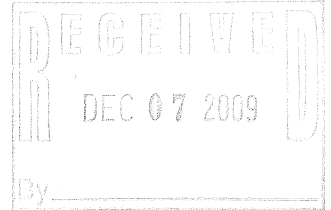


ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-09-21	:	HEARING DATE: October 22, 2009
	:	
APPLICATION OF:	:	
Victory Christian Fellowship	:	
	:	DATE OF MAILING OF OPINION
	:	AND DECISION: December 4, 2009
PROPERTY:	:	
2650 Audubon Road	:	
Audubon, PA 19403	:	
Parcel Nos. 43-00-00822-00-8 and	:	
43-00-00819-00-2	:	



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

The applicant, Victory Christian Fellowship, (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Section 143-141.A(1) in connection with proposed erection of a freestanding sign. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on October 22, 2009 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Victory Christian Fellowship, which is a church that has been a part of Lower Providence Township for 32 years.
2. The Applicant is a tenant with respect to 80,000 square feet within the 96,000 square feet office building at the subject property.
3. The subject property is owned by M.B. Investments, a Pennsylvania General Partnership which has provided a letter consenting to the filing of this application for variance.

4. The subject property is located at 2650 Audubon Road, Audubon, PA 19403 (the "Property"). The parcel numbers of the Property are 43-00-00822-00-8 and 43-00-00819-00-2.

5. The applicable zoning is LI, Limited Industrial District.

6. The Applicant was represented by John A. Rule, Miller, Turetsky, Rule & McLennan, 3770 Ridge Pike, 2nd Floor, Collegeville, PA 19426.

7. The lot size of the Property is approximately 11.9 acres.

8. The Applicant has filed an application for a dimensional variance from the maximum 35 square feet size for a freestanding sign under § 143-141.A(1) of the Township Zoning Ordinance.

9. The Applicant is seeking approval to place a freestanding sign (40' long by 5.86' high, or approximately 234 square feet) facing southwest on the Property where it has curving street frontage on U.S. Route 422.

10. Solid Waste Services, Inc., d/b/a J.P. Mascaro & Sons, also a tenant in the building on the Property, filed a previous application for a sign dimensional variance before this Board at No. Z-08-19, and has consented to the Applicant utilizing materials from the line of sight analysis it submitted in connection with such prior application.

11. The line of sight analysis submitted with respect to the previous application in No. Z-08-19 is relevant to the present application as the basic location of the proposed sign and vantage point from which it is viewable are virtually identical to the sign in such previous application. The Applicant incorporated by reference in connection with this application the line of sight analysis submitted in connection with the application in No. Z-08-19.

12. J. Edward Crenshaw and Dan Cross, the Pastor and Executive Pastor respectively of the Applicant, testified as witnesses for the Applicant.

13. The Applicant submitted into evidence at the hearing a number of exhibits, including a depiction of the proposed sign (Exh.A-1), a site plan showing the proposed location of the sign with distances from the visibility area for drivers on Route 422 (Exh. A-2), and pertinent photographs (Exhs. A-3 to A-7).

14. The Applicant established the following:

- a. The Applicant's lease is for approximately 18 years remaining.
- b. The proposed sign will read: "422CHURCH.COM" on one line and "VICTORY CHRISTIAN FELLOWSHIP" on a second line. It will also contain a tongue of flame logo.
- c. The web address identification of "422CHURCH.COM" is a significant identifying brand by which the Applicant is quickly being identified and is extremely important in communicating its identity with the public.
- d. The purpose of the proposed sign is to identify the location of the Applicant church to those traveling on Route 422 eastbound.
- e. The proposed sign is not a neon sign.
- f. At night, the proposed sign will be indirectly illuminated by flood/spot light type lights which will not cause any glare on adjoining properties.
- g. The proposed sign will not be visible from any direction or vantage point other than from the Route 422 area.
- h. The proposed sign will not be visible from any adjoining properties.
- i. The approximate distance from which motorists on Route 422 eastbound would view the proposed sign at the optimal angle for visibility is 500 feet. The closest distance from which motorists on Route 422 eastbound would view the proposed sign is 355 feet.

j. A sign of 234 square feet viewed from a distance of 500 feet is the equivalent of a permitted sign dimension of 35 square feet viewed from a distance of 75 feet.

k. A sign of the permitted dimension of 35 square feet would not be reasonably, effectively or legibly viewable from the vantage point of the Route 422 frontage of the Property, as demonstrated by photographic evidence.

15. The Property is located in a limited industrial zone and the proposed sign will be visible from only the vantage point of Route 422 and for only a very limited time by motorists traveling eastbound. Accordingly, granting the requested variance would not alter the essential character of the neighborhood or district in which the Property is located.

16. The location of the proposed sign on the Property, considering its isolation from buildings located on adjoining properties by reason of distance, vegetation and terrain, will not have a discernable effect on the use or development of adjacent property.

17. The proposed sign will not increase traffic congestion in the streets surrounding the Property. It will only be visible from a small segment of U.S. Route 422 eastbound and it will have a negligible impact on a person's visual focus.

18. The proposed sign will not be detrimental to the public welfare.

19. The proposed sign is consistent with the legislative intent of § 143-138 of the Township Zoning Ordinance relating to signs, in that it serves the important function of identifying the Applicant church in a visually attractive manner without any adverse visual impact.

20. The proposed sign size and height are the minimum necessary for the sign to be reasonably and effectively visible to motorists traveling on the small segment of U.S Route 422 eastbound from which the sign will be visible.

21. The proposed sign was graphically shown on exhibits before the Board and is attractively designed.

22. The unique physical characteristics and topography of the Property are causing a hardship.

23. This is not a self-created hardship.

DISCUSSION/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 upon the Applicant.

3. The hardship is not self imposed, and is due to the unique physical circumstances and topography of the Property, including its curving frontage on and distance from Route 422.

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

5. The variance granted by the Board 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 variance granted by the Board represents the minimum that will afford relief from the hardship.

The Applicant has requested a variance from the maximum sign size requirement of Section 143-141.A(1) of the Zoning Ordinance in connection with the proposed erection of a freestanding sign to face southwest on the Property where it has curving frontage on Route 422.

This is a request for relief from requirements of the Zoning Ordinance of a dimensional nature, not for relief as to use requirements or 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 necessitates 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 variance is from the applicable maximum size requirement of Section 143-141.A(1) of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-141.A(1), the applicable maximum size for freestanding signs is 35 square feet. The Applicant requested this variance in order to erect a proposed sign facing southwest on the Property at the Property's curving frontage on Route 422.

The approximate distance from which motorists on Route 422 eastbound would view the proposed sign at the optimal angle for visibility is 500 feet. A sign of 234 square feet viewed from a distance of 500 feet is the equivalent of a permitted sign dimension of 35 square feet viewed from a distance of 75 feet. A sign of the permitted dimension of 35 square feet would not be reasonably, effectively or legibly viewable from the vantage point of the Route 422 frontage of the Property. Accordingly the requested variance is necessary to enable reasonable

use of the Property and to alleviate the unnecessary hardship created by the unique physical characteristics and topography of the Property.

The proposed sign size and height are the minimum necessary for the sign to be reasonably and effectively viewable to motorists traveling on the small segment of U.S Route 422 eastbound from which the sign will be visible. Accordingly the requested variance represents the minimum variance that will afford relief and represents the least modification possible of the applicable provisions of the zoning ordinance.

The Property is located in a limited industrial zone and the proposed sign will be visible from only the vantage point of Route 422 and for only a very limited time by motorists traveling eastbound. The proposed sign will not be visible from any adjoining properties. At night, the proposed sign will be indirectly illuminated by flood/spot light type lights which will not cause any glare on adjoining properties. The location of the proposed sign on the Property, considering its isolation from buildings located on adjoining properties by reason of distance, vegetation and terrain, will not have a discernable effect on the use or development of adjacent property. Accordingly, granting the requested variance would not alter the essential character of the neighborhood or district in which the Property is located, nor would it be detrimental to the public welfare.

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

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

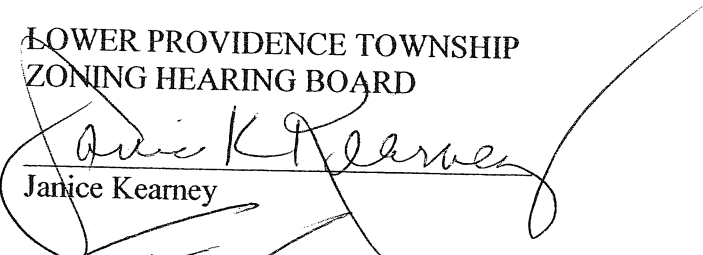
The application for variance from the maximum size requirement of Section 143-141.A(1) in connection with the Applicant's proposed erection of a freestanding sign on the Property is granted.


Dated: December 4, 2009

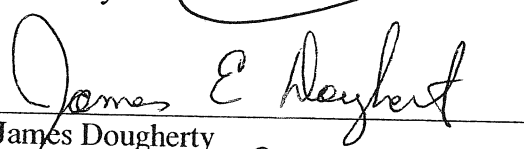
ORDER

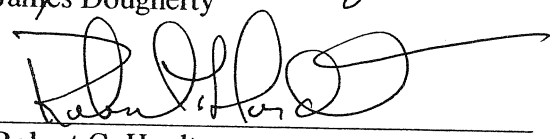
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

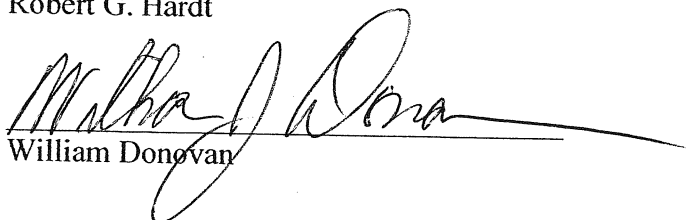
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Janice Kearney


Eric Frey


James Dougherty


Robert G. Hardt


William Donovan

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 or the decision granting approval.