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December 14, 2020

DFD Properties, LLC
3848 Germantown Pike
Collegeville, PA 19426

**RE: Lower Providence Township Zoning Hearing Board
Application of DFD Properties, LLC
Property: 3852 Germantown Pike
Parcel No.: 43-00-05266-00-1
Appeal No.: Z-20-21**

Dear Applicant:

As a follow-up to correspondence dated November 13, 2020, enclosed please find the Findings of Fact, Conclusions of Law, Decision and Order of the Zoning Hearing Board regarding the above-captioned matter.

All parties shall have thirty (30) days to appeal this Decision to the Court of Common Pleas of Montgomery County.

Sincerely,


MICHAEL E. FUREY

MEF:js

Enclosure

cc: Charles D. Mandracchia, Esquire (w/enclosure)
Kathie A. Eskie, Chair (w/enclosure)
George Ozorowski, Esquire, Vice Chair (w/enclosure)
Gail Hager (w/enclosure)
Joseph Pucci (w/enclosure)
Patricia Alzamora (w/enclosure)
Robert G. Hardt (w/enclosure)
Christopher Gerdes (w/enclosure)
Keith B. McLennan, Esquire (w/enclosure)
Tina Blain, Lower Providence Township (w/enclosure)
Michael Mrozinski, Community Development Director Lower Providence Township (w/enclosure)

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-20-21	:	HEARING DATE: November 12, 2020
	:	
APPLICATION OF:	:	
DFD Properties, LLC	:	
	:	
PROPERTY:	:	
3852 Germantown Pike	:	
Collegeville, PA 19403	:	
Parcel No. 43-00-05266-00-1	:	

**FINDINGS OF FACT, DISCUSSION, CONCLUSIONS OF LAW, DECISION AND
ORDER OF THE LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

On October 8, 2020, Applicant, DFD Properties, LLC (hereinafter "Applicant") filed an application ("Application") requesting a variance from the Lower Providence Township Zoning Ordinance ("Ordinance") Section 143-276.A(5) regarding building coverage to permit a lot line adjustment minor subdivision of the subject property located at 3852 Germantown Pike, Lower Providence Township. The application requests approval such that approximately 7,000 square feet of land may be joined with Applicant's adjoining parcel located at 3848 Germantown Pike. The Owner of the subject property, Cathy Maris, authorized the Applicant, as equitable owner of such parcel of land, to pursue the Application. The Application was properly advertised, notices were mailed to property owners within 500 feet of Applicant's Property, and the Property was posted. A public hearing was held at the Lower Providence Township Building before the Lower Providence Township Zoning Hearing Board ("Board") on November 12, 2020. Chair Kathy Eskie, Vice Chair George Ozorowski, and Voting Members Gail Hager, Patricia Alzamora, Christopher Gerdes, and Alternate Member Robert Hardt, 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, Tim Kurek, the Court Reporter, and Michael E. Furey, Esquire, serving as Acting Solicitor for this Application.

FINDINGS OF FACT

1. The Applicant is DFD Properties, LLC, equitable owner of a portion of the property located at 3852 Germantown Pike, Collegeville, PA 19403, Parcel No. 43-00-05266-00-1 (hereinafter the "Property"), located in the EVC District.

2. The EVC District limits building coverage to 10% of the lot for a Class One use such as single-family residence.

3. The Applicant intends to seek subdivision approval from the Board of Supervisors so as to subdivide an approximately 7,000 square foot part of the subject Property and join it with the Applicant's adjoining property located at 3848 Germantown Pike.

4. The Property is situated on Germantown Pike, in a mixed commercial and residential area.

5. Even though no additional buildings will be constructed, the result of the subdivision will be to reduce the square footage of the subject Property, such that the resulting lot will no longer comply with the 10% building coverage limitation, exceeding same by .79%.

6. No neighboring property owners entered appearance in opposition to the Application.

7. The Applicant requested a variance from §143-276.A(5), to permit 10.79% building coverage, rather than the 10% allowed, so that the Property may be subdivided and joined with the Applicant's adjoining property.

8. No use variance or dimensional relief was requested with reference to the Applicant's Property located at 3848 Germantown Pike, and therefore any use of the additional property obtained as a result of subdivision will be subject to approval by the Zoning Officer.

9. The following exhibits were marked and admitted into the record:

- B-1 Application to the Zoning Hearing Board
- B-2 Proof of Publication of the Legal Ad
- B-3 Certificate of Posting
- B-4 Certificate of Mailing, Notice and Mailing List
- A-1 Relevant portions of the Agreement of Sale
- A-2 Plans
- A-3 Memorandum of Law

DISCUSSION

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 may be used in a manner consistent with the zoning regulations. In contrast, a use variance seeks to use the property in a way that is inconsistent with the zoning regulations. In Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Supreme Court of Pennsylvania determined that, in evaluating a hardship for a dimensional variance, the Zoning Hearing Board should consider various factors, including economics, and the characteristics of the surrounding neighborhood, in determining whether a variance would be appropriate. The Court also held that, when considering a dimensional variance, a Zoning Hearing Board should adopt a somewhat more relaxed standard of scrutiny than when the Board is considering a use variance.

In Marshall v. City of Philadelphia and Zoning Board of Adjustment, 626 Pa. 385, 97 A.3d 323 (2014), the Supreme Court recognized that a property does not have to be valueless in order to obtain a use variance. The Court further indicated that economic considerations may be

considered in a use variance case, if the property can only be brought into conformance at a prohibitive expense. The Supreme Court reiterated in the Hertzberg and Marshall cases, that an Applicant need not prove that the property cannot be used for any other permitted use in order to be entitled to a variance. Nevertheless, an applicant seeking a variance must prove that unnecessary hardship will result if the variance is denied, and must also prove that the proposed use is not contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983). “The burden on an applicant seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling.” Singer v. Zoning Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth. 2011).

The Applicant in this case is not requesting a use variance, but rather only a minor dimensional variance, which requires a relaxed level of scrutiny. Society Hill Civic Association v. Philadelphia Zoning Board of Adjustment, 42 A.3d 1178 (Pa. Cmwlth. 2012).

To obtain a dimensional variance, the Applicant must ordinarily meet the five (5) criteria set forth in Section 910.2 of the Pennsylvania Municipalities Planning Code (“MPC”), 53 P.S. §10910.2, and incorporated in §143-168.A. of the Ordinance:

- (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.
- (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.

However, such criteria governing the granting of a variance on the basis of hardship need not be met when the dimensional variance requested is de minimis. West Bradford Township v. Evans, 384 A.2d 1382 (Pa. Cmwlth. 1978), Stewart v. Zoning Hearing Board of Radnor Township, 531 A.2d 1180 (Pa. Cmwlth. 1987). In Middletown Township vs. Zoning Hearing Board of Middletown Township, 682 A.2d 900 (Pa. Cmwlth. 1996), the Commonwealth Court determined that a 6.7% variance was de minimis. In Lench v. Zoning Board of Adjustment of the City of Pittsburgh, 13 A.3d 576 (Pa. Cmwlth. 2011), the Commonwealth Court determined that a 5.82% variance was de minimis. In In re Appeal of Ressler Mill Foundation, 573 A.2d 675 (Pa. Cmwlth. 1990), the Commonwealth Court held that a 4.7% variance was de minimis. Consistent with the analyses followed in the cases cited, and particularly in this case where the Applicant does not propose additional building coverage on the two (2) lots involved in the subdivision, but rather proposes to redraw the property lines, resulting in the remaining lot exceeding the 10% building coverage limitation by only .79 percent, the 7.9% variance requested is de minimis. Rigid adherence to the building coverage requirement is not necessary to protect the public interests sought to be protected by the Ordinance. Therefore, the granting of a de minimis variance is justified.

Accordingly, the Board finds that the application for a variance from the building coverage requirements of Section 143-276.A(5) of the Lower Providence Township Zoning Ordinance should be granted.

CONCLUSIONS OF LAW

(1) The Applicant is the equitable owner of the Property in question, and therefore has standing to appear before the Board regarding the requested relief.

(2) The Zoning Hearing Board has jurisdiction over the subject matter of the Application.

(3) The relief requested is de minimis as a matter of law.

(4) The relief 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) Rigid compliance with the Ordinance in this case is unnecessary for preservation of the public interest sought to be protected by the Ordinance.

DECISION

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

The Application for a variance from the requirements of Lower Providence Township Zoning Ordinance §143-276.A(5), to permit 10.79% building coverage, rather than the 10% allowed, so that the property may be subdivided and joined with the Applicant's adjoining property, is hereby **GRANTED**.

The approval granted herein is subject to the condition that the Applicant comply with the requirements of the Township with respect to an application for subdivision approval, substantially in accordance with the plans, testimony and exhibits submitted to the Zoning Hearing Board.

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

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PROPERTY:		:	
3852 Germantown Pike		:	
Collegeville, PA 19403		:	
Parcel No. 43-00-05266-00-1		:	

ORDER

The foregoing Findings of Fact, Discussion, Conclusions of Law, and Decision are hereby approved and so ordered.

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

—DocuSigned by:

Kathie Eskie

Kathie A. Eskie, Chair

~~George Ozorowski, Esquire, Vice Chair~~

Gail Hager

Patricia Alzamora

Christopher Gerdes

NOTICE TO APPLICANT

All parties have thirty (30) days after the issuance of this Decision and Order to file an appeal to the Court of Common Pleas of Montgomery County to contest the approval granted herein. The Applicant may take action on the approval during the thirty (30) day appeal period, however, the Applicant will do so at its own risk.

In accordance with Section 143-170 of the Lower Providence Township Zoning Ordinance, the Applicant must secure all applicable permits from Lower Providence Township within six (6) months of the date of this Decision and Order.

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LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

Kathie A. Eskie, Chair

George Ozorowski, Esquire, Vice Chair



Gail Hager



Patricia Alzamora

Christopher Gerdes

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