

IN RE: : **BEFORE THE ZONING HEARING BOARD OF**
: **EAST HANOVER TOWNSHIP**
APPLICATION FOR VARIANCE OF :
KATELYN AND CARL WITMER : **HEARINGS: FEBRUARY 16, 2023 & MARCH 20,**
: **2023**
No. 2023.01 :
: **DECISION: MARCH 20, 2023**
: **WRITTEN DECISION MAILED: 5/4/2023**

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 February 16, 2023, commencing at 7:00 p.m., upon the Application for a Variance of Katelyn Witmer and Carl Witmer (collectively “Applicants”), with respect to the property, which was the subject of a hearing, to wit: **1011 Manada Gap Road, Grantville, East Hanover Township, Dauphin County, Pennsylvania, 17028** (“Property”). The hearing on the matter was continued to and completed on March 20, 2023, upon request of the Applicant.

Notice of the initial hearing was published in *The Patriot News* on January 31, 2023, and February 7, 2023, 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 February 2, 2023, on and about the tract of land which is the subject of the hearing. Written notice of the hearing was also mailed on February 27, 2023, 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 Chairman, Mark Stremmel, James Smith, and Shelly Fetterhoff, and Larry McCarter 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 subject property is located in a Rural Agricultural (RA) Zone along Manada Gap Road and is the second property to the east of the roadway intersection with Ridge Road. The property has a total area of 0.91 acres with a lot width of 200 ft. and a lot depth also of 200 ft. The property is abutted by various residential uses. Applicant Katelyn Witmer is an owner of the property which was acquired in approximately 2012.

A 28 ft. x 40 ft. single story, single-family ranch home is situated on the northeast corner of the property. A shed having dimensions of 11 ft. x 12 ft. is located to the rear of the home. Attached to the western side of the home is a carport having dimensions of 12 ft. 6 in. x 28 ft. The home and property are occupied as the primary residence of Applicants and their family.

Applicants have submitted the following exhibits which have been made a part of the record before the Board:

Applicant Exhibit No. 1 consists of various pole barn construction information; Applicants inquiries and communications with PennDOT; sight distance data requirements; construction estimates, septic system related and other information.

Applicant Exhibit No. 2 is a detailed site plan showing dimensions and location of all existing structures and driveway, setbacks, location of septic tank and drainfield, private well, wet land areas and elevation changes of the property.

Applicant Exhibit No. 3 is a "Line of Site" plan noting various sight distances along Manada Gap Road of and from the existing driveway in relation to the location of the home and the proposed garage.

Applicant Exhibit Nos. 4 – 12, inclusive, consist of a series of 29 photographs of the entire property. These photos provide views of and from: Manada Gap Road and Ridge Road intersection; rear yard slope; existing trees; area of proposed construction for the garage; properties along Ridge Road; front and rear carport elevations; southwest corner and wetland area of the property; and various views of the general back and side yards with existing slope conditions.

Applicants propose to construct a single-story 24 ft. x 40 ft. pole building having a height of 14 ft. 8 in. set back a distance of 10 ft. from the northern property line along Manada Gap Road and abut the existing driveway. Two-door access for vehicles shall be provided directly on to the existing driveway which will be accommodated with minor additional paving. A single side door on the south wall of the garage will be installed for pedestrian access. Applicants shall use the garage only for vehicles and storage of personal property.

Applicants' rear yard is subject to large wet areas and pooling of water. Large trees are located throughout the rear yard and also around the perimeter of the Property. The area of the Property located between the rear of the home and the rear property line is subject to a slope of 29 degrees and a drop in elevation of 20 ft.

The home is set back a distance of 41.5 ft. from Manada Gap Road. Manada Gap Road is a two-lane paved state roadway. The right-of-way for the road is 33 ft. in width but only paved to a

width of 24 ft. The right-of-way therefore extends onto Applicant's property a distance of 4 ft. 6 in. from the edge of the pavement, at which distance the ordinance setback requirements are applied.

A conventional on-lot sewage disposal system services Applicants' property together with a private well. The drainfield for this system consists of three (3) east-west drain line runs, each being 100 ft. in length, located generally parallel to Manada Gap Road but located to the west of the home in the side yard in an area where the slope commences.

Placement of the garage at a setback of 40 ft. from the road as required by the ordinance requires substantial fill and compaction to compensate for the slope. This will result in material additional construction costs in excess of \$16,900, plus costs of tree removal. Placement of the garage at the required setback line would also encroach upon the existing drainfield.

DISCUSSION

Zoning Ordinance Section 501.2 requires a minimum front yard setback of 40 ft. In addition, Section 503.A.3, pertaining to accessory structures and uses provides that the placement of such accessory structures and uses, such as Applicants' proposed garage, are not allowed within the minimum front yard setback area. Therefore, variances will be required.

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 only if the Board finds, where relevant, that the standards as set forth in Section 1411.D.3.b of the Zoning Ordinance have been met. It is Applicants burden of proof that an unnecessary hardship exists without injury to the public interest. Valleyview Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 452 A.2d 637 (1983).

When a reasonable dimensional adjustment of the Zoning Ordinance regulations, such as for a building setback with respect to a permitted use or in this case the front yard setback, is being sought rather than a change of a use, a lesser amount of proof is then required to establish hardship under the

circumstances being presented. See Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998). Multiple factors may be considered in this analysis, including economic detriment to the applicant, financial hardship created by the work necessary to bring the property in compliance with design requirements, and characteristics of the surrounding neighborhood.

The Board further recognizes that for dimensional variances such as that presently requested an 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 322 (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 variances requested.

Section 1411.D.3.b sets forth the standards for granting a variance. Although Applicant's Property is regular in shape (200 ft. x 200 ft.), the shape is only one factor that is considered. Exceptional topographical or other physical conditions may be taken into account. The Property is generally level between the roadway and the rear of the existing dwelling to a depth of approximately 70 feet. The area to the rear of the proposed location of the garage begins to change in elevation rendering the need for substantial amounts of fill should the garage be moved to the south. Beyond that point the placement of additional structures such as the proposed garage is substantially limited due to the significant change in elevation, slope, wet areas, location, and necessity of the drainfield.

The Board is persuaded that with placement of the garage in the rear of the property doing so would be impacted by the wet areas and require other protective measures from the elements. A driveway of more extensive length would be needed out of proportion to a lot of this size. Such access would also encroach upon and over the existing drainfield. The Board finds therefore that there are other physical conditions peculiar to this Property and that a hardship results from such conditions and not circumstances generally created by the Zoning Ordinance in this Rural Agricultural District and neighborhood.

Alteration of the physical conditions to accommodate the requirements of Zoning Ordinance sections 501.2 and 503.A.3 is prohibitive and costly. The Board finds that it is due to the physical conditions that the Property cannot be developed strictly in accordance with the Zoning Ordinance requirements. Therefore, relief is warranted in order to enable continued reasonable use of the Property for residential purposes. The Board further finds that such hardship has not been created by the Applicants, but by the imposition of the Zoning Ordinance requirements on the unique conditions of the Property.

Garages, pole barns and the like are common types of accessory structures associated with and in residential neighborhoods. Given the size, shape, style and proposed limited use of the Applicants' proposed garage, the Board is persuaded that the variance will not alter the essential residential character of this neighborhood.

Zoning Ordinance Section 1502 defines Setback Line as: "The line within a property defining the required minimum distance between any structure and the right-of-way or property line." Applicants have submitted PennDOT's preferred setback of 15 feet from the paved roadway edge as having no likely sight distance impact for placement of the garage. The Manada Gap Road right-of-way is 33 ft. wide but paved only a width of 24 ft. presently. The Board recognizes that the ability to extend or change placement of Manada Gap Road exists and to assure that the minimum variance is granted and maintained the setback be measured and no less than 11 ft. from the right-of-way line.

Pursuant to Zoning Ordinance Section 1411.D.3.c, when granting a variance, the Board is authorized to attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of the Ordinance. As a variance runs with the property and can apply to future owners of the property, the Board finds that such conditions are necessary under the circumstances and conditions presented to continue to assure the minimum variance is maintained for the public welfare.

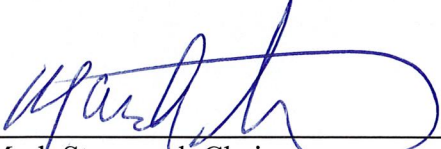
By reason of all the foregoing, the Board finds that Applicants' request for variances are consistent with the purposes and intent of the East Hanover Township Zoning Ordinance and its comprehensive plan and, therefore, enters the following:

ORDER

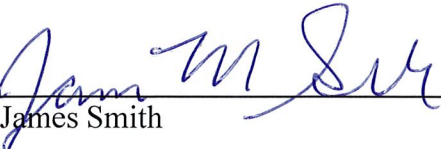
AND NOW, this 20th day of March, 2023, upon consideration of the Application of Katelyn Witmer and Carl Witmer for variances from the minimum front yard setback requirements of Section 501.2 and placement of accessory structures and uses within a front yard of Section 503.A.3 of Zoning Ordinance, for the property located at 1011 Manada Gap Road, Grantville, PA, 17028, being Dauphin County Tax Parcel No. 25-006-048, said Application is hereby GRANTED, subject to the following conditions:

1. Applicant's pole building garage shall be set back no less than a distance of 11 ft. from Manada Gap Road right-of-way line; and
2. The pole building garage shall be used only for the purpose of storage and vehicles.


EAST HANOVER TOWNSHIP ZONING HEARING BOARD



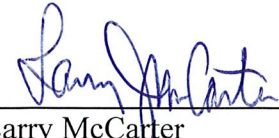
Mark Stremmel, Chairperson



James Smith



Shelly Fetterhoff



Larry McCarter