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August 5, 2008

F. Peter Lehr, Esquire
Tallman, Hudders & Sorrentino
The Paragon Centre, Suite 300
1611 Pond Road
Allentown, PA 18104-2258

**Re: Hanover Township Zoning Hearing Board –
Richard D. Martin and Susan C. Yee (h/w)**

Dear Attorney Lehr:

Enclosed herewith please find a true and correct copy of the Findings of Fact and Conclusions of Law of the Hanover Township Zoning Hearing Board concerning the application of Richard D. Martin and Susan C. Yee, dated May 22, 2008, that I am sending to you as attorney for the petitioners.

Very truly yours,



Theodore R. Lewis, Esquire

TRL/bn
Enclosure

cc: Yvonne D. Schoenly, Zoning Administrator

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Re : Richard D. Martin &
: Susan C. Yee h/w
Dated : May 22, 2008
Property : 4646 Virginia Drive

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, June 26, 2008, and rendering its oral decision denying the requested variance as applied for but granting a lesser variance, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The subject property is located at 4646 Virginia Drive in an R1-S – Residential Suburban District.

2. The property is owned by the Estate of Stella C. Yee. The applicants are Richard D. Martin and Susan C. Yee, husband and wife, who reside at the property.

3. The applicants were represented at the hearing by Attorney Peter Lehr. The applicants submitted in addition to the attachments to the petition, the following Exhibits:

P-1 Plan of Keystone Consulting Engineers, Inc. entitled Plans Showing Boundary Retracement on lands now or formerly Stella C. Yee, Drawing No. CB-08-052, dated May 22, 2008 without any revision dates.

P-2 Floor plan of home after desired addition.

P-3 North and south elevations of home after desired addition.

P-4 thru P-13 Pictures of the home and the lot of the subject premises.

4. Mr. Martin testified on behalf of his application and indicated that he and his wife desired the proposed addition as outlined on Exhibit P-1.

5. On the west side of the premises the addition will consist of a third bay to the garage, and on the east side the addition will primarily consist of a great room.

6. This room will encroach into the side yard by approximately 7-1/2 ft. on the northern side and approximately 3-1/2 ft. on the southern side, as is depicted in P-1.

7. According to Mr. Martin these improvements are a result of what he termed a structural defect in that the center post of the garage is out of skew and if left unrepaired in his opinion might cause the collapse of the structure at some time in the future.

8. Mr. Martin indicated that if he were going to repair it, then he wanted to get something in return for these expenses. He therefore desires to raise the roof above the garage and add a third bay as well as the great room. He expects to expend some \$400,000 on these improvements. Approximately \$178,000 of this amount is related to the new great room.

9. He noted the lot is a corner lot and the home is not positioned on the lot parallel to the lot lines or to the street but at an angle.

10. He also noted that neither he nor his wife had anything to do with the location of the house on the lot.

11. Sect. 185-14.C.(3) and Sect. 185-14.G. prohibits structures from being located within the required yards.

12. Sect. 185-26.F.(2) provides for a rear yard of 40 ft. in an R1-S District. However, Sect. 185-14.H has a special provision for corner lots indicating that when the proposed structure or building is situated at a 30 degree to 45 degree angle to the rear lot line, the required rear yard is reduced by 20%.

13. The Zoning Officer stated that the file already contained an application on behalf of a prior owner for a permit for the concrete area that is shown on the present plan. Apparently the prior Zoning Officer interpreted the ordinance so that Sect. 185-14.H. was applicable since he applied a 32 ft. setback to that construction.

14. The applicants argue that the positioning of the home on the lot at an angle causes it unique hardship, thereby entitling the applicants to a variance.

15. However, this theory of hardship is already covered under the ordinance which reduces the applicable setback from 40 ft. to 32 ft. for the very reason that the applicant now says there is a hardship, that is that his home is not situated on the lot parallel to the rear lot line.

16. The applicants further argue that because they have structural repairs to make, that if they are not permitted to add the additions they will not get a sufficient return for the cost of their structural improvements, and therefore they will suffer an economic detriment.

17. It is the opinion of the Board that the Hertzberg case does not stand for such a proposition, and the applicant failed to supply any other case law that has held that a party is entitled to a variance based on such a theory.

18. Nevertheless, the Board recognizes that a reasonable addition on this lot which the applicants certainly are otherwise entitled to do if they are not encroaching into the rear lot line would be difficult to construct in a typical rectangular way without the grant of a variance.

19. The Board is appreciative of the testimony that the applicants would like to remain residents of Hanover Township and would like to make significant improvements which will probably be of benefit not only to themselves but to the overall values of properties in the neighborhood.

20. However, in the grant of any variance it is the responsibility of the Board to give the minimum relief necessary under the ordinance. In this case the Board notes that the great room in question is proposed to have interior dimensions of 22'10" x 19'8". If the applicant were constrained at the southern edge to not encroach into the required, albeit reduced rear yard, and then keep the same parallel line to his construction, the encroachment at the northern end would be approximately 4 feet rather than 7-1/2 to 8 feet. The interior dimension of the great room would still be approximately 19'6" x 19'8".

21. The Board believes that this is certainly a reasonable modification of the variance request, and necessary in order to grant only the minimum relief as required under the ordinance.

WHEREFORE, the Hanover Township Zoning Hearing Board denies the requested variance as submitted. The Board, however, does grant a variance for an encroachment into the required rear yard which results by permitting the southern wall to go as far as the required rear yard and then extend in a perpendicular line in a northerly direction to the northern wall of the proposed addition.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: 
Paul A. Balla, Chairman

Dated: August 5, 2008