

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-24 : HEARING DATE: October 27, 2011

APPLICATION OF:

William C. Pinkstone

PROPERTY:

17 S. Park Avenue

Eagleville, PA 19403

Parcel No. 43-00-10192-00-7

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

The applicant, William C. Pinkstone (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Sections 143-19.C and 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with proposed construction of a detached two car garage. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on October 27, 2011 at the Lower Providence Township Building. The Zoning Hearing Board members present were Eric Frey, James E. Dougherty, Thomas Borai and alternate member Joyce D. Cluley, who served as a voting member due to the absence of two other members of the Board. Also present were the Community Development Director, the Solicitor, and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is William C. Pinkstone.
2. The Applicant is the owner of the subject property.
3. The subject property is located at 17 Park Avenue, Eagleville, PA 19403 (the "Property"). The parcel number is 43-00-10192-00-7.
4. The applicable zoning is R2, Residential District.
5. The Applicant was not represented by legal counsel.

6. The lot size of the Property is approximately 20,400 square feet. It is 100 feet wide by 204 feet long.

7. The present use on the Property, a residential dwelling, began in 1940.

8. Mr. Pinkstone 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 Applicant proposes to construct a two car garage.

11. The proposed garage is to be a detached, modular garage with dimensions of 24 feet by 28 feet. It will be one story and 10-12 feet tall.

12. The proposed garage is to be located at the end of the existing circular driveway on the Property, which was installed by a previous owner.

13. The existing circular driveway is an attractive and functional feature of the Property.

14. The distance from the rear end of the existing circular driveway to the rear property line of the Property is 60 feet.

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

16. The required rear yard setback is 60 feet.

17. There previously was an older garage on the Property which was in poor shape, with rotting timbers, ants and leaking roof. It was torn down a year ago.

18. The proposed new garage would extend into the rear yard resulting in a setback of between 21 to 24 feet, depending on how close the garage is positioned to the existing circular driveway.

19. Mr. Pinkstone discussed the proposed garage with the neighbor in the back, who stated no objections to the proposal.

20. The topography of the Property is sloping.

21. The proposed garage would have windows and flower boxes, and would be architecturally consistent with the existing home and the character of the neighborhood.

22. Granting the requested variance will not alter the essential character of the neighborhood in which the Property is located.

23. Absent the requested relief the Applicant 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 sloping topography of the Property, the undersized area of the lot including its narrow width, and the location of the existing dwelling and driveway on the lot.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant 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.

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 Applicant's 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 the setback requirements of Section 143-37.A(2) (and Section 143-19.C) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a one story detached 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 a request for variance 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.

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 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 Applicant has 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 setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance (and from the requirements of Section 143-19.C). Pursuant to these provisions the applicable minimum rear yard setback for the proposed garage (which is over 250 square feet) is 60 feet. The Applicant requested this variance in order to construct a proposed garage at the rear end of the existing circular driveway which will result in a rear yard setback of from 21 to 24 feet.

The Applicant has demonstrated that there are unique physical circumstances and/or characteristics of the Property. These include the sloping topography of the lot, the undersized nature of the lot including its narrow width (which is less than half of its length), and the location on the lot of the existing circular driveway and the residence.

The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. The Applicant 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 garage will be consistent with the existing dwelling and with the surrounding neighborhood. Therefore the granting of the variance conforms to the essential character of the neighborhood, will not impair the appropriate use or development of any adjacent properties, and will not be detrimental to the public welfare.

The Board finds and concludes that based on the evidence presented by the Applicant 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 3-1 vote, as set forth in the Notice of Decision letter mailed on October 28, 2011, is as follows:

The application for variance from Sections 143-19.C and 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.

Dated: December 10, 2011

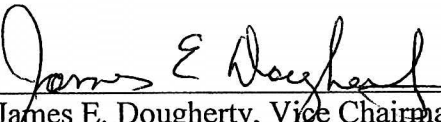
ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

DISSENTING

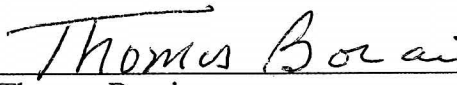
Eric Frey, Chairman



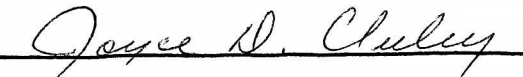
James E. Dougherty, Vice Chairman

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.