**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

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| APPLICATION NO. Z-09-14 | : | HEARING DATE: July 23, 2009 |
| APPLICATION OF: | : | |
| Robert L. and Sandra K. Nansteel | : | DATE OF MAILING OF OPINION |
| | : | AND DECISION: September 3, 2009 |
| PROPERTY: | : | |
| 3856 Nancy Lane | : | |
| Collegeville, PA 19426 | : | |
| Parcel No. 43-00-09514-50-5 | : | |

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

The applicants, Robert L. and Sandra K. Nansteel (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Section 143-37 in connection with proposed construction of a sunroom addition to their single family residence. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 23, 2009 at the Lower Providence Township Building. All members of the Zoning Hearing 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 Applicants are Robert L. and Sandra K. Nansteel.

2. The Applicants are the legal owners of the subject property.

3. The subject property is located at 3856 Nancy Lane, Collegeville, PA 19426 (the "Property"). The parcel no. is 43-00-09514-50-5.

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 31,306 square feet.

7. The present use on the Property, a single family home, began in approximately 1987.

8. The Applicants propose to build an addition to the rear of the single family residence.

9. The proposed addition will have a footprint of approximately 195 square feet.

10. The proposed addition will consist of a sunroom, and will be one story without any kitchens or bathrooms or plumbing facilities.

11. The proposed addition will be located in the rear of the existing dwelling between the existing dwelling and an existing swimming pool, where there now is an existing twenty-year old deck.

12. The Applicants also propose replacing the existing deck.

13. The proposed addition will not encroach upon the side yard setback.

14. The proposed addition will extend 8.5 feet from the house into the rear yard setback. That is, the rear yard setback from the proposed addition will be 51 feet six inches, as opposed to the required setback of sixty feet.

15. The Property consists of a pie-shaped lot.

16. As a result of the shape and dimensions of the Property, the existing dwelling is located farther from the front of the lot (71 feet) than required.

17. Applicant Sandra Nansteel testified that her father recently passed away and her mother had come to live with her and her husband. She wants to provide a small area for her mother to use as her own.

18. Mrs. Nansteel testified that in the rear of the Property there are fully grown trees behind the deck so the neighbors to the rear should not be able to see the proposed addition.

19. Mrs. Nansteel testified that she had spoken with the neighbors on both sides of the Property and across the street and they did not object to the project.

20. No neighbors or other members of the public testified at the hearing.

21. The proposed addition would architecturally match the existing house.

22. The proposed addition 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 consists of a pie shaped 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 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 represents the minimum that will afford relief from the hardship.

The Applicants have requested a variance from the rear yard setback requirements in connection with a proposed addition to the rear of the existing single family residence located on 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 variance is from the applicable rear yard setback requirements of Section 143-37 of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-37, the applicable minimum rear yard setback for principal and accessory buildings over 250 square feet is sixty feet. The Applicants requested this variance in order to construct a proposed 195 square feet sunroom addition in the rear of the existing house.

The existing house is located approximately 71 feet from the front of the Property and 66.5 feet from the rear of the Property. The proposed addition, which will be thirteen feet wide,

will extend toward the rear an additional fifteen feet, and will encroach upon the applicable required rear yard set back by approximately eight and one-half feet.

The Board finds that the Applicants are requesting a reasonable accommodation for the proposed sunroom addition. The Applicants have demonstrated that there are unique physical characteristics of the Property including the shape and dimensions of the lot. The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property, including the shape, dimensions and other unusual physical characteristics of the lot. The Applicants did not create the unnecessary hardship.

Due to the unique shape, 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 sunroom addition will be consistent with the existing residence and the neighborhood; therefore the granting of the variance 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 variance 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 variance from the rear yard setback requirements of Section 143-37 in connection with the Applicants' proposed addition is granted.

Dated: September 3, 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.