

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2011-27 : HEARING DATE: December 7, 2011
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APPLICATION OF: Porcelanosa USA : DECISION DATE: December 21, 2011
: :
: :
PROPERTY: 645 W. DeKalb Pike and :
113 Long Road :
: :
Upper Merion Township :

OPINION AND ORDER OF THE UPPER MERION
TOWNSHIP ZONING HEARING BOARD

The Applicant, Porcelanosa USA, (hereinafter referred to as the “Applicant”), filed an application requesting the following variances and special exception:

The Applicant proposes a sales office use with 6,700 square feet used for “high-end” tile showroom, 1,000 square foot used for principal storage and accessory display assembly to be used in conjunction with the showroom, on its property located at 645 West DeKalb Pike and 113 Long Road, within the Township’s CO Commercial Office Zoning District. In order to facilitate the proposed improvement, Applicant requests the following zoning relief: (1) an appeal from the zoning officer’s determination on the basis the proposed use is permitted by-right under the Ordinance; alternatively, (2) Special exception/variance from Section 165-97(A) and (C) to permit the proposed use; alternatively, (3) an appeal from the determination of the zoning officer as to use imposing greater lot area and lot width; alternatively, a variance from Section 165-99(A)(1) to allow a lot width of 95.8 feet where the Ordinance requires a minimum of 100 feet; alternatively, (4) variance from Section 165-99(A)(4) to allow a lot area of .572

acres and a lot width of 95.8 feet, where the Ordinance requires a minimum lot area of 4.25 acres and a minimum lot width of 300 feet; (5) variance from Section 165-99(B) to permit a front yard setback of 15.1 feet (along Route 202), where the Ordinance requires a minimum of 35 feet; (6) variance from Section 165-99(C) to allow a side yard set-back of 5 feet (along C-O boundary along the westerly property line), where the Ordinance requires a minimum of 15 feet; (7) variance from Section 165-100(A) to allow 31% building coverage, where the Ordinance requires a maximum of 25%; (8) variance from Section 165-100(C) to allow a lot area/gross floor area ratio of 3.2 to 1, where the Ordinance requires a ratio of 5:1; (9) variance from Sections 165-101 and 165-191(B)(1)(a)(1) to allow 18 total parking spaces for a retail use (of less than 20,000 square feet of gross lease area), where the Ordinance requires 32 parking spaces; alternatively, (10) variance from 165-101 and 165-191(B)(1)(c) to allow 18 parking spaces for furniture store use, where the Ordinance requires 15 parking spaces; (11) variance from Section 165-101 and 165-191(B)(2)(a) to allow for 18 total parking spaces for office use, where the Ordinance requires 29 parking spaces; (12) variance from Sections 165-101 and 165-191(B)(6) to allow for 18 total parking spaces for a use not specified within the Ordinance's applicable parking space provisions; (13) variance from Section 165-194 and 165-195 to allow for 1 off-street loading space that is not dimensionally compliant, where the Ordinance requires 1 small space.

The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on December 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 Porcelanosa USA, c/o Frank R. Bartle, Esq., Dischell Bartle & Dooley, PC, 1800 Pennbrook Parkway, Suite 200, Lansdale, PA 19446.
2. The legal owner of the subject property is Porcelanosa USA.
3. The property is located at 645 DeKalb Pike and 113 Long Road, King of Prussia, PA 19406, Upper Merion Township.
4. The Applicant was represented by Frank R. Bartle, Esq., Dischell Bartle & Dooley, PC, 1800 Pennbrook Parkway, Suite 200, Lansdale, PA 19446.
5. The property is zoned "C-O" Commercial/Office District.
6. Joseph Pizonka, Esq., Township Solicitor, entered his appearance on behalf of the Township to defend the Zoning Officer's interpretation.
7. The Applicant started the hearing by introducing Exhibits "A-1" through "A-9" identified as follows:
 - a. Exhibit "A-1" - Zoning Application with Deed.
 - b. Exhibit "A-2" - Depictions
 - c. Exhibit "A-3" - Curriculum Vitae of Thomas
 - d. Exhibit "A-4" - Porcelanosa Renderings
 - e. Exhibit "A-5" - Curriculum Vitae of Rolph A. Graf, P.E.
 - f. Exhibit "A-6" - Zoning Plan
 - g. Exhibit "A-7" - Site Plan Renderings
 - h. Exhibit "A-8" - Zoning Relief Grid
 - i. Exhibit "A-9" - Bohler Traffic Report

8. The property in question is situated on two (2) lots. The first lot is situated at 645 DeKalb Pike and the second at 113 Long Road. Both lots are in the "CO" Commercial/Office Zoning District.
9. The size of the property is .57 acres and the "CO" District is generally written for parcels that are longer than .57 acres.
10. There is no potential for the Applicant to join vacant lots adjacent to the parcel because the lots adjacent to the parcel are already built out.
11. The Applicant plans on using the property for display by setting up several vignettes so customers can see kitchen and bathroom designs.
12. It is not a retail use in that people do not come into the store and leave with a product, but rather it is shipped from a different location.
13. It is same or similar to a sales office, in that a sales office is used to sell product that is not immediately delivered at the premises.
14. At the time of the hearing, the Applicant withdrew their request to appeal the zoning officer's determination and, in turn, the Township withdrew its opposition.
15. The Applicant sufficiently proved that the use of the property is the same or similar to a sales office which is a permitted use, therefore, the use is permitted by special exception.
16. The request for a use variance is declared moot because the use is permitted by special exception.
17. Because this board is determining that a special exception should be granted based on the use being similar to a sales office, the 20,000 sq. ft. lot requirement is applicable, therefore, the variance for lot size is rendered moot.

18. Because the use is similar to a sales office, the lot width of 100 ft. is applicable, therefore, the variance for lot width of 300 ft. is rendered moot.
19. At the time of the hearing, the Applicant amended their request for front yard setback relief. Originally, the application requested a 15 ft. front yard setback, whereas, the code requires 35 ft. At the time of the hearing, the Applicant amended their request to a 25 ft. front yard setback, which is only a 10 ft. encroachment into the required front yard setback.
20. The Applicant is requesting a 5 ft. side yard setback, whereas the code has a minimum side yard setback of 15 ft. In order for the Applicant to have a reasonably functional building, the side yard setback proposed by the Applicant is required.
21. The Applicant is requesting a 31% building coverage, whereas the code has a maximum building coverage of 25%. The reason for this request is because the lot is much smaller than other lots in the "CO" District and in order to reasonably use the lot, relief is necessary for building coverage.
22. For the reasons outlined above, the Applicant is requesting relief of the gross floor area ratio.
23. The last variance involves a number of parking spaces. Based on studies from other locations, the amount of parking spaces proposed is sufficient.
24. The use of the property is for displaying tile products through the display technique of using vignettes.
25. Approximately 1,000 sq. ft. of the building will be used for storage.
26. Approximately 6,700 sq. ft. will be used for the display of merchandise making the building total 7,700 sq. ft.

27. Only three (3) employees will be working at the facility at one time.
28. The product would be shipped directly to the customer and not through the store.
29. There is nothing on the showroom that is available for sale that can be removed by the customers.
30. The average sale is approximately \$10,000.00.
31. Thomas Hall testified and was accepted by the board as an expert in architecture.
32. The Applicant has coordinated the development efforts with Township staff to come up with the design being proposed by the Applicant at this time.
33. The Applicant is open seven (7) days a week, no later than 8:00 pm on weekdays.
34. The Applicant agreed to extinguish the lighting on the signage no later than 10:00 pm, however, this condition does not apply to the signage on the façade facing Rt. 202.
35. Rolf Graf, P.E. was found qualified to testify as an expert in the field of civil engineering and land planning.
36. The engineer's testimony satisfied all of the objective criteria of the zoning ordinance sufficient for the granting of a special exception and all of the required criteria sufficient for the granting of the dimensional variances.
37. The engineer's testimony satisfied the board's concern regarding parking and proved that the proposed parking is sufficient for the proposed use.
38. The Applicant agreed to not open before 10:00 am any day and to not close later than 8:00 pm at night, except on Sundays where the Applicant will close at 5:00 pm.
39. Paul Tuok, a neighbor adjacent to the property, testified at the hearing.
40. Mr. Tuok was concerned about making sure a fence is erected at the rear of the property.

41. The Applicant agreed as a condition of approval to extinguish the lighting in the parking lot at 10:00 pm, with the exception of security lighting.
42. Ali Nejad testified at the hearing and encouraged the Applicant to join with him in a joint development proposal.
43. Theresa Capaldi testified in favor of the project, except she had some concerns about the front yard setback.
44. Robert Zanazian testified at the hearing and his concern was parking.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant proposes a sales office use with 6,700 square feet used for “high-end” tile showroom, 1,000 square foot used for principal storage and accessory display assembly to be used in conjunction with the showroom, on its property located at 645 West DeKalb Pike and 113 Long Road, within the Township’s CO Commercial Office Zoning District. In order to facilitate the proposed improvement, Applicant requests the following zoning relief: (1) an appeal from the zoning officer’s determination on the basis the proposed use is permitted by-right under the Ordinance; alternatively, (2) Special exception/variance from Section 165-97(A) and (C) to permit the proposed use; alternatively, (3) an appeal from the determination of the zoning officer as to use imposing greater lot area and lot width; alternatively, a variance from Section 165-99(A)(1) to allow a lot width of 95.8 feet where the Ordinance requires a minimum of 100 feet; alternatively, (4) variance from Section 165-99(A)(4) to allow a lot area of .572 acres and a lot width of 95.8 feet, where the Ordinance requires a minimum lot area of 4.25 acres and a minimum lot width of 300 feet; (5) variance from Section 165-99(B) to permit a front yard setback of 15.1 feet (along Route 202), where the Ordinance requires a minimum of 35 feet; (6)

variance from Section 165-99(C) to allow a side yard set-back of 5 feet (along C-O boundary along the westerly property line), where the Ordinance requires a minimum of 15 feet; (7) variance from Section 165-100(A) to allow 31% building coverage, where the Ordinance requires a maximum of 25%; (8) variance from Section 165-100(C) to allow a lot area/gross floor area ratio of 3.2 to 1, where the Ordinance requires a ratio of 5:1; (9) variance from Sections 165-101 and 165-191(B)(1)(a)(1) to allow 18 total parking spaces for a retail use (of less than 20,000 square feet of gross lease area), where the Ordinance requires 32 parking spaces; alternatively, (10) variance from 165-101 and 165-191(B)(1)(c) to allow 18 parking spaces for furniture store use, where the Ordinance requires 15 parking spaces; (11) variance from Section 165-101 and 165-191(B)(2)(a) to allow for 18 total parking spaces for office use, where the Ordinance requires 29 parking spaces; (12) variance from Sections 165-101 and 165-191(B)(6) to allow for 18 total parking spaces for a use not specified within the Ordinance's applicable parking space provisions; (13) variance from Section 165-194 and 165-195 to allow for 1 off-street loading space that is not dimensionally compliant, where the Ordinance requires 1 small space.

Variance

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.

Special Exception

A special exception is a conditionally permitted use, allowed by the legislature if specifically listed standards are met. Appeal of Brickstone Realty Corp., 789 A.2d 333 (Pa. Cmwlth 2001). As such, a special exception is not an exception to the zoning ordinance, but a use permitted conditionally, the application for which is to be granted or denied by the Zoning Hearing Board pursuant to express standards and criteria. Id. As a matter of law, an applicant

has an absolute right to a special exception, *unless it is injurious to the public safety, health, and welfare of the community.* Manor Health Care v. Zoning Hearing Bd., 139 Pa. Commw. 206, 590 A.2d 65 (1991) (emphasis supplied).

An applicant for a special exception has the burden of proving that it has met the criteria for a special exception contained in the ordinance. Shamah v. Hellam Township Zoning Hearing Board, 167 Pa. Cmwlth. 610, 648 A.2d 1299 (1994). The applicant must prove not only that the proposed use is of a type permitted by special exception, but also that the proposed use complies with the other applicable requirements of the ordinance which expressly govern such a grant. Id. Once the applicant for a special exception shows compliance with the specific requirements of the ordinance, it is presumed that the use is consistent with the promotion of health, safety and general welfare. Brickstone, 789 A.2d at 340. At this point, the burden shifts to objectors to prove that the proposed use is not consistent with the health, safety and general welfare. Id.

In accordance with § 912.1 of the Municipalities Planning Code, 53 P.S. § 10912.1, the Zoning Hearing Board may attach reasonable safeguards and conditions on the grant of a special exception.

Pursuant to Section 165-250B(1) of the Upper Merion Zoning Code, the Board is required to consider the following criteria that is outlined in Section 165-250B of the Zoning Code.

- (a) The Applicant shall establish, by credible evidence, that the special exception complies with the statement of community development objectives as stated in Article I of this Chapter and with the declaration of legislative intent that may appear at the beginning of the applicable district under which approval is sought.

- (b) The Applicant shall establish, by credible evidence, compliance with all conditions on the special exception enumerated in the section which gives the Applicant the right to seek a special exception.
- (c) The Applicant shall establish, by credible evidence, that the proposed special exception will not adversely affect neighboring land uses in any way and will not impose upon its neighbors in any way but rather shall blend with them in a harmonious manner.
- (d) The Applicant shall establish, by credible evidence, that the proposed special exception shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of the approval shall be accommodated in a safe and efficient manner, or improvements shall be made in order to effect the same. Similar responsibility shall be assumed with respect to other public service systems, including, but not limited to, police protection, fire protection, utilities, parks and recreation.
- (e) The Applicant shall establish, by credible evidence, that the proposed special exception shall be in and of itself properly designed with regard to internal circulation, parking, buffering and all other elements of proper design.
- (f) The Applicant shall provide the Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.
- (g) The Board shall impose such conditions as are necessary to ensure compliance with the purpose and intent of this chapter, which conditions may include plantings and buffers, harmonious design of buildings and the elimination of noxious, offensive or hazardous elements.

The Applicant is requesting a use variance or a special exception to utilize the property for a display area for high end tile sales. The Applicant intends to install vignettes of bathrooms, kitchens and other tile displays that would permit customers to see the high end tile designs and then order the tile accordingly. The average sale is \$10,000.00. The Applicant's use does not clearly fall within the uses of the "C-O" Zoning District because this use was not contemplated at the time the "C-O" District was created. It does not appear to be purely a retail use, albeit it has similarities of retail use, however, it does not involve the purchase of products that can be carried out of the store at the time of purchase. One of the board members questioned whether the use is any different from a retail carpet store use. The Applicant's answer was that a carpet store has materials that can be taken from the premises or the materials are ordered, delivered to the premises and then taken out to the customer's house. What differentiates this use from a carpet store use is the fact that the materials are never delivered to this premises, but rather are shipped directly to the customer's house and then installed accordingly. The only activity that takes place on this site is the display of the tiles and a minor area for storage and repair of the vignettes. This facility does not clearly fall within the traditional category of sales office because a sales office would traditionally be intangible-type products like insurance or the sale of a house that obviously cannot be displayed on the premises. Because it does not clearly fit into any permitted or prohibited use, it seems logical that it would fit within the uses permitted by special exception. A use permitted by special exception is any use that is similar to a permitted use, such as a sales office. Because the use as described at the time of the hearing is reasonably similar to a sales office, it can be permitted by this board by special exception. The Applicant introduced considerable testimony from experts recognized by the board to prove each and every

criteria of the zoning ordinance required for a special exception, therefore, the special exception must be granted.

All other forms of variance relief are dimensional in nature because the use variances previously requested were rendered moot by the granting of the special exception. The dimensional relief requested by the Applicant is necessary because the parcel is only .57 acres. This parcel is an unusually small parcel within the "C-O" Zoning District. The "C-O" Zoning District did not contemplate the dimensional criteria for such a small parcel. Because of the unique circumstances involving this particular parcel, the Applicant is prevented from reasonably using the property if the zoning ordinance is strictly enforced. The proposed relief is dimensional, therefore, the standards of the Hertzberg case are applicable to the case at bar and the Applicant offered sufficient expert testimony to prove the elements necessary for granting the dimensional variances.

At the time of the hearing, an adjacent neighbor, as well as the members of the board were concerned about the front yard setback request because the building would be substantially closer to the street than the other buildings adjacent to this property. It would have a visual impact on adjacent properties. The Applicant indicated that the building was pushed forward because of concerns of the residents located to the rear of the parcel. The Applicant originally had the building to the rear of the parcel, but was encouraged by the residents and Township staff to move the building further from the rear property line. In the spirit of cooperation, the Applicant at the time of the hearing amended the front yard setback request to ask for a 25 ft. front yard setback, rather than a 15 ft. front yard setback. A 25 ft. front yard setback is 10 ft. back from the street further than what the Applicant originally requested and it is 10 ft. less than what is the minimum front yard setback area required by the ordinance. The board believed that

the amended front yard setback request sufficiently protected the adjacent neighbors and still allowed the Applicant to reasonably use their property. Based on all of the above, all the dimensional variances should be granted.

ORDER OF THE UPPER MERION TOWNSHIP

ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds as follows:

1. Appeal from the zoning officer's determination on the basis the proposed use is permitted by right under the ordinance: Withdrawn at the time of the hearing.
2. Special exception/variance from Section 165-97(A) and (C) to permit the proposed use: Special exception granted. Variance rendered moot.
3. An appeal of the determination of the zoning officer as to use imposing greater lot area and lot width, alternatively a variance from Section 165-99(A)(1) to allow a lot width of 95.8 ft., where the ordinance requires a minimum of 100 ft.: Based on special exception granted, this variance request is rendered moot.
4. Variance from Section 165-99(A)(4) to allow a lot area of .572 acres and a lot width of 95.8 ft., where the ordinance requires a minimum lot area of 4.25 acres and a minimum lot width of 300 ft.: These variance requests are rendered moot because the special exception is granted, however, the variance is granted to permit a 95.8 ft. lot width, whereas the code requires 100 ft.
5. Variance from Section 165-99(B) to permit a front yard setback of 25 ft., whereas the ordinance requires a minimum of 35 ft.: This variance is granted as amended at the time of the hearing to permit a 25 ft. front yard setback.

6. Variance from Section 165-99(C) to allow a side yard setback of 5 ft. (along C-O boundary along the westerly property line), where the ordinance requires a minimum of 15 ft.: Granted.
7. Variance from Section 165-100(A) to allow 31% building coverage, where the Ordinance requires a maximum of 25%: Granted
8. Variance from Section 165-100(C) to allow a lot area/gross floor area ratio of 3.2 to 1, where the Ordinance requires a ratio of 5:1: Granted
9. Variance from Sections 165-101 and 165-191(B)(1)(a)(1) to allow 18 total parking spaces for the proposed use where the ordinance requires 32 parking spaces: Granted
10. Variance from 165-101 and 165-191(B)(1)(c) to allow 18 parking spaces for furniture store use, where the Ordinance requires 15 parking spaces: Rendered moot by the parking variance previously granted.
11. Variance from Section 165-101 and 165-191(B)(2)(a) to allow for 18 total parking spaces for office use, where the ordinance requires 29 parking spaces: Rendered moot by the previously granted variance for parking.
12. Variance from Sections 165-101 and 165-191(B)(6) to allow for 18 total parking spaces for a use not specified within the Ordinance's applicable parking space provisions: Rendered moot by the previously granted variance for parking.
13. Variance from Section 165-194 and 165-195 to allow for one off-street loading space that is not dimensionally compliant, where the Ordinance requires one small space: Granted.

The above relief is conditioned upon the following:

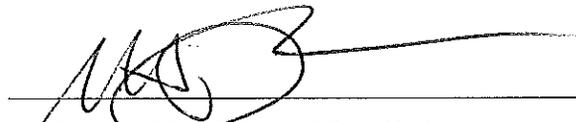
1. The Applicant must comply with the testimony as presented at the hearing on December 7, 2011. The testimony has been transcribed and is attached hereto, incorporated herein and this board is specifically requiring this Applicant to utilize the property in accordance with the use that is described in great detail in the attached transcript. It is a specific condition of this approval that the Applicant use the property exactly as the Applicant described the use of the property in the attached transcript.
2. All lights for signage and the parking lot must be extinguished no later than 10:00 pm with the exception of minor lighting for security. This condition shall not apply to the signage facing Rt. 202.
3. The Applicant must install a fence to the rear of the property to block lights from the parking lot from shining on to residential properties unless otherwise directed by the Township Board of Supervisors through the land development process.

Decision Dated: December 21, 2011

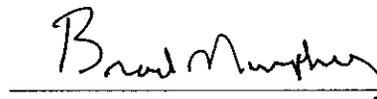
**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**



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.