

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-18-09 : HEARING DATE: June 28, 2018

APPLICATION OF:

Edward John Birkmire

PROPERTY:

31 Stoneham Road

Lower Providence Township

Collegeville, PA 19426

Parcel No. 43-00-13792-00-7

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

The applicant, Edward John Birkmire (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 ("Ordinance") in connection with the side and rear yard setbacks, in order to construct and install a 24' x 30' garage in the rear of their 18,898 square foot lot with a side and rear yard setback of eight feet (8') . The Ordinance requires a minimum side yard setback of twenty (20) feet and a rear yard setback of sixty feet (60'). The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on June 28, 2018 at the Lower Providence Township Building. The following members of the Board were present: Chairwoman Kathie Eskie, Vice-Chairwoman Gail Hager, members, Joseph Pucci, Patricia Alzamora and Robert Hardt. Also present were, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszaros, the Court Reporter and Keith B. McLennan, Esq., the Solicitor.

FINDINGS OF FACT

1. The Applicant is Edward John Birkmire.

2. The Applicant is the owner of the subject property located at 31 Stoneham Road, Collegeville PA 19426, parcel number 43-00-13792-00-7 purchased by the Applicant in 2004 (hereinafter the "Property").

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 18,898 square feet, on a cul-de-sac and thus pie shaped.

6. The present use of the Property is residential.

7. Applicant wishes to place a 24' x 30' garage to the left rear of his home on a cul-de-sac the Property for storage of lawn tools, household items and his father's sport utility vehicle incident to the construction of an addition to his house to accommodate his elderly parents.

8. Applicant will not be losing his existing garage which will continue to be used for the storage of household items.

9. Applicant has an existing utility shed on the Property also for storage that he intends to remove if he obtains the variance for the garage.

10. The proposed garage would be 24' by 30' and approximately 720 square feet in size and would be set back eight (6) feet from the side and rear property lines.

11. Applicant contends that the proposed garage cannot be placed within the setback area of the Property due to the fact that Applicant wants to permit greater use of the open ground and a direct angle of entry for a vehicle to enter the garage and he did not wish to see a building off his patio if the garage was constructed closer to the house within the building envelope in accordance with the Ordinance.

12. The application for a variance was made to accommodate Applicant's desire for

additional storage.

13. Applicant asserted that if he cannot obtain the variance he would install a number of additional less attractive sheds to accommodate his storage needs for his tractor, motorcycle, boat and other household items.

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

15. The following exhibits were included in the record:

A-1 Four Letters from neighbors of no objection to the proposed garage;

B-1 Application;

B-2 Site Plan;

B-3 Advertisement;

B-4 Proof of Publication.

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); Sotencanos, 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.Cmwlt. 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 Applicant has 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 720 square foot garage for the Applicant and his parents to store household items, lawn equipment, tools and a vehicle. The relief sought is purportedly dimensional in nature requesting the allowance of a side and rear yard setback of eight (8) feet from the twenty (20) foot side yard and sixty (60) foot rear yard setback requirements of the Ordinance.

To establish that an unnecessary hardship exists warranting the ambitious dimensional variance from the side and rear yard setback reducing them from 20 and 60 feet respectively to

8,' the Applicant was 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.Cmwlth. 2007).

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

As per the Applicant's testimony his interest in placing the garage 8 feet off the property line is entirely subjective. His motivation to help his parents although noble is only part of his goal. Applicant made it clear that he wanted to preserve the open space of his back yard for his own use that he believed would be impaired if he were to move the garage in from the side and rear property lines and build the addition to his home that he desires for his parents. He wishes to preserve more space with his proposed placement of the garage so that he can build a deck around his above ground pool to avoid entering and exiting it by way of a ladder. He was unwilling to alter his ambitious request even to provide for a 10-15 foot set back since it would deny him 2-7 feet of his yard. Applicant believes that whatever he determines is the ultimate and efficient use of the property should dictate the outcome of his Application, not the standards developed by the Supervisors when they passed the Ordinance. In fact, the Applicant was unwilling to take any steps in an effort to lessen the encroachment of the garage on the setbacks.

Applicant has failed to demonstrate any hardship, unique or unnecessary, which

requires the grant of a variance from the limitation on the side and rear yard setbacks on the Property in the R2 zoning district.

IV. Conclusion

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 for side and rear yard setbacks of eight feet (8') where twenty (20) and sixty (60) feet respectively are required is inappropriate.

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will not impose an unnecessary hardship on the Applicant.
3. Any hardship, is entirely self-imposed, and is due to the Applicant's desire for additional storage, construction of an addition, his desire for a pool deck, more open back yard, preferred angle of approach to the new garage and his desire not to look at a building off of his patio rather than any unique physical circumstances of the Property.
4. There was no evidence introduced to indicate that compliance with the Ordinance could only be achieved at prohibitive expense.
5. Applicant failed to demonstrate that the characteristics of the property were such that it would have no value or only distress value for any use approved by the zoning ordinance.
6. 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.

7. The proposed variance does not represent the minimum variance that will afford relief and fails to represent the least modification possible of §143-37(A)(2) of the Ordinance.

DECISION

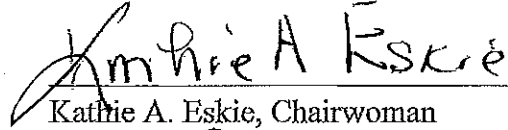
The decision of the Lower Providence Township Zoning Hearing Board on the application for a variance from Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance for side and rear yard setbacks of eight feet (8') where twenty (20) and sixty (60) feet respectively are required is denied by a 3-2 vote with Chairwoman Eskie, Vice Chairwoman Hager and member Alzamora voting against the Application and Members Pucci and Hardt voting to support the Application.

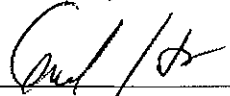
Dated: August 12, 2018

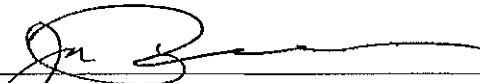
ORDER

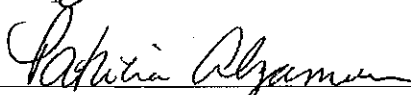
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

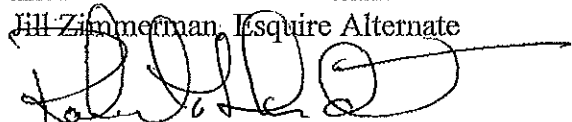

Kathie A. Eskie, Chairwoman


Gail Hager, Vice Chairwoman


Joseph Pucci


Patricia Alzamora

George J. Ozorowski, Esquire


Robert G. Hardt, 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.

