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June 5, 2023

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7020 2450 0001 6265 2220**

Natan Andres
22 Meadow Road
Collegeville PA 19426

**RE: Lower Providence Township Zoning Hearing Board
Applicant: Natan Andres
Application No: Z-23-06**

Dear Mr. Andres:

In accordance with the Zoning Application filed on March 17, 2023, 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.

Yours very truly,



Keith B. McLennan

KBM/

Pc: Kathie A. Eskie
Christopher Gerdes
Gail Hager
Randy Klein
Joseph Pucci
Tejal Mehta
Gary Brown
Mike Mrozinski, Community Development Director
Gregory Heleniak, Esquire, Township Solicitor
Tina Blain

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-23-06	: HEARING DATE: April 27, 2023
		:
		:
APPLICATION OF:		:
Natan Andres		:
22 Meadow Road		:
Collegeville, PA 19426		:
		:
PROPERTY:		:
22 Meadow Road		:
Collegeville, PA 19426		:
Lower Providence Township		:
Parcel Nos. 43-00-08152-00-4		:

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

A public hearing on the above Application having been held on April 27, 2023, before the Zoning Hearing Board of Lower Providence Township (the “Zoning Hearing Board” or “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”), concerning the above captioned premises (the “Property” or “Subject Property”), and having considered the Application and the testimony, exhibits, and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

Procedural Matters

Application to Zoning Hearing Board

1. Natan Andres, owner of 22 Meadow Road, Collegeville, PA 19426 (Applicant), requests relief from Section 143-49.A(2) of the Ordinance for a front yard setback of 15 feet instead

of the required 25 feet, and a side yard setback of 2 feet instead of the required 10 feet in the R-3 Residential Zoning District (the "Application").

Notice and Hearing

2. The Application was properly advertised, and a public hearing took place before the Lower Providence Township Zoning Hearing Board (the "Board") on April 27, 2023. The Board accepted evidence on the matter.
3. Participating Zoning Hearing Board Members Present at the April 27, 2023, hearing were: Kathie Eskie (Chair), Chris Gerdes (Vice-Chair), Gail Hager (Member), Joseph Pucci (Member), Randy Klein (Member), Gary Brown (Alternate), and Tejal Mehta (Alternate).
4. Appearances of Counsel
 - a. Keith B. McLennan, Esquire, served as Solicitor for the Zoning Hearing Board.
 - b. The Applicant was not represented by counsel.
5. Appearance of Other Party
 - a. No other party entered their appearance in the matter.
6. Additional Attendees
 - a. Mike Mrozinski, the Community Development Director for Lower Providence Township, was also present.
7. Witnesses
 - a. Natan Andres testified in support of the Application.
 - b. Aline Beigesch-Baith testified in support of the Application.
 - c. Mary Caine testified in support of the Application.
8. Exhibits
 - a. The Applicants submitted the following exhibits:

A-1: Addendum to the Application with all attachments.

b. The Board entered the following exhibits:

B-1: Public Notice by Posting.

B-2: Certificate of Posting.

B-3: Letter notifying neighbors within 500 feet of the Property of the Application.

B-4: Matrix of Addresses where notice was mailed.

B-5: Certificate of Notification to the neighbors within 500 feet of the Property.

B-6: Certificate of Publication.

Findings of Fact

1. The subject property is located at 22 Meadow Road, Collegeville, PA 19426, with a parcel number of 43-00-08152-00-4 (the "Property").
2. The applicable zoning district is the R-3 Residential Zoning District.
3. The Property consists of a 16,634 square foot lot.
4. The present use began in 2007.
5. The Applicant acquired the Property in 2026.
6. The Property currently consists of a single, two-story residential dwelling.
7. The Property is serviced by public water and public sewer.
8. There are no outstanding state or federal violations cited on the Property.
9. Section 143-49.A(2) requires a minimum front yard setback of at least 25 feet and a side yard setback of at least 10 feet.
10. The Applicant proposes to construct a garage on the southeast corner of the property.
11. The proposed use would result in a 2-foot side yard setback from the adjacent lot.
12. The proposed use would result in a 15-foot front yard setback from the legal right-of-way

to Meadow Road.

13. The Applicant states that the location was preferable due to having the least topographic challenges, minimum additional impervious coverage, and financial considerations.
14. The adjacent neighbors approve of the construction.
15. The northeast corner of the lot has an 8-foot slope to the back of the lot.
16. Using the northeast corner would render the backyard inaccessible by vehicle.
17. Vehicles must sometimes be driven into the backyard to replace equipment in the basement.
18. The west side of the lot would be problematic due to the existence of overhead power and communication cables.
19. Additionally, the main water line and an underground propane tank are located on this side of the lot.
20. The west side of the property has a 6-foot slope to the back of the lot.
21. The proposed use will not alter the character of the neighborhood, as the use is similar to many other properties in the area.
22. A house across the street has a garage that is 5 feet from the legal right-of-way of Meadow Rd. and 2 feet from the neighboring property.
23. The proposed use will not emit smoke, dust, odor, or other air pollutants.
24. Denial of the request will impose an unnecessary hardship due to the physical characteristics of the property, which are not self-imposed.
25. There is already a garage attached to the home.
26. The Applicant intends to work on his vehicles in the new garage.
27. The proposed garage will have electrical utilities.

28. The garage will be adjacent to the existing driveway.
29. The garage will have two garage doors.
30. The garage will accommodate four cars.
31. The impervious coverage will not require relief.
32. While the current neighbor agrees to the setback, the Board must consider future owners of the adjacent property.
33. The Applicant testified that he could potentially build the garage with a 5-foot side-yard setback.
34. The Applicant testified that he could potentially shift the garage over to accommodate a larger side-yard setback.
35. No parties adverse to the Application entered their appearance.

DISCUSSION

I. Statement of the Case

Natan Andres, owner of 22 Meadow Road, Collegeville, PA 19426, requests relief from Section 143-49.A(2) of the Ordinance for a front yard setback of 15 feet instead of the required 25 feet, and a side yard setback of 2 feet instead of the required 10 feet in the R-3 Residential Zoning District.

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.Cmwlth. 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.

II. Facts Applied to the Legal Standard.

Before the Board is the Application of Natan Andres (the "Applicant") for a variance from the minimum front yard setback and side yard setback requirements under Section 143-49.A(2) of the Lower Providence Township Zoning Ordinance (the "Ordinance") in order to construct a garage on the Applicant's property located at 22 Meadow Road, Collegeville, PA 19426 (the "Property"). The Board has considered the facts and testimony presented during the public hearing and assessed the Applicant's request based on the five-part variance test and standards of proof set forth in the Ordinance. For the reasons set forth below, the Board grants relief for the front yard setback and a 5-foot side yard setback rather than the requested 2-foot setback.

The Board has carefully considered the Applicant's request for a variance from the minimum front yard setback and side yard setback requirements under Section 143-49.A(2) of the

Lower Providence Township Zoning Ordinance (the "Ordinance") in light of the five-part variance test set forth in §143-168.A. of the Ordinance and the standards of proof in §910.2 of the Municipalities Planning Code. In determining whether the Applicant has met the burden of proof, the Board must evaluate whether the Applicant has established the necessary criteria.

In analyzing the Applicant's request, the Board finds that the unique circumstances and conditions of the Property create an unnecessary hardship due to the physical characteristics, including the 8-foot slope in the northeast corner, the 6-foot slope on the west side of the lot, and the location of overhead power and communication cables, the main water line, and an underground propane tank. These conditions are peculiar to the Property and are not generally applicable to other properties in the neighborhood or district. The Applicant has demonstrated that these circumstances prevent the Property from being developed in strict conformity with the zoning ordinance.

The Applicant has shown that a variance is necessary to enable the reasonable use of the Property by constructing a garage. The proposed location of the garage minimizes topographic challenges, additional impervious coverage, and financial constraints, and allows for reasonable access to the backyard by vehicle, as required for the replacement of equipment in the basement. The unnecessary hardship has not been created by the Applicant, as the physical characteristics of the Property exist independently of the Applicant's actions.

Furthermore, the Board finds that the variance will not alter the essential character of the neighborhood or district, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. The proposed use is consistent with the character of the neighborhood, as evidenced by a similar garage located across the street. The adjacent neighbors approve of the construction, and no parties adverse to the Application have entered their

appearance.

Lastly, the Board must determine whether the requested variance represents the minimum variance necessary to afford relief and the least modification of the regulation in issue. The Applicant has testified that he could potentially build the garage with a 5-foot side yard setback and could shift the garage to accommodate a larger side yard setback. Based on this testimony and considering the concerns for future owners of the adjacent property, the Board concludes that a 5-foot side yard setback, rather than the requested 2-foot setback, represents the minimum variance that will afford relief.

In conclusion, the Board grants the Applicant's request for a variance from the minimum front yard setback requirement and a 5-foot side yard setback, rather than the requested 2-foot setback, as the Applicant has met the burden of proof by demonstrating that the proposed use satisfies the five-part variance test and the standards of proof set forth in the Ordinance and the Municipalities Planning Code.

CONCLUSIONS OF LAW

1. The Applicant has the 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 not necessary for the Applicant's reasonable use of the Property; instead, a smaller variance consisting of a 5-foot side yard setback where 15 feet is required would suffice. This 5-foot setback represents the minimum variance that will

afford relief and is the least modification possible of the regulation at issue.

5. The proposed use will not alter the essential character of the neighborhood in which the Property is located.

DECISION

The Lower Providence Township Zoning Hearing Board by a 3-2 vote Granted a variance from Section 143-49.A(2) of the Lower Providence Township Zoning Ordinance as Amended, to permit the construction of a garage with a front yard setback of 15 feet where 25 feet is required in the R-3 Residential District with the following conditions:

1. Construction placement shall be as per the plans introduced into evidence in this case as Exhibit "A-1";
2. No additional curb cuts will be added to the Property;
3. No widening of the driveway apron on the Property;
4. No commercial activity will take place in the new garage;
5. Applicant will install screening between the new garage and the neighbor's property.

The Lower Providence Township Zoning Hearing Board by a 5-0 vote Granted a variance from Section 143-49.A(2) of the Lower Providence Township Zoning Ordinance as Amended, to permit the construction of a garage with a front yard setback of 5 feet where 10 feet is required in the R-3 Residential District with the following conditions:

1. Construction placement shall be as per the plans introduced into evidence in this case as Exhibit "A-1";

2. No additional curb cuts will be added to the Property;
3. No widening of the driveway apron on the Property;
4. No commercial activity will take place in the new garage;
5. Applicant will install screening between the new garage and the neighbor's property.

Dated: June 2, 2023

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

Kathie A. Eskie

Kathie Eskie

Christopher Gerdes

Gail Hager

Randy Klein

Randy Klein

Joseph Pucci

Joseph Pucci

Gary Brown, Alternate

Tejal Mehta

Tejal Mehta, 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.