

WEST HEMPFIELD TOWNSHIP ZONING HEARING BOARD
3476 MARIETTA AVENUE
LANCASTER, PA 17601
March 12, 2019

The West Hempfield Township Zoning Hearing Board met in the meeting room of the West Hempfield Township Municipal Building at 3476 Marietta Avenue, Lancaster, PA, on Tuesday, March 12, 2019. Board members Gary Lintner, Daryl Peck and Carl Manelius were present, along with Bernadette Hohenadel ZHB Solicitor; Dwayne Steager, Zoning Officer; Ronda Adams, Court Reporter; and Judy Carrier, Recording Secretary.

Call to Order

The meeting was called to order by Gary Lintner at 7:30 p.m.

Reorganization

Gary Lintner welcomed Carl J. Manelius to the Board.

The first order of business was to organize the Board for the year 2019.

- **Motion** was made by Daryl Peck and seconded by Carl Manelius to *retain* Gary Lintner and Daryl Peck in their current positions and *nominate* Carl Manelius as Secretary for the year 2019. Motion carried (3-0).
- **Motion** was made by Daryl Peck and seconded by Carl Manelius to *continue* the same meeting schedule of the second Tuesday of the month at 7:30 p.m. with meetings held at the Township building for the year 2019. Motion carried (3-0).

Approval of Minutes – November 13, 2018

- **Motion** was made by Daryl Peck and seconded by Gary Lintner, to *approve* the minutes as presented for the meeting held November 13, 2018. Motion carried (2-0-1) with Carl Manelius abstaining.

Case 1281

Applicant: Delta Par LLC (60 day 4/20/19)
Owner: Delta Par LLC
Description: Request for a variance for a sign.
Location : 3929 Columbia Ave, Pa.
Zone : C-2

The Applicant, Delta Par LLC, is looking to convert an existing building on property located at 3929 Columbia Avenue to a Dunkin Donuts franchise and is requesting a variance for an additional sign. At present, one building sign is permitted and a Dunkin' sign will be placed on the front of the building facing Columbia Avenue. To guide pedestrian traffic, the applicant is seeking a variance to place a second wall sign over the entrance door located on the east side of the building

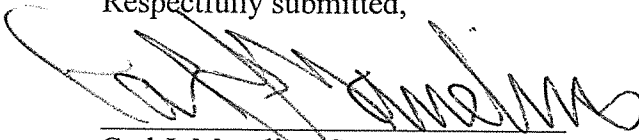
close to the parking area.

Eddie Delvadia, Owner, Delta Par LLC and Jeremey Denley, Architect, Albert Taus & Associates were sworn in as witnesses. Mr. Denley presented the request for variance to place an additional facade sign on the building. A court stenographer was present to record the testimony and the stenographic transcript will be the official record of the Hearing. All exhibits submitted and discussed were entered and made part of the official record of the Hearing.

At close of testimony, motion was made by Daryl Peck and seconded by Carl Menelius to *deny* the application for a second building sign based on West Hempfield Township Zoning Ordinance Section 708.9 Table 2 Sign Regulations for the property located at 3929 Columbia Avenue. There was no further discussion and the motion passed (3-0).

There being no further business to come before the Board, the meeting was unanimously adjourned at 8:30 p.m.

Respectfully submitted,



Carl J. Manelius, Secretary

BEFORE THE ZONING HEARING BOARD OF
WEST HEMPFIELD TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA

| | | |
|----------------|---|---------------|
| IN RE: | : | |
| | : | |
| | : | Case No. 1281 |
| APPLICATION OF | : | |
| DELTA PAR LLC | : | |

A. FINDINGS OF FACT:

1. Applicant is Delta Par LLC, a Pennsylvania limited liability company with an address of 767 Laudermilch Road, Hummelstown, Pennsylvania 17056 “Applicant”.

2. The Property which is the subject of this Application is located at 3929 Columbia Avenue, Columbia, Pennsylvania 17512, in West Hempfield Township, Lancaster County, Pennsylvania (hereinafter “Property”).

3. The Property which is the subject of the Application is owned by Delta Par LLC, 767 Laudermilch Road, Hummelstown, Pennsylvania 17056.

4. The Property is located in the C-2 Commercial Zoning District as shown on the Official Zoning Map of West Hempfield Township, Lancaster County, Pennsylvania.

5. Notice of this hearing was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code (hereinafter “MPC”) and the Zoning Ordinance of West Hempfield Township (hereinafter “Zoning Ordinance”).

6. A public hearing was conducted on March 12, 2019, in front of the West Hempfield Township Zoning Hearing Board.

7. Applicant was not represented during the proceedings by counsel, but Eddie Delvadia of Delta Par and Jeremy Danley of Albert Taus & Associates, 1187 Morefield Road, Philadelphia, Pennsylvania presented testimony in support of the Application.

8. The Board was represented at the hearings on this application by its solicitor Bernadette McKeon Hohenadel, of Nikolaus & Hohenadel, LLP, 212 N. Queen Street, Lancaster, Pennsylvania 17603.

9. The Property subject to this Application has been the subject of previous proceedings before the Zoning Hearing Board relating to a request by the prior occupant of the Property for a variance to mount three business signs on the building located on the Property

10. With the current Application, Applicant is seeking a variance from Section 708, Table 2 of the Zoning Ordinance, to place an additional business sign on the façade of the building, in addition to the one building sign as permitted by the Zoning Ordinance.

11. At the hearing, Applicant by Eddie Delvadia presented testimony on its own behalf, as well as testimony by Jeffrey Danley, Architect.

12. At the hearing, Applicant presented one exhibit, Applicant-1, which consisted of copies of 4 signs mounted on a McDonald's restaurant in the Township, which was entered into the record.

13. The Property is located on Columbia Avenue and is improved with one building, previously operating as a Rita's Italian Ice store.

14. Applicant is proposing to open a Dunkin Donuts franchise on the Property and is making some minor alterations to the building, including additional space for interior seating and a new loading zone, but the drive-thru will remain the same.

15. Entrance to the property is by means of a driveway off Columbia Avenue, at which entrance there will be a large pole sign identifying the business, and parking will be located to the eastern side of the building in an existing parking area. Directional signs, such as to identify the location of the drive-thru lane, will be mounted at various locations throughout the property

16. Applicant will be mounting a “DUNKIN” internally illuminated sign, 30” high and 170” long or approximately 35 square feet, on the front elevation of the building, visible from Columbia Avenue.

17. Entrance to the building will be by means of a single entrance door located on the eastern side of the building.

18. Above the entrance door Applicant proposes to mount a second building sign, which will read “DD”, approximately 30” high by 58” wide or approximately 12 square feet. It is this sign that is the subject of the request for a variance.

19. The two building signs proposed, one as permitted and the other the subject of this variance application, do not exceed the permitted maximum total area of building sign permitted on the lot but do exceed the number of building signs permitted.

20. Testimony established that the purpose of the sign was to navigate pedestrian traffic on the Property, such as people arriving in vehicles, through the parking area to the entrance. No other purpose was identified.

21. Dwayne Steager, West Hempfield Township Zoning Officer, provided information to the Board on the previous application for this Property and advised that application requested a variance to mount three building signs on the façade, and further that the application was denied as no hardship was found to support the variance.

22. No further testimony was presented and no one appeared in opposition to the Application.

B. DISCUSSION:

Generally, in order to obtain a variance, the landowner bears the burden of proving that he suffers from an unnecessary hardship, which hardship is unique or peculiar to the Property and is not self-imposed, and that if granted, the variance relief will not adversely affect the public health, safety and welfare. *Valley View Civic Association v. Zoning Board of Adjustment*, 462 A.2d 637, 640 (Pa. 1983). A variance should only be granted where it is not contrary to the public interest and where the Property involved is subject to an unnecessary “hardship unique or peculiar to itself as distinguished from one arising from the impact of the zoning regulations on the entire district.” *Smolow v. Zoning Board of Adjustment*, 137 A.2d 251, 252 (Pa. 1958). As stated by the Court in *Valley View Civic Association, supra.*, the hardship must be shown to be unique or peculiar to the Property as distinguished from a hardship arising from the impact of zoning regulations generally. The hardship shall not have been created by the Applicant, must be such as renders the property essentially incapable of development or use for any purpose, and must not be merely a financial or economic hardship. *SCRUB v. Zoning Hearing Board of the City of Philadelphia*, 858 A. 2d 679 (Pa. Cmwlth. 2004).

Applicant has requested a variance from Section 708 -Table 2 of the Zoning Ordinance which limits the number of building signs to one sign, no more than 50 square feet in size, in the C-2 Zoning District. A variance from this Section may be granted only when certain criteria are established. Section 1005.4, as set forth below, establishes what any applicant must establish to be entitled to a variance.

1005.4 VARIANCES

The Board shall hear requests for variances where it is alleged that the provisions of the Ordinance inflict unnecessary hardship upon the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance, provided the following findings are made where relevant in a given case.

- A. 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 this Zoning Ordinance in the neighborhood or district in which the property is located.
- B. 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 this Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- C. That such unnecessary hardship has not been created by the applicant.
- D. 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 detrimental to the public welfare.
- E. 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.

Applicant, by the testimony presented at the hearing, has not met the standard for the grant of a variance. Applicant has not established that there are unique circumstances or conditions related to this Property. Applicant has not established that there are unique circumstances which have created such a hardship or unique physical circumstances precluding reasonable use of the Property. Mr. Delvadia testified that the reason he wants an additional sign is to assist pedestrian traffic into the store and thereby bring in more customers. The need for the sign is not clear as there is only one entrance door to the building and the door is located at the corner of the building, directly facing the parking area.

Applicant did not carry the burden necessary to establish entitlement to a variance under the Section 1005.4 criteria. Applicant failed to show unnecessary hardship, failed to show unique

circumstances relating to the property, failed to show that the variance was necessary for the reasonable development or use of the property, and failed to show that the hardship was not created by him. In addition, Applicant failed to show any changed circumstances since the previous application for a variance, wherein the request for additional building signage was denied as no hardship had been established.

C. CONCLUSIONS OF LAW:

1. Applicant has failed to establish that he is entitled to a variance from Section 708 – Table 2 to permit the two-building signs in the C-2 Commercial District.

2. Applicant has failed to establish that there are unique physical circumstances or conditions peculiar to the Property and that there is a hardship relating to the Property as a result of such circumstances or conditions as required by Section 1005.4.

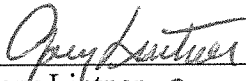
3. Applicant has failed to establish that there are physical circumstances or conditions relative to the Property that are unique to it and are not generally created by the Zoning Ordinance in the district in which the Property is located.

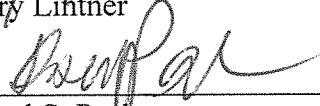
4. Applicant has failed to establish that the Property cannot be developed or utilized without the grant of a variance in that he testified that he will be operating a Dunkin Donuts at the location, and that the sign was to potentially increase business and not so that the Property could be used at all for the business.

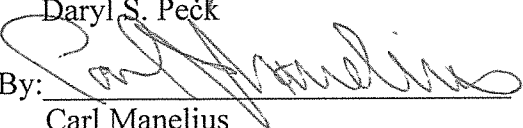
D. DECISION:

1. The request for a variance from Section 708, Table 2 is denied.

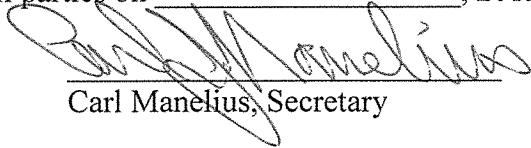
ZONING HEARING BOARD OF WEST HEMPFIELD TOWNSHIP

By: 
Gary Lihtner

By: 
Daryl S. Peck

By: 
Carl Manelius

Dated and filed _____ 2019 after hearing concluding on March 12, 2019.
Notice of this Decision was mailed to all parties on _____, 2019.


Carl Manelius, Secretary

Copies provided to: