

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2017-23
APPLICATION OF LANCASTER :
ELECTRIC, INC. :

DECISION

I. FINDINGS OF FACT

1. Applicant is Lancaster Electric, Inc., 58 Pitney Road, Lancaster, Pennsylvania 17602 ("Applicant").
2. The property which is the subject of the instant application is 58 Pitney Road, Lancaster County, Pennsylvania (the "Property").
3. Applicant is a tenant upon the Property.
4. The owner of the Property is Pinnacle Premier Properties, LLC.
5. The Property is located within the C-1 Commercial District and partially within the Floodplain Overlay District as shown on the Official Zoning Map of East Lampeter Township.
6. Notice of the hearing on the 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").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on January 25, 2018.

8. Testimony at the hearing was stenographically recorded.

9. Andy Fletcher, Applicant's President, appeared at the hearings and testified on behalf of Applicant.

10. Applicant has requested:

(i) a variance from the terms of Section 21040.K.3 of the Zoning Ordinance;

(ii) a variance from the terms of Section 221040.J.2 of the Zoning Ordinance;

(iii) a special exception pursuant to Section 24030.A of the Zoning Ordinance; and

(iv) a variance from the terms of Section 25030 of the Zoning Ordinance.

11. Section 21040.K.3 of the Zoning Ordinance states in pertinent part that expansions or modifications of nonconforming uses or structures within the Floodplain District may not occupy more space within the Floodplain than was occupied on the effective date of the Zoning Ordinance.

12. Section 221040.J.2 of the Zoning Ordinance states in pertinent part that all uses or structures except those allowed in Section 21040.F and 21040.G of the Zoning Ordinance are prohibited in the Floodplain District.

13. Section 24030.A of the Zoning Ordinance sets forth general requirements for the expansion of nonconforming uses and structures.

14. Section 25030 of the Zoning Ordinance sets forth requirements for permits.

15. The Property contains approximately 4.126 acres.

16. Among other things, the Property is improved with a three-sided structure used by Applicant for the storage of bucket trucks and ladders.

17. The three-sided structure is a nonconforming use/structure within the Floodplain District.

18. The three-sided structure was originally 100 feet by 12 feet in size.

19. Without obtaining Township approval, Applicant constructed a 9 foot extension to the three-sided structure such that the current dimensions are 100 feet by 21 feet.

20. Applicant now desires to obtain approval for the extension.

21. The addition is made of the same materials and continues to include the entire open western exposure of 100 feet in length.

22. Applicant provided sufficient credible evidence that, provided the three-sided structure is not enclosed, the extension will have no impact on the existing FEMA floodplain.

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. 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. Applicant has presented 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.

4. Applicant is entitled to the variances requested.

5. With regard to Applicant's request for a special exception, to be entitled to a special exception, an applicant must bring the proposal within the specific requirements in the zoning ordinance. Act I, Inc. v. Zoning Hearing Board of Bushkill Township, 704 A.2d 732, 735 (Pa. Cmwlth. 1997).

6. An applicant for a special exception has the burden of persuasion as to the specific criteria and standards of the zoning ordinance. Shamah v. Hellam Township Zoning Hearing Board, 648 A.2d 1299 (Pa. Cmwlth. 1994); Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989).

7. Applicant has satisfied the standards for a special exception.

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 Lancaster Electric, Inc., for:

(i) a variance from the terms of Section 21040.K.3 of the Zoning Ordinance;

(ii) a variance from the terms of Section 221040.J.2 of the Zoning Ordinance;

(iii) a special exception pursuant to Section 24030.A of the Zoning Ordinance; and

(iv) a variance from the terms of Section 25030 of the Zoning Ordinance.

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 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 information and representations submitted with and contained in its application and the evidence presented to the Board at the hearing held on January 25, 2018.

3. The three-sided structure shall not be enclosed in an any manner.

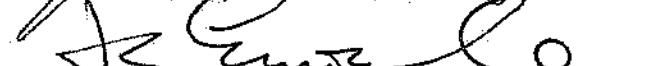
4. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

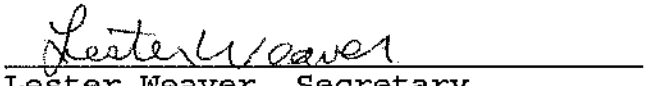
5. The approval granted by this Decision shall expire in accordance with the terms of Section 25060 of the Zoning Ordinance.

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

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER


James Glick, Chairman


J. Scott Enterline, Vice-Chairman


Lester Weaver, Secretary

Dated and filed February 8, 2018, after hearing held on January 25, 2018.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to February 9, 2018.

Jana R. Hitchens