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June 3, 2021

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7020 2450 0001 6265 2282**

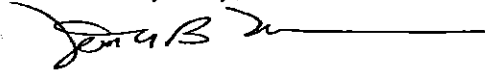
Mr. Joseph Webster
110 Tyson Mill Road
Collegeville, PA 19426

RE: Zoning Application No. Z-21-08

Dear Mr. Webster:

In accordance with the initial application filed on March 9, 2021, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board.

Yours very truly,



Keith B. McLennan

KBM/jds
Enclosure

Pc: George Ozorowski, Esq. Chairman
Joseph Pucci Vice-Chairman
Kathie A. Eskie
Gail Hager
Tina Blain

Patricia Alzamora
Christopher Gerdes
Randy Klein
Michael Mrozinski

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-21-08 : HEARING DATE: April 22, 2021

:

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APPLICATION OF:

:

Joseph G. Webster

:

110 Tyson Mill Rd,

:

Collegeville, Pennsylvania 19426

:

:

PROPERTY:

:

35 Evansburg Rd.

:

Lower Providence Township

:

Collegeville, PA 19426

:

Parcel No. 43-00-04012-00-4

:

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

On March 9, 2021, Joseph G. Webster, filed an application requesting a variance from the sign requirements of Section 143-141.3.J.(1)¹ of the Lower Providence Township Zoning Ordinance (the “Ordinance”) to permit a third freestanding unilluminated sign in the PBO - Professional Business Office District where one (1) sign is permitted but no more than two (2) signs are permitted per property held in single and separate ownership (the “Application”). The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on April 22, 2021 at the Lower Providence Township Building. George Ozorowski, Chairman, Vice Chairman, Joseph Pucci, members Kathie Eskie, Gail Hager and Patricia Alzamora and alternate members Christopher Gerdes, and Randy Klein were present. Also present were Mike Mrozinski, the Community Development Director, Paula Meszaros, the Court Reporter and Keith B. McLennan, Esquire, the Solicitor.

¹ A typographical error in the notice of hearing inadvertently listed §143-141.3.E as the Ordinance Section at issue. This was corrected by agreement at the hearing.

FINDINGS OF FACT

1. The subject property is located at 35 Evansburg Road with parcel number 43-00-04012-004 (hereinafter the “Property”).
2. The Property is leased to Joseph G. Webster (hereinafter the “Applicant”) by Gambone Management Company.
3. Gambone Management Company approved the Applicant’s pursuit of this variance.
4. The zoning district is PBO – Professional Business Office Zoning District.
5. The lot size is 79,910 square feet.
6. The Property is used for office space and a childcare facility.
7. Applicant uses the Property as an office relating to his position in the Pennsylvania legislature.
8. No change of use is requested.
9. The Property area is characterized by a commercial building in a well-tended, grassy/treed area.
10. Evansburg Road is curved and has shallow shoulder areas adjacent to the Property.
11. The Applicant seeks to obtain a variance from §143-141.3.J.(1) of the Ordinance to permit a third free standing sign on the property where only two are permitted.
12. The proposed variance is necessary to install the additional free-standing sign.
13. The installation of the additional free-standing sign will increase safety of those traveling to the Property. Without the sign, visitors may miss the first driveway causing confusion, sudden slowing or stopping or unsafe U-turns.

14. The proposed use will not emit smoke, dust, odor or other air pollutants, noise, vibration, light, electrical disturbances, water pollutants, or chemical pollutants.

15. The proposed use will not alter the essential character of the neighborhood or district in which the property is located, or substantially or permanently impair the appropriate use or development of adjacent properties or be detrimental to the public welfare.

16. The sign is important to provide ease of access to those traveling to the office building for state government services.

17. The sign is essential to public safety.

18. There was no adverse public comment regarding this application.

19. The following exhibits were presented:

A-1 The Application;

A-2 Letter conveying legal standing to the Applicant;

B-1 Letter notifying neighbors within 500 feet of the Property of the Application, and Matrix of Addresses where notice was mailed.

B-2 Certificate of Notification to the neighbors within 500 feet of the Property;

B-3 Public Notice;

B-4 Certificate of Posting;

B-5 Certificate of Public Notice by Posting.

DISCUSSION

I. Statement of the Case.

The Applicant has requested a variance from the sign number requirements Section 143-141.3.J.(1). of the newly adopted Lower Providence Township Sign Ordinance. Section 143-141.3.J.(1). states:

Except as noted below, the following numbers and types of signs may be erected in the ... PBO ... Districts, subject to the conditions specified here and elsewhere within this article.

J. In addition to building signs, freestanding signs for nonresidential uses shall be permitted subject to the following regulations:

(1) Number. One sign per street frontage, up to two signs per property held in single and separate ownership.

Applicant is requesting a variance to allow a third free standing sign.

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 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 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).

Further, a sign variance will be proper when it is necessary to allow those who have a legitimate interest in locating the premises to do so safely. Achem Chemical Products, Inc. Appeal, 31 Pa. D. & C.2d 341, 344 (1963).

IV. **Facts Applied to the Legal Standard.**

In the instant case, Applicant wishes to add a third free standing sign to the Property in order to increase the safety of the road by more clearly identifying the office location to passing motorists. As a state legislator, Applicant receives numerous constituent visits each week. Applicant seeks to provide greater visibility for easier access to his office.

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. The current sign does not allow those with a legitimate interest in locating the Property to do so safely. Without the sign motorists may act recklessly in an effort to locate the Applicant's office. Thus, an additional sign, particularly on a busy street, will create a safer environment for those traveling on the road.

The Applicant is precluded from adding the sign that would provide the information necessary to those looking for Applicant's office while improving the safety of the motoring public. This causes it an unnecessary hardship. Finally, this hardship was not created by the Applicant who has, to date, conformed to the sign requirements of the variance. Rather, the hardship is a result of the location and unique nature of the Property. As a result, Applicant, due to no fault of his own, is denied reasonable use of the Property for its intended purpose.

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. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue. The *Achem Chemical Products* case provides the Board precedent necessary to grant the requested variance to allow the sign. Thus, according to *Hertzberg* the Applicant has carried its lesser burden of proof for a *dimensional variance*.

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 physical circumstances of the Property.
4. The requested relief 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 sign will also 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 Joseph G. Webster for a Variance from Section 143-141.3.J.(1) of the Lower Providence Township Zoning Ordinance to permit a third freestanding unilluminated sign in the PBO Professional Business Office District where one (1) sign is permitted but no more than two (2) per property held in single and separate ownership is: GRANTED subject to the following conditions:

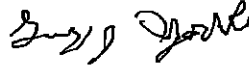
(1) The sign shall be removed upon the applicant vacating the property.

Dated: June 2, 2021

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



George Ozorowski



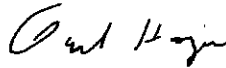
Joseph Pucci



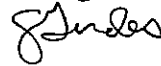
Kathie Eskie



Patricia Alzamora



Gail Hager



Christopher Gerdes, Alternate

Randy Klein, 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.