

RE: First Evangelical Lutheran Church and,	:	ZONING HEARING BOARD OF
Safe Harbour, Inc.	:	THE BOROUGH OF CARLISLE
Applicants	:	
	:	CASE NO. 2023-07
	:	
Request for Variances	:	Date of Decision: September <u>11</u>, 2023

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

First Evangelical Lutheran Church (the “Church”) and Safe Harbour, Inc. (“Safe Harbour”) (the Church and Safe Harbour are hereinafter collectively defined as the “Applicants”) have applied for dimensional variances from § 255-42 (area and bulk regulations) and § 255-212 (paved area setbacks) pursuant to §255-250 of the Carlisle Zoning Ordinance (the “Ordinance”), to create a nonconforming lot and nonconforming setbacks for existing development associated with a Garden Apartment and a Place of Worship (the “Application”). The Application was filed with the Carlisle Borough Zoning Hearing Board on July 5, 2023, and proposes the creation of a lot for an existing Garden Apartment. The Church is the fee owner of a property located in the Borough’s R-4 Town Center Residential District, with addresses of 21 South Bedford Street and 132 East High Street, Carlisle, Pennsylvania (the “Property”). Safe Harbour is a not-for-profit organization that provides a continuum of housing services for the homeless of Cumberland County. The Church has authorized the gifting of 132 East High Street to Safe Harbour for use for permanent housing to eligible individuals and families, and for renovation, use, and maintenance as rental units.

After proper advertisement and notice¹, a public hearing was held at 6:30pm on August 3, 2023, in the Carlisle Borough Municipal Building, 53 West South Street, Carlisle, Pennsylvania, at which hearing Board Members Britt Erney-Muniz (Acting Chair), Dana Culbertson, and Robin Guido were present. Dana Culbertson recused herself as a member of the Church. Alternate Anna L. Knych participated in the hearing and the decision. Solicitor Kurt E. Williams was present on behalf of the Board, and the Applicant was represented Hubert X. Gilroy, Esq. of Martson Law Offices. Zoning Officer Jared Woolston was present and introduced the Application to the Board. Douglas Brehm, Scott Shewell, and David Fitzsimons testified on behalf of the Applicants. Aside from the Application submitted (Exhibit A-1), the Applicants offered a letter of support from the Borough Council (Exhibit A-2) into the record. One other exhibit was accepted into the record by the Board (Exhibit Boro-1), the Staff Report for the Application. There were no objections to the admission of any exhibits. Bill White and Dorothy Andrews of 151 East High Street, and Joseph Patterson of 137 East High Street requested party status. There was no objection to their party status. The hearing was stenographically recorded.

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

1. Mr. Woolston stated that the Applicants are requesting dimensional variances pursuant to §255-250 to create a nonconforming lot with nonconforming setbacks for existing development associated with a garden apartment use and a place of worship at 21 Bedford Street and 132 East High Street.
2. The Property is in the Borough’s R-4 Town Center Residential District and HP Historical Preservation District and Overlay District.

¹ Notice of the hearing was published in the *Carlisle Sentinel* on July 20 and 27, 2023. The property was posted on July 19, 2023, and notices were mailed to adjacent landowners on July 17, 2023.

Douglas Brehm, P.L.S., the Applicant's engineer ("Mr. Brehm"), having been sworn, presented testimony on behalf of the Applicant as follows:

1. Mr. Brehm is a Professional Engineer with Brehm Lebo Engineering located at 17 State Avenue.
2. The Church is the fee owner of 14 parcels of land that are consolidated in one deed. The Property sits like an island in the middle of the various other parcels with a two or three-story brick building containing three apartments that have been previously rented out by the Church.
3. The Church is proposing to give the Property to Safe Harbour. If the variance is denied, the Church will continue to rent the three apartments to individuals or families as a residential use.
4. The building is 22 feet wide and sits on a 22-foot lot with varying side yard areas and abuts the street right-of-way with no front yard.
5. The Applicants are requesting a minimum lot area variance, a rear yard setback variance, side yard variances, building coverage variance, and impervious coverage variance, as there is little to no grass on the lot.
6. The Applicants are also requesting a paved area variance as the lot is paved up against the building on both sides.
7. Safe Harbour's proposed use will not require any additional variances. The only improvement will be the removal of a ground level porch that is falling apart.

Scott Shewell ("Mr. Shewell"), having been sworn, presented testimony on behalf of the Applicant as follows:

1. Mr. Shewell is with Safe Harbour located at 102 West High Street.

2. Safe Harbour provides housing and support services for homeless individuals and families in the community. It provides emergency shelter and permanent housing options and is in the process of constructing additional affordable housing in the community.
3. The Church approached Safe Harbour about gifting the Property to it pursuant to a Gift Agreement that contains a right of first refusal in favor of the Church and a contingency to keep the Property as a non-profit use.
4. Safe Harbour intends to continue offering three units of affordable housing in the building after a complete renovation of the interior. It has not been lived in for approximately three years and requires new interior walls, new heating and air conditioning, and other rehab work.
5. Safe Harbour has funding from the county in the amount of \$275,000 through home ARP funds, \$175,000 from fair funding through the Pennsylvania Housing Finance Agency, and a \$15,000 grant from St. John's Church as a contingency fund. These funds constitute all the funding required to renovate the building.
6. Safe Harbour has an agreement with the Church for a parking space easement for six spaces, which will provide two spaces for each unit including one disability accessible space.
7. Safe Harbour will select occupants for permanent housing who have 50% of the mean area income, and Safe Harbour would accept HUD Section 8 vouchers and property housing vouchers.
8. The occupants will have one-year leases that will become month to month leases after one year.

9. Safe Harbour will conduct quarterly inspections of the apartments to ensure they remain in good condition, and it has a contract with pest control company to treat for pest infestations every other month.
10. Safe Harbour has a local history with rental properties and remains active in responding immediately to any neighbor concerns.

Dave Fitzsimmons ("Mr. Fitzsimmons"), having been sworn, presented testimony on behalf of the Applicant as follows:

1. Mr. Fitzsimmons is the Church Council President of the Church located at 32 Bedford Street.
2. The Church purchased the Property in the mid-1990s as the residence for the Sexton and his family. The Property was already being used as apartments for several years prior.
3. To explain the parcel consolidation, Mr. Fitzsimmons stated that several years ago the Church built an annex that was financed with a loan through Orrstown Bank, which required the Church to execute a deed of consolidation. The Church then consolidated its various parcels into one deed.

Mr. Brehm, on cross-examination by Dorothy Andrews and Bill White, presented testimony on behalf of the Applicant as follows:

1. When asked to explain the hardship presented in support of the variance request, Mr. Brehm stated that while the Church, as the Property owner, could continue to rent the Property without the variances, the hardship exists because Safe Harbour cannot purchase the Property and use it for rental apartments without the variances because of the preexisting nonconformities.

Mr. Shewell, further testified on behalf of the Applicant as follows:

1. As to the hardship, Mr. Shewell stated that the Church cannot afford to do the required renovations and the Property is not in a livable condition without the renovations.

Bill White ("Mr. White"), having been sworn, presented testimony on behalf of the Objectors as follows:

1. Mr. White lives at 151 East High Street and owns properties at 147 and 148 East High Street.
2. Mr. White discussed the historic nature of the area as an historic district. He expressed concern that the number of apartments could be increased in the future and the issue of people parking along the street as the parking lot is limited.
3. Mr. White additionally stated that he does not believe that Safe Harbour fits into the historic residential district as he believes the proposed use is institutional.
4. Finally, Mr. White questioned the hardship imposed by the Ordinance that would justify the granting of the requested variances because the Church could rent the apartments itself without the variances.

Dorothy Andrews ("Ms. Andrews"), having been sworn, presented testimony on behalf of the Objectors as follows:

1. Ms. Andrews is a social worker and generally supports Safe Harbour.
2. Ms. Andrews' concern is the effect on the historic district that is all residential. She does not like the idea of introducing a non-profit into the neighborhood because a different non-profit could take over the Property in the future.

Joseph Patterson ("Mr. Patterson"), having been sworn, presented testimony on behalf of the Objectors as follows:

1. Mr. Patterson expressed his concern that the non-conforming parcel will become two abutting, non-conforming parcels without proper drainage, which will be less conforming to the Ordinance requirements in terms of impervious surface.

Mr. Woolston, on cross-examination by Mr. Patterson, presented testimony as follows:

1. When asked if there are any special requirements for an organization like Safe Harbour for nonconforming properties, Mr. Woolston explained that the Property is considered a “Garden Apartment,” the composition of which reflects the corresponding Ordinance requirements. He stated further that Garden Apartments are not exclusive to a non-profit or any other group, rather it is three or more dwelling units.
2. Mr. Woolston stated further that Garden Apartments are a permitted use in the R-4 District and the current use will be continued as proposed by the Applicants.

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

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

³ 53 P.S. § 10910.2.(a).

property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the 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; and
- 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

⁴ *Id.*

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

in a manner that is wholly outside the zoning regulation.⁶ The Applicant here is seeking dimensional variances.

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 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 and its location, specifically as an existing three-unit apartment building with a frontage of 22 feet and a depth of 240 feet with nonconforming lot area and width, minimum rear and side yards, minimum building coverage, maximum impervious coverage, and paved areas and setback, present unique physical circumstances justifying the grant of the requested variances.

The granting of the dimensional variances will not have a significant negative impact on the neighborhood or be detrimental to the public welfare because the nonconforming conditions requiring the variances already exist. Likewise, the granting of the dimensional variances will not alter the character of the neighborhood as the nonconforming conditions requiring the variances already exist. Indeed, the character of the neighborhood will be maintained as it currently exists.

Permitting the requested variances from §§255-42 and 255-212 represents the least modification possible given that the nonconforming conditions already exist.

⁶ *Id.*

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 on the foregoing, this Board determines that the Applicants have established that they are entitled to the requested dimensional variances.

III. Order and Decision of the Board

Based upon the Application as submitted, Exhibits A-1, A-2, and Boro-1, 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 unanimously decides to grant the requested variances from §255-42 as follows:

1. Minimum Lot Area: 17,888 square feet
2. Minimum Lot Width: 178 feet
3. Minimum Rear Yard for Principal Building: 8.8 feet
4. Minimum Side Yard for Principal Building: 50 square feet and 25 feet each side
5. Minimum Building Coverage: 21.5%
6. Maximum Impervious Coverage: 7.6%
7. Minimum Side Yard for Accessory Structures: 4.7 feet⁹

B. The Board hereby unanimously decides to grant the requested variances from § 255-212, specifically a variance of 10 feet for paved areas and setbacks, one for the Church and one for the residential structure.

C. The Board hereby incorporates into its decision the Report and the Application, as partial justification for the grant of the variance.

⁹ Applicable to both the Garden Apartment Use and the Place of Worship Use.

- 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 variances granted. Changes from said representations, documentation, and testimony, other than minor technical changes, or failure to comply with the conditions of the variance approvals, shall be considered a violation of the variances, and may result in revocation of the variance approvals if not brought into full compliance within sixty (60) days of written notice of non-compliance from the Borough.
- E. In addition, Safe Harbour shall apply to the Carlisle HARB and follow its guidelines; the outdoor deck will be removed if required by the HARB Board; five (5) regular parking spaces and one (1) additional ADA compliant parking space (six (6) parking spaces total), shall be dedicated to the Property by easement and become a permanent part of the use as a covenant running with the land; and the Property will be limited to a maximum of three (3) dwelling units.
- F. The Applicant shall comply with all applicable federal, state, local and Borough laws, ordinances, and regulations, including the Uniform Construction Code ("UCC") requirements of the Commonwealth of Pennsylvania and Borough of Carlisle.

Borough of Carlisle Zoning Hearing Board

By: Britt E. Muniz
Britt Erney-Muniz, Acting Chair

MAILING DATE: September 11, 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.