

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-16-10	: HEARING DATE:	October 27, 2016
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		:	
APPLICATION OF:		:	
	Douglas and Nancy White	:	
		:	
PROPERTY:		:	
	709 Barrington Road	:	
	Lower Providence Township	:	
	Collegeville, PA 19426	:	
	Parcel No. 43-00-01060-00-4	:	

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

The applicants, Douglas and Nancy White (hereinafter "Applicants") filed an application requesting a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance ("Ordinance") in connection with the side yard setback, in order to place a pre-fab storage shed labeled a garage next to their house with a side yard setback of six (6) feet. The Ordinance requires a minimum side yard setback of twenty (20) feet. 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, Vice-Chairwoman Kathie Eskie, members: Gail Hager, Robert Hardt, Patricia Alzamora and Joseph Bergquist, alternate. 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 Applicants are Douglas and Nancy White.

2. The Applicants are the owners of the subject property located at 709 Barrington Road, Collegeville PA 19426, parcel number 43-00-01060-00-4 (hereinafter the "Property").

3. The applicable zoning district is an R-2, residential district.

4. The Applicants were not represented by legal counsel.

5. The lot size is 23,900 square feet.

6. The present use of the Property is residential.

7. The following exhibits were introduced:

A-1 Deed of Property;

A-2 Architectural Sketches of Proposed "Garage;"

A-3 Photographs of Surrounding Neighbor's Accessory Buildings;

A-4 Letter From Neighbors at 705 Barrington Road expressing no objection to the Proposed "Garage;"

B-1 Application;

B-2 Advertisement;

B-3 Proof of Publication.

8. Applicants wish to place a "storage garage" on gravel/stones next to their home on the Property for storage of tools and household items and/or a place to work on equipment such as bikes, a tractor, and other equipment from Applicant's former commercial business.

9. Applicants will not be using the "garage" for the storage of vehicles; the "garage" would have a plywood floor that would not be appropriate for the storage of vehicles.

10. Applicants have an existing small utility shed on the Property approximately 150 square feet in size within the setback.

11. The proposed "garage" would be 14' by 24' and approximately 335 square feet in

size and would be set back six (6) feet from the side property line.

12. The proposed “garage” cannot be placed within the setback area of the Property due to the fact that a portion of the property is wet and sinking due the presence of fill..

13. The proposed “garage” is a shed, not a garage.

14. The application for a variance was made to accommodate Applicant’s desire for additional storage of equipment.

15. There was no adverse public comment regarding this application, and Applicant’s neighbors provided a written letter indicating no objection to the proposed structure.

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.

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 335 square foot shed for storage of the Applicants' extra equipment and tools. The relief sought is purportedly dimensional in nature requesting the allowance of a side yard setback of six (6) feet from the twenty (20) foot setback requirements of the Ordinance.

To establish that an unnecessary hardship exists warranting a dimensional variance from the twenty foot (20') side yard setback, the Applicants were required 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.Cmwltb.

2007).

Further, the Applicant had to otherwise comply with all applicable sections of the Ordinance.

The Applicants refer to the subject of its Application as a “garage”. Ordinance §143-6 defines a private garage as:

“An accessory building to a residential property or a part of a principal residential building used for the storage of motor vehicles of type and nature permitted in the zoning district and owned and used by the owner or tenant of the premises.”

Further, the Ordinance at §143-6 defines a storage garage as:

“A building, not a private or public garage, one story in height, used solely for the storage of motor vehicles (other than trucks), but not for the service or repair thereof nor for the sale of fuel, accessories or supplies.”

Mr. White testified that:

1. They do not and have not had a garage on their property for motor vehicle storage;
2. The proposed structure would not accommodate a motor vehicle;
3. Applicants are not interested in constructing a garage for motor vehicle storage;
4. The structure would be placed on a gravel/stone base;
5. The structure would be used for storage and as a “shop” to work on equipment from his previous trade; and
6. The proposed structure was an oversized shed not to be used for parking of cars.

Section 143-6 of the Ordinance defines a “shed” as:

SHED, HOUSEHOLD STORAGE

A structure or building which is less than 250 square feet and is used only for the storage of lawn equipment and personal items accessory to residential use. Any other type of use other than storage shall not be allowed within the shed.

Therefore, the proposed 335 square foot 14' x 24' structure for storage of household items, not for storage of motor vehicles can only be considered an accessory building in the nature of a shed. Lower Providence Township Zoning Ordinance §143-19 B(3) permits only one shed or accessory building of 250 square feet or smaller in the R2 district. Not only does the proposed structure exceed 250 square feet, but the Applicants already have a storage shed on the property.

Inasmuch as the Applicants sought a variance from the 20 foot side yard set back requirements of §143-19 B(3) for the construction of a *garage* when in fact they are not constructing a garage, they have failed to demonstrate any hardship, unique or unnecessary, which requires the grant of a variance from the limitation on the size and number of sheds on the Property in the R2 zoning district.

What is more, even had the Applicants sought relief under the proper Ordinance sections governing sheds in the R2 district it is unclear they could justify maintaining two (2) sheds, particularly one with dimensions of 14' x 24' and 335 square feet. Accordingly, the requested variance cannot be the minimum variance that will afford 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 inappropriate.

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. A dimensional variance is sought by the Applicant for a garage, however, a

garage is not what was proposed.

3. The proposed “garage” is, under §143-6 of the Ordinance, a shed.

4. Sections 143-6 and 143-19B.(3) of the Ordinance permit only one shed of no more than 250 square feet to exist in the R2 district on the Property.

5. Denial of the requested relief will not impose an unnecessary hardship on the Applicant.

6. Any hardship, is entirely self-imposed, and is due to the Applicants’ desire for additional storage shed rather than any unique physical circumstances of the Property.

7. The requested relief is not necessary to enable the Applicant’s reasonable use of the Property and does not represent the minimum deviation from the Ordinance that will afford relief.

DECISION

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

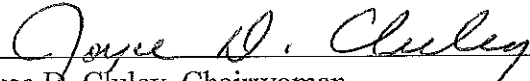
The application for a variance from Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is denied.

Dated: December 9, 2016

ORDER

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

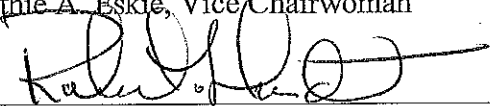
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



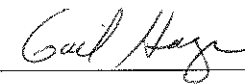
Joyce D. Cluley, Chairwoman



Kathie A. Eskie, Vice Chairwoman

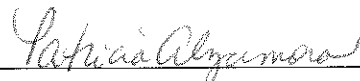


Robert G. Hardt

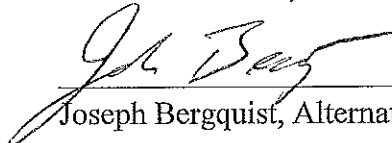


Gail Hager

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.