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June 9, 2022

VIA CERTIFIED MAIL
RRR# 7020 2450 0001 6265 1865

Mr. and Mrs. Jonathan Sovocool
35 Driftwood Drive
Audubon, PA 19403

RE: Lower Providence Township Zoning Hearing Board
Application of Jonathan and Julia Sovocool
Application No. Z-22-06

Dear Mr. and Mrs. Sovocool:

In accordance with your Zoning Application filed on March 23, 2022, 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/

Enclosure

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-22-06 | : | HEARING DATE: | April 28, 2022 |
| | | : | | |
| APPLICATION OF: | | : | | |
| | Jonathan and Julia Sovocool | : | | |
| | 35 Driftwood Drive | : | | |
| | Audubon, PA 19403 | : | | |
| PROPERTY: | | : | | |
| | 35 Driftwood Drive | : | | |
| | Lower Providence Township | : | | |
| | Parcel No. 43-00-03202-00-4 | : | | |

**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 April 28, 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 March 23, 2022, applicants Jonathan and Julia Sovocool (“Applicants”) owners of 35 Driftwood Drive, Audubon, Pennsylvania in Lower Providence Township filed an application seeking a variance from Section 143-37.A(2) of the Ordinance to allow for a rear yard setback of 50.2 feet where a minimum of 60 feet is required, to allow for a side yard setback of 17.5 feet

where a minimum of 20 feet is required, and to allow for a side yard setback of 18.6 feet were a minimum of 20 feet is required.

2. Notice and Hearing

The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on April 28, 2022, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

4. Present at the hearing on April 28, 2022, were: George J. Ozorowski, Chair, and members Kathie Eskie, Gail Hager, Chris Gerdes and Randy Klein.

5. Appearances of Counsel

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

6. Appearance of Other Party

- a. No other party appeared regarding the Application.

7. Also Present

- a. Mike Mrozinski, the Community Development Director for Lower Providence Township.
- b. Paula Meszaros, the Court Reporter.

8. Witnesses

- a. Jonathan and Julia Sovocool testified in support of the Application.

9. Exhibits

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

B – 1 The Certificate of Posting.

B – 2 Certificate of Notification.

B – 3 Letter Sent to Property Owners.

B – 4 Matrix of Addresses.

B – 5 Proof of Publication.

b. The Applicants submitted the following exhibits:

A – 1 The Application and attached exhibits.

A – 2 Plan document.

FINDINGS OF FACT

1. The Applicants are Jonathan and Julia Sovocool owners of the Subject Property located at 35 Driftwood Drive, Audubon, PA 19403.

2. The Subject Property is comprised of a 14,883 square foot lot with tax parcel number 43-00-03202-00-4 which currently has a single-family home, a screened in porch, and a storage shed.

3. Applicant acquired the Property in March of 2020.

4. The present use began in 1966.

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

6. The applicable zoning district is the R-2 Residential Zoning District requiring 25,000 square foot lots.

7. Section 143-37 of the Ordinance requires that a property in the R-2 Residential Zoning District that is serviced by both public water and sewer have a side yard setback which is a minimum of twenty feet (20').

8. Section 143-37 of the Ordinance requires that a property in the R-2 Residential Zoning District that is serviced by both public water and sewer have a rear yard setback which is

a minimum of sixty feet (60').

9. Applicant is proposing to construct an addition for an in-law suite.
10. The existing home was built under more lenient zoning standards that have since changed.
11. The current home on the property is a preexisting nonconforming use due to encroachment on the setbacks.
12. Applicants intend to line the addition up with the existing primary residence.
13. The proposed use will not intrude further into the side yard setback than the existing house.
14. Applicants intend to have family members move into the in-law suite.
15. The addition will be one story.
16. The addition will have siding and a roof that matches the current siding and roof.
17. Applicants intend to include a deck which will most likely include composite decking.
18. Applicants spoke to their neighbors on each side who were in favor of the proposed use.
19. The proposed use is consistent with the character of the neighborhood.
20. There will be no additional signs, traffic, or parking due to the proposed use.
21. There was no adverse comment regarding the Application.
22. There are no outstanding state or federal violations cited on the Property.
23. The proposed use will not impact existing traffic patterns or volumes.
24. The proposed use will not emit smoke, dust, odor or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants.

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

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

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

DISCUSSION

I. Statement of the Case

Applicants seek a variance from Section 143-37.A.(2) of the Ordinance to allow for a rear yard setback of 50.2 feet where a minimum of 60 feet is required, to allow for a side yard setback of 17.5 feet where a minimum of 20 feet is required, and to allow for a side yard setback of 18.6 feet where a minimum of 20 feet is required.

II. Ordinance Subsections in Question.

Section 143-37.A.(2) of the Ordinance requires that a property that is serviced by both public water and sewer have a side yard setback which is a minimum of twenty feet (20') and a rear yard setback of sixty feet (60').

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.

Applicants seek a variance from Section 143-37.A.(2) of the Ordinance to allow for a rear yard setback of 50.2 feet where a minimum of 60 feet is required, to allow for a side yard setback of 17.5 feet where a minimum of 20 feet is required, and to allow for a side yard setback of 18.6 feet where a minimum of 20 feet is required. There is an existing hardship relating to the Property in that the home on the Property was constructed prior to the standards in the current Ordinance. While the home was conforming at the time of construction, upon the change in the Zoning Ordinance, the home became non-conforming with encroachments into the required setbacks. Due to this, Applicants are unable to make reasonable use of their property in conformity with the Ordinance. Therefore, a hardship exists which the Applicants did not cause.

Applicants seek to construct the addition along the same line as the current house is constructed. Therefore, there will be no increase in the side-yard encroachment. Give the current non-conforming status of the property and the proposal to stay consistent with the boundaries of the currently existing building, the requested relief is the minimal variance that would afford relief.

The construction of the addition will not change the character of the neighborhood which

is replete with similarly constructed homes. Further, the Applicants intend to construct the addition with the same siding and roof as the current home. Therefore, there would be no impact on the neighborhood.

The Board finds and concludes that the Applicants' requested relief should be granted.

CONCLUSIONS OF LAW

1. The Applicants have 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 Lower Providence Township Zoning Hearing Board, by a 5-0 vote granted the following variances from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance requested in the Application of **Jonathan & Julia Sovocool** docket #Z-22-06 to permit the construction of an addition to their Property in the R-2 Residential District with:

1. A rear yard setback of 50.2 feet were a minimum of 60 feet is required;


2. A side yard setback of 17.5 feet were a minimum of 20 feet is required;
3. A side yard setback of 18.6 feet were a minimum of 20 feet is required.

Dated: June 6, 2022

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

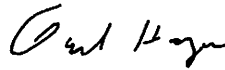


George Ozorowski

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.