

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO.	Z-19-03	: HEARING DATES:	February 28, 2019
		:	March 28, 2019
		:	April 25, 2019
		:	
APPLICATION OF:		:	
C. Robert Nowak		:	
		:	
PROPERTY:		:	
808 Jode Road	:		
Lower Providence Township	:		
Audubon, PA 19403	:		
Parcel No. 43-00-07543-00-1	:		

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

Applicant C. Robert Nowak (hereinafter referred to as the "Applicant") filed his original application on February 1, 2019 requesting variance from the flood plain requirements of Section §143-185 of the Lower Providence Township Zoning Ordinance ("Ordinance") in connection with the proposed construction of an addition to his existing home to serve as his studio. The application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board on February 28, 2019 at the Lower Providence Township Building. At the hearing it was determined that the Applicant was not prepared to advance his application resulting in his request for a continuance. The Applicant's Request for a continuance was granted subject to Applicant's waiver of the time periods provided in the Municipalities Planning Code ("MPC"). Applicant then appeared before the Board at its March 28, 2019 meeting and sought to amend his application abandoning his request for a variance from §143-185, the flood plain of the Ordinance. Rather, Applicant requested that the Board permit him to amend his application to seek a variance from §143-37.A.(2) of the Ordinance to permit the construction of his studio with a twenty-five foot (25') front yard setback where fifty feet (50) is required. Inasmuch as Applicant's proposed amendment was material, he was required to again

advertise his Application to reflect his request for amended relief. As a result, Applicant's application was again continued subject to his waiver of the time periods provided in the MPC. Applicant then appeared before the Board at its April 25, 2019 meeting to advance his amended application which had been properly advertised and noticed. At the April meeting Chairwoman, Kathy Eskie, and members Gail Hager, Joseph Pucci, alternates Robert Hardt 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 C. Robert Nowak.
1. The Applicant is the owner of the subject property, which is located at 808 Jode Road, Lower Providence Township, Audubon, PA 19403 (the "Property"). The parcel number is 43-00-07543-00-1.
2. The applicable zoning is R-2 Residential District.
4. The Applicant was not represented by legal counsel.
5. The present use on the Property is a single family residence.
6. The Applicant acquired the Property in 1994.
7. The lot is 30,500 square feet.
8. The Property is located at the corner of Jode and Linnet Roads.
9. The Applicant initially proposed to construct a room to serve as Applicant's studio to the side of the residence that would encroach on the flood plain.
10. The proposed studio would be used solely for personal use and no as an accessory building.
11. As a result of the challenges that are present when building in the flood plain, Applicant revised his Application to purportedly propose a less offensive location.

12. To avoid building in the flood plain, Applicant proposes to locate his new studio that previously was in the rear of the Property to now be on the right side of the Property when facing it.

13. By relocating the studio it will now be within twenty five feet (25') of Linnet Road.

14. As a corner lot, the Property arguably has two (2) front yards with one being Linnet Road.

15. The studio is proposed to be joined to the home by connecting to the existing 12' x 18' foot deck and connecting the studio with the house by extending the home's cinder block foundation to the studio and constructing a trellis between the house and the studio.

16. The studio will be heated and have electricity but not water.

17. Both Mr. Nowak and his structural engineer, Mr. Dana Ziegler of Providence Engineering Corporation testified at the hearing.

18. Mr. Ziegler was qualified as an expert in the field of engineering.

19. There was no adverse public comment regarding this application.

20. The Applicant's lot with two (2) front yards is unique creating challenges for the Applicant to develop his property as intended.

21. The proposed studio room will not alter the essential character of the neighborhood.

22. The following exhibits were marked at the hearing:

A-1: Application and Deed to the Property;

A-2 One (1) sketch plan of the lot dated January 30, 2019 from Providence Engineering Corporation;

A-3 Front and side elevations along with a floor plan;

B-1: Certification of Notification with a copy of the Notice and mailing matrix to those neighbors within five hundred (500) feet of the subject property along with a mailing matrix of those property owners notified;

B-2: Certificate of Posting of the Notice;

B-3: Notices to property owners including the notice published in the Times Herald on April 17, 2019.

### **DISCUSSION**

The Applicant has requested a variance from the setback requirements of §143-37.A.(2) of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the dimensional requirements that require a fifty (50) foot setback on what could be described as a second front yard of the Property along Linnet Road.

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)). 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). Pursuant to the Municipalities Planning Code the following must be found in order for the Board to grant the requested variance:

(1) That 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) 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 such 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 in issue. 53 P.S. § 10910.2; §143-168.A. of the Ordinance.

The unique circumstances of the Applicant and 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 Applicant's property being both a corner property with two (2) front yards and a significant portion being in the flood plain. Applicant has amended his Application in an effort to avoid constructing his proposed studio in the flood plain proposing a less offensive use. But for the Property's location at the corner of Linnet and Jode Roads, the construction of his studio on the side of his house as proposed in his amended Application would not require zoning relief. Also, the essential character of the neighborhood will not be changed with addition of this studio room. Finally, the proposed studio would only extend from

the existing deck that is already non-confirming. Compared with building in the flood plain, Applicant's amended Application is the minimum variance that will afford the required relief.

Accordingly, the Board finds that the application for a variance from the front yard setback requirements of §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 an unnecessary hardship on the Applicant.
3. The hardship is not self-imposed, and is due to the unique physical circumstances of the Property and post-acquisition more restrictive alteration of the Ordinance.
4. The requested relief is necessary to enable the Applicant reasonable use of the Property,
5. The variance represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.
6. The proposed studio 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:

The application for a variance from §143-37.A.(2) of the Lower Providence Township Zoning Ordinance to permit a front yard setback of twenty five feet (25') along Linnet Road is granted.

Dated: May 28, 2019

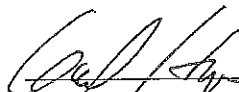
**ORDER**

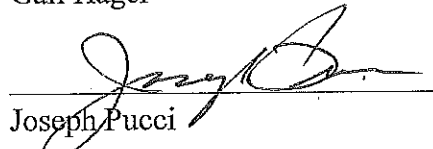
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

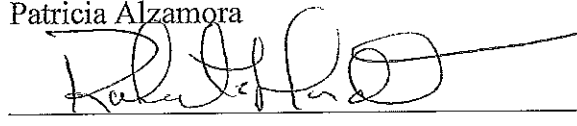
  
Kathie A. Eskie, Chairwoman

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Gail Hager

  
Joseph Pucci

Patricia Alzamora

  
Robert G. Hardt

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.