

RE: Conodoguinet Investments, LLC, : ZONING HEARING BOARD OF
Applicants : THE BOROUGH OF CARLISLE
: :
: CASE NO. 2023-08
: :
Request for Variances : **Date of Decision:** September 11, 2023

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

Conodoguinet, LLC, owned by Mark and Mary Adams, (the “Applicant”), is the owner of property at 133 North East Street in the Borough of Carlisle (the “Property”). The Property is located in the Borough’s R-4 Town Center Residential zoning district.

The Applicant submitted an appeal to the Zoning Officer’s determination of “front yard” as defined in §255-11 of the Carlisle Borough Zoning Ordinance (the “Ordinance”), pursuant to §255-242 of the Ordinance or, in the alternative, for an application to the Carlisle Borough Zoning Hearing Board (the “Board”), requesting a variance from §255-42 (area and bulk regulations) pursuant to §255-250 to allow for a rear yard setback of 16’ (the “Application”). This request results in a request for a 9’ rear yard variance.

After proper advertisement and notice¹, a public hearing was held at 6:30 p.m. 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, Robin Guido and alternate Anna L. Knych were present. Ms. Knych participated in the hearing and the decision. Solicitor Kurt E. Williams, Esq., of Salzmann Hughes, P.C. was present on behalf of the

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.

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. Aside from the Application submitted (Exhibit A-1), the Applicants offered a preliminary concept sketch (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 (the “Report”). There were no objections to the admission of any exhibits. Robert Cianfichi testified on behalf of the Applicant. Paul and Jennifer Alessio of 131 North East Street requested party status. There was no objection to their party status. The hearing was stenographically recorded.

Zoning Officer Jared Woolston, AICP, presented sworn testimony as follows:

1. Mr. Woolston stated that the Applicants are requesting a dimensional variance from the rear yard setback pursuant to §255-250.
2. The Property is in the Borough’s R-4 Town Center Residential District

Robert Cianfichi (“Mr. Cianfichi”), having been sworn, presented testimony on behalf of the Applicant as follows:

1. Mr. Cianfichi is an architectural engineer with an address of 1230 Carlisle Pike.
2. The Property is a rear property behind an existing set of homes on North East Street. An unopened alley called East Locust Avenue sits on the south side of the Property.
3. Lots were consolidated several years ago whereby the front of the lot should be the street facing side of the Property.
4. The Property is adjacent to a home on East North Street on the left of the sketch and borders a stream to the right side of the sketch.
5. The Applicant proposes to construct a single-family residence of approximately 2,700 square feet.

6. The Applicant has appealed the Zoning Officer's determination that East Locust Avenue side of the Property is the "front" of the lot.
 7. Mr. Cianfichi described the Property as having a unique or limiting size. There is a floodplain line based on a FEMA map because of the creek to the east and the house cannot encroach the line.
 8. For purposes of the variance request, the Applicant is considering the alley side of the Property to be the front and the north side to be the rear where there is a 25-foot setback requirement. The Applicant requests a variance to allow a rear yard setback of 16', which requires a variance of 9'. This is the minimum variance that can accommodate the completion of the proposed structure.
 9. Mr. Cianfichi does not believe the proposed variance would have any adverse impact on adjacent property owners.
 10. The Property is currently vacant except for a garage and a shed that are in poor condition and that the Applicant plans to remove.
 11. The Applicant will have to make a driveway in the alley for access to North East Street.
- Jennifer Alessio ("Ms. Alessio"), having been sworn, presented testimony on behalf of the

Objectors as follows:

1. Ms. Alessio lives at 131 North East Street which property was purchased from the Applicant.
2. Ms. Alessio presented four photographs which were marked as Exhibit Alessio-1.
3. Exhibit Alessio-1 shows the unopened alley and Ms. Alessio stated that the Objectors' concern is for the safety of their young children based on additional traffic in the alley.

4. Ms. Alessio requested that a fence be installed on the Objectors' side of the property to protect their children and to preserve the privacy of their property. Additionally, the objectors would like a guarantee that their shade trees will not be removed for construction equipment.

II. Findings of Fact

The following Finding of Facts were accepted by the Board:

1. The hearing on August 3, 2023, was properly advertised and noticed.
2. The Application was administratively complete as filed.
3. The existing use of the Property is as a vacant lot.
4. The Board takes judicial notice of the plan entitled "Final Subdivision Plan for Conodoguinet Investments, LLC," dated September 9, 2019, prepared by Diffenbaugh Wadel Inc., and recorded in the Office of the Recorder of Deeds in and for Cumberland County, Pennsylvania, on February 21, 2020, at Instrument No. 202004703 (the "Plan").²
5. The Plan shows how the Applicant could build a conforming structure on the Property without a variance.
6. The Plan (signed by the Applicant in 2020), depicts the East Locust Avenue facing side of the lot as the front of the Property. The Property has no nexus with North East Street except that access to the Property is via East Locust Avenue which intersects with North East Street.
7. The Zoning Officer's determination is consistent with the Plan.
8. The Property is not a "multiple frontage lot." It does not abut any public street.

² The Plan was referenced in the "Addendum to Notice of Appeal" included with Exhibit A-1 and was cited by the Zoning Officer in Exhibit Boro-1.

III. Conclusions of Law

The Board hereby makes the following Conclusions of Law:

1. The Applicant did not meet its burden to satisfy the requirements of 53 P.S. §10910.2(a) and Ordinance §255-250.B. (requirements for variances).
2. The evidence presented of hardship, unique physical circumstances or conditions presented was insufficient to support a grant of the requested variance.
3. The variance requested does not represent the minimum variance that will afford relief and does not represent the least modification possible of the regulation in issue because a conforming residential structure could be built without a variance in accordance with the Plan.³
4. The Applicant did not satisfy its burden for the granting of variances for the proposed rear yard setback.
5. The Zoning Officer's determination that the Property fronts on East Locust Avenue is affirmed.

³ Note 3 on Sheet SD3 of the Plan states "The proposed dwelling and parking area are shown to demonstrate that adequate space is available for these improvements on Lot 2." Note 4 on the same sheet states "The building envelope is depicted to clearly illustrate the area where building may occur without encroaching into adjacent flood zone **or the required yard areas.**" (emphasis added).

IV. Order and Decision of the Board

Based upon the Application as submitted and the testimony provided, the Board makes the above Findings of Fact and Conclusions of Law and issues the following Order and Decision as set forth below.

It is hereby ordered and unanimously decided as follows:

- A. The Zoning Officer's interpretation of "front yard" as defined in §255-11 and as applied to the Property is affirmed.
- B. The Board finds that the Applicant has not met its burden of establishing those criteria set forth in 53 P.S. §10910.2. and Ordinance §255-250.B. necessary for the grant of variances from Ordinance §§255-42.
- C. The Board hereby decides by unanimous vote to DENY the requested variance.

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.