

MILLER TURETSKY RULE & MCLENNAN
A Professional Corporation

MARK D. TURETSKY
JOHN A. RULE
KEITH B. MCLENNAN*

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

JOSHUA H. CAMSON*
CHRISTOPHER D. HINDERLITER*
ROBERT G. MINNICH**

*ALSO MEMBER OF NEW JERSEY BAR
**ALSO MEMBER OF FLORIDA BAR

DATE OF MAILING: March 31, 2023
SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7020 2450 0001 6265 2015

VIA EMAIL: james.lentz@lpfire.com

James Lentz, Chief
Lower Providence Fire Department
3199 Ridge Pike
Eagleville, PA 19403

Re: Lower Providence Township Zoning Hearing Board
Application No: Z-23-02
Property: 3199 Ridge Pike
Parcel No. 43-00-11956-00-7

Dear Chief Lentz:

In accordance with your Zoning Application filed January 30, 2023, 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

pc: Kathie A. Eskie
Christopher Gerdes
Gail Hager
Randy Klein
Joseph Pucci
Gary Brown
Tejal Mehta
Mike Mrozinski, Community Development Director
Gregory Heleniak, Esquire, Township Solicitor

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-23-02	: HEARING DATE: February 23, 2023
		:
		:
APPLICATION OF:		:
Lower Providence Township		:
Volunteer Fire Department		:
3199 Ridge Pike Eagleville, PA		:
		:
PROPERTY:		:
3199 Ridge Pike		:
Lower Providence Township		:
Eagleville, PA 19403		:
Parcel No. 43-00-11956-00-7		:

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

A public hearing on the above Application having been held on February 23, 2023, before the Zoning Hearing Board of Lower Providence Township (the “Zoning Hearing Board” or “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”), concerning the above captioned premises (the “Property” or “Subject Property”), and having considered the Application and the testimony, exhibits, and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

Procedural Matters

1. Application before Zoning Hearing Board

Applicant, Lower Providence Township Volunteer Fire Department in Eagleville, Pennsylvania filed an application requesting a variance from the sign area and illumination requirements of Section 143-141.1.E(4) and Section 143-141.1.F(2) of the Lower Providence

Township Zoning Ordinance (the “Ordinance”) to permit the installation of a wall mounted sign measuring 71 square feet where a maximum of 20 square feet is permitted and with letters backlit where no illumination is permitted in the R-2 INO District (the “Application”). Applicant is proposing to replace the existing wall mounted letter on the front of the primary building with slightly smaller back-lit sign lettering.

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 February 23, 2024 where the Board accepted evidence in the case.

3. Zoning Hearing Board Members Participating

Present at the February 23, 2023, hearing were: Kathie Eskie, Chair, Chris Gerdes, Vice-Chair, Gail Hager, Member, Joseph Pucci, Member, Randy Klein, Member, Gary Brown, alternate, and Tejal Mehta, alternate.

4. Appearances of Counsel

- a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.
- b. Applicant was not represented by counsel.

5. Appearance of Other Party

- a. No other party entered their appearance in the matter.

6. Also Present

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

7. Witnesses

- a. James Lentz, fire chief testified in support of the application.

8. Exhibits

The Applicants submitted the following exhibits:

A – 1 The Application with all attachments.

The Board entered the following exhibits:

B – 1 Public Notice by Posting.

B – 2 Certificate of Posting.

B – 3 Letter notifying neighbors within 500 feet of the Property of the Application.

B – 4 Certificate of Notification to the neighbors within 500 feet of the Property.

B – 5 Matrix of Addresses where notice was mailed.

B – 6 Certificate of Publication.

FINDINGS OF FACT

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

2. The applicable zoning district is R2 – residential with institutional overlay.

3. The lot size is 15 Acres.

4. The Property is comprised of the fire house and several accessory buildings.

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

6. The fire department is an entirely volunteer organization and provides the primary fire rescue service to Lower Providence Township.

7. The fire department has been updating the facility.

8. The current sign is comprised of brittle material that breaks easily.

9. Applicant would like to replace the sign with a more durable and visually pleasing sign.
10. In the proposed sign, each letter is backlit.
11. The letters are approximately 17.5 inches.
12. The Applicant does not believe that the new sign will impact any residential properties. The properties across the street are commercial properties.
13. Applicant provides an essential and often lifesaving service to the community.
14. Fire departments are often resources for individuals to come to for assistance, and therefore it is important that people be able to identify the fire department.
15. The Applicant seeks to obtain a variance from §143-141.1.E.(4) of the Ordinance to permit a free-standing digital sign to be illuminated.
16. The Applicant also seeks a variance from Section 143-141.1.F.(2) of the Ordinance to permit a sign with a size of 71 square feet where a maximum of 20 square feet is permitted.
17. The property is a municipal use within a residential zoning district and therefore there is a hardship in terms of the zoning standard for any changes to signage on the property.
18. The new sign, the sign area will be smaller than the current sign.
19. There was no adverse public comment regarding this application.

DISCUSSION

I. Statement of the Case

On January 30, 2023, the Lower Providence Township Volunteer Fire Department in Eagleville, Pennsylvania filed an application requesting a variance from the sign area and illumination requirements of Section 143-141.1.E.(4) and Section 143-141.1.F.(2) of the Lower

Providence Township Zoning Ordinance (the “Ordinance”) to permit the installation of a freestanding sign measuring 71 square feet where a maximum of 20 square feet is permitted and with letters backlit where no illumination is permitted in the R-2 INO District.

II. Ordinance Subsections in Question

The Applicant has requested a variance from the illumination requirements of Section 143-141.1 of the 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.

F. Wall and projecting signs for nonresidential uses shall be permitted subject to the following regulations:

(2) Area. Each sign shall have a maximum area of 20 square feet per sign face.

III. Variance Legal Standard

A. 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.

B. 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.
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. Under §143-168.C. the burden of proof for variances is on the applicant. In order to carry its burden of proof, the Applicant must meet certain standards of proof as set forth in §143-168.D. as follows:

(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.

IV. Facts Applied to the Legal Standard.

Applicant seeks a variance from the sign area and illumination requirements of Section 143-141.1.E(4) and Section 143-141.1.F(2) of the Lower Providence Township Zoning Ordinance (the “Ordinance”) to permit the installation of a freestanding sign measuring 71 square feet where a maximum of 20 square feet is permitted and with letters backlit where no illumination is permitted in the R-2 INO District.

The new sign is part of a modernization project for the fire department. The current sign is constructed of brittle material that breaks easily. It is difficult to find matching lettering to replace broken signage. The new sign will be a more modern look and will be visually pleasing. The signage will ensure that individuals seeking the aid of the fire department are able to locate the facility easily and provide public service safety announcements to township residents.

Additionally, there will be no adverse impact on the community as the properties across the street are commercial in nature. The modest lighting will not impact residential communities in a negative way and will instead improve the appearance of the building. Further, it will allow the building to be easily identified which will decrease the risk of traffic issues as individuals attempt to locate the building by vehicle.

The property is zoned R-2 residential with an institutional overlay, however, it is situated in an area that is predominantly commercial in use. The firehouse is surrounded by commercial buildings each having their own signage. The closest residence is approximately 500 feet away and behind the firehouse and thus out of the line of sight of the proposed sign. 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 proximity to residential buildings. This creates a unique circumstance for a fire department building which is not itself of residential use. 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

On February 23, 2023, the Lower Providence Township Zoning Hearing Board by a 5-0 vote Granted the following variances from the Lower Providence Township Zoning Ordinance requested in the Application of the Lower Providence Township Volunteer Fire Department, docket #Z-23-02 to permit the installation of a wall mounted sign on the front of its fire house in the R-2 INO District:

(1) A Variance from Section 143-141.1. F(2) to permit the installation of a wall mounted sign on the front of its fire house with a sign area of 71 square feet where twenty (20) square feet is permitted; and

(2) A Variance from Section 143-141.1. F(4) to permit backlit illumination of the letters in the sign.

This approval is conditioned upon the following:

1. Strict compliance with the testimony and evidence presented at the hearing and the information set forth in the application; and
2. Compliance with all other applicable Township ordinances.

Dated: March 28, 2023

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

Kathie A. Eskie

Kathie A. Eskie

Christopher Gerdes

Christopher Gerdes

Gail Hager

Randy Klein

Randy Klein

Joseph Pucci

Joseph Pucci

Gary Brown, Alternate

Tejal Mehta, 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.