

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-15 : HEARING DATE: September 25, 2008
: :
APPLICATION OF: :
John S. Mengucci :
: :
DATE OF MAILING OF OPINION
PROPERTY: : AND DECISION: November 7, 2008
1904 Black Hawk Circle :
Audubon, PA 19403 :
Parcel No. 43-0001465229 :

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

Applicant John S. Mengucci filed an application requesting a variance from Section 143-19(C) of the Lower Providence Township Zoning Ordinance with regard to side yard setback requirements relating to construction of a pool house on his residential property. 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 members of the Zoning Hearing Board were present as well as the Zoning Hearing Board's Solicitor, the Director of Community Development, and the Court Reporter.

FINDINGS OF FACT

1. Applicant John S. Mengucci shall be referred to as the "Applicant."
2. The Applicant is the legal owner of the subject property.
3. The property is located at 1904 Black Hawk Circle, Audubon, PA 19403
4. The Parcel Number of the property is 43-0001465229.
5. The Applicant was represented by Thomas E. Carluccio, Esquire, Plymouth Greene Office Campus, 1000 Germantown Pike, Plymouth Meeting, PA 19462.
6. The property is zoned R-1 Residential District and OSR Open Space Residential Overlay District.
7. The lot size is approximately 16,293 square feet.

8. The Applicant resides at the property in a single family detached dwelling.
9. The Applicant wishes to construct a pool house in the rear yard of the property next to the swimming pool.
10. The proposed pool house will be one story and total 622 square feet in building area. It will have the same external features, roof characteristics, construction materials and colors as the existing primary structure, the residence.
11. There is a 10% slope on the property.
12. The only side of the back yard on which the pool house can be constructed is on the east side, which is the only usable side of the rear yard due to the topography of the property. There is a steep slope on the opposite side of the pool.
13. If the pool house is constructed on the east side of the back yard adjacent to the pool, as shown on the drawings submitted with the application, the pool house will sit flush with the pool deck and keep the original gentle grade of the property to the back property line.
14. The pool house is being built to provide necessary storage, bathroom and other necessities for pool activities.
15. The only layout that is compatible for the site is the proposed project as shown in the drawings submitted with the application.
16. The proposed pool house would encroach into the applicable side yard setback area by five feet at the northern end of the pool house and would encroach into the applicable side yard setback area by three feet at the southern end of the pool house.
17. There was no public comment regarding the project at the hearing.
18. The unique physical characteristics of the lot, including the topography in the rear yard, are causing a hardship.

19. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the subject property.

20. The Applicant is seeking the minimal relief necessary.

21. The proposed pool house will not alter the essential character of the neighborhood in which the property is located, nor will it impair the appropriate use or development of the neighboring properties.

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 including the topography of the rear yard.

4. The approval of the requested relief is necessary to enable the reasonable use of the property.

5. The grant of the requested variance from the side yard setback requirements on the east side of the rear yard 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.

6. The relief sought by the Applicant is the minimum that will afford relief from the hardship.

The Applicant is asking this Zoning Board to grant a variance from the applicable side yard setback requirements for one side of the rear yard of the subject property. This 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 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 requested variance is from the setback requirements set forth in Section 143-19(C) of the Lower Providence Township Zoning Ordinance. Pursuant to that section the accessory structure must comply with the setback requirements of the applicable zoning district. The applicable side yard setback requirement for OSR single-family detached dwellings under Section 143-44 of the Zoning Ordinance is 15 feet.

The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the property, including the topography of the lot. The variance is necessary to permit construction of a pool house to provide necessary storage, bathroom and other necessities for pool activities, and to enable reasonable use of the property.

This is not a self-created hardship. Instead, it results from the unique physical characteristics of the subject property. The only side of the back yard on which the pool house

can be constructed is on the east side, which is the only usable side of the rear yard due to the topography of the property. There is a steep slope on the opposite side of the pool. If the pool house is constructed on the east side of the back yard adjacent to the pool it will sit flush with the pool deck and keep the original gentle grade of the property to the back property line.

The grant of the requested variance will not alter the essential character of the neighborhood in which the property is located, nor will it impair the appropriate use or development of the neighboring properties. The pool house will have the same external features, roof characteristics, construction materials and colors as the existing primary structure, the residence. There was no public opposition to the project at the hearing.

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 only layout that is compatible for the site is the proposed project. The proposed pool house would encroach into the applicable side yard setback area by five feet at one end and by three feet at the other end.

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 143-19(C) should be granted.

DECISION

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

The application of John S. Mengucci for relief in Appeal No. Z-08-15, specifically including a variance from Section 143-19(C), is granted.

Dated: November 7, 2008



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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.

