

# MILLER TURETSKY RULE & MCLENNAN

MARK D. TURETSKY  
JOHN A. RULE  
KEITH B. MCLENNAN\*  
TRACEY L. POTERE  
BRANDON H. ZANAN

\*ALSO MEMBER OF NEW JERSEY BAR

ATTORNEYS AT LAW  
3770 RIDGE PIKE  
COLLEGEVILLE, PENNSYLVANIA 19426  
(610) 489-3300 OFFICE  
(610) 489-1157 FACSIMILE  
[www.millerturetsky.com](http://www.millerturetsky.com)

JAMES H. FREEMAN  
OF COUNSEL  
MITCHELL W. MILLER  
RETIRED  
JILL K. ANDERSON, J.D.

September 3, 2014

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED  
7012 1640 0002 1498 1662

Anthony and Amy Re  
728 Raynham Road  
Collegeville, PA 19426

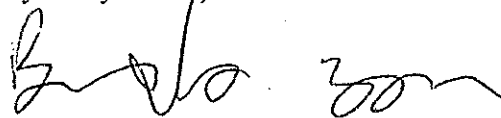
Re: 728 Raynham Road, Collegeville, PA 19426; Parcel No. 43-00-11422-00-1; Notice of  
Decision of the Lower Providence Township Zoning Hearing Board – Application Z-14-12

Dear Mr. and Mrs. Re:

I am writing in accordance with the Pennsylvania Municipalities Planning Code. This is a notice of decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on August 28, 2014. Pursuant to the decision of the Zoning Hearing Board your application for a variance from the setback requirements of Sections 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is GRANTED.

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

Very Truly Yours,



Brandon H. Zanan

Pc. Nancy J. McFarland, Zoning Hearing Board Chair  
Thomas A. Borai  
Eric C. Frey, Esquire  
Joyce D. Cluley  
Robert G. Hardt  
Kathie A. Eskie

## ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-12 : HEARING DATE: August 28, 2014

APPLICATION OF:  
Anthony and Amy Re

PROPERTY:

728 Raynham Road  
Lower Providence Township  
Collegeville, PA 19426  
Parcel No. 43-00-11422-00-1

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

Applicants Anthony and Amy Re (hereinafter referred to as the "Applicants") filed an application requesting variances from the side yard setback requirements of Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance in connection with the proposed extension of the first floor living space in place of the existing deck. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on August 28, 2014 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present. Also present were Keith McLennan, the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

### FINDINGS OF FACT

1. The Applicants are Anthony and Amy Re.
2. The Applicants are the owners of the subject property, which is located at 728 Raynham Road, Collegeville, PA 19426 (the "Property"). The parcel number is 43-00-11422-00-1.
3. The applicable zoning is R-2 Residential District.

4. The Applicants were not represented by legal counsel.
5. The present use on the Property is a single family residence.
6. The Applicants acquired the Property in 1998.
7. The lot size is 18,196 square feet.
8. The following exhibits were marked at the hearing:

B-1: Application

B-2: Advertisement

B-3: Proof of publication

A-1: Sketch outlining the exiting property lines, house, existing deck, and proposed family room

A-2: Letters of support for application from neighbors

9. Applicants seek to build a 16' x 18' extension of the first floor living space in place of the existing deck for personal use.

10. The proposed extension would convert part of Applicant's existing deck to an enclosed family room. The deck would be removed and the existing footings would be used to support the extension from below.

11. The proposed family room extension would be 15 feet from the side property line at the closest point, and would be flush with the point where it joins the wall and roof of the existing house, which is also 15 feet from the side property line.

12. There was no adverse public comment regarding this application.

13. There is an unnecessary hardship requiring the grant of a variance.

14. The proposed extension 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) of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the dimensional requirements that require a twenty (20) foot setback on the side yard.

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.

The unique circumstances of the Applicants and 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 Applicants' property previously being built with a 15 foot side yard setback before the 2014 zoning ordinance amendment, and the family room extension would not extend any further into the side yard setback. Also, the essential character of the neighborhood will not be changed with addition of this family room extension, as similar extensions have been added to many of the other houses in Applicants' neighborhood. Finally, the proposed extension would only cover the existing deck and extend no further. It is therefore the minimum variance that will afford the required relief.

Accordingly, the Board finds that the application for a variance from the side yard setback requirements of Section 143-37(A)(2) 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 family room extension 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 5-0 vote is as follows:

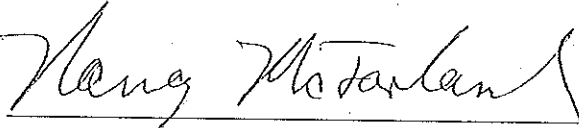
The application for a variance from Section 143-37(A)(2) of the Lower Providence Township Zoning Ordinance is granted.

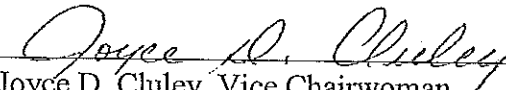
Dated: September 2, 2014

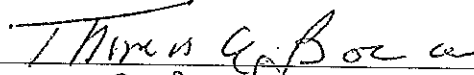
### ORDER

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

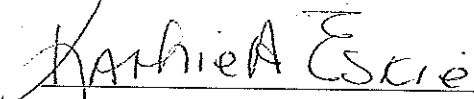
#### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

  
Nancy McFarland, Chairwoman

  
Joyce D. Chuley, Vice Chairwoman

  
Thomas A. Borai

  
Robert G. Hardt

  
Kathie A. Eskie

### NOTICE 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.