

**MILLER TURETSKY RULE & McLENNAN**  
*A Professional Corporation*

MARK D. TURETSKY  
JOHN A. RULE  
KEITH B. McLENNAN\*  
JOSHUA H. CAMSON

ATTORNEYS AT LAW  
3770 RIDGE PIKE  
COLLEGEVILLE, PENNSYLVANIA 19426  
(610) 489-3300 Office  
(610) 489-1157 Facsimile  
[www.millerturetsky.com](http://www.millerturetsky.com)

JAMES H. FREEMAN  
*Of Counsel*

JILL K. ANDERSON, J.D.

\*ALSO MEMBER OF NEW JERSEY BAR

September 3, 2021

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7020 2450 0001 6269 2356**

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

**Re: LinMike, LLC Application  
Application No. Z-21-15**

Dear Joe:

In accordance with the initial application filed on June 29, 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  
John and Joan Munro  
Dennis Lepine

Patricia Alzamora  
Christopher Gerdes  
Randy Klein  
Michael Mrozinski  
John Lenigan  
Pat McKernan

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO.	Z-21-15	:	HEARING DATE:	July 22, 2021
		:		
		:		
APPLICATION OF:		:		
LinMike, LLC		:		
2965 Germantown Pike		:		
Eagleville, PA 19403		:		
		:		
PROPERTY:		:		
Seventh Street		:		
Lower Providence Township		:		
		:		
Parcel Nos.	43-00-13021-00-4	:		
	43-00-13024-00-1	:		
	43-00-13027-00-7	:		

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

On June 29, 2021, applicant LinMike, LLC (“Applicant”) equitable owner of three lots located in Lower Providence Township with Parcel ID Numbers of 43-00-13021-00-4, 43-00-13024-00-1, and 43-00-13027-00-7 filed an application requesting a variance from the Lower Providence Township Zoning Ordinance (the “Ordinance”) §43-37.A(2) as follows: (1) (minimum lot size) to permit construction of a single family home on a lot area of 20,000 square feet where a minimum of 25,000 square feet is required; (2) (front yard setback) to permit construction of a single family home with a front yard setback of twenty-five feet (25’) where fifty feet (50’) is required; and (3) (rear yard setback) to permit construction of a single family home with a rear yard setback of thirty-four feet (34’) where sixty feet (60’) 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 July 22, 2021, at the Lower Providence Township Building. Present at the hearing were: Kathie Eskie, Joseph Pucci, Gail Hager, Chris Gerdes, and Randy Klein. Also present were Mike Mrozinski, the Community

Development Director and Keith B. McLennan, Esquire, the Solicitor.

### **FINDINGS OF FACT**

1. The Applicant is LinMike, LLC equitable owner of the lots located in Lower Providence Township with Parcel ID Numbers of 43-00-13021-00-4, 43-00-13024-00-1, and 43-00-13027-00-7 (the Property).
2. The Applicant was represented by M. Joseph Clement, Esq.
3. Nicholas Feola testified in support of the Application.
4. Dennis Lepine gave a statement regrading his concerns for the development of the property. Additionally, he read into the record a Statement from Mr. and Mrs. Monroe regrading their concerns for the development of the property. Both indicated the preference for a single-family home instead of two single family homes to be constructed on the Property.
5. Pat McKernan gave a statement regarding the development of the Property.
6. John Lanigan gave a statement regarding his concerns for the development of the Property.
7. The Property consists of three vacant lots which amount to approximately 20,000 square feet.
8. The lots have frontage on Seventh Street in Lower Providence Township, Montgomery County.
9. The Property is a collection of “movie lots” that are in single and separate ownership.
10. Collectively, the Property is approximately 200 feet wide and 100 feet deep.

11. The Property is currently vacant and located in the R-2 zoning district.
12. The Property will be served by public sewer.
13. Applicant intends to connect the home to public water, however, in the event public water is not available, the Property will be served by a private well.
14. It would not be financially feasible for Applicant to connect to the existing public water line. Therefore, the Property being connected to public water is dependent on an extension of the water main by the utility provider. Applicant can make that request; however, it will be dependent on the decision of the water company.
15. The surrounding neighborhood is primarily single-family residential homes.
16. Many of the homes are on lots that are smaller than the Property.
17. Nearly all the home sin the surrounding neighborhood do not comply with applicable R-2 Lot area or setback requirements.
18. Because the Property is comprised of two preexisting nonconforming lots, Applicant may seek to construct two home son the Property.
19. Applicant is requesting relief to construct only a single-family home on the Property.
20. The proposed single-family residence will be an approximately 3,000 square foot home.
21. The Ordinance requires lots not served by public water and sewer to have a minimum size of 30,000 square feet, a minimum front yard setback of fifty feet (50'), and a minimum rear yard setback of sixty feet (60').
22. The Property is approximately one hundred feet (100') deep.
23. The applicable zoning district is the R-2 residential district which permits single-

family detached dwellings.

24. There are unique characteristics of the Property, including its wide and shallow configuration, as well as other physical conditions particular to the property that make reasonable use and construction of a single family home impossible without zoning relief.

25. Because of the physical circumstances or conditions, there is no possibility that the Property can be developed in strict conformity with the provisions of the Code.

26. There is an unnecessary hardship on the Applicant which was not caused by the Applicant.

27. Applicant will ensure that storm water is managed properly.

28. The proposed use will not alter the essential character of the neighborhood or zoning district.

29. There will be no impact to existing traffic patterns and volumes as a result of the proposed structure.

30. There will be no parking spaces or unloading areas as a result of the proposed structure.

31. The surrounding buildings and abutting properties are residential.

32. There will be no adverse impact on the development of adjacent properties.

33. The proposed relief would not be detrimental to the public welfare.

34. The proposed use will not emit smoke, dust, odor, or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants.

35. The proposal is compliant with all other zoning regulations.

36. There is no change of use requested.

37. The neighborhood is replete with non-conforming lots.

38. Many of the lots in the neighborhood are smaller than the minimum square footage required.

39. The addition of the home will be an improvement to the neighborhood.

40. It benefits the township to consolidate small lots for development.

41. There are no other lots that can be purchased to enlarge the area.

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

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

A – 1 Addendum to Application

A – 2 Board of Assessment Map

A – 3 Google Map Image

A – 4 Sketch Plan

B – 1 Letter

B – 2 Matrix

B – 3 Certificate of Notification

B – 4 Certificate of Posting

## **DISCUSSION**

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

The Applicant requests a variance from the Lower Providence Township Zoning Ordinance (the “Ordinance”) §43-37.A(2) as followed: (1) (minimum lot size) to permit construction of a single family home on a lot area of 20,000 square feet where a minimum of 25,000 square feet is required; (2) (front yard setback) to permit construction of a single family home with a front yard setback of twenty-five feet (25’) where fifty feet (50’) is required; and

(3) (rear yard setback) to permit construction of a single family home with a rear yard setback of thirty-four feet (34') where sixty feet (60') 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.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 the Legal Standard.

The Applicant requests a variance from the Lower Providence Township Zoning Ordinance (the “Ordinance”) §43-37.A(2) as followed: (1) (minimum lot size) to permit

construction of a single family home on a lot area of 20,000 square feet where a minimum of 25,000 square feet is required; (2) (front yard setback) to permit construction of a single family home with a front yard setback of twenty-five feet (25') where fifty feet (50') is required; and (3) (rear yard setback) to permit construction of a single family home with a rear yard setback of thirty-four feet (34') where sixty feet (60') is required.

Applicant is the equitable owner of the subject property, containing approximately 20,000 square feet and having frontage on Seventh Street in Lower Providence Township. The Property is comprised of three "movie lots". Collectively the property is approximately two hundred feet (200') wide and one hundred feet (100') deep.

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 in that the size, shape, and change to the Ordinance has made it practically impossible to construct a home on the Property in compliance with the Ordinance. The lot is uniquely formed due to the amalgamation of several lots to create a larger building lot. This creates a hardship as it prohibits the Applicant from the reasonable and permitted use of the property. The Applicant did not create the hardship. In fact, applicant has attempted to expand the size of the effective lot through purchasing and combining three tax parcels. There are no other adjacent lots that are for sale and could be used to enlarge the building area.

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.

The variance 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. The proposed construction of a single-family home and requested variance is consistent with the neighborhood and will not negatively impact neighboring properties nor will it change the character of the neighborhood. The neighborhood has single family homes on lots that do not conform with the Ordinance based on the lots being particularly small.

The variance will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue. Permitting the construction of the singled family home that is consistent with the neighborhood is the minimum alteration that can be made to the Ordinance to permit the Applicant the reasonable use of its Property. Further, the Township and community has a vested interest in the proposed combination and development of the otherwise minimally useful lots. Accordingly, the Board finds that Applicant suffers a hardship that is not self-imposed and the requested variance from Lower Providence Township Zoning Ordinance §143-37. A. (2).

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 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 LinMike, LLC docket #Z-21-15 for a Variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit the construction of a single family home with a lot area of 20,000 square feet where 25,000 square feet is required in the R-2 residential district is: GRANTED subject to the following condition:

1. Construction placement shall be as per the plans introduced into evidence in this case as Exhibit 4 for a single-family home.

The Application of LinMike, LLC docket #Z-21-15 for a Variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit the construction of a single family home with a front yard setback of twenty-five feet (25') feet where a minimum of fifty feet (50') is required in the R-2 Residential District is GRANTED subject to the following condition:

1. Construction placement shall be as per the plans introduced into evidence in this case as Exhibit 4 for a single-family home.

The Application of LinMike, LLC docket #Z-21-15 for a Variance from Section 143-

37.A.(2) of the Lower Providence Township Zoning Ordinance to permit the construction of a single family home with a rear yard setback of thirty-four feet (34') where a minimum of sixty feet (60') is required in the R-2 Residential District is GRANTED subject to the following condition:

1. Construction placement shall be as per the plans introduced into evidence in this case as Exhibit 4 for a single-family home.

Dated: September 3, 2021

## **ORDER**

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

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

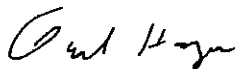
\_\_\_\_\_  
George Ozorowski



\_\_\_\_\_  
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.