

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-10	:	HEARING DATE: May 26, 2011
	:	
APPLICATION OF:	:	
Anthony J. Jost and Lisa A. Jost	:	
	:	
PROPERTY:	:	
214 Collegeville Road	:	
Collegeville, PA	:	
Parcel No. 43-00-02666-10-8	:	

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

Applicants Anthony J. Jost and Lisa A. Jost (hereinafter referred to as the “Applicants”) filed an application requesting a variance from the minimum lot area requirement of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed subdivision of the existing single residential lot into two proposed residential lots, one of which would be undersized. 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 Anthony J. Jost and Lisa A. Jost, whose address is 3851 Germantown Pike, Collegeville, PA 19426.
2. The Applicants are the owners of the subject property, which is located at 214 Collegeville Road, Collegeville, PA (the “Property”). The parcel no. is 43-00-02666-10-8.
4. The applicable zoning is R-2 Residential District.
5. The Applicants were represented by Michael E. Furey, Esquire, Furey & Baldassari, P.C., 1043 S. Park Avenue, Audubon, PA 19403.

6. The present use on the Property is a single family residence, which commenced in 1948.

7. The lot size is 47,242 square feet to ultimate right of way line.

8. The following exhibits were marked at the hearing:

- A-1: Plan set
- A-2: 8 color photographs of the Property and surrounding neighborhood
- A-3: Packet of appellate court decisions
- B-1: Application
- B-2: Advertisement
- B-3: Proof of publication

9. The Applicants propose to subdivide the Property into 2 single family residential lots. The area of proposed lot 1 would be 22,242 square feet to the ultimate right of way line. The area of proposed lot 2 would be 25,000 square feet to the ultimate right of way line.

10. The Property currently is served by public water and private on-lot septic.

11. The Applicants would connect the two proposed lots to public water and public sewer.

12. The Applicants acquired the Property in 2006.

13. The Applicants are requesting a variance from the minimum lot area requirements of Section 143-37.A(2) of the Township Zoning Ordinance with regard to proposed lot 1, which would be smaller than the required minimum lot area of 25,000 square feet. Proposed lot 2 would comply with the minimum lot area requirements.

14. The Applicants propose to remove all existing structures on the Property and construct two new single family residences.

15. The Property fronts on two streets, Collegeville Road and Forest Lane, which is a new street.

16. Joseph Estock, a professional engineer, testified on behalf of the Applicants.

17. Mr. Estock testified as to the subdivisions and new houses in the surrounding neighborhood, as shown on Exhibits A-1 and A-2.

18. Mr. Estock testified that the proposed subdivision and development of the Property, including proposed lot 1 on Collegeville Road having less than the 25,000 square feet minimum lot area, would not adversely affect the neighborhood but instead would conform to and enhance the character of the neighborhood, which includes multiple new houses on subdivided lots.

19. Mr. Jost, one of the Applicants, testified in support of the application. Mr. Jost stated that he spoke to a number of neighbors on Forest Lane when the photos marked as Exhibit A-2 were taken, and they supported the project and did not object to it.

20. If the proposed two new residences are built on the Property, there will be entrances on Collegeville Road and Forest Lane.

21. The Applicants have determined the best use of the Property is to have two properties, one on Collegeville Road and one on Forest Lane. If the variance is not granted and the Property cannot be subdivided that would impose an economic hardship.

22. There was no comment by the public regarding the application.

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

24. 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 frontage on two streets and the 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.

DISCUSSION/CONCLUSIONS OF LAW

The Applicants have requested a variance from the minimum lot area requirement of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance for a proposed subdivision of the existing single residential lot into two proposed residential lots, one of which would be undersized. That provision of the zoning ordinance requires a minimum lot area of

25,000 square feet where both public water and sanitary sewer service are available. The 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

Property into two residential lots on which will be constructed new single family dwellings, consistent with the character of the surrounding neighborhood.

This is not a self-created hardship. Instead, it results from the unique physical characteristics of the subject property including its size and its frontage on two streets. As a result of the size of the Property, when 2,434 square feet of proposed lot 1 is dedicated to the right of way line, the lot will be 2,758 square feet less than the 25,000 square feet minimum lot area requirement. However, proposed lot 2 will fully comply with the required minimum net lot area.

Granting the requested variance will not alter the essential character of the neighborhood in which the Property is located, nor will it impair the appropriate use or development of the neighboring properties. The neighborhood consists of subdivided properties with new houses. The proposed subdivision of the Property into two residential lots each containing a new single family dwelling is in conformance with the existing character of the neighborhood, which has changed since the existing dwelling on the Property was built. In addition, the variance as to proposed lot 1, without any need for a variance regarding proposed lot 2 which will be fully compliant with the minimum lot area requirement, represents the minimum variance that will afford relief and the least modification possible of the applicable provisions of the zoning ordinance. In addition, the proposed residential dwellings on the proposed subdivided residential lots will comply with all applicable setback requirements under the Zoning Ordinance.

The Board finds and concludes that based on the testimony and evidence presented at the hearing the standards for the requested relief have been met and that the requested variance from Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance should be granted.

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DECISION

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



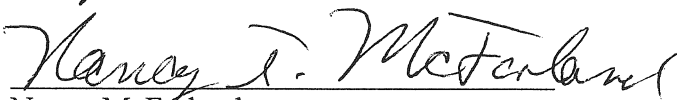
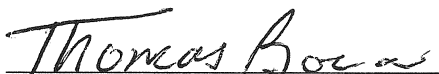
The application for a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance is granted, in accordance with the application and plans submitted by the Applicants.

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.