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August 10, 2020

Dean Mazzotta
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Eagleville, PA 19403

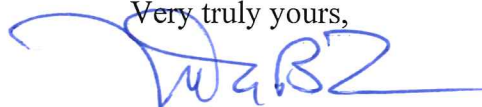
**RE: Lower Providence Township Zoning Hearing Board
Application of Dean Mazzotta
Application No. Z-20-05**

Dear Mr. Mazzotta:

In accordance with your application for a variance from the use requirements of the Lower Providence Zoning Ordinance §§143-258, 143-259 and 143-261.D., enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board.

Should you have any questions, please contact me.

Very truly yours,



Keith B. McLennan

KBM/mac
Enclosure

pc: Kathie A. Eskie, Chairwoman
George Ozorowski, Vice Chairman
Gail Hager
Joseph Pucci
Patricia Alzamora
Robert G. Hardt
Chris Gerdes
Michael Mrozinski, Community Development Director

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-20-05	: HEARING DATE: June 25, 2020
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	:
APPLICATION OF:	:
Dean Mazzotta	:
2938 Ridge Pike	:
Eagleville, PA 19403	:
Parcel No. 43-00-11566-00-1	:
	:

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

The applicant Dean Mazzotta (hereinafter “Applicant”) filed his application on May 1, 2020¹ (“Application”) requesting variances from §§143-259 and 143-261.D. of the Lower Providence Township Zoning Ordinance (the “Ordinance”) to convert a commercial use into a residential use. The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on June 25, 2020 at the Lower Providence Township Building. Kathy Eskie, Chairman, George Ozorowski, Vice-Chair and members Gail Hager, Joseph Pucci, Patricia Alzamora and alternates, Robert Hardt and Christopher Gerdes were present. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Tim Kruek, the Court Reporter and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Dean Mazzotta, the owner of 2938 Ridge Pike, Eagleville, PA 19403, Parcel No. 43-00-11566-00-1 (hereinafter referred to as the “Property”).

¹ On May 21, 2020 Applicant was notified under Act 15 of 2020 that as a result of the March 6, 2020 Covid-19 pandemic Disaster Proclamation of Governor Wolf, the April 28, 2020 Order of the Pennsylvania Supreme Court and the May 5, 2020 Order of the Court of Common Pleas of Montgomery County his application was delayed and his Application stayed and the requisite time requirements of §908(1.2) of the Municipalities Planning Code waived.

2. The Property is located in the Ridge Pike Business District (“RPBD”).
3. Applicant was unrepresented at the hearing.
4. The Property is comprised of six (6) units, four are residential units with two (2) in the rear building and two (2) in the front building along with two commercial units.
5. The Property is immediately adjacent to residential homes in the R-2 zoning district.
6. Most recently the commercial unit at issue located on the second floor in the front was the O & S Spa although not in conformity with the RPBD.
7. Two previous tenant spa operators presumably conducted businesses unlawfully resulting in investigations by the Montgomery County District Attorney and raids by county detectives and Police which led to their being shut down and the space vacated for approximately a year.
8. In an effort to avoid similar investigations, raids and shutdowns in the future, Applicant believes it would be best for the community if the spa space was converted from a commercial use to residential use.
9. The space would be converted into a one or two bedroom apartment of approximately 1,300 square feet with no change in the layout or floor plan.
10. To retain its commercial use and convert the space to an office would require extensive renovations to remove the spa facilities that could be easily repurposed for residential use.
11. A residential use would be less offensive than the previous commercial use decreasing transient traffic, reducing the number of cars parked at the building and would generate less trash or waste, noise and the like.

12. Applicant testified that the change in use from commercial to residential will have a positive effect on the neighborhood.

13. The Property has 25 parking spaces to accommodate cars associated with the space conversion.

14. The proposed residential use will be the 5th apartment in the building with one remaining commercial space, the former Minuteman Press.

15. Applicant testified that the proposed repurposing of the space would have no adverse impact upon other land in the area or the public welfare.

16. There was no adverse public comment regarding the Application.

17. The following exhibits were marked at the hearing:

A-1 Application filed on May 1, 2020 signed by the Applicant;

B-1 Certificate of Posting the Property with the notice of the Application;

B-2 Letter notifying neighbors within 500 feet of the Property of the Application;

B-3 Matrix of Addresses where notice was mailed;

B-4. Certificate of Notification.

DISCUSSION

I. Statement of the Case.

The Applicant has requested a use variance to permit the conversion of a commercial space in the Ridge Pike Business District to residential-apartment use. The applicable and interconnected sections of the Ordinance that govern this fact pattern are §§143-258, 143-259 and 143-261 which state in pertinent part as follows:

§ 143-258 **Uses permitted unless prohibited.**

The Ridge Pike Business District (RPBD) will permit all uses listed below, *unless otherwise listed in § 143-261 as a prohibited use.*

§ 143-259

Permitted uses.

The following are permitted uses:

A. Retail establishment for the sale of dry goods, variety merchandise, clothing, food, beverages, flowers, plants, drugs, hardware, books, furnishings and the sale and repair of jewelry, optical goods, cameras and home appliances, and similar uses.

B. Personal service shop, provided that at least 30% of the gross floor area is devoted to customer service.

Section 143-261 states in pertinent part the following:

§ 143-261 **Prohibited uses.**

The following uses are prohibited in the RPBD:

D. Multifamily apartments.

Accordingly, use of the Property as multifamily apartments is precluded in the RPBD without a variance.

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.

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)). The quantum of proof required to establish unnecessary hardship in the case of a dimensional variance is, however, lesser than when a use variance is sought. *Id.* at 258-59.

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.

In the instant case, the Property is located on Ridge Pike in the heart of the RPB. It has

served as a mixed use with the former Minuteman Press on the lower level and the O & S Spa above as well as four (4) residential units, two (2) in the front building and two (2) in the rear building. Although the residential use as multifamily apartments is precluded in the RPBD, this property is unique due not only to its existing nonconforming use but also its recent history. Needless to say the spa space at issue has been a magnet for illegal activity having gone through 2 different spa tenants, each of whom has been under investigation by the Montgomery County District Attorney and raided by the police authorities on at least 2 separate occasions. Meanwhile the existing residential uses have continued without incident. Clearly conversion to a less offensive use is preferred under the Ordinance, residential use with plenty of parking fits the bill.

The unique existing mixed use not created by the Applicant makes the property difficult to lease causing a hardship to the Applicant. A change in use, particularly one that is less offensive than is permitted and more restrictive in that use would enable the Applicant a reasonable use of the Property.

Although the RPBD is comprised primarily of assorted commercial enterprises, as noted, the buildings at issue already include non-conforming, residential uses. Further, those businesses that surround the Property include a florist on one side and a restaurant on the other. Not only do these 2 businesses compliment the apartments but the properties behind them are all residential. Inasmuch as the surrounding properties have been developed to accommodate single-family homes a change in use of this Property will not impair nor impact the development of neighboring property. The adjoining properties will in no way be impacted both in their use or development nor will the proposed use be detrimental to public welfare.

Finally, a variance to permit a residential use in an area that is already residential but for the Ridge Pike corridor will neither imperil the RPBD nor materially alter the RPBD ordinance.

Accordingly, Applicant has met its burden for variances from §143-258 and §143-261(D) to permit a residential use in the RPBD.

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 is necessary to enable the Applicant's reasonable use of the Property.
5. The variances requested represent the minimum that will afford relief.
6. The proposed residential use will not alter the essential character of the neighborhood, be harmful to the public welfare, nor impact the use or development of adjacent property.
7. A variance to permit residential use, a less offensive yet with more restrictive parameters represents the least modification possible of the regulation at issue.
8. The proposed home will not alter the essential character of the neighborhood in which the Property is located.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

The Application of DEAN MAZZOTTA for a use variance from §143-259 of the Lower Providence Township Zoning Ordinance to permit the residential use of the former spa described in the Application is GRANTED.²

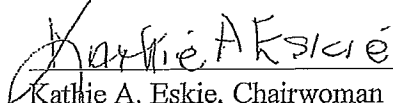
Dated: August 7, 2020

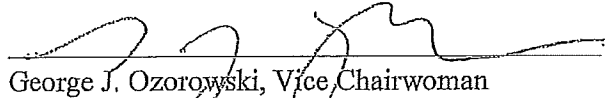
² Inasmuch as §143-259 is a corollary to §143-258 and §143-261, the variance also applies to those sections.

ORDER

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

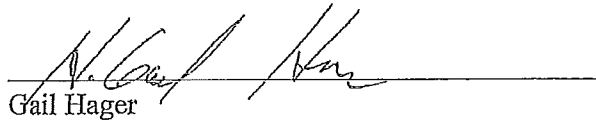
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Kathie A. Eskie, Chairwoman

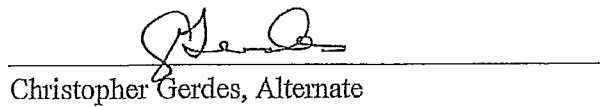

George J. Ozorowski, Vice Chairwoman


Joseph Pucci

Patricia Alzamora


Gail Hager

Robert G. Hardt, Alternate


Christopher Gerdes, 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.

