

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-10	:	HEARING DATE: June 26, 2008
	:	
APPLICATION OF:	:	
Lower Providence Presbyterian	:	
Church	:	DATE OF MAILING OF OPINION
	:	AND DECISION: August 8, 2008
PROPERTY:	:	
3050 Ridge Pike	:	
Eagleville, PA 19403	:	

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

The applicant, Lower Providence Presbyterian Church, (hereinafter referred to as the “Applicant”), filed an application requesting an interpretation of the zoning ordinance, a special exception under Section 143-27(A)(7), and/or a variance from Sections 143-149 and 143-37 in connection with a proposed addition to the existing church building and expansion of the parking area on the property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on June 26, 2008 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, the Director of Community Development/Zoning Officer, and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Lower Providence Presbyterian Church.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 3050 Ridge Pike, Eagleville, PA 19403.
4. The applicable zoning is R-2, Residential District.
5. The Applicant was represented by John A. Rule, 3770 Ridge Pike, Collegeville, PA 19426.

6. The lot size is approximately 9 acres.

7. Approximately ten audience members (residents) indicated they were in favor of the project.

8. There were no residents who testified against the project.

9. As shown on Exhibit A-1, an existing site plan prepared by Applicant's engineer Site Engineering Concepts, LLC, the existing main church building on the property has certain nonconformities, as follows: the building is approximately 25-26 feet from the right of way line in the front and thus encroaches into the required front yard setback; parking for the building in the front is out to the right of way line; parking for the main church building between two contiguous properties owned by the church is too close to the property line between the properties; and another parking area for the church is too close to First Street.

10. As shown on Exhibit A-2, a plan prepared by the Applicant's engineer, the Applicant proposes to build a new lobby/narthex addition on one side of the front of the main church building with corresponding sidewalk improvements. This addition would be located in a portion of the existing parking area for the main church building.

11. The new addition, which would be on the side of the front of the existing main church building, would encroach into the required front yard setback along with the front of the existing main church building, but would be approximately one foot farther from the right of way than the front of the existing main church building and thus would represent less of an encroachment than that of the existing building.

12. As shown on Exhibit A-3, another plan by the Applicant's engineer, the Applicant proposes to demolish and remove an existing building on the church property (the sexton's house) and extend and reconfigure the parking over that area.

13. The proposed parking area would reduce total impervious coverage, increase the number of spaces and would be farther back from the right of way in the front of the property and decrease the existing non-conformity. A certain portion of the parking area would continue to be too close to the property line between two contiguous parcels owned by the Applicant, a certain portion of the extended parking area would be too close to that property line, and a certain portion of the extended parking area would extend slightly over that line into an area which is currently gravel.

14. The main church building and the existing parking pre-date the zoning ordinance.

15. The Applicant has operated a church at the property since the eighteenth century, and the sanctuary dates back to the Civil War.

16. The property is used for 2 Sunday services and other religious uses and services. In addition, many community organizations use the church premises and main building, including, for example, the Boy Scouts, Girl Scouts, Cub Scouts, Brownies, Daisies, Weightwatchers, Red Cross blood drive, a mission group, and the Sons of America.

17. There have been no improvements to the property since 1950. The goal of the project is to modernize the church building and parking lot, including access to the building, to make the building and the property safer and more accommodating for the church members and other users including the elderly, including creating more accommodating stairwells for elderly members and users of the church.

18. The proposed addition is designed to and would help direct people into the parking area.

19. The proposed addition is designed to and would provide a drop off place and a grand staircase to get into the narthex and the sanctuary.

20. The proposed sidewalks are designed to and would improve protection for pedestrians.

21. The purpose of the proposed addition is to make the building and property safer and more efficient for vehicles and pedestrians.

22. The Applicant would continue to use a traffic officer for ingress and egress in the front of the property during peak use times, and the resulting increased efficiency of use of the front entrance/exit would likely lead to reduced use of the rear exit into First Street where residences are located.

23. A possible buffer for the lower part of the parking lot to block the effect of lights on residences on First Street is being discussed and/or considered.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant is the property owner and has standing to appear before the Board.
2. The Applicant's ownership and use of the property and the main church building which is the subject of the proposed addition predate the zoning ordinance.
3. Because of the unique physical characteristics of the property and the location of the main church building and existing parking area on the property, it would be impossible to construct any addition to the front of the church building or construct an extended/reconfigured parking area that would comply with the setback requirements of the zoning ordinance.
4. The proposed addition to the church building and the proposed reconfigured parking area is necessary to make the building and the parking area safe and accessible for members and users of the church consistent with modern standards.
5. The front of the proposed addition will be farther away from the right of way and therefore will not increase the level of nonconformity.

6. The proposed parking area will constitute less of an encroachment upon the front setback than the existing parking area, and any encroachment upon the side yard setback would relate only to the property line between the contiguous parcels owned by the Applicant. Therefore there will be no increase in the level of any nonconformity with regard to the proposed parking area.

7. Denial of the requested variances for the property will impose an unnecessary hardship upon the Applicant by preventing it from making the building and the parking area safe and accessible for members and users of the church consistent with modern standards.

8. The hardship is not self imposed but results from the unique physical characteristics of the property and the location and physical characteristics of the main church building which predated the zoning ordinance.

9. The grant of the requested variances will not alter the essential character of the neighborhood or the zoning district in which it is located, will not substantially impair the appropriate use of adjacent properties and will not be detrimental to the public welfare. In addition, the requested variances represent the minimum variances that will afford relief.

10. The longstanding uses of the church building and property by church members and other community users constitute a benefit to the community and otherwise meet the criteria for approval as permitted uses under the zoning ordinance as a special exception.

The Applicant seeks approval by the Board of existing, longstanding church and community uses of the property as permitted uses by special exception under Section 143-27(A)(7). Such uses constitute a benefit to the community. The allowance of the special exception will not be contrary to the public interest, and is otherwise consistent with the criteria for a special exception including the criteria referenced in Sections 143-167 and 143-168.

The Applicant seeks variances as to the front set-back requirements in connection with the proposed addition to the front of the main church building and as to the side-yard setback requirements for the proposed parking area extension and reconfiguration.

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 case law 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 has demonstrated, and the Board finds and concludes, that the Applicant will suffer unnecessary hardship if the variances are not granted; that the unnecessary hardship is due to the 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.

With respect to a property used for lawful purposes prior to enactment of the zoning ordinances, a municipality is “without power to compel a change in the nature of the use, or prevent the owner from making such necessary additions to the existing structure as were needed to provide for its natural expansion * * * so long as such additions would not be detrimental to the public welfare, safety and health.” In re Yocum, 393 Pa. 148, 152-54, 141 A.2d 601, 604-05 (1958) (quoting Re Gilfillan’s Permit, 291 Pa. 358, 362, 140 A.136, 138) (wherein Yocum court approved extension of building predating zoning ordinance whose juxtaposition on land rendered it nonconforming). See also In re Grubb’s Appeal, 395 Pa. 619, 622-23, 151 A.2d 599, 601 (1959) (quoting Peirce Appeal, 384 Pa. 100, 105, 119 A.2d 506, 509) (“a nonconforming use may be extended in scope, as the business increases in magnitude, over ground occupied by the owner for the business at the time of the enactment of the zoning ordinance”; affirming expansion of building which was presently nonconforming as to both side-yard and front setback requirements due to unique and undue hardship to property unless such use permitted).

Due to the unique physical circumstances and characteristics of the property and the main church building predating the enactment of the zoning ordinance, Applicant would suffer unnecessary hardship if it were not permitted to modernize the building and the corresponding parking area to ensure and accommodate the safety, convenience and efficiency of the use of the property by the church members and other community users of the property. The variances requested for the front setback and the side yard requirements represent the minimum that will afford relief, and such variances will not be detrimental or contrary to the public interest or alter or impair the character of the surrounding neighborhood. Accordingly, the Board will grant the requested variances.

DECISION

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

1. The Applicant's longstanding and continuing religious and other community uses of the church property are approved as permitted uses by special exception under Section 143-27(A)(7).
2. The variance from Sections 143-37(A)(2) and 143-149 with respect to front set-back requirements regarding the proposed addition to the main church building is granted.
3. The variance from Sections 143-37 and 143-149 with respect to any side-yard (or other) set-back requirements applicable to the proposed extension and reconfiguration of the parking area 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.