

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

OPINION OF THE ZONING HEARING BOARD

Re: Appeal 3-2018 – Appeal of Henry & Leanne Blair for a special exception or variance under Chapter 27, Section 2101(E) & (H) in order to permit construction of a two-story (2) addition to the home and related improvements on the property which is a preexisting non-conforming structure, where no expansion in excess of twenty-five (25%) percent permitted and the property is listed on the Township’s Historic Resource Inventory. In addition, a variance from Chapter 27, Section 403.4, front yard, is requested to locate the addition within the required front yard where a minimum of eighty-five (85’) feet is required. The property is located at 496 Thornton Road, Cheyney, PA, in the R-1 Residential District of Thornbury Township, Delaware County, Pennsylvania.

A hearing was conducted on August 6, 2018 at Thornbury Township. J. Robert Haines, Chairman, Scott Cannon, George Morley attended and participated in this decision.

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, Henry & Leanne Blair are the owners of a property located at 496 Thornton Road, Cheyney, PA 19319 (hereinafter “the Property”).
2. The Property is located in the R-1 Residential Zoning District of Thornbury Township Delaware County.
3. The Property contains approximately two and ninety-two hundredths (2.92) acres more or less.

4. The Property is developed with a single-family home and detached garage. The home has approximately one thousand seven hundred thirty-six (1,736 sq. f.) square feet of floor space, two (2) stories with three (3) bedrooms, one (1) bath, kitchen, living room, dining room and mud room.

5. The house was constructed around 1850 and the Property is listed in the Thornbury Township Historical Resource Inventory.

6. An addition and deck have been added to the historic residence, but they are not considered to be of historic significance.

7. The Property, however, is permitted to be developed and modified.

8. The Property is a pre-existing, non-conforming structure with a front yard of fourteen (14') feet, where eighty-five (85') feet is required.

9. The Property is conforming with respect to all other requirements of the zoning ordinance.

10. The Applicants proposed to remove the existing four hundred eighty-four (484 sq. f.) square foot non-historic addition, seven hundred forty-two square foot existing deck, and two hundred twenty-two (222 sq. f.) square foot of existing hardscape and construct a two (2) story one thousand seven hundred fifty-one (1,751 sq. f.) square foot addition, a nine hundred ninety-six (996 sq. f.) square foot deck for a total dwelling of three thousand eight-nine (3,089 sq. f.) square foot home with four (4) bedrooms, three and one-half (3.5) baths.

11. The addition would be constructed to the rear of the historic structure and would not create further non-conformity or incursion into the front yard.

12. The Applicants have children. Applicant Henry Blair's mother is unwell and currently resides with his niece, a minor. His mother is no longer able to live independently and will move into the house along with the niece who will be adopted.

13. The Applicants have requested a variance under Chapter 27 Section 403.4 to construct the addition and a special exception under Chapter 27 Section 2101(H) in order to construct the proposed addition.

14. The Applicants proposed using the existing driveway to access the garage, which will be connected to the addition and attached to the house.

15. The existing structure is a pre-existing non-conforming structure with respect to the western boundary

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) story addition to their house with a two (2) car garage. The Applicants seek a variance under Chapter 27, Section 403.4 of the Township Zoning Ordinance and a special exception under Chapter 27, Section 2101(H).

The Applicant has requested authority from the Zoning Hearing Board to construct a two (2) story addition where the front most portion of the existing home is fourteen (14') feet from the property line. In addition, the proposed addition will expand

a non-conforming structure by an amount greater than twenty-five (25%) percent. The Board had determined that this must be reviewed for the grant of a variance and a special exception for expansion of a non-conforming structure.

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.”

“An applicant for a special exception has both the persuasion burden and the initial evidence presentation duty to show that the proposal for special exception comprised with the “terms of the Ordinance” which expressly govern such a grant. Bray v. Philadelphia ZBA, 410 A.2d 909 (Pa. Cmwlth.1980). These are the “threshold requirements” for the issuance of special exception.

Once having demonstrated compliance with the specific requirements of the Ordinance, an applicant identifies its proposal as one which the Zoning Ordinance expressly designates to be appropriate in the district and, therefore, is presumptively consistent with the promotion of health, safety and general welfare. Therefore, the burden is placed on objectors to an application for special exception to demonstrate that the proposal would be detrimental to the public health, safety and welfare, and the proposal should be denied on such a basis. Where there are general, non-specific or non-objective requirements contained in the Ordinance with respect to special exceptions, these matters are generally not part of the threshold requirements for which the applicant has the persuasion burden and evidence presentation duty. Bray, supra.”

The Zoning Hearing Board is satisfied that the Applicants have met the requirements for a variance and a special exception under the facts and conditions of this application. The existing house is non-conforming with respect to the required front yard of eighty-five (85') feet with the front of the existing structure being fourteen (14') feet from the property line. The entire house lies within the eighty-five (85') foot front yard and it is impossible to construct any addition without encroaching into the eighty-five (85') foot front yard. The Applicant proposes constructing the addition so that it is no less than fourteen (14') feet from the front yard boundary. The construction of the addition is not practical to be performed anywhere where it does not create any other non-conformity. The back of the existing structure lies in the required front yard of eighty-five (85') feet. Therefore, we find that the location and placement of the existing structure constitutes a hardship, which justifies the grant of the variance requested. Further, as the original house is historic, the Board finds that it meets the requirements for a special exception and will allow expansion beyond the twenty-five (25%) percent of the existing historic structure. Furthermore, the cost of building an addition which would conform to the Zoning Ordinance with respect to the front yard boundary, would be prohibitive and require the entire structure be relocated. The grant of a variance and special exception 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 Scott Cannon and seconded by George Morley, the Board voted unanimously to grant a variance and special exception 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 and special exception.
2. The Applicants have demonstrated that there is hardship caused by the pre-existing non-conforming structure being located in the required front yard.
3. The Applicants have met the conditions required for a grant of a dimensional variance and special exception.

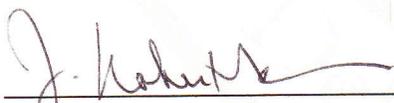
ORDER

AND NOW, this 20th day of August, 2018, a variance under Chapter 27, Section 403.4 of the Thornbury Township Zoning Ordinance and special exception pursuant to Chapter 27, Section 2101(H) is hereby granted to the Applicants in order to permit them to construct the proposed addition as follows:

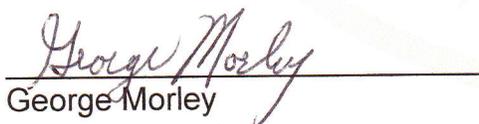
A variance is granted to permit the building of an addition which would extend into the required front yard and not closer than fourteen (14') feet from the front yard boundary line and a special exception to expand an existing non-conforming structure in excess of twenty-five (25%) percent.

The variance and special exception herein granted are expressly subject to the Applicants compliance with the following conditions:

- (a) The Applicant's addition may not encroach less than fourteen (14') feet from the front boundary line.
- (b) The Applicants must obtain all necessary permits and approvals before beginning construction of the addition;
- (c) The addition must be constructed in substantial conformity with the evidence presented to the Zoning Hearing Board in this matter.



J. Robert Haines



George Morley

BY THE BOARD:



Scott Cannon