

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Appeal of Robert Plotts from :
the Decision of the Zoning Hearing :
Board of Limerick Township dated :
January 19, 2007 : No. 522 C.D. 2008
: Argued: November 11, 2008
Appeal of: Robert Plotts :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: December 8, 2008

Robert Plotts (Applicant) appeals from an order of the Court of Common Pleas of Montgomery County (trial court) affirming the decision of the Zoning Hearing Board of Limerick County (Board) denying his application for an amended variance. The issues before the court are whether Applicant should have been granted a *de minimis* variance and whether Applicant should have been granted a modification of his previously granted variance for the purpose of expanding a certain sun porch. For reasons that follow, we affirm the trial court.

Applicant resides on the property located at 115 Neiffer Road, Limerick Township, Montgomery County, Pennsylvania. The property is owned by his daughter and son-in-law, Tanya Plotts-Yoeman and William Yoeman. The owners live on the property but in a separate dwelling.

On November 9, 1995, the Limerick Zoning Hearing Board granted a variance to Article XIV, Section 184-104 and Article XII, Section 184-101 of the Zoning Ordinance to Applicant to construct a 35 foot by 14 foot sun porch onto the south side of his pool house, and to utilize the pool house as a residence, for as long as he and his wife shall live. Thereafter in 2005, Applicant began work to build a 20 foot by 20 foot enclosed addition to the sun porch. On January 25, 2006, Applicant was required to stop work on the addition because he did not have a permit.

On March 22, 2006, Applicant filed an appeal requesting an amended variance. A hearing was held by the Board, and on January 19, 2007, the Board issued a decision denying all zoning relief requested by Applicant. On February 20, 2007, Applicant appealed to the trial court, and the trial court affirmed the Board. On March 20, 2007, Applicant timely appealed to this Court.¹

Applicant argues he should have been granted a *de minimis* variance because the proposed addition would encroach only two feet into the 50 foot side yard setback requirement. This is a four percent dimensional deviation from the ordinance requirement and therefore, “minor.”

As previously held by this Court:

A party seeking a variance bears a heavy burden of proof and the *de minimis* doctrine is an extremely narrow exception to that rule. It is rare, but on occasion, this Court has permitted minor dimensional variances without requiring that the traditional grounds for a variance be satisfied. In a limited number of cases the doctrine has been applied to permit a variance where the violation of the ordinance was minor and to do otherwise would require the

¹ Where the parties present no additional evidence after the Board’s decision, as in this case, this Court’s review is limited to determining whether the Board committed an abuse of discretion or an error of law. *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807 (Pa. Cmwlth. 2005).

moving of a building and where rigid compliance with the ordinance was not necessary to protect the public policy concerns underlying the ordinance. ... There is no precedent, however, for approving a *use* variance based on the 'de minimis' approach.

Rollins Outdoor Advertising, Inc. v. Zoning Bd. of Adjustment, 529 A.2d 99, 102-103 (Pa. Cmwlth. 1987)(citations and footnotes omitted). In the instant case, Applicant's proposed addition will add 400 square feet to his accessory use structure (the pool house). Applicant completely ignores this fact and focuses on the two foot encroachment on the setback requirement.

The ordinance limits accessory use structures to 1,200 square feet. The intended addition would expand the structure to 2,120 square feet. Notwithstanding, the Applicant is not requesting a dimensional variance, but the amendment of a use variance. Further, we note that Applicant's not acquiring the variance does not require relocation of the pool house. Yet if granted, the variance would frustrate the public policy concerning the ordinance, i.e., limiting the size of accessory structures.

The fact that Applicant was previously granted a use variance allowing him to live in an accessory structure for the duration of his life does not change the status of the structure. It is still technically an accessory structure and will continue as such upon his death. Given these facts, this variance clearly cannot be considered *de minimus*.

Consequently, we must treat Applicant's request for an amended variance as a request for a modification of his previously granted variance. An owner who wishes to obtain a modification of a condition which has become final must establish: (1) either traditional grounds for a variance or changed circumstances which render the condition inappropriate, and (2) absence of injury to the public

interest. *Ford v. Zoning Hearing Bd. of Caernarvon Twp.*, 616 A.2d 1089 (Pa. Cmwlth. 1992).

The traditional grounds for a variance are:

(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 the zoning ordinance in the neighborhood or 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 the zoning 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 appellant.

(4) That 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.

(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.

Section 910.2 of the Pennsylvania Municipalities Planning Code² (MPC), 53 P.S. § 10910.2.

² Act of July 31, 1968, P.L. 805, *as amended*, added by Section 89 of the Act of December 21, 1988, P.L. 1329.

The Board specifically found that Applicant did not present any evidence regarding the traditional grounds for variance set out by Section 910.2 of the MPC, nor did he present any evidence of changed circumstances which renders the previous variance inappropriate. Thus, the Board correctly concluded that Applicant did not meet his burden of proof to justify the granting of an amended variance. Accordingly, the trial court did not err or abuse its discretion in affirming the decision of the Board.

For these reasons, the order of the trial court is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 8th day of December, 2008, the order of the Court of Common Pleas of Montgomery County dated February 20, 2008, is hereby affirmed.

JOHNNY J. BUTLER, Judge