

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

<b>APPLICATION NO.</b>	<b>Z-16-03</b>	:	<b>HEARING DATE:</b>
		:	<b>March 24, 2016</b>
		:	
<b>APPLICATION OF:</b>		:	
<b>BARRY CAMPBELL</b>		:	
		:	
		:	
<b>PROPERTY:</b>		:	
<b>3450 Germantown Pike,</b>		:	
<b>Collegeville, PA 19426</b>		:	
<b>Parcel No. 43-00-0158-00-1</b>		:	

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

On February 29, 2016 applicant, Barry Campbell (hereinafter “Applicant”) filed an application requesting a variance from the of the Lower Providence Township Zoning Ordinance (the “Ordinance”) § 143-105 (primarily subsection (A)(4) regarding commercial usage of property to display vehicles, equipment, goods, or merchandise within front yards), in order to permit the Applicant to use the property as a contractor office and storage (the “Application”). The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on March 24, 2016 at the Lower Providence Township Building. Chairwoman Joyce Cluley, Vice Chair Kathy Eskie, members Robert Hardt, Joseph Pucci, and Joseph Bergquist of the Zoning Hearing Board were present. Also present at both hearings were Keith B. McLennan, Esq., the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement and Paula Meszaros, the Court Reporter.

### **FINDINGS OF FACT**

1. The Applicant is Barry Campbell, shareholder of Advanced Plastering, Inc.
2. The Applicant is the buyer under an agreement of sale from William Titze for the

subject property located at 3450 Germantown Pike, Collegeville, PA 19426, parcel number 43-00-0158-00-1 comprised of 81,022 square feet (hereinafter the “Property”) and thus the equitable owner.

3. The applicable zoning district is the Highway Commercial.
4. The Applicant was not represented by legal counsel.
5. The Property was formerly used as an office building, but has been vacant for many years.
6. The Applicant proposes to use the existing buildings on the property for his Advanced Plastering, Inc. as contractor’s office, exterior storage of job materials, business vehicles, and snow removal equipment.
7. The exterior storage would be located at the rear of the property surrounded by a privacy/security fence.
8. The exterior of the office building will be remodeled and occupied by a staff of two to three people.
9. The existing garage is a shell which Applicant will reconstruct for interior storage of vehicles, equipment and supplies.
10. The Property neighbors a woodworking shop with truck and equipment storage, a tree service with equipment and tree log storage, a landscape company with equipment storage, and a lawnmower supply and repair shop with equipment storage.
11. The Lower Providence Zoning Ordinance is silent regarding contractor office/storage use in the Highway Commercial District.
12. The following exhibits were made of record:  
A-1 The Application.

A-2 Proposed use statement by the Applicant.

A-3 Land survey of the Property.

A-4 Aerial photograph of the Property and surrounding properties and indicating usage.

A-5 Aerial photograph of the Property noting setback distances of the structures.

A-6 Unannotated aerial photograph of the Property indicating proximity to the neighboring residential neighborhood.

A-7 Street view photograph of the Property from Germantown Pike.

B-1 Application Advertisement.

B-2 Proof of Publication of the Advertisement.

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

## **DISCUSSION**

### **I. Dimensional v. Use Variance.**

There are 2 types of variances, a “dimensional” variance and a “use” variance. One who advances a dimensional variance seeks to adjust zoning regulations so that the property can be used in a manner consistent with the zoning regulations. Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998). In contrast, a use variance seeks to use the property in a way that is inconsistent or outside of the zoning regulations. Tidd v. Lower Saucon Township Zoning Hearing Board, Green Gable Investment Partners, LP and Lower Saucon Township, 118 A. 3d 1 (Pa. Cmwlth. 2015). Regardless of whether the variance sought is a use or dimensional variance, 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. Cmwlth. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of

Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998).

## II. Variance Legal Standard.

Generally a Zoning Board may grant a variance when the following criteria are satisfied:

(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. Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board, 88 A.3d 488, 520 (Pa. Cmwlth. 2014) appeal denied, 101 A.3d 788 (Pa. 2014) and appeal denied, 101 A.3d 788 (Pa. 2014); 53 P.S. § 10910.2.

## III. Use Variance Legal Standard.

In the context of use variances, “unnecessary hardship is established by evidence that: (1) the physical features of the property are such that it cannot be used for a permitted purpose; or (2) the property can be conformed for a permitted use only at a prohibitive expense; or (3) the property has no value for any purpose permitted by the zoning ordinance.” Marshall v. City of Philadelphia, 626 Pa. 385, 395, 97 A.3d 323, 329 (2014) (citing Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998) and 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)). In establishing hardship, an applicant for a variance is not required to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose, though there must be more than mere economic hardship or increase in property value. Id.

#### IV. Facts Applied to the Legal Standard.

The variance requested here is to permit the use of the property for a contractor office and supply storage, which is not specifically permitted in the Highway Commercial District section of the Ordinance that allows for outdoor displays of vehicles, equipment, goods or merchandise within front yards. The usage the Applicant seeks fits the current usage of the area, and the property appears to have been used as contractor office and supply storage in the past.

Applicant’s desired use of the land would be for a limited amount of storage for vehicles and supplies for his business, as most of the supplies are delivered directly to job sites and most business vehicles are kept by employees at their homes. The uses defined by the Ordinance anticipate visitation by customers onto the property, but that would not be the case here. Rigid compliance with the Ordinance would force the Applicant to incur significant additional costs to construct a large parking area for customers, when Applicant’s proposed use is less invasive than is permitted by the existing zoning. Not only would the Applicant experience an

unnecessary hardship if he were forced to strictly comply with the Ordinance but the Property would remain an unused, blighted section of the Township. Applicant plans to clean up the area, remodel the existing building and restore the overgrown and dangerous garage structure.

The businesses surrounding the subject property are similar and do not otherwise conform to the Highway Commercial District. For example, immediately to the west of the Property there is a wood working shop with an office and vehicle storage. Next is a tree service, with a fenced in yard that surrounds logs, tree equipment, and an office building. After that is an auto repair facility with a house, office and garage. Further west is a landscape equipment sales and service facility and an installer of lifts on trucks. Across the street is an electrical union hall with training facilities in the rear. The rear of the subject property is wooded with a fence, and Applicant will maintain that area of the subject property to ensure that the use on the subject property will not be visible to neighboring residences. In addition, Applicant's proposed use of the property would have little to no impact on the traffic in the area, as there would only be 2-3 employees staffed on the property. The Applicant will improve the property by remodeling and finishing the existing buildings on the Property, thereby increasing the value of the surrounding properties. Thus, Applicant's proposed use of the subject property will not 1) alter the essential character of the neighborhood, 2) impair the appropriate use or development of any adjacent property, or 3) be detrimental to the public welfare.

Finally, granting the Applicant a variance for his proposed use of the property would represent the least modification possible of the regulation in issue, as the variance would allow the Applicant to enjoy the same use of the subject property as the adjacent properties and businesses.

In this case, the Applicant is able to satisfy the five-part *Tri County Landfill* variance test referenced above.

Accordingly, the Board finds that the Application for a variance from the use requirements of Lower Providence Township Zoning Ordinance § 143-105 (A)(4) is granted in order to permit the Applicant to use the property as a contractor office and storage provided that the building will not be used for residential purposes; any outside storage of materials, vehicles or equipment shall be screened by appropriate fencing so as not to create an eyesore to the community.

### **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 proposed use will not alter the essential character of the neighborhood in which the Property is located, and will not contravene the use of adjacent property or endanger public safety.
4. Rigid compliance with the Ordinance in this case is unnecessary for preservation of the public interest sought to be protected by the Ordinance.
5. 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.

### **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 the use requirements of Lower Providence Township Zoning Ordinance § 143-105 (A)(4) is GRANTED in order to permit the Applicant to use the property as a contractor office and storage subject to the following conditions:

1. The building will not be used for residential purposes;
2. Any outside storage of materials, vehicles or equipment shall be screened by appropriate fencing so as not to create an eyesore to the community.

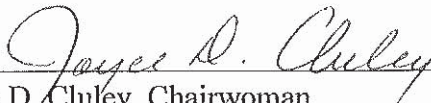
Dated: April 15, 2016



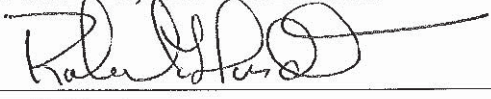
**ORDER**

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


LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
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Joyce D. Cluley, Chairwoman

  
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Kathie A. Eskie, Vice Chairwoman

  
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Robert G. Hardt

\_\_\_\_\_  
Gail Hager

  
\_\_\_\_\_  
Joseph Pucci

\_\_\_\_\_  
Patricia Alzamora, Alternate

  
\_\_\_\_\_  
Joseph Bergquist, 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.