

RE: Carlisle Allen, LLC,	:	ZONING HEARING BOARD OF
Applicant	:	THE BOROUGH OF CARLISLE
	:	
	:	CASE NO. 2023-04
	:	
Request for Variances	:	Date of Decision: October 9, 2023

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

Applicant, Carlisle Allen, LLC (the “Applicant”), is the owner of property at 207 Allen Road in the Borough of Carlisle (the “Property”). The Property is located in the Borough’s I-2 Light Industrial zoning district.

The Applicant submitted an application to the Carlisle Borough Zoning Hearing Board (the “Board”), appealing the Zoning Officer’s interpretation of § 255-108.D. and 53 P.S. § 10914.1(b) of the Carlisle Zoning Ordinance (the “Ordinance”) and, in the alternative, requesting a variance from §255-108.D. of the Ordinance to allow for a setback of 165’ from any dwelling resulting in a 35’ variance or to allow for a setback of 126’ from any residential district resulting in a 74’ variance; and, if one of these variances is not granted, requesting a variance to allow for a setback of 120’ without the requirement of building an earth berm (the “Application”).

After proper advertisement and notice¹, a public hearing was held at 6:30 p.m. on June 1, 2023, which was continued to August 3, 2023 by agreement of the Applicant and the Board, and

¹ Notice of the hearing was published in the *Carlisle Sentinel* on May 24 and 31, 2023. The property was posted on May 19, 2023, and notices were mailed to adjacent landowners on May 19, 2023. The hearing was continued on the record on June 1, 2023, to August 3, 2023; the hearing was continued again on the record on August 3, 2023, to September 7, 2023; and the hearing was continued again on the record on September 7, 2023, to October 5, 2023.

which was continued again by agreement to September 7, 2023, and which was continued again by agreement until October 5, 2023, in the Carlisle Borough Municipal Building, 53 West South Street, Carlisle, Pennsylvania, at which hearing Board Members Christopher G. Fowler (Chair), John Rovegno, Dana Culbertson, Britt Erney-Muniz, and alternate Anna L. Knych were present. Ms. Knych participated in the hearing and in the decision. Solicitor Kurt E. Williams was present on behalf of the Board. Zoning Officer Jared Woolston was present and introduced the Application to the Board. Thomas J. Nehilla, Esq., of the law firm Barley Snyder, LLP, represented the Applicant.

Aside from the Application and cover letter submitted (Exhibit A-1), which included exhibits A through F, the Applicant offered Exhibit A-2, comprised of plans showing updated property lines based on a recently discovered subdivision plan, which included exhibits A through G, and Exhibit A-3, which consists of five photographs, into the record. Three other exhibits were accepted into the record by the Board, the Zoning Officer Determination for the Application dated February 28, 2023 (Exhibit Borough-1), the Zoning Officer Report dated May 31, 2023 (Exhibit Borough-2), and the revised Zoning Officer Report dated October 2, 2023 (Exhibit Borough-3). There were no objections to the admission of any exhibits. Other than the Applicant, there were no persons requesting party status. The hearing was stenographically recorded.

Zoning Officer Jared Woolston ("Mr. Woolston") presented sworn testimony as follows:

1. Mr. Woolston noted that the Applicant is appealing the Zoning Officer determination of the meaning of "dwelling" and "residential district" as used in § 255-108.D. of the Ordinance, as well as the mandate of an earth berm, for ZHB Application 2023-04, dated February 28, 2023, pursuant to § 255-242 of the Ordinance and 53 P.S. § 10914.1(b).

2. Mr. Woolston also noted that the Applicant requests, in the alternative to overturning the Zoning Officer's Determination, dimensional variances from § 255-108.D. of the Ordinance pursuant to § 255-250, to encroach on the 200 foot minimum setback from any dwelling and residential district boundary, and any applicable provision related to an earth berm at 207 Allen Road. The subject lot is zoned I-2 Light Industrial District.
3. Mr. Woolston stated that the Zoning Officer Determination dated February 28, 2023, found that the zoning district abutting the property in North Middleton Township is a mixed-use district and does not constitute a residential district. Consequently, the residential district boundary variance does not apply.
4. Mr. Woolston stated further that the Zoning Officer Determination for the dwelling applied to the entire lot containing the dwellings, which would require the setback to be from the lot containing the dwelling, not the dwelling itself. Accordingly, the Zoning Officer has interpreted the dimensional variance request as being from the lot line of the residential property.
5. Concerning the warehouse as an accessory use of the Property, Mr. Woolston clarified that the principal use shall be not less than 35% of the total building area, while the accessory use may not exceed 65% of the total building area.

Larry Prescott, the Applicant's architect ("Mr. Prescott"), having been duly sworn, presented testimony as follows:

1. Mr. Prescott is a professional architect with Professional Design and Construction.
2. The Property, which is a wedge-shaped parcel, is at the end of Allen Road and is adjoined by Rails to Trails property. The portion of the Rails to Trails property directly adjoining the Property is an existing woodland area. The property on the north side of

the Rails to Trails property is in the Neighborhood Commercial zoning district of North Middleton Township.

3. Mr. Prescott confirmed that the evergreen barrier proposed by the Applicant would be on the Rails to Trails property and PPL has an easement through the middle of that property. He stated that the trees, as proposed, are not in the PPL easement. The barrier would consist of 141 trees.
4. The proposed parking area along Allen Road is for car parking for employees. Truck and trailer parking is behind the back of the building. Based on the restriction contained in § 255-108.E(1), which prohibits vehicles and trailer parking in front of a building along a public street, Mr. Prescott confirmed that the Applicant will either move the parking to the back of the building or apply for a variance.
5. The Applicant would not be building an earth berm if the residential lot line variance is granted.

Patrick Kane ("Mr. Kane"), owner of the Applicant, having been duly sworn, presented testimony as follows:

1. There is a residential trailer park next to the Property and the Applicant requests a variance to allow a 165' setback from the nearest trailer residents to the edge of the pavement line.
2. Mr. Kane stated that the project provided notice of a community meeting to the mobile home-owners on the adjacent property to discuss the proposed tree barrier and no one showed up.
3. Given the irregular lot size, the Application is not economically viable without the variance, which would enable the building to be a certain size.

4. The proposed evergreen tree screening will provide year-round coverage as the existing wood line loses its leaves in the fall.

James Mader, a representative of Rails to Trails (“Mr. Mader”), having been duly sworn, presented testimony as follows:

1. Mr. Mader stated that it was acceptable to Rails to Trails for the Applicant to install the evergreen buffer on the Rails to Trails property provided that it does not interfere with its shed or the PPL power line easement.
2. Rails to Trails attempted to seek mobile home resident input without any response.

II. Discussion and Conclusions of Law

Under traditional zoning laws, a party seeking a change from a zoning ordinance (a variance), must meet a heavy three-prong burden.² The Municipalities Planning Code, 53 P.S. 10101, *et. seq.* (the “MPC”), provides that the Board shall hear requests for variances where it is alleged that the provisions of the Ordinance inflict unnecessary hardship upon the applicant.³ The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- i. 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 the

² See, *Valley View Civic Ass'n. v. Zoning Bd. of Adjustment*, 501 Pa. 550, 462 A.2d 637, 640 (1983).

³ 53 P.S. § 10910.2.(a).

zoning ordinance in the neighborhood or district in which the property is located;

- ii. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- iii. That such unnecessary hardship has not been created by the applicant;
- iv. That the variance, if authorized, will not alter the essential character of the neighborhood or district 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;
- v. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.⁴

There is a distinction between use variances and dimensional variances. When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with applicable regulations.⁵ Conversely, when an owner seeks a use variance, he is seeking to use the property in a manner that is wholly outside the zoning regulation.⁶

To justify the grant of a dimensional variance (as opposed to a use variance), the board may consider multiple factors, including the economic detriment to the applicant if the variance is

⁴ *Id.*

⁵ *SPC Co., Inc. v. Zoning Bd. of Adjustment of the City of Philadelphia*, 773 A.2d 209, 213 (Pa. Cmwlth. 2001).

⁶ *Id.*

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.⁷

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the MPC and the zoning ordinance.⁸

Here, the dimensions of the Property, specifically the wedge or triangle shape of the parcel, present unique physical circumstances justifying the grant of the requested variance. Without the requested variance, the Applicant is not able to construct a building of a size necessary to make economically viable use of the Property, preventing the Applicant from making reasonable use of the Property. As such, the authorization of a variance is necessary to enable reasonable use of the Property. The required residential lot line setback now applicable to the Property is not a condition generally created by the zoning provisions of the I-2 District. The unnecessary hardship was not created by the Applicant.

The granting of the dimensional variance will not have a significant negative impact on the neighborhood or be detrimental to the public welfare. The granting of dimensional variances for the residential lot line, in and of itself, will not alter the character of the neighborhood.

Permitting a variance from §255-108.D. of the Ordinance to allow a 126' setback from the residential lot line represents the least modification possible for the building.

Based on the foregoing, this Board determines that the Applicant has established that it is entitled to the requested dimensional variance.

III. Order and Decision of the Board

⁷ *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 721 A.2d 43, 50 (Pa. 1998).

⁸ 53 P.S. § 10910.2.(b).

Based upon the Application as submitted, Exhibits A-1, A-2, A-3 and Borough-1, Borough-2 and Borough-3, and the testimony presented, the Board makes the above findings of fact and issues the following Order and Decision as set forth below.

It is hereby ordered and decided as follows:

- A. The Board hereby upholds the Zoning Officer's Determination dated February 28, 2023.
 - B. The Board hereby decides by a 5-0 vote to grant the requested variance to allow a residential property lot line setback of 126' as depicted on exhibit E-1 to Exhibit A-2. to allow the construction of an office building with a warehouse as an accessory use on the Property.
 - C. The Board hereby incorporates into its decision Exhibits Borough-1, Borough-2 and Borough-3, and the Application as partial justification for the grant of the variance.
 - D. The representations made by the Applicant in the Application, the supporting documentation, and the testimony at the public hearing shall be considered conditions of the variance granted. Changes from said representations, documentation, and testimony, other than minor technical changes, or failure to comply with the conditions of the variance approval, shall be considered a violation of the variance, and may result in revocation of the variance approval if not brought into full compliance within sixty (60) days of written notice on non-compliance from the Borough.
3. As a condition of approval, the Applicant, its successors and assigns, shall plant screening trees on the Rails to Trails property subject to a perpetual easement for the long-term maintenance of the trees or, in the alternative, all screening trees shall be placed on the Property.

4. In addition, the Applicant shall move the vehicle parking shown adjacent to Allen Road to comply with Section 255-108.E.(1), or the Applicant shall obtain zoning relief in the form of a variance.

In addition to the above, the Applicant shall comply with all applicable federal, state, local and Borough laws, ordinances and regulations.

Borough of Carlisle Zoning Hearing Board

By: 
Christopher G. Fowler, Chair

MAILING DATE: November 9, 2023

Any person aggrieved by this decision of the Zoning Hearing Board may appeal to the Court of Common Pleas of Cumberland County. The appeal must be taken within thirty (30) days of the mailing date of this Decision.