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July 8, 2022

**VIA CERTIFIED MAIL R.R.R.  
NO: 7018 3090 0000 0752 8356**

Madelaine Saunders  
11 N. Grange Ave.  
Collegeville, PA 19426

**RE: Lower Providence Township Zoning Hearing Board Application Z-22-09**

Dear Ms. Saunders:

In accordance with your Zoning Application filed on April 29, 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-22-09	:	HEARING DATE:	May 26, 2022
		:		
		:		
APPLICATION OF:		:		
	Madelaine Saunders	:		
	11 N. Grange Avenue	:		
	Collegeville, PA 19426	:		
		:		
PROPERTY:		:		
	11 N. Grange Avenue	:		
	Lower Providence Township	:		
	Parcel No. 43-00-12061-00-1	:		

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

A public hearing on the above Application having been held on May 26, 2022, 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 April 29, 2022, applicant Madelaine Saunders (“Applicant”) owner of 11 N. Grange Avenue, Collegeville, Pennsylvania in Lower Providence Township filed an application seeking a variance from Section 143-33 of the Ordinance to allow for a rear yard setback of forty-six feet (46’) where a minimum of sixty feet (60’) is required in the R-1 Residential Zoning 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 May 26, 2022, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the hearing on May 26, 2022, were: George Ozorowski, Chair, Kathie Eskie, member, Chris Gerdes, Member, Gail Hager, Member, 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.

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. Madelaine Saunders testified in support of the Application.

8. 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 Applicant submitted the following exhibits:

A – 1: The Application and attached exhibits.

A - 2: Photographs of the Property

**FINDINGS OF FACT**

1. The Applicant is Madelaine Saunders (Applicant) owner of the Subject Property located at 11 N. Grange Ave. Collegeville, PA 19426.
2. The Subject Property is comprised of a 62,000 square foot lot with tax parcel number 43-00-12061-00-1 which currently has a single-family home and a storage shed.
3. Applicant acquired the Property in 2018.
4. The applicable zoning district is the R-1 Residential Zoning District.
5. The Property is currently serviced by public sewer and private well.
6. Section 143-33 of the Ordinance requires that a property in the R-1 Residential Zoning District have a rear yard setback which is a minimum of sixty feet (60’).
7. Applicant is proposing to construct an accessory structure, specifically a chicken coop, with a rear yard setback of forty-six feet (46’).
8. Applicant intends to maintain chickens to produce eggs for personal use.
9. Applicant does not intend to have a rooster on the property.
10. The size of the coop would be six feet by twelve feet.
11. Applicant spoke to her neighbors who were in favor of the proposed use.
12. There is no other practical location for the chicken coop on the property due to the fact that any alternative area inside the building envelope floods during heavy rain.
13. The grade of the property causes storm water to flow off North Grange Ave.

14. The lot is of a unique character because it is a historic lot and a corner lot.
15. Due to being a corner lot and historic lot, the property is configured in a manner that does not allow for normal use of the property within the constraints of the Ordinance.
16. The proposed use is consistent with the character of the neighborhood.
17. There will be no additional signs, traffic, or parking due to the proposed use.
18. There was no adverse comment regarding the Application.
19. There are no outstanding state or federal violations cited on the Property.
20. The proposed use will not impact existing traffic patterns or volumes.
21. The proposed use will not alter the essential character of the neighborhood or district in which it is located.
22. The proposed use will not impair the appropriate use or development of adjacent properties.
23. The proposed use will not be detrimental to the public welfare.

## **DISCUSSION**

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

Applicant seeks a variance from Section 143-33 of the Ordinance to allow for a rear yard setback of forty-six feet (46') where a minimum of sixty feet (60') is required in the R-1 Residential Zoning District to allow for construction of an accessory structure.

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

Section 143-33 of the Ordinance requires that a property in the R-1 Residential Zoning District have a rear yard setback which is a minimum of sixty feet (60').

### **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 143-33 of the Ordinance to allow for a rear yard setback of forty-six feet (46') where a minimum of sixty feet (60') is required in the R-1 Residential Zoning District to allow for construction of an accessory structure. Applicant intends to build a chicken coop on the property to benefit from the produced eggs for personal use. The property is of unique character due to it being a corner lot and a historic lot, which has led to the configuration of the property limiting the ability of the owner to develop it in a reasonable way. Further, the exceptional topographical and physical conditions relating to the grade of the property cause an irregularity in that the property is frequently inundated with excessive rainwater from North Grange Ave. Due to this, much of the building envelope on the property frequently floods



making it impossible to place an accessory structure within the building envelope. Therefore, there is a hardship that the Applicant did not create, and the property cannot be developed in strict conformity with the provisions of the Ordinance.

Further, the variance will not alter the essential character of the neighborhood which is predominately R-1 residential. The proposed coop will be constructed and pleasing to the eye. The adjacent property owners approve of the location of the chicken coop, and there was no adverse comment at the hearing. Finally, the requested relief is the minimum variance that will afford relief. The encroachment into the rear yard setback will still allow a 46-foot setback, and there are no other locations that would serve as a better alternative to the proposed location of the coop.

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 5-0 vote is as follows:

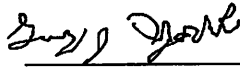
The Application of Madelaine Saunders docket #Z-22-09 for a Variance from Section 143-33.A. of the Lower Providence Township Zoning Ordinance to permit the placement of a chicken coop with a rear yard setback of 46 feet where a minimum rear yard setback of 60 feet is required in the R-1 Residential District is Granted.

Dated: July 7, 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.