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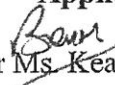
JAMES H. FREEMAN
OF COUNSEL
JILL K. ANDERSON, J.D.

September 8, 2017

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7015 3430 0000 4433 5662**

Bernadette A. Kearney, Esquire
Hamburg Rubin Mullin Maxwell & Lupin
375 Morris Road
Lansdale, PA 19446

**RE: Lower Providence Township Zoning Hearing Board
Application of 2603 Egypt Road; Application No. Z-12-07**

Dear  Ms. Kearney:

In accordance with your client's Application for a variance from Lower Providence Zoning Ordinance Section 143-141.A, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board that your client's application has been granted with the conditions set forth under 3 a. and b. of the Decision.

Should you have any questions, please contact me. Good luck to your client on its project.

Yours very truly,


Keith B. McLennan

KBM/jds

Enclosure

pc: Kathie A. Eskie, Chairwoman (via e-mail)
Gail Hager, Vice Chairwoman (via e-mail)
Robert G. Hardt (via e-mail)
Joseph Pucci (via e-mail)
Patricia Alzamora (via e-mail)
Joseph Bergquist (via e-mail)
Michael Mrozinski, Community Development Director (via e-mail)

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-12-07	: HEARING DATE: July 25, 2017
		:
APPLICATION OF:		:
Egypt 2603, LLC		:
		:
PROPERTY:		:
2603 Egypt Road		:
Lower Providence Township		:
Audubon, PA 19403		:
Parcel No. 43-00-03538-00-1		:

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

On July 6, 2017 the applicant, Egypt 2603, LLC (hereinafter "Applicant") filed an application requesting a variance from the sign size requirements of Section 143-141.A of the Lower Providence Township Zoning Ordinance (the "Ordinance") in connection with the construction and placement of a free standing sign at 2603 Egypt Road (formerly the Royal Bank building). The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the "Board") on July 25, 2017 at the Lower Providence Township Building. Chairwoman, Kathy Eskie, Vice Chair Gail Hager and members Robert Hardt, Patricia Alzamora and Joseph Bergquist were present. Also present were Michael Mrozinski, the Director of Community Development responsible for Zoning/Code Enforcement and Keith B. McLennan, Esquire, the Solicitor. As a result of a scheduling snafu the court reporter was not present, however the Applicant agreed to rely upon the video of the hearing as the official record and waived any requirement that the hearing be recorded by a stenographer.

FINDINGS OF FACT

1. The Applicant is Egypt 2603, LLC.
2. The Applicant is the owner of the subject property, parcel number 43-00-03538-00-1, located at 2603 Egypt Road Audubon, PA 19403, near the intersection of Egypt Road and commonly referred to as the Royal Bank building (hereinafter the "Property").
3. The applicable zoning district is GC - General Commercial.
4. The lot size is 14,430 square feet.
5. The Property is presently vacant.
6. The Property is to be used as the Employment Center for Shannondell at Valley Forge, a retirement living community located just west of the Property.
7. The Applicant seeks to obtain a variance from §143-141.A of the Ordinance to permit a free-standing double-sided digital monument sign that exceeds the permitted size requirements by 6.667 square feet.
8. The Applicant will otherwise comply with the Ordinance regarding the height, message color and rotation.
9. The Property was the subject of a previous zoning variance application at Z-97-04 to permit the installation of 2 wall signs on the building at the Property with dimensions that differed from the Ordinance.
10. The variance previously requested to permit the installation of 2 wall signs on the building was granted by the Board on April 22, 1997 conditioned upon the then applicant, Royal Bank of Pennsylvania, Inc. ("Royal Bank"), executing an irrevocable waiver of its right to erect a free-standing sign on the building at the Property.
11. The Applicant has abandoned its right to 2 wall signs on the building at the

Property and requests that Royal Bank's previous waiver of a free-standing sign on the building be likewise abandoned or revoked.

12. The proposed sign is necessary to allow people to safely locate the Property from the street.

13. P. Bradford Macy, PLS appeared as agent and witness on behalf of the Applicant.

14. The Applicant was represented by Bernadette A. Kearney, Esquire from Hamburg, Rubin, Mullin, Maxwell & Lupin 375 Morris Road Lansdale, PA 19446.

There was no adverse public comment regarding this application.

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

16. The following exhibits were presented:

A-1 Application filed at Z 17-11.

A-2 Deed to the Property dated March 29, 2017.

A-3 Letter dated July 25, 2017 authorizing Brad Macy to act on behalf of the Applicant at the hearing.

A-4 Curriculum Vitae for P. Bradford Macy.

A-5 Mock-up of the proposed digital sign.

A-6 Project summary depicting the overhead view of the proposed location of the signs and landscape enhancements.

A-7 Variance plan for Shannodell Employment Center by Audubon Land Development dated June 22, 2017.

A-8 Aerial Variance plan for Shannodell Employment Center by Audubon Land Development dated June 22, 2017.

A-9 Zoning decision to Royal Bank of Pennsylvania, Inc. dated April 22, 1997.

A-10 3 page building sign mock-up.

B-1 Advertisement.

B-2 Proof of publication.

DISCUSSION

I. Statement of the Case.

The Applicant has requested a variance from the sign limitations of Section 143-141.A. of the Lower Providence Township Zoning Ordinance entitled "Signs permitted in nonresidential districts." Section 143-141.A. states:

A. Free-standing signs. Each property shall be permitted one freestanding sign per street frontage, not to exceed 35 square feet in size and 10 feet in height.

The request seeks relief as to the dimensional requirements of the Ordinance to permit a double-sided digital monument sign 41.667 square feet in size. Applicant likewise seeks to abandon the variance granted Royal Bank at docket Z-97-04 to install 2 signs on the building¹ at the Property and vacate the Royal Bank's waiver of the right to install a monument sign on the Property.

II. Variance Legal Standard.

Pursuant to the Municipalities Planning Code and the Ordinance at §143-168.A. the following must be established by the Applicant in order for the Board to grant the requested variance:

(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

¹ The Ordinance at subsection 141.B. permits one street frontage wall sign per property. Applicant is not seeking abandonment of its right to one such sign.

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. **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.

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.* Therefore, 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).

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).

IV. Facts Applied to the Legal Standard.

In the instant case, the location of the Property on the heavily traveled Egypt Road near the intersection with Trooper Road supports 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 smaller the sign, the harder it is to read. The harder it is to read causes motorists to act recklessly in an effort to read the sign. Thus a larger sign, particularly on a busy street where a motorist can easily view the sign and thus the location of the Employment Center and its job opportunities promotes safety. Further, the Applicant has agreed to the placement of the monument sign such that it will not impact the sight lines for the safe ingress and egress from the Property.

Thus, according to the *Achem Chemical Products* case the Board has the precedent necessary to grant the requested variance to allow the sign to exceed the 35 square foot size requirement. What spatially is a nominal 6.667 square feet increase in size significantly increases visibility and thus promotes safety.

Further, as the Property is surrounded by other similar businesses, 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 required height requirements. 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.

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.

DECISION

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

1. The waiver of the right to install a monument sign on the property by Royal Bank of Pennsylvania, Inc. as required by the variance granted by the Board on April 22, 1997 at docket number Z-97-04 is vacated;
2. The variance at that same docket number to permit two (2) wall signs is also vacated as abandoned;
3. The application for a dimensional variance from Section 143-141.A of the Lower Providence Township Zoning Ordinance is granted subject to the following conditions:
 - a. The proposed double-sided digital monument sign is to be built according to the height requirements of the ordinance and the specifications and limitations of the Application and exhibits presented to the Board including, without limitation enhanced landscaping; and
 - b. Compliance with other Township ordinances, particularly regarding the use of digital signs and preservation of unimpeded sight lines.²

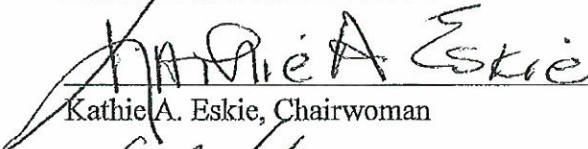
Dated: September 8, 2017

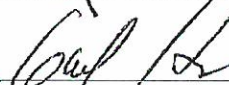
² Applicant testified that it would provide the Township use of the digital sign to provide public service announcements such as Amber alerts, weather or other emergencies and promote special events. The Board encourages this public service.

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.