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August 9, 2021

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7020 2450 0001 6269 2233**

Mr. Michael Hermann  
3813 Vincent Drive  
Collegeville, PA 19426

RE: Zoning Application No. Z-21-12

Dear Mr. Hermann:

In accordance with the initial application filed on June 1, 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 - 12	:	HEARING DATE: June 24, 2021
	:	
APPLICATION OF:	:	
Michael Hermann	:	
	:	
PROPERTY:	:	
3813 Vincent Dr.	:	
Collegeville, PA 19426	:	
Parcel No. 43-00-15518-06-03	:	

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

On June 1, 2021, Michael Vincent (hereinafter referred to as the “Applicant”), filed an application requesting a variance from the maximum impervious coverage requirements of Section 143-49.A(2) of the Lower Providence Township Zoning Ordinance (the “Ordinance”) in connection with the subject property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on June 24, 2021. Present at the hearing were Chairman, George Ozorowski, and board members Kathie Eskie, Gail Hager, Christopher Gerdes, and Randy Klein. 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 Michael Hermann.
2. The Applicant is the owner of the subject property.
3. The subject property is located at 3813 Vincent Dr. Collegeville, PA 19426 (the “Property”). The parcel number is 43-00-15518-06-3.

4. The applicable zoning is R3, Residential District.
5. The Applicant was not represented by legal counsel.
6. The lot size of the Property is approximately 10,263 square feet.
7. The Applicant acquired the Property, which is a single-family residence, in November of 1999.
8. The Applicant appeared as a witness in support of the application.
9. There was no adverse testimony or public comment regarding the Application.
10. Applicant proposes to build a 10' by 12' shed on the property which would cause the total impervious coverage of the property to exceed the 35% permitted under the Ordinance.
11. The project will result in the property having 3,691 square feet of impervious coverage.
12. The impervious coverage with the proposed project would amount to 35.96 percent.
13. Applicant initially included the public sidewalk and apron in the impervious coverage calculation resulting in a higher request than is necessary.
14. The Property at present without the proposed shed has impervious coverage of 34.79 percent.
15. Applicant agreed to amend his application to reflect the revised amount of impervious coverage that is necessary to complete the project.
16. Applicant's family needs require additional space in the home. The shed will add additional storage to allow for more personal space in the house.
17. The shed will be placed on a crushed-stoned pad.
18. No runoff will impact the neighbors.
19. Applicant approached both side-neighbors who were not opposed to the property.

20. The property is very narrow and shallow.
21. A shed cannot be placed on the property without a variance.
22. Currently, the Property has a large patio and driveway.
23. The Property would continue to be used as a primary residence.
24. The neighborhood has many properties that include sheds.
25. The proposed use will have no impact on traffic patterns.
26. Granting the requested variance will not alter the essential character of the neighborhood in which the Property is located.
27. Absent the requested relief the Applicant will suffer an unnecessary hardship. This is not a self-created hardship. Instead, it results from the unique physical circumstances and/or characteristics of the Property, including the size of the lot.
28. The proposed use will not emit smoke, dust, odor or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants.
29. The following exhibits were included in the record of the hearing:
  - B – 1 Certificate of Posting.
  - B – 2 Letter notifying neighbors within 500 feet of the Property of the Application.
  - B – 3 Matrix of Addresses where notice was mailed.
  - B – 4 Certificate of Notification to the neighbors within 500 feet of the Property by mail.
  - A – 1 Application.
  - A – 2 Impervious Coverage Form.

### **DISCUSSION**

**I. Statement of the Case**

The Applicant has requested a variance from the maximum total impervious coverage requirement set forth in Section 143-49.A(2) of the Lower Providence Township Zoning Ordinance, in connection with the proposed construction of a shed on the Property.

**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 (*italics supplied*). 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.Cmwlt. 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 Legal Standard**

There are unique circumstances and conditions regarding this lot due to the size of the lot, the placement of the existing dwelling, driveway, and patio which create a hardship regarding the

need for additional permissible impervious coverage on the Property. Specifically, the lot is narrow and shallow. There is no possible way for the Applicant to add a shed to the property as the impervious coverage was nearly at the maximum allowable under the Ordinance at the time Applicant purchased the property.

The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. Applicant is unable to place a shed on the Property without the requested relief. The shed is necessary for Applicant to enjoy the full use of the Property and accommodate the family's current circumstances.

Applicant did not create the unnecessary hardship. The requested variance represents the minimum variance that will afford relief and represents the least modification possible of the applicable provisions of the zoning ordinance. Further, the proposed addition, a shed, is consistent with the essential character of the neighborhood. Finally, the requested relief is a minimal deviation from the permitted amount of impervious coverage. Therefore, the Board finds and concludes that the Applicant's requested relief should be GRANTED.

#### **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 due to the unique physical circumstances and characteristics of the Property and not self-imposed.
4. The requested relief is necessary to enable the Applicant 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 Michael Herman for a Variance from §143-49.A(2) of the Lower Providence Township Zoning Ordinance to permit impervious surface coverage of 35.96% of lot area where a maximum of 35% is permitted is GRANTED.

Dated: August 4, 2021

## **ORDER**

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

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

\_\_\_\_s/George Ozorowski

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George Ozorowski

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Joseph Pucci

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*Kathie A Eskie*

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Kathie Eskie

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Patricia Alzamora

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*Gail Hager*

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Gail Hager

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*Christopher Gerdes*

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Christopher Gerdes, Alternate

\_\_\_\_s/Randy Klein

\_\_\_\_\_  
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.