

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-05	:	HEARING DATE: April 28, 2011
	:	
APPLICATION OF:	:	
David and Doreen Marberger	:	
	:	
PROPERTY:	:	
4020 Killington Court	:	
Eagleview, PA 19403	:	
Parcel No. 43-00-06635-14-4	:	

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

The applicants, David and Doreen Marberger (hereinafter referred to as the “Applicants”), filed an application requesting a variance from Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with proposed construction of an addition to the existing residential dwelling on the subject property. 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 David and Doreen Marberger.
2. The Applicants are the owners of the subject property.
3. The subject property is located at 4020 Killington Court, Eagleview, PA 19403 (the “Property”). The parcel number is 43-00-06635-14-4.
4. The applicable zoning is R2, Residential District.
5. The Applicants were not represented by legal counsel.
6. The lot size of the Property is approximately 23,110 square feet.

7. The present use on the Property, a residential dwelling, began in 1994.
8. Mr. and Mrs. Marberger, the Applicants, appeared as witnesses in support of the application.
9. The following exhibits were marked at the hearing:
 - A-1 Applicants' packet of supplemental documents
 - topographical site plan
 - additional signatures on petition of support for application
 - Providence Woods layout with lot numbers, showing neighbors who signed petition of support
 - 3D rendering of house elevations with proposed addition
 - preliminary architect drawings (2 pages)
 - B-1 Application
 - B-2 Advertisement
 - B-3 Proof of publication
10. The topography of the Property is sloping.
11. The Property is a corner lot. Under the Zoning Ordinance the Property has two front lot lines.
12. The front of the existing house faces Killington Court; however, the house is located at an angle to both streets rather than squarely within the building envelope.
13. There is a large grove of mature trees in the rear yard.
14. The Applicants propose to construct a two story addition to the side of the house facing Breckenridge Boulevard, with a proposed footprint of 488 square feet.
15. The proposed addition is needed because the Applicants' family has grown.
16. The proposed addition will extend not more than 12 feet into the 50 feet front yard setback on the portion of the Property adjacent to Breckenridge Boulevard. Due to the angle of the existing house on the lot the extension into the setback will decrease from the maximum of twelve feet along the addition going toward the rear of the Property. The proposed

addition will not encroach into the front yard setback on Killington Court, the side yard setback or the rear yard setback.

17. The Property is on a cul-de-sac street and there is no cut-through traffic.

18. 35 neighbors signed a petition in support of the application.

19. Neighbor Ken O'Neill, who lives at 2819 Breckinridge Boulevard, testified in support of the application.

20. The proposed addition would be architecturally consistent with the existing home, matching the external features, roof characteristics, construction materials and colors, and would be consistent with the architecture and character of other homes in the neighborhood. The addition would also make the dwelling consistent in size with the newer homes being built on the Killington Court cul-de-sac.

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

22. 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 circumstances and characteristics of the Property, including the sloping topography of the Property, the mature grove of trees located in the rear of the Property, the fact that the Property is a corner lot, and the location of the existing dwelling on the lot.

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 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 front yard setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of an addition to the existing single family residential dwelling. This request for a variance 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 variance is necessary to enable reasonable use of the Property. The requested variance is from the applicable front yard setback requirements 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 addition to the side of the existing house facing Breckenridge Boulevard.

The proposed addition will extend not more than 12 feet into the required 50 feet setback from Breckenridge Boulevard. The amount of the encroachment into the setback will decrease from the maximum of 12 feet, going toward the rear of the Property, due to the angle of the existing house on the lot and the corresponding angle of the proposed addition.

The Applicants have demonstrated that there are unique physical circumstances and/or characteristics of the Property. These include the sloping topography of the lot, the mature grove of trees at the rear of the lot, the fact that the Property is a corner lot, and the location of the existing residence at an angle on the lot rather than squarely in the building envelope. For example, the location of the existing dwelling on the lot at an angle rather than squarely within the building envelope means that the proposed addition, which will be angled to correspond to the angle of the existing house, will have one corner jutting out toward Breckenridge Boulevard and into the required setback (which is a 50 yard front yard setback rather than a 20 feet side yard setback because the Property is a corner lot).

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 unique physical circumstances and/or characteristics of the lot, including 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 to the existing dwelling will be consistent with the existing dwelling and with the existing homes in the surrounding 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. Indeed, 35 of the Applicants' neighbors have signed a petition in support of the application.

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 variance should be granted.

DECISION

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

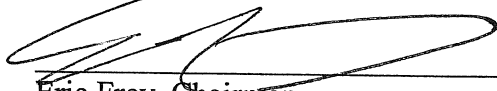
The application for variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance is granted.

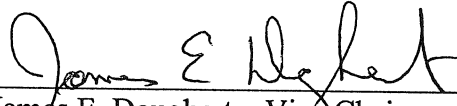
Dated: June 10, 2011


ORDER

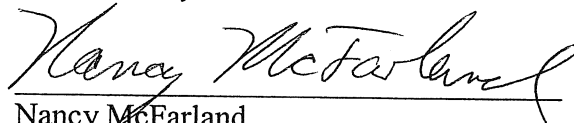
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

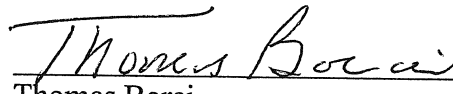
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


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.

