

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

APPLICATION OF KING OF PRUSSIA VOLUNTEER FIRE COMPANY

NO. 2014-27

**PROPERTY: 300 W. BEIDLER ROAD
KING OF PRUSSIA, PA 19406**

OPINION AND ORDER

This zoning application involves a request for a use variance to permit an electronic changeable sign in the R-2 zoning district. The applicant is the owner of the property.

On November 19, 2014, the Zoning Hearing Board (“ZHB”) of Upper Merion Township (“Township”) held an advertised hearing on application no. 2014-27 of the King of Prussia Volunteer Fire Company. Members of the ZHB present at the hearing were: Lynne Gold-Bikin, Esq., Chairwoman; Mark DePillis, Esq., Secretary; Judith A. Vicchio, Member; and Maria Mengel, Member. The ZHB was represented by Marc D. Jonas, Esq. of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. The applicant was represented by Edmund J. Campbell, Jr., Esq. of the law firm of Campbell Rocco Law LLC.

After careful consideration, the ZHB makes the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

BACKGROUND

1. The applicant, King of Prussia Volunteer Fire Company (“Fire Company”), is the owner of an R-2 property located at 300 W. Beidler Road (the “Property”).

2. The Property consists of 3528 square feet. [Ex. A-1] The Property is used as and for Fire Company's "substation", which includes a firehouse and related facilities. [Exs. A-1; A-2]

3. Fire Company proposes a double-sided 24 square foot (4' x 6') sign, with each side containing a changeable "component for digital messages" (the "Sign"). [Exs. A-1; A-2]

4. Fire Company requests a use variance from section 165-168 of the Upper Merion Township Zoning Ordinance of 1942, as amended (the "Zoning Ordinance") to permit a changeable digital face on each side of the Sign.

5. Section 165-167.A of the Zoning Ordinance enumerates the signs permitted in the R-2 zoning district. Section 165-167.A does not permit a changeable sign in the R-2 zoning district.

6. Section 165-168.Q permits changeable signs in the Township, but only (1) in the C-3 district and (2) on school and church properties.

7. Fire Company also requests a dimensional variance from Section 165-168.K of the Zoning Ordinance to permit a business sign of 24 square feet instead of the 20 square feet maximum.

8. A changeable sign is not a permitted use on the Property.

ZHB HEARING

9. Fire Company offered the testimony of one witness, Mark Forster, Chairman of Fire Company's Board of Directors.

10. Mr. Forster's testimony was as follows:

- Fire Company operates a “substation”, otherwise known as a “satellite facility” on the Property. [N.T. pp. 28-29] The Property contains a firehouse and related facilities. [Ex. A-1]
- The Sign as proposed is 6’ in height by 4’ in width. [N.T. p. 12, Ex. A-1]
- The bottom 2’ of the Sign consists of a “digital message area” (the “Digital Component”). [N.T. p. 12]
- The top 4’ of the Sign is a static sign that identifies Fire Company. [N.T. pp. 12-13]
- The Sign will be placed on a brick foundation 29” in height. [N.T. p. 13; Ex. A-2] The Digital Component of the Sign will contain digital messages consisting of letters or numbers. [N.T. p. 14]
- The Digital Component of the Sign will be used for recruitment of new members and for advertising fundraising events on the Property. [N.T. p. 14]
- The Digital Component will be controlled from a laptop computer. [N.T. p. 14]
- Fire Company plans on having a rotation of messages at any given time of 3-4 messages on the Sign. [N.T. p. 20]
- Fire Company would keep the Sign on 24 hours a day, 7 days a week. [N.T. p. 21]
- The proposed location of the Sign is directly across W. Beidler Road from a residential community. [N.T. p. 31] Ambient light from the Sign would be visible from the residences. [N.T. pp. 31-32]
- Fire Company did not consult the neighbors across W. Beidler Road regarding the proposed Sign. [N.T. pp. 30-31]

- Fire Company presently has an identification sign on the firehouse itself. [N.T. p. 35] Specifically, there are six-inch bronze letters over the garage bay doors identifying Fire Company. [N.T. p. 35]
- The current identification sign is illuminated by soffit lighting above the letters. [N.T. p. 36]

11. One Township resident, Diana Sherlock, directly connected to Fire Company, testified in support of the application:

- Sherlock is the treasurer for Fire Company. [N.T. p. 25]
- Sherlock is in favor of the Sign for purposes of bringing revenue to the Fire Company. [N.T. p. 25]

INSUFFICIENCY OF THE EVIDENCE

11. Fire Company failed to offer proof that the Property suffers an unnecessary hardship that would justify the ZHB's grant of the requested use variance.

12. Fire Company failed to offer proof that the Property suffers an unnecessary hardship that would justify the ZHB's grant of the requested dimensional variance.

13. Fire Company failed to offer proof that the variances would be necessary to permit a reasonable use of the Property. To the contrary, the Property is being reasonably used for Fire Company's substation. The Property presently contains an existing identification sign on the firehouse itself.

14. Fire Company failed to offer proof that the requested variance is the minimum variance that would afford relief.

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 Twp.*, 578 A.2d 1002, 1005 (Pa. 1990).

Variations should be granted sparingly, and the reasons for granting variations must be substantial and compelling. *Laurento v. Zoning Hearing Bd. of the Borough of West Chester*, 638 A.2d 437, 439 (Pa. Commw. Ct. 1994). "The burden on a landowner seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling." *Bawa Muhaiyaddeen Fellowship v. Philadelphia Zoning Bd. of Adjustment*, 19 A.3d 36, 39-40 (Pa. Commw. Ct. 2011) (citing *Valley View Civic Assoc. v. Zoning Bd. of Adjustment*, 462 A.2d 637 (Pa. 1983)). "Further, a use variance carries a greater risk of injury to the public

interest than a dimensional variance.” *Id.* at 40. Therefore, the burden carried by an applicant seeking a use variance is high. *See id.*

An applicant for a use variance has the burden of proving that “(1) the proposed use is not contrary to the public interest and (2) the property involved is subjected to an unnecessary hardship unique or peculiar to the property itself.” *Zaruta v. Zoning Hearing Bd. of City of Wilkes-Barre*, 543 A.2d 1282, 1284 (Pa. Commw. Ct. 1988). Unnecessary hardship can be demonstrated by:

...either (1) showing that the physical characteristics of the property are such that it could not be used for a permitted use or that the physical characteristics were such that it could only be arranged for such purpose at a prohibitive expense, or (2) by proving that the characteristics of the area were such that the lots had either no value or only a distress value for any purpose permitted by the zoning ordinance.

Id. (citing *Appeal of Nardozza*, 405 A.2d 1020 (Pa. Commw. Ct. 1979)).

Although a somewhat relaxed standard applies to applications for dimensional, as opposed to use, variances, an applicant must still demonstrate an unnecessary hardship caused by unique physical characteristics of the property. *See Singer v. Philadelphia Zoning Bd. of Adjustment*, 29 A.3d 144, 149 (Pa. Cmwlth. 2011). Additionally, “[i]t is well-settled that in order to establish unnecessary hardship for a dimensional variance an applicant must demonstrate something more than a mere desire to develop a property as it wishes or that it will be financially burdened if the variance is not granted.” *Id.* at 150. Commonwealth Court rejects requests for variances where proof of hardship is lacking. *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment of the City of Pittsburgh*, 997 A.2d 423, 445 (Pa.Cmwlth. 2010).

1. **Fire Company failed to demonstrate any unique physical conditions of the Property that have caused an unnecessary hardship justifying use and dimensional variances to permit the desired changeable, digital, sign.**

Fire Company requested use and dimensional variances to permit the changeable digital Sign on the Property. Despite the heavy burden borne by Fire Company in requesting a use variance, Fire Company did not prove that an unnecessary hardship exists on the Property to justify the desired sign. Far from demonstrating that the Property could not be used for a permitted use, or that engaging in a permitted use on the Property would be prohibitively expensive, Fire Company's testimony established that the Property is presently being used as its substation. Fire Company already has a large, illuminated, identification sign on the firehouse, spanning the front of the building above the garage doors.

Fire Company similarly did not prove that the characteristics of the area were such that the Property has no value, or only distress value, for a permitted use.

Fire Company merely articulated its "personal" desire to add a changeable digital sign to the Property, notwithstanding the fact that such a sign is not permitted in the R-2 zoning district. Fire Company offered no evidence that it considered a free-standing sign of a permitted nature on the Property.

In a case similar to the facts presented here, *Society Created to Reduce Urban Blight (SCRUB) v. Zoning Bd. of Adjustment*, 831 A.2d 1255 (Pa. Commw. Ct. 2003), a property owner sought to install a mounted, single-face, wall-wrap display on a commercial building. The first floor of the building was used as a beauty salon, and the remaining 8 stories were empty. *Id.* at 1257. The owner asserted that the rental income from the beauty salon was not sufficient to cover the expenses of the property.

In holding that the asserted hardship did not warrant the grant of a use variance, Commonwealth Court noted:

Further, a party seeking a variance bears the burden of proving, *inter alia*, that an unnecessary hardship will result if the variance is not granted. *Society Created to Reduce Urban Blight v. Zoning Board of Adjustment*, 804 A.2d 116, 119-120 (Pa.Cmwltth.2002). Absent a finding that property will be rendered valueless, financial hardship alone is not a sufficient basis for granting a variance. *Id.* at 120. Typically, the loss of rental income from disallowed outdoor advertising signs is not an unnecessary hardship. *Id.* (collecting cases). Under the Zoning Code, the applicant must also present evidence that the conditions on which the appeal for a variance is based are unique to the property and that the special conditions or circumstances forming the basis for the variance did not result from the actions of the applicant. Zoning Code, § 14-1802(1)(b) and (d).

Here, the only hardship asserted by Applicant was a financial hardship. ... The denial of a variance will have no effect on the ability of the property to continue to be used for purposes permitted in a C-5 Commercial District.

Id. at 1262.

Even under the relaxed standard applicable to dimensional variances, this application and the evidence offered by Fire Company present the classic personal articulation of a hardship, which is legally insufficient for the grant of variances. *Nettleton v. Zoning Board of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1040 (Pa. 2003) (citing *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 286, 288 (1996)); *Singer*, 29 A.3d at 149-150. Unnecessary hardship, caused by unique physical circumstances of the property, is required for the grant of a variance. *Nettleton*, 828 A.2d at 1040. For example, in *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595 (Pa. Cmwltth. Ct. 2001), the court held:

A variance, whether labeled dimensional or use, is appropriate “only where the *property*, not the person, is subject to hardship.” *Szmigiel v. Kranker*, 6 Pa.Cmwlth. 632, 298 A.2d 629, 631 (1972) (emphasis in original). In the present case, Daniels’ property is well suited to the purpose for which it is zoned and actually used, a car dealership, which is in no way burdened by the dimensional requirements of the ordinance. Daniels has proven nothing more than that adherence to the ordinance imposes a burden on his personal desire to sell vehicles for Land Rover.

779 A.2d at 598.

Here as well, the Property is well suited for its present use – the substation for a volunteer fire company with an existing identification sign. Fire Company failed to articulate any manner in which the Property is burdened by the requirements of the Zoning Ordinance. As with the *SCRUB* property, the Property can be utilized, and is being utilized, reasonably – as and for Fire Company’s substation. Fire Company’s desire to utilize the Sign to raise revenue through, *e.g.*, fundraising, is insufficient to establish an unnecessary hardship. *Id.* Fire Company merely demonstrated, as in *Yeager*, its personal preference for an unpermitted sign, despite the Property’s present, reasonable, use. This desire is insufficient to entitle Fire Company to the requested variances.

2. Fire Company failed to prove the requested variances are the minimum needed to afford relief.

Fire Company was required to provide evidence that the variances requested represent the minimum necessary to afford relief. 53 P.S. § 10910.2(a); *Hohl v. Caernarvon Twp. Zoning Hearing Bd.*, 736 A.2d 57, 59 (Pa.Cmwlth. 1999). Fire Company failed to offer any proof that the requested variances were the minimum necessary to afford relief. To the contrary, testimony reveals that (1) the Property presently contains Fire Company’s substation; (2) the

Property presently contains a large, illuminated, identification sign; and (3) Fire Company failed to consider other, permitted, options to display the desired messages.

Under these circumstances, Fire Company failed to prove that the requested use variance represents the minimum necessary to afford relief.

C. CONCLUSIONS OF LAW

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

2. Fire Company has standing to seek the requested variances as the legal owner of the Property.

3. The ZHB is obligated to ensure compliance with the technical requirements of the Zoning 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; (c) such unnecessary hardship has not been created by the applicant; and (d) the variance, if authorized, will represent the minimum variance that will afford relief. Zoning Ordinance §165-251.B(2).

5. Fire Company failed to demonstrate any unnecessary hardship entitling it to a use variance from sections 165-167.A and 165-168.Q of the Zoning Ordinance to permit a changeable, digital, Sign on the Property.

6. Fire Company failed to demonstrate any unnecessary hardship entitling it to a dimensional variance from Section 165-168.K

6. Fire Company failed to demonstrate that the variances are necessary to permit a reasonable use of the Property.

7. Fire Company failed to demonstrate that the requested variances represent the minimum necessary to afford relief.

8. Accordingly, Fire Company failed to sufficiently demonstrate its entitlement to the requested variances.

At its November 19, 2014 hearing, the ZHB entered the following order:

ORDER

AND NOW, this 19th day of November, 2014, the Zoning Hearing Board DENIES the request for variances from the following section of the Upper Merion Township Zoning Ordinance of 1942, as amended:

- 165-167.A *Residential Signs*
- 165-168.K *Ground or freestanding signs*
- 165-168.Q *Animated and changeable signs*

to install a double-sided electronic activated changeable freestanding sign approximately 4 feet in width and 6 feet in height.

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.

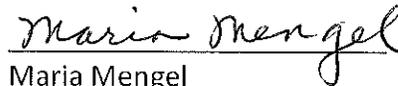
Written notice of the ZHB's decision was mailed to Fire Company on November 20, 2014.

**ZONING HEARING BOARD OF
UPPER MERION TOWNSHIP**

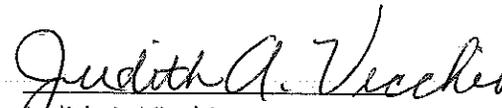
Lynne Gold-Bikin, Esq.
Chairwoman



Mark DePillis, Esq.
Secretary



Maria Mengel
Member



Judith A. Vicchio
Member

Date of Mailing: