

YORK TOWNSHIP

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York Township Zoning Hearing Board
June 28, 2016
6:00 p.m.

The June meeting of the York Township Zoning Hearing Board was called to order by Glenn Myers, Chairman.

Those in attendance were:

Glenn Myers, Chair
David Fishel, Asst. Secretary
James Barnes, Alternate Member
Kathleen Cronin, Alternate Member
Jeffrey Rehmeyer, Esquire, Solicitor
Lisa Frye, Zoning Officer

MINUTES OF MAY 24, 2016

The Zoning Hearing Board minutes of the May 24, 2016, meeting were approved.

DECISIONS OF MAY 24, 2016

The Zoning Hearing Board decisions of the May 24, 2016, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2016-16, Alisha Kauffman requests a Special Exception to establish an In-Home Day Care on property located at 320 Blymire Road in a Residential Medium Density (RM) District.

Present: Alisha Kauffman

York Stenographic Services, Inc.
34 North George St., York, PA 17401 - (717) 854-0077

York Township Zoning Hearing Board
Tuesday, June 28, 2016
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MOTION: On Application 2016-16, Alisha Kauffman requests a Special Exception to establish an In-Home Day Care on property located at 320 Blymire Road in a Residential Medium Density (RM) District, that the request for a Special Exception be approved.

MOTION MADE BY: Kathleen Cronin
SECONDED BY: James Barnes
MOTION PASSED UNANIMOUSLY

Continued Application 2016-15, Edward Tony requests Variances to 1) exceed allowable lot coverage and 2) to allow encroachment of a deck into side setback on property located at 703 Goddard Drive in a Residential Low Density (RL) District.

Present: Stacey MacNeal, Esquire
Melissa Tony

MOTION: On Continued Application 2016-15, Edward Tony requests Variances to 1) exceed allowable lot coverage and 2) to allow encroachment of a deck into side setback on property located at 703 Goddard Drive in a Residential Low Density (RL) District, that the request for Variances be approved.

MOTION MADE BY: James Barnes
SECONDED BY: Kathleen Cronin
MOTION PASSED UNANIMOUSLY

ATTEST:



William Descar, Secretary

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2016-15
Hearing Date: May 24, 2016 and June 28, 2016
Applicant: Edward N. and Melissa A. Tony
Property Owner: Edward N. and Melissa A. Tony
Property: 703 Goddard Drive
UPI: 54-000-54-0080-00-00000
Existing Zoning District: Residential Low Density (RL)

Relief Requested- Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-401.G. and 265-536.B. thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. Mr. Edward Tony was present at the May 24, 2016 hearing as the Applicant.
3. Mrs. Melissa Tony was present at the June 28, 2016 hearing as the Applicant.
4. Joe Nardo of Private Paradise Construction, Inc. was present at the May 24, 2016 hearing in support of the Applicant.
5. Attorney Stacey MacNeal appeared as counsel for the Applicant at the June 28, 2016 hearing.
6. The Applicant is seeking a Variance of Section 265-401.G. (which limits lot coverage to 30 percent of Net Lot Area) and Section 265-536.B. (which limits yard projections of decks closer than 25 feet to any property line), to allow for the replacement of an existing deck (the "Existing Deck") with a new deck (the "New Deck") and the installation of a patio area (the "Proposed Patio").
7. By way of background, Mr. Tony provided additional information as follows:
 - a. The Property itself has a trapezoid style shape, being substantially narrower in the rear, and wider in the front.
 - b. The Property does slope from the rear to the front.
 - c. The Existing Deck is in need of replacement, and the New Deck is proposed to be relatively squared in shape, coming off the rear portion of the house.
 - d. The New Deck would be constructed from composite materials.
 - e. The New Deck would be a little longer.
 - f. It was explained that the Existing Deck intrudes into the side setback, being approximately 13 feet from the Property line.
 - g. The New Deck would intrude only slightly further.

- h. There was no Variance sought for or received for the installation of the Existing Deck.
8. Additionally, the Applicant provided information with regard to a Proposed Patio as follows:
 - a. The Proposed Patio would adjoin the New Deck and also be to the rear of the home.
 - b. The Proposed Patio would be located near the center of the Property, at least 23 feet from the edge of the Property on the Southern side.
 - c. Both the Proposed Patio and New Deck are intended to integrate and match the existing house and be consistent with other such facilities in the neighborhood.
9. The Applicant requested a continuance, to allow him to do further analysis with regard to the size of the New Deck and Proposed Patio and the specific amount of relief requested, to justify the Variance.
10. William Descar moved, and David N. Fishel seconded, the motion to grant a continuance to the Applicant on the May 24, 2016 hearing date.
11. On June 28, 2016, using Exhibits presented to the Board, Attorney MacNeal and Mrs. Tony provided additional testimony to the Board as follows:
 - a. With regard to Exhibit No. 1, which was a portion of a Subdivision Plan including the Property, it was noted that the Lot is irregularly shaped (and not rectangular).
 - b. Further, the Property is smaller than many of the nearby lots, being only 17,917 square feet (gross) and 14,647 square feet (net).
 - c. With regard to Exhibit No. 2, a revised Grading Plan for the Property, it was noted that there is a stormwater swale along its Northeastern property line.
 - d. That swale is covered with grass.
 - e. It was noted that the Existing Deck was very small, being only 252 square feet in size.
 - f. Exhibit No. 3 consisted of photographs of the Existing Deck as follows:
 - i. From the Northeastern Property line up towards the Existing Deck and its access door from the dwelling.
 - ii. Another view from the Northeastern Property line showing the Existing Deck from the rear of the house.
 - iii. A view of a table that seats 6 on the Existing Deck.
 - iv. A photograph of Mrs. Tony in the walkway from the dwelling to the main portion of the Existing Deck.
 - g. It was noted that the table and chairs need to be maneuvered to allow 6 people to use them on the Existing Deck and when all chairs are in use, nobody can walk around the table.
 - h. With regard to Exhibit No. 4, which was a drawing by Private Paradise Construction, Inc., it was shown that the Existing Deck is only 14 feet, 6 inches from the Property line.
 - i. Exhibit No. 4 also shows that the New Deck would be 13 feet, 9 inches from the Property line.
 - j. The New Deck would allow a wheelchair on the walkway from the dwelling to the main portion of the New Deck.
 - k. Exhibit No. 5 is a drawing by Private Paradise Construction, Inc. showing the location of the Existing Deck, the expanded area of the New Deck and the Proposed Patio.

- l. The New Deck would add 155 square feet and greatly enhance the use of the area.
 - m. Exhibit No. 6A and B consisted of 2 photographs of the area for the Proposed Patio. Exhibit No. 6A first shows the area immediately adjacent to the Existing Deck and 6B shows the area beyond it, closer to the driveway.
 - n. It was noted that there is a basement window and window well beside the Existing Deck.
 - o. It was explained that there is a fixture on the side of the home for the fireplace and a satellite antenna too.
 - p. The Proposed Patio would be 648 square feet and integrate from the New Deck to the driveway.
 - q. Exhibit No. 7, a drawing by Private Paradise Construction, Inc., showed the dimensions of the Proposed Patio, Existing Deck and New Deck.
 - r. Specifically, the New Deck, which increases the size of the Existing Deck by 155 square feet, would have a total of 407 square feet.
 - s. The Board was reminded that the initial request for the Proposed Patio was 892 square feet and the current request represents a reduction.
 - t. Exhibit No. 8 is a Building Permit for the home, which shows that the square footage of the impervious coverage on the Property at the time of construction was 3,650 square feet.
 - u. If 155 square feet are added to increase the size of the Existing Deck to the New Deck and the Proposed Patio adds another 640 square feet, then the total impervious area would be 4,705 square feet of the net lot area of 14,674 square feet, which yields a coverage of 32.1 percent.
 - v. Looking at Exhibit No. 9, which are portions of the prior Zoning Ordinance for the Township, it was highlighted that impervious coverage in this Zone used to be 50 percent of the Gross Lot Area.
 - w. An Amendment to the Zoning Ordinance 2005-17 required the impervious coverage to be measured in connection with Net Lot Area.
 - x. Accordingly, when the home was built, the impervious coverage limit was 50 percent of the Gross Lot Area.
 - y. Under the current Ordinance, 4,394 square feet of impervious coverage is allowed and an additional 311 square feet is requested.
 - z. Additionally, the encroachment for the New Deck on the side Property line needs to be increased by 9 inches.
 - aa. The increase in size for the New Deck and the installation of the Proposed Patio are necessary to allow effective utilization of those areas on the Property, including handicapped access.
 - bb. If the drainage swale were not factored into the calculation of Net Lot Area, since the drainage swale is simply grass, the lot coverage with the New Deck and Proposed Patio, would be only 26 percent.
 - cc. Exhibit No. 10 is an aerial photograph showing the Property and those in its vicinity, noting that many had extensive decks and/or patios installed.
12. In response to the criteria for the Variance, the Applicant provided the following:
- a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, include the relatively small size of the lot at the time of creation, its shape, which is somewhat irregular, and such unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by

the provision of this chapter in the neighborhood or district in which the Property is located.

- b. Because of such physical circumstances or conditions, there is no possibility that the Property can be developed in strict conformity with the provisions of this Chapter and the authorization of a Variance is therefore necessary to enable the reasonable use of the Property, as the Existing Deck is too small to function and doesn't allow for handicapped access, and is necessary for adequate and safe use.
 - c. The unnecessary hardship is not being created by the Applicant.
 - d. The Variance, if authorized, will not alter the essential character of the neighborhood or district 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.
 - e. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least modification possible to the regulation at issue, particularly since the Applicants' request for relief was reduced further upon consideration between the hearings.
13. Lisa Frye, Township Zoning Officer confirmed that the Township had no issues with the relief as requested.
14. There were no telephone calls from anyone with questions or concerns.
15. In response to questions, the Applicant provided the following:
- a. The satellite dish will come off the home once the Proposed Patio is installed.
 - b. No portion of the New Deck would be in the existing drainage swale.
 - c. There are screen plantings along the Northeastern portion of the Property.
16. Attorney MacNeal indicated that the Variances as requested are dimensional and *de minimus*.
17. She further argued that they are necessary to allow the owners to invest in their Property.
18. She reminded the Board that the home was constructed when the Zoning Ordinance was substantially different that it is today, specifically that lot coverage at the time could have been closer to 9,000 square feet and now it is closer to 4,000 square feet.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

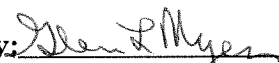
1. The Property is unique, as are certain circumstances related to its development and use.
2. The increase of projection into the side setback by the New Deck versus the Existing Deck, is minimal.
3. The increase in impervious coverage by the New Deck and Proposed Patio do not appear as if it will cause any harm, but rather will improve the use and value of the Property.
4. The Variances would allow an additional 9 inch intrusion into the side setback by the New Deck and 311 square feet of impervious coverage beyond the limits of the current Ordinance.
5. The Variance criteria have been met.

Accordingly, Jim Barnes moved, and Kathleen A. Cronin seconded, to grant the Variance to allow for the replacement of an Existing Deck with a New Deck and the installation of a Proposed Patio to exceed the lot coverage and to exceed the limit of the yard projection closer than 25 feet to the Property line on the Property located at 703 Goddard Drive in a Residential Low (RL) Zone. The motion passed with Glenn Myers, David N. Fishel, Kathleen A. Cronin and Jim Barnes voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


Secretary

By: 
Glenn Myers, Chair
8/23/16
Date

The Variance granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Variance, pursuant to Section 265-1009. E. of the Ordinance.

DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

Application Number: 2016-16
Hearing Date: June 28, 2016
Applicant: Alisha Kauffman
Property Owner: Jason Laucks
Property: 320 Blymire Road
UPI: #54-000-31-0061-0000000
Existing Zoning District: Residential Medium Density Zone (RM)

Relief Requested- Special Exception under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-627 thereof.

FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. The Applicant was present on her own behalf.
3. The Applicant is seeking a Special Exception under the Ordinance to allow for an In Home Day Care (the "Day Care") on the Property.
4. With the Applicant's younger child included, the facility would exceed the parameters as defined in the Ordinance for Day Care, In Home. Therefore, a Special Exception in accordance with Section 265-304.B (All Other Uses), is sought, generally in accordance with the specific criteria for an In Home Day Care as set forth in Section 265-627 (the "Use").
5. The Applicant provided information in support of the Application as follows:
 - a. She is licensed to provide Day Care facilities in her current home in Dover.
 - b. She is looking to move.
 - c. The basement area in the Dwelling would be used for the Day Care, as it has direct access to the outside.
 - d. An outside area on the Property would be fenced in to serve the Day Care.
 - e. There would be no sign denoting the Day Care on the Property.
 - f. The hours of operation for the Day Care would be Monday through Friday from 6:30 am till 5:30 pm.
6. In response to the Specific Criteria for an In Home Day Care in Section 265-627 of the Ordinance, the Applicant offered the follows:
 - a. While she has a certificate of licensure for her current facility in Dover, she shall obtain a certificate of licensure from the appropriate federal, state and/or local authorities for the new Day Care on the Property.
 - b. No sign is proposed.

- c. The In Home Day Care shall be conducted only in the Single-Family Detached Dwelling on the Property.
 - d. The Applicant, who will be a full-time resident in the Dwelling on the Property, shall be the person primarily responsible for the Day Care.
 - e. An outdoor play area shall be provided, including the following:
 - i. The outdoor play area shall be completely enclosed by a minimum 6 foot high fence.
 - ii. The outdoor play area shall not be located in the front yard, but rather shall be in the back.
 - iii. The outdoor play area shall have shade.
 - iv. Vegetation within the outdoor play area shall be safe for humans.
7. The Applicant noted that she will have 6 children in the Day Care, plus 2 of her own children, are currently ages 10 and 13.
 8. It was noted that the definition of In Home Day Care contemplates not more than 6 children under the age of 12, including any children under the age of 12 who are residents of the building.
 9. Lisa Frye, the Zoning Officer noted that the definition of In Home Day Care was intended to mirror state regulations in effect at the time the Ordinance was adopted. Mrs. Frye indicated that the State Regulations have since changed.
 10. Mrs. Frye indicated that the Township has no objection with the Applicant providing Day Care services for 6 children, plus her own children, only 1 of which is under the age of 12.
 11. In response to the General Standards for a Special Exception in Section 265-1009, the following was provided:
 - a. The intended purpose of the proposed Use shall be consistent with the Township's development objectives as established in the Comprehensive Plan.
 - b. The proposed Use shall be in the best interest of properties in the general area, as well as the community at large, when viewing the proposed Use in relationship to and its potential effects upon surrounding land uses and existing environmental conditions regarding the pollution of air, land and water, noise, potential of hazards and congestion, illumination and glare, restrictions to natural light and circulation.
 - c. The proposed Use is suitable for the Property in question and is designed, constructed and will be operated and maintained suitably for the anticipated activity and population served, numbers of participating population, frequency of use, adequacy of space and generation of traffic.
 - d. There are adequate and available utility services and facilities, such as sanitary and storm sewers, water, fire, police and other public facilities and the ability of the Township to supply such services.
 - e. The proposed Use has adequate ingress, egress, interior circulation of pedestrians and vehicles, off-street parking and accessibility to the existing Township street system.
 - f. The Use shall be in conformance with all applicable requirements of the Ordinance and, where applicable, in accordance with the Townships' Subdivision and Land Development Ordinance.
 12. There were no questions from the audience.
 13. There was no testimony for or against the Applicant.

CONCLUSIONS OF LAW

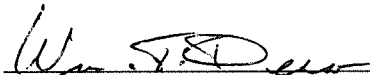
Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

1. The Applicant has or shall meet the specific requirements for an In Home Day Care pursuant to Section 265-627.
2. The Applicant has met the requirements for a Special Exception pursuant to Section 265-304.B as follows:
 - a. The Use is similar to other uses permitted or allowed by Special Exception;
 - b. The Use will not constitute a public or private nuisance; and
 - c. The Use will not violate any other provisions of the Ordinance.
3. The Board imposes a Condition, which is the installation of the fence to enclose the outdoor play area in the back yard, with areas of shade, and with no unsafe vegetation, as well as compliance with all other provisions of the Ordinance (collectively the "Condition").
4. The Applicant has met the General Standards for a Special Exception pursuant to Section 265-1009.C.

Accordingly, Kathleen A. Cronin moved, and Jim Barnes seconded, to grant the Special Exception to establish an In Home Day Care, on the Property located at 320 Blymire Road in a Residential Medium Density (RM) Zone, subject to the imposition of the Condition. The motion passed with Glenn Myers, David N. Fishel, Kathleen A. Cronin and Jim Barnes voting in favor of the motion.

WITNESS/ATTEST

YORK TOWNSHIP
ZONING HEARING BOARD


Secretary

By: 
Glenn Myers, Chair

8/23/16
Date

The Special Exception granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Special Exception, pursuant to Section 265-1009. E. of the Ordinance.