

MILLER TURETSKY RULE & MCLENNAN

MARK D. TURETSKY
JOHNA. RULE
KEITH B. MCLENNAN*
SISA M. COLLETTI*
TROY E. LEITZEL

*ALSO MEMBER OF NEW JERSEY BAR

ATTORNEYS AT LAW
3770 RIDGE PIKE
COLLEGEVILLE, PENNSYLVANIA 19426
(610) 489-3300 OFFICE
(610) 489-1157 FACSIMILE
www.millerturetsky.com

JAMES H. FREEMAN
OF COUNSEL
JILL K. ANDERSON, J.D.

September 7, 2018

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7015 3010 0002 1910 8657**

Mr. and Mrs. Douglas White
709 Barrington Road
Collegeville, PA 19426

**RE: Douglas and Nancy White
Notice of Decision of the Lower Providence Township Zoning
Hearing Board
Application Z-18-11**

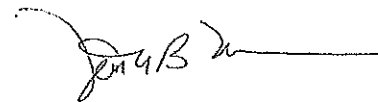
Dear Mr. and Mrs. White:

Enclosed please find a Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on July 26, 2018. Pursuant to the decision of the Zoning Hearing Board, your application for a variance from Section 143-37.A.(2) to provide for a 10 foot side yard setback is granted subject to the following conditions:

1. The garage not exceed twenty feet (20') wide by twenty-four feet (24') long (deep); and
2. No part of the garage to be installed will be used for or as living space.

Should you have any questions, please contact me. Best of luck with your project.

Very truly yours,



Keith B. McLennan

KBM/jds
Enclosure

pc: Kathie A. Eskie, Chairwoman
Gail Hager, Vice Chairwoman
Joseph Pucci
Patricia Alzamora
Geroge J. Ozorowski, Esquire

Robert G. Hardt
Jill Zimmerman, Esquire
Michael Mrozinski
(via e-mail with enclosure)

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-18-11 : HEARING DATE: July 26, 2018

APPLICATION OF:

Douglas and Nancy White

PROPERTY:

709 Barrington Road

Lower Providence Township

Collegeville, PA 19426

Parcel No. 43-00-01060-00-4

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

The applicants, Douglas and Nancy White (hereinafter "Applicants") filed an application requesting a variance from the setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance ("Ordinance") in connection with the side yard setback, in order to place a garage next to their house with a side yard setback of six (6) feet. The Ordinance requires a minimum side yard setback of twenty (20) feet. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 26, 2018 at the Lower Providence Township Building. The following members of the Board were present: Chairwoman, Kathie Eskie, Vice-Chairwoman, Gail Hager, members: Joseph Pucci, Patricia Alzamora George Ozorowski and Robert Hardt, alternate. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszaros, the Court Reporter and Keith B. McLennan, Esq., the Solicitor.

FINDINGS OF FACT

1. The Applicants are Douglas and Nancy White.

2. The Applicants are the owners of the subject property located at 709 Barrington Road, Collegeville PA 19426, parcel number 43-00-01060-00-4 (hereinafter the "Property").

3. The applicable zoning district is an R-2, residential district.

4. The Applicants testified in support of their Application but were not represented by legal counsel.

5. The Property is serviced by public water and sewer.

6. The lot size is 100 feet wide by approximately 226 feet deep with a lot size of 22,600 square feet.

7. The present use of the Property is residential.

8. The following exhibits were introduced:

A-1 Application;

A-2 Site Plan drawing dated June 1, 2018;

B-1 Advertisement;

B-2 Proof of Publication;

B-3 Notice to the neighbors.

9. Applicants wish to place a 2 car garage on gravel/stones next to their home on the Property for parking a vehicle and the storage of household items.

10. Applicants have an existing small utility shed on the Property approximately 150 square feet in size within the setback.

11. The proposed "garage" would be 20' by 28' and approximately 560 square feet in size and would be set back five (5) feet from the side property line.

12. The proposed garage cannot be placed within the setback area of the Property due to a portion of the property is wet and sinking due the presence of fill.

13. There is a large maple tree located where a garage would likely be placed.
14. Organic fill that was placed in the back yard by the developer has settled causing a swale and wetland type area precluding the installation of a garage further back on the lot.
15. The lot is such that it is impossible to install a two (2) car garage at the end of the existing driveway next to the house and comply with the Ordinance side yard setback requirements.
16. Applicants amended their Application to provide for a ten foot (10') side yard setback and a garage twenty feet (20') wide by twenty-four feet (24') long (deep).
17. The application for a variance was made to accommodate Applicant's desire for storage of 2 vehicles and household equipment.
18. There was no adverse public comment regarding this Application.
19. Mrs. Alzamora recused herself from participation in the hearing due to her knowledge of the Applicants and therefore Mr. Hardt served in her stead.

DISCUSSION

I. Variance Legal Standard.

Pursuant to the Municipalities Planning Code the following must be found in order for the Zoning Board to grant the requested variance:

(1) 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) 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) Such unnecessary hardship has not been created by the applicant.

(4) 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) 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. Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board, 88 A.3d 488, 520 (Pa. Cmwlth. 2014) appeal denied, 101 A.3d 788 (Pa. 2014) and appeal denied, 101 A.3d 788 (Pa. 2014); 53 P.S. § 10910.2.

II. Dimensional v. Use Variance.

There are 2 types of variances, a “dimensional” variance and a “use” variance. One who advances a dimensional variance seeks to adjust zoning regulations so that the property can be used in a manner consistent with the zoning regulations. Hertzberg v. Zoning Bd. of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998). In contrast, a use variance seeks to use the property in a way that is inconsistent or outside of the zoning regulations. Tidd v. Lower Saucon Township Zoning Hearing Board, Green Gable Investment Partners, LP and Lower Saucon Township, 118 A. 3d 1 (Pa. Cmwlth. 2015). A dimensional variance is at issue in this case.

Regardless of the type of variance sought, 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).

III. Dimensional Variance Legal Standard.

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)). Although Hertzberg eased the variance requirements for a dimensional variance, it did not remove them. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa.Cmwlt. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and the five part test articulated above. Id.

IV. Facts Applied to the Legal Standard.

The Applicants have requested a variance from the setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance in connection with the construction of a 560 square foot garage for storage of the Applicants' vehicle and household items. The relief sought is dimensional in nature requesting the allowance of a side yard setback of five (5) feet from the twenty (20) foot setback requirements of the Ordinance.

To establish that an unnecessary hardship exists warranting a dimensional variance from the twenty-foot (20') side yard setback, the Applicants were required to prove that:

- a. Physical characteristics of the property were such that the property could not be

used for any permitted purpose; or

b. The permitted purpose could only be achieved at prohibitive expense; or

c. Characteristics of the property were such that it would have no value or only distress value for any use approved by the zoning ordinance.

Solebury Twp. v. Solebury Twp. Zoning Hearing Bd., 914 A.2d 972 (Pa.Cmwlt. 2007).

Further, the Applicant had to otherwise comply with all applicable sections of the Ordinance.

The Applicants refer to the subject of its Application as a “garage.” Ordinance §143-6 defines a private garage as:

“An accessory building to a residential property or a part of a principal residential building used for the storage of motor vehicles of type and nature permitted in the zoning district and owned and used by the owner or tenant of the premises.”

Mr. White testified that:

1. They do not and have not had a garage on their property for motor vehicle storage;

2. The proposed structure would accommodate two (2) motor vehicles;

3. The structure would be placed on a gravel/stone base;

4. The proposed garage would also be used for storage of household items; and

5. The proposed garage would be used for parking of cars;

6. The deposit of organic fill material in the rear of the yard by the developer has caused settlement which in turn creates a swale for water run off;

7. A large maple tree exists where the garage would typically be located to the rear and next to the house;

8. The swale coupled with the location of a large maple tree preclude the installation of the garage in conformity with the side yard setback requirements of the Ordinance.

Inasmuch as the property is unique on account of the tree and swale located in the middle of the rear lot which is also comprised of loose fill material, a garage cannot be located further back in order to comply with the twenty-foot (20') side yard setback requirements of §143-37.A.(2) of the Ordinance.

Further, if the Applicants were required to fill the swale and fill area of their property or replace the loose fill to accommodate the garage in compliance with the Ordinance it would be prohibitively expensive denying the Applicants the use of a garage.

Accordingly, the Applicants have demonstrated an unnecessary hardship which is required in order to support the grant of a variance from the limitation on the setback requirements of the Property in the R2 zoning district.

Finally, in an effort to minimize the variance requested, Applicants have agreed to amend their Application from a proposed side yard setback of five feet (5') to ten feet (10'), rather than the twenty foot (20') foot setback in their Application. In light of the unique nature of the property, the requested variance is the minimum variance that will afford relief.

Accordingly, the Board finds that the application for a variance from the setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance is appropriate.

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.

2. A dimensional variance is sought by the Applicant for a garage.
3. Denial of the requested relief will impose an unnecessary hardship on the Applicants.
4. The hardship is due to the unique physical circumstances of the Property.
5. The requested relief is necessary to enable the Applicant's reasonable use of the Property.
6. The requested variance represents the minimum deviation from the Ordinance that will afford relief.

DECISION

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

The application for a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to provide for a 10 foot side yard setback is granted subject to the following conditions:

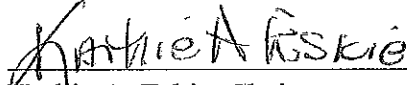
1. The garage not exceed twenty feet (20') wide by twenty-four feet (24') long (deep);
and
2. No part of the garage to be installed will be used for or as living space.

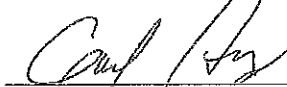
Dated: September 7, 2018

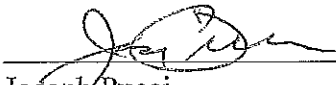
ORDER

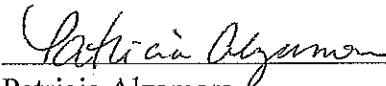
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

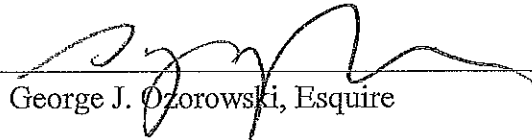
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Kathie A. Eskie, Chairwoman



Gail Hager, Vice Chairwoman


Joseph Pucci


Patricia Alzamora


George J. Ozorowski, Esquire

Jill Zimmerman, Esquire Alternate


Robert G. Hardt, Alternate

NOTICE 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.