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January 26, 2012

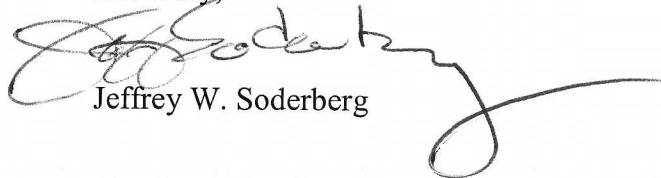
Ms. Geraldine Golas
Interim Township Manager
Lower Providence Township
100 Parklane Drive
Eagleville, PA 19403

**Re: Lower Providence Township Zoning Hearing Board
Application of Senator John Rafferty, Jr., No. Z-11-30**

Dear Ms. Golas:

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-11-30 : HEARING DATE: December 14, 2011
:
APPLICATION OF: :
Senator John Rafferty, Jr. :
:
PROPERTY: :
3818 Germantown Pike :
Collegeville, PA 19426 :
Parcel No. 43-00-05251-02-5 :

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

The applicant, Senator John Rafferty, Jr. (hereinafter referred to as the "Applicant"), filed an application requesting a variance from Section 143-142.E of the Lower Providence Township Zoning Ordinance in connection with placement of a second freestanding sign in excess of allowed square footage for multiple tenant office use at the premises. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on December 14, 2011 at the Lower Providence Township Building. All of the Zoning Hearing Board members were present, along with the Community Development Director, the Solicitor, and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Senator John Rafferty, Jr.
2. The Applicant is the tenant at the subject property, with written authorization from the owner, Americo Moscariello, to make the application for variance regarding the sign.
3. The subject property is located at 3818 Germantown Pike, Collegeville, PA 19426 (the "Property"). The parcel number is 43-00-05251-02-5.
4. The applicable zoning is EVC Evansburg Village Commercial District.
5. The Applicant was not represented by legal counsel.

6. The lot size of the Property is 1.9 acres.

7. The present use on the Property is a day care facility and multi-tenant offices.

8. Mr. Dave Priest, district representative at Senator Rafferty's office, 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 seeks a variance with regard to placement on the Property of a second freestanding sign with a total area of 24 square feet.

11. The sign for which a variance is sought identifies the Applicant's office for his constituents, and is in front of the Applicant's office building between the sidewalk and the building.

12. There is an existing sign for the day care at the premises, on the other side of the driveway.

13. The sign for which a variance is sought includes a 5 feet by 4 feet sign identifying the Senator's office with the street number on top and an additional smaller sign below identifying Moscariello Development. The total area of the sign for which a variance is sought including the Moscariello sign is 24 square feet.

14. The Applicant's proposed sign is necessary to identify the Senator's office for constituents, as they would miss the driveway if there was no sign first.

15. The area limit for a freestanding sign pursuant to the applicable ordinance provision, Section 143-142.E, is 20 square feet, but for properties with multiple tenants the area of each freestanding sign may be increased to a maximum of 35 square feet.

16. The proposed sign be consistent with existing signs in the zoning district.
17. Granting the requested variance will not alter the essential character of the neighborhood in which the Property is located.
18. 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 location of the office 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 143-142.E of the Lower Providence Township Zoning Ordinance in connection with the placement of a second

freestanding sign in excess of allowed square footage on the subject Property. 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 Applicants 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 limitations of Section 143-142.E of the Lower Providence Township Zoning Ordinance. Pursuant to this provision one freestanding sign shall be permitted per street frontage, not to exceed 20 square feet in size and 10 feet in height. For properties with multiple tenants, the area of each freestanding sign may be increased to a maximum of 35 square feet. The Applicant requested this variance with regard to placement of a

sign in front of the Applicant's office building to identify the Senator's office for constituents, in a total size of 24 square feet and in addition to the existing sign for the day care which is on the other side of the driveway on the Property.

The Applicants have demonstrated that there are unique physical circumstances and/or characteristics of the Property. As a result of the existing driveway and the location on the lot of the Senator's office, the proposed sign is necessary because constituents would miss the driveway without the sign in front of the Senator's office building.

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.

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 sign for which the variance is sought will be consistent with the surrounding neighborhood and zoning district and will benefit the public by identifying the Senator's office for constituents. 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 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 4-1 vote, as set forth in the Notice of Decision letter mailed on December 15, 2011, is as follows:

The application for variance from Section 143-142.E of the Lower Providence Township Zoning Ordinance to permit a second freestanding sign, of twenty-four square feet, in excess of the allowed square footage, is granted, in accordance with the application and plans submitted. The Board also recommends to the Lower Providence Township Board of Supervisors that it waive the Zoning Hearing Board application fee as requested in the Applicant's letter to Lower Providence Township dated August 23, 2011 which accompanies the application.

Dated: January 26, 2012

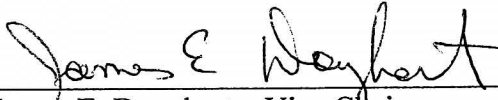
ORDER


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

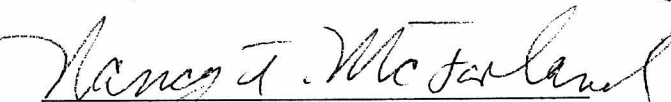
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


dissenting

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.