

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

<b>APPLICATION NO. Z-17-01</b>	:	<b>HEARING DATES:</b>
	:	<b>February 23 &amp; March 23, 2017</b>
	:	
<b>APPLICATION OF:</b>	:	
<b>Providence Place of</b>	:	
<b>Collegeville Associates, LP</b>	:	
	:	
<b>PROPERTY:</b>	:	
<b>3974, 3976 &amp; 4000 Ridge Pike,</b>	:	
<b>Collegeville, PA 19426</b>	:	
<b>Parcel Nos. 43-00-11857-00-7</b>	:	
<b>43-00-11860-00-4</b>	:	
<b>43-00-11863-00-1</b>	:	

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

On January 12, 2017 applicant, Providence Place of Collegeville Associates, LP (hereinafter “Applicant”) filed an application<sup>1</sup> for an interpretation and variances from the following sections of the Lower Providence Township Zoning Ordinance:

- §143-77.B(4)(e) regarding dedication of less than twenty percent (20%) of total area to passive recreation;
- §143-240.A regarding construction of a retaining wall in the Steep Slope Conservation District.
- §143-240.B regarding installation of a roadway in the Steep Slope Conservation District.<sup>2</sup>

In addition, Applicant sought a variance from §86-401.B of the Lower Providence

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<sup>1</sup> On January 25, 2017 Applicant amended its application. The original application and revised application are collectively referred to hereinafter as the “Application.”

<sup>2</sup> At the February 23, 2017 hearing Applicant sought to amend its Application to include a request for a variance from §143- 240.B to permit the installation of a road traversing a portion of ground within the steep slope conservation district. This request was not addressed in the Board’s decision of March 23, 2017 but shall be entertained at its April 27, 2017 meeting.

Township Floodplain Ordinance (“FP Ordinance”) regarding the placement of fill in the floodway.

The Application was properly advertised, and public hearings were held at the Lower Providence Township Building before the Lower Providence Township Zoning Hearing Board (“Board”) on February 23, 2017 and a decision regarding the Board’s interpretation of §143-77.B(4)(e) of the Ordinance and requested variances from Ordinance §§143-77.B(4)(e), §143-240.A and §86-401.B of the FP Ordinance was rendered by the Board on March 23, 2017. Chairwoman Kathie Eskie and members Joseph Pucci, Patricia Alzamora and Joseph Bergquist of the Zoning Hearing Board were present at the February 23, 2017 hearing.<sup>3</sup> Also present at both hearings 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 Applicant is Providence Place of Collegeville Associates, LP a Pennsylvania Limited Partnership who acts by and through its general partner G.M. Leader Corp., a Pennsylvania corporation, 1528 Sand Hill Road, Hummelstown, PA 17036.

2. Incident to a Purchase and Sale Agreement dated January 4, 2016 between Applicant and SIOBAIN VI, LLC, the Applicant has an equitable interest in the subject property located at 3974, 3976 & 4000 Ridge Pike, Collegeville, Lower Providence Township, PA 19426 comprised of 21.468 acres (hereinafter the “Property”).

3. The Property is commonly referred to as the Collegeville Inn and is located immediately adjacent to both the historic Perkiomen Bridge to the northwest and the Perkiomen

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<sup>3</sup> ZHB Vice-Chairwoman Gail Hager and senior member Robert Hardt were present on March 23, 2017 but took no part in the decision. Mr. Bergquist served as a full voting member of the Board for this Application.

Creek to the west.

4. The applicable zoning district is the newly created Ridge Pike West District (“RPW”).

5. On February 16, 2017 the Lower Providence Township Board of Supervisors granted Applicant’s conditional use application for the proposed life care facility on the Property.

6. Applicant was represented at the hearings by Rowan Keenan, Esquire, 376 East Main Street, P.O. Box 26460, Collegeville, PA 19426.

7. David C. Leader, President of G.M. Leader Corp. and Adam J. Brower, P.E. (professional engineer) testified on behalf of the Applicant.

8. Applicant intends to construct a residential life care facility on the Property comprised of approximately 160 dwelling units.<sup>4</sup>

9. The Property is located within the floodplain and floodway of the Perkiomen Creek as follows:

- The floodway encroachment area of the Property is 2.275 acres;
- The floodplain encroachment area is 3.935 acres.

10. The steep slope disturbance area outside of the floodplain is 0.198 acres.

11. The Federal Emergency Management Agency (“FEMA”) has mapped the Property’s Base Flood Elevation (“BFE”) (commonly known as the 100 year flood elevation) at downstream cross section 32036 of 115.80 feet.

12. The floodway intersects the southwest corner of the existing structure known as the Collegeville Inn.

13. According to the Floodplain Analysis dated November 10, 2016 commissioned by the Applicant, the proposed installation of a retaining wall in the floodplain will not increase the

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<sup>4</sup> The allowable density for this parcel is 8 units per acre or 171 units.

BFE 100 year water surface elevations of the Perkiomen Creek.

14. Installation of a 12' retaining wall in the floodplain is intended to protect the integrity of the existing Collegeville Inn structure which will be incorporated into the overall design and construction of the residential dwelling units.

15. Of the 21.468 acres of Property, 4.2936 acres must be dedicated to passive recreation and said ground may not be in the floodplain or on ground that has steep slopes greater than 5%.

16. Due to the unique nature of the Property, Applicant can devote 2.2 acres of ground not subject to steep slopes or in the floodplain to passive recreation.

17. A change in design of the life care facility will not increase the available ground utilized for passive recreation required by §143-77.B(4)(e) of the Ordinance.

18. The proposed access roadway to be constructed on the Property from Pechins Mill Road to the south and southwest of the intended location of the facility to the loading dock of the existing structure will disturb 0.198 acres of the existing steep slopes that are greater than 5%.

19. That portion of the proposed retaining wall immediately adjacent to the proposed access road at the southwest bend in the road as depicted on Exhibit A-2.E will disturb the existing steep slopes that are greater than 5%.

20. The proposed location of the access roadway and retaining wall within the Steep Slope Conservation District is the only feasible location due to the design of the facility as influenced by the unique nature of the property with the Perkiomen Creek and floodplain to the west and the steep slopes to the south and west of the Property.

21. Construction of the proposed retaining wall will require the placement of fill in portions of the floodway.

22. No alternative means of design or construction exist to avoid the placement of fill and a retaining wall where proposed.

23. Applicant has otherwise agreed to comply with all other applicable sections of the Ordinance, the FP Ordinance and the Township's Subdivision and Land Development Ordinance ("SALDO").

24. The retaining wall is to be placed, designed and built without impacting Perkiomen Creek or its flow in the ordinary course or in the event of a flood.

25. The retaining wall will be constructed of materials and in a way so as not to adversely impact the structural integrity of the Perkiomen Bridge, increase the BFE or otherwise violate the ordinances of Lower Providence Township.

26. Granting the requested variance will not alter the essential character of the neighborhood in which the Property is located.

27. Absent the requested relief, the Applicant will suffer an exceptional hardship not created by the Applicant. Rather, it results from the unique physical characteristics of the Property including the unique topography of the Property, the Perkiomen Creek, floodway and flood plain and the location of the existing structure and proposed access road.

28. The following exhibits were made of record:

A-1 Curriculum Vitae of Adam J. Brower, P.E.;

A-2 The following Preliminary Plans dated May 3, 2016:

(a) Post Construction Stormwater Management Plan for Providence Place;

(b) Flood Plain Cross Section Exhibit Plan;

(c) Existing Features Plan;

(d) Overall Site Plan;

(e) Site Plan.

A-3 Floodplain Analysis for Providence Place prepared by Edward B. Walsh & Associates, Inc. dated November 10, 2016.

A-4 Deed in Lieu of Foreclosure dated March 2, 2011 between The Collegeville Inn Conference & Training Center, Inc. as Grantor and SIOBAN VI, LTD., as Grantee recorded on April 15, 2011 in the Montgomery County Recorder of Deeds Office at Deed Book 5798 Page 01300.

A-5 Letter from SIOBAIN VI, LLC addressed to Lower Providence Township dated January 11, 2017.

A-6 Purchase and Sale Agreement between SIOBAIN VI, LLC and Providence Place of Collegeville Associates, a Pennsylvania limited partnership with the last signature dated January 4, 2016.

A-7 Affidavit of Publication from 21<sup>st</sup> Century Media/digital first MEDIA for the Conditional Use Application before the Lower Providence Township Board of Supervisors dated October 25, 2016.

A-8 Adjudication of the Lower Providence Township Board of Supervisors dated February 16, 2017 approving the Applicant's Conditional Use Application.

A-9 Providence Place Rendered Perspective Views dated January 11, 2017.

B-1 Application Advertisement.

B-2 Proof of Publication of the Advertisement.

C-1 Alternative design plan offered by John Costanza.

29. John and Lori Costanza, 80 Pechins Mill Road questioned the Applicant's witnesses and testified at the hearings expressing acute concerns for downstream flooding but

asserting qualified support of the Application if the development plans were altered in accordance with Mr. Costanza's submission of Exhibit C-1. In addition, Kathy Hunt and Sean Dippold 85 Pechins Mill Road and John Organtini, 79 Pechins Mill Road questioned the Applicant's witnesses and testified at the hearings expressing concern primarily regarding the impact adding fill to the floodway and a retaining wall in the floodplain will have on downstream properties and the historic Perkiomen Bridge.

## **DISCUSSION**

### **I. Dimensional v. Use Variance.**

There are 2 types of variances, a "dimensional" variance and a "use" variance. Differing standards apply to use and dimensional variances. 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). The Supreme Court in Hertzberg held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of the Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. at 263-64, 721 A.2d at 50. In this case the Board is asked to grant a series of variances that are of the more restrictive "use"

variety.

## **II. Use Variance Legal Standard.**

### **A. Use Variance Generally.**

A traditional use 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. To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

A. Variance. The Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical 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 the 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 at issue.

In the context of use variances, “unnecessary hardship” is established by evidence that: (1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) the property can be conformed for a permitted use only at a prohibitive expense; or (3) the property has no value for any purpose permitted by the zoning



ordinance.” Marshall v. City of Philadelphia, 626 Pa. 385, 395, 97 A.3d 323, 329 (2014) (citing Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998) and 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 establishing hardship, an applicant for a variance is not required to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose, though there must be more than mere economic hardship or increase in property value. Id.

B. Flood Plain Use Variance.

When dealing with floodplains the variance standard utilized in non-floodplain related cases changes from an “undue hardship” standard to an “exceptional hardship” standard. The “exceptional hardship” standard is defined by FEMA in 44 CFR Part 60.6(a) as unusual and specific to the property involved and not the personal circumstances of the applicant. See also, FEMA, Floodplain Management Bulletin: Variances and the National Flood Insurance Program, FEMA P-993 July 2014. Regarding the variance request under the FP Ordinance §86-505 there is good and sufficient cause to grant a variance when the following criteria are satisfied:

A. If granted, a variance shall only provide the least modification necessary to provide relief.

D. In reviewing any request for a variance the LPT ZHB shall consider, at a minimum, the following:

(1) That there is good and sufficient cause to grant the variance including:

(a) There are unique physical 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 this Chapter (*referring to the FP Ordinance*) in

the neighborhood or district in which the property is located.

(b) 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 this Chapter and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

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

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or zoning 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.

Further, §86-505 of the FP Ordinance requires the Board to find:

D.(2). That failure to grant the variance would result in exceptional hardship to the applicant.

D.(3) That the granting of the variance will:

(a) Neither result in a prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense;

(b) Nor create nuisance, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances or regulations.

### **III. Facts Applied to the Legal Standard.**

#### **A. The Purpose of the Floodplain Ordinance.**

The variance requested here is to permit the development and use of the Property as a life-care facility. The use is permitted in the RPW zoning district upon approval by the Board of Supervisors.<sup>5</sup> Regardless of the conditional use approval, the Ordinance restricts new construction in the Floodplain Conservation District (“FCD”). The intention of the Ordinance is manifest, §86-100 labeled “Intent” states:

The intent of this chapter is to:

A. Protect areas of the floodplain necessary to contain floodwaters.

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<sup>5</sup> The Lower Providence Township Board of Supervisors approved Applicant’s application for conditional use of the property as a life-care facility on February 16, 2017, see Exhibit “A-8.”

- B. To permit only those uses in the floodplain that are compatible with preserving natural conditions and stream flow.
- C. Promote the general health, welfare, and safety of the community by providing development in areas prone to flooding.
- D. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- E. Minimize danger to public-health by protecting water supply natural drainage.
- F. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
- G. Comply with the federal and state floodplain management requirements.

Applying these intentions to the current set of facts reveals that the Applicant has demonstrated the existence of an exceptional hardship that is not self-created.

Applicant seeks to preserve the Collegeville Inn, a structure, although not historic per se, has a history in the Township. Applicant's plan to integrate the existing structure, a portion of which is in the floodplain, into the planned life-care facility without impacting up or downstream neighbors and properties has been carefully considered, planned and produced. The placement of fill and construction of a retaining wall up to 12' in height in the floodway and/or floodplain will not increase the BFE, alter the creek, stream flow or the natural conditions that contain floodwaters. Further, the granting of the variance will not otherwise relieve the Applicant of its responsibilities to comply with the Ordinance, the FP Ordinance and the Township's Subdivision and SALDO.<sup>6</sup>

Applicant is in the process of acquiring parcels of ground that are, to say the least, unique. Not only is a significant portion of the main parcel in the 100 year floodplain, a large

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<sup>6</sup> In fact, the Applicant has repeatedly agreed to comply with all local, state and federal requirements associated with the development of the Property.

part of it is in the Perkiomen Creek. As is evident by the fact that the property has been vacant since it was conveyed to SIOBAIN VI, LLC by a deed in lieu of foreclosure in March of 2011, use of the Property is extremely limited. With the proper alterations of the Property, the intended use as a life-care facility designed to withstand any 100 year flood with little or no impact upon general health, welfare, and safety of the community and the residents up and downstream makes the most sense.

The Applicant has demonstrated meticulous design and engineering practices to minimize incursions into the Steep Slope Conservation District and the FCD. Applicant has agreed to institute those same practices in the further design, engineering and construction of the facility to minimize the impact upon the Perkiomen Creek, the historic Perkiomen Bridge, Pechins Mill Road and its residents so that increased flooding either up or downstream will not occur. The requested variances are the least modifications of the Ordinance and the FP Ordinance necessary to accommodate Applicant's needs to utilize and develop the Property.

What is more, the irregularity of the shape, topographical composition, location and flooding of the Property is such that some incursion into the floodplain and steep slopes is inevitable making it extremely difficult to do anything with the Property. Of course, this creates a hardship upon both the owner and anyone interested in purchasing and thus developing the Property. The best evidence of this is the fact that the property has sat vacant for over 6 years. Neither the owner nor the Applicant created those conditions or the hardship. Thus the variances requested are necessary to enable the reasonable use of the Property.

According to the Applicant's floodplain analysis, the proposed facility will have minimal impact upon the Perkiomen Creek and its natural drainage. Further, the construction of the retaining wall and access road on a small section of ground that is otherwise useless adjacent to the existing Inn and creek, can hardly be characterized as excessive development

that would impose a financial burden upon the community, governmental units or the residents of Lower Providence Township. On the contrary, the Applicant's planned improvement of the Property after over 6 years of neglect and deterioration with full recognition and sensitivity to the creek, floodplain, steep slopes and uniqueness of the Property will only make the parcel more valuable thereby enhancing the value of the surrounding properties benefitting the Township and its finances in the process.

B. The Hardship.

1. *Prohibited Uses in the FCD Under §86-401.B.* This section of the FP Ordinance states that the placement of fill within any designated *floodway* is prohibited. Floodway is defined in §86-201 as: "The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood." As noted above, §86-505 of the FP Ordinance permits the Board to grant a variance from such restrictions provided the Applicant can establish "sufficient cause" for same. Applicant has demonstrated such sufficient cause primarily due to the unique physical characteristics of the Property as previously noted. The placement of fill necessary to construct the retaining wall in order to utilize the existing structure necessarily must be done in a way that will leave the creek flow unhindered. This unique topography of the lot demonstrates that the physical features of the property as restricted by the FP Ordinance are such that its use is impaired. This condition is natural, it was not created by the Applicant. In fact, to date the Applicant has developed plans to improve the Property so as not to alter the natural conditions of the watercourse or creek flow.<sup>7</sup> In fact it permits the creek to continue its flow as before allowing it to overflow its banks into the floodway in the event of a base flood.

Accordingly, without the requested variance from §86-401.B. of the FP

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<sup>7</sup> In addition, as Mr. Brower testified, the velocity of the creek flow and BFE height will not change as a result of the fill and the retaining wall in the floodway. Further, the joint permit the Applicant must obtain with the Pennsylvania Department of Environmental Protection ("DEP") would be unavailable rule number 1 is that the Applicant

Ordinance<sup>8</sup> to add fill to enable the building of the retaining wall, the existing structure and possibly the new dwelling units being constructed will be subject to flooding making the Property useless. Thus the requested variance is necessary to alleviate the exceptional hardship the unique physical circumstances and characteristics of the Property cause.

Additionally, the placement of fill for construction of a retaining wall permitted by variance will allow for the installation of dwelling units for seniors both within and outside of our community. The Lower Providence Township Board of Supervisors has, by way of granting the Applicants Conditional Use Application, acknowledged that the intended use as a life-care facility will not adversely affect the surrounding neighborhood. Further, the proposed life-care facility will not impair the appropriate use or development of any adjacent properties nor be detrimental to the public welfare.

Finally, the requested variance represents the minimum variance that will afford relief and the least modification possible of the FP Ordinance.

The Board finds that subject to the conditions set forth in this Opinion, the Applicant has presented sufficient evidence to satisfy the §86-505 test for a use variance under from §86-401.B. of the FP Ordinance.

2. *Retaining Walls in the Steep Slope Conservation District Under §143-240.A.* This section of the Ordinance states that retaining walls are prohibited in the Steep Slope Conservation District. Applying the variance test embodied in §143-168.A. and the standards articulated in §143-242.A. of the Ordinance to this section warrants the same result.<sup>9</sup>

Applicant seeks to construct a life-care facility on the Property, a key component of which is the installation of retaining wall in 0.198 acres of the Steep Slope Conservation District to support an access roadway to be installed from Pechins Mill Road on

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<sup>8</sup> Subject to the conditions set forth in the Opinion and Order below.

<sup>9</sup> The test for a variance set forth in §86-505 is essentially the same as the test embodied in §143-168.A.

the south side of the property to the existing loading dock of the Collegeville Inn. As testified by the Applicant's engineer, there is no other way to provide access to the existing loading dock except through a small section of the Steep Slope Conservation District. The loading dock already exists where situated. Access cannot be obtained by traversing the front of the Collegeville Inn and any other access to the loading dock would be blocked by the proposed residences. Clearly, the requirement of §143-240.A. of the Ordinance precludes the installation of a retaining wall and thus the roadway. A reason for our being sensitive to steep slopes is for storm water management and erosion control. Mr. Brower testified that the disturbance of the steep slopes for the roadway would in fact enhance storm water management and erosion control since the slopes abutting the roadway, although made steeper, would be stabilized with grass and have no adverse impact on water flow. Thus the planned alteration of the steep slopes to install a retaining wall will not be contrary to the avowed intention of the Ordinance. Further, considering the nature of this parcel and the sensitivity of the Applicant regarding alteration of floodway and steep slopes to allow sufficient flow of floodwaters and storm water, the prohibition of retaining walls affecting 0.198 acres in the Steep Slope Conservation District is unduly restrictive. With the conditions imposed by the Board herein, the spirit of the Ordinance can be maintained along with the installation of a retaining wall in as depicted in Applicant's Exhibit A-2. Any other result would render the only remaining buildable portion of the Property useless and thus a hardship. The requested variance is warranted.

3. *20% Passive Recreation - §143-77B.(4)(e)*. Finally, the Applicant has requested either a favorable interpretation of §143-77B.(4)(e) of the Ordinance or, alternatively, a variance from the requirement that at least 20% of the proposed site of a life-care facility, not including land subject to flooding or on slopes in excess of 5%. The public policy of encouraging community interaction through the requirement of outdoor sitting areas, decks,

patios, gazebos, picnic areas and pedestrian walks is a noble goal. However, that goal must be balanced against the requirement that 4.2 acres of a parcel, a significant portion of which is either in the floodplain or Perkiomen Creek. Mr. Brower testified that due to the steep slopes and floodplain there just is not enough acreage available on the site to meet the 20% requirement. As a result, without the requested variance to permit 2.2 acres (10.34%) of the total area for passive recreation the Property cannot be developed as a life-care facility.<sup>10</sup>

The plan to install passive recreation in 2.2 acres of the parcel not in the steep slopes or floodplain reasonably addresses the policy behind the rule. At the same time it in no way affects the floodplain or BFE nor does it alter the character of the neighborhood, impair the development of adjacent property, constitute a detriment to public welfare and represents the least modification to the rule.

Accordingly, the Board concludes that the test for a variance embodied in §143-168.A. has been met subject to those conditions specified in this Opinion.

### **CONCLUSIONS OF LAW**

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Ordinance Section 143-77.B(4)(e) requires that 20% of the total area of the proposed life-care site exclusive of land subject to flooding or steep slopes in excess of 5% be dedicated to passive recreational use.
3. Denial of the requested variance relief addressed hereby will impose an exceptional hardship on the Applicant.
4. The proposed use will not alter the essential character of the neighborhood in

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<sup>10</sup> By permitting a reduction from 4.2 to 2.2 acres the Board expects that the required passive recreation facilities will be installed in the areas not subject to steep slopes or flooding. The Board does not discourage (in fact it encourages) Applicant's installation of additional passive recreation facilities in the floodplain provided they do not alter the BFE, are properly anchored and can be safely used.



which the Property is located, and will not contravene the use of adjacent property or endanger public safety.

5. Rigid compliance with the Ordinance and FP Ordinance in this case is unnecessary for preservation of the public interest sought to be protected by the ordinances.

6. The requested relief is necessary to enable the Applicant's reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulations at issue.

7. The granting of the variances subject to the conditions imposed by the Board herein and those provisions of the ordinances unaffected by the variance will not increase flood heights or threaten public safety or expense.

8. The variances subject to the conditions set forth in this Opinion will not create a nuisance, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances or regulations.

### **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

1. The Application for a variance from the use requirements of Lower Providence Township Zoning Ordinance §143-77.B(4)(e) to permit the development of 2.2 acres or 10.34% of the Property not in the floodplain or upon steep slopes in excess of 5% toward passive recreation rather than 4.2 acres or 20% of the Property is Granted.

2. The Application for a variance from the use requirements of Lower Providence Township Zoning Ordinance §143-240.A. to permit the installation of a retaining wall within

the Steep Slope Conservation District is Granted provided said retaining wall is installed in the area designated on the plans introduced into evidence by the Applicant as A-2(a)-(e) and in conformity with all other applicable Lower Providence Township Ordinances, Pennsylvania State laws, codes or regulations and federal laws, codes or regulations.

3. The Application for a variance from the use requirements of Lower Providence Township Floodplain Ordinance §86-401.B. to permit the placement of fill in the floodway designated by FEMA on the Property is Granted provided said fill is placed in those areas of the floodway necessary to support the proposed retaining wall that is designated on the plans introduced into evidence by the Applicant as A-2(a)-(e) and in conformity with all other applicable Lower Providence Township Ordinances, Pennsylvania State laws, codes or regulations and federal laws, codes or regulations subject to the following conditions as provided by §86-505.B. to protect the public health, safety and welfare:

- a. Those applicable provisions of Part 6 of the FP Ordinance §86-600 et seq.
- b. Applicant shall construct the retaining wall in the Steep Slope Conservation District in accordance with the application, plans and exhibits submitted to the Board.
- c. Applicant shall obtain the necessary floodplain permit from the Lower Providence Township Zoning Officer/Director of Community Development before construction commences within the FCD.

Applicant is advised pursuant to § 86-505.C.(1) as follows:

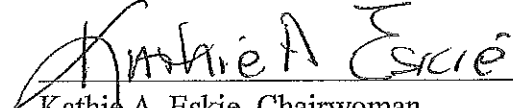
- a. The granting of the variance may result in increased premium rates for flood insurance; and
- b. Such variances may increase the risks to life and property.

Dated: April 6, 2017

**ORDER**

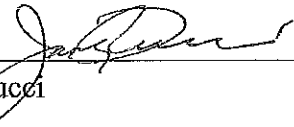
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

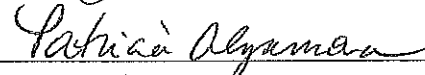
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD


  
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Kathie A. Eskie, Chairwoman

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Gail Hager, Vice Chairwoman

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Robert G. Hardt

  
\_\_\_\_\_  
Joseph Pucci

  
\_\_\_\_\_  
Patricia Alzamora

  
\_\_\_\_\_  
Joseph Bergquist, 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.

