

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-10-10	:	HEARING DATE: June 24, 2010
	:	
APPLICATION OF:	:	
Rosemarie Lomire	:	
	:	
PROPERTY:	:	
2864 W. Ridge Pike	:	
Eagleville, PA 19403	:	
Parcel No. 43-00-11545-00-4	:	

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

The applicant, Rosemarie Lomire (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Sections 143-19.C and 143-37.A(2) in connection with construction of a garage/storage/carport structure. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on June 24, 2010 at the Lower Providence Township Building. All members of the Zoning Hearing Board except Nancy McFarland were present along with the Code Enforcement Manager, the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Rosemarie Lomire.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at 2864 W. Ridge Pike, Eagleville, PA 19403 (the "Property"). The parcel no. is 43-00-11545-00-4
4. The Applicant was represented by Michael J. Clement, Esquire, Wisler Pearlstine, LLP, 484 Norristown Road, Suite 100, Blue Bell, PA 19422.
5. The lot size of the Property is approximately 25,000 square feet.

6. The Property is divided between the Ridge Pike Business District and the R-2 Residential District.

7. The Applicant presented testimony at the hearing. The Applicant also presented the testimony of Ms. SuSanne Creveling, a Pennsylvania licensed professional engineer who was familiar with the Property and was accepted as an expert witness.

8. The portion of the Property in front, which is within the Ridge Pike Business District, is wider than the portion of the Property in the rear, which is within the R-2 District.

9. The present use of the Property is commercial. On the portion of the Property within the Ridge Pike Business District there is a commercial building with residences.

10. In the rear portion of the Property within the R-2 Residential District, lined up behind the commercial building in the front portion of the Property, is a garage/storage/carport structure.

11. This garage/storage/carport structure has been framed with Tyvek on the side but has not been completed. The structure is to be sided and finished in residential form, with a residential type garage door, residential type windows, and residential type door lights on the second floor.

12. The garage/storage/carport structure is 20 feet wide and 35 feet in overall length. It is two stories in height. On the first floor there is an enclosed garage portion and a carport portion. The second story will be for storage.

13. No one will live in the garage/storage/carport structure.

14. The Property is adjacent on one side to a property also owned by the Applicant. The adjacent property owned by the Applicant is wider in the rear portion located in the R-2 District and narrower in the front portion located in the Ridge Pike Business District.

15. The Property is adjacent on the other side to two properties: a property located in the Ridge Pike Business District and a property located in the R-2 District. The adjacent property located in the R-2 District which is not owned by the Applicant contains a single family dwelling and was referred to at the hearing as the Gonzalez property.

16. The garage/storage/carport structure is located approximately one foot from the property line shared with the adjacent property also owned by the Applicant. It is located approximately 40 feet from the property line shared with the residential property on the other side which is not owned by the Applicant.

17. The garage/storage/carport structure meets the applicable area and dimensional requirements except for the side yard setback with regard to the property line shared with the Applicant's adjacent property.

18. If the garage/storage/carport structure were moved to the center of the rear portion of the Property, where it would be in compliance with the side yard setback requirement, it would be approximately 18 to 19 feet closer to the property line shared with the adjacent residential property not owned by the Applicant.

19. Currently the Property contains buffers in the form of landscaped mounds, berms and plantings between the garage/storage/carport structure and First Street and the garage/storage/carport structure and the adjacent residential property not owned by the Applicant.

20. The Applicant testified that she is willing to agree not to extend a driveway on the Property out to First Street.

21. There were questions from the audience regarding the inspection process and development history of the garage/storage/carport structure. Engineer Creveling testified that her

office was responsible for the plan submitted with this application, but that she did not participate in and could not give information about the application for the building permit, the history as to inspections or design of the garage/storage/carport structure or the prior zoning application relating to the structure.

22. Audience member Ruth Silver testified that she was a taxpayer in the Township since 1952. She stated she did not understand why her project was inspected a lot and the structure in question in this application was submitted to be approved.

23. Zoning Hearing Board alternate Thomas Borai testified, as an individual and not in his capacity as alternate, as to the development history and permit process with regard to the garage/storage/carport structure, and also as to the prior zoning application, subsequent correspondence and a newspaper article. Mr. Borai also stated that no copies of site plans were attached to the application and that the application did not reference public water and public sewer connections. Mr. Borai agreed in response to a question from the Board that the garage/storage/carport structure could be put in, without any relief from the Zoning Hearing Board, if it were moved 20 feet toward the center of the Property.

24. When questioned as to the location of the accessory structure, Mr. Borai testified that he would want it be located as permitted by the Zoning Ordinance (i.e., 18-19 feet closer to the adjacent property which is not owned by Applicant) even if he were the owner of the adjacent property. Given this answer, the Zoning Hearing Board determined that Mr. Borai's testimony was not credible.

25. Harold Baird, a resident of 1428 Lincoln Street, testified he lived 5 miles from the Property. He stated that a shed is not a garage or a carport and does not have a second floor. He

stated that the structure was built under the eyes of a building inspector and that he believed it was illegal and should be torn down.

26. The owner of the residential property adjacent to the rear portion of the Property on the opposite side of the Property from the Applicant's adjacent property (the Gonzalez property) did not appear or provide testimony at the June 24, 2010 hearing before the Board.

27. The garage/storage/carport structure when completed as proposed would conform to and would not alter the essential character of the neighborhood in which the Property is located.

28. The unique physical and other characteristics of the lot, including that the Property is bisected by a zoning district line and is divided between the Ridge Pike Business District and the R-2 District, the configuration of the two portions of the Property (which is narrower in the rear portion than in the front), the location of the existing commercial structure in the front portion including as it relates to the rear portion of the lot, and that if the garage/storage/carport structure were to be located in the center of the rear portion of the lot it would be significantly closer to the adjacent residential property not owned by the Applicant, are causing a hardship.

29. This is not a self-created hardship. Instead, it results from the unique characteristics of the Property.

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 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 Applicant has requested a variance from the applicable side yard setback requirements in connection with a garage/storage/carport structure in the rear portion of 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 side yard setback requirements of Section 143-37.A(2) and the requirements of Section 143-19.C of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-37.A(2), the applicable minimum side yard setback for principal and accessory buildings over 250 square feet is twenty feet. The Applicant requested this variance in connection with a garage/storage/carport structure which is located approximately one foot from the side yard property line shared by the Property and the adjacent property also owned by the Applicant.

The Applicant has demonstrated that there are unique physical characteristics of the Property, including that the Property is bisected by a zoning district line and is divided between the Ridge Pike Business District and the R-2 District, the configuration of the two portions of the Property (which is narrower in the rear portion than in the front), the location of the existing commercial structure in the front portion including as it relates to the rear portion of the lot, and that if the garage/storage/carport structure were to be located in the center of the rear portion of the lot it would be significantly closer to the adjacent residential property not owned by the Applicant. Due to the configuration of the front and rear portion of the lot and the narrowness of the rear lot, when the garage/storage/carport structure is lined up behind the commercial building in the front portion of the lot it is located close to the property line shared by the rear portion of the Property and the adjacent lot also owned by the Applicant. Also, due to the narrowness of the rear portion of the lot, if the garage/storage/carport structure is located in the center of the lot it will be much closer to the property line shared by the rear portion of the Property and the adjacent residential property not owned by the Applicant. Locating the structure close to the

property line shared by the rear portions of the Property and the adjacent property of the Applicant is beneficial to the adjacent residential property on the other side which is not owned by the Applicant. 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, including the narrowness of the rear portion of the lot within the R-2 District and the configuration of the front and rear portions of the lot, 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 form of the garage/storage/carport structure as proposed to be completed will be consistent with the existing 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.

In allowing public comment and questions, the Zoning Hearing Board has a policy of allowing any member of the public to speak during a hearing either in support or in opposition to an application. This results in many comments from residents who are unfamiliar with the zoning process and the issues before the Board. As such many comments are deemed not relevant by the Board. In this case, the Board deemed the comments of Mr. Baird, who admittedly lives 5 miles from the Property, not to be relevant. The Board also deemed the comments of Mr. Borai, who also lives several miles from the subject property, not to be relevant as they related to a building permit for a shed and a prior zoning application which was withdrawn. In addition to making findings of relevancy, the Board also is the sole judge of credibility with power to resolve conflicts in the testimony and to reject even uncontradicted

testimony that it finds to be lacking in credibility. See Petition of Dolington Land Group, 576 Pa. 519, 839 A.2d 1021 (2003). Due to the nature of Mr. Borai's comments and answers to questions, the Zoning Hearing Board also determined that Mr. Borai's testimony was not credible.

The Board finds and concludes that based on the testimony presented by the Applicant the standards for granting a dimensional variance have been met and the requested dimensional variance with certain conditions should be granted.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 3-1 vote is as follows:

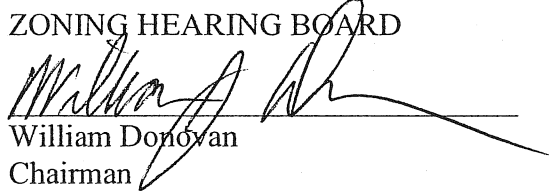
The application for variance from the side yard setback requirements of Section 143-37.A(2) and the requirements of Section 143-19.C of the Lower Providence Township Zoning Ordinance is granted, with the conditions that (1) there will be no plumbing in the garage/storage/carport structure, (2) the structure will not be occupied, (3) there will be no access to First Street, and (4) the Applicant will maintain the berm and landscaping along First Street and along the Gonzalez property (the adjacent residential property which is not owned by the Applicant).

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.