

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-17	:	HEARING DATE: July 28, 2011
	:	
APPLICATION OF:	:	
Catherine Beyer	:	
	:	
PROPERTY:	:	
3568 Arcola Road	:	
Collegeville, PA 19426	:	
Parcel No. 43-00-00547-00-4	:	

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

The applicant, Catherine Beyer (hereinafter referred to as the “Applicant”), has requested a variance from Sections 143-188.A and 143-191.A of the Lower Providence Township Zoning Ordinance in connection with the proposed demolition and reconstruction of a portion of the existing residence with a small addition to accommodate disability accessibility which is medically required for her husband. 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 Applicant is Catherine Beyer.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at 3568 Arcola Road, Collegeville, PA 19426 (the “Property”). The parcel number is 43-00-00547-00-4.
4. The applicable zoning is R-2 Residential District and the Floodplain Conservation District.

5. The Applicant was not represented by legal counsel.
6. The lot size of the Property is approximately 2.027 acres.
7. The present use on the Property is a single family residence.
8. Mrs. Beyer 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
B-4	Email requesting continuance

10. The Applicant proposes to demolish and reconstruct a portion of the existing residence with a small addition to accommodate disability accessibility for her husband.

11. The proposed disability accessibility renovation is medically required for the Applicant's husband.

12. Demolition of one portion of the existing residence is required because the existing foundation is on railroad ties.

13. The proposed reconstruction/addition will be two stories, with handicapped accessible bathroom and bedroom on the first floor and two bedrooms on the second floor.

14. The proposed reconstruction/addition will be within all required setbacks.

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

16. The proposed reconstruction/addition will conform with and will not alter the essential character of the neighborhood in which the Property is located.

17. The unique physical characteristics of the lot, along with the Applicant's husband's medical need for disability accessibility, are causing a hardship.

18. This is not a self-created hardship.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant is the legal owner of the Property and 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 (as well as her husband).
3. The hardship is not self imposed, and is due to the unique physical circumstances and characteristics of the Property along with the Applicant's husband's medical need for disability accessibility in the residence.
4. The approval of the requested relief is necessary to enable the 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 Applicant has requested a variance from Sections 143-188.A and 143-191.A of the Lower Providence Township Zoning Ordinance in connection with demolition and reconstruction of a portion of the existing dwelling to accommodate the disability accessibility requirements of Applicant's husband. This is a request for relief from requirements of the Zoning Ordinance of a dimensional nature.

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 § 910.2 of 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 variance is from floodplain restrictions stated in Sections 143-188.A and 143-191.A of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-188.A, existing structures in the floodplain area shall not be expanded or enlarged unless the effect of the proposed expansion or enlargement of flood heights is fully offset by accompanying improvements. Pursuant to Section 143-191.A, the lowest floor of any substantially improved or new residential structure located in the Floodplain Conservation District shall be at least 1 ½ feet above the 100-year flood elevation.

The requested variance from the above-referenced sections is necessary to alleviate unnecessary hardship, including due to the unique physical circumstances and characteristics of the Property and the Applicant's husband's medical need for disability accessibility in the residence. The Applicant did not create the unnecessary hardship.

Due to the unique physical characteristics of the lot, the nature of the existing residence and the Applicant's husband's medical need for disability accessibility, 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 reconstruction/addition will be consistent with the existing residence and the 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 nor will it be detrimental to the public welfare.

The Board finds and concludes that based on the evidence presented the standards for granting a 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 143-188.A and Section 143-191.A of the Lower Providence Township Zoning Ordinance to permit the proposed demolition and reconstruction of (partial) existing residence with small addition is granted, in accordance with the application and plans submitted.

Dated: September 9, 2011

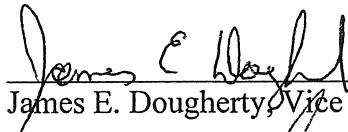
ORDER

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

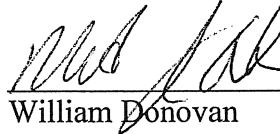
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



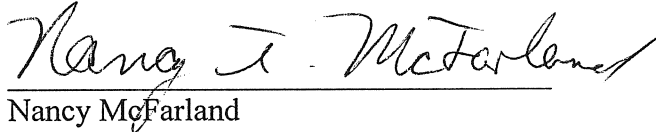
Eric Frey, Chairman



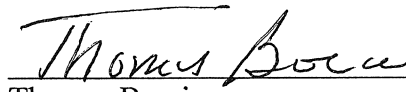
James E. Dougherty, Vice Chairman



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.