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March 2, 2020

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7018 3090 0000 0752 7861**

Aperio Homes, LLC
1000 Germantown Pike, Unit B7
Plymouth Meeting, PA 19462
Attention: Allan J. Katsock

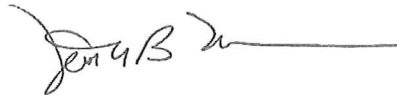
**RE: Lower Providence Township Zoning Hearing Board
Application of: Aperio Homes, LLC
Property: Township Line Road Parcel # 43-00-15058-10-9
Appeal Number: Z – 19 – 29**

Dear Mr. Katsock:

In accordance with your application for variances for Lower Providence Zoning Ordinance § 143.-33.A.(1) and §143-18, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board granting your request.

Should you have any questions, please contact me. Best of luck with the project.

Yours very truly,



Keith B. McLennan

KBM/jds

Enclosure

pc: Kathie A. Eskie, Chairman
George Ozorowski, Esq., Vice Chairman
Gail Hager
Joseph Pucci
Michael Mrozinski
(Community Development Director)

Patricia Alzamora
Robert G. Hardt
Christopher Gerdes
Tina Blain

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-19-29	:	HEARING DATE: January 23, 2020
	:	
	:	
APPLICATION OF:	:	
Aperio Homes LLC	:	
1000 Germantown Pike Unit B7	:	
Plymouth Meeting, PA 19462	:	
	:	
PROPERTY:	:	
Township Line Road	:	
Collegeville	:	
Lower Providence Township, PA 19403	:	
Parcel No. 43-00-15058-10-9	:	

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

The applicant Aperio Homes LLC (hereinafter “Applicant”) filed its application on December 30, 2019 (“Application”) requesting a variance from the lot area and lot width, requirements of sections 143-18 and 143-33.A.(1) of the Lower Providence Township Zoning Ordinance (the “Ordinance”). The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on January 23, 2020 at the Lower Providence Township Building. Kathy Eskie, Chairman, George Ozorowski, Vice-Chair and members Gail Hager, Joseph Pucci, and Christopher Gerdes were present. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszaros, the Court Reporter and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Aperio Homes LLC, a Pennsylvania limited liability company.
2. The Applicant is the owner of the subject property located on the southwest side of Township Line Road between Hildebeitel Drive and Collegeville Road, Collegeville, Lower

Providence Township. Parcel No. 43-00-15058-10-9 (hereinafter referred to as the “Property”).

3. The applicable zoning district is the R-1, residential district requiring a lot size of 65,000 square feet.

4. The Property is 56,995 square feet and, unlike its neighboring lots, is undeveloped.¹

5. The property is provided access to Township Line Road by way of 10’ narrow strip of land that when viewed from above gives the lot the shape of a flag and flag pole resulting in it being referred to as a “flag lot.”

6. Tom Ludgate of Ludgate Engineering Corporation, a licensed professional engineer was accepted as an expert due to his previous qualification and testimony before the Board, testified on behalf of the Applicant.

7. The lot is what is known as a “lot of record.”

8. The proposed driveway providing access to Township Line Road or the “flag pole” of the “flag lot” will be approximately 5,000 square feet and 10’ in width.

9. Since the driveway provides both access to the flag portion of the lot and the road frontage for the lot, Applicant queried whether Section 143-18 regarding lot width of 195’ was impacted requiring either a query of inapplicability or a variance.

10. The surrounding lots are developed making it challenging, if not impossible to increase the Applicant’s lot size.

11. Applicant intends to build a 3,000 square foot single family, detached dwelling with 4 bedrooms, 2.5 baths, 2 car garage colonial serviced by on lot water and sewer.

12. The proposed dwelling will be eighty feet (80’) from the eastern property line and

¹ 87.68% of what is required.

sixty-five feet (65') from the western property line where the side yard setback requirement is at least fifty feet (50') and is in compliance with the front and rear yard setbacks.

13. The proposed dwelling will otherwise fit within the building envelope and comply with all impervious surface requirements of the Ordinance.

14. Camillo Pulcini, the proposed builder testified that the proposed home would not alter the character of the neighborhood.

15. Mr. Ludgate testified that the proposed development would have no adverse impact upon other land in the area or the public welfare.

16. Applicant seeks a lot size variance to permit the construction of the proposed dwelling on a lot that is eighty seven percent (87%) of the required lot size.

17. Although there are various sized homes in the area, the neighborhood is residential with essentially similarly sized lots and homes.

18. Although storm water management issues created by the construction of the dwelling on the lot at issue are to be addressed during the building permit stage, not zoning, Applicant will install the appropriate controls to manage said storm water.

19. The lot at issue is of the "flag" variety and thus unique.

20. The proposed variance to allow for a lot size that is 87% of the norm to build a 3,000 square foot home will not change the residential character of the neighborhood.

21. Mr. Frank Campbell, 4032 Township Line Road, Stephanie and Dr. Richard Cohen, 4046 Township Line Road and Denise Fulton 4024 Township Line Road questioned the Applicant extensively regarding the:

- a. Stormwater;
- b. Size of the house;

- c. Location of the house on the lot;
- d. Well and septic.

All of the questions were answered by the Applicant.

22. The following exhibits were marked at the hearing:

- A-1 Application filed on December 30, 2019 signed by the Applicant;
- A-2 Proposed Site Plan dated May 23, 2019 by Ludgate Engineering;
- B-1 Letter notifying neighbors within 500 feet of the Property of the Application;
- B-2 Certificate of Notification;
- B-3 Matrix of Addresses where notice was mailed;
- B-4 Certificate of Posting the Property with the notice of the Application.

DISCUSSION

I. Statement of the Case.

The Applicants have requested a variance from the lot area and lot width requirements of Section 143-33.A.(1) and 143-18 respectively of the Lower Providence Township Zoning Ordinance in connection with the plan to construct a single family home on a lot that is 56,995 square feet where 65,000 square feet is required. The aforesaid Sections of the Ordinance state in pertinent part:

§ 143-18 Minimum lot dimensions without public sanitary sewer and public water.
In all zoning districts of the Township, existing or proposed lots which are not served by public sanitary sewers and by public water shall have a minimum lot area of 30,000 square feet and a minimum lot width at the building line of 150 feet.

§ 143-33 Area, setback, bulk, height and parking requirements.

- A. Site area or building lot area.

(1) The minimum building lot size shall be 65,000 square feet, and the minimum lot width shall be 195 feet.

The relief sought is dimensional in nature requesting the allowance of lot size that is 87% of that required by the Ordinance.

II. Variance Legal Standard.

Pursuant to the Municipalities Planning Code and the Ordinance at §143-168.A. the following must be established by the Applicant in order for the Board to grant the requested variance:

(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. 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.

Generally, a variance requires the applicant to show that unnecessary hardship will result if a variance is denied, and that the proposed use will not be contrary to public interest.

Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998) (citing Allegheny West Civic Council, Inc. v. Zoning Bd. Of Adjustment of the City of Pittsburgh, 547 Pa. 163, 167, 689 A.2d 225, 227 (1997)). The quantum of proof required to establish unnecessary hardship in the case of a dimensional variance is, however, lesser than when a use variance is sought. *Id.* at 258-59.

Regardless of the type of variance sought, 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. Commw. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Commw. 1998).

III. Dimensional v. Use Variance.

There are 2 types of variances, a “dimensional” variance and a “use” variance. 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). Dimensional variances are at issue in this case.

Although Hertzberg eased the variance requirements for a dimensional variance, it did

not remove them. 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 the five part test articulated above. Id. Therefore, regardless of the type of variance sought, 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. Commw. 1999); Sotencanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Commw. 1998).

IV. Facts Applied to the Legal Standard.

In the instant case, the Property is located on Township Line Road in a section of the Township where larger lots and homes are the norm. Applicant owns a flag lot that is significant in size but not quite the size required by the R-1 district. Nevertheless, the lot size will support a 2 story, 3,000 square foot colonial style home while meeting all setback and impervious surface requirements.

As a unique lot of record and a flag lot to boot where the surrounding area is developed there is nothing more that Applicant can reasonably do with the Property and still conform to the Ordinance. As such, denial of the variance to permit a lot size that is roughly 13% under the required size creates a palpable hardship for the Applicant. Clearly the Applicant has not created the hardship and the construction of a single-family home in a sea of single-family homes will not change the essential character of the neighborhood. Inasmuch as the surrounding properties have been developed to accommodate other single-family homes development of this Property will not impair nor impact the development of neighboring property. Finally, a variance of 13% from the standard lot size to permit the Applicant's reasonable use of the Property can only be deemed to be the minimum variance that will afford

relief.

Accordingly, Applicant has met its burden to demonstrate that its proposal for dimensional variances from §143-18 and §143-33.A.(1) to accommodate the home proposed 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 not self-imposed, and is due to the unique physical circumstances of the Property.

4. The requested relief is necessary to enable the Applicant's reasonable use of the Property.

5. The variances requested represent the minimum that will afford relief.

6. The proposed 56,995 square feet lot size and variance from the 195 foot frontage at Township Line Road represent the least modification possible of the regulation at issue.

7. The proposed home will not alter the essential character of the neighborhood in which the Property is located.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

1. The Application of APERIO HOMES, LLC for a Dimensional Variance from §143-33.A.(1) of the Lower Providence Township Zoning Ordinance to allow lot area of 56,995 square feet where 65,000 square feet is required is GRANTED.

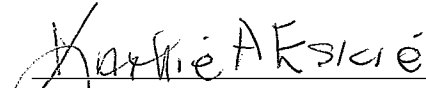
2. The Application of APERIO HOMES, LLC for a Dimensional Variance from §143-18 of the Lower Providence Township Zoning Ordinance to allow a lot width less than 195 feet is GRANTED.

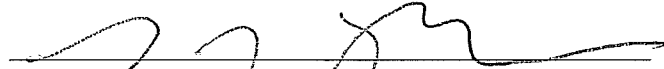
Dated: February 28, 2020

ORDER

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


LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Kathie A. Eskie, Chairwoman



George J. Ozorowski, Vice Chairwoman


Joseph Pucci

Patricia Alzamora


Gail Hager

Robert G. Hardt, Alternate


Christopher Gerdes, 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.