

**BEFORE THE ZONING HEARING BOARD
THORNBURY TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

OPINION OF THE ZONING HEARING BOARD

Re: Appeal 1-2018 – Appeal of Michael and Mary Phillips for a variance under Chapter 27, Section 27-503 in order to remove the existing detached one (1) car garage and construct a new attached two (2) car garage and breezeway at their residence with a side yard of twenty-four (24') feet and an aggregate side yard of ninety-four (94') feet where the minimum side yard required is forty-five (45') feet with an aggregate of one hundred (100') feet under Sections 27-503.4, and impervious coverage of eighteen and two tenths (18.2%) percent where a maximum of fifteen (15%) percent is allowed under 27-503.3 The applicant's property is located at 26 Natalie Road, Thornton, Pa in the R-2 Residential Zoning District of Thornbury Township, Delaware County, Pennsylvania.

A hearing was conducted on March 5, 2018 at Thornbury Township. Scott Cannon, George Morley and Vincent Iannello, alternate, attended and participated in this decision. The Applicant appeared on his behalf. James Raith, Michael Bradley, Leonard Miscannon and Josh Kleinhouse appeared as neighbors and testified.

The following exhibits were admitted into the record:

- T-1 Proof of Publication
- T-2 Proof of Posting
- A-1 Application and Appeal

FINDINGS OF FACT

1. Applicants, Michael and Mary Phillips are the owners of a property located at 26 Natalie Road, Thornton, Pa 19373 (hereinafter "the Property").
2. The Property is located in the R-2 Residential Zoning District of Thornbury Township, Delaware County.

3. The Property contains approximately thirty-eight hundredths (.38) of an acre more or less.

4. The Property is a pre-existing non-conforming lot, particularly with respect to the following: 1. lot area requirement – lot nineteen thousand four hundred forty-three (19,443 sq. ft.) square feet where sixty thousand (60,000 sq. ft.) square feet is required; 2. lot coverage – the Property has seventeen and four tenths (17.4%) percent impervious coverage where fifteen (15%) percent is allowed; 3. side-yard setback requirements right yard seventy (70') feet, left yard twenty-four (24') feet, aggregate ninety-four (94') feet, where a minimum of forty-five (45') feet on either side and an aggregate of one hundred (100') feet is required.

5. The Property is conforming with respect to all other requirements of the Zoning Ordinance, particularly the use as a single-family dwelling.

6. The Property is developed with a single-family home and one (1) car detached garage. The home has approximately one thousand, six hundred sixty-four (1,664 sq. ft.) square feet of floor space and the garage is two hundred sixty-three (263 sq. ft.) square feet.

7. The Property is located in the area of the Brinton Lake Community (Colony of Brinton Co-operative Community) of Thornbury Township and the construction and development of the Property preceded adoption of the Zoning Ordinance.

8. The Applicants propose to demolish the existing one (1) story two hundred sixty-three (263 sq. ft.) square foot detached garage and construct a new two (2) car six hundred sixty (660 sq. ft.) square foot one (1) story attached garage and breezeway. In addition, the new garage will have an A-Frame roof and the rafters will be used for storage.

9. The garage addition would be attached to the existing house by a breeze way.

10. The Applicant has requested a variance from the requirements of Chapter 503.E of the Zoning Ordinance to request relief for the side yard encroachment and additional impervious coverage resulting from the proposed construction.

11. The proposed garage will increase the existing impervious coverage on the lot from seventeen and four tenths (17.4%) percent to eighteen and two tenths (18.2%) percent.

12. The side yard where the garage is located will be reduced from twenty-six and five tenths (26.5') feet to twenty-four (24') feet. However, because a detached garage is an accessory structure, it is permitted to be located twenty-five (25') feet from the side boundary line.

13. The Applicant requires a variance to account for the encroachment into the side yard resulting from the proposed construction and for the additional eight tenths (.8%) percent impervious coverage.

14. The existing structure is a pre-existing non-conforming structure and lot.

15. Several neighbors came forward in support of the proposed project and acknowledged that if permitted, it would not have an adverse impact on the health, safety, or welfare of the neighborhood.

DISCUSSION

This matter reaches the Zoning Hearing Board as a result of the appeal of the Zoning Officer's denial of the application for a Zoning Permit in order to construct a two (2) car garage to be attached to their existing house by a breezeway. The Applicants seek a variance under Chapter 27-503.E of the Township Zoning Ordinance. The Applicants applied for and were denied a Zoning Permit by the Township Zoning Officer.

The Applicant has requested authority from the Zoning Hearing Board to construct a two (2) car garage which will be located approximately twenty-four (24') feet from the property line and increase the existing impervious coverage on the lot from seventeen and four tenths (17.4%) percent to eighteen and two tenths (18.2%) percent. The Board had determined that this must be reviewed and determined for the grant of a variance.

In order to be entitled to a variance, a property owner must meet the requirements of Section 910.2 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. Section 10910.2. In summary, Section 910.2 contains the following standards for the grant of a variance: unique physical circumstances peculiar to the subject property which create an unnecessary hardship to the property; such physical circumstances prevent development of the property in strict conformity with the provisions of the Zoning Ordinance; the hardship is not self-created; the variance, if authorized, will not substantially impair neighboring properties or otherwise detract from

the public welfare; and the variance is the minimum to afford relief.

The reasons for granting a variance must be substantial, serious and compelling. A party seeking a variance bears the burden of proving that (i) unnecessary hardship will result if the variance is denied, and (ii) the proposed use will not be contrary to the public interest. Valley View Civic Association v. Philadelphia ZBA, 501 Pa. 550, 462 A.2d 637 (1983). However, we note, that a variance from the setback requirements is a dimensional variance. The Pennsylvania Supreme Court has recently held that applications for dimensional variances should be viewed with more tolerance than applications for use variances. In Hertzberg v. Pittsburgh ZBA, 721 A.2d 43 (Pa. 1998), the Supreme Court stated as follows: "When seeking a dimensional variance for the permitted use, the owner is only asking for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance... We now hold that in determining whether unnecessary hardship has been established, the court should examine whether the variance sought is use or dimensional. To justify dimensional variance, the court may consider multiple factors, including economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.

The Zoning Hearing Board is satisfied that the Applicants have met the requirements for a variance under the facts and conditions of this application. The Property is a pre-existing non-conforming lot, particularly with respect to the following:

1. lot area requirement – lot nineteen thousand four hundred forty-three (19,443 sq. ft.) square feet where sixty thousand (60,000 sq. ft.) square feet is required; 2. lot coverage – the Property has seventeen and four tenths (17.4%) percent impervious coverage where fifteen (15%) percent is allowed; 3. side-yard setback requirements right yard seventy (70') feet, left yard twenty-four (24') feet, aggregate ninety-four (94') feet where a minimum of forty-five (45') feet on either side and an aggregate of one hundred (100') feet is required. The Applicant proposes constructing the garage addition so that it is no less than twenty-four (24') feet from the western side yard boundary. The impervious coverage will increase from seventeen and four tenths (17.4%) percent to eighteen and two tenths (18.2%) percent. The construction of the addition is not practical to be performed anywhere else on the lot and does not create any other non-conformity. We find that the non-conforming structure together with the non-conforming lot, location, and placement of the existing structure, constitutes a hardship, which justifies the grant of the variance requested.

Furthermore, the cost of building an addition which would conform to the Zoning Ordinance with respect to the side yard boundary, would be prohibitive and result in a financial hardship to the Applicants. The grant of a variance will not have any adverse effects on the neighborhood, will not cause a detriment to the Township, nor interfere with the existing zoning regulations. Upon motion of the Zoning Hearing Board by George Morley and seconded by Vincent Iannello, the Board voted unanimously to grant a variance to the Applicants.

CONCLUSIONS OF LAW

1. The Applicants have demonstrated that there are no detrimental effects to the surrounding properties or neighborhood by the grant of this variance.

2. The Applicants have demonstrated that there is hardship caused by the pre-existing non-conforming structure.

3. The Applicants have modified the conditions required for a grant of a dimensional variance.



Order

AND NOW, this 9th day of April, 2018, a variance under Chapter 27-503.E of the Thornbury Township Zoning Ordinance is hereby granted to the Applicants in order to permit them to construct the proposed two (2) car garage and breezeway, as follows:

A variance is granted to permit the building of a two (2) car attached garage addition to be located in the western side to the rear of the house approximately twenty-four (24') feet from the western boundary; and a variance to permit the impervious coverage to increase from seventeen and four tenths (17.4%) percent to eighteen and two tenths (18.2%) percent.

The variance herein granted is expressly subject to the Applicants compliance with the following conditions:

- (a) The Applicants must obtain all necessary building permits and approvals before beginning construction of the addition;
- (b) The addition must be constructed in substantial conformity with the evidence presented to the Zoning Hearing Board in this matter.

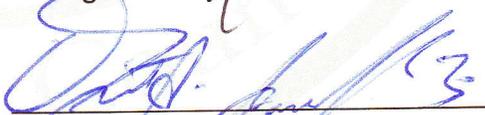
BY THE BOARD:



Scott Cannon



George Morley



Vincent Iannello, Esquire