

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-14 : HEARING DATE: September 25, 2008 and  
: October 23, 2008  
: :  
APPLICATION OF: : DATE OF MAILING OF OPINION AND  
ERIK BARNSHAW : DECISION: November 6, 2008  
: :  
PROPERTY: :  
68 Featherbed Lane :  
Audubon, PA 19403 :  
Parcel No. 43-0010966007 :

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

Applicant Mr. Erik Barnshaw (hereinafter referred to as the "Applicant") filed an application requesting a variance from the side yard setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with a proposal to build a two-story garage to be attached to a renovated deck attached to his existing single family residential dwelling. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on September 25, 2008 at the Lower Providence Township Building. All of the members of the Zoning Hearing Board were present as well as the Solicitor, the Director of Community Development, and the Court Reporter. The hearing was continued until the October 23, 2008 public meeting of the Board, at which time all of the members of the Board except Mr. Jim Dougherty were present as well as the Solicitor, the Director of Community Development and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is Mr. Erik Barnshaw.
2. The Applicant is the legal owner of the subject property.

3. The property is located at 68 Featherbed Lane, Audubon, PA 19403. The Parcel No. is 43-0010966007.
4. The Applicant was not represented by legal counsel.
5. The property is zoned "R-2" Residential District.
6. The property currently contains a single family detached dwelling with a building area of 1345 square feet, along with a deck that has a cinderblock foundation and a storage area.
7. The Applicant wishes to build a new two story garage addition totaling 1,861 square feet and a 507 square feet renovated deck attached to the existing house. The renovated deck would be in between the house and the garage.
8. The Applicant would like to build the garage to provide storage for his cars and lawn equipment. The second story of the garage would be used for storage and would not have a kitchen or bathroom.
9. According to the architect's plan submitted with the application and testimony of the Applicant's contractor, Mike Gradwell, the proposed new three-car garage would extend eight feet and two and fifteen sixteenths inches into the side yard setback area.
10. There were several residents who testified in favor of the project.
11. A neighbor, the resident of 70 Featherbed Lane, testified in opposition to the project. He believed that the Applicant should not build into the setback area.
12. Mr. Gradwell, the contractor, originally proposed a garage design that was within the applicable setbacks for the property, but it was a boxier design and the Applicant rejected that design.

13. Mr. Gradwell, the contractor, testified that they had tried to design the garage different ways, but the other designs were less attractive.
14. The Applicant testified that moving the deck to the other side of the house and putting the garage where the deck is currently located would cut off the light to his kitchen, bathroom and two upstairs bedrooms.
15. If the Applicant were to make the deck a walkway, put the deck behind the house and move the garage over, that would require cutting down trees in the yard which the Applicant does not want to do.
16. The square footage of the building area of the proposed new garage exceeds the square footage of the building area of the existing single family residence on the property.
17. According to the architect's plans submitted with the application, the long wall of the proposed new garage, which is on the side of the garage that would extend into the setback area, would be 45 feet long.
18. The Applicant was willing to reduce the size of the deck which would reduce but not eliminate the extension of the proposed new garage into the setback area.
19. Mr. Gradwell, the contractor, testified that because of the hill in the rear area it was not feasible to build the proposed new garage in the rear yard, and there are flood plain problems on the lower part of the lot.
20. A new two-story garage could be built without extending into the setback area by utilizing a different design.

#### **DISCUSSION/CONCLUSIONS OF LAW**

1. The Applicant has standing to appear before the Board.

2. Denial of the requested relief will not impose an unnecessary hardship upon the Applicant.
3. Any claimed hardship is not due to the unique physical circumstances of the property.
4. Approval of the requested relief is not necessary to enable the reasonable use of the property.
5. The application does not seek the minimum relief necessary.

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 that is 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.

This application does not meet the criteria necessary to grant a variance.

The Applicant is asking the Board to grant a variance from side setback requirements under Section 143-37 in order to construct a proposed new two-story garage addition adjacent to a renovated deck to be attached to the existing house. The proposed garage addition would

include a three-car garage and storage space on the second floor. The primary purpose of the proposed garage would be to house the Applicant's vehicles, and it would also provide storage space.

The proposed addition would infringe on the 20 feet side setback requirement by approximately eight and one-quarter feet. The long side of the proposed addition, approximately forty-five feet in length, would be located approximately eleven and three-quarters feet from the property line. The owner of the neighboring property opposed the encroachment of the proposed new garage into the setback area adjacent to his property. In addition, the building area of the proposed new garage is greater than the building area of the existing house.

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, the configuration of the lot and the testimony of the Applicant's contractor the proposed new garage could be accommodated on the property within the applicable setback requirements if a different design were to be used. Such alternative design, however, was considered to be not as attractive. Also, the proposed renovated deck could be moved to a different location which would enable the proposed garage to be located within the applicable setback requirements.

Finally, the Applicant's presentation was devoid of testimony demonstrating a 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 OF THE BOARD**

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

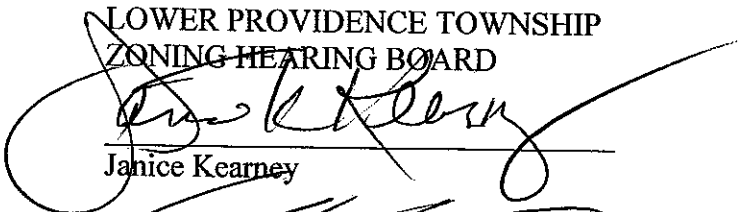
The application for a variance from the side setback requirements of Section 143-37 is denied.

Dated: November 6, 2008

**ORDER**

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

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

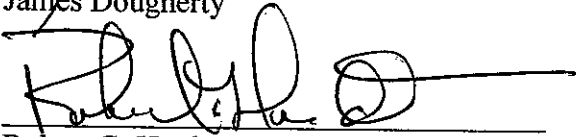


Janice Kearney



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.

