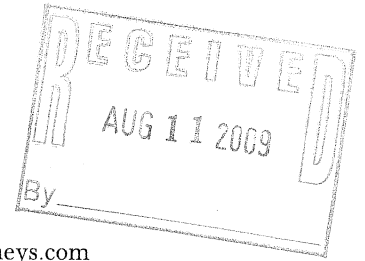


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August 8, 2009

Mr. Joseph Dunbar  
Township Manager  
Lower Providence Township  
100 Parklane Drive  
Eagleville, PA 19403

**RE: Lower Providence Township Zoning Hearing Board –Van Conversions, Inc.  
Application Z-09-10**

Dear Mr. Dunbar:

Enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board in the above matter. Please be advised that the mail date is today.

Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey W. Soderberg".

Jeffrey W. Soderberg

## **ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-09-10	:	HEARING DATE: June 25, 2009
	:	
APPLICATION OF:	:	
Van Conversions, Inc.	:	DATE OF MAILING OF OPINION
	:	AND DECISION: August 8, 2009
PROPERTY:	:	
925 S. Trooper Road	:	
Norristown, PA 19403	:	
Parcel No. 430015136004	:	

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

The applicant Van Conversions, Inc., (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Section 143-141 and from Section 143-139(A)(5) of the Township Zoning Ordinance in connection with proposed installation of a digital message board sign on top of the existing sign for the Applicant's business. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on June 25, 2009 at the Lower Providence Township Building. All members of the Zoning Hearing Board except Mr. William Donovan were present as well as the Solicitor, Building Code Official Sinclair Salisbury, and the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicant is Van Conversions, Inc.
2. Francis Pough, the equitable owner of the subject property through an installment sale agreement with the Montgomery County Industrial Development Authority, granted permission in writing (which is included in the application) to the Applicant, as tenant at the subject property, to proceed with this application.
3. The subject property is located at 925 S. Trooper Road, Norristown, PA 19403 (the "Property"). The parcel no. is 430015136004.

4. The applicable zoning is IP, Industrial Park District.
5. The Applicant was represented by legal counsel, Michael Furey, Audubon.
6. The lot size of the Property is approximately 2.79 acres.
7. The present use on the Property, a commercial building, began 25 years ago.
8. The Applicant has an existing freestanding sign measuring approximately 35 square feet on the Property.
9. The Applicant proposes to install a double-faced 11 inch by 88 inch (approximately seven square feet) digital message board sign on top of the existing sign. The total size of the sign after such installation will be approximately 43 square feet. The top of the existing sign will be modified to accommodate the new digital message board sign. The newly configured sign will not exceed 9 feet in height.
10. The business of the Applicant is mainly handicapped vehicle adapters including vehicle controls.
11. The Property is on Trooper Road, a busy four lane thoroughfare, and is next to a plumbing business and an electric facility. Across the street are fences along the back yards of residences.
12. Only the top eleven inches of the proposed sign will be digital.
13. A benefit of a digital message board sign is that it can be programmed easily.
14. Digital message board signs are allowed in three other zoning districts in the Township.
15. The Applicant is not going to scroll the message on the digital sign. The Applicant wishes to program it. The Applicant testified that the proposed digital message sign is

necessary to provide the Applicant with the ability to compete more effectively in its industry and market.

16. The sign will fit in with the zoning district and the uses located therein.

17. The Township has a digital message board sign.

18. The Applicant proposes that the digital message board sign will comply with all restrictions applicable to such signs permitted in other zoning districts in the Township. The Applicant proposes that the digital message board sign will display a brief message changing no more frequently than once every 45 seconds and only in amber color, and is proposing to change the message only twice per day.

19. There was no public comment regarding this application.

20. The proposed newly configured sign will not alter the essential character of the neighborhood in which the Property is located.

21. Absent the requested relief the Applicant will suffer an unnecessary hardship. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property.

#### **DISCUSSION/CONCLUSIONS OF LAW**

1. The Applicant is authorized by the equitable owner of the Property to pursue the application and has standing to appear before the Board regarding the requested relief.

2. Denial of the requested relief will impose an unnecessary hardship upon the Applicant.

3. The hardship is not self imposed, and is due to the unique physical circumstances and/or characteristics of the Property.

4. The approval of the requested relief is necessary to enable the Applicant's reasonable use of the Property.

5. The variances granted by the Board with certain conditions will not alter the essential character of the neighborhood or the zoning district in which it is located, will not substantially impair the appropriate use of adjacent properties and will not be detrimental to the public welfare.

6. The variances granted by the Board with certain conditions represent the minimum that will afford relief from the hardship.

The Applicant has requested a variance from Section 143-141 of the Township Zoning Ordinance to permit a freestanding sign in a nonresidential district to exceed 35 square feet. The Applicant has requested a variance from Section 143-139(A)(5) of the Zoning Ordinance to permit a digital copy message sign in the IP district. The request for a variance from Section 143-141 is a request for relief from requirements of the Zoning Ordinance of a dimensional nature. The request for a variance from Section 143-139(A)(5) is a request for relief as to use limitations.

Differing standards apply to use and dimensional variances. 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 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. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Id. at 258-59, 721 A.2d at 47-48. In addition, to justify the grant of a dimensional variance courts may consider multiple factors, “including the economic detriment to the applicant if the variance was 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.” Id. at 263-64, 721 A.2d at 50.

It is only the stringency of the standard in proving an unnecessary hardship that varies, depending on whether a use or dimensional variance is sought. Great Valley School District v. Zoning Hearing Board of East Whiteland Township, 863 A.2d 74, 83 (Pa. Commw. 2004), appeal denied, 583 Pa. 675, 876 A.2d 398 (2005) (citing Zappala Group, Inc. v. Zoning Hearing Board of the Town of McCandless, 810 A.2d 708, 710-11 (Pa. Commw. 2002), appeal denied, 573 Pa. 718, 828 A.2d 351 (2003)); The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Commw. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Commw. 2001).

Despite the trend to apply a relaxed standard to dimensional variances Pennsylvania case law is clear in its approach to the issuing of variances and demands that 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). Moreover, variances from zoning codes should be granted sparingly and only under exceptional circumstances; a

variance should not be granted simply because such a grant would permit the owner to obtain greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Commw. 1996).

In order to grant a variance, the Board must make the findings set forth in § 910.2 of the Municipalities Planning Code, 53 P.S. § 10912.2, where relevant. See Hertzberg, 554 Pa. at 256-57, 721 A.2d at 46-47. The law established by the Pennsylvania courts further establishes these standards, stated in full herein. See Alpine Inc. v. Abington Township Zoning Hearing Board, 654 A.2d 186 (Pa. Commw. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Commw. 626, 647 A.2d 279 (1994). The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

(1) That 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) That 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) That such unnecessary hardship has not been created by the applicant.

(4) That 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) That 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.

The requested variances are necessary to alleviate unnecessary hardship, including due to unique physical circumstances and characteristics of the Property. The variances are necessary to allow reasonable use of the Property. The Applicants did not create the unnecessary hardship.

The triangular-shaped top portion of the existing sign will be modified and/or reduced to accommodate the proposed digital message sign. In addition, the Applicant will accept certain conditions to the requested variances regarding the maximum area of the sign and compliance with use limitations and restrictions applicable to such digital message signs permitted in other zoning districts. Therefore the requested variances represent the minimum that will afford relief and the least modification possible of the applicable provisions of the zoning ordinance. In addition, the requested variances with certain conditions conform to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties.

The Board finds and concludes that based on the testimony and evidence presented by the Applicant the standards for granting the requested variances have been met and the requested variances should be granted.

### **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board by a 3-1 vote is as follows:

The application for variances from Section 143-141 and Section 143-139(A)(5) of the Lower Providence Township Zoning Ordinance to permit a freestanding sign in a nonresidential district to exceed 35 square feet and to permit a digital message sign in an IP district is granted, subject to the conditions that (a) the total sign be no larger than 42.75 square feet and (b) the



digital message sign comply with the digital copy/message requirements of Section 143-139(A)(5) of the Lower Providence Township Zoning Ordinance applicable to digital copy or message signs permitted in other zoning districts of the Township.

Dated: August 8, 2009

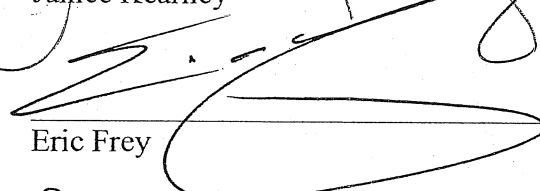
**ORDER**

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

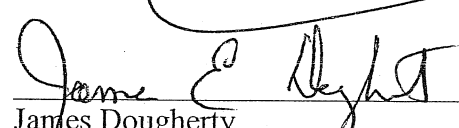
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD



Janice Kearney



Eric Frey



James Dougherty



Robert G. Hardt

**NOTE 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 of the decision granting approval.