

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-01 : HEARING DATE: February 27, 2014
:
:
APPLICATION OF: :
2626 Main L.P d/b/a :
Car Vision :
:
PROPERTY: :
2626 Main Street :
Lower Providence Township :
Trooper, PA 19403 :
Parcel No. 43-00-11482-00-4 :

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

The applicant, 2626 Main L.P. d/b/a Car Vision (hereinafter “Applicant”) filed an application requesting a variance from the sign limitations at Sections 143-139(A)(5) and 143-141(A) of the Lower Providence Township Zoning Ordinance in connection with the construction of an LED flashing sign. The application was properly advertised. After Applicant’s request for a continuance from the January 23, 2014 meeting and waiver of the time constraints in the Municipalities Planning Code (“MPC”) a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on February 27, 2014 at the Lower Providence Township Building. Four of the five members of the Board were present. Also present were Keith B. McLennan, Esq., the Solicitor, Rachel Vahey, the Interim Director of Community Development responsible for Zoning/Code Enforcement and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is 2626 Main L.P. d/b/a Car Vision.
2. The Applicant is the owner of the subject property located at 2626 Main Street, Trooper, PA 19403 (hereinafter the “Property”). The parcel number is 43-00-11482-00-4.

3. The Applicant's property is located in the Ridge Pike Business District.
4. The Applicant was represented by Jason Rabinovich, Esq. of Conshohocken.
5. The lot measures 3.08 acres.
6. The present use of the Property is commercial, housing a car dealership and showroom.
7. The following exhibits were introduced at the hearing:
 - B-1 Appeal Application
 - B-2 Advertisement
 - B-3 Proof of Publication
 - A-1 3 page Site Plan dated February 25, 2014 for 2626 Main Street, Trooper, PA
8. The proposed sign will be located 15' set back from the front curb on West Main Street, will measure 16' high and have A 4'x8' illuminated LED sign with a 2'x8' header sign, and will contain colored LED animations which will operate during business hours and be dim at night.
9. The Applicant states the sign is required as "we want to keep business in this township (we are across the street from the next township) and we are in a very commercial area so the sign won't bother anyone" (See page 5 of application).
10. There was adverse public comment regarding this application.
11. There is no unnecessary hardship requiring the grant of a variance.
12. The proposed sign is completely unnecessary and is in no way required for the reasonable use of the Property.

DISCUSSION

The Applicant has requested a variance from sign limitations at Sections 143-139(A)(5)

and 143-141(A) of the Lower Providence Township Zoning Ordinance in connection with the construction of an LED flashing sign.

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 but is the Applicant's burden. 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 that:

(1) 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) 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) Such unnecessary hardship has not been created by the applicant.

(4) 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) 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.

It is well settled that planning and the orderly development of the community are themselves proper zoning objectives. The municipal legislative body is authorized to adopt reasonable rules even though different rules could have been adopted that were less restrictive or may be different in other communities. The Board of Supervisors for Lower Providence Township enacted ordinance section 143-139 which generally prohibits flashing, intermittent, animated or revolving or changeable message signs. It has made an exception at A.(5) which permits in the Ridge Pike Business District electronic signs with a flashing, changeable message provided the message is amber in color and changes only once in every 45 seconds.

Further, the Supervisors also enacted ordinance section 143-141 A. that permits the installation in non-residential districts of one freestanding sign not to exceed 35 square feet in size and 10 feet in height. Applicant seeks to install a double-sided color illuminated LED sign 16 feet in height for the purpose of attracting new business as a result of a downsizing of its business due to a break up with a partner and attract employees. Applicant asserts in its application that since it is in a "very commercial area" a variance from the ordinance is

warranted as the “sign won’t bother anyone.” Clearly from those who attended the hearing, the proposed sign in fact bothers many people.

The starting point in any review of an application in cases such as this one is with a recognition of the fact that the simple argument "my use won't hurt anyone" is insufficient to invalidate a zoning restriction. Swade v. Springfield Township Zoning Board of Adjustment, 392 Pa. 269, 140 A.2d 597 (1958). Applicant has presented no evidence that the requested relief is required. There are no unique circumstances of the Property which require a sign as requested. Applicant contends that it is a hardship that a neighboring township permits changeable LED signs but that Lower Providence does not. The fact that a township permits certain signs while another township restricts that same sign is not a hardship to hold otherwise would undercut local zoning codes throughout the Commonwealth.

Applicant is already permitted to erect a sign with a brief message changing every 45 seconds which is amber in color. § 143-139(A)(5)(b). This alone could accomplish its intended purpose of attracting more business to help it offset any impact the break up of its business with its partner might otherwise cause. If there were any reason to have an electronic sign those needs would clearly be met by a sign that falls within the parameters of the ordinance for the district.

Applicant has failed to demonstrate any hardship, unique or unnecessary which requires the grant of a variance. Further, the requested variance is not the minimum variance that will afford relief. The only justification for the instant request proffered by Applicant is in the form of a threat to take the business to an adjoining township. This is not sufficient justification for a variance.

Accordingly, the Board finds that the application for a variance from sign limitations at Sections 143-139(A)(5) and 143-141(A) of the Lower Providence Township Zoning Ordinance

is denied.

CONCLUSIONS OF LAW

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will not impose an unnecessary hardship on the Applicant.
3. The hardship, if any, is entirely self-imposed, and is not due to any unique physical circumstances of the Property.
4. The requested relief is not necessary to enable the Applicant's reasonable use of the Property and does not represent the minimum deviation from the ordinance that will afford relief.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 4-0 vote is as follows:

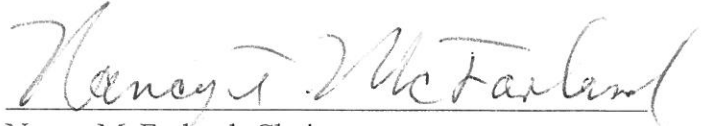
The application for a variance from sign limitations at Sections 143-139(A)(5) and 143-141(A) of the Lower Providence Township Zoning Ordinance is DENIED.

Dated: April 10, 2014

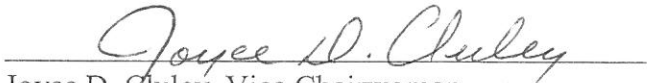
ORDER

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

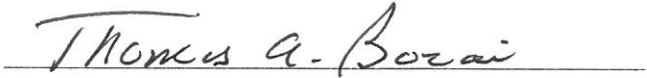
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



Nancy McFarland, Chairwoman

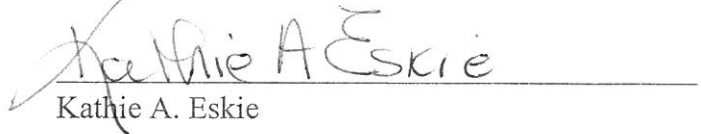


Joyce D. Cluley, Vice Chairwoman



Thomas A. Borai

Robert G. Hardt



Kathie A. Eskie

NOTICE 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.