

LEET TOWNSHIP ZONING HEARING BOARD

IN RE: VARIANCE APPLICATION OF JACQUELINE AND RONALD MOOK

STATEMENT OF REASONS FOR DECISION

The de minimis doctrine is an exception to the usual variance rules. It is applied only to minor deviations from dimensional requirements, and then only where rigid compliance is not necessary for the protection of the public policy concerns inherent in the ordinance. *Township of Middletown v. Zoning Hearing Board of Middletown Township*, 682 A.2d 900 (Pa. Cmwlth. 1996); *Constantino v. Zoning Hearing Board of the Borough of Forest Hills*, 152 Pa. Cmwlth. 258; 618 A.2d 1193 (1992); *Stewart v. Zoning Hearing Board of Radnor Township*, 110 Pa. Cmwlth. 111, 531 A.2d 1180 (1987).

Whether or not others in the neighborhood are violating the setback is not controlling. *Rushford v. Zoning Board of Adjustment of Pittsburgh*, 81 Pa. Cmwlth. 274, 473 A.2d 719 (1984).

A variance cannot be granted simply to accommodate the needs of a growing family. The desire to provide more space for the enjoyment of a family member does not constitute unnecessary hardship. *Larsen v. Zoning Board of Adjustment of the City of Pittsburgh*, 543 Pa. 415, 672 A.2d 286 (1996). In this case, ZHB heard convincing testimony that the needs of a growing family had nothing to do with the variance application.

Though a zoning hearing board has the power to grant de minimis variances without proof of all the criteria applied to the usual variance application, the courts also have held that a USE variance cannot be granted on de minimis grounds. *Pzydrowski v. Pittsburgh Board of Adjustment*, 437 Pa. 481, 263 A.2d 426 (1970) (Court affirmed the grant of a de minimis variance despite the fact that the hardship was self-created); *Coyle v. City of Lebanon Zoning Hearing Board*, 135 A.3d 240 (Pa. Cmwlth. 2016).

There is no general right to a de minimis variance in Pennsylvania, and the decision of whether to grant such a request is at the discretion of the zoning board. *200 W. Montgomery Ave. Ardmore, LLC v. Zoning Hearing Board of Lower Merion Township*, 985 A.2d 996 (Pa. Cmwlth. 2009); *Lench v. Zoning Board of Adjustment of the City of Pittsburgh*, 13 A.3d 576 (Pa. Cmwlth. 2011).

A de minimis variance is proper where the deviation is minor and strict compliance is unnecessary for the protection of the public policy concerns of the ordinance. *Stewart*

v. Zoning Hearing Board of Radnor Township, 110 Pa. Cmwlth. 111, 531 A.2d 1180 (1987).

The following decisions provide ZHB with contours for the exercise of its reasonable discretion in de minimis variance cases.

A five-foot variance from an eight-foot setback requirement is not justified as a de minimis variance. *Heilman v. Zoning Hearing Board of Adjustment of Philadelphia County*, 69 Pa. Cmwlth. 157, 450 A.2d 318 (1982).

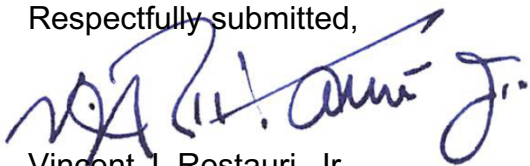
In a congested area, variances of 3 feet from a 9-foot rear yard requirement and 3 feet from a 5-foot open court requirement are too large to be considered as de minimis. *Chacona v. Zoning Board of Adjustment of the City of Philadelphia*, 143 Pa. Cmwlth. 408, 599 A.2d 255 (1991).

A reduction from 211 sq. ft. to 185 sq. ft. in a crowded area is too great to be de minimis. *D'Amato v. Zoning Board of Adjustment of the City of Philadelphia*, 137 Pa. Cmwlth. 157, 585 A.2d 580 (1991).

A variance should not necessarily be granted when applicant can locate the building to another place on the lot without violating the Ordinance and needing a variance *Lavallee v. Zoning Board of Adjustment of Pittsburgh*, 63 Pa. Cmwlth. 73, 437 A.2d 540 (1981), or where an "adequate" building for the purpose could be built in conformity with the requirements of the zoning ordinance. *Green Townes Financial Corp. v. Zoning Hearing Board of Lower Merion Township*, 157 Pa. Cmwlth. 454, 630 A.2d 492 (1993). During the hearings on the Mook application, the evidence presented convinced ZHB that another place on the lot could not adequately address the intended purpose set forth in the Application without violating the Ordinance.

For all these reasons, coupled with ZHB's Findings of Fact, ZHB properly applied the law and properly exercised its discretion in approving the application and granting the variance, subject to conditions, based on the de minimis variance doctrine.

Respectfully submitted,



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December 27, 2024