

RE: Spyro Karetsos, : ZONING HEARING BOARD OF
Applicant : THE BOROUGH OF CARLISLE
: :
: CASE NO. 2023-10
Appeal of Zoning Officer Determination :
Request for Variances : **Date of Decision:** October 16, 2023

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

Spyro Karetsos, (the “Applicant”), is the owner of property at 506 W. High Street in the Borough of Carlisle (the “Property”). The Property is located in the Borough’s R-5 Traditional Residential zoning district.

The Applicant submitted an appeal to the to the Carlisle Borough Zoning Hearing Board (the “Board”) appealing the Zoning Officer’s determination regarding the application of Carlisle Borough Zoning Ordinance (the “Ordinance”) §255-47.B.(2)¹ to the Property, or in the alternative, an application requesting a variance from §255-47.B.(2) (the “Application”).

After proper advertisement and notice², a public hearing was held at 6:30 p.m. on September 7, 2023, in the Carlisle Borough Municipal Building, 53 West South Street, Carlisle, Pennsylvania, at which hearing Board Members Chirstopher G. Fowler (Chair), Britt Erney-Muniz, John Rovegno, Dana Culbertson, Robin Guido and alternate Anna L. Knych were present. Ms. Knych participated in the hearing but not the decision. Solicitor Kurt E. Williams, Esq. of Salzmann Hughes, P.C. was present on behalf of the Board, and the Applicant appeared *pro se*.

¹ No new or expanded vehicle parking shall be located between the curbline along the front of the principal building. A minimum of 50% of the land area between the front street right-of-way and the front of the principal building shall be maintained in grass or other landscaping.

² Notice of the hearing was published in the *Carlisle Sentinel* on August 23 and 30, 2023. The property was posted on August 22, 2023, and notices were mailed to the Applicant and adjacent landowners on August 16, 2023.

Zoning Officer Jared Woolston was present and introduced the Application to the Board. Aside from the Application submitted (Exhibit A-1), the Applicant offered an excerpt from the Cumberland County tax parcel mapping showing the Property and surrounding parcels (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. The Applicant testified in support of the Application. No other person or party requested party status. The hearing was stenographically recorded. Prior to deliberating and making a decision in this matter, public comment was received by the Board in compliance with the Sunshine Act.

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

1. The Applicant has appealed the Zoning Officer's determination dated June 28, 2023, denying Applicant's request for a new or expanded vehicle parking area located between the curblin and front of the principal building.
2. Mr. Woolston stated that the Applicant is alternatively requesting a dimensional variance from §255-47.B.(2).
3. The Property is in the Borough's R-5 Traditional Residential District

The Applicant, having been sworn, presented testimony in support of the Application as follows:

1. The Applicant is a compliance officer with a top 5 company in the world. He and his wife are Dickinson College graduates, and the Property serves as a second home for them.

2. When the Applicant purchased the Property in 2023, the Property was already improved with gravel parking between the house (principal building) and the curblin, in violation of §255-47.B.(2). Prior to October 2021, the gravel area had been in grass.
3. No concerns had been raised by any party, any complainant, or Borough representative with the gravel parking area before the Applicant paved the gravel parking area in question.
4. The Applicant characterized this lack of enforcement or complaint by the Borough as a “preexisting nonconformity.”
5. The Applicant further characterized the previous owner’s actions in selling the Property to the Applicant as a “bait and switch” since they sold a house publicly promoting two parking spots and a Borough that had awareness for over a year.
6. The Applicant described the prior gravel parking area as an impervious surface.
7. When he purchased the Property, the Applicant was unaware of a potential violation of §255-47.B.(2) due to the gravel parking area.
8. The Applicant explained that but for the parking spaces created in the front of the Property, there is limited to no parking available in the immediate area of the Property since Dickinson College does not enforce its prohibition on first-year students having a vehicle³ and there are no spaces on High Street.
9. The Applicant testified that there was a year plus opportunity for the Borough to address the gravel parking area with the previous owner, prior to the Property being marketed and sold with two front-yard parking spaces.

³ The Applicant admitted to breaking this Dickinson College rule himself as a first-year student by parking his vehicle on High Street.

10. After his purchase of the Property in 2023, the Applicant hired a contractor to pave the gravel parking area because he realized the “gravel was getting everywhere.”⁴
11. The Property is adjacent to Kimberly’s Café, which has paved parking areas between the restaurant building and West High Street.
12. The Applicant proposes to use the paved parking area on the Property to park and charge one or more vehicles.
13. The Applicant testified that but for the recently paved parking area on the Property, there are no convenient parking areas available to him.

II. Findings of Fact

The following Finding of Facts were made by the Board:

1. The hearing on September 7, 2023, was properly advertised and noticed.
2. The Application was administratively complete as filed.
3. The existing use of the Property is residential.
4. Street parking is available to the public near the Property on Conway Street and West High Street.
5. The property to the west of the Property along West High Street is in commercial use.⁵
6. A prior owner of the Property installed the gravel parking area in October 2021.
7. Without first seeking a permit from the Borough to do so, the Applicant caused the gravel parking area to be paved.
8. The Zoning Officer denied a Zoning Permit to the Applicant for the newly paved parking area based on a violation of §255-47.B.(2).

⁴ Applicant admitted that the contractor failed to seek or secure any permits from the Borough to pave the gravel parking area.

⁵ Kimberly’s Café.

9. The adjacent parcel to the east along West High Street owned by Dickinson College does not have parking between the principal building and any curblineline. *See*, Exhibit A-2.

III. Conclusions of Law

The Board hereby makes the following Conclusions of Law:

1. A prior owner of the Property installed the gravel parking area in violation of §255-47.B.(2).
2. The Applicant caused the gravel parking area to be paved in continued violation of §255-47.B.(2).
3. The parking area on the Property constitute a violation of §255-47.B.(2).
4. The reasons for granting a variance must be substantial, serious and compelling.⁶ The party seeking the variance bears the burden of proving that (1) unnecessary hardship will result if the variance is denied, and (2) the proposed use will not be contrary to the public interest.⁷ 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.⁸

The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

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

⁶ *See, Valley View Civic Ass'n. v. Zoning Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983).

⁷ *Id.*

⁸ 53 P.S. § 10910.2.(a).

- b. 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;
 - c. That such unnecessary hardship has not been created by the applicant;
 - d. 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;
 - e. 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.⁹
5. The Applicant did not meet his burden to satisfy the requirements of 53 P.S. §10910.2(a) and Ordinance §255-250.B. (requirements for variances).
6. There are no 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 Property.
7. The evidence presented of hardship, unique physical circumstances or conditions presented was insufficient to support a grant of the requested variance.
8. The adjacent property owned by Dickinson College does not have off-street parking. Adding parking to the Property in violation of §255-47.B.(2). would alter the essential character of the neighborhood. No evidence was presented by the Applicant as to the basis for Kimberly's Café's parking between the principal building and the street.
9. Without the grant of a variance, the Property may be used for residential purposes, albeit with on-street parking.

⁹ *Id.*

10. 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 street parking is available within close proximity of the Property (on Conway Street and West High Street).
11. The Zoning Officer's determination regarding a denial of a zoning permit in violation of §255-47.B.(2) is affirmed.
12. The Applicant did not satisfy its burden for the granting of a variance from §255-47.B.(2).

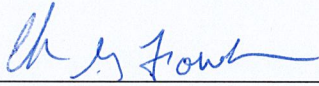
IV. Order and Decision of the Board

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 determination 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 a variance from Ordinance §255-47.B.(2).
- C. The Board hereby decides by 3-2 vote to DENY the requested variance.¹⁰

Borough of Carlisle Zoning Hearing Board

By: 
Christopher G. Fowler, Chair

MAILING DATE: October 16, 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.

¹⁰ Members Britt E. Muniz, Robin Guido and Dana Culbertson voted in favor of the motion to deny the appeal and requested variance.