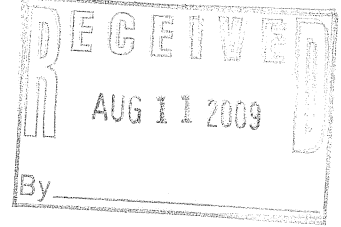


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JEFFREY W. SODERBERG

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August 8, 2009

Mr. Joseph Dunbar
Township Manager
Lower Providence Township
100 Parklane Drive
Eagleville, PA 19403

**RE: Lower Providence Township Zoning Hearing Board – Robert & Teresa
Morella Application Z-09-09**

Dear Mr. Dunbar:

Enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board in the above matter. Please be advised that the mail date is today.

Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Soderberg". The signature is fluid and cursive.

Jeffrey W. Soderberg



ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-09-09	:	HEARING DATE: June 25, 2009
	:	
APPLICATION OF:	:	
Robert and Teresa Morella	:	DATE OF MAILING OF OPINION
	:	AND DECISION: August 8, 2009
PROPERTY:	:	
139 Woodlyn Avenue	:	
Norristown, PA 19403	:	
Parcel No. 430016204007	:	

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

The applicants, Robert and Teresa Morella (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Section 143-37 and Section 143-149 in connection with proposed construction of an addition to their single family residence and a garage. 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 members of the Zoning Hearing Board except Mr. William Donovan were present as well as the Solicitor, Building Code Official Sinclair Salisbury, and the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Robert and Teresa Morella.
2. The Applicants are the legal owner of the subject property.
3. The subject property is located at 139 Woodlyn Avenue, Norristown, PA 19403 (the "Property"). The parcel no. is 430016204007.
4. The applicable zoning is R-2, Residential District.
5. The Applicant was represented by legal counsel, George J. Ozorowski, Plymouth Meeting.

6. The lot size of the Property is approximately 26,645 square feet.
7. The present use on the Property, a single family home, began in approximately 1960.
8. The existing residence on the Property is nonconforming as to required lot width and side yard setback requirements under Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance.
9. The Applicants propose to build an addition to the rear of the single family residence.
10. The proposed addition will have a footprint of 960 square feet.
11. The proposed addition will consist of additional living space for the Applicants' family.
12. The Applicants have two children and have simply outgrown the small existing house.
13. One side of the proposed addition will be flush with one side of the existing dwelling, and will extend that side of the existing house farther to the rear of the Property. That side of the proposed addition will be 18 feet from the side property line, which is 2 feet within the required setback.
14. The Applicants also are proposing to build a new two car garage at the rear of the property, which will have a footprint of 24 feet by 24 feet. The proposed garage will be thirty feet from the rear property line, which is 30 feet within the required setback.
15. The Applicants need the garage to store personal items and Mr. Morella's antique Corvette automobile.

16. The proposed garage would architecturally match the existing house and the addition.
17. If the proposed garage were within the rear setback there would be no room for a pool, which the Applicants hope to add in the future.
18. The Applicants submitted a petition in support of their application which was signed by five of the surrounding neighbors.
19. Two neighbors testified in support of the application.
20. The Applicants are willing to accept as a condition of the variance that the firebox on the addition be moved so that no part of the addition is closer to the property line on that side than the existing residence.
21. The Applicants proposed constructing a berm along the rear of the property and planting arborvitaes or other screening materials to shield the Property from the neighbors.
22. The proposed addition and garage will not alter the essential character of the neighborhood in which the Property is located.
23. The unique physical characteristics of the lot are causing a hardship.
24. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicants are the legal owners of the Property and have standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will impose an unnecessary hardship upon the Applicants.

3. The hardship is not self imposed, and is due to the unique physical circumstances of the Property, which is nonconforming as to lot width and side yard setbacks.

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 certain conditions 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 certain conditions represent the minimum that will afford relief from the hardship.

The Applicant has requested variances from the 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, and variance from the rear yard setback requirements in connection with proposed construction of a two car garage at the rear portion of the Property. This is a request 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 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 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 Applicants requested these variances in order to construct a proposed 960 square feet addition in the rear of the existing house and a proposed 24 feet by 24 feet garage in the rear portion of the Property.

The existing house is a non-conforming structure infringing upon the twenty feet side setback by approximately two feet on one side. The proposed addition will continue this dimensional non-conformity by extending the house toward the rear. The proposed garage will infringe upon the rear setback, reducing the setback to thirty feet. The proposed addition also will constitute an extension of the existing nonconforming building on the Property 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 other unusual physical characteristics of the lot. The variances are necessary to provide additional

living space for the Applicants' family, i.e, to allow reasonable use of the Property. The Applicants did not create the unnecessary hardship.

The existing structure is non-conforming, and due to the unique dimensions and other characteristics 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 flush with the current non-conforming side, while the reduction of the rear setback in connection with the construction of the proposed garage is not so severe as to preclude a variance. The addition and the garage will be consistent with the existing residence and the neighborhood; therefore the granting of the variances 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 Applicants 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 4-0 vote is as follows:

The application for variances from the side and rear setback requirements of Section 143-37 and from Section 143-149 in connection with the Applicant's proposed addition and proposed two car garage is granted, subject to the conditions that (a) the addition including the firebox shall be constructed no closer to the side yard property line than the existing house; (b) a berm

shall be constructed and/or arborvitae or other screening vegetation placed along the rear of the Property per township approval/requirements; and (c) there shall be no commercial use of the Property.

Dated: August 8, 2009

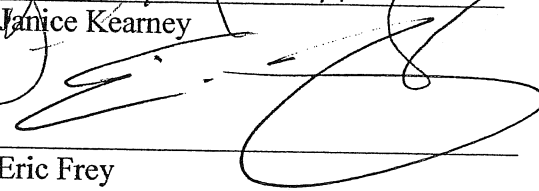
ORDER

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

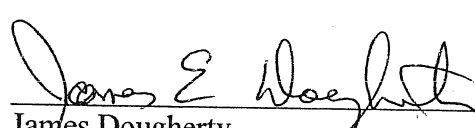
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



Janice Kearney



Eric Frey



James Dougherty



Robert G. Hardt

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.