

MONROE TOWNSHIP ZONING HEARING BOARD

IN RE: :
 :
 :
 Application of : APPEAL NO. 2022-02 ZHB
 David Kosinski :
 :
 Premises: 131 Simmons Road :
 :
 Mechanicsburg, PA 17055 :

DECISION

This case comes before the Monroe Township Zoning Hearing Board (“Board”) pursuant to the provisions of §604.4 of the Monroe Township Zoning Ordinance (hereinafter referred to as the “Ordinance”), the same being an application for a variance by David Kosinski (“Applicant”) from the provisions of §201.5 of the Ordinance, relating to the minimum rear yard setback requirements in the Agricultural Zone. The variance is sought to permit the construction of a barn structure, in apparent violation of the foregoing Section of the Monroe Township Zoning Ordinance.

Pursuant to notice duly given, as required by the provisions of the Ordinance, a hearing was held before the Board at the Monroe Township Municipal Offices, 1220 Boiling Springs Road, Mechanicsburg, Pennsylvania, on Tuesday, March 29, 2022, beginning at 7:00 p.m. The matter was heard by Paul Rast, Vice-Chair of the Board, member Greg Sheffer and alternate member Cass Gibson.

In accordance with the provisions of the Ordinance, notice of said hearing was given to the Applicant and to adjoining property owners. A Proof of Publication of public notice is also made a part of the Record.

Testimony at the hearing was offered by the Applicant and by adjoining property owner Joseph Napoli. Testimony on behalf of the Township was offered by Gregory R. Rogalski, the Township Zoning Officer. The Application related submissions filed by the Applicant were admitted into evidence as Board Exhibits.

No objectors appeared at the hearing to register any opposition to the requested variance.

At the conclusion of the evidentiary hearing of March 29, 2022, the Board in open meeting conducted a formal discussion of the matter and took formal action.

The Record consists of the aforesaid Notice of Public Hearing, Proof of Publication, and letters of notification of neighboring property owners, together with the original Application and related submissions filed by the Applicant.

FINDINGS OF FACT

After a review of the testimony and the documents included in the Record of this case, the Board makes the following Findings of Fact:

1. On February 25, 2022, David Kosinski (“Applicant”), the owner of the property located at 131 Simmons Road, Mechanicsburg, Cumberland County, Pennsylvania, filed a Zoning Hearing Board Application, seeking a variance that would allow for a new barn structure to be constructed in the Agricultural Zone. The Application included documents depicting the dimensions relating to the requested variance, which have been received into evidence.
2. Applicant sought a variance from the Ordinance’s requirement of a minimum rear yard setback of 10 feet, so that the new structure could be constructed on the property line.
3. The lot in question has substantial elevation changes and rock outcroppings close to the rear setback line.
4. The Applicant intends to remove a large growth of bamboo that is currently situated on the intended location of the structure.
5. Because the construction of the proposed structure at the required setback line would necessitate undertaking substantial expense and difficulty to remove subsurface rock, the Applicant has asked for a variance to situate the structure where such excavation would not be necessary.
6. The adjoining property owner who shares the property line where the proposed structure is to be located does not object to the granting of the requested variance.

ADDITIONAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW

When determining whether to grant a variance in any given case, this Board must take into consideration the provisions of the Ordinance setting forth the criteria for the granting of variances. Accordingly, this Board must be guided by the provisions of Section 604.4 of the Ordinance, which provides in pertinent part as follows:

604.4. Variances - The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

1. 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 this Ordinance in the neighborhood or zoning district in which the property is located;
2. That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
3. That such unnecessary hardship has not been created by the applicant;
4. That the variance, if authorized, will not alter the essential character of the zone or neighborhood 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;
5. 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.

In the instant case, the Applicant has made a sufficient showing to satisfy each of the 5 above-enumerated criteria for the granting of a variance. The foregoing Findings of Fact demonstrate that the physical characteristics of the lot present tangible obstacles for the construction of the proposed structure other than at the property line. Given the features of the terrain, the Applicant has no viable choice but to situate the structure within the required setback area.

Consequently, the Board specifically finds that the granting of the requested variance would promote the declared purposes of the Zone in which the property is situated.

Therefore, based on the foregoing discussion and analysis, the Board grants the Applicant's request for a variance with respect to the construction of the proposed structure that will be situated on the rear property line of the premises.

The Board also notes, and has so admonished the Applicant, that all other requirements of applicable Township Ordinances are to be complied with by the Applicant in the construction of the proposed structure and any other accessory facilities.

ALL MEMBERS CONCUR.

MONROE TOWNSHIP ZONING HEARING BOARD

By: *Philip J. Murren*
Philip J. Murren, Solicitor

Dated: May 12, 2022