BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF WILLIAM AND MAUREEN THOMPSON **NO. 2017-07**

DECISION

I. BACKGROUND

A public hearing on the above Application was held on July 25, 2017 at the Worcester Township Community Hall, 1031 Valley Forge Road, Fairview Village, Pennsylvania, pursuant to Notice as required by the Worcester Township Zoning Ordinance, as amended (hereinafter "Zoning Ordinance") and the Pennsylvania Municipalities Planning Code. The Applicants/ Owners, William and Maureen Thompson, propose to construct a single-family house outside of the building envelope established when the lot in question, 2506 Spring Creek Road, Worcester Township, was created by subdivision. The lot is located in the AGR–Agricultural Zoning District.

The Applicants requested the following relief:

> A variance from Section 150-12.B(1) of the Zoning Ordinance, to permit construction of the house where the lot width at the building line would be 213.9', rather than the 250' required.

A quorum of the Zoning Hearing Board participated in the public hearings and conducted a vote in accordance with law. The Applicants were represented by Edward Wild, Esquire. No neighboring property owners elected to enter appearance as parties. The witnesses were duly sworn or affirmed and Notes of Testimony for the hearings were transcribed and are hereby made a part of this record.

At the meeting on July 25, 2017, the Board voted to deny the application. The Board issues Findings of Fact and Conclusions of Law in support of the Decision and Order.

II. FINDINGS OF FACT

1. The Applicants are William and Maureen Thompson, the legal owners of the property in question located at 2506 Spring Creek Road, Parcel No. 67-00-02665-01-3, Worcester Township, Montgomery County, Pennsylvania. (N.T. 07/25/17, p. 7, Exhibit A-1)

2. The following Exhibits were marked and duly admitted into evidence:

Board Exhibits:

B-1	Public Notice
B-2	Proof of Publication

Applicants' Exhibits:

A-1	Application, Narrative, Deed, Plot Plan
A-2	1998 Subdivision Plan
A-3	Aerial Photo
A-4	Board of Assessment Records
A-5	Footprint Plan – 2506 Pondview Drive

3. The property is located in the AGR-Agricultural District, and was created by way of an approved subdivision of a larger parcel in 1998. (N.T. 07/25/17, pp. 7, 16-17, Exhibits A-1 and A-2)

4. The Applicants presented the expert testimony of a civil engineer, John Anderson. (N.T. 07/25/17, p. 13)

5. The Applicants' lot measures approximately 1.98 acres, and because of the configuration of the lot when it was laid out at time of subdivision, the building envelope is smaller than, and is located further back from the road than, the two (2) adjoining lots. (N.T. 07/25/17, pp. 15-18, Exhibits A-1, A-2, A-3)

6. In Section 150-9 of the Worcester Township Zoning Ordinance, lot width is defined as the frontage dimension measured at the building line.

7. Under Section 150-12.B(1), the lot width at the building line is required to measure

250', which is measured on an arc on this lot. (N.T. 07/25/17, pp. 15-18, Exhibits A-1, A-2)

8. The only evidence presented by the Applicants in support of the variance was that other houses in this development, consisting of three (3) fairly identical cul-de-sacs off of North Wales Road, were quite large, with depths ranging from 58' to 72'. (N.T. 07/25/17, pp. 20, 31, Exhibits A-1, A-2, A-3, A-4, A-5)

9. The Applicants also presented an argument that the house at 2506 Pondview Drive, a similar lot in the adjoining cul-de-sac, may have been built outside of the building envelope, according to permit records, but such a condition was not verified by a field survey. (N.T. 07/25/17, pp. 28-29, Exhibits A-3, A-4, A-5)

10. A fairly large single-family house can be built on the lot within the building envelope, but the house that the Applicants wish to build, measuring 88' in depth, will simply not fit within the previously approved building envelope on this lot. (N.T. 07/25/17, p. 30, Exhibits A-1, A-2)

11. The proposed house is between 16' and 30' wider in depth than the other houses on this street. (N.T. 07/25/17, pp. 20, 31, Exhibits A-1, A-2, A-3, A-4)

12. The Applicants could redesign the house and reposition the garage, so as to significantly reduce the requested relief, and therefore, the Applicants have not requested the minimum variance to afford relief. (N.T. 07/25/17, pp. 33-34)

13. The Applicants presented no evidence of hardship whatsoever, other than the fact that the house which the Applicants wish to build cannot fit on the lot. (N.T. 07/25/17, pp. 20-23, 25, 31-33, Exhibits A-1, A-2)

14. The Applicants' engineer could not testify as to whether the similarly situated lot in the third cul-de-sac in this development was improved with a longer and less deep house than

the other houses built on lots with more generous building envelopes. (N.T. 07/25/17, pp. 29-30)

15. There was no evidence presented to support a finding that the lot could not be developed in strict conformity with the provisions of the Zoning Ordinance; in fact, the lot was created by subdivision with a building envelope meeting all requirements of the Zoning Ordinance, and therefore, the lot is capable of development without any relief whatsoever.

16. The building envelope on this property was intentionally created by the developer when the lot was laid out on the subdivision plan, undoubtedly to maximize the number of lots in the development.

17. The Applicants purchased the lot in January of 2000, are charged with knowledge of the previously approved building envelope, and have thus created their own hardship by designing a large and deep house that does not fit within the building envelope on the lot.

18. The Applicants' engineer admitted that the house which the Applicants plan to construct on the lot is substantially larger in depth than any other house in this development, and the variance is necessitated solely by the Applicants' desire for a certain layout of the house. (N.T. 07/25/17, pp. 32-33)

19. With reference to the variance requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following:

A. There are no unique physical circumstances or conditions, peculiar to the particular property, resulting in an unnecessary hardship. The lot was created by subdivision with an ample building envelope.

B. The property can be developed and used in strict conformity with the provisions of the Zoning Ordinance, and the authorization of a variance is not necessary to enable the reasonable use of the property.

C. The hardship has been created by the Applicants by designing a house that simply does not fit in the building envelope on this lot.

D. The granting of the variance will frustrate the intent of the ordinance.

E. The variance requested is not the minimum variance to afford relief under the circumstances.

20. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the requested variance will be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship.

21. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action:

A. The property is not suitable for the house as designed, and the variance is not consistent with the spirit, purpose and intent of the Zoning Ordinance.

B. The relief will not necessarily injure or detract from the use of neighborhood property or from the character of the neighborhood, but such a conclusion does not require the granting of relief.

C. The proposal will not serve the best interest of the Township, the convenience of the community and the public welfare, any more than if the Applicants just simply complied with the Zoning Ordinance and designed a house that would fit within the building envelope.

D. There will not necessarily be an adverse impact upon the logical efficient and economical extension of public services and facilities such as public water, sewer, police and fire protection and public schools, but such a conclusion does not require the granting of relief.

E. There was no evidence presented with respect to sewage or waste resulting from the proposed use, but such was not relevant to the current inquiry.

F. There was no evidence presented for the Board to determine that the construction would not cause runoff water or drainage problems injurious to adjacent or nearby properties.

G. Sound standards of subdivision practice have already been utilized in laying out the lot, so there is no reason to grant relief from the ample building envelope provided.

H. There are no special circumstances or conditions applying to the land for which the variance is sought, which justify the conclusion that the application of the

provisions of the Zoning Ordinance would deprive the Applicants of the reasonable use and development of such land.

I. The circumstances for which the variance is sought were created by the developer of the property, and existed at the time that the Applicants purchased the lot, which circumstances result from general conditions in the zoning district in which the property is located.

22. The provisions of the Zoning Ordinance do not impose an unnecessary hardship whatsoever on the Applicants and, therefore, the requested variance should be denied.

23. To the extent that the Applicants argued that the variance requested was de minimis, the Board finds that a 14.4% variance from the lot width requirement is not de minimis in this particular case.

III. CONCLUSIONS OF LAW

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application.

2. The Applicants are the legal owners of the property in question.

3. The Applicants and the subject matter are properly before the Board, and the Applicants have standing to submit the application.

4. Hearing notices were duly published and posted in accordance with law, by advertisement in the newspaper and posting on the property.

5. With reference to the variance requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following as a matter of law:

A. There are no unique physical circumstances or conditions, peculiar to the particular property, resulting in an unnecessary hardship. The lot was created by subdivision with an ample building envelope.

B. The property can be developed and used in strict conformity with the provisions of the Zoning Ordinance, and the authorization of a variance is not necessary to

enable the reasonable use of the property.

C. The hardship has been created by the Applicants by designing a house that simply does not fit in the building envelope on this lot.

D. The granting of the variance will frustrate the intent of the ordinance.

E. The variance requested is not the minimum variance to afford relief under the circumstances.

6. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the requested variance will be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship.

7. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action, and determines the following as a matter of law:

A. The property is not suitable for the house as designed, and the variance is not consistent with the spirit, purpose and intent of the Zoning Ordinance.

B. The relief will not necessarily injure or detract from the use of neighborhood property or from the character of the neighborhood, but such a conclusion does not require the granting of relief.

C. The proposal will not serve the best interest of the Township, the convenience of the community and the public welfare, any more than if the Applicants just simply complied with the Zoning Ordinance and designed a house that would fit within the building envelope.

D. There will not necessarily be an adverse impact upon the logical efficient and economical extension of public services and facilities such as public water, sewer, police and fire protection and public schools, but such a conclusion does not require the granting of relief.

E. There was no evidence presented with respect to sewage or waste resulting from the proposed use, but such was not relevant to the current inquiry.

F. There was no evidence presented for the Board to determine that the construction would not cause runoff water or drainage problems injurious to adjacent or nearby properties.

G. Sound standards of subdivision practice have already been utilized in laying out the lot, so there is no reason to grant relief from the ample building envelope provided.

H. There are no special circumstances or conditions applying to the land for which the variance is sought, which justify the conclusion that the application of the provisions of the Zoning Ordinance would deprive the Applicants of the reasonable use and development of such land.

I. The circumstances for which the variance is sought were created by the developer of the property, and existed at the time that the Applicants purchased the lot, which circumstances result from general conditions in the zoning district in which the property is located.

8. The provisions of the Zoning Ordinance do not impose any unnecessary hardship whatsoever on the land or the Applicants and, therefore, the requested variance should be denied.

9. To the extent that the Applicants argued that the variance requested was de minimis, the Board finds that a 14.4% variance from the lot width requirement is not de minimis as a matter of law.

IV. OPINION

Upon consideration of the evidence and testimony presented regarding the Application, the Zoning Hearing Board of Worcester Township determines that a variance from Section 150-12.B(1) of the Zoning Ordinance, to permit construction of the house where the lot width at the building line would be 213.9', rather than the 250' required, should be denied. The Board therefore enters the following Order.

BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF WILLIAM AND MAUREEN THOMPSON **NO. 2017-07**

ORDER

A variance from Section 150-12.B(1) of the Zoning Ordinance, to permit construction of the house where the lot width at the building line would be 213.9', rather than the 250' required, is **DENIED**.

WORCESTER TOWNSHIP ZONING HEARING BOARD

Michael Libor, Chair

Caesar Gambone, Vice Chair

John D'Lauro, Secretary

(Alternate)
Bradford Smith

Order Entered: August 31, 2017

Circulation Date: August 31, 2017

This Decision and Order of the Board is final and any appeal of it must be filed with the Court of Common Pleas of Montgomery County within thirty (30) days following the Circulation Date set forth above. The Board reserves the right to supplement the Findings of Fact and Conclusions of Law in support of this Decision if an appeal is filed.