

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-10-15	:	HEARING DATE: July 22, 2010
	:	
APPLICATION OF:	:	
Montgomery Del Val Association, a	:	
Pennsylvania Limited Partnership	:	
	:	
PROPERTY:	:	
Northeast Corner of Brimfield Road	:	
and Wedgewood Way	:	
Norristown, PA 19403	:	
Parcel No. 43-00-15811-00-4	:	

**OPINION, DECISION AND ORDER OF THE  
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

The applicant, Montgomery Del Val Association, a Pennsylvania Limited Partnership (hereinafter referred to as the "Applicant"), filed an application requesting relief under Sections 143-37 and 143-145 of the Lower Providence Township Zoning Ordinance in connection with proposed construction of a single family residence on a vacant lot. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 22, 2010 at the Lower Providence Township Building. All members of the Zoning Hearing Board except William Donovan were present as well as the Code Enforcement Manager, the Solicitor and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is Montgomery Del Val Association, a Pennsylvania Limited Partnership.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at the Northeast Corner of Brimfield Road and Wedgewood Way, Norristown, PA 19403 (the "Property"). The parcel number is 43-00-15811-00-4.

4. The Applicant was represented by Joseph J. McGrory, Jr., Esquire, Hamburg, Rubin, Mullin, Maxwell & Lupin, 375 Morris Road, P.O. Box 1479, Lansdale, PA 19446.
5. The lot size of the Property is 19,192 square feet.
6. The Property is currently vacant. It is zoned R-2 Residential District. Public water and public sewer are available.
7. The Applicant presented testimony at the hearing by its principal, Mr. Tornetta.
8. The subdivision plan dated 1966 pursuant to which the lot was created was presented as Exhibit A-2.
9. The Applicant proposes to build a single family dwelling on the lot, in accordance with the plot plan submitted as Exhibit A-3.
10. The lot is a corner lot. Accordingly the lot has two front lot lines.
11. The proposed single family dwelling depicted on Exhibit A-3 has a footprint of 32 feet by 68 feet.
12. The plot plan marked as Exhibit A-3 shows that the proposed single family dwelling on the Property will be in compliance with all setback criteria of Section 143-37 of the Township Zoning Ordinance.
13. The plot plan marked as Exhibit A-3 shows that the proposed single family dwelling on the Property will comply with the other requirements of Section 143-37.A except for the minimum lot area.
14. The size of the Property is 19,192 square feet, which is less than the minimum lot size of 25,000 square feet.
15. Due to the nature of the lots created in accordance with the 1966 subdivision plan pursuant to which the Property was created as a separate residential lot of the Lehigh Maple

Corp. subdivision, the lot comprising the Property is undersized according to the minimum lot area currently required by the Township Zoning Ordinance.

16. Other smaller lots in the neighborhood contain single family dwellings.

17. Construction of a proposed single family dwelling on the Property would be consistent with the character of the neighborhood and will not alter the character of the existing neighborhood.

18. The Applicant cannot construct a single family residential dwelling on the Property or otherwise use the Property without relief from the Zoning Ordinance.

19. The unique physical circumstances and characteristics of the Property are causing a hardship.

20. This is not a self-created hardship. Instead, it results from the unique circumstances and characteristics of the Property.

21. No neighbors or other members of the public testified at the hearing on the application.

#### **DISCUSSION/CONCLUSIONS OF LAW**

1. The Applicant is the legal owner of the Property and has standing to appear before the Board regarding the requested relief.

2. Denial of the requested relief will impose an unnecessary hardship upon the Applicant.

3. The hardship is not self imposed, and is due to the unique physical circumstances and characteristics of the Property.

4. The approval of the requested relief is necessary to enable the reasonable use of the Property.

5. The variance granted by the Board will not alter the essential character of the neighborhood or the zoning district in which it is located, will not substantially impair the appropriate use of adjacent properties and will not be detrimental to the public welfare.

6. The variance granted by the Board represents the minimum that will afford relief from the hardship.

The Applicant has requested a variance from the minimum lot area requirement in connection with a proposal for construction of a single family dwelling on the Property. This is a request for relief from requirements of the Zoning Ordinance of a dimensional nature, not for relief as to use requirements or limitations.

Differing standards apply to use and dimensional variances. Generally, a variance requires the applicant to show that unnecessary hardship will result if a variance is denied and that the proposed use will not be contrary to public interest. Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998) (citing Allegheny West Civic Council, Inc. v. Zoning Bd. Of Adjustment of the City of Pittsburgh, 547 Pa. 163, 167, 689 A.2d 225, 227 (1997)).

The Supreme Court in Hertzberg held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of the Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. at 263-64, 721 A.2d at 50. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Id. at 258-59, 721 A.2d at 47-48. In addition, to justify the grant of a dimensional variance courts may consider multiple factors, “including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the

zoning requirements and the characteristics of the surrounding neighborhood.” Id. at 263-64, 721 A.2d at 50.

It is only the stringency of the standard in proving an unnecessary hardship that varies, depending on whether a use or dimensional variance is sought. Great Valley School District v. Zoning Hearing Board of East Whiteland Township, 863 A.2d 74, 83 (Pa. Commw. 2004), appeal denied, 583 Pa. 675, 876 A.2d 398 (2005) (citing Zappala Group, Inc. v. Zoning Hearing Board of the Town of McCandless, 810 A.2d 708, 710-11 (Pa. Commw. 2002), appeal denied, 573 Pa. 718, 828 A.2d 351 (2003)); The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Commw. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Commw. 2001).

Despite the trend to apply a relaxed standard to dimensional variances Pennsylvania case law is clear in its approach to the issuing of variances and demands that the reasons for granting a variance must be substantial, serious, and compelling. POA Company v. Findlay Township Zoning Hearing Board, 551 Pa. 689, 713 A.2d 70 (1998); Evans v. Zoning Hearing Board of the Borough of Spring City, 732 A.2d 686 (Pa. Commw. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Commw. 1998). Moreover, variances from zoning codes should be granted sparingly and only under exceptional circumstances; a variance should not be granted simply because such a grant would permit the owner to obtain greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Commw. 1996).

In order to grant a variance, the Board must make the findings set forth in § 910.2 of the Municipalities Planning Code, 53 P.S. § 10910.2, where relevant. See Hertzberg, 554 Pa. at 256-57, 721 A.2d at 46-47. The law established by the Pennsylvania courts further establishes these

standards, stated in full herein. See Alpine Inc. v. Abington Township Zoning Hearing Board, 654 A.2d 186 (Pa. Commw. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Commw. 626, 647 A.2d 279 (1994). The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

(1) That there are unique 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.

(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.

(3) That such unnecessary hardship has not been created by the applicant.

(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.

(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.

The relief at issue in this application is a variance from the applicable minimum lot area requirement of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-37.A(2), the applicable minimum building lot area is 25,000 square feet. The Applicant sought zoning relief in connection with a proposal to construct a single family

dwelling in a proposed building envelope on the Property which would comply with all applicable setback and other dimensional criteria of Section 143-37 except for the minimum lot area.

The Applicant has demonstrated that there are unique circumstances and physical characteristics of the Property, including the dimensions of the Property, and that, due to the nature of the undersized lots created in connection with the 1966 residential subdivision in which the Property is located, the Applicant can only use the residential Property for a single family dwelling if relief from the currently applicable minimum lot area requirement of the Zoning Ordinance is granted. The variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. The Applicant did not create the unnecessary hardship. The variance represents the minimum variance that will afford relief and represents the least modification possible of the applicable provisions of the zoning ordinance.

The proposed construction of a single family dwelling in the proposed building envelope on the Property will comply with all applicable setback criteria and will be consistent with the existing neighborhood. The granting of the variance, with a certain condition, conforms to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties.

The Board finds and concludes that based on the testimony presented by the Applicant the standards for granting a dimensional variance have been met and the dimensional variance with a certain condition should be granted.

## DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

A variance from the minimum lot area requirement of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a single family dwelling on the Property is approved and granted, with the condition that the Applicant comply with all applicable setback criteria and requirements set forth in the Township Zoning Ordinance.

Dated: September 3, 2010

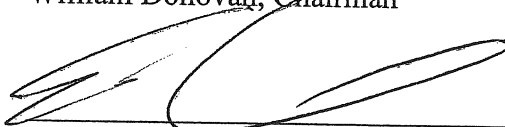
**ORDER**

The foregoing Findings, Discussion and Decision are hereby approved and ordered.

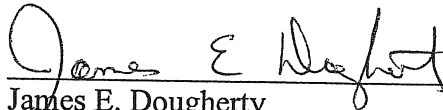
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

*Absent*

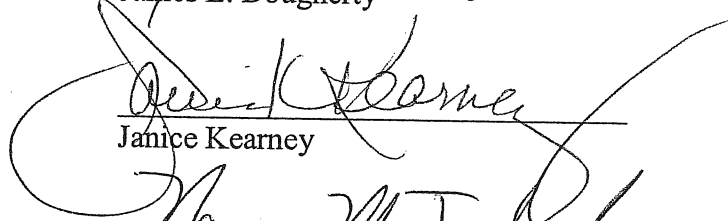
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William Donovan, Chairman



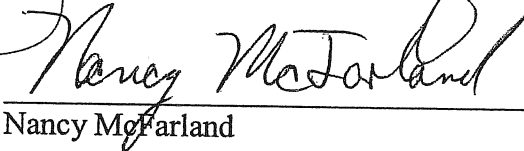
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Eric Frey, Vice Chairman



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James E. Dougherty



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Janice Kearney



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Nancy McFarland

**NOTE TO APPLICANT**

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing Board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.