

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

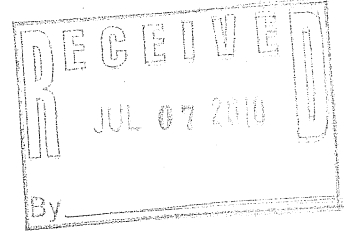
APPLICATION NO. Z-10-08 : HEARING DATE: May 27, 2010

APPLICATION OF:

Gerald F. McDermott and  
Heather A. Noel

PROPERTY:

975 Grange Avenue  
Collegeville, PA 19426  
Parcel I.D. # 43-00-05803-00-4



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

The applicants, Gerald F. McDermott and Heather A. Noel (hereinafter referred to as the "Applicants"), filed an application requesting a variance from the requirements of the Lower Providence Township Zoning Ordinance in connection with the proposed re-building of a horse barn (which was non-conforming as to side yard setback) that was destroyed by fire in October 2009. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on May 27, 2010 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicants are Gerald F. McDermott and Heather A. Noel.
2. The Applicants are the legal owners of the subject property.
3. The subject property is located at 975 Grange Avenue, Collegeville, PA 19426 (the "Property"). The parcel no. is 43-00-05803-00-4.
4. The applicable zoning is R-1 Residential District.
5. The Applicants were not represented by legal counsel.

6. The lot size of the Property is approximately 2.96 acres.
7. The present use on the Property is a single family home. The Applicants purchased the Property in November 2008.
8. The Applicants propose to re-build a horse barn in the rear of the Property.
9. The proposed horse barn will contain three stalls and will have dimensions of 30 feet by 36 feet by approximately ten feet, plus an eight foot lean-to.
10. The footprint of the horse barn will be approximately 1080 square feet.
11. The proposed barn will be located at the same spot as the 3-stall horse barn that existed when the Applicants purchased the Property in 2008 but which was destroyed by fire in October 2009.
12. Since the October 2009 fire the Applicants have been boarding their horses elsewhere.
13. The side yard setback on one side of the pre-existing horse barn which was destroyed by fire was 25 feet.
14. The side yard setback on one side of the proposed horse barn will also be 25 feet.
15. The barn which was destroyed by fire had a footprint of 20 feet by 40 feet, or 800 square feet, and was over 35 feet in height.
16. The foot print of the proposed horse barn will exceed the footprint of the prior barn which was destroyed by fire by approximately 280 square feet. The increased size will give the barn a larger aisle and make it more user-friendly.
17. The proposed barn will be less than half the height of the prior barn.
18. The Property has unique physical characteristics, including the dimensions. The length of the lot is much greater than its width.

19. Mr. Emmanuel Iglesias, an adjoining neighbor, appeared at the hearing and stated that he welcomed the proposed barn.

20. The proposed barn is as close to the original barn in size and dimensions as is practicable and reasonable.

21. The proposed barn will comply with all applicable area and setback requirements of the Township Zoning Ordinance except for the setback requirement on one side.

22. No neighbors or residents appeared in opposition to the proposed project.

23. The proposed replacement barn will not alter the essential character of the neighborhood in which the Property is located.

24. The unique physical characteristics of the lot are causing a hardship.

25. 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, with regard to applicable side yard setback requirements and limitations on reconstruction of a prior nonconforming building, in connection with the proposed re-building of a horse barn in the rear of the Property to replace a prior horse barn on the same location which was destroyed by fire in October 2009. 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 applicable side yard setback requirements of Section 143-33.A of the Lower Providence Township Zoning Ordinance and limitations on reconstruction of a prior nonconforming building destroyed by fire set forth in Section 143-151 of the Ordinance. Pursuant to Section 143-33.A, the applicable minimum side yard setback for principal and accessory buildings over 250 square feet is fifty feet. Pursuant to Section 143-151 a building nonconforming as to area and height destroyed by fire may be reconstructed and used for the same use provided that the building when rebuilt does not exceed the height and area of the building so destroyed. The Applicants requested the variance in order to construct a proposed 3-stall horse barn to replace a prior 3-stall horse barn in the same location on the Property which was destroyed by fire approximately nine months ago. The proposed replacement barn will be approximately 280 feet larger in footprint than the prior barn and will have a 25 feet side setback like the prior barn.

The Board finds and concludes that based on the testimony presented by the Applicants the standards for granting the requested variance have been met and the variance should be granted.

### **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

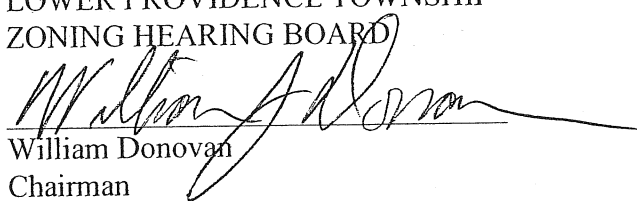
The application for variance from the requirements of the Lower Providence Township Zoning Ordinance in connection with the Applicants' proposed reconstruction of a pre-existing horse barn which was destroyed by fire is granted.

Dated: July 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.