

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-09-03	:	HEARING DATE: March 26, 2009
	:	
APPLICATION OF:	:	
David J. Ray, Jr.	:	DATE OF MAILING OF OPINION
	:	AND DECISION: May 5, 2009
PROPERTY:	:	
2 Hollywood Avenue	:	
Eagleville, PA 19403	:	

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

The applicant, David J. Ray, Jr., (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Section 143-37 and Section 143-149 in connection with a proposed addition to his single family residence. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on March 26, 2009 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, the Director of Community Development/Zoning Officer, and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is David J. Ray, Jr.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at 2 Hollywood Avenue, Eagleville, PA 19403 (the "Property").
4. The applicable zoning is R-2, Residential District.
5. The Applicant was not represented by legal counsel.
6. The lot size of the Property is approximately 18,140 square feet.
7. There were no residents who testified regarding the project.

8. The Property previously consisted of two separate parcels, which were combined by deed dated March 10, 2006.

9. The Property is a triangular lot, the back of which faces Park Avenue.

10. The present use on the Property, a single family home, began in 1950 or earlier.

11. The residence on the Property is nonconforming as to minimum lot area and side yard setback requirements under Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance.

12. The Applicant previously obtained a variance to permit building of the garage, which is 13 feet from the back yard line.

13. The Applicant testified that he proposes to build an addition to the rear of his single family residence.

14. The proposed addition will be two stories with dimensions of 17 feet by 25 feet with a footprint of 425 square feet.

15. The proposed addition will consist of a family room, office, half bath and closet on the first floor and a master bedroom suite on the second floor. The house with the proposed addition will have 3 bedrooms and 2 ½ baths.

16. The Applicant is seeking the variance to build the proposed addition for additional living space because he has gotten married and had a child.

17. The Applicant also is putting a roof over his front porch and connecting that to the garage. An existing deck ties the house and the garage together. The Applicant will not build between the existing house and garage. The existing screened porch in the rear of the house will be lost as a result of the proposed addition.

18. The proposed addition will be flush with the sides of the existing dwelling, and will simply extend the sides of the existing house farther to the rear of the Property.

19. The proposed addition in the rear will face Park Avenue and be 32 feet from the back yard line.

20. Fifteen of 25 homes on Applicant's street have additions, many larger than what Applicant is proposing.

21. Applicant approached his neighbors regarding the proposed project and none had any problems with the proposal.

22. Due to the unusual triangular shape of the lot, there is virtually no room for expansion without encroaching on a setback.

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

24. The Applicant is willing to accept a condition that no further additions would be constructed on the Property outside of the existing building envelope.

25. The unique physical characteristics of the lot are causing a hardship.

26. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant is the legal owner of the Property and has standing to appear before the Board regarding the requested relief.

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, which represents two lots that currently form an irregular, triangle-shaped single property.

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

5. The variances granted by the Board with a certain condition 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 variances granted by the Board with a certain condition represent the minimum that will afford relief from the hardship.

The Applicant has requested variances from the applicable minimum lot area requirements, rear yard setback requirements, side yard setback requirements and limitation on extension of a nonconforming building, in connection with a proposed addition to the rear of the existing single family residence located on the 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 variances are from the applicable minimum lot area requirements, rear yard setback and side yard setback requirements of Section 143-37 of the Lower Providence Township Zoning Ordinance and from the limitation on extension of a nonconforming building of Section 143-149 of the Ordinance. Pursuant to Section 143-37, the applicable minimum lot area is 25,000 square feet, the minimum rear yard setback for principal and accessory buildings over 250 square feet is 60 feet and the minimum side yard setback is 20 feet. The Applicant requested these variances in order to construct a proposed seventeen (17) feet by twenty-five (25) feet addition in the rear of the existing house.

The existing house is a non-conforming structure infringing upon the twenty feet side setback by approximately twelve feet. The proposed addition will continue this dimensional non-conformity by extending the house toward the rear an additional seventeen feet. The proposed addition will also infringe upon the rear setback, reducing the setback to thirty-two feet. The proposed addition also will constitute an extension of the existing nonconforming building on the Property (which is smaller than the minimum lot area) by more than 25%.

The requested variances are necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property, including the dimensions and unusual triangular shape of the lot. The variances are necessary to provide additional living space for

Applicant's family, i.e, to allow reasonable use of the Property. The Applicant did not create the unnecessary hardship.

The existing structure is non-conforming, and due to the unique dimensions and shape of the lot, the construction of the existing house and the existing setbacks, this is the most minimal manner of expanding the house. Therefore 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 proposed addition will merely extend the non-conforming side of the house to the rear toward Park Avenue flush with the current non-conforming side, while the reduction of the rear setback facing Park Avenue is not so severe as to preclude a variance. The addition will be consistent with other additions in the neighborhood; therefore it conforms to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties.

The Board finds and concludes that based on the testimony presented by the Applicant the standards for granting a dimensional variance have been met and the requested dimensional variances should be granted.

DECISION

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

The application for variances from the minimum lot area requirement and side and rear setback requirements of Section 143-37 and from Section 143-149 in connection with the Applicant's proposed 17 feet by 25 feet addition to the rear of the existing house is granted,

subject to the condition that no further additions may be constructed on the Property outside of the existing building envelope.

Dated: May 5, 2009

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.

