

## **ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-14-06 : HEARING DATE: May 22, 2014

APPLICATION OF:

Barbara M. Bancroft

PROPERTY:

513 Highgate Road

Lower Providence Township

Eagleville, PA 19404

Parcel No. 43-00-06190-00-4

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

The applicant, Barbara Bancroft (hereinafter "Applicant") filed an application requesting a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with the construction of a carport built on existing paving. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on May 22, 2014 at the Lower Providence Township Building. All members of the Board were present. Also present were Brandon Zanan, the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicant is Barbara Bancroft.
2. The Applicant is the owner of the subject property located at 513 Highgate Road, Eagleville, PA 19404 (hereinafter the "Property"). The parcel number is 43-00-06190-00-4.
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 1800 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
8. The lot is nonconforming as it does not meet the minimum square footage requirement of 25,000 square feet, the minimum frontage or impervious coverage requirements.
9. The proposed carport will be set back eight (8) feet from the side property line and will serve to shield the parking area of the home from adverse weather conditions.
10. The proposed carport would be a roof and supports, and not more than one wall.
11. The application for a variance was made to accommodate Mrs. Bancroft due to her age and disability; her left knee has been replaced, and her right knee needs replacement. Mrs. Bancroft needs to have her car protected from weather and accessible on a flat surface, as well as to be able to enter the home without encountering wet or icy pavement.
12. There was no adverse public comment regarding this application.
13. There is an unnecessary hardship requiring the grant of a variance.
14. The proposed carport will not alter the essential character of the neighborhood.

### DISCUSSION

The Applicants have requested a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the dimensional requirements that require a twenty (20) foot setback on the side yard.

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 of the Applicants and the subject Property require the grant of a variance. 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 and the need for Applicant to avoid any potential dangers of slipping on wet or icy pavement due to her age and health conditions; her left knee has been replaced, and her right knee needs replacement. Also, the essential character of the neighborhood will not be changed with addition of this carport. Finally, the proposed carport will be set back eight (8) feet from the side property line. The existing parking pad pavement is already set back eight (8) feet from the side property line. The carport would only cover the existing parking pad and extend no further. It is therefore the minimum variance that will afford the required relief.

Accordingly, the Board finds that the application for a variance from the side yard setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is granted.

#### **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 on the Applicants.
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 Applicants' reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue. The proposed carport will also not alter the essential character of the neighborhood in which the Property is located, and neighbors have no opposition to its construction.

### **DECISION**

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

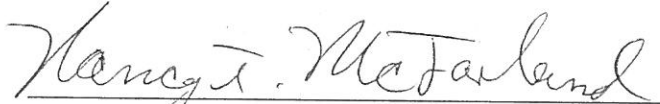
The application for a variance from Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is granted.

Dated: June 6, 2014

### ORDER

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

#### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



Nancy McFarland, Chairwoman



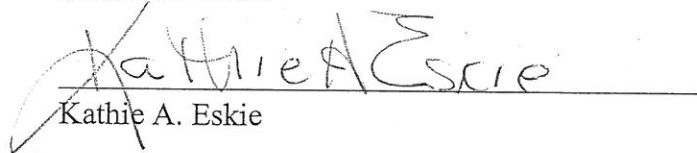
Joyce D. Cluley, Vice Chairwoman



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.