

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-19-04 : HEARING DATE: February 28, 2019  
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:  
APPLICATION OF: :  
Craig Cusamano :  
16 S Grange Avenue :  
Collegeville, PA 19426 :  
:  
PROPERTY: :  
16 S Grange Avenue :  
Lower Providence Township :  
Collegeville, PA 19426 :  
Parcel No. 43-00-05833-00-1 :

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

Craig Cusamano (“Applicant”) filed an application requesting a variance from Section 143-33.A.(2)(c) of the Lower Providence Township Zoning Ordinance (“Ordinance”) to permit construction of a “Pole Barn” style garage with a rear yard setback of Twenty Five feet (25’) instead of the required sixty feet (60’) in the R1 Residential District. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on February 28, 2019 at the Lower Providence Township Building. The following members of the Board were present: Chairwoman Kathie Eskie, Vice Chairman George Ozorowski, Gail Hager, Joseph Pucci, Patricia Alzamora, and Christopher Gerdes. 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 Craig Cusamano who filed his application for a variance from

the setback requirements of 143-33.A.(2)(c) on January 31, 2019.

2. The Applicant owns the subject property located at 16 S Grange Avenue, Lower Providence Township, Collegeville, PA 19426 located in the R1 Residential District bearing the parcel identification number 43-00-05833-00-1 (“Property”).

3. The present use of the Property is single family residential.

4. The Property is approximately 3.2 acres.

5. Applicant seeks to build a 40 foot by 40 foot detached single story private garage or “pole barn” for trucks, a racecar, and a racecar trailer.

6. Applicant’s proposed pole barn will be 1,600 square feet in size, 600 square feet larger than permitted by the Ordinance.

7. The Property is wider than it is long thus impairing the Applicant’s flexibility in placement of the pole barn.

8. In order to comply with the Ordinance set back requirements the pole barn would be located on a steep slope whereas further back on the Property it levels out.

9. Placing the garage within the required setbacks creates an unreasonably and unsafe steep driveway.

10. Applicant has yet to secure a conditional use permit from the Board of Supervisors as required by Section 143-19.B.(4)-(5).

11. The Applicant resides in a home on the property.

12. There are two driveways servicing the house: one paved driveway leading to the left side of the house and a gravel driveway leading to a garage under the house.

13. The proposed garage is on the right side of the house and will be serviced by the gravel driveway.

14. The grading behind the house is such that building the garage within the setbacks is unfeasible.

15. There is a subdivision in the process of development behind the property but will not be adversely impacted by the variance requested.

16. There was no opposition expressed to the application.

17. The following exhibits were included in the record of the hearing:

A-1 Application

A-2 Site/Plot Plan

B-1 Certification of Notification of the neighbors of the Application and hearing

B-2 Copy of the Notice provided to the neighbors

B-3 Address Matrix for the neighbors notified of the Application and hearing

B-4 Certificate of Posting

## **DISCUSSION**

### **I. Variance Legal Standard.**

Pursuant to the Municipalities Planning Code and the Ordinance §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.

## II. **Dimensional v. Use Variance.**

There are two 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). A dimensional variance is at issue in this case.

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 Variance Legal Standard.**

Differing standards apply to use and dimensional variances. 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)). 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.Cmwlt. 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.

### IV. **Facts Applied to the Legal Standard.**

The Applicant has requested a variance from Section 143-33.A.(2)(c) of the Lower Providence Township Zoning Ordinance to permit construction of a “pole barn” style garage.

The relief sought is dimensional in nature requesting the allowance of a rear yard setback of 25 feet instead of the required 60 feet required by Section 143-33.A.(2)(c) of the Ordinance.

The applicable section of the Ordinance states:

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

[Amended 9-21-2006 by Ord. No. 556]

A. Site area or building lot area.

(2) Each building/structure shall have yards of at least the following distance from the property line:

[Amended 10-20-2011 by Ord. No. 602[1]]

(c) Rear yard: 60 feet.

To establish that an unnecessary hardship exists warranting a variance from the Ordinance, the Applicant must prove that:

- a. Physical characteristics of the property were such that the property could not be used for any permitted purpose; or
- b. The permitted purpose could only be achieved at prohibitive expense; or
- c. Characteristics of the property were such that it would have no value or only distress value for any use approved by the zoning ordinance.

Solebury Twp. v. Solebury Twp. Zoning Hearing Bd., 914 A.2d 972 (Pa.Cmwlt. 2007).

In the instant case, the unique grade and property size of the lot make it difficult for the Applicant to avoid encroachment on a setback creating an unnecessary hardship for the Applicant. In order for the garage to be constructed within the setbacks, the grading of the driveway would have to be adjusted significantly to create a steep incline that is impractical for use. Taken together, these factors create an unnecessary hardship. Furthermore, since this is related to the existing grading of the land, this hardship is not imposed by the applicant. The applicant has nowhere within the setback to build the garage.

So long as the garage is not run as a business or have commercial use, there is no living space or residential use, and there is no running water, its construction will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Because of the physical restrictions of the law, a variance will represent the minimum variance that will afford relief and will represent the least modification possible.

## 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 Applicants.
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 Applicants reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.
5. The proposed addition will not alter the essential character of the neighborhood in which the Property is located.
6. Under §143-19.B(4) of the Ordinance Accessory buildings/structures permitted for the purpose of an accessory use as a private garage cannot exceed 1,000 square feet in overall size and shall have a minimum roof pitch ratio of 2:12.
7. Section 143-19.B.(5) requires the Applicant to obtain a conditional use permit from the Board of Supervisors to construct a detached garage of more than one thousand square feet (1,000).

## DECISION

The unanimous decision<sup>1</sup> of the Lower Providence Township Zoning Hearing Board is as follows:

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<sup>1</sup> This decision shall in no way be deemed the grant of a conditional use under §143-19.B.(5) for the Applicant's 1,600 square foot structure which the Applicant must obtain from the Board of Supervisors.

The Application of Craig Cusamano for a Variance from §143-33 of the Lower Providence Township Zoning Ordinance requiring each building or structure to have a 60 foot rear yard setback to permit a setback of 25 feet for the construction of a “Pole Barn” on his property is granted subject to the following conditions:

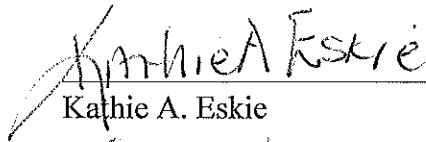
- a. The pole barn shall not be for commercial use;
- b. There shall be no residential living space in the building;
- c. There shall be no running water; and
- d. Applicant obtains a conditional use permit from the Board of Supervisors under §143-19.B.(5) of the Ordinance.



**ORDER**

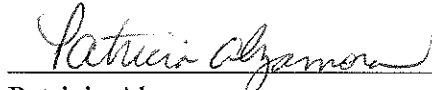
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

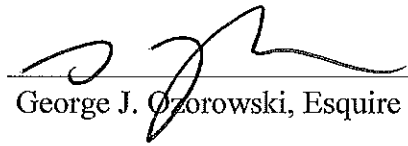
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
Kathie A. Eskie


  
Gail Hager

  
Joseph Pucci

  
Patricia Alzamora

  
George J. Ozorowski, Esquire

Robert G. Hardt

  
Christopher Gerdes

**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.

