

**LOWER ALLEN
ZONING HEARING BOARD**

IN THE MATTER OF: 1013 St. John’s Road
 Zone: General Commercial District (C-2)
 Applicant: Jameson Stone, LLC
 Property Owner: Kindt Properties, LLC
 Application No. 2024-10

REQUEST FOR: **DIMENSIONAL VARIANCES FOR ZONING RELIEF
FROM THE REQUIREMENTS FOR A MOTOR VEHICLE
ACCESS DRIVE INTERSECTION AND CARTWAY**

BEFORE: Moran, Chair
 Bonneville, Vice-Chair
 Migala, Participating Alternate Member

DECISION

Applicant seeks to create an access drive to provide a steady and safe flow of traffic to and from the property. Applicant filed an application for dimensional variances for zoning relief from (1) the 20 foot minimum radius requirement for an access drive intersection; and (2) the requirement of paving the first 50 feet of a driveway adjacent to a street cartway. The property is located in the General Commercial (C-2) Zoning District. The Board considered and decided Applicant’s variance requests at the November 21, 2024 hearing.

EXHIBITS

- B-1 Application for variance with attached narrative and plans for the proposal.
- B-2 Certificate of Service of public notice and written notice of hearing on variance application
- T-1 Property history

FINDINGS OF FACT

1. On or about October 22, 2024, Jameson Stone, LLC (Applicant) applied for zoning relief in the form of two dimensional variances to establish an access drive on the property located

at 1013 St. John's Road, Camp Hill, Pennsylvania (property), which is owned by, Kindt Properties, LLC¹.

2. A hearing on the application took place on November 21, 2024.
3. Public notice of the hearing on the application was published in the Patriot News on November 5, 2024, and November 12, 2024. Notice of the hearing was posted at the Lower Allen Township Municipal Building and on Township's website on November 1, 2024, and placed on the property on November 6, 2024.
4. Notice of the hearing was mailed to Applicant and adjoining property owners on November 6, 2024.
5. No objections as to the method and timing of notice and advertising were raised.
6. No objections as to any of the exhibits submitted into the record at the hearing were raised.
7. The property is located in the General Commercial (C-2) Zoning District.
8. The Applicant has standing to pursue the zoning relief requested as it is representing the owner of the property and had the owners authorization to file the application and pursue the requested zoning relief.
9. Testimony at the hearing was taken from Dan Jameson, Esq. from Applicant, Jameson Stone, LLC, Barry Kindt, on behalf of the property owner, Kindt Properties, LLC, Adam Davis (project engineer) with Hyland Engineering, and Marcus Brandt, Township Zoning and Codes Administrator. Danya Donelan and Deb Barr, two neighbors of the property, offered public comment at the hearing.

¹ Jameson Stone, LLC is the law firm retained by the property owner to represent them in this zoning proceeding.

10. Kindt operates a home services business on the Primrose Avenue property located behind the St Johns Road property.

11. Ingress and egress to the business is on Primrose Avenue which creates traffic movement issues on the business property, including trucks with loud alarms that are activated when the vehicle is in reverse.

12. There is an existing curb cut on the St. Johns Road property for the location of the proposed access drive.

13. The curb cut is overgrown, but was previously used for truck access to the site by the prior owner.

14. The existing curb cut has a jersey barrier blocking access to the property, but the curb cut and the access drive will be improved and paved.

15. The proposed curb cut will have a 10 foot turning radius and the access drive will allow one way ingress to the property for Kindt's business².

16. The existing ground where the 10 foot access drive will be located is approximately 3 feet below the ground on either side of the driveway.

17. The trucks that enter the property from the access drive on Saint Johns Road will exit the property on Primrose Avenue via the stone access drive on the property.

18. The access drive will improve the flow of traffic on the property for larger trucks that have trailers or large equipment attached to them.

19. The proposed access drive at St Johns Road will allow larger trucks to avoid traffic that may increase on certain months/days and at certain times from the Pizza Grille restaurant

² The Township Zoning Ordinance requires a turning radius of 20 feet at the intersection with an access drive. Section 220-244(B)(3)(f)

along Gettysburg Road and the public recreational park and fields located along Rosemont Avenue.

20. Kindt will put signs at the entrance at St. Johns Road that will advise to the public that it is a private access to the property and not to be used by the traveling public.

21. By utilizing the existing curb cut for the access drive and not having to establish a 20 foot turning radius and driveway, Kindt will avoid having to remove many trees on the property to create an access drive to improve traffic flow to the business property.

22. Business box trucks and vans will continue to utilize the ingress/egress to the property along Primrose Avenue.

23. The tractor trailers, box trucks and vans typically leave the business property at Primrose Avenue between 7:00 a.m. and 9:00 a.m., and return at various times between 11:00 a.m. and 7:00 p.m. based on the schedule of the employee; ½ day job or full day job.

24. Applicant requested a variance to pave the first 25 feet of the access drive at St. Johns Road into the property³.

25. No and/or insufficient evidence was submitted to justify the variance to pave the first 25 feet of the access drive instead of 50 feet required by the Township Zoning Ordinance.

26. The proposed curb cut and access drive will not alter the character of the neighborhood or substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

³ The Township Zoning Ordinance requires the first 50 feet of a driveway adjacent to a street cartway be hard surfaced in asphalt, concrete, paving block or similar surface, not including stones or soil. See 220-244(B)(7) and Chapter 192, Subdivision and Land Development, Section 192-57(b)(3)(e).

CONCLUSIONS OF LAW

1. The Lower Allen Township Zoning Hearing Board has jurisdiction to hear the above-captioned application pursuant to 53 P.S. Section 10909.1(a)(5). (The Municipalities Planning Code).

2. Proper notice of the hearing was given to the public and to all interested parties.

3. Exhibits B-1 and B-2 and T-1 were properly admitted into evidence.

4. Applicant has sustained its burden of proof for a variance to for zoning relief from Section 220-244(B)(3)(f) of the Township Zoning Ordinance in accordance with the attached discussion and decision.

5. Applicant failed to sustain its burden of proof for a variance for zoning relief from Section 220-244(B)(7) of the Township Zoning Ordinance in accordance with the attached discussion and decision.

DISCUSSION

The property is located in the General Commercial (C-2) Zoning District which is regulated by Article 4 of Chapter 220 – Lower Allen Township Zoning Ordinance (Ordinance). Applicant seeks two (2) dimensional variance from the Township Zoning ordinance in order to create an access drive to its property it uses to operate a Home Services business.

VARIANCE

In reviewing the application requesting the dimensional variance, the Zoning Hearing Board must take into account the criteria as set forth in Section 220-269 of the Township Zoning Ordinance which states the following:

Section 220-269 Zoning Hearing Board

C. Variances.

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application and may require application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that 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 chapter in the district in which the property is located.

(2) That 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 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 appellant.

(4) That the variance, if authorized, will not alter the essential character of the 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.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and represent the least modification possible of the regulation in issue. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter.

Applicant submitted a request for two (2) dimensional variances, one of which is to create a curb cut and access drive at St. Johns Road for its business property located along Primrose Avenue. The proposed curb cut will have a 10 foot turning radius, which is less than the required 20 feet. Also, Applicant requested a variance from the Zoning Ordinance requirement that the first 50 feet of the access drive be paved. Applicant proposed the only the first 25 feet of the access drive be paved.

Common law distinguishes between a dimensional variance and a use variance. A use variance applicant requests to use the property in a manner prohibited by the zoning regulation. *Hertzberg v. Zoning Bd. of Adjustment*, 554 Pa. 249, 264, 721 A.2d 43, 47 (Pa. 1998). A dimensional variance allows for the reasonable adjustment of the zoning regulation in order to utilize the property as desired. *Dunn v. Middletown Twp. Zoning Hearing Bd.*, 143 A.3d 494, 501 (Pa. Commw. 2016).

When considering a dimensional variance for purposes of determining unnecessary hardship, a Zoning Hearing Board is able to consider multiple factors not applicable to the use variance test, such as the financial hardship created by any work necessary to bring the property into strict compliance with the ordinance, the economic detriment to the applicant if the variance was denied, and the characteristics of the surrounding neighborhood. *Soc'y Created to Reduce Urban Blight v. Zoning Bd. of Adjustment*, 771 A.2d 874, 877 (Pa. Commw. 2001). Unreasonable economic burden may be considered in determining the presence of unnecessary hardship. *Yeager*

v. Zoning Hearing Bd. Of City of Allentown, 779 A.2d 595, 598 (Pa. Cmwlth. 2001) In *Marshall v. City of Philadelphia*, 97 A.3d 323 (Pa. 2014), the Pennsylvania Supreme Court stated “This Court has repeatedly made clear that in establishing hardship, an applicant for a variance is not required to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose” *Id.* at 330 A dimensional variance therefore compels a slightly lowered standard from a use variance, but must still address the aforementioned factors, including the showing of an unnecessary hardship. *Tri-Cnty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 520 (Pa. Commw. 2014). The reason for treating a dimensional variance more leniently than a use variance is that the applicant is asking for nothing more than a reasonable adjustment of the zoning regulations for the purpose of utilizing the property in a manner consistent with the zoning regulation. *Hertzburg* at p. 264

VARIANCE FOR TURNING RADIUS FROM ACCESS DRIVE INTERSECTION

Applicant intends to use the location of an existing curb cut on the property to create the proposed curb cut and access drive to the business property located along Primrose Avenue. The access drive will allow free flow of traffic to the business property for larger trucks that currently enter and exit the business along Primrose Avenue. The condition of the St. Johns Road property has an approximate 3 foot elevation outside of the grounds of the proposed curb cut and access drive. Also, maintaining the location of the existing curb cut will avoid the need to remove several trees on the property to create a wider turn radius (20 feet) and access drive to the business.

Applicant did not create the existing curb cut on the property which is currently overgrown, but capable of being improved and paved for larger trucks/vehicles. Additionally, the ability to utilize the condition of the property in its current condition for the proposed curb cut and access

drive will be economically feasible and less disruptive to the neighbors than requiring compliance with the Township Zoning Ordinance.

The 10 foot turning radius for the access drive at the proposed location will not alter the essential character of the C-2 Zoning District, nor substantially impair the appropriate use or development of adjacent property. Also, the public welfare benefits from the proposed variance as it will make traffic flow smoothly to the business property and will avoid the disturbances of alarms activated by a truck traveling in reverse at the business due to access solely from Primrose Avenue. Finally, the variance will represent the minimum necessary to afford relief to applicant as it will utilize the location of the current curb cut.

Accordingly, we find that the Applicant has sustained its burden of proving entitlement to the variance requested to create a 10 foot turning radius at the access drive intersection with the property at St. Johns Road.

VARIANCE FOR PAVING CARTWAY OF ACCESS DRIVE

Applicant has requested zoning relief to only pave the first 25 feet of the access drive from St. Johns Road, instead of the 50 feet required by the Township Zoning Ordinance. Applicant did not provide any evidence establishing an undue hardship created by the property or the hardship it will sustain if it needed to comply with the 50 foot requirement of the ordinance. Applicant did not submit any evidence establishing that it was unable to comply with the ordinance requirement as a result of an alleged undue hardship.

Applicant failed to submit sufficient evidence to satisfy its burden of proof for a variance to pave only the first 25 feet of the access drive on the property.

ORDER

Applicant is granted a dimensional variance for zoning relief from Zoning Ordinance Section 220-244(B)(3)(f), which requires all access drive intersections to be rounded by a tangential arc with a minimum radius of 20 feet. The variance granted authorizes applicant to create a 10 foot radius for the access drive intersection at 1013 St. Johns Road.

Applicant is denied a dimensional variance for zoning relief from Zoning Ordinance Section 220-244(B)(7) which requires the cartway of all access drives be constructed according to the local street standards established in Chapter 192, Subdivision and Land Development. This Chapter requires the first 50 feet of the cartway be hard surfaced in asphalt, concrete, paving block or similar surface, not including stones or soil. (Section 192-57(b)(3))(e).

The variance requests apply to the property located at 1013 St. Johns Road, Camp Hill, PA.

SIGNATURE PAGE TO FOLLOW

LOWER ALLEN TOWNSHIP ZONING HEARING BOARD

Date: 12/19/2024

By: Ann Moran
Ann Moran, Chair