

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-09-06 : HEARING DATE: June 25, 2009  
: :  
: :  
APPLICATION OF: : DATE OF MAILING OF OPINION AND  
Joseph DeMedio : DECISION: August 8, 2009  
: :  
: :  
PROPERTY: :  
3962 Township Line Road :  
Collegeville, PA 19426 :  
Parcel No. 430015034007 :

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

Applicant Mr. Joseph DeMedio (hereinafter referred to as the "Applicant") filed an application requesting a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with a proposal to construct a proposed 576 square feet two-story prefabricated garage on the property where Applicant resides in an existing single family residential dwelling. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on June 25, 2009 at the Lower Providence Township Building. All of the members of the Zoning Hearing Board except for Mr. William Donovan were present, as well as the Solicitor, Building Code Official Sinclair Salisbury, and the Court Reporter. The Zoning Hearing Board voted on the application at the subsequent public hearing which was held on July 23, 2009 at the Lower Providence Township Building at which time all of the members of the Board except Mr. Jim Dougherty were present as well as the Solicitor, Building Code Official Sinclair Salisbury, and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is Mr. Joseph V. DeMedio.

2. The Applicant, together with his wife Susan A. DeMedio, is the legal owner of the subject property.
3. The property is located at 3962 Township Line Road, Collegeville, PA 19426. The Parcel No. is 430015034007.
4. The Applicant was not represented by legal counsel.
5. The property is zoned "R-2" Residential District.
6. The property currently contains a single family detached dwelling including a garage, two storage sheds, and a swimming pool. Access to the existing garage is via an existing driveway onto Township Line Road.
7. The Applicant wishes to build a new two-story prefabricated garage with dimensions of 24 feet by 24 feet to be located on a concrete pad of the same size, facing and with access onto Linda Lane.
8. According to the drawing submitted with the application and testimony of Mr. Patrick J. Galleo, the Applicant's brother-in-law, the proposed new two-story garage would be located eight feet from Linda Lane, with a concrete apron extending in the front of the garage.
9. According to the drawing submitted with the application and testimony of Mr. Galleo, the proposed two-story garage would be located 55 feet from the rear of the lot.
10. The proposed garage would be within the setback as to the border of the property with Linda Lane and also would be within the setback as to the rear of the lot.
11. The side walls of the garage would be 10 feet high. The Applicant did not know the total height of the garage.

12. Mrs. DeMedio explained that her sister is handicapped and lives with them. Her sister needs access to the house through the existing garage, which contains numerous personal items, so they propose to build the new garage for storage of the personal items.
13. One neighbor, Mr. David McCaig, with an address of 3960 Township Line Road, testified that he was not opposed to the project.
14. Another neighbor, Mr. Mitchell Gorman, with an address of 351 Linda Lane, which is located next to the parcel, testified in opposition to the project. He stated that he believed that the proposed location for the new, second garage would be dangerous, as it would block his view of Linda Lane when exiting his property via his driveway.
15. The Applicant testified that moving the proposed garage to the other side of the house would require removal of nine large trees which he does not want to do.
16. There also was testimony that the proposed garage could not be moved farther back from Linda Lane than as currently proposed because of the storm drain or swale in that area of the property.

#### **DISCUSSION/CONCLUSIONS OF LAW**

1. The Applicant has standing to appear before the Board.
2. Denial of the requested relief will not impose an unnecessary hardship upon the Applicant.
3. Any claimed hardship is not due to the unique physical characteristics or circumstances of the property.

4. Approval of the requested relief is not necessary to enable the reasonable use of the property.
5. The application does not seek the minimum relief necessary.

The Applicant's 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 that is 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.

This application does not meet the criteria necessary to grant a variance.

The Applicant is asking the Board to grant a variance from setback requirements under Section 143-37 in order to construct a proposed new two-story free-standing garage which would face Linda Lane. The primary purpose of the proposed garage would be to provide additional storage space for personal items which are currently located in the existing garage.

The proposed garage would infringe on the front setback requirement as to the border of the property with Linda Lane by approximately 42 feet, as this portion of the property is considered a front yard. Even if this portion of the property were to be considered a side yard,

which it is not, the proposed garage would infringe on the setback requirement by approximately 17 feet. The proposed garage would infringe on the rear setback requirement by approximately five feet.

The Applicant did not present any evidence of unnecessary hardship which would prevent reasonable use of the property unless the requested variance is granted. The Applicant did not present any evidence demonstrating particular or unique circumstances or characteristics of the property which make the proposed garage, as designed and proposed to be located, necessary to accomplish the purpose or needs of the Applicant or enable reasonable use of the property.

In addition, the application does not represent the minimum variance necessary to afford relief. The proposed garage could be moved to a different location on the property which would be within the applicable setback requirements.

Finally, the Applicant's presentation was devoid of testimony demonstrating a hardship or any other compelling justification for allowing such a significant infringement into the setback as to the border of the property with Linda Lane.

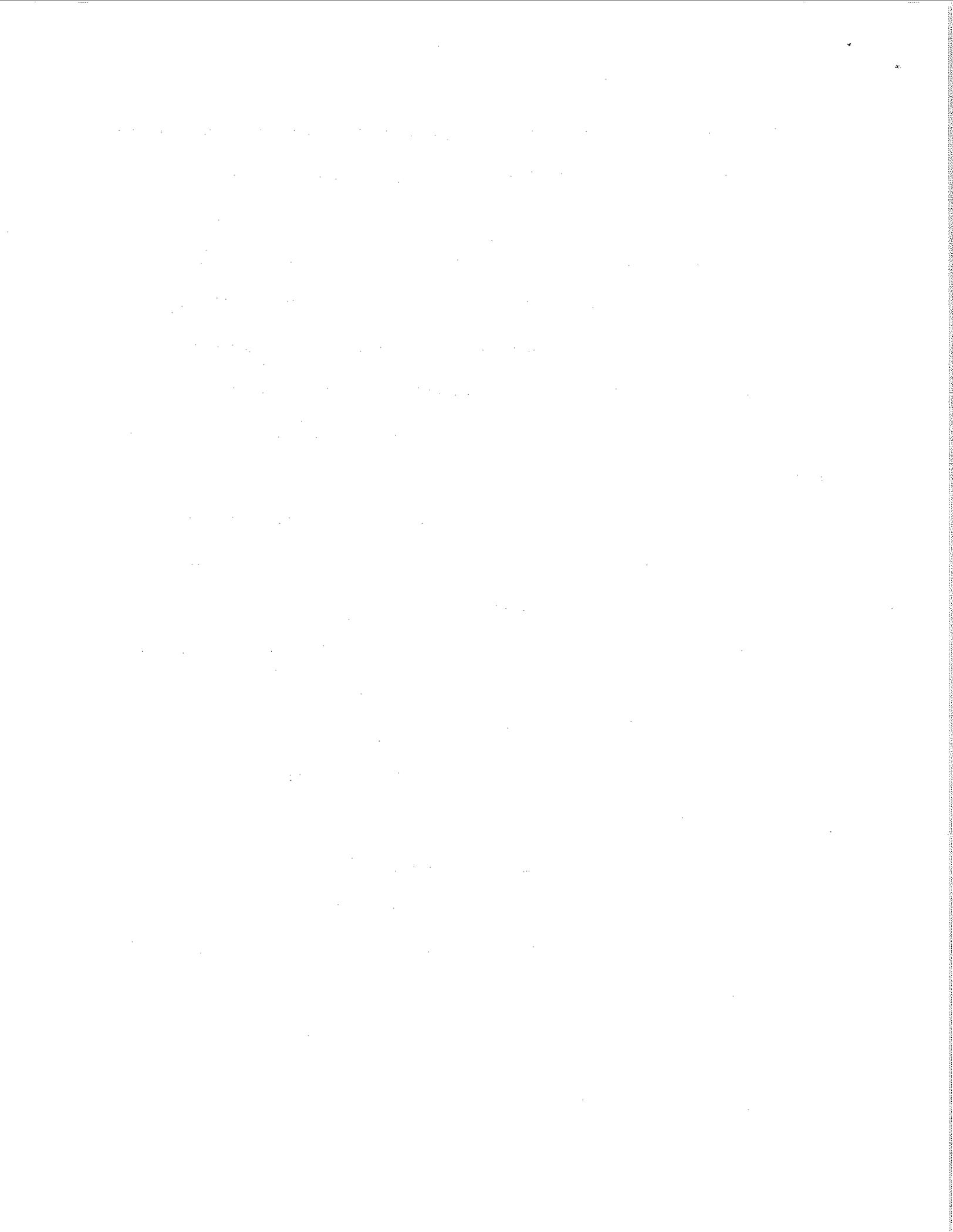
The Board finds and concludes that the Applicant has failed to sustain his burden for justifying a variance from the applicable provisions of the zoning code.

#### **DECISION OF THE BOARD**

The decision of the Lower Providence Township Zoning Hearing Board by a 3-0 vote (Mr. Donovan abstaining as he was not in attendance at the June 25, 2009 public hearing on the application) is as follows:

The application for a variance from the setback requirements of Section 143-37 is denied.

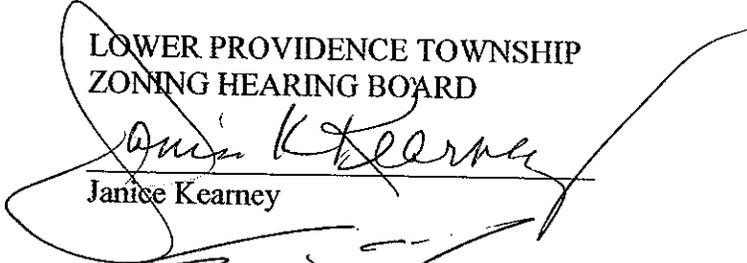
Dated: August 8, 2009



**ORDER**

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

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

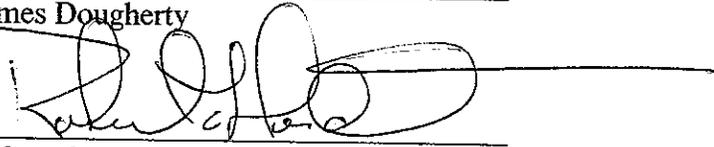


Janice Kearney



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.

