

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-01 : HEARING DATE: February 24, 2011
:
APPLICATION OF: :
Anthony J. Jost and Lisa A. Jost :
:
PROPERTY: :
214 Collegeville Road :
Collegeville, PA :
Parcel No. 43-00-02666-10-8 :

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

Applicants Anthony J. Jost and Lisa A. Jost (hereinafter referred to as the "Applicants") filed an application requesting variances from the minimum lot area requirement of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed subdivision of the existing single residential lot into two proposed undersized residential lots. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on February 24, 2011 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, the Zoning Officer and the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Anthony J. Jost and Lisa A. Jost, whose address is 3851 Germantown Pike, Collegeville, PA.
2. The Applicants are the owners of the subject property, which is located at 214 Collegeville Road, Collegeville, PA (the "Property"). The parcel no. is 43-00-02666-10-8.
4. The applicable zoning is R-2 Residential District.
5. The Applicants were not represented by legal counsel.

6. The present use on the Property is a single family residence, which commenced in 1948.

7. The lot size is 47,242 square feet to ultimate right of way line.

8. The following exhibits were marked at the hearing:

- B-1: Application
- B-2: Advertisement
- B-3: Proof of publication
- A-1: Large board with application plan and aerial photo
- A-2: Large board with 8 color photos

9. The Applicants propose to subdivide the Property into 2 single family residential lots. The area of proposed Lot 1 would be 22,946 square feet to the ultimate right of way line.

The area of proposed Lot 2 would be 24,296 square feet to the ultimate right of way line.

10. The Property currently is served by public water and private on-lot septic.

11. The Applicants would connect the two proposed lots to public water and public sewer.

12. The Applicants acquired the Property in 2006.

13. The Applicants are requesting a variance from the minimum lot area requirements of Section 143-37.A(2) of the Township Zoning Ordinance with regard to the two proposed lots, each of which would be smaller than the required minimum lot area of 25,000 square feet.

14. If the Applicants' proposed subdivision and construction of two new single family residences were to take place the Applicants would demolish the existing single family dwelling and deck and remove the existing pool.

15. Applicant Anthony J. Jost testified in support of the application, and stated that he talked to adjacent neighbors and in the back (Forest Lane), and they are all excited.

16. Applicant Anthony J. Jost testified that there was a hardship because he could not turn the Property into two lots without the variances.

17. Applicant Anthony J. Jost stated that he did not wish to modify the proposed two lots so that one of them would comply with the minimum lot area requirement and only one of the proposed lots would require a variance as to minimum lot area.

18. No members of the public testified for or against the application.

19. The Property could be developed into two residential lots, one of which would comply with the minimum lot area requirement.

20. The requested variances do not represent the minimum that will afford relief and do not represent the least modification possible of the regulation at issue.

21. The Property could be reasonably used without the requested variances.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicants have standing to appear before the Board regarding the requested relief.

2. Denial of the requested relief will not impose an unnecessary hardship upon the Applicant, and the requested variances are not necessary to enable reasonable use of the Property.

3. The variances requested by the Applicants do not represent the minimum that will afford relief and do not represent the least modification possible of the regulation at issue.

The Applicants have requested variances from the minimum lot area requirement of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance for a proposed

subdivision of the existing single residential lot into two proposed undersized residential lots. That provision of the zoning ordinance requires a minimum lot area of 25,000 square feet where both public water and sanitary sewer service are available. The request for variances seeks relief as to dimensional requirements.

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 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 Applicants failed to submit evidence which demonstrates that there exists an unnecessary hardship, which is not self created, or that the requested variances are necessary to enable reasonable use of the Property. The Applicants also have failed to demonstrate that the requested variances for two proposed lots which do not meet the minimum lot area requirement will represent the minimum variance that will afford relief and the least modification possible of the regulation in issue. For example, the Applicants could but do not wish to create two proposed lots, one of which would comply with the minimum lot area requirement of Section 143-37.A(2) of the Zoning Ordinance.

The Board finds and concludes that the Applicants have failed to sustain their burden for justifying a variance from the applicable provisions of the zoning code.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 3-2 vote is as follows:


The application for variances from Section 143-37.A(2) is denied.


Dated: April 8, 2011

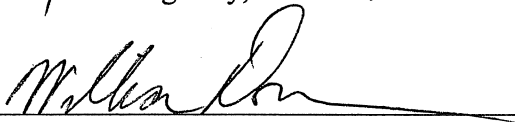
ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD


Eric Frey, Chairman


James E. Dougherty, Vice Chairman


William Donovan

dissenting
Nancy McFarland

dissenting
Thomas Borai

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.