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June 4, 2018

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7015 3010 0002 1910 8497**

Mr. David Crist
14 Lee Road
Audubon, PA 19403

**RE: St. Andrew's Evangelical Lutheran Church
Notice of Decision of the Lower Providence Township Zoning
Hearing Board
Application Z-18-03**

Dear Mr. Crist:

Enclosed please find a Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on April 26, 2018. Pursuant to the decision of the Zoning Hearing Board, your application for a variance from Section 143-141.1E.(2), (3) and (4) of the Lower Providence Zoning Ordinance was approved.

Should you have any questions, please contact me. Best of luck with your project.

Very truly yours,



Keith B. McLennan

KBM/jds
Enclosure

pc: Kathie A. Eskie, Chairwoman
Gail Hager, Vice Chairwoman
Joseph Pucci
Patricia Alzamora
Geroge J. Ozorowski, Esquire
Robert G. Hardt

Jill Zimmerman, Esquire
Michael Mrozinski
(Via e-mail with enclosure)

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-18-03 : HEARING DATE: April 26, 2018

APPLICATION OF:

**St. Andrews Evangelical
Lutheran Church of Audubon,
Pennsylvania**

PROPERTY:

**2725 Egypt Road
Lower Providence Township
Audubon, PA 19403
Parcel No. 43-00-03610-001**

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

On March 8, 2018, David Crist, President of the church council of the St. Andrews Evangelical Lutheran Church of Audubon, Pennsylvania¹ filed an application requesting a variance from the sign area, height and illumination requirements of Section 143-141.1.E. of the Lower Providence Township Zoning Ordinance (the “Ordinance”) in connection with construction and placement of a free standing sign at 2725 Egypt Road in Audubon (the “Application”). At the hearing held on April 26, 2018 Mr. Crist asserted that his intention when filing the Application was to do so on behalf of the St. Andrews Evangelical Lutheran Church of Audubon, Pennsylvania. Accordingly, Mr. Crist agreed to amend his application to convert the applicant to the St. Andrews Evangelical Lutheran Church of Audubon, Pennsylvania (hereinafter “Applicant”). The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on April 26, 2018 at the Lower Providence Township Building. Chairwoman, Kathy Eskie, Vice Chair Gail

¹ St. Andrews Evangelical Church of Audubon, Pennsylvania is the entity name registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations.

Hager and members Joseph Pucci, Patricia Alzamora and alternates Robert Hardt and Jill Zimmerman were present. 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. Although the Application was filed in the name of David Crist, President of the St. Andrews Evangelical Lutheran Church of Audubon, Pennsylvania Church Council, it was agreed by Mr. Crist that the real party in interest was the St. Andrews Evangelical Lutheran Church of Audubon, Pennsylvania and the Application was amended to reflect same.

2. The subject property is located at 2725 Egypt Road Audubon, PA 19403, has a parcel number 43-00-03610-001 and was acquired by the Applicant on February 4, 1960 (hereinafter the "Property").

3. The applicable zoning district is R2 - residential.

4. The lot size is 4.7035 Acres.

5. The Property is comprised of a church and nursery school with appurtenant parking lot and grounds.

6. The Property shall continue to be used as a church and nursery school.

7. The Property is bordered by Audubon Elementary School to the west, the Shannondell Golf Club to the south, residential property owned by the Applicant to the east and residences to the north that are screened from view of the sign at issue.

8. The Applicant seeks to obtain a variance from §143-141.1.E.2. of the Ordinance to permit a free-standing double-sided digital monument sign that exceeds the permitted area requirements of thirty-two (32) square feet by four (4) square feet per sign face.

9. The Applicant seeks to obtain a variance from §143-141.1.E.3. of the Ordinance to permit a free-standing double-sided digital monument sign that exceeds the permitted six foot (6') height requirement by four and one half feet (4'6").

10. The Applicant seeks to obtain a variance from §143-141.1.E.4. of the Ordinance to permit a free-standing double-sided digital monument sign to be illuminated.

11. The Property was the subject of a previous zoning variance application at Z-93-08 which permitted the installation of a double-sided monument sign with sign faces of twenty four (24) square feet.

12. The proposed variances are necessary to allow letter sizes and illumination for the motoring public to safely read the messages promoted by the Church from two hundred feet (200') away.

13. The Applicant will locate its new sign closer to the entrance to the Church parking lot to facilitate the ease of the public to both view the sign and locate the entrance thus making it safer for the motoring public, the residents of the area and Church members and guests.

14. Paul Crist, President of the Applicant's Church Council and Steven Clark of KC Sign & Awnings, Aston, Pennsylvania appeared as witnesses on behalf of the Applicant.

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

16. The following exhibits were presented:

A-1 Application filed at Z 18-03 inclusive of exhibits identified as Attachments:

9.2 Depicting the oversized, illuminated sign for Chadwick's Restaurant & Bar and The Club at Shannondell;

9.3 Typical Messages (3 pages);

9.4 Letter Visibility Chart;

9.5 Depicting a view of the existing sign;

13.1 St. Andrew's Lutheran Church Area Plan;

13.2 Aerial photograph of the Property from Google;

17.1 Reasons to Approve.

A-2 Sign Plan from KC Sign & Awnings dated January 8, 2018.

B-1 Advertisement.

B-2 Proof of publication.

DISCUSSION

I. Statement of the Case.

The Applicant has requested a variance from the sign area, height and illumination requirements of Section 143-141.1.E. of the newly adopted Lower Providence Township Sign Ordinance. Section 143-141.1. states:

§ 143-141.1 **Signs in R-2, R-3, R-4, R-5 Residential Districts and Mobile Home Park District.** In addition to the exempt signs described in § **143-140.1**, the following numbers and types of signs may be erected in the R-2, R-3, R-4, R-5, and MHP Districts, subject to the conditions specified here and elsewhere within this article.

E. Freestanding signs for nonresidential uses shall be permitted subject to the following regulations:

- (2) Area. Each sign shall have a maximum area of 32 square feet per sign face.
- (3) Height. Signs shall have a maximum height of six feet.
- (4) Illumination. These signs shall be nonilluminated.

The Applicant seeks relief as to the dimensional requirements of the Ordinance to permit:

- (1) A double-sided, digital monument sign 36 square feet in size per sign face;
- (2) Height of the aforesaid digital monument sign at ten feet, six inches (10'6");

(3) Illumination of the double-sided, digital monument sign.

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 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 acquisition of the Property by the Applicant on February 4, 1960 and its location on the heavily traveled Egypt Road near the intersection with Crawford Road belies its R-2 residential district designation. Not only is the area where the sign is proposed (and the existing Church two-sided monument sign presently located) primarily a commercial area, there is a much larger illuminated, digital two-sided monument sign located across the street from the Church promoting Chadwick's Restaurant at the Club at Shannondell, a Golf Club.

A. The Hardship

Measuring the height of the sign in accordance with Section 143-140.2.D.1 of the Ordinance demonstrates the unusual Property grade that is at least three feet (3') above that of Egypt Road. Such unusual elevation, in effect takes what would be a sign that would otherwise be approximately seven feet, six inches (7'6") tall and makes it ten feet, six inches (10'6") tall.

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 with letters of a size and illumination necessary for a motorist to easily view the sign two hundred feet (200') away makes not only pragmatic but logical sense. What is more, the Applicant will place the illuminated digital monument sign closer to the entrance to the Church to further promote the location of the Church and visibility of its community messages promotes safety while preserving the sight lines for the safe ingress and egress from the Property. The existing double-sided monument sign installed in 1993 has failed to keep pace with the advent of digital, illuminated web- controlled signs that provide valuable information to the motoring public with greater safety.

Thus, there exist exceptional topographical and other physical conditions peculiar to the

Property that make compliance with the Ordinance impossible. The Applicant is precluded from upgrading or replacing its two-sided monument sign that would provide it the information sharing necessary to a Church while improving the safety of the motoring public and, in turn, the residents of the Township causing it an unnecessary hardship. Finally, this hardship was not created by the Applicant who has, to date, conformed to the sign requirements of the previous variance. Rather, the hardship is a result of the location and unique nature of the Property. As a result, Applicant, due to no fault of its own, is denied reasonable use of the Property for its intended purpose.

B. The Impact of a Variance

Further, as the Property is bordered by a school on one side with a double-sided monument sign and a golf club with an illuminated oversized double-sided monument sign, the character of the neighborhood will not be altered by the grant of this variance. The proposed sign represents the minimum variance possible to promote safety of the motoring public, those who participate in Church activities and the Township's residents, the primary purpose of the Ordinance. 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. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

The *Achem Chemical Products* case provides the Board precedent necessary to grant the requested variance to allow the sign to exceed the 32 square foot size requirement, permit illumination and validate sign height of 10'6". What spatially amounts to a nominal 4 square feet increase in size, 3' in height and enhanced visibility through illumination are essentially de

minimus variances from the Ordinance significantly increases visibility and thus promotes safety. Thus, according to *Hertzberg* the Applicant has carried its lesser burden of proof for a *dimensional variance*.

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 application for a dimensional variance from Section 143-141.1E.(2) of the Lower Providence Township Zoning Ordinance to permit a free standing, two-sided digital

monument sign with thirty-six (36) square feet sign faces is GRANTED.

2. The application for a dimensional variance from Section 143-141.1E.(3) of the Lower Providence Township Zoning Ordinance to permit a free standing, two-sided digital monument sign not to exceed ten feet, six inches (10'6") in height is GRANTED.

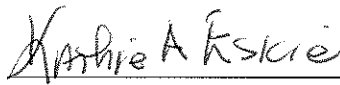
3. The application for a dimensional variance from Section 143-141.1E.(4) of the Lower Providence Township Zoning Ordinance to permit a free standing, two-sided digital, monument sign to be illuminated is GRANTED.

Dated: June 1, 2018

ORDER

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

LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



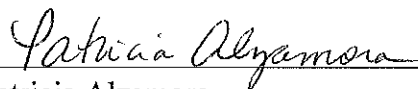
Kathie A. Eskie, Chairwoman



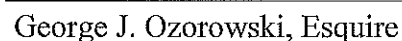
Gail Hager, Vice Chairwoman



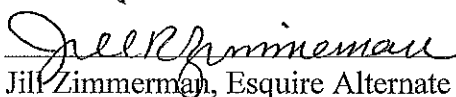
Joseph Pucci



Patricia Alzamora



George J. Ozorowski, Esquire



Jill Zimmerman, Esquire Alternate



Robert G. Hardt, 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.