

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2010-14 : **HEARING DATE:** July 7, 2010
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APPLICATION OF: Fiserv : **DECISION DATE:** July 21, 2010
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PROPERTY: 455 S. Gulph Road :
:
Upper Merion Township :

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

The Applicant, Fiserv, (hereinafter referred to as the “Applicant”), filed an application requesting a variance to Section 165-168 in order to erect a sign on the rear building elevation (“Application”). The Application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on July 7, 2010 at the Upper Merion Township Building. All members of the Zoning Hearing Board, except William C. Whitmore, Sr., were present as well as the Solicitor, Zoning Officer, and Court Reporter. Brad Murphy, the alternate for the board, sat in place of Mr. Whitmore.

FINDINGS OF FACT

1. The Applicant is Fiserv, 455 S. Gulph Road, King of Prussia, PA 19406.
2. The owner of the subject property is Executive Terrace Investors, LP, 770 Township Line Road, Suite 150, Yardley, PA 19067.

3. The owner of the property provided written permission dated June 15, 2010 addressed to the Zoning Hearing Board allowing the Applicant to request a variance for signage. A copy of the June 15, 2010 letter is attached to the Application.
4. The property is located at 455 S. Gulph Road, King of Prussia, PA 19406, Upper Merion Township and is further identified as Tax Parcel #58-00-17329-001 (“Property”).
5. The Applicant was not represented by an attorney.
6. The property is located in the “R-1” Residential and “AR” Administrative and Research Zoning Districts.
7. The Property is approximately 14.582 acres.
8. The Property is used as an office campus with several multi-story office buildings.
9. The Applicant submitted a one-sheet plan titled “ALTA/ACSM Land Title Survey” dated May 22, 2002 (“Plan”) as part of its Application.
10. The Plan shows the proposed location of the sign on the rear of the building.
11. The Applicant submitted a detail of the sign from Global Sign Logistics as part of the Application showing the proposed sign.
12. The proposed sign is 18 square feet (3’ x 6’) and will not be illuminated.
13. Susan Clausen, a representative and employee of Fiserv, provided testimony at the hearing.
14. Fiserv has been at the present location since 1984 and has extended its lease for another 10 years. Fiserv leases 89,000 square feet of office space at the Property and employs approximately 500 people at the Property.

15. Fiserv has undertaken an improvement project, improving the office space and having the location designated as a Fiserv campus. With the designation as a Fiserv campus, the Fiserv branch at the Property was awarded a sign which serves as a brand.
16. Since Fiserv is not the only tenant at the Property, it agreed that it would not place the sign on the front of the building.
17. Ms. Clausen testified that the proposed sign is not for advertising and is not a directional sign since there is no walk-in business. The sign is to delineate the Fiserv campus distinction.
18. Ms. Clausen testified that there are no other plans for signage.
19. Mr. Christopher Gallen testified on behalf of the property manager of the Property.
20. Mr. Gallen testified that Fiserv is the largest tenant at the Property.
21. Mr. Gallen testified that there are six (6) other tenants at the Property and that is why Fiserv and the owner agreed that the sign should not be placed on the front of the building.
22. There were no residents who testified in favor of the project.
23. There were no residents who testified against the project.

DISCUSSION AND CONCLUSIONS OF LAW

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.

Through the introduction of testimony and the information attached to the Application, the Applicant has met its burden to prove entitlement to the requested variance to erect the proposed 18 square foot sign on the rear building elevation. The requested relief is the minimum to afford relief and will not adversely affect the public health, safety or welfare.

ORDER OF THE UPPER MERION TOWNSHIP

ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant did present sufficient testimony to grant a variance to Section 165-168. This variance is conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on July 7, 2010.

Decision Dated: July 21, 2010

**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**

Robert J. Montemayor - Chairman

Mark S. DePillis, Esq. – Vice Chairman

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.