLICATION OF STANLEY STAGG :
AND LENA STAGG :

DECISION

I. FINDINGS OF FACT

1. Applicants are Stanley Stagg and Lena Stagg, 103 Lilly Road, Honey Brook, Pennsylvania 19344 ("Applicants").
2. The property which is the subject of the instant application is 2802 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicants are the owners of the Property.
4. The Property is located in the VC - Village Commercial 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 various continuances, a public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on September 14, 2017.

7. Testimony at the hearing was stenographically recorded.

8. Applicants were represented at the hearing by Sheila O'Rourke, Esquire.

9. The Township was represented at the hearing by its solicitor, Stephen Kraybill, Esquire.

10. The Property contains approximately 23,958 square feet of area (0.55 acre).

11. The Property is improved with a building containing four (4) dwelling units and a garage building with an attached one unit dwelling.

12. The Township Zoning Officer issued an Enforcement Notice, dated April 18, 2017, regarding the multi-family use of the Property.

13. Applicants filed a timely appeal of the Enforcement Notice.

14. In the alternative, Applicants have requested: (i) a special exception pursuant to 19020.C.6 (and pursuant to Section 23490) of the Zoning Ordinance in order to use the Property as and for multi-family dwellings (five units); (ii) a variance from the terms of Section 23490.D.5 of the Zoning Ordinance to permit the multi-family dwelling units to be served by an on-lot well; and (iii) to the extent deemed necessary, a variance from the parking

space minimum size requirements set forth in Section 22160.C.2 of the Zoning Ordinance to permit three parking spaces 8' x 15' in size.

15. The Property complies with the minimum lot size requirement for Applicants' proposed five (5) unit multi-family use.

16. The Property exceeds the minimum lot width of 100 feet required by the Zoning Ordinance.

17. The multi-family dwelling units are served by public sanitary sewer.

18. With regard to sanitary sewer service, the Property requires and uses a grinder pump.

19. Because of issues regarding the potential capacity and capability of the existing grinder pump, Applicants agreed that there would be a maximum of seven (7) occupants on the Property at all times.

20. The Property complies with the required yard setbacks and lot coverage limitations of the Zoning Ordinance.

21. There are eight (8) parking spaces located upon the Property. However, three (3) of the existing parking spaces are undersized and do not comply with the current requirements of the Zoning Ordinance.

22. The parking spaces as currently provided are sufficient for Applicants' use.

23. The use as proposed will not cause undue traffic congestion or hazards.

24. The use as proposed will not be detrimental to the health, safety and welfare of the neighborhood.

25. The use as proposed will not adversely affect the general character of the neighborhood and/or property values of the adjacent uses.

26. No persons appeared in opposition to the application.

II. CONCLUSIONS OF LAW

1. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 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).

2. Section 19020.C.6 of the Zoning Ordinance states that multi-family dwellings are permitted in the VC - Village Commercial District subject to the terms of Section 23490.

3. With the exception of the requirements of Section 23490.D.5 of the Zoning Ordinance, Applicant has satisfied the requirements of Section 23490 for a special exception.

4. Applicants require a variance from the terms of Section 23490.D.5 of the Zoning Ordinance in order to use an on-lot well rather than public water service.

5. Also, it may be deemed that Applicants require a variance from the parking space minimum size requirements set forth in Section 22160.C.2 of the Zoning Ordinance to permit three parking spaces 8' x 15' in size.

6. 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.

7. 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).

8. 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).

9. 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).

10. The layout of the Property and the location of the existing structures and parking spaces warrants the granting of the variances requested.

11. The unnecessary hardship has not been created by the Applicants.

12. Applicants have presented evidence sufficient to establish that unnecessary hardship will result if the variances are not granted, that the grant of the proposed variances will not be contrary to the public interest, and that the variances requested are the minimum that will afford relief and will represent the least modification of the ordinance.

13. Conditions must be attached to a grant of the special exception and variances 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: (i) grants a special exception pursuant to 19020.C.6 (and pursuant to Section 23490) of the Zoning Ordinance in order to use the Property as and for multi-family dwellings (five units); (ii) grants a variance from the terms of Section 23490.D.5 of the Zoning Ordinance to permit the multi-family dwelling units to be served by an on-lot well; and (iii) to the extent deemed necessary, grants a variance from the parking space minimum size requirements set forth in Section 22160.C.2 of the Zoning Ordinance to permit three parking spaces 8 x 15 in size. Applicants' appeal of the Enforcement Notice issued by the Township Zoning Officer is deemed moot.

This special exception and variances 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.

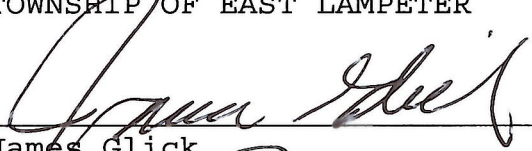
2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing held on September 14, 2017.

3. There shall be a maximum of seven (7) occupants on the Property.

4. 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.

5. The foregoing Decision shall be binding upon the Applicants and their heirs and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



James Glick



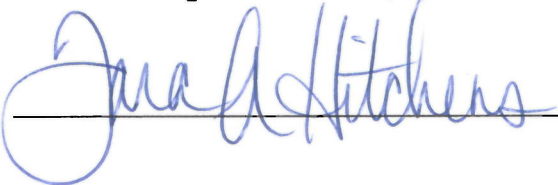
J. Scott Enterline



Lester Weaver

Dated and filed September 28, 2017, after hearing held on September 14, 2017.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to September 29, 2017.



Proposed conditions

1. The number of occupants on the Property shall be limited to seven occupants for as long as the current sewage grinder pump or a similar model is in use. If the grinder pump is upgraded to a pump with greater capacity, consistent with the Township Sewer Authority's specifications for a five-unit multi-family use, this condition shall be eliminated.
2. Applicants agree to install cooking facilities in the two apartment units that lack such facilities.