

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-10-11 : HEARING DATE: June 24, 2010
:
APPLICATION OF: :
Chestnut Street Properties, LLC :
:
PROPERTY: :
Second Street (between Sunnyside Avenue :
and Barry Avenue) :
Lower Providence Township, PA 19403 :
Parcel Nos. 43-00-12865-00-7, :
43-00-12862-00-1, 43-00-12856-00-7, :
43-00-12859-00-4 and 43-00-04723-00-4 :

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

The applicant, Chestnut Street Properties, LLC (hereinafter referred to as the “Applicant”), filed an application requesting relief under Sections 143-145, 143-20 and 143-37 of the Lower Providence Township Zoning Ordinance in connection with proposed construction of a single family residence on five undersized lots to be consolidated into one parcel. 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 as well as the Code Enforcement Manager, the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Chestnut Street Properties, LLC.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at Second Avenue/Street, between Sunnyside Avenue and Barry Avenue, Lower Providence Township, PA 19403 (the “Property”). The

parcel numbers are 43-00-12865-00-7, 43-00-12862-00-1, 43-00-12856-00-7, 43-00-12859-00-4 and 43-00-04723-00-4.

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 19,000 square feet.

6. The Property is currently vacant. It is zoned R-2 Residential District.

7. The Applicant presented testimony at the hearing by its principal, Mr. Andrew Venezia, and by Ms. SuSanne Creveling, a Pennsylvania licensed professional engineer who was familiar with the Property and was accepted as an expert witness.

8. The Property consists of five parcels.

9. One of the parcels of the Property is forty feet wide and 125 feet long, and fronts on First Avenue.

10. The other parcels of the Property form the body of the proposed flag lot, on which the Applicant proposes to construct a single family dwelling.

11. The parcels of the Property which form the body of the proposed flag lot adjoin Second Avenue, in the rear of the proposed flag lot, for a distance of 140 feet. The body of the proposed flag lot is 100 feet deep, between Second Avenue and existing residential lots which front on First Avenue/Street.

12. Second Avenue is an unopened street not dedicated to the Township which is 40 feet wide.

13. The lots of the Property are, or are combinations of, lots originally 20 feet wide which were part of the "Norristown Park" plan for residential development dating to the 1920s. The lots have been vacant since that time.

14. The Applicant proposes to consolidate the lots of the Property and build a single family dwelling in a proposed building envelope which would have a front setback of 25 feet rather than the required setback of 50 feet and would have a rear setback of 25 feet rather than the required setback of 60 feet. The proposed building envelope on the Property would have side setbacks of 20 feet consistent with the requirements of the Township Zoning Ordinance.

15. The proposed front and rear setbacks are consistent with other setbacks in the neighborhood.

16. The size of the Property is 19,000 square feet, which is less than the minimum lot size of 25,000 square feet.

17. Due to the nature and availability of the undersized lots created in the 1920s in connection with the Norristown Park plan, the Applicant was only able to acquire the adjoining/contiguous undersized lots comprising the Property.

18. Ms. Silver, a neighbor who resides at 201 S. Barry Avenue, stated that she understood the area would not be developed and would be kept as a park. She stated it was a shame this was happening.

19. Ms. Caron, a neighbor who resides at 109 S. Barry Rd., stated that most of the homes in the neighborhood are small capes.

20. Mr. Heisner, Code Enforcement Manager, stated that the Township does not plan to open Second Avenue.

21. The Applicant does not intend to and will not use Second Avenue. Access to the Property will only be via First Avenue.

22. The unique physical and other characteristics of the Property, including the available/acquired undersized lots which comprise the Property, are causing a hardship.

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

24. The proposed construction of a single family dwelling on the Property, and the proposed building envelope for construction of a single family dwelling on the Property, are consistent in character with the surrounding neighborhood and will not alter the character of the existing neighborhood.

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 front and rear setback requirements and the minimum lot area requirement in connection with a proposal for construction of a single family dwelling on five parcels to be consolidated. 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 relief at issue in this application is a variance from the applicable front and rear yard setback requirements and the minimum lot area requirement 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 rear yard setback is 60 feet. The applicable minimum lot area is 25,000 square feet. The Applicant sought zoning relief in connection with a proposal to construct a single family dwelling in a proposed building envelope on the five existing separate parcels of the Property which would be consolidated.

The Applicant has demonstrated that there are unique circumstances and physical characteristics of the Property, including the configuration, shape and dimensions of the Property and that, due to the nature and availability of the undersized lots created in the 1920s in

connection with the Norristown Park plan, the Applicant acquired only the adjoining/contiguous undersized lots comprising the Property. The variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. The Applicant did not create the unnecessary hardship. The 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 construction of a single family dwelling in the proposed building envelope on the Property will be consistent with the existing neighborhood. The granting of the variance, with certain conditions, 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 Applicant the standards for granting a dimensional variance have been met and the dimensional variance with certain conditions should be granted.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

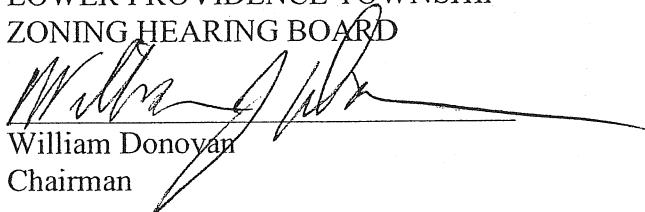
A variance from the front yard and rear yard setback requirements and the minimum lot area requirement of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance is approved and granted, with the conditions that (1) Second Avenue/Street will not be used as an access point, (2) all of the lots are to be consolidated into one lot, and (3) the Applicant will abide by the rules and regulations of Lower Providence Township.

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.

