

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

APPLICATION NO. Z-17-13 : HEARING DATE: November 30, 2017  
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APPLICATION OF: :  
Ryan A. and Erika J. Becker :  
:  
PROPERTY: :  
2015 Sweetgum Lane :  
Lower Providence Township :  
Collegeville, PA 19404 :  
Parcel No. 43-00-12034-00-1 :

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

The applicants, Ryan A. and Erika J. Becker (hereinafter "Applicants") filed an application on September 11, 2017 requesting a variance from the 40 foot rear yard setback requirements of Section 143-44 of the Lower Providence Township Zoning Ordinance ("Ordinance") in connection with construction of a new garage on their property located at 2015 Sweetgum Lane, Lower Providence Township, Collegeville, PA 19426 ("Property"). The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on November 30, 2017 at the Lower Providence Township Building after Applicant's request for a continuance from the initial October 26, 2017 hearing. The following members of the Zoning Hearing Board were present: Gail Hager, Chairwoman, Robert Hardt and Joseph Pucci. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszanos, Court Reporter and Keith B. McLennan, the solicitor.

### **FINDINGS OF FACT**

1. The Applicants are Ryan A. and Erika J. Becker.
2. The Applicants are the owners of the subject property located at 2015 Sweetgum

Lane, Collegeville, PA 19426 (hereinafter the "Property"). The parcel number is 43-00-12034-00-1.

3. The applicable zoning district is an R-1, residential district in the OSR Open Space Residential Overlay District.

4. The Applicants were represented by George W. Broseman, Esquire, Kaplin Stewart Meiloff Reiter & Stein, P.C., Union Meeting Corporate Center, 910 Harvest Drive, Blue Bell, PA 19422.

5. The lot size is 1.06 acres (+/-).

6. The present use of the Property is residential.

7. The following exhibits were marked at the hearing:

A-1 Application dated October 20, 2017

A-2 Letter from George W. Broseman, dated October 20, 2017 requesting a continuance from the October 26, 2017 hearing.

A-3 Curriculum Vitae of Joseph Mackin, R.A.

A-4 Individual Photographs

A-5 Additional Photographs

A-6 Elevations (existing and proposed)

A-7 Google Map Aerial View of the Property

B-1 Advertisement

B-2 Proof of Publication

8. Applicants are abandoning the existing garage that is part of the existing fieldstone home that dates to circa 1800.

9. The existing garage was rendered useless for its intended purpose in or around

1999 when as a result of the subdivision of the overall property of which the property was a part known as the Wooded Glen Subdivision, access to the garage was eliminated.

10. The existing extended driveway goes to the site of the proposed garage adjoining the house on its Northwest side.

11. The proposed replacement garage will be set back five (5) feet from the rear property line that abuts dedicated open space.

12. The proposed 2 car replacement garage will serve to replace the existing garage which is no longer suitable for use as a result of the reconfiguration of roadway access to the property, caused by the Wooded Glen Subdivision.

13. The application for a variance was made to accommodate the unusual reorientation of the lot on which the house was built in 1800 before setback requirements existed.

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

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

16. The proposed replacement garage will not alter the essential character of the neighborhood.

## **DISCUSSION**

The Applicants have requested a variance from the rear yard setback requirements of Section 143-44 of the Ordinance in connection with the construction of a replacement garage. The relief sought is dimensional in nature requesting the allowance of a rear yard setback of five (5) feet from the requirements that require a forty (40) foot setback.

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 reorientation of the home as a result of the construction of the Wooded Glen Subdivision makes the front the rear and the rear the front; that is unique, to say the least. Historically, when the home had Ridge Pike as its roadway access, the existing garage was functional. With the elimination of that access to Ridge Pike as a result of the subdivision, the garage was rendered useless. With the Subdivision a new driveway was installed from newly constructed Sweetgum Lane on the Southwest side of the house to provide road access. Applicants propose to construct a new 2 car garage over a portion of an existing gravel covered area. There is no other location on the lot that would support the new garage other than where proposed by the Applicants. Said location however, would allow for only a 5 foot rear yard setback where the OSR overlay under § 143-44 requires 40 feet. However, denial of their variance would deny the Applicants a garage, an integral use and part of a residence in this zone.

Clearly, the rationale for the rear yard setback of 40 feet clearly was to preserve open space and historic resources while permitting residential development in open space settings as stated in § 143-40. This lot borders upon dedicated open space to the West immediately adjacent to the proposed location of the new garage. Further, the home is located on an oversized lot 1.06 acres in size with significant open space. As such, a rear yard setback of 5 bordering on the dedicated open space does not negatively impact the neighborhood nor impact development of that open space, since it cannot be developed.

What is more, the proposed variance allows the Applicants to use their property as

intended while supporting the intent of the open space and historical resources of the Township.

Applicants have proposed a garage that attempts to limit encroachment into required setback while maintaining open space as best possible. It is therefore the minimum variance that will afford the required relief.

Accordingly, the Board finds that the application for a variance from the rear yard setback requirement of Section 143-4 of the Lower Providence Township Zoning Ordinance is granted to permit a 5 foot rear yard setback.

### **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. Unique hardship would result from the denial of the variance requested.
4. The hardship is not self-imposed, and is due to the unique physical circumstances of the Property.
5. 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 replacement 2 car garage would be constructed on existing impervious surface and would not require the creation of new impervious surface. The proposed replacement garage 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 3-0 vote is as follows:

The application for a variance from Section 143-44 of the Lower Providence Township Zoning Ordinance is granted to permit a five (5) foot rear yard setback for the proposed garage.

Dated: January 12, 2018

**ORDER**

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

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

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Kathie A. Eskie, Chairwoman

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Gail Hager, Vice Chairwoman

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Robert G. Hardt

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Joseph Puoci

\_\_\_\_\_  
Patricia Alzamora

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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.