

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

APPLICATION NO. Z-11-26 : HEARING DATE: October 27, 2011

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APPLICATION OF: :

Michael & Amy Fisher :

PROPERTY: :

544 Long Meadow Road :

Eagleville, PA 19403 :

Parcel No. 43-00-07690-00-7 :

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

The applicants, Michael and Amy Fisher (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Sections 143-37.A(2) and 143-30.C of the Lower Providence Township Zoning Ordinance in connection with proposed conversion of an existing screened porch at the rear of the existing dwelling into an enclosed three-season room. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on October 27, 2011 at the Lower Providence Township Building. The Zoning Hearing Board members present were Eric Frey, James E. Dougherty, Thomas Borai and alternate member Joyce D. Cluley, who served as a voting member due to the absence of two other members of the Board. Also present were the Community Development Director, the Solicitor, and the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicants are Michael and Amy Fisher.
2. The Applicants are the owners of the subject property.
3. The subject property is located at 544 Long Meadow Road, Eagleville, PA 19403 (the "Property"). The parcel number is 43-00-07690-00-7.
4. The applicable zoning is R2, Residential District.

5. The Applicants were not represented by legal counsel.
6. The lot size of the Property is approximately 18,080 square feet.
7. The present use on the Property, a residential dwelling, began in the 1960s.
8. Mr. Fisher and Rick Yeager, a representative of the contractor for the proposed project, appeared as witnesses in support of the application.
9. The following exhibits were marked at the hearing:

B-1	Application
B-2	Advertisement
B-3	Proof of publication
A-1	Photograph of existing screened-in porch
10. The Applicants propose to construct a three-season room addition to the existing residential dwelling, by enclosing the existing screened-in porch.
11. The proposed enclosed three-season room will be one story, with dimensions of 15 feet by 21 feet and the same footprint as the existing screened porch.
12. The proposed three-season room will be located at the rear of the existing dwelling, at the same location as the existing screened porch, which encroaches into the required rear yard setback.
13. The existing screened porch will be enclosed with glass and windows, will be refurbished and will be colored white.
14. The Property is undersized. The required minimum lot area is 25,000 square feet.
15. The required rear yard setback is 60 feet.
16. The proposed enclosure/three-season room would extend into the rear yard resulting in a setback of 45 feet.
17. The Applicants need the additional space, as they have two children.

18. The Property is irregularly shaped, with the rear yard line at a strange angle because of the adjacent church property.

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19. The proposed enclosure/three-season room addition will be architecturally consistent with the existing home and the character of the neighborhood.

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

21. 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 circumstances and characteristics of the Property, including the irregular shape and undersized total area of the lot, and the location of the existing dwelling on the lot.

#### **DISCUSSION/CONCLUSIONS OF LAW**

1. The Applicants have standing to appear before the Board regarding the requested relief.

2. Denial of the requested relief will impose an unnecessary hardship upon the Applicants.

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 Applicants' 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 Applicants have requested a variance from the setback requirements of Section 143-37.A(2) and the requirements of Section 143-30.C of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of an enclosed three-season room at the same location as an existing screened porch at rear of the residence. This request for a variance seeks relief as to dimensional requirements.

Differing standards apply to use and dimensional variances. Generally, a variance requires the Applicants 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 a request for variance 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 Applicants 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.

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 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 Applicants.

(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 Applicants have 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 applicable setback requirements of Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance and from the requirements of Section 143-30.C of the Ordinance. Pursuant to these provisions the applicable minimum rear yard setback for the proposed addition is 60 feet, and an enclosure shall not extend into the rear yard setback area. The Applicants requested this variance in order to construct a proposed three-season room addition at the rear of the existing dwelling with the same footprint as the existing screened porch which will result in a rear yard setback of 45 feet.

The Applicants have demonstrated that there are unique physical circumstances and/or characteristics of the Property. These include the irregular shape of the lot, the undersized total area of the lot, and the location on the lot of the existing residence.

The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. The Applicants did not create the unnecessary hardship.

Due to the unique physical circumstances and/or characteristics of the lot, as stated above, the requested variance represents the minimum variance that will afford relief and represents the least modification possible of the applicable provisions of the zoning ordinance.

The proposed enclosure/three-season room will be consistent with the existing dwelling and with the surrounding neighborhood. Therefore the granting of the variance conforms to the essential character of the neighborhood, will not impair the appropriate use or development of any adjacent properties, and will not be detrimental to the public welfare.

The Board finds and concludes that based on the evidence presented by the Applicants 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 4-0 vote, as set forth in the Notice of Decision letter mailed on October 28, 2011, is as follows:

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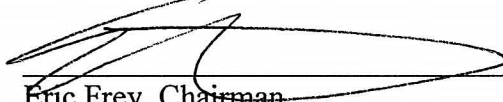
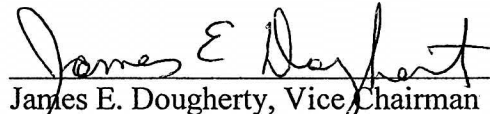
The application for variance from Sections 143-37.A(2) and 143-30.C of the Lower Providence Township Zoning Ordinance to permit the enclosure of an existing porch is granted, in accordance with the application and plans submitted.

Dated: December 10, 2011

## ORDER

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

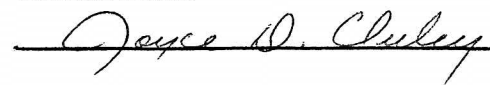
### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

  
Eric Frey, Chairman  
James E. Dougherty, Vice Chairman

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William Donovan

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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.