

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-16-08 : HEARING DATE: October 27, 2016
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APPLICATION OF: :
Chris Kohar :
:
PROPERTY: :
141 Regency Drive :
Lower Providence Township :
Audubon, PA 19403 :
Parcel No. 43-00-11474-26-4 :

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

The applicant, Chris Kohar (hereinafter "Applicant"), filed an application requesting a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with the side yard setback in order to replace an existing storage shed with a 512 square foot garage. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on October 27, 2016, at the Lower Providence Township Building. The following members of the Board were present: Chairwoman Joyce Cluley, Ms. Kathie Eskie, Ms. Gail Hager, Mr. Robert Hardt, Ms. Patty Alzamora and Mr. Joe Bergquist. Also present were Keith B. McLennan, Esq., 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 Chris Kohar.
2. The Applicant is the owner of the subject property located at 141 Regency Drive, Audubon, PA 19403 (hereinafter the "Property"). The parcel number is 43-00-11474-26-4.
3. The applicable zoning district is an R-2, residential district.

4. The Applicant was not represented by legal counsel.
5. The lot size is 19,243 square feet.
6. The present use of the Property is residential.
7. The following exhibits were marked at the hearing:
 - A-1 Architectural Sketches of Proposed Garage
 - A-2 Sample Plan of Proposed Garage
 - A-3 Photographs of Existing Storage Shed
 - A-4 Photographs of Surrounding Neighbor's Garage
 - B-1 Appeal Application
 - B-2 Advertisement
 - B-3 Proof of Publication
8. Applicant is replacing an existing storage shed structure that had been on the Property for approximately twenty years with a garage for the purpose of vehicle storage.
9. Existing garage attached to Applicant's home does not allow for the parking of two vehicles, which most modern sized garages allow.
10. The existing driveway goes to the site of the existing shed structure and proposed garage where any change in the location of the garage would require the addition of unnecessary impervious coverage in the form of additional driveway area.
11. The existing storage shed structure is set back seven (7) feet from the side property line.
12. The proposed replacement garage will be set back five (5) feet from the side property line in order to accommodate the increased size of the proposed garage structure.

13. The application for a variance was made to accommodate the small size of the nonconforming lot on which the house was built.

14. There was no adverse public comment regarding this application, and Applicant's neighbors were in verbal agreement with the proposed garage structure.

15. There is an unnecessary hardship requiring the grant of a variance.

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

DISCUSSION

I. Variance Legal Standard.

Pursuant to the Municipalities Planning Code the following must be found in order for the Zoning Board to grant the requested variance:

(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.

II. **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). A dimensional variance is at issue in this case.

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).

III. **Dimensional Variance Legal Standard.**

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)). 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.

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IV. **Facts Applied to the Legal Standard.**

The Applicants have requested a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with the construction of a garage structure to replace an existing storage shed. The relief sought is dimensional in nature requesting the allowance of a side yard setback of five (5) feet from the requirements that require a twenty (20) foot setback on the side yard.

To establish that an unnecessary hardship exists warranting a dimensional variance from the twenty foot (20') side yard setback, the Applicant had to prove that:

- a. 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. 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 Applicant. Although the proposed garage will be larger than the existing storage shed, it will be, for the most part, built in the same location as the previous accessory structure with a side yard setback of five (5) feet as opposed to the current setback of seven (7) feet. As such, it will not disrupt the neighbors who previously accepted the prior storage shed's non-conformity and will maintain the essential character of the neighborhood. If the Applicant 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. To handle the increased impervious coverage, water from the proposed garage will be diverted directly to existing gardens in the rear and side of the property. The proposed garage and proposed landscaping would provide for an improved barrier to the neighboring property owner's pool and will improve the character of both 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.

The Applicant has proposed an addition that attempts to limit encroachment into required setback and accommodates, as best possible, the undersized parcel. It is 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 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'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 garage would not require the creation of new impervious surface in additional driveway. The proposed replacement garage 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 3-1 vote is as follows:

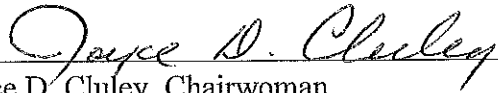
The application for a variance from Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is granted.

Dated: December 9, 2016

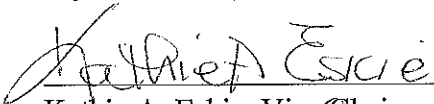
ORDER

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

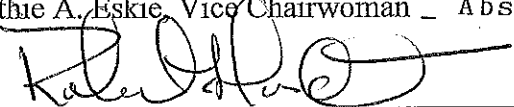
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



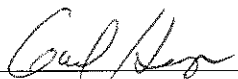
Joyce D. Cluley, Chairwoman



Kathie A. Eskie, Vice Chairwoman - Abstained

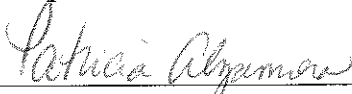


Robert G. Hardt

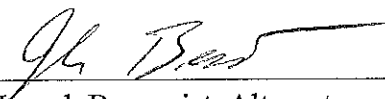


Gail Hager - Dissent

Joseph Pucci



Patricia Alzamora, Alternate



Joseph Bergquist, 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.