

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-09-15	:	HEARING DATE: August 27, 2009
	:	
APPLICATION OF:	:	
Mark W. Carrio and	:	
Patti J. Jeffries	:	DATE OF MAILING OF OPINION
	:	AND DECISION: October 10, 2009
PROPERTY:	:	
2711 Audubon Road	:	
Audubon, PA 19403	:	

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

The applicants, Mark W. Carrio and Patti J. Jeffries, (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Section 143-149 in connection with a proposed patio room addition between the main family residence and the in-law residence. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on August 27, 2009 at the Lower Providence Township Building. All members of the Zoning Hearing Board except for 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 Mark W. Carrio and Patti J. Jeffries.
2. The Applicants are the legal owners of the subject property.
3. The subject property is located at 2711 Audubon Road, Audubon, PA 19403 (the "Property"). The parcel no. is 43-00-00904-007.
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 17,000 square feet.

7. There were no neighbors who testified regarding the project.
8. The present use on the Property of the single family home began in 1950 or earlier.
9. The present use on the Property of the in-law quarters began in approximately 1960.
10. The in-law residence on the Property is nonconforming as to rear yard setback requirements under Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance. Approximately half of the structure is within the rear yard setback.
11. The in-law residence on the Property is located at the rear of the main house. The main dwelling and the in-law suite structure are connected by a narrow roof located where there is a small vestibule at the rear of the main dwelling. In between the two buildings there is a small concrete patio of approximately 400 square feet.
12. The Applicants testified that they propose to build an addition to the rear of the single family residence connecting it with the in-law suite structure.
13. The proposed addition would be an enclosed patio room with a concrete floor which would be approximately three-quarters the size of the existing concrete patio, or approximately 340 square feet. Also the Applicants propose removing the existing narrow roof between the two structures and the small vestibule at the rear of the main dwelling.
14. The proposed patio or sun room addition would not extend past the sides of the existing house or the existing in-law suite structure, and the façade would be basically the same, including the same siding materials, similar doors and same style windows.
15. Applicant Carrio's mother, who is in her seventies, lives in the in-law suite. The proposed addition is necessary to give her an additional living or sitting area with windows on

both sides, to give her protection from the weather when going between the in-law suite and the main dwelling, and improve the quality of the Applicant's mother's life.

16. The proposed addition will have dimensions of 17 feet by 20 feet. This is the minimum size necessary for creation of a sun room or patio room area suitable for the Applicants' needs and the needs of Applicant Carrio's mother.

17. The proposed patio room addition will be located entirely within the building envelope under the applicable setback requirements.

18. Applicant Carrio spoke with his surrounding neighbors regarding the proposed project and none had any problems with or objections to the proposal.

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

20. The unique physical characteristics of the lot and the existing structures including the existing nonconforming in-law suite structure are causing a hardship.

21. 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 owner 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 characteristics of the lot and the existing structures on the Property.

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 represent the minimum that will afford relief from the hardship.

The Applicant has requested a variance from Section 143-149 regarding extension of a nonconforming building, in connection with a proposed addition to the rear of the existing single family residence located on the Property which will connect to the existing in-law suite structure. 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 limitation on extension of a nonconforming building of Section 143-149 of the Ordinance. The Applicant requested this variance in order to construct a proposed seventeen (17) feet by twenty (20) feet patio room addition in the rear of the existing house connecting the house to the in-law suite structure.

The existing in-law suite structure is a non-conforming structure infringing upon the sixty feet rear yard setback. The proposed addition will not extend this dimensional non-conformity. Instead, the proposed addition will be entirely within the building envelope under the applicable setback requirements. The proposed addition would expand the non-conforming in-law suite structure in excess of the limitations of Section 143-149.

The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property, including the existing structures including the existing non-conforming in-law suite structure. The variance is necessary to provide additional living space for Applicant Carrio's mother and protect her from the weather when going between the in-law suite and the main dwelling, i.e, to allow reasonable use of the Property. The Applicants did not create the unnecessary hardship.

The existing in-law suite structure is non-conforming, and due to the unique dimensions and shape of the lot, the construction of the existing house and the existing in-law suite structure, and the existing setbacks, this is the most minimal manner of expanding the in-law suite structure. 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 addition will be consistent with the existing dwelling structures on the Property and 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 Applicants the standards for granting the requested relief have been met and the requested relief 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 Section 143-149 in connection with the Applicants' proposed patio room addition between the existing main house and the existing in-law suite structure is granted.

Dated: October 10, 2009

ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



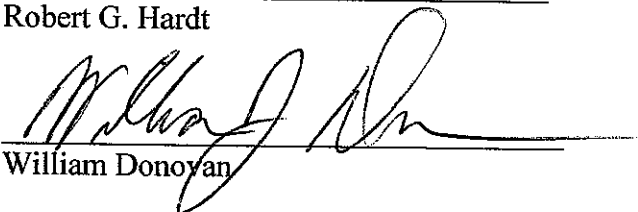
Janice Kearney



Eric Frey



Robert G. Hardt



William 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.