

IN RE: THE APPLICATION OF WALTER .; BEFORE THE ZONING HEARING BOARD
THOMPSON AND SUSAN THOMPSON : OF WESTTOWN TOWNSHIP

OPINION

In this Application before the Board, Walter Thompson and Susan Thompson, (hereinafter "the Appellants"), being the legal and equitable owners in fee of a certain tract of land known as 1091 Edgewood Chase Drive, this Township, said premises being designated on the Maps of the Assessor of Chester County as Tax Parcel UPI 67-3-144.36 seek variance relief from the mandated 25 foot side yard setback to permit them to retain, use and occupy a portion of their dwelling unit previously constructed by the prior owners and improved by them without first having obtained a building permit therefor. The Premises is situate in an area designated on the Zoning Map of Westtown Township as lying within an R-1 Residential Zoning District. In an R-1 Residential Zoning District the minimum mandated side yard is twenty-five feet and the encroaching addition extends 11 feet into the proscribed side yard. While the Application filed sought various forms of relief, the Applicant withdrew all but this variance request.

Pursuant to the Application filed, a hearing was scheduled and held at the Westtown Township Municipal Building, 1039 Wilmington Pike (US Route 202) commencing at 7:30 p.m. on Thursday, April 5, 2018. Notice of the hearing was duly advertised according to law by publication in the Daily Local News, a newspaper of general circulation in the Township and the newspaper duly designated for publication of legal notices, on March 15 and March 22, 2018. The Applicant was notified by Certified Mail on March 26, 2018. Notice of the Hearing was sent to the by regular first class mail to those persons entitled to receive such notices and to adjacent property owners on March 19, 2018. The Property was posted on March 15, 2018. The

Application was forwarded to the Westtown Township Planning Commission, who reviewed the same and filed a report and recommendation, a copy of which was forwarded to the Applicant and the report was entered in evidence without objection.

At the hearing there appeared David Scaggs, Esquire, Chairman of the Zoning Hearing Board and Jeffrey R. House and Laura Scanlon, Esquire, Members of the Board, constituting the entire Board. Also appearing were the Applicants, Ronald M Agulnick, Esquire, Solicitor to the Zoning Hearing Board and Robert Ewing, Esquire, Attorney for the Applicant. At the hearing, Timothy Dumont and Cynthia Dumont, adjacent property owners sought and were granted leave to intervene as Parties Protestant.

FINDINGS OF FACT

At the hearing, the Applicant offered as an omnibus exhibit, a bound volume containing 16 exhibits. Exhibit A-8 thereof is denominated "Findings and Recommendation – Office of Planning and Zoning – Westtown Township, Pennsylvania" and fairly and accurately describes the relevant facts of the case and the facts so stated are fully supported by the testimony produced and exhibits presented. The Board adopts Exhibit A-8 as its findings in support of its decision.

Certain other facts entered into our decision. The original single family dwelling was constructed pursuant to a valid building permit issued in 1973, but may have been located differently from the location shown on the permit. During the tenure of title of prior owners, the offending structural addition was added along with a garden shed, patio and sidewalk, all without obtaining any building permit. During Appellant's tenure of title he planted along the property common property line with Dumonts as both Dumonts and Appellants understood it to be,

approximately 30 trees. Upon survey by Dumonts the common property line appeared to differ resulting in the encroaching addition to be 14 feet from the common side lot line rather than the mandated 25 feet. As previously noted, there was never a building permit applied for or issued for the structure. At some point, a branch from one of the trees fell on the encroaching structure's roof requiring that the roof be replaced. The Appellant also undertook substantial modification of the windows and siding. These modifications integrated the addition into the basic house, but did not change the footprint or enlarge the encroachment. At the request of the Dumonts, the Appellants removed the trees and modified the grade, all of which appears to have redirected storm water onto the Dumont property.

The Appellant has retained an engineer who designed drainage changes that would appear to correct the storm water issue and the Appellant has implemented this work. The sufficiency of these modifications is not determined.

Inasmuch as the Appellant has withdrawn all requested relief except the variance for encroachment into the side yard, the Appellant still needs building and other permits for the patio, sidewalk and shed. But these matters are not before the Board at this time.

DISCUSSION

We find that the facts as stated coupled with the long time that the encroachment has continued without complaint and the difficulty involved in replacing the original side wall all militate toward the grant of this dimensional variance and we see no injury to the public interest or to the neighboring property by permitting the structural addition to

remain provided the storm water issue is satisfactorily addressed. In light of the foregoing, we will enter the following


ORDER

AND NOW, this 17th day of May, 2018, upon consideration of the testimony and exhibits presented it is ordered that the variance sought to retain the encroaching structure into the common side yard as the same now exists shall be and hereby is granted subject to the following conditions and not otherwise:

- a. The storm water report prepared by H. Gilroy Damon Associates, Inc. dated April 28, 2018 and the relevant land to which it pertains shall be submitted to and reviewed by the Township Engineer for sufficiency and implementation. The Appellant shall implement such other or additional supplements or modifications as the Township Engineer deems appropriate to mitigate the storm water runoff onto the Dumont property proximately related to the activities of Appellants or their predecessors in title. The cost of review and implementation shall be at the expense of the Appellant.
- b. Nothing herein contained shall relieve the Appellants of their obligations to apply for, receive and implement the obtaining of the permits to authorize the construction and installation of the shed, sidewalk and patio, improvements not the subject of this appeal.

- c. Appellants shall apply for and pay the required fees for the necessary permits for the approval, installation, use and occupancy of the encroaching structure and the changes thereto.
- d. Nothing herein contained shall be construed to authorize the expansion of the enlargement of the existing footprint of the encroachment thereof.
- e. Upon compliance with all of the foregoing and the filing of proper applications and payment of proper fees, the Zoning Officer is authorized and directed to issue, nunc pro tunc, the necessary permits and approvals for the construction, use and occupancy of the presently constructed encroaching structure.

WESTTOWN TOWNSHIP ZONING
HEARING BOARD



Laura M. Scaron

Jeff Abuse
