

## **ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-11-16 : HEARING DATE: July 28, 2011  
:  
APPLICATION OF: :  
Joseph and Rosanna Urbano :  
:  
PROPERTY: :  
4017 Redwing Lane :  
Audubon, PA 19403 :  
Parcel No. 43-00-11472-48-2 :

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

Applicants Joseph and Rosanna Urbano (hereinafter referred to as the “Applicants”) filed an application requesting a variance from the rear yard setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a kitchen/sunroom addition to the existing single residential dwelling. 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 Joseph and Rosanna Urbano.
2. The Applicants are the owners of the subject property, which is located at 4017 Redwing Lane, Audubon, PA 19403 (the “Property”). The parcel no. is 43-00-11472-48-2.
4. The applicable zoning is R-2 Residential District.
5. The Applicants were not represented by legal counsel.
6. The present use on the Property is a single family residence, which commenced in 1994.

7. The lot size is 18,074 square feet.
8. The following exhibits were marked at the hearing:
  - B-1: Application
  - B-2: Advertisement
  - B-3: Proof of publication
9. Applicant Mr. Urbano testified in support of the application.
10. The Applicants propose to construct a kitchen/sunroom addition to the rear of the existing single family dwelling on the Property.
11. The proposed addition will be one room with an area of approximately 396 square feet.
12. The proposed addition will be finished like the rest of the house, including multiple windows.
13. The proposed addition will consist of an expansion of the kitchen along with a sunroom.
14. The proposed addition is for additional living space for the Applicants. It would expand the kitchen eating area and double as a sun room.
15. There is a deck with a hot tub at the rear of the existing dwelling. The deck extends approximately 15 to 16 feet from the house with the hot tub several feet beyond that. The Applicants propose to remove the deck and the hot tub in connection with the construction of the proposed kitchen/sunroom addition.
16. The proposed addition would extend 13 to 14 feet in the rear of the existing dwelling.
17. The rear property line is angled irregularly.

18. As a result of the irregularly angled rear property line one corner of the proposed addition would extend into the required rear yard setback by at most 12 feet, resulting in a rear yard setback of 48 feet at that point. However, most of the proposed addition would be within the required rear yard setback of 60 feet.

19. Mr. Urbano stated that several other houses in the neighborhood have additions on the rear of the house.

20. Mr. Urbano stated that the neighbors have not objected to the proposal.

21. No members of the public testified for or against the application.

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 Applicants will suffer an unnecessary hardship. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property including the dimensions and irregularly angled rear property line of the Property 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 rear yard setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a kitchen/sunroom addition to the existing single residential dwelling. That provision of the zoning ordinance requires a minimum rear yard setback of 60 feet. 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 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 rear 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 rear yard setback for principal and accessory buildings over 250 square feet is sixty feet. The Applicants requested the variance in order to construct a proposed addition to the rear of the existing house.

The rear yard setback from the proposed addition to the existing dwelling will be 48 feet at the closest point, as a result of the irregularly angled rear property line. Most of the addition will be within the required setback of sixty feet.

The Applicants have demonstrated that there are unique physical characteristics of the Property, including the irregularly angled rear property line and the location of the existing residence. 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 characteristics of the lot 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 be consistent with the existing residence and the neighborhood; therefore the granting of the variances 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 rear yard setback 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 the rear yard setback requirements of Section 143-37.A(2) is granted, in accordance with the application and plans submitted..

Dated: September 9, 2011



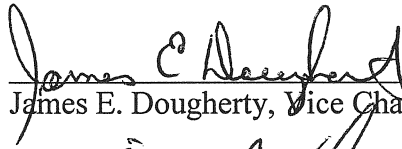
**ORDER**

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.

