

RE: Carlisle Allen, LLC, : ZONING HEARING BOARD OF
Applicant : THE BOROUGH OF CARLISLE
: :
: CASE NO. 2024-01
: :
Request for Variance : **Date of Decision:** February 13, 2024

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 previously 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. The Board granted the requested variance to allow a residential property lot line setback of 126’ to allow the construction of an office building with a warehouse as an accessory use on the Property subject to conditions. One of the conditions imposed by the Board in its decision, Case No 2023-4, was that 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. The Applicant has now submitted an application to the Board requesting a variance from Section 255-108.E.(1) to allow parking in front of the building adjacent to Allen Road (the “Application”).

After proper advertisement and notice¹, a public hearing was held at 6:30 p.m. on January 4, 2024, in the Carlisle Borough Municipal Building, 53 West South Street, Carlisle, Pennsylvania, at which hearing Board Members Christopher G. Fowler (Chair), 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. Assistant Zoning Officer Jim Bennett was also present. 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 D, the Applicant offered Exhibit A-2, comprised of a plan showing the property lines and setback lines, into the record. One other exhibit was accepted into the record by the Board, the Zoning Officer Report for the Application dated January 4, 2024 (Exhibit Borough-1). 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 stated that the Applicant is requesting a variance pursuant to Zoning Ordinance § 255-108.E.(1) to permit paved parking in front of the proposed building along the public street, Allen Road, subject to a lot zoning I-2, Light Industrial District.

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

1. The Property, which is a long skinny property that narrows in the rear, fronts Allen Road and the entrance drive is off Allen Road.

¹ Notice of the hearing was published in the *Carlisle Sentinel* on December 21 and 28, 2023. The property was posted on December 20, 2023, and notices were mailed to adjacent landowners on December 18, 2023.

2. Mr. Prescott stated that truck parking is in the rear of the lot and the building is within the setback requirements of the Ordinance.
3. The lot is 94 feet wide at the back of the lot behind the building, which is where the Applicant intends to direct all truck traffic and commercial vehicles.
4. The Applicant is proposing two docks and loading doors at the rear of the building and an office across the front of the building. The Applicant desires to keep vehicle traffic generated by employees and visitors in the front of the building in a parking lot adjacent to Allen Road so that vehicle traffic is segregated from the trucks and commercial vehicles.
5. To that end, the design of the parking areas reflects safety purposes by separating car traffic from truck traffic. This also reflects a common design feature within the I-2 zoning district where cars are generally parked in front of buildings and trucks are parked at the rear of buildings.
6. Mr. Prescott confirmed that the plan conforms to the Ordinance to the extent that the parking lot is a minimum of ten feet from any property or right-of-way line.

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

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).

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 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

⁴ *Id.*

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 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 while providing a safe parking lot for employees and visitors separate from the truck parking lot, 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 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. Several lots within the I-2 District have

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

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).

parking lots adjacent to a public road. Accordingly, the granting of a dimensional variance for the parking lot, in and of itself, will not alter the character of the neighborhood.

Permitting a variance from §255-108.E.(1) of the Ordinance to allow a parking lot in front of the building adjacent to a public street, Allen Road, represents the least modification possible for the parking lot.

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

Based upon the Application as submitted, Exhibits A-1 and A-2, and Borough-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:

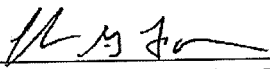
- A. The Board hereby decides by a 4-0 vote to grant the requested variance to allow a parking lot in front of the building adjacent to Allen Road, as depicted on exhibit B to Exhibit A-1 and on Exhibit A-2.
- B. The Board hereby incorporates into its decision Exhibit Borough-1, and the Application as partial justification for the grant of the variance.
- C. 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.

D. As a condition of approval, all prior conditions imposed in Case No. 2023-04 remain applicable except for the need for additional relief from the parking requirement.

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: February 13, 2024

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.