

# MILLER TURETSKY RULE & McLENNAN

MARK D. TURETSKY  
JOHN A. RULE  
KEITH B. McLENNAN\*  
SISAM. COLLETTI\*

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

JAMES H. FREEMAN  
OF COUNSEL  
JILL K. ANDERSON, J.D.

\*ALSO MEMBER OF NEW JERSEY BAR

April 4, 2018

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
No. 7015 3010 0002 1910 8855**

Mr. and Mrs. Dennis R. Lepine  
601 Hillside Avenue  
Trooper, PA 19403


**RE: 601 Hillside Avenue, Lower Providence Township, Trooper, PA  
Notice of Decision of the Lower Providence Township Zoning  
Hearing Board - Application Z-18-02**

Dear Mr. and Mrs. Lepine:

Enclosed please find a Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on February 22, 2018. Pursuant to the decision of the Zoning Hearing Board, your application for a variance from Section 143-37.A.(2) of the Lower Providence Zoning Ordinance was approved. This approval is subject to the conditions that the in-law suite and its addition shall be occupied by blood relatives only and not be rented to third parties and the shed on the 6<sup>th</sup> Street side of the house shall be removed.

Should you have any questions, please contact me. Best of luck with your project.

Very truly yours,

*Keith B. McLennan*  
Keith B. McLennan 

KBM/jds

Enclosure

pc: Kathie A. Eskie, Chairwoman  
Gail Hager, Vice Chairwoman  
Joseph Pucci  
Patricia Alzamora  
Geroge J. Ozorowski, Esquire  
(Via e-mail with enclosure)

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

APPLICATION NO. Z-18-02 : HEARING DATE: February 22, 2018  
:  
:  
APPLICATION OF: :  
Dennis R. and Deborah L. Lepine :  
:  
PROPERTY: :  
601 Hillside Avenue :  
Lower Providence Township :  
Trooper, PA 19403 :  
Parcel No. 43-00-06280-004 :

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

The applicants, Dennis R. and Deborah L. Lepine (hereinafter "Applicants") filed an application on February 8, 2018 requesting a variance from the 50 foot front yard setback requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance ("Ordinance") in connection with construction of an addition to their home on their property located at 601 Hillside Avenue, Lower Providence Township, Trooper, PA 19403. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on February 22, 2018 at the Lower Providence Township Building. The following members of the Zoning Hearing Board were present: Kathie Eskie, Chairwoman, Gail Hager, Vice-Chairwoman, Joseph Pucci, Patricia Alzamora, George J. Ozorowski and Robert Hardt, and Jill Zimmerman, alternates. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszaros, Court Reporter and Keith B. McLennan, the solicitor.

### **FINDINGS OF FACT**

1. The Applicants are Dennis R. and Deborah L. Lepine, husband and wife.
2. The Applicants are the owners of the subject property located at 601 Hillside

Avenue, Lower Providence Township, Trooper, PA 19403, parcel number is 43-00-06280-004 (hereinafter the "Property").

3. The applicable zoning district is an R-2, residential district.
4. Julie Stephens of J.R. Stephens Architects, LLC, Deborah L. and Dennis R. Lepine, Stan and Jeff Sarnocinski, Pat McKronin and John Monroe testified in support of the Application.
5. The present use of the Property is residential and has been since 1958.
6. The Property was purchased by the Applicants forty two (42) years ago and included two (2) different living spaces in the home.
7. The existing home is situated at the corner of Hillside Avenue and 6<sup>th</sup> Street and thus has, in effect, 2 front yards with the 6<sup>th</sup> Street side akin to a side yard.
8. Each "front yard" set-back currently complies with the fifty (50) feet set-back requirements of Section 143-37.A.(2) of the Ordinance.
9. The Applicants seek to construct a ten (10) foot addition to the 6<sup>th</sup> Street side of the house allowing for a forty (40) foot setback instead of the required fifty (50) feet set-back.
10. The grade and configuration of the Property as well as the location of the garage and well facilitates the placement of the addition on the 6<sup>th</sup> Street side of the home.
11. The application for a variance was made to accommodate the unusual orientation of the lot on which the house was built before the current setback requirements existed.
12. The addition will expand the living space and kitchen and add a powder room for Applicants' daughter to reside in that new space.
13. Applicants agreed as a condition of approval that after the addition is constructed the additional space will not be rented but will be occupied by blood relatives only.

14. Applicants agreed, as a condition of approval to remove the shed on the 6<sup>th</sup> Street side of the house to allow for the construction of the addition leaving two (2) sheds on the property.

15. There was no adverse public comment regarding this application only supportive comment was introduced.

16. Applicant surveyed 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> streets and Hillside Avenue of the neighborhood and determined that 40% of the houses have less than a fifty (50) foot front yard setback.

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

18. The proposed addition and forty (40) foot setback will not alter the essential character of the neighborhood.

19. The following exhibits were marked at the hearing:

A-1 Application dated February 7, 2018;

A-2 Plot plan, first-floor plan, second-floor plan, front elevation plan, side elevation plan of J. R. Stephens architects 4601 Hillside Ave lower Providence Township;

B-1 Advertisement;

B-2 Proof of Publication.

## **DISCUSSION**

The Applicants have requested a variance from the front yard setback requirements of 143-37.A.(2) of the Ordinance in connection with the construction of an addition. The relief sought is dimensional in nature requesting the allowance of a front yard setback of forty (40) feet from the requirements that require a fifty (50) 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.

When dealing with a dimensional variance the doctrine of a *de minimis* variance may apply. The *de minimis* doctrine is an extremely narrow exception to the heavy burden which a party seeking a variance must normally bear and is applied where the violation of an ordinance is a relatively minor one and where rigid compliance is not necessary to protect the ordinance's public policy concerns. Hawk v. City of Pittsburgh Zoning Bd. of Adjustment, 38 A.3d 1061 (Pa. Commw. Ct. 2012). Over time Court's have held that *de minimis* variances may be authorized if they "...will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done." Pyzdrowski v. Bd. of Adjustment of City of Pittsburgh, 437 Pa. 481, 491, 263 A.2d 426, 432 (1970) citing Appeal of Crawford, 358 Pa. 636, 57 A.2d 862 (1948).

To obtain *de minimis* variance an applicant must prove that 'strict compliance (with the ordinance) is not necessary to protect the public interest.' Id." Pugliese v. Zoning Hearing Bd. of Bethlehem Tp., 2015 WL 6473668 (Pa. Commw. Ct. 2015). There is no general right to a *de minimis* zoning variance, and the decision of whether to grant a *de minimis* variance is left to the discretion of the local zoning board. 200 W. Montgomery Ave. Ardmore, LLC v. Zoning Hearing Bd. of Lower Merion Tp., 985 A.2d 996 (Pa. Commw. Ct. 2009); Hawk v. City of Pittsburgh Zoning Bd. of Adjustment, 38 A.3d 1061 (Pa. Commw. Ct. 2012).

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 orientation of the home on the Property is such that its front faces Hillside Avenue and its north east side faces 6<sup>th</sup> Avenue; that is unique, to say the least. Historically, the home has what is commonly referred to as an “in-law suite.” The Applicants seek to add ten (10) feet of space to that in-law suite for their daughter to reside in.

There is no other practical location on the lot that would support the addition other than where proposed by the Applicants. Said location however, would allow for only a forty (40) foot front yard setback on the north east side of the home facing 6<sup>th</sup> Street. The R-2 district under §143-37.A.(2) requires fifty (50) feet. Denial of the variance would deny the Applicants the ability to construct the addition to the in-law suite on the side of the home that serves as a second front yard.

Presumably, the rationale for the front yard setback of fifty (50) feet clearly was to provide privacy to the occupants and a buffer between the residence and the flow of traffic on abutting roads. In this case, the Applicants are burdened with two (2) front yards due to the home occupying a corner lot. Ordinarily, most homes have one (1) front yard, two (2) side yards and a rear yard.<sup>1</sup>

The rear grade of the property is such that construction of an addition in the back of the Property is problematic; the location of the well in that same area makes placement of the addition in the back of the home prohibitive. That coupled with the de minimis nature of the ten (10) foot reduction in the setback on a second front yard (that is in the nature of a side yard) that will not negatively impact the neighborhood nor impact future development of adjoining property cries out for the grant of the variance.

Applicants have proposed a variance to construct an addition to an in-law suite that attempts to: (i) address the unique nature of the Property, (ii) limit encroachment into required

---

<sup>1</sup> Interestingly, the required side yard setback under §143-37.A.(2) is twenty-five (25) feet, a new forty (40) foot setback materially exceeds that standard.

setback, (iii) is the minimum variance that will afford the required relief, (iv) will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, and (v) has not been created by the Applicants.

Accordingly, the Board finds that the application for a variance from the front yard setback requirement of §143-37.A.(2) of the Lower Providence Township Zoning Ordinance is granted to permit a forty (40) foot front yard setback subject to the conditions noted.

### **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.
6. The proposed addition will 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 to permit a forty (40) foot front yard setback on the 6<sup>th</sup> Street side of the home for the construction of the addition to the home extending from that side of the home by ten (10) feet subject to the following conditions:

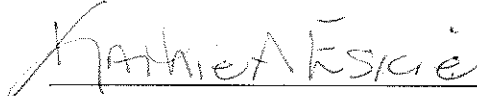
1. The in-law suite and its addition shall be occupied by blood relatives only and not be rented to third parties.
2. The shed on the 6<sup>th</sup> Street side of the house shall be removed.

Dated: April 4, 2018

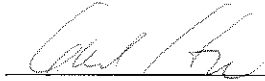
**ORDER**

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

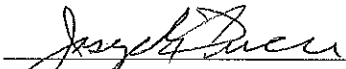
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD



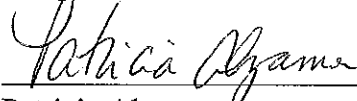
Kathie A. Eskie, Chairwoman



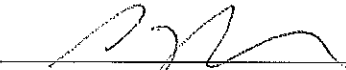
Gail Hager, Vice Chairwoman



Joseph Pucci



Patricia Alzamora



George J. Ozorowski, Esquire

\_\_\_\_\_  
Jill Zimmerman, Esquire Alternate

\_\_\_\_\_  
Robert G. Hardt, 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.