

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-11-15	:	HEARING DATE: July 28, 2011
	:	
APPLICATION OF:	:	
Lower Providence Recreation	:	
Partners, LLC	:	
	:	
PROPERTY:	:	
2750 Egypt Road	:	
Eagleville, PA 19403	:	
Parcel No. 43-00-3451-01-6	:	

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

The applicant, Lower Providence Recreation Partners, LLC (hereinafter referred to as the “Applicant”), filed an application requesting a variance from Section 143-139.A(5) of the Lower Providence Township Zoning Ordinance in connection with proposed installation of a digital copy or message sign. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on July 28, 2011 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Community Development Director, the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Lower Providence Recreation Partners, LLC.
2. The owner of the subject property, Lower Providence Township, has granted permission to the Applicant, as tenant at the subject property, to proceed with the application. A copy of the lease between the Applicant and the legal owner of the subject property accompanies the application.
3. The subject property is located at 2750 Egypt Road, Eagleville, PA 19403 (the “Property”). The parcel no. is 43-00-3451-01-6.

4. The applicable zoning is R2, Residential District.
5. The Applicant was represented by legal counsel, Bernadette A. Kearney, Esquire, Hamburg Rubin Mullin Maxwell & Lupin, 375 Morris Road, PO Box 1479, Lansdale, PA 19446.
6. The lot size of the Property is 9.5 acres.
8. Mr. Jim Sorom appeared as a witness in support of the application. Mr. Sorom is the President of Dell Recreation, the operator of the Property. He was authorized by the applicant in writing to appear on its behalf at the hearing.
9. The following exhibits were marked at the hearing:

A-1	Applicant's authorization of Mr. Sorom's appearance
B-1	Application
B-2	Advertisement
B-3	Proof of publication
10. The present use on the Property is a restaurant, Chadwick's, and the Club at Shannondell, a golf course and swim club.
11. There currently is an existing freestanding sign located on the Egypt Road street frontage on the Property, advertising Chadwick's and the Club at Shannondell.
12. The Applicant proposes to add to the existing freestanding sign an illuminated sign cabinet approximately 38 inches in height and consistent in width with the existing sign containing a two-sided programmable message board with amber LED lettering.
13. The message on the programmable message board portion of the Applicant's proposed sign will change no more than every 45 seconds and will be only in amber color.
14. The messages on the proposed programmable message board will relate to the swim club, Club at Shannondell, and Chadwick's.

15. The applicant will agree to display messages for Lower Providence Township on the digital message board sign, upon the Township's request.

16. Egypt Road, where the proposed digital message board sign is to be located, is a heavily traveled roadway.

17. The Applicant needs the digital message board sign for purposes of visibility for the business and to enable the Applicant to advertise effectively.

18. Mr. Bill Clark also appeared as a witness on behalf of the Applicant, testifying that the proposed modified sign would be self-contained and no additional box was needed.

19. The Applicant will agree to take down the other existing sign located behind the sign which is proposed to be modified, as a condition.

20. There was no public comment regarding this application.

21. The proposed digital message sign to be installed as a part of the existing sign on the Egypt Road street frontage of the Property will not alter the essential character of the neighborhood in which the Property is located.

22. 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 owner of the Property to pursue the application and accordingly 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 variance 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 variance granted by the Board with certain conditions represents the minimum that will afford relief from the hardship.

The Applicant has requested a variance from Section 143-139.A(5) of the Township Zoning Ordinance to permit installation of a digital message board sign as part of an existing freestanding sign on the Egypt Road street frontage of the Property. Section 143-39.A(5) does not permit a digital copy message sign in the R-2 District. The request for a variance seeks relief as to a use limitation.

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 the Municipalities Planning Code, 53 P.S. § 10910.2, 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 necessary to alleviate unnecessary hardship, including due to unique physical circumstances and characteristics of the Property. The variance is necessary to allow reasonable use of the Property. The Applicant did not create the unnecessary hardship.

The Applicant will accept certain conditions to the requested variances, including removal of another existing sign located behind the sign proposed to be modified and use restrictions applicable to the digital message board portion of the proposed modified sign. Therefore the requested variance represents the minimum that will afford relief and the least modification possible of the applicable provisions of the zoning ordinance.

In addition, the requested variance with certain conditions, permitting modification of the existing sign located on the Property's frontage on heavily traveled Egypt Road by the addition of a digital message board portion, conforms to the essential character of the neighborhood and will not impair the appropriate use or development of any adjacent properties nor will it be detrimental to the public welfare.

The Board finds and concludes that based on the evidence presented by the Applicant the standards for granting the requested 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, as set forth in the Notice of Decision letter mailed on July 29, 2011, is as follows:

The application for a variance from Section 143-139.A(5) of the Lower Providence Township Zoning Ordinance to permit the proposed addition of a digital

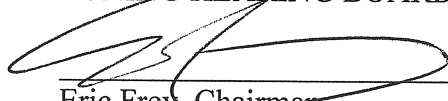
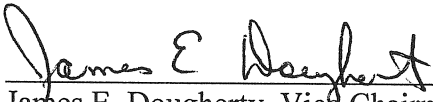
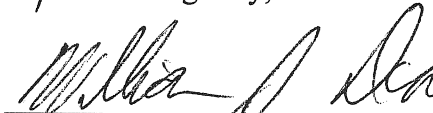
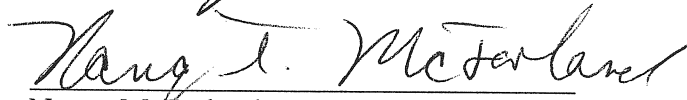
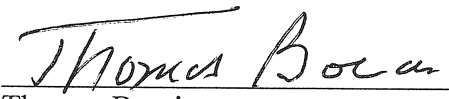
message board to the existing sign is granted, in accordance with the application and plans submitted and subject to the following conditions: (1) the Applicant shall remove the sign that is currently located behind the existing sign proposed to contain the digital message board and is visible behind the existing sign proposed to contain the digital message board on the photograph submitted with the application; (2) the Applicant will display messages of Lower Providence Township upon the Township's request, as referenced at the Hearing; and (3) the proposed digital message sign will display a brief message changing only once in every 45 seconds and only in amber color.

Dated: September 9, 2011

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD


Eric Frey, Chairman
James E. Dougherty, Vice Chairman
William Donovan
Nancy McFarland
Thomas Borai

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.

