

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-18	:	HEARING DATE: July 28, 2011
	:	
APPLICATION OF:	:	
Gene E. and Weipo H. Chessen	:	
	:	
PROPERTY:	:	
2845 Second Street	:	
Norristown, PA 19403	:	
Parcel Nos. 43-00-01240-00-4 and	:	
43-00-12847-00-7	:	

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

The applicants, Gene E. and Weipo H. Chessen (hereinafter referred to as the “Applicants”), filed an application requesting a variance from Section 143-37.A(2) in connection with the proposed construction of a one story addition with roofed patio to be attached to their existing single family residence. 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 Gene E. and Weipo H. Chessen.
2. The Applicants are the legal owners of the subject property.
3. The subject property is located at 2845 Second Street, Norristown, PA 19403 (the “Property”). The parcel numbers are 43-00-01240-00-4 and 43-00-12847-00-7.
4. The applicable zoning is R-2 Residential District.
5. The Applicants were not represented by legal counsel.
6. The lot size of the Property is approximately 12,000 square feet.

7. The present use on the Property is a single story single family residence.

8. Mrs. Chessen 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. The Applicants propose to build an addition to the side of the existing single family residence.

11. The proposed addition will consist of one story: one bedroom, one bathroom and one living room. The addition will be 28 feet 2 inches from the rear property line.

12. Applicants also propose to construct a roofed patio to the rear of the proposed addition, which will extend 8 feet 2 inches to the rear of the proposed addition and will be 20 feet from the rear property line. The patio will be unenclosed at the present time, but Applicants wish to have the right to enclose the patio in the future.

13. The present application for variance is for a modification or amendment of the variance granted to the Applicants with regard to application No. Z-10-06. In that previous application the Applicants sought a variance from the applicable setback requirements to permit the construction of a two story addition consisting of a first floor garage and a second floor in law suite.

14. The present application for variance is for a smaller addition, consisting of one story rather than two and a lesser area.

15. The reasons for the present application for a variance for the smaller addition with roofed patio are as follows: (1) the construction cost of the original proposed addition is too high; and (2) with the reduced size structure, it would be difficult to join the roofline of the

proposed addition with the original structure and make the addition aesthetically pleasing and/or symmetrical without extending the roof in the rear.

16. The proposed addition is for living space for Applicants' parent/in-law.

17. The Applicants do not intend to install or construct a second kitchen in the proposed addition or the house.

18. The front of the proposed addition will be at the same distance from the front property line as the existing residence.

19. The requested variance for a rear yard setback of 20 feet from the rear of the roofed patio is for a setback that is greater than the rear yard setback of approximately 16 feet for the existing house.

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

21. The proposed addition and roofed patio would conform with and will not alter the essential character of the neighborhood in which the Property is located.

22. The unique physical characteristics of the lot, including the size and dimensions of the lot and the location of the existing dwelling are causing a hardship.

23. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicants are the legal owners of the Property and 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 characteristics of the Property.

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 Applicants have requested a variance from the applicable rear yard setback requirements in connection with construction of a proposed addition and roofed patio to be attached to the existing single family residence located on the Property. 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 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 60 feet. The Applicants requested this variance in order to construct a proposed addition on the side of the existing house with a roofed patio to the rear. The rear yard setback from the rear of the proposed roofed patio will be 20 feet, which is greater than the current rear yard setback of approximately 16 feet for the existing house. The requested variance is for an amendment of the variance granted in regard to Application No. Z-10-06, to permit a smaller addition located at the same distance from the front yard line as the proposed addition which was the subject of the previously granted variance, which is only one story and has a smaller area, but which will have a rear yard setback of 20 feet from the proposed roofed patio.

The Applicants have demonstrated that there are unique physical characteristics of the Property, including the size and dimensions of the lot and the location of the existing dwelling. 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 location of the existing house and the existing setbacks, 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 one story addition with roofed patio 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 by the Applicants the standards for granting a dimensional variance have been met and the requested dimensional 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:

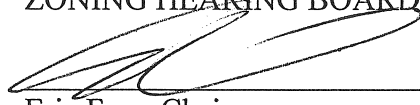
The application for variance from Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance to permit the proposed addition with roofed patio with rear yard setback of 20 feet is granted, in accordance with the application and plans submitted and subject to the condition that there not be a second kitchen.

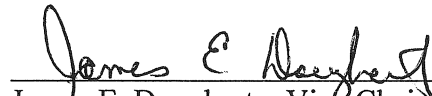
Dated: September 9, 2011

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 J. 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.

