

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-08 : HEARING DATE: April 24, 2008
: :
APPLICATION OF: : DECISION DATE: April 24, 2008
James Dickson : :
: : DATE OF MAILING OF OPINION
PROPERTY: : AND DECISION: June 4, 2008
3605 Worthington Road :
Collegeville, PA 19426 :

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

The Applicant, James Dickson (hereinafter referred to as the “Applicant”), filed an application requesting a variance from 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 Applicant is James Dickson.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 3605 Worthington Road, Collegeville, PA 19426.
4. The Applicant was not represented by legal counsel.
5. The property is zoned R-2 Residential.
6. The lot size is approximately 18,663 square feet.
7. The Applicant proposes to construct a two-story addition to the existing single family house.

8. The existing structure apparently conforms to applicable zoning requirements.

The Applicant testified that the proposed addition would include a four car garage (two abreast, two deep) and would also add a master bedroom suite with bath and additional bedroom above the garage.

9. According to testimony by the Applicant, the dimensional footprint of the proposed addition would be 26 feet by 40 feet (although the architect's drawing submitted with the application specifies dimensions of 26 feet by 44 feet). The wall of the addition facing the neighboring property would be all siding. The roof on the proposed addition would be six to 12 inches taller than the roof on the existing structure.

10. The existing structure is currently situated with the side on which the addition is proposed to be located facing the back of 591 Barrington Road. The Applicant's property is situated uphill from 591 Barrington Road.

11. The owner of 591 Barrington Road, Dean Allebach, expressed concerns that the proposed addition, which would expand the existing structure's side from twenty-four feet to forty (or forty-four) feet, would negatively impact his property value by placing a large, white sided vinyl two-story wall-like structure directly behind his house and in his line of view. His property is downhill from the Applicant. The addition would be a large, continuous wall-like structure on one side which would run contrary to the character of the neighborhood.

12. Michael Siegel, the Director of the Lower Providence Township Community Development expressed concerns that the impervious coverage in relation to the downhill slope towards 591 Barrington Road could have a negative impact on drainage and water runoff. Mr. Siegel recommended that a drywell system be implemented that would funnel all downspout runoff safely away from 591 Barrington Road. He also stated that a buffer of spruce trees along

the property line between the Applicant and 591 Barrington Road would be beneficial and reduce the aesthetic impact of the proposed addition.

13. According to the Applicant's testimony, the primary purpose of the addition is to house all of his vehicles, and it also would provide additional living space.

14. Based on the plans submitted by the Applicant and the configuration of the lot, the square footage of the proposed two-story garage and bedroom addition could easily be accommodated on the property within the applicable building setback, pursuant to a different design and/or location.

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

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 Applicant is asking the Board to grant a variance from side setback requirements under Section 143-37 in order to construct a proposed two-story garage and bedroom addition to the existing house. The proposed addition would include a four car garage with a master

bedroom suite and additional bedroom on the second floor. The primary purpose of the proposed addition would be to house the Applicant's vehicles, and it would also provide additional living space.

The proposed addition would infringe on the 20 foot side setback requirement by 10 feet, with the long side of the proposed addition located 10 feet from the property line. The proposed addition would create a continuous two-story structure of at least forty feet in length which would be located 10 feet from the property line. The neighboring property which the proposed addition would face is downhill from the subject property. The two-story wall-like side of the proposed addition would face the back of the neighboring property. The owner of the neighboring property testified as to his concerns about the negative aesthetic impact of the proposed addition, including its continuous, vinyl sided wall directly facing his property only 10 feet from the property line, and its potential negative impact on his property value.

The Applicant did not present any evidence of unnecessary hardship which would prevent reasonable use of the property unless the requested variance is granted. The Applicant did not present any evidence demonstrating particular or unique circumstances or characteristics of the property which make the proposed addition as designed necessary to accomplish the purpose or needs of the Applicant or enable reasonable use of the property.

In addition, the application does not represent the minimum variance necessary to afford relief. According to the plans submitted by the Applicant and the configuration of the lot, the square footage of the proposed addition could be accommodated on the property within the applicable setback requirements if a different design were used.

A variance should be cautiously granted and only if sufficient evidence is offered to justify a deviation from the zoning code. In this instance, Applicant has failed to present sufficient evidence to justify a variance.

There is considerable room available at the rear of the house for an addition; therefore, the Applicant cannot demonstrate the necessity for a variance based on the particular physical conditions or circumstances of the property. Nor can the Applicant demonstrate that he is unable to develop the property in strict conformity to the zoning code. There are also concerns as to water runoff and the impact of building such a significant addition so close to the property line of a downward sloping property adjacent to the Applicant. Finally, the Applicant's presentation was devoid of any testimony related to hardship or any other compelling justification for allowing such a significant infringement into the side yard setback.

The Board finds and concludes that the Applicant has failed to sustain his burden for justifying a variance from the applicable provisions of the zoning code.

DECISION

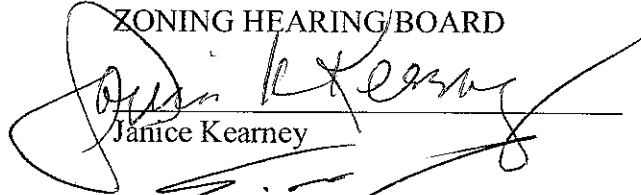
The decision of the Lower Providence Township Zoning Hearing Board, by a vote of 5-0, is as follows:


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

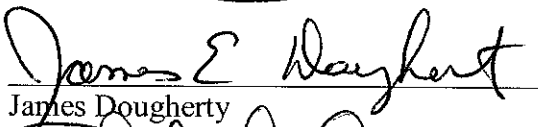
ORDER

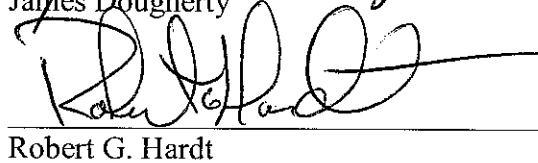
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

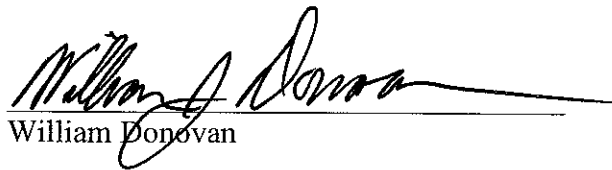
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


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.