

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-07	:	HEARING DATE: April 24, 2008
	:	
APPLICATION OF:	:	DECISION DATE: April 24, 2008
Robert and Karen Smith, h/w	:	
	:	DATE OF MAILING OF OPINION
PROPERTY:	:	AND DECISION: June 4, 2008
509 Sunnyside Avenue	:	
Norristown, PA 19403	:	

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

The Applicants, Robert and Karen Smith (hereinafter referred to as the "Applicants"), filed an application requesting a variance from front and side setback requirements in the zoning ordinance. 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.

FINDINGS OF FACT

1. The Applicants are Robert and Karen Smith, husband and wife.
2. The Applicants are the legal owners of the subject property.
3. The property is located at 509 Sunnyside Avenue, Norristown, PA 19403.
4. The Applicants were not represented by counsel.
5. The property is zoned R-2 Residential.
6. The lot size is approximately 25,639 square feet.
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 Applicant Robert Smith, who presented the application to the Board, the Applicants propose to build an addition to the front of their single family residence.

10. The proposed addition will be one story with dimensions of 12 feet by 24 feet.

11. One side of the existing house currently is nonconforming with regard to the 25 foot side setback requirement. This side of the house is 14 feet from the property line and therefore infringes on the side setback requirement by 11 feet. The proposed addition will be flush with this side of the house and extend 12 feet toward the front of the property. This will result in an extension of the existing nonconformity on this side of the house with regard to the 11 feet infringement of the side setback requirement for an additional twelve feet toward the front of the property.

12. The proposed addition in the front of the existing house will be 39 feet from the property line and therefore will infringe on the 50 feet front setback requirement by 11 feet.

13. The proposed addition will permit the enlargement of the existing bedroom at the front of the house and also will contain a bathroom and a closet.

14. The purpose of the proposed addition is to provide for future living comfort and handicap accessibility as the Applicants become older.

15. The property has many mature trees across the front, which will remain.

16. There is an existing concrete pad across the front of the house where the proposed addition will be located. A new patio will not be installed.

17. The proposed addition will not alter the essential character of the neighborhood in which the property is located.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant is asking this Zoning Board to issue a 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 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 Applicants are asking the Board to grant variances from front yard and side yard setbacks under Section 143-37 in order to construct a proposed twelve (12) by twenty-four (24) feet addition in the front of the existing house.

The existing house is a non-conforming structure infringing upon the twenty-five (25) feet side setback by eleven (11) feet. The proposed addition will continue this dimensional non-conformity by extending the house toward the front an additional twelve (12) feet. The proposed addition will also infringe upon the front setback, reducing the setback to thirty-nine (39) feet.

The requested variances from the setback requirements are necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the property, including the dimensions of the lot. The variances are necessary to provide additional living space and comfort and handicap accessibility for the Applicants which will allow the

Applicants to navigate the living space as they grow older and more infirm, i.e, to allow reasonable use of the property. The Applicants did not create the unnecessary hardship.

The existing structure is non-conforming, and due to the unique dimensions of the lot and the construction of the house and the existing conforming setbacks on the Sixth Street side and rear of the house, this is the most minimal manner of expanding the house. Therefore the requested variance represents the minimum variance that will afford relief and represents the least modification possible of the applicable provisions of the zoning ordinance.

The proposed addition will merely extend the non-conforming side of the house towards Sunnyside Avenue flush with the current non-conforming side, while the front setback reduction is not so severe as to preclude a variance. The addition will mirror the existing façade and style of the house; therefore it conforms to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties.

The Board finds and concludes that based on the testimony presented by the Applicant the standards for granting a dimensional variance have been met and the requested dimensional variance should be granted.

DECISION

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

The application for a variance from the side and front setback requirements of Section 143-37 is granted.

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 or the decision granting approval.