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July 29, 2022

VIA CERTIFIED MAIL
RRR# 7020 2450 0001 6265 1711

Jeremy and Ann Houseman
3780 Drake Circle
Collegeville, PA 19426

RE: Lower Providence Township Zoning Hearing Board Application No Z-22-10

Dear Mr. and Mrs. Houseman:

In accordance with your Zoning Application filed on May 11, 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/

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

Christopher Gerdes
Randy Klein
Terrance Barnes
Michael Mrozinski

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-22-10	: HEARING DATE:	June 23, 2022
		:	
		:	
APPLICATION OF:		:	
	Jeremy and Ann Houseman	:	
	3780 Drake Circle	:	
	Collegeville, PA 19426	:	
		:	
PROPERTY:		:	
	3780 Drake Circle	:	
	Lower Providence Township	:	
	Parcel No. 43-00-07222-02-5	:	

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

A public hearing on the above Application having been held on June 23, 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 May 11, 2022, applicants Jeremy and Ann Houseman (“Applicants”) owners of 3780 Drake Circle, Collegeville, Pennsylvania in Lower Providence Township filed an application seeking a variance from Section 143-6.2B(2) of the Ordinance to allow for the construction of an accessory structure with a rear yard setback of 32 feet where a minimum of 60 feet is required in

the R-2 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 June 23, 2022, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the hearing on June 23, 2022, were: Joseph Pucci, Vice Chair, members Kathy Eskie, Christopher Gerdes, and Terrance Barnes.

4. Appearances of Counsel

- a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.
- b. Applicants were represented by M. Joseph Clement of 460 Norristown Road, Suite 110, Blue Bell, PA 19422.

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. Paula Meszaros, the Court Reporter.

7. Witnesses

- a. Ann Houseman testified in support of the Application.
- b. Jeremy Houseman 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 Applicants submitted the following exhibits:

A – 1: Tax map of the Subject Property.

A – 2: A plot of the location of the existing home, pool, and proposed pool house.

A – 3: A rendering of the proposed pool house.

A – 4: An architectural drawing of the proposed pool house.

A – 5: Aerial view of the property.

A – 6: Letter in support of the Application.

A – 7: Letter in support of the Application.

A – 8: Letter in support of the Application.

A – 9: Application and attachments.

FINDINGS OF FACT

1. The Applicants are Jeremy and Ann Houseman (Applicants) owners of the Subject Property located at 3780 Drake Circle, Collegeville, PA 19426.

2. The Subject Property is comprised of a 38,202 square foot lot with tax parcel number 43-00-07222-02-5 which currently has a single-family home, an inground pool, an aluminum fence, and a paver patio.

3. Applicants acquired the Property in December of 2020.

4. The applicable zoning district is the R-2 Residential Zoning District.
5. The Property is currently serviced by public water and public sewer.
6. Section 143-37 of the Ordinance requires that a property in the R-2 Residential Zoning District that is service by both public water and sewer have a rear yard setback which is a minimum of sixty feet (60').
7. Section 143-6.2B(2) states that "[e]xcept as otherwise specifically permitted in this chapter, all residential accessory buildings/structures shall meet all of the setback requirements applicable to the principal building on the same lot."
8. Applicants are proposing to construct a pool house (Proposed Use).
9. The Property is of a unique shape and character because it is a corner lot.
10. The lot is not a normal quadrilateral shape.
11. The lot is an odd shape due to its location on a cul-de-sac.
12. As a result of the odd shape, the house had to be constructed further back from the street than normal.
13. Due to the unusual configuration of the lot, the rear yard is long and narrow.
14. Further, the house is placed in such a way that there is currently only 60 feet between the edge of the house and the rear property line.
15. Therefore, there is no practical way for Applicant to construct an accessory structure in the rear yard without zoning relief.
16. The only location that the pool house could be constructed, is the proposed location.
17. The relief requested is the minimum necessary to provide relief.
18. Applicants wish to include the pool house to allow easier and less intrusive access to a bathroom for their family while using the pool.

19. The neighborhood is residential, and there are other properties with similar structures.
20. The Proposed Use is consistent with the character of the neighborhood.
21. There will be no additional signs, traffic, or parking due to the Proposed Use.
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.
28. There was no testimony in opposition to the Application.
29. One neighbor appeared at the hearing to state she was in support of the Application.
30. Applicants spoke with their neighbors, and they support the Application.

DISCUSSION

I. Statement of the Case

Applicants seek a variance from Section 143-6.2B(2) of the Ordinance to allow for the construction of an accessory structure with a rear yard setback of 32 feet where a minimum of 60 feet is required in the R-2 Residential Zoning District.

II. Ordinance Subsections in Question.

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

sixty feet (60').

Section 143-6.2B(2) states that “[e]xcept as otherwise specifically permitted in this chapter, all residential accessory buildings/structures shall meet all of the setback requirements applicable to the principal building on the same lot.”

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 143-6.2B(2) of the Ordinance to allow for the construction of an accessory structure with a rear yard setback of 32 feet where a minimum of 60

feet is required in the R-2 Residential Zoning District. Due to the unique circumstances and conditions of the lot which is largely related to the unusual size of the lot and the placement of the house, an unnecessary hardship exists. The lot is located on the end of a cul-de-sac, and due to the orientation of the property to the road, the house was constructed further back from the front yard than normal. Further, due to the orientation of the property to the road and the unusual shape of the parcel, the rear yard is long and narrow. This is more akin to what would normally be considered a side yard. As the property is currently situated, the rear yard is 60 feet long when measured from the house. Therefore, there is no way for Applicants to construct an accessory structure on their property without zoning relief. Due to this, there is an unnecessary hardship that the Applicants did not create.

Due to this hardship, Applicants are unable to develop their property in strict conformity with the Ordinance because the constructing of any accessory structure in the rear yard would encroach on the 60-foot setback requirement of the Ordinance. Applicants testified that there is no other practical location for the pool house, and that they are constructing it as close to their home as possible. This will have the minimum encroachment possible on the rear yard setback and therefore, the requested relief is the minimum variance necessary to afford relief.

Finally, the testimony showed that the construction of such an accessory structure would be consistent with the character of the neighborhood. Other properties have similar accessory structures. Further, the rendering of the proposed structure is consistent with the aesthetic of 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 decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

The Application of Ann and Jeremy Houseman docket #Z-22-10 for a Variance from Section 143.62B(2) of the Lower Providence Township Zoning Ordinance to permit the construction of an accessory structure with a rear yard setback of 32 feet where a minimum rear yard setback of 60 feet is required by Section 143-37A.(2) in the R-2 Residential District is Granted subject to the following conditions:

(1) Construction and placement shall be as per the plans introduced into evidence;

(2) Applicants shall comply with township engineer directives as to storm water management.

Dated: July 28 , 2022

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

George Ozorowski



Joseph Pucci

Kathie A Eskie

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.