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August 4, 2023

**SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7018 3090 0000 0752 8400**

Michael J. Clement, Esquire
Wisler Pearlstine, LLP
460 Norristown Road, Suite 110
Blue Bell, PA 19422-2323

**Re: Lower Providence Township Zoning Hearing Board
Applicant: Joe Venezia (JVJD LLC)
Application No: Z-23-15
Property: 143 Plymouth Road, Plymouth Meeting PA 19462
Parcel No. 43-00-07003-00-1**

Dear Mike:

In accordance with the Zoning Application filed May 11, 2023, 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

Pc: Kathie A. Eskie
Christopher Gerdes
Gail Hager
Randy Klein
Joseph Pucci
Tejal Mehta
Gary Brown
Mike Mrozinski, Community Development Director
Gregory Heleniak, Esquire, Township Solicitor
Tina Blain

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-23-15	:	HEARING DATE:	June 22, 2023
		:		
		:		
APPLICATION OF:		:		
	JVJD, LLC	:		
	143 Plymouth Road	:		
	Plymouth Meeting, PA 19462	:		
		:		
PROPERTY:		:		
	218 Lauman Ave,	:		
	Norristown PA 19403	:		
	Lower Providence Township	:		
	Parcel Nos. 43-00-07003-00-1	:		

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

On June 22, 2023 JVJD, LLC, (“Applicant”) owner of the subject property located at 218 Lauman Ave, Norristown, PA 19403 (the “Property”), in order to permit the construction of a 2,500 square foot single family residence on the Property filed an application requesting dimensional variances from the following sections of the Lower Providence Township Zoning Ordinance (the “Ordinance”):

- §143-37.A.(2) regarding a front yard setback of forty-three feet (43’) where fifty feet (50’) is required;
- §143-37.A.(2) regarding a side yard setback, of eighteen feet (18’) where twenty feet (20’) is required; and
- §143-37.A.(2) regarding a rear yard setback, of fifty-seven point nine feet (57.9’) where sixty feet (60’) is required.

Procedural Posture of the Case

1. 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 22, 2023, in person at the Township Administration Building, 100 Parklane Drive, Eagleville, PA, (the “Hearing”) pursuant to Notice as required by the Ordinance and the Pennsylvania Municipalities Planning Code (the “MPC”).

2. Board Members

Board members present at the hearing were: Kathie Eskie, Chairperson, Gail Hager, Christopher Gerdes, Tejal Mehta and Gary Brown.

3. Appearances of Counsel

- a. Michael J. Clement, Esquire of Wisler, Pearlstine appeared for the Applicant.
- b. Keith B. McLennan, Esquire, Miller, Turetsky, Rule & McLennan appeared for the Board.

4. Appearances of Other Parties

- a. Kristina Palushaj, a resident at 228 Lauman Avenue,.
- b. Victor Nikollaj, a resident of 131 Tomstock Circle, was admitted as a party.
- c. Susan Millar, a resident of 123 Tomstock Circle, was admitted as a party.
- d. Mire Ndau, 127 Tomstock Circle, was admitted as a party.

5. Also Present

Michael Mrozinski, the Community Development Director for the Township.

6. Witnesses

- a. For the Applicant - Joe Venezia, member and Joshua Hoagland, a registered engineer.

b. The “Other Parties” named above.

7. Exhibits - The following exhibits were included in the record of the hearing:

A – 1 Lower Providence Township Zoning Hearing Board Appeal Application.

A – 2 Memorandum from Joe Venezia to Zoning Hearing Board regarding 218 Lauman Avenue Zoning Appeal.

A – 3 Sketched plan of proposed construction.

B – 1 Public notice itself and certificate of posting of public notice.

B – 2 Letter notifying neighbors within 500 feet of property of the Application, Matrix of Addresses where notice was mailed.

B – 3 Certificate of notification of the notice of the hearing.

B – 4 Notice of publication.

FINDINGS OF FACT

1. The Applicant, JVJD, LLC, is the owner of the property located at 218 Lauman Ave, Norristown PA, 19403 as evidenced by the deed dated August 31, 2022 attached to its application.

2. The Applicant was represented at the hearing by Michael J. Clement, Esquire.

3. Joseph Venezia, a member of the Applicant testified in support of the application.

4. The subject property on 218 Lauman Ave, Norristown PA, 19403 is a single parcel with 16,000 square feet of land area with a tax parcel number 43-00-07003-00-1 (hereinafter the “Property”)

5. The Property contains 1 single family home, 1 detached garage with a residential unit and 3 sheds for storage.

6. Collectively the Property is approximately one hundred feet (100') wide and one hundred-sixty feet (160') deep.

7. The Property is currently vacant.

8. The Property is served by public water and public sewer.

9. The applicable zoning district is the R-2 residential district which permits single-family detached dwellings.

10. In the R-2 zoning district the Ordinance requires lots served by public water and public sewer to maintain a minimum lot size of 25,000 square feet.

11. The Ordinance similarly requires a front yard setback of fifty feet (50').

12. The Ordinance requires a side yard setback of twenty feet (20').

13. The Ordinance also requires a rear yard setback of sixty feet (60').

14. The lot that defines the Property is undersized at 16,000 square feet and with existing 22.9' front yard, 15.3' side yard and 29.8' rear yard setbacks the Property fails to meet the current Ordinance and is thus non-conforming.

15. The Applicant seeks to construct a single-family home with a "foot print" of 2,100 square feet and 2,500 square foot dwelling with a front yard setback of forty-three feet (43'), a side yard setback of eighteen feet (18'), and a rear yard setback of fifty-seven point nine feet (57.9').

16. The proposed single dwelling will not only more closely comply with the setback requirements of the existing R-2 District and the Ordinance, it will remove the 4 other structures on the Property reducing the overall impervious coverage and be more consistent with the yards in the neighborhood.

17. There are unique characteristics of the Property, including the wide and shallow configuration and other physical conditions peculiar to the Property.

18. Because of the physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Ordinance.

19. There is an unnecessary hardship on the Applicant which was not caused by the Applicant.

20. The proposed use will not alter the essential character of the neighborhood or zoning district.

21. There will be no impact to existing traffic patterns and volumes as a result of the proposed structure.

22. The surrounding buildings and abutting properties are residential.

23. There will be no adverse impact on the development of adjacent properties.

24. The proposed relief would not be detrimental to the public welfare.

25. The proposed use will not emit smoke, dust, odor, or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants.

26. The proposal is compliant with all other zoning regulations.

27. There is no change of use requested.

28. The neighborhood is replete with non-confirming lots.

29. Many of the lots in the neighborhood with homes thereon are smaller than the minimum square footage required.

30. The Property in its current state is not in compliance with any applicable zoning Ordinances.

31. Applicant has expended reasonable effort to tailor his proposal to make the Property in better compliance with the zoning Ordinances.

32. There are no other lots that can be purchased to enlarge area.

33. The construction of the home will include provisions to address the issue of water runoff in compliance with the Township storm management requirements.

DISCUSSION

I. Statement of the Case

The Applicant requested a variance from: (1) §143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit a front yard setback of forty-three feet (43') where fifty feet (50') is required; (2) §143.37.A.(2) of the Lower Providence Township Zoning Ordinance to permit a side yard setback of eighteen feet (18') where twenty feet (20') is required; (3) §143.37.A.(2) of the Lower Providence Township Zoning Ordinance to permit a rear yard setback of fifty-seven point nine feet (57.9') where sixty feet (60') is required.

II. 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.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.

(3) Zoning Hearing Board considerations. In considering whether the allowance of a special exception or variance is contrary to the public interest, the Zoning Hearing Board shall consider whether the application, if granted, will:

(a) Substantially increase traffic congestion in the streets surrounding the subject site;

(b) Increase the risk of fire or panic or otherwise endanger the public safety;

(c) Overcrowd the land or create undue concentration of population;

(d) Be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of this chapter;

(e) Intrude upon the adequacy of natural light and air to adjoining properties;

(f) Create extraordinary burdens on public, private or community water systems or upon groundwaters or wells within the neighborhood;

(g) Overburden the public sanitary sewer system within the Township occasion environmental problems with on-site sanitary sewer installations;

(h) Place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood;

(i) Cause adverse effects to the appropriate use of adjacent properties in the neighborhood where the property is located;

(j) Cause risk or danger to the safety of persons or property by improper location or design of facilities for ingress and egress to and from the property in question; or

(k) Otherwise adversely affect the public health, safety, morals or general public welfare of the community.

(4) Burden of proof. In all cases, whether special exception, variance, interpretation, appeals from the Building Inspector or any other appeals lawfully brought before the Zoning Hearing Board, the applicant shall have the burden of proof, including the duty of presenting credible, relevant and pertinent evidence and testimony to persuade the Zoning Hearing Board that the applicant has satisfied the criteria set forth in this section. In addition to the foregoing, where an applicant has been specifically requested by the Zoning Hearing Board to provide specific evidence or testimony on any item set forth in Subsection D(3)(a) through (j), supra, or in the event that any party opposing any application shall claim that the proposal before the Zoning Hearing Board will cause any effects upon the matters addressed in Subsection D(3)(a) through (j), supra; then the applicant's burden of proof shall include the obligation of presenting credible, relevant and pertinent evidence on such topics as to persuade the Zoning Hearing Board that the relief requested by the applicant will not be contrary to the public interest with respect to the criteria placed at issue.

III. Facts Applied to the Legal Standard.

The Applicant's requests for front, side, and rear yard setback variances to construct a 2,500 square foot, single-family home on an undersized, 16,000 square foot, lot is often encountered in Lower Providence Township. The existing lot size and setback nonconformities were not caused by the Applicant. Moreover, not only is the Property non-compliant with any of the setback sections of the Ordinance, it is vacant and, as members in the community have testified, requires

maintenance. Despite the fact that the (i) Property setbacks have been non-compliant for as long as can be remembered; (ii) lot is undersized for the R-2 District as currently constituted; (iii) proposed single-family dwelling will more closely conform to the current setback requirements; (iv) four (4) structures will be removed to make room for only one (1); (v) neighborhood is comprised of many homes non-compliant with the Ordinance setback requirements; (vi) impervious coverage will be reduced; and (vii) poor maintenance will be reduced if not eliminated the opponents assert that the property should be made to comply with the exact setback requirements of the Ordinance and that any new structures on the lot would create a burden on community water systems. The Applicant asserts that strict conformity with the Ordinance is impossible given the pre-existing lot size, and that because the proposed use would convert the property from 2 dwelling units to 1, the demands on the water system are reduced while the pervious coverage would increase, benefiting the neighborhood with stormwater absorption and ground water enrichment.

Applicant's plan seeks to bring the Property into closer compliance with the Ordinance. The Applicant's proposed use will more closely conform to current setbacks of the abutting properties as well as reduce overall impervious coverage. Applicant's plan would change the front yard setback of twenty-two and nine tenths' feet (22.9') or forty-five and eight tenth's percent (45.8%) of the required fifty feet (50') to forty-three feet (43') or eighty-six percent (86%) of what is required. Further, Applicant would change the side yard setback of fifteen and three tenths' feet (15.3') to eighteen feet (18') where twenty feet (20') is required, an increase from seventy-six and five tenths' percent (76.5%) to ninety percent (90%). Finally, the existing rear yard would be increased from twenty-nine and eight tenths' feet (29.8') to fifty-seven and nine tenth's feet (57.9'), ninety-six and five tenths percent (96.5%) of the required sixty feet (60') rather than the

existing forty-nine and sixty-six hundredths percent (49.66%).

The irregular nature of this pre-existing lot with 2 dwelling units and 3 accessory structures, situated on an already non-conforming lot of 16,000 square feet, where neighboring properties are already nonconforming make the Property both unique for the R-2 zone and similar to the homes that have also been constructed in that zone. These and other physical conditions peculiar to the Property and the imposition of the Ordinance in 1955 when many of the homes in this zone were constructed have made it practically impossible to construct a home on the Property in compliance with the Ordinance. This creates a hardship as it prohibits the Applicant from the reasonable and permitted use of the Property. The Applicant did not create the hardship. In fact, Applicant has expended reasonable effort to tailor his proposal to make the Property more compliant with the Ordinance.

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. Therefore, authorization of a variance is necessary to enable the reasonable use of the property.

The variance 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. The proposed construction of single-family home and requested variance is consistent with the neighborhood which exhibits many homes on undersized and nonconforming lots. The introduction of another home will not negatively impact neighboring properties, nor will it change the character of the neighborhood. In fact, the introduction of this proposed home would only make it more consistent with the rest of the neighborhood. The proposed construction will not increase any traffic in the neighborhood or cause any extraordinary burdens on the public.

As a result of Applicant's efforts to reduce impervious coverage and propose setbacks significantly closer to the requirements of the Ordinance compared with the existing structures demonstrate that the requested variances represent the minimum that will afford relief and will represent the least modification possible of the regulation at issue. Permitting the construction of the single-family home that is consistent with the neighborhood is the minimum alteration that can be made to the Ordinance to permit the Applicant the reasonable use of its property. Accordingly, the Board finds that Applicant suffers a hardship that is not self-imposed and the requested variances from Ordinance §143-37. A. (2) are warranted.

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 JVJD, LLC for variances from §143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit, in the R-2 residential District:

- a. a front yard setback of forty-three feet (43') where fifty feet (50') is required;
- b. a rear yard setback of fifty-seven point nine feet (57.9') where sixty feet (60') is required;
- c. a side yard setback of eighteen feet (18') where sixty feet (20') is required are

Granted subject to the condition that construction and placement of the home shall be as per the plans presented at the June 22, 2023, hearing.

Dated: August 1, 2023

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

Kathie A Eskie

Kathie A. Eskie

Gerdes

Christopher Gerdes

Gail Hager

Gail Hager

Randy Klein

Joseph Pucci

Gary Brown, Alternate

Tejal Mehta

Tejal Mehta, 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.