

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-02 : HEARING DATE: February 28, 2008  
: :  
APPLICATION OF: : DECISION DATE: February 28, 2008  
IMAN M. EL HADDAD : :  
: :  
PROPERTY: : :  
800 Jode Road : :  
Audubon, PA 19403 : :

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

The Applicant, Ms. Iman M. El Haddad (hereinafter referred to as the "Applicant") filed an application requesting a variance to Section 143-37 of the Lower Providence Township Zoning Code. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on February 28, 2008 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, Zoning Officer, and Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is Ms. Iman M. El Haddad.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 800 Jode Road, Audubon, Montgomery County, Pennsylvania.
4. The Applicant was not represented by an attorney.
5. The property is zoning "R-2" Residential.
6. The lot is approximately 18,800 square feet.
7. There are no residents who testified in favor of the project.
8. There were two residents who testified against the project.

## DISCUSSION AND CONCLUSIONS OF LAW

The Applicant is asking this Zoning Board to issue a dimensional variance rather than a use variance. When considering a dimensional variance, the Zoning Board utilizes a standard that differs from the standard employed in a “use variance” analysis. 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, 721 A.2d 43 (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. If the Board determines that the relief is for a use variance, then the Board should use the traditional five-part test, which is set forth in both the Municipalities Planning Code and case law. MPC § 910.2. If the requested relief is for a dimensional variance, then the standard to be applied will be different. Id. While the Court in Hertzberg did not specifically identify a single standard for a dimensional variance, it noted that the requirements for a dimensional variance were something less than that of a use variance. Id.

In its opinion, the Court went on to opine that some of the factors that a Zoning Hearing Board should look at to determine whether to grant a dimensional variance include, where applicable:

- (1) The economic detriment to Applicant if the variance is denied;
- (2) The financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements; and,

(3) The characteristics of the surrounding neighborhood. Id.

While these factors are not exhaustive, the Court in Hertzberg and subsequent cases have referred to them specifically as findings a Zoning Hearing Board should make in its determination of whether to grant or deny a dimensional variance.

Although the language in Hertzberg is expansive, the current trend is to apply the relaxed standard for dimensional variances only to the consideration of whether unnecessary hardship results from unique physical characteristics or conditions of the land. The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Cmwlth. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001).

Despite the trend to apply a relaxed standard to dimensional variances, Pennsylvania caselaw 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. Cmwlth. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998). Moreover, variances to 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. Cmwlth. 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. 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. Cmwlth. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Cmwlth. 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.

In their petition before the Zoning Hearing Board, the Applicant seeks to significantly expand the square footage of the residential structure upon the property and increase the amount of non-permeable surface areas on the property. The square footage expansion would exceed the setbacks established for sideyards and exceed the existing footprint of the structure. The Zoning

Board is being asked to consider a dimensional variance by the Applicant, and must accordingly analyze the evidence presented by the Applicant in the context of the standards and caselaw set forth above.

The Applicant's residence is a pre-existing structure that does not conform to current zoning ordinances with respect to setbacks. Under its current use, it is a single-family home in a R-2 zoned residential neighborhood.

In making their presentation, the Applicant indicated that the proposed addition to residence and impervious coverage would not exceed the maximum allowable coverage, and that neither the structure's encroachment into the sideyard setbacks nor the significant alteration of the profile, aesthetic, or layout of the residence significantly altered the nature and characteristics of the neighborhood. The proposed variance would be to Lower Providence Township Zoning Ordinance § 143-37 and § 143-39, which allow the proposed addition to exceed the front setback (Jode Road) by 4'5" and the sideyard setback (Park Avenue) by 7'7" at one point and with a visible taper toward the property line resulting in an even greater sideyard setback encroachment.

The Applicant did not, however, represent to the Zoning Hearing Board that a denial of the variance request would result in an economic detriment either by virtue of some unique circumstance or condition of the residence, property, or topography that would justify a variance. The Applicant also did not illustrate whether it is impossible for the Applicant to design and build an addition which will be in strict conformity to the zoning ordinance and that the variance would allow for a reasonable use of the property. Based on the evidence presented by the Applicant, there is no hardship associated with this project, nor did they adequately represent that the addition to the property would not substantially or permanently impair the appropriate use of the property or be detrimental to the neighborhood. The expansion of the residence would

increase both the footprint of the structure and the square footage significantly. The Applicant was unable to adequately prove to the Board that structure would retain the nature and characteristics of the neighborhood and existing residences.

Most significantly, however, the Applicant failed to adequately present to the Zoning Hearing Board a rationale for granting a variance of the sideyard setback provisions of the zoning ordinance. While the Applicant was able to illustrate that the encroachment into the sideyard set back was arguably de minimis, it nonetheless violates the zoning ordinance and it is therefore incumbent upon the Applicant to indicate to the Zoning Hearing Board those particular characteristics of the property which would justify a variance.

The Applicant's case-in-chief was predicated predominantly upon convenience and quality of life of the current residents, while also arguing that the dimensions of the addition were not significant violations of the zoning ordinances. Encroaching upon the sideyard setbacks may seem innocuous, but it is the responsibility of the Zoning Hearing Board to strictly apply the zoning ordinances and code of the municipality barring sufficient justification by the Applicant to depart from the code and grant a variance. In this instance, the Applicant did not adequately present or accentuate those qualities of the proposed addition that would warrant a variance.

### **ORDER**

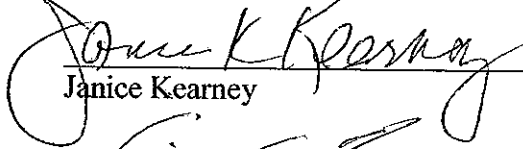
IT IS HEREBY ORDERED AND DECREED that the Lower Providence Township Zoning Hearing Board finds that the Applicant presented insufficient testimony to grant a variance to Section 143-37 or Section 143-39.

Decision Dated: 4/21/08

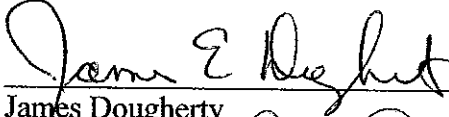
**ORDER**

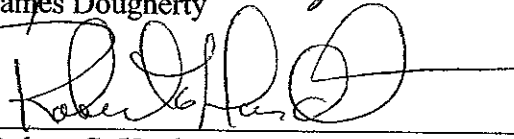
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
Janice Kearney

  
Eric Frey

  
James Dougherty

  
Robert G. Hardt

  
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 of the decision granting approval.