

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :  
: No. 2022-14  
APPLICATION OF CWP WEST CORP. :

DECISION

I. FINDINGS OF FACT

1. Applicant is CWP West Corp., 222 East 5<sup>th</sup> Street, Tucson, Arizona 85705 ("Applicant").
2. The property which is the subject of the instant application is 2175 Lincoln Highway East, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. The Property is located in the C-2 Commercial District as shown on the Official Zoning Map of East Lampeter Township. A portion of the Property is also located in the Floodplain Overlay District.
4. Applicant is the lessee of the Property.
5. The owner of the Property is Lincoln2175, LLC.
6. Notice of the hearing on the within application was duly advertised and posted in accordance with the provisions of the

Pennsylvania Municipalities Planning Code ("MPC") and the East Lampeter Zoning Ordinance of 2016 (the "Zoning Ordinance").

7. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on October 13, 2022.

8. Testimony at the hearing was stenographically recorded.

9. Applicant was represented at the hearing by Charles M. Suhr, Esquire.

10. Anthony Caponigro, of Kimley Horn, appeared at the hearing and testified on behalf of Applicant.

11. The Property was the subject of a previous zoning hearing and the Board takes administrative notice of its Decision in Case No. 2021-15.

12. The Property contains approximately 1.983 acres.

13. The Property was previously used as and for a restaurant.

14. Applicant proposes to construct upon the Property a tunnel carwash, driveways, parking areas and vacuum stations. The Board approved this special exception use in Case No. 2021-15.

15. Applicant has now requested: (i) a variance from the terms of Section 22160.C.2.b of the Zoning Ordinance regarding the maximum permitted size of parking spaces for spaces located at the

vacuum islands; (ii) variances for signs which do not comply with the terms of the Zoning Ordinance, as more fully set forth herein; and (iii) an extension of the time limits set forth in Section 25060.F of the Zoning Ordinance.

16. There will be twenty vacuum parking spaces, as more fully shown on the plan submitted by Applicant and identified as Exhibit 6.

17. The vacuum parking spaces will be 13 feet by 18 feet (234 square feet) each, which is in excess of the 180 square feet permitted by Section 22160.C.1.b of the Zoning Ordinance.

18. It is necessary to have wider than normal parking spaces at the vacuum islands for proper opening of car doors and space to perform vacuuming functions.

19. With regard to its sign variance requests, Applicant submitted a Mister Car Wash sign package brand guide identified as Exhibit 7.

20. Applicant has proposed signage identified as signs A1, A2, B, C, D1, D2, D3, D4, E, F, G and H, all of which require certain variances.

21. Sign A1 is a freestanding business sign (pylon sign).

22. Section 22230.G.1 (Table 22230.1), states that the maximum sign area for a freestanding business sign shall be 80 square feet.

23. Applicant proposes that sign A1 contain 104.4 square feet of sign area.

24. Sign A2 is a freestanding sign (monument sign) which will be located off of the Property and adjacent to the access easement leading from Harvest Road to the Property.

25. Applicant proposes that sign A2 contain 30 square feet of sign area.

26. Off-premise signs are not permitted (or are only permitted as billboards). See Section 2020, definition of off-premise sign and billboard, and Table 22230.1.

27. Sign B is a "Mister" channel letter building sign and such signs are proposed on 3 sides of the tower element.

28. Applicant proposes that each sign B contain 73 square feet of sign area.

29. Section 22230.G.1 (Table 22230.1), states that the maximum sign area for a business sign is calculated based on the length of the building facade multiplied by 1.5 square feet which, in this case, permits a building sign to contain a maximum of 67.5 square feet.

30. Signs B, C and F (including 3 "Mister" signs, 2 "sparkle" signs, and 1 "free vacuum" sign for a total of 6 signs) are all

building signs and contain a cumulative sign area of 383 square feet.

31. Section 22230.G.1 (Table 22230.1), states that the maximum cumulative sign area for all building signage is 200 square feet.

32. Signs D1, D2, D3 and D4 are proposed as incidental signs, but are larger than permitted by Section 22230.G.1 (Table 22230.1). The maximum permitted size of an incidental sign is 4 square feet and the proposed signs contain approximately 8.1 square feet. They also contain a sparkle logo, which is not permitted. See definition of incidental sign, Section 2020 of the Zoning Ordinance.

33. With regard to sign H, Applicant proposes yellow LED lighting to outline the roof.

34. Section 22230.D.37 prohibits the outline lighting as proposed by Applicant.

## **II. CONCLUSIONS OF LAW**

### **A. VARIANCE FROM SECTION 22160.C.2.b REGARDING MAXIMUM SIZE OF PARKING SPACE**

1. Applicant proposes vacuum parking spaces (on the west side of the Property) to be 13 feet by 18 feet (234 square feet each).

2. Section 22160.C.1.b of the Zoning Ordinance states that the maximum parking space size shall be 180 square feet.

3. Applicant requires a variance from the terms of Section 22160.C.2.b of the Zoning Ordinance to permit vacuum parking areas on the west side of the Property to be no larger than 13 feet by 18 feet (234 square feet).

4. An applicant for a variance bears the burden of proving that unnecessary hardship will result if the variance is not granted and that the grant of the proposed variance will not be contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983); Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

5. A variance, if granted, "must be the minimum that will afford relief and will represent the least modification of the ordinance." Rogers v. Zoning Hearing Board of East Pikeland Township, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922, 924 (1987); MPC §910.2(a)(5).

6. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum

that will afford relief and will represent the least modification of the ordinance.

B. VARIANCE FROM SECTION 22230.G.1, TABLE 22230.1 FOR OFF-PREMISE MONUMENT SIGN

1. Sign A2 is a freestanding sign (monument sign) which will be located off of the Property and adjacent to the access easement leading from Harvest Road to the Property.

3. Off-premise signs are not permitted (or are only permitted as billboards). See Section 2020, definition of off-premise sign and billboard, and Table 22230.1.

4. Applicant requires a variance from Section 22230.G.1, Table 22230.1 to permit the off-premise monument sign.

5. An applicant for a variance bears the burden of proving that unnecessary hardship will result if the variance is not granted and that the grant of the proposed variance will not be contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983); Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

6. A variance, if granted, "must be the minimum that will afford relief and will represent the least modification of the

ordinance." Rogers v. Zoning Hearing Board of East Pikeland Township, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922, 924 (1987); MPC §910.2(a)(5).

7. The location of the access drive off of Harvest Road (and the access easement leading from Harvest Road to the Property) warrant granting of the requested variance.

8. Applicant has presented evidence sufficient to establish that unnecessary hardship will result if the variance is not granted, that the grant of the proposed variance will not be contrary to the public interest, and that the variance requested is the minimum that will afford relief and will represent the least modification of the ordinance.

C. VARIANCE FROM SECTION 22230.G.1, TABLE 22230.1 FOR FREESTANDING PYLON SIGN A1.

1. Sign A1 is a freestanding business pylon sign and would contain 104.4 square feet of sign area.

2. Table 22230.1 states that the maximum size of a building sign shall be 80 square feet.

3. Applicant requires a variance from the terms of Section 22230.G.1, Table 22230.1 to permit business pylon sign A1 to contain 104.4 square feet of sign area.

4. An applicant for a variance bears the burden of proving that unnecessary hardship will result if the variance is not granted and that the grant of the proposed variance will not be contrary



to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983); Zaruta v. Zoning Hearing Board of the City of Wilkes-Barre, 117 Pa. Commonwealth Ct. 526, 543 A.2d 1282 (1988); Pennsylvania Municipalities Planning Code ("MPC") §910.2.

5. A variance, if granted, "must be the minimum that will afford relief and will represent the least modification of the ordinance." Rogers v. Zoning Hearing Board of East Pikeland Township, 103 Pa. Commonwealth Ct. 478, 520 A.2d 922, 924 (1987); MPC §910.2(a)(5).

6. Unnecessary hardship justifying a grant of a variance is shown where denial of the variance would render the property practically useless. Economic and personal considerations in and of themselves are insufficient to constitute hardship." McNally v. Bonner, \_\_\_ Pa. Commonwealth Ct. \_\_\_, 645 A.2d 287, 289 (1994) (citations omitted).

7. In order to warrant the grant of a variance, the hardship must be unique to the property and not one which is generally suffered by other properties in the district. D'Amato v. Zoning Board of Adjustment of the City of Philadelphia, \_\_\_ Pa. Commonwealth Ct. \_\_\_, 585 A.2d 580, 583 (1991).

8. Circumstances unique to the user of a property and not the property itself do not constitute unnecessary hardship. See, e.g.

Chrin v. Zoning Hearing Board of the Borough of Nazareth, 127 Pa. Commonwealth Ct. 279, 561 A.2d 833 (1989).

9. An applicant is not entitled to a dimensional variance if a conforming structure, albeit a less desirable one, can be erected. Greene Townes Financial Corporation v. Zoning Hearing Board of Lower Merion Township, \_\_\_ Pa. Commonwealth Ct. \_\_\_, 630 A.2d 492 (1993).

10. The Pennsylvania Supreme Court has expressly rejected the contention of a landowner that the requirements for the granting of a variance set forth in the MPC should not be applied to dimensional variances for signs. Beecham Enterprises, Inc. v. Zoning Hearing Board of Kennedy Township, 530 Pa. 272, 608 A.2d 117 (1992).

11. The Board, as fact finder, has the power to reject even uncontradicted testimony if the Board finds the testimony to be lacking in credibility. Vanguard v. Zoning Hearing Board of Smithfield Township, 130 Pa. Commonwealth Ct. 371, 568 A.2d 703, 707 (1989), appeal denied, 527 Pa. 620, 590 A.2d 760 (1990) (citations omitted).

12. The Board, "as factfinder, has the power to reject the testimony of an expert witness". Berman v. Manchester Township Zoning Hearing Board, 115 Pa. Commonwealth Ct. 339, 540 A.2d 8, 9

(1988); Hogan, Lepore & Hogan v. Pequea Township Zoning Hearing Board, 162 Pa. Commonwealth Ct. 282, 638 A.2d 464 (1994).

13. The fact that municipal zoning requirements do not permit a business to utilize signs manufactured according to specifications of the business is not unnecessary hardship entitling the applicant to a variance.

14. It is possible to reasonably and safely utilize the Property with signage meeting the requirements of Table 22230.1 of the Zoning Ordinance regarding maximum business sign size. A variance is not needed to allow reasonable use of the Property.

15. The Board specifically rejects as not credible any testimony which would infer that a sign containing 80 square feet of signage would be unsafe.

16. Applicant has failed to demonstrate evidence sufficient to warrant the granting of the requested variance.

17. The Board also rejects any arguments set forth by Applicant that the variance requested is de minimis.

18. Commonwealth Court has specifically found the following not to be de minimis: 6% of minimum lot area was too large to be de minimis (Leonard v. Zoning Hearing Board of the City of Bethlehem, 136 Pa. Commonwealth Ct. 182, 583 A.2d 11 (1990)); a 9 foot variance from a 40 foot setback requirement

for a satellite dish was too large to be de minimis (Hirsh v. Zoning Hearing Board of the Borough of Fox Chapel, 163 Pa. Commonwealth Ct. 296, 641 A.2d 32 (1994)); a variance of 20% from a requirement that a retaining wall not exceed 5 feet in height is not de minimis (Zoning Board of Adjustment of the City of Philadelphia v. Pasha, 118 Pa. Commonwealth Ct. 190, 544 A.2d 1101 (1988)).

19. Moreover, the Pennsylvania courts have, as a general matter, rejected the arguments of property owners who seek variances from dimensional requirements without establishing unnecessary hardship on the theory that the variance should be granted because it will do no harm. Ottaviano v. Zoning Hearing Board of Adjustment of Philadelphia, 31 Pa. Cmwlth Ct. 366, 376 A.2d 286 (1977).

20. Applicant's variance request cannot be considered a minor deviation from the zoning ordinance specifications.

D. VARIANCE FROM SECTION 22230.G.1, TABLE 22230.1 FOR BUILDING SIGN B.

1. Sign B is a "Mister" channel letter building sign and such sign is proposed on 3 sides of the tower element.

2. Applicant proposes that each sign B contain 73 square feet of sign area.

3. Table 22230.1 states that the maximum sign area for a business sign is calculated based on the length of the facade multiplied by 1.5 square feet which, in this case, permits a building sign to contain a maximum of 67.5 square feet.

3. Applicant requires a variance from the terms of Section 22230.G.1, Table 22230.1 to permit building sign B to contain 73 square feet of sign area.

4. Conclusions of Law C-4 through C-20 are incorporated herein. Applicant has failed to satisfy the requirements for the requested variance.

E. VARIANCE FROM SECTION 22230.G.1, TABLE 22230.1 FOR BUILDING SIGNS B, C and F.

1. Signs B, C and F (including 3 "Mister" signs, 2 "sparkle" signs, and 1 "free vacuum" sign for a total of 6 signs) are all building signs and contain a cumulative sign area of 383 square feet.

2. Table 22230.1 states that the maximum sign area for all business signs is 200 square feet.

3. Applicant requires a variance from the terms of Section 22230.G.1, Table 22230.1 to permit total building signage of 383 square feet of sign area.

4. Conclusions of Law C-4 through C-20 are incorporated herein. Applicant has failed to satisfy the requirements for the requested variance.

F. VARIANCE FROM SECTION 22230.G.1, TABLE 22230.1, AND SECTION 2020 TO PERMIT INCIDENTAL SIGNS TO EACH CONTAIN STAR SPARKLE LOGO AND 8.1 SQUARE FEET OF SIGN AREA.

1. Signs D1, D2, D3 and D4 are proposed as incidental signs, but are larger than permitted by Section 22230.G.1 (Table 22230.1). The maximum permitted size of an incidental sign is 4 square feet and the proposed signs contain approximately 8.1 square feet. They also contain a sparkle logo, which is not permitted. See definition of incidental sign, Section 2020 of the Zoning Ordinance.

2. Applicant requires a variance from the terms of Section 22230.G.1, Table 22230.1 and Section 2020 of the Zoning Ordinance to permit signs D1, D2, D3 and D4.

3. Conclusions of Law C-4 through C-20 are incorporated herein. Applicant has failed to satisfy the requirements for the requested variance.

G. VARIANCE FROM SECTION 22230.D.37 TO PERMIT YELLOW LED LIGHTING TO OUTLINE ROOF.

1. With regard to Sign H, Applicant proposed yellow LED lighting to outline the roof.

2. Applicant requires a variance from the terms of Section 22230.D.37.

3. Conclusions of Law C-4 through C-20 are incorporated herein. Applicant has failed to satisfy the requirements for the requested variance.

### **III. DECISION**

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby:

(i) grants a variance from the terms of Section 22160.C.2.b of the Zoning Ordinance to permit vacuum parking areas on the west side of the Property to be no larger than 13 feet by 18 feet (234 square feet);

(ii) grants a variance from the terms of Section 22230.G.1, Table 22230.1 to permit Sign A2 (freestanding monument sign to be located off of the Property).

(iii) denies variances for all other signage as more fully set forth herein.

The variances which are granted herein shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in his application and the evidence presented to the Board at the hearing held on October 13, 2022.

3. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

4. The approval granted by this Decision shall expire if Applicant does not obtain a zoning permit within twelve (12) months from the date of the Decision and does not complete the improvements and construction activities within twelve (12) months from the date of the permit. This is an extension of the time period set forth in Section 25060 of the Zoning Ordinance.

5. The foregoing Decision shall be binding upon the Applicants and its successors and assigns.

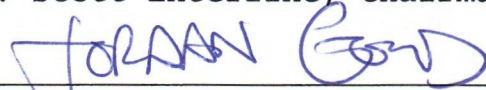


ZONING HEARING BOARD OF THE  
TOWNSHIP OF EAST LAMPETER



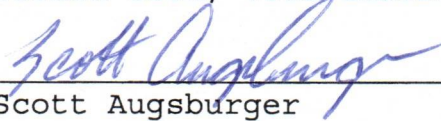
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J. Scott Enterline, Chairman



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Jordan Good, Vice-Chairman



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Scott Augsburger

Dated and filed November 10, 2022, after hearing held on  
October 13, 2022.

The undersigned certifies that a copy of this Decision was  
served upon all parties on or prior to November 11, 2022.



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