ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-21-24	:	**HEARING DATE: November 23, 2021**
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	:	
APPLICATION OF:	:	
Mikelen, LLC	:	
	:	
PROPERTY:	:	
Fourth Street between	:	
2977 Fourth Street & Hillside Avenue	:	
Tax Map Block 22, Unit 33	:	
Parcel No. 43-00-05020-00-4	:	

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

The applicant, Mikelen, LLC (hereinafter, collectively, "Applicant") filed an application on October 22, 2021 requesting variances in connection with the property known as Block 22, Unit 33, on Fourth Street between the house at 2977 Fourth Street and Hillside Avenue, in Lower Providence Township, Montgomery County, Pennsylvania, being designated as Parcel No. 43-00-05020-00-4 (hereinafter, "Property"). Applicant seeks variances from §143-37 of the Lower Providence Township Zoning Ordinance, as amended, (hereinafter "Ordinance") to allow the construction of a single family detached dwelling on an existing non-conforming vacant lot. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on November 23, 2021 at the Lower Providence Township Building. The following members of the Board were present: Kathie A. Eskie, acting-Chairwoman, Patricia Alzamora, Member Joseph Pucci, Member, and Christopher Gerdes, Alternate Member. Also present was Eric C. Frey, Esquire, Acting Solicitor.

FINDINGS OF FACT

1. The Applicant is the equitable owner of the Property, having the same under Agreement of Sale at the time of Application and Hearing.

2. The Property is a vacant lot located on Fourth Street between the house at 2977 Fourth Street and Hillside Avenue, in Lower Providence Township, Montgomery County, Pennsylvania, being designated as Parcel No. 43-00-05020-00-4.

3. The Property is located in an R-2 Residential District.

4. The Applicant is represented by Michael J. Clement, Esquire, of Wisler Pearlstine, LLP, 460 Norristown Road, Blue Bell, Pennsylvania, 19422. Attorney Clement is also a principal of the Applicant.

5. The following neighbors entered their appearance as protestants to the Application;

   A. Brian Heiser, 2976 Fifth Street, Eagleville, PA 19403; and
   B. Taylor Hallowell, 2952 Second Street, Eagleville, PA 19403.

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

   B-1 Application;
   B-2 Legal Notice;
   B-3 Proof of Publication;
   B-4 Certificate of Notification;
   B-5 Certificate of Posting;
   B-6 Zoning Hearing Board Decision in Application Z-19-19 dated September 26, 2019.

7. The present use of the Property is currently vacant ground.

8. The Property is a rectangular lot measuring approximately 40 feet wide by 100 feet deep.

9. Applicant also claims ownership to the center line of Fourth Street which is an improved paper street.

10. In a prior decision of the Board on Application Z-19-19 ("Prior Decision"), the Board denied the development of the Property for a 14 feet wide by 66 feet deep manufactured home. That Prior Decision was appealed by the owner of the property and overturned by the Court of Common Pleas of Montgomery County ("Court"). Pursuant to the Order of the Court ("Court Order"), the Property may, therefore, be developed for a 14 feet wide by 66 feet deep manufactured home without conditions.

11. Applicant proposes to construct a 24 feet wide by 50 feet deep stick built single family semi-custom home.

12. The proposed home will have a basement, garage, 3 bedrooms and 2 ½ baths as shown in Exhibit "B-1." It will also have a paved driveway which will be 10 feet wide by 20 feet deep.

13. Public sewer and public water will be supplied to the Property.

14. The proposed setbacks are as follows:

    a. Front yard – 20 feet

    b. Rear Yard – 30 feet

    c. Side yards – 8 feet each

15. Applicant will design and install stormwater controls as required by the Township.

16. Residents in attendance at the Hearing all preferred the Applicant's proposed stick built semi-custom home over the modular home permitted by the Court's Order.

II. Facts Applied to the Legal Standard – Variance Relief.

The Applicant filed an application requesting Variances from §143-37 of the Ordinance to permit the construction of a single-family detached dwelling on a pre-existing non-conforming lot.

The applicable sections of the ordinance state:

§ 143-37 Area, setback, bulk, height and parking requirements.

A. Site area or building lot area.

[Amended 9-21-2006 by Ord. No. 556]

(1) The maximum percentage of building coverage permitted shall be 35% of the net site area in any new land developments of more than one building. In addition, the maximum percentage of impervious material coverage shall be 30% of the net site area or building lot area in any new land development, whichever is applicable.

(2) The minimum building lot size, width and area requirements shall be determined by availability of public water and sanitary sewer service, as follows:

[Amended 10-20-2011 by Ord. No. 602]

Requirement	No Public Service	Either Water or Sanitary Sewer Service Only	Both Water & Sanitary Sewer Service
Lot area, minimum	40,000 square feet	30,000 square feet	25,000 square feet
Lot width at building line	175 feet	150 feet	100 feet
Principal and accessory buildings over 250 square feet:			
Front yard	50 feet	50 feet	50 feet
Side yard	30 feet	25 feet	20 feet
Rear yard	60 feet	60 feet	60 feet
Maximum total building coverage	20%	20%	20%
Maximum total impervious coverage	35%	35%	35%

B. All buildings/structures shall be located and constructed so as not to exceed a maximum height of 35 feet from the finished grade level to the highest point of the building/structure, except as herein otherwise provided, including the provisions of § **143-19B** related to accessory building/structures.

[Amended 10-20-2011 by Ord. No. 602]

C. Parking. A minimum of two off-street parking spaces shall be required for each dwelling unit.

To establish that an unnecessary hardship exists warranting a variance from the Ordinance, the Applicant must prove that:

a. Physical characteristics of the property were such that the property could not be used for any permitted purpose; or

b. The permitted purpose could only be achieved at prohibitive expense; or

c. Characteristics of the property were such that it would have no value or only distress value for any use approved by the zoning ordinance.

Solebury Twp. v. Solebury Twp. Zoning Hearing Bd., 914 A.2d 972 (Pa.Cmwlth. 2007).

In the instant case, the Applicant seeks a Variance due to the pre-existing non-conformity of the lot. The Board finds that the record (including the Order of the Court) establishes that the Property was rendered undersized and too narrow by the subsequently enacted Ordinance. Pennsylvania Courts have held that where a subsequently enacted zoning ordinance causes a property to be undersized or too narrow, the undersized nature and narrowness of the property are unique physical circumstances peculiar to that property giving rise to an unnecessary hardship. Searles v. Zoning Hearing Board, 545 A.2d 476, 478–79 (Pa.Cmwlth.1987); Jones v. Zoning Board of North Catasauqua, 455 A.2d 754, 755–56 (Pa.Cmwlth.1983); Township of Salisbury v. Rummel, 406 A.2d 808, 809 (Pa.Cmwlth.1979). Accordingly, the undersized nature and narrowness of the Property are unique physical circumstances peculiar to the Property giving rise to an unnecessary hardship and the Applicants meet the first prong of the five-part variance test.

Moreover, The Board finds that the Applicant has satisfied the second prong of the variance test. The Ordinance requires a minimum lot area of 25,000 square feet and a minimum lot width of 100 feet (Ordinance § 143-37.A). The Property, however, only has an area of 4,000 square feet and is only 40 feet wide. The Ordinance also requires a front yard setback of 50 feet, a rear yard setback of 60 feet, and side yard setbacks of 20 feet each. Thus, if the Ordinance were strictly adhered to, the Applicants would be able to build a home that is -10 feet wide and -10 feet deep. Therefore, it is obvious that the Applicant cannot strictly comply with the requirements of the Ordinance and that variances are necessary to allow for the use of the Property. Further, because of these hardships the Property cannot reasonably be utilized for a permitted use. The proposed use of a single-family residence is a reasonable use.

The Board also finds that the Applicant has satisfied the third prong of the variance test. Because the Property was caused to be undersized and too narrow by the subsequently enacted Ordinance, the hardship was not self-inflicted. See Rummel, 406 A.2d at 809 (concluding that hardship caused to a property that was rendered undersized and too narrow by a subsequently enacted zoning ordinance was not self-inflicted). The Applicant has, therefore, satisfied the first three prongs of the variance test.

With respect to the required access to a public street the Ordinance requires that "each and every lot shall abut a public street for at least 50 feet at the right-of-way lines." (Ordinance § 143-20). The Board finds that the Property is forty feet wide at the right of way line of Fourth Street. As such, Applicant cannot meet the requirements of Section 143-20 of the Ordinance and the Applicant, therefore, meets the fourth and fifth prongs of the Variance test.

With regard to the area and setback requirements, the Ordinance requires: (1) lot area of 25,000 square feet; (2) lot width of 50 feet; (3) front yard of 50 feet; (4) rear yard of 60 feet; and (5) side yards of 20 feet each. (Ordinance § 143-37.A). The Board finds that the Applicant did meet the fourth and fifth prong of the variance test for this variance request for a stick built home as proposed in Applicant's plans.

Applicant testified that the proposed home was designed to fit the neighborhood and to be the smallest marketable home possible. The Board finds that the single-family residential use is available in the area of the Property, the size of the home and the deviation from the required setbacks is consistent with the neighborhood. Accordingly, the construction of the proposed semi-custom stick-built home will not have detrimental impacts on the character of the neighborhood and the use and enjoyment of adjacent properties. This shows compliance with the fourth prong of the Variance test.

The Applicant satisfies the fifth prong - that the requested variance is the minimum variance to afford relief. The Applicant's proposed semi-custom stick-built home with one off street parking space and a garage with the setbacks as set forth in Exhibit "B-1" is the minimum relief necessary to afford a reasonable use of the Property. As the Applicant satisfies the fourth and fifth prongs of the variance test for the variance requested from the area and setback provisions of Section 143-37.A of the Ordinance, the requested variance should be approved.

In addition, to the above variance analysis, the Board is compelled to review the Order of the Court which allows the current property owner to construct a modular home on the subject property without conditions. The Board is, in essence, deciding to allow the currently permitted modular home or the semi-custom stick-built home proposed by Applicant. The Board agrees with the residents that appeared during the Hearing, that the Applicant's semi-custom home better meets

the fourth prong of the variance criteria as it will have less detrimental impacts on the neighborhood, adjacent properties and the public welfare.

CONCLUSIONS OF LAW

1. The Applicant, Mikelen, LLC, has standing to appear before the Board regarding the requested relief.

2. The Application for a variance from the area and setback requirements of Ordinance Section 143-37 to permit a reduced lot area and setback requirement for the development of a single-family stick-built semi-custom home on the Property is approved subject to the conditions set forth in the Order below.

ORDER

AND NOW, this 23rd day of November, 2021, the application of Mikelen, LLC is hereby **GRANTED** subject to conditions. The Board **GRANTS** variances from Sections 143-37.A(2) of The Lower Providence Township Zoning Ordinance, as amended, to permit the proposed 24 feet x 50 feet custom built single family home, as presented in the plans and testimony during the hearing with a front yard setback of 20 feet, a rear yard setback of 30 feet and side yard setbacks of 8 feet each.

The relief is granted in accordance with the application and plans submitted and subject to the following conditions:

1. The property shall be served with both public sewer and public water;

2. The Applicant shall prepare a stormwater plan which shall be submitted to the Township and approved by the Township Engineer; and

3. The Applicant shall mark the boundary of the subject property with at least 8 concrete monuments prior to use and occupancy of the single-family home.

ORDER

The foregoing Findings of Fact, Discussion and Decision are hereby approved and Ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

Dated: 11-23-21

BY: _____
George J. Ozorowski, Chairman

_____
Joseph Pucci

_____
Kathie A. 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 permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.