

IN RE: : **BEFORE THE ZONING HEARING BOARD**
: **OF EAST HANOVER TOWNSHIP**
APPLICATION FOR VARIANCE OF :
STEVEN AND AMANDA UNGER : **HEARING: December 29, 2014**
: **DECISION: December 29, 2014**
No. 2014.12 : **WRITTEN DECISION MAILED:**
: **February 10, 2015**
:

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 December 29, 2014, commencing at approximately 7:00 p.m., upon the Application for Variance of Steven Unger and Amanda Unger, with respect to the property which was the subject of the hearing, to wit: 1858 Blue Heron Lane, East Hanover Township, Palmyra, PA, 17078.

Notice of the hearing was published in *The Patriot News* on December 11, 2014, and December 18, 2014, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with Section 603.1.1 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on December 8, 2014, on and about the tract of land which is the subject of the hearing. Jackie Wilbern, the East Hanover Township Zoning Officer, was present at the hearing and confirmed that the property had been posted with the hearing notice. Furthermore, Ms. Wilbern confirmed that she had provided written and mailed notices on December 5, 2014, of the hearing to those property owners adjacent to the subject property as identified with the Application for Variance.

All members of the Zoning Hearing Board were present throughout the hearing. Property owner, Steven Unger, participated in the hearing individually together with his contractor, Marc Bankston of Stump's Quality Decks & Porches, LLC. Ronald Reeder, the Township Manager, and Jackie Wilbern, the Zoning Officer, both for East Hanover Township provided background at the hearing pertaining to the property. All witnesses offering testimony in the course of the hearing were duly sworn.

FINDINGS

The request for a variance submitted by the Applicants includes a copy of a plot plan for the subject property adopted from the Final Plan of Subdivision for "Bow Creek", as prepared by Keystone Custom Homes, Inc., ("Keystone") for Mr. and Mrs. Unger's lot identified by Keystone as Job No. BWs113. This plot plan details the location of Applicants' home, setbacks and location of the proposed deck and steps to be constructed in addition to other lot details. Two photographs marked Applicant Exhibit No. 1(A) and (B) depicting the rear of Applicants' home have been admitted as part of the record. Two computer generated images marked Applicant Exhibit No. 2(A) and (B) depicting Applicants' proposed deck have also been admitted as part of the record. A copy of a first floor plan of Applicants' constructed home has been made part of the record marked as Applicant Exhibit No. 3.

Mr. and Mrs. Unger purchased their two story single-family home from Keystone on or about December, 2011. The home is constructed in accordance with a design and style selected by the Applicants. When designing their home, Mr. and Mrs. Unger elected to increase the size of the garage in order to accommodate a third vehicle. The dwelling is centrally located on the property. The northwest corner of Applicants' home is set back a distance of approximately forty-seven (47') feet from the rear property line. The southwestern corner of Applicants' home

is set back a distance in excess of forty-seven (47') feet. The single-family dwelling has an area of 2,080 square feet. The total area of impervious coverage on Applicants' property, including the macadam driveway for the three car garage, is approximately 2,876 feet. This represents 24.3% of Applicants' entire lot which has a total area of 11,837 square feet.

Mr. and Mrs. Unger propose to construct a deck having dimensions of fourteen (14') feet by twenty (20') feet and an area of 280 square feet. Steps having an area of forty (40) square feet will be attached to the deck. The total addition onto applicants' home shall have a proposed area of 320 square feet. This addition will be constructed along the rear and western portion of the home. The northwestern corner of the deck upon completion shall be set back a distance of thirty-seven (37') feet from the western rear yard property line. The southwestern most corner of Applicants' deck shall be set back a distance of forty-one (41') feet from the western rear property line. Applicants also propose that the roof line of the house be extended over the entire deck to provide cover and shade. The deck however shall not be enclosed.

The adjoining properties to the north and south of the subject property consist of single-family residences. The terrain of Applicants' lot slopes to the west downward into a ravine which contains a creek. Further to the west of this ravine is a tree line beyond which is located a residential development. Located to the east and across Blue Heron Drive is a Bow Creek community common area, some parking areas and single-family residences.

According to testimony presented the home is constructed approximately four (4') feet above grade. As depicted on Applicants' Exhibit No. 1(A) and (B) there is a three (3') foot drop in elevation from the patio door to ground level in the rear of the home. Temporary steps have been built by the Applicants in order to provide access to a patio door. Applicants' lot is slightly sloped toward the south and west which directs water runoff into a ten (10') foot wide drainage

easement. Applicants propose to build their deck on the flatter area of the lot at the northern end of the home. There are no other structures located on the property. Applicants therefore propose to increase lot coverage by 2.7% which increases the a total lot impervious surface coverage to 27% which exceeds the maximum lot coverage allowed of 20% by Section 202.5 Design Requirements of the Zoning Ordinance. Therefore, a variance shall be required.

DISCUSSION

Prior to adoption of the present East Hanover Township Zoning Ordinance on April 1, 2003, the area of land where the Bow Creek Subdivision and the subject property are located was designated as a Residential/Agricultural Zone and required a rear yard setback of only twenty-five (25') feet. The preliminary plan for the Bow Creek Residential Development had been approved for future residential use by the Planning Commission and the Township Board of Supervisors prior to the adoption of the present Zoning Ordinance. As a result, the owner of the land and the builder possess the ability to construct the dwellings upon lots within the development which would be located no closer than twenty-five (25') feet to the rear property lines of each lot.

Furthermore, prior to adoption of the present East Hanover Township Zoning Ordinance a maximum lot coverage for impervious surfaces and structures of forty (40%) percent was permitted within this Residential/Agricultural Zone. Therefore, the prior owner/developer and builder possessed the ability to construct dwellings and impervious surfaces upon the lot within the Bow Creek Development cumulatively not to exceed a lot coverage of forty (40%) percent.

Upon adoption of the present Zoning Ordinance, the zoning designation and use requirements for the subject property were modified to that of Residential Medium Density ("RMD") under Section 202 of the Zoning Ordinance. The design standards for the RMD Zone

their garage being aware that lot coverage would exceed ordinance requirements after purchase of the property

It has been the position of the Township and Zoning Officer based upon the advice of respective solicitors that the dwellings constructed by Keystone can lawfully be constructed having a rear setback not to exceed twenty-five (25') feet and a maximum lot coverage of forty (40%) percent in accordance with the previously approved subdivision plan and view of the fact that the preliminary plans for this development had been initially approved in accordance with standards of the pre-existing zoning ordinance. However, upon completion and sale of a finished home to a new owner, and including the subject property, the protections afforded to the prior owner/developer/builder ended and any subsequent extensions or expansions of the constructed dwelling and impervious surfaces are required to comply with the present requirements of the zoning ordinance. Therefore, the rear setback of forty (40') feet and maximum lot coverage of twenty (20%) percent is applicable in this case with regard to the proposed installation of a deck, steps and roof.

Under the circumstances presented, although Mr. and Mrs. Unger's home is situated on the central portion of the lot, this lot is large enough to accommodate the forty (40') foot rear yard setback and maximum lot coverage of twenty (20%) percent required by the ordinance. Although the dwelling as built encroached upon the current ordinance requirements by 4.3%, Mr. and Mrs. Unger cannot take advantage of any further encroachments without a variance from the current ordinance requirements.

The Board is not persuaded that the property is subject to unusual and unique physical circumstances and conditions including irregularity of shape of the lot. The lot also is only subject to some slight slopes. The physical conditions of Applicants' lot are not dissimilar to

those of typical properties within this community. The Board is therefore not persuaded that a hardship is present to warrant granting the variance to the extent requested by the Applicants.

In addition to the lack of unique physical circumstances and conditions concerning the property, sufficient evidence has not been provided that the remaining requirements of Section 604.4 of the Ordinance have been met. Because there are no unique or dissimilar physical circumstances and conditions concerning Applicants' property, or other hardship, the Board is not persuaded that there is no possibility the property cannot be developed in strict conformity with the provisions of the Zoning Ordinance without installation of the size of deck as proposed by Applicants as being necessary to enable reasonable use of the property. The home is and can continue to be used for residential purposes for which it was intended and built. The rear yard can still be functional for outdoor activities for example with seating and a patio enhanced by use of impervious materials. Even though there is no other side yard access to the premises, ingress and egress from the home can be accommodated through steps and a landing area with respect to the existing patio door.

Of further concern to the Board is that the minimum variance would be granted under the circumstances and be maintained. Applicants have proposed a substantial deviation from the ordinance impervious coverage requirements. It is evident to the Board that Applicants' constructed steps are temporary to provide interim access directly to the home. The Board is not unmindful of a need for appropriate access through the rear of the home which can be provided by proper but minimal steps. A reduction in the size of the deck likewise eliminates the encroachment on the rear yard setback and need for a variance. The Board finds that the allowance of a variance not to exceed fifty (50) additional square feet in order to accommodate this access would be *de minimis* in nature and warranted.

The Board is not persuaded that the variance requested has not been created by the Applicants. In addition to testimony concerning Applicants' awareness of the lot coverage and setback requirements, the plot plan of the subject property submitted as part of the Variance Application notes not only the twenty-five (25') foot rear yard setback in effect prior to the sale of the property to Mr. and Mrs. Unger, but also the setback requirement of forty (40') feet that would be in place post-sale. Despite being aware of these requirements, Applicants constructed a third bay onto the garage having an area of approximately 120 square feet and correspondingly increased the size of the macadam driveway and impervious lot coverage in lieu of the deck.

Based upon all the foregoing, the Board is persuaded that the proposed deck to be constructed of 320 square feet shall be a substantial increase above the current lot coverage requirements to twenty-seven (27%) percent and reduction of rear yard setback requirements to thirty-seven (37') feet. The Board cannot find due to the size, shape and location of the proposed deck that its installation would not alter the essential character of the zoning neighborhood in which this property is located and not substantially or permanently impair the appropriate use or development of adjacent properties particularly with respect to the increased lot coverage. Absent sufficient evidence to demonstrate that all of the requirements of Section 604.4 of the Zoning Ordinance have been met to grant a variance for the size of addition proposed by Applicants, the Board finds that such request as presented must be denied. However, the Board is persuaded that a variance of fifty (50) square feet to accommodate proper access to and from the existing home is *de minimis*.

ORDER

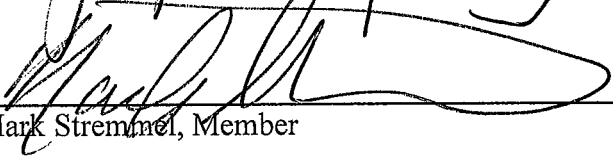
For the reasons previously set forth, Applicants request for a variance from the maximum lot coverage requirements of Section 202.5 of the Zoning Ordinance to construct a deck with a

gable roof having an area of 320 square feet, and a rear yard setback of thirty-seven (37) feet on the property located at 1851 Blue Heron Lane, Palmyra, Pennsylvania, being Dauphin County Tax Parcel No. 25-016-167 is denied. However, a *de minimis* variance is granted of a total area of fifty (50) square feet to allow Applicants to construct appropriate steps and a landing area to enable ingress and egress to the dwelling from the rear patio door.

ZONING HEARING BOARD, EAST HANOVER TOWNSHIP



JoLynn M. Stoy, Chairperson



Mark Stremmel, Member

Kenneth Wolensky, Member

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