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September 3, 2021

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7020 2450 0001 6269 2349**

Mr. Jeff Stong
1500 Pawlings Road
Phoenixville PA 19460

RE: Zoning Application No. Z-21-13

Dear Mr. Stong:

In accordance with the initial application filed on June 4, 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-21-13	:	HEARING DATE:
		:	June 24, 2021 and July 22, 2021
		:	
APPLICATION OF:		:	
Jeffrey Stong		:	
1500 Pawlings Road		:	
Phoenixville, PA 19460		:	
		:	
PROPERTY:		:	
1500 Pawlings Road		:	
Lower Providence Township		:	
Phoenixville, PA 19460		:	
Parcel No. 43-00-10690-00-4		:	

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

On June 4, 2021, applicant Jeffrey Stong (“Applicant”) owner of 1500 Pawlings Road Phoenixville, Pennsylvania filed an application requesting a variance from the Lower Providence Township Zoning Ordinance (the “Ordinance”) §143-37.A(2) to permit construction of an accessory structure with a side-yard setback of fifteen feet (15’) where a minimum of twenty-five feet (25’) 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 June 24, 2021. Following the presentation of facts, the hearing was continued to July 22, 2021, at the Lower Providence Township Building. Present at the hearing were: Joseph Pucci, Chairman and members Kathie Eskie, Gail Hager, Chris Gerdes, and Randy Klein. Also present were Mike Mrozinski, the Community Development Director, Paula Meszaros, the stenographer and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Jeffrey Stong, owner of a home located at 1500 Pawlings Rd. Phoenixville, Pennsylvania.
2. The Applicant was not represented by counsel.
3. Applicant testified in support of the Application.
4. The subject property, 1500 Pawlings Road, Phoenixville, Lower Providence Township, Pennsylvania is comprised of a 15,700 square foot lot with tax parcel number 43-00-10690-00-4 with a single-family home (hereinafter the “Property”).
5. The applicable zoning district is the R-2 residential district which permits single-family detached dwellings.
6. Applicant purchased the property on May 8, 2001.
7. The Property is served by public sewer and private well.
8. Applicant proposes to construct a garage on his property.
9. For lots served by either public water or public sewer in the R-2 zoning district the Ordinance requires a side yard setback of twenty-five feet (25’).
10. Applicant wishes to install an accessory structure with a side-yard setback of fifteen feet (15’).
11. The garage dimensions would be forty feet (40’) by twenty-four feet (24’) with a maximum height of eighteen feet (18’).
12. Applicant wishes to use the garage to have a more secure location to store his vehicles.
13. There is no pragmatic location on the property to construct the proposed structure

without a variance.

14. The neighborhood is replete with single family homes that have similar accessory structures.

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

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

17. There are no outstanding state or federal violations cited on this property at the time of the Application.

18. There have been no previous zoning appeals filed in connection with the Property.

19. The proposed use will not emit smoke, dust, odor or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants inconsistent with those customarily associated with a garage associated with a residence.

20. The requested zoning relief will not alter the essential character of the neighborhood.

21. The lot is long and narrow.

22. There is an existing stone driveway that will lead to the garage.

23. Placing the garage in a location that would comply with the zoning requirements would make it difficult to access the garage with his vehicles from the driveway.

24. Moving the garage to the center of the yard would take up a large portion of the back yard rendering it less usable.

25. Neither of Applicant's neighbors have concerns regarding the requested relief.

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

Applicant Exhibits:

A-1 Application;

- A - 2 Drawing of proposed use;
- A – 3 Letter of approval from neighbor;
- A – 4 Letter of approval from neighbor;
- A – 5 Rendering of the proposed garage;.
- A – 6 Draft drawing of the proposed garage.

Board Exhibits:

- 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-5 Matrix of Addresses where notice was sent;
- B-6 Certificate of Notification;

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 fifteen feet (15’) where a minimum of twenty-five feet (25’) is required.

II. Variance Legal Standard

A. Dimensional v. Use Variance.

There are two 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. Cmwlt. 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. Cmwlt. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlt. 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 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 fifteen feet (15') where a minimum of twenty-five feet (25') is required.

There are unique circumstances regarding this lot that cause an unnecessary hardship and prohibit Applicant from the full reasonable use of his property. Specifically, the property is narrow in width. Due to this, and the location of the house, the construction of a garage can only take place in the proposed location. This location is additionally pragmatic considering it will be at the end of the existing stone driveway. This will allow for easier access to the garage. Applicant did not create this hardship.

Without the variance, Applicant would not be able to reasonably use the property. Without the variance, Applicant would be required to construct the proposed garage in the middle of the back yard. This would take up most of the usable space in the backyard causing the property to be less desirable, and the use of the garage more difficult.

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 garage to replace a makeshift storage area on the property.

The proposed variance of the setback requirement is minimal varying only by ten feet (10') from the setback requirement. 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 Jeffrey Stong docket #Z-21-13 for a Variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit the construction of a garage with a side yard setback of 15 feet where a minimum of 25 feet is required in the R-2 Residential District is: GRANTED with the following conditions:

- 1) Construction placement shall be as per the plans introduced into evidence in this case.
- 2) There will be no residential occupancy.
- 3) There will be no commercial use.
- 4) The existing storage area described in the hearing shall be removed.

Dated: August 30, 2021

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

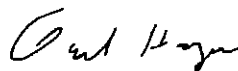
George Ozorowski



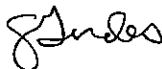
Joseph Pucci

Kathie Eskie

Patricia Alzamora



Gail Hager



Christopher Gerdes, Alternate

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.