

Dover Township
Zoning Hearing Board
May 17, 2023

Vice Chairman Robert Wright called the meeting to order at 7:01 p.m. Members present: Richard Pope, Jonathan Reynolds, and Gina Myers. Absent with prior notice: Chairman Jane Ginter. Also present: Zoning Officer John McLucas, Solicitor Mike Craley, Attorney Samantha Craley, Stenographer Tammy Rinehart, Recording Secretary, and eleven citizens.

I. Minutes

Motion by Pope, second by Reynolds, to approve the minutes of the meetings of February 15, March 15, and April 19, 2023. All members voted aye; motion carried.

II. Zoning Cases

A. ZHB 23-3, Tracey Deakin, 3505 Summer Drive (Seasons Phase II); R3 district, appeal from determination of Zoning Officer OR in the alternative, request for Variance to permit a deck to project in the rear setback area.

Ms. Deakin and one member of the audience were sworn in. Ms. Deakin has appealed the decision of the Zoning Officer who turned down her request for a deck. In the alternative, she's requesting a Variance. For the record, she is withdrawing/dropping the appeal and is only proceeding with the request for Variance. She has a shallow lot with a 10' encroachment if she were to put on a deck as proposed. Behind her is an open field with no development possible. Her HOA has given its approval per a letter dated 5/2/23 from the HOA, marked as Applicant's Exhibit 1. Photos are Applicant's #2 and #3, showing the open field to the rear of her property. Applicant's Exhibit #4 is a photo showing part of the house. Applicant's Exhibit #5 shows the neighbor's property. Applicant's Exhibit #6 shows a neighboring property with a similar deck. Applicant's Exhibit #7 shows the type of deck that Ms. Deakin would like to install.

Home was built in early 2023; she moved in in March of 2023. The lot was vacant when she purchased the home. Did she show the builders what she wanted? Yes. It was less expensive to have the deck built afterward rather than including it with the house purchase/construction. She did not know about the setback prior to moving in (it was unmarked, per her testimony.) Proposed deck dimensions: 12' x 16'. Applicant's Exhibit #8 shows the decking material; Applicant's Exhibit #9 is same information as A#8; Applicant's Exhibit #10 is the proposal from decking/fence company.

In the R3 zone, the rear setback is 30'. With this proposed deck width, she's down to 18'. Per Mr. McLucas, the zoning changed. The development was originally approved under the Residential Open Space Zone and the Township rezoned it to R3. The Township is currently undergoing a zoning update, and setback modifications for attached decks are being evaluated.

What's the hardship? She bought the flat lot and put on a single level house to avoid steps. Did she consider any alternatives that wouldn't be considered a part of the principal structure? She did and was told that she couldn't do anything unless there was 5' of separation from the existing structure.

At the Planning Commission meeting, Section 27-1003.2.a.1, was discussed. The Planning Commission members felt that the shallowness or narrowness of the lot shape is the problem.

From the audience, neighbors who bought the home next to her, Chris Swanson, 3501 Summer Drive, was present. She supports Ms. Deakin in her endeavor, and she hopes she and her family can put a deck on the back of their home also. They're interested in how this case resolves.

Ms. Deakin feels that the ordinance doesn't make sense; she would be permitted to put a deck 5' from the house, which would put it closer to the setback.

From Ms. Myers, regarding Ex.#6, did that neighbor have to secure a Variance? Unknown, but it was built a while ago, so maybe not. That's a corner lot, so it would have two front yards, with a 10' setback.

From Mr. Reynolds, neither the builder nor her realtor suggested that there might a problem putting a deck on? Jennifer Kibbler, Ms. Deakin's realtor, was sworn in. She's been a realtor for 30 years, and she's never run into this situation. If a deck isn't approved, the value of this property may well be negatively affected. There are other neighbors who might find themselves in this situation. Ms. Kibbler is aware of zoning laws, etc., but nonetheless, she didn't advise the applicant of any potential problems.

Mr. McLucas has no objection to this application. A previous staff member handled other cases in this area. The zoning has changed, and this lot backs up to the open space area. The zoning amendment will likely address this matter with possible resolution by the end of this year.

Did Ms. Deakin investigate the open space area? She asked about development and was told that it would not be developed. The owner of that area is the builder, Pasch.

Planning Commission recommendation: On [Tracey Deakin's] request for a Variance due to the hardship presented by her lot configuration, **Motion** by Harlacher, second by Miller, to recommend approval of the Variance request pursuant to Section 27-503.c.5, due to a dimensional hardship. All members voted aye; motion carried.

At 7:24 p.m., the Board went into Executive Session to deliberate.

At 7:36 p.m., the Board reconvened.

Ruling:

Motion by Myers, second by Pope, to approve the Variance request by Tracey Deakin to permit a deck in the rear setback. Two members voted aye; *two opposed*. That means a *denial* of the Variance request.

The applicant can appeal if she chooses.

B. ZHB 23-4, Modane Marshall, 4031 Carlisle Road, Commercial District; request for Special Exception to permit expansion of a non-conforming use.

Chris Brockmeyer 2836 Vireo Road, York, was sworn in with the applicant Modane Marshall. Mrs. Marshall is authorizing Mr. Brockmeyer to act on her behalf. Proposed 18x33 addition to her house. This would be an expansion of a non-conforming use. Mrs. Marshall explained the special features of her house. She bought it and knew it was in the Commercial district. She'd like to add a handicap restroom on the first floor, with a laundry area, too. This property has always been used as a residence, not a commercial use. In fact, she obtained a Variance years ago to be permitted to use it as a residence. She purchased the home in 1989; totally renovated it; purchased the property next to her in case she wants to subdivide. She would like to stay in this property as she ages.

From Attorney Craley, confirmed that she bought the property in 1989, and there was already a building on the property. A person was living there. Mrs. Marshall obtained a Variance to keep the property as a residential use. At that time, the building was already being used as a residence. Built in 1922. Since purchasing the property, she has built a patio, conservatory, and a two-story 28 x 40 garage, all later than when she moved in.

Mr. McLucas was unaware of this past Variance to continue the residential use.

The applicant says it's a nonconforming use, which would indicate that it predates zoning. If the Variance were granted for another reason, another set of standards would apply.

Perhaps she was given erroneous advice back in 1989 to warrant the Variance.

If the maximum expansion permitted is 35%, her proposed addition is 33%.

Mr. McLucas confirmed the setback requirements and the proposal's compliance.

Planning Commission recommendation: **Motion** by Harlacher, second by Bigham, to recommend approval of the request by Modane Marshall for Special Exception to expand a non-conforming use at 4031 Carlisle Road. All members voted aye; motion carried.

Hearing closed.

Motion by Pope, second by Myers, to approve the request by Modane Marshall/Chris Brockmeyer for Special Exception to permit the expansion of a non-conforming use. All members voted aye; motion carried.

III. Other Business

Nothing at this time.

Motion by Pope, second by Reynolds, to adjourn. All members voted aye; motion carried. The meeting adjourned at 7:58 p.m.

Respectfully submitted,

Julie B. Maher,
Recording Secretary