

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

**IN RE: MATTER OF FLUSS FLOORING**

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

I. **FINDINGS OF FACT**

1. Applicant is Fluss Flooring, a Pennsylvania general partnership, located at 231 East High Street, Carlisle, Cumberland County, Pennsylvania, which is within the C-4 commercial zoning district.

2. Applicant operates a retail flooring store at the property and leases space to a commercial tenant.

3. On or about January 3, 2020, Applicant submitted a permit request seeking permission to install a freestanding sign in the front parking area ("Permit 220-0004"), which was denied by the Zoning Officer because the sign was not located behind the building setback line, which is 15 feet from the street right-of-way.

4. On May 5, 2020, the Applicant filed a Notice of Appeal from the determination of the Zoning Officer denying Permit 220-0004 and, alternatively, requesting a variance from the provisions of Section 288-87.B. of the Zoning Ordinance so that it can erect a free-standing sign at a distance less than 15 feet from the existing street right-of-way.

5. A public hearing was convened pursuant to public notice on June 4, 2020, at 6:30 p.m. at the municipal building, 53 W. South Street, Carlisle, Cumberland County, Pennsylvania.

6. Notice of the hearing was properly advertised; the property was properly posted by Michael Skelly, AICP; the hearing was advertised in the Carlisle Sentinel newspaper on May 20 and May 27, 2020; and notice was posted on the borough's website on May 27, 2020.

7. Applicant appeared with counsel, Michael T. Traxler, Esquire, who ably represented the Applicant at the hearing.

8. No other property owners appeared or requested party status at the hearing.

9. Michael Skelly is the Carlisle Borough Community Development Manager and Zoning Officer.

10. Skelly testified as to his denial of Permit No. 220-0004, asserting that his reading of Sections 255-220.B, 255-87, 255-12, and 255-13 of the Zoning Ordinance, in addition to conventional interpretation, led him to the conclusion that the building setback area in which a sign can be erected means the area more than 15 feet from the existing street right-of-way.

11. Skelly further testified that he believed the requirements for a dimensional variance were met by Applicant.

12. The undisputed testimony was that the proposed height and surface area of the sign met the requirements of the Zoning Ordinance.

13. Applicant called Troy Fluss, one of the owners of the property, who testified that his business will be forced to remove the free-standing sign currently existent upon the property because the Pennsylvania Department of Transportation took a portion of the property through eminent domain where the sign is located.

14. Applicant would not have moved the sign but for the eminent domain action by PennDOT.

15. Applicant asserts that if it was required to place the sign behind the 15-foot building setback line, the visibility of the sign and Applicant's ability to advertise to drivers would be curtailed, which it asserts would be a hardship

16. Applicant requests a variance to place its sign five feet from the street right of way.

17. Applicant entered Exhibits 1 and 2 into evidence, which demonstrated the location of the street right-of-way, the proposed sign location and the existing sign location.

18. Troy Fluss testified that the proposed sign location will be at a similar distance from the street right-of-way line as the current sign.

19. Applicant testified that the sign size and location would be comparable to the signs of nearby businesses in the C-4 zoning district.

## II. DISCUSSION

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) unique physical circumstances or conditions that create the unnecessary hardship; (b) because of the conditions, there is no possibility that the property can be developed in strict conformity and a variance is necessary to enable

reasonable use of the property; (c) the hardship is not self-inflicted; (d) the variance will not alter the essential character of the neighborhood, impair use of adjacent property, or be detrimental to public welfare; (e) the variance is the minimum variance that would afford relief.

However, 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.

In this case, Applicant is being forced to take down the sign advertising his place of business and it was not his desire to do so. Placement of the sign at a location visible to people traveling along High Street is important for the success of Applicant's business. It would be a financial hardship if Applicant did not receive a variance because visibility of the sign from the street would be reduced. The proposed placement of the new sign is consistent with the location of the currently existing sign. Placement of the proposed sign would be consistent with the neighborhood, a commercial district. Granting of the variance would not impair adjacent properties or be detrimental to public welfare. The proposed sign is in all other aspects compliant with the Zoning Ordinance – Applicant seeks only to place the sign five feet from the street right-of-way line instead of fifteen feet.

III. CONCLUSIONS OF LAW

1. The Zoning Hearing Board has jurisdiction to hear and decide Applicant's request.

2. Public notice of the hearing was properly made pursuant to the Zoning Ordinance and Pennsylvania Municipalities Planning Code.

3. The request for a dimensional variance from the requirement of Section 255-87.B of the Zoning Ordinance is granted subject to the following conditions:

a. The proposed freestanding sign may be placed no less than five feet from the street right-of-way line.

b. The sign shall otherwise conform to the requirements of the Zoning Ordinance and shall be consistent with Permit 220-0004 submitted January 3, 2020, and the representations made to the Zoning Hearing Board at the hearing.

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

4. Because the Board has approved Applicant's request for a Variance, it declines to address Applicant's alternate claim for relief, which was the appeal from the denial of Permit 220-0004 by the Zoning Officer.

SO ORDERED this 4<sup>th</sup> day of June, 2020

CARLISLE BOROUGH  
ZONING HEARING BOARD

By:   
Vince Champion, Chairman

Mailed 6/24/20  
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