

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-12-05 : HEARING DATE: July 26, 2012

APPLICATION OF:
Anthony and Lisa Branca

PROPERTY:
2785 Audubon Road
Lower Providence Township
Norristown, PA 19403
Parcel No. 43-00-00949-00-7

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

The applicants, Anthony and Lisa Branca (hereinafter "Applicants") filed an application requesting a variance from the setback requirements of § 143-37 and the use requirements of § 143-27 of the Lower Providence Township Zoning Ordinance in connection with the construction of a second garage for storage of vehicles. 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 Applicants are Anthony and Lisa Branca.
2. The Applicants are the owners of the subject property located at 2785 Audubon Road, Norristown, PA 19403 (hereinafter the "Property"). The parcel number is 43-00-00949-00-7.
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 15,100 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 Proposed Garage Plan
 - A-2 Signatures of Neighbors in Support of Application
8. The proposed garage would be located three (3) feet from one side boundary and twenty-nine (29) feet from the rear boundary of the Property.
- ~~9. The Property currently has impervious coverage of forty-nine percent (49%) and~~
the proposed garage would increase this coverage to fifty-six percent (56%).
10. There was no adverse public comment regarding this application.
11. There is no unnecessary hardship requiring the grant of a variance.
12. The hardship is self-imposed and the construction of a second garage is not necessary for the reasonable use of the property.
13. The proposed garage will alter the essential character of the neighborhood.

DISCUSSION and CONCLUSIONS OF LAW

1. Applicants have standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will not impose an unnecessary hardship on Applicants.
3. The hardship is self-imposed, and is not due to the unique physical

circumstances of the Property.

4. The requested relief is not necessary to enable the Applicants' 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.

5. The proposed additional garage will alter the essential character of the neighborhood in which the Property is located.

The Applicants have requested a variance from the setback and impervious coverage requirements of § 143-37 and use requirements of § 143-27(A) of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the setback requirements of twenty (20) feet on the side yard and sixty (60) in the rear. The request would further increase the impervious coverage to fifty-six (56%). The use request seeks permission to add an additional garage for vehicle storage.

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.

There are no unique circumstances that require a variance from the prescribed setback or use ordinances. Neither the size of the lot, nor its physical characteristics prohibit the Applicants from meeting the existing side yard and rear yard setback requirements. The proposed garage will have a side setback of merely three (3) feet while the required setback is twenty (20) feet. Further, the proposed garage would leave a rear yard setback of twenty-nine (29) feet sixty where a setback of (60) feet is required. Also, the garage would increase the impervious coverage to fifty-six percent (56%) where the prescribed maximum for an R-2 lot is thirty-five percent (35%). This extreme non-conformance is not necessary as the proposal is for a second garage. This is not necessary for the reasonable use of the property which serves as a single family residence. Further, it will have an adverse effect on surrounding properties as the mere three (3) feet left between the garage and side boundary could easily cause interference

with the adjacent properties.

There is neither a substantial, compelling, nor serious reason why the variance should be granted.

Accordingly, the Board finds that the application for a variance from the setback and impervious coverage requirements of § 143-37 and use requirements of § 143-27(A) of the Lower Providence Township Zoning Ordinance is denied.

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 § 143-37 and § 143-27(A) of the Lower Providence Township Zoning Ordinance is denied.

Dated: September 7, 2012

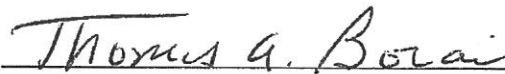
ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



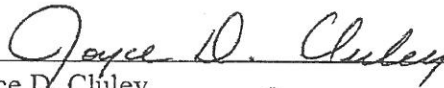
Nancy McFarland, Chairwoman



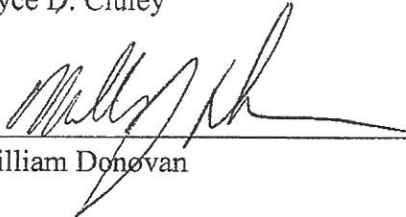
Thomas A. Borai, Vice Chairman



Eric Frey



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.