



In Re: Bryan L. and Janet E.
Weaver - Petition for Variance

: THE ZONING HEARING BOARD OF
: MILLCREEK TOWNSHIP
:
: LEBANON COUNTY, PENNSYLVANIA
:
: CASE # 3-22

DECISION OF THE ZONING HEARING BOARD
OF MILLCREEK TOWNSHIP

I. INTRODUCTION

The Zoning Hearing Board of Millcreek Township (hereinafter "ZHB"), Lebanon County, Pennsylvania, met on Monday, February 13, 2023 at a duly advertised public session to hear a Petition for Variance submitted by Bryan L. Weaver and Janet E. Weaver.

II. FINDINGS OF FACT

1. The Petitioners are Bryan L. Weaver and Janet E. Weaver, with an address of 109 South Fort Zellers Road, Newmanstown, PA 17073. (Hearing Exhibit 2).
2. The Petitioners are the owners of a 1.07-acre property, GPIN #24-2396159-371195, 109 South Fort Zellers Road, Millcreek Township, Newmanstown, PA 17073. (Hearing Exhibit 2).
3. The Subject Property is located in the R-1 Residential Suburban District. (Hearing Exhibit 2).
4. The Subject Property is improved with a single-family dwelling and a shed. The property is serviced by a well and an on-lot septic system. (Hearing Exhibit 2).

5. Petitioners propose to install an 84.5 foot x 19.5 foot ground mount solar system on the property. (Hearing Exhibit 2).

6. A Variance is being sought to Article 16, Section 16.21.A.4. of the Millcreek Township Zoning Ordinance, related to Solar Energy Systems, to allow the proposed ground mount solar system to exceed 25% of the area of the ground floor of the principal structure. (Hearing Exhibit 2).

7. A hearing to consider Petitioners' request for a Variance was scheduled initially for Wednesday, January 11, 2023; however, the Petitioners requested the hearing be rescheduled and waived the right to a hearing within sixty (60) days. (Hearing Exhibit 1).

8. Thereafter, a hearing to consider Petitioners' request for a Variance was scheduled for Monday, February 13, 2023 at 7:00 p.m. at the Millcreek Township Municipal Building, 81 East Alumni Avenue, Newmanstown, PA 17073. (Hearing Exhibit 3).

9. Notice of the zoning hearing was duly advertised in the *Lebanon Daily News* on Monday, January 30, 2023 and Monday, February 6, 2023. (Hearing Exhibit 4).

10. Notice of the zoning hearing was sent to Township officials and neighboring property owners by United States First Class Mail. (Hearing Exhibit 5).

11. Notice of the zoning hearing was posted on the Subject Property on February 3, 2023. (Hearing Exhibit 6).

12. The Petition for Variance was heard by the Millcreek Township ZHB before Zoning Hearing Board Members Robert Beisel, Chairman; Timothy Bartow, Vice-Chairman; and Scott Sweigart, Secretary.

13. Present at the February 13, 2023 zoning hearing were:
- Robert Beisel – ZHB Chairman
 - Timothy Bartow – ZHB Vice-Chairman
 - Scott Sweigart – ZHB Secretary
 - Bryan L. Weaver – Petitioner/Property Owner
 - Kimberly Paugh – Zoning Officer, Lebanon County Planning Department
 - Kathy J. Sheffy, Court Stenographer
 - Amy B. Leonard, Esquire – ZHB Solicitor
14. Petitioner Bryan Weaver presented the case for the variance. (Hearing Testimony).
15. Petitioner testified that he owns the property at 109 South Fort Zellers Road, Newmanstown, PA 17073. (Hearing Testimony).
16. Petitioner began looking at installing a solar energy system in March 2022. He was interested in maximizing profitability of the system (Hearing Testimony).
17. Because the single-family dwelling on the property has sixteen (16) skylights, Petitioner is unable to mount solar panels on the roof of the residence, though he would be able to mount them on the garage roof. (Hearing Testimony).
18. The side yard of Petitioners' property abuts the intersection of South Fort Zellers Road and Stricklerstown Road, and Petitioner would like to install a ground mount solar system in that location. (Hearing Testimony).
19. Petitioner stated that the proposed system is approximately 1,650 square feet in size. He could not build this system if he is required to meet the provisions of the zoning ordinance limited ground mount solar energy systems to 25% of the area of the ground floor of the principal structure. (Hearing Testimony; Exhibit 8).

20. Petitioner stated that the project is eligible for an approximate rebate of \$18,000 from PPL if he is permitted to install it. (Hearing Testimony).

21. Petitioner testified that he would have 112 total panels. (Hearing Testimony).

22. Petitioner stated that the proposed location for the ground mount solar system would be able to meet setbacks from the road rights-of-way for South Fort Zellers Road and Stricklerstown Road. (Hearing Testimony).

23. Petitioner also indicated that the ground mount solar system would be placed a sufficient distance from the stop sign at the intersection of South Fort Zellers Road and Stricklerstown Road. He believed the proposed placement was a safe distance from the intersection and was outside any utility easement area related to existing electric poles and lines. (Hearing Testimony).

24. Petitioner testified he could consider a fence around the ground mount solar system. He stated that the system has safety shut off features. (Hearing Testimony).

25. At their December 7, 2022 meeting the Millcreek Township Planning Commission reviewed Petitioners' submission and was not in favor of it for safety reasons. The Planning Commission was concerned about clear sight triangles, inadequate setbacks, and the impact upon the character of the existing neighborhood. (Exhibit 14).

26. Petitioner agreed that the property is already used as a single-family residential property in accordance with the Zoning Ordinance. (Hearing Testimony).

27. Petitioner agreed that he could meet the requirements of the Zoning Ordinance and restrict the size of the ground mount solar system to comply with the Ordinance. (Hearing Testimony).

28. Petitioner stated that he wanted to build a larger ground mount solar system than what is permitted by the Zoning Ordinance so he could take advantage of the financial incentive offered by the electric company. (Hearing Testimony).

III. HEARING EXHIBITS

Hearing Exhibit 1 – Letter from Petitioner Bryan Weaver dated 12/14/2022 requesting a continuance of January 11, 2023 hearing and waiving right to a hearing within 60 days

Hearing Exhibit 2 – Petition for Variance

Hearing Exhibit 3 – Notice of Public Hearing

Hearing Exhibit 4 – Proof of Publication in the *Lebanon Daily News* on January 30, 2023 and February 6, 2023

Hearing Exhibit 5 – Mailing List

Hearing Exhibit 6 – Photo of public notice posted on the property

Hearing Exhibit 7 – Signed variance criteria

Hearing Exhibit 8 – Letter from Petitioner Bryan Weaver describing project and reason for Petition

Hearing Exhibit 9 – Plot plan showing existing structures

Hearing Exhibit 10 – Plot plan showing proposed location for ground mount solar system

Hearing Exhibit 11 – Photos of Stricklerstown Road and Fort Zellers Road and the intersection of the two roadways

Hearing Exhibit 12 – Aerial view of property showing proposed location of ground mount solar system

Hearing Exhibit 13 – Communication to Petitioner from PPL regarding pre-approval for proposed project

Hearing Exhibit 14 – December 7, 2022 Minutes of the meeting of the Millcreek Township Planning & Zoning Commission

IV. DISCUSSION

The Petitioners are Bryan L. and Janet E. Weaver, with an address of 109 South Fort Zellers Road, Newmanstown, PA 17073. The Petitioners are the owners of a 1.07-acre property, GPIN #24-2396159-371195, 109 South Fort Zellers Road, Millcreek Township, Newmanstown, PA 17073. The Subject Property is located in the R-1 Residential Suburban District. The Subject Property is improved with a single-family dwelling and a shed. The property is serviced by a well and an on-lot septic system. Petitioners propose to install an 84.5 foot x 19.5 foot ground mount solar system on the property. A Variance is being sought to Article 16, Section 16.21.A.4. of the Millcreek Township Zoning Ordinance, related to Solar Energy Systems, to allow the proposed ground mount solar system to exceed 25% of the area of the ground floor of the principal structure.

A Zoning Hearing Board may grant a variance when all of the following criteria are met: (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 applicant; (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; and (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. Pennsylvania Municipalities Planning Code, Section 910.2; see *also* Hearing Exhibit 7.

An applicant must establish all elements to be entitled to a variance. See *Demko v. City of Pittsburgh Zoning Board of Adjustment*, 155 A.3d 1163, 1172 (Pa. Commw. Ct. 2017). A variance is the proper relief where an unnecessary hardship attends the property; a variance cannot provide relief where a hardship afflicts the property holder's desired use of the land and not the land itself. *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595, 598 (Pa. Commw. Ct. 2001). Although zoning ordinances are to be liberally construed to allow for the broadest possible use of the land, the applicant seeking a variance bears a heavy burden. See *Beers ex rel. P/O/A Beers v. Zoning Hearing Board of Towamensing Township*, 933 A.2d 1067, 1069 (Pa. Commw. Ct. 2007); *Borough of Latrobe v. Paul B. Sweeney*, 17 Pa.Cmwlth. 356, 331 A.2d 925, 927 (1975) (personal and economic considerations are not sufficient grounds upon which to base the grant of a variance). The reasons for granting a variance must

be substantial, serious, and compelling. *Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637, 640 (Pa. 1983).

Evaluating each of the criteria required to grant a variance, Petitioners cannot meet all the elements here. First, there is no unnecessary hardship. This case is a classic example of an alleged “hardship” that afflicts the property holder's desired use of the land and not the land itself. Petitioners’ property is presently developed as a single-family residential property in accordance with the Millcreek Township Zoning Ordinance. Petitioners have not presented any evidence that the property has unique physical circumstances or conditions that affect it. Although the single-family dwelling has skylights that prevent a roof-mounted solar energy system, Petitioners remain able to install a ground mount solar system elsewhere on the property. Petitioner Mr. Weaver admitted that he could meet all the criteria set forth in Section 16.21 of the Millcreek Township Zoning Ordinance, but that he did not wish to construct a ground mount solar system of that size because it would not result in the maximum financial gain to him. This is not a hardship under the law.

Second, a variance is not necessary to enable the reasonable use of the property. The property has already been developed in accordance with the zoning regulations for the R-1 Residential Suburban District as a single-family detached dwelling. Denying a variance to the maximum lot coverage requirements for solar energy systems does not prevent reasonable use of the property. In this case, it is possible for Petitioners to install a ground mount solar system of a smaller size that meets the applicable requirements of Section 16.21.

Third, any hardship asserted by Petitioners is self-inflicted. Petitioners seek to gain a financial benefit from PPL by constructing a ground mount solar system that

exceeds the maximum lot coverage for such structure as permitted pursuant to Section 16.21 of the Millcreek Township Zoning Ordinance. This is a “hardship” of Petitioners’ own making, as a smaller ground mount solar system could be constructed in accordance with the requirements, but simply would not result in the same financial gain to Petitioners.

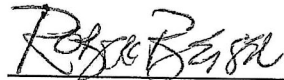
The Zoning Hearing Board gave less weight to arguments that the variance, if authorized, would alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. However, there were concerns raised by the Zoning Hearing Board regarding safety at the intersection of Stricklerstown Road and South Fort Zellers Road, as well as the aesthetic impact of allowing oversized solar energy systems in the R-1 Residential Suburban District.

Finally, Petitioners have not met their burden of proving that the variance requested is the minimum variance that would afford relief, as Petitioner does not need a variance to enable full compliance with the provisions of the Zoning Ordinance. Petitioners are not precluded from installing a ground mount solar energy system, they are merely limited to the permissible maximum lot coverage for such a system as set forth in Section 16.21.A.4. Petitioner Mr. Weaver’s testimony established that the variance requested was a matter of maximizing financial incentives rather than necessity.

Because Petitioners have not established all the elements necessary to be entitled to a variance, particularly the elements related to hardship, granting the variance is not appropriate in this circumstance.

DECISION

Now, therefore, this 13th day of February, 2023, the Zoning Hearing Board of Millcreek Township, by a 3-0 vote, hereby DENIES the Petition for Variance filed by Petitioners Bryan L. Weaver and Janet E. Weaver.

A handwritten signature in dark ink, appearing to read "Robert Beisel", is written over a horizontal line.

Robert Beisel, Chairman
Millcreek Township
Zoning Hearing Board

Date: March 27, 2023