

***MILLER TURETSKY RULE & McLENNAN***  
A Professional Corporation

MARK D. TURETSKY  
JOHN A. RULE  
KEITH B. McLENNAN\*  
JOSHUA H. CAMSON

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

JAMES H. FREEMAN  
Of Counsel

JILL K. ANDERSON, J.D.

\*ALSO MEMBER OF NEW JERSEY BAR

April 9, 2021

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO.: 7018 3090 0000 0752 8189**

Lower Providence Volunteer Fire Company  
3199 Ridge Pike  
Eagleville, PA 19403

**Re: Decision on Zoning Application #Z-21-03**

Dear Sir:

In accordance with the initial application filed on February 4, 2021, 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-21-03 : HEARING DATE: February 25, 2021**

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**APPLICATION OF:**

**Lower Providence Township**

**Volunteer Fire Department**

**3199 Ridge Pike Eagleville, PA**

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**PROPERTY:**

**3199 Ridge Pike**

**Lower Providence Township**

**Eagleville, PA 19403**

**Parcel No. 43-00-11956-00-7**

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

On January 25, 2021, the Lower Providence Township Volunteer Fire Department (“Applicant”) in Eagleville, Pennsylvania filed an application requesting a variance from the sign area, height and illumination requirements of Section 143-141.1.E(4) of the Lower Providence Township Zoning Ordinance (the “Ordinance”) in connection with the construction of a freestanding illuminated sign intended to replace the current free standing unilluminated sign (the “Application”). The Application was properly advertised and a public hearing was held via advanced communication device before the Lower Providence Township Zoning Hearing Board (the “Board”) on February 25, 2021. Present at the hearing were: George Ozorowski, Chairman, Joseph Pucci, Vice Chairman, members Kathie Eskie, Gail Hager, Patricia Alzamora and alternate members Christopher Gerdes and Randy Klein. Also present were Keith B. McLennan, Esquire, the Solicitor, and Mike Mrozinski, the Community Development Director.

**FINDINGS OF FACT**

1. The subject property was acquired by the Applicant in January 1950 and is located at 3199 Ridge Pike, Eagleville, PA 19403, parcel number 43-00-11956-00-7 (hereinafter the

“Property”).

2. The applicable zoning district is R2 - residential. However, there are numerous businesses and institutional uses close by within that R2 district.

3. The lot size is 15 Acres.

4. The Property is comprised of a fire house, community hall and fair grounds.

5. The Property shall continue to be used as a fire house.

6. The Property is bordered by commercial, retail, and office use property.

7. The sign would not have an impact on any residential homes.

8. The Applicant seeks to obtain a variance from §143-141.1.E.4. of the Ordinance to permit a free-standing illuminated digital sign.

9. The proposed variances are necessary to allow illumination for the motoring public to safely read the messages promoted by the Applicant.

10. The sign will replace the current static sign which has the same dimensions.

11. Applicant recently applied for and received a grant for recruitment and retention.

12. As part of the grant Applicant was to use grant funds to update the sign in order to enhance recruitment efforts.

13. Recruitment and retention for volunteer fire departmenats is waning of late.

14. Applicant provides an essential and often life saving service to the community.

15. The primary use of the sign will be recruitment.

16. The sign will use the same base and be in the same location as the current sign.

17. The sign could be used for amber alerts and other emergency services.

18. The digital sign will allow the sign to be changed remotely.

19. The sign is preprogramed to dim at night in order to prevent an adverse impact on

drivers.

20. The sign will be in compliance with Pennsylvania Department of Transportation regulations and, to the extent unvaried hereby, Township regulations.

21. The Township submitted a letter in support of the Application.

22. Daniel Furman, James Lentz, and Bill White appeared as witnesses on behalf of the Applicant.

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

24. The following exhibits were presented:

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 of the Application and hearing posted at the property.

B – 4 Certificate of Posting

B – 5 Public Notice advertised in newspaper of general circulation.

B – 6 Letter from the Township in support of the Application.

## **DISCUSSION**

### **I. Statement of the Case.**

The Applicant has requested a variance from the illumination requirements of Section 143-141.1.E(4) of the newly adopted Lower Providence Township Sign Ordinance. Section 143-141.1. states:

**§ 143-141.1 Signs in R-2, R-3, R-4, R-5 Residential Districts and Mobile**

**Home Park District.** In addition to the exempt signs described in § 143-140.1, the following numbers and types of signs may be erected in the R-2, R-3, R-4, R-5, and MHP Districts, subject to the conditions specified here and elsewhere within this article.

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

(4) Illumination. These signs shall be nonilluminated.

## 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 is a volunteer fire department that is faced with recruitment challenges. In order to adequately protect the community in its essential role as a first responder organization, Applicant relies on volunteers from the community. To improve recruitment and retention, Applicant has received a grant which includes money allocated for updating the current analog sign to a modern digital sign. Failing to allow the sign to be illuminated would create a hardship and further limit the recruiting ability of Applicant to the detriment of the entire community. Applicant did not create this hardship, and it is based on the unique circumstances of the location of the Property.

The property is zoned R-2 residential, however, it is situated in an area that is predominately commercial in use. While there normally would be concerns relating to an illuminated sign in a residential district, that must be balanced with the benefit of having a fire department within close proximity to residential buildings. This creates a unique circumstance for a fire department building which is not itself of residential use. Further, there are no residential properties that would be impacted by the illuminated sign. In fact, the sign will not be visible from any residential properties. Further, the pragmatic impact of the variance would be beneficial to the surrounding community as a robust and vibrant fire brigade is in the best interest of all the surrounding property owners. The requested variance is the minimum variance necessary to provide relief.

### **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 for a dimensional variance from Section 143-141.1E(4) of the Lower Providence Township Zoning Ordinance to permit an illuminated sign is GRANTED.


Dated: April 7, 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*

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.