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May 8, 2023

**DATE OF MAILING: May 8, 2023**  
**SENT VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**NO. 7020 2450 0001 6269 2448**

**VIA EMAIL (LAltieri@Klehr.com)**

Leonard B. Altieri, III, Esquire  
Klehr Harrison Harvey Branzburg LLP  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103

**Re: Lower Providence Township Zoning Hearing Board**  
**Application No: Z-23-03**  
**Property: 2601-2614 Ridge Pike, Norristown, PA 19403**  
**Parcel No. 43-00-11875-007; 43-00-11872-001; 43-00-11866-007;**  
**43-00-11869-004**

Dear Mr. Altieri:

In accordance with your Zoning Application filed February 15, 2023, enclosed please find a copy of the Opinion, Decision and Order of the Lower Providence Township Zoning Hearing Board. Please note that if you have any objections to the Order, you have thirty (30) days from its date to file an appeal with the Court of Common Pleas in Norristown.

Yours very truly,



Keith B. McLennan

Pc: Kathie A. Eskie  
Christopher Gerdes  
Gail Hager  
Randy Klein  
Joseph Pucci

Gary Brown  
Tejal Mehta  
Mike Mrozinski, Community Development Director  
Gregory Heleniak, Esquire, Township Solicitor

# ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

**APPLICATION NO. Z-23-03 : HEARING DATE: March 23, 2023**

**APPLICATION OF:**

## LIDL US Operations, LLC

**3500 S. Clark St.**

**Arlington, VA 22202**

**PROPERTY:**

## 2601-2614 Ridge Pike

## Lower Providence Township

**Parcel Nos. 43-00-11875-007**

43-00-11872-001

43-00-11866-007

43-00-11869-004

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

A public hearing on the above Application having been held on March 23, 2023, before the Zoning Hearing Board of Lower Providence Township (the “Zoning Hearing Board” or “Board”), in the Township Administration Building, 100 Parklane Drive, Eagleville, PA, (the “hearing”) pursuant to Notice as required by the Lower Providence Township Zoning Ordinance (the “Ordinance”) and the Pennsylvania Municipalities Planning Code (the “MPC”), concerning the above captioned premises (the “Property” or “Subject Property”), and having considered the Application and the testimony, exhibits, and argument presented, the Zoning Hearing Board hereby renders its decision on the Application.

## Procedural Matters

## 1. Application before Zoning Hearing Board

Applicant, LIDL US Operations, LLC of Arlington, VA (Applicant) filed an application relating to the property located at 2601-2614 Ridge Pike in Lower Providence Township

requesting a variance from the sign illumination requirements of Section 143-141.3.F(2)(a) of the Lower Providence Township Zoning Ordinance (the “Ordinance”) to permit the construction of a canopy sign internally illuminated where external illumination from above is permitted in the Ridge Pike Business District. (the “Application”).

2. Notice and Hearing

The Application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board (the “Board”) on March 23, 2023, where the Board accepted evidence in the matter.

3. Zoning Hearing Board Members Participating

Present at the March 23, 2023, hearing were: Kathie Eskie, Chair, Chris Gerdes, Vice-Chair, Gail Hager, Member, Randy Klein, Member, and Gary Brown, alternate.

4. Appearances of Counsel

- a. Keith B. McLennan, Esquire, appeared as Solicitor for the Zoning Hearing Board.
- b. Applicant was represented by Leonard B. Altieri, III, Esq. of 1835 Market St, Suite 1400, Philadelphia, PA 19103.

5. Appearance of Other Party

- a. No other party entered their appearance in the matter.

6. Also Present

- a. Mike Mrozinski, the Community Development Director for Lower Providence Township.

7. Witnesses

- a. Lindsey Breylinger testified in support of the application.
- b. Mike Seserko testified in support of the application.

8. Exhibits

The Applicants submitted the following exhibits:

- A – 1 The Addendum to the Application with all attachments.
- A – 2 The Deed to the Subject Property.
- A – 3 The CV of Lindsey Breylinger.
- A – 4 An arial photo of the Subject Property.
- A – 5 A detailed plot map of the subject property from above.
- A – 6 Diagrams, drawings, and renderings of the proposed sign.

The Board entered the following exhibits:

- B – 1 Public Notice by Posting.
- B – 2 Certificate of Posting.
- B – 3 Letter notifying neighbors within 500 feet of the Property of the Application.
- B – 4 Matrix of Addresses where notice was mailed.
- B – 5 Certificate of Notification to the neighbors within 500 feet of the Property.
- B – 6 Certificate of Publication.

**FINDINGS OF FACT**

1. The subject property is located at 2601-2614 Ridge Pike, Norristown, PA 19403, and has parcel numbers 43-00-11875-007; 43-00-11872-001; 43-00-11866-007; 43-00-11869-004 (hereinafter the “Property”).
2. The applicable zoning district is RPBD.
3. The lot size is approximately 30,000 square feet.
4. The Property currently used for an existing Lidl grocery store.
5. The Property shall continue with that use.

6. The Property was the subject of a prior zoning application relating to sign setback, area and height requirements under Application Z-18-05 on June 7, 2018.

7. Applicant intends to add new signage to an existing cart corral.

8. The proposed signage will assist passing motorists identify the grocery store.

9. The internal illumination is necessary because the Property is located adjacent to an intersection of a busy roadway.

10. The proposed 40 square foot sign will be consistent with the other signs on the property.

11. The Property is located at the northeast corner of Trooper Rd and Ridge Pike.

12. There is an existing Lidl store on the property.

13. There are 135 parking spaces on the Property.

14. There is an existing food market sign along with the Lidl sign facing Ridge Pike.

15. There is an additional Lidl sign facing Trooper Road.

16. The proposed sign will be facing Trooper Road and is located approximately 180 feet from that road.

17. The proposed sign will be approximately 40 square feet.

18. The sign will be placed on the cart corral which is 13 feet tall.

19. The variance sought is the minimum that will allow relief in consideration of the safety concerns relating to the size of the Property and the busy roads in the area.

20. The sign will have defused light, and there will be a limited amount of light that radiates from the sign.

21. The sign will use low voltage LED lighting.

22. This will limit light pollution.

23. In the alternative if the variance were denied, direct lighting would be required and this would be much brighter and could interfere with traffic.

24. Passing motorists need adequate time to identify the building and safely enter the parking lot.

25. The internally illuminated sign will aid in visibility to accomplish this purpose.

26. The sign will also be consistent with Lidl marketing.

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

## **DISCUSSION**

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

Applicant, LIDL US Operations, LLC of Arlington, VA filed an application relating to the property located at 2601-2614 Ridge Pike in Lower Providence Township requesting a variance from the sign illumination requirements of Section 143-141.3.F(2)(a) of the Lower Providence Township Zoning Ordinance (the “Ordinance”) to permit the construction of a canopy sign internally illuminated where external illumination from above is permitted in the Ridge Pike Business District.

### **II. Ordinance Subsections in Question**

The Applicant has requested a variance from the illumination requirements of Section 143-141.3.F(2)(a) of the Lower Providence Township Sign Ordinance which states:

Awning or canopy signs for nonresidential uses shall be permitted subject to the following regulations: (2) Illumination. The following illumination types shall be permitted subject to the regulations in § 143-140.2: (a) External illumination, lit from above.

### **III. Variance Legal Standard**

A. Dimensional v. Use Variance. There are 2 types of variances, a “dimensional” variance and a “use” variance. Differing standards apply to use and dimensional variances. 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). Regardless of whether the variance sought is a use or dimensional variance, 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. Cmwlth. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998). The Supreme Court in Hertzberg held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of the Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. at 263-64, 721 A.2d at 50. In this case the Board is asked to grant a dimensional variance.

B. The Five Part Variance Test. To obtain a variance the Applicant must pass the following five (5) part variance test set forth in §143-168.A. of the Ordinance:

(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.

See also: 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.

C. Dimensional Variance Legal Standard. Generally, a use variance requires the applicant to show that unnecessary hardship will result rendering the property close to useless if a variance is denied, and that the proposed use will not be contrary to public interest. However in the case of Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998) our Supreme Court held that in the case of a dimensional variance, the quantum of proof required to establish unnecessary hardship is lesser than when a use variance is sought. *Id.* at 258-59. For example, the Hertzberg Court held that to justify the grant of a dimensional variance, "...courts *may* consider multiple factors, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood." 721 A.2d at 50 (*italics supplied*). In effect, no longer is an applicant required to demonstrate in a dimensional variance case, that the property was close to useless without the variance.

Although Hertzberg eased the burden of proof somewhat for a dimensional variance, it did



not remove the variance requirements that are universally applicable to use and dimensional variance cases. Doris Terry Revocable Trust v. Zoning Bd. of Adjustment of City of Pittsburgh, 873 A.2d 57 (Pa.Cmwlt. 2005). An applicant must still present evidence as to each of the conditions listed in the zoning ordinance and satisfy the five-part test articulated above. Id. In addition, §§143-168.C. & D.(2), (3) & (4) of the Ordinance articulate the Applicant' burden of proof and the standards to meet that burden as follows:

C. Burden of proof. For variances, the burden of proof shall be on the applicant. For special exceptions, the applicant shall be entitled to the special exception unless others can prove that it would adversely affect the public health, safety, morals or welfare.

D. Standards of proof.

(2) Variance case. An applicant for a variance shall have the burden of establishing:

(a) All the requirements of § 910.2 of the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended, 53 P.S. § 10910.2;

(b) That literal enforcement of the provisions of this chapter will result in unnecessary hardship, as the term is defined by relevant statutory provisions and case law; and

(c) That the allowance of a variance will not be contrary to the public interest.

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

Applicant, LIDL US Operations, LLC of Arlington, VA filed an application relating to the property located at 2601-2614 Ridge Pike in Lower Providence Township requesting a variance from the sign illumination requirements of Section 143-141.3.F(2)(a) of the Lower Providence Township Zoning Ordinance (the "Ordinance") to permit the construction of a canopy sign internally illuminated where external illumination from above is permitted in the Ridge Pike Business District.

The Property is located in the RPBD zoning district, and the lot size is approximately 30,000 square feet. The existing Lidl grocery store will continue its use of the Property. The proposed sign will be located on the cart coral, facing Trooper Road and approximately 180 feet from that road. The sign will be approximately 40 square feet and will be internally illuminated using low voltage LED lighting. The variance sought is the minimum necessary to allow relief in consideration of the safety concerns relating to the size of the Property and the busy roads in the area. The sign will aid in visibility to allow passing motorists adequate time to identify the building and safely enter the parking lot.

The Applicant testified that the proposed sign would assist passing motorists in identifying the grocery store and that the internal illumination was necessary due to the Property's location adjacent to an intersection of a busy roadway. The proposed sign would be consistent with the other signs on the Property, and the low voltage LED lighting would limit light pollution. The Applicant further testified that if the variance were denied, direct lighting would be required, which would be much brighter and could interfere with traffic.

The Property already has an existing Lidl sign facing Trooper Road and a food market sign facing Ridge Pike. The proposed sign will also face Trooper Road, and the variance sought is the minimum necessary to ensure safe entry into the parking lot. There was no adverse public comment regarding this application.

Based on the testimony and evidence presented at the hearing, the Board finds that the Applicant has met their burden of proving that the proposed variance is the minimum necessary to allow relief in consideration of the safety concerns relating to the size of the Property and the busy roads in the area. The proposed sign will aid in visibility to allow passing motorists

adequate time to identify the building and safely enter the parking lot, and will be consistent with Lidl's marketing.

### **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**

On March 23, 2023, the Lower Providence Township Zoning Hearing Board by 5-0 vote Granted a variance from Section 143-141.3F.(2)(a) of the Lower Providence Township Zoning Ordinance requested in the Application of LIDL US Operations, LLC of Arlington, VA docket #Z-23-03, to permit the construction of a canopy sign internally illuminated where external illumination from above is permitted in the Ridge Pike Business District.

This approval is conditioned upon the following:

1. Construction placement shall be as per the plans introduced into evidence in this case as exhibits;

2. Strict compliance with the testimony and evidence presented at the hearing and the information set forth in the application, as amended; and
3. Compliance with all other applicable Township ordinances.

Dated: May 3, 2023

### **ORDER**

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

#### **LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

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Kathie A. Eskie

*Kathie A. Eskie*

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Christopher Gerdes

\_\_\_\_\_  
Gail Hager

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Randy Klein

\_\_\_\_\_  
Joseph Pucci

*Gary R. Brown*

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Gary Brown, Alternate

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Tejal Mehta, 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.