

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-08-21 : HEARING DATE: January 22, 2009  
: :  
APPLICATION OF: :  
Stephen J. Traitz, Jr. : DATE OF MAILING OF OPINION  
: AND DECISION: February 17, 2009  
PROPERTY: :  
400 S. Park Avenue :  
Audubon, PA 19403 :

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

The applicant, Stephen J. Traitz, Jr., (hereinafter referred to as the “Applicant”), filed an application requesting a variance from Section 143-37(A)(2) and purporting to appeal from an enforcement notice in connection with a porch that was rebuilt on the property in question. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on January 22, 2009 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, the Director of Community Development/Zoning Officer, and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is Stephen J. Traitz, Jr.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at 400 S. Park Avenue, Audubon, PA 19403 (the “Property”).
4. The applicable zoning is R-2, Residential District.
5. The Applicant was represented by Robert L. Brant, Esquire, 572 W. Main Street, P.O. Box 26865, Trappe, PA 19426.
6. The lot size of the Property is approximately .84 acres.

7. There were no residents who testified against the project.
8. The Applicant also is the record owner of the adjacent property, 402 S. Park Avenue.
9. The porch which is the subject of the application was rebuilt by the Applicant's son, Joseph Traitz, who resides at the Property.
10. Joseph Traitz appeared and presented testimony at the hearing in support of the application.
11. The original porch, which was attached to the residence on the Property, predated the subdividing of the Property and the adjacent property.
12. The original porch extended to the property line between the Property and the adjacent property, 402 S. Park Avenue. The poles supporting the original porch were on the property line.
13. The original porch was in a deteriorated and dilapidated condition with a tree on one corner of it.
14. Joseph Traitz rebuilt the original porch because it was in a deteriorated and dilapidated condition and for safety reasons.
15. Joseph Traitz testified that he was unaware that a permit was needed to repair and/or rebuild the original porch which was deteriorated.
16. The Township issued an enforcement notice dated June 12, 2008 because the Applicant did not obtain the required permits.
17. The Applicant has dementia and was unable to understand the enforcement notice, which did not get to Joseph Traitz until several months later.

18. The rebuilt porch extends to approximately 3 feet six inches from the property line between the Property and 402 S. Park Avenue; it is not larger than the original porch.

19. Joseph Traitz spent approximately \$10,000 on materials for construction of the rebuilt porch and performed the work himself with a friend.

20. The original porch was supported by pillars on an asphalt floor.

21. The rebuilt porch consists of a concrete floor.

22. The rebuilt porch does not negatively alter the character of the Property or the neighborhood.

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

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

2. The Applicant filed an appeal from the Township's June 12, 2008 enforcement notice on December 5, 2008. Accordingly the appeal from the enforcement notice was untimely under applicable law including the provisions of the Lower Providence Township Zoning Ordinance, including without limitation Section 143-169(A)(1) thereof, and is deemed denied as a matter of law.

3. The original porch predated the subdivision of the Property and the adjacent property owned by the Applicant, making it a nonconforming structure.

4. Because of the unique physical characteristics of the Property and the location of the residence and original porch, it would be impossible to rebuild or repair the porch in compliance with the side-yard setback requirements of the zoning ordinance.

5. The rebuilding of the porch was necessary to remedy the deteriorated and dilapidated condition of the porch and for safety reasons.

6. The rebuilt porch will be several feet farther away from the property line between the Property and 402 S. Park Avenue than the original porch was and will not be larger than the original porch; therefore it will not increase the level of nonconformity.

7. The rebuilt porch will constitute less of an encroachment upon the side-yard setback than the original porch, and any encroachment upon the side-yard setback would relate only to the property line between the contiguous parcels owned by the Applicant.

8. Denial of the requested variance for the Property will impose an unnecessary hardship upon the Applicant by preventing him from making the porch safe, functional and acceptable in appearance.

9. The hardship is not self imposed but results from the unique physical characteristics of the property and the location and physical characteristics of the residence and the original porch which predated the subdivision of the Property and 402 S. Park Avenue.

10. The grant of the requested variance 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. In addition, the requested variance represents the minimum variance that will afford relief.

The Applicant seeks a variance as to the side-yard setback requirements for the rebuilt porch on the Property. This constitutes an application for dimensional variance.

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. § 10912.2, 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 Applicant has demonstrated, and the Board finds and concludes, that the Applicant will suffer unnecessary hardship if the requested variance is not granted; that the unnecessary hardship is due to the unique physical circumstances or conditions relating to the Property, and that the authorization of a variance is therefore necessary to enable the reasonable use of the Property; that the unnecessary hardship was not created by the Applicant; that the requested 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; and that the requested variance is the minimum that will afford relief and will represent the least modification possible of the applicable zoning code provisions.

Due to the unique physical circumstances and characteristics of the Property and the location of the residence and original porch on the Property predating the subdivision of the Property and the adjacent property owned by the Applicant, the Applicant would suffer unnecessary hardship if he were not permitted to rebuild and modernize the original porch to ensure the safety of the users of the Property and to maintain the functionality and acceptable appearance of the porch which was in a deteriorated and dilapidated condition. The variance requested for the side-yard set back requirement represents the minimum that will afford relief.

The rebuilt porch in fact represents a reduction of the nonconformity of the original porch with regard to the side-yard setback requirement, by several feet. The requested variance will not be detrimental or contrary to the public interest or alter or impair the character of the surrounding neighborhood. Accordingly, the Board will grant the requested variance.

### **DECISION**

The following is the decision of the Lower Providence Township Zoning Hearing Board by a vote of 5-0:

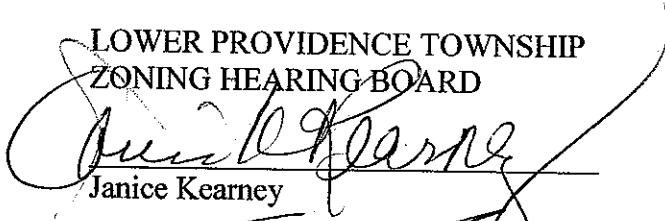
The requested variance from Section 143-37(A)(2) with respect to the side-yard setback requirements applicable to the rebuilt and reconfigured porch on the Property is granted, subject to the following conditions: Within thirty (30) days Applicant shall (a) obtain all required permits from the Township, (b) obtain and comply with all required inspections and (c) remove all demolition debris from the Property to the Township's satisfaction.


Dated: February 17, 2009

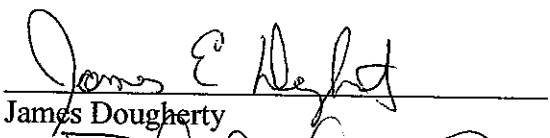
**ORDER**

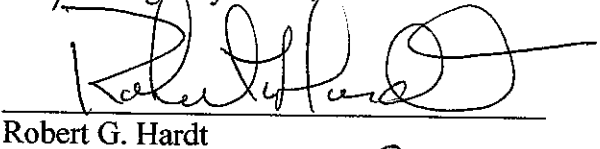
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
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Janice Kearney

  
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Eric Frey

  
\_\_\_\_\_  
James Dougherty

  
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Robert G. Hardt

  
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William Donovan

**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.

