

# MILLER TURETSKY RULE & MCLENNAN

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August 10, 2020

Christopher Interrante  
41 Brenda Lane  
Audubon, PA 19403

**RE: Lower Providence Township Zoning Hearing Board  
Application of Christopher Interrante  
Application No. Z-20-03**

Dear Mr. Interrante:

In accordance with your **initial application** for variances from the setback requirements of the Lower Providence Zoning Ordinance §143-37.A.(2) **filed on March 4, 2020**, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board.

Should you have any questions, please contact me.

Very truly yours,

  
Keith B. McLennan

KBM/mac  
Enclosure  
pc: Kathie A. Eskie, Chairwoman  
George Ozorowski, Vice Chairman  
Gail Hager  
Joseph Pucci  
Patricia Alzamora  
Robert G. Hardt  
Chris Gerdes  
Michael Mrozinski, Community Development Director



APPLICATION NO.	Z-20-03	:	HEARING DATE:	June 25, 2020
		:		
APPLICATION OF:		:		
	<b>Christopher Interrante</b>	:		
		:		
PROPERTY:		:		
	<b>41 Brenda Lane</b>	:		
	<b>Lower Providence Township</b>	:		
	<b>Audubon, PA 19403</b>	:		
	Parcel No. 43-00-01564-00-4	:		

The applicant, Christopher Interrante (hereinafter “Applicant”) filed an application requesting a variance from the setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance as amended (“Ordinance”) in order to construct a 25’ x 36’ post and frame garage behind his house with a side yard setback of five (5) feet and no rear yard setback and to extend his existing attached garage to within ten (10) feet of the side property line and to then pave the remaining ten (10) feet. The Ordinance requires a minimum side yard setback of twenty (20) feet and a rear yard setback of sixty (60) feet. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on June 25, 2020 at the Lower Providence Township Building. The following members of the Board were present: Kathie Eskie, Chair, George Ozorowski, Vice-Chair, members: Gail Hager, Joseph Pucci, Patricia Alzamora and alternates: Robert Hardt, and Christopher Gerdes. Also present were Keith B. McLennan, Esq., the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement and Tim Kurek, the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicant is Christopher Interrante.
2. The Applicant is the owner of the subject property located at 41 Brenda Lane, Audubon, Lower Providence Township, PA 19403, parcel number 43-00-01564-00-4 (hereinafter the "Property").
3. The applicable zoning district is an R-2, residential district.
4. The Applicants were not represented by legal counsel.
5. The lot size is 15,040 square feet.
6. The present use of the Property is residential.
7. Applicant wishes to construct "post and frame" building on the Property for the storage of tools and materials associated with his remodeling business and to work on private vehicles to fuel his classic car hobby on the rear property line and five (5) feet from the side property line.
8. Applicant also seeks to extend the existing attached garage to within ten (10) feet of the side property line and to then pave over that ten (10) feet right up to the side property line.
9. Applicant already has two (2) existing storage sheds on the Property of 12 x 20 and the other 10 x 12 that he intends to remove if the variances requested are granted.
10. The proposed fifteen foot to peak, one-story post and frame building would be 24' by 36' - 864 square foot two car garage.
11. Applicant believes that since the wooded area behind his house is owned by Lower Providence Township, the back of the proposed garage could be up against his rear property line.
12. The proposed garage cannot be placed against the rear property line merely

because it is wooded, undeveloped and owned by the Township.

13. Applicant also believes that he should be able to extend the existing garage attached to his house to within ten (10) feet of the side property line and that he should be able to pave over that ten feet up to the side property line.

14. The Board of Supervisors when enacting the Ordinance required at §143-38 certain design and development standards that required any property owner in the R-2 District to develop the property in accordance with an overall plan for locating buildings and structures, to provide a safe and efficient circulation of vehicles and pedestrians, preserve and extend the natural amenities of the site, and provide for the continued maintenance of the land and the improvements thereon..

15. Applicant's proposed development of the Property fails to adhere to those design and development standards.

16. After questioning, Applicant withdrew his request to extend the attached garage and paving of the area next to the garage up to the side property line.

17. There was no adverse public comment regarding this application.

18. Applicant testified that his neighbors on either side of him had no objection to his plans.

19. The following exhibits were introduced:

A-1 Application filed on March 4, 2020<sup>1</sup>;

A-2 Site plan – 2 pages in length;

B-1 Notice of the Application Posted at the Property;

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<sup>1</sup> Under Act 15 of 2020, as a result of the March 6, 2020 Covid-19 pandemic Disaster Proclamation of Governor Wolf, the April 28, 2020 Order of the Pennsylvania Supreme Court and the May 5, 2020 Order of the Court of Common Pleas of Montgomery County the Application was stayed and the requisite time requirements of §908(1.2) of the Municipalities Planning Code waived.

B-2 Form of Notice sent to the neighbors within 500 feet;

B-3 Mailing Matrix of the neighbors notified by mail;

B-4 Certificate of Notification of the neighbors.

## **DISCUSSION**

### **I. Variance Legal Standard.**

Pursuant to §143-168.A. of the Ordinance and the Municipalities Planning Code the following must be found in order for the Zoning 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. **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). A dimensional variance is at issue in this case.

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).

## III. **Dimensional 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)). 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.Cmwlt. 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.**

The Applicant has requested a variance from the setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance in connection with the construction of a 864 square foot two car garage to work on antique cars and for storage of the Applicant's contracting equipment, materials and tools. The relief sought is purportedly dimensional in nature requesting the allowance of a side yard setback of five (5) feet from the twenty (20) foot setback requirements of the Ordinance and no setback from the rear property line where sixty (60) feet is required.

To establish that an unnecessary hardship exists warranting a dimensional variance from the twenty (20) foot side yard and sixty (60) foot rear yard setbacks, the Applicant was required to prove that:

- a. Physical characteristics of the property were such that the property could not be used for any permitted purpose; or
- b. The permitted purpose could only be achieved at prohibitive expense; or
- c. Characteristics of the property were such that it would have no value or only distress value for any use approved by the zoning ordinance.

Solebury Twp. v. Solebury Twp. Zoning Hearing Bd., 914 A.2d 972 (Pa.Cmwlt.



2007).

Further, the Applicant had to otherwise comply with all applicable sections of the Ordinance.

The Applicants refer to the subject of its Application as a “shed.” §143-48 of the Ordinance defines a shed as:

Shed, household storage. One household storage shed shall be permitted with a five-foot setback from the rear and/or side yard property lines, provided said shed or said structure shall not exceed 120 square feet in overall size and shall not exceed 12 feet in height, as measured from the lowest point in the grade at the entrance to the structure to the highest peak of the roof ridge.

Further, the Ordinance at §143-6.2 defines a household garage as:

#### K. GARAGE, HOUSEHOLD

An accessory building located upon a residential property or a part of a principal residential building used for the storage of motor vehicles of the type and nature permitted in the zoning district and/or for the storage of personal items, sports equipment, tools, and lawn and garden equipment and materials. All of the items stored within a household garage must be owned and used by the owner or tenant of the principal residential use on the same lot.

Mr. Interrante testified that:

1. He needed a building to store accoutrements of his remodeling contract business;
2. The post and frame building would be 864 square feet;
3. He expected to use the building to work on antique motor vehicles, not for compensation.

Therefore, the proposed 864 square foot 24' x 36' structure is a household garage under the Ordinance where only one is permitted under §143-52. A(4)(e) in the R2 district.

The Applicant has offered no evidence to demonstrate any hardship, unique or unnecessary, which compels the grant of variances for the construction of a garage up against the rear property line and only five feet from the side property line instead of the 20 foot side

yard setback and 60 foot rear yard setback requirements of §143-37.A.(2) in the R2 zoning district.

Further, at no point did the Applicant prove that: (i) the Property was in any way unique in shape or contour; (ii) that any hardship was not of his own making; or (iii) the variances requested represent the minimum that will afford relief representing the least modification possible of §143-37.A.(2).

Finally, when pressed on the issues of extension of the attached garage and paving up to the side property line in disregard for the 20 foot side yard setback required by §143-37.A.(2) by the Board, Applicant withdrew his request for the variances related thereto.

Accordingly, the Board finds that the application for variances from the setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance is inappropriate.

### **CONCLUSIONS OF LAW**

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. A dimensional variance is sought by the Applicant for a garage, not a shed.
3. Denial of the requested relief will not impose an unnecessary hardship on the Applicant.
4. Any hardship that the Applicant believes he has suffered is entirely self-imposed and is due to the Applicant's desire for an 2<sup>nd</sup> garage on his property for additional storage and to advance his hobby rather than any unique physical circumstances of the Property.
5. The requested relief is not necessary to enable the Applicant's reasonable use of the Property and does not represent the minimum deviation from the Ordinance that will afford

relief.

### **DECISION**

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

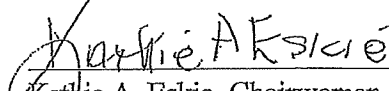
The application for side and rear yard setback variances from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance are denied.

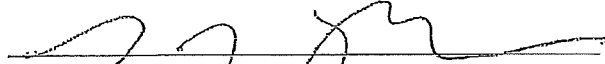
Dated: August 7, 2020

**ORDER**

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

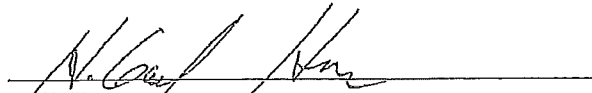
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
Kathie A. Eskie, Chairwoman


  
George J. Ozorowski, Vice Chairwoman

  
Joseph Pucci

Patricia Alzamora

  
Gail Hager

Robert G. Hardt, Alternate

  
Christopher Gerdes, 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.