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December 10, 2011

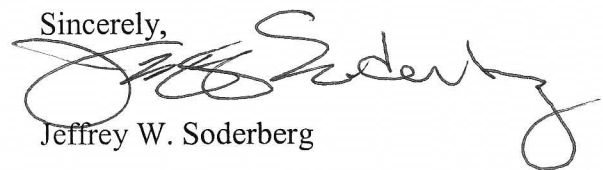
Mr. Joseph Dunbar  
Township Manager  
Lower Providence Township  
100 Parklane Drive  
Eagleville, PA 19403

**Re: Lower Providence Township Zoning Hearing Board  
Application of Reilly Foam Corporation, No. Z-11-27**

Dear Mr. Dunbar:

Enclosed is a copy of the Findings of Fact and Discussion/Conclusions of Law of the Lower Providence Township Zoning Hearing Board in the above matter.

Sincerely,



Jeffrey W. Soderberg

Enclosure

cc (w/encl.): Ms. Randee J. Elton, Community Development Director



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

APPLICATION NO. Z-11-27 : HEARING DATE: October 27, 2011

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APPLICATION OF:

Reilly Foam Corporation

PROPERTY:

2525 Monroe Boulevard

Trooper, PA 19403

Parcel No. 43-00-15118-00-4

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

The applicant, Reilly Foam Corporation (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Sections 143-141.A(1), 143-141.B(1) and 143-141.E of the Lower Providence Township Zoning Ordinance to construct an additional identification sign as new business tenant in the existing building, awning signs not along the street frontage and directional signage for deliveries. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on October 27, 2011 at the Lower Providence Township Building. The Zoning Hearing Board members present were Eric Frey, James E. Dougherty, Thomas Borai and alternate member Joyce D. Cluley, who served as a voting member due to the absence of two other members of the Board. Also present were the Community Development Director, the Solicitor, and the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicant is Reilly Foam Corporation.
2. The Applicant is a tenant at the subject property. The owner of the subject property, Trooper Road Associates, LP, a subsidiary of High Street Equity Advisors LLC, 53 State Street, 38<sup>th</sup> Floor, Boston, MA 02109, provided written permission for the Applicant to make the application for variance.

3. The subject property is located at 2525 Monroe Boulevard, Trooper, PA 19403 (the "Property"). The parcel number is 43-00-15118-00-4.

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4. The applicable zoning is IP-Industrial Park Zoning District.

5. The Applicant was not represented by legal counsel.

6. The lot size of the Property is approximately 33.48 acres. The Applicant will sublease 141,000 square feet within the existing building.

7. The present use on the Property is fabrication (industrial). The building was built in 1984.

8. Stephen Phillips, the President of the Applicant, appeared as a witness in support of the application.

9. The following exhibits were marked at the hearing:

B-1	Application
B-2	Advertisement
B-3	Proof of publication

10. The Applicant proposes to construct an additional identification sign for the new business as an additional tenant at the building, awning signs not along the street frontage and directional signage for deliveries.

11. The proposed signs are detailed in a presentation drawing/photograph package attached to the Application. The proposed signs are professionally designed and will match the color of the new Park Pointe signage.

12. The proposed signs are necessary for the Applicant to communicate its presence and location in the building to customers, suppliers and the general public, so that people will be able to identify and find the company.

13. Granting the requested variance will not alter the essential character of the neighborhood in which the Property is located.

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14. 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 circumstances and characteristics of the Property, including the configuration of the existing building including its design as a single-business building and the existing access and delivery portals, and the location of the existing building on the lot.

#### **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/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 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 sign limitations of Section 143-141 of the Lower Providence Township Zoning Ordinance in connection with the proposed construction

of additional signs of certain specified dimensions and characteristics at certain locations at the existing building. This request for a variance seeks relief as to dimensional requirements.

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 a request for variance 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.

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 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 Applicant has demonstrated that there exists an unnecessary hardship, which is not self created, and that the requested variance is necessary to enable reasonable use of the Property.

The requested variance is from the applicable sign limitations set forth Section 143-141 of the Lower Providence Township Zoning Ordinance. The Applicant requested this variance in order to construct an additional identification sign for the new business as an additional tenant at the building, awning signs not along the street frontage and directional signage for deliveries.

The Applicant has demonstrated that there are unique physical circumstances and/or characteristics of the Property. These include the single-business building which is now to house an additional fabrication business tenant, the configuration of the existing building including access and delivery portals, and the location of the existing building on the lot.

The requested variance is necessary to alleviate unnecessary hardship due to the unique physical circumstances and characteristics of the Property. The Applicant did not create the unnecessary hardship.

Due to the unique physical circumstances and/or characteristics of the Property, as stated above, 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 proposed signs will be consistent with the existing building and signs and the existing industrial park area. Therefore the granting of the variance conforms to the essential character of the neighborhood, will not impair the appropriate use or development of any adjacent properties, and will not be detrimental to the public welfare.

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

### **DECISION**

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote, as set forth in the Notice of Decision letter mailed on October 28, 2011, is as follows:

The application for variance from Section 143-141 of the Lower Providence Township Zoning Ordinance to permit the proposed signs is granted, in accordance with the application and plans submitted.

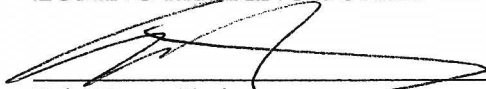
Dated: December 10, 2011



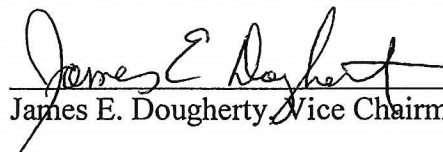
## ORDER

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

### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



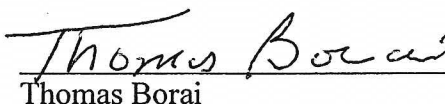
Eric Frey, Chairman



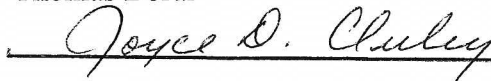
James E. Dougherty, Vice Chairman

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William Donovan

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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.

