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November 2, 2018

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7015 3010 0002 1910 8701**

Jingsong Yang and Nianying Wang  
2820 Breckenridge Blvd.  
Norristown, PA 19403

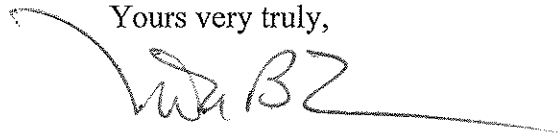
**RE: Lower Providence Township Zoning Hearing Board  
Application of Jingsong Yang & Nianying Wang  
Application No. Z-17-14**

Dear Jingsong and Nianying:

In accordance with your Application for a variance from Lower Providence Zoning Ordinance 143-37(A).(2) to enclose a portion of your existing uncovered deck, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board approving your variance application.

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

Yours very truly,



Keith B. McLennan

KM/jds

Enclosure

pc: Kathie A. Eskie, Chairwoman  
Gail Hager, Vice Chairwoman  
Joseph Pucci  
Patricia Alzamora  
George J. Ozorowski, Esquire

Robert G. Hardt  
Jill Zimmerman, Esquire  
Michael Mrozinski  
(Via e-mail with enclosure)

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

APPLICATION NO. Z-18-14 : HEARING DATE: October 25, 2018  
:  
:  
APPLICATION OF: :  
Jingsong Yang & Nianying Wang :  
:  
PROPERTY: :  
2820 Breckenridge Boulevard :  
Lower Providence Township :  
Norristown, PA 19403 :  
Parcel No. 43-00-01553-18-6 :

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

The applicants, Jingsong Yang & Nianying Wang (“Applicants”) filed an application requesting a variance from §143-37.A.(2) of the Lower Providence Township Zoning ordinance (“Ordinance”) to enclose a portion of their existing uncovered deck that, when constructed, encroached upon the sixty foot (60’) rear yard setback by eight feet (8’) as permitted by §143-30 of the Ordinance. By seeking to cover a portion of their deck, the Applicants must comply with §143-37.A.(2) that requires a sixty foot (60’) rear yard setback or obtain a variance. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on October 25, 2018 at the Lower Providence Township Building. The following members of the Board were present: Chairwoman Kathie Eskie, Vice Chairwoman Gail Hager and members Patricia Alzamora, Joseph Pucci, George Ozorowski and alternate, Robert Hardt. 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 Jingsong Yang and Nianying Wang.

2. In 2009 the Applicants acquired the subject property located at 2820 Breckenridge Boulevard Lower Providence Township, Norristown, PA 19403, Parcel No. 43-00-01553-18-6 within the R-2 Residential District ("Property").

3. The Property is approximately 18,034 square feet and abuts a large oversized parcel in the rear owned by Pennsylvania American Water Company with an above ground water storage tank placed thereon.

4. The present use of the Property is residential and the Applicants wish to expand the living space with the construction of a sun room on two hundred twenty-four (224) square feet of the existing deck.

5. The Applicants reside in a home on the Property which was constructed in 1994.

6. The Property is wooded in the rear serving as a buffer with the Pennsylvania American Water Company, slopes away from the home to the southeast.

7. Applicants seek to construct a two hundred twenty-four (224) square foot, single story sunroom on the existing deck on their home.

8. The lot is unique in that no matter where the sunroom is placed it will encroach upon the side or rear yard setbacks making it difficult if not impossible to expand the living space of the home.

9. The proposed sunroom will be unheated space without alteration of the size of the existing deck resulting it encroaching in the sixty foot (60') rear yard setback required by the Ordinance by eight feet (8') as currently existing.

10. Adjoining neighbors are supportive of the Application, the Pennsylvania American Water Company expressed no objection to the Application despite being notified of same.

11. The proposed addition will not alter the essential character of the neighborhood.

12. There was no adverse public comment regarding this Application.
13. The Applicant was not represented by legal counsel.

The following exhibits were offered at the hearing without objection:

A-1 Application;

A-2 Addition/Renovation Plan of Thomas J. DiNardo Architect dated September 16, 2018;

B-1 Certificate of Posting the Property executed by Michal Rohlfing, Community Development Department for Lower Providence Township;

B-2 Letter dated October 4, 2018 addressed to Pennsylvania American Water Company informing it of the pending Application and hearing accompanied by an address matrix listing all of the addresses where similar notice letters were sent on or about October 4, 2018;

B-3 Advertisement informing the public of the Application and hearing placed in newspaper of general circulation for Lower Providence Township.

## **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 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). 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.Cmwlt. 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 Applicants have requested a variance from the rear yard setback requirements of §143-37.A.(2) of the Lower Providence Township Zoning Ordinance in order to construct a two hundred twenty-four (224) square foot, single story sunroom on the existing deck already attached to their home. The relief sought is dimensional in nature requesting the allowance of a rear yard setback of fifty-two feet (52') rear yard setback instead of the sixty foot (60') rear setback required by §143-37.A.(2) of the Ordinance.

The applicable sections of the Ordinance state:

#### **§ 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:

Rear yard 60 feet

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, the Applicants enjoy the benefits of §143-30 which permits a nominal extension of unenclosed decks into the rear yard setback. Section 143-30 provides as follows:

§ 143-30 Projection of awnings, patio covers, patios and decks into yards.

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

A. Projection of unenclosed awnings, patio covers, patios and decks. Projection of unenclosed awnings, patio covers, patios and decks shall be permitted in all residential districts subject to the following applicable provisions:

(2) Rear yard intrusion.

(a) In all residential districts except in the R-4 and R-5 Districts, unenclosed awnings, patio covers, patios and decks shall be permitted to extend or project into the rear yard lot area a distance not to exceed 16 feet; provided, however, that in no event shall any unenclosed awning, patio cover, patio or deck extend closer than 20 feet to the rear lot

line or closer than 10 feet to any side property line.

Applicants now wish to enclose a portion of their deck to turn it into a sunroom which, in turn, runs afoul of that same ordinance section as well as the setback requirements of §143-37.A.(2). However, the uniqueness of the lot makes it difficult for the Applicants to avoid encroachment on any setback creating an unnecessary hardship for the Applicant. This hardship is not self-imposed but is rather the result of the physical characteristics of the lot. The Applicants have nowhere to build their sunroom to establish more useful living space without violating the setbacks. Thus the Applicants are unable to develop their property as they wish. As required by Ordinance §143-168.A, the Applicants have demonstrated that they have an unnecessary hardship that was not of their own making.

Further, the enclosed deck will have no impact upon the undeveloped rear parcel owned by Pennsylvania American Water Company. Not only has it asserted no objection to the Application, it is inconceivable that the enclosing of two hundred twenty-four feet (224') of the existing encroaching deck will impact the large, above ground water storage tank on its property.

What is more, the Property is part of a development with similarly situated homes, many of which contain similar decks that are screened by trees and other flora. Accordingly, the essential character of the neighborhood will not be changed with the proposed addition.

Finally, Applicants are not seeking to expand the eight foot (8') rear yard setback encroachment. Rather, Applicants seek to use the very same "footprint" of their existing deck to enclose a portion of it. Therefore what is requested by the Applicants is 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, 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 for a variance from Section §143-37.A.(2) of the Lower Providence Township Zoning Ordinance which requires a sixty foot (60') rear yard setback in the R-2 Residential District to permit a rear yard setback of fifty-two feet (52') as depicted on the Plan of Thomas J. DiNardo Architect dated September 16, 2018 is granted.

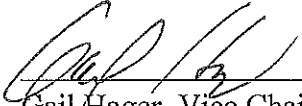
Dated: October 29, 2018

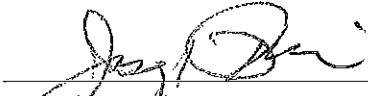
## **ORDER**

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

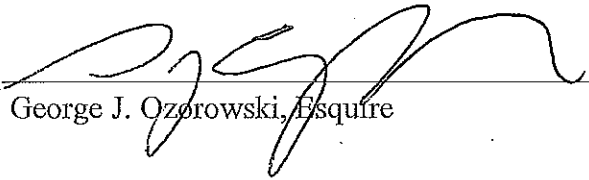
### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

  
Kathie A. Eskie, Chairwoman

  
Gail Hager, Vice Chairwoman

  
Joseph Pucci

  
Patricia Alzamora

  
George J. Ozorowski, Esquire

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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.