

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-030	:	HEARING DATE: February 6, 2013
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APPLICATION OF:	:	
VF Center Associates, L.P.	:	
	:	
	:	DECISION DATE: February 6, 2013
PROPERTY:	:	
Valley Forge Shopping Center	:	
105 Town Center Road	:	
King of Prussia, PA 19406	:	
	:	
205 DeKalb Pike	:	
King of Prussia, PA 19406	:	

**OPINION AND ORDER OF THE UPPER MERION
TOWNSHIP ZONING HEARING BOARD**

The Applicant, VF Center Associates, L.P. (hereinafter referred to as the "Applicant"), filed an application requesting certain variances from the Upper Merion Township Sign Code as well as special exceptions under Signe Code Section 265-168.O. The application was properly advertised, and public hearing was held before the Upper Merion Township Zoning Hearing Board on February 6, 2013 at the Upper Merion Township Building.

The members of the Zoning Hearing Board present were William Clements, Esquire, Chairman, Lynn Z. Gold, Esquire, Vice Chairman, Mark DePillis, Esquire, member and John Tallman, member. Brad Murphy, member, was not present and did not participate in the hearing. Also present were Mark Zadroga, the Township Zoning Officer, Joseph Pizonka, Esquire, the solicitor for the Zoning Hearing Board and Pat Crudo, the Court Reporter.

FINDINGS OF FACT

1. The Applicant is VF Center Associates, L.P., with a mailing address of 116 Radio Circle, Suite 204, Mount Kisco, NY 10549.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 105 Town Center Road & 205 Dekalb Pike, King of Prussia, PA 19406.
4. The applicant was represented by George W. Broseman, Esquire and Craig Robert Lewis, Esquire of Kaplan Stewart.
5. The subject property is located in the "SC" zoning district.
6. The lot is approximately 22 acres.
7. All of Applicant's requested relief relates to proposed signage associated with the redevelopment of the Valley Forge Shopping Center.
8. The Shopping Center is comprised of five tax parcels (identified as Montgomery County Tax Parcel numbers 58-00-06103-004, 58-00-10081-004, 58-00-06091-007, 58-00-06094-004 and 58-00-06106-00-1) that have a combined area of approximately 22 (+/-) acres. The Township has treated the Shopping Center as one tract for purposes of application of the Zoning Ordinance
9. Testimony revealed that the Shopping Center has frontage on four (4) public streets: Dekalb Pike (a.k.a. Route 202), Prince Frederick Street, Town Center Road and Henderson Road. Town Center Road bisects a portion of the Shopping Center. The Shopping Center currently has ten (10) vehicular access points to these public roads. None of these access points is identifiable or functions as a main entrance for the Shopping Center. Some of the buildings are set back from the adjoining roadways at a substantial distance.

10. Testimony revealed that the Shopping Center covers ground with an uneven topography. Namely, the eastern half of the Shopping Center is at a significantly lower grade than the western half of the Shopping Center.
11. Testimony revealed that the combination of multiple road frontages (one of which bisects the Shopping Center property), multiple vehicular access points, the diversity of uses, the number of buildings, the varied topography, the significant distance of some buildings to the adjoining public roadways, and large tract size present unique challenges to identify the Shopping Center and its various uses with signage.
12. On April 26, 2012, the Board of Supervisors of Upper Merion Township granted Preliminary/Final Land Development approval for the redevelopment of the Shopping Center. The redevelopment includes, among other things, demolition of several buildings (e.g. the building that last housed the Marshall's, the vacant Fortunoff building, a multi-tenant commercial building, the Sleepy's building and the existing Starbucks building). The redevelopment also includes construction of (i) a 165,355 s.f. (+/-) Target store; (ii) a new 1,750 s.f. (+/-) Starbucks building; (iii) a new 11,330 s.f. (+/-) freestanding multi-tenant commercial building ("Building A-1"); and (iv) related site work (collectively, "Redevelopment Project").
13. Testimony revealed that the demolition totals approximately 103,019 s.f.¹ of gross leasable area ("GLA"), and the proposed new GLA is approximately 178,415 s.f. for a net gain of approximately 75,396 s.f. of GLA.
14. Testimony revealed that the Redevelopment Project requires various new signage, and Applicant intends to update some of the other building facades and signage in the Shopping Center as part of the revitalization and modernization of the Shopping Center.

¹ This figure includes 24,388 s.f. (+/-) of space under the Michaels craft store to be "mothballed".

A. VARIANCE RELIEF FOR PROPOSED FREESTANDING SIGNS

15. One freestanding multi-tenant entrance directory sign is proposed at the intersection of Town Center Road and Dekalb Pike (a.k.a. Route 202). This sign will replace the existing freestanding multi-tenant sign at this location.
16. One freestanding multi-tenant Entrance Sign is proposed at the intersection of the remaining site driveway and Dekalb Pike. This sign will replace the existing multi-tenant entrance sign. Signage at this location is critical because this driveway will be significantly upgraded and now serve as the main entrance for this portion of the Shopping Center and the sole entrance to DeKalb Pike (a.k.a Route 202).
17. One freestanding sign identifying the proposed Starbucks is proposed along Dekalb Pike adjacent to the relocated Starbucks ("Starbucks Entrance Sign"). The Starbucks Entrance Sign will not represent an increase in the number of freestanding signs as the Starbucks to be demolished has its own free-standing sign.
18. Testimony revealed that one freestanding sign identifying McDonald's is proposed at the intersection of the site driveway and Henderson Road ("McDonald's Entrance Sign"). The sign is needed to identify McDonald's, due to its relatively obscure location, the height of the new retaining walls being built along Dekalb Pike (a.k.a. Route 202) and Building A-1. These improvements will further obscure McDonald's and a freestanding entrance sign is needed to provide identification for McDonald's and its primary entrance.

19. Sign Code §165-169.M specifically permits a freestanding entrance sign at each vehicular access point. However, Sign Code § 165-169.M(d) imposes a blanket of prohibition of not more than three (3) entrance signs regardless of the number of vehicular entrances, topography, setback distances, the number of buildings/uses, or the size of a property. Presently the Shopping Center has 10 vehicular access points. Under the Redevelopment Project, the number of access points will be reduced to seven (7). The blanket preclusion of no more than three entrance signs applies to properties of all sizes, large and small and to properties with many uses.
20. Applicant requests variances from Sign Code §165-169.M.1(c) to permit Entrance Signs in excess of 100 square feet. (Entrance Sign – 108.s.f; Multi-tenant Entrance Sign 241s.f.; Starbucks Entrance Sign 105 s.f.; and McDonald's Entrance Sign 144 s.f.).

B. VARIANCE RELIEF FOR PROPOSED WALL SIGNS

i. Michaels Craft Store

21. In accordance with Sign Code §165-168.A, Michaels is permitted a maximum of 300 s. f. of sign area.
22. Applicant requests a variance to permit a total sign area of 312.6 s.f.

ii. Starbucks

23. Applicant proposes six (6) wall signs for the freestanding Starbucks and that the Starbucks Wall Signs have sign areas of (i) 25 (+/-) s.f., (ii) 25 (+/-) s.f., (iii) 16 (+/-) s.f., (iv) 16 (+/-) s.f., (v) 7 (+/-) s.f., and (vi) 7 (+/-) s.f. The Starbucks Wall Signs have a total sign area of 96 (+/-) s.f.

24. Testimony revealed that two of the Starbucks Wall Signs consist of a Starbucks logo, two of the Starbucks Wall Signs consist of individual letters identifying “Starbucks Coffee” and two of the Starbucks Wall Signs identify or direct customers to the drive-thru window. Further, because of the “internal” nature of the Starbucks location it is visible and may be approached by customers from any façade. The Board of Supervisors in the land development process strongly recommended a comprehensive pedestrian access system for the Shopping Center. The Applicant testified that this proposed pedestrian connectivity, which allows for pedestrians to approach from various locations also supports the need for the proposed signage.

25. In accordance with Sign Code §165-168.A Starbucks is permitted a maximum of 175 s.f. of sign area and therefore the proposed Starbucks Wall Signs comply with the maximum sign area permitted by the Code.

26. In accordance with Sign Code §165-168.A the maximum sign area may only be erected on two building facades. Therefore, the Applicant seeks a variance from Sign Code §165-168.A to permit wall signs on four sides of the Starbucks building.

iii. McDonald’s

27. Applicant also seeks a variance from Sign Code §165-168.A to permit wall signs on three sides of the McDonald’s Building. The McDonald’s Wall Signs comply with the maximum sign area permitted by the Code.

iv. Target Store

28. Applicant proposes six wall signs for the Target retail store.

29. Applicant testified that the Target Wall Signs have sign areas of (i) 216 (+/-) s.f., (ii) 144 (+/-) s.f., (iii) 64 (+/-) s.f., (iv) 64 (+/-) s.f., (v) 35 (+/-) s.f., and (vi) 51 (+/-) s.f., or 574 s.f. (+/-).

30. In accordance with Sign Code §165-168.A, Target is permitted a maximum of 300 s.f. of sign area and the sign area may be erected only on two sides of the Target building.

31. Applicant seeks a variance from Sign Code §165-168.A to permit wall signs on three sides of the Target building where a maximum of two sides is permitted; a variance from Sign Code §165-168.A(1) to permit a sign area of 302 (+/-) s.f. on the principal Building Frontage facing Dekalb Pike (a.k.a. Route 202) where a maximum of 200 s.f. is permitted; a variance from Sign Code §165-168.A(2) to permit a sign area of 144 (+/-) s.f. on a second Building Frontage where a maximum of 100 s.f. is permitted; and variance from Sign Code §165-168.A to permit a total sign area for Target of 574 s.f. where only 300 s.f. is permitted.

v. Sleepy's

32. Sleepy's proposes three (3) new wall signs (collectively the "Sleepy's Wall Signs"). The first Sleepy's Wall will be located on the Building A-1 Building Frontage facing the principal Shopping Center parking lot; Sleepy's principal approach. The second Sleepy's Wall Sign will be located on the adjacent Dekalb Pike (a.k.a. Route 202) building façade. The third Sleepy's Wall Sign will be located on the Henderson Road building façade.

33. Testimony revealed that the Sleepy's Wall Signs each have sign areas of 40 (+/-) s.f. for a total sign area of 120 (+/-) s.f. The Sleepy's Wall Signs will reduce the overall number of signs

for Sleepy's and significantly reduce the overall sign area for Sleepy's. reduce the overall sign area for Sleepy's.

34. In accordance with Sign Code §165-168.A, Sleepy's is permitted a maximum of 240 s. f. of sign area

35. Applicant requests a variance from Sign Code §165-168.A to permit Sleepy's Wall Signs on three sides of Building A-1.

C. SPECIAL EXCEPTION RELIEF FOR SPECIAL SIGNS

36. Applicant requests a special exception in accordance with Section 165-168.O of the Sign Code to permit the Valley Forge Center East Elevation Sign and Tower Element as Special Signs.

37. The Applicant proposes that a special exception is proper because: (1) The Shopping Center is located in the SC-Shopping Center District one of the enumerated districts in which Special Signs are permitted; The Town Center East Elevation Sign and Tower Element on which signs will be placed, form an are integral part of the façade of the Town Center Building and their inclusion provides for the identification of tenants of the building that are not otherwise identifiable by traditional building façade signage; and The Valley Forge Center East Elevation Sign and Tower Element are not primarily intended to allow for signs to be located above the sign height line of the Town Center Building, rather these Special Signs are an integral part of the architecture of the building and intended to identify tenants of the building that are not otherwise readily identifiable by traditional signage.

CONCLUSIONS OF LAW

A. VARIANCES RELIEF FOR ENTRANCE SIGNS AND WALL SIGNS

1. The Applicant requests sign variances pursuant to Sections 165-168.M(1)(b), 165-168.M(1)(c), 165-168.M(1)(d), 165-168.A, 165-168.A(1), 165-168.A(2) of the Code, which are all related to the redevelopment of the VF Shopping Center.

2. 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).

3. 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.

4. 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.

5. 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.

6. 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).

7. 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).

8. 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.

9. The Board found that the criteria for granting the aforementioned variances were met and that the relief granted was the minimum variance that will afford the relief requested. Further, the Board and that Applicant agreed during the hearing that, as a condition of approval, the McDonald's FreeStanding/Entrance Sign shall be a maximum of 25' in height.

B. SPECIAL EXCEPTION RELIEF FOR SPECIAL SIGNS

10. The Applicant requests a special exception under Section 165-168.O of the Sign Code.

11. The Code authorizes Special Signs such as the Valley Forge Center East Elevation Sign and the Tower Element by special exception.

12. Section 165-168.O further provides that Special Signs shall (i) be limited to the districts set forth in § 165-168, (ii) form an integral part of the structural or decorative façade of a building wall, and (ii) not be placed on a decorative façade where the purpose appears primarily to increase the permitted height of a sign above the sign height line of the building.

13. 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).

14. 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.

15. 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.

16. 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.

17. The Board found that the criteria for granting the special exception were met.

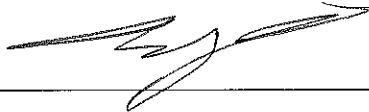
ORDER OF THE UPPER MERION TOWNSHIP

ZONING HEARING BOARD

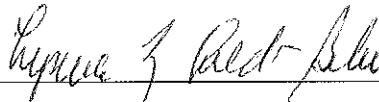
IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant certain variances and special exceptions as outlined in the Applicant's Application dated November 8, 2012. The variances and special exceptions are granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on February 6, 2013, which includes but is not limited to, the condition that the McDonald's FreeStanding/Entrance Sign shall be a maximum of 25' in height.

Decision Dated: February 6, 2013

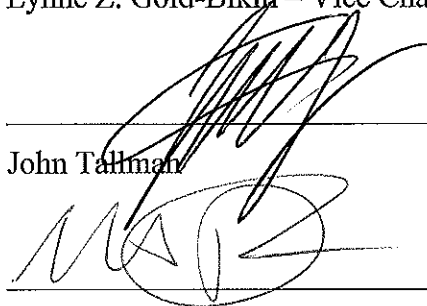
**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**



William Clements- Chairman



Lynne Z. Gold-Bikin – Vice Chair



John Tallman



Mark DePillis

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.