

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-13 : HEARING DATE: August 28, 2008
: :
APPLICATION OF: : DATE OF MAILING OF OPINION AND
CHRISTOPHER MONAGHAN : DECISION: October 9, 2008
: :
PROPERTY: :
700 Grandview Road :
Parcel No. 43-0005677004 :

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

The Applicant, Mr. Christopher Monaghan (hereinafter referred to as the "Applicant") filed an application requesting an extension of non-conforming structure under Section 143-149 and variance from that Section's requirement that the structure alteration or extension conform with dimensional criteria for R-2 Zone, and, in the alternative, variance from the front, side, rear yard setback requirements, minimum lot size requirements and accessory building yard requirements under Section 143-37(A)(2) in order to rebuild a 1,000 square feet single family dwelling. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on August 28, 2008 at the Lower Providence Township Building. Four of the five members of the Zoning Hearing Board were present as well as the Solicitor, the Director of Community Development, and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Mr. Christopher Monaghan.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 700 Grandview Road. The Parcel No. is 43-000-5677004.

4. The Applicant was represented by attorney Joseph McGrory, Esquire.
5. The property is zoned "R-2" Residential District.
6. The Applicant currently has a single family detached dwelling with a square footage and a footprint of 780 square feet.
7. The Applicant wishes to demolish the current residence.
8. The Applicant wishes to build a new single-family dwelling with a footprint of 1000 square feet. The new proposed single-family dwelling would be two stories which is compared to his single-family dwelling which is one story. The new single-family dwelling would encroach less into the setback areas than the existing structure and be more conforming, would be more aesthetically pleasing than the existing structure and would add value to the neighborhood.
9. There were several residents who all testified in favor of the new single family dwelling. No residents testified against the project.
10. Mr. Monaghan lives in the house with his fiancé and two small children and needs to enlarge the house to give his son and daughter separate bedrooms to live in.
11. The rear yard has water drainage problems which cannot be totally corrected.
12. The new single-family dwelling is being moved towards the front to avoid the water damage and mold that it created in the former residence and will create in any remodeling.
13. The current house was built in 1939 prior to the Zoning Ordinance being adopted.
14. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the subject property.
15. The Applicant is seeking the minimal relief necessary.

16. The current parcel is a unique small undersized flag lot which is only 7417 square feet.
17. The Applicant also entered into evidence the site plan prepared by Barry Isett & Associates, Inc.
18. The existing house currently does not meet any of the setback requirements.
19. The site plan showed that after the new single family home is built there will be a 4 foot front yard, 20 foot side yard and a 21 foot rear yard.
20. The new accessory building will have a four foot front yard, a seven foot side yard and 21 foot rear yard.
21. A plan also was offered into evidence which showed the layout of the new single family dwelling.
22. As Mr. Monaghan testified, the nonconforming lot and/or physical characteristics of the lot are causing a hardship.
23. The proposed extension of the structure on the nonconforming lot will not alter the essential character of the neighborhood in which the property is located.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board.
2. Denial of the requested relief will impose an unnecessary hardship upon the Applicant.
3. The hardship is not self imposed, and is due to the unique physical circumstances of the property.
4. The approval of the requested relief is necessary to enable the reasonable use of the property.

5. The grant of the requested extension of the nonconforming existing building 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 relief sought by the applicants is the minimum that will afford relief from the hardship.

The Applicant is asking for an expansion of a single family home located on non-conforming lot. Section 143-6 of the Lower Providence Zoning Ordinance defines a non-conforming lot as follows: "Any lawful lot which does not conform to one or more of the applicable dimensional regulations of the zoning district in which it is located either on the effective date of Part 1 [footnote omitted] or as a result of a subsequent amendment thereto."

The current single home structure was built in 1939 on this undersized lot prior to the Zoning Ordinance being passed. It is clearly a lawful use on an undersized non-conforming lot.

This undersized lot also has water-drainage problems in the rear of the lot causing the applicant to move the proposed new structure forward on the lot. Even installing a drain at the rear of the parcel has not completely relieved the water drainage problems with respect to the existing structure. Moving the proposed new structure forward requires relief due to non-compliance with set back requirements.

The Applicant's request is for relief from requirements of the Zoning Ordinance of a dimensional nature, not for relief as to use requirements or limitations. 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.

This application meets the criteria necessary to grant a variance. The lot is an irregular undersized lot with water drainage problems in the rear. Due to the size of the lot and the water drainage problems the Applicant must move the structure toward the front of the lot to avoid the water drainage problems. Additionally, since this is an undersized non-conforming lot with a water drainage problem, there is no way that the Applicant could build the new structure to conform to the current setbacks or keep the lot in the same footprint and be faced with the same water drainage problems. More importantly the homeowner in accordance with Section 143-149 is expanding the footprint by the amount allowed by the ordinance of 25%. If it is slightly over the 25% the amount over is de minimis. Further this variance represents the minimum amount of relief needed to be able to build the structure to meet the homeowner's family needs and also to avoid the water drainage problems. Every neighbor who appeared at the hearing (and there were approximately 10 neighbors there) supported the application and stated that the new home addition would enhance the character of the neighborhood and they strongly supported the Board issuing the variance.

The Board finds and concludes that based on the testimony and evidence presented at the hearing the standards for the requested relief have been met and the requested variance from Section 143-149 and from the front, side, rear yard setback requirements, minimum lot size

requirements and accessory building yard requirements under Section 143-37(A)(2) should be granted.

DECISION OF THE BOARD

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

The Board hereby grants the relief requested in Application Z-08-13 of homeowner Christopher B. Monaghan for his property on 700 Grandview Road, Lower Providence Township, specifically including the requested variances from the front, side, rear yard setback requirements, minimum lot size requirements and accessory building yard requirements under Section 143-37(A)(2) and the requested variance from Section 143-149 relating to the extension of the nonconforming structure.

Dated: October 9, 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



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.