

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-12-07 : HEARING DATE: September 27, 2012

APPLICATION OF:
Trooper Dental Associates, LLC

PROPERTY:
233 South Trooper Road
Lower Providence Township
Norristown, PA 19403
Parcel No. 43-00-15235-00-4

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

The applicant, Trooper Dental Associates, LLC (hereinafter "Applicant") filed an application requesting a variance from the sign size requirements of Section 143-140(A)(1) of the Lower Providence Township Zoning Ordinance in connection with the construction of sign. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on September 27, 2012 at the Lower Providence Township Building. All members of the Board were present. Also present were the Solicitor, the Zoning/Code Enforcement Officer and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is the Trooper Dental Associates, LLC.
2. The Applicant is the owner of the subject property located at 233 South Trooper Road, Norristown, PA 19403 (hereinafter the "Property"). The parcel number is 43-00-15235-00-4.
3. The applicable zoning district is an R-2, residential district.
4. The Applicant was not represented by legal counsel.
5. Engineer Susanne M. Creveling, P.E. appeared on behalf of Applicant.

6. The lot size is 19,140 square feet.

7. The Property is presently used as a dentist's office.

8. Doctor Barbara J. Urbano, D.D.S., the owner of the office served as a witness in support of the application.

9. The following exhibits were marked at the hearing:

B-1 Application filed at Z 12-07

B-2 Advertisement

B-3 Proof of publication

A-1 Photographs of Current Sign

A-2 Proposed Sign Sketch

10. The current sign on the Property conforms to the R-2 ordinance and measures one (1) square foot.

11. The Applicant proposes to enlarge the existing sign within the current frame.

12. The proposed sign frame is forty one (41) inches wide and sixty eight (68) inches tall with a sign measuring thirty three (33) inches by forty four (44) inches.

13. The proposed sign does not include any electronic message and will employ the same lighting as the current sign.

14. There was no adverse public comment regarding this application.

15. There is unnecessary hardship requiring the grant of a variance.

16. There are unique physical characteristics of the property which require the proposed sign.

DISCUSSION and 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 on the Applicant.
3. The hardship is not self-imposed and is due to the unique physical circumstances of the Property.
4. The requested relief is necessary to enable the Applicant's reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.
5. The proposed sign will also not alter the essential character of the neighborhood in which the Property is located.
6. The proposed sign is necessary to allow patients to safely locate the Property from the street.

The Applicant has requested a variance from the sign limitations of Section 143-140(A)(1) of the Lower Providence Township Zoning Ordinance. The request seeks relief as to the dimensional requirements in the R-2 residential district.

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 quantum of proof required to establish unnecessary hardship in the case of a dimensional variance is, however, lesser than when a use variance is sought. Id. at 258-59.

Regardless of the type of variance sought, 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). Pursuant to the Municipalities Planning Code the following must be found in order for the Board to grant the requested variance:

(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. 53 P.S. § 10910.2.

Further, a sign variance will be proper when it is necessary to allow those who have a legitimate interest in locating the premises to do so safely. Achem Chemical Products, Inc. Appeal, 31 Pa. D. & C.2d 341, 344 (1963).

In the instant case, the location of the Property on the heavily traveled Trooper Road, which has speed limits of thirty five (35) miles an hour, requires the grant of a sign variance. The current sign does not allow those with a legitimate interest in locating the Property to do so safely. The volume of traffic on the roadway, as well as the relative speed of this traffic, require

a larger sign for proper identification. It is therefore the unique characteristics of the property which require a variance. Further, as the Property is in on the border of the Township and is surrounded by other businesses, including the Short Stuff Daycare, the character of the neighborhood will not be altered by the grant of this variance. The proposed sign represents the minimum variance possible as the sign is to be built within the existing frame, and will have internal facing lighting which will be turned off no later than 10pm each evening. Finally, this hardship was not created by the Applicant who has, till the date of this application, conformed to the sign requirements of the variance, but rather is a result of the location of the Property.

Accordingly, the Board finds that the application for a variance from Section 143-140(A)(1) of the Lower Providence Township Zoning Ordinance is granted. The proposed sign may be built according to the specifications and limitations of the proposal before the Board.

DECISION

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

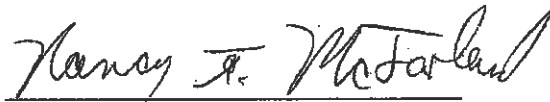
The application for a variance from Section 143-140(A)(1) of the Lower Providence Township Zoning Ordinance is granted.

Dated: October 18, 2012

ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



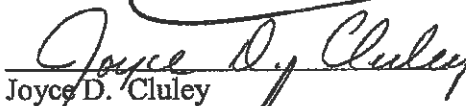
Nancy T. McFarland, Chair



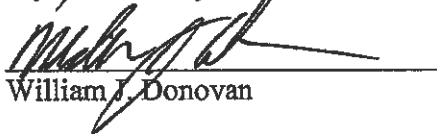
Thomas A. Borai, Vice Chairman



Eric C. Frey



Joyce D. Cluley



William J. Donovan

Kathie A. Eskie (Alternate)

Robert G. Hardt (Alternate)

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.