

APPLICATION NO.	Z-18-15	:	HEARING DATE:	November 29, 2018
		:		
APPLICATION OF:		:		
Kristine Shafer		:		
4016 Eagleville Rd		:		
Eagleville, PA 19408		:		
		:		
PROPERTY:		:		
4016 Eagleville Rd		:		
Lower Providence Township		:		
Eagleville, PA 19408		:		
Parcel No. 43-00-03261-00-8		:		

The applicant, Kristine Shafer ("Applicant") filed an application requesting a variance from Section 143-33.A.(2)(b) of the Lower Providence Township Zoning Ordinance ("Ordinance") to permit construction of a detached garage with a side yard setback of fourteen and fifty-five one hundredths feet (14.55') instead of the required fifty feet (50') in the R1 Residential District. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on November 29, 2018 at the Lower Providence Township Building. The following members of the Board were present: Vice Chairwoman Gail Hager, Joseph Pucci, Patricia Alzamora, and Robert G. Hardt. Also present were Mary Anne Morello the Court Reporter, and Keith B. McLennan, Esquire, the Solicitor.

1. The Applicant is Kristine Shafer.

2. The Applicant owns the subject property located at 4016 Eagleville Rd, Lower Providence Township, Eagleville, PA 19408 located in the R1 Residential District bearing the parcel identification number 43-00-03261-00-8 ("Property").
3. The present use of the Property is single family residential.
4. The Property is approximately 40,020 square feet.
5. The Property is smaller than surrounding properties.
6. The applicant resides in a home on the Property.
7. Applicant seeks to build a 24 foot by 28 foot detached private garage for collectable cars within the required side yard setback of 50 feet.
8. The applicant seeks to locate the garage 14.55 feet from the side property line.
9. Water for the Property is drawn from the on-site well near the middle of the backyard.
10. The significant grade of the land that falls away from Eagleville Road prohibits any additional construction on almost the entirety of the property outside the required side yard setback.
11. The proposed addition will not alter the essential character of the neighborhood.
12. Next-door neighbors on either side of the Property are not in opposition of the application.
13. There was no adverse public comment regarding this application.
14. The Applicant was not represented by counsel.
15. The following exhibits were included in the record of the hearing:
 - A-1 Appeal Application
 - A-2 Site/Plot Plan

A-3 Letter from Boian Pelici

B-1 Certificate of Notice

B-2 Certificate of Posting

B-3 Zoning Hearing Board Meeting Agenda

DISCUSSION

I. Variance Legal Standard.

Pursuant to the Municipalities Planning Code and the Ordinance §143-168.A, the following must be established by the Applicant in order for the 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 two 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 Applicant has requested a variance from Section 143-33.A.(2)(b) of the Lower Providence Township Zoning Ordinance to permit construction of a detached garage

The relief sought is dimensional in nature requesting the allowance of a side yard setback of 14.55 feet instead of the required 50 feet required by Section 143-33.A.(2)(b) of the Ordinance.

The applicable section of the Ordinance states:

§ 143-33 Area, setback, bulk, height and parking requirements.

[Amended 9-21-2006 by Ord. No. 556]

A. Site area or building lot area.

(2) Each building/structure shall have yards of at least the following distance from the property line:

(b) Side yards: 50 feet.

To establish that an unnecessary hardship exists warranting a variance from the Ordinance, the Applicant must 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).

In the instant case, the unique grade, property size of the lot makes it difficult for the

Applicant to avoid encroachment on a setback creating an unnecessary hardship for the Applicant. The location of the onsite well near the middle of the backyard further restricts the location at which a garage can be placed. This hardship is not self-imposed but is rather the result of the said physical characteristics of the lot. The Applicants have nowhere within the setbacks to build the garage. As long as the garage is not run as a business, in-law suite, or any other living space, it will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Because of the physical restrictions of the law, a variance will represent the minimum variance that will afford relief and will represent the least modification possible.

CONCLUSIONS OF LAW

1. The Applicants have standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will impose an unnecessary hardship on the Applicants.
3. The hardship is not self-imposed, and is due to the unique physical circumstances of the Property.
4. The requested relief is necessary to enable the Applicants reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.
5. The proposed addition will not alter the essential character of the neighborhood in which the Property is located.

DECISION

The unanimous decision of the Lower Providence Township Zoning Hearing Board is as follows:

The Application for a Variance from Section 143-33.A.(2)(b) of the Lower Providence Township Zoning Ordinance to permit construction of a detached garage with a side yard setback of 14.55' instead of the required 50' in the R1 Residential District is granted subject to the condition that there be no living space within the garage.

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



Robert G. Hardt

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.