

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-22 : HEARING DATE: September 22, 2011
:
APPLICATION OF Anna and Steve Burry :
:
:
PROPERTY: :
3852 Nancy Lane :
Collegeville, PA 19426 :
Parcel No. 43-00-14998-50-2 :

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

The applicants, Anna and Steve Burry (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 a detached garage on this single family residential property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on September 22, 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 Anna and Steve Burry.
2. The Applicants are the owner of the subject property.
3. The subject property is located at 3852 Nancy Lane, Collegeville, PA 19426 (the "Property"). The parcel number is 43-00-14998-50-2.
4. The applicable zoning is R2, Residential District.
5. The Applicant was represented by Michael Furey, Esquire as legal counsel.
6. The lot size of the Property is approximately 30,518 square feet.

7. The present use on the Property, a residential dwelling, began in 1980.
8. Mr. and Mrs. Burry appeared as witnesses in support of the application.
9. The following exhibits were marked at the hearing:

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| B-1 | Application |
| B-2 | Advertisement |
| B-3 | Proof of publication |
| A-1-15 | Applicants' Exhibit Packet with 15 tabs; each tab was numbered as a separate exhibit |
| A-16 | Copy of building permit application |

10. The Applicants propose to construct a detached garage to house Mr. Burry's business vehicles.

11. The proposed garage will be 36 feet by 40 feet.

12. The proposed garage will be single story, with a height of 20 feet four inches at the peak of the roof. It will be constructed of painted steel. It will be built on a cement pad.

13. The proposed garage will be 40 feet from the rear property line.

14. The required rear yard setback is 60 feet.

15. The Applicants wish to use the garage to store a flat bed and a wrecker tow truck. Mr. Burry's business requires that he have immediate access to the two business vehicles, as he can be called for an emergency pick up at any time of the day. Both of these vehicles would fit inside of the garage. Any vehicles picked up would be towed to a different location.

16. Mr. Burry also would like to store his 26 feet long personal boat in the proposed structure.

17. The Property is triangle shaped.

18. The Applicants submitted a letter from three neighbors on Nancy Lane [Exhibit A-14] stating that they have no objections to the requested variance for the proposed garage.

19. 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 its unusual triangle shape and dimensions 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 one story detached garage on the existing single family residential lot. 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 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 have requested this variance in order to construct a proposed one story detached garage. The proposed garage will be 40 feet from the rear property line.

The Applicants have demonstrated that there are unique physical circumstances and/or characteristics of the Property. These include that the Property is a triangle shaped lot, the dimensions of the Property and the location of the existing dwelling 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 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. Three neighbors on the street where the Property is located submitted a letter stating that they had no objections to the requested variance for the proposed garage.

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, subject to certain conditions, should be granted.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 3-2 vote, as set forth in the Notice of Decision letter mailed on September 23, 2011, is as follows:

The application for a variance from Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance to permit the construction of the proposed garage is granted, in accordance with the application and plans submitted and subject to the following conditions:

1. No more than 2 commercial vehicles may be stored in the proposed garage;
2. No work on any commercial vehicles shall be permitted on the Property;
3. No towing of any customer's vehicles to the Property or having any customer's vehicles on the Property shall be permitted; and
4. The commercial vehicles must be stored in the garage at all times.

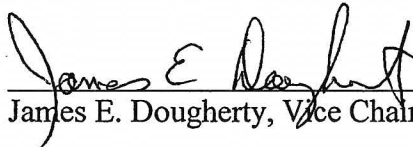
Dated: November 7, 2011

ORDER

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

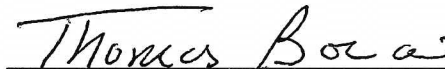
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

Dissenting
Eric Frey, Chairman


James E. Dougherty, Vice Chairman

Dissenting
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.