

IN RE:	:	BEFORE THE ZONING HEARING BOARD
	:	OF EAST HANOVER TOWNSHIP
APPLICATION FOR VARIANCES OF	:	
BRIAN AND LOUISE HEERE	:	HEARING: March 20, 2017
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NO 2017-02	:	DECISION: March 20, 2017
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	:	WRITTEN DECISION MAILED: May 4, 2017
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DECISION OF THE ZONING HEARING BOARD

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted a properly-advertised and posted public Hearing on March 20, 2017, commencing at 7:00 p.m., upon the Application for Variances of Brian and Louise Heere with respect to their property which was the subject of the Hearing: 550 Firehouse Road, Grantville, East Hanover Township, Pennsylvania.

Notice of the Hearing was published in The Sun on March 2, 2017 and March 9, 2017 in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with §603.1.1 of the Zoning Ordinance, written notice of the Hearing was conspicuously posted 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 a Hearing Notice. In addition, Ms. Wilbern confirmed that she had provided written and mailed Notices of the Hearing to the property owners adjacent to the subject property as identified with the Application for Variance.

The members of the Zoning Hearing Board were present throughout the Hearing. The property owners, Brian and Louise Heere, participated in the Hearing. Jackie Wilbern, the Township Zoning Hearing Officer for East Hanover Township, was present and provided testimony pertaining to the property which was the subject of the Hearing. The applicants and the Zoning Officer were sworn and offered testimony in the course of the Hearing.

FINDINGS AND DISCUSSION

A copy of the Plot Plan for the subject property adapted from the Foundation Plan prepared by Keystone Custom Homes, Inc. for the home owned by Mr. and Mrs. Heere was submitted as part of the record and Mr. and Mrs. Heere's Application for Variance. It was marked as Exhibit 3. Additional exhibits consisting of photographs of the rear patio which is the subject of the Request for Variances were also submitted as Exhibits as part of the Appellants' Application for Variance (Exhibit 3). Finally, Google Earth overhead views of the Applicant's property were submitted as Exhibits 4 and 4A.

Mr. and Mrs. Heere purchased the home as constructed on June 28, 2016. They continue to use this home as their primary residence. The home is located at 1801 Silver Leaf Lane, Palmyra, East Hanover Township. The home is centered on the property. The shape of the lot is essentially square. It faces Silver Leaf Lane.

Based on a misunderstanding with the contractor retained by the Heeres to build the patio, the patio was actually constructed without a necessary permit from East Hanover Township. Thus, as seen in the exhibits, the patio extension is already installed at the Heeres' property.

Although information on the Applicant's application suggested that the patio was 540 square feet, leading to 22% impervious coverage, testimony at the Hearing established that the square footage of the patio was actually 384 square feet and that the correct percentage of impervious coverage was 21.1%.

With respect to the rear setback, the patio as installed is 33 feet from the rear property line whereas, prior to its installation, the rear of the applicant's home was 39 feet from the rear property line.

As the patio installed at the Heere's property exceeds both the maximum lot coverage and rear setback requirements of the Ordinance, a variance will be required.

Prior to the 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 provided a maximum lot coverage by impervious surfaces and structures of forty percent (40%). The preliminary plan for the applicant's 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 dwellings upon lots within the development and related impervious surfaces which cumulatively would provide a lot coverage not to exceed forty percent (40%). In addition to this lot coverage requirement, a rear yard setback of only twenty-five (25) feet was required within this former Residential/Agricultural Zone. Both the landowner and the builder possess the ability to construct dwellings upon the lots within this development which would be located no closer than twenty-five (25) feet to the rear property lines of each lot.

As of the adoption of the present Zoning Ordinance, the zoning designation and use requirements for the subject property were re-designated to that of Residential Medium Density ("RMD") under §202 of the Zoning Ordinance. The design standards for this Zone as set forth in §202.5 are that all single family dwellings without both public sewer and water are subject to a maximum lot coverage of twenty percent (20%) and a rear yard setback of forty (40) feet. The Heere's property is served by public sewer and private water, the same as other dwellings within this residential development. Therefore, the Heeres' home was originally authorized to

be constructed and provide a lot coverage not to exceed forty percent (40%) inclusive of all structures, walkways, driveways, decks and other impervious surfaces upon the property and that the home was to be constructed no closer than twenty-five (25) feet from the rear property line of this lot.

Upon examination of the plan attached to the application, it appears that the northernmost portion of the concrete patio addition is set back a distance of thirty-three (33) feet at its closest point to the rear property line. Prior to the construction of the patio, the rear setback distance was thirty-nine (39) feet.

With respect to the coverage of the patio, it was originally calculated to cover five hundred and forty (540) square feet. Testimony at the Hearing established that that calculation was in error and that the accurate square footage of the patio was three hundred and eighty-four (384) square feet. This correction reduced the percentage of impervious lot coverage from approximately twenty-two percent (22%) to approximately twenty-one point one percent (21.1%).

Applicant's patio appears to be of the size, construction, character and appearance compatible to other patios which are located within this residential neighborhood. Mr. and Mrs. Heere testified that this additional space is reasonable for use in order to provide for a grill, a table, chairs and other outdoor furniture as would typically be associated with a residential use. No roof or other structure enclosing the patio exists.

Under the circumstances presented, Mr. and Mrs. Heere do not have the opportunity to direct the placement of their home at either a different location or orientation on the property.

The Zoning Hearing Board is persuaded that the property is subject to unusual and unique physical circumstances and conditions. Most of the homes within this area have been built by Keystone Homes but not all of the neighboring homes have attached patios. Given the existing conditions of the lot, use of the property with a patio has been maximized. The Board

finds that due to the physical circumstances and conditions that a hardship is present with respect to the Applicants' need for reasonable use of their property to the rear of their dwelling.

The un-contradicted testimony on behalf of the Applicants indicates they were not aware, nor made aware of by their Sellers, until after they acquired their home and after the installed the patio that this Lot was subject to a maximum lot coverage requirement of twenty percent (20%) and a rear setback of forty (40) feet. Indeed, they testified and the Board accepted their testimony that they believe the builder of the patio had obtained the necessary permits to construct the patio.

The Board concludes that there does exist some hardship to the property owners which affects their full and reasonable utilization of the property. The Board further concludes that Mr. and Mrs. Heere did not intentionally create this hardship. The construction of a patio is not an unusual addition for a home in a completely residential neighborhood and it is a use which promotes and enhances outdoor activities and overall use of the property.

In order to grant a Variance, Applicants must meet their burden of proof with regard to the elements set forth in §604.4 of the Zoning Ordinance where relevant. One of those conditions is that the Variance, if authorized, represents the minimum Variance that will afford relief and the least modification possible of the regulation at issue. Applicant's patio reduces the rear setback from thirty nine (39) feet to thirty three (33) feet. The Board finds this to be a minimum encroachment on the rear setback in order to create the patio.

Applicants have requested an increase in the lot coverage area by 384 square feet. This will represent an increase of approximately one percent (1%) over the existing lot coverage. The Board is persuaded based upon all of the foregoing that this is a nominal increase above the lot coverage that existed at the date of acquisition of the property.

The Board further finds that due to the size, shape and location of the patio, the essentially residential character of the neighborhood in which this property is located will not be altered. Since no objection from any potentially interested neighbors or others has been made,

after notice being duly published, a limited variance will be granted to the Applicants from the setback and minimum lot coverage requirements.

DECISION

For the reasons previously set forth, the East Hanover Township Zoning Hearing Board does hereby **GRANT** the Applicants' request for a variance from the maximum lot coverage and rear setback requirements of §202.5 of the Zoning Ordinance in order to maintain a patio subject to the following conditions:

- (1) Applicants shall retain a rear setback of no less than thirty-three (33) feet from the northern most rear property line;
- (2) The Applicant's patio shall not exceed its existing 384 square feet.

**ZONING HEARING BOARD
EAST HANOVER TOWNSHIP**

By: _____


Jolynn M. Stoy, Chairperson

By: _____

Shirley K. Allison, Member

By: _____

Mark Stremmel, Member

:859898

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