

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-18 : HEARING DATE: September 25, 2014
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APPLICATION OF: :
James Hickey :
:
PROPERTY: :
3758 Old Baptist Road :
Lower Providence Township :
Collegeville, PA 19426 :
Parcel No. 43-00-09850-00-7 :

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

The applicant, James Hickey (hereinafter "Applicant") filed an application requesting a variance from the setback requirements of Sections 143-33(A)(2)(b) and (A)(2)(c) of the Lower Providence Township Zoning Ordinance, as well as variance from Sections 143-6, 143-19(B)(3), 143-32(B)(2) and 143-27(A)(10) to exceed the maximum 150 square feet to place an additional accessory structure of 288 square feet outside of the building envelope to allow the storage structure to be placed five feet from the side and rear property lines. 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, the Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is James Hickey.
2. The Applicant is the owner of the subject property located at 3758 Old Baptist Road , Collegeville, PA 19426 (hereinafter the "Property"). The parcel number is 43-00-09850-

00-7.

3. The applicable zoning district is an R-1, residential district.
4. Applicant was represented by Michael E. Furey, Esq.
5. The lot size is 37,430 square feet, and lot width is 100 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 Property Deed
 - A-2 Tax Parcel Board of Assessment Information
 - A-3 Zoning Map
 - A-4 All County Associates Plan
 - A-5 Photos of Property
 - A-6 Shed Example
8. The lot is nonconforming as it does not meet the minimum square footage requirement of 65,000 square feet, and does not meet the minimum lot width of 195 feet.
9. The proposed shed will be set back six (5) feet from the side and rear property lines and will provide storage space for items such as a lawn mower and a motorcycle.
10. The application for a variance was made to accommodate Applicant due to nonconforming lot size and width; the undersized lot resulted in a zero building envelope.
11. There was no adverse public comment regarding this application.
12. There is an unnecessary hardship requiring the grant of a variance.

13. The proposed shed will not alter the essential character of the neighborhood.

DISCUSSION

The Applicant has requested a variance from the setback requirements of Sections 143-33(A)(2)(b) and (A)(2)(c), and variance to exceed maximum storage structure size of Sections 143-6, 143-19(B)(3), 143-32(B)(2) and 143-27(A)(10) of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the dimensional requirements that require a fifty (50) foot setback on the side yard and sixty (60) foot setback on the rear yard, as well as relief as to an accessory structure that exceeds one hundred and fifty (150) square feet.

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 Applicant 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. Also, the essential character of the neighborhood will not be changed with addition of this storage shed. The property will continue to conform with the building coverage and impervious coverage requirements. The storage shed size is what is required for the Applicant's needs. The required variances in setback and storage accessory size are de minimis in nature, and are 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 Sections 143-33(A)(2)(b) and (A)(2)(c), and variance to exceed maximum storage structure size of Sections 143-6, 143-19(B)(3), 143-32(B)(2) and 143-27(A)(10) 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 Applicant's 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 storage shed will also not alter the essential character of the neighborhood in which the Property is located.

DECISION

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

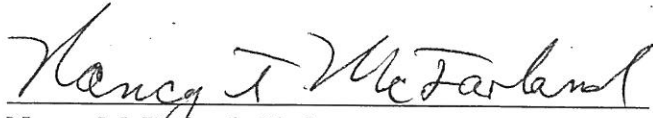
The application for a variance from the setback requirements of Sections 143-33(A)(2)(b) and (A)(2)(c), and variance to exceed maximum storage structure size of Sections 143-6, 143-19(B)(3), 143-32(B)(2) and 143-27(A)(10) of the Lower Providence Township Zoning Ordinance is granted.

Dated: October 8, 2014

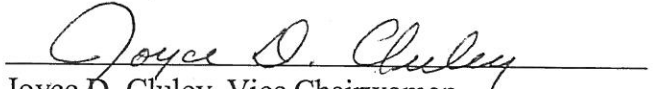
ORDER

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

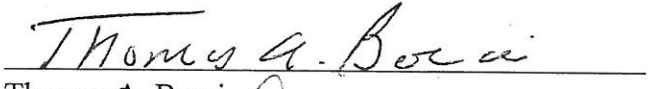
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



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.