

**ZONING HEARING BOARD OF HANOVER TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA**

IN RE:

APPEAL OF THERESA FREEMAN : Date of Hearing:
: December 28, 2017

**DECISION AND OPINION OF THE
HANOVER TOWNSHIP ZONING HEARING BOARD**

This is an appeal from Theresa Freeman, Applicant, the legal owner of property known as 5625 Grace Avenue, Hanover Township, Northampton County, Pennsylvania, also known as Northampton County Tax Parcel No. M6NW3-3-1-0214 (the "Property") for four (4) separate variance requests to the Hanover Township Zoning Ordinance (the "Ordinance"). In particular, Applicant seeks a variance from Sections 185-25C.(4)(b)[3]; 185-25C.(4)(6)[4]; 185-25C.(4)(a)[3]; and 185-25C.(3) of the Ordinance.

The Applicant, Theresa Freeman, testified at the hearing and was not represented by counsel. There were a number of supporters of Applicant's application and one (1) objector at the hearing. Testimony was taken before the Zoning Hearing Board (the "Board") on December 28, 2017 and from that testimony, we make the following:

FINDINGS OF FACT:

1. Applicant, Theresa Freeman, is the owner of the Property located at 5625 Grace Avenue, Hanover Township, Northampton County, Pennsylvania.
2. The Property is located in the R1-U Residential Zoning District as established and defined by the Ordinance.
3. The Property contains a multi-family residential dwelling and a shed.

4. The Property is 6,853.03 square feet.
5. Applicant acquired the Property on January 1, 1989.
6. The Property is generally flat, long and narrow, with dimensions of approximately 284 feet in length and 24 feet in width.
7. The surrounding properties are residential.
8. Applicant seeks the relief necessary to retain a paver patio in its existing dimensions, maintain a Rubbermaid shed approximately 4' x 7' and to install a privacy fence.
9. Applicant testified that she has no access to the rear yard with a lawnmower and tools other than to trespass on lands of her neighbor. Applicant would like to retain the shed to store her mower and lawn equipment.
10. Applicant testified that she has an undersized one car garage that is insufficient to store a parked vehicle as well as lawn equipment.
11. The pavers were installed over a concrete barrier which was located along the adjoining property at 5623 Grace Avenue. Applicant desired to cover the concrete barrier with the pavers for aesthetic reasons.
12. Applicant desires to install a privacy fence greater than 16 feet from the home as there is no privacy between the attached units. Applicant testified that the interior of each property can clearly be seen from adjoining properties. Arborvitae had previously provided a certain amount of privacy; however, they have since been removed.
13. Amy McGarr of 5627 Grace Avenue testified in favor of Applicant. Ms. McGarr confirmed the necessity for the shed and Applicant's need to trespass across the properties to mow and maintain her lawn.

14. Ina Nechita of 5621 Grace Avenue testified in favor of Applicant's request and stated that the Applicant's Property is "professionally done" and looks much better with the shed and paver patio.

15. Avtar Singh of 5639 Grace Avenue also testified in favor of Applicant's request.

16. Susan Scholl of 5383 Greenbriar Drive testified that she resides in a single-family home and that the townhouses in question adjoin her back yard. Ms. Scholl testified that she only opposes Applicant's variance request for the shed. She fears that the Zoning Board Appeal for Applicant will result in other townhouse owners receiving approval to install sheds.

17. Notice of the Zoning Hearing was duly advertised in accordance with the Zoning Ordinance and the Pennsylvania Municipalities Planning Code.

18. At the hearing, the following exhibits were made a part of the record:

ZHB -1: Appeal Petition dated October 17, 2017.

ZHB -2: Notice of Hearing.

ZHB -3: Proof of Posting.

DISCUSSION:

Applicant is the owner of 5625 Grace Avenue, Hanover Township, Northampton County, Pennsylvania, also known as Tax Map Parcel No. M6NW3-3-4 (the "Property"). The Property is located in the R1-U Residential Zoning District as defined and established by the Zoning Ordinance. Applicant seeks zoning relief by way of a variance to permit her to retain a paver patio and shed and to install a privacy fence. The Property is unique in that it is irregular in shape, it being long and narrow. A further hardship is that Applicant is required to cross other properties with her lawn equipment in order to mow and maintain her yard. The one car garage

is undersized and does not allow for a car and lawn equipment. Applicant only seeks to position the pavers over an already existing concrete barrier.

Section 185-52 of the Zoning Ordinance sets forth the Zoning Hearing Board's functions concerning its consideration of the Applicant's request for a variance. This section provides as follows:

§ 185-52. Variances.

A. Upon appeal from a decision by the Zoning Administrator, the Zoning Hearing Board shall have the power to vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions whereby such strict applications would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building involved but in no other case.

B. In general, the power to authorize a variance from the terms of this chapter shall be sparingly exercised and only under peculiar and exceptional circumstances.

C. No variance in the strict application of the provisions of this chapter shall be granted by the Zoning Hearing Board unless the Zoning Hearing Board finds that all the below requirements and standards are satisfied.

D. The applicant must prove that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. In particular, the applicant shall establish and substantiate his appeal to prove that the appeal for the variance is in conformance with the requirements and standards listed below:

- (1) That the granting of the variance shall be in harmony with the general purpose and intent of this chapter and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (2) That the granting of the variance will not permit the establishment within a district of any use which is not permitted in that district.
- (3) There must be proof of unique circumstances; there are special circumstances or conditions, fully described in the findings, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.
- (4) There must be proof of unnecessary hardship; if the hardship is general, that is, shared by neighboring property, relief can be properly obtained only by legislative action or by court review of an attack on the validity of this chapter.
- (5) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance granted by the Zoning Hearing Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded. Furthermore, hardship

complained of cannot be self-created; it cannot be claimed by one who purchases with or without knowledge of restrictions; it must result from the application of this chapter; it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.

- (6) The Zoning Hearing Board may prescribe any safeguard which it deems necessary to secure substantially the objectives of the regulation or provisions to which the variance applies.
- (7) In granting any variance the Zoning Hearing Board may prescribe appropriate conditions and safeguards in conformity with this chapter.
- (8) Any variance granted by the Zoning Hearing Board must be for uses permissible under the terms of this chapter for the district involved.
- (9) The existence of nonconforming uses or buildings in the district in which the property for which a variance is sought is located, or the fact that the use or building proposed constitutes a permitted use or a use by right in another district, shall not constitute grounds for granting a use or building variance.

These provisions are, in essence, a recitation of the requirements set forth in the Pennsylvania Municipalities Planning Code, as reenacted and amended.

With respect to the Applicant's request for variances, the Applicant has met her burden to obtain a variance from Section 185-25C.(3) to permit an approximate 4' x 7' Rubbermaid shed; Section 185-25C.(4)(b)[3] to extend the paver patio to the side yard line; Section 185-25C.(4)(b)[4] to exceed the maximum diameter of 16' by 3'9"; and Section 185.25C.(4)(a)[3] to install a privacy fence in conformity with the dimensions set forth in Applicant's application and consistent with any other applicable Ordinance requests.

In this matter, the Applicant's Property has unique physical characteristics due to its unique size and narrowness. The paver patio, shed and proposed privacy fence do not alter the essential character of the zone or neighborhood, and will not substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

CONCLUSIONS OF LAW:

1. The instant matter is properly before the Zoning Hearing Board.
2. The Zoning Ordinance of Hanover Township is constitutional and proper.

3. Applicant has demonstrated sufficient credible facts and the requisite legal hardship that would permit the grant of the variances requested; therefore, the same are granted.

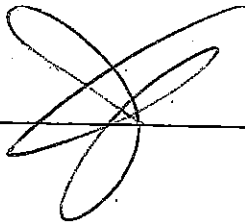
ORDER OF THE BOARD:

And now, this _____ day of January, 2018, the Zoning Hearing Board of Hanover Township determined the following:

1. The Applicant's request for a variance from Sections 185-25C.(4)(b)[3]; 185-25C.(4)(6)[4]; 185-25C.(4)(a)[3]; and 185-25C.(3) of the Ordinance are granted.

2. In all other respects, the Applicant shall comply with the Hanover Township Ordinances.

ATTEST:



ZONING HEARING BOARD OF
HANOVER TOWNSHIP,
NORTHAMPTON COUNTY,
PENNSYLVANIA

BY 

BARBARA L. BALDO, CHAIRPERSON