

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2011-20 : **HEARING DATE:** September 7, 2011
:
APPLICATION OF Temple Brith Achim :
:
: **DECISION DATE:** September 21, 2011
:
PROPERTY: 481 S. Gulph Road :
Upper Merion Township :

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, Temple Brith Achim, (hereinafter referred to as the “Applicant”), filed a zoning application (“Application”) requesting a variance pursuant to Section 165-167.A(2) of the Upper Merion Township Zoning Code (“Zoning Code”) in order to erect a second ground sign on the property located at 481 South Gulph Road. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on September 7, 2011 at the Upper Merion Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, Zoning Officer, and Court Reporter.

FINDINGS OF FACT

1. The Applicant is Temple Brith Achim, 481 S. Gulph Road, King of Prussia, PA 19406, Upper Merion Township.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 481 S. Gulph Road and is identified as tax Parcel Numbers 58-00-017320-00-1 and 58-00-17323-00-7 (“Property”).
4. The Property is zoned “R-1” Residential.
5. The lot is approximately 191,476 square feet.

6. The present use of the Property is as a house of worship and school.
7. The Applicant was not represented by counsel.
8. Jonathan Edelman, President of Temple Brith Achim provided testimony.
9. The Applicant desires to install a 5' x 4' sign, 3 feet high, on the Property for the Early Childhood Learning Center at Temple Brith Achim. A copy of the proposed sign is attached to the Application.
10. The proposed location of the sign is shown in the picture provided as part of Exhibit A-1, a folder of material related to the Early Childhood Learning Center at Temple Brith Achim.
11. The Early Childhood Learning Center at Temple Brith Achim proves an educational program to young children promoting the child's development physically, intellectually, socially and spiritually. The program integrates a secular and a Judaic curriculum.
12. The Applicant desires to inform the community of the program offered by the Early Childhood Learning Center at Temple Brith Achim and invite the community to visit to see if the program best suits their child's individual needs.
13. As part of Exhibit A-1, pictures were provided of Upper Merion Baptist Church and Valley Forge Presbyterian Church which also have second signs for their early childhood schools.
14. The proposed sign will not be illuminated and will not have a spot light.
15. The proposed variable wording on the sign will use the same letters, which are black and red, that are used on the existing sign so that the letters can be used on both

signs. The variable wording on the proposed second sign will announce events related to the Early Childhood Learning Center and no other message.

16. It is not possible to add more square footage to the existing sign as the existing sign is mounted on a solid brick brace.
17. The temporary sign on the Property will be removed and there will only be two (2) signs on the Property, the existing sign and the proposed second sign.
18. The neighboring Goddard School located at 489 South Gulph Road provided a letter dated August 26, 2011 that it had no opposition to the requested relief.
19. There were no residents who testified against the project.
20. There were no residents who testified in support of the project.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, Temple Brith Achim, (hereinafter referred to as the “Applicant”), filed an application requesting a sign variance pursuant to Section 165-167.A.2 in order to erect a second ground sign on the Property. Section 165-167.A.(2), Residential Signs, states as follows:

A.

The following types of signs shall be permitted on single-family lots in the AG, R-1A, R-1, R-2, R-2A, R-2,R-3, R-3A, R-3B and U-R Zoning Districts as well as in any other areas where the uses permitted in these districts are located:

(2)

One identification sign or bulletin board of a school, college, church, hospital, sanitarium, municipal building, farm, estate, club or any permitted use other than a dwelling, not exceeding 24 square feet in area.

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 and provided as part of the zoning hearing, the Applicant has met its burden to prove entitlement to the requested variance to erect the proposed second ground sign. 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 presented sufficient testimony to grant a variance pursuant to Section 165-167.A(2) in order to erect a second ground sign.

This variance is conditioned upon the Applicant's compliance with the testimony and exhibits presented at the public hearing on September 7, 2011 and the following:

- 1) The variable wording on the second ground sign shall only be related to the Early Childhood Learning Center at Temple Brith Achim.
- 2) The second ground sign shall be removed if the Early Childhood Learning Center at Temple Brith Achim ceases operation at the Property.

Decision Dated: September 21, 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.