

RE: Application of Robert & Susan Otway, Applicants  
Request for Variances

: ZONING HEARING BOARD OF THE BOROUGH OF CARLISLE  
:  
: CASE NO. 2020-01  
:  
: **Date of Decision: May 7, 2020**

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

Robert & Susan Otway (the “Applicant” or the “Otways”), have applied for a variance from §255-18.H. of the Carlisle Zoning Ordinances, for relief from the ten (10) foot side yard setback requirement for accessory structures (the “Application”). The Otways own the property and reside at 753 West South Street, Carlisle (the “Property”). The Property is located in the Borough’s R-1 Low Density Residential District. The Otways have lived at the Property for the past 35 years. The rear of the Property (behind the Applicants’ home) is improved with a garage, a swimming pool, a fence, a garden and a large wood deck. The fence is three (3) feet inside the side lot line. The deck is five (5) feet from the side lot line and surrounds a large tree. The tree is dying and needs to be removed before causing damage to the Otway’s home or their neighbor’s home to the west (Stewart). The large tree serves as cover from the sun and rain and allows the Otways more enjoyable use of their backyard. The Otways propose to construct a gazebo over their wood deck supported by four (4) posts, which would be five (5) feet off the side lot line. No movement of the existing fence is proposed.

A gazebo meets the definition of an Accessory Structure.<sup>1</sup> The specific relief requested is from the side lot line setback for an accessory structure (to reduce the ten (10) foot requirement of §255-18.H. to five (5) feet).

Alternatives to the need for a variance for the proposed gazebo were researched by the Otways with the assistance of architects. None were deemed viable.

A public hearing on the Application was held on May 7, 2020 in the Carlisle Borough Hall.<sup>2</sup> The Zoning Hearing Board (the “Board” or the “ZHB”) was represented by Kurt E. Williams, Esq. of Salzman Hughes, PC and the Applicant was represented by Hubert X. Gilroy, Esq. of Martson Law Offices. The hearing was stenographically recorded. The Property was properly posted by Michael Skelly, AICP on April 1, 2020, and the hearing was advertised in the *Sentinel* newspaper on April 22 and 29, 2020.<sup>3</sup> Board member Robin Guido recused herself from considering the Application based on her close friendship with the Applicant. Alternate Board Member Britt Erney-Muniz therefore participated in the hearing and the decision.

The Applicant offered the following exhibits into the record which were accepted by the Board:

- A-1 Letter of support for the variance from Mary and John Stewart
- A-2 Letter of support for variance from Frank and Doreen Maisano
- A-3 Application (as amended) filed by Robert and Susan Otway

The Applicants’ immediate neighbors, Mary and John Stewart (765 West South Street) and Frank and Doreen Maisano (745 West South Street), both provided letters of support for the

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<sup>1</sup> Carlisle Zoning Ordinances §255-12.

<sup>2</sup> The public hearing having taken place during the pendency of the COVID-19 pandemic, and in conformity with Pennsylvania Department of Health requirements to limit gatherings of more than ten (10) people, the hearing was held virtually, with members of the ZHB and the Applicant participating in person and the public participating remotely via Zoom in accordance with 35 Pa.C.S.A. §5741(f).

<sup>3</sup> In accordance with 35 Pa.C.S.A. §5741(e), notice of proposed action on Application 2020-01 was posted on the Carlisle Borough public website on or about May 1, 2020.

requested variance. Mr. Otway testified that the gazebo would have a positive impact on the Property with no negative impacts on his neighbors. There were no observed questions or comments via Zoom from members of the public.

## **II. Order and Decision of the Board**

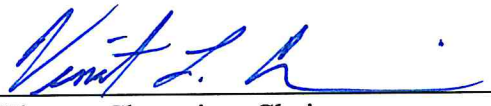
Based upon the Application as submitted and the testimony provided, the Board makes the above findings of fact and issues the following Order and Decision as set forth below.

It is hereby ordered and decided as follows:

- A. In accordance with 53 P.S. §10910.2., the Board finds that the Applicant has met its burden of establishing those criteria necessary for the grant of a variance to §255-18.H. of the Carlisle Zoning Ordinances, to allow for the construction of a gazebo no closer than five (5) feet from the western side lot line of the Property.
- B. The representations made by the Applicant in the Application, the supporting documentation, and the testimony at the public hearing shall be considered conditions of the variance granted. Changes from said representations, documentation and testimony, other than minor technical changes, or failure to comply with the conditions of the variance approval, shall be considered a violation of the variance, and may result in revocation of the variance approval if not brought into full compliance within sixty (60) days of written notice of non-compliance from the Borough
- C. The Board hereby decides by unanimous vote that a variance to §255-18.H. of the Carlisle Zoning Ordinances is hereby granted.

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:   
Vincent Champion, Chair

MAILING DATE: ~~May 27~~ June 1, 2020  
*VF*

**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.**