



2. The legal owner of the subject property is King of Prussia Hotel Associates, L.P., a Kansas Limited Partnership Logeworks, L.P., 8100 E. 22<sup>nd</sup> Street, Building 500, Wichita, KS 67226.
3. The property is located at 240 Mall Boulevard, King of Prussia, PA 19406, Upper Merion Township and is further identified as Tax Parcel #58-00-08473-10-9.
4. The Applicant was not represented by an attorney.
5. The property is zoned “SC” Shopping Center District.
6. The lot is approximately 6.524 acres.
7. The proposed use of the Property is for a seafood restaurant.
8. Abutting properties are a hotel, shopping mall and various retailers.
9. Edward McGraw, Senior Vice President of Joe’s Crab Shack, and Brian Smith from NW Sign Industries testified on behalf of the Applicant.
10. The following exhibits were offered into evidence at the zoning hearing on July 6, 2011:
  - A-1: Series of six (6) photographs; and
  - A-2: Memorandum as to square footage of signage proposed.
11. NW Sign Industries prepared an eight (8) page plan set that was submitted with the zoning application consisting of:
  - Site Plan;
  - Exterior Elevations, South and North Elevations;
  - Exterior Elevations, East and West Elevations;
  - Building Signs – “Eat at Joe’s”;
  - Building Signs – “Joe’s Crab Shack”;
  - Building Signs – Non-illuminated wall sign, Pirate Picture of Skull and Crossbones;
  - Building Signs – Non-illuminated wall sign consisting of Stars and Bars and Peace, Love, Crab; and
  - Building Signs – Non-illuminated banners naming items on menu.

12. Section 165-168.A(1) and A(3) and A(4) of the Zoning Ordinance state as follows:

A. Business signs are permitted in the C-O, C-1, C-2, C-3, SC, ARE, AR-1, SM, SM-1, LI and HI Zoning Districts, subject to the following:

(1) The maximum total sign area shall be two square feet for every one linear foot of building frontage, with a maximum area of 200 square feet. For shopping centers, industrial parks and other multiple occupancy nonresidential buildings, the building face or wall shall be calculated separately for each separate occupancy.

(3) The sign area calculated for each frontage shall be erected on that frontage only and shall not be increased by the sign area calculated for another frontage.

(4) The total sign area as computed under the formulas set forth above may be distributed by the applicant in any percentage among ground signs, wall signs, canopy signs, awning signs, projecting signs, light bands and roof signs where such signs are permitted, provided that if a roof sign is permitted, not more than 50% of the total permitted sign area may be allocated to such roof sign.

13. The Applicant is requesting 483.7 square feet of signage on the building and has 40 square feet of signage on a pylon sign for a total of 523.7 square feet.

14. The requested signage is as follows:

**South Elevation (front elevation)**

Eat at Joe's:	52 square feet
Joe's Crab Shack:	75 square feet
Banners:	<u>13.3 square feet</u>
	140.3 square feet

The "Eat at Joe's" sign and the "Joe's Crab Shack" are proposed as internally illuminated sign and the banners are not illuminates and do not have lighting associated with them.

**North Elevation (rear elevation)**

Eat at Joe's:	29.25 square feet
Banner:	<u>6.5 square feet</u>
	35.75 square feet

The North elevation faces the turnpike and is the loading dock area. The banner sign is not illuminated and does not have lighting associated with it.

**East Elevation**

Stars & Bars:	105.375 square feet
Pirate Flag:	49.00 square feet
Banners:	<u>23.3 square feet</u>
	177.65 square feet

The Stars & Bars are not illuminated and are referred to as color elements. The Pirate Flag and banner items are also not illuminated

**West Elevation (elevation that faces hotel)**

Peace Love & Crab:	<u>130 square feet</u>
--------------------	------------------------

The Peace, Love and Crab are pieces of metal and are not individually illuminated. The gooseneck lamps seen on the signage plan are meant to shine down and are turned off when restaurant is not open. The Peace, Love and Crab sign is part of the Applicant's brand.

All Elevations:	483.7 square feet
-----------------	-------------------

15. The Applicant agreed to withdraw the request for the "Eat at Joe's" sign on the North Elevation reducing the requested relief for signage on the elevations to 454.45 square feet and overall signage to 494.2 square feet.
16. The signs requested are the prototype signs for Joe's Crab Shack.
17. The restaurant has limited visibility around Mall Boulevard.
18. The gooseneck lamps seen on the signage plans are to be turned off when the restaurant is not open.
19. The requested signs allow Joe's Crab Shack to maintain its brand image and provide better visibility for patrons.
20. There were no residents who testified in favor of the project.
21. There were no residents who testified against the project.

## DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, Crab Addison, Inc., d/b/a Joe's Crab Shack, filed an application requesting variances to Section 165-168.A(1) in order to exceed the allowable sign area and Section 165-168.A(3) in order to erect the proposed signage on all four (4) building elevations.

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 is requesting signage for its chain restaurant and due to the location of the Property, the proposed signage, as amended at the zoning hearing, is appropriate for the Property. The Applicant's requested signage relief, as amended at the zoning hearing, is the minimum to afford relief and is consistent with the existing signs for businesses in the area of Mall Boulevard. The proposed signage will not adversely affect the public health, safety and welfare and allows the restaurant to maintain the consistent look of neighboring restaurants and allows the restaurant to use signage that promotes its brand. The proposed signage will

alert motorists attempting to locate the restaurant, thereby aiding in the safety of the public. The Applicant has the burden of satisfying the standard of proof for the criteria outlined above and through the use of testimony and exhibits, the Applicant has satisfied that standard, therefore, requested variances for signage, as amended by the Applicant at the zoning hearing, 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 the requested variances to Section 165-168.A(1) and Section 165-168.A(3) for the proposed signage as amended at the zoning hearing. These variances are conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on July 6, 2011 which includes the withdrawal of the request for the "Eat at Joe's" sign on the North Elevation.

Decision Dated: August 3, 2011

**UPPER MERION TOWNSHIP  
ZONING HEARING BOARD**

---

Robert J. Montemayor - Chairman

---

Mark S. DePillis, Esq. – Vice Chairman

---

Brad Murphy - Secretary

**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.