ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2011-30	:	**HEARING DATE:** January 18, 2012 and February 1, 2012
APPLICATION OF: Continental Square Associates, L.P.	:	**DECISION DATE:** February 1, 2012
PROPERTY: 1000 Continental Road Upper Merion Township	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, Continental Square Associates, L.P. (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Sections 165-168A(1) and 165-168A(2). The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on January 18, 2012 and February 1, 2012 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 Continental Square Associates, L.P., 770 Township Line Road, Yardley, PA 19067.
2. The legal owner of the subject property is Continental Square Associates, L.P., 770 Township Line Road, Yardley, PA 19067.
3. The property is located at 1000 Continental Road, Upper Merion Township.

4. The Applicant was represented by Craig Robert Lewis, Esquire, 910 Harvest Drive, Blue Bell, PA 19422.
5. The property is zoned SM-1 Suburban Metropolitan District.
6. The lot is approximately 7.45 acres in size.
7. The use of building situated on the property is a six (6) story, approximately 202,667 square foot office building.
8. The property fronts Continental Drive and has approximately 500 feet of frontage on state route 202.
9. Continental Drive is a publicly dedicated street and for purposes of the Upper Merion Township Zoning Code, constitutes the front of the building.
10. In accordance with prior decisions, the Township has concluded that were, as here, state route 202 is a limited access highway, a property cannot be considered to have frontage on state route 202 much less be considered the principal approach as is required to erect signage facing state route 202.
11. The shape and siting of the building is such that two facades of the building are visible from state route 202.
12. The front of the building which faces Continental Drive is allowed signage as permitted in Section 165-168 of the Upper Merion Zoning Ordinance.
13. Section 165-168A(1) provides that 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.
14. The Applicant applied for a variance to allow placement of wall signs sized approximately 51 square feet each on the rear of the building and on the side of the

building facing state route 202 identifying one of the proposed tenants as the Kremer Eye Center.

15. The Applicant presented testimony through its expert witness, Dennis Glackin, that the lot configuration, elevation changes and site line, made identification and location of the building to the travelling public difficult.
16. Kremer Eye Center is a specialty medical treatment center which performs outpatient surgical procedure to clients with vision problems.
17. The typical patient of Kremer will visit the premises only to be evaluated and have the surgery performed in contrast to the typical office worker who comes to the office on a more or less daily schedule.
18. The Applicant presented credible evidence that an additional sign on the rear of the building is necessary to adequately identify and locate the building to those patients of Kremer Eye Center who need to come to the building to have surgery performed.
19. The Applicant did not present sufficient and credible evidence to establish that a sign is necessary on the side of the building facing state route 202 to allow the travelling public to identify and locate the building.
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

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 permission to erect two wall signs, each with an area of approximately 75 square feet, facing state route 202 where there is no "building frontage" along route 202. Commercial building signs in the SM-1 Zoning District are governed by Article XXVII, Section 165-168 of the Zoning Ordinance. The Board found that the Applicant presented credible evidence that an additional sign on the rear of the building is necessary to

adequately identify and locate the building to those patients of Kremer Eye Center who need to come to the building to have surgery performed. However, the Board also found that the Applicant did not present sufficient and credible evidence to establish that a sign is necessary on the side of the building facing state route 202 to allow the traveling public to identify and locate the building. Accordingly, a variance should be granted to install an approximately fifty-one (51) square foot wall sign on the rear or north side of the building. Further, the request for a variance to install an approximately fifty-one (51) square foot wall sign on the west side of the building is denied.

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 to Sections 165-168A(1) and 165-168A(2) to install an approximately fifty-one (51) square foot wall sign on the rear or north side of the building. The Board further denies your request for a variance to install an approximately fifty-one (51) square foot wall sign on the west side of the building. This variance is conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on January 18, 2012 and February 1, 2012.

Decision Dated:

UPPER MERION TOWNSHIP
ZONING HEARING BOARD

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Robert J. Montemayor - Chairman

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Brad Murphy – Vice Chairman

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Lynne Z. Gold-Bikin - 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.