

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-09 : HEARING DATE: May 26, 2011
:
APPLICATION OF: :
Stanley and Dolores Sarnocinski :
:
PROPERTY: :
408 Hillside Avenue :
Eagleview, PA 19403 :
Parcel No. 43-00-06346-00-1 :

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

The applicants, Stanley and Dolores Sarnocinski (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Section 143-37.A(2) and Section 143-149 of the Lower Providence Township Zoning Ordinance in connection with proposed construction of a family room and basement 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 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 Stanley and Dolores Sarnocinski.
2. The Applicants are the owners of the subject property.
3. The subject property is located at 408 Hillside Avenue, Eagleview, PA 19403 (the "Property"). The parcel number is 43-00-06346-00-1.
4. The applicable zoning is R2, Residential District.
5. The Applicants were represented by Patricia Leisner Clements, Esquire, 516 Falcon Road, Audubon, PA 19403.

6. The lot size of the Property is 23,844 square feet.
7. The present use on the Property, a residential single family dwelling, began in 1955.
8. Mr. Sarnocinski, 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 topography of the Property is sloping in the back.
11. The footprint of the existing home is 1152 square feet.
12. The front yard setback for the existing house is 20 feet, which is nonconforming. The front yard setback required under Section 143-37.A(2) is 50 feet.
13. The Property also is nonconforming as to minimum lot area. The requirement under Section 143-37.A(2) is 25,000 square feet.
14. The Applicants propose to construct a family room and basement addition to the east side of the existing house with a proposed footprint of 396 square feet.
15. The proposed addition would have a front yard setback of 37 feet. That is less of an encroachment into the required front yard setback than the existing house.
16. The Applicants need the extra space in the proposed family room addition for use by their family, including for grandchildren during family visits especially at holidays. The existing house is an older home with small rooms.
17. Mr. Sarnocinski received positive feedback from neighbors with whom he discussed the project.

18. Neighbor Stacey Rymkiewicz, who resides next door at 400 Hillside Avenue together with the Applicants' son, testified in support of the application. She stated that she is part of the family and that at holidays the Applicants' house is very crowded and the additional space is needed.

19. The proposed addition would be consistent with the existing home, and would be consistent with the character of other homes in the neighborhood.

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 circumstances and characteristics of the Property, including the sloping topography in the back of the existing dwelling, the small size of the 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 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 a variance from the front yard setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance and from the limitation on expansion of the area of a nonconforming building stated in Section 143-149 of the Lower Providence Township Zoning Ordinance, in connection with the proposed construction of a family room and basement addition to the existing single family residential dwelling. This 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 requires 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 requested relief is from the applicable front yard setback requirements set forth in Section 143-37.A(2) of the Zoning Ordinance and from the limitation on expansion of a nonconforming building set forth in Section 143-149 of the 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. Pursuant to Section 143-149, the area of an existing nonconforming building may not be expanded by more than 25% of the existing area of the building. The Applicants requested these variances in order to construct a proposed addition to the side of the existing house.

The Applicants have demonstrated that there exists an unnecessary hardship, which is not self created, and that the requested relief is necessary to enable reasonable use of the Property. There are unique physical circumstances and/or characteristics of the Property. These include the sloping topography of the lot, the small size of the lot and the location of the existing residence on the lot. The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property and to enable reasonable use of the Property. The Applicants did not create the unnecessary hardship.

Due to the unique physical circumstances and/or characteristics of the lot and 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 will encroach upon the front yard setback less than the existing house does. The proposed addition will comply with all other setback requirements.

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.

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.

DECISION

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

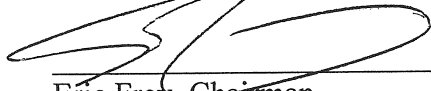
The application for variances from Section 143-37.A.(2) and Section 143-149 of the Lower Providence Township Zoning Ordinance is granted, in accordance with the application and plans submitted by the Applicants.

Dated: July 8, 2011

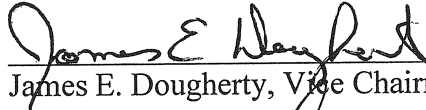
ORDER

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

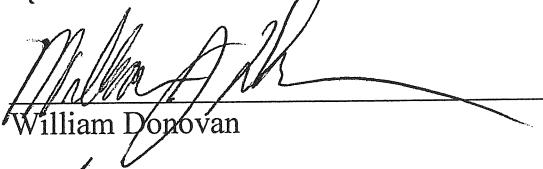
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



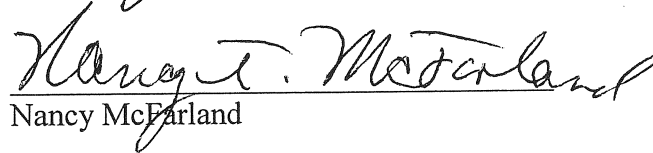
Eric Frey, Chairman



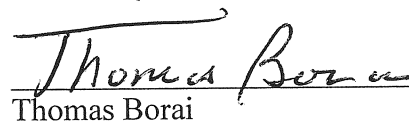
James E. Dougherty, Vice Chairman



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.