

IN RE: : **BEFORE THE ZONING HEARING BOARD OF**
: **EAST HANOVER TOWNSHIP**
APPLICATION FOR VARIANCE OF :
RICHARD AND STACY GROVE : **HEARING: SEPTEMBER 14, 2022**
: **DECISION: SEPTEMBER 14, 2022**
No. 2022.01 : **WRITTEN DECISION MAILED:**
: **OCTOBER 7, 2022**

DECISION OF THE ZONING HEARING BOARD

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted an initial properly advertised and properly posted public hearing on September 14, 2022, commencing at 7:00 p.m., upon the Application for a Variance of Richard and Stacy Grove (collectively “Applicant”), with respect to the property which was the subject of a hearing, to wit: 147 Shirks Lane, Grantville, East Hanover Township, Dauphin County, 17028.

Notice of the hearing was published in *The Patriot News* on August 30, 2022, and September 6, 2022, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance (“Zoning Ordinance”). Additionally, in compliance with Article 14, Section 1412 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on September 1, 2022, on and about the tract of land which is the subject of the hearing. Written notice of the hearing was also mailed on August 25, 2022, by Jacey Knaub, East Hanover Township Zoning Officer to Applicant and the owners of each lot that are abutting or located immediately across from the subject property. Jacey Knaub, the East Hanover Township Zoning Officer, was present at the hearing and confirmed that the property was posted with the hearing notices, and she provided the written and mailed notices of the hearing to the property owners as identified in the Application for a variance.

A quorum of the Members of the Zoning Hearing Board, being the Chairman, Mark Stremmel, James Smith, and Smittie Brown were present throughout the hearing. The property owners, were present to provide testimony in support of the application for relief. Jacey Knaub, Zoning Officer, provided background at the hearing pertaining to the property. All witnesses offering testimony during the course of the hearing were duly sworn.

FINDINGS

The request for a variance submitted by Applicant includes a copy of a site drawing being a Stormwater Management Plan Showing As-Built Location of Foundation on the property in addition to other features such as wetlands, setbacks, proposed building construction locations and identification of setbacks including the encroachment for which relief is requested. Mr. and Mrs. Grove are the owners of the subject property being known as Tax Parcel No. 25-013-121 which is located in a Rural Agricultural District under Section 201(B) of the East Hanover Township Zoning Ordinance.

Mr. and Mrs. Grove purchased their property in 2020 and at or about July 2022 began construction of a single-family residence on the then vacant lot. The lot was excavated by Jake Louer Services for placement of required concrete footers and a crawl space. Applicant is constructing a single-family home having dimensions of approximately 76 ft. by 26 ft. 8 in. on a crawl space foundation together with a detached garage having dimensions of 24 ft. by 24 ft. The contractor hired to complete the home project is Blacks Home Sales, Inc. Applicant's property has a total area of approximately 1.08 acres.

Upon completion of the excavation, the location for placement of the concrete footers and crawl space was marked. The concrete footers and crawl space were erected by Peachey's Poured Walls, which was contracted by Black's Home Sales for this service. The footers and

concrete foundation were then installed. A foundation survey was then completed by Melham Associates, P.C. on or about August 5, 2022, as was required by the Applicant's lender. The foundation survey determined that the concrete footers and crawl space were not poured in the correct location in accordance with the home design plans but created one encroachment into the side yard setback on the western side of the property. Section 501.8.2 of the Zoning Ordinance requires a minimum yard setback of 20 ft. A small portion of the northwestern most corner of Applicant's foundation would encroach the setback by a distance of 2.51 ft. and therefore a variance will be required.

Applicant's home is proposed to be located on the northern portion of the lot with the detached two-car garage to be situated to the east in proximity to the home but setback a distance of 20 ft. from the easternmost side yard setback line. Applicant's property is subject to a unique shape and located on a cul-de-sac. Various wetlands and stormwater infiltration basement and easement are located on the southern portion of Applicant's property. Applicant is unable to move, relocate or modify the foundation of the home without substantial expense.

Applicant's property is bordered to the east and west by single-family residences. Behind Applicant's property to the south are wetlands and an open field. To the north of Property on the other side of the cul-de-sac to the north is a substantial area of farmland. In July 1999, a subdivision plan was recorded in Dauphin County Recorder of Deeds Office at Plan Book D, Volume 7, Page 76, which included Applicant's property and the lots abutting it to the east and the west. The original subdivision plan has been made a part of the record before the Board and identifies a 15 ft. side yard setback from the property line rather than the current 20 ft. standard.

DISCUSSION

It is evident from Applicant's plan and the testimony presented that the encroachment into the side yard setback is minor. It includes only a very small portion of the northwest corner

of the home, an encroachment of only 2.51 feet and a side yard setback of 17.49 ft. at its closest point to the western property line. The encroachment then reduces to the north and the south from the western property line creating a small triangle and an area of encroachment of only 6 sq. ft.

Applicant has confirmed that this encroachment shall not be increased as the primary structure to be built upon the foundation and crawl space shall likewise conform to the existing location of the foundation. The variance requested by Applicant is dimensional in nature rather than for use. Single-family residences are permitted uses within this zone. A dimensional variance involves a request to adjust the zoning regulations in order to use the property in a manner which is consistent with those regulations, whereas a use variance involves or requests the use of the property in such a manner that is wholly outside of or contrary to those zoning regulations. Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998).

As a general matter a variance may be granted only where there is an unnecessary hardship. Even when there is a finding of an unnecessary hardship, a variance may be granted if the Board finds where relevant that the standard set forth in Section 1411.D of the Zoning Ordinance have been met. When a reasonable dimensional adjustment of the Zoning Ordinance regulations, such as for a building setback with respect to a permitted use, as is the case of this application, being sought rather than that change of use, a lesser amount of proof is then required to establish hardship under the circumstances. See Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998). Multiple factors are considered in this analysis, including economic detriment to the Applicant and financial hardship created by the work necessary to bring the property into compliance with design requirements and characteristics of the surrounding neighborhood and the regulations.

The Board recognizes that for dimensional variances such as that now requested, Applicant is not required to show that the property at issue is valueless without the variance or that it cannot be used for any permitted purpose. Marshall v. City of Philadelphia, 93 A.3d 323 (Pa. 2014). Upon consideration of all the testimony and evidence presented, the Board is persuaded that the conditions are satisfied for purposes of granting the variance requested.

Section 1411.D.3.b of the Zoning Ordinance identifies the factors to be applied under the circumstances. These include unique physical circumstances or conditions, including irregularity and/or narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to this particular property. This Board recognizes that this property was part of a subdivision completed in 1997. At that time, the required setback was 15 ft. Thereafter, the Zoning Ordinance was changed in order to provide for the current setback requirements.

The Board finds however that there remain physical circumstances and conditions including the shape and location of this house. The shape does provide some limitations with regard to the available space located for a property.

The Board is persuaded circumstances existed beyond the control of the Applicants with regard to the placement of their home. Testimony indicates that the excavation which took place on the property was indeed completed in accordance with the required plans and design of the home. It appears that the discrepancy which occurred was inadvertent, due to the miscalculation of the foundation form locations in relation to the setback line. These actions however were taken by third party professionals engaged by the Applicant for purposes of construction of the home and raised a more than reasonable expectation that the location of such an important structure would be accurately completed.

The Board finds that the hardship created by the location of this foundation and crawl space presently was not created by the Applicant. Applicant is not able to relocate that foundation, modify it or make an adjustment to come into compliance with the ordinance without incurring substantial and prohibited expense.

The Board is persuaded and finds that the variance requested by Applicant from the side yard setback would also be considered *de minimis*. A *de minimis* variance is a requested dimensional change that is very small, such that it could be granted without proof of all the traditional requirements for a variance. Lench v. Zoning Board of Adjustment of City of Pittsburgh, 13 A.3d 576 (Pa. Cmwlth. 2011). The test for whether a variance is *de minimis* is if the relief sought is relatively small and strict compliance with the Zoning Ordinance provisions is not necessary in order to protect public policy concerns that may be addressed by that provision. Id. There is no hard and fast rule as to what amounts of a deviation can be considered *de minimis* and Pennsylvania courts have made it clear that the amount of deviation is not the sole criteria. Township of Middletown v. Zoning Hearing Board of Middletown Township, 682 A.2d 900 (Pa. Cmwlth. 1996). The Board is persuaded that these conditions likewise are satisfied.

There are single-family residences located on either side of Applicant's property are permanent structures which are likewise substantially set back from their respective common property lines with the Applicant's Property. Substantial space exists between these properties and the existing homes to allow adequate access and free movement in and about the property and between the homes even in the event of emergency situations. Furthermore, Applicant proposes to build no other structures related to the home within the minimum required setback area. Applicant's two-car detached garage shall be situated so as to be fully compliant with ordinance setback requirements for such a use.

Applicant has requested a variance from the side yard setback of 20 ft. to 15 ft. Such a deviation so generally described however the Board finds as not warranted. Applicant's encroachment into the setback is only 6 sq. ft. in area, triangular in shape, and at its closest point it is only 17.49 ft. to the westernmost side yard property line. In order to grant the minimum variance which will afford relief from the ordinance, the Board is persuaded it is appropriate and finds that a variance be granted only as needed for the 6 sq. ft. area of encroachment that has been identified by Applicant on the plans which have been submitted as part of their application.

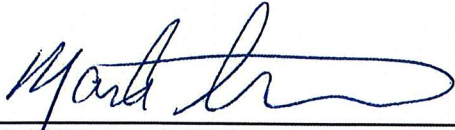
The Board further finds that the variance if authorized will not alter the essential character of this residential neighborhood or district where this property is located, nor will such a minor deviation from the setback requirement substantially or permanently impair the appropriate use or develop of adjacent properties. Thus, such variance will not be detrimental to the public welfare.

By reason of all the foregoing, the Board finds that Applicant's request for a variance is consistent with the purposes and intent of the East Hanover Township Zoning Ordinance and its comprehensive plan and, therefore, enters the following:

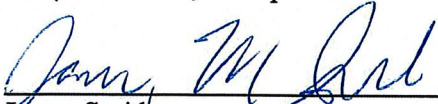
ORDER

AND NOW, this 14th day of September, 2022, upon consideration of the Application of Richard and Stacy Grove for a variance from the minimum side yard setback requirements of Section 501.A.2 of the East Hanover Township Zoning Ordinance, for the property located at 147 Shirks Lane, Grantville, PA, Tax Parcel No. 25-013-121, said Application is hereby GRANTED, on the condition that the western side yard setback be no less than 17.49 ft. and the encroachment be no greater than 6 sq. ft. as set forth on Applicant's Stormwater Management Plan Showing the As-Built Location of the Foundation.

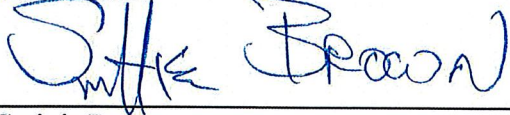
EAST HANOVER TOWNSHIP ZONING HEARING BOARD



Mark Stremmel, Chairperson



James Smith



Smittie Brown