

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.: Z-15-04	:	HEARING DATE: July 23, 2015
	:	
APPLICATION OF:	:	
Jeff Szakacs	:	
	:	
PROPERTY:	:	
1034 Skyline Circle	:	
Lower Providence Township	:	
Audubon, PA 19403	:	
Parcel No. 43-00-13443-26-6	:	

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

The Applicant, Jeff Szakacs, (hereinafter "Applicant") filed an application requesting variances from the setback requirements of Sections 143-37(A)(2) and 143-19(B)(2), as well a variance from Section 143-19(B)(3), to exceed the maximum 150 square feet applicable to an accessory structure. The Applicant proposes to place an accessory structure of 336 square feet on the property at a location which is seven (7) feet from the side property line. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on July 23, 2015 at the Lower Providence Township Building. All members of the Board were present with the exception of Mr. Hardt. Also present were Michael E. Furey, Esquire, special counsel to the Board, and Michael Mrozinski, the Director of Community Development/Zoning Officer, and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Jeff Szakacs.
2. The Applicant is the owner of the subject property located at 1034 Skyline Circle, Audubon, Pennsylvania 19403 (hereinafter the "Property"). The parcel number is 43-00-13443-26-6.
3. The applicable zoning district is R-2 Residential District.
4. Applicant was not represented by counsel.
5. The lot size is approximately 27,700 square feet, and lot width is approximately 115 feet.
6. The present use of the Property is residential.
7. The following exhibits were marked at the hearing:

- B-1 Application with attachments: Deed, Letter from Neighbors, Plan, Tax Map
- B-2 Proof of Publication and Advertisement

8. Since the property is serviced by public water and sewer, the lot is conforming as it meets the minimum square footage requirement of 25,000 square feet, and the minimum lot width of 100 feet.
9. The proposed shed will be set back seven (7) feet from the side property line, and will provide storage space for items such as a lawn equipment, patio and recreational equipment.
10. The Applicant will remove an existing 8' x 10' shed.
11. The application for a variance was made to accommodate Applicant's need for additional storage space.
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 shed will not alter the essential character of the neighborhood.

DISCUSSION

The Applicant, Jeff Szakacs, (hereinafter "Applicant") filed an application requesting variances from the setback requirements of Section 143-37(A)(2), and Section 143-19(B)(2), as well as variance from Section 143-19(B)(3) to place an accessory structure of 336 square feet at a location seven (7) feet from the side property line.

The request seeks relief as to the dimensional requirements that require a 20 foot setback from the side 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 the 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, less than that which is required for a use variance. 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); Sotereanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Commw. 1998). Pursuant to Section 910.2 of the Pennsylvania Municipalities Planning Code and Section 143-168(A) of the Lower Providence Zoning 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 creating an unnecessary hardship, and that the 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 of 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 variances that will afford the required relief.

Accordingly, the Board finds that the application for variances from the setback requirements of Sections 143-37(A)(2) and 143-19(B)(2), and a variance to exceed maximum storage structure size of Section 143-19(B)(3) of the Lower Providence Township Zoning Ordinance should be 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'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:

Variances from the setback requirements of Sections 143-37(A)(2) and 143-19(B)(2) and a variance to exceed maximum storage structure size of Section 143-19(B)(3) of the Lower Providence Township Zoning Ordinance are granted.

ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

Thomas A. Borai

Thomas A. Borai, Chair

Kathie A. Eskie

Kathie A. Eskie, Vice-Chair

Joyce D. Cluley

Joyce D. Cluley

Gail Hager

Gail Hager

(ABSENT)

Robert G. Hardt

Joseph Pucci

(ALTERNATE)

Patricia Alzamora, Alternate

Dated: 9/3/15

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.