

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-08-19 : HEARING DATE: October 23, 2008
:
APPLICATION OF: : DATE OF MAILING OF OPINION AND
SOLID WASTE SERVICES, : DECISION: December 5, 2008
INC., d/b/a J.P. :
MASCARO & SONS :
:
PROPERTY: :
2650 Audubon Road :
Parcel No. :
43-00-00822-00-8 :

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

The Applicant, Solid Waste Services, Inc. d/b/a J.P. Mascaro & Sons (hereinafter referred to as the "Applicant") filed an Application requesting a Variance from Section 143-141 (b)(1) of the Zoning Ordinance in order to construct a one hundred thirty-four foot by five foot (134' x 5') wall sign on its corporate headquarters at the above address. Specifically, the Applicant seeks relief from the one hundred square foot limitation provided in the above section of the Code. The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board on October 23, 2008, at the Lower Providence Township Building. Four of the five members of the Zoning Hearing Board were present, as well as the Substitute Solicitor, the Director of Community Development, and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Solid Waste Services, Inc. d/b/a J.P. Mascaro & Sons, which is the tenant of the subject property.

2. The legal owner of the subject property is M.B. Investments, a Pennsylvania General Partnership, and a Mascaro related entity, of 2650 Audubon Road, Audubon, Pennsylvania, 19403. Pat Mascaro is a General Partner of M.B. Investments as well as the President of J.P. Mascaro & Sons.

3. The property is located at 2650 Audubon Road. The Parcel Nos. are 43-00-00822-00-8 and 43-00-00819-00-2.

4. The subject property consists of 11.9 acres, which is zoned "LI" Limited Industrial.

5. Situate on the property is a 96,000 square foot two-story office building.

6. The Applicant was represented by Attorney William Fox. Mr. Mandracchia recused himself from serving as Solicitor on this Application, noting for the record that Blake Dunbar would represent the Board on this matter.

7. The following exhibits were entered into evidence during the course of the hearing:

(a) Exhibit (Board) B1 - A copy of the notice of publication.

(b) Exhibit B2 - A copy of the zoning application.

- (c) Exhibit Mascaro 1 - A copy of the deed for the property, four pages.
- (d) Exhibit Mascaro 2 - A one-page document dated October 21, 2008, showing the metes and bounds of the building and the proposed location for the sign.
- (e) Exhibit Mascaro 3 - A binder containing a Line of Sight Analysis dated October 23, 2008.

8. The subject property was purchased by the Mascaro related entity in 2005. Mascaro started using the office building on the property as its corporate headquarters in January, 2006.

9. A large portion of the subject property borders Route 422 and is included in the right-of-way of Route 422.

10. Since its purchase in August, 2005, over One Million Dollars (\$1,000,000.00) of improvements have been made to the building.

11. M.B. Investments has authorized Solid Waste Services, Inc. d/b/a J.P. Mascaro & Sons, to file and pursue the dimensional variance application that is the subject of this proceeding.

12. The Applicant seeks to install a wall sign (134' long by 5' high) on the southern face of the office building, facing Route 422.

13. The proposed wall sign will consist of Five foot (5') high letters affixed to the building, which would include the blue Mascaro elephant, red lettering for "J.P. Mascaro & Sons," and black lettering for the corporate motto, "If it's service, it's us."

14. The purpose of the proposed wall sign is to identify Applicant's local business and its corporate motto to those traveling on Route 422 East.

15. The proposed sign will not be neon, nor internally illuminated, but will be indirectly lit at night with a spot or flood light on the letters only. Measures will be taken so that there is no spillover of the lighting which would affect adjacent properties. The sign will be constructed of plastic or aluminum, depending on durability.

16. It was noted that the building is on a twenty-five foot (25') high embankment at the center of the curvature on U.S. Route 422, and is surrounded by vegetation and terrain that limits its visibility. These geographical circumstances impact the ability of a driver on U.S. Route 422 to see a sign which conforms to the Zoning Ordinance.

17. Mr. Pasquale N. Mascaro, President of J.P. Mascaro & Sons, was sworn in as the first witness. Mr. Mascaro testified that the summary of facts as related by Mr. Fox was the same information he would have provided.

18. William S. Tafuto, P.E., of ARM Group, Inc., testified on behalf of the Applicant as an expert in visual line of sight and visual perspective analysis.

19. In connection with the Application, Mr. Tafuto prepared a detailed visual line of sight and visual perspective report that was introduced as Exhibit Mascaro 3. Mr. Tafuto testified at length about the contents of his report.

20. Mr. Tafuto's testimony and report established the following:

- (a) Parallel wall signs are permitted under §143-141(B)(1) of the Township Zoning Ordinance provided that such signs "may not exceed 25% of the building face area on that frontage, up to a maximum of 100 square feet."
- (b) Mascaro's proposed wall sign meets the 25% requirement but Mascaro is seeking a "dimensional variance" from the maximum 100 square foot wall sign size requirement.
- (c) Because of the unique topography and the way that the property is situated in relation to U.S. Route 422, the proposed wall sign will only be visible to motorists traveling on a small segment of U.S. Route 422 East, approximately 2,000 feet.

- (d) The proposed wall sign will not be visible from any other direction or vantage point.
- (e) In a one-mile radius from the building, the proposed wall sign will not be visible to 99.77% of the surrounding properties.
- (f) The closest distance between motorists on Route 422 East and the proposed wall sign is 355 feet, which is substantially further than is typical for wall signs in the Township.
- (g) A 100 square foot sign which conforms to the Zoning Ordinance would not be effectively visible to a person of normal visual acuity from Route 422 East even at the closest point to the proposed sign (i.e. 355 feet).
- (h) From a "visual perspective" point of view of a motorist traveling on U.S. Route 422 East, even at its closest point (i.e. 355 feet), the proposed wall sign will appear to be smaller than the 100 square foot maximum provided for in the Zoning Ordinance.
- (i) The proposed wall sign will not increase traffic congestion in the streets surrounding the property. It will only be visible from a small segment (i.e. about 2,000 feet) of U.S. Route 422

East. It is conservative and understated and will have a negligible impact on a person's visual focus.

- (j) The proposed wall sign does not present a risk of fire, panic, or otherwise endanger public safety.
- (k) Because it will not be seen from any adjoining properties and neighborhoods, the proposed wall sign will not have any adverse visual impact upon adjoining properties and neighborhoods.
- (l) The proposed wall sign is consistent with the spirit and declared legislative intent of §143-138 of the Zoning Ordinance relating to signs in that it serves the important function of identifying the local J.P. Mascaro & Sons business in a visually attractive manner without any adverse visual impact.
- (m) The proposed wall sign will not alter the essential character of the neighborhood or impair the appropriate use or development of any adjacent properties.
- (n) The proposed size and height of the sign are the minimum that are reasonably necessary for the sign to be visible to motorists traveling on the

small segment of U.S. Route 422 East (2,000 feet) from which the sign will be visible.

21. Mr. Mascaro testified that the signage as proposed is essential to establishing the corporate headquarters on the subject property. Although the company now has twenty-five (25) different locations, it originated in Lower Providence Township and the Applicant wants to create its identity in the Township.

22. The proposed sign is similar to other existing signs at the Applicant's other locations, although the exact nature of lighting may be different.

23. No witnesses appeared and testified in opposition to the Application, nor has the Applicant received any complaints about the proposed sign.

24. Mr. Patrick Mandracchia testified briefly in favor of the Application, indicating that the proposed signage will enhance the aesthetics of the subject building.

25. The Applicant seeks only a dimensional variance.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board.
2. The Applicant has established that, because of unique physical circumstances, conditions, and/or topography related to the subject property, the maximum 100 square foot wall sign size permitted under §143-141(B)(1) of the Township Zoning Ordinance

will inflict an unnecessary hardship upon Mascaro by completely negating its ability to have any "effectively visible" wall sign on the southern face of its office building where the property fronts on U.S. Route 422.

3. The unnecessary hardship has not been created by the property owner or Mascaro.

4. The proposed wall sign size and height is the minimum that is reasonably necessary for the sign to be "effectively visible" to motorists traveling on U.S. Route 422 East.

5. The requested dimensional variance and proposed wall sign are consistent and in harmony with the declared legislative intent of §143-138 of the Township Zoning Ordinance relating to signs.

6. Mascaro has met the standards under §143-168(A) and (D) of the Township Zoning Ordinance necessary for the approval of the dimensional variance it has requested.

7. "Dimensional variances" are subject to a less stringent burden of proof than "use variances." Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 721 A.2d 43 (Pa. 1998).

8. When an applicant seeks a dimensional variance within a permitted use, as is the case here, it is only asking for a reasonable adjustment of a zoning regulation in order to utilize the property in a manner consistent with the applicable

regulation. In such case, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation. [Hertzberg, 721 A.2d at 47].

9. Mascaro is entitled to the dimensional variance it has requested for its proposed wall sign, which is limited to the evidence and exhibits presented to the Zoning Hearing Board. That is, the proposed shall not exceed the dimensions of one hundred thirty-four feet long by five feet high (134' x. 5'), limited to the Mascaro logo, name, and motto.

DISCUSSION

The Applicant's request is for relief from requirements of the Zoning Ordinance of a purely dimensional nature, not for relief as to use requirements or limitations. 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 the proposed use will not be contrary to public interest. Hertzberg v. Zoning Board of Pittsburgh, 544 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 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. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Id. at 258-59, 721 A.2d at 47-48. In addition, to justify the grant of a dimensional variance courts may consider multiple factors, "including the economic detriment to the applicant if the variance was 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." Id. at 263-64, 721 A.2d at 50.

It is only the stringency of the standard in proving an unnecessary hardship that varies, depending on whether a use or dimensional variance is sought. Great Valley School District v. Zoning Hearing Board of East Whiteland Township, 863 A.2d 74, 83 (Pa. Commw. 2004), appeal denied, 583 Pa. 675, 876 A.2d 398 (2005) (citing Zappala Group, Inc. v. Zoning Hearing Board of the Town of McCandless, 810 A.2d 708, 710-11 (Pa. Commw. 2002), appeal denied, 573 Pa. 718, 828 A.2d 351 (2003); The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Commw. 2002);

Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Commw. 2001).

Despite the trend to apply a relaxed standard to dimensional variances, Pennsylvania caselaw is clear in its approach to the issuing of variances and demands that 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). Moreover, variances from zoning codes should be granted sparingly and only under exceptional circumstances; a variance should not be granted simply because such a grant would permit the owner to obtain greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Commw. 1996).

In order to grant a variance, the Board must make the findings set forth in §910.2 of the Municipalities Planning Code, 53 P.S. §10912.2, where relevant. See Hertzberg, 554 Pa. at 256-57, 721 A.3d at 46-47. The law established by the Pennsylvania courts further establishes these standards, stated in full herein. See Alpine Inc. v. Abington Township Zoning Hearing Board, 654A.2d 186 (Pa. Commw. 1995); Appeal of Lester

M. Prang, Inc., 169 Pa. Commw. 626, 647 A.2d 279 (1994). The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

(1) That 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) That 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) That such unnecessary hardship has not been created by the applicant.

(4) That 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) That 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.

The Applicant meets the criteria necessary to grant a variance in this case. The lot is unique as to its physical circumstances, including its location and proximity to U.S. Route 422 including the limitation on its visibility from vehicles traveling on the highway. The Applicant established that if a conforming sign were placed on the building facing U.S. Route 422, it would be virtually impossible for a person of normal visual acuity to read the sign at its nearest location (355 feet). These circumstances present a hardship to the Applicant, which is not of its making. It prevents the Applicant from having a visually effective sign if it conforms to the Ordinance. It should also be noted that the variance request does not include the twenty-five percent (25%) limitation of wall area, but only the 100-square foot limitation.

The only testimony offered by anyone other than the Applicant was in support of the Application to the effect that the proposed signage would actually enhance the appearance of the building.

The Board finds and concludes that based on the testimony and evidence presented at the hearing the standards for the

requested relief have been met and the requested variance from Section 143-141(B)(1) should be granted in accordance with the testimony and evidence presented at the hearing.

DECISION OF THE BOARD

The Decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

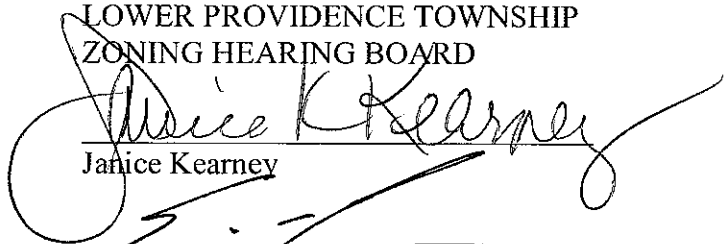
The Board hereby grants the relief requested in Application Z-08-19 of Solid Waste Services, Inc. d/b/a J.P. Mascaro & Sons for the property located at 2650 Audubon Road, Audubon, Pennsylvania, 19403, in order to exceed the 100 square foot maximum for a wall sign of this type. The sign shall be in accordance with the evidence and testimony presented at hearing; that is, it shall not exceed one hundred thirty-four feet (134') in length and five feet (5') in height and shall be limited to the corporate logo, corporate name, and corporate motto, as presented.

Dated: December 5, 2008

ORDER

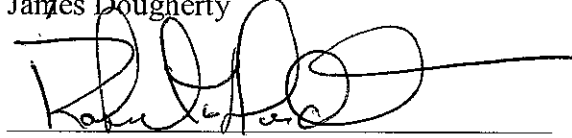
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Janice Kearney


Eric Frey


James Dougherty


Robert G. Hardt


William Donovan

NOTE 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 of the decision granting approval.