

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-18-07 : HEARING DATE: May 24, 2018
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APPLICATION OF: :
Larry B. & Linda R. McGranahan :
:
PROPERTY: :
34 Ashton Road :
Lower Providence Township :
Collegeville, PA 19426 :
Parcel No. 43-00-00676-00-1 :

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

The applicants, Larry B & Linda R. McGranahan (“Applicants”) filed an application requesting a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning ordinance (“Ordinance”) to construct an addition to their home that would allow for a thirty six and thirty three one hundredths feet (36.33’) rear yard setback instead of the sixty foot (60’) rear setback required by §143-37.A.(2) of the Ordinance. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on May 24, 2018 at the Lower Providence Township Building. The following members of the Board were present: Vice Chairwoman Gail Hager and members Patricia Alzamora, George Ozorowski, Jill Zimmerman 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, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicants are Larry B & Linda R. McGranahan, husband and wife.
2. The Applicants own the subject property located at 34 Ashton Road Lower

Providence Township, Collegeville, Pennsylvania 19426 located within the R-2 Residential District bearing parcel identification number 43-00-00676-00-1 ("Property").

3. The Property is approximately 30,600 square feet and is more wide than deep.
4. The present use of the Property is residential.
5. The Applicants reside in a home on the Property which was constructed in the 1960's.
6. The Property was made non-conforming in 2006 when the R-2 residential sections of the Ordinance were revised making the R-2 district more restrictive increasing the rear yard setback from fifty (50) to (60) feet.
7. The Property is irregular and of an unusual layout, shape and dimension.
8. Applicants seek to construct a single story eight hundred and twenty (820) square feet addition to their home for Mr. McGranahan's mother.
9. Placement of the proposed addition on the west side of the existing residence is impossible due to the existence of a sanitary lateral in that area.
10. No matter where you place the proposed addition the Applicants would violate the sixty foot (60') rear yard setback.
11. The proposed addition will be what is commonly referred to as an in-law suite for Mr. McGranahan's mother and will include a bedroom and a kitchen all on one story.
12. The proposed addition to be located on the east side of the home will be setback thirty three one hundredths feet (36.33') from the property line in the rear of the home instead of the sixty foot (60') rear yard setback required by the Ordinance.
13. The proposed addition would exceed twenty-five percent (25%) of the area of the existing home.
14. The area behind the Property is an undeveloped ravine with a stream and thus is

not likely to create an issue with the landowner behind the Property.

15. The application for a variance was made to accommodate Applicants due to the odd shaped lot and building envelope.

16. The proposed addition will not alter the essential character of the neighborhood.

17. There was no adverse public comment regarding this Application.

18. The Applicant was not represented by legal counsel.

The following exhibits were offered at the hearing:

A-1 Zoning Plan for the McGranahan Residence, 34 Ashton Road;

A-2 Appeal Application;

B-1 Advertisement;

B-2 Proof of Publication.

DISCUSSION

I. Variance Legal Standard.

Pursuant to the Municipalities Planning Code and the Ordinance §143-168.A. the following must be established by the Applicant in order for the 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); Soteneanos, 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 Applicants have requested a variance from the rear yard setback requirements of §143-37.A.(2) and the limitations on extensions of a nonconforming use of §143-149 of the Lower Providence Township Zoning Ordinance in connection with the construction of an addition to their home. The relief sought is dimensional in nature requesting the allowance of a rear yard setback of thirty three one hundredths feet (36.33') rear yard setback instead of the sixty foot (60') rear setback required by §143-37.A.(2) of the Ordinance and an extension of a non-conforming use of greater than 25% of the area of the current home.

The applicable sections of the Ordinance state:

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

A. Site area or building lot area.

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

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

Rear yard 60 feet

§ 143-149 Extension of nonconforming use.

Any lawful nonconforming use of a portion of a building may be extended throughout the building, and any lawful nonconforming building or any building of which a lawful nonconforming use is made may be extended upon the lot occupied by such building and held in single and separate ownership on the effective date of this chapter, provided that the area of such building shall not be increased by more than a total of 25% of the area of such building existing on the date it first became a lawful nonconforming building or a building of which a lawful nonconforming use is made, and provided further that any structure alteration, extension or addition shall conform with all height, area, width, yard and coverage requirements for the district in which it is located.

To establish that an unnecessary hardship exists warranting a variance from the Ordinance, 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 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 lot and its being rendered non-compliant with the amendments to the R-2 district sections of the Ordinance in 2006. As a result of those amendments Applicants' existing home is already violating the rear yard setback requirement. The Applicants have nowhere to build their addition to provide housing to Mr. McGranahan's elderly mother.

Due to the uniqueness of the lot, the change in the Ordinance making the Property subject to greater restrictions, the sewer lateral on the west side of the existing home and there

being no other area on the Property to place the addition and the lesser dimensional variance standard, the Applicants are unable to develop their property as they wish. As required by Ordinance §143-168.A, the Applicants have demonstrated that they have an unnecessary hardship that was not of their own making.

Further, behind the Property is an undeveloped wooded area comprised of a ravine and stream and thus not encroaching upon another residence or occupant, one of the key reasons for the implementation of §143-37.A.(2). The home on the Property is significantly screened by trees and other flora. The homes adjacent to the Property are larger than that of the Applicants. Accordingly, the essential character of the neighborhood will not be changed with the proposed addition.

The lot's odd shape precludes the construction of an addition that would not encroach upon the rear yard setback requirements of the Ordinance. Further the proposed addition is quite modest in size. Nevertheless, more than half of that proposed addition is located in the rear yard setback. Therefore what is requested by the Applicants is the minimum variance that will afford the required relief.

Finally, in as much as the proposed addition exceeds twenty five percent (25%) of the size of the existing house, extension of nonconforming use by way of a special exception under §143-149 of the Ordinance is not available to the Applicants.

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 addition will not alter the essential character of the neighborhood in which the Property is located.

6. A special exception under §143-149 of the Ordinance is not available to the Applicants.

DECISION

The unanimous decision of the Lower Providence Township Zoning Hearing Board is as follows:

The application for a variance from Section §143-37.A.(2) of the Lower Providence Township Zoning Ordinance which requires a rear yard setback of sixty (60) feet in the R-2 Residential District to permit a rear yard setback of 36.33 feet as depicted on the Zoning Plan dated April 26, 2018 submitted with the Application is granted.

Applicant shall otherwise comply with the provisions of the Ordinance as well as any other applicable Lower Providence Township Ordinances.

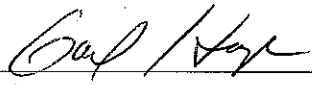
Dated: July 8, 2018

ORDER

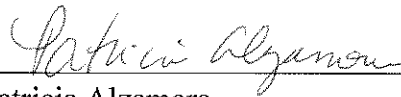
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

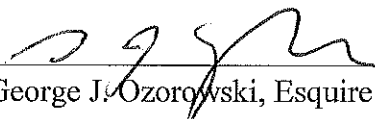
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


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George J. Ozorowski, Esquire


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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.