

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-19-06 : HEARING DATE: March 28, 2019

APPLICATION OF:
Joseph Groff

PROPERTY:
1010 Sunnyside Avenue
Lower Providence Township
Audubon, PA 19403
Parcel No. 43-00-14210-01-2

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

Applicant Joseph Groff (hereinafter referred to as the "Applicant") filed an application requesting variances from the side yard setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance ("Ordinance") in connection with the proposed construction of a three-season room addition on top of the existing deck. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on March 28, 2019 at the Lower Providence Township Building. Chairwoman, Kathy Eskie, Vice Chairman, George J. Ozorowski and members Gail Hager, Joseph Pucci, Patricia Alzamora and alternate Robert Hardt were present. Also present were Michael M:rozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszaros, the Court Repmter and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Joseph Groff.
2. The Applicant is the owner of the subject propelty, which is located at 1010 Sunnyside Avenue, Audubon, PA 19403 (the "Property"). The parcel number is 43-00-14210-01-2.

3. The applicable zoning is R-2 Residential District.
4. The Applicant was not represented by legal counsel.
5. The present use on the Property is a single family residence.
6. The Applicant acquired the Property in 1989.
7. When the Applicant acquired the property the Ordinance provided for a fifteen (15) foot side yard setback.
8. In 2011 the Ordinance was amended to require a twenty (20) foot set back.
9. The lot size is 19,455 square feet.
10. The Applicant proposes to construct a three-season room addition to the rear/southern corner in place of the existing deck attached to the single family residence for personal use.
11. The proposed three-season room will convert part of Applicant's existing deck to an enclosed three-season room.
12. The structure would be attached to the house will be even with the side of Applicant's existing home which is fifteen feet (15') from the side yard setback line which was permitted in 1989.
13. The exterior of the proposed three-season room would blend with the existing siding from the house and include a window wall.
14. The proposed three-season room would be 15 feet from the side property line at the closest point, and would be flush with the point where it joins the wall of the existing house, which is also 15 feet from the side property line.
15. There was no adverse public comment regarding this application.
16. There is an unnecessary hardship requiring the grant of a variance.
17. The proposed three-season room will not alter the essential character of the

neighborhood.

18. The following exhibits were marked at the hearing:

A-1: Application

A-2 Two (2) sketches of the proposed three-season room

B-1: Notice of the proposed variance

B-2: Certificate of Posting of the Notice

B-3: Certificate of Notification of property owners within five hundred (500) feet of the subject property with a mailing matrix of those property owners notified

B-4 Notice published in the Times Herald on March 20, 2019

DISCUSSION

The Applicant has 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.

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)). The quantum of proof required to establish unnecessary hardship in the case of a dimensional variance is, however, lesser than when a use variance is sought. Id. at 258-59.

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). Pursuant to the

Municipalities Planning Code the following must be found in order for the Board to grant the requested variance:

(1) That 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) That 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) That such unnecessary hardship has not been created by the applicant.

(4) That 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) That 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. 53 P.S. § 10910.2; §143-168.A. of the Ordinance.

The unique circumstances of the Applicant and the subject Property require the grant of a variance. Undue hardship would result from a denial of the variance. This hardship is not self-imposed but is rather the result of the Applicant's property previously being built with a 15 foot side yard setback before the 2011 zoning ordinance amendment, and the three-season room addition would not extend any further into the side yard setback. Also, the essential character of the neighborhood will not be changed with addition of this three-season room. Finally, the proposed three-season room would only cover the same area as the existing deck and extend no

further. It is therefore the minimum variance that will afford the required relief.

Accordingly, the Board finds that the application for a variance from the side yard setback requirements of §143-37.A.(2) of the Lower Providence Township Zoning Ordinance is granted.

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 circumstances of the Property and post-acquisition more restrictive alteration of the Ordinance.
4. The requested relief is necessary to enable the Applicant reasonable use of the Property,
5. The variance represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.
6. The proposed three-season room 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 §143-37.A.(2) of the Lower Providence Township Zoning Ordinance is granted.

Dated: May 10, 2019

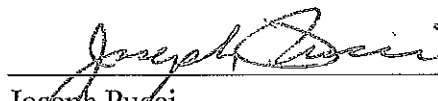
ORDER

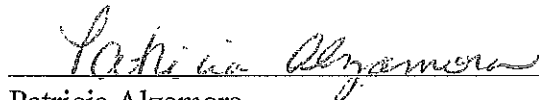
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Kathie A. Eskie


Gail Hager


Joseph Pucci


Patricia Alzamora


George J. Ozorowski, Esquire

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.