

HANOVER TOWNSHIP ZONING HEARING BOARD
OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Re : Samuel M. Varney, III
: & Susan E. Adams, M.D.
Dated : March 16, 2009
Property : 4511 Hampshire Drive

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, April 30, 2009, and rendering its oral decision denying the requested variances from the rear yard provisions of the ordinance by a 2-1 vote, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is known as 4511 Hampshire Drive and is located in an R1-S – Residential Suburban District.

2. The applicants are the owners of the premises and desire to construct a sunroom and patio which includes a hot tub.

3. Testifying on behalf of the applicants was Susan Adams. She introduced into the record the following exhibits:

- A-1 Plan showing the original proposed design of the patio and sunroom entitled, Conceptual Design, indicating a copyright date of 11/06/08.
- A-2 Planting plan for the original design indicating a copyright date of 12/5/08.
- A-3 Pictures consisting of Subpart 1 and Subpart 2 for a total of eight pictures numbered 1 through 8 depicting various views of the property as well as the adjoining properties.
- A-4 Amended plans with respect to the dimensions of the patio area and sunroom.

4. Susan Adams stated that she desired that the Board consider the amended plan as now depicted on A-4 with respect to the requested variances.

5. She testified that they purchased the property in 2001. The home was built for them by Faust Construction. In 2002 they did extensive landscaping to the property.

6. She also stated that because of the rear yard setback requirement she cannot locate what in her opinion is a reasonably sized patio area other than in the side yard. She stated that locating the patio in the side yard would not afford them as much privacy as locating it in the back yard.

7. Ms. Adams also indicated that in her opinion the size of the lot presented a unique hardship entitling her to a variance. The dimensions of their lot are 150 feet on Hampshire Drive and 120 feet in depth, as is indicated on Page 9 of the Petition submitted by the applicants.

8. Ms. Adams also pointed to the fact that the neighboring property apparently owned by a Rosalia Randazzo at 4503 Hampshire Drive, as per Page 11 of the document submitted along with the Petition, has a patio that encroaches into the rear yard.

9. This is depicted on picture No. 4 of Exhibit A-3, Subpart 1. It appears that no permit was obtained for the construction of this patio and no variance was granted by the Board.

10. Also at the hearing was the owner of the property adjacent to the rear yard of the subject property, Gordon Dunker, of 4743 Kathi Drive. Mr. Dunker stated that he is in favor of the application.

11. Also appearing was Sarah Phillips of 4739 Kathi Drive, who also indicated that she was in favor of this application.

12. Finally, appearing on behalf of the applicants was Lewis Monaco of 4541 Hampshire Drive, the property immediately adjacent to the west of the subject property. Mr. Monaco stated he was in favor of the project.

13. Appearing at the hearing was Attorney Leo DeVito from the Township Solicitor's Office, and Paul Drissel from the Township Engineer's Office.

14. Attorney DeVito questioned Ms. Adams as to whether in fact the proposed sunroom and proposed patio could be smaller and still function as a sunroom and patio. Ms. Adams acknowledged it could be somewhat smaller.

15. Sect. 185-26.F.(2) provides that the minimum rear yard in this district is 40 feet, and the minimum side yards are 10% of the lot width, or in this case 15 feet.

16. Sect. 185-15.G. of the ordinance does not permit any structures to be located within the required yards.

17. On April 28th, two days before the hearing, the Board of Supervisors amended Sect. 185-25.C. of the ordinance dealing with regulations applicable to all residential districts to add a Subsection 5. In general these provisions did not change the required rear yard line in any district, but instead permitted a patio to encroach into the required rear yard line.

18. This amendment was to become effective five days after the date of passage, which technically meant it was not effective as of the date of the hearing. However, with the consent of the Township, Solicitor and the applicant, and in order to avoid the necessity of the applicant filing a new application to get the full benefit of the more flexible provisions as to locating patios in the rear yard, the Board considered the application in light of the recent amendment.

19. Sect. 5.(a)(2) of the amendment provides that a patio shall be permitted to extend into a required rear yard but not closer than 30 feet from the rear lot line. Sect. 5.(a)(3). provides that the maximum surface area of that portion of the patio that does extend into any required rear yard shall be 150 sq. ft.

20. In the present case the amended proposal as per Exhibit A-4 locates the patio 22 feet from the rear lot line, so that a variance is still necessary from this provision.

21. In addition, the present amended application proposes a patio area that would be within the required rear yard that is considerably larger than 150 sq. ft.

22. In addition, the applicant proposes to construct a sunroom which would be within the required rear yard. The recent amendment to the ordinance did not provide that any principal structures can be located within the required rear yard, and therefore a variance is necessary.

23. The majority of the Board believes that the applicants, with the recent amendment to the ordinance, do have sufficient area on their lot to have a functional and adequate patio. It is noted that as a result of the amendment the applicants can have a patio located immediately behind their home 10' x 15' in width, without the need for any variance at all.

24. In addition, the applicants could place their patio area on the side yard where there appears to be approximately 31 ft. from the existing porch in which a patio could be constructed without the need for a variance. While the patio area would not be screened by the home, landscaping could be provided by the applicants that would create privacy.

25. The Board also believes that the sunroom could be reduced in size and still be a functional sunroom without encroaching into the rear yard.

26. The majority of the Board also rejects the argument that the lot creates a hardship. The lot in question is of the same approximate dimensions, including its depth, of many of the lots in the general area.

27. It is the opinion of the majority of the Board that the applicants have failed to show that the regulations in question impact them in any manner different than what was generally intended by the imposition of these regulations in the zoning ordinance.

28. Therefore, the majority of the Board believes the applicants have not demonstrated a hardship and/or have failed to demonstrate that the requested relief is the minimum relief necessary under the ordinance, both of which are requirements for the grant of a variance.

WHEREFORE, the Hanover Township Zoning Hearing Board by a 2-1 vote hereby denies the requested variance from the rear yard provisions of the ordinance as it affects the sunroom and patio.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: _____
Paul A. Balla, Chairman

Dated: