

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

|   |   |   |
|---|---|---|
| APPLICATION NO. Z-08-06                 | : | HEARING DATE: April 24, 2008                          |
|   | : |   |
| APPLICATION OF:                         | : | DECISION DATE: April 24, 2008                         |
| Montgomery County Correctional Facility | : |   |
|   | : | DATE OF MAILING OF OPINION AND DECISION: June 4, 2008 |
| PROPERTY:                               | : |   |
| 60 Eagleville Road                      | : |   |
| Eagleville, PA 19403                    | : |   |

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

The Applicant, Montgomery County Correctional Facility (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Section 143-211(G)(2) and Section 143-211(K)(1). The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on April 24, 2008 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as Aaron D. Weems, Esquire (attorney from the office of the Zoning Hearing Board's Solicitor), the Director of Community Development, and the Court Reporter. Board member Mr. Robert Hardt recused himself and did not participate in the decision because he is a neighbor of the property.

**FINDINGS OF FACT**

1. The Applicant is the Montgomery County Correctional Facility.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 60 Eagleville Road, Eagleville, PA 19403.
4. The applicable zoning is INO, Institutional Overlay District.
5. The Applicant was represented by Bruce J. Eckel, Esquire, of the Montgomery County Solicitor's Office.

6. The lot size is approximately 156 acres.
7. There were no residents who testified in favor of the project.
8. There were no residents who testified against the project.
9. According to testimony by Warden Algarin, the proposed expansion is based on three years of work by a planning committee and judges.
10. According to testimony by Warden Algarin, the proposed new buildings will be a new administration building and a dormitory for 512 minimum security inmates participating in a program for DUI and work release.
11. Warden Algarin testified that the new facility is necessary because of an increase in DUI offenders and participants in the work release program, which program requires them to pay taxes and fines and facilitates easier re-entry into the community. The proposed facility will separate the minimum security non-violent inmates from the other inmates. There will be no change in the external appearance of the facility or alteration to the community.
12. Warden Algarin testified that the enclosed corridors will connect the two new buildings to existing buildings for the purposes of control and security, continuity of operations and cost-effectiveness.
13. Warden Algarin's testimony established the following: The proposed expansion to the facility is the minimum that will meet the County's needs. If the proposed expansion is not constructed there will be economic detriment to the county, including in operational and manpower costs. The County has to house inmates that are assigned to it by the judicial system, and the expansion is necessary to alleviate the overcrowding which has developed at the facility.

14. Alberto Venettilli, P.E., engineer for the project, testified that the existing facility, which is constructed of several buildings connected via walkways and hallways, is nearly 730 feet wide including the covered walkways..

15. Mr. Venettilli testified that the proposed building, as expanded and connected via covered/enclosed walkways, will be approximately 1100 feet wide. In addition, the minimum distance between the new buildings, as connected with enclosed walkways, will be less than 45 feet at several spots. The Applicant is seeking variances from sections of the zoning code with which the existing facility is nonconforming.

16. Pursuant to Mr. Venettilli's testimony there will be buffers around the expanded facility. The existing dense woods will remain. 2 new detention basins will be constructed. The proposed new building will be approximately 350-400 feet away from the property line. Recreational areas for the inmates will be within the center of and surrounded by the new dormitory facility. Lighting for the new facility will be directed inward toward the new facility and not outward toward the property line.

17. Mr. Venettilli's testimony established the following: Other than the requested variances the proposed expanded facility will comply with all other zoning requirements. The expanded facility as designed requires the least variance necessary to alleviate the County's hardship.

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

The Applicant is asking this Zoning Board to issue a dimensional variance for the construction of an expansion to the existing Montgomery County Correctional Facility. The expansion is designed to house 512 DUI and Work Release inmates in a minimum-security

building connected by enclosed walkway to a new administration building which will be connected by enclosed walkway to the existing facility.

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.

The dimensional variances requested by the Applicant are from Section 143-211(G)(2), which provides for a four hundred feet maximum horizontal building dimension, and from Section 143-211.K(1), which provides for a minimum distance between buildings of forty-five feet.

The proposed expanded facility will exceed the maximum horizontal building dimensions and the extension will infringe upon the forty-five feet (45') buffer between structures in several places. As testified to by Montgomery County Correctional Facility Warden Algarin and project engineer Mr. Vennettilli, such dimensions are a necessity in order to operate a safe, accessible, and effective correctional facility. Many walkways, corridors, and entrances must be secured and/or enclosed. As a result, structures exceeding the maximum horizontal building length and minimum distance sections are necessary, and in the operation of a correctional facility are also

the most efficient design for maximizing the use of correctional facility manpower, operational costs, and allocation of housing for inmates.

At the root of the design characteristics is the requirement that the expansion be as safe and secure as possible for the protection of the facilities inmates, staff, correctional officers, and the community at large. The unique necessities of design inherent in the construction of a secure correctional facility require the deviation from some ordinance requirements.

Warden Algarin and Mr. Vennettilli testified, in pertinent part, that the overcrowding of the existing prison facilities is a hardship created by law. As such, the hardship is not self-inflicted or created by the Applicant. The Applicant must accept any prisoners allocated by Pennsylvania courts. The Applicant has no ability to decline, refuse, or otherwise alleviate institutional constraints created by prisoners being assigned to the facility.

The Applicant has no recourse to alleviate the overcrowding of the facility other than the construction of the proposed DUI/Work Release facility. By moving inmates out of the main facility and into the expansion, the Applicant may exercise greater flexibility in maintaining a controlled, safe environment in the main facility while also allocating non-violent offenders to the expansion where they will be able to be housed among similarly situated inmates.

The project engineer, Mr. Vennettilli, testified to the inclusion in the design of certain characteristics that will reduce externally emitted lighting and sound by focusing lights into the facility rather than projecting out. The design of the extension would also focus sounds and voices towards the center of the facility rather than projecting out. By employing such design characteristics, the Applicant will minimize the impact of the extension on the surrounding properties and neighborhood.

With respect to the impact on the surrounding neighborhood and community, while a dense forest abuts the property and the proposed extension is compliant with all setback standards, a neighbor testified that during winter months the lack of foliage makes it possible for light to reach surrounding properties and the structures to be visible through the trees. It was suggested by the Board that an additional screen of evergreen trees may help to buffer the extension and existing buildings from the surrounding neighborhood, and the Applicant agreed to make a good faith effort to incorporate the suggestion. In all other respects, however, the facility has co-existed with the surrounding neighborhood and community without incident or complaint. The proposed addition incorporates such measures as to insure that the Applicant will continue to operate with minimal light and noise intrusion upon adjacent properties.

Based on the testimony presented, the Board is persuaded that the Applicant has sought the most minimal variance that will accomplish its needs; that the expansion will remedy the lack of adequate housing sufficient to house the inmates assigned to the facility which has led to overcrowding and potentially hazardous conditions for the inmates and the staff of the facility; that the removal of non-violent offenders to a minimum-security facility on-site will accomplish the Applicant's goals of reducing overcrowding, removing non-violent offenders from the general population of inmates and allowing the facility to more efficiently administer the Work Release program operating out of the facility; and that the proposed expansion design and suggested tree screens will offer the greatest degree of buffering between the facility and the adjacent neighborhood.

The Applicant has demonstrated, and the Board finds and concludes, that the Applicant will suffer unnecessary hardship including economic detriment if the variances are not granted; that the unnecessary hardship is due to 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 variances 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 variances are the minimum that will afford relief and will represent the least modification possible of the applicable zoning code provisions.

**DECISION**

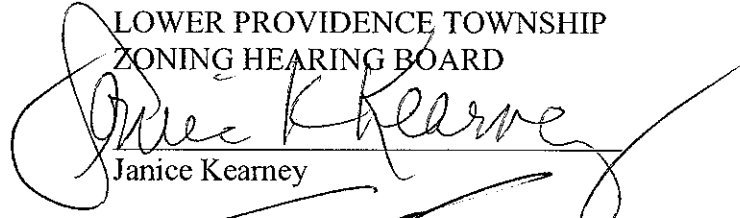
The following is the decision of the Lower Providence Township Zoning Hearing Board by a vote of 5-0:

The application for a variance from Sections 143-211(G)(2) and 143-211(K)(1) is granted. This variance is conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on April 24, 2008.

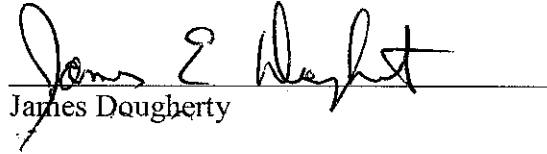
**ORDER**

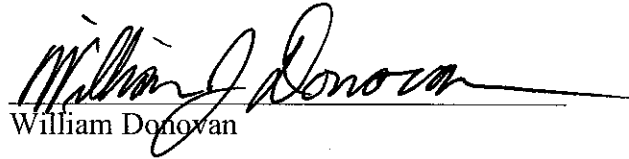
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
Janice Kearney

  
Eric Frey

  
James Dougherty

  
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.