

IN RE: APPLICATION OF RANDY BREWBAKER	ZONING HEARING BOARD OF LOWER ALLEN TOWNSHIP CUMBERLAND COUNTY, PENNSYLVANIA
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WRITTEN DECISION

EXHIBITS

- B-1 Application for variance of Randy Brewbaker dated July 16, 2024
- B-2 Certificate of Service of Public Notice and Written Notice

FINDINGS OF FACT

1. Applicant, Randy Brewbaker (hereinafter “Applicant”), is the owner of the property located at 98 Oneida Road, Camp Hill, Cumberland County, Pennsylvania (hereinafter the “Property”).
2. The property is in the R-1 Zoning District of Lower Allen Township, Cumberland County.
3. Public Notice of the hearing in this matter was published in the Patriot News, a newspaper of general circulation in Lower Allen Township on July 30, 2024, and August 6, 2024.
4. Written Notice of the hearing was forwarded to the following individuals and entities on August 2, 2024: Applicant and adjoining property owners.
5. Written Notice of the time and place of the hearing and the nature of the matter to be considered at the hearing was posted upon the property in question on August 1, 2024, as well as posted to the Lower Allen Township Municipal Building and Lower Allen Township’s website on August 1, 2024.
6. No objections as to the method and timing of notice and advertising were raised.
7. No objections as to any of the Board’s exhibits were raised.
8. Applicant attended the hearing pro se and testified on his own behalf.
9. On August 15, 2024, at approximately 7:55 p.m., a public hearing was conducted on the matter.

CONCLUSIONS OF LAW

1. The Lower Allen Township Zoning Hearing Board has jurisdiction to hear the above-captioned appeal and application pursuant to 53 P.S. Section 10909.1(a)(5). (The Municipalities Planning Code).
2. Proper notice of the hearing was given to the public and to all interested parties.
3. Exhibits B-1 through B-2 were properly admitted into evidence.
4. Applicant has met his burden of establishing that a variance from Lower Allen Township Zoning Ordinance Section 220-15.A(2) is appropriate.

DISCUSSION

In the instant matter, Applicant is the owner of the property located at 98 Oneida Road, Camp Hill, Pennsylvania. The property is located in the R-1 Zoning District of Lower Allen Township. Applicant is seeking a variance from Lower Allen Township Zoning Code Section 2020-15.A(2) to obtain relief from the fifteen (15) total feet required for side yard setbacks and one side yard not less than five (5) feet. The reason for the requested variance is to allow for the construction of a carport on the side of the property, which would allow closer ingress and egress into the property, especially during inclement weather. Without the requested variance, the proposed carport would not comply with the setback requirements of Section 2020-15.A(2) which provides:

Section § 220-15. Yards.

A. Yards of the following minimum depths shall be provided for residential uses:

(2) Minimum side yards shall total no less than 15 feet, with no one side yard less than five feet in width. On a corner lot, two side yards shall be provided along the interior lot lines.

Applicant proposes a 12 ft. by 18 ft. carport that will have less than 15 total feet of setback, and one side has less than 5 ft. of width. Applicant has a total side yard setback of approximately 12 ft., and one side has a 2-1/2 ft. setback.

In reviewing the variance request in the above application, the Zoning Hearing Board must consider the criteria as set forth in Section 10910.2 of the Municipalities Planning Code (53 P.S. § 10910.2).

The Zoning Hearing Board may grant a variance if an applicant shows, where relevant in a given case, the following:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions, and not the circumstances or

conditions generally created by the provisions of this Ordinance in the neighborhood or zone in which the property is located;

2. That because of such physical circumstances or conditions, there is not the possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the property;
3. That such unnecessary hardship has not been created by the appellant;
4. That the variance, if authorized, will not alter the essential character of the zone or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.

Applicant testified at the hearing that his elderly mother (86) lives on the property and that due to her having some health issues, Applicant would like to erect a carport on the property so that his mother can pull up closer to the house, which would be a great benefit, especially in inclement weather. The proposed carport will measure 12 ft. by 18 ft. According to Applicant, the driveway is not being expanded. Due to the layout of the property, without a variance, the setback requirements of Section 2020-15.A(2) cannot be met. The intended carport will be free standing and about a foot away from the house. It will be open on three sides. Only the side of the carport that will be facing a small grass area between the existing properties will have about a five-foot wall.

Applicant confirmed that the carport will not change the slope of the ground or disturb the existing drop off at the edge of the existing driveway. The supports for the carport will extend approximately one (1) foot over the driveway. Applicant further testified that his driveway is currently non-conforming by standards of the current zoning code.

Common law distinguishes between a dimensional variance and a use variance. A use variance applicant requests to use the property in a manner prohibited by the zoning regulation. *Hertzberg v. Zoning Bd. of Adjustment*, 721 A.2d 43, 47 (Pa. 1998). A dimensional variance allows for the reasonable adjustment of the zoning regulation in order to utilize the property as desired. *Dunn v. Middletown Twp. Zoning Hearing Bd.*, 143 A.3d 494, 501 (Pa. Commw. Ct. 2016).

When considering a dimensional variance for purposes of determining unnecessary hardship, a Zoning Hearing Board is able to consider multiple factors not applicable to the use variance test, such as the financial hardship created by any work necessary to bring the property into strict compliance with the ordinance and the characteristics of the surrounding neighborhood. *Soc'y Created to Reduce Urban Blight v. Zoning Bd. of Adjustment*, 771 A.2d 874, 877 (Pa. Commw. Ct. 2001). A dimensional variance therefore compels a slightly lower standard than a use variance, but must still address the aforementioned factors, including the showing of an unnecessary hardship. *Tri-Cty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 520 (Pa. Commw. Ct. 2014).

Based upon the testimony as discussed above, the Board believes that the Applicant has presented evidence of a sufficient hardship.

The Board believes that allowing the relief as requested would be consistent with the character of the neighborhood.

ORDER

And Now, this 20th day of **September 2024**, in consideration of application for variance of Randy Brewbaker and after a public hearing, the Zoning Hearing Board hereby grants Applicant's request to allow:

1. A variance from Section 2020-15.A(2) of the Lower Allen Township Zoning Code and allow the construction of a carport on the side of the house located upon the property as set forth in Exhibit B-1 consistent with the above decision.

(SIGNATURE PAGE TO FOLLOW)

Ann Moran

Ann Moran, Chairperson

(Written Decision of Findings issued this 20th day of September 2024)