



Hartman, Valeriano, Magovern & Lutz, P.C.

Christopher J. Hartman  
Lawrence J. Valeriano Jr.  
Elizabeth A. Magovern  
George M. Lutz  
Brett M. Fegely  
Michelle R. Mayfield

Matthew R. Fessler  
*Of Counsel*  
Paul T. Essig

MAR 06 2023

March 1, 2023

NVR Inc.  
d/b/a Ryan Homes  
893 South Matlack Street  
West Chester, PA 19382

Penn Wayne Chestnut, LP  
P.O. Box 240  
Wynnewood, PA 19096

Ms. Valerie Shultz  
165 Caitlin Court  
Honey Brook, PA 19344

RE: ZHB Application of NVR, d/b/a Ryan Homes  
Honey Brook Township – 2023-3

Dear Applicant, Owner and Party:

Enclosed is a copy of the Decision entered in the above-referenced matter. Please contact us with any questions.

Sincerely,

Cynthia A. Barto

Paralegal

Direct Extension – x3011

Email – [cbarto@Hvmlaw.com](mailto:cbarto@Hvmlaw.com)

/cab

Enclosures

cc: Honey Brook Township with enclosure ✓

INNOVATIVE ATTORNEYS. TRADITIONAL VALUES.

**DECISION**  
**OF THE HONEY BROOK TOWNSHIP ZONING HEARING BOARD,**  
**CHESTER COUNTY, PENNSYLVANIA**

Re: Application of NVR Inc. d/b/a Ryan Homes

No. 2023 - 3

Date of Application: January 19, 2023

Date of Hearing: February 20, 2023

**FINDINGS OF FACT**

1. The property which is the subject of this zoning application is located at Chestnut Ridge, Honey Brook Township, Chester County, Pennsylvania, being Tax Parcel Numbers 22-8.52.4, 22-8.433 and 22-8-52.5 (the "Property").
2. The Property is part of the Chestnut Ridge Poplar Realty Land Development Staged Final Plan, recorded in the Chester County Recorder of Deeds Office at plan book 20538, p.1, recorded June 11, 2019 (the "Plan"). (See Applicant Exhibit A-3)
3. The applicant is NVR Inc. d/b/a Ryan Homes, the equitable owner of the Property, mailing address 893 South Matlack Street, West Chester, Pennsylvania 19382 ("Applicant").
4. The owner of the Property is Penn Wayne Chestnut, LP, mailing address P.O. Box 240, Wynnewood, Pennsylvania 19096.
5. Applicant filed an Application to the Honey Brook Township Zoning Hearing Board on January 19, 2023, requesting a dimensional variance from Sections 27-603.1. and 27-1105.2.G. of the Honey Brook Township Zoning Ordinance of 2003, as amended (the "Zoning Ordinance") to reduce the minimum lot and yard requirements for the rear yard of the Property from thirty-five (35) feet to twenty-five (25) feet. (See Board Exhibit B-1).
6. Applicant was represented at the hearing by Brian Nagle, Esquire.
7. The Honey Brook Township Zoning Hearing Board was represented at the hearing by Christopher J. Hartman, Esquire.
8. Valerie Shultz, property owner residing at 165 Caitlin Court, located approximately a quarter of a mile from Property, was granted party status, was unrepresented, and testified regarding the hardship in placing sheds on the Property given the reduction in the rear yard setback and her concerns regarding issues which may arise as a result of the reduction of the size of the rear yard.

9. Chris Pearson, the Division Manager for Applicant, was admitted as an expert in the construction and sales of single family homes and testified in support of the Application.

10. Mellissa Hutchison, P.E., a Senior Municipal Engineer at LVL Engineering Group, LLC was admitted as an expert in civil engineering and testified in support of the Application.

11. The Plan is for the development of a residential community to be developed over three stages, which will consist of one hundred twenty-eight (128) lots to be used as single-family detached dwellings.

12. The Property consists of fifty-eight (58) lots out of the Plan's 128 lots, being lots 12-23, 26-36, 98, 101, 102-110, and 112-115 of Stage 2 of the Plan, and lots 38, 40-56, 58-59, and 103-110 of Stage 3 of the Plan (the "Variance Lots").

13. The Property is located in the Farming Residential (FR) Zoning District which was in existence at the time of the Plan submission.

14. Stage 1 of the Plan has been completed.

15. None of the lots in Stage 2 and Stage 3 have been developed.

16. The improvements set forth in the Plan, including the construction of roads and stormwater management systems, have been completed.

17. Applicant offers certain house models based on the needs of the buyer and the size and shape of the lot, including the setback requirements.

18. The house models which were offered and developed during Stage 1 complied with the 35 feet rear yard requirement set forth in Sections 27-603.1. and 27-1105.2.G. of the Zoning Ordinance.

19. Mr. Pearson stated that, as a result of market changes, including higher interest rates, the demands of the housing market have changed such that the house models offered during Stage 1 are no longer in demand.

20. Mr. Pearson claimed that, in order to respond to the current housing market demands, the house models need to offer more options to potential buyers, and that such models require the construction of a deeper and narrower house.

21. Applicant can only offer the deeper and narrower house models on the Variance Lots if it obtains a variance from Sections 27-603.1. and 27-1105.2.G. of the Zoning Ordinance to reduce the minimum rear yard setback requirement from thirty-five (35) feet to twenty-five (25) feet.

22. The house models offered and developed during Stage 1 required a side yard setback of ten (10) feet on both sides of the lots.

23. The deeper and narrower house models Applicant proposes to offer on the Variance Lots can be constructed with a side yard setback of fifteen (15) feet on each side of the Property.

24. The rear yards of fifty-five (55) of the fifty-eight (58) Variance Lots border open space, as shown in the setback variance exhibit submitted by Applicant. (See Applicant Exhibit A-5)

25. The rear yards of lots 98, 101, and 102 border other lots. (See Applicant Exhibit A-5)

26. The square footage of the houses on the Variance Lots will slightly increase from approximately 2,000 square feet to approximate 2,300 square feet.

27. The grant of the variance and the use of the new house models on the Variance Lots will not exceed the impervious coverage limitations of the Variance Lots and will not require changes to the stormwater management systems. (See Applicant Exhibit A-9)

28. In response to Ms. Shultz questioning the appropriateness of the variance based on financial hardship, Applicant referenced *Hertzberg v. Zoning Bd. of Pittsburgh*, 721 A.2d 43 (Pa. 1998) to assert that financial hardship is relevant in establishing hardship in dimensional variance cases.

29. The Board provided opportunity for public comment, and George Perez, Jerome Gerald, Karen Custer-Force, and Shane Hadden spoke in opposition of the variance.

30. Due to the changes in the housing market, Applicant will be unable to sell the Variance Lots using house models which comply with the 35 feet rear yard requirement.

31. Applicant will only be able to sell the Variance Lots if the houses can be designed with the 25 feet rear yard setback.

32. The variance is the minimum variance that will afford relief and will represent the least modification possible.

33. The failure to sell the Variance Lots would be a substantial economic impact to the Applicant.

34. The failure to sell the Variance Lots would also negatively impact the Township and the purchasers of the Stage 1 properties, as the development would have numerous empty lots.

35. The hardship was not created by Applicant because the Variance Lots were not created by Applicant and the economic conditions which prevent the Variance Lots from being sold without the variance was not caused by Applicant.

36. The cost to re-subdivide the Property to create lots which would meet the setback requirements while meeting market demands would be time consuming, cost prohibited, and would

require a variance to reduce the size of the open space of the residential development which would also require an alteration to the stormwater management systems.

37. The reduction in the rear yard setback will not alter the essential character of the neighborhood or have a detrimental or negative effect on the neighborhood or public welfare, in part due to back of the lots bordering open space, with the exception of lot numbers 98, 101, and 102.

38. Public notice of this hearing was duly advertised in the Daily Local, a newspaper of general circulation within Honey Brook Township on February 9 and February 13, 2023; adjacent property owners were notified of the hearing by mail on February 9, 2023; and the Property was posted with the notice of the hearing on February 9, 2023. (See Exhibits B-3 through B-5)

39. The Township Engineer submitted a letter, dated February 9, 2023, stating that the Board of Supervisors of Honey Brook Township approved a motion to take no position on the variance request at the February 8, 2023 regular meeting of the Board of Supervisors. (See Exhibit B-6)

40. After closing the testimony at the February 20, 2023 hearing, the Honey Brook Township Zoning Hearing Board announced its decision on the Application.

### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction to decide this variance application pursuant to Section 27-2004 of the Zoning Ordinance and Section 909.1 of the MPC, 53 P.S. 10909.1.

2. Section 27-2004.2 of the Zoning Ordinance and Section 910.2 of the MPC, 53 P.S. § 10910.2 provide that no variance shall be granted unless the applicant can demonstrate to the satisfaction of the Board that:

- a. 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 this Chapter in the neighborhood or district in which the property is located;
- b. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Chapter and a variance is therefore necessary to enable the reasonable use of the property;
- c. Such unnecessary hardship has not been created by the appellant;
- d. 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; and

- e. 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.

3. Pursuant to *Hertzberg v. Zoning Bd. of Pittsburgh*, 721 A.2d 43, 47-48 (Pa. 1998) and subsequent caselaw, the proof required to establish unnecessary hardship is lesser for a dimensional variance as opposed to a use variance.

4. To determine if an unnecessary hardship for a dimensional variance has been established, the zoning hearing board may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship in obtaining strict compliance with the zoning requirements, and the characteristics of the surrounding neighborhood. *Hertzberg v. Zoning Bd. of Pittsburgh*, 721 A.2d 43, 50 (Pa. 1998).

5. The Board has determined that the Applicant has met the requirements for the grant of the variance requested under Section 27-2004.2. of the Zoning Ordinance.

6. Applicant has shown that there exist unique physical circumstances and/or conditions of the Property that create hardships and the variance is necessary to enable reasonable use of Property. The hardships have not been created by the Applicant.

7. Applicant has also established that the variance 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.

8. Section 27-2004.3 of the Zoning Ordinance and Section 910.2(b) of the MPC, 53 P.S. §10910.2(b) provides that the Board may attach reasonable conditions and safeguards it deems necessary to implement the purposes of the MPC and the Zoning Ordinance.

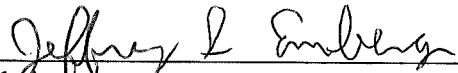
9. The following conditions and safeguards are necessary to implement the purposes of the MPC and Zoning Ordinance:

- a. The side yard setback for both sides of the Variance Lots shall be fifteen (15) feet.
- b. The variance is denied for lots 98, 101, and 102.
- c. Applicant must create a disclosure form which is acceptable to the Township Solicitor and which will be provided to each buyer of a Variance Lot. The disclosure must disclose this decision and the grant of the variance, the setback limits of the lot, and the maximum shed and deck size that can be placed on the lot in compliance with the setbacks.

## DECISION

AND NOW, this 20th day of February, 2023, the Zoning Hearing Board of Honey Brook Township, hereby APPROVES the request of NVR Inc. d/b/a Ryan Homes for a dimensional variance from Sections 27-603.1. and 27-1105.2.G. of the Zoning Ordinance to reduce the minimum lot and yard requirements for the rear yard of the Property from thirty-five (35) feet to twenty-five (25) feet, subject to the following conditions:

1. The side yard setback for both sides of the Variance Lots shall be fifteen (15) feet.
2. The variance is denied for lots 98, 101, and 102.
3. Applicant must create a disclosure form which is acceptable to the Township Solicitor and which will be provided to each buyer of a Variance Lot. The disclosure must disclose this decision and the grant of the variance, the setback limits of the lot, and the maximum shed and deck size that can be placed on the lot in compliance with the setbacks.

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Member

Date of Issuance of Written Decision: 2/27, 2023.

**ANY AGGRIEVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF CHESTER COUNTY WITHIN THIRTY (30) DAYS FROM THE DATE OF ISSUANCE OF THE WRITTEN DECISION.**