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MANDRACCHIA & McWHIRK, LLC

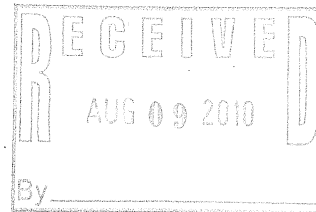
ATTORNEYS AT LAW

2024 Cressman Road, P. O. Box 1229

Skipack, PA 19474-1229

Tel 610.584.0700

Fax 610.584.0507



CHARLES D. MANDRACCHIA*
JEFFREY W. SODERBERG
KEITH M. MCWHIRK*
JOSEPH C. TERZO
JOSEPH N. BUSILLO

direct email: jws@mmattorneys.com

*member of Pennsylvania and New Jersey Bar

August 6, 2010

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

**RE: Lower Providence Township Zoning Hearing Board – Gene E. and Weipo
Chessen, Application No. Z-10-06**

Dear Mr. Dunbar:

Enclosed is 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey W. Soderberg". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Jeffrey W. Soderberg

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-10-06 : HEARING DATES: May 27, 2010 and
: June 24, 2010
APPLICATION OF: :
Gene E. and Weipo H. Chessen :
: :
PROPERTY: :
2845 Second Street :
Norristown, PA 19403 :
Parcel Nos. 43-00-01240 and :
43-00-12847-00-7 :

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

The applicants, Gene E. and Weipo H. Chessen (hereinafter referred to as the “Applicants”), filed an application requesting a variance from Section 143-37.A(2) in connection with proposed construction of a two story garage and in-law suite 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 May 27, 2010 and on June 24, 2010 at the Lower Providence Township Building. All members of the Zoning Hearing Board and the Solicitor and the Court Reporter were present for the hearing on May 27, 2010, and members of the Zoning Hearing Board William Donovan, Eric Frey and Janice Kearney were present for the hearing on June 24, 2010 along with the Township Code Enforcement Manager, the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Gene E. and Weipo H. Chessen.
2. The Applicants are the legal owners of the subject property.
3. The subject property is located at 2845 Second Street, Norristown, PA 19403 (the “Property”). The parcel numbers are 43-00-01240 and 43-00-12847-00-7.

4. The applicable zoning is R-2 Residential District.
5. The Applicants were represented by Stephen M. Porter, Esquire, 376 E. Main Street, Keenan, Ciccitto & Associates, Collegeville, PA 19426.
6. The lot size of the Property is approximately 12,000 square feet.
7. The present use on the Property is a single story single family residence.
8. The Applicants propose to build an addition to the side of the existing single family residence.
9. The proposed addition will consist of two stories: a two car garage on the first floor and an in-law suite with dining area, living and study area, bedroom, bathroom and additional room on the second floor. The proposed addition will be connected to the existing residence.
10. The dimensions of the proposed addition will be 22 feet by 33 feet on the first floor and 25 feet six inches by 33 feet on the second floor.
11. The front of the proposed addition, at the extended perimeter of the second floor, would be flush with the front of the existing house, at a distance of 24 feet three inches from the front property line. Applicant's Exhibit 5 which was introduced at the June 24, 2010 hearing, as well as testimony on behalf of the Applicants at the June 24, 2010 hearing, stated that the proposed addition will be moved back by 21 inches from the position marked on that exhibit and the prior drawings submitted to the Board at the May 27, 2010 hearing so that the front setback of the addition (at the extended perimeter on the second floor) will be in line with the existing residence.
12. At the June 24, 2010 hearing Applicant Weipo Chessen's testimony was that the rear of the proposed addition, at the extended perimeter of the second floor, would be at a

distance from the rear property line of 52 feet at the farthest point and 32 feet at the closest point. The rear of the existing house is located at a distance of 15 feet nine inches from the rear property line.

13. With the proposed project the Property will meet the maximum total impervious coverage limitation.

14. No neighbors appeared or spoke with regard to the application.

15. The Applicant's testimony at the June 24, 2010 hearing was that she spoke with the immediate neighbors and they had no problems with the project.

16. Applicant Weipo Chessen's father intends to reside in the proposed in-law suite.

17. The proposed addition will connect with the existing public sewer and water.

18. The proposed garage addition would conform with and will not alter the essential character of the neighborhood in which the Property is located.

19. The unique physical characteristics of the lot, including the size and dimensions of the lot and the location of the existing dwelling (which the Applicants did not build) are causing a hardship.

20. 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 and characteristics of 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 represents the minimum that will afford relief from the hardship.

The Applicants have requested a variance from the applicable front and rear setback requirements in connection with a proposed garage and in-law suite addition to 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 front and rear yard setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-37.A(2), the applicable minimum front yard setback for principal and accessory buildings over 250 square feet is 50 feet and the applicable minimum rear yard setback is 60 feet. The Applicants requested this variance in order to construct a proposed garage and in-law suite addition on the side of the existing house. The front yard setback from the proposed addition at will be 24 feet three inches, which is the same as the current setback for the existing house. The rear yard setback from the proposed addition will be 52 feet at the farthest point and 32 feet at the closest point, which is greater than the current rear yard setback of 15 feet 9 inches for the existing house.

The Applicants have demonstrated that there are unique physical characteristics of the Property, including the size and dimensions of the lot and the location of the existing dwelling. The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. The Applicants did not create the unnecessary hardship.

Due to the unique physical characteristics of the lot, the location of the existing house and the existing setbacks, 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 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 2-1 vote is as follows:

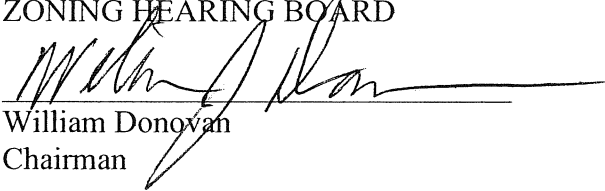
The application for variance from the front yard and rear yard setback requirements of Section 143-37.A in connection with the Applicants' proposed addition, as amended and stated on the record at the June 24, 2010 hearing, is granted.

Dated: August 6, 2010

ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



William Donovan
Chairman

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.