ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-17	:	HEARING DATE: October 23, 2008
	:	
APPLICATION OF:	:	
R. Fred Cutaiar/R.F. Cutaiar	:	
Builder, Inc. and John and Kathleen	:	
Hockenbrock	:	
	:	DATE OF MAILING OF OPINION
PROPERTY:	:	AND DECISION: December 5, 2008
2812 Second Street	:	
Eagleville, PA 19403	:	

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

Applicants R. F. Cutaiar/R.F Cutaiar Builder, Inc. and John and Kathleen Hockenbrock filed an application requesting an extension of nonconforming use under Section 143-149 of the zoning ordinance and variance from rear, side and front lot setback requirements under Section 143-37 of the zoning ordinance with regard to proposed construction of an addition to an existing single family residence. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on October 23, 2008 at the Lower Providence Township Building. Four of the five 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. The application refers to Fred Cutaiar/R.F Cutaiar Builder, Inc. as applicant on the first page, and is signed by and John and Kathleen Hockenbrock as applicants. In a notarized statement Mr. and Mrs. Hockenbrock state that they authorized R. Fred Cutaiar of R.F Cutaiar Builder, Inc to represent them at the zoning hearing on the application.

2. Mr. and Mrs. Hockenbrock are the legal owners of the subject property.

3. The property is located at 2812 Second Street, Eagleville, PA 19403, and the parcel number is 430012766007.

4. The applicants were not represented by counsel. Mr. Cutaiar was present at the hearing to present the application.

5. The property is zoned R-2 Residential District.

6. The lot size is approximately 7,790 square feet, and it is a corner lot.

7. There was one resident, next door neighbor Mr. Patrick Mandracchia, who testified in favor of the project. He believed the proposed addition would beautify the Hockenbrock residence and the neighborhood.

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

9. According to testimony by Mr. Cutaiar, the applicants propose to build an addition to the rear portion of their single family residence. The house currently has a shed on the back of the kitchen which will be demolished.

10. The proposed addition will be an 18 feet by 24 feet single story family room.

11. The existing house foundation square footage is 944 square feet. The area of the proposed addition is 432 square feet.

12. Based on the site plan presented at the hearing, the existing house is nonconforming with regard to side yard setback requirements. On the side facing South Midland Street, there is a setback of 10 feet. On the other side of the dwelling, the setback is primarily 10 feet, except for a small portion of the dwelling near the rear of that side of the house which extends further into the setback area. The shed on the rear of the residence extends 8 feet 7 inches from the rear wall of the residence into the rear yard but does not extend as far as the sides of the house.

13. Based on the site plan the proposed addition will extend 24 feet from the existing rear wall of the residence and will be 18 feet wide, with a 6 feet by 8 feet porch at the rear. The proposed addition will not extend as far as the sides of the existing dwelling. The proposed addition would represent an expansion of the footprint of the existing house which is greater than 25%.

14. On both sides, the existing house currently is nonconforming with regard to the 20 feet side setback requirement.

15. The proposed addition will be 12 feet from the property line on the side of the property adjacent to South Midland Street and 18 feet from property line on the other side of the property. This encroachment on the side yard setback requirements is less than the encroachment of the existing dwelling on the setback requirements.

16. The proposed addition is necessary to provide additional living space.

17. A gravel parking space is also being added. The area where the addition will go is currently paved, so there will be less impervious coverage.

18. The front of the property faces the rear side of a shopping center on Ridge Pike.

19. The property is an undersized lot.

20. The addition will fit in with the other houses in the neighborhood.

21. Mr. Cutaiar will install silt fencing around the area while construction is underway if he thinks there will be a runoff.

22. No additional bathroom or kitchen will be added.

23. Based on the site plan it appears that the proposed addition will conform to the rear yard setback requirements. No changes are proposed to the front of the residence.

23 The nonconforming lot and/or current nonconformity of the existing building are causing a hardship.

24. The proposed addition will not alter the essential character of the neighborhood in which the property is located.

DISCUSSION/CONCLUSIONS OF LAW

1. The applicants have standing to appear before the Board.

2. Denial of the requested relief will impose an unnecessary hardship upon the applicants.

3. The hardship is not self imposed, and is due to the unique physical circumstances of the property and the nonconformity of the existing building.

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 applicants are asking this Zoning Board to approve an extension of a nonconforming single family home by an addition of more than 25% of the area of the existing home, where the existing home is nonconforming as to side setback requirements, and a variance from the side setback requirements with regard to the proposed addition to the rear of the existing residence. 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 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 proposed addition is necessary to provide additional living space. Without the requested relief from Section 143-149 and Section 143-37 as to the addition, there will be an unnecessary hardship. The hardship is due to the unique physical conditions of the lot and the nonconforming existing home and was not created by the applicants. Due to the unique physical circumstances the requested relief is necessary to enable the reasonable use of the property.

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 existing house is nonconforming as to side setback requirements on both sides, and the proposed addition will be less of an encroachment on the side setback requirements than the existing dwelling.

The addition will fit in with the other houses in the neighborhood and will be used for single family use. The proposed addition as permitted by the requested relief conforms to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties nor be detrimental to the public welfare. In addition, there was no opposition to the application for relief in connection with the proposed addition, and a next door neighbor testified in favor of the project.

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 Section 143-37 should be granted.

DECISION

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

The application for relief specifically including a variance from Section 143-149 as to the extension of the nonconforming single family home on the premises as a result of the proposed addition and a variance from Section 143-37 with regard to the proposed addition is granted and the project is approved (insofar as any relief from the Zoning Ordinance is requested) as proposed.

Dated: December 5, 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 of the decision granting approval.