

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-10-12 : HEARING DATE: June 24, 2010
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APPLICATION OF: :
Thomas and Susanne Clark :
:
PROPERTY: :
211 S. Trooper Road :
Eagleville, PA 19403 :
Parcel No. 43-00-15253-00-4 :

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

The applicants, Thomas and Susanne Clark (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 garage on their corner residential property. 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. Members of the Zoning Hearing Board William Donovan, Eric Frey and Janice Kearney were present as well as the Township Code Enforcement Manager, the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Thomas and Susanne Clark.
2. The Applicants are the legal owners of the subject property.
3. The subject property is located at 211 S. Trooper Road, Eagleville, PA 19403 (the "Property"). The parcel no. is 43-00-15253-00-4.
4. The applicable zoning is R-2 Residential District.
5. The Applicants were not represented by legal counsel.
6. The lot size of the Property is 26,400 square feet. The Property is a corner lot.
7. The present use on the Property, a single family home, began in the 1940s.

8. The Applicants propose to build a garage on their lot at the end of the existing driveway.
9. The Applicants propose to construct a one story, two and one-half car garage.
10. The footprint of the proposed garage will be 22 feet by 30 feet.
11. As the Property is a corner lot, the lot line on Trooper Road and the lot line on Rogers Road are both front lot lines.
12. The proposed garage will not encroach on any setback except for the setback as to Rogers Road. The setback from the proposed garage to Rogers Road would be 12 feet, rather than the required setback of fifty feet.
13. The Applicants submitted as part of their application a written statement in favor of the application signed by two adjoining neighbors, a neighbor directly across the street from the Property on Rogers Road, and an additional nearby neighbor on Rogers Road.
14. No neighbors or members of the public appeared at the hearing in favor of or in opposition to the application.
15. The Applicants testified that they need the garage to house their cars because they are retired and with advancing age it is becoming more and more difficult for them to scrape ice and snow off their cars.
16. The cars in the proposed garage would be parked at the same distance from Rogers Road as the cars are currently parked in the existing driveway.
17. Screening exists on the Property. On one side of the Property are a fence and shrubs; a line of trees is on the other side; and a fence and large evergreens buffers the adjoining property on Rogers Road.

18. There are unique physical characteristics of the Property which preclude locating the garage at another spot. In addition, construction of the proposed garage would not require disturbing the existing shrubs and trees. The cost to remove a large ash tree on the other side of the driveway would be significant.

19. The proposed garage would consist of frame and siding and would architecturally match the existing house and fit in with the neighborhood and other houses in the neighborhood.

20. The proposed garage will not alter the essential character of the neighborhood in which the Property is located.

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

22. 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 setback requirements as to one lot line on the Property in connection with a proposed garage to be located at the end of the existing driveway on their residential lot. 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 yard setback 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 fifty feet. The Applicants requested this variance in order to construct a proposed garage at the end of the existing driveway on the side of the Property which fronts on Rogers Road. The Rogers Road lot line is considered a front lot line because the Property has

frontage on two streets – Trooper Road and Rogers Road. The setback from the proposed garage to the Rogers Road lot line will be 12 feet. This is consistent with the existing driveway where the Applicants' cars are currently parked.

Based on the evidence presented, the Applicants have met the applicable standards for the requested relief regarding the construction of the proposed garage, including that there are unique physical characteristics of the Property and that 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 physical characteristics 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 proposed garage 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:

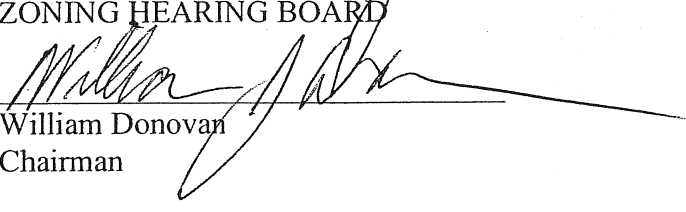
The application for variance from the applicable front yard setback requirement of Section 143-37.A(2) in connection with the Applicants' proposed garage is granted.

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.