

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-04 : HEARING DATE: April 28, 2011
:
APPLICATION OF: :
Joseph Webster and Laura Winslow :
:
PROPERTY: :
3498 Tyson Mill Road :
Collegeville, PA 19426 :
Parcel Nos. 43-00-00511-00-4, :
43-00-00511-01-3, 43-00-00511-02-2:

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

The applicants, Joseph Webster and Laura Winslow (hereinafter referred to as the “Applicants”), filed an application requesting a variance from Section 143-149 and from Section 143-33 of the Lower Providence Township Zoning Ordinance in connection with proposed expansion of an existing house and expansion of an existing garage/barn. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on April 28, 2011 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, the Community Development Director, and the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Joseph Webster and Laura Winslow.
2. The Applicants are the owners of the subject property.
3. The subject property is located at 3498 Tyson Mill Road, Collegeville, PA 19426 (the “Property”). The parcel numbers are 43-00-00511-00-4, 43-00-00511-01-3, and 43-00-00511-02-2.
4. The applicable zoning is R1, Residential District.

5. The Applicants were represented by legal counsel, Carl N. Weiner, Esquire, Hamburg, Rubin, Mullin, Maxwell & Lupin, 375 Morris Road, PO Box 1479, Lansdale, PA 19446-0773.

6. The lot size of the Property is approximately 7.73 acres.

7. The present use on the Property, a residential dwelling and accessory barn, began in approximately the 1800s.

8. Mr. Michael Cole, the architect for the proposed project, testified as a witness on behalf of the Applicants.

9. The following exhibits were marked at the hearing:

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| A-1 | Curriculum Vitae of Michael Cole |
| A-2 | Prior subdivision plan for the Property |
| A-3 | Board of Assessment Appeals record |
| A-4a & b | Photographs of the existing residential dwelling |
| A-5a & b | Photographs of the existing barn/garage |
| A-6 | Architectural site plan |
| A-7 | Drawing – proposed garage elevations |
| A-8 | Drawing – proposed garage elevations |
| B-1 | Application |
| B-2 | Advertisement |
| B-3 | Proof of publication |

10. The topography of the Property is unique. The Property slopes down to Skippack Creek and Perkiomen Creek.

11. The existing residential dwelling and accessory barn/garage are estimated to have been built in approximately the 1800s.

12. The existing residential dwelling and accessory barn/garage are non-conforming, as both buildings extend into the required front yard setback adjacent to Tyson Mill Road; the ultimate right of way for Tyson Mill Road strikes and/or runs around these existing buildings.

13. The footprint of the existing house is 1547 square feet.

14. The Applicants propose to build an addition to the existing dwelling which will extend to the rear 17.27 feet. The footprint of the proposed expanded house is 2,076 square feet.

15. The footprint of the existing barn/garage is 491 square feet.

16. The Applicants propose to build an addition to the existing barn/garage which will extend to the rear 24 feet. The footprint of the proposed expanded barn/garage is 1,654 square feet.

17. The proposed addition to the existing house will be located at the rear of the house and will not further encroach into the existing front yard setback.

18. The proposed addition to the existing barn/garage will be located at the rear of the barn/garage and will extend along but will not further encroach into the existing front yard setback. There will be a permeable bridge to the entrance of the barn/garage, on ground level from Tyson Mill Road, which will extend into the right of way.

19. The proposed use of the expanded barn/garage will be for vehicles only in the lower level and home office and crafts and hobbies on the upper level. There will not be a kitchenette or another dwelling unit in this building.

20. The retaining wall supporting Tyson Mill Road is deteriorating and will be corrected.

21. In connection with the project which is the subject of the application, the two additional proposed buildings shown on the previously approved subdivision plan marked as Exhibit A-2 will not be built; the proposed driveway shown on Exhibit A-2 will not be built; and the three lots shown on Exhibit A-2 (which comprise the Property) will be consolidated into one parcel.

22. The Applicants were agreeable to the following conditions:

- The 3 existing parcels which are the subject of the application will be consolidated into one parcel
- The development on the Property will be consistent with the plans shown on Exhibits A-6, A-7, and A-8
- No other homes will be constructed on the Property
- There will be no commercial use of the Property or the structures thereon
- There will be no second dwelling unit located on the Property
- There will be no new driveway on the Property

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

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

25. 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 topography of the Property and the location of the existing non-conforming dwelling and accessory barn (which date from approximately the 1800s).

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 with certain conditions represent the minimum that will afford relief from the hardship.

The Applicants have requested variances from the front yard setback requirements of Section 143-33.A(2)(a) of the Lower Providence Township Zoning Ordinance and from Section 143-149 of the Zoning Ordinance which places certain limitations upon expansion of non-conforming buildings, in connection with the proposed construction of an addition to the existing single family residential dwelling and an addition to the existing accessory barn/garage. 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 front yard setback requirements of Section 143-33.A(2)(a) of the Lower Providence Township Zoning Ordinance and from the

limitations on expansion of non-conforming buildings stated in Section 143-149 of the Zoning Ordinance. Pursuant to Section 143-33.A(2)(a), the applicable minimum front 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 addition to the rear of the existing house and a proposed addition to the existing accessory barn/garage.

The proposed addition to the rear of the existing house will not further encroach into the existing front yard setback. The proposed addition to the existing barn/garage will extend along but will not further encroach into the existing front yard setback.

The Applicants have demonstrated that there are unique physical characteristics of the Property, including the topography of the lot and the location of the existing residence and the existing accessory barn/garage which dates from approximately the 1800s. The requested variances with certain conditions 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 barn/garage, the requested variances with certain conditions represent the minimum variance that will afford relief and represent the least modification possible of the applicable provisions of the zoning ordinance.

The proposed addition to the existing dwelling and the proposed addition to the existing barn/garage will be consistent with the existing buildings on the Property and with 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 proposed two additional houses on the subdivision plan will not be built; the

proposed driveway on the subdivision plan will not be constructed; and the 3 existing parcels constituting the Property will be consolidated into one parcel. This will avoid a possible increase in residential density on the Property and in the neighborhood.

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 variances should be granted, with certain conditions.

DECISION

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

The application for variances from Section 143-149 and Section 143-33.A.(2)(a) of the Lower Providence Township Zoning Ordinance is granted, subject to the following conditions:

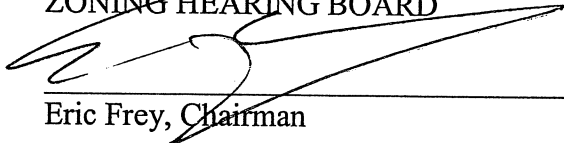
1. The Applicants shall consolidate the 3 existing parcels of real property which are the subject of the application into one parcel, including without limitation by filing a deed as necessary to accomplish such consolidation;
2. The development on the subject property shall be consistent with the plans shown on Exhibits A-6, A-7, and A-8;
3. No other homes shall be constructed on the subject property;
4. There shall be no commercial use of the subject property or the structures thereon;
5. There shall be no second dwelling unit located on the subject property; and
6. No new driveway shall be created or located on the subject property.

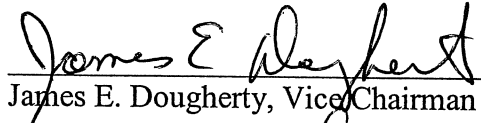
Dated: June 10, 2011


ORDER

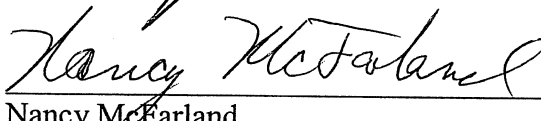
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

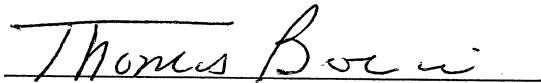
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


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.