

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-12-06	:	HEARING DATE:	July 26, 2012
		:		
APPLICATION OF:		:		
Joseph Proietto		:		
		:		
PROPERTY:		:		
1402 and 1406 Pawlings Road		:		
Lower Providence Township		:		
Phoenixville, PA 19460		:		
Parcel No. 43-00-10927-00-1		:		

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

The applicant, Joseph Proietto (hereinafter "Applicant") filed an application requesting a

~~variance from the public street access requirements of Section 143-20 of the Lower Providence~~
Township Zoning Ordinance in connection with the subdivision of the lot currently unified at
one parcel number. The application was properly advertised, and a public hearing was held
before the Lower Providence Township Zoning Hearing Board (the "Board") on July 26, 2012 at
the Lower Providence Township Building. All members of the Board were present. Also present
were the Solicitor, the Zoning/Code Enforcement Officer and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Joseph Proietto.
2. The Applicant is the owner of the subject property located at 1402 and 1406
Pawlings Road, Phoenixville, PA 19460 (hereinafter the "Property"). The parcel number is 43-
00-10927-00-1.
3. The applicable zoning district is an R-2, residential district.
4. The Applicant was not represented by legal counsel.
5. The lot size is 130,680 square feet.

6. The present use of the Property is residential.
 7. The following exhibits were marked at the hearing:
 - B-1 Appeal Application
 - B-2 Advertisement
 - B-3 Proof of Publication
 - A-1 Minor Subdivision Plan of Applicant
 8. The proposed subdivision would create two (2) lots one of which does not front a public road.
 9. The Property is currently used for two (2) residential structures on opposite sides of the parcel.
-
10. The lot was purchased with a prior nonconforming use of two (2) separate residential dwellings.
 11. The reservation of a driveway for the benefit of the lot which shall not abut the public street must be addressed in Applicant's subdivision plan submitted to the Township.
 12. There was no adverse public comment regarding this application.
 13. There is an unnecessary hardship requiring the grant of a variance.
 14. There are unique physical characteristics of the property which require the proposed variance.
 15. The proposed subdivision will not alter the essential character of the neighborhood.

DISCUSSION and 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 on the Applicant.
3. The hardship is not self-imposed, and is due to the unique physical circumstances of the Property.
4. The requested relief is necessary to enable the Applicant's reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.
5. The proposed subdivision will not alter the essential character of the neighborhood in which the Property is located.

The Applicant has requested a variance from the setback requirements of Section 143-20 of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the requirement that each lot abut a public street.

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 quantum of proof required to establish unnecessary hardship in the case of a dimensional variance is, however, lesser than when a use variance is sought. Id. at 258-59.

Regardless of the type of variance sought, 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). Pursuant to the

Municipalities Planning Code the following must be found in order for the Board to grant the requested variance:

(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. 53 P.S. § 10910.2.

The unique circumstances presented by Applicant, including non-conforming lot use of two (2) separate dwelling units, necessitate the grant of a variance from the requirement of access to a public street. The variance is appropriate because it is the size of the lot and the position of the existing homes thereon which require a variance. Further, undue hardship would result from a denial of the variance. This hardship is not self-imposed but is rather the result of

the physical characteristics of the lot. Also, the essential character of the neighborhood will not be changed with the subdivision of the lot. Finally, the proposed subdivision will leave each plot with one residence as is the norm in the R-2 Residential district.

Accordingly the Board finds that the application for a variance from access to public street requirement of § 143-20 of the Lower Providence Township Zoning Ordinance is granted.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

The application for a variance from Section 143-20 of the Lower Providence Township Zoning Ordinance is granted.

Dated: September 7, 2012

ORDER

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

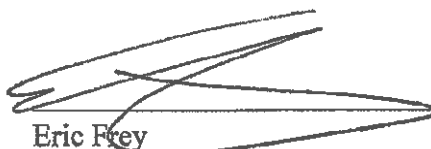
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

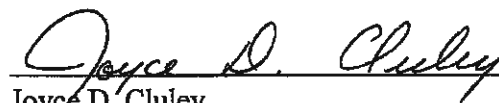


Nancy McFarland, Chairwoman

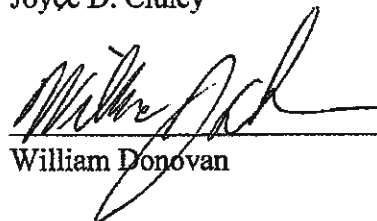


Thomas A. Borai, Vice Chairman





Joyce D. Cluley



William Donovan

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.