

COPY

In Re: Lester Z. and Deborah K.
Martin - Petition for Variance

: MILLCREEK TOWNSHIP
:
: LEBANON COUNTY, PENNSYLVANIA
: CASE # 1-23

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 Wednesday, June 28, 2023 at a duly advertised public session to hear a Petition for Variance submitted by Lester Z. Martin and Deborah K. Martin.

II. FINDINGS OF FACT

1. The Petitioners are Lester Z. Martin and Deborah K. Martin, with an address of 568 Stricklerstown Road, Newmanstown, PA 17073. (Hearing Exhibit 1).
2. The Petitioners are the owners of a 10.01-acre property, GPIN #24-2394523-357666, 568 Stricklerstown Road, Millcreek Township, Newmanstown, PA 17073. (Hearing Exhibit 4).
3. The Subject Property is located in the A – Agricultural Industry District. (Hearing Exhibit 4).
4. The Subject Property is improved with a single-family dwelling and various accessory structures. (Hearing Exhibit 4).

5. Petitioners propose to install two (2) ground mount solar system arrays on the property, one consisting of 17 panels with overall dimensions of 119 feet by 20 feet, and the second consisting of 22 panels with overall dimensions of 154 feet by 20 feet. (Hearing Exhibit 3).

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 1).

7. A hearing to consider Petitioners' request for a Variance was scheduled for Wednesday, June 28, 2023, at 7:00 p.m. at the Millcreek Township Municipal Building, 81 East Alumni Avenue, Newmanstown, PA 17073. (Hearing Exhibit 4).

8. Notice of the zoning hearing was duly advertised in the *Lebanon Daily News* on Wednesday, June 14, 2023 and Wednesday, June 21, 2023. (Hearing Exhibit 5).

9. Notice of the zoning hearing was sent to Township officials and neighboring property owners by United States First Class Mail. (Hearing Exhibit 6).

10. Notice of the zoning hearing was posted on the Subject Property on June 19, 2023. (Hearing Exhibit 7).

11. 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.

12. Present at the June 28, 2023 zoning hearing were:

Robert Beisel – ZHB Chairman

Timothy Bartow – ZHB Vice-Chairman

Scott Sweigart – ZHB Secretary

Lester Z. Martin – Petitioner/Property Owner

Paul Bametzreider, Esq. – Counsel for Petitioner

Kimberly Paugh – Zoning Officer, Lebanon County Planning Department

Kathy J. Sheffy, Court Stenographer

Amy B. Leonard, Esquire – ZHB Solicitor

13. Petitioner Lester Z. Martin, along with his counsel, Paul Bametzreider, presented the case for the variance. (Hearing Testimony).

14. Petitioner testified that he owns the property at 568 Stricklerstown Road, Newmanstown, PA 17073. (Hearing Testimony).

15. Petitioner's property consists of a residential dwelling, garage, horse barn, and a building enclosing a pool, along with a trailer and various vehicles. (Hearing Testimony).

16. Petitioner accesses his property utilizing a driveway across an adjacent lot. (Hearing Testimony).

17. Petitioner presented an aerial view of his property and indicated that the proposed ground mount solar system would be hidden from view and not an eyesore to any nearby properties. (Hearing Testimony).

18. Petitioner further testified that he did not have any issues meeting the required setbacks. (Hearing Testimony).

19. The issue for Petitioner is Section 16.21.A.4. of the Zoning Ordinance, which does not allow a solar energy system of the proposed size. (Hearing Testimony).

20. Petitioner testified that he has an estimated 4 to 5 power outages a year; however, he stated that installing the ground mount solar system would not fix the issue unless he connected a battery or generator to the system. (Hearing Testimony).

21. Petitioner stated that the solar array would help to lower his electricity bill, and would effectively zero out his bill. (Hearing Testimony).

22. Petitioner currently uses a coal boiler and the propose solar energy system would allow him to convert to electric heat in the residential dwelling and in the garage. He presently burns approximately 16 tons of coals per year. (Hearing Testimony).

23. Petitioner indicated that he has already paid PPL to install an electric pole and run an electric wire to his garage. (Hearing Testimony).

24. It was roughly estimated that the square footage of the ground floor of the principal structure on the property was 2,000 square feet. (Hearing Testimony).

25. Petitioner testified that he did not consider a roof-mounted system because he understood that the fire company would not address a fire in a structure with a roof-mounted system. (Hearing Testimony).

26. Petitioner stated that although he could install a 500 square foot solar energy system that would meet the requirements of the Zoning Ordinance, it would not be "worth his time" to put in a system of that size. (Hearing Testimony).

27. Petitioner was offered a rebate for a certain percentage of the installation cost, plus he believed he would be eligible for a tax credit. (Hearing Testimony).

28. Petitioner admitted that there is no hardship, but noted that the proposed location for the solar array does not negatively affect the area. (Hearing Testimony).

III. HEARING EXHIBITS

Hearing Exhibit 1 – Petition for Variance

Hearing Exhibit 2 – Signed variance criteria

Hearing Exhibit 3 – Email message dated February 2, 2023 containing an aerial view of the location for the proposed solar arrays and providing dimensions

Hearing Exhibit 4 – Notice of Public Hearing

Hearing Exhibit 5 – Proof of Publication in the *Lebanon Daily News* on June 14, 2023 and June 21, 2023

Hearing Exhibit 6 – Mailing List

Hearing Exhibit 7 – Photo of public notice posted on the property

Hearing Exhibit 8 – Aerial view of property depicting proposed location of the ground mount solar system and all buildings on the property

IV. DISCUSSION

The Petitioners are Lester Z. Martin and Deborah K. Martin, with an address of 568 Stricklerstown Road, Newmanstown, PA 17073. The Petitioners are the owners of a 10.01-acre property, GPIN #24-2394523-357666, 568 Stricklerstown Road, Millcreek Township, Newmanstown, PA 17073. The Subject Property is located in the A – Agricultural Industry District. The Subject Property is improved with a single-family dwelling and various accessory structures. Petitioners propose to install two (2) ground mount solar system arrays on the property, one consisting of 17 panels with overall dimensions of 119 feet by 20 feet, and the second consisting of 22 panels with overall dimensions of 154 feet by 20 feet. 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 2.

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, by the Petitioners' own admission, there is no unnecessary hardship. Here, the alleged "hardship" is one 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 Petitioner Mr. Martin stated that he experiences power outages at his property, his own testimony confirmed that the mere installation of the solar energy system would not eliminate those outages without other action being taken. In addition, there was no evidence that Petitioners attempted to resolve any outage issues with PPL prior to embarking on the proposal for a ground mount solar energy system.

Mr. Martin 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 the allowed size because it would not result in the maximum financial gain to him. In addition, he was not willing to consider the roof-mounted solar system permitted by Section 16.21 of the Zoning Ordinance. 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 A – Agricultural Industry 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 benefit 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. To the contrary, the Zoning Hearing Board indicated that the proposed location would not be visible to most of the adjacent property owners and would have little to no aesthetic

impact on the neighborhood. In addition, it was noted that there could be some benefit to allowing property owners who might wish to convert to a renewable energy source from a non-renewable one such as coal.

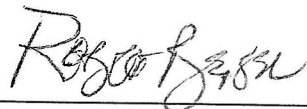
Finally, Petitioners have not met their burden of proving that the variance requested is the minimum variance that would afford relief, as Petitioner does not need a variance to enable full compliance with the provisions of the Zoning Ordinance. Petitioners are not precluded from installing a ground 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. Martin's testimony established that the variance requested was, in large part, a matter of lowering or eliminating his electricity bill rather than necessity to enable use of the property. Section 16.21.D. of the Millcreek Township Zoning Ordinance, subparagraph 2, specifies that variances shall be granted only for minimum relief and not for purely financial reasons.

The Zoning Hearing Board acknowledged that Petitioners' property was not poorly suited for a ground mount solar energy system, and discussed the restriction of Section 16.21.A.4. of the Zoning Ordinance, as it does not allow the Zoning Hearing Board to approve requests for larger systems based upon lot size or other factors that might be relevant. Ultimately, the majority of the Zoning Hearing Board determined that they were constrained by the specific language of Section 16.21.A.4. as to the size of solar energy systems.

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.

V. DECISION

Now, therefore, this 28th day of June, 2023, the Zoning Hearing Board of Millcreek Township, by a 2-1 vote, hereby DENIES the Petition for Variance filed by Petitioners Lester Z. Martin and Deborah K. Martin, with Mr. Sweigart and Mr. Bartow voting to deny the Petition for Variance, and Mr. Beisel voting to grant the Petition for Variance.



Robert Beisel, Chairman
Millcreek Township
Zoning Hearing Board

Date: 8-11-2023