

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

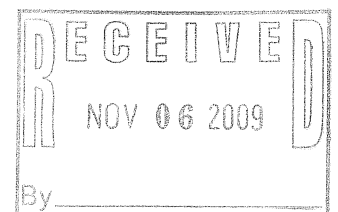
APPLICATION NO. Z-09-13	:	HEARING DATE: September 21, 2009
	:	
APPLICATION OF:	:	
Ralph V. Nigro	:	
	:	DATE OF MAILING OF OPINION
PROPERTY:	:	AND DECISION: November 5, 2009
Grandview Road	:	
Norristown, PA 19403	:	
Parcel Nos. 43-00-05686-01-3	:	
and 43-00-05686-02-2	:	

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

Applicant Ralph V. Nigro filed an application requesting a Special Exception pursuant to Section 143-145 of the Lower Providence Township Zoning Ordinance or, in the alternative, a variance from Section 143-37 of the Lower Providence Township Zoning Ordinance, to develop two lots with single family dwellings. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on September 21, 2009 at the Lower Providence Township Building. All members of the Zoning Hearing Board except Mr. Jim Dougherty were present, as well as the Zoning Hearing Board's Solicitor and the Court Reporter.

FINDINGS OF FACT

1. Applicant Ralph V. Nigro shall be referred to as the "Applicant."
2. The Applicant is the legal owner of the subject property.
3. The property is located at Grandview Road, Norristown, PA 19403.
4. The Parcel Numbers of the property are 43-00-05686-01-3 and 43-00-05686-02-2.
5. The Applicant was represented by Robert L. Brant & Associates, LLC, 572 West Main Street, P.O. Box 26865, Trappe, PA 19426.
6. The property is zoned R-2 Residential District.



7. The property consists of two lots of 17,500 square feet each.
8. The lots are adjacent to the lot on which Applicant's single family dwelling is located, at 718 Grandview Road.
9. In his application the Applicant stated that he wished to develop the two lots with single family residential dwellings. The Applicant stated at the hearing, however, that he was withdrawing the request for relief with respect to developing one of the two lots, and instead sought relief only with respect to developing one of the lots with a single family residential dwelling.
10. The Applicant testified at the hearing and introduced into evidence at the hearing Exhibits A-1, A-2, A-3 and A-4.
11. Exhibit A-3 is a property sketch of the Applicant's residence and the two adjacent lots. On Exhibit A-3 the lot on which the Applicant's residence is located is identified as Lot B, and the adjacent lots are identified as Lot C and Lot A.
12. Lot A, Lot B and Lot C each were sold separately to prior owners Mr. and Mrs. Reimel in the 1940s, as reflected in a March 23, 2005 Deed of Correction executed by Dennis M. Flynn, Jr. to correct the deed between Mr. Flynn and the Applicant dated January 26, 1998. The Applicant introduced the Deed of Correction into evidence at the hearing as Exhibit A-1.
13. The Applicant wishes to develop Lot A with a single family dwelling consistent with other homes in the neighborhood in scope, dimensions and style, and approximately 2700 square feet in size similar in size to the Applicant's residence. The Applicant proposes to merge Lot B (on which his residence is located) and Lot C into one lot.
14. There is existing public sewer service to the Applicant's residence on Lot B. He proposes to bring public water service to Lot B and Lot A.

15. Mr. and Mrs. Bauduin, residents of 764 Grandview Road, Mr. Paul McNamara, resident of 712 Grandview Road, and Mr. Kevin R. Dupell, resident of 730 Grandview Road, questioned the Applicant at the hearing.

16. Mr. Dupell testified at the hearing in opposition to the application.

17. The property in question was the subject of a prior application by Daniel Tabor General Contracting for a special exception under Section 143-13 of the Zoning Ordinance to construct a single family dwelling on Parcel No. 43-000-5686-022, Application Z-06-16. In a decision dated August 2, 2006 the Zoning Hearing Board denied that application for special exception. That decision was appealed to the Montgomery County Court of Common Pleas. The Applicant believed but was not certain that the appeal was terminated but stated that if the appeal was not terminated he would agree to clear that matter up.

18. The circumstances of the application presently before the Board are different than the prior application, as the present application includes an application for a variance and the Applicant proposes to arrange for public water service to be brought to the property.

19. The unique physical characteristics of the property, including the dimensions of the two lots and the location of the Applicant's existing dwelling on the lot in between the two lots, are causing a hardship.

20. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the subject property.

21. The proposed development of a single family dwelling on Lot A will not alter the essential character of the neighborhood in which the property is located, nor will it impair the appropriate use or development of the neighboring properties.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board.
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, including the dimensions of the two lots adjacent to the lot on which the Applicant's existing residence is located and the location of the Applicant's existing residence on the lot.
4. The approval of the requested relief is necessary to enable the reasonable use of the property.
5. The variance 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 variance granted by the Board with certain conditions represents the minimum that will afford relief from the hardship.

The Applicant has requested a special exception and, alternatively, a variance from the applicable minimum lot area requirements, with respect to development of a single family residence on Lot A, which is 17,500 square feet in area. 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 variance is from the applicable minimum lot area requirements of Section 143-37 of the Lower Providence Township Zoning Ordinance. Pursuant to that section the applicable minimum lot area is 25,000 square feet where both water and sanitary sewer service are available.

The Applicant proposes to develop a single family residence on Lot A of the subject property, which is 17,500 square feet in size and is adjacent to Lots B and C each of which is 17,500 square feet in size.

The Board has granted a variance from the minimum lot area requirement with respect to Lot A, with the following conditions: Lot C and Lot B shall be combined into a single lot; public water and public sewer service shall be provided to Lot A and to the combined Lot C and B; the Applicant shall comply with all codes, regulations and ordinances of Lower Providence Township in connection with the project; and the appeal from the 2006 decision of the Zoning

Hearing Board regarding the prior application for relief with regard to Parcel No. 43-000-5686-022 shall be terminated.

The variance granted with conditions is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the subject property, including the size and dimensions of Lot A and Lot C and the location of the Applicant's single family residence on Lot B. The variance is necessary to permit reasonable use of Lot A.

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

The variance granted with conditions will not alter the essential character of the neighborhood in which the property is located, nor will it impair the appropriate use or development of the neighboring properties. The proposed single family dwelling on Lot A will be in keeping and character with the neighborhood. The granted variance with conditions represents the minimum variance that will afford relief and the least modification possible of the applicable provisions of the zoning ordinance. In addition, the variance is subject to the Board's conditions that Lot B on which Applicant's existing single family residence is located and Lot C be combined into a single lot, and that public water and public sewer service be provided to Lot A and the combined Lot B and C.

The Board finds and concludes that based on the testimony and evidence presented at the hearing the standards for the requested relief, subject to the Board's conditions, have been met and that the variance from Section 143-37 of the Lower Providence Township Zoning Ordinance should be granted, subject to the Board's conditions.

The Board finds and concludes that the Applicant has failed to present evidence establishing the criteria and standards under the applicable law for the requested special exception under Section 143-145 of the Zoning Ordinance.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

The requested variance from the minimum lot area requirements of Section 143-37 of the Lower Providence Township Zoning Ordinance with respect to the development of Lot A proposed by the Applicant is granted, subject to the following conditions: (1) Lot C and Lot B shall be combined into a single lot of record; (2) public water and public sewer service shall be provided to Lot A and to the combined Lot C and B; (3) the Applicant shall comply with all codes, regulations and ordinances of Lower Providence Township in connection with the project; and (4) the appeal from the 2006 decision of the Zoning Hearing Board regarding the prior application for relief with regard to Parcel No. 43-000-5686-022, Application Z-06-16, shall be terminated.

The application for a special exception under Section 143-145 of the Zoning Ordinance is denied.


Dated: November 5, 2009

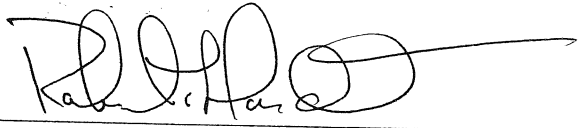
ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Janice Kearney


Eric Frey


Robert G. Hardt


William Donoyan

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.