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July 2, 2021

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7020 2450 0001 6265 0097**

Ms. Jenna Storti  
2643 Amy Drive  
Norristown, PA 19403

**RE: Zoning Application No. Z-21-11**

Dear Ms. Storti:

In accordance with the initial application filed on April 15, 2021, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board.

Yours very truly,



Keith B. McLennan

KBM/jds  
Enclosure

Pc: George Ozorowski, Esq. Chairman  
Joseph Pucci Vice-Chairman  
Kathie A. Eskie  
Gail Hager  
Tina Blain

Patricia Alzamora  
Christopher Gerdes  
Randy Klein  
Michael Mrozinski

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO.	Z-21-11	: HEARING DATE:	May 27, 2021
		:	
		:	
APPLICATION OF:		:	
Jenna Storti		:	
2643 Amy Drive		:	
Norristown, PA 19403		:	
		:	
PROPERTY:		:	
2643 Amy Drive		:	
Lower Providence Township		:	
Norristown, PA 19403		:	
Parcel No. 43-00-00319-00-7		:	

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

On April 15, 2021, applicant Jenna Storti (“Applicant”) owner of 2643 Amy Drive, Norristown, Pennsylvania filed an application requesting a variance from the Lower Providence Township Zoning Ordinance (the “Ordinance”) §43-37.A(2) to permit construction of an accessory structure with a side-yard setback of ten feet (10’) where a minimum of twenty feet (20’) is required (“Application”).

The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on May 27, 2021, via advanced communication device due to the ongoing global pandemic. Present at the hearing were: Kathie Eskie, Chairwoman, and members Gail Hager, Patricia Alzamora, Christopher Gerdes and Randy Klein, alternate. Also present were Mike Mrozinski, the Community Development Director, Paula Meszaros, the court reporter and Keith B. McLennan, Esquire, the Solicitor.

## **FINDINGS OF FACT**

1. The Applicant is Jenna Storti co-owner of the lot and home located at 2643 Amy Drive, Norristown, Pennsylvania.
2. The Applicant was not represented by counsel.
3. Jenna Storti and Robert Storti, Jr. testified in support of the Application.
4. The subject property, 2643 Amy Drive, Norristown, Pennsylvania is comprised of a 18,000 square foot lot with tax parcel number 43-00-00319-00-7 with a single-family home, a shed, and a garage (hereinafter the "Property").
5. The applicable zoning district is the R-2 residential district which permits single-family detached dwellings.
6. For lots served by public water and sewer in the R-2 zoning district the Ordinance requires a side yard setback of twenty feet (20').
7. Applicant wishes to install a 30' by 35' pole barn to store personal vehicles and use for general storage.
8. The Property was established under prior zoning standards.
9. The Property does not conform to the current zoning standards.
10. There is no possibility that the proposed structure could be located on the Property without a variance.
11. The neighborhood is replete with single family homes that have similar accessory structures.
12. The proposed use will replace the two sheds currently on the property.
13. There was no adverse public comment regarding this application.

14. Applicant testified that all her neighbors approved of the relief sought in the Application in order to install the pole barn/garage.

15. All required notices of the application and hearing were properly provided.

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

B-1 Public Notice of the Hearing;

B-2 Certificate of Posting;

B-3 Letter notifying neighbors within 500 feet of the Property of the Application;

B-4 Matrix of Addresses where notice was sent;

B-5 Certificate of Notification;

A-1 Application;

A-2 Survey Plan from Cavanaugh's Surveying Services dated March 1, 2021 of the Property with and without the proposed garage.

## **DISCUSSION**

### **I. Statement of the Case**

The Applicant requests a variance from the Lower Providence Township Zoning Ordinance (the "Ordinance") §43-37.A(2) (Side-yard setback) to permit construction of an accessory structure with a side-yard setback of ten feet (10') where a minimum of twenty feet (20') is required.

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

#### **A. 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 dimensional variance.

B. The Five Part Variance Test.

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

(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.

*See also* 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.

C. Dimensional Variance Legal Standard.

Generally, a use variance requires the applicant to show that unnecessary hardship will result rendering the property close to useless if a variance is denied, and that the proposed use will not be contrary to public interest. However in the case of Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998) our Supreme Court held that in the case of a dimensional variance, the quantum of proof required to establish unnecessary hardship is lesser than when a use variance is sought. *Id.* at 258-59. For example, the Hertzberg Court held that to justify the grant of a dimensional variance, "...courts may consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood." 721 A.2d at 50. In effect, no longer is an applicant required to demonstrate in a dimensional variance case, that the property was close to useless without the variance.

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.

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

The Applicant requests a variance from the Ordinance §143-37.A(2) regarding side-yard setbacks to permit construction of a garage with a side-yard setback of ten feet (10') where a minimum of twenty feet (20') is required.

The Property was established prior to the modern zoning standards and therefore the property does not meet current zoning. In fact, the most recent changes to the Ordinance expanded the side yard setback requirements from fifteen feet (15') to twenty feet (20"). As a result, the existing residence became non-conforming with a 15'1" side yard setback on its

northwest side. This non-conformity, coupled with the Property's unique long and narrow shape, makes it impossible to conform to current zoning. Further, no matter where the proposed garage is placed it will conflict either with the side or rear yard setbacks of the current zoning Ordinance. Inasmuch as a garage is a reasonable use of the Property, the non-conformity caused by a change in the Ordinance and the uniqueness of the lot creates an unnecessary hardship not created by the Applicant.

Because of the change in the Ordinance, location of the house, and the shape of the lot, there is no practical way that the property can be developed in strict conformity with the provisions of the Ordinance and the authorization of a variance is necessary to enable the reasonable use of the property.

Garages and similar accessory structures are replete throughout the neighborhood. Thus, the requested variance, if granted, will not alter the essential character of the neighborhood in which the Property is located. Further, the Applicant intends to use the proposed pole barn to replace two other accessory structures on the property.

The proposed variance of the setback requirement is minimal varying only by five feet (5') from the setback that was in place when Applicant's acquired the Property. As a result, permitting the construction of the garage as proposed is the minimum alteration that can be made to the Ordinance to permit the Applicant the reasonable use of the Property.

Finally, all the adjoining property owners agree with the proposed variance and garage. Moreover, the addition of the garage and the variance required therefor will in no way adversely affect the public interest, negatively impact public services or facilities, or adversely impact neighbors or the community.

Accordingly, the Board finds that Applicant suffers a hardship that is not self-imposed and the requested variance from Lower Providence Township Zoning Ordinance from §143-



37.A.(2) is necessary.

### **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 Applicants.
3. The hardship is due to the unique physical circumstances and characteristics of the Property and not self-imposed.
4. The requested relief is necessary to enable the Applicants reasonable use of the Property.
5. If granted, the community will not be significantly changed nor will it alter the character of the neighborhood.
6. The requested relief represents the minimum that will afford relief and represents the least modification possible of the regulation at issue.

### **DECISION**

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

The Application of Jenna Storti docket #Z-21-11 for a Variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit the construction of a 30' x 35' pole barn garage with a side yard setback of ten feet (10') where a minimum of twenty feet (20') is required in the R-2 Residential District is GRANTED with the following conditions:

- 1) The pole barn shall not be used for living space;

- 2) The pole barn shall not be used for commercial purposes.

Dated: June 28, 2021

### **ORDER**

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

#### **LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

\_\_\_\_\_  
George Ozorowski

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Joseph Pucci

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Kathie Eskie

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Patricia Alzamora

*Gail Hager*

\_\_\_\_\_  
Gail Hager

*Christopher Gerdes*

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Christopher Gerdes, Alternate

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Randy Klein, 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.