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December 7, 2021

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7020 2450 0001 6269 2509**

Mr. Daniel Pileggi  
3865 Vincent Drive  
Collegeville PA 19426

**RE: Opinion, Decision and Order  
Lower Providence Township Zoning Hearing Board Application Z-21-22  
Hearing Date: October 28, 2021**

Dear Mr. Pileggi:

In accordance with the initial application filed on September 27, 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/  
Enclosure

Pc: George Ozorowski, Esq. Chairman  
Joseph Pucci 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-21-22	:	HEARING DATE:
		:	October 28, 2021
		:	
APPLICATION OF:		:	
Daniel Pileggi		:	
3865 Vincent Drive		:	
Collegeville, PA 19426		:	
		:	
PROPERTY:		:	
3865 Vincent Drive		:	
Collegeville, PA 19426		:	
Lower Providence Township		:	
Parcel No. 43-00-15518-40-5		:	Request for Variance

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

A public hearing on the above Application having been held on October 28, 2021, before the Zoning Hearing Board of Lower Providence Township (the “Zoning Hearing Board” or “Board”), in the Township Administration Building, 100 Parklane Drive, Eagleville, PA, (the “hearing”) pursuant to Notice as required by the Lower Providence Township Zoning Ordinance (the “Ordinance”) and the Pennsylvania Municipalities Planning Code (the “MPC”), concerning the above captioned premises (the “Property” or “Subject Property”), and having considered the Application and the testimony, exhibits, and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

#### **Procedural Matters**

##### **1. Application before Zoning Hearing Board**

On September 27, 2021, applicant Daniel Pileggi (“Applicant”) owner of 3865 Vincent Drive, Collegeville, PA in Lower Providence Township, Pennsylvania filed an application seeking relief from Section 143-49.A(2) of the Ordinance relating to Applicant’s proposal to construct an

addition to the existing single-family home which would raise the building coverage on the Property to twenty-one percent (21%) where a maximum of twenty percent (20%) is permitted in the R-3 Residential Zoning District, together with any other relief deemed necessary or appropriate by the Board.

2. Notice and Hearing

The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on October 28, 2021, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the hearing on October 28, 2021, were: Joseph Pucci, Member, Kathie Eskie, Member, Gail Hager, Member, and Randy Klein, Alternate.

4. Appearances of Counsel

- a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.
- b. Applicant was not represented by counsel.

5. Appearance of Other Party

- a. No other party appeared regarding the Application.

6. Also Present

- a. Mike Mrozinski, the Community Development Director for Lower Providence Township.

7. Witnesses

- a. Daniel Pileggi testified in support of the Application.

8. Exhibits

- a. Applicant submitted the following exhibits at the hearing in support of the

Application:

A – 1: Application;

b. The Board submitted the following exhibits at the hearing:

B – 1 The Certificate of Posting.

B – 2 The Certificate of Notification.

B – 3 Letter Sent to Property Owners.

B – 4 Matrix of Addresses.

B – 5 Proof of Publication.

**FINDINGS OF FACT**

1. The Applicant is Daniel Pileggi (Applicant) owner of the lot located at 3865 Vincent Drive, Collegeville, PA 19426.

2. The Subject Property, is comprised of an 10,616 square foot parcel with tax parcel number 43-00-15518-40-5 which currently has a single-family home with no additional structures.

3. Applicant acquired the Property on April 22, 2016.

4. The applicable zoning district is the R-3 Residential Zoning District.

5. The Property is currently serviced by public water and public sewer.

6. The Ordinance § 143-49.A(2) addresses the dimensional requirements in the R-3 Residential Zoning District and states that properties located in that district shall have a maximum building coverage (percentage of lot area) of twenty percent (20%).

7. Applicant desires to construct an addition to the existing home that would raise the building coverage on the Subject Property to twenty-one percent (21%).

8. Therefore, the Proposed use would exceed the permitted coverage by one percent (1%).

9. The addition will include a extend the existing family room and add a mud room and laundry room.

10. The addition will be one level.

11. The roof of the family room extension will come to a peak below the windows on the second floor.

12. The proposed construction is within the building envelope as permitted under the Ordinance.

13. The Property is located in the Evansburg Crossing development.

14. The lots in the Evansburg Crossing development are relatively small.

15. The neighborhood is fairly densely developed.

16. Standard improvements of homes in the neighborhood have required zoning relief similar to that which Applicant seeks.

17. There was no adverse comment with regard to the Application.

18. There are many similar additions in the neighborhood.

19. The proposed use is consistent with other properties in the neighborhood.

20. There are no outstanding state or federal violations cited on the Property.

21. The proposed use will not impact existing traffic patterns or volumes.

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

23. The proposed use will not alter the essential character of the neighborhood or district in which it is located.

24. The proposed use will not impair the appropriate use or development of adjacent properties.

25. The proposed use will not be detrimental to the public welfare.

## **DISCUSSION**

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

Applicant is seeking relief from Section 143-49.A(2) of the Ordinance relating to Applicant's proposal to construct an addition to the existing single-family home which would raise the building coverage on the Property to twenty-one percent (21%) where a maximum of twenty percent (20%) is permitted in the R-3 Residential Zoning District, together with any other relief deemed necessary or appropriate by the Board.

### **II. Ordinance Subsections in Question**

The Ordinance § 143-49.A(2) addresses the dimensional requirements in the R-3 Residential Zoning District and states that properties located in that district shall have a maximum building coverage (percentage of lot area) of twenty percent (20%).

### **III. 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 Applicant 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 Applicant’ 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.

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

Applicant is seeking relief from Section 143-49.A(2) of the Ordinance relating to Applicant's proposal to construct an addition to the existing single family home which would raise the building coverage on the Property to twenty-one percent (21%) where a maximum of twenty percent (20%) is permitted in the R-3 Residential Zoning District, together with any other relief deemed necessary or appropriate by the Board. The Board finds and concludes that the Applicant's requested relief should be granted.

The relief sought in this matter is a *de minimis* increase in the allowable building coverage by one percent. The Property currently consists of an undersized lot, which is common for this particular neighborhood. Due to the undersized nature of the lot, Applicant is unable to fully develop the property in order to have reasonable use thereof. This constitutes unique circumstances or conditions based upon the small lot size. The inability to reasonably develop the property due to the lot size creates a hardship on the Applicant which the Applicant did not create. Further, this Board has granted similar relief under similar circumstances in the past.

If the Board failed to provide relief to the Applicant, Applicant would be unable to develop the property in a reasonable way. The addition that Applicant seeks to build is consistent with the character of the neighborhood. There are many similar additions, and in fact, the contractor Applicant has engaged has constructed a similar addition on a neighboring property. Finally, the

Variance is the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

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 4-0 vote is as follows:

The Application of Daniel Pileggi, docket #Z-21-22 for a Variance from Section 143-49.A(2) of the Lower Providence Township Zoning Ordinance to permit building coverage of twenty-one

percent (21%) where a maximum coverage of twenty percent (20%) is permitted in the R-3 Residential District is GRANTED.

Dated: November 20, 2021

**ORDER**

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

**LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD**

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George Ozorowski

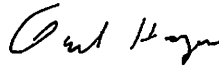


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Joseph Pucci



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Kathie Eskie

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Patricia Alzamora



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Gail Hager

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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.