

## ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-19-07 : HEARING DATE: April 25, 2019

APPLICATION OF:

Donald J. and Mary Louisa Neilson, :  
Audubon Management Corp. & :  
Gravel Pike 50, LLC :

PROPERTY:

64 Sandown Road  
2712 Wedgewood Way  
2617 Egypt Road  
Lower Providence Township  
Audubon, PA 19403  
Parcel Nos. 43-00-12652-00-4  
43-00-12655-00-1  
43-00-15820-00-4

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

The applicants, Donald J. and Mary Louisa Neilson, Audubon Management Corp. and Gravel Pike 50, LLC (hereinafter “Applicants”) filed their joint application on March 22, 2019 requesting a variance from the lot area, impervious surface, front, rear and side yard setback requirements of section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance (“Application”). The variances are necessary as a result of a proposed lot line adjustment of these contiguous parcels, which are owned or controlled by Mr. and Mrs. Neilson. The lot line adjustment is proposed in order to better accommodate a proposed 2,400 square foot addition to the Neilsons’ residence located at 64 Sandown Road. The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on April 25, 2019 at the Lower Providence Township Building. Kathy Eskie, Chairman, and members Gail Hager, Joseph Pucci, alternates Robert Hardt and Christopher Gerdes were present. Also present were Michael Mrozinski, the Director of Community

Development responsible for Zoning/Code Enforcement, Paula Meszaros, the Court Reporter and Keith B. McLennan, Esquire, the Solicitor.

### **FINDINGS OF FACT**

1. The Applicants are Donald J. Neilson, Sr. and Mary Louisa Neilson, Audubon Management Corp. and Gravel Pike 50, LLC.
2. The Applicants are the owners of the subject properties located at 2712 Wedgewood Way ("Lot 1"), 64 Sandown Road ("Lot 2") and 2617 Egypt Road ("Lot 3"), Audubon, PA 19403 parcel numbers 43-00-12652-00-4, 43-00-12655-00-1 and 43-00-15820-00-4 respectively (hereinafter referred to collectively as the "Property").
3. Mr. Neilson maintains a controlling interest in Audubon Management Corp. and Gravel Pike 50, LLC.
4. The Applicants were represented by Carl N. Weiner, Esquire, Hamburg, Rubin, Mullin, Maxwell & Lupin.
5. Bradley Macy, a licensed professional land surveyor and project coordinator for Audubon Land Development who was accepted as an expert due to his previous qualification and testimony before the Board, testified on behalf of the Applicants.
6. The applicable zoning district is the R-2, residential district.
7. The use of the Property is residential.
8. The residence on Lot 1 is a single family dwelling.
9. The residence on Lot 2 is a single family dwelling in which the Neilsons have resided since 1995.
10. The residence on Lot 3 is a duplex.
11. Lots 1, 2 & 3 were first used for residential purposes in 1980, 1983 and 1925

respectively.

12. According to the Board of Assessment, Lots 1, 2 & 3 are 19,514, 18,088 and 45,840 square feet in area respectively.

13. According to the Applicants, Lots 1, 2 & 3 are 17,230, 18,569 and 45,647 square feet in area respectively.

14. Applicant proposes to alter the existing lot lines in order to more closely align these three unique, contiguous parcels with the 25,000 square foot lot area mandated by the R2 district.

15. Lots 1 and 2 are undersized according to the current R2 requirements.

16. Lot 3 although non-compliant with the rear yard setback requirement of 60 feet, exceeds the R2 district's lot size requirements by 20,647 square feet.

17. The proposed lot sizes are 20,644, 33,092 and 26,506 square feet respectively.

18. Lot 1 is already non-conforming with an existing lot area of 17,230 square feet and a front yard setback of 40 feet when 50 feet is required.

19. As a result of the lot line alterations, Applicants seek variances associated with Lot 1 to permit the following:

- a. A 40 foot front yard setback where 50 feet is required;
- b. A side yard setback of 15 feet where 20 feet is required;
- c. Lot area of 20,644 square feet where 25,000 square feet is required.

20. Lot 2 is already non-conforming with an existing lot area of 18,569 square feet and a front yard setback of 40 feet.

21. As a result of the lot line alterations, Applicants seek variances associated with Lot 2 to permit the following:

- a. A 40 foot front yard setback where 50 feet is required;
  - b. Impervious surface of 46.9% where no more than 35% is permitted.
22. Lot 3 is already non-conforming with an existing rear yard setback of 40 feet where 60 feet is required.
23. As a result of the lot line alterations, Applicants seek a variance associated with Lot 3 to permit a rear yard setback of 40 feet.
24. The proposed one story, 2,400 square feet addition to the home on Lot 2 will be an expansion of the Neilsons' dining room and kitchen to accommodate their ever growing family.
25. The proposed addition will be one story with a basement.
26. The application for a variance was made to address the unusual nature of the three lots under the common control of Mr. Neilson, construct the addition and accommodate the unity thereof.
27. According to Mr. Macy, in 1967 the Township increased the lot area from 18,000 square feet and from the setback requirements of 50 feet for the rear yard, 15 feet for the side yard and 35 feet for the front yard.
28. Mr. Macy believes that in 1974, the current lot area, setbacks and frontages became what they are today.
29. The revisions to the Ordinance in or about 1974 made these 3 lots at issue nonconforming.
30. The surveys for lots 1 and 2 upon which the legal description for each was created date back to 1966 while the legal description for Lot 3 was created in 1954.
31. The proposed lot line adjustment results in more equally sized lots with lots 2 and

3 complying with current lot size requirements while Lot 1 is 4,356 square feet under the 25,000 square feet requirement.

32. With the proposed Lot 2 adjustment and the addition to the home thereon, the impervious surface of Lot 2 would constitute 46.9% where no greater than 35% is permitted.

33. In order to address any storm water runoff issues created by the construction of the addition to the home on Lot 2, Applicant will install the appropriate controls to manage said storm water.

34. The neighborhood is residential with similarly sized lots and homes to the north, east and south with Shannondell at Valley Forge to the west.

35. The lots at issue are unique in that they were made non-conforming with the revisions to the Ordinance and thus impossible to develop as desired by the owners.

36. The proposed lot line adjustment will make the lot sizes more equal rendering non-conforming lots less non-conforming without changing their residential use.

37. Placement of the proposed addition at the rear of the house to match the existing roof line rather than the proposed east side yard would encroach more significantly into the 60 foot rear yard setback than the 5 foot encroachment in the side yard setback.

38. Regardless of the proposed lot line adjustments and addition, the following non-conformities already exist:

- a. Lots 1 and 2 are undersized;
- b. Front yard setbacks for Lots 1 and 2 are less than the 50 feet required;
- c. Rear yard setback for Lot 3 is less than the 60 feet required.

39. The new issues created by the proposed lot line adjustments and construction of the addition are:

- a. The impervious coverage for Lot 2 exceeds the permitted amount by 11.9%;
- b. The 15 foot side yard setback for lot #1 where 20 feet is required.

40. As a result of the proposed lot line adjustments, Applicants have increased the size of Lot 1 and eliminated the lot area non-conformity of Lot 2, making 2 of the 3 lots compliant with lot size requirements of the R2 district.

41. As a result of the proposed lot line adjustments, Applicants are required to formally seek variances from both the remaining existing non-conformities in #38 above and the 2 new non-conformities described in #39 above.

42. Mr. Richard Hartung, 20 Driftwood Road, Audubon, Lower Providence Township questioned the Applicants regarding the:

- a. Orientation of the existing house on Lot 3;
- b. Size of the proposed addition;
- c. Parking requirements as a result of the addition;
- d. Visibility of the addition from the street.

All of Mr. Hartung's questions were answered by the Applicants.

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

44. The following exhibits were marked at the hearing:

A-1 Final Subdivision Lot Line Adjustment Plan from Bursich dated March 4, 2019;

A-2 Deeds for Lots 1, 2 and 3 dated September 22, 2005, June 6, 2013 December 16, 2010 respectively;

A-3 Montgomery County Board of assessment information printout for Lot 1;

A-4 Montgomery County Board of assessment information printout for Lot 3;

A-5 Montgomery County Board of assessment information printout for Lot 2;

A-6 Application;

A-7 Aerial photo of the site and Bursich Plan.

B-1 Certificate of Posting

B-2 Certificate of Notification

B-3 Matrix of Addresses where notice was mailed

B-4 Public Notice

B-5 Proof of Publication

## **DISCUSSION**

### **I. Statement of the Case.**

The Applicants have requested a variance from the setback, lot area and impervious surface requirements of Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance in connection with the adjustment of lot lines for 3 parcels in common control and the construction of an addition to the home on Lot 2. The aforesaid Section of the Ordinance states in pertinent part:

#### **§ 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]

<b>Requirement</b>	<b>No Public Service</b>	<b>Either Water or Sanitary Sewer Service Only</b>	<b>Both Water and Sanitary Sewer Service</b>
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

<b>Requirement</b>	<b>No Public Service</b>	<b>Either Water or Sanitary Sewer Service Only</b>	<b>Both Water and Sanitary Sewer Service</b>
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%

The relief sought is dimensional in nature requesting the allowance of front yard setbacks of 40 feet for Lots 1 and 2, 15 feet side yard setback for Lot 1, rear yard setback for Lot 3 of 41 feet and impervious coverage of 46.9% for Lot 2.

## **II. Variance Legal Standard.**

Pursuant to the Municipalities Planning Code and the Ordinance at §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.

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).

### **III. Dimensional v. Use Variance.**

There are 2 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). Dimensional variances are at issue in this case.

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.* Therefore, 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).

### **IV. Facts Applied to the Legal Standard.**

In the instant case, the Property is located at the intersection of Wedgewood Way and Sandown Road. Applicants are related with the common denominator Donald J Neilson, Sr. who along with his wife Mary Louisa have resided in the home on Lot 20 since 1995. Over the years they have acquired through entities controlled by Mr. Neilson Lots 1 and 3 retaining their integrity without change since their acquisition in 2005 and 2010 respectively. As the Neilson’s

family has grown, their existing residents on Lot 2 at Sandown Road can no longer accommodate them. As a result, they propose to construct a 2400 square foot one story addition to their home to accommodate their family at holidays and other similar events. In order to do so, certain lot adjustments are necessary in order to not only accommodate the building addition but to seek compliance of lot area requirements in the R2 district and make the lot sizes more equal.

Accordingly, applicants have proposed lot line adjustments that will accommodate the building addition while, at the same time, seeking to conform to lot size requirements of the R2 district and formalize in the form of dimensional variances the existing nonconformities with front and rear yard setbacks. The proposed lot line adjustments appeared to make the most practical sense to equalize the lot sizes, make Lot 2 conform to size requirements and increase the size of Lot 1 making it closer to the required size. The proposed lot line adjustments will not offensively encroach on any of the 3 lots at issue nor the Southern lot, the only other parcel of ground bordering those at issue.

Each lot has residential dwellings constructed thereon, therefore the lot line adjustments and/or addition will not alter their present use. In fact, the lot line adjustments tend to reconfigure the lots consistent with those in the neighborhood.

The unique nature of the 3 lots of common ownership/control, non-conformities caused by a change in the zoning ordinance and the adjustment of the lot lines making them less non-conforming support the grant of a variance. Undue hardship would result from a denial of the variance. This hardship is not self-imposed but is rather the result of the physical characteristics of the lots and the need for Applicants to add a reasonable addition to their home. Also, the essential character of the neighborhood will not be changed with the proposed addition. Finally, Applicants have proposed an addition that attempts to limit encroachment into required

setbacks and is located in the least offensive location to the other lots. It is therefore the minimum variance that will afford the required relief.

### **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. 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 Applicants' reasonable use of the Property.
5. The variances requested represent the minimum that will afford relief.
6. The proposed lot line adjustments coupled with formal requests to accept existing nonconformities represents the least modification possible of the regulation at issue.
7. The proposed addition to the home will not alter the essential character of the neighborhood in which the Property is located.

### **DECISION**

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

1. The application of Audubon Management Corp. for variances from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance for Lot 1 are granted to permit:
  - a. A minimum lot area of 20,644 square feet where 25,000 S.F. was required;

- b. A front yard setback of 40 feet where 50 feet was required;
- c. A side yard setback of 15 feet where 20 feet was required.

2. The application of Donald J. Neilson, Sr. and Mary Louisa Nelson for variances from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance for Lot 2 are granted to permit:

- a. A front yard setback of 40 feet where 50 feet is required;
- b. Impervious surface coverage of 46.9% where no more than 35% was

permitted.

3. The application of Gravel Pike 50, LLC for a variance from Section 143-37.A.(2) of the Lower Providence Township Zoning Ordinance for Lot 3 to permit a rear yard setback of 41 feet where 60 feet was required is granted.

Dated: June 3, 2019

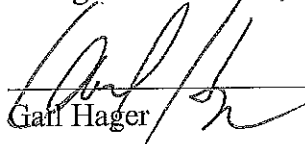
**ORDER**

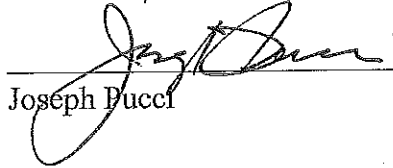
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
Kathie A. Eskie, Chairwoman

George J. Ozorowski, Vice Chairman

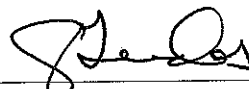
  
Gail Hager

  
Joseph Pucci

Patricia Alzamora



Robert G. Hardt



Christopher Gerdes

**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.