

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-09 : HEARING DATE: September 25, 2014

APPLICATION OF:

Daniel and Patricia Tabor
3987 Yerkes Road
Collegeville, PA 19426

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 applicants, Daniel and Patricia Tabor (hereinafter "Applicants") 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 was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on September 25, 2014 at the Lower Providence Township Building. All members of the Board were present. Also present were Keith B. McLennan, Esquire, the Solicitor, Michael Mrozinski, Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Daniel and Patricia Tabor ("Applicant").
2. The Applicants are the equitable owners 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. The applicable zoning district is an R-2, residential district.
4. The Applicants were represented by Patricia Leisner Clements, Esq.
5. The combined lot size (including four (4) tax parcels) is 14,000 square feet.
6. The Property is presently vacant and wooded.
7. The following exhibits were marked at the hearing:

B-1 Appeal Application

B-2 Advertisement

B-3 Proof of Publication

A-1 Survey of Recent Variances Granted

A-2 Survey of Neighborhood Indicating Character of Neighborhood

8. 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.

9. The Applicants propose a house to be built on the property that will be between 2,100 square feet and 2,600 square feet.

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

11. There was no adverse public comment regarding this application.

12. 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. The relief sought is dimensional in nature requesting the allowance of a lot area of 14,000 square feet where 30,000 square feet is required, 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.

The doctrine of res judicata applies when the following four elements are met: 1) identity of the thing sued for; 2) identity of the cause of action; 3) identity of persons and parties to the action; and 4) identity of the quality in the persons for or against whom the claim is made. *City of Pittsburgh v. Zoning Board of Adjustment*, 522 Pa. 44, 559 A.2d 896 (1989). However, res judicata is applied sparingly in the area of zoning because the need for flexibility outweighs the risk of repetitive litigation. *Grim v. Borough of Boyertown*, 141 Pa.Cmwlth. 427, 595 A.2d 775 (1991). Therefore, res judicata will not bar a second application even if identical to an earlier application if there has been a substantial change in conditions or circumstances relating to the land itself. *Id. In re Dippolito*, 833 A.2d 336, 340-41 (Pa. Commw. Ct. 2003).

Where an identical application brought by the same applicant has been denied by the Board, the applicant is not entitled to relitigate the entire matter de novo but is limited to demonstrating a material change in circumstances during the time since the previous application. *Mobil Oil Corp. v. Zoning Hearing Bd. of Tredyffrin Tp.*, 100 Pa. Commw. 480, 515 A.2d 78 (1986). The zoning board generally must provide an applicant with the opportunity to present evidence of an alleged substantial change in conditions or circumstances related to the land itself before the Board determines whether res judicata is applicable. *Stoneback v. Zoning Hearing Bd. of Upper Saucon Tp.*, 699 A.2d 824 (Pa. Commw. Ct. 1997). Thus, an applicant making such a claim of “substantial change” in circumstances is entitled to a meaningful opportunity to present evidence on the issue. Evidence warranting a finding of

substantial change must not be too vague, contradictory, or conclusory, or the application will be denied. 37 Standard Pennsylvania Practice 2d § 166:476.

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.

This application involves the same property as a previous application the Board decided on in February 2014. Though Applicants were not a party to the previous application, they were named in the application as sellers of the Property to the then-Applicant. Res judicata is applied sparingly in the area of zoning because the need for flexibility outweighs the risk of repetitive litigation, so this application is decided on the merits rather than barred due to res judicata.

No unique characteristics exist which require the grant of a variance. The need for relief is neither serious nor substantial. The area consists of a variety of parcels which could be developed in a manner which would not require such an extreme dimensional variance. The request asks, among other things, for approval of a lot that is less than half the size of the required space in the applicable R-2 district. No justifications have been provided as to the need for such a variance. Further, no undue hardship would result from a denial of the variance. This hardship, if any exists is self-imposed. Applicant has proposed a home that is simply too large for the lot in question which will affect the rights of the neighbors. The proposed house would have been close to 2,700 square feet in size. The addition would cause congestion and include an oversized home in an area with little room for expansion. The relief requested is not the

minimum variance that will afford the required relief.

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. The 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 the Applicants.
3. The hardship, if any, 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 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 home will also cause congestion in the neighborhood.

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 of the Lower Providence Township Zoning Ordinance is denied.

Dated: October 9, 2014

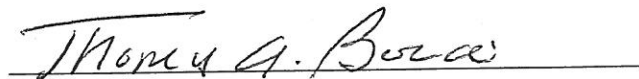
ORDER

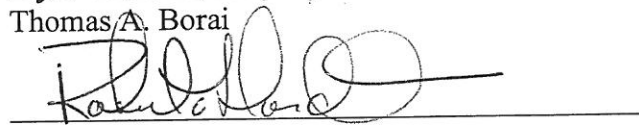
The foregoing Findings, Discussion and Decision are hereby approved and ordered.


LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Nancy McFarland, Chairwoman


Joyce D. Cluley, Vice Chairwoman


Thomas A. Borai


Robert G. Hardt


Kathie A. Eskie

Gail Hager, Alternate

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.