

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-14-15 : HEARING DATE: October 23, 2014 &
: December 3, 2014

APPLICATION OF:
Trooper Road Enterprise, L.P. d/b/a :
Taco Bell :

PROPERTY:
1161-1165 S. Trooper Road :
Lower Providence Township :
Audubon, PA 19403 :
Parcel No. 43-00-15109-004 :

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

On September 28, 2014 applicant, Trooper Road Enterprise, L.P. d/b/a Taco Bell (hereinafter "Applicant") filed an application requesting several variances from the Lower Providence Township Zoning Code as follows:

- Section 143-112 of to allow a reduction in impervious coverage from 77.3% to 76.6% requires zoning relief (the standard is 30%).
- Section 143-141(A) to permit two freestanding pylon signs one on the Trooper Road side of the property, and the other on the Audubon Road side of the Property each at a height of 28 feet and square footage of 101.1 square feet.
- Section 143-141(A) to permit a third freestanding monument sign on the property as per the Township's recommendation to construct a sign welcoming people to the Township.
- Section 143-141.B to allow for signage on all four facades of its proposed Taco Bell Restaurant. The applicant proposes two signs comprising the words Taco Bell on one sign and the logo of the bell on the other sign on each side of the

A-2 Deed

A-3 Lease Agreement

A-4 Amendment to Lease

A-5 Second Amendment to Lease

A-6 Property Manager Permission for Applicant to Submit Zoning Applications

A-7 Resolution of General Partner of Trooper Road Enterprise, L.P.

A-8 – A-15 Photographs of Subject Property and Examples of Proposed Signs

A-16 Credentials of Civil Engineer John M. Petit

A-17 Proposed Pylon Sign Detail Specifications

A-18 Site Plan

A-19 Credentials of Kristin M. Norwood, Senior Transportation Engineer

A-20, A-21 Caselaw in Support of Impervious Coverage Position

8. Applicant requests a variance from § 143-112 for maximum impervious coverage from 77.3% to 76.6% where the standard is 30%.

9. Applicant proposes to place two (2) signs on each façade, and to have a set of the two (2) signs on all four (4) façades. The sign proposed by Applicant is 34.79 square feet per façade.

10. The primary reason for this is for the notification of traffic proceeding on Audubon Road and on Trooper Road that a Taco Bell is located on the corner in order to facilitate motorists safely entering the parcel, as motorists will have a better chance seeing the signs and having advanced notice.

11. Applicant seeks to place two (2) freestanding pylon type signs, one on the Trooper Road side of the property and the other on the Audubon Road side at a height of 28 feet

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.

B. Impervious Coverage – Section 143-112

Ordinance section 143-141 (A) was enacted to permit the installation in non-residential districts of one freestanding sign not to exceed 35 square feet in size and 10 feet in height. The primary reason for Applicant's requests for a variance concerning signs on the property is for the notification of traffic proceeding on Audubon Road and on Trooper Road that a Taco Bell is located on the corner in order to facilitate motorists safely entering the parcel. The Applicant demonstrated that:

1. An oversized non-conforming pylon sign already exists at the property;
2. The sign required by the ordinance was insufficient to provide notice required for safe access to the property from Trooper Road warranting a larger pylon sign;
3. A pylon sign on Audubon Road greater in size (not height) would enhance the safety of the motoring public and the residents of the Township by effectively informing motorists of the restaurant ahead to enable safe ingress and egress.

There are unique circumstances that require a variance from the prescribed sign ordinances, as the lot is extremely small with short road frontage, requiring motorists to have advanced notice in order to enter the parcel. The proposed signs do not contain electronic messages, and are instead manual signs. The essential character of the neighborhood will not be changed, and surrounding property values will not be impaired. Further the hardship has not been created by the applicant.

However, the Board is of the opinion that the variance, as requested, will not represent the minimum variance that will afford relief. The two pylon signs, of the dimensions proposed one on Audubon Road and the other on Trooper Road are unnecessary and obtrusive. Accordingly, the Applicant agreed that it would remove the existing pylon sign in return for a variance permitting a 20 foot high pylon sign on Trooper Road at the location specified in the

Applicant.

3. The hardship is not self-imposed, and is due to unique physical circumstances of the Property.

4. The requested relief is necessary to enable the Applicant's reasonable use of the Property and represents the minimum deviation from the ordinance that will afford relief.

DECISION

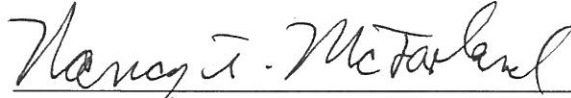
The decision of the Lower Providence Township Zoning Hearing Board is as follows:

1. By unanimous vote, the variance from Section 143-112 of the Lower Providence Township Zoning Ordinance to allow a reduction in impervious coverage from 77.3% to 77.6% is GRANTED.
2. Also by unanimous vote, the variance from Sections 143-141(B) of the Lower Providence Township Zoning Ordinance to place two (2) signs on each building façade and to have a set of the two (2) signs on all four (4) façades at 34.79 square feet per façade is GRANTED.
3. By a vote 3 -2 vote with Mr. Borai and Mrs. Eskie dissenting, the variance from Section 143-141(A) of the Lower Providence Township Zoning Ordinance to permit a freestanding pylon sign on the Trooper Road side of the property as located in the application at a height of 20 feet and total size of 101.1 square feet is GRANTED, *conditioned upon the removal of the existing non-conforming oversized pylon sign located at the corner of Trooper and Audubon Roads.*
4. By unanimous vote, the variance from Section 143-141(A) of the Lower Providence Township Zoning Ordinance to permit a freestanding pylon sign on the Audubon Road side of the property as located in the application at a height of 10 feet and total

ORDER

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

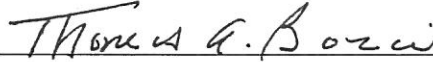
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD



Nancy McFarland, Chairwoman



Joyce D. Cluley, Vice Chairwoman



Thomas A. Borai



Robert G. Hardt



Kathie A. Eskie

Gail Hager, Alternate

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.