

BEFORE THE ZONING HEARING BOARD OF CARLISLE BOROUGH,
CUMBERLAND COUNTY, PENNSYLVANIA

IN RE: MATTER OF CARLISLE AUTO INDUSTRIES, INC.

FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS OF LAW OF THE ZONING
HEARING BOARD

I. **FINDINGS OF FACT**

1. Applicant is Carlisle Auto Industries, Inc., which maintains a business address of 1000 Bryn Mawr Road, Carlisle, PA 17013.
2. Applicant is the owner of real property located at 50 Carlisle Springs Road, Carlisle, PA (the "Property").
3. The Property is located in the Urban Mixed Use Zoning District ("UM District").
4. The Property is a part of a redevelopment project, and Applicant seeks to develop the Property as a retail center consisting of three buildings.
5. On June 5, 2023, Applicant submitted a request for a special exception from Carlisle Borough Zoning Ordinance, Section 255-123, which sets forth the maximum gross floor area at 15,000.00, for one of the buildings intended to serve as a grocery store use.
6. Specifically, Applicant seeks a special exception allowing a maximum gross floor area of 18,000 square feet.
7. During the hearing, as will be discussed *infra*, Applicant requested a dimensional variance from Section 255-165(h)(5) from 20 feet to 50 feet.

8. A public hearing was convened pursuant to public notice on July 6, 2023, at 6:30 p.m. at 53 W. South Street, Carlisle, Pennsylvania.

9. Notice of the hearing was properly advertised; the property was properly posted on June 21, 2023; the hearing was advertised in the Carlisle Sentinel newspaper on June 22, 2023, and June 29, 2023; notice was served on neighboring property owners on June 21, 2023.

10. Applicant appeared with counsel, Charles M. Suhr, Esquire, who ably represented the Applicant at the hearing. As well, a summer law clerk, Chandler Penn, presented portions of the Applicant's case and did an excellent job.

11. For Applicant, Tom Ritchey, of Third Mountain Consulting, testified.

12. The particular subject of Applicant's request was a retail space building to be used as an "anchor" grocery store.

13. Applicant submitted a land development plan as Exhibit 3 showing a proposed retail building at the northwest corner of Lot 1, being the subject of the requested special exception.

14. Access to the Property would be from A Street.

15. According to Mr. Ritchey, the layout of the entrances was necessitated by the anticipated truck deliveries to the intended grocery store use.

16. Mr. Ritchey further testified that the intended grocery store use was to address the need in that portion of Carlisle, which is a "food desert."

17. Applicant did not intend to put in an alternative retail use because it was cognizant of downtown Carlisle and did not wish to directly compete.

18. The need for the increased floor space was because of the requirements of the national grocery store chain intended to use the building.

19. Mr. Ritchey testified that the placement of the building was necessary because of a sanitary lateral and large storm drain that traverses through the center of the Property.

20. To the south of the Property are railroad tracks, to west and east are residential areas, and the north is the balance of Applicant's redevelopment project.

21. Mr. Ritchey testified that: the project was not in conflict with other Borough Ordinances, State or Federal law or regulations; was consistent with the comprehensive plan; would not negatively impact traffic; would not create a public safety hazard; and would not negatively impact an existing residential neighborhood, and would instead be a positive impact in that it would bring a grocery store to an area without one.

22. There was no testimony to the contrary on any of these points.

23. On the issue of adequate site design, Mr. Ritchey testified that Applicant would adhere to the design criteria of the UM District involving landscaping and so on.

24. Jared Woolston, Borough of Carlisle Zoning Officer, testified.

25. As to design, Mr. Woolston testified that the plan did not adhere to the standard under Section 255-126(h)(5), which required that the building shall have at least one primary entrance space on every abutting street or is directly accessed by a sidewalk or a plaza within 20 feet of the primary entrance.

26. Mr. Woolston noted that the primary entrance faces the proposed parking lot, and although there is a sidewalk to said entrance from the sidewalk on A Street, the distance is more than 20 feet.

27. Mr. Ritchey testified that the national grocery chain had particular design and prototype requirements that Applicant must meet in order to place said grocery chain in the proposed retail space building.

28. Applicant testified that the purpose of the redevelopment project was to create a walkable type community.

29. Exhibit 1, being the Application, Exhibit 2, being the deed, Exhibit 3, being the site plan, and Exhibit 4, being the public notice, were entered into evidence.

II. DISCUSSION

The Carlisle Borough Zoning Ordinance §255-197(C) provides that the Zoning Hearing Board may grant a special exception if it finds adequate evidence that the proposed use meets (a) all the standards listed in §255-197; (b) all the specific standards listed in §255-199 and 255-200; and (c) all other applicable requirements. In granting a special exception, the Board may require reasonable conditions and safeguards. Pursuant to Section 255-197(D), a special exception use must: (1) comply with other Borough ordinances, state or federal laws, and other regulations; (2) be consistent with the Comprehensive Plan; (3) not result in a serious traffic hazard or congestion; (4) not create a significant public safety hazard; (4) not significantly

negatively affect the desirable character of the existing residential neighborhood; and (5) involve adequate design methods.

Applicant is seeking a special exception to permit a maximum gross floor area of 18,000 square feet. Applicant has met the requirements for a special exception. The evidence adequately demonstrated that an increase of the maximum square footage of retail space to 18,000 square feet would not be in conflict with other Borough ordinances, state or Federal laws or regulations; would be consistent with the Comprehensive Plan; would not seriously and negatively impact traffic; would not create a public safety hazard; and, would not negatively affect any existing residential neighborhood.

The remaining standard under Section 255-197.D is whether the project would involve adequate sight design methods, including evergreen screening, setbacks, berming and traffic control, to avoid serious negative influences on adjacent uses. The only conflict on this point was whether the proposed building adhered to the standard set forth in Section 255-126(h)(5), which required that the building shall have at least one primary entrance space on every abutting street or is directly accessed by a sidewalk or a plaza within 20 feet of the primary entrance.

At the hearing, Applicant orally requested a dimensional variance from this Section of 20 feet to 50 feet. The request was not a significant departure from the request being made at the hearing. As such, and there being no opposition, the Zoning Hearing Board permitted the Applicant to orally request a dimensional variance to Section 255-126(h)(5).

The Carlisle Borough Zoning Ordinance §255-250 provides that the Zoning Hearing Board may grant a variance from the requirements of the Ordinance where an unnecessary hardship is inflicted upon a property owner, if the following findings, where relevant, are made:

- (a) 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 chapter in the neighborhood or district in which the property is located.
- (b) 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 a variance is therefore necessary to enable the reasonable use of the property.
- (c) Such unnecessary hardship has not been created by the appellant.
- (d) 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.
- (e) 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.

The requirements of the Ordinance are similar to the standards established by Pennsylvania case law. See e.g. Alpine, Inc. v. Abington Tp. ZHB, 654 A.2d 186 (Pa. Commw. 1995).

Applicant is seeking a dimensional variance. The Pennsylvania Supreme Court has held that a more relaxed standard applies. See Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh, 721 A.2d 43 (Pa. 1998). Under Hertzberg, consideration should also be given to the economic detriment and financial hardship to

an applicant if the variance was denied. Id. at 50. A Zoning Hearing Board is also permitted to consider the desirability of the proposed use of an Applicant, the benefit to the community, and the support of the community. See Marshall v. City of Philadelphia, 626 Pa. 385 (2014).

Applicant has met the requirements for a dimensional variance. The placement of the easement for sanitary and storm water, the requirements of the desired national grocery chain for placement of entrances, and the placement of delivery entrances act as a unnecessary hardship for placement of the entrance within 20 feet of a sidewalk on an abutting street. A dimensional variance from 20 feet to 50 feet is necessary. The hardship is created by the conditions of the property and the requirements of the national grocery chain. A variance will not alter the essential character, impair the development of the adjacent property not be detrimental to the public welfare. To the contrary, bringing a grocery store to this area of the Borough will solve the “food desert” issue, is desired by the community, and will be a substantial and important boon to the area. A variance from 20 feet to 50 feet is the minimum variance required.

With the granting of a dimensional variance, Applicant also meets the special exception requirements.

The substantial bulk of Applicant’s testimony was that the special exception was necessary to bring a grocery store to the area and to address cure the “food desert” issue. The Zoning Hearing Board is permitted to require reasonable conditions and safeguards necessary to implement the purposes of Section 255. Accordingly, a

condition of approval is that the use of the retail space, which is the subject of Applicant's request for a special exception, is as a grocery store.

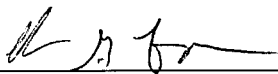
III. CONCLUSIONS OF LAW

1. The Zoning Hearing Board has jurisdiction to hear and decide Applicant's request.
2. Public notice of the hearings were properly made pursuant to the Zoning Ordinance and Pennsylvania Municipalities Planning Code.
3. The request for a special exception from Zoning Ordinance Section 255-123 to permit the retail space to have a maximum gross floor area of 18,000 square feet is granted.
4. A dimensional variance from Section 255-126.H(5) is granted as follows:
the building shall have at least one primary entrance facing every abutting street, or is/are directly accessed by a sidewalk or plaza within 50 feet of the primary entrance.
5. The grant of the special exception and variance is subject to the following conditions:
 - a. The proposed retail space shall be used as a grocery store.
 - b. The plan shall otherwise conform to the requirements of the Zoning Ordinance and the representations made to the Zoning Hearing Board at the hearing, in the application, and in the narrative attachment.

- c. The Applicant shall comply with all other applicable statutes, regulations and Ordinances and shall obtain all required permits and approvals.

SO ORDERED this 21 day of August, 2023

**CARLISLE BOROUGH
ZONING HEARING BOARD**

By: 
Christopher Fowler, Chairman