

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-08 : HEARING DATE: May 22, 2014

APPLICATION OF:
Eric and Christine Frey

PROPERTY:
135 Oakdale Avenue
Lower Providence Township
Eagleville, PA 19404
Parcel No. 43-00-09601-00-4

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

The applicants, Eric and Christine Frey (hereinafter "Applicants") filed an application requesting a variance from the setback requirements of Section 143-37(A)(2), as well as a variance from the requirements of Section 143-19(B)(2) of the Lower Providence Township Zoning Ordinance in connection with the side yard setback, in order to replace an existing one-story garage with a two-story garage. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on May 22, 2014 at the Lower Providence Township Building. All members of the Zoning Hearing 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 Applicants are Eric and Christine Frey.
2. The Applicants are the owners of the subject property located at 135 Oakdale Avenue, Eagleville, PA 19404 (hereinafter the "Property"). The parcel number is 43-00-09601-00-4.
3. The applicable zoning district is an R-2, residential district.

4. The Applicants were not represented by legal counsel.
5. The lot size is 33,900 square feet.
6. The present use of the Property is residential.
7. The following exhibits were marked at the hearing:
 - A-1 Photographs of Mr. Frey's property
 - A-2 Letter from Clark and Cristina Swinney in support of garage
 - A-3 Photographs of surrounding neighbor's garages
 - B-1 Appeal Application
 - B-2 Advertisement
 - B-3 Proof of Publication
8. Applicants are replacing the existing garage as it was hit by a tree in the winter storms, which destroyed the back half of the garage.
9. Existing garage did not allow for the parking of two vehicles, which most modern sized garages allow.
10. The existing driveway goes to the site of the existing and proposed garage where any change in the location of the garage would require the addition of unnecessary impervious coverage in the form of additional driveway area.
11. The proposed replacement garage will be set back four (4) feet from the side property line, and will serve to replace the existing damaged garage which was not suitable for modern cars.
12. The application for a variance was made to accommodate the unusual shape of the nonconforming lot on which the house was built in 1925 before setback requirements existed.
13. There was no adverse public comment regarding this application.

14. There is an unnecessary hardship requiring the grant of a variance.
15. The proposed replacement garage 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) as well as the requirements of Section 143-19(B)(2) of the Lower Providence Township Zoning Ordinance in connection with the construction of a replacement garage. The relief sought is dimensional in nature requesting the allowance of a side yard setback of four (4) feet from the 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 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 unique shape and location of the subject Property require the grant of a variance. Undue hardship would result from a denial of the variance; change in the location of the proposed garage would destroy the back yard, which is used by many children in the adjacent homes, as well as having to create additional driveway area. This hardship is not self-imposed but is rather the result of the physical characteristics of the lot and the need for Applicants to replace a damaged garage, as well as upgrade the garage to a more modern and useful size. Also, the essential character of the neighborhood will not be changed with the proposed addition, as evidenced by the pictures of the surrounding neighbor's garages. Finally,

Applicants have proposed an addition that attempts to limit encroachment into required setback and mirrors, as best possible, the unusual shape of the parcel. It is therefore the minimum variance that will afford the required relief.

Accordingly, the Board finds that the application for a variance from the setback requirements of Section 143-37(A)(2) and Section 143-19(B)(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 replacement garage would be constructed on existing impervious surface and would not require the creation of new impervious surface. The depth of the garage would not change from its current depth. The proposed replacement garage 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) and Section 143-19(B)(2) of

the Lower Providence Township Zoning Ordinance is granted.

Dated: June 10, 2014

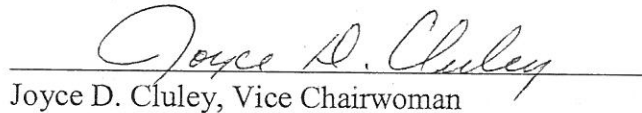
ORDER

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

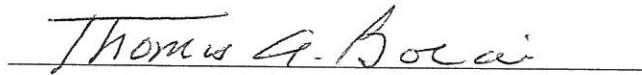
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



Nancy McFarland, Chairwoman



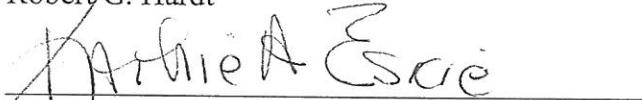
Joyce D. Cluley, Vice Chairwoman



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.