

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

APPLICATION NO. Z-13-01 : HEARING DATE: March 28, 2013  
:  
:  
APPLICATION OF: :  
Donald and Denise Thomas :  
:  
PROPERTY: :  
19 North Trooper Road :  
Norristown, PA 19403 :  
Parcel Nos. 43-00-15316-00-4 :  
43-00-15313-00-7 :

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

Applicants Donald and Denise Thomas (hereinafter the “Applicants”) filed an application requesting a special exception pursuant to Sections 143-147 and 143-150 of the Lower Providence Township Zoning Ordinance (hereinafter “LPTZO”) for the proposed change of a nonconforming commercial use into four (4) residential one bedroom units. The Applicants further requested a variance from Section 143-71 of the LPTZO to permit one parking space per residential unit. Finally, Applicants requested an extension to the six (6) month expiration period to obtain all permits pursuant to Section 143-170 of the LPTZO. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on March 28, 2013 at the Lower Providence Township Building. All members of the Board were present. Also present were the Solicitor, Keith B. McLennan, Esq. and Randee J. Elton, the Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicants are Donald and Denise Thomas.

2. The Applicants are the owners of the subject property, located at 19 N. Trooper Road, Norristown, PA 19403 (the "Property"). The property contains two (2) tax parcels with parcel numbers 43-00-15316-00-4 and 43-00-15313-00-7.

3. Applicants were represented by Michael E. Furey, Esq. of 1043 S. Park Ave. Audubon, PA 19403.

4. Mary Anne Denczi of 32 Brant Rd. appeared as a protestant.

5. George Gibson of 33 Brant Rd. appeared as a protestant.

6. Mary Beth Van Trieste of 26 Brant Rd. appeared as a protestant.

7. Testimony was provided by Mr. Thomas.

8. Citizens Earl Thomas, Joseph Mascaro, and Janice Kearney also proffered opinions at the hearing.

9. The Property is located within the R-2 Residential District.

10. The present use of the Property is as a single family residence on the front parcel with a commercial garage and heating oil business in the rear.

11. The Applicants acquired the Property in 1989 from Applicant Donald Thomas' father.

12. The lot sizes are 21,700 square feet and 15,000 square feet.

13. The Property will be served by public water and sewer.

14. The following exhibits were marked at the hearing:

- A-1 Application and Narrative.
- A-2 Deed.
- A-3 Board of Assessment Information.
- A-4 Zoning Map.
- A-5 Use and Occupancy Permit.

- A-6 Correspondence from Township Manager Joseph Dunbar to attorney representing J.P. Mascaro and Sons dated August 4, 2010.
- A-7 Earl Thomas Heating Oil Co. business license
- A-8 Series of photographs depicting current garage
- A-9 Floor plans of proposed residential units
- A-10 Site plan of Property.

15. The commercial portion of the Property is used as a Heating Oil Business dating prior to 1955.

16. The commercial use predated the passage of the comprehensive zoning law in 1955.

17. The application seeks development of four (4) one (1) bedroom apartments on the portion of the property previously used for commercial purposes.

18. The requested change from commercial use to multifamily dwellings is a more restrictive use.

19. Applicants further seek a variance from Section 143-71 of the LPTZO to allow for one parking space per unit where two (2) are required by the ordinance.

20. Due to the size and restrictions on the lot, including considerations of impervious coverage, an unnecessary hardship exists which requires the grant of a variance.

21. Applicants also requested an extension to the six (6) month expiration period to obtain all permits pursuant to Section 143-170 of the LPTZO.

22. An unnecessary hardship exists requiring an extension of the six (6) month period.

## **DISCUSSION and CONCLUSIONS OF LAW**

1. Applicants have standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will impose an unnecessary hardship on Applicants.
3. The hardship is not self-imposed, and is due to the unique physical circumstances of the Property and the time needed to properly develop the same.
4. The requested relief is necessary to enable the Applicants' reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.
5. The proposed change in use, reduction in parking per unit and extension of time to obtain permits will not alter the essential character of the neighborhood in which the Property is located rather returning the existing commercial non-conforming use to a more conforming residential use.

### **I. SPECIAL EXCEPTION**

A special exception is not an exception to a zoning ordinance, but rather a use, which is expressly permitted, absent a showing of a detrimental effect on the community. Greaton Properties, Inc. v. Lower Merion Township, 796 A.2d 1038 (Pa. Cmwlth. 2002) (internal citation omitted). An applicant for a special exception shall have the burden of establishing by competent evidence and testimony: a) That the applicant's application falls within the provisions of the ordinance which accords to the applicant the right to seek a special exception; and b) That the allowance of a special exception will not be contrary to the public interest. LPTZO Section 143-168(d)(1). When determining whether the grant of the exception is contrary to public

interest the board will consider whether the application, if granted, will:

- (a) Substantially increase traffic congestion in the streets surrounding the subject site;
- (b) Increase the risk of fire or panic or otherwise endanger the public safety;
- (c) Overcrowd the land or create undue concentration of population;
- (d) Be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of this chapter;
- (e) Intrude upon the adequacy of natural light and air to adjoining properties;
- (f) Create extraordinary burdens on public, private or community water systems or upon groundwaters or wells within the neighborhood;
- (g) Overburden the public sanitary sewer system within the Township occasion environmental problems with on-site sanitary sewer installations;
- (h) Place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood;
- (i) Cause adverse effects to the appropriate use of adjacent properties in the neighborhood where the property is located;
- (j) Cause risk or danger to the safety of persons or property by improper location or design of facilities for ingress and egress to and from the property in question; or
- (k) Otherwise adversely affect the public health, safety, morals or general public welfare of the community. LPTZO Section 143-168(d)(3).

None of these negative factors apply to the instant application. The proposed change in use is authorized by LPTZO Sections 143-150 and 143-147. The change will result in a use permitted in a more restrictive district as the change is from a commercial use to a multifamily residential use. The ordinance therefore permits a change in use from a commercial oil heating business to a four (4) unit residential building. The change will benefit the public as it will bring the area into closer conformance with the surrounding R-2 neighborhood. The proposed change will also have no adverse effects on the public interest. Therefore the Board hereby grants the special exception requested by Applicants.

## II. VARIANCES

Applicants have requested a variance from Section 143-71 of the LPTZO to permit one parking space per unit. Applicants have also requested an extension to the six (6) month expiration period to obtain all permits pursuant to Section 143-170 of the LPTZO. 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.

In the instant application, there are unique circumstances that require the grant of a variance. The nature of the property, including size and location, as well as impervious surface coverage restrictions, create an unnecessary hardship if Applicants are required to provide two (2) parking spaces per residential unit. Strict conformity with the requirements of the ordinance is not possible. Further, this hardship was not created by the Applicants. Additionally, this is the minimum variance possible to address the underlying hardship. Therefore, a variance will be granted from the provisions of LPTZO Section 143-71. Finally, the following conditions were imposed to assure that the grant of the variance will in no way effect the surrounding area:

- 1) The Property must provide public water and sewer for the four (4) units;
- 2) There shall be no physical extension of the building with the exception of the addition of a second set of outside stairs;
- 3) Each lease must clearly state that there is only one car permitted per unit.

A variance is also granted from the requirement of §143-170 which requires that all

permits be obtained within six (6) months of the grant of zoning relief. Such an extension will allow for proper development of the Property and will have no adverse effect on the surrounding areas.

### **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board is as follows:

1) The application for a special exception pursuant to LPTZO §§ 143-147 and 143-150 is GRANTED by a vote of 4 in favor and 1 opposed with the following conditions:

- i) The Property must provide public water and sewer for the four (4) units;
- ii) There shall be no physical extension of the building with the exception of the addition of a second set of outside stairs;
- iii) Each lease must clearly state that there is only one car permitted per unit.

2) The application for a variance from LPTZO § 143-72 to permit one parking space per unit is GRANTED by a vote of 4 in favor and 1 opposed.

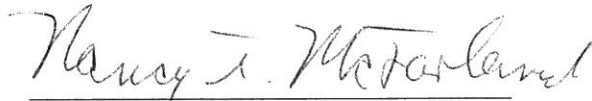
3) The application for an extension from the six month time period for acquisition of permits of § 143-170 is GRANTED by a unanimous vote.

Dated: May 10, 2013

### **ORDER**

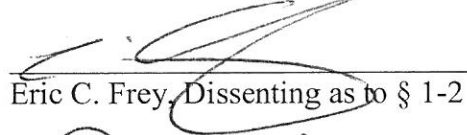
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

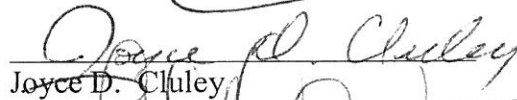


Nancy T. McFarland, Chair

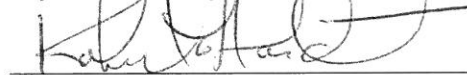
Thomas A. Borai, Vice Chairman



Eric C. Frey, Dissenting as to § 1-2 of Decision



Joyce D. Cluley



Robert G. Hardt

### **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.

**ORDER**

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

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

\_\_\_\_\_  
Nancy T. McFarland, Chair

*Thomas A. Borai*  
\_\_\_\_\_  
Thomas A. Borai, Vice Chairman

\_\_\_\_\_  
Eric C. Frey, Dissenting as to § 1-2 of Decision

\_\_\_\_\_  
Joyce D. Cluley

\_\_\_\_\_  
Robert G. Hardt

**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.