

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-15-10	:	HEARING DATE: December 21, 2015
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	:	
APPLICATION OF:	:	
Clark and Cristina Swinney	:	
	:	
PROPERTY:	:	
131 Oakdale Avenue	:	
Eagleview, PA 19403	:	
Parcel No. 43-00-09598-00-7	:	

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

On November 23, 2015 applicants, Clark and Cristina Swinney (hereinafter "Applicants") filed an application requesting a variance from the setback requirements of the Lower Providence Township Zoning Ordinance (the "Ordinance") §§ 143-37 (primarily subsection (A)(2) regarding side yard setback requirements), and § 143-19 (primarily subsection (B)(2) regarding accessory structures setback and size limitation requirements), in order to replace a then existing one-story garage of approximately 690 square feet with a two-story 1,799 square foot garage including pool changing area, storage and kitchenette.¹ The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on December 21, 2015 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present. Also present were Keith B. McLennan, Esq., the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement and Paula Meszaros, the Court Reporter.

FINDINGS OF FACT

¹ When the information for the preparation of the application was developed the garage at issue was a standing structure. Since that time it was discovered that the structure was sinking and has since been demolished.

1. The Applicants are Clark and Cristina Swinney.
2. The Applicants are the owners of the subject property located at 131 Oakdale Avenue, Eagleville, PA 19404, parcel number is 43-00-09598-00-7 comprised of 33,863 square feet (hereinafter the "Property").
3. The applicable zoning district is the R-2, residential district.
4. The Applicants were represented by Eric C. Frey, Esquire of Dischell, Bartle & Dooley, P.C., 1800 Pennbrook Parkway, Suite 200 Lansdale, PA 19466.
5. The lot consists of approximately 33,900 square feet.
6. The present use of the Property is residential with a single family dwelling located thereon.
7. The house located on the Property was built on a narrow lot in 1925 prior to the Ordinance and current setback requirements.
8. The garage that was on the Property had a side yard set-back of ten feet nine sixteenths inch (10' 9/16") making it nonconforming.
9. The garage was sinking and not structurally sound requiring replacement.
10. The existing garage did not allow for the parking of two vehicles, which most modern sized garages allow.
11. The existing driveway will accommodate the proposed garage.
12. The total building area with the proposed garage would expand by three hundred ninety-nine (399) square feet, however, at eleven percent (11%) remain within the twenty percent (20%) building area permitted by Township ordinances.
13. Impervious surface coverage would increase from just over twenty eight percent (28%) to thirty one percent (31%) yet remain within the thirty five percent (35%) allowable

under the Ordinance.

14. Any change in the location of the garage would require the addition of impervious coverage in the form of an expanded driveway.

15. § 143-37 of the Ordinance requires a twenty (20) foot side yard setback.

16. Rather than install multiple accessory structures, the Applicants propose a replacement garage designed to accommodate 2 cars of recent vintage, allowing for combination use with the existing pool for the storage of pool equipment, a kitchenette and changing area. .

17. The proposed garage will conform to the ten feet nine sixteenths inch (10' 9/16") side yard setback occupied by the previous garage.

18. § 143-19 of the Ordinance requires that a private garage shall not exceed one thousand (1,000) square feet in overall size.

19. The proposed one thousand seven hundred and ninety nine (1,799) square foot structure will include a one thousand and eighty eight (1,088) square foot garage and a seven hundred and eleven (711) square foot second floor to be used exclusively for recreational use.

20. The following exhibits were made of record:

A-1 Photographs of the property;

A-2 Architectural plans for the new garage and surrounding property prepared by J. R. Stephens Architects comprised of 4 pages that include a plot plan, first and second floor plans, front and side yard elevations and rear and side elevations;

B-1 Application;

B-2 Application Advertisement;

B-3 Proof of Publication of the Advertisement.

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

22. There is an unnecessary hardship requiring the grant of a variance which is not self-imposed.

23. The proposed replacement garage will not alter the essential character of the neighborhood.

DISCUSSION

I. Dimensional v. Use Variance.

There are 2 types of variances, a “dimensional” variance and a “use” variance. One who advances a dimensional variance seeks to adjust zoning regulations so that the property can be used in a manner consistent with the zoning regulations. Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998). In contrast, a use variance seeks to use the property in a way that is inconsistent or outside of the zoning regulations. Tidd v. Lower Saucon Township Zoning Hearing Board, Green Gable Investment Partners, LP and Lower Saucon Township, 118 A. 3d 1 (Pa. Cmwlth. 2015). Regardless of whether the variance sought is a use or dimensional variance, 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. Cmwlth. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998).

II. Variance Legal Standard.

Generally a Zoning Board may grant a variance when the following criteria are satisfied:

(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. Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board, 88 A.3d 488, 520 (Pa. Cmwlth. 2014) appeal denied, 101 A.3d 788 (Pa. 2014) and appeal denied, 101 A.3d 788 (Pa. 2014); 53 P.S. § 10910.2.

III. Dimensional Variance Legal Standard.

Differing standards apply to use and dimensional variances. In Hertzberg, our Supreme Court relaxed the standard for establishing unnecessary hardship in a dimensional variance case. Generally, multiple factors must be considered to determine whether an unnecessary hardship exists if the dimensional variance is denied, including the cost to bring the subject of the Application into compliance and whether the proposed use will 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)).

Although Hertzberg eased the variance requirements for a dimensional variance, it did not remove them. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa. Cmwlth. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and the five part test articulated above. Id.

IV. Facts Applied to the Legal Standard.

A. 20' Side Yard Set Back § 143-37 (A)(2).

To establish that an unnecessary hardship exists warranting a dimensional variance from the side yard set back the Applicants had to prove that:

- a. the physical characteristics of the property were such that the property could not be used for any permitted purpose; or
- b. the permitted purpose could only be achieved at prohibitive expense; or
- c. the characteristics of the property were such that it would have no value or only distress value for any use approved by the zoning ordinance.

Solebury Twp. v. Solebury Twp. Zoning Hearing Bd., 914 A.2d 972 (Pa.Cmwlth. 2007).

The narrowness of the lot creates an unnecessary hardship for the Applicants. Although the proposed garage will be larger and include 2nd floor recreation space, kitchenette, changing area and patio, it will be, for the most part, built in the same location as the previous garage with the same side yard setback as before. As such, it will not disrupt the neighbors who previously accepted the garage's non-conformity and will maintain the essential character of the neighborhood. If the Applicants were to move the proposed garage to fit within the Property's building envelope not only would car turning areas be compromised but it will be prohibitively expensive and the path of any storm water runoff or drainage will be altered potentially causing issues for neighboring properties. Granting the requested variance to permit

the placement of the structure in essentially the same place as the previous garage is the least modification possible of the Ordinance. Finally, the hardship is not self-imposed but is the result of the physical characteristics of the Property and its previous non-conformity.

B. Accessory Structures Size Limitations § 143-19 (B)(2).

Applicants have also convinced the Board that exceeding the 1,000 square feet limitation found in § 143-37 of the Ordinance is warranted to provide recreational and pool related storage and utility, provided it is not used as an apartment, mother in-law suite or other similar living/sleeping area. Applicants testified that it is impractical to use their existing basement as recreational space due to water table issues. The Property has limited useful space for the construction of a recreation room. The only efficient way for the Applicants to get the most out of their Property is to add recreational space to the garage. The addition of a second floor to the garage for recreation space is preferred over building a separate accessory structure that by definition are permitted to be built closer to the property line. What's more, by building up rather than on additional land, building area and impervious surface concerns are eliminated. The additional seven hundred and eleven (711) square feet will have a minor impact on the Ordinance and virtually no affect upon the neighborhood. It will not impact the use or development of adjacent property nor will it be detrimental to public welfare.

Regarding the addition of three hundred ninety-eight (398) square feet for the bathroom, kitchenette, changing area and pool related storage on the first floor the Applicants testified that said uses are consistent with the previous use and that of the neighborhood which has many similar oversized garages. The installation of these accessory structures as part of the garage makes practical and aesthetic sense. If the Applicants are required to place the kitchenette, bathroom, and pool storage area elsewhere on the property not only will the costs significantly increase but it may impact storm water management, increase building coverage and

impervious surface and will allow those structures to be built much closer to neighboring property lines. The Board is convinced that the Applicants have proposed an addition that efficiently seeks to utilize the space previously occupied by an old deteriorating garage. The age of the residence, the narrowness of the lot and the restrictions of the property establish the need for a variance. Applicants' efforts to minimize any setback encroachment coupled with the hardship warrants a variance. The imposition of the non-residential condition set forth below makes that variance the minimum that will afford the required relief.

Accordingly, the Board finds that the application for a variance pursuant to the setback requirements of Lower Providence Township Zoning Ordinance § 143-37 and § 143-19 is granted subject to the condition that the garage, particularly the second floor will only be used for recreational purposes and not as an apartment, mother in-law suite, sleeping quarters or other similar residential purpose.

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 garage structure efficiently includes accessories for the pool area consistent with the R-2 residential zone and the nature of the property that would otherwise be normally placed as separate accessory structures.

5. The proposed garage structure will not alter the essential character of the neighborhood in which the Property is located, and will not contravene the use of adjacent property or endanger public safety.

6. The location of the proposed garage is consistent with the side yard setback with the previous garage structure.

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 setback and accessory structure size requirements pursuant to Lower Providence Township Zoning Ordinance § 143-37 and § 143-19 is GRANTED with the condition that the second floor will only be used for recreational purposes and not as an apartment, mother in-law suite, sleeping quarters or other similar residential purpose.

Dated: January 19, 2015

MILLER TURETSKY RULE & MCLENNAN

MARK D. TURETSKY
JOHN A. RULE
KEITH B. MCLENNAN*
TRACEY L. POTERE
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JILL K. ANDERSON, J.D.

January 19, 2016

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7006 3450 0002 3649 5873**

Eric C. Frey, Esquire
Dischell, Bartle & Dooley, P.C.
1800 Pennbrook Parkway, Suite 200
Lansdale, PA 19466

**RE: 131 Oakdale Avenue, Eagleville PA 19403; Parcel No. 43-00-09598-00-7; Notice of Decision
of the Lower Providence Township Zoning Hearing Board-Application Z-15-10**

Dear Eric:

I am writing in accordance with the Pennsylvania Municipalities Planning Code. Enclosed please find a Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on December 21, 2015. Pursuant to the decision of the Zoning Hearing Board, your application for a variance from the setback requirements of § 143-37 as well as variance from the requirements of § 143-19 of the Lower Providence Zoning Ordinance was granted.

Should you have any questions regarding the foregoing please contact me.

Very Truly Yours,



Brandon H. Zanan

pc: Clark and Christina Swinney (via certified mail, return receipt requested 7014 2870 0002 3803 7463)
Thomas A. Borai, Zoning Hearing Board Chair
Kathie A. Eskie
Joyce D. Cluley
Robert G. Hardt
Ms. Gail Hager
Ms. Patricia Alzamora
Mr. Joseph Pucci
Mr. Mike Mrozinski, Director of Community Development

