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August 8, 2019

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7014 2870 0002 3801 1967**

Ms. Christine Kenny
517 Elizabeth Drive
Eagleville, PA 19403

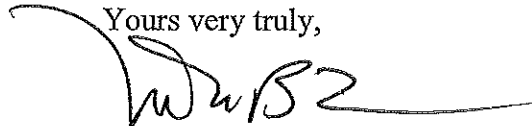
**RE: Lower Providence Township Zoning Hearing Board
No. Z-19-12**

Dear Ms. Kenny:

In accordance with your Application for a variance from Lower Providence Zoning Ordinance 143-37.A.(2), enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board that your application has been approved.

Should you have any questions, please contact me. Best of luck with your project.

Yours very truly,



Keith B. McLennan

KBM/jds

Enclosure

Pc: Kathie A. Eskie, Chairman
George Ozorowski, Esq., Vice Chairman
Gail Hager
Joseph Pucci
Patricia Alzamora
Roberg G. Hardt
Christopher Gerdes
Michael Mrozinski, Community Development Directors
(via e-mail)

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

| | | |
|-----------------------------|---|--------------------------------|
| APPLICATION NO. Z-19-12 | : | HEARING DATE: June 27, 2019 |
| | : | |
| | : | |
| APPLICATION OF: | : | |
| CHRISTINE KENNY | : | |
| | : | |
| PROPERTY: | : | |
| 517 Elizabeth Drive | : | |
| Lower Providence Township | : | |
| Eagleville, PA 19403 | : | |
| Parcel No. 43-00-03730-23-2 | : | |

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

The applicant, Christine Kenny (hereinafter “Applicant”) filed an application on May 17, 2019 requesting variances in connection with her existing home located at 517 Elizabeth Drive, Lower Providence Township, Eagleville, PA 19403, Parcel No. 43-00-03730-23-2 (the “Property”). Applicant seeks to build a 28’ x 32’ one story addition in the nature of an “in-law suite” on the right side of their house encroaching 5’4’ upon the 60’ rear yard setback under §143-37.A.(2) of the Lower Providence Township Zoning Ordinance (“Ordinance”). Applicant further sought a variance from §143-71 of the Ordinance to permit an additional parking space (the “Application”).¹ The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on June 27, 2019 at the Lower Providence Township Building. Chairwoman, Kathy Eskie, and members Gail Hager, Joseph Pucci, Patricia Alzamora, and Christopher Gerdes were present. 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.

¹ Applicant withdrew her request for a variance from §143-71 of the Ordinance at the hearing.

FINDINGS OF FACT

1. The Applicant is Christine Kenny, the owner of the Property.
2. The applicable zoning district is an R-2, residential district.
3. Applicant was unrepresented by counsel at the hearing.
4. Applicant and Douglas E. Milliken, registered architect testified in support of the Application.
5. Applicant purchased the Property in August, 2006 just prior to the Ordinance amendments of September 21, 2006.
6. The house currently on the Property was constructed in 1978 on a 25,122 square foot lot in the R-2 residential district prior to the changes to the R-2 section of the Ordinance in 2006.
7. The Property is located on Elizabeth Drive of what can best be described as racecourse style roadway connected at either end to East Mt. Kirk Avenue in the middle, cater-corner from the entry of Sky Drive.
8. Applicant seeks to construct a 28' x 32' one story addition in the nature of an "in-law suite" for her aging parent(s).
9. The conditions of the lot which compel the placement of the addition on the side opposite the garage and driveway side of the home is the location of the main utility lines and to facilitate proper storm water management.
10. The grading on the property slopes down sharply on the right side of the home than between the street and house with drainage running laterally across the front of the home.
11. Placement of the addition flush with the front of the house will cause lateral

drainage creates a catch basin pocket that positive drainage against the building and then standing water against the foundation.

12. By setting the addition back from the front of the house approximately 5'4" drainage can be swaled around the addition to the side yard as is the current storm water management course.

13. With setting back the addition the rear of the new structure will encroach upon the rear set back by a similar amount.

14. The grant of the variance will result in a rear yard setback of at least 54' where 60 feet is required.

15. Applicant's architect believes that the existing home is already non-conforming with a portion of its family room inside the 60' rear yard setback required under §143-37.A.(2) of the Ordinance.

16. The house was created in a subdivision before the update to the zoning code that then precluded this addition thus the hardship is not self-created.

17. The proposed addition setback encroachment of 5'4" from the rear property line leaves a rear yard setback of 54'8" providing a sufficient buffer between Applicant's home and those of her neighbors.

18. The addition will not alter the character of the neighborhood.

19. The proposed new deck will align closely with the existing home's non-conforming "footprint," will only slightly vary from the existing non-conforming sixty (60') rear yard setback.

20. The Application for a variance was made to accommodate the unusual nature of the corner lot and to, in effect, continue the existing non-conformity of the home built before the

current setback requirements existed.

21. The amount of encroachment is de minimis.

22. Applicant's request for a variance from §143-71 of the Ordinance for an additional 2nd driveway curb cut to provide an additional parking space for use by the addition was withdrawn.

23. There was no adverse public comment regarding the Application.

24. The following exhibits were marked at the hearing:

A-1 Application dated May 17, 2019;

A-2 Diagram 3 pages long from Douglas E. Milliken, Inc., Registered Architect comprised of a Site Plan, Floor Plan and Elevations for the proposed addition;

B-1 Certification of Notification of the hearing sent to those neighbors within 500 feet of the Property with mailing matrix;

B-2 Copy of the newspaper advertisement of the Notice of the Hearing;

B-3 Certificate of Posting of the Property with Notice of the Application Certification.

DISCUSSION

I. Statement of the Case.

The Applicant has requested a variance from the rear yard setback requirements of §143-37.A.(2) of the Ordinance in connection with the construction of an in-law suite on the right side of her home in order to maximize the unique topography of this purported non-conforming lot. The relief sought is dimensional in nature requesting the allowance of a rear yard setback of 54'8" where a sixty (60) foot setback is required.

The aforesaid Sections of the Ordinance state in pertinent part:

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

A. Site area or building lot area.

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

| Requirement | No Public Service | Either Water or Sanitary Sewer Service Only | Both Water and Sanitary Sewer Service |
|---|--------------------------|--|--|
| Lot area, minimum | 40,000 square feet | 30,000 square feet | 25,000 square feet |
| Lot width at building line | 175 feet | 150 feet | 100 feet |
| Principal and accessory buildings over 250 square feet: | | | |
| Front yard | 50 feet | 50 feet | 50 feet |
| Side yard | 30 feet | 25 feet | 20 feet |
| Rear yard | 60 feet | 60 feet | 60 feet |
| Maximum total building coverage | 20% | 20% | 20% |
| Maximum total impervious coverage | 35% | 35% | 35% |

Under §143-168.D.(4) of the Ordinance the Applicant bears the burden of proof of persuading the Board of the necessity of the requested variances and to satisfy the legal standards articulated below.

II. 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)). 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.

When dealing with a dimensional variance the doctrine of a *de minimis* variance may apply. The *de minimis* doctrine is an extremely narrow exception to the heavy burden which a party seeking a variance must normally bear and is applied where the violation of an ordinance is a relatively minor one and where rigid compliance is not necessary to protect the ordinance's public policy concerns. Hawk v. City of Pittsburgh Zoning Bd. of Adjustment, 38 A.3d 1061 (Pa. Commw. Ct. 2012). Over time Courts have held that *de minimis* variances may be authorized if they "...will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done." Pyzdrowski v. Bd. of Adjustment of City of Pittsburgh, 437 Pa. 481, 491, 263 A.2d 426, 432 (1970) citing Appeal of Crawford, 358 Pa. 636, 57 A.2d 862 (1948).

To obtain *de minimis* variance an applicant must prove that 'strict compliance (with the ordinance) is not necessary to protect the public interest.' Id." Pugliese v. Zoning Hearing Bd. of Bethlehem Tp., 2015 WL 6473668 (Pa. Commw. Ct. 2015). There is no general right to a *de minimis* zoning variance, and the decision of whether to grant a *de minimis* variance is left to the discretion of the local zoning board. 200 W. Montgomery Ave. Ardmore, LLC v. Zoning Hearing Bd. of Lower Merion Tp., 985 A.2d 996 (Pa. Commw. Ct. 2009); Hawk v. City of Pittsburgh Zoning Bd. of Adjustment, 38 A.3d 1061 (Pa. Commw. Ct. 2012).

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 that:

(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. 53 P.S. § 10910.2.

III. Facts Applied to the Legal Standard.

Not only is the Property unique due to its grading and resultant storm water management issues that forces the addition to be setback from the existing home but the change

in zoning in 2006 soon after the Applicant purchased the Property increased the setback requirements of the Ordinance. That is unique, to say the least. The Applicant merely seeks to set the proposed addition back 5'4" causing a similar sized encroachment upon the 60' rear yard setback. Inasmuch as said encroachment is a nominal 9% + - of the required setback from the rear yard property line, the grant of a de minimis dimensional variance from §143-37.A.(2) of the Ordinance makes sense.

There is no other practical location on the lot that would support the construction of the in-law suite other than where proposed by the Applicant. Said location however, would facilitate critical storm water management insuring that surface water would continue to flow according to the existing grade without causing detention of water that would impact both the Applicant's property and that of her neighbors. Further, placing the addition flush with the front of the home would necessarily disrupt the underground utilities that have their d-mark points at the right corner of the front of the house. This will create not only impair their use, it would cause relocation of those utilities, a significant expense that is to considered when dealing with any dimensional variance. Denial of the variances would deny the Applicant the ability to construct the deck on this unique lot in the only feasible location thus imposing an unnecessary hardship upon the Applicant.

A 5'4" encroachment on a property with a sixty foot (60') rear yard setback will hardly alter the character of the neighborhood nor impact future development of adjoining property nor be contrary to the public interest. Further, adherence to the 2006 amendments to the R-2 district rendering the Property non-conforming with the sixty foot (60') side yard setback in light of the foregoing is eminently reasonable and cries out for the grant of the requested variance.

The variances: (i) are required to address the unique nature of the Property, (ii) limit encroachment into the required setbacks, (iii) is the minimum variance that will afford the

required relief, (iv) will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, and (v) have not been created by the Applicant.

Accordingly, Applicant has carried her burden of proof warranting the grant of the dimensional variances from the front and side yard setback requirements of the Ordinance.

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.

5. 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.

6. The proposed in-law suite with a 5'4" encroachment on the 60 foot rear yard setback will not alter the essential character of the neighborhood.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

1. The Application for a Variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit a rear yard setback of fifty four feet eight

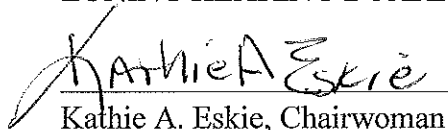
inches (54'8") for the construction of an addition to Applicant's home in the R2 Residential District is GRANTED.

Dated: August 7, 2019

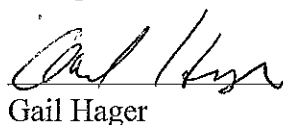
ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD


Kathie A. Eskie, Chairwoman

George J. Ozorowski, Vice Chairman


Gail Hager


Joseph Pucci


Patricia Alzamora

Robert G. Hardt


Christopher Gerdes

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.