



**MEMORANDUM**

<b>TO:</b>	Zoning Hearing Board Members
<b>FROM:</b>	Laura Harrier, Zoning Officer
<b>DATE:</b>	December 29, 2023
<b>SUBJECT:</b>	ZHB-2023-10 / Allison Gallardo and Benjamin Witmer 2133 Loring Drive Hearing Date January 04, 2024
<b>COPIES:</b>	ZHB, T. Dinkelacker, Twp Staff, Applicant

The following information is being provided regarding Zoning Application ZHB-2023-10 originally received on October 13, 2023, and continued to January 04, 2024, due to zoning appeal application case load. A Waiver of Time was received on November 01, 2023, to not hold the hearing within the 60 days from the original date.

**PROPOSAL**

Allison Gallardo and Benjamin Witmer (“Applicant”), seek to add a Residential Accessory Detached Garage with a 2<sup>nd</sup> story to the side yard of their parcel located at 2133 Loring Drive.

**APPLICATION COMPLETENESS REVIEW**

The submission included the following documentation:

- A Zoning Appeal Application pages 1 through 11
- Lehigh County Property Assessment Record
- A copy of the Deed
- J. McRell Design LLC Construction Drawings, three (3) sheets
- Bascom & Sieger, Inc. Supplemental Statement/Narrative
- Check with appropriate fee

**BACKGROUND INFORMATION**

A building permit application was received on October 13, 2023, for a variance from the height of an accessory detached garage. A conversation took place between the Zoning Officer and Rob Paligian of Bascom & Sieger to determine the relief required. Rob followed up with an email to the ZO dated October 4, 2023, in which he asked questions and the ZO responded a variance would be required to exceed the maximum height. The Applicant wishes to utilize the 2<sup>nd</sup> story as a workshop/hobby room. The maximum height for an accessory detached garage is 20 feet.

It was determined if the garage roof as measured from grade would exceed 20 feet, a dimensional variance would be required.

### **ZONING OFFICERS COMMENTS**

Section 350-48(g)(1) "Garage" allows for accessory structures to principal uses by right in all zoning districts. There are no specific criteria relating to the building size (area) and/or height in this section.

Section 350-24(2) Zoning District Schedule for Rural Residential 2 (RR-2) lists garages as a permitted Accessory Use with the setbacks of 4 feet from side and rear property lines, and the front yard setback to be 5 feet greater than that observed by the associated permitted principal use. The proposal meets the front, side, and rear yard setback requirements. The district lists the maximum height as 20 feet.

Within the ordinance where detached garages are utilized for living quarters, there is a Use Schedule for Accessory Dwelling Units (ADU), detached. These can be placed above either an existing garage or newly constructed detached garage by Special Exception approval. This criterion does not specifically speak to "2<sup>nd</sup> story" either and lists a maximum height of 18 feet (as opposed to the 20 feet in the garage definition). Unlike the Garage definition, the ADU definition does speak to the building size (area) of the structure maximizing the square footage of the ADU to no more than 75% of the living area of the house or 1,000 square feet, whichever is less.

### **VARIANCES 350-16**

The Board may grant a variance provided the following findings are made 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;
- (6) The variance shall not authorize a Use that is not permitted in the Zoning Ordinance and which could more properly be considered a rezoning to be heard by the South Whitehall Township Board of Commissioners.

## **APPLICABLE DEFINITIONS**

### **ACCESSORY BUILDING OR STRUCTURE**

The building or structure subordinate to and detached from the principal building on the same lot and used for purposes customarily incidental to the principal use or building.

### **ACCESSORY or ACCESSORY USE**

Those activities and land uses incidental to a primary use that function as secondary or subordinate to a primary or principle use. Accessory activities or uses are considered sufficiently significant or different from the primary or principal use so as to warrant regulatory criteria separate from the primary or principal use. Accessory uses are permitted by right provided said use is shown as an accessory use in the Zoning District Schedule for the district in which the use is located and the use is in conformance with all other provisions of this chapter.

### **ACCESSORY DWELLING UNIT, DETACHED**

An accessory dwelling unit that is located in a separate building, independent of the principal dwelling unit, including a dwelling unit located above a detached garage, that includes its own living facilities for the provision of sleeping, cooking, and sanitation, designed for residential occupancy independent of the primary dwelling unit. The accessory dwelling unit shall be for long-term occupancy (greater than six months).

### **GARAGE**

A structure or portion thereof maintained for the storage and parking of vehicles operated by customers, employees, and visitors of the principal building(s) and in which no business or other use is carried on and no services rendered to the general public.

### **HEIGHT**

The vertical dimension measured from the average elevation of the single highest point and single lowest point of the finished grade at the perimeter of the building or structure to the highest point of the building or structure.

### **STORY**

That part of a structure included between any floor and the floor or roof next above. When applied to the permissible height of the building, the term "story" shall not include a basement if the basement is not designed for living quarters and if the floor thereof is more than 50% below the average ground level.

## **CLOSING**

Based on the construction documents and site information provided, it is of the Zoning Officer's opinion the proposal meets all criteria of the Ordinance with exception to the height of the structure. The Applicant should present testimony to the Zoning Hearing Boards satisfaction regarding the reasoning for the height modification.

Laura Harrier  
Zoning Officer, Community Development