

BEFORE THE ZONING HEARING BOARD
OF
SCHUYLKILL COUNTY

RE: REQUEST FOR VARIANCE BY ROBERT KELLY AND CLAUDIA KELLY

BEFORE: Daniel Daub, Eric Seitzinger, Dave Ambrose and Mary Jo Moss, Members of the Schuylkill County Zoning Hearing Board (the “Board”).

MINUTES OF HEARING

Name of Applicant	Robert and Claudia Kelly 405 Walnut Street, PO Box 44 Marlin, PA 17951
Location of Subject Property	0 West Penn Street Minersville Borough Schuylkill County, PA UPI No. 52-03-0066 & 52-03-0066.001
Owner of Property	Minersville Borough
Zoning Classification	R3 – High Density Residential
Date of Hearing	August 19, 2015
Place of Hearing	Courtroom #5 Schuylkill County Courthouse Pottsville, PA
Appearances for Applicant	James Diehl, Esq. & J.T. Herber III, Esq.

BEFORE THE SCHUYLKILL COUNTY ZONING HEARING BOARD
SCHUYLKILL COUNTY, PENNSYLVANIA

IN RE: REQUEST FOR VARIANCE BY ROBERT KELLY AND CLAUDIA KELLY

FINDINGS OF FACT

1. The parcel for which the variance is sought is located along Penn Street, in the Borough of Minersville, Schuylkill County, Pennsylvania and is part of UPI No. 52-03-0066 (“Parcel”).

2. The Parcel is owned by the Borough of Minersville.

3. The Parcel is located in an R-3 high density residential district.

4. In 1966, Stella Chicora and her husband, John Chicora, were granted a lease of the Parcel from the Borough of Minersville (“Lease”).

5. The Lease was to permit the Chicoras to construct a two car garage (“Garage”) upon the Parcel, and was for fifty (50) years in duration.

6. The Lease terminated upon the death of both Stella Chicora and John Chicora.

7. Claudia Kelly is the daughter of the late Stella and John Chicora.

8. The Borough of Minersville now seeks to convey the Parcel consisting of the land under the Garage and a small amount of surrounding land to the applicants, Claudia Kelly and her husband Robert Kelly (“Applicants”).

9. The Garage is bounded by streets on two sides, one being Penn Street, located in front of the Garage, and the other being an unnamed alleyway to the rear of the Garage.

10. The Garage is situated in close proximity to a property line, and further bounded upon the fourth side by an access way connecting Penn Street to the unnamed alleyway, which is used by the general public.

11. Consequently, the Garage is entirely bounded by property lines, access ways, roads or alleyways, with Penn Street to the East, the property line in close proximity to the South, the unnamed alleyway to the West, and the access way to the North.

12. The balance of the Borough property fronts along Penn Street and has been used by numerous residents who live across Penn Street for residential parking, which use has been occurring for in excess of fifty years.

13. The remaining portions of the Borough's land are utilized for recreational purposes, including a community playground which is owned, operated, and maintained by the Borough of Minersville.

14. The access streets surrounding the property both in front and rear, combined with the proximity of the garage to the edge of the parcel, and the access way connecting Penn Street to the unnamed alleyway, collectively create a hardship necessitating the subdivision of an undersized lot.

15. The continued use of the Parcel with the Garage constitutes a pre-existing non-conforming use.

16. The applicants are Robert Kelly and Claudia Kelly, who seek to acquire the parcel from the Borough of Minersville.

17. The Borough of Minersville has submitted a letter confirming its intent to convey the parcel, subject to the granting of variances by this Board and subdivision approval.

18. No improvements/additions or changes of use are being requested by the applicant.

19. The purpose of the application is to exclusively obtain dimensional variances so that the existing two car garage can be subdivided and sold off from a larger parcel owned by the Borough.

20. Due to the location of the lot and the other existing uses upon the lot, a variance is being requested to permit the ongoing reasonable use of the parcel without any changes.

21. The variances requested are as follows:
 - Section 306.G.a – minimum lot area of 5000 square feet;
 - Section 306.G.b – minimum lot width 50 feet
 - Section 306.C.4 – vehicle garage placement
22. The applicant proposes the lot width to be 43 +/- feet wide, requiring a variance from the standard minimum lot width of fifty (50) feet.
23. Extending the lot further north to widen the proposed lot would result in the loss of other open space upon the lot, and result in the closure of an access way utilized to obtain access between Penn Street and the unnamed Alleyway.
24. Section 307.C.4 of the Ordinance permits the placement of a vehicle garage on a separate lot without a principal use upon that lot, provided that the garage is only used for household storage and vehicle parking, and provided that the access to and from the garage occurs on an alley with a twenty foot right-of-way or less.
25. Penn Street has a Right-of-Way in excess of twenty (20) feet.
26. The garage will be utilized for household storage and vehicle parking.
27. The Garage is a pre-existing non-conforming use, the construction of which pre-dates the Schuylkill County Zoning Ordinance.
28. The depth of the lot will be forty-eight (48) +/- feet. This is limited as the lot line to the East is that of Penn Street, while the proposed lot line to the West abuts an unnamed alleyway necessary for use of the playground located on the residential Parcel.
29. Public notice of the Hearing was given by advertisement in the Pottsville Republican Newspaper.
30. Notice of the Hearing was posted on the property.

31. Notice of the Hearing was given by mail to the primary last known owner of each lot that is abutting or immediately across the street from the property.
32. There were no objectors present at the Hearing.

CONCLUSIONS OF LAW

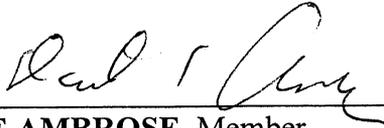
1. The Board is empowered with exclusive jurisdiction to hear and render final adjudications in variance requests. Ordinance, Section 111 et seq.
2. The burden on an Applicant for a dimensional variance is less than that of a use variance.
Id.
3. Given that the Property line is located in close proximity to the south, and as there is an access way to the north connecting Penn Street to the unnamed alleyway, these factors collectively restrict the size of the Parcel, and necessitated the variance of both the minimum lot area requirement and the minimum lot width requirement.
4. The Parcel cannot be developed in accordance with the Ordinance.
5. The proposed variance will represent the minimum variance that will afford relief and will not impair the use of adjacent property and represents the least modification possible of the regulations in issue.
6. The proposed variance will not alter the essential character of the neighborhood.
7. The Board finds that Applicant has satisfied the pertinent criteria outlined in the Ordinance to justify the award of the Variance requests.

DECISION

AND NOW, this 3rd day of September, 2015, the Board **GRANTS** the Dimensional Variance request by Claudia and Robert J. Kelly and directs the Zoning Officer to approve a permit that is consistent with this decision and with Applicant's application.



DAN DAUB, Chairman



DAVE AMBROSE, Member



MARY JO MOSS, Member



ERIC SEITZINGER, Member