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ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-031 : **HEARING DATE:** December 5, 2012
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APPLICATION OF: :
Enterprise Leasing Co. :
of Philadelphia, LLC :
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DECISION DATE: December 5, 2012
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PROPERTY: :
801 W. Dekalb Pike :
King of Prussia, PA 19406 :

**OPINION AND ORDER OF THE UPPER MERION
TOWNSHIP ZONING HEARING BOARD**

The Applicant, Enterprise Leasing Co. of Philadelphia, LLC (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Section 165-168(A). The application was properly advertised, and public hearing was held before the Upper Merion Township Zoning Hearing Board on December 5, 2012 at the Upper Merion Township Building.

All members of the Zoning Hearing Board were present as well as the Solicitor, Zoning Officer, and Court Reporter.

FINDINGS OF FACT

1. The Applicant is Enterprise Leasing Co. of Philadelphia, LLC, with a mailing address of 7001 Essington Avenue, Philadelphia, PA 19153.
2. The legal owner of the subject property is Hartzell Properties KOP, LP with a mailing address at 2751 Cold Spring Lane, Lansdale, PA 19446.

3. The property is located at 801 W. Dekalb Pike, King of Prussia, PA 19406.
4. The applicant was represented by Robert Small, Esquire of the firm of Reger, Rizzo & Darnell, LLP.
5. The subject property is located in the "C-1" zoning district.
6. The lot is approximately 21,869 square feet.
7. The existing structure on the property is 1787 square feet/commercial building.
8. The Applicant proposes to occupy the property as a car rental/leasing business.
9. John Frisby is the regional operations manager. He testified that the hours of operation will be 7:30A-6:00P Monday through Friday and 8:30A-9:00P on Saturday.
10. The location of the site is on Route 202 near the off ramp from Route 76.
11. The average speed of cars at the location is 55-60mph.
12. Proper signage is necessary for accessibility and visibility.
13. The Code allows for 20 square feet of signage.
14. Applicant seeks to erect a 15'5" by 3'1" pylon sign which would have a total area of 47 square feet.
15. This is the standard size for the company and is the smallest sign to accommodate the speed/accessibility problem of the site.
16. David Gibbon testified on behalf of the Applicant. He is a professional engineer.
17. He testified that the present configuration of the site in terms of location relative to the high speed traffic area presents a possible safety hazard.
18. Further, he testified that in addition to the high speed, the area tends to become congested with traffic and the proposed sign is the smallest sign necessary to alleviate the hardship posed by several factors affecting the site.

19. The Application was approved by a vote of 5-0.

CONCLUSIONS OF LAW

1. The Applicant requests a variance pursuant to Section 165-168(A) of the Code to construct a 15'5" by 3'1" pylon sign with a total area of 47 square feet.

2. The maximum allowable square feet permitted by the Code is 20 square feet.

3. The standard to determine whether to grant a dimensional variance as outlined by the Pennsylvania Supreme Court is that the Applicant must show that unnecessary hardship will result if a variance is denied and that the proposed use will not be contrary to public interest.

Hertzberg v. Zoning Bd. of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998); citing, Allegheny West Civic Council, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh, 547 Pa. 163, 167, 689 A.2d 225, 227 (1997).

4. Although the language of Hertzberg is expansive, the current trend is to apply the relaxed standard for dimensional variances only to the consideration of whether unnecessary hardship results from unique physical characteristics or conditions of the land. The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Cmwlth. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001).

5. The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

a. That there are unique physical 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.

b. That 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.

c. That such unnecessary hardship has not been created by the Applicant.

d. That 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.

e. That 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.

6. Here, the Applicant is requesting permission to construct a business sign in excess of the allowable square feet, but which is the smallest sign necessary to alleviate to the hardship posed by several factors affecting the site.

7. The Board found that the criteria for granting a variance were met, the granting of the variance is necessary to promote public safety, and the relief granted was the minimum variance that will afford the relief requested.

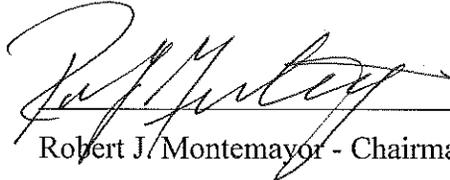
ORDER OF THE UPPER MERION TOWNSHIP

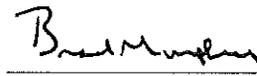
ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-168(A). The variance is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on December 5, 2012.

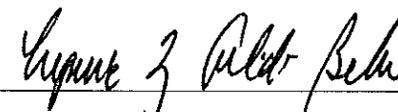
Decision Dated: December 5, 2012

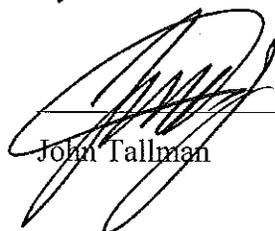
**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**


Robert J. Montemayor - Chairman


Brad Murphy - Vice Chairman


William J. Clements


Lynne Gold-Biken


John Tallman

NOTE 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 has received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Upper Merion Township within one (1) year of the date of the approval or the decision granting approval.