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June 7, 2018

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
No. 7015 3010 0002 1910 8510**

Matthew J. McHugh, Esquire  
Obermayer Rebmann Maxwell & Hippel, LLP  
100 Four Falls Corporate Center, Suite 313  
1001 Conshohocken State Road  
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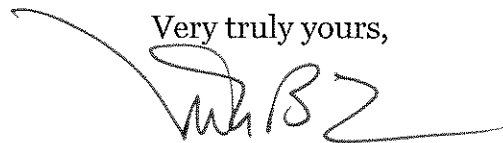
**RE: LIDL US Operations, LLC  
Notice of Decision of the Lower Providence Township Zoning  
Hearing Board  
Application Z-18-05**

Dear Mr. McHugh:

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, the application of LIDL US Operations, LLC for a variance from Sections 143-264.B, 143-264.F, 143-264.C, 143-140.3.F.3.a., 143-141.3.E.2 of the Lower Providence Zoning Ordinance was approved. As noted in the Decision, the variances are conditioned upon Applicant's resolution of the Township's Enforcement Notice dated March 28, 2018 should those violations noted therein remain extant immediately after Applicant closes on the purchase of the Property acquiring title thereto.

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

Very truly yours,



Keith B. McLennan

June 7, 2018

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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**

<b>APPLICATION NO.</b>	<b>Z-18-05</b>	<b>: HEARING DATE: April 26, 2018</b>
		:
		:
<b>APPLICATION OF:</b>		:
<b>LIDL US Operations, LLC</b>		:
		:
		:
<b>PROPERTY:</b>		:
<b>2601 – 2619 Ridge Pike</b>		:
<b>Lower Providence Township</b>		:
<b>Norristown, PA 19403</b>		:
<b>Parcel Nos. 43-00-11875-007</b>		:
<b>43-00-11872-001</b>		:
<b>43-00-11866-007</b>		:
<b>43-00-11869-004</b>		:

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

On April 3, 2018 LIDL US Operations, LLC filed an application requesting a series of variances from the sign setback, area and height requirements of Sections 143-140, 143-141 and 143-264 respectively of the Lower Providence Township Zoning Ordinance (the “Ordinance”) in connection with construction and placement of two (2) free standing monument signs and two (2) wall mounted signs on a proposed LIDL store at 2601 – 2619 Ridge Pike, Norristown, PA 19403 (the “Application”). 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 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. The subject property is located at 2601 – 2619 Ridge Pike, Lower Providence Township, Norristown, PA 19403 and comprise parcel numbers 43-00-11875-007; 43-00-11872-001; 43-00-11866-007 and 43-00-11869-004 (hereinafter the “Property”).
2. LIDL US Operations, LLC (“Applicant”) acquired an equitable interest in the Property by way of an agreement of sale executed on August 30, 2016.
3. The applicable zoning district is the Ridge Pike Business/R2 – district (“RPBD”).
4. The two (2) lots subject to purchase by the Applicant are 3.75 and 1.27 acres respectively totaling 5.02 Acres.
5. The Property is the former Norristown Ford car dealership which has been vacant for many years.
6. Applicant intends to construct and operate a LIDL thirty six thousand (36,000) square foot<sup>1</sup> supermarket on the Property (the “Store”).
7. The Applicant seeks a variance from §143-264.B of the Ordinance to permit two (2) free-standing double-sided monument signs that exceed the permitted ten-foot (10’) height requirements at the proposed entry and exit points of the Store, one along Ridge Pike and the other along Trooper Road.
8. The Applicant seeks a variance from §143-264.C of the Ordinance to permit two (2) wall mounted signs to be installed on the Store that exceeds the permitted fifteen foot (15’) height requirement by nine feet (9’).<sup>2</sup>
9. The Applicant seeks a variance from §143-264.F of the Ordinance to permit each

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<sup>1</sup> The testimony was that this was an approximate size.

<sup>2</sup> At the hearing the Applicant sought an interpretation that the height of the wall mounted signs as proposed complied with the maximum height requirements of §143-264.C. Failing to receive that favorable interpretation Applicant proceeded with its variance request.

side of a two-sided freestanding sign to exceed the fifty (50) square foot per side area requirement by 17.37 square feet.

10. The Applicant seeks to obtain a variance from §143-140.3.F.(3).(a) of the Ordinance to permit a freestanding monument sign to be set back less than five feet (5') from any right-of-way.<sup>3</sup>

11. Applicant seeks to obtain a variance from §143-141.3.E.(2) of the Ordinance to permit wall signs to exceed the area limitation of thirty two (32) square feet by 35.38 square feet.

12. The title owner of the Property has been served with an Enforcement Notice from the Township dated March 28, 2018 for a series of violations of the Ordinance related to the presence of a portable vehicular sign on the Property as more specifically set forth in the Notice.

13. Lauren Vickers, Development Manager for the Applicant and Cornelius Brown, professional engineer with Bohler Engineering appeared as witnesses on behalf of the Applicant.

14. Don Thomas and Carl Herman, 25 Henry Road testified in support of the Application.

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

16. The following exhibits were presented:

A-1 - Cornelius Brown, PE Curriculum Vitae

A-2 - Zoning Plan from Bohler Engineering dated April, 2018

A-3 - Store Rendering with one wall mounted sign displayed

A-4 - Sign Rendering with both wall mounted signs displayed

A-5 - AnchorSign rendering of the wall mounted and monument signs

A-6 - AnchorSign Monument Sign Detail

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<sup>3</sup> Applicant initially requested that the Board interpret its proposed placement of the Ridge Pike freestanding monument sign 2.1 feet from the ultimate right-of-way as compliant with §143-140.3.F.(3).(a). The Board declined such interpretation resulting in Applicant seeking alternative relief with its variance request.

A-7 - AnchorSign Wall Sign Detail

A-8 - Application filed at Z-18-05 inclusive of attachments

B-1 Advertisement

B-2 Proof of publication

## **DISCUSSION**

### **I. Statement of the Case.**

The Applicant has requested a variance from the height and sign area requirements of Sections 143-141 and 143-264 of the Lower Providence Township Zoning Ordinance and a determination that the proposed location of the freestanding sign along Ridge Pike complies with the five foot (5') setback requirements of §143-140.3. Alternatively, Applicant seeks a variance from 143-140.3.F.3.a. to permit one freestanding sign to be located within five (5) feet of the ultimate right-of-way along Ridge Pike. The aforesaid Sections of the Ordinance state in pertinent part:

#### **§ 143-140.3 Regulations by sign type: on-premises signs.**

F. Freestanding signs.

(3) Sign placement.

(a) All freestanding signs shall be set back five feet from the right-of-way, except for government/regulatory signs.

**§143-141.3 Signs in General Commercial (GC), Highway Commercial (HC), Professional and Business Office (PBO), Limited Industrial (LI), Industrial (I), Industrial Park (IP), Mixed-Use (MU), Ridge Pike Business (RPB) and Ridge Pike West (RPW) Districts.**

Except as noted below, the following numbers and types of signs may be erected in the GC, HC, PBO, LI, I, IP, MU, RPB, and RPW Districts, subject to the conditions specified here and elsewhere within this article.

E. Wall 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.

**§143-264 Special sign regulations for all uses.**

The following standards shall apply in addition to the regulations set forth in Article XIX, Signs, of the Lower Providence Township Zoning Code, as amended. Where the regulations of Article XIX are in conflict with the standards of this section, this section shall control.

C. The maximum height of wall-mounted signs shall be 15 feet. No sign shall extend above the eave line of a roof.

F. Signs shall not exceed 50 square feet per side.

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

- Two (2) free-standing double-sided monument signs that exceed the permitted ten-foot (10') height requirements at the proposed entry and exit points of the Store, one along Ridge Pike and the other along Trooper Road;
- Each side of a two-sided freestanding signs to exceed the fifty (50) square foot per side area requirement by 17.37 square feet;
- One (1) freestanding monument sign to be set back less than five feet (5') from any right-of-way;
- Each of the two (2) wall signs to exceed the area limitation of thirty two (32) square feet by 35.38 square feet.

Under §143-168.D.(4) of the Ordinance the Applicant bears the burden of proof of persuading the Board of the necessity of the requested variances and to satisfy the legal standards articulated below.

## **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).

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

In the instant case, the Property is located at the intersection of Ridge Pike and Trooper Road, one of the Township’s key commercial interchanges. Applicant is the United States division of a German enterprise engaged in the business of owning and operating supermarkets

throughout Europe. Applicant has recently introduced its “one stop shop” European supermarket concept to the United States and seeks to construct a supermarket on ground that previously served as a car dealership but has been vacant and unproductive for many years and described by Mr. Thomas as an “eye sore.” Applicant has developed the brand name “LIDL” such that it is ubiquitous throughout Europe. In order to establish its brand and unique supermarket concept in the United States, Applicant has established a standard design and format for its proposed stores. A key attribute of that design and its brand is its LIDL logo projected by its bright yellow, blue and red signs strategically placed on its stores. However, Applicant’s standard design signage is either too big for the Township sign ordinance or too high off the ground.

A. The Hardship.

Applicant asserts that its reasons for the sign size and height requirements are primarily safety, visibility, store identification and branding. Due to the busy nature of the Ridge Pike and Trooper Road location larger and higher signs promote safety through visibility and ease of identification of the Store for passing or seeking motorists. LIDL is new to the United States and thus unfamiliar to most of our citizenry. As a new supermarket, occasion for traffic disruption from passing or seeking motorists is a real concern. Denial of the Applicant’s requests not only creates a hardship for the Applicant to be quickly identified but also fosters genuine safety concerns for the Township. The importance of safety in the law of sign regulation is well settled. As noted by the United States Supreme Court in Cusack Company v. Chicago, 242 U.S. 526, 37 S.Ct. 190; St. Louis Poster Advertising Co. v. St. Louis, 249 U.S. 269, 39 S.Ct. 274 a municipality has the power to regulate signs provided such regulation is not unreasonable, arbitrary or discriminatory and bears a reasonable relationship to the *safety, morals, health or general welfare of the community*.

Placement of two (2) wall mounted signs on the building with sixty-seven and thirty-eight hundredths (67.38) square feet of area rather than thirty-two (32) square feet required by the Ordinance promotes that visibility. Similarly elevating those wall mounted signs to twenty-four (24) feet rather than the maximum height required by the Ordinance of fifteen (15) feet alerts everyone to the whereabouts of the Store. Finally, the placement of freestanding monument signs at or near entrances with area seventeen and thirty seven hundredths (17.37) square feet greater than that permitted by the Ordinance, nineteen (19) feet high along Ridge Pike and fourteen (14) feet along Trooper Road rather than the ten (10) feet required by the Ordinance reasonably addresses the traffic, visibility and branding issues. In fact, Mr. Herman testified that in his travels in the unfamiliar environs of South Carolina, the reason he was able to find a LIDL was due to the height and size of its signs.

Reliance upon signage consistent with the Ordinance in this case impairs 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 to locate the property. Thus, a larger sign, particularly at a busy intersection for a motorist to easily view the sign not only makes pragmatic but logical sense. What is more, the Applicant will place the illuminated monument signs close to the entrances to the Store promoting safe ingress and safety while preserving the sight lines for the safe egress from the Property.

According to *Hertzberg* a request for a dimensional variance invokes a lesser standard to demonstrate unnecessary hardship. Multiple additional factors are to be considered when evaluating the hardship, including:

- Economic detriment to the applicant if the variance is denied;
- Financial hardship created by any work necessary to bring the building into strict

compliance with the zoning requirements; and

- Characteristics of the surrounding neighborhood.

Although the lesser degree of hardship is difficult to define with precision, the cases after *Hertzberg* provide a zoning board broader discretion in resolving the issue provided the board considers the proper factors. With *Hertzberg*, financial hardship and economic detriment can now be considered. The key question is whether those two factors flow from the dimensional requirement involved.

As noted above and in the Applicant's presentation, LIDL is new to the United States and thus not well known. It has developed a brand, sign and store design that has worked elsewhere to promote safe access to its stores while promoting its brand. Denial of the variances at issue will have a significant impact upon visibility, branding and ultimately business at the Store. That of course means reduced profitability. There is no dispute that such reduced profitability flows from the signage dimensional requirements.

Finally, the last factor to consider in any dimensional variance case under *Hertzberg* is whether there is injury to the public interest. Injury to the public interest overrides other factors such as financial hardship in the dimensional variance analysis. If proved, such injury requires rejection of a dimensional variance application. No such injury was proven in the case at bar, in fact, proof was provided by not only the Applicant but also neighbors, that the oversized signs enhance visibility, access and thus public safety.

Thus, there exist exceptional topographical, economic, financial and other conditions unique to the Property that make compliance with the Ordinance difficult if not impossible. The undersized signage specified by the Ordinance placed on a thirty six thousand (36,000) square

foot building denies the public the visibility it undoubtedly will seek when looking for the LIDL supermarket. Signs that comply with the Ordinance will make it harder for Township residents and other consumers to learn about LIDL and locate its Store thus undercutting Applicant's brand and business. The proposed larger and higher signs solve that problem while improving the safety of the motoring public and, in turn, the residents of the Township. Finally, this hardship was not created by the Applicant who is merely seeking to promote safety through the enhancement of safe identification and access while also promoting its brand. 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. Impact of the Variances

A primary purpose of the Ordinance generally is to promote public safety. §143-3 of the Ordinance provides:

§143-3 **Purpose.** This chapter is enacted for the purpose of promoting the health, safety and general welfare of the Township, is in accordance with a Comprehensive Plan and is designed to lessen congestion in the streets, roads and highways and *to secure safety* from fire, panic and other dangerous concentration of population; *to facilitate the adequate provision of transportation*, water, sewerage, schools, parks and other public requirements and to encourage the most appropriate use of land throughout the Township. (Italics supplied)

As noted above, the Property is primarily located in the Ridge Pike Business District at perhaps one of the most heavily used intersections. A Burger King Fast Food restaurant is on one corner, Citadel bank on another a proposed Dunkin' Donuts on yet another with the final corner previously supporting a Sunoco gas station and convenience store. Across the street from the Property is a car dealership with at least one illuminated large monument and two (2) wall signs. Needless to say, the character of the neighborhood will not be altered by the grant of these variances. The proposed signs represent the minimum variance possible to promote visibility and

identification of the Store and its entrances. As a result, the safety of the motoring public and thus the Township's residents, the primary purpose of the Ordinance, is enhanced.

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.

Finally, the 5<sup>th</sup> part of the variance legal standard requires a determination by the Board of whether the proposed variances represent the minimum variance that will afford relief and represents the least modification possible of the regulation at issue. Although Applicant's sign area and height requests are ambitious,<sup>4</sup> Applicant's arguments regarding visibility, ease of access and egress, safety, branding and financial and economic hardship to justify the signs of the size and height are compelling. LIDL has expended significant resources developing a certain look, feel and trade dress for its stores, brand and signs. It contends that the design of the signs were the result of those efforts and are only effective to advance its brand and provide easy access to the public at the sizes and heights proposed.

For example, the building height will be thirty-five (35) feet high. Section 143-264.C. of the Ordinance restricts the height of wall mounted signs to fifteen (15) feet. A wall mounted sign fifteen (15) feet above ground would place the sign right in the lower level of the thirty-five (35) foot high building rather than the proposed twenty four (24) feet above the entrance way for the motoring public to easily see. The sign's visibility would therefore be impaired.<sup>5</sup>

Further, §143-264.B. of the Ordinance encourages the use of ground monument signs in

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<sup>4</sup> However, Applicant compromised on the height of the monument sign on Trooper Road reducing its request from 19 feet to 14 feet.

<sup>5</sup> The Board determined that Applicant's request for a determination that the proposed locations of the 2 wall mounted signs comply with the height requirements of Section 143-264. C was rejected thus requiring Applicant to proceed with a request for a variance from said Ordinance section. Nevertheless, the same safety, visibility, branding and related arguments apply to sign area.

the RPBD similar to those proposed by the Applicant.

Lastly, there was no contrary contention by witnesses or the Board that the variances requested were not the minimum necessary.

Thus, *Hertzberg* reduces the degree of hardship necessary to sustain a dimensional variance. In defiance of convention, financial hardship can support a dimensional variance. No longer must the Applicant demonstrate that because of the zoning rules the property has been rendered close to useless. The Applicant has carried its lesser burden of proof for the dimensional variances from the sign ordinance.

### **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 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 signs 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 is as follows:

1. The Application for a dimensional variance from §143-264.B of the Lower Providence Township Zoning Ordinance to permit a freestanding sign in excess of the permitted ten (10) feet in height in the RPBD/R2 district is unanimously GRANTED subject to the following conditions:

- a. The freestanding sign on Ridge Pike shall not exceed nineteen (19) feet in height; and
- b. The freestanding sign on Trooper Road shall not exceed fourteen (14) feet in height.

2. The Application for a dimensional variance from §143-264.F of the Lower Providence Township Zoning Ordinance to permit freestanding signs in excess of the permitted fifty (50) square feet in area per side in the RPBD/R2 district is GRANTED by a 4-1 vote with Chairwoman Eskie opposed, provided said area does not exceed sixty-seven and thirty-seven hundredths (67.37) square feet per side.

3. The Application for a dimensional variance from Section 143-264.C of the Lower Providence Township Zoning Ordinance to permit two wall mounted signs that exceed the permitted fifteen (15) feet in height in the RPBD/R2 district is unanimously GRANTED not to exceed twenty-four (24) feet in height.

4. The Application for a dimensional variance from Section 143-140.3.F.3.a. of the Lower Providence Township Zoning Ordinance to permit one freestanding sign to be located

within five (5) feet of the ultimate right-of-way along Ridge Pike in the RPBD/R2 district is unanimously GRANTED.<sup>6</sup>

5. The Application for a dimensional variance from §143-141.3.E.2. of the Lower Providence Township Zoning Ordinance to permit wall mounted signs in excess of the permitted thirty-two (32) square feet in area per side in the RPBD/R2 district is unanimously GRANTED provided said area does not exceed sixty-seven and thirty-eight hundredths (67.38) square feet per side.

6. The aforesaid variances are conditioned upon Applicant's resolution of the Township's Enforcement Notice dated March 28, 2018 should those violations noted therein remain extant immediately after Applicant closes on the purchase of the Property acquiring title thereto.

Dated: June 6, 2018

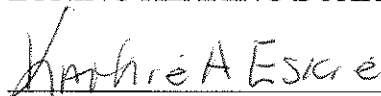
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<sup>6</sup> Applicant's request for a Board interpretation that the setback required for freestanding signs under this section is measured from the legal right-of-way rather than the ultimate right-of-way was rejected requiring consideration of a dimensional variance.

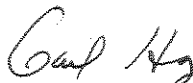
## **ORDER**

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

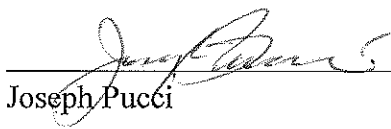
### LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD



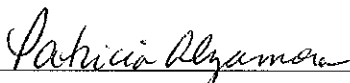
Kathie A. Eskie, Chairwoman



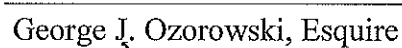
Gail Hager, Vice Chairwoman



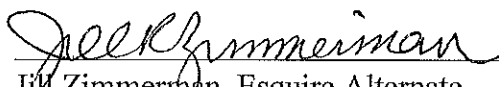
Joseph Pucci



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.