

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-02

: HEARING DATE: February 27, 2014

APPLICATION OF:

Accolade Properties, Inc.
P.O. Box 997
Media, PA 19063

PROPERTY:

Lots 85, 86, 87 and 214 5th Street
Norristown, PA 19403

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

The applicant, Accolade Properties, Inc. (hereinafter "Applicant"), purportedly the "equitable owner" of the parcels at issue¹ filed an application requesting a variance from the minimum lot area, minimum lot width and setback requirements of Section 143-37 of the Lower Providence Township Zoning Ordinance in connection with the proposed development of a vacant plot of land containing four (4) tax parcels (the "Application"). The Application was properly advertised, and the first of two (2) public hearings on the Application was held before the Lower Providence Township Zoning Hearing Board (the "Board") on January 23, 2014 at the Lower Providence Township Building. Prior to concluding the first hearing the Applicant requested that the Application be continued to the February 27, 2014 meeting of the Board and waived the time requirements contained in the Municipalities Planning Code ("MPC") regarding

¹ Applicant attached an agreement of sale to its application which, for the most part, was illegible. Upon production of a legible copy of the agreement at the first hearing it states that the sellers were Daniel & Patricia Tabor adult individuals who are presumably husband and wife. It appears as though the record owner of two of the parcels at issue in the Application to wit: parcel numbers 43-00-04654-00-1 and 43-00-04657-00-7 is Daniel Tabor General Contractor, LLC a separate legal entity from Mr. and Mrs. Tabor. The application fee paid to the Township was drawn on a check from B.J. Homes, Inc.

conducting the hearing and rendering a decision regarding the Application. Accordingly, Applicant's request for a continuance was unanimously granted. A second hearing was held before the Board on February 27, 2014. Four of the five members of the Board were present. Also present were Keith B. McLennan, Esquire, the Solicitor, Rachel Vahey, the Interim Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Accolade Properties, Inc. ("Applicant").
2. The Applicant represents that it is the equitable owner of the subject property located at Lots 85, 86, 87 and 214 5th Street, Norristown, PA 19403 (hereinafter the "Property"). The parcel numbers for said lots are 43-00-04654-001, 43-00-04648-007, 43-00-04651-004, and 43-00-04657-007.
3. Applicant entered into an agreement of sale with sellers Daniel and Patricia Tabor on or about December 9, 2013 for the above noted parcels.
4. The sale of the Property to the Applicant is contingent upon the grant of the variance requested in the subject application.
5. The applicable zoning district is an R-2, residential district.
6. The Applicant was not represented by legal counsel.
7. The combined lot size (including four (4) tax parcels) is approximately 14,000 square feet.
8. The Property is presently vacant and wooded.
9. The following exhibits were marked at the hearing:
 - B-1 Appeal Application
 - B-2 Advertisement

B-3 Proof of Publication

A-1 The Application

A-2 Aerial map of the subject parcels

A-3 Letter dated February 26, 2014 from Francis Recchuiti, Esquire on behalf of Timothy and Mr. and Mrs. Kenneth Miller in support of the variance requests

A-4 Front Elevation for a model home known as the Ashbridge -- 2013 proposed to be constructed on the parcels at issue

A-5 Fourth Street Property Comparisons and descriptive map with a rendering of the parcels compared.

A-6 Letter dated January 21, 2014 from John B. Rice, Esquire on behalf of the Lower Providence Township requesting the imposition of conditions on any variance approval.

10. The proposed home will be set back thirty (30) feet from the front property line, and thirty four (34) feet from the rear property line and will be on a lot which measures 14,000 square feet with a width of 140 feet.

11. The application for a variance was made to enable development on the undersized collection of parcels.

12. There was adverse public comment regarding this application.

13. There is no unnecessary hardship requiring the grant of a variance.

DISCUSSION

The Applicant requested a variance from the minimum lot area, minimum lot width and setback requirements of Section 143-37 of the Lower Providence Township Zoning Ordinance in connection with the proposed development of a vacant plot of land containing four (4) tax

parcels. Applicant seeks to construct a single family dwelling with living space of anywhere from 2,100 to 2,600 square feet plus a garage of an additional 600 square feet upon the 4 parcels. The relief sought is dimensional in nature requesting the allowance of a lot area of 14,000 square feet where the R2 zoning district requires 30,000 square feet, a rear yard setback of thirty four (34) feet where sixty (60) feet is required, a front yard setback of thirty (30) feet where fifty (50) feet is required and a lot width of 140 feet where 150 feet is required.

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 such as health, safety or welfare. 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 burden to prove unnecessary hardship is upon the Applicant. 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 that:

- (1) 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) 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) Such unnecessary hardship has not been created by the applicant.

(4) 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) 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 aggregation of the lots, commonly referred to as "movie lots" significantly fails to comply with the dimensional requirements of the ordinance for the construction of the home proposed for this location. No unique characteristics exist which require the grant of a variance.

The need for relief is neither serious nor substantial.

The implicit intent of the Township when it legislated R2 zoning for this location was to regulate the density of the neighborhood. No doubt the public interest was the main consideration of the Board of Supervisors when it enacted the R2 ordinance and applied it to this area. In fact, issues of public safety and health were raised by Mr. Miller, an adjoining neighbor who complained that there would not be enough area after the house was built for

effective use of the lot for such things as children at play. He further expressed his opposition to the variance due the impact the installation of a well at the site would have upon his own well and water supply. Applicant dismissed the well issue out of hand claiming that it would be cost prohibitive for it to connect the home to public water.

Further, the Township opposed the construction of a home in excess of 2,400 square feet. Applicant is seeking to build a single-family home as large as 2,600 square feet plus a garage of 600 square feet. The Applicant seeks to build on a lot that is less than half the size of the required space in the applicable R-2 district. Applicant has proposed a home that is simply too large for the lot in question. If granted the variance will have a negative impact upon the rights of the neighbors who have opposed the application. The addition would cause congestion and include an oversized home in an area with little room for expansion. No justifications have been offered by the Applicant as to the need to repudiate the requirements of this R2 district. No undue hardship would result from a denial of the variance.

Finally, Applicant has it within its power to either seek additional lots or adjust its proposal to address the aforesaid concerns and develop the land in a manner that would not require such an extreme dimensional variance yet it has chosen not to. Any hardship is self-imposed. The relief requested is not the minimum variance that will afford the required relief.

It is a paramount function of the Zoning Hearing Board to protect the legislative decisions embodied in the zoning ordinance and to make sure that they are not "adjusted" out of existence with inappropriate variances. Otherwise it will prove almost impossible to administer and enforce dimensional limitations if zoning boards are given power to act freely by modifying dimension requirements as they see fit.

Accordingly, the Board finds that the application for a variance from the front and rear setback as well as the minimum lot size and width requirements of Section 143-37 Lower

Providence Township Zoning Ordinance is denied.

CONCLUSIONS OF LAW

1. Denial of the requested relief will not impose an unnecessary hardship on the Applicant.
2. The hardship, if any, is self-imposed, and is not due to the unique physical circumstances of the Property.
3. The requested relief is not necessary to enable the Applicant's reasonable use of the Property, does not represent the minimum that will afford relief, and does not represent the least modification possible of the regulation at issue. The proposed addition to the home will also cause congestion in the neighborhood, and neighbors have significant opposition to its construction.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

The application for a variance from Section 143-37 of the Lower Providence Township Zoning Ordinance is denied.

Dated: April 10, 2014

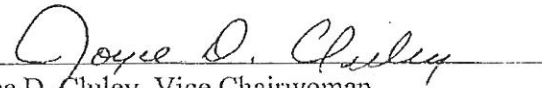
ORDER

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

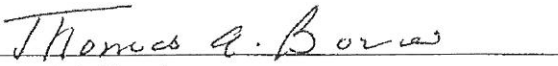
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



Nancy McFarland, Chairwoman

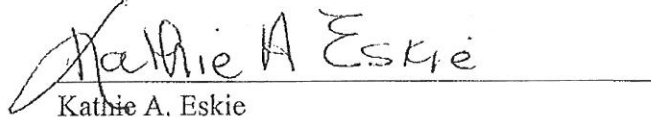


Joyce D. Cluley, Vice Chairwoman



Thomas A. Borai

Robert G. Hardt



Kathie A. Eskie

NOTICE 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.