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August 23, 2019

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**RE: Lower Providence Township Zoning Hearing Board
Application of Grace Building Co., Inc. and
Moser Construction Co., Inc.
Our File No. 19-11118-MU**

Of Counsel:

David W. Conner
Sean E. Cullen
Robert G. Rosen
George E. Saba Jr.
Theodore A. Schwartz

Dear Michael:

Enclosed you will find the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board for your clients, Grace Building Co., Inc. and Moser Construction Co., Inc.

Very truly yours,

ERIC C. FREY

ECF:mh

Enclosure

cc: Keith B. McLennan, Esquire (w/enclosure)
Michael Mrozinski, Director of Community Development (w/enclosure)
John Meckes (w/enclosure)
Ellen Beswick (w/enclosure)
David Meckes (w/enclosure)
Harry J. Cornoy (w/enclosure)

A Professional Corporation

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-19-15	:	HEARING DATE: July 25, 2019
	:	
	:	
APPLICATION OF:	:	
MOSER CONSTRUCTION CO. &	:	
GRACE BUILDING CO., INC.	:	
	:	
PROPERTY:	:	
Fifth Street between 2915 Fifth Street	:	
and house at corner of Fifth and	:	
Sunnyside Avenue	:	
Block 21, Units 21 and 22	:	
Lower Providence Township	:	
Parcel Nos: 43-00-04600-00-1 and	:	
43-00-04603-00-7	:	

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

The applicants, Grace Building Co. Inc. and Moser Construction Co., Inc. (hereinafter, collectively, "Applicant") filed an application on July 12, 2019 requesting variances and a special exception¹ in connection with the properties known as Block 21, Units 21 and 22, on Fifth Street between 2915 Fifth Street and the house on the corner of Fifth Street and Sunnyside Avenue, Lower Providence Township, Montgomery County, Pennsylvania, being designated as Parcel No. 43-00-04600-00-1 and Parcel No. 43-00-04603-00-7 (hereinafter, collectively, "Property"). Applicant seeks a Variance from §143-37 and §143-20 of the Lower Providence Township Zoning Ordinance, as amended, (hereinafter "Ordinance") to allow the construction of a single family detached dwelling on an existing non-conforming vacant lot. The application was properly advertised, and a public hearing was held before the Lower Providence Township

¹ It must be noted that the Application states that the Applicant is requesting both variances and a special exception. There is no reference in the Application, however, to an Ordinance Section that permits anything by Special Exception.

Zoning Hearing Board (the “Board”) on July 25, 2019 at the Lower Providence Township Building. The following members of the Board were present: Kathie A. Eskie, Chairwoman, George J. Ozorowski, Esquire, Vice Chairman, Member, Gail Hager, Member, Patricia Alzamora, Member, and Robert G. Hardt. Also present was Eric C. Frey, Esquire, Acting Solicitor.

FINDINGS OF FACT

1. The Applicant, Grace Building Co., Inc. (hereinafter “Grace”), with a mailing address of P.O. Box 4008, Rydal, Pennsylvania, 19046 is the owner of the Property. The Applicant, Moser Construction Co., Inc. (hereinafter “MoserCC”), of 101 Stewart Lane, Chalfont, Pennsylvania, 18914 is the equitable owner of the subject Property by Agreement of Sale. Grace and Moser are collectively referred to herein as “Applicant.”
2. The Property is a vacant lot located on Fifth Street between 2915 Fifth Street and the house at the corner of Fifth Street and Sunnyside Avenue, being identified as Block 21, Units 21 and 22 and designated as Parcel Nos. 43-00-04600-00-1 and 43-00-04603-00-7, Lower Providence Township, Montgomery County, Pennsylvania.
3. The Property is located in an R-2 Residential District.
4. The Applicant is represented by G. Michael Carr, Esquire of Eastburn and Gray, P.O. Box 1389, Doylestown, Pennsylvania, 18901-0137.
5. The following neighbors entered their appearance as protestants to the Application;
 - A. John Meckes, 2915 5th Street, Eagleville, PA 19403;
 - B. Ellen Beswick, 501 Sunnyside Avenue, Norristown, PA 19403;

- C. David Meckes, 419 Sunnyside, Eagleville, PA 19403; and
- D. Harry J. Cornoy; 2980 Fourth Street, Eagleville, PA 19403.

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

Applicant Exhibits:

- A-1 Curriculum Vitae of Charles A. Breinig;
- A-2 Proposed floor plans (2 sheets);
- A-3 Summary of zoning cases;
- A-4 Lower Providence Township Zoning Decision for application of David Meckes, for premises at 419 Sunnyside Avenue dated May 16, 2007;
- A-5 County map printout of 2915 Fifth Street;
- A-6 Montgomery County Common Pleas Opinion and Order of Judge Stanziani dated June 30, 1977;
- A-7 Plan for Dante Iamcampo;
- A-8 Montgomery County Court of Common Pleas Opinion and Order of Judge Vogel dated Jun 11, 1979;
- A-9 Lower Providence Township Zoning Decision for application of David Navitsky for premises at 638 Hillside Avenue;
- A-10 Lower Providence Township Zoning Decision for application of Elizabeth A. and Sylvester J. Yorck, Sr. for premises at 2930 4th Street;
- A-11 Picture of plan; and
- A-12 Package of Deeds.

Board Exhibits:

- B-1 Application;
- B-2 Legal Notice;
- B-3 Proof of Publication;
- B-4 Certification of Notification;
- B-5 Certification of Posting;

- 7. The present use of the Property is currently vacant ground
- 8. The Property is a rectangular lot measuring approximately 60 feet wide by 100 feet deep.
- 9. Grace also claims ownership to the center line of Fifth Street which is an unimproved paper street.

10. Applicant proposes to construct one single family home that measures 26 feet wide by 43 feet deep, plus an addition of a 10 feet by 12 feet deck and a bilco door.
11. Applicant proposes a 20 feet deep front yard to the edge of the right-of way for the unimproved paper street known as Fifth Street.
12. Applicant proposes a 20 feet side yard to the south of the proposed house and a 14 feet side yard to the west side of the proposed house.
13. Applicant proposes a 37 feet deep rear yard, not including the deck and bilco door located on the rear of the proposed house.
14. The proposed deck will be 10 feet deep by 12 feet wide and therefore will encroach an additional 10 feet into the proposed rear yard.
15. The proposed bilco door will be approximately 6 feet wide by 8 feet deep and will, therefore encroach an additional 8 feet into the proposed rear yard.
16. The property slopes 5% generally from north to south, which is toward the public street known as Sunnyside Avenue.
17. Charles Breinig ("Breinig") of Grace testified that Grace has owned the Property since the 1970s and that there is no other land to purchase to make the Property any larger.
18. All adjoining lots are developed and used as single family homes.
19. Breinig testified that the reason for the two differing side yards is to keep the proposed house somewhat equidistant from the existing homes on the adjoining lots.

20. The proposed house will be 64 feet from the existing home to the north (which is built 50 feet from the shared property line), and 54 feet from the existing home to the south (which is built 34 feet from the shared property line).
21. Breinig testified that the building coverage of the proposed home, as shown on the plans is 1,262 square feet, or approximately 21%. He testified further that the size of the home would be reduced to 1,200 square feet (20%) or below to comply with the 20% requirement of the Ordinance.
22. Breinig testified that the Property would be developed so that it has a maximum of 35% impervious as required by the Ordinance.
23. Ed Moser ("Moser") of MoserCC testified that the proposed house will have one garage and two parking spaces.
24. Moser testified that he would do erosion and sediment control and will design storm water as required by the Township.
25. Applicant did not have an agreement with the neighbors as to how to deal with existing driveways, future upkeep, and trash bin locations.
26. Applicant did not consult with emergency service providers to determine their respective abilities to access the Property.
27. David Meckes testified that Fifth Street is an unimproved paper street with multiple driveways.
28. David Meckes also testified that there are existing storm water issues from Hillside Avenue across adjacent properties, the Property all the way to Sunnyside Avenue.

29. David Meckes also stated further that the Township has installed two storm water drains in Sunnyside Avenue, where it meets Fifth Street, and there is current overflows and icing in the winter.
30. David Meckes stated that the trash provider will not utilize the driveways, since they are private, and that the neighbors currently place the trash cans on his property along Sunnyside Avenue. The Applicant has not approached him about placing trash cans on his property.
31. David Meckes also stated that additional vehicular and pedestrian traffic on Fifth Street and Sunnyside Avenue would be dangerous as there are no handicap ramps and pedestrians frequently have to walk out on the street in this area.
32. John Meckes testified that there is a high water table and that there are current water and tree issues on Property.
33. Ellen Beswick testified that there are substantial water and drainage issues in the area with a high water table and water runoff that causes problems in winter both at her house and where Fifth Street connects to Sunnyside Avenue.
34. Ellen Besqick stated that water and ice had moved the wall of her garage three inches in the past and that the current storm water controls cannot handle the existing storm water in the area.
35. Stacy Rymkiewicz stated that her house is 1,142 square feet on Hillside Avenue which is in the same neighborhood as the Property.

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. Special Exception Legal Standard.

An applicant for a special exception has both the burden of producing evidence and the burden of persuading the zoning hearing board that the proposal satisfies the specific requirements expressed in the zoning ordinance. Bray v. Zoning Board of Adjustment, 410 A.2d 909, 910–11 (Pa.Cmwlth.1980). The specific requirements in a zoning ordinance may be categorized as: (1) the requirement that the proposal meet the “threshold definition of what is authorized as a special exception”; (2) “[s]pecific requirements ... applicable to the special exception [such as] special setbacks [or] size limits”; (3) [s]pecific requirements applicable to such kind of use even when not a special exception [such as] setback limits or size maximums”; and (4) any standards governing special exception approval which set forth specific criteria. *Id.* at 911–13. If the applicant satisfies his burdens of production and persuasion, “a presumption arises that [the requested use] is consistent with the health, safety and general welfare of the community.” Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board, 590 A.2d 65, 70 (Pa.Cmwlth.1991). Normally, the burden would then shift “to the objectors of the application to present evidence and persuade the [z]oning [h]earing [b]oard that the proposed use will have a generally detrimental effect on health, safety and welfare or will conflict with the expressions of general policy contained in the ordinance.” *Id.* However, this is not always the case. A zoning ordinance may contain a provision that “place[s] the ‘burden of proof’ on the applicant as to the matter of detriment to health, safety and general welfare.” *Id.* If a zoning ordinance contains “[s]uch a provision ... [it] merely places the persuasion burden on the applicant,” and “[t]he objectors still retain the initial presentation burden with respect to the general matter of the detriment to health, safety and general welfare.” *Id.*

III. Facts Applied to the Legal Standard – Variance Relief.

The Applicant filed an application requesting Variances from §143-37 and §143-20 of the Ordinance to permit the construction of a single family detached dwelling on a pre-existing non-conforming lot.

The applicable sections of the ordinance state:

§ 143-37 Area, setback, bulk, height and parking requirements.

A. Site area or building lot area.

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

(1) The maximum percentage of building coverage permitted shall be 35% of the net site area in any new land developments of more than one building. In addition, the maximum percentage of impervious material coverage shall be 30% of the net site area or building lot area in any new land development, whichever is applicable.

(2) The minimum building lot size, width and area requirements shall be determined by availability of public water and sanitary sewer service, as follows:

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

Requirement	No Public Service	Either Water or Sanitary Sewer Service Only	Both Water & Sanitary Sewer Service
Lot area, minimum	40,000 square feet	30,000 square feet	25,000 square feet
Lot width at building line	175 feet	150 feet	100 feet
Principal and accessory buildings over 250 square feet:			
Front yard	50 feet	50 feet	50 feet
Side yard	30 feet	25 feet	20 feet
Rear yard	60 feet	60 feet	60 feet
Maximum total building coverage	20%	20%	20%
Maximum total impervious coverage	35%	35%	35%

B. All buildings/structures shall be located and constructed so as not to exceed a maximum height of 35 feet from the finished grade level to the highest point of the building/structure, except as herein otherwise provided, including the provisions of § 143-19B related to accessory building/structures.

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

C. Parking. A minimum of two off-street parking spaces shall be required for each dwelling unit.

§143-20 Access to public street.

[Amended 7-6-2006 by Ord. No. 550]

Each and every lot shall abut a public street for at least 50 feet at the right-of-way lines, provided that, in the case of a rear lot, the required abutment along the public street shall be not less than 25 feet for each such lot. The portion of a rear lot required for the access driveway shall not be included in calculating the required front, rear and side yards or the required lot area.

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 Applicant seeks a Variance due to the pre-existing non-conformity of the lot. The Board finds that the record establishes that the Property was rendered undersized and too narrow by the subsequently enacted Ordinance. Pennsylvania Courts have held that

where a subsequently enacted zoning ordinance causes a property to be undersized or too narrow, the undersized nature and narrowness of the property are unique physical circumstances peculiar to that property giving rise to an unnecessary hardship. Searles v. Zoning Hearing Board, 545 A.2d 476, 478–79 (Pa.Cmwlt.1987); Jones v. Zoning Board of North Catasauqua, 455 A.2d 754, 755–56 (Pa.Cmwlt.1983); Township of Salisbury v. Rummel, 406 A.2d 808, 809 (Pa.Cmwlt.1979). Accordingly, the undersized nature and narrowness of the Property are unique physical circumstances peculiar to the Property giving rise to an unnecessary hardship and the Applicants meet the first prong of the five part variance test.

Moreover, The Board finds that the Applicant has satisfied the second prong of the variance test. The Ordinance requires a minimum lot area of 25,000 square feet and a minimum lot width of 100 feet (Ordinance § 143-37.A). The Property, however, only has an area of 6,000 square feet and is only 60 feet wide (and not on an improved public street). The Ordinance also requires a front yard setback of 50 feet, a rear yard setback of 60 feet, and side yard setbacks of 20 feet each. Thus, if the Ordinance were strictly adhered to, the Applicants would be able to build a home that is 20 feet wide but -10 feet deep. Therefore, it is obvious that the Applicant cannot strictly comply with the requirements of the Ordinance and that variances are necessary to allow for the use of the Property. Further, because of these hardships the Property cannot reasonably be utilized for a permitted use. The proposed use of a single family residence is a reasonable use.

The Board also finds that the Applicant has satisfied the third prong of the variance test. Because the Property was caused to be undersized and too narrow by the subsequently enacted Ordinance, the hardship was not self-inflicted. See Rummel, 406 A.2d at 809 (concluding that

hardship caused to a property that was rendered undersized and too narrow by a subsequently enacted zoning ordinance was not self-inflicted).

The Applicant has, therefore, satisfied the first three prongs of the variance test. The Applicant's satisfaction of the fourth and fifth prong is different for each variance request. Accordingly, each Section of the Ordinance for which variance relief has been requested will be addressed separately.

A. **Access to a public street.**

With respect to the required access to a public street the Ordinance requires that "each and every lot shall abut a public street for at least 50 feet at the right-of-way lines." (Ordinance § 143-20). The Board finds that the Property is sixty feet wide at the right of way line of Fifth Street. The issues are that Fifth Street is an unimproved paper street and that the Property cannot be increased in size to meet this Ordinance requirement. As such, Applicant cannot meet the requirements of Section 143-20 of the Ordinance.

Applicant argued, however, during the Hearing that it has rights to the entirety of the paper street known as Fifth Street due to the fact that the Property is shown on the plans that originally created said street. See *Estojak v. Mazsa*, 522 PA. 353, 562 A.2d 271 (1989)(court recognized that, where a municipality fails to accept or open a dedicated street in a plan within twenty-years, the owners of property within the plan or subdivision retain private rights of easement by implication over the unopened streets). Accordingly, Applicant can improve the paper street known as Fifth Street to meet the standards of a public street (curbing, sidewalks, stormwater controls, etc.).

Currently Fifth Street is only improved with the private driveways and shared driveways of the adjacent landowners. Applicant currently proposes to simply add a driveway connection to link the Property and the proposed home to the existing private driveways. The Board finds that this will violate the fourth prong of the variance test by altering the character of the neighborhood, impair the use of adjoining properties, and being detrimental to the public welfare.

The neighbor protestants stated that there are existing issues with trash services, storm water issues, and icing on the existing driveways. The addition of another driveway will increase these problems. Further, neighbor protestants also stated that there is an understanding for the shared maintenance and repair of the current driveway configuration that Applicant is not a part of. The Board is concerned that there may be issues with emergency vehicular access to the Property that was not addresses by Applicant.

With regard to the fifth prong of the variance test, that the variance be the least modification possible, the Board finds that this can only be satisfied if Fifth Street were improved to the standard of a public street. As Applicant has easement rights to complete these improvements, pursuant to Estock, Applicant can satisfy this fifth prong only by completing the necessary improvements to Fifth Street.

Further, by adding this as a condition to any approval, Applicant could also then satisfy the fourth prong, by ensuring storm water improvements, emergency vehicular access and trash collector access to each of the neighboring properties. Accordingly, the Applicant can satisfy the requirements for a variance from Section 143-20 of the Ordinance only by complying with the following conditions:

- (1) Improve Fifth Street to standard of public street for curbing, road improvements and storm water improvements; and
- (2) Complete a land development with the Township for the approval of the Fifth Street improvements.

B. Area and setback requirements.

With regard to the area and setback requirements, the Ordinance requires: (1) lot area of 25,000 square feet; (2) front yard of 50 feet; (3) rear yard of 60 feet; and (4) side yards of 20 feet each. (Ordinance § 143-37.A). The Board finds that the Applicant did not meet either the fourth or fifth prong of the variance test for this variance request.

As the Applicant cannot satisfy either the fourth or fifth prong of the variance test the variance must be denied. Landfill, Inc. v. Pine Township Zoning Hearing Board, 83 A.3d 488 (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. Applicant testified that they designed the home to fit the neighborhood and to be the smallest marketable home possible. The Board finds that the single family residential use is available in the area of the Property, the size of the home and the deviation from the required setbacks is excessive.

The Board finds the concerns and facts presented by the neighborhood protestants to be credible. There are significant existing stormwater issues in the vicinity of the Property. While the Applicant testified that they would design erosion and sediment controls and stormwater controls, compliance with these concerns was not shown to the Board. A promise to comply is not evidence that compliance can be obtained and evidence of compliance is required at the time of the Hearing before the Board. Appeal of Baird, 113 Pa.Comm. 637, 641, 537 A.2d 976, 978 (1988). Accordingly, the construction of the home could have detrimental impacts on the

character of the neighborhood and the use and enjoyment of adjacent properties. This violates the fourth prong of the Variance test.

The applicant further violates the fourth prong of the variance test, as there is no provision for trash service, emergency vehicles, parking, pedestrian and vehicular traffic both on the public roadways and the unimproved paper street known as Fifth Street. All of these items are potential issues with public safety, the safety of the adjacent residents and all show that the Applicant failed to satisfy the fourth prong of the variance test.

The Applicant also failed to satisfy the fifth prong - that the requested variance is the minimum variance to afford relief. Applicant simply stated that they attempted to develop a smaller house on a different property, in a different municipality. There was no analysis that a smaller house would not work on the Property. There was evidence that a smaller house or smaller houses exist in the neighborhood where the Property is located. The Applicant did state that the proposed home has two parking spaces and a garage. If the garage were eliminated, the proposed house could be reduced in size to better meet the setback requirements.

It is unclear from the record whether a house smaller than 26 feet wide and 43 feet deep with a 10 by 12 deck could be built. The Board believes that a smaller marketable house could be built. As a smaller house could be built, the Applicant failed to present evidence to meet the fifth prong of the variance test. See *Pembroke Pee Wee Inc. v. ZHB of Bethlehem Twp.*, 768 A.2d 410 (Pa.Comm. 2001).

As the Applicant failed to satisfy the fourth and fifth prongs of the variance test for the variance requested from the area and setback provisions of Section 143-37.A of the Ordinance, the requested variance must be denied.

IV. Facts Applied to the Legal Standard – Special Exception Relief.

In its Application, the Applicant has checked the box for special exception relief. The Applicant failed, however, to identify any section of the Ordinance in which a special exception is applicable. Further, the Applicant did not mention the Ordinance section at the Hearing or in its brief submitted in support of its Application. Accordingly, the Board does not know what general and specific criteria to apply.

The Board, being familiar with the Ordinance, is aware that a special exception is required for the development of undersized lots pursuant to Ordinance Section 143-145. In an abundance of caution, the Board will address this section and Applicant's failure to show compliance with the general and specific requirements for the special exception.

Section 143-145 of the Ordinance provides as follows:

Any land, the existing lawful use of which at the time of passage of this chapter does not conform to the regulations of the district in which it is located, either because of the original passage of this chapter or because of subsequent amendments of applicable regulations, shall have such use considered as a nonconforming use, which may continue on such land but shall be subject to the regulations governing nonconforming uses. A nonconforming lot which is of public record in single and separate ownership at the time of the enactment of the Zoning Ordinance, namely May 8, 1955, may, by special exception, be used for a permitted use in the district in which it is located.

Emphasis added. General standards for special exceptions are set forth in Sections 143-167 and specific standards are set forth in Section 143-168.B and 143-167.D(3). The burden of proof is on the Applicant as set forth in Ordinance Section 143-168.D(4).

An Applicant for special exception has both the burden of producing evidence and the burden of persuading the zoning hearing board that the proposal satisfies the general and specific requirements of the zoning ordinance. Bray v. Zoning Board of Adjustment, 410 A.2d 909, 910-11 (Pa.Cmwlt. 1980). As the applicant never addressed this relief

and the general and specific criteria set forth in the ordinance, the Applicant failed to meet its burden.

Specifically, the Applicant failed to show any compliance with the following:

- A. The suitability of the property for the use desired and assure itself that the proposed change is consistent with the spirit, purpose and intent of the Zoning Ordinance and Comprehensive Plan.
- B. The proposed use and development will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood and that the use of the adjacent property is adequately safeguarded.
- C. The proposed use and development will serve the best interests of the Township, the convenience of the community (where applicable) and the public welfare.
- D. The effect of the proposed use and development upon the logical, efficient and economical extension of public services and facilities such as public water, sewers, police and fire protection and public schools.
- E. The suitability of the proposed location of use with respect to probable effects upon highway traffic and assure adequate access arrangements in order to protect major roads from undue congestion and hazard.

See Ordinance Section 143-167. The Applicant also failed to address whether the proposed use or development would:

- 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.

See Ordinance Section 143-168.D(3).

As many of these items were not addressed, Applicant did not meet its burden. Further, as discussed in the above analysis of the requested variance relief, Applicant specifically failed to address the traffic (pedestrian and vehicular), fire and emergency service access, public safety, storm water and ground water, adverse impacts on adjacent properties, access to the property and impact on access of others, other impacts on adjacent properties and the neighborhood. As Applicant failed to address these specific and general criteria in a satisfactory way, Applicant did not meet its burden with regard to any requested Special Exception.

Any request for Special Exception is therefore, denied for two reasons:

- (1) Applicant failed to request relief from any ordinance Section that would provide for relief by way of Special Exception;² and
- (2) Applicant failed to satisfy the general and specific criteria for the granting of a Special Exception as set forth in the Ordinance.

² This includes Ordinance Section 143-145 and any other Section of the Ordinance.

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Applicant failed to request special exception relief and, to the extent it did, failed to meet its burden of proof to warrant a Special Exception.
3. The Application for a variance from the dimensional requirements of Ordinance Section 143-20 to permit less than 50 feet of frontage on a public street is granted so long as the conditions set forth in the Order below are satisfied.
4. The Application for a variance from the area and setback requirements of Ordinance Section 143-37 to permit a reduced lot area and setback requirement for the development of a single family home on the Property is denied.
 - a. If the requested variance were to be granted, the community will be significantly changed altering the character of the neighborhood and the R2 District, and the proposed development will substantially impair the appropriate use and/or development in the district thus detrimentally impacting the adjacent properties and the public welfare; and
 - b. The requested relief does not represent the minimum that will afford relief and does not represent the least modification possible of the regulation at issue.

DECISION

The unanimous Decision of the Lower Providence Township Zoning Hearing Board is as follows:

1. The requested special exception relief is denied for two reasons:
 - a. Applicant failed to request relief from any ordinance Section that would provide for relief by way of Special Exception;³ and
 - b. Applicant failed to satisfy the general and specific criteria for the granting of a Special Exception as set forth in the Ordinance.
2. The Application for a variance from the area and setback requirements of Ordinance Section 143-37 to permit single family home to be built on a lot having an area of 6,000 square feet with a front yard of 20 feet, a rear yard of 37 feet (27 feet to the proposed deck) and side yards of 14 feet and 20 feet is denied.
3. The Application for a variance from the dimensional requirements of Ordinance Section 143-20 to permit less than 50 feet of frontage on a public street is granted so long as the following conditions are satisfied:
 - a. Applicant shall improve Fifth Street from Sunnyside Avenue to Hillside Avenue to the standard of a public street. Improvements to cartway, curbing and stormwater controls shall be installed as required by the Township.
 - b. Applicant shall submit a land development application for the review and approval of any and all roadway and storm water improvements for the development of both Fifth Street and the single family development on the Property.

³ This includes Ordinance Section 143-145 and any other Section of the Ordinance.

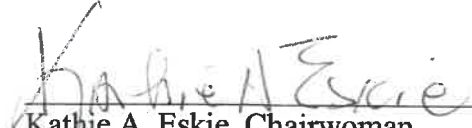
ORDER

The foregoing Findings of Fact, Discussion and Decision are hereby approved and Ordered.

**LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD**

Dated:


BY:


Kathie A. Eskie, Chairwoman

George J. Ozorowski, Vice Chairman

Gail Hager

Joseph Pucci


Patricia Alzamora


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 permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.