

further testified that a copy of the agenda had been made available on the Borough website at least 24 hours before the hearing; that the agenda had been posted on the municipal building, which was the place of the meeting; and that copies of the agenda were available at the hearing for the public.

10. Also attending the hearing was Attorney Josele Cleary, solicitor for the Borough of Millersville, who entered her appearance on behalf of the Borough in opposition to the request.

11. The property is 0.307 net acres in size and is already improved with a two-unit apartment building. James Sanchez, of Sanchez Engineering, represented the Applicant and requested variances from the open common space requirement, the front yard building setback requirement, the side yard building setback requirement, and the lot coverage requirement.

12. No request for a density variance was presented.

13. As Ms. Cleary pointed out, this property is subject to a density requirement of at least 4,000 square feet per dwelling unit.

14. The testimony established that the other dimensional variances could be eliminated if Applicant chose to build a smaller building.

15. Following the conclusion of testimony, the Board voted unanimously to deny the variance.

B. CONCLUSIONS OF LAW

1. The property is located in the Neighborhood Commercial district.

2. Apartments that constitute new construction in the Neighborhood Commercial District must comply with the R-3 density requirement of no less than 4,000 square feet of lot per dwelling unit.

3. No density variance request was made and therefore the issue was not before the Board.

C. DISCUSSION

Variances are not to be granted unless a hardship is shown. A "hardship" within the meaning of the zoning ordinance means that there are unique physical factors present, such as topography, lot size or shape, or other physical circumstances that prevent the property from having a reasonable use. Further, if a variance is to be granted, it must be the minimum variance necessary to afford the Applicant a reasonable use of the property.

The problem in the present case, fundamentally, is that the property already has a use—namely, a two-unit apartment building. Further, the solicitor's point is well-taken that the four dimensional variances requested could be reduced or eliminated if the Applicant chose to build fewer units or smaller units. The claimed hardship respecting those dimensional variances is self-inflicted.

The fatal issue to this application is the density requirement. The size of the lot is only 0.307 net acres. The existing conditions on the property already constitute a slightly larger density than would be allowed under new construction. In order to have sufficient ground to meet the density requirement for a property with eight apartments, Applicant would need a minimum of 32,000 net feet, a lot several times the size of the

lot in this case. The Board could not consider granting a variance of that magnitude even if presented.

D. DECISION

AND NOW, this 22nd day of December, 2022, all of Applicant's variance requests are denied.

MILLERSVILLE BOROUGH
ZONING HEARING BOARD

By: 
Lindsay Gerner, Chairman

By: 
Vickie Usciak, Member

By: 
James A. Kirk Jr., Member

By: 
W. David Sykes, Alternate