

**DECISION OF THE ZONING HEARING BOARD OF  
LONGSWAMP TOWNSHIP, BERKS COUNTY, PENNSYLVANIA**

**In Re: Application of Andrew Hafer for variances pursuant to §§ 405 and 808 of the Longswamp Township Zoning Ordinance of 2015, as amended, for the property located at 340 Centennial Road in Mertztown, Longswamp Township, Berks County, Pennsylvania, bearing Property Identification No. 59547202959039.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The Zoning Hearing Board of the Township of Longswamp (hereinafter referred to as the “Board”) finds as follows:

**FINDINGS OF FACT**

1. The property, which is the subject of this land use application, is located at 340 Centennial Road in Mertztown, Longswamp Township, Berks County, Pennsylvania, and bearing Property Identification No. 59547202959039, (hereinafter referred to as the “Subject Property”).

2. The applicant is Andrew Hafer of 340 Centennial Road in Mertztown, Berks County, Pennsylvania 19539 (hereinafter referred to as the “Applicants”).

3. The owners of the Subject Property are the MMM Trust with Andrew J. and Eileen H. Hafer as Trustees with a mailing address of 2407 S. Dundee Street in Tampa, Florida 33629.

4. The Subject Property is located in an area zoned “CONS” – Conservation District pursuant to a Longswamp Township Zoning Ordinance of 2015, as amended (hereinafter referred to as the “Zoning Ordinance”) and the Longswamp Township Zoning Map.

5. Public notice of the hearing of March 25, 2019, was timely advertised in the Reading Eagle, a newspaper of general circulation within Longswamp Township, on March 13, 2019 and March 18, 2019; adjacent property owners were timely notified of the hearing by mail

on March 7, 2019; and the Subject Property was timely posted with notice of the hearing on March 8, 2019.

6. The Subject Property has been in the Applicant's family for three (3) generations and it is his intention to retire at the Subject Property.

7. The Subject Property is an irregularly shaped lot of land with six (6) sides consisting of a total of approximately 3.58 net acres of land.

8. The Subject Property is bisected by Centennial Road. The portion of the Subject Property west of Centennial Road is also irregularly shaped.

9. The Subject Property is sloped largely sloping downward southeast to northwest.

10. There are three (3) structures on the Subject Property including a 2.5 story dwelling and a frame garage east of Centennial Road, and a frame garage west of Centennial Road.

11. The frame garage west of Centennial Road is 420 square feet in total size. It currently sits twenty feet (20') from the edge of the property line and thirty-three and one-half feet (33.5') from the centerline of the roadway.

12. The Applicant proposes to remove the frame garage that is located west of Centennial Road and replace it with a new garage. The existing frame garage is not suitable for the Applicant's current needs.

13. The proposed garage will be placed in the same location as the existing garage.

14. The Applicant seeks to replace the existing garage with a proposed garage suitable for storage of two (2) vehicles. The dimensions of the proposed garage will be twenty-four feet by sixty feet (24' x 40') for a total of 960 square feet. As a result, the proposed garage will be 540 square feet larger than the existing garage resulting in a 130% expansion in size.

15. The proposed garage will be accessed by a gravel driveway from Centennial Road.

16. The construction of the new garage will provide for storage of two (2) vehicles in a manner consistent with current designs.

17. Due to unique physical conditions at the Subject Property, including its size and shape, slopes and bisecting roadway, an unnecessary hardship exists preventing the Subject Property from being developed in strict conformity with the Zoning Ordinance.

18. The authorization of variances is necessary for the reasonable use of the Subject Property.

19. The unnecessary hardship was not created by the Applicants.

20. Neither the Applicants proposed use nor the granting of variances will alter the essential character of the neighborhood or district in which the Subject Property is located, and it will not subsequently or permanently impair the appropriate use or development of adjacent properties.

21. The Applicants' proposed use and the granting of variances will not be detrimental to the public welfare.

22. The variances requested will represent the minimum variance that will afford relief and represent the least modification possible of the regulations at issue.

### **DISCUSSION**

After careful and thoughtful consideration, the Zoning Hearing Board finds the Applicant has met, or will meet, the requirements of the Zoning Ordinance for obtaining a special exception and variance.

In this case, the Applicant is seeking relatively modest dimensional variances. When an applicant seeks a dimensional variance it is merely seeking a reasonable adjustment of the zoning regulations. *Singer v. Philadelphia Zoning Board of Adjustment*, 29 A.3d 144, 149 (Pa.Cmwlth. 2011). A dimensional variance is an adjustment of the zoning regulations in order to use the property in a manner consistent with the applicable regulations; thus the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside zoning regulations. *Hertzburg v. Zoning Board of Adjustment*, 554 Pa. 249, 721 A.2d 73 (1998).

In addition to a variance from the front yard setback limits of § 405 of the Zoning Ordinance, the Applicant is also seeking a variance from § 808 of the Zoning Ordinance which provides:

Total future expansion of a non-conforming use or structure shall not exceed 50% of the activity occurring or the area occupied by the use or non-conforming structure, at the time of the effective date of this Ordinance, or at the time of subsequent amendment that makes it non-conforming, and as long as the expansion does not increase its non-conformity and all other area and dimensional requirements of this Ordinance are met.

The Board has legislatively been granted jurisdiction to hear applications for variances. 53 P.S. § 10909.1 (a)(5). The standards that the Board must consider are set forth in the Municipalities Planning Code, the Zoning Ordinance and related case law. The Zoning Ordinance sets forth the following criteria that must be met to obtain a variance:

The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance will inflict unnecessary hardship upon the applicant... The Zoning Hearing Board may grant a variance provided that all of the following findings are made where relevant in a given case:

a. 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 this Zoning Ordinance in the neighborhood or district in which the property is located; and

b. 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 this Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property; and

c. That such unnecessary hardship has not been created by the appellant; and

d. 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

e. 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.

*Zoning Ordinance §1002(4)*. The requirements in the Zoning Ordinance are identical to those contained in the Municipalities Planning Code, 53 P.S. § 10910.2.

In this case, the Board finds that the size and shape of the Subject Property, the slopes and the bisecting roadway create hardships that prevent the Subject Property from being developed in strict conformity with the Zoning Ordinance. Further the board finds the proposed replacement garage will make the Subject Property safer and will not be detrimental to the public welfare. As a result, the grant of the requested variances is appropriate.

### **CONCLUSIONS OF LAW**

1. The Zoning Hearing Board of Longswamp Township has jurisdiction to decide this land use application pursuant to the Longswamp Township Zoning Ordinance of 2015, as amended, and the Pennsylvania Municipalities Planning Code of 1968, P.L. 805, No. 246 as reenacted and amended, 53 Pa.C.S.A. §10901.1, *et seq.*

2. Pursuant to the Zoning Ordinance, the Board shall hear and decide requests for variances filed with the Board in writing, as provided for in the Zoning Ordinance and in accordance with all standards and criteria contained in the Zoning Ordinance.

3. The Applicant has met all the requirements of § 1002(4) of the Zoning Ordinance to obtain the requested variances.

### **ORDER**

AND NOW, the Longswamp Township Zoning Hearing Board, by a unanimous vote, hereby rules as follows:

1. The Applicant's request for a variance pursuant to § 405 of the Zoning Ordinance to construct a garage no less than twenty feet (20') from the property line and thirty-three and one-half feet (33.5') from the center line of the roadway is GRANTED.

2. The Applicant's request for a variance from § 808 of the Zoning Ordinance to expand the size of the existing garage by no more than 130% is GRANTED.

The authorizations granted herein are subject to the following conditions:

1. Upon completion of the construction of the proposed garage, the Applicant shall provide complete as-built plans to the Township Zoning Officer.

2. In the event the Applicant chooses to pave the gravel driveway, the Applicant shall consult with the Township Zoning Officer regarding storm water management and comply with any directions from the Township relating to storm water management.

3. The Applicant shall comply with all local, state, and federal laws and regulations relating to the proposed use of the Subject Property.

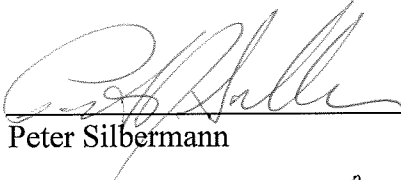
4. The Applicant is bound by the testimony presented at the zoning hearing and any development or construction deviating from the testimony shall be a violation of this Order.


No zoning or occupancy permit shall be issued by the Township Zoning Officer unless all terms and conditions as set forth in this Decision are complied with and upon any subsequent non-compliance, any said issued permits shall be immediately revoked.

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Longswamp Township Zoning Hearing Board:

By:   
Steven Parks, Chair

By:   
Peter Silbermann

By:   
Donald Hickman

Date of Issuance of Written Decision: 3/27/19

**ANY AGGRIEVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA, WITHIN THIRTY (30) DAYS FROM THE DATE OF THE ISSUANCE OF THIS WRITTEN DECISION.**