

**ZONING HEARING BOARD
MT. LEBANON, PENNSYLVANIA**

ZONING HEARING NOTICE TO PROPERTY OWNERS & INTERESTED PERSONS

Mt. Lebanon, Pennsylvania wishes to advise that the Zoning Hearing Board will conduct a virtual continued hearing from February 25, 2021 on Thursday evening **April 22, 2021** at 7:00 p.m. (prevailing time).

The following appeal is listed for hearing at which time - as a property owner within 200 feet of the property in question or an interested person - you are invited to submit your view on the matter by emailing before noon on Thursday, **April 22, 2021** to the Chief Inspector/Zoning Officer, Rodney Sarver at rsarver@mtlebanon.org who will then invite you to the virtual hearing. Please note, all comments will become part of the official transcript of the hearing.

APPEAL NO. 1818

OWNER: Joseph Brasacchio, 217 Vernon Dr, Pittsburgh, PA 15228

APPELLANT: Alice B. Mitinger, Dentons Cohen & Grigsby, P.C., 625 Liberty Ave, Pittsburgh, PA 15222

LOCATION: 217 Vernon Dr, Pittsburgh, PA 15228

The applicant filed "Appeals From Municipal Actions" for two violations notices; an accessory structure(trampoline) in a front yard #24695 "*Not Authorized in Required Yard*" & for a retaining wall constructed within the public right-of-way of Mayfair Drive #24684 "*Removal of Hazardous Condition or Nuisance*" in accordance with the provisions of the Mt. Lebanon Zoning Ordinance(Chapter XX), Grading Ordinance(Chapter VI) and Administrative Code(Chapter I) and the Pennsylvania Municipalities Planning Code(Act of 1968, P.L.805, No.247) and the following sections:

Chapter I

§127 Administrative Appeal Procedure. Whenever a section of any chapter of the Mt. Lebanon Code permits a right of appeal to the Commission, any board or other reviewing body pursuant to the procedures set forth in this §127, the exclusive procedure for perfecting said appeal shall be as follows:

127.1 Within 30 days from the date of the decision or other action from which the appeal is taken, the appellant shall file a Notice of Appeal with the Office of the Manager. The Notice of Appeal shall be in writing, shall state the current mailing address of appellant, shall briefly describe the action from which the appeal is taken and shall briefly set forth the grounds upon which the aforesaid action is being challenged.

127.2 Upon receipt of the Notice of Appeal, the Manager shall transmit the Notice of Appeal to the appropriate reviewing body, as set forth in the Mt. Lebanon Code section authorizing the appeal. The reviewing body shall schedule a time and place for a public hearing on the appeal, to be held no later than forty-five (45) days after the date on which the Notice of Appeal was filed with the Manager. At least several days prior to the scheduled hearing, the reviewing body shall notify the appellant of the time and place of the hearing by sending a Notice of Hearing by certified mail, postage prepaid, to appellant to the address set forth in the Notice of Appeal.

127.3 At the time of the public hearing, Appellant may appear in his own behalf or be represented by counsel or agent. Appellant shall have the opportunity to present evidence and argument and cross-examine adverse witnesses on all relevant issues. Formal rules of evidence shall not apply, but irrelevant, immaterial or unduly repetitious evidence may be excluded.

127.4 The reviewing body shall render a decision upon the appeal within forty-five (45) days from the date of the public hearing and within the same time period shall send a Notice of Decision by certified mail, postage prepaid, to Appellant at the address set forth in the Notice of Appeal.

Chapter VI

§110. Responsibility of the Administrator and Appeals.

110.4 Any Applicant or permit holder aggrieved by the action of the Administrator in denying, revoking, modifying or refusing to grant an extension of, a Grading Permit, or by any other adverse determination of the Administrator taken pursuant to this Chapter, shall have the right of appeal to the Codes Review Board, pursuant to procedures set forth in the Administrative Code, Chapter I, §128.

110.5 If any appeal is taken from the issuance of a building permit where a Grading Permit has also been issued and if such appeal shall, pursuant to the provisions of the Zoning Chapter, operate as a stay of all proceedings under any such building permit, then such appeal shall also operate to stay all proceedings under any such Grading Permit.

§118. Hazardous Condition, Nuisance.

118.1 If the Administrator determines that any existing retaining wall, excavation, embankment or fill constitutes a hazard, as defined in this Chapter, or is otherwise in violation of this Chapter, the owner of the property for which a Grading Permit has been issued, the permit holder or other person or agency in control of said property, upon receipt of notice, in writing, from the Administrator, shall, within the time specified in such notice, repair, reconstruct or remove such retaining wall, excavation, embankment or fill so as to eliminate the hazard.

Chapter XX

§803 *Accessory Uses. Accessory Uses or Structures* are permitted in any zoning district in connection with any *Principal Use* lawfully existing within such district. No *Accessory Use* or *Structure* shall be established or constructed until the primary *Use* or *Structure* is constructed and unless evidence of compliance of such *Use* or *Structure* shall have first been issued. *Accessory Uses* or *Structures* deemed to be similar in nature, as determined by the *Zoning Officer*, may also be allowed.

803.1 Not Authorized in Required *Yards*. *Accessory Uses* or *Structures* shall not be erected, altered, enlarged or maintained in required *Yards*, except as otherwise provided in this chapter. A *Parking Facility* incidental to a *Principal Building* is deemed to be an *Accessory Use*. A *Driveway* or *Governor's Drive* may be located in required *Yards*, subject to specifications outlined in §817.9, §817.10 and §817.11.

And as an alternative to the above appeals, seeks an "Area Variance" to Ordinance No. 2636, Chapter XX, and the following sections:

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§1005 *Variance*. The *Zoning Hearing Board* shall have the authority, in accordance with the procedures hereinafter established, to authorize *Use, Area* or other *Variances* within the Mt. Lebanon. The *Variance* procedure is intended to provide a means by which relief may be granted only when no other applicable remedy, pursuant to other provisions of this Chapter, is available.

1005.2 *Area Variances*. *Area Variance* shall mean the authorization by the *Zoning Hearing Board* for the use of land in a manner that is not permitted by regulations of this Chapter related to:

1005.2.1 A dimension, such as size, height and setbacks.

1005.2.2 Physical requirements of this Chapter.

1005.2.3 The expansion, structural Alteration or Enlargement of a legally existing Nonconforming Use as outlined in §903.

1005.2.4 The waiver of the Additional Requirements for Specified Uses for permitted Uses set forth in Part 6.

1005.2.5 Any Design Standard.

1005.3 *Variance* Criteria.

1005.3.1 The Board shall hear requests for Variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the Applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a Variance, provided that all of the following findings are made.

1005.3.1.1 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.

1005.3.1.2 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.

1005.3.1.3 That such unnecessary hardship has not been created by the appellant.

1005.3.1.4 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.

1005.3.1.5 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.

1005.3.2 In granting any Variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the zoning ordinance.

§1103 Zoning Hearing Board.

1103.1.5 Variances and Appeals from Actions of the Zoning Officer. The Board shall hear requests for *Variances* from the provisions of this Chapter and shall hear appeals from actions of the *Zoning Officer* when authorized under the Pennsylvania Municipalities Planning Code or this Chapter as the same are now established or as hereafter amended.

1103.1.6 Jurisdiction of Zoning Hearing Board. The jurisdiction of the *Zoning Hearing Board* shall be as set forth in the Municipalities Planning Code, as amended and other applicable law.

The property is zoned R-2 Single Family Residential District

The application for this request was received by the Chief Inspector and it was determined that the matter should properly come before the Zoning Hearing Board. Ordinance No. 2636, Chapter XX, Part 12, section 1201, empowers the Zoning Hearing Board to act in this appeal.

ZONING HEARING BOARD

Rs/2no1818