

HANOVER TOWNSHIP ZONING HEARING BOARD

OF NORTHAMPTON COUNTY, PENNSYLVANIA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Application of: : Hal L. Folander & Kimberly L. Folander
Application dated : February 27, 2019
Property : 214 Wedgewood Road

The Hanover Township Zoning Hearing Board after conducting a hearing on Thursday, March 28, 2019, and rendering its oral decision granting the side yard and rear yard variances as set forth below, hereby makes the following Findings of Fact and Conclusions of Law in support thereof:

1. The subject property is located in an R1S Residential Suburban District.
2. The property is owned by Hal L. Folander and Kimberly L. Folander who were both present to testify on behalf of the application.
3. Representing the applicants was Attorney Joseph Bubba, who in addition to the application presented the following exhibits:
 1. Site plan depicting the existing home and the proposed construction of the breezeway and garage.
 2. Interior of existing garage with stairway leading below as testified to at the hearing.
 3. Aerial of property and the other properties in the immediate vicinity
 4. The area where the garage is intended to be located showing its relationship to the backyard and the existing garage.
 5. Picture looking towards the road from the area where the intended garage would be located.
4. The Applicants testified as to the reasons why they desire to locate the new garage in the location proposed on the lot.
5. The Applicants argue that the requested variances are diminimus and, therefore, do not require a showing of hardship. The Board rejects this argument believing that the diminimus theory is limited to situations where there is a much smaller deviation of the regulation in question.
6. The proposed location of the garage is 37 feet from the rear yard and since the rear yard requirement is 40 feet, the garage would encroach into the rear yard by 3 feet.

7. With regards to this variance, the property adjacent to the rear of the subject property is committed to a drainage swale as is shown in the aerial photograph. Moreover, there are a considerable number of trees bordering the rear yard. The Board, therefore, easily concludes that the grant of this variance in the rear would not be detrimental.

8. The ordinance requires that the side yard be ten (10%) percent of the width of the lot. The Applicants argue that the Board should just consider the lot where the garage is being located and not both lots owned by the Applicants.

9. However, the Board is of the opinion that for zoning purposes, these two lots have become one since the Applicants used part of the one lot for the construction of their home. Therefore, in the opinion of the Board the measurement is ten (10%) percent of the width of the combined lots, which would be 22.8 feet or rounded to 23 feet. Since the garage is 17 feet away, this means that there would be an encroachment of 6 feet.

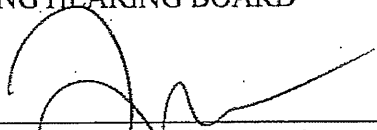
10. The Applicants also argue that Section 185-25E. should be interpreted to exempt the present lot from the 23 feet setback. However, it appears from the testimony that the measurements were computed from the aerial photographs rather than being actual measurements of the side yards.

11. In any event it is clear that in general, the side yards in the area are approximately 9 to 11 feet and most importantly, the side yard of the neighbor most affected is similar to that set back. It is noted that the structure located on the neighbor's property is also a garage so that the Applicant is proposing to locate its garage across from the neighbor's garage with a setback that is comparable to the setback for the neighbor. It is also noted that the neighbor did not appear and object to the grant of this variance.

12. During the hearing the Zoning Board indicated that it had received a letter from Dr. and Mrs. Augustine Moffitt, expressing their concern that this construction would possibly cause problems with their being able to access their property located across the street. The letter was shown to the Applicants who indicated that they would make every effort to make sure that access to the neighboring property would not be blocked off as a result of this construction.

WHEREFORE, the Hanover Township Zoning Hearing Board hereby adopts the above Findings of Fact and Conclusions of Law and grants the variance locating the garage structure 37 feet rather than 40 feet and the side yard 17 feet rather than 23 feet.

HANOVER TOWNSHIP
ZONING HEARING BOARD

By: 
Barbara L. Baldo, Esquire,
Chairperson

Dated: 5/9/19