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March 15, 2019

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7015 3010 0002 1910 8749**

Mr. Daniel Testa
3143 Providence Road
Eagleville, PA 19403

**RE: Application of Daniel Testa
Application No. Z-18-16**

Dear Mr. Testa:

Enclosed please find a Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on November 29, 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 there be no commercial use of the structure and no living space in the structure.

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

Very truly yours,


Ronald A. Kolla

RAK/jds
Enclosure

pc: Kathie A. Eskie, Chairwoman
George J. Ozorowski, Vice Chairwoman
Gail Hager
Joseph Pucci
Patricia Alzamora
Robert G. Hardt
Christopher Gerdes
Michael Mrozinski, Community Development Director
(Via e-mail with enclosure)

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-18-16 : HEARING DATE: November 29, 2018

APPLICATION OF:

Daniel Testa

3143 Providence Road

Eagleville, PA 19403

PROPERTY:

3143 Providence Road

Lower Providence Township

Eagleville, PA 19403

Parcel No. 43-00-11395-00-1

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

The applicant, Daniel Testa (“Applicant”) filed an application requesting a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance (“Ordinance”) to permit construction of a garage attached to his residence with a side yard setback of seventeen feet (17’) instead of the required twenty feet (20’) in the R2 Residential District. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on November 29, 2018 at the Lower Providence Township Building. The following members of the Board were present: Vice Chairwoman Gail Hager, Joseph Pucci, Patricia Alzamora, and Robert G. Hardt. Also present were Mary Anne Morello the Court Reporter, and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Daniel Testa.
2. The Applicant owns the subject property located at 3143 Providence Road, Lower

Providence Township, Eagleville, PA 19403, Parcel No. 43-00-11395-00-1.

3. The present use of the Property is single family residential.
4. The Property is approximately 24,000 square feet.
5. The Property is similarly sized to others in the neighborhood.
6. The applicant resides in the home on the Property.
7. Applicant seeks to demolish his current garage and build a 17 foot by 30 foot garage attached to his residence.
8. The Applicant seeks to locate the garage 17 feet from the side property line.
9. There are similar structures in the neighborhood.
10. The property has both water and sanitary sewer service.
11. The current size of the garage, built in the 1950s does not fit modern-day vehicles like SUVs.
12. There is a drainage issue in the backyard preventing an expansion of the garage into the backyard.
13. The Applicant is a professional contractor.
14. The proposed addition will not alter the essential character of the neighborhood.
15. Neighbors are not in opposition to the application.
16. There was no adverse public comment regarding this application.
17. The Applicant was not represented by Counsel.
18. The following exhibits were included in the record of the hearing:

A-1 Appeal Application

B-1 Public Notice

DISCUSSION

I. Variance Legal Standard.

Pursuant to the Municipalities Planning Code and the Ordinance §143-168.A. the following must be established by the Applicant in order for the Board to grant the requested variance:

(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 two 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 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).

III. **Dimensional Variance Legal Standard.**

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)). 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.**

The applicant, Daniel Testa (“Applicant”) filed an application requesting a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance (“Ordinance”) to permit construction of a garage attached to his residence.

The relief sought is dimensional in nature requesting the allowance of a side yard setback of 17 feet instead of the required 20 feet required by Section 143-37.A.(2) of the ordinance.

The applicable section of the ordinance states:

§ 143-37 Area, setback, bulk, height and parking requirements.

A. Site area or building lot area.

[Amended 9-21-2006 by Ord. No. 556]

2. The minimum building lot size, width and area requirements shall be determined by availability of public water and sanitary sewer service, as follows:

[Amended 10-20-2011 by Ord. No. 602]

Requirement	No Public Service	Either Water or Sanitary Sewer Service Only	Both Water and Sanitary Sewer Service
Lot area, minimum	40,000 square feet	30,000 square feet	25,000 square feet
Lot width at building line	175 feet	150 feet	100 feet
Principal and accessory buildings over 250 square feet:			
Front yard	50 feet	50 feet	50 feet
Side yard	30 feet	25 feet	20 feet
Rear yard	60 feet	60 feet	60 feet
Maximum total building coverage	20%	20%	20%
Maximum total impervious coverage	35%	35%	35%

To establish that an unnecessary hardship exists warranting a variance from the Ordinance, the Applicant must 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, since the applicant seeks a dimensional variance, the burden of proof is relaxed from that of the strict use variance. The drainage issues in the backyard prevent the garage from being extended into the backyard within the setback creating an unnecessary hardship for the Applicant and satisfying the burden to grant a dimensional variance. Furthermore, the existing garage, built in the 1950s does not fit modern-day vehicles like SUVs. This hardship is not self-imposed but is rather the result of the said physical characteristics of the lot and societal changes since that have occurred since the house was built in the 1950's.

As long as the garage is not run as a business, has no commercial use, in-law suite, or any other living space, it 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. Because of the physical restrictions of the law, a variance will represent the minimum variance that will afford relief and will represent the least modification possible.

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 not self-imposed, and is due to the unique physical circumstances of the Property.
4. The requested relief is necessary to enable the Applicant 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.

DECISION

The unanimous decision of the Lower Providence Township Zoning Hearing Board is as follows:

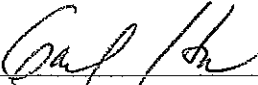
The Application of Daniel Testa for a Variance from Section 143-37.A.(2) of the Lower Providence Zoning Ordinance to permit construction of a garage attached to his residence with a side yard setback of 17' instead of the required 20' in the R2 Residential District is granted subject to the conditions that there be no commercial use of the structure and no living space in the structure.

ORDER

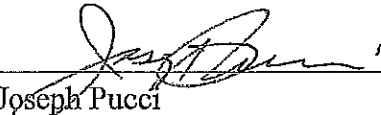
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

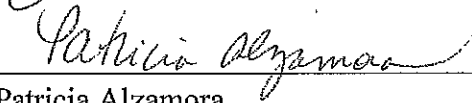
Kathie A. Eskie, Chairwoman



Gail Hager, Vice Chairwoman

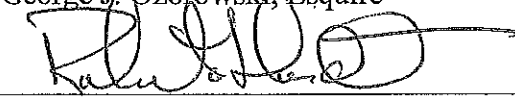


Joseph Pucci



Patricia Alzamora

George J. Ozorowski, Esquire



Robert G. Hardt

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.