

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

MONTGOMERY COUNTY, PA

APPLICATION OF JL & CK HOLDINGS, LLC

APPLICATION NO. 2022-05

PROPERTY: 731 W. DEKALB PIKE

TAX PARCEL NO. 58-00-06412-00-1

DECISION

This matter concerns a notice of violation issued to a property owner regarding commercial signs. The applicant appealed the notice of violation and requested a special exception and variances as alternative zoning relief. The Zoning Hearing Board voted to sustain the appeal of the notice of violation.

JL & CK Holdings, LLC (“Landowner”) is the owner of the property located at 731 West DeKalb Pike, tax parcel no. 58-00-06412-00-1 (the “Property”). The Property is in the L-C Limited Commercial zoning district (“L-C District”) of Upper Merion Township (the “Township”). The Property is improved with a building used as a beauty spa and salon.

On January 26, 2022, the Township’s Director of Code Enforcement issued a notice of violation (“NOV”) to Landowner pursuant to section 616.1 of the Pennsylvania Municipalities Planning Code (“MPC”), 53 P.S. § 10616.1, and section 165-263 of the Upper Merion Township Zoning Ordinance of 1942, as amended (the “Zoning Ordinance”). The relevant portion of the NOV stated:

The Property is in violation of the following provisions of the Township Zoning Code:

1. Article XXVII titled Signs, specifically section 165-166 Permit required; fees, which states; “Unless specifically exempt from the provisions of this article, no sign shall be erected or structurally altered by a person except as

prescribed in this article and until a permit has been issued by the Township.”

No sign permits were issued for the window signs and no sign permits were issued for the electronic sign, which are both visible from a public place that displays either commercial or noncommercial messages by means of graphic presentation of alphabetic, numeric or pictorial symbols or representations.

You must bring the property in compliance with the sign code within thirty (30) days from the date of this notice by doing the following:

Remove the window signs and the electronic signs, until a permit has been issued by the Township.

Landowner submitted an application to the ZHB appealing the NOV. In the alternative, Landowner sought zoning relief on several grounds. First, Landowner requested a special exception to permit under section 165-168.O of the Zoning Ordinance as “special signs” vinyl window treatments covering 100% of the windows. Second, Landowner sought dimensional variances from sections 168-168.I and 168-168.A (1) and (2) of the Zoning Ordinance to allow for the installation and use of the vinyl window treatments covering 100% of the windows on the north and west elevations of the building. Finally, Landowner requested a dimensional variance from section 168-168.A(1) and (2) of the Zoning Ordinance to allow for the installation and use of a flat screen television as an “electronic sign” in the interior of the building in excess of the total permitted sign area of 121 square feet.

The ZHB held 2 advertised public hearings on Landowner’s appeal. The following members of the ZHB were present at the hearings: John M. Tallman, Jr., chairman, Mark S. DePillis, Esq., secretary, M Jonathan Garzillo, member, and Hedda Schupak,

member.¹ The ZHB was represented by Marc D. Jonas, Esq. and Zachary A. Sivertsen, Esq., of the law firm of Eastburn and Gray, P.C. Landowner was represented by Christopher H. Schubert, Esq., of the law firm of Riley Riper Hollin & Colagreco. The Township was represented by Rebecca W. Geiser, Esq. of the law firm Kilkenny Law.

During the second hearing, Landowner and the Township offered a joint-stipulation. A true and correct copy of the joint-stipulation is attached as Exhibit “A” and incorporated herein. Pursuant to the stipulation, Landowner and the Township agreed to resolve the portion of the NOV related to window signage on the Property in lieu of having the ZHB decide the merits of that portion of the appeal. As a result, the sole issue remaining for the ZHB to decide was the portion of the NOV related to the “electronic sign.”

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 ZHB sustained Landowner’s appeal of the notice of violation regarding the “electronic sign,” the ZHB issues this decision with findings of fact, conclusions of law, and reasons.

After careful consideration of the evidence presented, the ZHB makes the following findings of fact and conclusions of law.

A. FINDINGS OF FACT

BACKGROUND

1. Landowner is the owner of the Property. [Ex. ZHB-4]
2. The Property is identified as tax parcel no. 58-00-06412-00-1. [Ex. ZHB-8]

¹ Viviak Peikin, vice-chairperson, attended the second hearing and reviewed the transcript from the first hearing.

3. The Property is located in the Township’s L-C zoning district. [N.T. 5/18/22, pp. 26-27]²

4. The Property is improved with a commercial building. [Ex. ZHB-7]

ZHB HEARING

5. The ZHB marked the following exhibits:

- a. ZHB-1 – ZHB appeal application and addendum;
- b. ZHB-2 – notice of violation dated January 26, 2022, issued to JL & CK Holdings LLC for failure to secure sign permits for “window signs” and an “electronic sign” visible from a public place;
- c. ZHB-3 – letter dated February 28, 2022, from attorney for Landowner to the ZHB Solicitor, regarding a waiver of possible conflict;
- d. ZHB-4 – deed dated August 23, 2016, between Dealer Profit Centers, LLC (grantor) and JL & CK Holdings, LLC (grantee), recorded in deed book 6013, page 1063;
- e. ZHB-5 – plan entitled “Elevations Section,” prepared by Compass Architectural Design, dated January 25, 2019, last revised October 16, 2018;
- f. ZHB-6 – sign renderings, prepared by image360, undated;
- g. ZHB-7 – photos of existing building and signage;
- h. ZHB-8 – MCBA property records and tax map;
- i. ZHB-9 – Google Map, aerial view;
- j. ZHB-10 – continuance request letter, dated April 20, 2022;

² The ZHB appeal application erroneously identified the zoning district as C-O.

- k. ZHB-11 – legal notice;
 - l. ZHB-12 – stipulation between Landowner and the Township, dated June 13, 2022;
 - m. ZHB-13 – memorandum of law for Landowner, dated June 14, 2022;
and
 - n. ZHB-14 – memorandum of law for the Township, dated June 15, 2022.
6. The Township marked the following exhibits:
- a. T-1 – notice of violation, dated January 16, 2022; and
 - b. T-2 – six photographs of the building interior and exterior.
7. Landowner marked the following exhibits:
- a. A-1 – appeal of Landowner;
 - b. A-2 – aerial view of subject property;
 - c. A-3 – deed to the Property;
 - d. A-4 – plan of building elevations;
 - e. A-5 – photo, north elevation;
 - f. A-6 – photo, west elevation;
 - g. A-7 – plan, wall sign;
 - h. A-8 – plan, building elevation with window area calculation;
 - i. A-9 – photo, interior of building;
 - j. A-10 – electrical floor plans, VW detail;
 - k. A-11 – electrical floor plans, panel details;
 - l. A-12 – approved construction plans; and

m. A-13 – photograph of Verizon Wireless store.

8. The Township and Landowner marked one joint exhibit: J-1 -- stipulation between Landowner and Township, dated June 13, 2022.

9. The Township called Mark A. Zadroga, the Township zoning officer, to testify.

10. Mr. Zadroga testified, in pertinent part, as follows:

a. He is the Township zoning officer and in that position is responsible for enforcing the Zoning Ordinance and issuing citations and notices of violation. [N.T. 5/18/22, p. 10]

b. He issued the NOV for window signage on the front and side elevations of the building and for an electronic sign placed inside the building without a permit. [N.T. 5/18/22, pp. 11-12]

c. The NOV was issued after he drove by the Property in November or December of 2021 and observed a large television screen inside the building. [N.T. 5/18/22, p. 15]

d. The television screen was clearly visible from the public road. [N.T. 5/18/22, pp. 15-16]

e. When he observed the television screen, it was dark outside, and there were no blinds on the lower level of the building. [N.T. 5/18/22, p. 16]

f. He confirmed that pursuant to section 165-164 of the Zoning Ordinance, a “window sign” is defined as “a sign affixed to the interior or exterior surface of a window with its message intended to be

visible to and readable from the public way or from adjacent property”; an “electronic sign” is defined as “any sign activated or illuminated by means of electrical energy”; and an “interior sign” is defined as “any sign that’s placed within a building, but not including window signs as defined by this article.” [N.T. 5/18/22, pp. 21-22]

- g. He agreed that a window sign must be affixed to the window. [N.T. 5/18/22, pp. 21-22]
- h. He conceded that any sign inside of a building is considered an interior sign. [N.T. 5/18/22, pp. 22-23]
- i. He opined that the purpose of the television screen was to advertise to the public outside of the building. [N.T. 5/18/22, pp. 24-25]

11. Landowner presented the testimony of Christina Kim and Anthony Massimo.

12. Ms. Kim testified, in pertinent part, as follows:

- a. She owns the Property with her husband and is the owner of the tenant business, Lux Skin and Laser, Inc. [N.T. 5/18/22, p. 49]
- b. The television screen inside of the building is 16 feet wide and 6 feet high. [N.T. 5/18/22, p. 71]
- c. The television screen is installed within the interior of the building. [N.T. 5/18/22, p. 80]
- d. She designed the television screen so it could be seen from inside and outside of the building. [N.T. 5/18/22, p. 86]

13. Landowner also presented the testimony of Anthony Massimo, who testified that he was the project manager for the construction of the building. He described the permitting process associated with the construction. [N.T. 5/18/22, pp. 87-88]

B. DISCUSSION

Section 616.1(a) of the MPC authorizes a municipality to issue an enforcement notice to the owner of a property for an alleged violation of its zoning ordinance. 53 P.S. 10616.1(a). In any appeal of an enforcement notice to the zoning hearing board, the municipality has the burden of presenting its evidence first. 53 P.S. 10616.1(d). A municipality cannot meet its burden in an enforcement proceeding merely by setting forth the relevant procedural history and establishing the content of the relevant zoning provisions without presenting evidence that those provisions were violated by the named individuals or entities. Hartner v. Zoning Hearing Bd. of Upper St. Clair Twp., 840 A.2d 1068, 1070 (Pa. Cmwlth. 2004).

Here, the relevant portion of the NOV alleged that Landowner was in violation of section 165-66 of the Zoning Ordinance because “no sign permits were issued for the electronic sign....” An “electronic sign” is defined by the Zoning Ordinance as “[a]ny sign activated or illuminated by means of electrical energy.” The zoning officer asserted that the television screen is an electronic sign and that Landowner failed to obtain a permit for the sign in violation of the Zoning Ordinance.

However, the zoning officer testified on cross-examination that under the Zoning Ordinance, an “interior sign” is defined as, “[a]ny sign placed within a building, but not including window signs as defined by this article. Interior signs, with the exception of window signs as defined, are not regulated by this article.” Zoning Ordinance § 165-164.

The zoning officer testified that the television screen is located inside the building. The zoning officer conceded that any sign placed inside a building is an “interior sign” and is not regulated by the sign regulations in the Zoning Ordinance.

In an attempt to argue that the television screen is a “window sign” subject to the sign regulations of the Zoning Ordinance, the zoning officer opined that because the television screen is placed in front of a window without blinds or curtains, the purpose of the sign is to advertise to individuals outside of the building. However, a “window sign” is defined by the zoning ordinance as “[a] sign affixed to the interior or exterior surface of a window with its message intended to be visible to and readable from the public way or from adjacent property.” Zoning Ordinance § 165-164 (emphasis added). The zoning officer acknowledged that a “window sign” must be affixed to the window and that the television screen is not affixed to the window. [N.T. 5/18/22, pp. 21-22]

Pursuant to section 603.1 of the MPC,

In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.

53 P.S. § 10603.1

“[Z]oning ordinances are to be liberally construed to allow the broadest possible use of land,” and “are to be construed in accordance with the plain and ordinary meaning of their words.” Light of Life Ministries v. Cross Creek Twp., 746 A.2d 571, 573 (Pa. 2000).

With these principles in mind, the evidence established that the television screen is an “interior sign” not subject to the permitting requirements set forth in the sign regulations of the Zoning Ordinance. The definition of an “interior sign” is unambiguous.

No language subjects interior signs to the signage regulations if they are intended to be viewed from outside of the building.

Given the express language of the Zoning Ordinance, the Township failed to meet its burden of proof to demonstrate that Landowner violated the Zoning Ordinance. The appeal must be sustained.

C. CONCLUSIONS OF LAW

1. The ZHB has jurisdiction under section 909.1(a)(3) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10909.1(a)(3), and Zoning Ordinance §165-251.A(3).

2. Landowner has standing to appeal the NOV as the owner of the Property.

3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.

4. Article XXVII of the Zoning Ordinance, entitled the “Sign Code,” regulates signs within the Township.

5. Section 165-166 *Permit required; fees*, provides in part, “[u]nless specifically exempt from the provisions of this article, no sign shall be erected or structurally altered by any person except as prescribed in this article and until a permit has been issued by the Township.” Zoning Ordinance § 165-166.

6. Section 165-164 of the Zoning Ordinance defines an “interior sign” as “[a]ny sign placed within a building, but not including window signs as defined by this article. Interior signs, with the exception of window signs as defined, are not regulated by this article.” Zoning Ordinance § 165-164.

7. The television screen constitutes an interior sign and not a window sign because it is not affixed to the interior or exterior of a window.

8. As an interior sign, the television screen is not regulated by the sign regulations of the Zoning Ordinance.

9. The television screen is not subject to the permitting requirements in section 165-166 of the Zoning Ordinance.

10. The Township failed to prove that Landowner violated the Zoning Ordinance.

At the conclusion of the June 15, 2022 hearing, the ZHB voted to sustain Landowner's appeal of the NOV with regard to the television screen. On June 16, 2022, the ZHB mailed the following notice of decision to Landowners:

This letter provides notice of the decision of the Upper Merion Township Zoning Hearing Board following the conclusion of the hearing on Wednesday, June 15, 2022.

The Zoning Hearing Board voted to sustain your appeal of the notice of violation ("NOV"), dated January 26, 2022, with regard to the LCD display screen. The ZHB determined that the LCD display screen constitutes an "interior sign" that is not a "window sign," as those terms are defined in the Zoning Ordinance, and therefore is "not regulated by [Article XXVII Signs of the Zoning Ordinance]." See Zoning Ordinance § 165-164.

Regarding the portion of the NOV related to "window signs" or "vinyl window treatments," pursuant to Joint Exhibit-1, a stipulation between the applicant and Upper Merion Township dated June 13, 2022, the Township withdrew that portion of the NOV subject to the terms of the stipulation. A copy of the stipulation accompanies this letter and is incorporated herein.

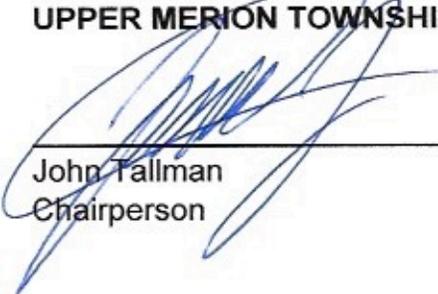
All other relief sought in the application was mooted by the ZHB's determination.

Because this application was granted and contested, the Zoning Hearing Board will issue a written decision with findings of fact, conclusions of law, and reasons.

This determination is subject to a 30-day appeal period beginning from the date of entry (mailing) of the written decision.

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**



John Tallman
Chairperson