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September 3, 2020

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7017 3090 0000 0752 9117**

M. Joseph Clement, Esquire
Wisler Pearlstine, LLP
460 Norristown Road, Suite 110
Blue Bell, PA 19422

**Re: Frank Venezia
409 Old Gulph Road
Narberth, PA 19072
Decision on Zoning Application #Z-20-07**

Dear Mr. Clement:

In accordance with your client's initial application for variances from the setback requirements of the Lower Providence Zoning Ordinance §143-37.A.(2) filed on June 18, 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

pc: Kathie A. Eskie, Chairman
George Ozorowski, Esquire, Vice Chairman
Gail Hager
Joseph Pucci
Michael Mrozinski, (*Community Development Director*)

Patricia Alzamora
Robert G. Hardt
Christopher Gerdes
Tina Blain

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-20-07	:	HEARING DATE:	July 23, 2020
		:		
APPLICATION OF:		:		
Frank Venezia		:		
		:		
PROPERTY:		:		
201 Rogers Road		:		
Lower Providence Township		:		
Trooper, PA 19403		:		
Parcel No. 43-00-12500-00-3		:		

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

The applicant, Frank Venezia (hereinafter “Applicant”) filed this 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 480 square foot garage behind the house with a proposed rear yard setback of thirty-five feet (35’) where sixty feet (60’) is required. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 23, 2020 by use of the ZOOM platform due to the ongoing risks associated with large gatherings from Covid-19. The following members of the Board were present: Kathie Eskie, Chair, George Ozorowski, Vice-Chair, members: Joseph Pucci and alternates: Robert Hardt, and Christopher Gerdes. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Tim Kurek, the Court Reporter and Keith B. McLennan, Esq., the Solicitor.

FINDINGS OF FACT

1. The Applicant is Frank Venezia, 409 Old Gulph Road, Narberth, PA 19072.
2. The subject property located at 201 Rogers Road, Trooper, Lower Providence Township, PA 19403, parcel number 43-00-12500-00-3 was constructed in or about 1956

(hereinafter the “Property”).

3. The Property has a lot size of 32,400 square feet and is located in the R-2 residential district.

4. The Applicant was represented by M. Joseph Clement, Esquire from Wisler Pearlstein, LLP.

5. The Applicant acquired the Property on August 1, 2019 after years of neglect and renovated the home thereon.

6. The present use of the Property is as a single-family, 1 story residence.

7. The Property has the peculiar attributes of:

- a. A home office with separate entrance in front and residential access on the side;
- b. Shares a long driveway to gain its only access to Rogers Road with another residence in its front at 203 Rogers Road;
- c. The shared driveway that not only is a narrow single lane but also merges with the driveway for 203 Rogers Road at an awkward angle making it almost impossible for one to back down the driveway for the Property safely;
- d. Being bordered on 2 sides, including the rear, by wooded, undeveloped lots;
- e. A nonconformity with the Ordinance from a rear yard setback of forty-five feet (45’) where sixty feet (60’) is required;
- f. Is absent a garage.

8. Applicant wishes to construct a 20’ x 24’ 480 square foot one-story two car detached garage at the rear and to the right side of the Property thirty-five feet (35’) from the rear property line where the setback requirement is sixty feet (60’).

9. The surrounding neighborhood on Roger’s Road and Clearfield Avenue is

primarily single-family ranch style residences with detached garages many of which are non-confirming with the rear or side yard setback requirements.

10. The location of the proposed garage on the Property will facilitate a turnaround area for vehicles to avoid backing down the driveway thereby exiting the property safely.

11. Applicant is prepared to improve the existing swale that is designed to address surface water run-off behind and to the right of the Property provided its owner permits access.

12. Placement of the garage sixty feet (60') from the rear property line would negate the use of a turnaround that would permit turnaround space that enables safe forward egress and would impede the existing entry to the residence and block natural light to that side of the home.

13. Mr. Michael Natale, 137 S. Trooper Road testified in opposition to the Application out of concern for any alterations of the ground causing additional stormwater to invade his property.

14. Sarah Bretz, 135 S, Trooper Road, Pat Peaks, 203 Rogers Road testified in support of the Applicant's previous efforts to ameliorate the previously existing surface water invading their properties through the use of swales and seepage pits on their property to either absorb the surface water or funnel it to the pond on Ms. Bretz's property, its natural distribution point.

15. Applicant agreed to obtain all of the necessary permits to construct the garage and comply with all reasonable requirements of the Township and its engineer regarding stormwater management including the improvement of the existing swale on Mr. Natale's property that had become overgrown rendering it less effective in directing stormwater to the pond on Ms. Bretz's property to capture the surface water.

16. Applicant's son Joseph Venezia appeared at the hearing on behalf of the Applicant as did Joseph Deluca of Deluca Brothers Land Development, LLC.

17. The following exhibits were introduced:

A-1 Application and its addendum along with exhibits A – D filed on June 19, 2020;

A-2 Proposed 2 Car Garage Layout from Wilkinson & Associates, Inc. dated June 15, 2020

B-1 Form of Notice sent to the neighbors within 500 feet of the Property;

B-2 Mailing Matrix of the neighbors notified by mail;

B-3 Certificate of Notification of the neighbors by mail;

B-4 Certificate of Posting the Property with Notice of the Application.

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.Cmwlth. 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.

Although Hertzberg eased the burden of proof somewhat for a dimensional variance, it did not remove the variance requirements that are universally applicable to use and dimensional variance cases. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa.Cmwlth. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and satisfy the five-part test articulated above. Id. In addition, §§143-168.C. & D.(2), (3) & (4) of the Ordinance articulate the Applicants' burden of proof and the standards to meet that burden as follows:

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of § 910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. § 10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public interest.

(3) Zoning Hearing Board considerations. In considering whether the allowance of a special exception or variance is contrary to the public interest, the Zoning Hearing Board shall consider whether the application, if granted, will:

(a) Substantially increase traffic congestion in the streets surrounding the subject site;

(b) Increase the risk of fire or panic or otherwise endanger the public safety;

(c) Overcrowd the land or create undue concentration of population;

(d) Be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of this chapter;

(e) Intrude upon the adequacy of natural light and air to adjoining properties;

(f) Create extraordinary burdens on public, private or community water systems or upon groundwaters or wells within the neighborhood;

(g) Overburden the public sanitary sewer system within the Township occasion environmental problems with on-site sanitary sewer installations;

(h) Place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood;

(i) Cause adverse effects to the appropriate use of adjacent properties in the neighborhood where the property is located;

(j) Cause risk or danger to the safety of persons or property by improper location or design of facilities for ingress and egress to and from the property in question; or

(k) Otherwise adversely affect the public health, safety, morals or general public welfare of the community.

(4) Burden of proof. In all cases, whether special exception, variance, interpretation, appeals from the Building Inspector or any other appeals lawfully brought before the Zoning Hearing Board, the applicant shall have the burden of proof, including the duty of presenting credible, relevant and pertinent evidence and testimony to persuade the Zoning Hearing Board that the applicant has satisfied the criteria set forth in this section. In addition to the foregoing, where an applicant has been specifically requested by the Zoning Hearing Board to provide specific evidence or testimony on any item set forth in Subsection D(3)(a) through (j), supra, or in the event that any party opposing any application shall claim that the proposal before the Zoning Hearing Board will cause any effects upon the matters addressed in Subsection D(3)(a) through (j), supra; then the applicant's burden of proof shall include the obligation of presenting credible, relevant and pertinent evidence on such topics as to persuade the Zoning Hearing Board that the relief requested by

the applicant will not be contrary to the public interest with respect to the criteria placed at issue.

IV. Facts Applied to the Legal Standard.

The Applicant has requested a variance from the rear yard setback requirement of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance in connection with the construction of a 480 square foot one-story two car garage on his Property. The relief sought is dimensional in nature requesting the allowance of a rear yard setback of thirty-five feet (35') from the sixty foot (60') setback requirement of the Ordinance. The home, constructed in 1956, before the current applicable sections of the Ordinance were enacted, is already non-conforming with a forty-five foot (45') rear yard setback due to the unique nature of the lot.

To establish that an unnecessary hardship exists warranting a dimensional variance from the sixty foot (60') rear yard setback, 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.

Mr. DeLuca testified through Applicant's counsel that:

1. Due to the unique configuration of the home and the landlocked nature of the lot, the garage needed to be placed 35' from the rear property line so that a sufficient turnaround area could be provided so that cars could exit the driveway safely;
2. The garage would be a typical one-story two car garage 20' x 24' in dimension or

480 square feet;

3. The property is lacking a garage while many of the homes in the surrounding area have either attached or detached garage, most of which do not conform to the setback requirements of the Ordinance;

4. The garage will not impair the use or development of the adjoining property and should its installation cause stormwater issues that impact neighboring properties, Applicant will do what is reasonably required by the Township and its engineer to address those issues;¹

5. The nature of the property was such that placement of the garage at least 45' from the rear property line to match that of the home's setback would deny the use of the turnaround area required to permit vehicles to turnaround to safely exit the home rather than backing down the driveway to the intersection with 530 Rogers Road.

6. Due to the location of the entrance to the residence on the right side of the home (when facing it) there were few options on the placement of the garage on the lot;

7. The placement of the structure 45' from the rear property line would locate it in front of the entrance to the residence denying safe access and blocking the flow of natural light to the home;

8. Addition of a garage where requested is the only feasible location and constitutes reasonable use of the property and will not alter the essential character of the neighborhood.

The Applicant asserts that denial of his application denies him the reasonable use of his property and thus a hardship not created by him.

No evidence was introduced to counter Applicant's testimony regarding the hardship nor were questions posed that in any way challenged his assertions that the proposed garage would not alter the essential character of the neighborhood. Rather, the only issue raised by anyone in

¹ The testimony of Ms. Bretz - 135 S. Trooper Road and Ms. Peaks - 203 Rogers Road confirmed that Applicant through Mr. Deluca, has done this when, at their request, he installed the necessary facilities to abate existing surface water running through their land like a river.

opposition to the Application was from Mr. Michael Natale who was very concerned about the installation of the garage and its impact upon 137 S. Trooper Road from surface water. Applicant has agreed to address any such stormwater issues through reasonable efforts provided he is permitted to go on Mr. Natale's property to improve the existing swale there that channels surface water to the pond on Ms. Betz's property. None of the issues of public safety articulated in §143-168.C. & D. of the Ordinance were raised by any opponent of the Application. On the contrary, the Applicant made the case for the requested variance primarily due to the unique shape and layout of the Property and the placement of the turnaround area to facilitate the ability of a vehicle to exit the property more safely than by backing down the long, narrow and oddly intersecting shared driveway.

Applicant has a reasonable and genuine expectation to use his property as would any of his neighbors, thorough the installation of a typical 2 car garage. Inasmuch as variances from dimensional requirements are generally more permissive. Nothing more can be done to accommodate both the Applicant's request and the Ordinance's mandates. In these contests the reasonable use of one's property prevails over rigorous enforcement of dimensional restrictions.

Applicant has carried his burden of proof that: (i) the property is irregular and peculiar for the application of the existing Ordinance creating an unnecessary hardship; (ii) as a result of the peculiarity of the property, there is no possibility that the property can be developed in strict conformity with the Ordinance without a variance to enable the reasonable use of the property; (iii) the hardship was not created by the Applicant; (iv) the variance 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; (v) the variance represents the minimum variance to provide relief and is the least modification possible of the Ordinance.

Accordingly, the Board finds that the application for variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit a thirty-five feet (35') rear yard setback where sixty feet (60') is required is appropriate.

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.
3. Denial of the requested relief will impose an unnecessary hardship on the Applicant by denying him the reasonable use of his property.
4. The requested relief will not alter the essential character of the neighborhood nor impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
5. The variance represents the minimum variance that will afford relief and represents the least modification possible of the regulation in issue.

DECISION

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

The application for a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit a thirty-five foot (35') rear yard setback for the construction of a garage on the Property is GRANTED subject to the following conditions:

1. Applicant shall comply with all recommendations of the Township engineer regarding stormwater management on the Property; and
2. Applicant shall comply with all reasonable recommendations of the Township

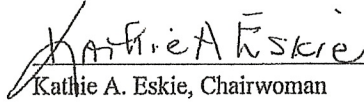
engineer regarding stormwater management offsite subject to the permission of the offsite landowner's permission to make such improvements.

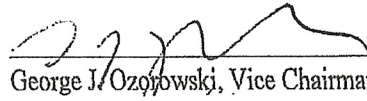
Dated: September 2, 2020

ORDER

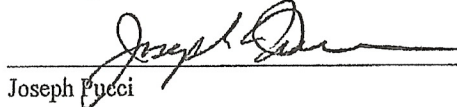
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

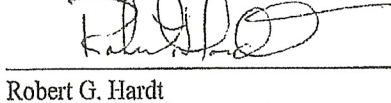

Kathie A. Eskie, Chairwoman


George J. Ozonowski, Vice Chairman


Gail Hager


Joseph Pucci

Patricia Alzamora


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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.