

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

<b>APPLICATION NO. Z-19-19</b>	:	
	:	
<b>APPLICATION OF:</b>	:	
<b>MOSER CONSTRUCTION CO.,</b>	:	
<b>101 Stewart Lane</b>	:	
<b>Chalfont, PA 18914</b>	:	<b>HEARING DATE: September 26, 2019</b>
<b>And</b>	:	
<b>GRACE BUILDING CO., INC.</b>	:	
<b>P.O. Box 4008</b>	:	
<b>Rydal, PA 19046</b>	:	
	:	
<b>PROPERTY:</b>	:	
<b>Fourth Street between 2977 Fourth St. &amp;</b>	:	
<b>Hillside Avenue</b>	:	
<b>Being block 22, Unit 33</b>	:	

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

**INTRODUCTION AND BACKGROUND**

The applicant, Moser Construction Co. and Grace Building Co., Inc. (collectively, "Applicants") filed an application requesting variances from section 143-37 of the Township Zoning Ordinance ("Ordinance") with respect to lot size, lot coverage, and yard setbacks.

The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on September 26, 2019 at 7:00 p.m. at the Lower Providence Township Building. The following members of the Board were present: Kathie Eskie, Chairperson, Patricia Alzamora, Member, Chris Gerdes, Member, Gail Hager, Member, Robert Hardt, Member, and George Ozorowski, Member. Joseph E. Bresnan, Esquire served as conflict counsel to the Zoning Hearing Board.

The following persons sought party status on the basis of their proximity to the subject location. Such status was not opposed by Applicant and was granted by the Board.

David Meckes, 419 Sunnyside Avenue  
John Meckes, 2915 5<sup>th</sup> Street  
Helen Beswick, 501 Sunnyside Avenue  
Harry Cornog, 2930 4<sup>th</sup> Street  
Elaine Meckes, 2915 5<sup>th</sup> Street  
Phyllis DiCicco, 640 Hillside Avenue  
Patrick McKernan, 2912 7<sup>th</sup> Street  
Stacey Rymkiewicz, 400 Hillside Avenue  
John Munro, 2981 6<sup>th</sup> Street  
Joan Munro, 2981 6<sup>th</sup> Street  
Christopher Wrigley, 502 Hillside Avenue  
Carl Allen, 2992 6<sup>th</sup> Street  
Anthony DiCicco, 640 Hillside Avenue  
Taylor Hallowell, 2952 2<sup>nd</sup> Street  
Brian Heiser, 2976 5<sup>th</sup> Street  
Betty Allen, 2992 6<sup>th</sup> Street  
Bob Gamache, 501 Hillside Avenue  
Paul Cook, 2990 6<sup>th</sup> Street  
Debbie Lepine, 601 Hillside Avenue  
Daria Cook, 2990 6<sup>th</sup> Street  
Jeff Sarnocinski, 400 Hillside Avenue  
Larry Povlow, 2996 6<sup>th</sup> Street  
Danielle Lepine, 601 Hillside Avenue

This application was heard in conjunction with two other applications from the same Applicants, each involving undersized parcels in close proximity with one another. By agreement of all parties, and in order to streamline the hearing process, Applicants first presented, at this application number, evidence that was common to all three applications. Thereafter, that testimony was incorporated by reference into the other two hearings, and at each application number Applicants separately presented evidence that was unique to that particular application. The other two matters were, respectively, Z-19-18 and Z-19-20.

## FINDINGS OF FACT

1. The Applicants are Moser Construction Co. and J. Grace Building Co., Inc.

Applicant Grace Building Co is the record owner of the subject property, and Applicant Moser Construction Co. is the equitable owner. Applicants are represented by G. Michael Carr, Esquire.

2. The present use of the Property is single family residential, R2 zoning district.

3. The Property is approximately 40 x 100 feet or 4000 square feet. The lot size requirement, 143-37, is 25,000 square feet.

4. As shown on the plans, the manufactured home would be 14 feet wide and 66 feet long. (NT 139). The front yard setback would be 18 feet and the rear yard setback would be 14 feet. Proposed side yards are 20 feet on the right and 6 feet on the left. The proposed rear yard would be 16 feet. The ordinance at section 143-37 requires a 50 foot front yard, a 60 foot rear yard, and 20 foot side yards. Applicants seek 23.7% building coverage against an ordinance limit of 20%, and impervious coverage of 39.8% against an ordinance limit of 35%.

5. The lot predates the Township's adoption of its zoning ordinance (NT 49).

6. Charles Breinig was sworn and was qualified as an expert witness in the areas of real estate and land development (NT 34).

7. Specifically, Applicants seek to install a manufactured home on the lot. (NT 39). Per the application, the home would be 14 feet wide and 66 feet long.(NT 139).

8. Mr. Breinig offered the opinion that the manufactured home he proposes is the smallest possible home that could be placed on the lot (NT 39).

9. He would prefer to build a 26 x 43 two story home but cannot do so in light of the prior ruling of the Board. (NT 140).

10. Mr. Breinig testified generally regarding the neighborhood and homes in close proximity, in some cases including previous grants of zoning relief (NT 40-41).

11. The witness testified to the availability and intention to connect to public water and sewer (NT 142).

12. The witness testified to similarities between conventional “stick built” homes and manufactured homes (NT 43-46), and to a successful manufactured home project in Horsham Township (NT 53). The proposed home would comply with zoning in the Township’s Mobile Home Park zoning district. The witness was questioned about differences between that district and R2 (NT 52).

13. The witness fielded questions about the proposed home’s compatibility with the neighborhood and manner of delivery of the manufactured home (NT57-60).

14. Mr. Breinig testified that it is not his responsibility to “build a home that fits in with other homes next to it” (NT 83).

15. Mr. Breinig testified that he does not know whether a modular home would reduce the value of the homes around it (NT 84).

16. Mr. Breinig also testified that if he obtains approval for a modular home through this application, he assumes he would construct a modular home on each property he owns in the neighborhood. (NT 97).

17. Applicant would address whatever stormwater requirements exist in connection with developing the lot (NT 143).

18. Mr. Breinig testified in response to a resident’s question that the home would not fit in terms of appearance with other homes in the area, but it was a matter of being forced to fit in based on the Board’s prior ruling (NT 152).

19. With respect to the proposed 8 foot side yard setback, the witness stated that he would not agree to remove the deck on the side of the house to differentiate the structure from an apartment (NT 160).

20. Ed Moser, on behalf of the co-applicant Moser Construction, testified that a stick-built house could “probably” not be profitably constructed at the same size as the proposed manufactured home (NT 101).

21. Mr. Breinig does not believe the proposed home “fits in” with the surrounding homes (NT 152).

22. Citizen questions and testimony focused on fit with other area homes, how the house would be sited on the lot, quality of life, profit motive, and details regarding the foundation. (NT 150-160). To the extent that questions and concerns raised earlier during the hearing on Z-19-18 apply to each application, those are incorporated by reference.

23. Other than Applicants, no person spoke in favor of the application.

24. The following exhibits were included in the record of the hearing:

Board Exhibits:

B-1, Copy of Application

B-2, Certificate of Posting

B-3, Certification of Notification to those within 500 feet

B-4, Proof of Publication

Applicant Exhibits:

A-1, Photo of lot

A-2, Copies of deeds showing chain of title

A-3, Court decision arising from a decision of the Horsham Twp. ZHB.

## DISCUSSION

### I. Variance Legal Standard.

Pursuant to the Municipalities Planning Code and 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. Application of Legal Standard to the Facts Presented**

The Board is satisfied that the first three prongs of the test are satisfied. Although this application involves a different parcel, the Board's findings at application Z-19-15 apply equally here, and the Board accepts that the hardship was not self-created, a point supported by the submitted deeds to the parcel showing continuance ownership to a date that precedes the zoning ordinance. As in the previous decision, satisfaction of the fourth and fifth prongs of the test must be examined in the context of the particular variance request being considered.

With regard to the area and setback requirements, the Ordinance requires: (1) lot area of 25,000 square feet; (2) front yard of 50 feet; (3) rear yard of 60 feet; and (4) side yards of 20 feet each. (Ordinance § 143-37.A). One of the side yards is compliant, while the other is dramatically not, with a proposed side yard of 8 feet.

Initially, the Board offers an observation on the use of the phrases "mobile home", "manufactured home", and "modular home". At certain points in the hearing, the terms "manufactured home" and "modular home" seemed to be used interchangeably, although at other times the words were seemingly used to indicate a difference between them. (NT 76). In popular literature and even in some court cases, there also seems to be inconsistent definitions of manufactured and modular homes. While it is the impression of the Board that manufactured homes are closer to being mobile homes and modular homes are generally placed on a foundation, the Board's decision does not hinge upon nomenclature and the Board accepts Applicant's point of emphasis, namely, that the structure would be transported to the site, but upon installation would lose the ability to be moved again in the future, unlike a mobile home that can be moved repeatedly.

During the testimony presented in connection with application Z-19-15, Applicant testified that the home included in that application was the smallest marketable home that could be built. Apparently, such was not the case, because now the testimony is that *this* proposed home is the smallest one that can be built. This means either that Applicant is misrepresenting the smallest house that can be built, or, that even Applicant recognizes a distinction between homes built on site and manufactured homes that are delivered on a trailer. Although modular homes are not mobile homes in that their delivery system is removed and they are placed on a foundation (causing them to be recognized as single family detached homes), it does not necessarily follow that this Board must be blind to aesthetic and other differences when deciding whether the home would be consistent with the overall welfare of that portion of the community. In this regard, the Board notes that Applicant said it was safe to assume that he would seek to place modular homes on each of his properties once he gets approval on any of them, and, that he did not know whether a modular home would reduce the value of nearby homes.

Further, even if the currently proposed home were a “stick built” home, there is nothing that changes the analysis with respect to the fourth prong and the Board’s previous conclusion that it was not satisfied. Although through testimony Applicant credibly explained that he can place trash cans at the corner of the nearest dedicated street, no evidence was presented to address the related concerns about fire and EMS safety, and storm water concerns are only slightly lessened by the change in the footprint of the home.

Applicant asks the Board to rely upon a 1998 decision from the Court of Common Pleas of Montgomery County, *Appeal of Edgewood Building Co.* There, the Court concluded that the Zoning Hearing Board of Horsham Township improperly denied an application for a modular home on an undersized lot. The ultimate conclusion that the Board acted improperly appears to



have been partly driven by the Court's disagreement with the Board that the hardship was self-created (an issue not involved here), and possibly because the Board asserted that the proposed home would come within a foot of the property line, while the Court found no such thing, concluding that the home would be set back forty feet on one side and eighty on the other. Further, while there are numerous cases setting forth the general proposition that a variance is the proper mechanism through which to avoid the sterilization of an undersized lot, the Board does not view these cases as requiring an automatic approval of a variance application related to a lot that is undersized relative to a subsequently adopted zoning ordinance.

The Board also recognizes *Appeal of W.B. Dodge, Jr.*, 402 A.2d 273 (Pa. Commwlth. 1979). In that case, which also arose out of Montgomery County, the Court held that the Upper Merion Township Zoning Hearing Board properly denied a variance request to build a home on an undersized lot where the proposed site had only one third of the total required lot area and could not conform to setbacks. The Court emphasized that the Board at all times enjoys the discretion to consider whether the variance would change the essential character of the neighborhood, and doing so includes a consideration of the required and proposed dimensions. While in a related hearing Applicant's counsel characterized this case as an outlier, it has not been reversed or questioned in subsequent decisions.

Applicant and before that Mr. Breinig's father have together owned the parcel for approximately fifty years, and developing it is something that until recently they simply "did not get around to". (NT 73). Certainly, that is their unquestioned prerogative. During those fifty years, however, the neighborhood, like any neighborhood, took on a certain character, with many of the lots merging for purposes of constructing homes. While Applicant represents that this application is seeking to comply with the prior Board ruling by bringing in an application

for an even smaller house, Applicant has presented a house of a different stripe for consideration. While certainly case law recognizes an important distinction between mobile homes and modular homes (the latter generally being recognized as a single family detached dwelling for zoning purposes), and while Applicant did clearly explain the important differences between them, the Board nonetheless feels that within the context of the neighborhood, it would be contrary to the character of the neighborhood to include a modular home that, in appearance, could only be distinguished from a mobile home by someone who has been instructed on the differences between them. For their part, the Township ordinances do not distinguish between modular homes and mobile homes; there is a “mobile home park” zoning district, but also limitations in the floodplain ordinance on the siting of “manufactured homes”. The Board notes that within the Mobile Home Park zoning district, Ordinance 143-59 states one of the purposes behind mobile homes being limited to distinct areas is to prevent a diminution of surrounding property values.

Aesthetic considerations, even standing alone, can be a basis for the denial of requested relief when the aesthetics have some impact on health, safety and welfare. *Orwell Township Supervisors v. Jewett*, 571 A.2d 1100 (Pa. Commwlth. 1990), and aesthetics can always be considered in conjunction with other concerns. *Berman v. Board of Commissioners of Lower Merion Township*, 608 A.2d 585 (Pa. Commwlth. 1992). *See also, John R. Green Associates v. Zoning Hearing Board of Lower Allen Township*, 426 A.2d 175 (Pa. Commwlth. 1981)(recognizing the testimony of an applicant asked about building a narrower home to meet side yard setbacks who stated as a reason for not doing so, “if we get any narrower, the home would take on the appearance of a mobile or modular home, and I do not think that would do

any justice to the existing homes in the neighborhood” Id. at 177). The Board does not believe that a modular home is consistent with the overall character of the neighborhood.

The Board also finds the testimony equivocal on whether the minimum amount of relief requested is the smallest amount of relief necessary. The testimony was to the effect that an equivalent stick built home “probably” could not be built profitably. With respect to modular homes, the Board observes that under the Manufactured Home Construction and Safety Standards Act, 42 USC 5402, which are incorporated by reference in Pennsylvania’s Manufactured Housing Improvement Act, 35 PS 1658.3, manufactured homes are regulated down to 320 square feet.

### **CONCLUSIONS OF LAW**

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. The Application for a variance from the area and setback requirements of Ordinance Section 143-37 to permit a reduced lot area and setback requirement for the development of a single family home on the Property is denied.
  - a. If the requested variance were to be granted, the community will be significantly changed altering the character of the neighborhood and the R2 District, and the proposed development will substantially impair the appropriate use and/or development in the district thus detrimentally impacting the adjacent properties and the public welfare; and

- b. The requested relief does not represent the minimum that will afford relief and does not represent the least modification possible of the regulation at issue.

{ORDER FOLLOWS ON NEXT PAGE}

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

<b>APPLICATION NO. Z-19-19</b>	:	
	:	
<b>APPLICATION OF: MOSER</b>	:	
<b>CONSTRUCTION CO.</b>	:	
<b>101 Stewart Lane</b>	:	
<b>Chalfont, PA 18914</b>	:	<b>HEARING DATE: September 26, 2019</b>
<b>and</b>	:	
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<b>Hillside Avenue</b>	:	
<b>Being block 22, Unit 33</b>	:	

**ORDER**

For the reasons set forth in the foregoing decision, the Order of the Lower Providence Township Zoning Hearing Board is as follows:

1. The Application for a variance from the area and setback requirements of Ordinance Section 143-37 to permit a single family home to be built on a lot having an area of 4,000 square feet with a front yard setback of 18 feet, a rear yard of 14 feet, side yards of 20 and 6 feet, building coverage of 23.7%, and impervious coverage of 39.8%, is denied.

{ SIGNATURE PAGE FOLLOWS }

**LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD**

  
Kathie A. Eskie, Chairwoman

  
George J. Ozorowski, Vice Chairman

  
Gail Hager

  
Robert G. Hardt

  
Patricia Alzamora

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Christopher Gerdes