

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-08-04	:	HEARING DATE: Initial Hearing - March 27, 2008
	:	
APPLICATION OF:	:	DECISION DATE: April 24, 2008
Katie Quinn-Kerins	:	
Catherine Quinn-Kerins, Ph.D.	:	DATE OF MAILING OF OPINION AND DECISION: June 4, 2008
	:	
PROPERTY:	:	
403 S. Trooper Road	:	
Norristown, PA 19403	:	

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

The Applicants, Katie Quinn-Kerins and Catherine Quinn-Kerins, Ph.D. (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Section 143-36, Section 143-27(A)(8)(b), Section 143-27(A)(9), Section 143-37, Section 143-139, and Section 143-140. The application was properly advertised, an initial public hearing was held before the Lower Providence Township Zoning Hearing Board on March 27, 2008 at the Lower Providence Township Building, and a decision on the application was reached and announced at the public hearing held before the Board on April 24, 2008. Present at the initial public hearing were four members of the Zoning Hearing Board: Mr. William Donovan, Mr. Eric Frey, Mr. Robert Hardt and Ms. Janice Kearney; Solicitor Charles Mandracchia; Township Solicitor David Onorato; the Director of Community Development; and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicants are Katie Quinn-Kerins and Catherine Quinn-Kerins, Ph.D.
2. Applicant Katie Quinn-Kerins is the equitable owner of the subject property pursuant to an Agreement of Sale with the legal owner, Charles Billera, Executor of the Estate of Mary Horvath.

3. The property is located at 403 S. Trooper Road, Norristown, PA 19403.

4. The Applicants were represented by Michael E. Furey, Esquire.

5. The property is zoned R-2 Residential.

6. The lot size is approximately 18,000 square feet.

7. There were no residents who testified in favor of the project.

8. Ms. Bette McTamney testified that she was the realtor for the property and that it had been for sale for over a year.

9. Applicant Katie Quinn-Kerins proposes to own the property and use it as her primary residence

10. Applicant Catherine Quinn-Kerins, Ph.D., who is the mother of Katie Quinn-Kerins and a clinical psychologist, proposes to use approximately 200 square feet of the first floor as a professional office (although the application specifies a proposed use of 500 square feet), with an average of six patients per day. She will not be an owner of the property and will not live there.

11. Applicant Katie Quinn-Kerins is willing to provide a deed restriction for the property limiting the proposed office use to no more than five years.

12. According to Applicant Dr. Catherin Quinn-Kerins, she cannot move out of the 19043 zip code or it will change her status with insurance companies and she may lose her patients.

13. Mr. Anthony Janfransisco, who resides at 405 Trooper Road, testified that he has lived in his home for 39 years and that the subject property was always a residence.

14. Mr. Michael Siegel, Director of Community Development for the Township, testified that the commercial properties nearest to the subject property are located 930 feet to the south and 1,090 feet to the north.

15. The Board specifically finds that the property can reasonably be used as a residential dwelling, the use for which it is zoned and improved.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The Applicant is asking this Zoning Board to issue a use variance, dimensional variance, and a variance related to the installation of a sign. 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 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. 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.

#### USE VARIANCE

The nature of the Applicants' application to the zoning hearing board first requires an analysis based on the proposed use of the property. Upon making a determination based on the proposed use, the Zoning Hearing Board may then consider the dimensional variance and professional sign variance requested by the Applicants.

The application before the Zoning Hearing Board asks for a use variance based on § 143-36, § 143-27(A)(8)(b), and § 143-27(A)(9) of the zoning code. The Applicant Katie Quinn-Kerins proposes to use the property as her primary residence, while her mother, Catherine Quinn-Kerins, Ph.D., a clinical psychologist, proposes to use approximately 200 (or 500) square feet of the first floor as a professional office or no-impact home-based business under Section 143-27(A)(8)(b) and/or Section 143-27(A)(9).

Section 143-27(A)(8)(b) unequivocally states, in pertinent part, that a permissible accessory use on a property in a residential district incidental to any other foregoing permissible uses (including residential dwellings) is a “[p]rofessional in-home office for a no-impact home-based business where there are no customers, provided that the office, studio or rooms are located in a dwelling in which the resident resides.” Section 143-27(A)(9) further defines no-impact home based business and sets forth additional requirements for such a use, including that “[t]he business shall employ no employees other than family members residing in the dwelling.” §143-27(A)(9)(b).

In the Application before the Board and in subsequent testimony related to the proposed use, it is clear that Dr. Catherine Quinn-Kerins would not be a resident on the property, nor would Ms. Katie Quinn-Kerins, as the resident and homeowner, be operating an in-home office/no-impact home-based business. The proposed use for which a variance is sought would be non-resident Dr. Catherine Quinn-Kerins’ operation of a clinical psychology practice in the R-2 Residential district. The proposed use would not be a no-impact home-based business conducted by a resident residing in the dwelling. In addition, the proposed use would employ an employee (Dr. Catherine Quinn-Kerins) other than a family member residing in the dwelling.

The Applicants did not present evidence demonstrating an unnecessary hardship as a result of unique characteristics of the property which would justify the requested use variance. Nor did the Applicants present evidence demonstrating that the requested variance met the other criteria required under the MPC for granting a variance. To the contrary, the evidence before the Board demonstrated that the property can be reasonably used as a residence, the use for which the property is zoned and improved, without adding a clinical psychologist's office. The proposed office use in fact would only last five years and then the property would be used solely for residential use; this further demonstrates that the property can be reasonably used as a residence. Accordingly, the requested use variance will be denied because the Applicants failed to meet their burden.

#### DIMENSIONAL VARIANCE

The failure of Applicants to meet the burden necessary for a use variance renders the request for a dimensional variance moot and unnecessary because the request for a dimensional variance was directly tied to the proposed use. Nevertheless, the Board will set forth briefly an analysis of the request for dimensional variance.

The MPC and Pennsylvania caselaw set forth the burdens an applicant must meet to sustain a request for a dimensional variance. In this instance, the Applicants did not offer any compelling testimony demonstrating that the requested dimensional variance would alleviate an unnecessary hardship to the Applicants, that it would represent the minimum variance that would afford relief or that because of the physical conditions of the property or unique characteristics of the land the requested variance was a necessity. Absent evidence to sustain the above-articulated burden, the Board has no alternative but to deny the requested dimensional variance.

PROFESSIONAL SIGN

In light of the denial of the application for a use variance to permit an office use of the residential property and the application for a dimensional variance, a determination as to the Applicant's request for a variance from Sections 143-139 and 143-140 must fail. In light of the denial of the use variance, there is no reason or basis for the Applicants to place a two-square feet, externally illuminated professional services sign on the property.

DECISION

The Lower Providence Township Zoning Hearing Board issues the following decision by a vote of 4-0 (Mr. Dougherty did not attend the initial public hearing or participate in the April 24, 2008 decision):

The Applicants' request for a variance from Sections 143-36, 143-27(A)(8)(b), 143-27(A)(9), 143-37, 143-139, and Section 143-140 is denied.

**ORDER**

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

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD



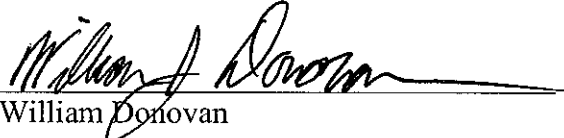
Janice Kearney



Eric Frey



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 or the decision granting approval.