

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

APPLICATION NO. Z-11-14	:	HEARING DATE: July 28, 2011
	:	
APPLICATION OF:	:	
Veronica Gambone	:	
	:	
PROPERTY:	:	
357 Level Road	:	
Collegeville, PA 19426	:	
Parcel Nos. 43-00-07300-00-1,	:	
43-00-07297-00-4	:	

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

The applicant, Veronica Gambone (hereinafter referred to as the “Applicant”), filed an application requesting a variance from Section 143-191.A of the Lower Providence Township Zoning Ordinance in connection with proposed expansion of an existing deck. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 28, 2011 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Community Development Director, the Solicitor, and the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicant is Veronica Gambone.
2. The Applicant is the owner of the subject property.
3. The subject property is located at 357 Level Road, Collegeville, PA 19426 (the “Property”). The parcel numbers are 43-00-07300-00-1 and 43-00-07297-00-4.
4. The applicable zoning is R2, Residential District, and Floodplain Conservation District.
5. The Applicants were not represented by legal counsel.

6. The lot size of the Property is approximately 6.21 acres.
7. The present use on the Property is residential, which began in the 1800s.
8. SuSanne M. Creveling, P.E., President of HT Engineering, Inc., testified as a witness on behalf of the Applicant.
9. The following exhibits were marked at the hearing:

A-1	Packet of 7 color photographs of the Property
B-1	Application
B-2	Advertisement
B-3	Proof of publication
10. The topography of the Property is unique. The Property is transected by the Perkiomen Creek.
11. The existing residential dwelling was built in approximately the early 1800s.
12. The existing residential dwelling is nonconforming in that its lowest floor is not at least 1 ½ feet above the one-hundred-year flood elevation.
13. The existing dwelling is L-shaped, with the short side of the L exposed to the direct flow of the Perkiomen Creek. It is currently used as a two-unit residential dwelling.
14. There is an existing deck at the rear of the existing dwelling.
15. The Applicants propose to expand the existing deck, so that it would wrap around the southwestern side of the house to the parking area at the driveway. The proposed deck would be constructed in the interior of the L. The elevation of the proposed deck would be consistent with the existing deck.
16. Per FEMA mapping, the 100-year flood elevation is at approximately elevation 104.5. The elevation of the existing deck and first floor is at approximately elevation 98.
17. If the proposed deck were constructed at an elevation at least 1 ½ feet above the 100-year flood elevation, it would need to be approximately 8 feet above the existing deck and

first floor. This would place the deck at a level that would pass through several first floor windows on the southern side of the property and would require a significant number of steps up to the deck level from the existing first floor and driveway.

18. Construction of the expanded deck would be consistent with the construction of the existing deck. There would be an open railing system and gapped decking. Due to the nature of the proposed construction of the expansion of the deck and its location the proposed expanded deck would not result in enlargement of flood heights.

19. During the over 10-inch rain event in October 2010, the floodwaters did not overtop the existing deck or enter into the existing dwelling.

20. The proposed expanded deck will be a modification in an amount less than 50% of the Property's market value.

21. The proposed expanded deck will be elevated as high as reasonably possible in light of the elevation of the existing dwelling.

22. No members of the public testified for or against the application.

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

24. Absent the requested relief the Applicants will suffer an unnecessary hardship. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property including the unique topography of the Property and the location of the existing non-conforming dwelling dating from approximately the early 1800s.

#### **DISCUSSION/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 upon the Applicant.
3. The hardship is not self imposed, and is due to the unique physical circumstances and/or characteristics of the Property.
4. The approval of the requested relief is necessary to enable the Applicant's reasonable use of the Property.
5. The variance granted by the Board will not alter the essential character of the neighborhood or the zoning district in which it is located, will not substantially impair the appropriate use of adjacent properties and will not be detrimental to the public welfare.
6. The variance granted by the Board represents the minimum that will afford relief from the hardship.

The Applicant has requested a variance from the requirements of Section 143-191.A of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of an expanded deck at the same elevation as the existing deck and the first floor of the existing dwelling. The request for variance seeks relief as to dimensional requirements.

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 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. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Id. at 258-59, 721 A.2d at 47-48. In addition, to justify the grant of a dimensional variance courts may consider multiple factors, “including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.” Id. at 263-64, 721 A.2d at 50.

It is only the stringency of the standard in proving an unnecessary hardship that varies, depending on whether a use or dimensional variance is sought. Great Valley School District v. Zoning Hearing Board of East Whiteland Township, 863 A.2d 74, 83 (Pa. Commw. 2004), appeal denied, 583 Pa. 675, 876 A.2d 398 (2005) (citing Zappala Group, Inc. v. Zoning Hearing Board of the Town of McCandless, 810 A.2d 708, 710-11 (Pa. Commw. 2002), appeal denied, 573 Pa. 718, 828 A.2d 351 (2003)); The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Commw. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Commw. 2001).

Despite the trend to apply a relaxed standard to dimensional variances Pennsylvania case law is clear in its approach to the issuing of variances and demands that 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). Moreover, variances from zoning codes should be granted sparingly and only under exceptional circumstances; a

variance should not be granted simply because such a grant would permit the owner to obtain greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Commw. 1996).

In order to grant a variance, the Board must make the findings set forth in the Municipalities Planning Code, 53 P.S. § 10910.2, where relevant. See Hertzberg, 554 Pa. at 256-57, 721 A.2d at 46-47. The law established by the Pennsylvania courts further establishes these standards, stated in full herein. See Alpine Inc. v. Abington Township Zoning Hearing Board, 654 A.2d 186 (Pa. Commw. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Commw. 626, 647 A.2d 279 (1994). The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

(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.

The Applicant has demonstrated that there exists an unnecessary hardship, which is not self created, and that the requested variance is necessary to enable reasonable use of the Property. The requested variance is from the requirements of Section 143-191.A of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-191.A, the lowest floor of any substantially improved or new residential structure located in the Floodplain Conservation District shall be at least 1 ½ feet above the 100-year flood elevation. The Applicant requested this variance to construct a proposed expansion to the existing deck at the same elevation as the existing deck and the first floor of the existing house.

The Applicant has demonstrated that there are unique physical characteristics of the Property, including the unique topography of the lot and the unusual location on the lot of the existing residence which dates from approximately the early 1800s. The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. The Applicant did not create the unnecessary hardship.

Due to the unique physical characteristics of the lot and the location of the existing house, if the proposed expanded deck were required to be at an elevation at least 1 ½ feet above the 100-year flood elevation, the deck would be at a level that would pass through several first floor windows on the southern side of the existing dwelling. The proposed expanded deck will be elevated to the greatest extent possible, at an elevation consistent with the elevation of the existing deck and the first floor of the existing dwelling. See Section 143-188.A of the Lower Providence Township Zoning Ordinance. The requested variance represents the minimum

variance that will afford relief and represent the least modification possible of the applicable provisions of the zoning ordinance.

The proposed expanded deck will be consistent in character with the existing deck and dwelling on the Property and with the neighborhood. The proposed expanded deck will be constructed in a manner consistent with the existing deck utilizing open railings and gapped decking and will not result in enlargement of flood heights. The granting of the variance conforms to the essential character of the neighborhood, and will not impair the appropriate use or development of any adjacent properties nor be detrimental to the public welfare.

The Board finds and concludes that based on the evidence presented by the Applicant the standards for granting a dimensional variance have been met and the requested variance should be granted.

### **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote, as set forth in the Notice of Decision letter mailed on July 29, 2011, is as follows:

The application for a variance from Section 143-191.A of the Lower Providence Township Zoning Ordinance is granted, in accordance with the application and plans submitted.


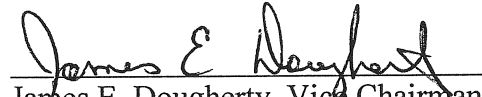

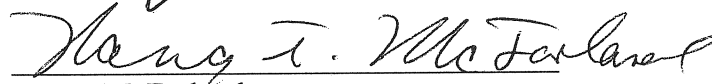
Dated: September 9, 2011



## ORDER

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

### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

  
Eric Frey, Chairman  
James E. Dougherty, Vice Chairman  
William Donovan  
Nancy McFarland  
Thomas Borai

### NOTE 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.

