plaintiff's motorcycle accident. We further note that plaintiff was represented by counsel in connection with the execution of the release and has not alleged fraud, accident or mutual mistake in the procurement thereof. Moreover, plaintiff was aware of the full extent of his injuries at the time the release was signed and, in fact, had already filed the subject medical malpractice action when the release was executed. Since the terms of the release render it applicable to "all past, present and future actions", we must conclude that the ordinary meaning of the release renders it applicable to the present litigation.

In so concluding, we recognize the harshness of the result in this ruling, but nonetheless feel compelled by the precedent established by our Supreme Court in ***Buttermore, supra,*** to arrive at this result. We would certainly invite a reconsideration of the rule established therein by the appellate courts of the Commonwealth, but believe we are given no choice but to defer to the mandates of that decision.

We will, accordingly, order that summary judgment be entered in favor of defendants.

ORDER OF COURT

NOW, this 27th day of June, 1991, the motions for summary judgment filed by Albert L. Henry, M.D., Surgical Associates of Waynesboro, Ltd. and Waynesboro Hospital are hereby granted.

NAUGLE V. WASHINGTON TOWNSHIP ZONING HEARING BOARD, C.P. Franklin County Branch, Misc. Doc. Vol AA, Page 98

Zoning - Variances - Hardship - DeMinimis

1. A 7'x30' deck is part of the house and must meet the setback requirement of the zoning ordinance.
2. An unnecessary hardship is not established where the variance is based on inability to rent a facility.
3. A request for a 5' variance is not deminimis where there is a 30' setback.

Deborah K. Hoff, Esq., Attorney for Appellant
Jeffery S. Evans, Esq., Attorney for Zoning Hearing Board

OPINION AND ORDER

WALKER, J. June 13, 1991:

FINDINGS OF FACT

Richard G. Naugle II, appellant, filed an application before the Washington Township Zoning Hearing Board seeking a variance from Article X, Section 1003 of the township's zoning ordinance. The appellant requested the variance to add a seven (7') foot by thirty (30') foot deck to the rear of an existing duplex. The proposed deck would encroach into the zoned rear setback by five (5') feet. The board conducted a hearing on September 24, 1990 and rejected the applicant's request.

On November 13, 1990, the appellant filed a notice of appeal pursuant to 53 P.S. Section 11001-A *et seq.* The appellant filed a motion for an additional evidentiary hearing which was denied by the court on February 28, 1991. Argument for the issue presented on appeal was heard on June 6, 1991.

The issue before the court is whether the Zoning Hearing Board erred by applying the unnecessary hardship standard in reviewing appellant's application for a variance from the rear yard setback to allow the addition of a seven (7') foot by thirty (30') foot open air, uncovered deck that is suspended twelve (12') feet above the ground.

DISCUSSION

Generally, the courts leave the questions of whether to grant a variance to the zoning boards. Therefore, the scope of review of a decision made by the zoning board is restricted to whether the board abused its discretion or committed an error of law. *Marlow v. Zoning Hearing Board of Haverford,* 52 Pa.Commw. 224, 231, 415 A.2d 946 (1980). This court finds that the Washington Township Zoning Hearing Board did not abuse its discretion or commit an error law when denying the appellant's variance petition.

First, the appellant, Naugle, contends that the deck is not regulated by Washington Township's zoning code. Section 303.7 of Washington Township's zoning ordinance lists exceptions to the setback requirements. The appellant's seven (7′) foot by thirty (30′) foot deck does not fall within one of the acceptable projections into the yard. The deck, being a part of the main structure, would have to meet the setback requirements. Therefore, a variance would be necessary in the current situation.

In order to obtain a variance, the property owner must establish: (1) that the zoning ordinance burdens his property with an unnecessary hardship which is unique to his property; (2) that granting a variance will not adversely affect the public health, safety and welfare; (3) that the hardship is not self-inflicted; and (4) that the variance sought is the minimum variance that will afford relief. *Marlow v. Zoning Hearing Board of Haverford,* 52 Pa. Commw. 224, 231, 415 A.2d 946 (1980); *Stewart v. Zoning Hearing Board of Rednor Township,* 110 Pa.Commw. 111, 114, 531 A.2d 1180 (1987); *Solow v. Zoning Hearing Board of Borough of Whitehall,* 64 Pa. Commw. 414, 416, 440 A.2d 683 (1982). An unnecessary hardship is determined by showing that the property cannot be used for the permitted purpose due to the existence of certain physical or topographical features or that the property could be used but only at a prohibitive expense. *Marlow v. Zoning Hearing Board of Haverford,* 52 Pa.Commw. 224, 231, 415 A.2d 946 (1980).

In the case at bar, the appellant failed to show that the physical characteristics of his property caused an unnecessary hardship. His reasons for requesting the variance are: (1) to provide the duplex with an additional fire exit; and (2) to provide a recreational area, which would solve the problem that he is having finding tenants for the second half of the duplex. first, the seven (7′) foot wide deck is not necessary for fire safety reasons. The appellant has other alternatives available to him such as a rope ladder or a two (2′) foot deck, that would provide an additional fire exit. Second, the appellant's rentability hardship is solely a financial matter. Repeatedly, Pennsylvania courts have held that economic or financial hardship is not sufficient justification for the grant of avariance. *In re Pierorozio,* 53 Pa.Commw. 593, 596, 419 A.2d 221 (1980): *Botula v. Zoning Board of Adjustment of*

City of Pittsburg, 69 Pa.Commw., 164, 168, 450 A.2d 316 (1982). Therefore, the rentability problem does not merit an unnecessary hardship.

Furthermore, this court finds that the zoning board had a sufficient basis for finding that the need for a variance request was self created. The appellant testified at the hearing before the zoning board that he intended to construct a deck when he requested the variance for the front yard setback requirements, which he obtained to build the duplex on the lot. He felt that a variance for the back yard setbacks probably would not have been approved at that time. The appellant decided to wait to request that variance, rather than build a smaller house. Therefore, his current dilemma was self-created.

Finally, the appellant, Naugle, claims that he should be awarded a *de minimis* variance. The *de minimis* doctrine for a dimensional variance is an extremely narrow exception to the heavy burden of proof that an applicant for a variance must bear normally. *King v. Zoning Hearing Board of the Borough of Nazareth,* 76 Pa.Commw. 318, 320, 463 A.2d 505 (1983). This type of variance is rarely granted. The courts have allowed a variance in a limited number of cases where the violation of the zoning ordinance was a minor one, and to do otherwise would require the moving of an entire building. *Id.* In addition, a *de minimis* variance may be granted where rigid compliance with the ordinance was not absolutely necessary to protect the purpose of the ordinance. *Id.*

In the case at bar, the request for, what amounts to, a five (5′) foot variance from the rear yard setback requirements of thirty (30′) feet constitutes a seventeen (17%) percent variance from the zoning regulation. One of the purposes of the thirty (30′) foot setback requirement is to prevent overcrowding of the land. The present situation is a classic example of trying to crowd too much on a small lot. Therefore, the zoning board had a reasonable basis for determining that the requested variance was not *de minimis* in nature.

The court upholds the zoning board's application of the unnecessary hardship standard and denies the variance request.

ORDER OF COURT

June 13, 1991, the court denies the appellant's request for rear yard setback variance.

COFFMAN V. COFFMAN, C.P. Franklin County Branch, No. F.R. 1979-933S

Support - Reduction in Income - Substantial Change in Circumstances

1. A support order may be modified only upon a showing of substantial change in circumstances.
2. A voluntary change of occupation made in good faith may constitute a material change in circumstances sufficient to warrant a modification of child support.
3. Where father left a job in California and took a job closer to his children at less pay, his support payments may be reduced.

Deborah K. Hoff, Esq., Attorney for Plaitiffs
Timothy W. Misner, Esq., Attorney for Defendant

OPINION AND ORDER

WALKER, J., July 2, 1991:

FINDINGS OF FACT

On May 2, 1989, Lloyd A. Coffman, Jr., petitioner, was ordered by the court to pay $115.50 twice a month to Debra K. Coffman, respondent, for the support of his children, Adrienne Lynn, born January 7, 1978, and Ashley Marie, born June 6, 1983. At the time of this order, Lloyd had an associate degree in electronics and was employed with Autocall Incorporated in California where he made $380.00 per week.

In April of 1990, Lloyd voluntarily quit his job in California in order to return to Hagerstown, Maryland to be located near his children and his parents. Lloyd is currently employed as a press operator with the Station House in Hagerstown, Maryland where he makes $200 per week in take home pay.

On February 8, 1991, Lloyd filed a petition for the modification of the May 1989 support order, requesting the reduction of the support payments to a reasonable weekly amount.

The issue presented to the court is whether the events leading to the petitioner's reduction in income establishes a substantial change in circumstances, and thus warrants a reduction in his support payments.

DISCUSSION

A support order is not final and may be increased or decreased if the financial conditions of the parties change. *Commonwealth ex rel. Burns.* 251 Pa.Super. 393, 400, 380 A.2d 837 (1977); *Commonealth v. Vogelsong*, 311 Pa.Super. 507, 511, 457 A.2d 1297 (1983). However, a support order may be modified only upon the demonstration of a substantial change in circumstances. *Jaskiewicz v. Jaskiewicz,* 325 Pa.Super. 507, 509, 473 A.2d 183 (1984). In a request for modification of child support orders, the party seeking the modification bears the burden of proving a change of circumstances that will justify the modification. *Id.* Only material and substantial changes in circumstances will warrant a modification of a support order. *Id.*

A voluntary change of occupation made in good faith may constitute a material change in circumstances sufficient to warrant a modification in the child support order. The test used by this court to determine a good faith change is whether the change in occupation was made to evade financial responsibility for supporting the child. If the party seeking the modification deliberately designed to avoid responsibility for his or her dependents, the modification will be denied on the basis of bad faith. Appellate courts have held that a parent may not obtain a reduction in the amount of support which a parent must provide for his or her children if that parent intentionally reduced his or her earnings. *Robert v. Bockin,* 315 Pa.Super. 52, 55, 461 A.2d 630 (1983); *Weiser v. Weiser,* 238 Pa.Super. 488, 492, 362 A.2d 287 (1976).

In the current situation, the court finds that Lloyd's change in employment was made in good faith. Lloyd voluntarily resigned from his position in California, paying $380, in order to move to