

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-21-05	: HEARING DATE:	March 25, 2021
		:	
		:	
APPLICATION OF:		:	
Charles Hence		:	
3837 Landis Mill Rd.		:	
Collegeville, PA 19426		:	
		:	
PROPERTY:		:	
3837 Landis Mill Rd.		:	
Lower Providence Township		:	
Collegeville, PA 19426		:	
Parcel No. 43-00-06709-00-7		:	

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

On February 24, 2021, applicant Charles Hence (“Applicant”) owner of 3837 Landis Mill Rd., Collegeville, Pennsylvania filed an application requesting a variance from the Lower Providence Township Zoning Ordinance (the “Ordinance”) §§143-6.2 and 143-37.A.(2) regarding side yard setbacks to permit the construction of a carport with a side yard setback of fourteen feet (14’) where a minimum of twenty-five feet (25’) is required.

The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on March 25, 2021, via advanced communication device due to the ongoing global pandemic. Present at the hearing were: George Ozorowski, Chairman, Joseph Pucci, vice-chairman, Members Kathie Eskie, Gail Hager, Patricia Alzamora and alternates, Christopher Gerdes and Randy Klein. Also present were Township Manager Don Delamater substituting for Michael Mrozinski, Paula Meszaros, the Court Reporter and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Charles Hence, owner of the lot and home located at 3837 Landis Mill Road which he purchased in 2018.
2. The Applicant was not represented by counsel.
3. Charles Hence testified in support of the application.
4. The subject property, 3837 Landis Mill Rd., Collegeville, Pennsylvania is comprised of tax parcel number 43-00-06709-00-7 with a one-story home and a detached garage (hereinafter the "Property").
5. The property has public sewer and private well water.
6. The applicable zoning district is the R-2 residential district which permits single-family detached dwellings.
7. In the R-2 zoning district the Ordinance requires lots served by private water, a side yard setback of twenty-five feet (25') for accessory structures.
8. Applicant seeks to construct a carport that is twenty-four feet (24') by thirty feet (30') and twelve feet (12') high.
9. The proposed carport would be located partially over an existing paved area next to the detached garage.
10. The paved area is the same size of the garage.
11. The paved area is currently used for parking a vehicle and equipment.
12. Applicant wishes to have the area covered by a carport in order to provide protection from the elements.
13. There is nowhere else on the property that Applicant could construct the carport

that would not encroach on the set-back requirements or interfere with water drainage.

14. The carport must be connected to the driveway in order to be of practical use.
15. The carport will be consistent with the character of the neighborhood.
16. The proposed use will not alter the essential character of the neighborhood.
17. The property will continue to be used as a single-family home.
18. There will be no adverse impact on the development of adjacent properties.
19. The proposed relief would not be detrimental to the public welfare.
20. The proposed use will not emit smoke, dust, odor, or other air pollutants, noise,

vibration, light, electrical disturbances, water pollutants, or chemical pollutants.

21. The proposal is compliant with all other zoning regulations.
22. There is no change of use requested.
23. Applicant testified that the neighbors directly adjacent to his property were not

opposed to the requested relief.

24. The following exhibits were included in the record of the hearing:

A-1 Application;

A-2 Photo of the Property;

A-3 Photo of the Property;

A-4 Photo of the Property;

B – 1 Letter notifying neighbors within 500 feet of the Property of the Application, Matrix of Addresses where notice was mailed, Certificate of Notification to the neighbors within 500 feet of the Property, and Certificate of Posting.

DISCUSSION

I. Statement of the Case

The Applicant requests a variance from the side-yard setback requirements of §143-6.2 and §143-37 A. (2) to permit the construction of a carport with a side yard setback of fourteen feet (14') where a minimum of twenty-five feet (25') is required.

II. Variance Legal Standard

A. Dimensional v. Use Variance. There are 2 types of variances, a “dimensional” variance and a “use” variance. Differing standards apply to use and dimensional variances. 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). Regardless of whether the variance sought is a use or dimensional variance, 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. Cmwlth. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998). 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. In this case the Board is asked to grant a dimensional variance.

B. The Five Part Variance Test. To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

- (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.

See also: 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.

C. Dimensional Variance Legal Standard. Generally, a use variance requires the applicant to show that unnecessary hardship will result rendering the property close to useless if a variance is denied, and that the proposed use will not be contrary to public interest. However in the case of Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998) our Supreme Court held that in the case of a dimensional variance, the quantum of proof required to establish unnecessary hardship is lesser than when a use variance is sought. *Id.* at 258-59. For example, the Hertzberg Court held that to justify the grant of a dimensional variance, "...courts *may* consider multiple factors, including the economic detriment to the applicant if the variance is 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." 721 A.2d at 50 (italics supplied). In effect, no longer is an applicant

required to demonstrate in a dimensional variance case, that the property was close to useless without the variance.

Although Hertzberg eased the burden of proof somewhat for a dimensional variance, it did not remove the variance requirements that are universally applicable to use and dimensional variance cases. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa.Cmwlth. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and satisfy the five-part test articulated above. Id. In addition, §§143-168.C. & D.(2), (3) & (4) of the Ordinance articulate the Applicant's burden of proof and the standards to meet that burden as follows:

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of § 910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. § 10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public interest.

III. Facts Applied to the Legal Standard.

Applicant wishes to install the carport next to the existing garage on the Property with a side yard setback of fourteen feet (14') where a minimum of twenty-five feet (25') is required. Presently, the Property is occupied by a single family detached residence. Next to the existing

garage is a paved area with access to the existing driveway. Applicant parks a vehicle and personal equipment on the paved area that he wishes to protect from the elements. The Applicant requested a dimensional variance from §143-6.2 and §143-37 A. (2) to permit the construction of a carport.

The lot is uniquely formed so as to prevent the placement of a carport in another location on the Property. Due to drainage issues on another portion of the Property, there are no other locations that the carport could be located without encroachment on the side-yard setback requirement. Additionally, the existing paved area is the most appropriate location for the proposed use.

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 in that the size, shape, and change to the Ordinance has made it practically impossible to construct a carport on any other portion of the property. The Applicant did not create the hardship.

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 the authorization of a variance is therefore necessary to enable the reasonable use of the property. There is no alternative location for the proposed carport on the property that would not cause the diversion of storm water or require relief from the zoning requirements.

There are other garages or carports on properties in the neighborhood. Therefore, the requested variance will not alter the essential character of the neighborhood or district in which the property is located. Further, the carport will not substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Further, the adjoining property owners had no objection to the proposed use.

The variance will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue. Permitting the construction of the carport that is consistent with the neighborhood is the minimum alteration that can be made to the Ordinance to permit the Applicant the reasonable use of their Property. Accordingly, the Board finds that Applicants suffer a hardship that is not self-imposed. The Board finds that the requested variance from Lower Providence Township Zoning Ordinance from §143-6.2 and §143-37 A. (2). as requested should be granted.

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will impose an unnecessary hardship on the Applicant.
3. The hardship is due to the unique physical circumstances and characteristics of the Property and not self-imposed.
4. The requested relief is necessary to enable the Applicant reasonable use of the Property.
5. If granted, the community will not be significantly changed nor will it alter the character of the neighborhood.
6. The requested relief represents the minimum that will afford relief and represents the least modification possible of the regulation at issue.

DECISION

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

as follows:

The Application of Charles Hence for a Variance from §143-6.2 and §143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit the construction of a carport with a side yard setback of fourteen feet (14') where twenty-five feet (25') is required in the R-2 residential District is Granted with the following conditions:

1. Placement shall be as per the plans as described at the March 25, 2021, hearing;
2. There will be no utility service to the carport;
3. There will be no garage door on the carport.

Dated: May 3, 2021

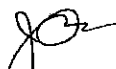
ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



George Ozorowski



Joseph Pucci



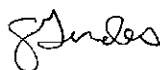
Kathie Eskie



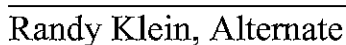
Patricia Alzamora



Gail Hager



Christopher Gerdes, Alternate



Randy Klein, 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.