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April 10, 2020

Mr. Pawel Zwierzchowski  
1017 Thrush Lane  
Audubon PA 19403

**RE: Lower Providence Township Zoning Hearing Board  
Application of Pawel Zwierzchowski  
Property: 1017 Thrush Lane #43-00-14833-00-1  
Appeal No. Z-20-01**

Dear Mr. Zwierzchowski:

As a follow up to my correspondence to you dated February 28, 2020, attached please find the full findings of facts and conclusions of law of the Board regarding the above captioned matter. I wish you success with your project.

Yours very truly,



Keith B. McLennan

KBM/jds

Enclosure

pc: Kathie A. Eskie, Chairwoman  
George Ozorowski, Esq., Vice Chairman  
Gail Hager  
Joseph Pucci  
Patricia Alzamora

Robert G. Hardt  
Christopher Gerdes  
Tina Blain  
Michael Mrozinski  
(Community Development Director)

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

<b>APPLICATION NO. Z-20-01</b>	:	<b>HEARING DATE: February 27, 2020</b>
	:	
	:	
<b>APPLICATION OF:</b>	:	
<b>Pawel Zwierzchowski</b>	:	
	:	
	:	
<b>PROPERTY:</b>	:	
<b>1017 Thrush Lane</b>	:	
<b>Audubon, PA 19403</b>	:	
<b>Parcel No. 43-00-14833-00-1</b>	:	

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

On January 31, 2020, applicant, Pawel Zwierzchowski (hereinafter “Applicant”) filed an application (“Application”) requesting variances from the Lower Providence Township Zoning Ordinance (“Ordinance”) Section 143-37 regarding setbacks to permit the construction of a two-car garage in the rear of his property located at 1017 Thrush Lane, Audubon, Lower Providence Township, Pennsylvania, 19403. The Application was properly advertised, and notices were mailed to all property owners within 500 feet of Applicant’s home. A public hearing was held at the Lower Providence Township Building before the Lower Providence Township Zoning Hearing Board (“Board”) on February 27, 2020. Chairman of the meeting George Ozorowski and members Gail Hager, Joseph Pucci, Patricia Alzamora and Chris Gerdes of the Zoning Hearing Board were present. Also present at the hearing 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 Pawel Zwierzchowski, who along with his wife, Renata are the

owners of 1017 Thrush Lane Audubon, Lower Providence Township, PA, 19403, parcel number 43-00-14833-00-1 (hereinafter the “Property”).

2. The Property is located in the R-2 residential district.
3. The lot at issue was developed in 1951 prior to the Ordinance’s adoption in 1955.
4. Applicant’s home is of the single-family variety constructed in 1951 with a 16 foot side yard setback on a of 15,300 square foot lot in the Apple Valley subdivision in the Township.
5. Before the Ordinance was changed in 2006, the required side yard setback was 15 feet.
6. Currently the R-2 district requires a lot size of 25,000 square feet and 20 foot side yard setbacks.
7. The Property is non-conforming in that it is undersized for the district and has setbacks that fail to comply with the Ordinance.
8. The Property as now constituted is unique since nothing could be constructed thereon that would comply with the R-2 district creating a hardship for the Applicant.
9. Applicant, a contractor, intends to construct a 2 bay, 1 story, 720 square foot detached garage that is 24 feet wide and 30 feet deep in the rear of the Property.
10. The Property sits on a street with other single-family dwellings, the majority of which have garages with no, or minimal setbacks.
11. Applicant testified that his home is similar to the 39 older single-family cape cod and ranch homes on the street.
12. Of the 39 homes on his street, Applicant testified that 26 have at least 1 garage and 7 of the 26 are 2 car garages.
13. None of the homes with a garage conform to the Ordinance most having only 2-5

foot side yard setbacks.

14. Although large, the detached garage will be located in the rear of his Property consistent with the garages constructed throughout the neighborhood having less impact on neighborhood.

15. Current requirements would place his garage in the middle of his backyard making it unusable.

16. Applicant's neighbor across the street has a 2 car garage with a 5 foot side and rear yard setback.

17. Applicant's neighbor to the right has a driveway with no setback.

18. At the hearing on February 27, 2020, Applicant testified that he is a contractor who stores his tools in the sunroom of his house or outside including his plow and he has no storage for the bikes his 4 children use now stored in a bedroom.

19. Applicant wishes to get his truck off the street and is plow in the garage as well as his tools and wife's vehicle.

20. Applicant's existing driveway is only 9 feet wide restricting what can be parked there or traversed.

21. Applicant seeks to widen the driveway to 15' in the back and thus further encroaching on the side yard setback in order to get his truck off the street and into the driveway.

22. The land development ordinance controls the driveway setback requirements, requiring a 5 foot setback.

23. Applicant requested a variance from §143-37.A.(2) to construct a two car garage in the rear of his property, with a three (3) foot side yard setback, and also requested to extend his driveway to the new garage with only a one (1) foot side yard setback and a 55 foot rear yard

setback.

24. Applicant testified that he spoke with his neighbors and none had an objection, in fact, one neighbor, Mr. Joseph Grablewski of 2774 Egypt Road, testified in support of the Application in order to get the Applicant's truck off the street to facilitate better traffic flow.

25. The hardship suffered by the Applicant having been created by the uniqueness of the Property was not self-inflicted.

26. Granting the requested variance will not alter the essential character of the neighborhood in which the Property is located.

27. The following exhibits were made of record:

A-1 Photograph supplied by Applicant of the garage at 1013 Thrush Lane as an example of the garage he wishes to build;

A-2 Photograph supplied by Applicant of 1015 Thrush Lane;

A-3 Application to the Zoning Hearing Board dated January 31, 2020;

B-1 Correspondence dated 2/12/20 notifying all property owners within 500 feet of the Application;

B-2 Copy of the Mailing Matrix;

B-3 Certificate of Notification;

B-4 Certificate of Posting;

B-5 Copy of Legal publication of hearing.

## **DISCUSSION**

### **I. 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 series of dimensional variances that are of the less restrictive variety.

## **II. Legal Standard.**

To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

A. Variance. The Board shall hear requests for variances where it is alleged that the provisions of the Zoning Ordinance inflict unnecessary hardship upon the applicant. The Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical 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) That 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) That the unnecessary hardship has not been created by the applicant.

(4) That 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) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

In any variance analysis, “unnecessary hardship” is established by evidence that: (1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) the property can be conformed for a permitted use only at a prohibitive expense; or (3) the property has no value for any purpose permitted by the zoning ordinance.” Marshall v. City of Philadelphia, 626 Pa. 385, 395, 97 A.3d 323, 329 (2014) (citing Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998) and 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)). In establishing hardship, an applicant for a variance is not required to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose, though there must be more than mere economic hardship or increase in property value. *Id.*

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

The unique shape, size and location of the subject Property require the grant of a variance. Undue hardship would result from a denial of the variance. This hardship is not self-imposed but is rather the result of the physical characteristics of the lot. Also, the essential character of the neighborhood will not be changed with the proposed addition, as evidenced by the pictures of the surrounding neighbor’s garages. Finally, Applicants have agreed to alter his

request for a 3 foot side yard setback for the garage to a 5 foot side yard setback making the variance requested the minimum variance that will afford the required relief.

The variance requested here is to permit the Applicant's use of the Property similar to that used by many Lower Providence Township single family homeowners in the neighborhood generally existing in the R-2 zoning district.

Accordingly, the Board finds that the application for a variance from the setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is granted.

### **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 a hardship on the Applicant.
3. The hardship is not self-imposed but is due to the unique nature of the Property.
4. The proposed use will not alter the essential character of the neighborhood in which the Property is located and will not contravene the use of adjacent property or endanger public safety.
5. The requested relief is necessary to enable the Applicant's reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulations at issue.
6. Rigid compliance with the Ordinance in this case is unnecessary for preservation of the public interest sought to be protected by the ordinances.



## **DECISION**

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

1. The Application for a variance from the requirements of Lower Providence Township Zoning Ordinance §143-37.A.(2) to permit a rear yard setback of fifty-five feet (55) where sixty (60) feet is required is hereby **GRANTED**.
2. The Application for a variance from the use requirements of Lower Providence Township Zoning Ordinance §143-37.A.(2) to permit a side yard setback of five feet (5) where twenty (20) feet is required is hereby **GRANTED**.
3. The Application for a variance from the dimensional requirements of Lower Providence Township Zoning Ordinance §143-37.A.(2) to permit the extension of his driveway to within one foot of the side yard property line is hereby **GRANTED**.

Dated: April 9, 2020.

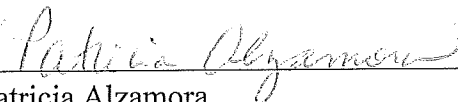
**ORDER**

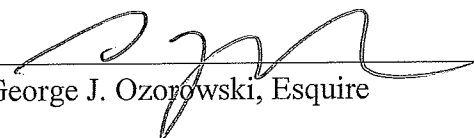
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD


  
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Gail Hager

  
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Joseph Pucci

  
\_\_\_\_\_  
Patricia Alzamora

  
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George J. Ozorowski, Esquire

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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.