

MILLER TURETSKY RULE & McLENNAN
A Professional Corporation

MARK D. TURETSKY
JOHN A. RULE
KEITH B. McLENNAN*
JOSHUA H. CAMSON*
CHRISTOPHER D. HINDERLITER*
ROBERT G. MINNICH

ATTORNEYS AT LAW
3770 RIDGE PIKE
COLLEGEVILLE, PENNSYLVANIA 19426
(610) 489-3300 Office
(610) 489-1157 Facsimile
www.millerturetsky.com

JAMES H. FREEMAN
Of Counsel

JILL K. ANDERSON, J.D.

*ALSO MEMBER OF NEW JERSEY BAR

September 9, 2022

VIA EMAIL: mmchugh@klehr.com
and Certified Mail
RRR#: 7020 2450 0001 6265 1919

Matthew J. McHugh, Esquire
Klehr Harrison Harvey Branzburg LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103

Via Certified Mail
RRR#: 7020 2450 0001 6265 1926

Leonard B. Altieri, III, Esquire
Klehr, Harrison, Harvey, Brandzburg LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103

**RE: PJ Land Development LLC
Lower Providence Township Zoning Application No. Z-22-08**

Dear Messrs. McHugh and Altieri:

In accordance with your Zoning Application filed on April 6, 2022, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board. Please note that if you have any objections to the Order, you have thirty (30) days from its date to file an appeal with the Court of Common Pleas in Norristown.

Yours very truly,



Keith B. McLennan

KBM/

Enclosure

pc: Lower Providence Township Zoning Hearing Board Members

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-22-08	: HEARING DATE:	June 23, 2022; July 28, 2022
		:	
APPLICATION OF:		:	
	PJ Land Development, LLC	:	
	71 Carolyn Blvd.	:	
	Farmingdale, NY 11735	:	
PROPERTY:		:	
	2619 Ridge Pike	:	
	Lower Providence Township	:	
	Parcel No. 43-00-11875-00-7	:	

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

Public hearings on the application (“Application”) concerning the above captioned premises (the “Property” or “Subject Property”) were held on June 23, 2022 and July 28, 2022, before the Zoning Hearing Board of Lower Providence Township (the “Board”) in the Township Administration Building, 100 Parklane Drive, Eagleville, PA, (the “hearing”) pursuant to notice as required by the Lower Providence Township Zoning Ordinance (the “Ordinance”) and the Pennsylvania Municipalities Planning Code (the “MPC”). After consideration of the Application and the testimony, exhibits, argument and briefs presented, the Zoning Hearing Board hereby renders its decision on the Application.

Procedural Matters

1. Application before Zoning Hearing Board

On April 6, 2022, applicant PJ Land Development LLC (“Applicant”) equitable owner of 2619 Ridge Pike, Lower Providence Township filed an application seeking the following relief: (1) a variance from Section 143-262.B of the Ordinance to allow for a rear yard setback of 0 feet where a minimum of 10 feet is required; (2) a variance from Section 143-141.3(J)(1) of the

Ordinance to permit a total of eight (8) freestanding signs where a total of one (1) per street frontage and up to a total of two (2) total signs is permitted; and (3) a variance from Section 143-141-3(J)(2) of the Ordinance to permit a total of 146.9 sq.ft. of freestanding signage where a maximum total of 100 sq.ft. is permitted under the Ordinance. At the June 23, 2022, hearing before the Board, Applicant amended its application regarding the total square footage of signage to be reduced from 146.9 sq.ft. to 135.2 sq. ft. At the July 28, 2022, hearing, Applicant amended its request for relief relating to the rear yard setback to request a setback of 5.6 feet.

2. Notice and Hearing

The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on June 23, 2022, where the Board accepted evidence in the matter. The Board took action with regard to two of the three requests for variances, but the request for a variance regarding the rear yard setback was continued to the July 28, 2022, hearing date.

3. Zoning Hearing Board Members Participating

Present at the hearing on June 23, 2022, were: Joseph Pucci, Vice Chair (serving as chair), members Kathy Eskie, Christopher Gerdes and Terrance Barnes.

Present and voting without objection from counsel for the Applicant at the July 28, 2022, hearing were: George Ozorowski¹, Chair, Christopher Gerdes, Member, and Kathy Eskie, Member.

4. Appearances of Counsel

- a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.
- b. Applicants were represented by Mr. Mathew J. McHugh, Esq. at the June 23, 2022

¹ Chairman Ozorowski was not present at the June 23rd hearing however he viewed the video transcript from that hearing and counsel for the Applicant had no objection to his participating and voting on the variance requests at the July 28th hearing. Members Gail Hager and Randy Klein who were present at the July 28th hearing were not present at the June 23rd hearing and did not view the video transcript so they did not vote on the Application.

hearing and Leonard B. Altieri, III, Esquire both of Klehr, Harrison, Harvey,
Branzburg, LLP, 1835 Market Street Suite 1400, Philadelphia, PA 19103.

5. Appearance of Other Party

- a. No other party appeared regarding the Application.

6. Also Present

Mike Mrozinski, the Community Development Director for Lower Providence
Township and Paula Meszaros, the Court Reporter.

7. Witnesses

- a. Nicholas Louis testified in support of the application. Mr. Louis as qualified as an
expert witness in civil engineering.
- b. Mathew Kearsse testified in support of the application.

8. Exhibits

- a. The Board submitted the following exhibits at the hearing:

B – 1 The Certificate of Posting.

B – 2 Certificate of Notification.

B – 3 Letter Sent to Property Owners.

B – 4 Matrix of Addresses.

B – 5 Proof of Publication.

- b. The Applicants submitted the following exhibits:

A – 1 Professional Resume of Nick Louis, PE.

A – 2 Aerial photo of the property with overlaid drawings.

A – 3 Diagram of proposed use.

A – 4 Rendering of proposed use.

A – 5 Proposed signage.

A – 6 Photos of similar kiosk.

A – 7 Rendering of proposed building.²

A – 10 Amended rendering of proposed use.

A – 11 Photo of amended kiosk proposal.

A – 12 Photo of amended kiosk proposal.

FINDINGS OF FACT

1. The Applicant is PJ Land Development LLC equitable owner of the Subject Property located at 2619 Ridge Pike, Lower Providence Township.

2. The Subject Property is comprised of a 43,225 square foot lot with tax parcel number 43-00-11875-00-7 which is currently vacant.

3. The Property is currently owned by LIDL US Operations LLC, 3500 S. Clark Street Arlington, VA 22202.

4. The Property is located between an existing Lidl Grocery Store and a TD bank.

5. The Property is located across the street from Car Vision and Mitsubishi Motors.

6. The applicable zoning district is the Ridge Pike Business District.

7. The Property is currently serviced by public water.

8. Section 143-262.B. of the Ordinance states that in the Ridge Pike Business District “the front, side and rear yard setbacks shall be no less 10 ten feet. . .” [sic]. Section 143-141.3(J) of the Ordinance states that “In addition to building signs, freestanding signs for nonresidential uses shall be permitted subject to the following regulations: (1) Number. One sign per street

² Inasmuch as the record was held open from the June 23rd meeting and additional exhibits were introduced at the July 28th hearing, the numbering sequence for the new Exhibits were arbitrarily marked to commence with Exhibit 10, numbers 8 & 9 went unused.

frontage, up to two signs per property held in single and separate ownership” and “(2) Area. Each sign shall have a maximum area of 50 square feet plus an additional 10 square feet per tenant, up to a maximum of 100 square feet.”

9. Applicants are proposing to construct a self-serve “Tidal Waves Auto Spa” branded car wash.

10. The proposed use will include a 3,386 square foot building, queuing lanes to accommodate 20 cars, 18 parking stalls for self-service vacuuming, landscaping, and other site improvements.

11. Applicant proposes the use of two existing curb cuts for access to Ridge Pike and cross access with the neighboring Lidl Grocery Store.

12. Applicant initially requested a rear yard setback variance to allow for a rear yard setback of zero (0) feet. However, this request was revised to meet the qualifications of being the minimum variance that would afford relief to a rear yard setback of 5.6 feet.

13. The rear yard setback is related to the location of the pay kiosk and canopy which is located on the rear of the property.

14. Applicant is unable to move the kiosk over further without impeding the traffic on the property. However, they were able to amend the plans regarding the canopy.

15. There were no other practical options to limit the encroachment into the rear yard setback.

16. Directly behind the pay kiosk is a Township park.

17. Applicant is proposing to install 8 internally illuminated signs none of which shall have programmable moving messaging:

- a. A monument sign, the main sign for the proposed development on road;

- b. A building mounted sign located above the exit of the proposed car wash;
 - c. Two pay/menu signs which will be in the pay kiosk;
 - d. Free standing entrance signs;
 - e. Three free standing directional signs throughout the area.
18. Each individual sign will be compliant with the restrictions on signage.
19. The relief request is relating to the number and square footage of signage.
20. The signs will be comprised of 146.9 square feet of signage.
21. These signs are necessary for the following reasons:
- a. To inform customers of essential information including pricing and flow of traffic;
 - b. To provide the necessary branding for Tidal Wave Auto Spa;
 - c. The road is a major road and signage is necessary to identify the property and avoid unnecessary dangers to motorists looking for the property;
 - d. To attract customers to the business;
 - e. Traffic Control within the property.
22. There was no adverse comment regarding the Application.
23. There have been no previous zoning appeals filed in connection with this property.
24. There are no outstanding state or federal violations cited on the Property.
25. The Proposed Use will not alter the essential character of the neighborhood or district in which it is located.
26. The Proposed Use will not impair the appropriate use or development of adjacent properties.
27. The Proposed Use will not be detrimental to the public welfare.

28. There was no testimony in opposition to the Application.

29. The Township approved the Applicant's request for a conditional use of the property as a car wash with a condition that install a fence along the rear property line.

DISCUSSION

I. Statement of the Case

Applicant seeks to construct a car wash on Ridge Pike in the Ridge Pike Business District in Lower Providence Township. In order to do so, Applicant seeks the following zoning relief: (1) a variance from Section 143-262.B of the Ordinance to allow for a rear yard setback of 5.6 feet where a minimum of 10 feet is required; (2) a variance from Section 143-141.3(J)(1) of the Ordinance to permit a total of eight (8) freestanding signs where a total of one (1) per street frontage and up to a total of two (2) total signs is permitted; and (3) a variance from Section 143-141-3(J)(2) of the Ordinance to permit a total of 135.2 sq.ft. of freestanding signage where a maximum total of 100 sq.ft. is permitted under the Ordinance.

II. Ordinance Subsections in Question

Section 143-262.B. of the Ordinance states that "the front, side and rear yard setbacks shall be no less [than] 10 ten feet. . ." in the Ridge Pike Business District. Section 143-141.3(J) states that "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" and "(2) Area. Each sign shall have a maximum area of 50 square feet plus an additional 10 square feet per tenant, up to a maximum of 100 square feet."

III. Variance Legal Standard

A. Dimensional v. Use Variance. There are 2 types of variances, a “dimensional” variance and a “use” variance. Differing standards apply to use and dimensional variances. 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). Regardless of whether the variance sought is a use or dimensional variance, 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. Cmwlth. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998). 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. In this case the Board is asked to grant a dimensional variance.

B. The Five Part Variance Test. To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

(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.

See also: 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.

C. Dimensional Variance Legal Standard. Generally, a use variance requires the applicant to show that unnecessary hardship will result rendering the property close to useless if a variance is denied, and that the proposed use will not be contrary to public interest. However, in the case of Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998) our Supreme Court held that in the case of a dimensional variance, the quantum of proof required to establish unnecessary hardship is lesser than when a use variance is sought. *Id.* at 258-59. For example, the Hertzberg Court held that to justify the grant of a dimensional variance, “...courts *may* consider multiple factors, including the economic detriment to the applicant if the variance is 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.” 721 A.2d at 50 (italics supplied). In effect, no longer is an applicant required to demonstrate in a dimensional variance case, that the property was close to useless without the variance.

Although Hertzberg eased the burden of proof somewhat for a dimensional variance, it did not remove the variance requirements that are universally applicable to use and dimensional

variance cases. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa.Cmwlt. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and satisfy the five-part test articulated above. Id. In addition, §§143-168.C. & D.(2), (3) & (4) of the Ordinance articulate the Applicant' burden of proof and the standards to meet that burden as follows:

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of § 910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. § 10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public interest.

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.

Applicant seeks to construct a car wash in the Ridge Pike Business District in Lower Providence Township. In order to do so, Applicant seeks the following zoning relief: (1) a variance from Section 143-262.B of the Ordinance to allow for a rear yard setback of 5.6 feet where a

minimum of 10 feet is required; (2) a variance from Section 143-141.3(J)(1) of the Ordinance to permit a total of eight (8) freestanding signs where a total of one (1) per street frontage and up to a total of two (2) total signs is permitted; and (3) a variance from Section 143-141-3(J)(2) of the Ordinance to permit a total of 135.2 sq.ft. of freestanding signage where a maximum total of 100 sq.ft. is permitted under the Ordinance.

The use of the property as a car wash has been approved by the township, therefore, this Board is tasked only with determining whether the requested Variances are appropriate. Applicant provided substantial and compelling testimony on the planned use of the property. The design of the property has taken into account the traffic patterns, the necessary location of the washing systems, and appropriate provisions for emergencies. Due to the size and the shape of the lot, the only practical location for the payment kiosk is at the rear of the property. Initially, Applicant proposed a zero-foot rear yard setback. However, upon reviewing the plans, Applicant was able to make a provision for a 5.6-foot setback. This limited the request and the encroachment into the setback area.

Applicant provided substantial and persuasive testimony that the 5.6 foot setback was necessary due to the configuration of the lot along with the necessary queuing and “bail-out” lanes for the car wash. Therefore, there are unique circumstances or conditions that limit the development of the property. Applicant did not create this hardship, and following the amendment of the construction plans, the variance would be the minimum variance that will afford relief.

Further, the construction of a carwash in this location is consistent with the character of the neighborhood. The lot is surrounded by other commercial properties and abuts a township park in the rear. Therefore, the setback variance will not have an adverse impact on the neighborhood.

With regard to the signage requests, Applicant is proposing to construct a total of 8 signs.

These signs fall into the following categories: a main monument sign to identify the business on the main road, a building mounted sign above the exit of the proposed car wash, two “menu” signs located near the pay kiosk, an entrance sign, and three directional signs. Aside from the number and square footage of the signs, the proposal is compliant with the requirements of the Ordinance.

While the number of signs is extensive and well beyond the provisions of the Ordinance, the signs are necessary for the productive, safe use of the property as a car wash. The signs will provide important identification and directional information to clients. They will ensure orderly traffic movement from Ridge Pike and within the property itself. The signs will provide necessary information to customers in the form of offerings and pricings that are crucial to the efficient operation of the business. Without the signs, car wash operation would be greatly hindered, and there may be adverse traffic consequences on both the subject property and the abutting roadways. Therefore, the Board finds and concludes that the Applicant’s requested relief should be granted.

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 due to the unique physical circumstances and characteristics of the Property and not self-imposed.
4. The requested relief is necessary to enable the Applicant reasonable use of the Property.
5. If granted, the community will not be significantly changed nor will it alter the character of the neighborhood.

6. The requested relief represents the minimum that will afford relief and represents the least modification possible of the regulation at issue.

DECISION

On June 23, 2022, The Lower Providence Township Zoning Hearing Board, by a 4-0 vote Granted the following variances from the Lower Providence Township Zoning Ordinance requested in the Application of PJ Land Development LLC to permit the construction of a car wash in the Ridge Pike Business District:

1. A variance from Section 143-141.3(J)(1) of the Ordinance to permit the installation of eight (8) freestanding signs where a total of one (1) per street frontage and a maximum of two is permitted subject to the condition that:
 - a. Placement of the signs shall be as per the plans introduced into evidence at the hearing in this case.
2. A variance from Section 142-141.3(J)(2) of the Ordinance to permit the installation of a total of 135.2 square feet of freestanding signage where a maximum total of 100 square feet of signage is permitted subject to the condition that:
 - a. Placement of the signs shall be as per the plans introduced into evidence at the hearing in this case.

On July 28, 2022, the Lower Providence Township Zoning Hearing Board, by a 3-0 vote Granted the Applicant, PJ Land Development LLC a variance from Section 143-262.B. of the Ordinance to permit a rear yard setback of 5.6 feet where 10 feet is required in the Ridge Pike Business District.

Dated: August 30, 2022

ORDER

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

As to the Motions on June 23, 2022:

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

George Ozorowski

Joseph Pucci

Kathie A Eskie

Kathie Eskie

Gail Hager

Gerdes

Christopher Gerdes

Terrance Barnes

Terrance Barnes, Alternate

Randy Klein, Alternate

As to the Motions on July 28, 2022:

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD

George Ozorowski

George Ozorowski

Joseph Pucci

Kathie A Eskie

Kathie Eskie

Gail Hager

Chris Gerdes

Christopher Gerdes

Terrance Barnes, 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.