

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-09-17	:	HEARING DATE: August 27, 2009
	:	
APPLICATION OF:	:	
Morrison Homes, LLC	:	
Jeff A. Morrison	:	DATE OF MAILING OF OPINION
	:	AND DECISION: October 10, 2009
PROPERTY:	:	
113 Sarah Avenue	:	
Eagleville, PA	:	
Parcel No. 43-00-12733-02-2	:	

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

The applicant, Morrison Homes, LLC, by Jeff A. Morrison, member (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Section 143-37 in connection with construction of a new single family 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 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 Morrison Homes, LLC, by Jeff A. Morrison, member.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at 113 Sarah Avenue, Eagleville, PA (the "Property"). The parcel no. is 43-00-12733-02-2.
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 29,250 square feet.

7. The present use on the Property, a single family home, began in approximately July 2009.

8. The Applicant constructed the new single family residence on the Property. The residence is completed and all inspections have been done.

9. After completion of the construction, the final survey revealed that the two-foot bump on the front foyer of the residence was erroneously extended beyond the front setback line by 1.7 feet.

10. The extension of the front foyer 1.7 feet beyond the front setback line was a mistake that was not discovered until construction of the residence was completed. In essence, the whole residence was moved forward 1.7 feet by mistake.

11. There is no way the completed residence can be moved or modified in any way to comply strictly with the front setback requirements without a huge encumbrance.

12. The proposed variance is the least possible modification of the ordinance which will afford relief.

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

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant is the legal owner of the Property and has standing to appear before the Board regarding the requested relief.

2. Denial of the requested relief will impose an unnecessary hardship upon the Applicant.

3. The approval of the requested relief is necessary to enable the reasonable use of the Property.

4. 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.

5. The variance granted by the Board represents the minimum that will afford relief from the hardship.

6. The variance requested by the Applicant with regard to the encroachment by the front foyer of the house 1.7 feet into the fifty feet front setback is a de minimis variance.

The Applicant has requested a variance from the front yard setback requirements in connection with the completed construction of the 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.

The requested variance is from the applicable front yard setback requirements of Section 143-37 of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-37, the applicable minimum front yard setback for principal and accessory buildings over 250 square feet is fifty feet. The Applicant requested this variance in connection with the completed construction of a single family residence. The front foyer of the completed residence encroaches 1.7 feet into the front setback, due to an error in the construction process that was not discovered until the final survey after completion of the construction.

The Board concludes that the requested relief is for a de minimis variance. The variance represents the minimum variance that will afford relief and represents the least modification possible of the applicable provisions of the zoning ordinance. If the variance is not granted, the Applicant will suffer unnecessary hardship. In addition, granting the variance conforms to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties.

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 front yard setback requirements of Section 143-37 in connection with the Applicant’s completed construction of a single family residence is

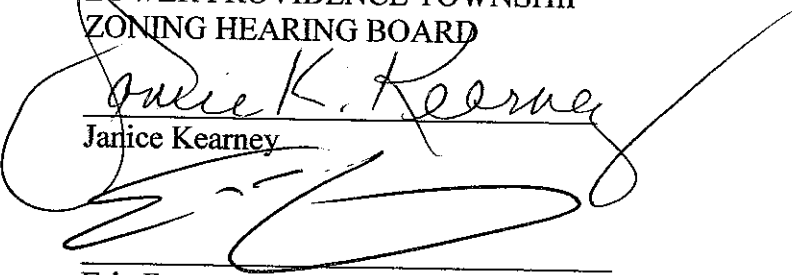
approved and granted, as de minimis, provided there are no further improvements done to the front yard.

Dated: October 10, 2009

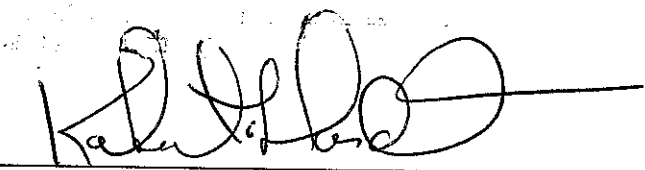
ORDER

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.