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August 23, 2019

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SR Realty Group, L.P.  
933 W. Main Street, 1<sup>st</sup> Floor  
Norristown, PA 19401

Attention: Mr. Paul Salvo

**RE: Lower Providence Township Zoning Hearing Board  
Application of SR Realty Group, L.P.  
Our File No. 19-11118-MU**

Of Counsel:

David W. Conner  
Sean E. Cullen  
Robert G. Rosen  
George E. Saba Jr.  
Theodore A. Schwartz

Dear Mr. Salvo:

Enclosed you will find the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board.

Very truly yours,

ERIC C. FREY

ECF:mh  
Enclosure

cc: Keith B. McLennan, Esquire (w/enclosure)  
Michael Mrozinski, Director of Community Development (w/enclosure)  
Keith Rebar (w/enclosure)  
Sandy Messner (w/enclosure)  
Rodney A. Bednar (w/enclosure)  
John F. Bednar, Jr. (w/enclosure)  
Helen A. Bednar (w/enclosure)

A Professional Corporation

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

<b>APPLICATION NO. Z-19-13</b>	:	<b>HEARING DATE: July 25, 2019</b>
	:	
	:	
<b>APPLICATION OF:</b>	:	
<b>SR REALTY GROUP, LP</b>	:	
	:	
<b>PROPERTY:</b>	:	
<b>14 Woodlyn Avenue/</b>	:	
<b>31 S. Trooper Road/</b>	:	
<b>29 S. Trooper Road</b>	:	
<b>Lower Providence Township</b>	:	
<b>Norristown, PA 19403</b>	:	
<b>Parcel Nos 43-00-16162-00-4,</b>	:	
<b>43-00-15289-00-4, and</b>	:	
<b>43-00-15292-00-1</b>	:	

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

The applicant, SR Realty Group, LP (hereinafter “Applicant”) filed an application on June 24, 2019 requesting variance in connection with the properties known as 14 Woodlyn Avenue, 31 South Trooper Road and 29 South Trooper Road, Norristown, Lower Providence Township, Montgomery County, Pennsylvania, 19403, being designated as Parcel Nos. 43-00-16162-00-4, 43-00-15289-00-4 and 43-00-15292-00-1 respectively (hereinafter, collectively, “Property”). Applicant seeks a Variance from §143-36 of the Lower Providence Township Zoning Ordinance, as amended, (hereinafter “Ordinance”) to convert an existing non-conforming gas cylinder servicing use to a non-conforming professional office use. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on July 25, 2019 at the Lower Providence Township Building. The following members of the Board were present: Kathie A. Eskie, Chairwoman, George J. Ozorowski, Esquire, Vice Chairman, Member, Gail Hager, Member, Patricia

Alzamora, Member, and Christopher Gerdes, Alternate-Member. Also present was Eric C. Frey, Esquire, Acting Solicitor.

### **FINDINGS OF FACT**

1. The Applicant is SR Realty Group, LP (hereinafter "Applicant"), with an address of 933 W. Main Street, Norristown, Pennsylvania, 19401.
2. Applicant is the equitable owner of the Property by Agreement of Sale dated July 1, 2019.
3. The legal owner of the Property is Michael Wagner, 15 Woodlyn Avenue, Norristown, Pennsylvania, 19401.
4. The parcels making up the Property are located at 15 Woodlyn Avenue (Parcel No. 43-00-16162-00-4), 31 South Trooper Road (Parcel No. 43-00-15289-00-4) and 29 South Trooper Road (Parcel No. 43-00-15292-00-1), Norristown, Lower Providence Township, Montgomery County, Pennsylvania.
5. The Property is located in an R-2 Residential District.
6. Applicant's representatives, Paul Salvo and Chris Chilla, testified in support of the Application.
7. Applicant was not represented by Counsel.
8. The following neighbors entered their appearance as protestants to the Application;
  - A. Keith Rebar, 38 Clearfield, Trooper, PA 19403
  - B. Sandy Messner, S. Trooper, Trooper, PA 19403;
  - C. Rodney A. Bednar, 27 S. Trooper Road, Norristown, PA 19403;
  - D. John F. Bednar, Jr., 27 S. Trooper Road, Norristown, PA 19403; and
  - E. Helen A. Bednar, 27 S. Trooper Road, Norristown, PA 19403.

9. The following exhibits were included in the record of the hearing:

**Applicant Exhibits:**

- A-1 Photo looking from Woodlyn;
- A-2 Photo looking from Trooper; and
- A-3 Photo of property.

**Board Exhibits:**

- B-1 Application;
- B-2 Legal Notice;
- B-3 Proof of Publication;
- B-4 Certification of Notification;
- B-5 Certification of Posting;
- B-6 Memorandum from Mike Mrozinski, Director of Community Development to the Zoning Hearing Board dated July 9, 2019.

- 10. The present use of the Property is a multi-story warehouse, house and parking lot.
- 11. 15 Woodlyn Avenue is approximately 35,000 square feet. It is currently improved with a single family residence and a 14,000 square feet commercial building which previously operated as a nonconforming gas cylinder business.
- 12. The 15 Woodlyn tract has one driveway off of Woodlyn Avenue which services both the residence and the commercial building.
- 13. 31 South Trooper Road is approximately 28,125 square feet. It is currently improved with a residential duplex (other half of duplex is 31 South Trooper Road).
- 14. 29 South Trooper Road is approximately 27,375 square feet. It is currently improved with a residential duplex (other half of duplex is 29 South Trooper Road).
- 15. Applicant proposes to convert the existing non-conforming gas cylinder servicing use to a non-conforming professional office use.

16. Portions of the nonconforming gas cylinder business were previously located on the rear portions of both 29 and 31 South Trooper Road. These areas included paved parking and storage areas as well as an access drive through 29 South Trooper Road tract to the gas cylinder business which had access only off of Woodlyn Avenue.
17. The legality of this prior non-residential use of these residential properties (29 and 31 South Trooper Road) was not proven. Accordingly, the nonresidential use was not determined to be a legal nonconforming use of these tracts.
18. There is public water and sewer on the Property.
19. Applicant proposes to retain the residential use of the single family home and the duplex. Applicant is seeking to convert the nonconforming gas cylinder business to a real estate office.
20. The real estate office is for Applicant's business and will have hours Monday through Friday from 9 a.m. to 5 p.m.
21. The nonresidential building will be renovated to appear as shown on Applicants Exhibits A-1, A-2 and A-3 to have a more residential appearance.
22. The large existing parking field will be renovated to a smaller parking field for 30-40 cars (as required by the Zoning Ordinance).
23. The excess paving areas will be removed along with the few hundred existing gas cylinder tanks.
24. Applicant proposes to screen the property lines that abut existing residential uses with a landscape buffer.
25. There will be no expansion of any existing building footprints, no expansion of

any existing parking, nor any exterior changes to the detached residences on the Property.

26. The proposed use will not alter the essential character of the neighborhood.
27. Applicant proposes that it will add a driveway off of Trooper Road to access the proposed office use.
28. Lighting for the use will only be safety lighting and lighting required by the Township's ordinances.
29. No sign is proposed by the Applicant.
30. Applicant will redesign and install storm water controls to address the Property as reconfigured by the proposed renovations.

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

The Applicant filed an application requesting a Variance from §143-36 Use Regulations of the Lower Providence Township Zoning Ordinance, as amended, (“Ordinance”) to permit the conversion of an existing non-conforming gas cylinder service use to a professional office use.

The applicable section of the ordinance states:

#### **§ 143-36 Use Regulations.**

[Amended 9-19-2002 by Ord. No. 472; 9-21-2006 by Ord. No. 556]

A building or group of buildings may be erected or used and a lot may be used or occupied for any of the following uses and no other:

- A. Single-family detached dwellings only.
- B. Accessory uses and buildings/structures.  
[Amended 10-20-2011 by Ord. No. 602]
  - (1) Accessory uses as defined by § 143-6, as limited by §§ 143-19A and 143-27.
  - (2) Accessory buildings/structures as defined by § 143-6, as limited by §§ 143-19B and 143-27.
- C. No-impact home-based businesses in accordance with the standards set forth in § 143-27A(9).
- D. Any use as permitted by right in Articles VII and XXVI and by conditional use.

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.Cmwlt. 2007).

In the instant case, the applicant seeks a Variance for a change of one non-conforming use to another use that does not comply with the underlying zoning.

This hardship is not self-imposed but is rather results from the historical use and development of the Property – which predates zoning in Lower Providence Township. The existing improvements and the prior use provide a hardship. The existing improvement is a 14,000 square feet commercial building which was utilized as a gas cylinder business. The related large paved parking/storage area is also a hardship. Further, the existence of hundreds of gas cylinders (from the prior use) adds to the hardship in the ability to convert the Property to a conforming R2 Zoning District use.

Because of these hardships the Property cannot reasonably be utilized for a permitted use. The proposed use of the property as a professional office and two residential buildings 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.

### 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 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.
4. The proposed use 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 §143-36 Use Regulations of the Lower Providence Zoning Ordinance to permit the conversion of an existing non-conforming gas cylinder service use to a professional office use is **GRANTED** under and subject to the following conditions:

1. The gas cylinders and environmental conditions currently existing on the Subject Property shall be removed/remediated by the Applicant;
2. The Applicant shall file a land development application with the Township to show the resulting impervious coverage and have the site design and stormwater controls approved by the Township and/or Township Engineer;
3. Landscaping and screening of the perimeter of the Subject Property shall be shown on the land development plans and shall be approved by the Township and/or the Township Engineer;
4. The two residences located on the Subject Property (a single family home and a duplex) shall be limited to a conforming residential use; and
5. Development and use of the Property shall be consistent with the Application submitted, as well as the testimony and exhibits presented at the Hearing before the Board;

**ORDER**

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

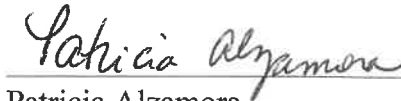
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
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.