

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

APPLICATION NO. Z-16-11	:	HEARING DATE: December 22, 2016
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APPLICATION OF:	:	
Sheena Cherian	:	
	:	
PROPERTY:	:	
9 Evans Road	:	
Eagleville, PA 19403	:	
Parcel No. 43-00-03895-13	:	

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

On October 3, 2016 the applicant, Sheena Cherian (hereinafter referred to as the "Applicant"), filed an application requesting a variance from the maximum impervious coverage requirements of Section 143-49.A(2)(b) of the Lower Providence Township Zoning Ordinance (the "Ordinance") in connection with the subject property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on October 27, 2016 when Applicant requested a continuance until the December 22, 2016 Board meeting to amend the application and present the necessary evidence. The Applicant waived the deadlines for a hearing and decision required under the Municipalities Planning Code and the Board granted her request for a continuance to the December 22, 2016 Board meeting. On December 22, 2016 a public hearing was held before the Board at the Lower Providence Township Building. All members of the Zoning Hearing Board were present with the exception of Patricia Alzamora, the Solicitor, the Community Development Director, and the Court Reporter were also present.

### **FINDINGS OF FACT**

1. The Applicant is Sheena Cherian.

12. Applicant has calculated that the total percentage of impervious coverage for the Property as a result of the proposed addition, patio and walkway would purportedly exceed, by 220 square feet, the 35% impervious surface limitation of Section 143-49.A(2)(b) of the Ordinance. However, in her calculation of impervious surface, the Applicant has included 252 square feet of public sidewalks.

13. Mr. Cherin testified that he talked to his neighbors who are not opposed to the proposal.

14. There was no public comment on the application.

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

16. Absent the requested relief the Applicant will suffer an unnecessary hardship. This is not a self-created hardship. Instead, it results from the unique physical circumstances and/or characteristics of the Property, including the size of the lot.

### **DISCUSSION**

The Applicant has requested a variance from the maximum total impervious coverage requirement set forth in Section 143-49.A(2)(b) of the Lower Providence Township Zoning Ordinance, in connection with the proposed construction of a patio in the rear of the existing single family residential dwelling and a walkway connecting the proposed patio to the driveway.

#### **I. Variance Legal Standard.**

Differing standards apply to use and dimensional variances. Generally however, 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

The requested variance is from the applicable maximum total impervious coverage requirements of 35% of lot area under Section 143-49.A(2)(b) of the Ordinance amounting to 3,705 square feet. The Applicant's house, steps, driveway and shed provide 2,986 square feet of impervious surface.<sup>1</sup> The construction of a 20' x 16' (320 square feet) addition, 16' x 16' (256 square feet) brick patio with covered roof and a 3' x 37' (111 square feet) concrete walkway from her driveway to the proposed brick patio adds 687 square feet of impervious coverage to the Applicant's property for a total impervious coverage of 3,673 square feet.

Applicant believes that with the construction of the proposed addition, patio and walkway the impervious coverage will amount to 3,925 square feet, 220 square feet more than the 35% limitation of 3,705 square feet. However, the Applicant included 252 square feet of existing public sidewalks in her calculation. Section 143-6 of the Ordinance defines "Lot Area" as:

"The total horizontal area of the lot lying within the lot lines, provided that, for the area of any lot abutting a road, the area shall be measured to the ultimate right-of-way line. Lot area shall exclude any public right-of-way..."

Sidewalks are considered part of the public right-of-way and therefore excluded from the total impervious coverage calculation. Therefore, the total impervious coverage is 3,673 square feet or 34.70%.

Regardless, of this recalculation of impervious coverage, should a variance be necessary, the Board determined that a variance was appropriate due to the small size of the lot, the placement of the existing dwelling and driveway creating a hardship with regard to the need for additional permissible impervious coverage on the Property. The requested variance was necessary to alleviate unnecessary hardship due to the unique physical circumstances and

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<sup>1</sup> In addition, there is 252 square feet of concrete sidewalk in the front of the Property parallel to the street deemed to be a public right of way.

7. The variance granted by the Board represents the minimum that will afford relief from the hardship.

### **DECISION**

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

Applicant is permitted to install the following as indicated on the amended drawings provided by the Applicant to the Board:

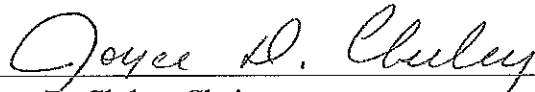
- a. A 16' x 16' brick patio (with roof) not to exceed 256 square feet in impervious surface coverage; and
- b. A 3' x 37' concrete walkway not to exceed 111 square feet in impervious surface coverage linking the proposed brick patio to the Applicant's driveway; and
- c. The foregoing approvals are conditioned upon Applicant constructing the patio and walkway in accordance with the application, plans and exhibits she submitted; and
- d. Applicant shall otherwise comply with the provisions of the Ordinance as well as any other applicable Lower Providence Township Ordinances.

Dated: January 30, 2017

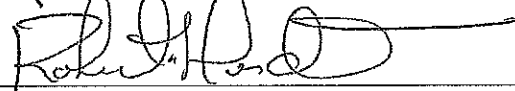
**ORDER**

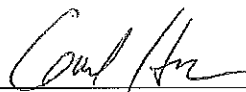
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
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Joyce D. Cluley, Chairwoman

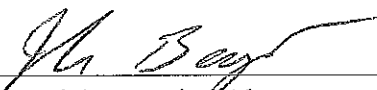
  
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Kathie A. Eskie, Vice Chairwoman

  
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Robert G. Hardt

  
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Gail Hager

  
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Joseph Pucci

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Patricia Alzamora, Alternate

  
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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.