

ZONING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-01 : **HEARING DATE: 3/27/08**

APPLICATION OF: Louis and Donna Murray : **DECISION DATE: 3/27/08**

PROPERTY: 117 Belmont Avenue :
Lower Providence Township :

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

The Applicant, Louis and Donna Murray, (hereinafter referred to as the "Applicant") filed an application requesting a variance to Section 143-37. The application was properly advertised, and a public hearing was held before the Lower Providence Zoning Hearing Board on March 27, 2008. 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 Louis Murray and Donna Murray, husband and wife.
2. The Applicant is the legal owner of 117 Belmont Avenue.
3. The property is located in Lower Providence Township with a mailing address of 117 Belmont Avenue, Eagleville, PA 19403.
4. The Parcel ID. No. is 43-00-013175-00-4.
5. The property is Zoned R2.
6. The Lot is approximately one-half acre.
7. Seven neighbors sent letters stating they had no objection to the application.
8. The Applicant was not represented by an attorney.
9. The Applicant wished to add an in-law suite to provide for the care of the Applicant's mother who is 55 years of age.

10. The addition represents the minimum addition that will afford relief and represent the least modification possible.
11. The addition will not alter the essential character of the neighborhood. There are several houses in the neighborhood with similar type of additions.

DISCUSSIONS AND CONCLUSIONS OF LAW

As a preliminary matter, the applicable standards for determining whether to grant Dimensional variance differ from those of use variance. The standard as outlined by the Pennsylvania Supreme Court is that the Applicant must 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).

In *Hertzberg*, the Supreme Court held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of a 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. 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 to opine that some of the factors that a Zoning Hearing Board should look at to determine whether to grant a dimensional variance should include, where applicable:

- (1) The economic detriment to Applicant if the variance was 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 of *Hertzberg* is expensive, 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 v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 808 A.2d 327 (Pa. Cmwlth. 2002); *Cardinace v. Whitpain Township Zoning Hearing Board*, 771 A.2d 103 (Pa. Cmwlth. 2001).

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); *Sotereanos, 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. § 10910.2, 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 physical 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 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.

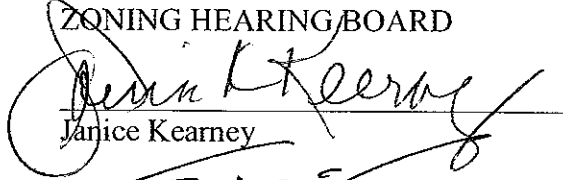
In this case the applicant presented pictures of the home where the addition was going to be located and a set of plans. There were several neighbors who sent letters in support of the addition. This addition will not alter the essential character of the neighborhood and also represents the minimum variance and represents the least modification possible of the regulation in issue. Even though the Applicant was not able to meet the multi-point criteria for a variance, the Board determined that the relief sought was minor and that based on the that representation by the Applicant, the Board then may issue a di minimus variance. *Leonard v. Zoning Hearing Board at the City of Bethlehem*, 136 Pa. Cmwlth. 182, 583 A.2d 11 (1990). Further, the Applicant agreed to record a deed restriction on the property once construction of the addition was completed. § 143-19 Section 4, Section 5. The Board also agrees and approves of the entry of such a deed restriction on the property.

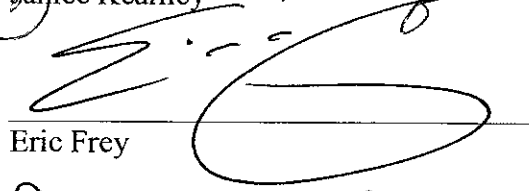
Accordingly, based on the testimony of the Applicants and corresponding exhibits, Board hereby determines that the elements of the variance have been met and the application is hereby approved.

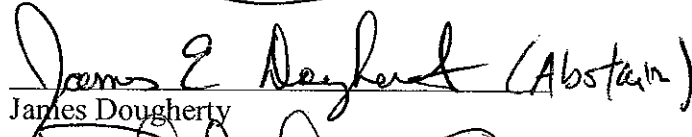
ORDER

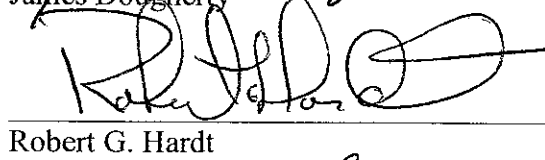
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Janice Kearney


Eric Frey

 (Abstain)
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.