

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-18-13 : HEARING DATE: November 29, 2018
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APPLICATION OF: :
Alexander and Julie McKinney :
4003 Runnymede Drive :
Collegeville, PA 19426 :
:
PROPERTY: :
4003 Runnymede Drive :
Lower Providence Township :
Collegeville, PA 19426 :
Parcel No. 43-00-12556-47-8 :

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

The applicants, Alexander and Julie McKinney (“Applicants”) filed an application requesting variances from Sections 143-6 and 143-48.B.(2) of the Lower Providence Township Zoning Ordinance (“Ordinance”) to permit placement of a 240 square foot shed on the property in the rear yard “Buffer Area” where only a 120 square foot accessory structure is permitted in the R3 Residential District. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on November 29, 2018 at the Lower Providence Township Building. The following members of the Board were present: Vice Chairwoman Gail Hager, Joseph Pucci, Patricia Alzamora, and Robert G. Hardt. Also present were Michael Mrozinski, Director of Community Development, Mary Anne Morello the Court Reporter, and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicants are Alexander and Julie McKinney husband and wife.
2. On September 27, 2018 the Applicants’ filed the instant Application.

3. On September 27, 2018 the Applicants' requested a continuance of their Application which was granted by the Board.

4. The Applicants own the subject property located at 4003 Runnymede Drive, Lower Providence Township, Collegeville, PA 19426 bearing parcel identification number 43-00-12556-47-8 ("Property").

5. The Property is approximately .43 acres.

6. The Property is located in the R3-Residential Zoning District.

7. The Property is a single family home in which the Applicants reside.

8. Applicants seek to place a 12' x 20' or 240 square foot shed on the Property for the storage of garden equipment, lawn mower, wheelbarrow, bicycles and other family tools and equipment.

9. In the R-1 and R-2 residential districts a 250 square foot accessory structure is permitted.

10. Due the increased density of the R-3 District, §143-48.B.(2) of the Ordinance permits an accessory structure no larger than 120 square feet.

11. Applicants wish to place the shed in what is defined as "Buffer Area" under §143-6 of the Ordinance and thus prohibited.

12. There is a 35' buffer area along the rear of the Property required when the housing development was approved.

13. The Property is abutted by the R-2 district with woods therein.

14. Straddling the Property to the north is a storm sewer/catch basin that is controlled by an easement.

15. The storm sewer/catch basin draws surface water from the neighboring properties across the Applicants' rear lot making it impossible to place the shed anywhere else than in the buffer area.

16. The lot is unique due to its shape, the required buffer for the subdivision, the storm sewer/catch basin and easement, the contour of the ground directing surface water to the storm sewer and its location in but adjacent to the R-2 district.¹

17. The unique aspects of the property were not created by the Applicants.

18. As a result of the its shape, the required buffer for the subdivision, the storm sewer/catch basin and easement, the contour of the ground directing surface water to the storm sewer, the best place to put the shed is in the Buffer Area.

19. Placement of the shed in the Buffer would neither offend the neighbors nor cause disruption of storm and surface water flow.

20. Both zoning districts are residential in character with several in the R3 District maintaining accessory structures such as sheds.

21. The Applicants were not represented by legal counsel.

22. There was no adverse public comment regarding this Application in fact there were 4 letters from neighbors in support of the Application.

23. The proposed shed will not alter the essential character of the neighborhood.

24. The following exhibits were made of record:

A-1 Application;

A-2 Statements in support of the Application from 4001 and 4005 Runnymede Drive, 21 and 25 Sharon Lane;

B-1 Certificate of Notification of the Application with Advertisement;

B-2 Certificate of Posting of the Property.

DISCUSSION

I. Variance Legal Standard.

Generally a Zoning Board may grant a variance when the following criteria are

¹ Applicants also installed an underground pipe on the Property to divert water away from the home.

satisfied:

(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). Regardless of whether the variance sought is a use or dimensional variance, 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. Cmwlth. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998).

III. Dimensional Variance Legal Standard.

Differing standards apply to use and dimensional variances. In *Hertzberg*, our Supreme Court relaxed the standard for establishing unnecessary hardship in a dimensional variance case. Generally, multiple factors must be considered to determine whether an unnecessary hardship exists if the dimensional variance is denied, including the cost to bring the subject of the Application into compliance and whether the proposed use will be contrary to the 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. 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.

IV. Facts Applied to the Legal Standard.

Section 143 – 6.B. of the ordinance defines BUFFER AREA as:

A strip of land which is planted and maintained in shrubs, bushes, trees, grass or other ground cover material and within which no structure or building is permitted except a wall or fence which meets Township requirements.

Section 143 – 48.B.(2) states as follows:

§143 – 48.B. Use Regulations.

A building or group of buildings may be erected or used and a lot may be used or occupied for any of the following uses and no other:

B. Accessory uses and buildings/structures.

[Amended 9-21-2006 by Ord. No. 556; 10-20-2011 by Ord. No. 602]

(2) All permitted accessory buildings/structures must be less than 120 square feet.

As noted in the findings of fact, applicants' property is unique. It is located in the more densely populated R3 residential zoning district but bordered by the less densely populated R2 district. When developed, a 35' wide wooded buffer was required in the rear at the demarcation of the R-2 and R-3 zoning districts. If the Property was located a few feet more into the R-2 district, the permitted size of a shed would more than double. Moreover, the Property not only contains a storm sewer at its northern border, it serves as the funnel for storm water from neighboring properties to enter that storm sewer to manage drainage of the surface water. Applicants are precluded by easement from building in the storm water swale that dominates the rear of their Property. Finally the only viable area within which to place a shed and not interfere with surface water flow is in the 35' wide buffer at the rear of the Property.

Applying the five-part variance test codified in the ordinance that §143 – 168.A. the first and second parts appear to be satisfied as a result of these facts. The property is unique both in physical circumstances and conditions. Placement of a shed in the swale that channels water to the storm sewer is not viable. Thus, applicants are unable to place a shed on their lot as typically available to most homeowners. As a result, they suffer from an unnecessary hardship.

Turning to parts 3 and 4 of the variance test, it is apparent that the establishment of the buffer and storm sewer, its easement and swale were created by the developer, not the Applicants. Placement of a 240 square foot shed in the 35 foot wide wooded buffer in the rear of the property will have no impact upon the character of the neighborhood nor impact development of adjacent property or be detrimental to public welfare. In fact, Applicants intentions are to preserve the essential character of the neighborhood and promote public welfare by placing the accessory structure where it cannot impede surface water flow and storm water drainage.

Finally, authorization of the variance affords the Applicants' relief without significantly modifying the applicable sections of the Ordinance. Applicants' Property is boxed in by the buffer zone and storm water management requirements. Varying from §§ 143-6 and 143-48.B.(2) of the Ordinance in this case is unique to this Property and will have no impact upon those sections when applying them to other cases. As such it represents the minimum variance that will afford relief.

Accordingly, the Board finds that the application for a variance from the requirements of Lower Providence Township Zoning Ordinance §143 – 6.B and §143-48.B.(2) is warranted.

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 Applicants due to the uniqueness of the Property.
3. 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.

4. The shed size and location will not alter the essential character of the neighborhood in which the Property is located, and will not contravene the use of adjacent property or endanger public safety.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a you and your grant or you to sleep 4-0 vote is as follows:

A. The Application of Alexander and Julie McKinney for a variance from Section 143-6 of the Lower Providence Township Zoning Ordinance to permit placement of a shed in the rear yard “Buffer Area” in the R3 Residential District is GRANTED;

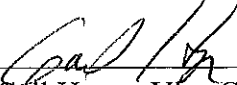
B. The Application of Alexander and Julie McKinney for a Variance from Section 143-48.B.(2) of the Lower Providence Township Zoning Ordinance to permit placement of 240 square foot shed on the property in the R3 Residential District where only a 120 square foot accessory structure is permitted is GRANTED.

ORDER

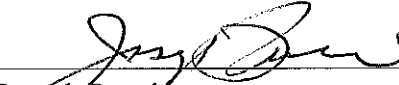
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

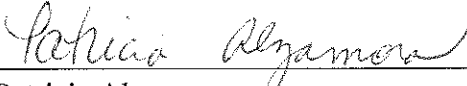
Kathie A. Eskie, Chairwoman



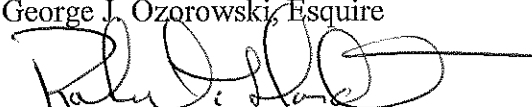
Gail Hager, Vice Chairwoman



Joseph Pucci



Patricia Alzamora

George J. Ozorowski, Esquire


Robert G. Hardt

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.