

✓

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2009-07 : HEARING DATE: April 15, 2009
: :
APPLICATION OF: 211 South Gulph : DECISION DATE: June 17, 2009
Associates, L.P. : :
: :
PROPERTY: 211 S. Gulph Road : :
: :
Upper Merion Township :

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

The Applicant, 211 South Gulph Associates, L.P., (hereinafter referred to as the “Applicant”), filed an appeal of the Zoning Officer’s interpretation providing that 300 sq. ft. of signage is permitted on the exterior of the building. In the alternative, the Applicant requests a variance to Section 165-168 to permit the same. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on April 15, 2009 at the Upper Merion Township Building. All members of the Zoning Hearing Board, except Mark S. DePillis, Esquire, were present as well as the Solicitor, Zoning Officer, and Court Reporter. Brad Murphy, the alternate for the board, sat in place of Mark DePillis.

FINDINGS OF FACT

1. The Applicant is 211 South Gulph Associates, L.P., 2701 Renaissance Boulevard, 4th Floor, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.

3. The property is located at 211 S. Gulph Road, King of Prussia, PA 19406.
4. The Applicant was represented by Edmund J. Campbell, Jr., Esq., MC Associates, LLC, 2701 Renaissance Boulevard, 4th Fl., King of Prussia, PA 19406.
5. The property is zoned "LI" Limited Industrial.
6. The lot is approximately 9 acres.
7. The subject property contains a building housing approximately 100,000 sq. ft. of flex warehouse/office space.
8. The Applicant is proposing 300 sq. ft. of signage to the exterior of the existing building.
9. The Applicant requested an interpretation and, in the alternative, a variance. At the time of the hearing, the Applicant amended the application to withdraw the interpretation request and to proceed only with the variance request.
10. The Applicant is requesting permission to place signage at or around each of the entrances for the tenants.
11. The property is unique in that it has an irregular shape with no visible street frontage on South Gulph Road.
12. The property is bordered on one side by the Schuylkill Expressway and is located at a lower elevation than the highway.
13. A variance is necessary to enable the reasonable use of the property.
14. The variance will not alter the essential character of the South Gulph Road neighborhood and the hardship was not created by the Applicant.
15. At the time of the hearing, the Applicant introduced five (5) exhibits.
16. The Zoning Application with the Addendum was marked as Exhibit "A-1".
17. The Deed was marked as Exhibit "A-2".

18. The Illustrative Site Plan and three (3) Aerial Photographs were marked as Exhibit "A-3".
19. The Site Plan indicating proposed signage was introduced as Exhibit "A-4".
20. Demonstrative Photos of proposed signage were introduced as Exhibit "A-5".
21. The hearing was left open to incorporate into the record a diagram of the amended Application showing the proposed location for the signage. Exhibit "A-4" was amended after the hearing by the attorney for the Applicant forwarding to the solicitor a more detailed plan showing the proposed location of the new and existing signage. Attached hereto and incorporated herein, is the diagram submitted into the record showing the extent and location of the proposed signage and amending previously submitted Exhibit "A-4".
22. The Applicant agreed to the following conditions: 1) The signs identifying a specific tenant could only be located at entrances to the building for that particular tenant. 2) The size of any single sign is limited to 36 sq. ft. 3) The total area of signage for the building is limited to 300 sq. ft. 4) There shall be no more than two (2) signs on the elevation that faces the Schuylkill Expressway.
23. There were no residents who testified in favor of the project.
24. There were no residents who testified against the project.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, 211 South Gulph Associates, L.P., (hereinafter referred to as the "Applicant"), filed an appeal of the Zoning Officer's interpretation providing that 300 sq. ft. of

signage is permitted on the exterior of the building. In the alternative, the Applicant requests a variance to Section 165-168 to permit the same.

As a preliminary matter, the applicable standards for determining whether to grant a dimensional variance differ from those of a use variance. The standard 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).

In Hertzberg, the Supreme Court held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of a Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. If the Board determines that the relief is for a use variance, then the Board should use the traditional five-part test, which is set forth in both the Municipalities Planning Code and case law. If the requested relief is for a dimensional variance, then the standard to be applied will be different. Id. While the Court in Hertzberg did not specifically identify a single standard for a dimensional variance, it noted that the requirements for a dimensional variance were something less than that of a use variance. Id.

In its opinion, the Court went on to opine that some of the factors that a Zoning Hearing Board should look at to determine whether to grant a dimensional variance should include, where applicable:

- (1) The economic detriment to Applicant if the variance was denied;
- (2) The financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements; and,

(3) The characteristics of the surrounding neighborhood. Id.

While these factors are not exhaustive, the Court in Hertzberg and subsequent cases have referred to them specifically as findings a Zoning Hearing Board should make in its determination of whether to grant or deny a dimensional variance.

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).

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); Sotereanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998). Moreover, variances to zoning codes should be granted sparingly and only under exceptional circumstances; a variance should not be granted simply because such a grant would permit the owner to obtain greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Cmwlth. 1996).

In order to grant a variance, the Board must make the findings set forth in § 910.2 of the Municipalities Planning Code, 53 P.S. § 10910.2, where relevant. The law established by the Pennsylvania courts further establishes these standards, stated in full herein. See, Alpine Inc. v. Abington Township Zoning Hearing Board, 654 A.2d 186 (Pa. Cmwlth. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Cmwlth. 626, 647 A.2d 279 (1994). The findings that the Board must

make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

1. 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.
2. 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.
3. That such unnecessary hardship has not been created by the Applicant.
4. 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.

5. 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.

The Applicant withdrew the interpretation request at the time of the hearing and proceeded with the request for a variance. The Applicant's property is unique in that it has no visible frontage on South Gulph Road. The Applicant's property is also unique because of its unusual shape. In order to reasonably use the property, the Applicant must obtain zoning relief. The Applicant did not create its own hardship and the proposal is consistent with the character of the neighborhood. The Applicant's proposed relief is the minimum relief to reasonably use the property.

Through the use of testimony and exhibits, the Applicant sufficiently satisfied the criteria for the granting of a variance. At the time of the hearing, there was extensive negotiation between the board and the Applicant regarding the location and size of signage that would face the Schuylkill Expressway. The board was concerned that the signage would distract the motoring public on the Schuylkill Expressway and, in turn, present a hazard. In response to the board's concern, the Applicant offered to limit the signs facing the Schuylkill Expressway to only two (2) signs and to limit the location of the signs to be placed on or about the entrance for each tenant that takes access from the Schuylkill Expressway elevation. The sign diagram attached hereto shows three (3) potential locations for signage on the Schuylkill Expressway. The Schuylkill Expressway elevation considered shall be any building façade that faces the south direction of the parcel. This shall include the area of the façade that is shown as a bump-out toward the Schuylkill Expressway, as well as the sides of the bump-out and the rest of the building façade that faces the Schuylkill Expressway. It is the intent of the board and the

Applicant that only two (2) signs be placed that can be facing the Schuylkill Expressway, therefore, only two (2) of the three (3) sign locations depicted on the attached plan may be selected by the Applicant. The Applicant also agreed to limit the size of all individual signs to no more than 36 sq. ft.

Based on the Applicant's agreement to the conditions, the board believes that their concerns are satisfied and a variance should be granted.

ORDER OF THE UPPER MERION TOWNSHIP

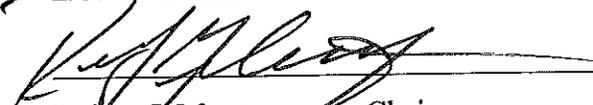
ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-168 to permit up to 300 sq. ft. of signage for the subject parcel with the following conditions:

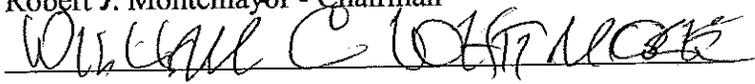
1. The Applicant must comply with the testimony of the Applicant presented at the public hearing on April 15, 2009.
2. Each single sign is limited to a maximum of 36 sq. ft.
3. Each single sign must be located at or around the entrance to a particular tenant and identify only that tenant.
4. There shall be no more than two (2) signs on the elevation facing the Schuylkill Expressway. The elevation facing the Schuylkill Expressway shall include the bump-out elevation as depicted on the attached plan, as well as the sides of the bump-out and the remaining portion of the main building that faces the Schuylkill Expressway. Currently, on the attached plan, are three (3) stars indicating potential locations for the signage, however, there shall only be two (2) signs on the elevation that is depicted with three (3) stars facing the Schuylkill Expressway.

Decision Dated: June 17, 2009

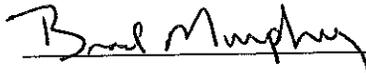
**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**



Robert J. Montemayor - Chairman



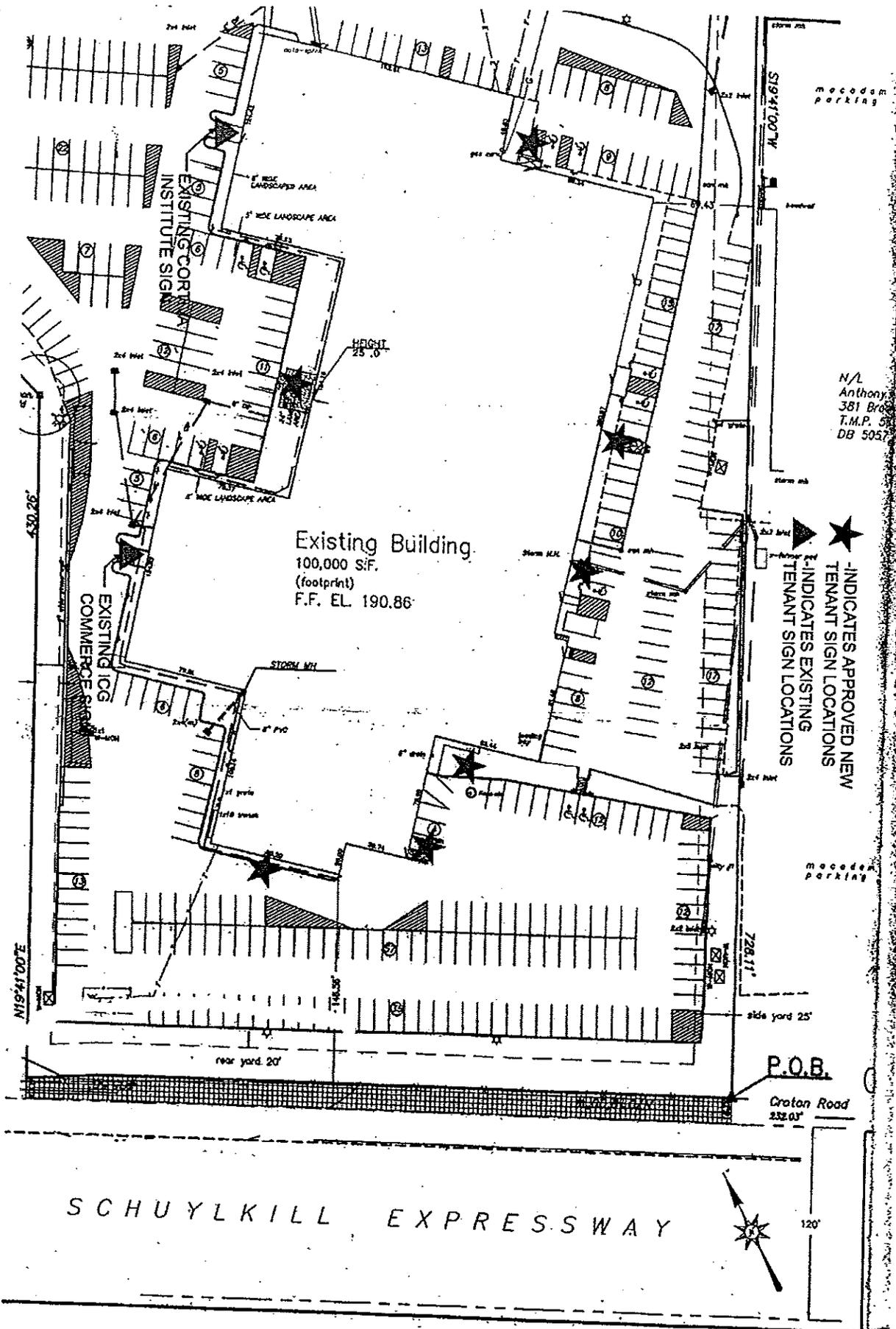
William C. Whitmore, Sr. - Secretary



Brad Murphy - Alternate

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.



Existing Building
100,000 S.F.
(footprint)
F.F. EL. 190.86

★ INDICATES APPROVED NEW
TENANT SIGN LOCATIONS
▲ INDICATES EXISTING
TENANT SIGN LOCATIONS

N/A
Anthony
381 Bro.
T.M.P. 5
DB 5057

SCHUYLKILL EXPRESSWAY

P.O.B.
Cratan Road
232.01'



120°