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April 5, 2022

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO.7020 2450 0001 6265 1728**

Ms. Margaret Labosh
43 S. Grange Avenue
Collegeville PA 19426

**RE: Lower Providence Township Zoning Hearing Board
Application of Margaret Labosh
Application No. Z-22-02**

Dear Ms. Labosh:

In accordance with your Zoning application filed on January 31, 2022, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board. Please note that if you have any objections to the Order, you have thirty (30) days from its date to file an appeal with the Court of Common Pleas in Norristown.

Very truly yours,



Keith B. McLennan

KBM/jds
Enclosure

Pc: George Ozorowski, Esq. Chairman
Joseph Pucci Vice Chairman
Kathie A. Eskie
Gail Hager

Christopher Gerdes
Randy Klein
Terrance Barnes
Michael Mrozinski
Tina Blain

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-22-02	:	HEARING DATE:	February 24, 2022
		:		
APPLICATION OF:		:		
	Margaret Labosh	:		
	43 S. Grange Ave.	:		
	Collegeville, PA 19426	:		
PROPERTY:		:		
	45 S. Grange Ave.	:		
	Lower Providence Township	:		
	Collegeville, PA 19426	:		
	Parcel No. 43-00-05722-00-4	:		

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

A public hearing on the application (“Application”) concerning the above captioned premises (the “Property” or “Subject Property”) was held on February 24, 2022, before the Zoning Hearing Board of Lower Providence Township (the “Board”) in the Township Administration Building, 100 Parklane Drive, Eagleville, PA, (the “hearing”) pursuant to notice as required by the Lower Providence Township Zoning Ordinance (the “Ordinance”) and the Pennsylvania Municipalities Planning Code (the “MPC”). After consideration of the Application and the testimony, exhibits, and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

Procedural Matters

1. Application before Zoning Hearing Board

On January 31, 2022, applicant Margaret E. Labosh (“Applicant”) owner of 45 S. Grange Ave. in Lower Providence Township, Pennsylvania filed an application seeking a variance from the Ordinance Section 143-33.A relating to Applicant’s proposal to construct a single-family

dwelling with a front yard setback of twenty-five (25') feet where a minimum of fifty (50') is required in the R-1 Residential Zoning District.

2. Notice and Hearing

The Application was properly advertised, and a public hearing was held before the Board on February 24, 2022, where evidence was received.

3. Zoning Hearing Board Members Participating

Present at the hearing were George Ozorowski, Chair, Joseph Pucci, Vice-Chair, Kathie Eskie, Member, Gail Hager, Member, Chris Gerdes, Member, Terrance Barnes, Alternate.

4. Appearances of Counsel

- a. Applicant was not represented by counsel.
- b. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.

5. Appearance of Other Party

- a. No other party appeared regarding the Application.

6. Also Present

- a. Michael Mrozinski, the Community Development Director for Lower Providence Township.

7. Witnesses

- a. Margaret Labosh testified in support of the Application.

8. Exhibits

- a. The following exhibits are included in the Applicant's file at the Township:
 - 1. The Application and its attachments;
 - 2. The Certificate of Posting of the Property with notice of the Application;
 - 3. The Certificate of Notification;

4. Letter Sent to property owners within 500 feet of the Property;
5. Matrix of Addresses for property owners within 500 feet of the Property.

FINDINGS OF FACT

1. The Applicant is Margaret E. Labosh owner of the lot located at 45 S. Grange Ave. Collegeville, PA 19426.
2. The Subject Property is comprised of a one-acre lot with tax parcel number 43-00-05722-00-4 which currently is an undeveloped lot that contains a storage shed.
3. Applicant acquired the Property in 2004.
4. The applicable zoning district is the R-1 Residential Zoning District.
5. The Property is currently serviced by private well and has public sewer available.
6. The Property was the subject of an August 2020 zoning appeal which permitted the non-conforming lot width.
7. The Ordinance § 143-33 requires that single-family homes constructed on parcels in the R-1 Residential Zoning District residential properties have a minimum front yard setback of fifty feet (50').
8. Applicant is proposing to construct a single-family home with a front yard setback of twenty-five (25') feet.
9. Applicant has already removed approximately twenty trees from the property in order to provide space for the construction.
10. The plans to construct the home are currently under development.
11. There is presently a "U" shaped driveway on the property that Applicant intends to extend.

12. Applicant intends to add back-fill against the house and a minimal retaining wall on the north side of the property if necessary.

13. The abutting properties and surrounding neighborhood are residential.

14. There will be no additional signs, traffic, or parking due to the proposed use.

15. There was no adverse comment with regard to the Application.

16. There are no outstanding state or federal violations cited on the Property.

17. The proposed use will not impact existing traffic patterns or volumes.

18. The proposed use will not emit smoke, dust, odor or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants except for occasional smoke from a wood-burning fireplace.

19. There are significant environmental constraints on the property.

20. Many trees grow on the property.

21. There is a significant water channel on the property.

22. This water channel is a large, deep ravine.

23. There is storm drain infrastructure that drains underneath the road into the water channel.

24. Due to the constraints caused by these factors as well as the presence of underlying stone, the house would need to be built outside of the permitted building envelope to be reasonably constructed.

25. Placing the house in the currently permitted building envelope would place the house closer to the ravine that continues to erode.

26. The proposed use will not alter the essential character of the neighborhood or district in which it is located.

27. The proposed use will not impair the appropriate use or development of adjacent properties.

28. The proposed use will not be detrimental to the public welfare.

29. Applicant spoke to the adjoining neighbors who have no objection to the proposed use.

DISCUSSION

I. Statement of the Case

Applicant seeks to construct a single-family dwelling and is requesting relief from Section 143-33.A of the Ordinance for a front yard setback of twenty-five (25') feet where a minimum of fifty (50') feet is required in the R-1 Residential Zoning District together with any other relief deemed necessary or appropriate by the Board.

II. Ordinance Subsections in Question.

The Ordinance § 143-33.A requires that single-family homes constructed on parcels in the R-1 Residential Zoning District conform to the following requirements: a front yard setback of a minimum of fifty (50') feet.

III. Variance Legal Standard

A. Dimensional v. Use Variance. There are 2 types of variances, a “dimensional” variance and a “use” variance. Differing standards apply to use and dimensional variances. 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). 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). The Supreme Court in Hertzberg held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of the Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. at 263-64, 721 A.2d at 50. In this case the Board is asked to grant a dimensional variance.

B. The Five Part Variance Test. To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

(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.

See also: 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.

C. Dimensional Variance Legal Standard. Generally, a use variance requires the applicant to show that unnecessary hardship will result rendering the property close to useless if a variance is denied, and that the proposed use will not be contrary to public interest. However in the case of Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998) our Supreme Court held that in the case of a dimensional variance, the quantum of proof required to establish unnecessary hardship is lesser than when a use variance is sought. *Id.* at 258-59. For example, the Hertzberg Court held that to justify the grant of a dimensional variance, “...courts *may* consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.” 721 A.2d at 50 (italics supplied). In effect, no longer is an applicant required to demonstrate in a dimensional variance case, that the property was close to useless without the variance.

Although Hertzberg eased the burden of proof somewhat for a dimensional variance, it did not remove the variance requirements that are universally applicable to use and dimensional variance cases. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa.Cmwlt. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and satisfy the five-part test articulated above. *Id.* In addition, §§143-168.C. & D.(2), (3) & (4) of the Ordinance articulate the Applicant’ burden of proof and the standards to meet that burden as follows:

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of § 910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. § 10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public interest.

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

Applicant seeks to construct a single-family dwelling and is requesting relief from Section 143-33.A of the Ordinance for a front yard setback of twenty-five (25') feet where a minimum of fifty (50') feet is required in the R-1 Residential Zoning District together with any other relief deemed necessary or appropriate by the Board.

The Property in question is unique in its irregular condition due to the substantial number of trees on the property, the ravine that cuts through the property, and the storm water infrastructure that crosses the property. Due to these physical conditions, the Applicant is unable to develop the property in a reasonable way to construct a single-family home on the parcel. If the Applicant were to construct the home within the permitted building envelope, the Applicant would be forced to remove additional trees and place the home closer to the continually eroding ravine. This creates a hardship on the Applicant in that she is unable to reasonably develop the property due to the unique physical characteristics of the lot.

The Applicant did not create this hardship. It is instead caused by the naturally occurring topography of the land as well as the storm water right-of-way. To reasonably use the property,

Applicant requires a variance which would permit the construction of the proposed single family home outside of the building envelope. This would entail a front yard setback of twenty-five (25') feet where fifty (50') feet would otherwise be required. This would represent the minimum relief that would alleviate the hardship for Applicant. Additionally, the proposed use would not alter the essential character of the neighborhood. The area is comprised of single-family homes similar to the proposed use. Further, the abutting neighbors have no objection to the proposed variance.

The Board finds and concludes that the Applicant's requested relief should be granted.

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 Applicant.
3. The hardship is due to the unique physical circumstances and characteristics of the Property and not self-imposed.
4. The requested relief is necessary to enable the Applicant reasonable use of the Property.
5. If granted, the community will not be significantly changed nor will it alter the character of the neighborhood.
6. The requested relief represents the minimum that will afford relief and represents the least modification possible of the regulation at issue.

DECISION

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

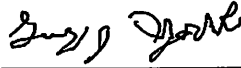
The Application of Margaret Labosh, docket# Z-22-02 for a Dimensional Variance from §143-33.A of the Lower Providence Township Zoning Ordinance to permit a front yard setback of twenty-five (25') feet where fifty (50') feet is required in the R-1 Residential District is GRANTED.

Dated: April 1, 2022

ORDER

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

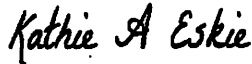
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



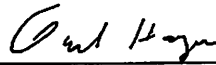
George Ozorowski



Joseph Pucci



Kathie Eskie



Gail Hager



Terrance Barnes, Alternate



Christopher Gerdes, Alternate

Randy Klein, 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.