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September 9, 2022

**VIA CERTIFIED MAIL**  
**RRR #: 7020 2450 0001 6265 1933**

Ian Godman  
600 S. Park Avenue  
Audubon, PA 19403

**RE: Ian Godman - Lower Providence Township Zoning Application No. Z-22-13**

Dear Mr. Godman:

In accordance with your Zoning Application filed on June 27, 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: Lower Providence Township Zoning Hearing Board Members

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO.	Z-22-13	: HEARING DATE:	July 28, 2022
		:	
APPLICATION OF:		:	
	Ian R. Godman	:	
	600 S. Park Avenue	:	
	Audubon, PA 19403	:	
PROPERTY:		:	
	600 S. Park Avenue	:	
	Audubon, PA 19403	:	
	43-00-10387-00-1	:	

**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 July 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, exhibit and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

**Procedural Matters**

1. Application before Zoning Hearing Board

On June 27, 2022, Ian R. Godman (“Applicant”) owner of 600 S. Park Avenue in Lower Providence Township filed an application seeking a variance from Section 143-6.2.B(1) to allow the placement of a new 12’ x 16’ shed on the existing shed pad/foundation in the front yard, 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 July 28, 2022, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the July 28, 2022, hearing were: George Ozorowski, Chair, Members, Kathy Eskie, Gail Hager, Christopher Gerdes and Randy Klein.

4. Appearances of Counsel

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

5. Appearance of Other Party

- a. No other party entered their appearance in the matter.

6. Also Present

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

7. Witnesses

- a. Ian Godman testified in support of the Application.

8. Exhibits

- a. The Board submitted the following exhibits at the hearing:
  - B – 1 Public Notice.
  - B – 2 The Certificate of Posting.
  - 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.

A – 2 Photo of the Property.

A – 3 Photo of the Property.

### **FINDINGS OF FACT**

1. The Applicant is Ian R. Godman, who along with his wife Jacqueline A. Godman are the owners of the Subject Property located at 600 S. Park Avenue, Lower Providence Township.

2. The Subject Property has a tax parcel number 43-00-10387-00-1 which currently has a home and shed.

3. The Property is located in the R-2 Residential zoning district.

4. Applicant acquired the property on January 2, 2019 from his parents Robert W. and Joanne Godman which included a single family detached residence with an old, dilapidated shed located in the front yard to the side of the driveway since 1998.

5. In 1998 a variance was granted by the Board to permit the construction of the original shed, however, that shed was constructed in a slightly different location than was originally planned and approved.

6. Applicant was not aware that the previous shed was installed in a location that differed from that which was approved by the Board in 1998.

7. Recently, Applicant removed the dilapidated shed and replaced it with a newer more appealing shed of the same dimensions and in the same location.

8. The current shed is used for personal storage but is located slightly in front of the house, but in the side yard area.

9. The adjoining property is owned by Shannondel and is wooded and unlikely to be developed.

10. To relocate the new shed elsewhere on the property would require excavation of the existing pad, restoration of the land there to grass or woods and the installation of a new pad further back on an unlevel section of ground and then the relocation of the shed.

11. The work required to move the shed back so that it would be aligned with the front of the Applicant's home would not only be cost prohibitive, it would be nominally beneficial since the previous shed was present there since 1998 and is not easily seen from the street.

12. Applicant considered a larger building but determined that this relief would be sufficient and is therefore the minimum relief necessary to overcome the hardship.

13. The proposed location for the shed on the side of the home that abuts undeveloped land.

14. The Applicant spoke to his neighbors who were in favor of the proposed use.

15. The proposed use will not have a detrimental impact on the community and will not alter the essential character of the neighborhood.

16. There is an unnecessary hardship in that Applicant is unable to construct a shed within a reasonable cost elsewhere on the property.

17. The proposed relief is the minimum relief necessary to overcome the burden because the replacement shed is in the same location as the previous shed that existed for over 24 years and the new shed meets the same dimensions as the previous shed.

## **DISCUSSION**

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

The Applicant is requesting a variance from Section 143-6.2.B(1) to allow the shed to be placed in the front yard, to the side of his driveway in the R-2 Residential Zoning District.

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

Section 143-6.2.B(1) of the Ordinance states that “No residential accessory building/structure shall be located within the required front yard setback.”

### **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.**

The Applicant is requesting a variance from Section 143-6.2.B(1) to allow a shed to be placed in the front yard to the side of his driveway in the R-2 Residential Zoning District. A hardship exists due to the shape of the property and the fact that the existing shed is located in the area where an older, dilapidated shed was located for over 22 years without objection or incident. To move the location of the shed now a few feet back to comply with the Ordinance which was previously varied by the Board in 1998 would be cost prohibitive and would amount to compliance with form over substance.<sup>1</sup> Inasmuch as the variance sought is dimensional, the financial hardship to relocate the shed to a different location to bring the shed into strict compliance with the zoning requirements is, under Hertzberg, a compelling factor to consider.

Applicant did not create this hardship. The existing shed was constructed by Applicant's father prior to Applicant's ownership of the property. Applicant has stated that he considered a larger building that would require additional relief but felt that replacing the existing shed with the same dimensions would be less impactful and meet the needs of the Applicant.<sup>2</sup> Therefore, the proposed variance is the minimum necessary to afford relief.

Finally, the proposed relief will not alter the essential character of the neighborhood. The shed itself is not outside the character of the neighborhood as it is common to have sheds in the R-2 Residential Zoning District. The location in the front yard is offset to the side of the house, so there are no esthetic concerns that may occur if the shed was placed directly in front of the house. Additionally, the applicant discussed the project with the neighbors who approved the plans.

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<sup>1</sup> As noted at the hearing, the Applicant installed the new shed on the existing pad even though when his father obtained a variance in 1998 it was for a location that was even with the front of the house so as to avoid it being prominently placed in the front yard.

<sup>2</sup> The Board's determination of hardship is limited to the facts in this particular case since it was Applicant's father, not the Applicant who failed to install the shed in the approved location in 1998. Thus, in this case, unlike in the Merchant of Venice, the sins of the father are NOT to be laid upon his children.

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 Ian Godman docket #Z-22-13 for a Variance from Section 143-6.2.B(1) of the Lower Providence Township Zoning Ordinance to allow a shed to be placed in the front yard to the side of his driveway on the existing pad in the R-2 Residential Zoning District is Granted.

Dated: September 6, 2022

## **ORDER**

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

### **LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

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George Ozorowski

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Joseph Pucci

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Kathie Eskie

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Gail Hager

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Christopher Gerdes

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Terrance Barnes, Alternate

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Randy Klein, Alternate

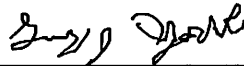
## **NOTICE TO APPLICANT**

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

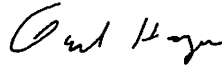
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