

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**APPLICATION OF ANDREW AMSTERDAM**

**NO. 2013-04**

**PROPERTY: 333 SOUTH HENDERSON ROAD  
KING OF PRUSSIA, PA 19406**

**OPINION AND ORDER**

This zoning application involves a business owner's request for a variance to permit an electronically activated changeable sign.

On March 6, 2013, the Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held a public hearing with regard to Application No. 2013-04 of Andrew Amsterdam ("Landowner"). The members of the ZHB present were William J. Clements, Esquire, Chairman; Brad Murphy, Secretary; Lynne Gold-Bikin, Esquire, Member; and Mark S. DePillis, Esquire, Member. The ZHB was represented by Marc D. Jonas, Esquire, of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. Landowner was not represented by counsel.

Landowner sought a variance from section 165-168.Q of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Ordinance") to permit an electronically activated changeable sign at a property located in the LI Limited Industrial district.

The zoning hearing was duly advertised, notice thereof was given in accordance with the requirements of the Ordinance, and the proceedings were stenographically recorded. After careful consideration, the ZHB makes the following findings of fact and conclusions of law:

**A. FINDINGS OF FACT**

**BACKGROUND**

1. Landowner is the owner of 2 businesses, both located at 333 South Henderson Road, King of Prussia, Pennsylvania ("Property"). [N.T. 12]
2. The Property is approximately 4 acres in area and is zoned LI Limited Industrial district. [N.T. 12, 15]
3. The Property is occupied by a map store and a car wash. [N.T. 17-18]
4. Landowner proposes the installation of an electronically activated changeable copy sign with LED lighting. [N.T. 5, 18-19]
5. Section 165-168.Q of the Ordinance does not permit electronically activated changeable signs in the LI Limited Industrial district.
6. Landowner seeks a variance to permit an electronically activated changeable sign for his 2 businesses.

**ZHB HEARING**

7. Landowner testified as follows:
  - the proposed sign complies with the dimensional requirements of the Ordinance [N.T. 5];
  - the proposed sign has a two-line electronic message board [N.T. 5];
  - the proposed sign complies with the Ordinance requirements except for the electronically activated changeable copy portion [N.T. 5];
  - the proposed sign would be on 24 hours a day [N.T. 6];
  - both businesses would be listed on the proposed sign [N.T. 12];

- the hours of operation of the car wash are stated on the proposed sign, and Landowner could add the hours of operation of the map store to the proposed sign without the need for changeable copy [N.T. 13]; and
  - the proposed sign is internally lit with LED lights [N.T. 19].
8. No one testified either in favor of or in opposition to the application.

### **INSUFFICIENCY OF THE EVIDENCE**

9. Landowner failed to offer proof that the Property suffers an unnecessary hardship that would justify the ZHB's grant of the requested variance.

10. Landowner failed to offer proof that the variance would be necessary to permit a reasonable use of the Property.

11. Landowner failed to offer proof that the requested variance was the minimum variance that would afford relief. To the contrary, Landowner testified that he could install the proposed sign without the 2 lines of electronically activated changeable copy. [N.T. 5]

## **B. DISCUSSION**

### **VARIANCES**

It is well settled in Pennsylvania that a zoning hearing board may grant a variance where:

1. an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions peculiar to the property;

2. because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance and, therefore, a variance is necessary to enable the reasonable use of the property;
3. the unnecessary hardship was not created by the applicant;
4. the variance will not be detrimental to the public welfare;  
and
5. the variance sought will represent the minimum variance that will afford relief.

53 P.S. § 10910.2(a); *Cope v. Zoning Hearing Bd. of South Whitehall Township*, 134 Pa.Cmwlt. 236, 578 A.2d 1002 (1990).

Variations should be granted sparingly and the reasons for granting variations must be substantial and compelling. *Laurento v. Zoning Hearing Board of the Borough of West Chester*, 628 A.2d 437 (Pa.Cmwlt. 1994). To prove unnecessary hardship, a landowner must demonstrate either the physical characteristics of the property are such that it could not in any case be used for any permitted purpose, or the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance. *Laurento* at 439.

- 1. Landowner failed to demonstrate any unique physical conditions of the Property that have caused an unnecessary hardship justifying a variance to permit an electronically activated changeable sign at the Property.**

Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use. The Property contains 2 businesses – a map store and a car wash. [N.T. 12] The Ordinance permits a sign of the dimensions Landowner is proposing, but the Ordinance does not allow an electronically activated changeable sign on properties located in the LI Limited Industrial district. Ordinance section 165-168.Q.

Landowner presented no proof of hardship entitling Landowner to a variance. Landowner testified that a sign of the exact dimensions as the proposed electronically activated changeable sign is permitted by the Ordinance. [N.T. 5] Landowner offered no evidence of hardship justifying the grant of a variance for the proposed electronically activated changeable sign.

**2. Landowner failed to prove the requested variance is the minimum needed to afford relief.**

Landowner was required to provide evidence that the variance requested represents the minimum amount necessary to afford relief. *Hohl v. Caernarvon Township Zoning Hearing Board*, 736 A.2d 57 (Pa.Cmwlt. 1999). Landowner requested a variance to allow an electronically activated changeable sign at the Property which is not permitted by the Ordinance. A sign of the exact dimensions Landowner proposes is permitted by the Ordinance. Landowner acknowledged the proposed sign complies with all Ordinance requirements except for the changeable copy portion. [N.T. 5] Landowner failed to offer any proof that an electronically activated changeable sign was the minimum necessary to afford relief.

**C. CONCLUSIONS OF LAW**

1. The ZHB has jurisdiction under section 909.1(a)(4) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10909.1(a)(4), and Ordinance section 165-251.A(5).

2. Landowner has standing as the owner of businesses located at the Property.

3. The ZHB is obligated to ensure compliance with the technical requirements of the Ordinance.

4. The ZHB may grant a variance provided that an applicant demonstrates that: (a) an unnecessary hardship will result if the variance is denied due to the unique physical circumstances or conditions peculiar to the property; (b) because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance, prohibiting the reasonable use of the property; and (c) the variance, if authorized, will represent the minimum variance that will afford relief. Ordinance §165-251.B(2).

5. Landowner failed to demonstrate any unnecessary hardship entitling Landowner to a sign variance from section 165-168.Q of the Ordinance.

6. Landowner failed to demonstrate that the sign variance is necessary to permit a reasonable use of the Property.

7. Landowner failed to demonstrate that the requested sign variance represented the minimum necessary to afford relief.

At the conclusion of its March 6, 2013 hearing, the ZHB entered the following order:

**ORDER**

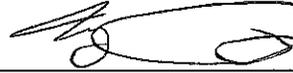
AND NOW, this 6<sup>th</sup> day of March, 2013, the Zoning Hearing Board DENIES a variance from section 165-168.Q of the Upper Merion Township Zoning Ordinance of 1942, as amended, to permit an electronically activated changeable sign.

An opinion with findings of facts, conclusions of law, and reasons will follow.

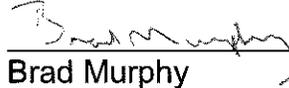
This decision is subject to a 30-day appeal period beginning on the date of entry (mailing) of this notice of decision.

Written notice of the ZHB's decision was mailed to Landowner on March 7, 2013.

**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**



William J. Clements, Esquire  
Chairman



Brad Murphy  
Secretary



Lynne Gold-Bikin, Esquire  
Member



Mark S. DePillis, Esquire  
Member

**Date of Mailing:**