

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-11	:	HEARING DATE: June 23, 2011
	:	
APPLICATION OF:	:	
Yu Qing Liu	:	
	:	
PROPERTY:	:	
24 Clearfield Avenue	:	
Audubon, PA 19403	:	
Parcel No. 43-00-02653-00-4	:	

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

The applicant, Yu Qing Liu (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Section 143-30.C and Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with a proposal to enclose a front porch on the subject property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on June 23, 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 Applicant is Yu Qing Liu.
2. The Applicant is the owner of the subject property.
3. The subject property is located at 24 Clearfield Avenue, Audubon, PA 19403 (the "Property"). The parcel number is 43-00-02653-00-4.
4. The applicable zoning is R2, Residential District.
5. The Applicant was not represented by legal counsel.
6. The Applicant appeared as a witness in support of the application.
7. The lot size of the Property is 11,250 square feet.

8. The Applicant acquired the Property, which consists of a residential single family dwelling, in 2006.

9. The Applicant lives at the Property with her husband, three children and parents.

10. The following exhibits were marked at the hearing:

B-1	Application
B-2	Advertisement
B-3	Proof of publication
A-1	Five color photographs
A-2	statement of no objection signed by neighbors

11. The Applicant proposes to enclose the existing front porch of the single family residence as a two room space/addition. The two rooms will be a playroom for the Applicant's children with no outside exit and an entrance foyer.

12. The project is needed to provide for more space and a safe area for the Applicant's children to play in.

13. The proposed enclosed front porch space will utilize the existing front wall of the residence.

14. The only utilities in the proposed enclosed front porch will be heat and electricity. There will not be a kitchenette or any business use in the proposed enclosed front porch.

15. According to the plans submitted the depth of the proposed enclosed front porch space will be 102 inches, and the width will be 28 feet and two inches.

16. The front setback for the existing unenclosed front porch is 44 feet.

17. The Applicant is requesting a variance to permit a front setback of 36 feet for the proposed enclosed front porch/addition.

18. There are other houses in the neighborhood including several on the Applicant's street with enclosed front porches, as shown by the photographs marked as Exhibit A-1.

19. James Nagle, a resident of 29 Clearfield Avenue, stated at the hearing that he was opposed to the proposal.

20. Eight neighbors, including seven residing on Clearfield Avenue, signed a written statement in support of the Applicant's proposed enclosed front porch project and requested variance. [Exhibit A-2.]

21. The proposed enclosed front porch space would be consistent with the existing home, and would be consistent with the character of other homes in the neighborhood.

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

23. Absent the requested relief the Applicant 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 undersized lot and the location of the existing house on the lot.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.

2. Denial of the requested relief will impose an unnecessary hardship upon the Applicant.

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 Applicant's 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 Applicant has requested variances from the front yard setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance and the restrictions set forth in Section 143-30.C of the Lower Providence Township Zoning Ordinance, in connection with the proposal to enclose the front porch of the existing single family residential dwelling as a two room space/addition extending into the front yard setback. 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 the restrictions set forth in Section 143-30.C 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 143-30.C, no awning, patio or deck which may be extended into the front yard area may be enclosed except with insect screening. Therefore the front yard setback requirements of Section 143-37.A(2) apply to the proposed enclosed front porch space/addition. The Applicant requested these variances in order to construct an enclosed front porch space/addition extending into the front yard setback.

The Applicant has 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, specifically the undersized lot and the location of the existing residence on the lot. The Applicant has a need for the proposed enclosed two room front porch space to provide more space and a safe area for the Applicant's children to play. 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 enclosed front porch space/addition will result in a front yard setback of 36 feet. The proposed enclosed front porch space/addition will comply with all other setback requirements.

The proposed front porch space/addition will be consistent with the existing dwelling and with the surrounding neighborhood, in which there are other enclosed front porches spaces/additions. Therefore the granting of the variance conforms to the essential character of the neighborhood and will not impair the appropriate use or development of adjacent properties.

The Board finds and concludes that based on the evidence presented by the Applicant 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 4-1 vote, as stated in the Notice of Decision letter mailed on June 24, 2011, is as follows:

The application for variances from Section 143-30.C and Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance to permit the proposed enclosed front porch is granted, in accordance with the application and plans submitted by the Applicant and subject to the condition that the Lower Providence Township Code Enforcement Staff verify that the proposed project was completed in accordance with the application and plans presented to the Zoning Hearing Board.

Dated: August 5, 2011

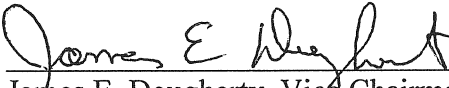
ORDER


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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

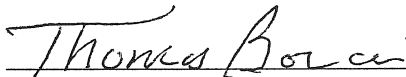
Dissenting

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.