

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

OPINION OF THE ZONING HEARING BOARD

Re: Appeal 13-2017 – Appeal of Allison Bonacquisti for a variance under Chapter 27-403.E in order to construct a two (2) story addition to her residence, which is listed as Historical Resource #141 on the Thornbury Township Historical Resource Inventory, in excess of the total permitted expansion of twenty-five (25%) percent of the existing structure; with a fifty-three (53') foot front yard where a minimum of eighty-five (85') feet is required; and a left wetern side yard of seventeen and nineteen hundredths (17.19') feet where a minimum of forty-five (45') feet is required for the property located at 10 Westtown Road, Thornton, PA located in the R-1 Residential Zoning District of Thornbury Township, Delaware County, Pennsylvania.

A hearing was conducted on January 22, 2018 at Thornbury Township. Scott Cannon, George Morley and Vincent Iannello, alternate, attended and participated in this decision.

The following exhibits were admitted into the record:

- T-1 Proof of Publication
- T-2 Proof of Posting
- T-3 Application and Appeal
- T-4 Appeal 10-2017 Order and Opinion of the Zoning Hearing Board
- A-1 Plan dated 10-20-2017
- A-2 Photographs

FINDINGS OF FACT

1. Applicants, Allison and Byron Bonacquisti are the owners of a property located at 10 Westtown Road, Thornton, Pennsylvania 19373 (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 (2) acres more or less.

4. The Property is developed with a single-family home and barn. The home is approximately two thousand (2,000 sq. f.) square feet of floor space, three (3) stories with three (3) bedrooms, one (1) bath, kitchen, family room and mud room.

5. The Property is over one hundred (100) years old and is listed in the Inventory of Historical Properties as Historical Resource #141 in the Thornbury Township Historical Resource Inventory.

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

7. The Property is a pre-existing, non-conforming structure with a front yard of forty-five (45') feet, where eighty-five (85') feet is required, and a side yard of seventeen and nineteen hundredths (17.19') feet on the western side of the Property where a minimum of forty-five (45') feet is required.

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

9. The Applicants proposed construction of a two (2) story addition, with approximately twenty-five hundred (2,500 sq. f.) square feet of living space and a one thousand (1,000 sq. f.) square foot two (2) car garage.

10. The addition would be constructed in an "L" shape, with the front most portion of the addition on the eastern side of the existing structure being approximately fifty-three (53') feet from the property line in the front of the house and the western portion to the rear of the existing structure being at least seventeen and nineteen hundredths (17.19') feet from the western property boundary line.

11. The Applicants have three (3) children ages five (5), three (3) and newborn.
12. The Applicants have requested a variance under 27-403.E to construct the addition.
13. The proposed addition will contain two (2) bedrooms and approximately one thousand (1,000 sq. f.) square feet of living space on the second floor with fifteen hundred (1,500 sq. f.) square feet of living space on the first floor.
14. The existing structure contains a wrap-around porch along the right side of the property and the rear of the house.
15. The Applicant proposes removal of the wrap-around porch and incorporating that area of the existing home into the addition.
16. The Applicants proposed using the existing driveway to access the garage, which will be connected to the addition and attached to the house.
17. The Applicant has requested a variance from the requirements of Chapter 403.E of the Zoning Ordinance.
18. The Applicant applied for and received approval for variances from the Board in Appeal 10-2017.
19. The Decision and Order from Appeal 10-2017 is incorporated herein in its entirety.

20. Since obtaining the variances in Appeal 10-2017, the applicants had the land surveyed.

21. The survey revealed that the boundary line to the left (the northwest) was not located where it had been represented at the hearing an Appeal 10-2017.

22. The boundary to the west is on a diagonal and is eleven and forty-six hundredths (11.46') feet from the front corner of the existing dwelling, seventeen and nineteen hundredths (17.19') feet from the rear corner of the existing dwelling.

23. The Applicant was granted a variance for seven (7') feet to allow them to build an addition in the western side yard thirty-eight (38') feet from the side boundary.

24. The Applicant requires a new variance to account for the discrepancy in the side yard resulting from the survey that was conducted allowing them to build addition seventeen and nineteen hundredths (17.19') feet from the western boundary line.

25. 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 27-403.E of the Township Zoning Ordinance. The Applicants applied for and were denied a Zoning Permit by the Township Zoning Officer. The

Applicant applied for and received variances under Appeal 10-2017, but due to newly acquired information, require additional relief.

The Applicant has requested authority from the Zoning Board to construct a two (2) story addition where the front most portion of the addition is approximately fifty-five (55') feet from the property line and seventeen and nineteen hundredths (17.19') feet from the western boundary line of the property. 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 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 forty-five (45') feet from the property line and seventeen and nineteen hundredths (17.19') feet from the western boundary line where a minimum of forty-five (45') feet is required. The Applicant proposes constructing the addition so that it is no less than seventeen and nineteen hundredths (17.19') feet from the western side yard boundary. These dimensions are identical to the rear edge of the existing dwelling along the western side 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 both in the

required front yard of eighty-five (85') feet and the required side yard of forty-five (45') feet. Therefore, we find that the 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 6th day of February, 2018, a variance under Chapter 27-403.E of the Thornbury Township Zoning Ordinance is hereby granted to the Applicants in order to permit them to construct the proposed addition with a two (2) car garage as follows:

A variance is granted to permit the building of an addition which would extend from the western rear of the house approximately forty-five (45') feet and not closer than seventeen and 19 hundredths (17.19') feet from the western side boundary line.

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

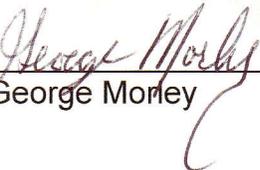
(a) The Applicant's addition may encroach no further than twenty-seven and eighty-one hundredths (27.81') feet into the required west side boundary with a minimum requirement of forty-five (45') feet and an encroachment of no more than twenty-seven and eighty-one hundredths (27.81') feet.

(b) The Applicants must obtain all necessary building 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.

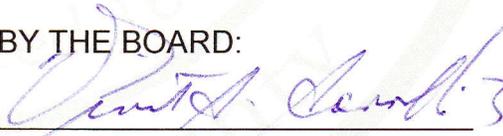


Scott Cannon



George Morley

BY THE BOARD:



Vincent Iannello, Esquire