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May 8, 2023

**SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
NO. 7020 2450 0001 6269 2363**

**VIA EMAIL ([gheleniak@rudolphclarke.com](mailto:gheleniak@rudolphclarke.com))**

Greg Heleniak, Esquire  
Rudolph Clarke LLC  
Seven Neshaminy Interplex, Suite 200  
Trevose, PA 19053

**Re: Lower Providence Township Zoning Hearing Board  
Application No: Z-23-05  
Property: 100 Parklane Drive, Eagleville, PA 19403  
Parcel No. 43-00-12019-00-7**

Dear Greg:

In accordance with your Zoning Application filed February 24, 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**

<b>APPLICATION NO.</b>	<b>Z-23-05</b>	<b>: HEARING DATE: March 23, 2023</b>
		:
		:
<b>APPLICATION OF:</b>		:
<b>Lower Providence Township</b>		:
<b>100 Parklane Drive</b>		:
<b>Eagleville, PA 19403</b>		:
		:
<b>PROPERTY:</b>		:
<b>100 Parklane Drive</b>		:
<b>Lower Providence Township</b>		:
<b>Parcel Nos. 43-00-12019-00-7</b>		:

**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, Lower Providence Township of 100 Parklane Drive Eagleville, PA (Applicant) is requesting relief from Section 143-144.B(4) of the Ordinance requiring a non-conforming sign to be brought into compliance when substantial changes are made; Section 143-141.4.A(2) of the

Ordinance to permit a sign area of 56.9 square feet where a maximum area of 24 square feet is permitted; and Section 143-141.4.A(4) of the Ordinance to permit a sign with internal illumination where only external illumination is permitted, together with any other relief deemed necessary or appropriate by the Board. Applicant seeks to change an existing free-standing digital sign from monochrome to multicolor illumination (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 Greg Heleniak, Esquire of Seven Neshaminy Interplex, Suite 200 Trevose, PA 19053.

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. E.J. Mentry 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 Photo of current sign and rendering of proposed new 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 Certificate of Notification to the neighbors within 500 feet of the Property.

B – 5 Matrix of Addresses where notice was mailed.

B – 6 Certificate of Publication.

**FINDINGS OF FACT**

1. The subject property is located at 100 Parklane Drive Eagleville, PA with a parcel number of 43-00-12019-00-7 (hereinafter the “Property”).
2. The applicable zoning district is R-1 PFO.
3. The Property is currently used as a local government building.
4. The present use began in 1979.
5. The Property shall continue with that use.
6. The Property includes facilities for municipal administration, emergency services, a community library, and parks and recreation.
7. The surrounding properties are residential to the north, east, and west, and commercial to the south.
8. The current sign needs to be replaced, and the current technology of the sign is

out of date.

9.

10. Lower Providence Township proposes to replace the existing sign with a sign with multicolor internal illumination.

11. The proposed changes to the sign will increase visibility to improve driver safety.

12. The brightness of the sign will be automatically adjusted by a sensor and the sign will be compliant with all ordinances.

13. The proposed sign will be beneficial to the community in that it will enhance public notification and participation and improve the readability of the sign for passing motorists.

14. Section 143-144.B(4) of the Ordinance requires that non-conforming signs be brought into compliance when substantial changes are made.

15. Section 143-141.4.A(2) of the Ordinance permits signs with a maximum area of 24 square feet.

16. Section 143-141.4.(A)(4) permits signs to be illuminated by external illumination only.

17. The structure of the sign, the shape, and the size will not change.

18. The existing sign is approximately 56.9 square feet.

19. The sign will continue to be internally illuminated.

20. The electronic messaging portion of the sign will be updated to allow multiple colors, but the function will not change.

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

## **DISCUSSION**

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

Applicant, Lower Providence Township of 100 Parklane Drive Eagleville, PA is requesting

relief from Section 143-144.B(4) of the Ordinance requiring a non-conforming sign to be brought into compliance when substantial changes are made; Section 143-141.4.A(2) of the Ordinance to permit a sign area of 56.9 square feet where a maximum area of 24 square feet is permitted; and Section 143-141.4.A(4) of the Ordinance to permit a sign with internal illumination where only external illumination is permitted, together with any other relief deemed necessary or appropriate by the Board. Applicant seeks to change an existing free-standing digital sign from monochrome to multicolor illumination.

### **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.Cmwlth. 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.

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



This matter came before the Lower Providence Township Zoning Hearing Board for a hearing on the application for a zoning permit filed by Lower Providence Township. The application seeks approval to replace the existing sign on the subject property located at 100 Parklane Drive Eagleville, PA with a sign that has multicolor internal illumination.

The subject property is located in the R-1 PFO zoning district and is currently being used as a local government building, which includes facilities for municipal administration, emergency services, a community library, and parks and recreation. The present use of the property began in 1979. The surrounding properties are residential to the north, east, and west, and commercial to the south.

The proposed changes to the sign include multicolor internal illumination and will increase visibility to improve driver safety. The brightness of the sign will be automatically adjusted by a sensor, and the sign will be compliant with all ordinances. The proposed sign will be beneficial to the community in that it will enhance public notification and participation and improve readability for passing motorists.

Section 143-144.B(4) of the Ordinance requires that non-conforming signs be brought into compliance when substantial changes are made. Section 143-141.4.A(2) of the Ordinance permits signs with a maximum area of 24 square feet, and Section 143-141.4.(A)(4) permits signs to be illuminated by external illumination only. The structure of the sign, the shape, and the size will not change. The existing sign is approximately 56.9 square feet, and the proposed sign will continue to be internally illuminated. The electronic messaging portion of the sign will be updated to allow multiple colors, but the function will not change. The current technology of the sign is out of date.

The Applicant has demonstrated that there are unique physical conditions peculiar to the Property, including the need to increase visibility for driver safety, which cannot be achieved under

the current zoning ordinance requirements. 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.

Due to the physical conditions of the Property, there is no possibility that the existing sign can be updated in strict conformity with the provisions of the zoning ordinance, and the authorization of a variance is therefore necessary to enable the reasonable use of the Property. The Applicant has not created the unnecessary hardship.

The proposed variance 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. In fact, the proposed sign will enhance public notification and participation, and improve the readability for passing motorists.

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.

At the hearing, there was no adverse public comment regarding this application. Therefore the Board finds that the requested relief shall be Granted

### **CONCLUSIONS OF LAW**

1. The Applicant has standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will impose an unnecessary hardship on the Applicant.
3. The hardship is not self-imposed and is due to the unique physical circumstances

of the Property.

4. The requested relief is necessary to enable the Applicant's reasonable use of the Property, represents the minimum that will afford relief, and represents the least modification possible of the regulation at issue.

5. The proposed sign will also not alter the essential character of the neighborhood in which the Property is located.

### **DECISION**

The Lower Providence Township Zoning Hearing Board by 5-0 vote Granted the following variances from the Lower Providence Township Zoning Ordinance requested in the Application of Lower Providence Township docket #Z-23-05:

1. Section 143-141.4.A(2), to permit a freestanding sign of 56.9 square feet of sign face on each side where 24 square feet is permitted;
2. Section 143-141.4.A(4) to permit internal, color illumination of an existing freestanding sign where external, static illumination is permitted; and
3. Section 143-144.B(4) to conform an existing freestanding sign into compliance with the size and illumination requirements of the Ordinance.

This approval is conditioned upon the following:

1. Construction placement shall be as per the plans introduced into evidence in this case as Exhibit "A-2";

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

*Kathie A Eskie*

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Kathie A. Eskie

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Christopher Gerdes

*Carl Hager*

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Gail Hager

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Randy Klein

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Joseph Pucci

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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.