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October 3, 2018

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7015 3010 0002 1910 8671**

M. Joseph Clement, Esquire
Wisler Pearlstine, LLP
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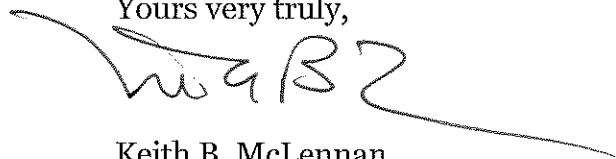
**RE: Streamlight Inc. on behalf of Ridgetop Associates
Notice of Decision of the Lower Providence Township Zoning
Hearing Board
Application Z-18-12**

Dear Mr. Clement:

Enclosed please find a Notice of Decision of the Lower Providence Township Zoning Hearing Board taken at the hearing held on August 23, 2018. Pursuant to the decision, your client's application for a dimensional variance from §143-141.3E.2. of the Lower Providence Township Zoning Ordinance is granted as per the enclosed opinion.

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

Yours very truly,



Keith B. McLennan

KBM/jds
Enclosure

pc: Kathie A. Eskie, Chairwoman
Gail Hager, Vice Chairwoman
Joseph Pucci
Patricia Alzamora
George 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-18-12 : HEARING DATE: August 23, 2018
:
:
APPLICATION OF: :
STREAMLIGHT INC. :
RIDGETOP ASSOCIATES, LP :
:
PROPERTY: :
30 Eagleville Road :
Lower Providence Township :
Eagleville, PA 19403 :
Parcel Nos. 43-00-11635-00-4 :

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

On August 13, 2018 Streamlight Inc., on behalf of Ridgetop Associates, a Pennsylvania limited partnership, the owner of 30 Eagleville Road, Lower Providence Township, Eagleville, PA 19403 (the "Property") filed an application requesting a variance from the sign area requirement of Section 143-141.3E.2. of the Lower Providence Township Zoning Ordinance (the "Ordinance") in connection with the installation of a wall mounted sign on Applicant's building located at 30 Eagleville Road, Eagleville, 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 August 23, 2018 at the Lower Providence Township Building. Chairwoman, Kathy Eskie, Vice Chair, Gail Hager, and members Patricia Alzamora, Jill Zimmerman and Robert Hardt 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 fifty-six (56) acres located at 30 Eagleville Road, Lower

Providence Township, Eagleville, PA 19403 with parcel number 43-00-11635-00-4 (hereinafter the "Property").

2. The Applicant is as noted above but for purposes of this Application is Streamlight, Inc. a long-standing Lower Providence business ("Applicant") which is an affiliate of Eagleville Corporation, general partner for Ridgetop Associates, the record owner of the Property.

3. Applicant is a leading manufacturer of portable lighting devices such as flashlights, headlamps, safety rated lights, weapon mounted lights, lanterns and scene lighting based at the Property.

4. The applicable zoning district is the Mixed-District ("MU").

5. Applicant is in the process of expanding its business and intends to construct a 72,000 square foot warehouse attached to its existing building and place an illuminated wall sign thereon.

6. Applicant receives deliveries of materials each day to conduct its business, many by tractor trailer.

7. There are two (2) access points to the Property, one is the driveway and the other from Prison Farm Road.

8. Due to the size of the Property and the location of the buildings thereon, often deliveries are misdirected to the Montgomery County Correctional Facility.

9. The proposed warehouse and sign are to be located approximately one thousand feet (1,000') from the travelling lanes of Eagleville Road making it difficult to see therefrom.

10. The proposed sign will be two hundred and thirty five (235) square feet on a six hundred foot (600') long building.

11. The proposed sign has been sized appropriately to provide adequate visibility to those seeking the Property such as the public and trucks making deliveries.

12. The proposed sign letters will be back lit to minimize the light emanating from the sign.

13. The proposed sign will be lit only during those hours that are in compliance with the Ordinance.

14. The proposed illuminated sign will in no way shine into homes or businesses on Eagleville Road.

15. Applicant seeks to obtain a variance from §143-141.3E.2. of the Ordinance to permit one (1) wall mounted illuminated sign to be installed on the southeast corner of the new warehouse overlooking the parking lot and partially visible from Eagleville Road.

16. Applicant's proposed sign would exceed the wall mounted sign area limitation of thirty two (32) square feet prescribed by §143-141.3E.(2) of the Ordinance by two hundred and three (203) square feet.

17. Applicant was represented by M. Joseph Clement, Esquire, Wisler Pearlstine, LLP, 460 Norristown Road, Blue Bell, PA 19422.

18. George C. Collier III, secretary/treasurer of Applicant and Alan Holeton testified on behalf of the Applicant.

19. There was no public comment adverse to the Application.

20. The following exhibits were presented:

A-1 –The Application filed at Z18-12 inclusive of attachments.

A-2 – Google aerial view of the Streamlight site.

A-3 – Rendering of the addition to the building and proposed location of the

proposed Streamlight sign dry mounted on poster board.

A-4 – Google street view of the entrance to the Streamlight property.

B-1 Certificate of Posting of Notice of Public Hearing on the Property.

Advertisement.

B-2 Public Notice of the Variance Request and Hearing date. Proof of publication.

B-3 Notice to adjacent and surrounding property owners of the Application inclusive of the matrix of recipient addresses.

B-4 Public Notice as advertised in the Times Herald on August 8 and 15, 2018 with proof of said advertisements.

DISCUSSION

I. Statement of the Case.

The Applicant has requested a variance from the sign area requirements of Section 143-14.3 E.(2) of the Lower Providence Township Zoning Ordinance which limits a wall mounted sign area to thirty-two (32) square feet. The aforesaid Section of the Ordinance states in pertinent part:

§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 thirty-two (32) sq. ft. per sign

face.

The Applicant seeks relief as to the dimensional requirements of the Ordinance to permit the proposed wall sign to exceed the area limitation of thirty-two (32) square feet by two hundred and three (203) square feet.

Under §143-168.D.(4) of the Ordinance the Applicant bears the burden of proof to persuade the Board of the necessity of the requested variance 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, due to its fifty-six (56) acres size, it is not obvious that the Property is located at the corner of Ridge Pike and Eagleville Road. Further, it is not apparent to motorists on either of those 2 major roads that Streamlight is located where it is. The existing buildings sit far back on the Property making them difficult to locate. In fact, those who have business with Streamlight but are unfamiliar with its location, often drive down Prison Farm Road that provides the Property's southern border. Needless to say, the wanderings of tractor trailers and other vehicles on the Montgomery County Correctional Facility's sole access road seeking Streamlight is not optimal.

Applicant has developed the brand name "Streamlight" such that it is synonymous with portable lighting solutions for first responders, contractors and the public. In order to establish its brand, Applicant has established a standard design and format for its products and facility. A key attribute of that design and its brand is its stylized "SL" logo coupled with its name. Applicant seeks to place and illuminate its brand and unique design on its building in sufficient size for those on the quest to locate Streamlight succeed without complication, disruption or interference with the local traffic and, access to the correctional facility. Here the Applicant seeks to place a sign of a size and in a location that will provide those conducting business with Streamlight the guide post to locate it. However, due to the exceptional size of the Property, the buildings thereon and their location set far back from the road, thirty-two square feet of sign area is not

only miniscule in proportion to the warehouse wall where it is to be installed but fails miserably in that mission.

A. The Hardship.

Applicant asserts that its reasons for the sign size and height requirements are primarily safety, visibility, building identification and branding. Due to the unique nature of the Property that sits high and far off of Ridge Pike and Eagleville Road, as well as the sizeable parking lot and one thousand foot (1,000') warehouse building setback from Eagleville Road a larger sign is necessary to promote safety through visibility and ease of identification of the Streamlight facility for passing or seeking motorists. These unique Property aspects occasion for traffic disruption from motorists is a real concern. Denial of the Applicant's request 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 the proposed wall mounted sign on the building with its unique imagery and two hundred and thirty-five (235) square feet of area rather than thirty-two (32) square feet required by the Ordinance promotes that visibility and alerts everyone to the whereabouts of the Applicant's facility.

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, to easily locate Streamlight, so that a motorist or delivery person can avoid going to the prison not only makes pragmatic but logical sense.

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, Streamlight's facility is not easily seen and thus not well known to many in the Township let alone those delivering to the facility. The primary reasons for that are the size of the Property, its location, placement and screening from view. With its plans to expand, Streamlight has seized the opportunity to address its location anonymity through the installation of the sign at issue on the parking lot and Eagleville Road facing of its new warehouse. By installing the sign in the proposed location, Applicant has chosen the most visible location to promote safe and easy access to Streamlight without

encroaching on the prison, while promoting its brand. Denial of the variance at issue will have a significant impact upon visibility, branding and ultimately business at Streamlight. 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, the sign location selected by the Applicant is the least offensive. Its lighting will shine intensely over its own parking lot while providing a diffuse yet visible identifier for those searching on Eagleville Road.

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 seventy-two thousand (72,000) square foot building denies the public the visibility it undoubtedly will seek when looking for Streamlight. A thirty-two (32) square foot wall sign is impossible to see from Eagleville Road so will in no way assist those looking for Streamlight. Inevitably, it will lead to those who stray onto the Prison Farm Road and the prison. The proposed larger sign solves that problem while improving the safety of the motoring public and, in turn, the residents of the Township.

Finally, the hardship is a result of the location and unique nature of the Property not a creation of the Applicant who is merely seeking to promote safety through the enhancement of safe identification and access while also promoting its brand. Should the variance be rejected, the Applicant will be 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 located in the MU District at the busy intersection of Ridge Pike and Eagleville Road. Adjacent to the Property is the Eagleville Tavern, and a Turkey Hill convenience store. Across the street is the Lower Providence Ambulance and Eagleville Auto Body. All of these businesses have either wall or pylon signage of various sizes, some of which are illuminated. Needless to say, 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 visibility and identification of the facility and its entrances. Further, the sign helps distinguish Streamlight from the prison. As a result, the safety of the delivery vehicles and 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 5th part of the variance legal standard requires a determination by the Board of whether the proposed variance represents the minimum variance that will afford relief and represents the least modification possible of the regulation at issue. Although Applicant's sign

area is ambitious, Applicant's arguments to justify the size of the sign regarding visibility, separation from the prison, ease of access and egress, safety, branding and financial and economic hardship are compelling.

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

Thus, *Hertzberg* reduces the degree of hardship necessary to sustain 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 sign will 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:

The Application for a dimensional variance from §143-141.3E.2. of the Lower Providence Township Zoning Ordinance to permit one wall mounted sign two hundred and thirty-five (235) square feet in in the Mixed Use district is GRANTED.


Dated: October 3, 2018

ORDER

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

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


Kathie A. Eskie, Chairwoman

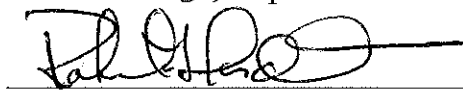

Gail Hager, Vice Chairwoman

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.