

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

APPLICATION NO. Z-11-28	:	HEARING DATE: November 15, 2011
	:	
APPLICATION OF:	:	
John K. & Debra A. Tagland	:	
	:	
PROPERTY:	:	
121 Brant Road	:	
Norristown, PA 19403	:	
Parcel No. 43-00-01552-00-7	:	

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

The applicants, John K. and Debra A. Tagland (hereinafter referred to as the "Applicants"), filed an application requesting a variance from Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance in connection with proposed construction of an addition to the existing residential dwelling. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on November 15, 2011 at the Lower Providence Township Building. All of the Zoning Hearing Board members except for Mr. James Dougherty were present, along with the Community Development Director, the Solicitor, and the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicants are John K. and Debra A. Tagland.
2. The Applicants are the owners of the subject property.
3. The subject property is located at 121 Brant Road, Norristown, PA 19403 (the "Property"). The parcel number is 43-00-01552-00-7.
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 13,795 square feet.

7. The present use on the Property, a residential dwelling, began in 1967.
8. Mrs. Tagland appeared as a witness 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
10. The Applicants propose to construct an addition to the existing residential dwelling.
11. The proposed addition is to be one story, with an area of 400 square feet.
12. The proposed addition is to be located at the rear of the existing dwelling, and will be an extension of the existing 9 feet by 10 feet kitchen.
13. The existing kitchen is too small for the needs of the Applicants' family, which includes teenaged children. The Applicants need additional living space, including for continuing to host family gatherings involving cooking for 20 people.
14. The Property is undersized. The required minimum lot area is 25,000 square feet. The lot also is narrow.
15. The required rear yard setback is 60 feet
16. The required side yard setback is 20 feet.
17. The proposed addition would extend two feet into the rear yard, resulting in a setback of 58 feet as opposed to the required 60 feet.
18. The proposed addition would extend two feet into the side yard, resulting in a setback of 18 feet as opposed to the required 20 feet.

19. The proposed addition cannot be moved farther away from the side yard because of an existing shed attached to the rear of the house, which was present when the Applicants bought the house.

20. The Applicants included with their application a letter of consent/no objection to the proposed project and requested variance signed by the connecting/adjacent neighbors, located at 117 Brant Road, 122 Henry Road, 120 Brant Road and 2606 Lloyd Lane.

21. The proposed addition will fit and be consistent with the existing home and the character of the neighborhood.

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

23. 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 narrow and undersized nature 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) of the Lower Providence Township Zoning Ordinance in connection with the proposed construction of a one story kitchen addition to the rear of the existing dwelling. 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. Pursuant to this provision the applicable minimum rear yard setback for the proposed addition is 60 feet, and the applicable minimum side yard setback for is 20 feet. The Applicants requested this variance in order to construct a proposed addition at the rear of the existing dwelling which will be 400 square feet and will encroach into the side yard setback and the rear yard setback by only 2 feet.

The Applicants have demonstrated that there are unique physical circumstances and/or characteristics of the Property. These include the narrowness and 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 kitchen addition 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 November 16, 2011, is as follows:

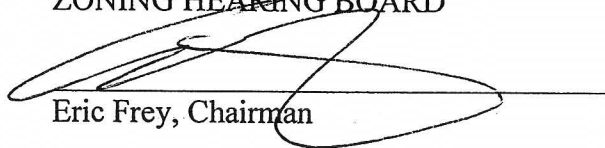
The application for variance from Section 143-37.A(2) of the Lower Providence Township Zoning Ordinance to permit the construction of the proposed addition is granted, in accordance with the application and plans submitted.

Dated: December 29, 2011

**ORDER**

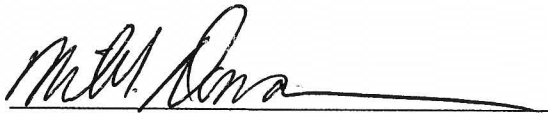
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

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.