

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-17-06 : HEARING DATE: March 23, 2017

APPLICATION OF:
Webb Shannahan Real Estate, LLC

PROPERTY:
915 Madison Avenue
Lower Providence Township
Eagleville, PA 19403
Parcel No. 43-00-07930-00-1

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

Applicant Webb Shannahan Real Estate, LLC (hereinafter referred to as the "Applicant") is under agreement to purchase the property located in the Lower Providence business park known as 915 Madison Avenue, Eagleville, Lower Providence Township, PA 19403 (the "Property"). Applicant filed its application requesting a variance from the dimensional requirements of Section 143-136.A. of the Lower Providence Township Zoning Ordinance (the "Ordinance") on February 28, 2017 to permit the relocation and operation of its Culligan Water Conditioning business at the Property. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on March 23, 2017 at the Lower Providence Township Building. The following members of the Board were present: Chairwoman Kathie Eskie, Vice Chair Gail Hager and members Robert Hardt, Joseph Pucci, Patricia Alzamora and alternate Joseph Bergquist. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement, Paula Meszaros the Court Reporter and Keith B. McLennan, Esquire, the Solicitor.

FINDINGS OF FACT

1. The Applicant is Webb Shannahan Real Estate, LLC.
2. The parcel number and location of the Property are 43-00-07930-00-1 and 915 Madison Avenue, Eagleville, Lower Providence Township, PA 19403 respectively.
3. The applicable zoning is the Industrial Park - IP District.
4. The Applicant was represented by J. Todd Savarese, Esquire, 80 N. Second Street Pike, Churchville, PA 18966.
5. The present use on the Property is as an industrial warehouse and office.
6. The Applicant has an equitable interest in the Property as the "Purchaser" under an agreement of sale with the owner, 915 Madison Realty, LLC dated February 24, 2017 ("Agreement of Sale").
7. The lot size is approximately 1.284 acres, and the main structure on the Property is a 15,000 square foot single story storage and office building and associated parking.
8. The Applicant proposes to use an existing building on the Property for its water softener business, which is relocating its operations and facilities from another area in Lower Providence Township.
9. Applicant's business is mostly service and storage related at this location, with a small retail component.
10. Ordinance section 143-136.A. requires that a water softener service and/or sales business, while permitted by right in the Industrial Park District, be located within 600 feet of the General Commercial District.
11. There was no adverse public comment regarding this application.
12. There is an unnecessary hardship requiring the grant of a variance.
13. The proposed use will not alter the essential character of the neighborhood, as

many of the surrounding businesses in this location have small customer/retail components that would be similar to Applicant's proposed use of the Property.

14. The following exhibits were marked at the hearing:

B-1: Advertisement

B-2: Proof of publication

A-1: Appeal Application

A-2: Agreement of Sale

A-3: Property Report of SVN Indicating Surrounding Business Uses

A-4: Township Zoning Map Indicating Location of Property

A-5: Letter of Support dated March 17, 2017 from the Township.

DISCUSSION

I. Variance Legal Standard.

To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

(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.

See also: 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.

II. 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). A dimensional variance is at issue in this case.

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).

III. Dimensional Variance Legal Standard.

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)).

Although Hertzberg eased the variance requirements for a dimensional variance, it did not remove them. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa.Cmwlth. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and the five part test articulated above. Id. In addition, §§143-168.C. & D.(2), (3) & (4) of the Ordinance articulate the Applicant's burden of proof and the standards to meet that burden as follows:

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of § 910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. § 10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public interest.

(3) Zoning Hearing Board considerations. In considering whether the allowance of a special exception or variance is contrary to the public interest, the Zoning Hearing Board shall consider whether the application, if granted, will:

(a) Substantially increase traffic congestion in the streets surrounding the subject site;

(b) Increase the risk of fire or panic or otherwise endanger the public

safety;

(c) Overcrowd the land or create undue concentration of population;

(d) Be suitable for the property in question so as to be consistent with the spirit and purpose of the provisions of this chapter;

(e) Intrude upon the adequacy of natural light and air to adjoining properties;

(f) Create extraordinary burdens on public, private or community water systems or upon ground waters or wells within the neighborhood;

(g) Overburden the public sanitary sewer system within the Township occasion environmental problems with on-site sanitary sewer installations;

(h) Place undue burdens upon the police, fire, ambulance or other emergency services provided throughout the neighborhood;

(i) Cause adverse affects to the appropriate use of adjacent properties in the neighborhood where the property is located;

(j) Cause risk or danger to the safety of persons or property by improper location or design of facilities for ingress and egress to and from the property in question; or

(k) Otherwise adversely affect the public health, safety, morals or general public welfare of the community.

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

§143-136.A of the Ordinance is quite specific regarding water softener sales/service when it states:

In the IP District, and in the Mixed-Use Overlay and Office Technology Campus Sectors, land, buildings or premises shall be used in accordance with the Schedule of Permitted Principal, Accessory and Conditional Uses and Uses by Special Exception as follows:

Water softener (sales/service) P (within 600 feet of GC District)

Accordingly, a water softener sales/service type business must be located within 600 feet of the General Commercial District ("GC"). In the case at bar, Applicant's Culligan water

softener business provides water conditioning products sales and service to residential and commercial customers. It primarily stores and then installs the equipment necessary to soften water as well as supplies the materials necessary for the equipment to be effective. In addition Applicant sells salt and bottled water to homes and businesses in the area. Unfortunately, the proposed new location is 1800-1900 feet from the GC district not 600 feet as required by the Ordinance. As a result, the Applicant has requested a variance from the dimensional requirements of §143-136.A.

The Ordinance does not articulate a rationale for the requirement that a water softener business be located within 600 feet of the GC district. Logic would suggest and Mr. Mrozinski confirmed that when enacted, the Ordinance was designed to group retail establishments in a suitable district rather than “blurring the line” by permitting retail sales within the IP district. This would foster a reasonable transition from the General Commercial District into the Industrial Park District. Mr. Webb testified that the primary activity from this location is dispatching field personnel to install, service and sell water softening equipment and products. Most service vehicles go home with the 11 field personnel limiting the number of vehicles stored there. Further, there are several similarly situated businesses with limited walk-in traffic already in the business park, namely, Comcast, Horizon, AVM Services, Mr. Rooter, Zoom Drain and Sewer Services. Accordingly, Strict adherence to the Ordinance due to the location of the Property in the IP district would make it impossible for the Applicant to use the Property for a type of use otherwise permitted by right, creating an unnecessary hardship for the Applicant. This hardship is not self-imposed but is rather the result of the location of the Property more than 600 feet from the General Commercial District, thus severely limiting the use of the Property.

The proposed use of the Property is entirely consistent with the uses of the surrounding

properties. Many of the surrounding businesses have limited walk-in business and focus on services to homes and businesses, similar to Applicant's proposed use.

The Applicant has also testified that its business will be less obtrusive to the area than the current business located on the property, and that most of the staff that will be located on the Property are field personnel involved in installation, sales, service, and delivery. Only a total of 16 staff members would be located at this location, and the retail component of this business where customers would come to the Property is extremely limited.

A variance from the requirement of Section 143-136.A to locate the water softening sales/service business within 600 feet from the General Commercial District is the minimum variance that will afford the required relief.

Finally, an analysis of the Applicant's business location §§143-168.C. & D.(2), (3) & (4) of the Ordinance

Accordingly, the Board finds that variance from the dimensional requirements of Section 143-136.A of the Lower Providence Township Zoning Ordinance is appropriate.

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 use of the Property will also not alter the essential character of the neighborhood in which the Property is located, and neighbors have no opposition to its construction.

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 143-136.A of the Lower Providence Township Zoning Ordinance to permit the location of the Applicant's water softening sales and service business inside the business park is granted.

Dated: May 9, 2017

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

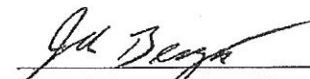

Kathie A. Eskie, Chairwoman


Gail Hager, Vice Chairwoman


Robert G. Hardt


Joseph Pucci


Patricia Alzamora


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.