

## **ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-11-02	:	HEARING DATE: February 24, 2011
	:	
APPLICATION OF:	:	
Eric L. and Cynthia T. Willcox	:	
	:	
PROPERTY:	:	
81 S. Grange Avenue	:	
Collegeville, PA 19426	:	
Parcel No. 43-00-05719-00-7	:	

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

Applicants Eric and Cindi Willcox (hereinafter referred to as the "Applicants") filed an application requesting variances from the side yard setback requirements of Section 143-33.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a carport and a four-season deck addition to the existing single residential dwelling. 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 Eric L. and Cynthia T. Willcox.
2. The Applicants are the owners of the subject property, which is located at 81 S. Grange Avenue, Collegeville, PA (the "Property"). The parcel no. is 43-00-05719-00-7.
4. The applicable zoning is R-1 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 the 1700s.

7. The lot size is 50,000 square feet.
8. The following exhibits were marked at the hearing:

- B-1: Application
- B-2: Advertisement
- B-3: Proof of publication
- A-1: letter and email from neighbors

9. The Applicants propose to construct a carport on the Property, to be attached to the existing detached one car garage presently used as a large shed. The Applicants also propose to construct a four-season deck addition to the rear/northeast corner of the existing single family residence.

10. The proposed carport would be attached to the east side of the one car garage, on the side which is closest to the existing dwelling and which is the greatest distance from the property line. The existing one car garage is only eight feet from the side property line. It is 14 feet wide. Accordingly the proposed carport would be 22 feet from the side property line.

11. The proposed four-season deck addition would be built on pilings, but completely enclosed, insulated and heated like any other living space. The proposed four-season deck addition would be located on the northeast corner of the existing residence because that is where there is an existing door and existing window to access the new space. The exterior of the proposed four-season deck addition would be made with vinyl siding materials the color and appearance of cedar shakes, and the lower roof line of tin would be carried around the back .

12. The existing dwelling has stone walls that are 2 feet thick. The original portion of the house was built in the 1720-1750 range. There is not a lot of room in the house.

13. The Applicants acquired the Property in 1990.

14. The Applicants propose to use the four-season deck addition for additional living space. The proposed carport would be used for vehicles and/or lawn and garden equipment storage. Both of these proposed projects are single story.

15. The proposed four-season deck addition would be 30 feet from the side property line at the closest point, and would be 41 feet from the side property line at the point where it joins the corner of the existing house.

16. The Applicants are requesting a variance from the fifty feet side yard set back requirement of Section 143-33.A(2) of the Township Zoning Ordinance with regard to the proposed carport to be attached to the existing garage, at 22 feet from the side yard property line, and with regard to the proposed four-season deck addition, at 41 to 30 feet from the other side yard property line.

17. Applicant Eric Willcox testified in support of the application. He stated that the neighbors support the application with regard to the proposed carport and four-season deck addition. He presented a letter from neighbors at 97 S. Grange Avenue, the Browns, and neighbors at 90 S. Grange Avenue, the Hardts, supporting the proposed projects. He also presented an email from neighbors at 49 S. Grange Avenue, the Egerters, supporting the proposed projects. [See Exhibit A-1.] Mr. Willcox also testified that he spoke to Mr. Laraby who did not have a problem with the proposal.

18. The Property is surrounded by state park land.

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

20. Granting the requested variances will not alter the essential character of the neighborhood in which the Property is located.

21. Absent the requested relief the Applicants will suffer an unnecessary hardship. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property including the dimensions of the Property and the location of the existing dwelling (which dates from the 1700s) and garage.

### **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 impose an unnecessary hardship upon the Applicants.

3. The hardship is not self imposed, and is due to the unique physical circumstances and/or characteristics of the Property.

4. The approval of the requested relief is necessary to enable the Applicants' reasonable use of the Property.

5. The variances 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 variances granted by the Board represent the minimum that will afford relief from the hardship.

The Applicants have requested variances from the side yard setback requirements of Section 143-33.A(2)(b) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a carport and a four-season deck addition to the existing single residential dwelling. That provision of the zoning ordinance requires a minimum side yard setback of 50 feet. 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 have demonstrated that there exists an unnecessary hardship, which is not self created, and that the requested variances are necessary to enable reasonable use of the Property. The requested variances are from the applicable side yard setback requirements of Section 143-33.A(2)(b) of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-33.A(2)(b), the applicable minimum side yard setback for principal and accessory buildings over 250 square feet is fifty feet. The Applicants requested these variances in order to construct a proposed carport to be attached to the existing one car garage and a proposed four-season deck addition on the rear/northeast corner of the existing house.

The side yard setback from the carport which is proposed to be attached to the existing one car garage will be 22 feet. The existing garage is only eight feet from the side yard property line.

The side yard setback from the proposed four-season deck addition to the existing dwelling will be 30 feet at the closest point and 41 feet at the point it joins the corner of the existing dwelling.

The Applicants have demonstrated that there are unique physical characteristics of the Property, including the dimensions of the lot and the location of the existing residence which dates from the 1700s and of the existing garage. In addition, the northeast corner of the existing residence, which has stone walls two feet thick, where the four-season deck addition is proposed to be located, is where there are an existing window and door for access to the proposed addition. Also, as the existing garage is only eight feet from the side property line and is only 14 feet wide there would be no way to attach the carport to the garage without encroaching on the side yard setback. Furthermore the proposed carport is on the side farthest away from the side property line and is set back almost twice as far from the side property line as the existing garage. The requested variances are 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 location of the existing house and garage, the requested variances represent the minimum variance that will afford relief and represent the least modification possible of the applicable provisions of the zoning ordinance.

The proposed carport and four-season deck addition will be consistent with the existing residence and the neighborhood; therefore the granting of the variances conforms to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties. In addition, the Property is surrounded by state park land.



The Board finds and concludes that based on the evidence presented by the Applicants the standards for granting a dimensional variance have been met and the requested side yard setback variances should be granted.

### **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

The application for variances from the side yard setback requirements of Section 143-33.A(2)(b) in connection with the Applicants' proposed carport and four-season deck addition is granted.

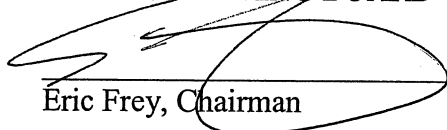
Dated: April 8, 2011

---

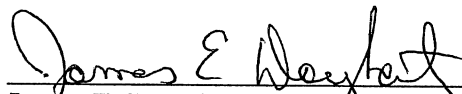
## ORDER

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


### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD




Eric Frey, Chairman



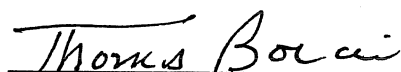
James E. Dougherty, Vice Chairman



William Donovan



Nancy McFarland



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.