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May 6, 2022

VIA CERTIFIED MAIL RRR
NO: 7020 2450 0001 6265 1780

Ari D. Linden, Esquire
501 Route 168
Blackwood, NJ 08012

VIA CERTIFIED MAIL RRR
NO: 7020 2450 0001 6265 1797

Robert Greenstreet, Jr.
Vision Solar LLC
511 Route 158
Blackwood, NJ 08012

**RE: Vision Solar LLC
Lower Providence Township Zoning Hearing Board Application Z-22-04**

Dear Messers. Linden and Greenstreet:

In accordance with the Zoning application filed on February 3, 2022 by Vision Solar LLC, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board. Please note that if you have any objections to the Order, you have thirty (30) days from its date to file an appeal with the Court of Common Pleas in Norristown.

Yours very truly,



Keith B. McLennan

KBM/

Pc: George Ozorowski, Esq. Chairman
Joseph Pucci Vice Chairman
Kathie A. Eskie
Gail Hager

Christopher Gerdes
Randy Klein
Terrance Barnes
Michael Mrozinski
Tina Blain

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-22-04	: HEARING DATE:	March 24, 2022
		:	
		:	
APPLICATION OF:		:	
	Vision Solar, LLC	:	
	511 Route 168	:	
	Blackwood, NJ 08012	:	
		:	
PROPERTY:		:	
	112 North Midland Ave.	:	
	Eagleville, PA 19403	:	
	Lower Providence Township	:	
	Parcel No. 43-00-08563-00-7	:	

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

A public hearing on the application (“Application”) concerning the above captioned premises (the “Property” or “Subject Property”) was held on March 24, 2022, before the Zoning Hearing Board of Lower Providence Township (the “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”). After consideration of 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 February 3, 2022, applicant Vision Solar, LLC (“Applicant”) of 511 Route 168 Blackwood, NJ filed an application seeking a variance from Section 143-6.2BB of the Ordinance to allow an 11”, 9”, and 2’11” solar panel clearance along the edges of the Subject Property’s roof where a minimum of 3 feet is required in the R-2 Residential District.

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 March 24, 2022, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the hearing on March 24, 2022, were: George J. Ozorowski, Chair, Joseph Pucci, Vice-chair, Kathie Eskie, Member, Chris Gerdes, Member, Gail Hager, Member, Randy Klein, Alternate and Terrance Barnes, Alternate.

4. Appearances of Counsel

- a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.
- b. Applicant was not represented by legal 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.
- b. Debbie Panetta, the property owner, was also present at the hearing and testified regarding the installation of solar panels, their capacity and the reason for the variance request.
- c. Monica Panetta, the property owner’s daughter-in-law spoke at the hearing but was unsworn.
- d. Michael Rohlfing Lower Providence Township Fire Marshall testified via the Zoom virtual meeting platform regarding the reason for the setback requirements of the Ordinance and against the Application.

7. Witnesses

a. Robert L. Greenstreet, Jr. testified in support of the Application as follows:

i. The Subject Property currently uses approximately 34,800 KW of electricity over the course of a year.

ii. Without the requested relief, the solar array would be unable to fulfill the Property Owner's electrical needs.

iii. Vision Solar, LLC failed to follow the rules when installing the solar array.

iv. Electricity is available through public utilities.

b. Mike Mrozinski, Community Development Director testified as follows:

i. The Property Owner contracted with Vision Solar to have Solar Panels installed on the house.

ii. Vision Solar, LLC installed the panels on the house prior to obtaining any permitting for the installation.

iii. The Township notified Vision Solar that the panels did not meet the three-foot setback required under the Ordinance.

iv. The setback is required for the safety of firefighters.

c. Debbie Panetta testified as follows:

i. That she engaged with Vision Solar, LLC to install solar panels on her roof.

ii. That she attempted to cancel the contract with Vision Solar, LLC, however, they did not respond to the cancelation request.

iii. That her electricity bill increased substantially after Vision Solar, LLC, completed a portion of the work on her property.

d. Michael Rohlfing testified in opposition as follows:

- i. He is the Fire Marshal for Lower Providence Township.
- ii. The three-foot setback under the Ordinance is important for firefighter safety.
- iii. The three-foot setback is the bare minimum for such a setback.
- iv. There are other sections of the Ordinance that require an eight-foot setback.
- v. The set back is necessary to allow firefighters to stand, dismount ladders, and to straddle the roof to get to the solar panels and to fight a structural fire.
- vi. Any setback less than three feet would not be safe.

8. Exhibits

- a. The Board submitted the following exhibits at the hearing:

B – 1 Letter Sent to Property Owners.

B – 2 Matrix of Addresses.

B – 3 The Certificate of Posting.

B – 4 The Certificate of Notification.

B – 5 Proof of Publication.

- b. The Applicants submitted the following exhibits:

A – 1: The Application and attached exhibits.

FINDINGS OF FACT

- 1. The Applicant is Vision Solar, LLC of 511 Route 168, Blackwood, NJ 08012.
- 2. The Property Owner is Debbie Panetta of 112 North Midland Ave, Eagleville, PA 19403.
- 3. The Subject Property is comprised of a 14,925 square foot lot with tax parcel number 43-00-08563-00-7 which currently has a single-family home and is located in the R-2

Residential Zoning District.

4. The Property Owner purchased the Subject Property in 2002.
5. Section 143-6.2BB(1)(c)(3) of the Ordinance requires that solar equipment “be set back a minimum of three feet from the edge of any roof they are installed on.”
6. Applicant installed a solar panel system on the Subject Property without seeking the appropriate permits or complying with the relevant sections of the Ordinance.
7. The Property Owner was not aware that the Applicant installed the solar panels without a permit and in violation of the Ordinance setback requirements.
8. The solar panels as they are currently installed do not comply with the three-foot setback requirements of the Ordinance.
9. The three-foot setback required under the Ordinance is necessary for firefighter safety.
10. The three-foot setback is the bare minimum required to ensure the safety of any responding firefighters.
11. The set back is necessary to allow firefighters to stand, dismount ladders and to straddle the roof to get to the roof to fight any structural fire.
12. Any setback less than three feet would not be safe.
13. The Applicant failed to obtain a building permit before the installation of the solar panels on the Property Owner’s roof.
14. Applicant asserted that if it was forced to comply with the Ordinance setback requirements the Property Owner would only realize 19 kilowatt hours of electric power rather than the 25 kilowatt hours realized from the solar panel system as currently installed.
15. Property Owner was required to borrow the money needed for the installation of

the solar array at issue through the Applicant resulting in a loan to be paid off over 25 years.

16. Applicant pledged to correct the solar array to the satisfaction of the Ordinance and the Property Owner without increased cost to her.

17. Applicant was unable to articulate a cognizable hardship relating to the Proposed Use on the Subject Property.

18. The denial of the Application would not impose an unnecessary hardship on the Applicant.

19. If granted, the Proposed Use would create a public safety issue in that firefighters would not be able to safely fight a fire at the Subject Property.

20. The Proposed Use would create a risk to the neighborhood and adjacent homes in that a fire on the premises may not be successfully controlled due to the inability of the fire department to manage a structure fire.

DISCUSSION

I. Statement of the Case

Applicant seeks a variance from Section 143-6.2BB of the ordinance to allow an 11", 9", and 2'11" clearance along roof edges where a minimum of three feet is required at the Subject Property which is located in the R-2 Residential District.

II. Ordinance Subsections in Question

Section 143-6.2BB(1)(c)(3) of the Ordinance requires that solar equipment "be set back a minimum of three feet from the edge of any roof they are installed on."

III. 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. 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.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 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 seeks a variance from Section 143-6.2BB of the ordinance to allow an 11", 9", and 2'11" clearance along roof edges where a minimum of three feet is required at the Subject Property. The three-foot setback is required to ensure the safety of the firefighters that may be tasked with extinguishing a blaze on the Property. The setback is intended to provide space for the fire department to safely mount the roof and fight a fire. Without this setback, not only would a responding fire department be put into additional peril, but the neighboring properties may also suffer damage from an uncontrolled fire that would otherwise be managed.

Applicant argues that it will suffer an undue hardship if it is required to comply with the three-foot (3') setback requirement of the Ordinance it will be forced to remove a number of solar panels from the roof of the Property. In turn the kilowatt hour power generation will diminish

from 25 to 19 and the Property Owner will be deprived of the power she needs. Initially it is worth noting that the electrical needs of the Subject Property were provided by PECO which would continue to provide power to fulfill the Property Owner's needs. Further, it can hardly be said that the reduction in kilowatt hour production by the removal of certain solar panels installed without a building permit and in contempt for the Ordinance and the safety of Lower Providence Township firefighters is a hardship. What is more, even if there existed a trace, spark or scintilla of hardship there can be no doubt that it was self-inflicted. The Applicant admitted that it has installed solar panels in Pennsylvania and New Jersey for many years. The setback requirements of the Ordinance are no different from the International Fire Code ("IFC"), something that should have been well known to the Applicant. Even if Applicant was not aware of the setback requirements of the IFC, all the Applicant had to do at the outset of the project was apply for a building permit and it would have been educated on the subject straight away. Therefore, Applicant has failed to meet its burden to articulate an undue hardship.

Applicant not only acknowledged the reasons for the three-foot setback but his representative testified that the installers for his company failed to follow the rules. Such callous disregard resulted in an illegally installed solar array prompting the Applicant to now seek forgiveness in order to save the cost of reconfiguring the solar panel system for the Property Owner.

Finally, the risk to firefighters responding to a fire at the Subject Property and the threat to public safety the grant of the variance would cause screams out for a rejection of Applicant's cynical request.

The Board unanimously finds and concludes that the Applicant's request for a variance be Denied.

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will not impose an unnecessary hardship on the Applicant.
3. There is no hardship which is due to the unique physical circumstances and characteristics of the Property and if any such hardship exists it was self-imposed.
4. The requested relief is not necessary to enable the Applicant's reasonable use of the Property.
5. The requested relief would create a public safety risk.
6. The requested relief is not necessary and therefore does not represent the minimum that will afford relief and does not represent 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 Vision Solar, LLC for a Variance from Section §143-6.2. Accessory Use BB.1.(c)(3) of the Lower Providence Township Zoning Ordinance to Permit the installation of roof mounted solar panels on 112 N. Midland Avenue, Eagleville, PA with setbacks of 11", 9", and 2' 11" from the roof edge where a three-foot (3') setback is required is DENIED.

Dated: May 3, 2022

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

George Ozorowski

Joseph Pucci

Kathie Eskie

Gail Hager

Christopher Gerdes

Terrance Barnes, 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.

ORDER

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

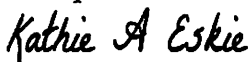
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



George Ozorowski

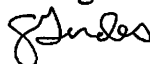


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