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April 6, 2021

Michael Duva  
38 Galbraith Avenue  
Norristown, PA 19403-3043

**RE: West Norriton Zoning Hearing Board  
Application of Michael Duva No. 908**

Dear Applicant:

Enclosed please find a copy of the Decision of the West Norriton Township Zoning Hearing Board in this matter.

Sincerely,

  
MICHAEL E. FUREY

MEF:js

Enclosure

cc: West Norriton Township (w/enclosure)  
David Jowett (w/enclosure)

BEFORE THE ZONING HEARING BOARD OF WEST NORRITON TOWNSHIP,  
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF MICHAEL DUVA

NO. 908

**DECISION**

**I. BACKGROUND**

A public hearing was held on March 17, 2021 with regard to the application of Michael Duva. The application requested a variance from the West Norriton Township Zoning Ordinance to place a carport 5 feet from the side property line rather than the 12 feet required. Notices of the public hearing were published in accordance with law, advertised in a newspaper of general circulation, and posted on the property. In accordance with such notices, and as permitted under Act 15 of 2020, a hearing was conducted by telecommunication device. West Norriton Township Zoning Officer Thomas Heisner participated in the hearing on behalf of the Township.

At the commencement of the proceedings, a request was made that anyone who wished to enter appearance as a party to the proceedings should identify himself/herself in order to participate as a party. The record reflects that no one chose to enter appearance as a party in opposition to the application in this regard. The adjoining property owner most affected by the application, David Jowett, entered appearance as a party, but was not opposed to the granting of relief. Witnesses were duly sworn or affirmed and notes of testimony for the hearing were taken and are hereby made a part of this record. Final vote with regard to the application was taken at the public meeting on March 17, 2021 after public discussion, and this Decision follows as a result of that vote.

## **II. FINDINGS OF FACT**

1. The Applicant is Michael Duva, the legal owner of the property in question which is located at 38 Galbraith Ave., West Norriton Township, Montgomery County, Pennsylvania.

2. The Zoning applicable to this parcel of ground is R-1 Residential Zoning District.

3. The following Exhibits were marked and duly admitted into evidence:

- A-1 Application
- A-2 Site Plans (2)
- A-3 Plot Plan
- A-4 Construction Plans

The Board marked and duly admitted into evidence the following Board Exhibit:

- B-1 Proof of Publication

4. Section 27-402.4.A of the Zoning Ordinance requires a setback of 12 feet from side property lines, and an aggregate side yard of 30 feet.

5. The variance requested would permit the carport to be located 5 feet from the side property line, rather than the 12 feet required, and reduce the aggregate side yard to 18 feet rather than the 30 feet required.

6. The carport will be constructed in the only location accessible to the existing driveway on the property.

## **III. DISCUSSION**

There are two types of variances, a "dimensional" variance and a "use" variance. Differing standards apply to use and dimensional variances. One who advances a dimensional variance seeks to adjust zoning regulations so that the property may be used in a manner consistent with the zoning regulations. In contrast, a use variance seeks to use the property in a way that is inconsistent with

the zoning regulations. In Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Supreme Court of Pennsylvania determined that, in evaluating a hardship for a dimensional variance, the Zoning Hearing Board should consider various factors, including economics, and the characteristics of the surrounding neighborhood, in determining whether a variance would be appropriate. The Court also held that, when considering a dimensional variance, a Zoning Hearing Board should adopt a somewhat more relaxed standard of scrutiny than when the Board is considering a use variance.

In Marshall v. City of Philadelphia and Zoning Board of Adjustment, 626 Pa. 385, 97 A.3d 323 (2014), the Supreme Court recognized that a property does not have to be valueless in order to obtain a use variance. The Court further indicated that economic considerations may be considered in a use variance case, if the property can only be brought into conformance at a prohibitive expense. The Supreme Court reiterated in the Hertzberg and Marshall cases, that an Applicant need not prove that the property cannot be used for any other permitted use in order to be entitled to a variance. Nevertheless, an applicant seeking a variance must prove that unnecessary hardship will result if the variance is denied, and must also prove that the proposed use is not contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983). “The burden on an applicant seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling.” Singer v. Zoning Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth. 2011).

The Applicant in this case is not requesting a use variance, but rather only a dimensional variance, which requires a relaxed level of scrutiny. Society Hill Civic Association v. Philadelphia Zoning Board of Adjustment, 42 A.3d 1178 (Pa. Cmwlth. 2012).

To obtain a dimensional variance, the Applicant must ordinarily meet the five (5) criteria set forth in Section 910.2 of the Pennsylvania Municipalities Planning Code (“MPC”), 53 P.S. §10910.2, and incorporated in §27-1804 of the Ordinance:

(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.

(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 the 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.

(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 at issue.

In this case, the Applicant has demonstrated that the lot suffers from the unnecessary hardship of being undersized for the zoning district in which it is located, and the carport must be located in the location proposed due to the current location of the existing driveway.

#### **IV. CONCLUSIONS OF LAW**

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application. The parcel in question is located in West Norriton Township, Montgomery County, Pennsylvania.

The Applicant and the subject matter are properly before the Board and the Applicant has standing to submit the application.

2. The hearing notices were duly published and posted in accordance with law.

3. The Applicant presented evidence and testimony supporting the granting of the variance requested as a matter of law.

#### V. OPINION

Upon consideration of the above Findings of Fact and Conclusions of Law, the Board determines that the application should be granted as set forth hereinafter in the Order.

BEFORE THE ZONING HEARING BOARD OF WEST NORRITON TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF MICHAEL DUVA

NO. 908

**ORDER**

AND NOW, this 6<sup>TH</sup> day of APRIL, 2021, upon consideration of the above


Findings of Fact and Conclusions of Law, the Board hereby ORDERS that:

- (1) The following relief from the West Norriton Township Zoning Ordinance is **GRANTED**:

A variance from the setback requirements of Section 27-402.4.A of the Zoning Ordinance, so as to permit the proposed carport to be located 5 feet from the side property line, rather than the 12 feet required, and to reduce the aggregate side yard to 18 feet, rather than the 30 feet required.

- (2) The Applicant shall comply with all requirements of West Norriton Township, including all building codes, fire codes and all other zoning ordinance provisions, including all other setback requirements.
- (3) All use and development permitted by this Decision shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
- (4) The relief granted herein shall expire within one (1) year of the date of this Order, and the Applicant shall submit all plans and apply for and obtain all permits as required within one (1) year of the date of this Order.

WEST NORRITON TOWNSHIP ZONING HEARING BOARD

  
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ALBERT ZONE, CHAIR OF THE BOARD

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CRYSTAL Y. MILLER, VICE CHAIR OF THE BOARD

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EDWARD LINCUL, SECRETARY OF THE BOARD

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JOAN P. GRAY, ALTERNATE MEMBER OF THE BOARD

A copy of this Decision was mailed  
to the parties this date:

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MICHAEL E. FUREY, ESQUIRE  
SOLICITOR FOR THE WEST NORRITON  
TOWNSHIP ZONING HEARING BOARD

THIS DECISION AND ORDER OF THE BOARD IS FINAL AND ANY APPEAL OF IT MUST  
BE FILED WITH THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY WITHIN  
THIRTY (30) DAYS FOLLOWING THE COPY MAILING DATE.

THE BOARD RESERVES THE RIGHT TO SUPPLEMENT THESE FINDINGS OF FACT AND  
CONCLUSIONS OF LAW IN THE EVENT OF AN APPEAL.



WEST NORRITON TOWNSHIP ZONING HEARING BOARD

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ALBERT ZONE, CHAIR OF THE BOARD



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CRYSTAL Y. MILLER, VICE CHAIR OF THE BOARD

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EDWARD LINCUL, SECRETARY OF THE BOARD

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**WEST NORRITON TOWNSHIP ZONING HEARING BOARD**

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**CRYSTAL Y. MILLER, VICE CHAIR OF THE BOARD**

  
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EDWARD LINCUL, SECRETARY OF THE BOARD

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JOAN P. GRAY, ALTERNATE MEMBER OF THE BOARD

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4/6/21

  
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