

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-10-16	:	HEARING DATE: July 22, 2010
	:	
APPLICATION OF:	:	
John Reilly	:	
	:	
PROPERTY:	:	
304 Clearfield Avenue	:	
Norristown, PA 19403	:	
Parcel No. 43-00-02596-00-7	:	

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

The applicant, John Reilly (hereinafter referred to as the “Applicant”), filed an application requesting a variance from Section 143-37.A(2) in connection with proposed construction of an addition to the existing single family residence. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 22, 2010 at the Lower Providence Township Building. All members of the Zoning Hearing Board except William Donovan were present as well as the Code Enforcement Manager, the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is John Reilly.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at 304 Clearfield Avenue, Norristown, PA 19403 (the “Property”). The parcel no. is 43-00-02596-00-7.
4. The applicable zoning is R-2 Residential District.
5. The Applicant was not represented by legal counsel.
6. The lot size of the Property is 100 feet by 156.79 feet.
7. The present use on the Property is a single family home.

8. The Applicant proposes to build an addition on the side and rear of the existing single family residence, which will be adjacent to the existing deck at the rear of the residence.
9. The Applicant testified at the hearing and also presented testimony by a builder, Brad DiCriscio.
10. The proposed addition will consist of a first floor with a bedroom, closet, bath and mudroom, and a basement floor. The proposed addition will adjoin and connect to the existing residence and will provide direct access to the existing deck at the rear of the existing residence.
11. The footprint of the proposed addition will be 421 square feet. The footprint of the existing house is 1,014 square feet.
12. The proposed addition will not encroach upon the side yard setback or the front yard setback.
13. The rear yard setback from the proposed addition will be 49 feet and 2.48 inches, rather than the required setback of sixty feet.
14. If the proposed addition were to be located farther along the side of the existing house toward the front of the Property, it would not provide access to the existing deck. There is no access to the deck from the existing house.
15. The existing house encroaches on the front yard setback and the rear yard setback.
16. Two existing large trees will remain on the Property near the proposed addition.
17. No neighbors appeared and spoke at the hearing regarding the application.
18. The Property is undersized.
19. The proposed addition would be architecturally consistent with the existing house.
20. The proposed addition would not stick out farther from the house than other houses on the street, and would be in conformity with other properties on the street.

21. The proposed addition would not alter the essential character of the neighborhood in which the Property is located.

22. The unique physical circumstances and characteristics of the Property, including the size of the lot and the location of the existing dwelling, are causing a hardship.

23. This is not a self-created hardship. Instead, it results from the unique physical circumstances and 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 rear yard setback requirement in connection with a proposed 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. § 10910.2, 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 rear 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 rear yard setback for principal and accessory buildings over 250 square feet is 60 feet. The Applicant requested this variance in order to construct a proposed addition on the side of the existing house. The rear yard setback from the proposed addition will be 49 feet and 2.48 inches. The proposed addition will comply with the applicable front yard setback and sideyard setback requirements.

The Applicant has demonstrated that there are unique physical characteristics of the Property, including the size 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 Applicant did not create the unnecessary hardship.

Due to the unique physical characteristics of the lot and the location of the existing house 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 Applicant 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 4-0 vote is as follows:

The application for variance from the rear yard setback requirement of Section 143-37.A(2) in connection with the Applicant's proposed addition, as presented by the Applicant at the hearing, is approved and granted.

Dated: September 3, 2010

ORDER

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

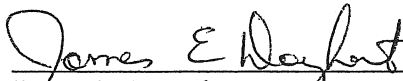
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

ABSENT


William Donovan, Chairman



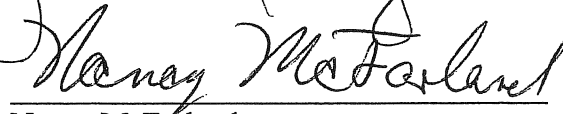
Eric Frey, Vice Chairman



James E. Dougherty



Janice Kearney



Nancy McFarland

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.