

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-17-03 : HEARING DATE: March 23, 2017

APPLICATION OF:

Gravel Pike 50, LLC

PROPERTY:

2620 Egypt Rd

Lower Providence Township

Audubon, PA 19403

Parcel No. 43-00-06001-00-4

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

The applicant, Gravel Pike 50, LLC (hereinafter "Applicant"), filed an application requesting a variance from Section 143-19.B(1) to permit a 30' x 33' detached private garage to be located within the front yard setback of the property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on March 23, 2017, at the Lower Providence Township Building. The following members of the Board were present: Chairwoman Kathie Eskie, members Gail Hager, Robert Hardt, Joseph Pucci, Patricia Alzamora and alternate, Joseph Bergquist. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszaros, the Court Reporter and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Gravel Pike 50, LLC.
2. The Applicant was represented by Bernadette A. Kearney, Esq., of Hamburg Rubin Mullin Maxwell & Lupin, 375 Morris Road, Lansdale, PA 19446.
3. The Applicant is the owner of the subject property located at 17 Heatherwood

Hills Road, Eagleville, Lower Providence Township, PA 19403, parcel number is 43-00-06001-00-4 (hereinafter the "Property").

4. The applicable zoning district is the R-2 residential district.
5. The lot size is 29,086 square feet.
6. The present use of the Property is residential.
7. Don Neilson, his wife and daughter reside at the property and have been authorized by the owner to advance the Application.

8. Mr. Neilson testified on behalf of the Applicant.
9. P. Bradford Macy, PLS also testified on behalf of the Applicant.
10. The following exhibits were included in the record of the hearing:

A-1 Appeal Application

A-2 Revised Attachment to Appeal Application;

A-3 Permit Denial Letter

A-4 Authorization Letter

A-5 CV of P. Bradford Macy, PLS

A-6 Tax Map of Property

A-7 Aerial Photograph of Property

A-8 Site Plan of Property

A-9 Elevation of Proposed Garage on Property

A-10 Letters of Support of Application by Neighbors

B-1 Advertisement

B-2 Proof of Publication.

11. Applicant's lot is uniquely shaped as it is akin to a flag lot with the shaft of the

flag off of Heatherwood Hills Road providing access to the residential lot which is triangular in shape.

12. The proposed garage will be placed partially within the front yard setback, and would be detached from the main house on the Property.

13. The proposed garage would be 990 square feet¹ with siding to match the appearance of the home built on the Property.

14. There is no room to place the proposed garage in the rear yard due to an existing pool that had been in place on the Property prior to Applicant's ownership of the Property.

15. The existing driveway goes to the site of the existing and proposed garage where any change in the location of the proposed garage would require the addition of unnecessary impervious coverage in the form of additional driveway area.

16. The application for a variance was made to accommodate Applicant due to the unusually shaped lot as well as the limited area in which the proposed garage could be placed on the Property.

17. There was no adverse public comment regarding this application; in fact there were several letters of support supplied by surrounding neighbors of the Property.

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

DISCUSSION

I. Statement of the Case

The Applicant requests a variance from Section 143-19.B.(1) which states:

§143-19 Accessory uses and accessory buildings/structures; bus shelters.

¹ Importantly, the garage would be 10 square feet of storage less than permitted by Ordinance.

B. Residential accessory building/structures. Accessory buildings/structures, as defined in §143-6, shall be permitted in all residential districts subject to the provisions of §143-27, the limitations herein set below and any additional limitations established in the provisions of the applicable to the zoning district:

- (1) No accessory building/structure shall be located within the front yard setback.

Applicant's property sits well back from Heatherwood Hills Road while the neighbors on that same road sit further forward. Thus, the Applicant's front yard abuts the back yards of its neighbors.

II. Variance Legal Standard.

To obtain a variance the Applicants must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

- (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.

See also: 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 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. Cmwlt. 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).

IV. Facts Applied to the Legal Standard.

The Applicant has requested a variance from Section 143-19.B.(1) for the placement of a detached garage within the front yard setback of the Property. The ordinance does not allow for any accessory building or structure to be located within the front yard setback. To establish that an unnecessary hardship exists warranting a variance from the Ordinance limiting the placement of an accessory building from the front yard setback, the Applicant must 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.Cmwlt. 2007).

In the instant case, the uniqueness of the lot makes it difficult for the Applicant to avoid placement of the proposed garage on any other part of the Property other than in the front yard 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 triangular flag lot. Due to the lot size and unique shape, existing pool, and existing driveway, the proposed garage can only be placed within the front yard setback of the Property in close proximity to the existing attached garage in order to eliminate the need to create additional driveway and impervious coverage. Applicant's witnesses testified that the additional garage will be used for storage of vehicles and additional items in order to keep the property aesthetically pleasing to the neighbors and house a truck for use in plowing the long driveway to the home. Further, Applicant's front yard abuts the neighbors' rear yards, making the garage less obtrusive. The Property will continue to conform to the building coverage and impervious coverage requirements, as well as Ordinance requirements for an additional shed structure located on the Property. In addition, the Applicant will properly screen the shed from view by planting evergreens to help screen the proposed garage structure and will not use it as living space.² Accordingly, the essential character of the neighborhood will not be changed with the addition of the proposed garage.

The rationale for the instant restriction against garages in front yards clearly was for the avoidance of unsightly structures, vehicles and what accompanies them plainly visible from township streets. Altering the current restriction with the requested variance to locate a garage designed to shield or camouflage vehicles and outdoor household equipment from view, set far back from the street such that the Applicant's front yard is akin to its neighbors back yards is the least modification of the Ordinance and the minimum variance that will afford the required

² Both Mr. Macy and Mr. Neilson testified that improvement of the existing screening to shield the garage from view was appropriate and that it would not be used as living space.

relief.

Accordingly, the Board finds that variance from 143-19.B.(1) of the Lower Providence Township Zoning Ordinance is appropriate.

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 characteristics 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.

5. The proposed garage structure will 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:

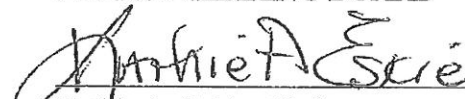
The application for a variance from the accessory structure requirements of Section 143-19.B.(1) of the Lower Providence Township Zoning Ordinance is granted with the condition that it conform to the provisions of Section 143-27 of the Ordinance and not be used as an apartment, mother in-law suite, sleeping quarters or other similar residential use.

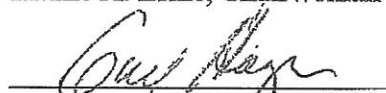
Dated: May 8, 2017

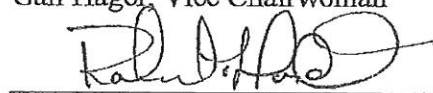
ORDER

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

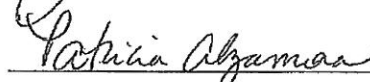
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

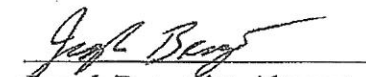

Kathie A. Eskie, Chairwoman


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.