

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-17-02 : HEARING DATE: February 23, 2017
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APPLICATION OF: :
Alessandra and Jeffrey Heller :
:
PROPERTY: :
24 Henry Road :
Lower Providence Township :
Norristown, PA 19403 :
Parcel No. 43-00-06154-00-4 :

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

The applicants, Alessandra and Jeffrey Heller (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 (the "Ordinance") in connection with the construction of an addition to the rear of their home. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on February 23, 2017, at the Lower Providence Township Building. The following members of the Board were present: Chairwoman Kathie Eskie, Joseph Pucci, Patricia Alzamora and Joseph Bergquist. Also present were Keith B. McLennan, Esquire, 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 Alessandra and Jeffrey Heller, husband and wife.
2. The Applicants own the subject property located at 24 Henry Road, Norristown PA 19403, parcel number is 43-00-06154-00-4 (hereinafter the "Property").
3. The applicable zoning district is the R-2, residential district.

4. The Applicant was not represented by legal counsel.
5. The present use of the Property is residential.
6. The following exhibits were marked at the hearing:
 - A-1 Architectural Sketch of Existing Residence;
 - A-2 Architectural Sketches of Proposed Addition to Residence;
 - B-1 Appeal Application;
 - B-2 Advertisement;
 - B-3 Proof of Publication.
7. Applicants' lot is undersized at 11,025 square feet; the minimum lot area in the R-2 residential district is 25,000 square feet according to Section 143-37.A.(2) of the Ordinance.
8. Section 143-37.A.(2) of the Ordinance requires a rear yard setback of 60 feet.
9. The proposed addition to the home will be set back forty eight (48) feet from the rear property line and will serve to add to a home that currently only has two bedrooms, no laundry room, and requires significant modernization.
10. The lot located immediately behind the Property is vacant and undeveloped.
11. The application for a variance was made due to the undersized and unusually shaped nonconforming lot.
12. Absent the variance, Applicants will be precluded from improving their home to accommodate their growing family.
13. Due to the undersized lot and angled placement of the home on that lot, the addition can only be placed where requested.
14. There was no adverse public comment regarding this application.
15. The proposed addition will not alter the essential character of the neighborhood.

DISCUSSION

I. Variance Legal Standard.

Generally, the Municipalities Planning Code and Section 143-168.A. of the Ordinance require an applicant to establish the following in order for the Board to grant a 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).

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).

A dimensional variance is at issue in this case.

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)). In *Hertzberg* the Supreme Court of Pennsylvania gave zoning boards and courts more liberality in granting or sustaining variances from regulations that are dimensional in nature than in cases where a use variance is sought. The Supreme Court determined that to justify the grant

of a dimensional variance, courts may consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. Thus *Hertzberg* offers an applicant a greater chance of gaining zoning relief in dimensional variance cases on a showing of a lesser hardship.

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 required by the Ordinance as 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 an addition to the rear of their home. The relief sought is dimensional in nature requesting the allowance of a rear yard setback of forty eight (48) feet. The ordinance requires a setback of sixty (60) feet from the rear property lines.

In the instant case, the uniqueness of the lot makes it difficult for the Applicants to avoid encroachment on a setback creating an unnecessary hardship for the Applicant. This hardship is not self-imposed but is rather the result of the physical characteristics of the undersized lot and the placement of the existing home on an angle to accommodate Montgomery Avenue, a paper street.

Due to its small footprint on this undersized lot, the existing home has only two bedrooms, one bathroom, and no laundry room. The Applicants assert that the existing house is inadequate to meet their needs. Applicants testified that the proposed addition will provide a

more useful and modernized home for a family, will be consistent with other homes in the neighborhood and will enhance not only the value of their property but also those in the immediate area. The proposed addition is best placed in the area of the existing porch to minimize encroachment on the setbacks from the property line. In fact, locating the addition anywhere else would cause greater encroachment into the rear and side yard setbacks.

What is more, placement of the addition where proposed makes the most practical and economic sense due to the existing plumbing of the home and location of other utilities and facilities therein. Locating it anywhere else will create significant added expense by either disrupting existing utilities or making it difficult to tie into plumbing, electric and other necessary facilities. Needless to say, this will create financial hardship to the Applicants. Further, no matter what amount of money Applicants could spend in an attempt to bring the building into strict compliance with the setbacks, it is impossible to achieve.

The Property will continue to conform to the building coverage and impervious coverage requirements. A number of surrounding homes already have similar additions thus the essential character of the neighborhood will not be changed by granting the variance to permit the proposed addition.

Applicants have proposed an addition that attempts to limit encroachment into required setbacks and makes the best use of the unusually shaped lot. It is therefore the minimum variance that will afford the required relief.

Accordingly, the Board finds that variance from 143-37.A.(2) of the Lower Providence Township Zoning Ordinance is appropriate.

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.

5. The proposed home addition will 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 4-0 vote is as follows:

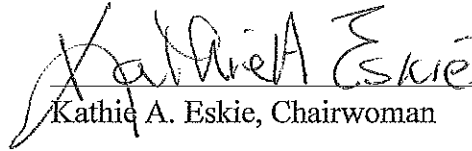
The application for a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance is granted.

Dated: March 17, 2017

ORDER

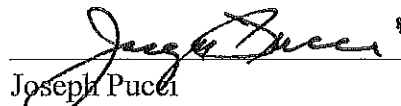
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

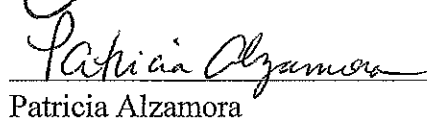
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

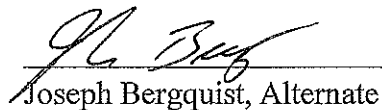

Kathie A. Eskie, Chairwoman

Gail Hager, Vice Chairwoman

Robert G. Hardt


Joseph Pucci


Patricia Alzamora


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.