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March 8, 2019

**VIA FIRST CLASS CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7017 2680 0000 6601 7533**

Michael E. Furey, Esquire
1043 S. Park Avenue
Audubon, PA 19403

**RE: Lower Providence Township Zoning Hearing Board
Application of Dr. Matthew Berardi
Application No. Z-19-01**

Dear Mike:

In accordance with your application for variances from Lower Providence Zoning Ordinance §143-72 and §143-141(C) enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board.

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

Very truly yours,



Keith B. McLennan

KBM/mac

Enclosure

pc: Kathie A. Eskie, Chairwoman
George Ozorowski, Vice Chairman
Gail Hager
Joseph Pucci
Patricia Alzamora
Robert G. Hardt
Christopher Gerdes
Michael Mrozinski, Community Development Director

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO.	Z-19-01	: HEARING DATE: January 24, 2019
		:
		:
APPLICATION OF:		:
Dr. Matthew Berardi		:
		:
PROPERTY:		:
1501 Pawlings Road		:
Lower Providence Township		:
Phoenixville, PA 19460		:
Parcel No. 43-00-10573-00-4		:

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

On January 8, 2019, Matthew Berardi, D.C. filed an application requesting the following variances from:

1. Section 143-71.G of the Lower Providence Township Zoning Ordinance (the “Ordinance”) to permit four (4) parking spaces rather than eight (8) required for home occupation medical office per residential unit and four (4) to be in reserve under §143-72 instead of the two (2) otherwise permitted.
2. The sign area, illumination and wall mounted sign requirements of §143-141.1.C. of the Ordinance in connection with the construction and placement of an externally illuminated free standing twenty (20) square foot sign at 1501 Pawlings Road (the “Application”).

The Application was properly advertised and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on January 24, 2019 at the Lower Providence Township Building. Chairwoman, Kathy Eskie, Vice Chair George Ozorowski, and members Gail Hager Joseph Pucci, Patricia Alzamora and alternates Robert Hardt and Christopher Gerdes 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 applicant is Matthew Berardi, D.C. equitable owner of the property located at 1501 Pawlings Road who intends to purchase of the subject property for his residence and chiropractic office (hereinafter "Applicant").

2. The subject property is located at 1501 Pawlings Road, Phoenixville, Lower Providence Township, PA 19460, parcel number 43-00-10573-004 (hereinafter the "Property").

3. The applicable zoning district is R2 - residential.

4. The lot size is two plus (2+) acres.

5. The Property is comprised of a residential dwelling with appurtenant grounds.

6. The Property is intended to be used as Dr. Berardi's residence for him, his spouse, mother in law and children as well as his chiropractic office.

7. The Property is wooded to the west and north, open to the east where the Applicant intends to place parking but separated from the neighboring residential property to the east by trees with a paper road running through it.

8. The Applicant seeks to obtain a variance from §143-71.G. of the Ordinance that requires 10 parking spaces, two (2) for the single family dwelling not in the garage and seven (7) per doctor plus one (1) per employee for the medical office, to permit four (4) spaces (one of which shall be ADA compliant) and four (4) to be in reserve under §143-72 instead of the two (2) otherwise permitted.

9. The Applicant seeks to obtain a variance from §143-141.1.C of the Ordinance to permit an externally illuminated, free-standing, double-sided free-standing sign twenty (20) square feet per side where only a non-illuminated, two (2) square foot wall mounted sign is

permitted.

10. The proposed use as a chiropractic office and residence for the Applicant would allow for seeing no more than two (2) patients at any given time.

11. Accommodation of two (2) patients, the applicant and a staff person during business hours will not require ten (10) parking spaces.

12. In the unlikely event of overflow parking needs four (4) reserve parking spaces are warranted.

13. The proposed sign variance is necessary to allow letter sizes and illumination for the motoring public to safely locate the medical office.

14. Dr. Berardi is a licensed chiropractor who appeared as witnesses in support of the Application.

15. Applicant was represented by Michael E. Furey, Esq. of 1043 S. Park Ave. Audubon, PA 19403.

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

17. The following exhibits were presented:

A-1 Application filed at Z 19-01 filed on January 8, 2019;

A-2 Authorization of Alexandru Dobai dated January 8, 2019;

A-3 Deed to the Property;

A-4 Agreement of sale dated December 7, 2018 providing Applicant an equitable interest in the Property;

A-5 Board of Assessment information and tax map for the Property;

A-6 Copies of applicable Ordinance sections;

A-7 Aerial photograph of the Property;

A-8 Floor plan for the home on the Property;

A-9 Proposed sign rendering;

A-10 Photographs of two (2) signs mon Pawlings Road in the vicinity;

A-11 Photographs of the house located on the Property.

B-1 Certificate of Posting the Property with Notice of the Public Hearing on
January 11, 2019;

B-2 Notice of the Application and Public Hearing delivered to those property
owners located within 500 feet of the Property dated January 8, 2019.

B-3 Proof of publication.

DISCUSSION

I. Statement of the Case.

The Applicant seeks to obtain a variance from §143-71.G. of the Ordinance that requires 10 parking spaces, two (2) for the single family dwelling not in the garage and seven (7) per doctor plus one (1) per employee for the medical office, to permit four (4) spaces (one of which shall be ADA compliant) and four (4) to be in reserve under §143-72 instead of the two (2) otherwise permitted.

The rules regarding off-street parking standards state in pertinent part as follows:

§143-71 General regulations for off-street parking.

G. Required spaces for various uses.

[Amended 9-4-2014 by Ord. No. 617; 3-15-2018 by Ord. No. 654]

Use	Requirement (number of spaces)
Single-family dwelling	2 per dwelling unit (not including garage)

Medical/dental office

7 per doctor and/or technician, plus 1 per additional employee

§ 143-72 Reserve parking.

If the number of spaces required by §143-71 above is substantially larger than the number anticipated by the applicant, reserve parking may be used in accordance with the following criteria:

A. Up to 25% of the number of spaces required under this chapter may be placed in reserve.

Thus, the Applicant is required by ordinance to have ten (10) parking spaces overall, two (2) for residential use and eight (8) for his home-based occupation.

The Applicant also seeks to vary from the sign area, illumination and wall mounted sign requirements of §143-141.1.C. of the Ordinance. That section of the Ordinance states in pertinent part as follows:

§143 – 141.1 Signs in R2, R3, R4, R5 Residential Districts and Mobile Home

Park District

In addition to the exempt signs described in section §143 – 140.1, the following numbers and types of signs may be erected in the R2, R3, R4, R5, and MHP districts, subject to the conditions specified here and elsewhere within this Chapter.

C. Home Occupations.

1. One (1) wall or projecting sign shall be permitted, up to two (2) sq. ft. in area.

b. Illumination: These signs shall be non-illuminated.

Applicant seeks to place an externally illuminated free standing double-sided twenty (20) square foot per sign face sign at 1501 Pawlings Road.

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 variances:

(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). Use variances are primarily 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 moderately traveled Pawlings Road is in an area that belies its R-2 residential district designation. The area where the home-based occupation office and sign are proposed is mixed between residential and commercial uses. Just

north of the Property at 1420 and 1433 Pawlings Road there are two (2) auto and/or auto and truck repair facilities both of which have parking areas and signs similar to those proposed in this Application. Further, the residence and available ground are sufficient to accommodate the Applicant's proposed use as a chiropractic office.

A. The Hardship

Considering Applicant's pledged use of the Property as both his home and chiropractic office treating no more than two (2) patients at a time within normal business hours up until 8:00 PM the use is not offensive. Home-based occupations are recognized both in the Ordinance and from any afternoon drive through the Township. Moreover, the home sits approximately 73 feet back from Pawlings Road providing a space buffer between neighboring properties and the street.

1. The Parking Conundrum

Fortunately the Property is in excess of two (2) acres providing adequate area for the creation of parking spaces both for residential and chiropractic office use. In fact, a portion of the area designated for parking already has gravel for such use. The creation of a defined parking area to accommodate two (2) spaces for residential use¹ and four (4) spaces for chiropractic office use (one of which will be ADA compliant) while placing four (4) additional spaces in reserve under §143-72 neither encroaches on a neighbor's property nor is out of character with those businesses currently existing east on Pawlings Road. In fact, those businesses are not home-based and therefore perhaps more offensive than what is proposed by the Applicant. To require the Applicant to provide what amounts to 10 parking spaces to comply with the strict construction of the Ordinance forces the applicant to convert what is otherwise green space into

¹ Section 143-71.G clearly provides that for single-family dwellings two (2) parking spaces are required. Further, the residential spaces may not be those in any garage. Therefore Applicant must comply with that requirement in addition to those needed for his home based business.

extensive impervious surface area to accommodate 10 vehicles similar to the auto and truck repair facility not more than 2 doors east. As a result, the overall intention of the Ordinance to preserve not only the residential character of the neighborhood but also the green space and wooded nature of the lot is at odds with the requirements of §143–71.G. and §143–72 in this instance. Not only would strict compliance with the Ordinance force the applicant to expend significant sums to remove trees and pave over green space but it would constitute another “brick in the wall” converting this neighborhood from residential to commercial. The Applicant’s proposal is less offensive and more practical. Denial of it not only causes a hardship to the Applicant but arguably causes a hardship to the neighborhood.

2. The Sign

Similarly, in what amounts to a reverse hardship argument that the neighborhood would be subject to hardship if the Ordinance were strictly adhered to, not only is the proposed sign less offensive to those that already exist along Pawlings Road, it alerts the motoring public to the location of the chiropractic office more safely. Pawlings Road has a speed limit of 40 mph, significantly higher than more densely populated residential districts within the Township. Not only would a two (2) square foot wall sign be invisible to those seeking out the Applicant for his services but it would inevitably impede safety of the motoring public in that area. 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. Further, illumination is necessary until 8:00 PM in those winter months that we now exit. The applicant’s proposed sign is tastefully done, provides adequate sign area to identify the office and will be placed where it can be easily seen to provide patients sufficient time to access the Property safely. In an interesting twist, compliance with the Ordinance would do none of those things. As a result that would cause the Applicant to be unable to promote its

business and would deny both the residence and the motoring public safe access. Thus, a larger freestanding sign, particularly on a higher speed street with letters of a size and illumination necessary for a motorist to easily view for the safe ingress and egress from the Property makes not only pragmatic but logical sense.

Thus, there exist exceptional topographical, physical and practical conditions peculiar to the Property that make compliance with the Ordinance impossible. Without the variances, the Applicant is precluded from enjoying his home based occupation otherwise permitted under the Ordinance.

Finally, this hardship was not created by the Applicant. Rather, the hardship is a result of the location, unique nature of the Property and the neighborhood dynamics. 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 located in a neighborhood of large lots that include non-home-based auto and truck repair facilities with extensive paved impervious surfaces and existing double-sided freestanding illuminated signs, the character of the neighborhood will not be altered by the grant of this variance. In fact, the Applicant's proposed limitation on paved parking and allocation of four (4) spaces in reserve counter the trend established by the aforesaid existing businesses. The proposed sign and parking plan represent the minimum variance possible to promote the preservation of the residential character of the neighborhood while the sign promotes safety of the motoring public 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 from section 143 – 141.1.C to allow the sign to exceed the two (2) square foot size requirement, be freestanding and permit illumination. The enhanced visibility through size increase, freestanding placement and illumination are essentially de minimus variances from the Ordinance as it 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 and neighborhood.
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 parking and sign will not alter the essential character of the neighborhood in which the Property is located.
6. Section 143–71.G. of the Ordinance requires the Applicant to maintain two (2) parking spaces for the residence in addition to those that are required for his home based

occupation and those residential parking spaces may not be in the home's garage.

DECISION

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

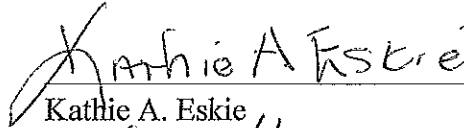
1. The Application for a variance from §143-71.G. of the Lower Providence Township Zoning Ordinance that requires eight (8) parking spaces for a home occupation medical office to permit four (4) spaces for chiropractic office use (one of which shall be ADA compliant) is Granted provided that the Applicant must also provide two (2) additional parking spaces acceptable to the Township for use by the residence that are not in the home's garage.
2. The Application for a variance from §143-72 of the Lower Providence Township Zoning Ordinance to allow Applicant to place four (4) additional parking spaces in reserve rather than the two (2) parking spaces permitted by the Ordinance is GRANTED also subject to the above condition that Applicant provided two (2) additional parking spaces for use by the residence.
3. The Application for a variance from Section 143 – 141.1.C of the Lower Providence Township Zoning Ordinance that permits one (1) non-illuminated wall or projecting sign no larger than two (2) square feet in area for a home based occupation is GRANTED to permit an externally illuminated, free standing, two-sided (4' x 5') sign with twenty (20) square feet per sign face is GRANTED subject to the conditions that said illumination be external, not internal and that it be turned off no later than 8 o'clock PM.

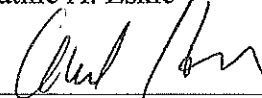
Dated: March 9, 2019


ORDER

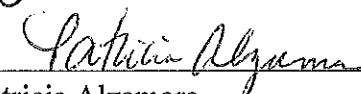
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

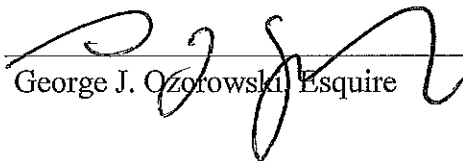
LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


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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.