

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

APPLICATION OF BLUE STAR/HENDERSON ENTERPRISES, L.P.

NO. 2015-13

PROPERTY: 125 West DeKalb Pike

OPINION AND ORDER

In this zoning application, the owner of a property located in the GC General Commercial District requests 5 variances to permit 2 freestanding signs of a greater size and height than permitted, and a wall sign on the side of a building where no sign is permitted.

Blue Star/Henderson Enterprises, L.P. ("Landowner") is the owner of a commercial building on DeKalb Pike, previously occupied by Sports Authority. Landowner has entered into lease agreements with 3 new tenants and seeks extensive relief from the sign regulations contained in section 165-168 *Business signs* of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Zoning Ordinance"). Landowner obtained relief from the Zoning Ordinance's sign regulations in 2011 for a previous land development encompassing both the subject property and a neighboring property.

The Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held an advertised hearing on September 16, 2015, on Landowner's application, no. 2015-13. The hearing was stenographically recorded. All members of the ZHB were present at the hearing: Lynne Gold-Bikin, Esq., Chairwoman; John M. Tallman, Jr., Vice Chairman; Mark DePillis, Esq., Secretary; Maria Mengel, Member; and Jonathan Garzillo, 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 Ameer S. Farrell, Esq., of the law firm of Kaplin Stewart.

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

A. FINDINGS OF FACT

BACKGROUND

1. Landowner is the legal owner of the parcel of land located at 125 West DeKalb Pike, Upper Merion Township, Pennsylvania (“Property”), identified as parcel no. 58-00-06292-00-4. [Ex. ZHB-1; Ex. ZHB-2.]
2. The Property is located in the Township’s GC General Commercial District (“GC District”). [Ex. ZHB-1.]
3. The Property is approximately 4.38 acres and contains a 50,267 square foot commercial building (the “Building”). [Ex. ZHB-3; N.T. p. 25.]
4. The Property contains 2 existing freestanding signs, one along DeKalb Pike (35 square feet in area and 13’ in height) and one along Henderson Road (112 square feet in area and 17’ 8” in height). [Ex. ZHB-8; Ex. ZHB-9.]
5. The Building was formerly occupied by Sports Authority pursuant to a long-term lease. [N.T. p. 25.]
6. Landowner has executed lease agreements with three commercial tenants—Stein Mart, Fortunoff Backyard Store, and a Wine and Spirits retail store. [N.T. pp. 34-35.]

7. Zoning Ordinance section 165-168 *Business signs* sets forth the sign regulations for the GC District.
8. The freestanding sign located on Henderson Road was the subject of a prior ZHB decision, application no. 2011-17, decision dated August 3, 2011. In that decision, the following relief was granted:
 - A variance from section 165-168.K(2) to allow a 0' ground clearance ground sign for a sign less than 15' from the curb line.
 - A variance from section 165-168.K(1) to allow the sign to exceed the allowable height of 15', for a height of 18'.
 - A variance from section 165-168.K(3)(b) to allow the sign to exceed the allowable area of 35 square feet, for a sign "copy" area of 40.55 square feet.¹
 - An interpretation that an off-site sign was not a "billboard", as defined by the Zoning Ordinance.

[Ex. ZHB-11, pp. 4-5, 11.]

9. The 2011 variances were granted subject to the following conditions:
 - compliance with the testimony of the applicant at the public hearing
 - removal of the existing Wells Fargo sign
 - the panels on the proposed sign shall be 4 equally sized panels

[*Id.*]

10. No relief was granted for the DeKalb Pike sign in application no. 2011-17.

¹ Although the "copy" area is 40.55 square feet, the actual square footage of the sign area is 112 square feet. [N.T. p. 40; Ex. ZHB-9; Ex. A-3.15.] The Zoning Ordinance calculates the size of a sign by sign area, not copy area.

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11. Landowner now requests 5 more variances from section 165-168:
- section 165-168.A(2), to permit a wall sign of 100 square feet, where no wall sign is permitted
 - section 165-168.K(1) to permit a freestanding sign 21' 6" high exceeding the 15' height permitted
 - section 165-168.K(1) to permit a freestanding sign 21' 4" high, exceeding the 15' height permitted
 - section 165-168.K(3)(b) to permit a freestanding sign of 100 square feet, exceeding the 35 square feet permitted
 - section 165-168.K(3)(b) to permit a freestanding sign of 140 square feet, exceeding the 35 square feet permitted
12. Landowner will have, by right, 438 square feet of wall signage, consisting of 3 wall signs, one for each tenant, on the front building façade facing DeKalb Pike. [N.T. pp. 35, 71-72.]

ZHB Hearing

13. The ZHB entered the following exhibits:
- a. ZHB-1—ZHB application
 - b. ZHB-2—deed for the Property
 - c. ZHB-3—plan entitled "Plan of Property" prepared by Chambers Associates, Inc., dated March 2, 2006, last revised March 17, 2006
 - d. ZHB-4—aerial photograph of existing site
 - e. ZHB-5—four photographs of building

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- f. ZHB-6—renderings providing location of each new sign
 - g. ZHB-7—plan entitled “Fortunoff—Signage Exhibit”, prepared by
GHC Architects, LLC
 - h. ZHB-8—plan entitled “Signage Exhibits”, prepared by GHC
Architects, LLC
 - i. ZHB-9—plan entitled “Signage Exhibits—Henderson Road Pylon”,
prepared by GHC Architects, LLC
 - j. ZHB-10—ZHB decision, application no. 2011-11, dated July 15,
2011
 - k. ZHB-11—ZHB decision, application no. 2011-17, dated August 3,
2011
 - l. ZHB-12—legal notice
 - m. ZHB-13—proof of publication
 - n. ZHB-14—affidavit of posting
14. Landowner entered the following exhibits:
- a. A-1—deed
 - b. A-2—ALTA survey dated March 2, 2006
 - c. A-3.1 through A-3.21—Power Point presentation
 - d. A-4—ZHB decision, application no. 2011-17, dated August 3, 2011

15. Landowner's only witness was Bruce Goodman, the principal of Goodman Properties. Landowner was identified as a "single-purpose entity that [Goodman Properties] owns."² [N.T. p. 23.]
16. Landowner's testimony was as follows:
 - a. Sports Authority vacated the Building at the end of its lease. [N.T. pp. 29, 67.] At the time of the hearing, the Building had been empty for approximately 9 months. [N.T. p. 29.]
 - b. Landowner has signed 10-year leases with the 3 new tenants. [N.T. pp. 30.] While Landowner noted its contractual obligation under the leases to exercise "good faith" to obtain the requested zoning relief, the leases are not contingent on the requested zoning relief. [N.T. pp. 48, 63.] Under the leases, Landowner guaranteed all tenants a presence on both freestanding signs. [N.T. pp. 46, 48.] However, there is no requirement in any of the leases for a sign of a specific minimum size. [N.T. p. 48.]

² Although Mr. Goodman offered himself as an expert in "commercial development and redevelopment", the opinion offered, which related to whether he thought the requested signage "was critical to the proposed tenants of the center", was not allowed. [N.T. pp. 23, 44-45.] This opinion was neither relevant, nor material to the legal standards applicable to the variance application, particularly in light of 10-year lease commitments which were not contingent on the grant of the requested sign variances. The decision to accept, or not accept, a witness as an expert is within the discretion of the ZHB. *See In re Appeal of Stagebrush Promotions, Inc.*, 512 A.2d 776, 782 (Pa. Commw. Ct. 1986) (no abuse of discretion where board of supervisors refused to accept witnesses as experts in conditional use hearing). *Cf. Berman v. Manchester Twp. Zoning Hearing Bd.*, 540 A.2d 8, 9-10 (Pa. Commw. Ct. 1988) (affirming zoning hearing board's discretion to rely on opinion of planning commission over that of applicant's expert). The ZHB is the sole judge of credibility of witnesses and the weight afforded their testimony. *Oxford Corp. v. Zoning Hearing Bd. of Borough of Oxford*, 34 A.3d 286, 295 n.9 (Pa. Commw. Ct. 2011). The formal rules of evidence do not apply to hearings before the ZHB. 53 P.S. §10908(6).

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- c. The Property and the adjacent property, also owned by an entity controlled by Goodman Properties, were treated as a “unified” development during land development of the adjacent property as a Chick-fil-A and Wawa.³ [N.T. pp. 25-26; ZHB-11, p. 3.] There are cross-easements in place for parking and access throughout the unified site. [N.T. p. 26.]
 - d. The Property has its principal frontage along DeKalb Pike and secondary access to and from Henderson Road. [ZHB-3.]
 - e. On the east side of the Property is a Wells Fargo bank, on a property not owned by Landowner. [N.T. pp. 26-27.]
 - f. The Wells Fargo property is located at the corner of DeKalb Pike and Henderson Road. [*Id.*] Thus, Landowner’s Property is not a corner lot.
 - g. There are 2 existing freestanding signs serving the Building—a 35 square foot freestanding sign, 13’ high, along DeKalb Pike and the 112 square foot freestanding sign, 17’ 8” high along Henderson Road. [N.T. p. 26; Ex. ZHB-9.] The Henderson Road sign also contains signage for Chick-fil-A, Wawa, and Wells Fargo. [N.T. pp. 39-40; ZHB-9.]

³ Significant sign relief was granted for the neighboring property in connection with this development, pursuant to the ZHB decision dated July 15, 2011, application no. 2011-11. [ZHB-10.] Specifically, 6 variances were granted from section 165-168 Business signs of the Zoning Ordinance, including a variance to permit over two times the sign area permitted thereunder. [*Id.*]

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- h. Along DeKalb Pike, the Wawa and Chick-fil-A sit at a higher elevation than the Building. [N.T. p. 32.] Mr. Goodman asserted that the Chick-fil-A blocks view of the Building when traveling north on DeKalb Pike. [*Id.*] Heading south, Mr. Goodman asserted that the Wells Fargo bank blocks view of the Building. [N.T. p. 33.] Another entity associated with Goodman Properties was the developer of the Chick-fil-A, including the related signage.
- i. At the same time, however, Mr. Goodman acknowledged that the Building was “pretty visible” and that proposed wall signs would be “high”. [N.T. p. 30.] Mr. Goodman maintained that, without the zoning relief, the signage would be “nice” but “not perfect”. [*Id.*]
- j. Landowner proposes a 100 square foot sign along DeKalb Pike, with approximately 33 1/3 square feet of signage dedicated to each of the 3 tenants. [N.T. p. 38; Ex. ZHB-8.] Landowner also proposes to increase the height of the sign to 21’ 6”, from a current height of 13’. [N.T. p. 38; Ex. ZHB-8.]
- k. Along Henderson Road, Landowner proposes to expand the 112 square foot freestanding sign by an additional 28 square feet, for a total of 140 square feet⁴ of signage. [N.T. p. 34; ZHB-9.] Landowner also proposes to increase the height of the sign from

⁴ Although the application, addendum, and plans submitted therewith request relief for a sign of 140 square feet in area and 21’ 4” in height, one of the exhibits, Ex. A-3.15, indicates that the sign is 144 square feet in area and 21’ 6” in height.

17' 8" to 21' 4". [ZHB-9.] Mr. Goodman explained the content of the Henderson Road sign as follows:

MR. GOODMAN:...It's important to have Wawa and Chick-fil-A on the sign, because you really want to avoid people going through the intersection when they can go through our property. That's desired. So we are obligated to put them here. It works. We are obligated to put Wells Fargo here because we have an agreement with them. And we think it's very important to have representation on this sign for our three new tenants.

[N.T. pp. 39-40.]

l. In addition to the freestanding signs, Landowner will place on the Building 438 square feet of wall signage, consisting of 3 wall signs, one for each tenant, on the front façade facing DeKalb Pike:

- Stein Mart—approximately 200 square feet
- Fortunoff Backyard Store—approximately 119 square feet
- Wine and Spirits—approximately 119 square feet

[N.T. pp. 35, 71-72.]

m. Landowner did not request zoning relief in connection with the wall signs on the DeKalb Pike frontage. Mr. Goodman testified that the 438 square feet of wall signs meet the requirements of the Zoning Ordinance. [N.T. pp. 35-36.]

n. On the east side of the Building, Landowner proposes a 100 square foot wall sign. [N.T. pp. 36-37, 41.] Landowner asserts that the 100 square foot sign is permitted under the Zoning Ordinance, contending that the Building has "frontage" on Henderson Road.

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- o. When asked specifically whether the totality of zoning relief requested was the minimum to afford relief, Mr. Goodman testified:

MR. DePILLIS: ... in each case is what you're asking for the minimum relief you need? ... I'd like to hear a justification for why it is the minimum relief?

...

MR. GOODMAN: Well, we believe that a three-foot panel by eight-foot will represent the tenant well. We think it's safe. We think it works. And that's consistent with what we are talking about on 202. We think it's important to have these signs be visible. They are nice. They are not flashing. They are not neon. They are nice.

...

We think it's necessary. We think it's important. And I will tell you that if this were in a different municipality, these signs would probably be allowed by right. You have a tough ordinance.

[N.T. pp. 68-70.]

17. Landowner presented no other witnesses -- neither fact witnesses, nor independent experts.

INSUFFICIENCY OF THE EVIDENCE

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

19. Landowner 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 as a large commercial building with 147 square feet of existing sign

area on freestanding signs along both Henderson Road and DeKalb Pike, and proposed 438 square feet of wall signage.

20. Landowner failed to offer proof that the requested variances were the minimum variances that would afford relief. Instead, Landowner acknowledged that the Building itself, which will have significant wall signage, is visible from DeKalb Pike.

21. Finally, Landowner failed to demonstrate that the hardship claimed by Landowner was not self-created. The concerns expressed by Landowner—particularly the visibility issues when travelling north on DeKalb Pike and the claimed difficulty caused by the commitments made by Landowner to Chick-fil-A, Wawa, Wells Fargo, and the 3 new tenants for representation on the signs—were all self-created and personal to the Landowner—caused by Landowner’s previous development of the neighboring parcel, its negotiations with Wells Fargo and the new tenants, and the simple desire for higher and larger signs.

B. DISCUSSION

THE BUILDING DOES NOT FACE HENDERSON ROAD

Section 165-168.A sets forth the regulations for wall signs in the GC District. Wall sign area is calculated based on linear footage of building frontage.⁵ Wall signs may only be erected on the building frontage used in the calculation. Zoning Ordinance

⁵ “Building frontage” is defined as:

The linear footage of building face which serves as the principal approach to a building and which building face fronts upon a public street, a shopping center driveway, parking area or pedestrian mall or walkway.

Zoning Ordinance § 165-164.

§ 165-168.A(3). Subsection 165-168.A(2) allows additional wall signage for buildings “facing more than one street” as follows:

(2) For buildings facing more than one street, an additional one square foot of sign area shall be permitted for every one linear foot of building frontage on the additional side, with a maximum additional sign area of 100 square feet.

Zoning Ordinance § 165-168.A(2). A wall sign may not be erected on a secondary building façade not facing a public street. *See id.*

Landowner relies on the assertion that the Building has frontage on both DeKalb Pike and Henderson Road. However, property frontage and where a building faces are different concepts with different meanings. The Wells Fargo property separates the Building from Henderson Road. Neither the Building, nor the proposed wall sign “face” Henderson Road. The Building and the proposed wall sign face the Wells Fargo property. In order to install the desired 100 square foot wall sign on the east side of the Building, Landowner needs a use variance. *See SPC Co. v. Zoning Bd. of Adjustment of Philadelphia*, 773 A.2d 209, 214 (Pa. Commw. Ct. 2001) (variance to locate sign in area where sign not permitted is a use variance); *Rollins Outdoor Advertising, Inc. v. Zoning Bd. of Adjustment*, 529 A.2d 99, 103 (Pa. Commw. Ct. 1987) (variance to locate sign in buffer zone is a use variance).

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. Commw. Ct. 1990).

Variations should be granted sparingly, and the reasons for granting variations must be substantial, serious and compelling. *Laurento v. Zoning Hearing Bd. of the Borough of West Chester*, 638 A.2d 437, 439 (Pa. Commw. Ct. 1994). Although a somewhat relaxed standard applies to applications for dimensional, as opposed to use, variations, 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. Commw. Ct. 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. Put another way, an applicant must demonstrate more than its “mere desire to increase profitability.” *Id.* at 149.

Commonwealth Court rejects requests for dimensional variations 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. Commw. Ct. 2010). Landowner requests both a use variance and several dimensional variances.

- 1. Landowner failed to demonstrate any unique physical conditions of the Property that have caused an unnecessary hardship justifying variances to permit the relief requested from the Zoning Ordinance's sign regulations.**

Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use unless the requested variances were granted. The Property presently contains a large commercial building, which has been leased to 3 tenants for 10-year lease terms, 147 square feet of existing freestanding sign area, and proposed 438 square feet of wall signage on the DeKalb Pike building frontage.

Landowner failed to articulate a legal, as opposed to a personal, hardship for the erection of 2 oversized freestanding signs (approximately 3 times the sign area, and 1 1/2 times the height, permitted) and a 100 square foot wall sign on the east side of the Building, where no sign is permitted. The proposed signage requires 5 variances, including a use variance for the east façade wall sign.

Despite its request for extensive relief, Landowner failed to articulate a hardship relating to the Property not created by its desire to have over 3 times the sign area, and 1 1/2 times the height, permitted in order to accommodate Landowner's tenants. Although Mr. Goodman testified that he thought the signage was "necessary", this testimony is belied by his concession that, without the requested relief, the Building and signage would be "pretty visible", but "not perfect". [N.T. p. 30.] The leases with the new tenants were not made contingent on the requested zoning relief. [N.T. p. 48.]

This application and the evidence offered by Landowner 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 circumstance 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. Commw. 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.

In an instructive case, *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment of City of Pittsburgh*, 997 A.2d 423 (Pa. Commw. Ct. 2010), the court upheld the denial of use and dimensional variances requested to allow signs of a type and size not permitted on a property already being used as a public parking garage. The use variance was requested to allow an LED sign in a zoning district where LED signs were not permitted. The court held:

...no error is apparent in the ZBA's determination that Lamar did not meet its burden of proof to obtain a use variance. Specifically, in denying Lamar's variance request for the LED sign, the ZBA determined Lamar did not prove the requisite unnecessary hardship. Specifically, the ZBA determined the subject property is being used in conformity with the Code's

requirements. As such, the ZBA stated Lamar could not prove there were unique physical circumstances relating to the subject property that would warrant relief from the Code's requirements to allow for the reasonable use of the subject property.

Id. at 444. Dimensional variances were requested to allow an electronic “ticker” sign with a sign area of more than 3 times that permitted and a height higher than permitted.

The court observed:

...here Lamar's dimensional variance request contemplated more than a 350% increase from the 300 square foot size limitation on electronic sign messages. *Concl. of Law No. 33.* According to the ZBA, the only justifications Lamar offered for this substantial deviation were its “self-interested opinion that the [t]icker [s]ign would be a community benefit and the assertion that the income from the sign would benefit the Parking Authority.” *Id.* Clearly, this alleged hardship is insufficient to satisfy the requisite hardship criterion even under the relaxed *Hertzberg* standard. *One Meridian Partners.* As such, no error is apparent in the ZBA's denial of a dimensional variance for Lamar's proposed ticker sign.

Id. at 446.

As in *Yeager* and *Lamar*, Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use. Rather, Landowner's personal preferences and desire for “perfect” signage drive the need for the variances and are totally insufficient under the law.

2. Landowner failed to demonstrate that the hardship alleged was not self-created.

Landowner was required to demonstrate that the hardship alleged was not self-created. 53 P.S. § 10910.2(a); *Hohl v. Caernarvon Twp. Zoning Hearing Bd.*, 736 A.2d 57, 59 (Pa. Commw. Ct. 1999). On DeKalb Pike, Landowner alleged that the Property

suffered a hardship because Chick-fil-A, built at a higher elevation than the Building, blocks view of the building when travelling north. The location and elevation of the Chick-fil-A were the result of Landowner's previous development of the adjacent parcel

On Henderson Road, Landowner alleges that additional sign area and height is needed to accommodate the 3 new tenants because (1) Wawa and Chick-fil-A also need signage, and (2) Landowner is required to provide space on the sign for Wells Fargo, pursuant to an agreement with Wells Fargo. Landowner has contractually agreed to provide each of the 3 new tenants representation on the signs, notwithstanding the alleged limitation caused by the sign regulations applicable in the GC District. Landowner's personal quest to provide maximum sign area to all of the parties with whom it has chosen to contract is insufficient as a matter of law to justify the significant zoning relief sought. Landowner has created its own need for the requested variances.

3. Landowner failed to prove the requested variances are the minimum needed to afford relief.

Landowner was required to provide evidence that the variances requested represent the minimum amount necessary to afford relief. 53 P.S. § 10910.2(a); *Hohl*, 736 A.2d at 59. Landowner failed to prove that the requested variances were the minimum necessary to afford relief. To the contrary, testimony reveals that (1) the Property contains the Building, which is fully leased to 3 new tenants and is part of a larger unified development also containing a Chick-fil-A and Wawa; (2) the Property presently contains significant freestanding signage as a result of the variances granted in application no. 2011-17, and will contain significant wall signage for each of the new

tenants; and (3) the Building and proposed wall signage are reasonably visible from DeKalb Pike. See finding #16.o above and the colloquy between Mr. Goodman and ZHB member DePillis. Landowner also failed to demonstrate that the size and height of the signs proposed were necessary, or that it even considered reducing the size and height of the signs. Under these circumstances, Landowner failed to prove that the requested variances represent the minimum amount necessary to afford relief.

C. CONCLUSIONS OF LAW

1. Landowner has standing to seek the requested variances as the legal owner of the Property.

2. The ZHB has jurisdiction under section 909.1(a)(5) of the MPC, 53 P.S. §10909.1(a)(5), and Zoning Ordinance section 165-251.A(5) to grant variances from the provisions of the Zoning Ordinance

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. Landowner failed to demonstrate any unnecessary hardship entitling Landowner to the 5 requested variances.

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

7. Landowner failed to demonstrate that the alleged hardship was not created by Landowner.

8. Landowner failed to demonstrate that the requested variances represented the minimum necessary to afford relief.

9. Accordingly, Landowner failed to sufficiently demonstrate its entitlement to the requested variances.

At its August 19, 2015 hearing, the ZHB entered the following order:

ORDER

AND NOW, this 16th day of September 2015, the Upper Merion Township Zoning Hearing Board DENIES the application of Blue Star/Henderson Enterprises, L.P. for the following 5 variances from section 165-168 (Business signs) of the Upper Merion Township Zoning Ordinance of 1942, as amended:

- *section 165-168.A(2), to permit a wall sign of 100 square feet, where no sign is permitted*
- *section 165-168.K(1) to permit a freestanding sign of 21' 6" instead of the 15' permitted*
- *section 165-168.K(1) to permit a freestanding sign of 21' 4" instead of the 15' permitted*
- *section 165-168.K(3)(b) to permit a freestanding sign of 100 square feet instead of the 35 square feet permitted*
- *section 165-168.K(3)(b) to permit a freestanding sign of 140 square feet instead of the 35 square feet permitted*

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.

**ZONING HEARING BOARD OF
UPPER MERION TOWNSHIP**



Lynne Gold-Bikin, Esquire
Chairwoman

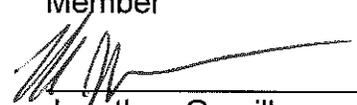


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Vice Chairman



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Jonathan Garzillo
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