

# MILLER TURETSKY RULE & McLENNAN

COPY

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December 20, 2013

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED  
7009 0820 0002 3897 4339

Re: 14 Medway Circle, Collegeville PA 19426; Parcel No. 43-00-08320-00-7;  
Notice of Decision of the Lower Providence Township Zoning Hearing Board –  
Application Z-13-03

Dear Mr. and Mrs. Stitt:

I am writing in accordance with the Pennsylvania Municipalities Planning Code. This is a notice of the decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on November 25, 2013. Pursuant to the decision of the Zoning Hearing Board your application for a variance and extensions non-conforming use are granted.

Should you have any questions regarding the foregoing please contact me.

Very Truly Yours,

Keith B. McLennan

Pc. Nancy J. McFarland, Zoning Hearing Board Chair  
Thomas A. Borai  
Eric C. Frey, Esquire  
Joyce D. Cluley  
Robert G. Hardt  
Ryan Fazio, Community Development Director

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-13-03 : HEARING DATE: November 25, 2013

APPLICATION OF:

Travis and Jennifer Stitt

PROPERTY:

14 Medway Circle

Lower Providence Township

Collegeville, PA 19426

Parcel No. 43-00-08320-00-7

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

The applicants, Travis and Jennifer Stitt (hereinafter "Applicants") filed an application requesting a variance from the setback requirements of Section 143-37(A)(2) and the limitations on extensions of a nonconforming use of Section 143-149 of the Lower Providence Township Zoning Ordinance in connection with the construction of an addition to their home. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on November 25, 2013 at the Lower Providence Township Building. Four of the five members of the Board were present. Also present were the Solicitor, Ryan A. Fazio, the Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicants are Travis and Jennifer Stitt.
2. The Applicants are the owners of the subject property located at 14 Medway Circle, Collegeville, PA 19426 (hereinafter the "Property"). The parcel number is 43-00-08320-00-7.
3. The applicable zoning district is an R-2, residential district.

4. The Applicants were not represented by legal counsel.
5. The lot size is 21,499 square feet.
6. The present use of the Property is residential.
7. The following exhibits were marked at the hearing:
  - B-1 Appeal Application
  - B-2 Advertisement
  - B-3 Proof of Publication
8. The proposed addition to the home will be set back twenty one (21) feet from the rear property line and will serve to add to a home that currently does not have a garage and requires significant modernization.
9. The application for a variance was made to accommodate the unusual shape of the nonconforming lot.
10. There was no adverse public comment regarding this application.
11. There is an unnecessary hardship requiring the grant of a variance.
12. The proposed addition to the home will not alter the essential character of the neighborhood.

### DISCUSSION

The Applicants have requested a variance from the setback requirements of Section 143-37(A)(2) and the limitations on extensions of a nonconforming use of Section 143-149 of the Lower Providence Township Zoning Ordinance in connection with the construction of an addition to their home. The relief sought is dimensional in nature requesting the allowance of a rear yard setback of twenty one (21) feet and an extension of a non-conforming use of greater than 25% of the area of the current home.

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 that:

- (1) 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) 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) Such unnecessary hardship has not been created by the applicant.

(4) 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) 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.

The unique shape and location of 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 physical characteristics of the lot and the need for Applicants to add reasonable additions, including a garage, and general modern amenities to their home. Also, the essential character of the neighborhood will not be changed with the proposed addition. Finally, Applicants have proposed an addition that attempts to limit encroachment into required setback and mirrors, as best possible, the unusual shape of the parcel. It is therefore the minimum variance that will afford the required relief.

Accordingly, the Board finds that the application for a variance from the setback requirements of Section 143-37(A)(2) and the limitations on extensions of a nonconforming use of Section 143-149 of the Lower Providence Township Zoning Ordinance is granted.

#### 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 on the Applicants.
3. The hardship is not self-imposed, and is due to the unique physical

circumstances of the Property.

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. The proposed addition to the home will also not alter the essential character of the neighborhood in which the Property is located, and neighbors have no opposition to its construction.

#### DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

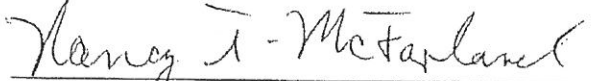
The application for a variance from Section 143-49(A)(3)(b) of the Lower Providence Township Zoning Ordinance is granted.

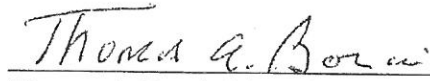
Dated: December 19, 2013

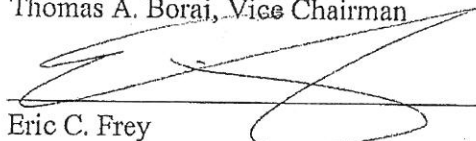
ORDER

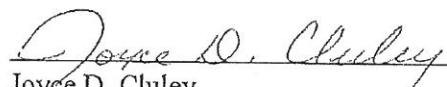
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
Nancy McFarland, Chairwoman

  
Thomas A. Borai, Vice Chairman

  
Eric C. Frey

  
Joyce D. Cluley

Dissent :

Robert G. Hardt

Kathie A. Eskie (Alternate)

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.