

In Re: : THE ZONING HEARING BOARD OF
: NORTH ANNVILLE TOWNSHIP
COUNTRY LANE FURNITURE AND :
ANNVILLE ASSOCIATES, L.P. :
PETITION FOR VARIANCE : LEBANON COUNTY, PENNSYLVANIA
:
: CASE # 1-23

**DECISION OF THE ZONING HEARING BOARD
OF NORTH ANNVILLE TOWNSHIP**

I. INTRODUCTION

The Zoning Hearing Board of North Annville Township (hereinafter "ZHB"), Lebanon County, Pennsylvania, met on Tuesday, February 6, 2024 at a duly advertised public session to hear a Petition for Variance submitted by related entities, Country Lane Furniture (lessee) and Annville Associates, L.P. (legal owner).

II. FINDINGS OF FACT

1. The Petitioners are Country Lane Furniture and Annville Associates, L.P., with an address of 10 Nathan Lane, Annville, PA 17003. (Hearing Exhibit 1).

2. Annville Associates, L.P. is the owner of the property located at GPIN #25-2306286-363753, 10 Nathan Lane, Annville, PA 17003 (hereinafter the "Subject Property") (Hearing Exhibit 1, 2).

3. Country Lane Furniture is a family-owned business that sells furniture and operates a retail store at the Subject Property. (Hearing Testimony).

4. The Subject Property is located in the C General Commercial District. (Hearing Exhibit 1).
5. The Subject Property is improved and has an existing building containing 61,649 square feet. (Hearing Exhibit 1).
6. The Subject Property is a 6.98-acre parcel. (Hearing Exhibit 8).
7. Petitioners propose to construct two building additions—one being 24,750 square feet on the north side of the existing building and the other being 4,983 square feet on the west side of the existing building. (Hearing Exhibit 1).
8. In addition, Petitioners propose to pave 8,311 square feet on the northeast side of the existing building. (Hearing Exhibit 1).
9. A dimensional variance is being sought pursuant to North Annville Township Zoning Ordinance Article IV, Section 404.3, Lot and Yard Requirements, to allow for a variance that would allow the maximum lot coverage to be 60.2% in lieu of the maximum lot coverage allowance of 50%. (Hearing Exhibits 1, Hearing Testimony).
10. The proposed additions would put the lot coverage at 182,954 square feet, which is 30,906 square feet over the maximum coverage area permitted by ordinance. (Hearing Exhibit 1, Hearing Testimony).
11. Petitioners are represented by Andrew J. Race, Esquire. (Hearing Testimony).
12. Petitioners presented three witnesses: Scott Weaver, part-owner of Country Lane Furniture; Anthony Hostetter with Hoover Building Specialists; and Josh Weaber, Professional Engineer with Chrisland Engineering. (Hearing Testimony).

13. Scott Weaver began his testimony with a brief history of Country Lane Furniture and their expansion from a store on 1200 East Main Street, Annville, Pennsylvania to its operation at the Subject Premises. (Hearing Testimony).

14. Mr. Weaver explained that Country Lane Furniture moved its operation to the Subject Premises in 2015 after the initial structure was built. (Hearing Testimony).

15. In 2018, there was an expansion to the rear of the building. (Hearing Testimony).

16. Mr. Weaver testified that Country Lane Furniture is seeking to expand the structure again by adding 24,750 square feet on the north side of the existing building for storage and warehousing purposes and by adding 4,983 square feet for retail space. (Hearing Testimony).

17. Mr. Weaver testified that the need for the expansion is because they are projecting toward growth. (Hearing Testimony).

18. Country Lane Furniture's store hours are Monday, Wednesday, Friday 9:00 a.m. to 5:00 p.m.; Tuesday and Thursday 9:00 a.m. to 8:00 p.m.; Saturday 9:00 a.m. to 4:00 p.m.; and closed on Sunday. (Hearing Testimony).

19. The only manufacturing that occurs on the Subject Property is slab work and live edge epoxy work. (Hearing Testimony).

20. Delivery trucks bring deliveries to the store about three to five times per week. (Hearing Testimony).

21. The Subject Premises is surrounded by an empty lot to the West, Urgent Care to the East, and an empty lot behind the Subject Property. (Hearing Testimony).

22. There are also warehouses to the South and a Rutter's across the street. (Hearing Testimony).

23. Anthony Hostetter of Hoover Building Specialists testified that Hoover Building Specialists was previously involved in expansion work for Country Lane Furniture in 2018. (Hearing Testimony).

24. Mr. Hostetter testified that the proposed expansion would use the same building material. (Hearing Testimony).

25. Mr. Hostetter also explained that the proposed expansion would include paving the East side of the building and the truck access to the new docks. (Hearing Testimony).

26. The height of the proposed expansion would match the height of the existing building. (Hearing Testimony).

27. Joshua Weaber, a Professional Engineer for Chrisland Engineering, testified that he had prepared a Zoning Variance Plan, Hearing Exhibit 7, for the Subject Property. (Hearing Testimony).

28. Mr. Weaber testified that the Preliminary/Final Land Subdivision & Land Redevelopment Plan of Infrastructure Improvements for Clear Spring Crossing Development, Hearing Exhibit 8, shows that stormwater management was taken into consideration prior to the development of the Subject Property and that the existing stormwater management could handle the proposed expansion. (Hearing Testimony).

29. Mr. Weaber testified that the existing stormwater management includes five (5) Rain Gardens, as outlined in Hearing Exhibit 7. (Hearing Testimony).

30. Mr. Weaber testified that the existing lot coverage for the Subject Property is at 49.4%. (Hearing Testimony).

31. Mr. Weaber testified that the proposed expansion would increase the lot coverage to 60.2%. (Hearing Testimony).

32. Maximum lot coverage is defined as “a percentage of lot area which may be covered by impervious material including roofs, drives, patios, walls, etc.” North Annville Township Zoning Ordinance Article II, Section 201.4, Definitions, Specific Terms.

33. A hearing to consider Petitioners’ request for a Variance was scheduled for Tuesday, February 6, 2024 at 6:30 p.m. at the Union Water Works Building, 2875 Water Works Way, Annville, PA 17003. (Hearing Exhibit 2).

34. Notice of the zoning hearing was duly advertised in the *Lebanon Daily News* on Tuesday, January 23, 2024 and Tuesday, January 30, 2024. (Hearing Exhibit 3).

35. Notice of the zoning hearing was sent to neighboring property owners by United States First Class Mail. (Hearing Exhibit 4).

36. Notice of the zoning hearing was posted on the Subject Property. (Hearing Exhibit 5).

37. The Petition for Variance was heard by the North Annville Township ZHB before Chairman, James Hoffman; Member, Paul Deshong; and Member, Gary Tshudy.

38. Present at the February 6, 2024 zoning hearing were:

James Hoffman, ZHB Chairman,

Paul Deshong – ZHB Member

Gary Tshudy – ZHB Member
Eric Brummer, ZHB Alternate Member
Scott Weaver – on behalf of Petitioners
Andrew Race, Esquire – Counsel for Petitioners
Anthony Hostetter – Hoover Buildings
Joshua Weaber – Chrisland Engineering
Randall Leisure – North Annville Township Supervisor
Benjamin Bow – North Annville Township Planning Commission
Chandra Tshudy – Township Resident
Brian Tshudy – Township Resident
Greg Hetrick – Zoning Officer, Lebanon County Planning Department
Kathy J. Sheffy, Court Stenographer
Roberta J. Santiago, Esquire – ZHB Solicitor

39. Mr. and Mrs. Tshudy expressed concerns over stormwater management.
(Hearing Testimony).

40. Counsel for Petitioners objected to the ZHB's consideration of stormwater concerns/questioning, citing that the issue need not be considered by the ZHB.
(Hearing Testimony).

41. The ZHB took the objection under advisement, but ultimately did not rely on the concerns expressed by Mr. and Mrs. Tshudy in making its decision.

42. The ZHB questioned Petitioners' witnesses about the setbacks, stormwater management, parking, and alternatives to paving.

43. The ZHB also questioned Petitioners about the variance criteria.

44. Petitioners admitted that the variance criteria could not be met, but that the request was one of a *de minimis* nature. (Hearing Testimony).

III. HEARING EXHIBITS

Hearing Exhibit 1 – Petition for Variance

Hearing Exhibit 2 – Notice of Public Hearing

Hearing Exhibit 3 – Proof of Publication in the *Lebanon Daily News* on January 23, 2024 and January 30, 2024

Hearing Exhibit 4 – Mailing List

Hearing Exhibit 5 – Posting photo on Subject Property on January 29, 2024

Hearing Exhibit 6 – Variance Criteria signed by representative of Petitioners

Hearing Exhibit 7 – Site Plan & other materials presented by Petitioners

Hearing Exhibit 8 – 2018 Preliminary/Final Land Subdivision & Land Development Plan, recorded in Plan Book 80, Page 152.

IV. DISCUSSION

Annville Associates, L.P. is the owner of a 6.98-acre property, 10 Nathan Lane, North Annville Township, Lebanon, Pennsylvania 17003, located at GPIN #25-2306286-363753 (hereinafter the “Subject Property”). The Subject Property is located in the C General Commercial Zoning District. The Subject Property is improved and has an existing building containing 61,649 square feet. Country Lane Furniture is a family-owned business that sells furniture and operates a retail store at the Subject Property. Country Lane Furniture is seeking to expand by adding 24,750 square feet on the north side of the existing building for storage and warehousing purposes and by adding 4,983

square feet for retail space. A Variance is being sought to Article IV, Section 404.3, to allow the allowable maximum lot coverage to exceed the 50% maximum lot coverage. See North Annville Township Zoning Ordinance Article IV, Section 404.3, Lot Area and Yard Requirements. Specifically, Petitioners propose that the impervious coverage be increased to 60.2% in lieu of the 50% permitted by ordinance. Maximum lot coverage is defined as "a percentage of lot area which may be covered by impervious material including roofs, drives, patios, walls, etc." North Annville Township Zoning Ordinance Article II, Section 201.4, Definitions, Specific Terms.

A Zoning Hearing Board may grant a variance when all of the following criteria are met, where relevant in a given case:

- (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 appellant.
- (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.
- (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, 53 P.S. § 10910.2; see also Hearing Exhibit 6. North Annville Township Zoning Ordinance Article XI, Section 1106, adds that a variance may be granted provided that the additional findings are made, where relevant, in a given case:

(6) That the Variance, if authorized, will not confer on the petitioner any special privilege that is denied by this Ordinance to the owners of other lands, structures, or buildings in the same zoning district; and

(7) That nonconforming use of neighboring lands, structures, or buildings in the same district and permitted or nonconforming use of lands structures or buildings in other zoning districts shall not be considered grounds for the granting of a Variance; and

(8) That a Variance shall not be granted solely for financial reasons or to facilitate financial gain.

North Annville Township Zoning Ordinance Article XI, Section 1106, Variances.

“[A]n applicant must establish all elements to be entitled to a variance.” *Demko v. City of Pittsburgh Zoning Board of Adjustment*, 155 A.3d 1163, 1172 (Pa. Commw. Ct. 2017). “A dimensional variance involves a request to adjust zoning regulations to use the property in a manner consistent with regulations, whereas a use variance involves a request to use property in a manner that is wholly outside zoning regulations. The same criteria apply to use and dimensional variances.” *Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494, 501 (Pa. Commw. 2016).

A variance is the proper relief where an unnecessary hardship attends the property. *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595, 598 (Pa. Commw. Ct. 2001). There is a more relaxed standard for establishing unnecessary hardship for a dimensional variance, as opposed to a use variance. See *Dunn*, 143 A.3d at 501.

“In general, unnecessary hardship may be shown by demonstrating either that physical characteristics of the property are such that the property could not be used for the permitted purpose or could only be conformed to such purpose at a prohibitive expense, or that the characteristics of the area are such that the lot has either no value or only a distress value for any permitted purpose.” *Mitchell v. Zoning Hearing Board of the Borough of Mount Penn*, 838 A.2d 819, 828 (Pa. Commw. Ct. 2003). “Under *Hertzberg*, the courts may consider multiple factors in determining whether the applicant established unnecessary hardship for a dimensional variance, including the cost of the strict compliance with the zoning ordinance, the economic hardship that will result from denial of a variance, and the characteristics and conditions of the surrounding neighborhood.” *Mitchell*, 838 A.2d at 828. “Although *Hertzberg* eased the requirements, it did not remove them. . . . An applicant must still present evidence as to each of the conditions listed in the zoning ordinance, including unnecessary hardship.” *Dunn*, 143 A.3d at 501 (internal citations omitted). “Where no hardship is shown, or where the asserted hardship amounts to a landowner's desire to increase profitability or maximize development potential, the unnecessary hardship criterion required to obtain a variance is not satisfied even under the relaxed standard.” *Dunn*, 143 A.3d at 501 (internal citations omitted).

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 Borough of Latrobe v. Paul B. Sweeney*, 17 Pa. Cmwlth. 356, 359, 331 A.2d 925, 927 (1975) (“[P]ersonal and economic considerations are not sufficient grounds upon which to base the grant of a variance.”). “It is the property that must be subject to the

hardship and not the person.” *Borough of Latrobe*, 17 Pa. Cmwlth. at 359, 331 A.2d at 927. “The reasons for granting a variance must be substantial, serious and compelling.” *Valley View Civic Association v. Zoning Board of Adjustment*, 501 Pa. 550, 555, 462 A.2d 637, 640 (Pa. 1983).

Evaluating each of the criteria required to grant a variance, the ZHB found that the Petitioners are not entitled to a variance. First, there are no unique physical circumstances or conditions that are peculiar to the Subject Property. Petitioners have presented no evidence that the Subject Property is irregular, narrow, or shallow in lot size or shape that results in unnecessary hardship. The hardship claimed by Petitioners is that they will not be able to expand its physical retail space and warehousing/storage space since it is already close to the maximum impervious coverage, permitted by ordinance. Even under a relaxed standard, this hardship “amounts to a landowner’s desire to increase profitability or maximize development potential,” which does not satisfy the criteria. Petitioners’ testimony was that the variance was needed to provide them with greater retail space and warehousing space, including docks for trucks. The testimony, presented by Petitioners, is that the business at Country Lane is doing well, and the expansion they are seeking is a bigger building to accommodate their business.

Second, a variance is not necessary to enable the reasonable use of the Subject Property since the Subject Property has already been developed and is already being used for its intended purpose—furniture retail operation, along with some warehousing/storage space. Based upon the brief testimony provided by Petitioners, it is not believed that the requested relief would alter the essential character of the neighborhood. There were concerns noted as to stormwater management by township

residents. Although these concerns were relayed by township residents and although the Petitioners presented twofold testimony that such concerns were not properly before the ZHB but that the stormwater management was already accounted for, the ZHB did not need to consider any testimony related to stormwater management because it found that Petitioners failed to present the evidence necessary to grant a variance. Finally, the ZHB found that the variance request to increase the maximum lot coverage to be 60.2% in lieu of the maximum lot coverage allowance of 50% did not represent the minimum variance that would afford relief and represent the least modification possible of the regulation in issue. Petitioners simply failed to produce evidence that the relief sought represented the minimum variance and least modification possible. Additionally, during its questioning of Petitioners, the ZHB found that Petitioners did not seem to have considered other options.

Petitioners have not established all the elements necessary to be entitled to a variance under the Pennsylvania Municipalities Planning Code, even under the relaxed standard and under the North Annville Zoning Ordinance. To grant such a variance without having met the necessary elements, would grant a special privilege to Petitioners that is denied to the owners of other lands, structures, or buildings in the same zoning district. Petitioners admitted that they would not be able to establish all the elements. Instead, Petitioners believed the request to be one under the *de minimis* doctrine.

“The *de minimis* doctrine is an extremely narrow exception to the heavy burden of proof which a party seeking a variance must normally bear. This exception may be applied where (1) only a minor deviation from the zoning ordinance is sought and (2)

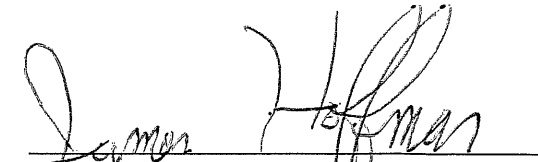
rigid compliance with the ordinance is not necessary for the preservation of the public interests sought to be protected by the ordinance. The determination of whether or not the *de minimis* doctrine applies requires careful consideration of both of these factors. Where the *de minimis* doctrine applies, there is no need to resort to any other theory of relief.” *Pequea Township v. Zoning Hearing Board of Pequea Twp.*, 180 A.3d 500, 504 (Pa. Commw. Ct. 2018) (internal citations omitted).

“There are no set criteria for determining what will be considered *de minimis*.” *Hawk v. City of Pittsburgh Zoning Board of Adjustment*, 38 A.3d 1061, 1066 (Pa. Commw. Ct. 2012). “Instead, the grant of a *de minimis* variance depends upon the circumstances of each case.” *Hawk*, 38 A.3d at 1066. “[T]he decision of whether to grant a *de minimis* variance is left to the discretion of the local zoning board.” *Alpine, Inc. v. Abington Township Zoning Hearing Board*, 654 A.2d 186, 191 (Pa. Commw. Ct. 1995).

In the instant case, the ZHB considered the matter to be outside the scope of a *de minimis* variance. The ZHB felt that the proposed deviation sought by Petitioners, which is greater than 10%, is not *de minimis in nature*, as it is not a minor deviation from the zoning ordinance sought. Additionally, a proposed deviation, which is greater than 10% in this case, requires compliance for the preservation of the public interests sought to be protected by the ordinance. Therefore, the ZHB concluded that Petitioners are not entitled to a variance on a *de minimis* basis.

V. DECISION

Now, therefore, this 6th day of February, 2024, the Zoning Hearing Board of North Annville Township, by a 3-0 vote, hereby DENIES a variance to exceed the maximum allowable lot coverage to 60.2%,



James Hoffman
North Annville Township
Zoning Hearing Board, Chairman

Date: 3/13/2024