

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-21 : HEARING DATE: October 23, 2014
:
APPLICATION OF: :
HOP Energy, LLC :
:
PROPERTY: :
521 Lexington Lane :
Norristown, PA 19401 :
Parcel No. 43-00-07438-00-7 :

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

The applicant, HOP Energy, LLC (hereinafter "Applicant") filed an application requesting a variance from the setback requirements of Sections 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with the side yard setback in order to install a whole house generator within the side yard setback. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on October 23, 2014 at the Lower Providence Township Building. All members of the Board were present. Also present were John A. Rule, Esquire, the Solicitor, Michael Mrozinski, Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is HOP Energy, LLC.
2. The Applicant represents the owners of the subject property, David and Patricia Nestler, located at 521 Lexington Lane, Norristown, PA 19401 (hereinafter the "Property"). The parcel number is 43-00-02221-59-8.

1. The applicable zoning district is an R-2, residential district.
2. Applicant was not represented by legal counsel.

3. The lot size is 17,934 square feet.
4. The present use of the Property is residential.
5. The following exhibits were marked at the hearing:
 - A-1 Appeal Application, land owner authorization, and attached diagrams
 - B-1 Appeal Application
 - B-2 Advertisement
 - B-3 Proof of Publication
6. The proposed whole house generator will be set back thirteen (13) feet from the side property line, and will provide electricity to the house in an emergency.
7. The application for a variance was made to accommodate the nonconforming lot that is undersized at 17,934 square feet, where the minimum lot area should be 25,000 square feet.
8. There was no adverse public comment regarding this application.
9. There is an unnecessary hardship requiring the grant of a variance.
10. The proposed addition to the home will not alter the essential character of the neighborhood.

DISCUSSION

The Applicant has requested a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with the installation of whole house generator. The relief sought is dimensional in nature requesting the allowance of a side yard setback of thirteen (13) 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 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 size of the subject Property, at 17,934 square feet when the minimum lot area should be 25,000 square feet, requires 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. § 143-37(A)(1) was amended 10-20-2011 by Ord. No. 602 to include current set back restrictions, and the current use of the property preceded that, as the property owners acquired the property in 1978. The nature of the appeal is based on space allowed for the generator to be installed. The generator cannot be placed in backyard due to pool and patio as it would pose a hazard to children and other individuals using the pool. If the generator were placed in the front of the house to comply with twenty foot side yard setback, as it would prohibit re-sale and limit curb appeal. This would also alter the essential character of neighborhood. The generator would only be used in emergency situations, and will not impair the development of adjacent properties.

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

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will impose an unnecessary hardship on the

Applicant.

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 to provide 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 addition to the home 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:

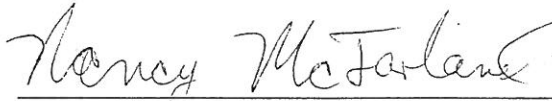
The application for a variance from Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is granted.

Dated: December 1, 2014

ORDER

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


LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



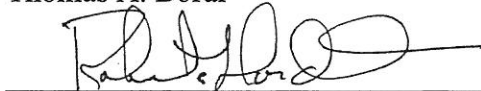
Nancy McFarland, Chairwoman



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.