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April 5, 2016

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7014 2870 0002 3803 7394**

Sanjay Reddy
5026 Woodgate Lane
Collegeville, PA 19426

**RE: 5026 Woodgate Lane, Collegeville, PA 19426; Parcel No. 43-00-15998-17-7;
Notice of Decision of the Lower Providence Township Zoning Hearing Board
Application Z-15-11**


Dear Mr. Reddy:

I am writing in accordance with the Pennsylvania Municipalities Planning Code. Enclosed please find a corrected Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on February 25, 2016.

Pursuant to the decision of the Zoning Hearing Board, your application for a variance from the setback requirements of Section 143-44 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

BHZ/mac

pc: Lower Providence Township Zoning Hearing Board
Mr. Mike Mrozinski, Director of Community Development

Enclosure

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-15-11	:	HEARING DATE:
		:	
		:	February 25, 2016
APPLICATION OF:		:	
Sanjay Reddy		:	
		:	
PROPERTY:		:	
5026 Woodgate Lane		:	
Collegeville, PA 19426		:	
Parcel No. 43-00-15998-17-7		:	

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

On December 2, 2015 applicant, Sanjay Reddy (hereinafter "Applicant") filed an application requesting a variance from front yard setback requirements of § 143-44 of the Lower Providence Township Zoning Ordinance (the "Ordinance") in order to construct a two story addition to Applicant's home. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on February 25, 2016 at the Lower Providence Township Building. Chairwoman Cluley, Vice Chair Kathy Eskie, members Gail Hager, Joseph Pucci, Patricia Alzamora and Joseph Bergquist, alternate of the Zoning Hearing Board were present. Also present were Keith B. McLennan, Esq., the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement and Paula Meszaros, the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Sanjay Reddy, owner of the subject property located at 5026 Woodgate Lane, Collegeville, PA 19426, parcel number is 43-00-15998-17-7 comprised of 19,103 square feet (hereinafter the "Property").

2. The applicable zoning district is the R-1 Open Space Residential District (“OSR”).
3. The Applicant was not represented by legal counsel.
4. The present use of the Property is residential with a single family dwelling located thereon.
5. The house located on the Property was built in 2005 as part of the Valley High Estates development, and the Applicant is the original owner.
6. Applicant proposes to build a two story addition, including a sun room and additional bedroom.
7. The Property is surrounded by common area.
8. The location of the proposed addition on the dwelling located on the Property was offered as a building option for a sunroom when the dwelling was originally built.
9. The Applicant was not able to add the additional room option at the time his home was constructed.
10. Several surrounding properties include a room similar to that proposed by the Applicant.
11. The proposed addition would only be accessed from within the dwelling, and no additional exterior doors would be added to the dwelling.
12. § 143-44 of the Ordinance requires a twenty five (25) foot front yard setback.
13. The proposed addition to the home will extend 60 square feet into the setback area, which is adjacent to Hi-View Road but supplemented by open space common area.

14. Because of the unusual shape of the property, one corner of the proposed addition will conform to the 25 foot front yard setback, but the other corner will encroach 5'7" into the front yard setback.

15. If the addition were placed on the dwelling the building envelope where the existing deck is located, the entire Property would need to be re-graded due to the slope of the Property.

16. The proposed six hundred and twenty four (624) square foot addition will include a sun room on the first floor and a bedroom on the second for Applicant's elderly parents.

17. The following exhibits were made of record:

A-1 Plot plan for the addition with a highlighted area of the portion of the addition affected by setback requirements;

A-2 Unannotated plot plan;

A-3 Aerial photograph of the Applicant's residence;

A-4 Aerial photograph of Applicant's residence and the common area surrounding the Property;

A-5 Aerial photograph of the neighborhood indicating other neighbors with the addition originally offered by the builder.

B-1 Application;

B-2 Application Advertisement;

B-3 Proof of Publication of the Advertisement.

18. A township resident expressed concern about the number of occupants in the residence if the variance was granted and the addition built.

19. The hardship complained of is not self-imposed.

20. The proposed two story addition will not alter the essential character of the neighborhood.

DISCUSSION

I. Variance Legal Standard.

Generally a Zoning Board may grant a variance when the following criteria are satisfied:

(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. *Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board*, 88 A.3d 488, 520 (Pa. Cmwlth. 2014) appeal denied, 101 A.3d 788 (Pa. 2014) and appeal denied, 101 A.3d 788 (Pa. 2014); 53 P.S. § 10910.2.

II. Dimensional v. Use Variance.

There are 2 types of variances, a “dimensional” variance and a “use” variance. One who advances a dimensional variance seeks to adjust zoning regulations so that the property can be used in a manner consistent with the zoning regulations. *Hertzberg v. Zoning Bd. Of Pittsburgh*, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998). In contrast, a use variance seeks to use the property in a way that is inconsistent or outside of the zoning regulations. *Tidd v. Lower Saucon Township Zoning Hearing Board, Green Gable Investment Partners, LP and Lower Saucon Township*, 118 A. 3d 1 (Pa. Cmwlth. 2015). A dimensional variance is at issue in this case.

Regardless of whether the variance sought is a use or dimensional variance, 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. Cmwlth. 1999); *Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh*, 711 A.2d 549 (Pa. Cmwlth. 1998).

III. Dimensional Variance Legal Standard.

Differing standards apply to use and dimensional variances. In *Hertzberg*, our Supreme Court relaxed the standard for establishing unnecessary hardship in a dimensional variance case. Generally, multiple factors must be considered to determine whether an unnecessary hardship exists if the dimensional variance is denied, including the cost to bring the subject of the Application into compliance and whether the proposed use will be contrary to the 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)).

Although Hertzberg eased the variance requirements for a dimensional variance, it did not remove them. *Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh*, 873 A.2d 57 (Pa. Cmwlth. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and the five part test articulated above. *Id.*

IV. **Facts Applied to the Legal Standard.**

Applicant seeks to construct a six hundred twenty four (624) square foot - two (2) story addition to the north side of his home to include a sun room and bedroom for his elderly parents. To do so approximately sixty (60) square feet of the northwest corner of the proposed addition will protrude five feet (5') into the twenty-five foot (25') set back required by § 143-44 of the Ordinance. To establish that an unnecessary hardship exists warranting a dimensional variance from the twenty-five foot (25') set back the Applicant had to prove that:

- a. Physical characteristics of the property were such that the property could not be used for any permitted purpose; or
- b. The permitted purpose could only be achieved at prohibitive expense; or
- c. Characteristics of the property were such that it would have no value or only distress value for any use approved by the zoning ordinance.

Solebury Twp. v. Solebury Twp. Zoning Hearing Bd., 914 A.2d 972 (Pa.Cmwlth. 2007).

In the instant case the uniqueness of the lot makes it difficult for the Applicant to avoid encroachment on a setback creating an unnecessary hardship for the Applicant. The proposed addition will be constructed on the side of the property with frontage on Hi-View Road, the housing development's main artery. Due to its proposed placement in an area of significant open space in the front, side and rear of the house it will not disrupt any of the neighbors nor impact the appropriate use or development of adjacent property. The addition will maintain the essential

character of the neighborhood as several of the Applicant's surrounding neighbors took the original builder's option for a similar addition when their homes were first built. Although concern was expressed for the number of occupants who could occupy the home with the addition, the R-1 OSR ordinance is silent as to any limitation on the number of occupants permitted in a residence. If the Applicant were to move the proposed addition to fit within the Property's building envelope to be constructed where the existing deck is located, not only would the deck need to be removed but access to the addition could only occur through another room and the entire Property would need to be re-graded due to the slope of the Property. The requested variance only affects sixty (60) square feet of ground on a lot that has significant open space surrounding it. Thus granting the requested variance to permit the placement of the addition where proposed is the least modification possible of the Ordinance. Finally, the hardship is not self-imposed but is the result of the physical characteristics of the Property.

Accordingly, the Board finds that the application for a variance pursuant to the setback requirements of Lower Providence Township Zoning Ordinance § 143-44 is granted as per the plan attached as Exhibit "A" to the Application.

CONCLUSIONS OF LAW

1. The Applicant has 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 Applicant's 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 addition will not alter the essential character of the neighborhood in which the Property is located, and will not contravene the use of adjacent property or endanger public safety.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

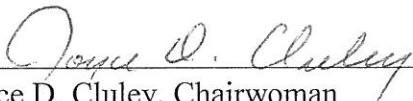
The application for a variance from setback and accessory structure size requirements pursuant to Lower Providence Township Zoning Ordinance § 143-44 is GRANTED as per the plan attached as Exhibit A to the application.

Dated: April 5, 2016

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



Joyce D. Cluley, Chairwoman



Kathie A. Eskie, Vice Chairwoman

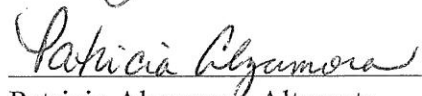
Robert G. Hardt



Gail Hager



Joseph Pucci



Patricia Alzamora, Alternate

Joseph Bergquist, Alternate

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.