

RE: JENNIFER WALKER, : ZONING HEARING BOARD OF
Applicant : THE BOROUGH OF CARLISLE
: :
: CASE NO. 19-07
: :
Request for Variance : Date of Decision: July 16, 2019

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

Applicant, Jennifer Walker, is the owner of real property located at 441 D Street in the Borough of Carlisle (the "Property"). The property is located in the Borough's R-2 zoning district.

On June 11, 2019, the Applicant submitted to the Borough of Carlisle Zoning Hearing Board (the "Board") a request for a special exception seeking relief from Section 255-200.D.(5)(g) of the Borough of Carlisle Zoning Ordinance (the "Zoning Ordinance") (the "Application") which sets forth that no business of any type shall be conducted as a home occupation that involves visits to the premises by clients, customers or patients. This section goes on to say that in the R-3, R-4 or Office Residential districts, up to an average of five (5) visits per day to the premises by clients, customers or patients may be permitted when authorized by the Zoning Hearing Board as a special exception.

The Applicant's specific request is to allow her to operate a massage therapy business in a portion of the Property. After proper advertisement and notice, a public hearing was held on July 3, 2019, in the Carlisle Borough Municipal Building, 53 West South Street, Carlisle, Pennsylvania, at which hearing Board Members Stephanie E. Chertok, Vincent Champion, Christopher Fowler, and Alternate Board Member Joel Hicks were present. Solicitor Kurt E. Williams was present on

behalf of the Board. Attorney John Mangan represented the Applicant. The hearing was stenographically recorded.

Ms. Walker testified in support of her Application. She testified that she previously resided on Walnut Street in the Borough and had previously obtained a special exception to operate her massage therapy business at her former home on Walnut Street. It was noted that her previous home on Walnut Street is not located in the R-2 district, which is the zoning district of her new home on D Street. Ms. Walker testified that she is a licensed massage therapist with the Commonwealth of Pennsylvania (LMT) and typically works from 9:00 a.m. to 5:00 p.m. Monday through Thursday, typically seeing three (3) clients per day. She rarely sees clients on weekends and never later than 8:00 p.m. Her property on D Street provides off-street parking for three (3) vehicles plus two (2) on the street. She only sees one (1) client at a time and there is never an overlap period. She does not use any signage and does not propose any signage. She works by referral, doing no advertising. Ms. Walker further testified that she has spoken to her neighbors on D Street and they are agreeable to her proposed use. Ms. Walker testified that she moved into her new residence on June 7 after living on Walnut Street for the past seven (7) years. The Walnut Street location is in the R-4 zoning district.

There was discussion amongst the Board and Mike Skelly, Planning, Zoning & Codes Manager for the Borough, regarding the specific relief that is necessary. Although Ms. Walker's Application requested a special exception, since her D Street property is located in the Borough's R-2 zoning district, a variance is required from Section 255-200 D.(5)(g) to allow her to see clients, customers or patients at the Property as part of her massage therapy business.

The Applicant testified that if granted a variance, she would agree to abide by the requirements of Section 255-200.D.(5)(a-i) as a condition of approval. She would have no

employees, conduct no product sales, and have no signage on the Property. She agreed to provide one (1) off-street parking space for clients with no overlap of clients. She also agreed to continue to reside at the residence on D Street in order to conduct the home occupation there.

Mr. Skelly offered his support of the Application.

The Application contained a letter of support for the requested relief from Camille Baughman, a former neighbor of Ms. Walker, who testified about the Applicants' positive business practices. Mr. Skelly testified there had been no zoning complaints reported to him regarding Ms. Walker's previous location on Walnut Street.

Chairman Chertok asked if there were any audience questions and there was only one. Ms. Baughman, who is also a licensed massage therapist, lives at 24 Walnut Street. She is a former neighbor of the Applicant and is in favor of the Application. She testified that she was never aware of when Ms. Walker had clients. There were no other audience comments.

Carlisle Borough Councilmember Dawn Flower-Webb advised the Board that the Council is open to discussing a text amendment regarding this type of home occupation to allow customers or clients to visit home occupations in the R-2 zone. Mr. Skelly testified that aside from subsection (g), the Application is in compliance with all other ordinance requirements for a home occupation of the type requested.

II. Order and Decision of the Board

The requested variance should be considered *de minimis* in nature. The variance is requested to allow a variance for the Applicant to see only one (1) client/patient at a time, with no overlap. There will be no change in the existing physical circumstances of the Property or dwelling

unit thereon. As a *de minimis* variance, the request may be granted without proof of all the requirements needed to show the necessity for a variance. There is no particular mathematical formula to determine whether or not a variance should be considered *de minimis*. A factor that the courts look to is whether “rigid enforcement is not necessary to protect public policy concerns inherent in the ordinance”. *King v. Zoning Hearing Board of the Borough of Nazareth*, 76 Pa.Cmwlth. 318, 483 A.2d 505 (1983); *Constantino v. Zoning Hearing Bd. of Borough of Forest Hills*, 152 Pa.Cmwlth. 258, 618 A.2d 1193, 1196 (1992). There are no set criteria for a *de minimis* variance. Rather, *de minimis* variances are granted according to the circumstances of each case. *Stewart v. Zoning Hearing Bd. of Radnor Township*, 110 Pa.Cmwlth. 111, 531 A.2d 1180, 1182 (1987).

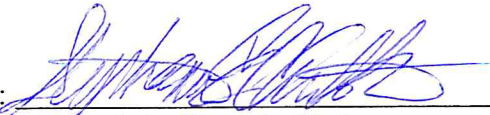
Based upon the Application as submitted and the testimony, the Board makes the above findings of fact and issues the following Order and Decision as set forth below.

It is hereby ordered and decided as follows:

- A. Rigid enforcement here is not necessary to protect the public policy concerns inherent in the Zoning Ordinance. The Applicant will only be seeing one (1) client at a time with no overlap. The Applicant can and will meet all other requirements of the Zoning Ordinance for a home occupation.
- B. The Board finds the requested variance to be *de minimis* in nature.
- C. The Board hereby decides by unanimous vote to grant the requested variance to Zoning Ordinance Article IV, Section 255-200 D.(5)(g).

In addition to the above, the Applicant shall comply with all applicable federal, state, local and Borough laws, ordinances and regulations.

Borough of Carlisle Zoning Hearing Board

By: 
Stephanie E. Chertok, Chair
Date: 7/16/19

Any person aggrieved by this decision of the Zoning Hearing Board may appeal to the Court of Common Pleas of Cumberland County. The appeal must be taken within thirty (30) days of the date of this Decision.