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October 9, 2019

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7014 2870 0002 3801 1998**

Mr. Matt Robinson
L&H Companies
425 North 3rd Street
Reading, PA 19601

**RE: Application of L&H Companies
Lower Providence Township Appeal Application No. Z-19-17**

Dear Mr. Robinson:

Enclosed please find a Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on August 22, 2019. Pursuant to the decision of the Zoning Hearing Board, your application for a variance from sections 143-140.2 C., 143-141.3.E.2 and 143-141.3 of the Lower Providence Zoning Ordinance was approved with the conditions set forth in the attached Decision.

I wish your client the best of luck with its project.

Very truly yours,


Keith B. McLennan

KBM/jds

Enclosure

pc: Kathie A. Eskie, Chairwoman
George J. Ozorowski, Vice Chairman
Gail Hager
Joseph Pucci
Patricia Alzamora
Christopher Gerdes
Robert G. Hardt
Michael Mrozinski
(Via e-mail with enclosure)

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-19-17	: HEARING DATE: August 22, 2019
		:
		:
APPLICATION OF:		:
L& H Companies		:
		:
		:
PROPERTY:		:
2890 Audubon Village Drive		:
Lower Providence Township		:
Audubon, PA 19403		:
Parcel Nos. 43-00-03517-004		:

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

On July 31, 2019 L&H Companies filed an application requesting variances from the Lower Providence Township Zoning Ordinance (the "Ordinance") regarding the number of signs under §143-141.3.E.1 and size requirements under §143-141.3.E.2 and §143-140.2. Applicant has requested variances to allow 23 signs on a supermarket building and extra-large "Redner's" wall signs on the Redner's supermarket and gas kiosk currently under construction in connection with the proposed Redner's store at 2890 Audubon Village Drive, Audubon, PA 19403¹ (the "Application"). The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on August 22, 2019 at the Lower Providence Township Building. Chairwoman, Kathy Hskie, and members Patricia Alzamora and Robert Hardt 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.

¹ Various addresses have been used for the Property including 2890 and 2850 Audubon Village Drive and 2828 Egypt Road but all are in the Audubon Village Shopping Center. A google search indicates that the actual store address is 2850.

FINDINGS OF FACT

1. The subject property is located at 2890 Audubon Village Drive, Audubon, Lower Providence Township, PA 19403, parcel number 43-00-03517-00-4 (hereinafter the "Property").

2. On July 29, 2019 Redner's was provided permission by Audubon Shopping Center Associates, L.P. the purported owner of the Property to advance the subject Application.

3. L&H Companies, a designer, manufacturer and installer of signs throughout the United States is noted on the Application as the "Applicant" when in fact L& H Companies filed the application as the representative of Redner's Fresh Market who will hereafter be referred to as the "Applicant."

4. Redner's Fresh Market is a family run, employee owned retail grocery store chain based in Berks County, PA operating 41 supermarkets and 13 convenience stores in the southeastern Pennsylvania area with 7 in close proximity to the Audubon store.

5. Redner's has commenced construction of its store at 2890 Audubon Village Drive, Audubon, Lower Providence Township, PA 19403

6. The applicable zoning district is the General Commercial District ("GC").

7. The Property is the former Genuardi's grocery store/supermarket which, but for a brief interlude, has been vacant for many years.

8. Applicant intends to construct and operate a Redner's Fresh Market supermarket on the Property (the "Store").

9. Applicant seeks a variance from §143-141.3.E.1 of the Ordinance to permit 23 new wall signs on its Store where 2 are permitted.

10. Applicant also seeks a variance from §143-140.2.C and §143-141.3.E.2 of the Ordinance to exceed the size area requirements of thirty-two (32) square feet to permit three (3)

wall mounted signs, one approximately 36 square feet to be placed on the side of the Store, another at 121.28 square feet to be placed on the front of the Store and the other of 56.367 square feet to be placed on the Redner's gas kiosk adjoining the Store.

11. In order to compete with the plethora of grocery stores (both brick and mortar and online), Redner's must distinguish itself from the herd by "making shopping fun again."

12. Applicant that although the Redner's "warehouse market" brand is ubiquitous in southeastern Pennsylvania, its new branding as the "Redner's fresh market" is not.

13. Most consumers are unaware of the opening of new Redner's fresh market Stores in Pennsylvania brand and when driving by often forget the best safety practices out of curiosity for the new stores which causes an unsafe condition.

14. To educate Pennsylvania consumers or to "change people's minds" the use of several signs and oversized signs to emphasize the Redner's fresh market brand and its offerings will help reduce the instances of distracted driving.

15. The use of numerous and oversized signage not only assists the public by providing additional healthy food choices and savings on grocery and related purchases, it improves Redner's Fresh Market business opportunities.

16. Applicant proposes to install:

- a. "Redner's fresh market" sign on the front and side of the Store;
- b. Various descriptive ancillary signs on the Store front such as "farm to table," "organic," "family" and "chef inspired that otherwise comply with the sign area requirements;" and
- c. 4 "Redner's fresh market Fast Fill-Up" signs on the gas station canopy and 4 on

the kiosk.²

17. The Store front is 238 lineal feet which sets far back from Egypt Road.

18. The Audubon Village Shopping Center is multi-tenanted with signs of various shapes and sizes such that the nature of the area is not altered.

19. Matt Robinson and Steven Kueny-Rangione with L&H Companies and Ryan Redner on behalf of Applicant appeared as witnesses.

20. Mr. James Braun 1065 Sheerwater Drive testified expressing support for the Application provided any lighting complies with the Township ordinances regarding same.

21. The following exhibits were presented:

Applicant's Exhibits:

A-1 – Application;

A-2 – Signage Plan from L & H Companies dated June 26, 2019 of 6 pages;

A-3 – Sign Permit Image Exhibit from Keystone Petroleum Equipment LTD dated June 5, 2019 for the Redner's fresh market Gas Station signage with 7 pages;

A-4 – Aerial photograph of the Audubon Village Shopping Center.

Board Exhibits:

B-1 Certification of Notification of the Application and hearing addressed to the property owners within 500 feet of the Property;

B-2 Certificate of Posting of the Property on August 7, 2019 with Notice of Public Hearing regarding the Application;

B-3 Copy of the newspaper advertisement of the Application and hearing thereon.

² Some of the proposed signs will be lit both from within and behind.

DISCUSSION

I. Statement of the Case.

The Applicant has requested a variance from the number of wall mounted signs and the sign area requirements of §143-141.3.E.1., §143-141.3.E.2. and §143-140.2.C of the Lower Providence Township Zoning Ordinance. The aforesaid Sections of the Ordinance state in pertinent part:

§143-141.3 Signs in General Commercial (GC), Highway Commercial (HC), Professional and Business Office (PBO), Limited Industrial (LI), Industrial (I), Industrial Park (IP), Mixed-Use (MU), Ridge Pike Business (RPB) and Ridge Pike West (RPW) Districts.

Except as noted below, the following numbers and types of signs may be erected in the GC, HC, PBO, LI, I, IP, MU, RPB, and RPW Districts, subject to the conditions specified here and elsewhere within this article.

E. Wall signs for nonresidential uses shall be permitted subject to the following regulations:

- (1) Number: One sign per tenant per street frontage, up to a maximum of two signs per tenant. Where a store has entrances facing both a street and a parking lot, a second sign is permitted to face the parking lot.
- (2) Area. Each sign shall have a maximum area of 32 square feet per sign face.

§143-140.2 General regulations.

C. Sign area.

(1) The “area of a sign” shall mean the area of all lettering, wording, and accompanying designs, logos, and symbols. The area of a sign shall not include any supporting framework, bracing or trim which is incidental to the display, provided that it does not contain any lettering, wording, or symbols.

(2) Where the sign consists of individual letters, designs, or symbols attached to a building, awning, wall, or window, the area shall be that of the smallest rectangle which encompasses all of the letters, designs, and symbols.

The Applicant seeks relief as to the dimensional requirements of the Ordinance

as noted heretofore. Under §143-168.D.(4) of the Ordinance the Applicant bears the burden of proof of persuading the Board of the necessity of the requested variances and to satisfy the legal standards articulated below.

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.

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). A dimensional variance is 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 Pawlings and Egypt Roads, one of the Township's key commercial interchanges. The Store sits far back from both Pawlings and Egypt Roads, challenging the motoring public to see the Store and its offerings. Applicant is a well-respected family run, employee owned supermarket chain. Applicant has recently introduced its "fresh market" concept for designated communities in the southeastern Pennsylvania area. Applicant seeks to change its branding in order to better serve the community, "make shopping fun again" and provide township consumers more and better choices. To accomplish that goal and enhance safety to the motoring public Applicant has proposed a series of signs that not only exceed the area size requirements but also their number.

A. The Hardship.

Applicant asserts that its reasons for the new branding, sign and size requirements are primarily safety, visibility, store identification and branding. Due to the busy nature of the Pawlings and Egypt Road location the descriptive signs to be added promote safety through visibility and ease of identification of the Store for passing or seeking motorists. Applicant is convinced that by including the descriptive words to its existing brand the consuming/motoring public in Pennsylvania will understand what Redner's now offers and act accordingly. As a new supermarket concept, occasion for traffic disruption from passing or seeking motorists is a real concern. Denial of the Applicant's requests not only creates a hardship for the Applicant to be quickly identified but also fosters genuine safety concerns for the Township. The importance of safety in the law of sign regulation is well settled. As noted by the United States Supreme Court in Cusack Company v. Chicago, 242 U.S. 526, 37 S.Ct. 190; St. Louis Poster Advertising Co. v. St. Louis, 249 U.S. 269, 39 S.Ct. 274 a municipality has the power to regulate signs provided such regulation is not unreasonable, arbitrary or discriminatory and bears a reasonable

relationship to the *safety, morals, health or general welfare of the community*.

Adding larger wall signs with more descriptive subordinate signs to remove the mystery and educate the public regarding the nature of the building and its business can only help the fundamental reason for zoning regulation, to enhance the safety of the community. Further, the placement of the larger additional wall signs and inclusion of those descriptive façade signs on the Egypt Road front reasonably addresses the traffic, visibility and branding issues.

Reliance upon signage consistent with the Ordinance in this case impairs those with a legitimate interest in locating the Property to do so safely. The smaller the sign, the harder it is to read. The harder it is to read causes motorists to act recklessly in an effort to read the sign to locate the property. Thus, a larger sign, particularly on a busy roadway such as Egypt Road for a motorist to easily view the sign not only makes pragmatic but logical sense.

According to *Hertzberg* a request for a dimensional variance invokes a lesser standard to demonstrate unnecessary hardship. Multiple additional factors are to be considered when evaluating the hardship, including:

- Economic detriment to the applicant if the variance is denied;
- Financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements; and
- Characteristics of the surrounding neighborhood.

Although the lesser degree of hardship is difficult to define with precision, the cases after *Hertzberg* provide a zoning board broader discretion in resolving the issue provided the board considers the proper factors. With *Hertzberg*, financial hardship and economic detriment can

now be considered. The key question is whether those two factors flow from the dimensional requirement involved.

As noted above and in the Applicant's presentation, Redner's has developed a brand, sign and store design that requires a "changing of people's minds." The increased number and sign size will only help educate the public and thus promote safe access to its stores while promoting its brand. Denial of the variances at issue will have a significant impact upon visibility, branding and ultimately business at the Store. That of course means reduced profitability. There is no dispute that such reduced profitability flows from the signage number and dimensional requirements.

Finally, the last factor to consider in any dimensional variance case under Hertzberg is whether there is injury to the public interest. Injury to the public interest overrides other factors such as financial hardship in the dimensional variance analysis. If proved, such injury requires rejection of a dimensional variance application. No such injury was proven in the case at bar, in fact, a reasonable presumption from the testimony of the Applicant is that the additional wall signs and increased sign area not only helps the Applicant in its marketing but it solves the mystery to our neighbors of this newly constructed store in the heart of our community.

Thus, there exist exceptional topographical, economic, financial and other conditions unique to the Property that make compliance with the Ordinance difficult if not impossible. The undersized signage specified by the Ordinance denies the public the visibility it undoubtedly will seek when looking for the Redner's fresh market. Signs that comply with the Ordinance will make it harder for Township residents and other consumers to learn about Redner's fresh market and locate its Store thus undercutting Applicant's brand and business. The proposed additional

and larger signs solve that problem while improving the safety of the motoring public and, in turn, the residents of the Township. Finally, this hardship was not created by the Applicant who is merely seeking to promote safety through the enhancement of safe identification and access while also promoting its brand. Rather, the hardship is a result of the location and unique nature of the Applicant and its occupancy of the Property. As a result, Applicant, due to no fault of its own, is denied reasonable use of the Property for its intended purpose.

B. Impact of the Variances

A primary purpose of the Ordinance generally is to promote public safety. §143-3 of the Ordinance provides:

§143-3 **Purpose.** This chapter is enacted for the purpose of promoting the health, safety and general welfare of the Township, is in accordance with a Comprehensive Plan and is designed to lessen congestion in the streets, roads and highways and *to secure safety* from fire, panic and other dangerous concentration of population; *to facilitate the adequate provision of transportation*, water, sewerage, schools, parks and other public requirements and to encourage the most appropriate use of land throughout the Township. (Italics supplied)

As noted above, the Property is primarily located in the General Commercial District at a heavily used intersection. Multiple other stores are located in the shopping center all of which have large if not oversized signs. Needless to say, the character of the neighborhood will not be altered by the grant of these variances. The proposed signs represent the minimum variance possible to promote visibility and identification of the Store and its entrances. As a result, the safety of the motoring public and thus the Township's residents, the primary purpose of the Ordinance, is enhanced. Accordingly, 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.

Finally, the 5th part of the variance legal standard requires a determination by the Board of whether the proposed variances represent the minimum variance that will afford relief and represents the least modification possible of the regulation at issue. Applicant has made a compelling case for the variances requested as they will likely have little or no adverse impact upon the neighborhood while enhancing visibility, brand recognition and safety. Applicant's variance requests are reasonable when considering visibility, ease of access and egress, safety, branding and financial and economic hardship.

Thus, *Hertzberg* reduces the degree of hardship necessary to sustain a dimensional variance. In defiance of convention, financial hardship can support a dimensional variance. No longer must the Applicant demonstrate that because of the zoning rules the property has been rendered close to useless. The Applicant has carried its lesser burden of proof for the dimensional variances from the sign ordinance.

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 hardship is not self-imposed and is due to the unique circumstances of the Property.
4. The requested relief from the number of signs and sign area is necessary to enable the Applicant's 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 signs 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:

1. The Application for a Variance from §143-140.2 C. and §143-141.3.E.2 of the Ordinance to permit a “Redner’s” and a “Fresh Market” wall sign on the front of the Store in the total sign area requested is granted subject to the following conditions:

- a. Compliance with the plans introduced at the hearing;
- b. Compliance with all township ordinances regarding lighting.

2. The Application for a Variance from §143-140.2 C. and §143-141.3.E.2 of the Ordinance to permit “Redner’s Fast Fill Up” wall signs on the canopy of 56.367 square feet is granted subject to the following conditions:

- a. Compliance with the plans introduced at the hearing;
- b. Compliance with all township ordinances regarding lighting.

3. The Application for a Variance from Section 143-141.3 of the Ordinance to permit 23 signs is granted subject to the following conditions:

- a. Compliance with the plans introduced at the hearing;
- b. Compliance with all township ordinances regarding lighting.

Dated: October 6, 2019

ORDER

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

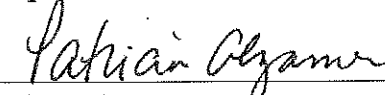
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

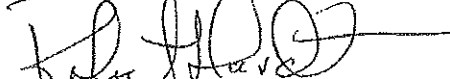

Kathie A. Eskie, Chairwoman

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.