

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-17-05	: HEARING DATE: March 23, 2017
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APPLICATION OF:	:
Christina and Robert Samtmann	:
	:
PROPERTY:	:
105 Farmhouse Drive	:
Lower Providence Township	:
Audubon, PA 19403	:
Parcel No. 43-00-04143-50-3	:

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

On February 23, 2017 the Applicants Christina and Robert Samtmann (hereinafter referred to as the "Applicants") filed an application (the "Application") requesting variances from the side and rear yard setback requirements of §143-37A.(2) of the Lower Providence Township Zoning Ordinance (the "Ordinance") in connection with the proposed construction of an addition to the side and rear of their home at 105 Farmhouse Drive, Audubon, Lower Providence Township, PA 19403 (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, Vice Chair Gail Hager and members 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 Applicants are Christina and Robert Samtmann.

2. The Applicants were not represented by legal counsel.
3. The Applicants acquired the subject Property with a parcel number of 43-00-04143-50-3 in 1999.
4. The present use on the Property is a single family residence.
5. The lot size is 21,375 square feet.
6. The applicable zoning is the R-2 Residential District which requires a side yard setback of twenty (20) feet and a rear yard setback of sixty (60) feet.
7. In 2011 §143-37A.(2) of the Ordinance was amended increasing the side yard setback from fifteen (15) feet to twenty (20) feet for this Property and others similarly situated.
8. The aforesaid amendment made the Property non-compliant with the side yard setback and building lot area which was conceived and built on an irregularly shaped triangular lot.
9. The Applicants propose to construct an addition to their single family residence by adding a front porch, rear deck and expanding the existing family room and garage to create a first floor master suite.
10. The proposed addition of the front porch, rear deck and expansion of the existing family room and garage would be distant from the side and rear yard property lines (as the case may be) as follows:
 - a. Front Porch – 18.25 feet from the north side property line;
 - b. Rear Deck – 26.25 feet from the rear property line;
 - c. Rear Deck – 12.5 feet from the north side property line;
 - d. Family room and Garage expansion – 9.375 feet from the south side property line.
11. Due to the existing non-conformity created by the amendment to the Ordinance

11 years after the home was built, it is impossible to add any space to the home and comply with the setback requirements of §143-37A.(2) of the Ordinance.

12. The neighborhood is comprised of similarly sized and constructed colonial style homes, some of which include additions similar to that which the Applicants propose.

13. There was only supportive public comment regarding this Application.

14. The following exhibits were marked at the hearing:

B-1: Advertisement

B-2: Proof of publication

A-1: Appeal Application

A-2: Survey by Bercek and Smith Engineering, Inc. dated February 17, 2017

A-3: Plot and Floor Plan by J.R. Stephens Architects

A-4: Home Elevation Plan by J.R. Stephens Architects

DISCUSSION

I. Statement of the Case

The Applicant requests a variance from §143-37A.(2) which states:

§143-37 Area, setback, bulk, height and parking requirements.

A. Site area or building lot area.

[Amended 9-21-2006 by Ord. No. 556]

(1) The maximum percentage of building coverage permitted shall be 35% of the net site area in any new land developments of more than one building. In addition, the maximum percentage of impervious material coverage shall be 30% of the net site area or building lot area in any new land development, whichever is applicable.

(2) The minimum building lot size, width and area requirements shall be determined by availability of public water and sanitary sewer service, as follows:

[Amended 10-20-2011 by Ord. No. 602]

Requirement	No Public Service	Either Water or Sanitary Sewer Service Only	Both Water and Sanitary Sewer Service
Lot area, minimum	40,000 square feet	30,000 square feet	25,000 square feet
Lot width at building line	175 feet	150 feet	100 feet
Principal and accessory buildings over 250 square feet:			
Front yard	50 feet	50 feet	50 feet
Side yard	30 feet	25 feet	20 feet
Rear yard	60 feet	60 feet	60 feet
Maximum total building coverage	20%	20%	20%
Maximum total impervious coverage	35%	35%	35%

Applicants seek variances from the side and rear yard setbacks in order to construct an addition to their home which is already non-compliant as a result of a 2011 change in the zoning and those setback requirements. The amendment to the Ordinance precludes the Applicants from ever constructing a rear deck or expanding their family room or garage as those structures currently violate the setbacks.

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. 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).

IV. 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)). 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.

In addition, §§143-168.C. & D.(2), (3) & (4) of the Ordinance articulate the Applicants' burden of proof and the standards to meet that burden as follows:

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of §910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. §10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public interest.

(3) Zoning Hearing Board considerations. In considering whether the allowance of a special exception or variance is contrary to the public interest, the Zoning Hearing Board shall consider whether the application, if granted, will:

- (a) Substantially increase traffic congestion in the streets surrounding the subject site;
- (b) Increase the risk of fire or panic or otherwise endanger the public safety;
- (c) Overcrowd the land or create undue concentration of population;
- (d) Be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of this chapter;
- (e) Intrude upon the adequacy of natural light and air to adjoining properties;
- (f) Create extraordinary burdens on public, private or community water systems or upon ground waters or wells within the neighborhood;
- (g) Overburden the public sanitary sewer system within the Township occasion environmental problems with on-site sanitary sewer installations;
- (h) Place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood;
- (i) Cause adverse affects to the appropriate use of adjacent properties in the neighborhood where the property is located;
- (j) Cause risk or danger to the safety of persons or property by improper location or design of facilities for ingress and egress to and from the property in question; or
- (k) Otherwise adversely affect the public health, safety, morals or general public welfare of the community.

V. Facts Applied to the Legal Standard.

The Applicants have requested a variance from the setback requirements of §143-37(A).(2) of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the dimensional requirements that require a twenty (20) foot setback on the side yard and a sixty (60) foot setback for the rear yard. 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 as further restricted by the 2011 amendment to the Ordinance makes it difficult for the Applicants to avoid encroachment on the side and rear yard setbacks creating an unnecessary hardship for the Applicants. This hardship is not self-imposed but is rather the result of the physical characteristics of the undersized uniquely shaped lot exacerbated by the Ordinance amendment.

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 their family as they anticipate that any of their parents may be required to move in with them as they age.

Applicants offered testimony from their neighbors and themselves that the home as improved will be consistent with other homes in the neighborhood. A number of surrounding homes already have similar additions and the surrounding neighbors are in support of the Applicants' proposal. There will be no secondary outside access to the addition, and Applicants' have made it clear that the proposed addition would be for personal use only. The Property will continue to conform to the building coverage and impervious coverage requirements. Accordingly, the addition will enhance not only the value of the Applicants' property but also those in the immediate area. 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 the rear and side yard setback requirements of Section 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 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 5-0 vote is as follows:

The request for variances from the side and rear yard setbacks set forth in Section 143-

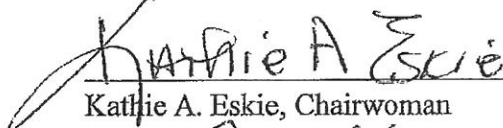
37(A).(2) of the Lower Providence Township Zoning Ordinance to construct an addition to the Property along with a rear deck and front porch as set forth in the Application is granted .

Dated: May 9, 2017

ORDER

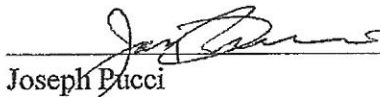
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

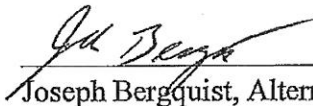

Kathie A. Eskie, Chairwoman


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.