

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

**MONTGOMERY COUNTY, PA**

**APPLICATION OF LUCID MOTORS**

**APPLICATION NO. 2024-01**

**PROPERTY: 250 Mall Boulevard**

**TAX PARCEL NO. 58-00-08473-00-1**

**DECISION**

The Zoning Hearing Board (“ZHB”) of Upper Merion Township considered an application for a variance to erect an additional large sign on the north elevation of applicant’s building facing the Pennsylvania Turnpike. The applicant failed to prove entitlement to the grant of relief. The ZHB voted to deny the application.

Lucid Motors (“Lucid”) is the tenant of the property located at 250 Mall Boulevard, tax parcel no. 58-00-08473-00-1 (the “Property”). Benderson Development is the record owner of the Property. The Property is in the GC General Commercial Zoning District (“GC District”) of Upper Merion Township (“Township”).

Lucid has opened a Lucid Motors retail sales and service facility for electronic vehicles in the existing building on the Property. The building was previously used as Toys “R” Us/Babies “R” Us retail store. The Property is located between Mall Boulevard to the south and the Pennsylvania Turnpike to the north. The Property has access on Mall Boulevard.

Lucid submitted a sign permit application to the Township for proposed signage on the Property. Lucid’s sign plan shows four signs on the building: one painted wall sign on the south building elevation, two wall signs on the west building elevation, and one

illuminated sign on the north building elevation which faces the Pennsylvania Turnpike. Lucid's sign plan also includes a pylon sign located at Mall Boulevard.

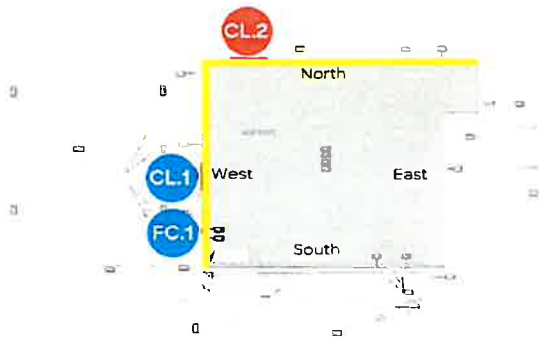
The Township issued a permit for the pylon sign and the wall signs on the south and west building elevations. However, the Township zoning officer denied a permit for Lucid's proposed sign on the north building elevation facing the Pennsylvania Turnpike ("Turnpike Sign"), since it did not comply with the Zoning Ordinance.<sup>1</sup>

Lucid appealed the decision of the zoning officer to the ZHB, and in the alternative, requested a variance from section 165-168.A(2) of the Upper Merion Township Zoning Ordinance of 1942, as Amended (the "Zoning Ordinance") to erect the proposed Turnpike Sign on the north building elevation. The appeal of the zoning officer's decision was withdrawn by Lucid. Lucid proceeded before the ZHB with the variance request only.

Lucid sought variance relief to locate the Turnpike Sign on the north building elevation in addition to the sign on the south building elevation and the two signs on the west building elevation. After the first public hearing, Lucid revised its proposal by removing the sign on the south building elevation. The Turnpike Sign is proposed to be 109.4 square feet. The proposed signage is depicted below:

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<sup>1</sup> The sign permit application and the zoning officer's denial letter identified the Turnpike Sign as located on the east building elevation. Lucid subsequently corrected this, as the Turnpike Sign is located on the north building elevation.



- Frontage
- Sign Requested To Add In This Variance Request
- Sign Proposed To Remove In This Variance Request
- Sign Approved Under Permit #

ID	Sign Type	Building Frontage	Sign Area	Sign Size H x W	Elevation Total Sign Area	Allowable Area Per Zoning
P.1	Lit Pylon Sign	-	84 sqf	6' x 14'	-	N/A
FC.1	Non-Lit Channel Letters	West: 232 LF	4.8 sqf	10" x 5'-9"	80.0 sqf	200 sqf
CL.1	Side Lit Channel Letters		75.2 sqf	2'-2" x 34'-8"		
CL.2	Side Lit Channel Letters	North: 300 LF	109.4 sqf	2'-7 1/2" x 41'-8"	109.4 sqf	100 sqf



Mail Blvd

Section 165-168.A of the Zoning Ordinance provides that business signs are permitted in the GC District subject to the following requirements:

- (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.
- (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(1)-(2).

Section 165-164 of the Zoning Ordinance defines "building frontage" to mean:

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.

A. For corner lots, such footage may be calculated separately for the principal approach and one adjacent face if such face also fronts on a public street, a shopping center driveway, public parking area, pedestrian mall or public walkway.

B. Building frontage shall be calculated as the perpendicular distance between any two parallel lines, both of which touch the building.

The north side of the building does not serve as the principal approach to the building. Thus, Lucid requires a variance from section 165-168.A(2) to erect the proposed 109.4 square foot Turnpike Sign on the north building elevation.

The ZHB held three advertised hearings – the first on March 20, 2024; the second on May 15, 2024; and the third on June 5, 2024. The ZHB was represented by Marc D. Jonas, Esq., of the law firm Eastburn and Gray, P.C. Lucid was represented by John J. Griffin, Esq. of the Law Offices of John J. Griffin.

The hearings were duly advertised, notice was given in accordance with the requirements of the Zoning Ordinance, and the proceedings were stenographically recorded. Because the application was denied, the ZHB issues this decision with findings of fact, conclusions of law, and reasons.

## **A. FINDINGS OF FACT**

### **BACKGROUND**

1. Benderson Development is the owner of the Property. [Ex. ZHB-2]
2. Lucid is the tenant of the Property. [Ex. ZHB-2]
3. The Property is identified as tax parcel no. 58-00-08473-00-1. [Ex. ZHB-2]

### **ZHB HEARING**

4. ZHB exhibits:
  - a. ZHB-1 – application;

- b. ZHB-2 – aerial photographs;
  - c. ZHB-3 – site plan;
  - d. ZHB-4 – letter from Lucid to the Township’s zoning officer;
  - e. ZHB-5 – deed dated December 17, 2018 between Tru Trust 2016, LLC. (grantor) and 250 MB, LLC (grantee);
  - f. ZHB-6 – landlord authorization dated January 2, 2024;
  - g. ZHB-7 – sign permit application;
  - h. ZHB-8 – legal notice for the March 20, 2024 public hearing;
  - i. ZHB-9 – Lucid’s appeal packet dated March 20, 2024;
  - j. ZHB-10 – letter to Township zoning officer dated March 29, 2024;
  - k. ZHB-11 – legal notice for the May 15, 2024 public hearing; and
  - l. ZHB-12 – legal notice for the June 5 2024 public hearing.
5. Lucid introduced the following exhibits:
- a. A-1 – packet of 21 documents;
  - b. A-2 – site plan;
  - c. A-3 – packet of PowerPoint presentation; and
  - d. A-4 – letter from Mr. Goldstein.
6. Miguel Claros, a national representative of Lucid Motors, testified on behalf of Lucid, as follows:
- a. The Property will be Lucid’s hub for the northeast market. [N.T. 3/20/2024, p. 33]
  - b. The Property will be one of Lucid’s largest facilities in the county. [N.T. 3/20/2024, p. 33]

- c. The Turnpike Sign is requested to increase visibility to customers driving westbound on the Pennsylvania Turnpike. [N.T. 3/20/2024, p. 34]
- d. The existing illuminated wall sign on the west building elevation is visible to motorists travelling eastbound on the Pennsylvania Turnpike. [N.T. 3/20/2024, p. 34]
- e. The existing pylon sign can be seen by motorists travelling on Mall Boulevard. [N.T. 3/20/2024, p. 34]
- f. The Turnpike Sign will give Lucid visibility to thousands of cars each day. [N.T. 3/20/2024, p. 36]
- g. Lucid's brand recognition is the goal of the Turnpike Sign. [N.T. 3/20/2024, p. 36]

7. Brandon Padron, the director of design for Lucid, testified on behalf of Lucid as follows:

- a. Lucid is an electronic vehicle manufacturer and technology company based in Newark, California. [N.T. 5/15/2024, p. 14]
- b. Lucid's facility on the Property is Lucid's first location in Pennsylvania. [N.T. 5/15/2024, p. 15]
- c. Lucid's facility on the Property opened in March, 2024. [N.T. 5/15/2024, p. 15]
- d. The building on the Property is approximately 62,000 square feet. [N.T. 5/15/2024, p. 16]
- e. The Property is situated between Mall Boulevard and the Pennsylvania Turnpike. [N.T. 5/15/2024, p. 16]

- f. The building sits at a lower elevation than Mall Boulevard. [N.T. 5/15/2024, p. 17]
- g. The Property is a flag lot. [N.T. 5/15/2024, p. 17]
- h. In Mr. Padron's opinion, the Property's visibility is constrained. [N.T. 5/15/2024, p. 18]
- i. Lucid had four signs approved by the Township and installed on the Property including: the pylon sign along Mall Boulevard; the painted wall sign on the south building elevation, an illuminated wall sign, and an unilluminated wall sign on the west building elevation. [N.T. 5/15/2024, p. 18]
- j. The existing painted wall sign on the south building elevation, marked PT.1 on the sign plans, is 109.4 square feet and says "Lucid". [N.T. 5/15/2024, p. 19]
- k. The existing illuminated wall sign on the west building elevation, marked CL.1 on the sign plans, measures 75 square feet and says "Lucid". [N.T. 5/15/2024, p. 20]
- l. The existing unilluminated wall sign on the west building elevation, marked FC.1 on the sign plans, measures 5 square feet and says "Service". [N.T. 5/15/2024, p. 20]
- m. The illuminated wall sign on the west building elevation is visible to motorists travelling eastbound on the Pennsylvania Turnpike. [N.T. 5/15/2024, p. 21]

- n. Lucid proposed to remove the painted wall sign on the south building elevation to install the Turnpike Sign on the north building elevation facing the Pennsylvania Turnpike. [N.T. 5/15/2024, p. 22]
  - o. The Turnpike Sign is proposed to be 109.4 square feet. [N.T. 5/15/2024, p. 21]
  - p. The Turnpike Sign will give Lucid visibility for motorists driving westbound on the Pennsylvania Turnpike. [N.T. 5/15/2024, p. 26]
  - q. Installing signage visible from the Pennsylvania Turnpike provides Lucid with increased brand awareness and advertises the location of Lucid's facilities on the Property. [N.T. 5/15/2024, p. 30]
  - r. Prior to leasing the Property, Lucid was advised that a variance would be required to install a sign facing the Pennsylvania Turnpike. [N.T. 5/15/2024, p. 30]
  - s. The purpose of the existing pylon sign is to announce the presence of Lucid on Mall Boulevard, while the proposed Turnpike Sign is requested to increase brand awareness to motorists on the Pennsylvania Turnpike. [N.T. 5/15/2024, pp. 32-33]
  - t. Lucid wants to maximize visibility to as many potential customers as possible. [N.T. 5/15/2024, p. 36]
  - u. An important reason Lucid leased the Property was to broadcast its presence in Pennsylvania. [N.T. 5/15/2024, p. 43]
  - v. The Turnpike Sign is advertising for Lucid. [N.T. 5/15/2024, p. 48]
8. Lucid provided no expert testimony in support of the variance.



9. The Property is reasonably used by Lucid for its electronic vehicle retail sales and service facility with numerous signs, including a pylon sign.

10. Lucid offered no substantial, competent evidence of a unique physical condition or characteristic of the Property and a resulting unnecessary hardship requiring the variance.

11. The reason for the variance for the Turnpike Sign is brand awareness by advertising Lucid's presence in Pennsylvania to potential customers traveling on the Pennsylvania Turnpike.

12. No evidence was offered by Lucid that the variance sought represents the minimum variance that will afford relief for a reasonable use of the Property.

13. No evidence was offered by Lucid that the variance would not be detrimental to the public welfare.

14. No evidence was presented relating to an unnecessary hardship based on unique conditions of the land.

## **B. DISCUSSION**

A zoning hearing board may only 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); Zoning Ordinance §165-251.B.2; *Cope v. Zoning Hearing Bd. of S. Whitehall Twp.*, 578 A.2d 1002, 1005 (Pa. Cmwlth. 1990).

The variance standard is a “high hurdle[ ]” *Omnipoint Comms. Ent. L.P. v. Zoning Hearing Bd. Easttown Twp.*, 331 F.3d 386, n\*11 (3d Cir. 2003). “[T]he reasons for granting the variance must be substantial, serious and compelling.” *Commonwealth v. Zoning Hearing Bd. Susquehanna Twp.*, 677 A.2d 853, 855 (Pa. Cmwlth. 1996). Variances are to be granted “sparingly and only under exceptional circumstances.” *Id.*; see also *Appeal of Lester M. Prange, Inc.*, 647 A.2d 279, 284 (Pa. Cmwlth. 1994); *Laurento v. Zoning Hearing Bd. of Borough of W. Chester*, 638 A.2d 437, 439 (Pa. Cmwlth. 1994).

“[T]o establish unnecessary hardship, an applicant must show more than a mere economic or personal hardship.” *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 980 (Pa. Cmwlth. 2009); see also *Singer v. Phila. Zoning Bd. of Adjustment*, 29 A.3d 144, 150 (Pa. Cmwlth. 2011) (“It 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.”); *Marple Gardens, Inc. v. Bd. of Zoning Adjustment of Marple Tp.*, 303 A.2d 239, 241 (Pa. Cmwlth. 1973) (“a variance will not be granted solely because the petitioner will suffer an economic hardship if he does not receive a variance.”)

An applicant for a variance from maximum sign area must demonstrate that the hardship is more than a financial hardship related to the applicant's income or brand. See *Lamar Advantage GP Co. v. Zoning Hrg. Bd. of Adjustment of City of Pittsburgh*, 997 A.2d 423 (Pa. Cmwlth. 2010) (rejecting applicant's request for dimensional variance from maximum square footage for proposed sign where the only asserted hardship involved the alleged benefit to community and increase in income); *Beecham Enterprises, Inc. v. Zoning Hrg. Bd. of Kennedy Tp.*, 556 A.2d 981, 987 (Pa. Cmwlth. 1989), *aff'd*, 608 A.2d 1017 (Pa. 1992) (applicant's testimony that due to the contour of the land a twelve-foot sign would not be visible enough to attract customers, did not demonstrate a hardship entitling applicant to a variance for a 320 square foot sign).

The mere fact that a municipal zoning ordinance does not permit signs to match an industry standard is insufficient to constitute unique hardship for grant of a dimensional variance. *App. of R.C. Maxwell Co.*, 548 A.2d 1300, 1305 (Pa. Cmwlth. 1988). In *Appeal of Marshall Automobile Co. Inc.* 57 Pa. D.&C.2d 373 (Pa. Com. Pl. 1972) a car dealership sought a variance from the maximum sign area to install signage which matched the specifications for signs used by American Motors. The landowner argued it would lose its corporate identity if it did not install signs consistent with American Motor's brand. The court held that the purported hardship constituted a financial hardship not sufficient to require grant of a variance. *Id.* at 374.

In this application before the ZHB, Lucid failed to satisfy the statutory requirements for entitlement to the requested variance. Lucid failed to demonstrate an unnecessary hardship due to unique physical characteristics of the Property. The evidence established merely that the need for the variance stems solely from a self-created rationale --- Lucid's

desire to install the Turnpike Sign to advertise its location in Pennsylvania and increase brand awareness.

Lucid's witnesses acknowledged repeatedly that the purpose of the Turnpike Sign, and the basis for the requested variance were brand awareness:

**Mr. Griffin:** But the signage that's proposed would give you the visibility of thousands and thousands of cars daily that might ride by and see Lucid and then know that's where the building is?

**Mr. Claros:** Correct.

**Mr. Griffin:** Is that correct?

**Mr. Claros:** Yes.

**Mr. Griffin:** And is it safe to say that's a major factor?

**Mr. Claros:** We're a new brand. Brand recognition, that's our goal.

[N.T. 3/20/2024, p. 36]

**Mr. Padron:** ...it's a requirement for an automotive company to provide service facilities in the state where your customers are. Part of that is brand awareness, to advertise the premise. So from our perspective, as a basic functional level, having access to provide signage on the turnpike gives us the biggest possibility to do that. It's not the only reason we want the sign, but it is kind of a basic function.

[N.T. 5/15/2024, p. 30]

**Mr. Padron:** The signage request for the frontage or facing the turnpike is to help on a brand-awareness sign.

[N.T. 5/15/2024, pp. 32-33]

**Mr. Padron:** I would say that we sort of see the turnpike-facing sign as something other than way-finding. Obviously, way-finding to our facility, you can figure out where we are any number of ways. The potential for us and why we value this opportunity so highly is that it's the, Oh, Lucid is here. I didn't know they were in Pennsylvania. It's that moment along the highway, which is not the way-finding moment to how do I get to that place, which I can go through Google Maps and find it. It's a different function of the sign.

**Mr. Garzillo** [ZHB member]: But it's advertising.

**Mr. Padron**: Yes.

[N.T. 5/15/2024, pp. 48]

Lucid argued that the Turnpike Sign was necessary to allow motorists to identify the store due to the elevation of the building, the shape of the Property, and existing landscaping which limits visibility of the building, but there was no credible testimony offered by Lucid to support this claim. Lucid acknowledged that the existing pylon signage provides visibility to motorists traveling on Mall Boulevard, and the existing illuminated west building elevation sign is visible to motorists travelling eastbound on the Pennsylvania Turnpike, a limited access state highway.

The evidence fell short of establishing an unnecessary hardship that prevents the reasonable use of the Property, or that the requested variance is the minimum variance necessary. The requested variance relates only to brand awareness. This is an example of a personal objective, not an unnecessary hardship as defined by the wealth of court decisions. See *Lamar Advantage GP Co.*, 997 A.2d 423; *Beecham Enterprises, Inc.*, 556 A.2d at 987; *App. of R.C. Maxwell Co.*, 548 A.2d at 1305. Accordingly, the variance was denied.

### **C. CONCLUSIONS OF LAW**

1. The ZHB has jurisdiction under section 909.1(a)(5) of the MPC, 53 P.S. §10909.1(a)(5), and Zoning Ordinance §165-251.A(5).
2. Lucid has standing to seek the requested zoning relief as the tenant of the Property.
3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.

4. Lucid requires a variance from section 165-168.A(2) of the Zoning Ordinance to erect a sign on the north building elevation on the Property.

5. The ZHB may grant a variance provided that an applicant establishes that: (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.

6. Lucid failed to demonstrate an unnecessary hardship entitling it to the requested variance.

7. The basis for the variance was Lucid's desire to install signage to increase its brand awareness.

8. Lucid failed to establish that the variance sought represents the minimum variance that will afford relief.

9. At the June 5, 2024 hearing, the ZHB voted unanimously to deny the application. On April 6, 2024, the ZHB mailed the following notice of decision to Lucid:

*This letter provides notice of the decision of the Upper Merion Township Zoning Hearing Board.*

*The Zoning Hearing Board voted to deny the application for a variance from section 165-168.A(2) of the Upper Merion Township Zoning Ordinance of 1942, as Amended, for an exterior sign on the turnpike building elevation.*

*Because this application was denied, the Zoning Hearing Board will issue a decision with findings of fact, conclusions of law, and reasons*

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This decision may be appealed to the Court of Common Pleas of Montgomery County within 30 days of the date of mailing.

**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**

DocuSigned by:  
*Mark DePillis*  
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Mark S. DePillis, Esq.  
Chairperson