

**APPLICATION OF ALAN GREAVES
BEFORE THE ZONING HEARING BOARD
CHARLESTOWN TOWNSHIP, CHESTER COUNTY,
PENNSLVANIA
NO. 01-16**

DECISION

The Application of Alan Greaves was heard by the Zoning Hearing Board of Charlestown Township on January 12, 2016 and April 13, 2016. Applicant, on behalf of the legal owner of 1766 Horseshoe Trail, Grant J. Wenger, sought a variance from §27-405(6) of the Zoning Ordinance of Charlestown Township to maintain part of a newly constructed wall of a building that encroached upon a side yard. Joseph R. Jordan, Jr. and Katherine E. Jordan, owners of 560 Clothier Springs Road, and Daryl and Jennifer Peveto, owners of 536 Clothier Springs Road, appeared at the January 12th hearing in opposition to the request for variance. Upon considering Applicant's evidence in support of his variance request, including Applicant's Exhibits A-1 through A-5, and the testimony of the Jordans and Pevetos, in opposition to the relief sought by Applicant, the Board proposed that Applicant and said persons attempt to resolve their differences by terms of a written agreement that, if made, would be considered by the Board prior to making a decision on Applicant's requested zoning relief.

At a public meeting held April 13th, the Board, following consideration of Applicant's proposed Agreement and the testimony of Applicant, Katherine Jordan, and Daryl Peveto, unanimously voted to grant Applicant the relief he requested upon compliance with a condition subsequent that included written acceptance by the landowners of 1766 Horseshoe Trail, 560 Clothier Springs Road, and 536 Clothier Springs Road of the Board's amendment of the provisions

of the proposed Agreement which the Board deemed necessary to make the proposed Agreement legally the effective.

FINDINGS OF FACT

1. Grant J. Wenger is the legal owner of realty and improvements located at 1766 Horseshoe Trail, Charlestown Township, Chester County, Pennsylvania, which property is designated tax map parcel 35-5- 30.1. Exhibit A-4.

2. Grant J. Wenger granted to Alan Greaves full discretion to do and cause to be done all acts, deeds, matters and things necessary to prosecute the zoning relief described in the zoning Application filed December 7, 2015. Exhibit A-5.

3. The relief sought by Applicant was the right to maintain part of the rear or easterly wall of a newly constructed attached garage that encroached upon a side yard contrary to §27-405(6) of the Ordinance.

4. §27-405(6) of the Ordinance provides, in pertinent part, that each lot shall have two side yards having an aggregate width of 100 feet; neither of which shall have a width of less than 50 feet.

5. The area of the encroachment totals approximately 11.7 square feet and said area's limits are equivalent to the sides of a right angle triangle formed as follows: the triangle's height is determined by a point on the rear wall of said garage approximately 18 feet from the garage's southeast corner; the triangle's base is determined by a point that begins at said corner and extends at a right angle from the rear wall 1.3 feet into the side yard; and the third side of the triangle is formed by a straight line that connects the two points determined heretofore.

6. The area heretofore is depicted on a plan of property prepared by Mullen Engineering, dated 12/7/2015. Exhibit A-2

7. Charlestown Township's Supervisors voted in favor of granting a variance to Applicant. Exhibit A-3

8. Joseph R. Jordan, Jr. and Katherine E. Jordan, owners of realty and improvements situated immediately east of the subject property at 560 Clothier Springs Road, Charlestown Township, appeared at hearing and voiced concerns about the impact of the newly constructed improvements at the said property upon their properties.

9. Daryl Peveto and Jennifer Peveto, owners of realty and improvements situated immediately northeast of the subject property at 536 Clothier Springs Road, Charlestown Township, appeared at hearing and voiced concerns about the impact of the newly constructed improvements at the said property upon their property.

10. The Board proposed that Applicant and said persons attempt to resolve their differences by terms set forth in a written agreement that, if made, would be considered by the Board prior to making a decision on Applicant's requested zoning relief.

11. By written agreement, dated February 8, 2016, Applicant waived time requirements set forth at §908 of the Pennsylvania Municipalities Planning Code for a thirty day period beginning January 25, 2016. Exhibit B-4

12. By written agreement, dated February 18, 2016 Applicant waived time requirements set forth at §908 of the Pennsylvania Municipalities Planning Code for a ninety day period beginning January 25, 2016. Exhibit B-5

13. The hearing date for the second hearing was announced at the conclusion of the January 12, 2016 hearing.

14. At a second hearing held April 13, 2016, Applicant presented to the Board a proposed Agreement, containing four provisions, signed by Applicant and the landowners of 1766 Horseshoe Trail, 560 Clothier Springs Road, and 536 Clothier Springs Road. Exhibit A-6

15. The Agreement heretofore provided, inter alia, that:

Flood light baffles to be installed at the rear and side yard fixtures to reduce light glare to the adjoining properties (para.1);

Install a minimum of (10) three to four gallon 'Green Giant Arborvitae' trees to the rear yard along the stone wall adjoining the Peveto property as discussed with Mr. Peveto on 1/26/16 (para.2);

All work to be completed by 5/30/16 (last paragraph).

16. The Board ordered at said hearing that Applicant's request for a variance would be granted provided that Exhibit A-6 be amended as follows:

Paragraph 3. of the heretofore Agreement (Exhibit A-6) is deleted and in lieu said deletion the following shall be added: "Install a minimum of fifteen (15) ornamental grass plants of a type which when mature will be no less than five (5) feet wide and a minimum of three (3) feet high along the Jordans' side of the existing berm, in an area that is at least sixty (60) feet in length, so that the plants cover in part, the area which was in need of the requested variance".

New Paragraph 4. shall be added to the said Agreement (Exhibit A-6) and shall provide the following: "All plantings agreed to herein shall be maintained in good health by the present and future owners of 1766 Horseshoe Trail."

17. The landowners of 1766 Horseshoe Trail, 560 Clothier Springs Road, and 536 Clothier Springs Road signed the written Amendment to A-6 and said Amendment was delivered to the Board on or about April 25, 2016.

18. The condition subsequent to the Board's Order of April 13, 2016 was satisfied on or about April 25, 2016.

19. Notice of hearings held January 12, 2016 and April 13, 2016 were advertised in the Daily Local News . Board Exhibits B-1 and B-6.

20. Daniel Wright, Charlestown Township's Zoning Officer, posted a notice of the January 12, 2016 hearing on the subject the property on or about

December 26, 2015, and said notice was posted continually until the date of hearing. Exhibit B-3

21. Adjoining property owners were provided with notice of the January 12, 2016 hearing by regular U.S. mail, at least 7 days prior to the hearing. Exhibit B-2.

CONCLUSIONS OF LAW

1. A *de minimis* variance may be granted, even where the strict requirements for a variance have not been met, where the variance requested is minor and rigid compliance is not necessary to protect the public policy concerns of the ordinance. Township of Middletown v. Zoning Hearing Board of Middletown, 682 A.2d. 900, 901 (Pa. Cmwlth. 1996).

2. The normal standards for granting a variance do not need to be applied when granting a *de minimis* variance. Nettleton v. Zoning Board of Adjustment of the City of Pittsburgh, 574 Pa.45, 53, 828 A.2d.1033 (2003)

3. There are no set criteria for determining what constitutes a *de minimis* variance; this determination depends on the circumstances of the case. Bailey v. Zoning Board of Adjustment of the City of Philadelphia, 569 Pa. 147, 166 n.21, 801 A.2d 492, 504 n.21(2002)

4. There is authority for the view that the current zoning standard should be the base measurement for evaluating whether the variance is *de minimis*. King v. Zoning Hearing Board of the Borough of Nazareth, 76 Pa. Cmwlth. 318, 463 A.2d 505, 506 (1983)

5. There is authority that a dimensional change of less than ten percent will be treated as *de minimis*. Township of Middletown, supra, at 901.

6. However, there is no general right to a *de minimis* variance and the decision whether to grant said variance is left to the discretion of the local zoning

hearing board. Segal v. Zoning Hearing Board of Buckingham, 771 A.2d 90, 95 (Pa. Cmwlth. 2001)

7. Applicant complied with the Board's condition subsequent to its Order of April 13, 2016 when he obtained the signatures of the landowners of 1766 Horseshoe Trail, 560 Clothier Springs Road, and 536 Clothier Springs Road on a writing entitled, "Amendment to Agreement Between Wenger, Owner of 1766 Horseshoe Trail, and Adjoining Property Owners, Jordan and Peveto, Hearing Exhibit 6," and said Agreement, as amended, is a legally binding instrument.

8. Notice of hearing was properly made in accordance with statute and provisions of the Charlestown Township Zoning Ordinance.

ORDER

It is hereby Ordered this 9th day of May, 2016, that Applicant is granted a de minimis variance from section 27-405(6) of the Zoning Ordinance of Charlestown Township so that the legal owner of 1766 Horseshoe Trail may maintain part of the rear wall of a newly constructed attached garage in a triangular area consisting of approximately 11.7 square feet; the farthest limit of said area shall not encroach the adjoining side yard by more than 1.3 feet. This Order is conditioned upon compliance with the provisions of the Agreement Between Wenger, Owner of 1766 Horseshoe Trail, and Adjoining Property Owners, Jordan and Peveto (Exhibit 6), as Amended, and with all other requirements of Charlestown Township's Zoning and Subdivision Ordinances. This Order shall be retroactively effective to April 25, 2016; however, appeal rights shall commence on the mail date of this Order.

THE ZONING HEARING BOARD OF
CHARLESTOWN TOWNSHIP BY:

John C. Martin, Jr.

JOHN C. MARTIN, Chairman

MICHAEL BOWELL, Vice Chairman

ROBERT C. WERT, Member