
ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-13	:	HEARING DATE: July 28, 2011
	:	
APPLICATION OF:	:	
Bruce Saville and Janice Saville	:	
	:	
PROPERTY:	:	
609 Mockingbird Lane	:	
Eagleville, PA 19403	:	
Parcel No. 43-00-08692-00-4	:	

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

The applicants, Bruce Saville and Janice Saville (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 which would expand the one car garage to a two car garage. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 28, 2011, at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Community Development Director, the Solicitor, and the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Bruce Saville and Janice Saville.
2. The Applicants are the owners of the subject property.
3. The subject property is located at 609 Mockingbird Lane, Eagleville, PA 19403 (the “Property”). The parcel number is 43-00-08692-00-4.
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 18,000 square feet.

7. The present use on the Property, a residential dwelling, began in 1966.

8. Mr. Saville 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. Accompanying the application were a set of 11 color photographs on 3 pages and a statement of no objections to the requested variance signed by neighbors residing at 6 other nearby properties on Mockingbird Lane.

11. The Applicants propose to construct a one story addition to the house to expand the existing one car garage to a two car garage.

12. The topography of the Property is steeply sloping, from the front to the rear. In addition the rear of the lot is heavily wooded with large old growth trees.

13. The Property is 90 feet wide. The required lot width at the building line is 100 feet.

14. The Property is undersized. The required minimum lot area is 25,000 square feet.

15. The side yard setback for the existing garage is 19 ½ feet. The side yard set back for the other side of the existing dwelling also is 19 ½ feet. The required side yard setback is 20 feet.

16. The front yard setback with regard to the existing dwelling and one car attached garage is 58 feet.

17. The existing attached one car garage is 30 feet long. The proposed addition to the garage to expand it to a two car garage would be 12 feet by 24 feet. The front of the garage

addition would be set back an additional 3 feet from the front of the existing garage and the rear of the addition would be set back an additional 3 feet from the rear of the existing garage.

18. The proposed addition to the garage would extend into the existing side yard setback an additional 12 feet.

19. To construct a garage addition in the rear of the lot would be costly, necessitating digging into the embankment as a result of the existing severe slope, removing old growth trees and extending the driveway further through the lot on the side of the Property. It also would result in a garage addition which would be elevated in the rear of the lot and not aesthetically pleasing.

20. The proposed garage addition would have the same exterior finish, the same type garage door, the same type windows and the same roof and pitch line as the existing attached garage.

21. The proposed garage addition would be architecturally consistent with the existing home and would be consistent with the architecture and character of other homes in the neighborhood.

22. The neighbors at two residences on the right, two residences on the left and two residences across the street, including the next door neighbors residing on the side where the proposed garage addition would be located, signed a statement of no objections to the requested variance.

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 the steeply sloping topography of the Property from the front to the rear, the undersized area of the lot including the width 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 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 side yard setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a one story garage addition to the existing single family residential dwelling which would expand the existing garage from a one car garage to a two car garage. 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 side 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 side yard setback for principal and accessory buildings over 250 square feet is twenty feet. The Applicants requested this variance in order to construct a proposed addition to the existing house expanding the garage from a one car garage to a two car garage. The proposed addition will extend not more than an additional 12 feet into the existing side yard setback.

The Applicants have demonstrated that there are unique physical circumstances and/or characteristics of the Property. These include the severely sloping topography of the lot from the

front to the rear, the undersized lot and its shape and dimensions, including the width of the lot which is less than half of its length, 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. The Applicants did not create the unnecessary hardship.

Due to the unique physical circumstances and/or characteristics of the lot, as stated above, 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/expanded garage 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, neighbors residing in six nearby properties located on the Applicants' street have signed a statement of no objections to the requested variance.

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, as set forth in the Notice of Decision letter mailed on July 29, 2011, is as follows:


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

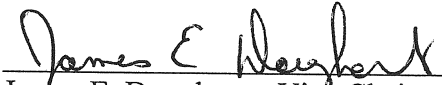
Dated: September 9, 2011

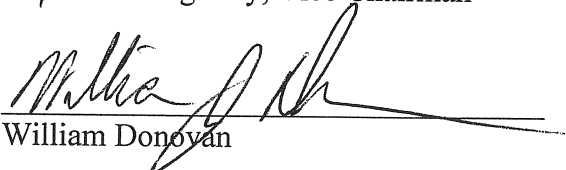
ORDER

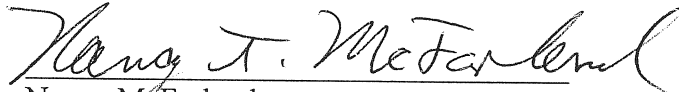
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

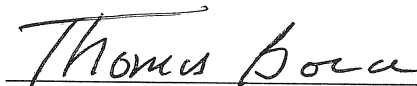
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


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.

