IN RE: APPLICATION OF SHAWN & CHERYL LOWERY
BEFORE THE ZONING HEARING BOARD OF TREDYFFRIN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA
APPEAL NO. 19-19

DECISION

The Zoning Hearing Board of Tredyffrin Township (the “Board”), after proper advertisement, met on Thursday, October 24, 2019, to hear evidence on the Application of Shawn and Cheryl Lowery (the "Applicants") for a variance for the property located at 1605 Horseshoe Trail, being Tax Parcel No. 43-4-48.1A (the “Property”). The requested variance is from §§208-13 of the Zoning Chapter of the Tredyffrin Township Code of Ordinances (the “Code”) to permit an accessory apartment for a caretaker on a 4.2 acre property where 5 acres are required. The Applicants were represented by Craig R. Lewis, Esquire. John H. Kennedy and Shawn Lowery testified on behalf of the Application.

Present at the hearing were Chairperson Daniel McLaughlin and Members Neill Kling and Julianne Peck. Also present at the hearing were Michael Pilotti, Senior Building, Code & Fire Official, and Amanda J. Sundquist, Esquire, Solicitor for the Board. Randy and Sharon Gurak were granted party status and were represented by William Brennan, Esquire. Dr. and Mrs. Gurak testified as part of their case. Several residents offered public comment.

I. Findings of Fact

1. The following exhibits were admitted as evidence at the hearing:

   Exhibit B-1 Application with attachments;
   Exhibit B-2 Proof of Publication of the notice in the Daily Local News;
   Exhibit B-3 Affidavit of Posting of the notice on the Property;
   Exhibit B-4 Affidavit of Mailing of notice to the required properties;
Exhibit A-1  Deed to the Property;
Exhibit A-2  Application to Zoning Hearing Board;
Exhibit A-3  Zoning Plan dated October 8, 2019;
Exhibit A-4  Zoning Hearing Board Decision re Appeal 01-10;
Exhibit A-5  Zoning Hearing Board Decision re Appeal 10-14;
Exhibit A-6  John Kennedy, C.V.;
Exhibit A-7  Neighbor Support Packet with blue circle indicating relevant neighbors;
Exhibit G-1  Transcript of Zoning Hearing Appeal No. 01-10;
Exhibit G-2  Zoning Hearing Board Decision re Appeal 01-10;
Exhibit G-3  Lowery Application No. 1712-19;
Exhibit G-4  Transcript of Zoning Hearing Board Appeal No. 12-19;
Exhibit G-5  Zoning Hearing Board Decision re Appeal No. 12-19;
Exhibit G-6  Lowery Application No. 1751-19;
Exhibit G-7  Plan of Property for Albert Barnes Zink, dated November 21, 1967, revised June 19, 1969;
Exhibit G-7A  Enlarged section of the U.S. Department of the Interior, U.S. Geological Survey, Valley Forge Quadrangle, 7.5 Minute Series, 2016 showing area of the Applicant’s Property;
Exhibit G-7C  Photos of 1605 Horseshoe Trail; and
Exhibit G-8  Definitions of Caretaker
The Code and Zoning Map are incorporated herein by reference. The parties also agreed to incorporate by reference the record from Zoning Hearing Board Appeal No. 12-19.¹

2. The hearing was duly convened, and the Applicants presented evidence in support of the Application.

3. The Property is located at 1605 Horseshoe Trail, Tax Parcel No. 43-4-48.1A. (Exh. B-1).

4. The Applicants and owners of the Property are Shawn and Cheryl Lowery. (Exhs. B-1, A-1).

5. The Property is located in the R-1/2 Residence Zoning District.

6. In 1967, the Property was improved with a single-family dwelling and several sheds. (Exh. G-7).

¹ The record from Zoning Hearing Board Appeal No. 12-19 consists of: (1) the July 25, 2019 hearing transcript; (2) the Zoning Hearing Board Decision; and (3) the following exhibits:

- Exhibit A-1 July 25, 2019 Amendment to Zoning Application;
- Exhibit A-2 Zoning Exhibit Plan;
- Exhibit A-3 Zoning Application and addendum;
- Exhibit A-4 Aerial photograph and pictures of buildings;
- Exhibit A-5 Tax map;
- Exhibit A-6 Petition of Support for the Amended Application;
- Exhibit A-7 January 28, 2010 Zoning Hearing Board Decision and Order;
- Exhibit A-8 June 6, 2019 Zoning Certification letter;
- Exhibit A-9 Deed;
- Exhibit A-10 MLS listing for apartments in the same zoning district;
- Exhibit A-11 John Kennedy’s CV;
- Exhibit A-12 Tredyffrin Township Historic Resources Index;
- Exhibit A-13 Appraisal;
- Exhibit G-1 January 28, 2010 Zoning Hearing Board Decision and Order;
- Exhibit G-2 Excerpts of the transcript of the January 28, 2010 Zoning Hearing;
- Exhibit G-3 Tax Assessment listing;
- Exhibit G-4 Plan of Property of Albert Barnes Zink, dated November 21, 1967;
- Exhibit G-5 Addendum to the Zoning Hearing Application;
- Exhibit G-6 July 23, 2019 email; and
- Exhibit G-7 Profile of Shawn Lowery.

8. In the 2010 Decision, the then-applicant, Edward Barrett, sought three variances to permit a caretaker apartment on less than 5 acres. (Exh. A-4).

9. The proposed caretaker apartment was previously a shed which had been improved into a dwelling unit. (Exh. A-4).

10. A finding of fact in the 2010 Decision related to hardship reads as follows: "The Applicant's advanced age, health issues and large size of the Property make it very difficult for him to maintain the Property." (Exh. A-4, Finding #15).

11. A finding of fact in the 2010 Decision related to the duties of the caretaker reads as follows: "The Applicant offers a small living space to the caretaker who in exchange maintains the Property and the residence of the Applicant." (Exh. A-4, Finding #14).

12. The Board granted the requested relief to permit an accessory apartment for a watchman, caretaker, staff or employee, subject to the conditions that (1) the accessory apartment for the caretaker shall be permitted only as long as Mr. Barrett was the legal owner of the Property; and (2) the construction and the use of the subject property shall be in conformance with the plan specifications, testimony and evidence presented to the Board. (Exh. A-4).


14. Different individuals occupied the cottage after the 2010 Decision.

15. The cottage is currently vacant.

16. On June 20, 2019, the Applicants purchased the Property. (Exh. A-1).

17. Upon the sale, the relief granted by the 2010 Decision terminated.
18. The Applicants filed an application to this Board to permit the cottage to be utilized as an accessory rental unit ("First Application"). (Exh. G-3).


20. The Applicants now seeks to utilize the existing cottage as a caretaker's quarters. (Exh. A-2).

21. The Applicants seek a variance from Section 208-13 to permit a caretaker's quarters on a property less than 5 acres. Section 208-13.

22. The Property is 4.2 acres.

23. Section 208-17.F permits by right: "Accessory uses as permitted in § 208-12G, subject to the requirements thereof."

24. Section 208-12.G(2) states: "Accessory use on the same lot with and customarily incidental to any of the foregoing permitted uses. Each use shall comply with the provisions of §§ 208-103 and 208-104. The term "accessory use" shall not include a business except as expressly authorized herein, but shall include: ... (2) Accessory apartment for a watchman, caretaker or the staff or employees of a permitted use subject to the area and height regulations of § 208-13."

25. Section 208-13.A states: "Lot area and width. A lot area of not less than five acres and a lot width of not less than 300 feet at the building line shall be provided."

26. Caretaker is an undefined term in the Code.

27. Caretaker is defined by the Merriam-Webster dictionary as:

"1: one that gives physical or emotional care and support

//served as caretaker to the younger children
2: one that takes care of the house or land of an owner who may be absent ...”
https://www.merriam-webster.com/dictionary/caretaker

28. Caretaker is defined by dictionary.com as:

“1. a person who is in charge of the maintenance of a building, estate, etc.; superintendent.

...  

4. a person who takes care of another.”

https://www.dictionary.com/browse/caretaker?s=t

29. At this time, the Applicants have not defined or determined the role of caretaker for their Property.

30. The caretaker might watch their house when the Applicants go on vacation, mow the lawn more than once, assist with their special needs child, or some other yet to be determined job function.

31. The Applicants agreed to limit the cottage to one (1) caretaker resident.

32. The Applicant agreed to provide the Township with documentation regarding the caretaker role of the resident of the cottage upon residency by the caretaker.

33. The represented hardship for the variance to permit the cottage to be used as an caretaker’s quarters on less than 5 acres is financial.

34. No evidence was offered that the need for a caretaker was a hardship at this time.

35. No evidence was offered regarding unique physical conditions or characteristics of the Property.

36. Dr. and Mrs. Gurak, 1604 Horseshoe Trail were admitted as parties.
37. John H. Kennedy was accepted as an expert in zoning and land planning. (Exh. A-11).

38. Several members of the public offered comment to the Board.

II. Discussion

Section 208-150 of the Code empowers the Board to grant variances from the terms of the Code. The Municipalities Planning Code and existing case decisions provide that variances from a zoning ordinance may be granted owing to any physical circumstance or condition of the property which causes unnecessary hardship, and which hardship is not self-created.

The Applicants have not made a showing to the Board regarding the necessary elements for a dimensional variance. The Applicants have not provided any evidence regarding unique physical conditions or characteristics of the Property.

The term "caretaker" is not defined at 1 Pa. C.S. §1991, or in the Pennsylvania Digest 2d "Words and Phrases" outside of the family law context. Caretaker is defined by the Merriam-Webster dictionary as:

1: one that gives physical or emotional care and support

//served as caretaker to the younger children

2: one that takes care of the house or land of an owner who may be absent ...

https://www.merriam-webster.com/dictionary/caretaker. Caretaker is defined by dictionary.com as:

1. a person who is in charge of the maintenance of a building, estate, etc.; superintendent.

...  

4. a person who takes care of another.

https://www.dictionary.com/browse/caretaker?s=t. Here, the Applicants by their own admission have not yet determined what functions they intend for a caretaker to perform, nor have they related any personal or other hardship to those functions. As a result it is unclear as the extent of the potential hardship and this Application in many ways appears to be premature. Without this information, the expressed hardship would appear to be identical to the financial hardship expressed in the First Application. As a result, the Board find the Applicants have not met their burden and this Application must be denied at this time.

III. Conclusions of Law

1. The hearing was duly advertised, all required notices were given, and the hearing was duly convened.
2. The Board has jurisdiction over this matter.

3. Randy and Sharon Gurak, 1604 Horseshoe Trail, were admitted as parties.

4. John H. Kennedy was admitted as an expert in zoning and land planning.

5. The Applicants have failed to establish entitlement to the requested dimensional variance from Section 208-13 to permit a 4.2 acre lot rather than a 5 acre.

The Board, therefore, enters the following:

ORDER

AND NOW, this 20th day of November, 2019, upon consideration of the Application of Shawn and Chery Lowery for the requested dimensional variance from §208-13 of the Zoning Chapter of the Tredyffrin Township Code of Ordinances to permit a 4.2 acre lot rather than a 5 acre for the property located at 1605 Horseshoe Trail, being Tax Parcel No. 43-4-48.1A, in the R-1/2 Residence District of the Township, IT IS HEREBY ORDERED that the relief requested shall be DENIED WITHOUT PREJUDICE.

ZONING HEARING BOARD OF
TREDYFFRIN TOWNSHIP

[Signatures]

DANIEL McLAUGHLIN, Chairman

NEILL KLING

JULIANNE PECK

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