

**LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

APPLICATION NO. Z-08-01 : HEARING DATE: March 27, 2008  
: :  
APPLICATION OF Donald and : DECISION DATE: March 27, 2008  
Mary Lou Neilson : :  
: :  
PROPERTY: 64 Sandown Road : :  
Lower Providence : :  
Township : :

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

The Applicant, Donald and Mary Lou Neilson, (hereinafter referred to as the "Applicant") filed an application requesting variances from rear yard setback under §143-37 Area, setback, bulk, height and parking requirements in order to construct a sunroom addition. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on March 27, 2008 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, Zoning Officer, and Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is Donald and Mary Lou Neilson, 2620 Egypt Road, Norristown, PA 19403.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 64 Sandown Road, Norristown, PA 19403, Lower Providence Township ("Property").
4. The Applicant was represented by Bernadette A. Kearney, Esquire, Hamburg, Rubin, Mullin, Maxwell & Lupin, 375 Morris Road, PO Box 1479, Lansdale, PA 19446.

5. The property is zoned "R-2".
6. The lot is approximately 18,088 sq. ft. and has frontage of 159 feet.
7. The Property is served by public water and sewer.
8. The required lot size for the R-2 District is 25,000 square feet with public water and public sewer.
9. The Applicant's property is nonconforming as to lot size.
10. Applicant is requesting a dimensional variance to install a sunroom which is approximately 16' x 31 ½' or 570 square feet. See Exhibit A-4.
11. The required rear yard setback is 60 feet.
12. The proposed sunroom will not extend into the rear yard setback anymore than the existing deck. See Exhibit A-5.
13. The existing rear yard setback encroachment is 60 feet.
14. The following exhibits were admitted into evidence:
  - A1: Deed of property
  - A2: Power of Attorney
  - A3: Tax map
  - A4: Plans
  - A5: Pictures
15. Mr. David Rittnehouse testified on behalf of the Applicant.
16. The property most affected by the proposed sunroom addition is to the property to the rear of the residence which is currently vacant and the Applicant has the right of first refusal to purchase the property.
17. The property to the rear has a nonconforming garage that sites several feet off the rear Property line.
18. The property to the east of the Property is Shannondell.

19. The property to the west of the Property is a residence owned by a corporation with which the Applicant is affiliated.

20. The requested relief is the minimum to afford relief and will not adversely affect the health, safety or welfare of the community.

21. There were no residents who testified in favor of the project.

22. There were no residents who testified against the project.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The Applicant filed an application requesting a dimensional variance from the rear yard setback under §143-37 in order to construct a sunroom that will extend no further than the existing deck.

As a preliminary matter, the applicable standards for determining whether to grant a dimensional variance differ from those of a use variance. The standard as outlined by the Pennsylvania Supreme Court is that the Applicant must 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, 721 A.2d 43 (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).

In Hertzberg, the Supreme Court held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of a Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. If the Board determines that the relief is for a use variance, then the Board should use the traditional five-part test, which

is set forth in both the Municipalities Planning Code and case law. If the requested relief is for a dimensional variance, then the standard to be applied will be different. Id. While the Court in Hertzberg did not specifically identify a single standard for a dimensional variance, it noted that the requirements for a dimensional variance were something less than that of a use variance. Id.

In its opinion, the Court went on to opine that some of the factors that a Zoning Hearing Board should look at to determine whether to grant a dimensional variance should include, where applicable:

- (1) The economic detriment to Applicant if the variance was denied;
- (2) The financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements; and,
- (3) The characteristics of the surrounding neighborhood. Id.

While these factors are not exhaustive, the Court in Hertzberg and subsequent cases have referred to them specifically as findings a Zoning Hearing Board should make in its determination of whether to grant or deny a dimensional variance.

The Board finds that the Applicant is requesting a reasonable accommodation for the proposed sunroom addition. The requested relief is dimensional in nature. The Applicant has demonstrated that there are unique physical characteristics of the Property including the nonconforming lot size. Due to the unique physical characteristics of the Property, the Applicant has proven an unnecessary hardship exists for the sunroom addition. The unnecessary hardship has not been created by the Applicant but by the unique physical characteristics of the Property. The Board finds that the requested dimensional relief is the minimum to afford relief and the requested variances will not alter the essential character of the neighborhood.

Pursuant to the relaxed standards of the Hertzberg case, multiple factors may be considered in granting the requested dimensional relief. The Board has considered the unique

nature of the Property and the characteristics of the surrounding neighborhood and determined that the requested variances for the requested sunroom addition should be granted.

**ORDER**

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

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD



Janice Kearney




Eric Frey



James Dougherty



Robert G. Hardt



William Donovan

**NOTE 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 of the decision granting approval.