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**Date of Mailing: March 5, 2024**  
**Sent Via Certified Mail**  
**Return Receipt Requested**  
**No. 7018 3090 0000 0752 8554**

Ms. Laure Rittie  
Ms. Nancy Marie Lindner  
2779 Lantern Lane  
Eagleville, PA 19403

**Re: Lower Providence Township Zoning Hearing Board**  
**Application No: Z-23-32**  
**Applicant: Douglas Davis on behalf of Laure Rittie and**  
**Nancy Marie Lindner**  
**Property: 2779 Lantern Lane**  
**Parcel No. 43-00-06835-00-7**

Dear Ms. Rittie and Ms. Lindner:

In accordance with the Zoning Application filed on October 30, 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

KBM/  
Enclosure

pc: Lower Providence Township Zoning Hearing Board Members  
Mike Mrozinski, Community Development Director  
Tina Blain, Community Development Assistant  
Robert Pope (2776 Lantern Lane, Audubon, PA 19403)  
Douglas Davis (310 Cypress Circle, King of Prussia, PA 19406)

# ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-23-32

HEARING DATES: December 28, 2023  
January 25, 2024

### APPLICATION OF:

# Douglas Davis

**310 Cypress Circle**

King of Prussia, PA 19406

**PROPERTY:**

## 2779 Lantern Lane

**Audubon, PA 19403**

## Lower Providence Township

**Parcel Nos. 43-00-06835-00-7**

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

A public hearing on the above application (the “Application”) having commenced on December 28, 2023 and concluded on January 25, 2024, 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**

### A. Application to Zoning Hearing Board

1. Douglas Davis, of 310 Cypress Circle, King of Prussia, PA submitted the Zoning Hearing Board Appeal Application No: Z-23-32 to the Board on behalf of and with the consent

and direction of the landowners Laurie Rittie and Nancy Linden (“Applicants”). Applicants are proposing to add a ground mounted solar energy system on the property. Applicants revised the initial proposal between the first and second hearing dates. Applicants are requesting relief from the following sections of the Ordinance:

- a. Section 143-6.2.BB(1)(a)1 to allow for a ground-mounted solar energy system in the front yard;
- b. Section 143-6.2.BB(1)(a)[2] to permit the installation of a ground-mounted solar energy system with the side and rear yard setbacks noted in the R2 residential district;
- c. Section 143—37.A(2) to permit the installation of a ground-mounted solar energy system with a 14 foot side yard setback where 20 feet is required;
- d. Section 143-37.A(2) to permit the installation of a ground-mounted solar energy system with a 34 foot front yard setback where 50 feet is required.

**B. Notice and Hearing**

1. The Application was properly advertised, and a public hearing took place before the Lower Providence Township Zoning Hearing Board (the “Board”) on December 28, 2023, following which the matter was continued to January 25, 2024, where testimony concluded.

2. Participating Zoning Hearing Board Members at the December 28, 2023, hearing were: Kathie Eskie (Chair), and members Gail Hager, Chris Gerdes and Joseph Pucci.

3. Participating Zoning Hearing Board Members at the January 25, 2024, hearing were: Chris Gerdes (Chair), Joseph Pucci (Vice-Chair), members Gail Hager, Tejal Mehta and Gary Brown and Mark Kuberski (Alternate).

4. Appearances of Counsel

a. Eric Frey, Esquire, served as Solicitor for the Zoning Hearing Board at the December 28, 2023, hearing.

b. Keith B. McLennan, Esquire, served as Solicitor for the Zoning Hearing Board at the January 25, 2024 hearing.

c. The Applicant was not represented by counsel.

5. Appearance of Other Party

a. Robert Pope, residing at 2776 Lantern Lane, Audubon, PA 19403 entered his appearance as a party.

6. Additional Attendees

a. Mike Mrozinski, the Community Development Director for Lower Providence Township, and Paula Meszaros, the stenographer were also present.

7. Witnesses:

a. Douglas Davis, testified in support of the Application.

b. Laurie Rittie, testified in support of the Application.

c. Nancy Linden, testified in support of the Application.

d. Robert Pope, testified in opposition to the Application.

8. Exhibits

a. The Applicant submitted the following exhibits:

A – 1: The plot plan of the proposed use.

A – 2: Aerial photograph of the subject property.

A – 3: Newly revised plan.

A – 4: Emails from neighbors approving of the proposed use.

b. The Board entered the following exhibits:

B – 1: Application with all attachments.

B – 2: Public Notice by Posting.

B – 3: Certificate of Publication in a newspaper.

B – 4: Certificate of Posting.

B – 5: Certificate of mailing including: Letter notifying neighbors within 500 feet of the Property of the Application and Matrix of Addresses where notice was mailed.

### **Findings of Fact**

1. The subject property is located at 2779 Lantern Lane, Audubon, PA, with parcel number 43-00-06835-00-7 (“Property”).

2. The applicant, a contractor, was hired to install ground mounted solar electric panels on the property on behalf of the current owners, Laurie Rittie and Nancy Linden.

3. Current owners, Laurie Rittie and Nancy Linden, acquired the property on August 9, 2017.

4. The applicable zoning district for the property is the R-2 Residential Zoning District.

5. The Property consists of a 21,125 square foot lot featuring a single-family home with a garage.

6. The property is currently used as a residential single-family dwelling.

7. The present use of the property began in 1961.

8. The property is serviced by public water and sewer.

9. There are no outstanding state or federal violations on the property.

10. There has been no previous zoning appeal in connection with the property.

11. The surrounding homes are single-family residential properties.

12. The property, located at the corner of Lantern Lane and Pawlings Road, has two front yards.

13. The Property's topography presents certain challenges due to the position of the house. G The Property has a unique topography and layout that creates a hardship for the owners.

14. Ground-mounted solar installations are not permitted in the front yard by the current zoning Ordinance.

15. Therefore, installation of a solar field on frontages requires zoning relief.

16. The house was originally a model home for the development and was therefore placed at a diagonal on the property to showcase the home, but this has a negative impact on the usability of the remaining space.

17. The roof is too shaded and of questionable stability for rooftop panel installation.

18. The Property is shaded by many trees both growing on the property and on the neighbor's property.

19. The property owners also own the land directly behind the Property, however this area is shaded by trees from a neighbor's yard, and would otherwise not be appropriate for installing a solar array.

20. Given the topography, location of the house, location of trees (both on and off the property), and the inability to mount panels on the roof make the proposed location the most practicable for the solar array.

21. The applicant has revised the project several times to reduce its noncompliance with the Ordinance.

22. The panels are intended to be placed on the ground in a meadow area.
23. The array is proposed to be located 14 feet from the road, considering sunlight exposure and tree preservation.
24. The project was redesigned to be further from the road after the first hearing.
25. There is a desire to preserve as many trees as possible.
26. All immediate neighbors, except Mr. Pope, agreed with the project.
27. The proposed location minimizes the impact of shade from trees.
28. The tallest part of the solar array will be six feet.
29. Landscaping buffers will be implemented to obscure the visibility of the panels from neighboring views.
30. The proposed solar panel installation will not impact traffic patterns.
31. The installation will not produce smoke, dust, odor, or air pollutants.
32. The proposed use will not alter the neighborhood's character.
33. The unique circumstances of the property create a hardship that the Applicant and landowners did not create.
34. The revised proposal represents the minimum variance required to overcome the hardship.
35. The proposed use would not alter the essential character of the neighborhood.

## **DISCUSSION**

### **A. Statement of the Case.**

Douglas Davis, of 310 Cypress Circle, King of Prussia, PA submitted the Zoning Hearing Board Appeal Application No: Z-23-32 to the Board on October 30, 2023 on behalf of the Applicants, requesting permission to install a ground mounted solar array in the R-2 Residential

Zoning District. The Applicants are requesting *variances* from Ordinance sections to permit or allow:

1. A ground-mounted solar energy system in the front yard - 143-6.2.BB(1)(a)1;
2. Installation of a ground-mounted solar energy system with a 14 foot side yard setback where 20 feet is required – 143-37.A(2);
3. Installation of a ground-mounted solar energy system with a 34 foot front yard setback where 50 feet is required 143-37.A(2); and
4. Installation of a ground-mounted solar energy system with the side and rear yard setbacks noted in the R2 residential district - 143-6.2.BB(1)(a)[2].

B. Ordinance Subsections at Issue. The applicable Ordinance sections provide:

1. 143-6.2.BB(1)(a)1: “No (Ground-Mounted solar energy systems) shall be permitted in a front yard.”
2. 143-6.2.BB(1)(a)[2]: “The side yard setback shall meet the principal use side yard setback requirement for the zoning district the (Ground-Mounted solar energy systems) is located within.”
3. 143-37.A(2): In the R-2 Residential Zoning District properties serviced by both water and sanitary sewer require a side yard setback of 20 feet and a front yard setback of 50 feet.

C. Variance Legal Standard. 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.

D. 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.

E. Dimensional v. Use 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's 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.

F. Facts Applied to the Legal Standard. Douglas Davis submitted, on behalf of Applicants, Application No: Z-23-32 to the Board on behalf of the Applicants and Property owners Laurie Rittie and Nancy Linden. Applicants are proposing to add a ground mounted solar energy system on the Property. Applicant revised the initial proposal between the first and second hearing dates. Applicant seeks relief from the following Ordinance sections:

1. Section 143-6.2.BB(1)(a)1 to allow for a ground-mounted solar energy system in the front yard;
2. Section 143-6.2.BB(1)(a)[2] to permit the installation of a ground-mounted solar energy system with the side and rear yard setbacks noted in the R2 residential district;
3. Section 143—37.A(2) to permit the installation of a ground-mounted solar energy system with a 14 foot side yard setback where 20 feet is required;
4. Section 143-37.A(2) to permit the installation of a ground-mounted solar energy system with a 34 foot front yard setback where 50 feet is required.

The Applicant seeks to place the array in the front yard of the property, with a side yard setback of 14 feet and a front yard setback of 34 feet. The Ordinance prohibits ground-mounted solar arrays from being constructed in the front yard of a property and requires that an array meet the zoning district's setback requirements. Due to the proposed array's location in the front yard and encroachment on the setback requirements, the applicant has the burden to show that he is entitled to a variance. To do so, the applicant must demonstrate that (1) there are unique circumstances on the property causing unnecessary hardship; (2) that it is impossible for the property to be developed in strict conformity with the ordinance; (3) that the unnecessary hardship was not created by the applicant; (4) that the variance will not alter the essential character of the neighborhood; and (5) that this will be the minimum variance necessary to overcome the hardship.

Here, there is a hardship that neither the applicant nor the landowners have caused. The property is uniquely situated as a corner lot with two front yards, making compliance with the ordinance particularly challenging for this specific property. Moreover, the house's position on the property complicates development in adherence to the ordinance. Originally a model home for the

development, the house was constructed in a manner that best suited that purpose, but this orientation complicates the use of the remaining property. The house is positioned diagonally on the property, which likely would have been different had it not been a model home.

Additionally, the property has substantial tree cover, from trees growing both on and off the property, which blocks sunlight in certain areas, rendering parts of the property unsuitable for solar array investment. This issue persists both on the subject property and on the neighboring property under common ownership. Despite this common ownership, placing the solar array on the adjacent property is impractical due to the surrounding trees and topography.

Furthermore, the applicant cannot place the array on the roof of the structure due to its questionable integrity. The landowners testified that the roof has had many issues over the years, and there could be a structural flaw that would make placing the weight of the array on the building dangerous. In addition to this concern, trees also shade the roof making it impractical for solar electric panels. Therefore, there is no other practicable location for the solar array on the Subject Property, a hardship not created by the applicant or landowners.

Following the first day of the hearing, Mr. Davis revisited his proposal and identified the location furthest from the road that could accommodate the solar array. In doing so, he also analyzed potential other locations for the array, finding that the final proposal is the least impactful on the intrusion into the setback requirements and the most accommodating to the sensibilities of the neighbors. Thus, the proposed use, as testified to at the January 25, 2024, hearing, requires the most minimal variance possible to overcome the hardship.

Finally, the proposed use will not alter the character of the neighborhood. Solar panels are permitted in this zoning district, and the request is merely for a dimensional variance. Except for the vigorous objections of Mr. Pope, other neighbors did not object to the proposed use.

Additionally, the applicant and landowners agreed to screen the array to address the primary objection of visual disruption.

The Applicants' have satisfied the variance test for each request.

#### 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 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 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 hereby GRANTS Application No: Z-23-32 as follows:

1. A variance from Section 143-6.2BB(1)(a)[1] to permit the installation of a solar array in the front yard;

2. A variance from Section 143—37.A(2) to permit the installation of a solar array with a 14 foot side yard setback where 20 feet is required;
3. A variance from Section 143-37.A(2) to permit the installation of a solar array with a 34 foot front yard setback where 50 feet is required;
4. A variance from Section 143-6.2.BB(1)(a)[2] to permit the installation of a solar array with the side and rear yard setbacks noted in the R2 residential district.

The above relief is granted with the following conditions:


1. Construction placement shall be as per the plans introduced into evidence in this case as Exhibit A-3;
2. The solar array shall not exceed 6 feet in height;
3. The solar array to be screened along Pawlings Road by trees or animal resistant arborvitae;
4. Strict compliance with the testimony and evidence presented at the hearing and the information set forth in the application, as amended; and
5. Compliance with all other applicable Township ordinances.

Dated: March 1, 2024

## **ORDER**

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

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



\_\_\_\_\_  
Christopher Gerdes



\_\_\_\_\_  
Joseph Pucci



\_\_\_\_\_  
Gail Hager



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Tejal Mehta



\_\_\_\_\_  
Gary Brown, Alternate



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Mark Kuberski, 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.