

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-08 : HEARING DATE: May 26, 2011
:
APPLICATION OF: :
Joseph and Allyson Debes :
:
PROPERTY: :
3038 Fairhill Drive :
Collegeville, PA :
Parcel No. 43-00-14903-02-1 :

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

The applicants, Joseph and Allyson Debes (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Section 143-49.A(2)(b) of the Lower Providence Township Zoning Ordinance in connection with the subject property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on May 26, 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 and Allyson Debes.
2. The Applicants are the owners of the subject property.
3. The subject property is located at 3038 Fairhill Drive, Collegeville, PA (the "Property"). The parcel number is 43-00-14903-02-1.
4. The applicable zoning is R3, Residential District.
5. The Applicant was not represented by legal counsel.
6. The lot size of the Property is 10,250 square feet.

7. The Applicant acquired the Property, which is a single family residence, on August 15, 1995.

8. Mr. Debes, one of the Applicants, appeared as a witness in support of the application.

9. The following exhibits were marked at the hearing:

B-1	Application
B-2	Advertisement
B-3	Proof of publication

10. The Applicants seek a variance in connection with a patio constructed in the back of the existing residence, consisting of flagstone.

11. Applicants' patio would increase the impervious coverage on the Property to a total of 26% of the lot area.

12. The Property has a water drainage issue in the back of the house, and receives water from three adjacent properties resulting in water in the basement. The patio is designed to swale the water away from the back of the house to an area between the existing residence and the property of the next door neighbor.

13. Mr. Debes testified that the neighbor does not object to the water being swaled between the two houses. He also testified that much of the water is drained in an underground trench and is percolating.

14. The patio consists of irregular flagstone, which allows water to flow through the joints.

15. The lot is small, for purposes of permissible area for impervious coverage, in light of the percentage of the lot occupied by the existing dwelling and by the existing driveway.

16. There was no public comment on the application.

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

18. 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/or characteristics of the Property, including the topography and size of 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 maximum total impervious coverage requirement set forth in Section 143-49.A(2)(b) of the Lower Providence Township Zoning Ordinance, in connection with a patio constructed in the rear of 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 maximum total impervious coverage requirements of Section 143-49.A(2)(b) of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-49.A(2)(b), the applicable maximum total impervious coverage is 25% of the lot area. The Applicants requested this variance in order to allow a patio of irregular flagstone in the rear of the existing house.

As a result of the patio the total impervious coverage on the Property will be 26%, which is 1% greater than the maximum percentage allowed under Section 143-49.A(2)(b). The topography of the lot relating to the water drainage issue in the back of the house which the patio is designed to address, together with the small size of the lot in light of the footprint of the

existing dwelling and driveway, contributes to a hardship with regard to the need for additional permissible impervious coverage on the Property. 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. 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 patio will not be inconsistent with the existing dwelling on the Property or 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.

The Board finds and concludes that 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:

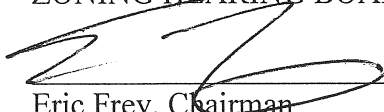
The application for variance from Section 143-49.A(2)(b) of the Lower Providence Township Zoning Ordinance is granted, in accordance with the application and plans submitted by the Applicants.

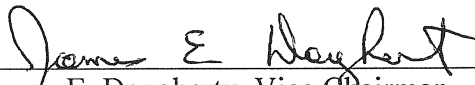
Dated: July 8, 2011

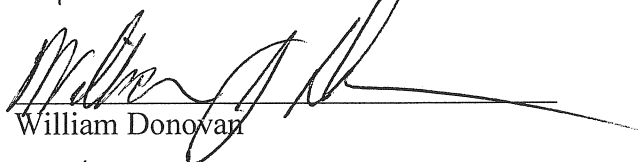
ORDER


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

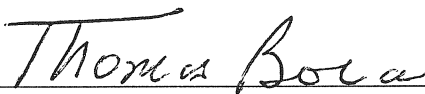
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


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.