

RICHLAND TOWNSHIP
ZONING HEARING BOARD

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In Re: :

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Case Nos. 12-07 :

13-07 :

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TRANSCRIPT OF PROCEEDINGS

MONTHLY ZONING HEARING BOARD MEETING

SEPTEMBER 2007

7:00 p.m.

Before: MARGO JOCHIMS, Chairperson

LOUIS VITTI, Member

BETSY KANE, Member

Date: Tuesday, September 18 , 2007

Place: Richland Township Municipal Building

4011 Dickey Road

Gibsonia, Pennsylvania 15044

By: Karen L. Cross

Court Reporter - Notary Public

ALSO PRESENT:

DEAN E. BASTIANINI

I N D E X

WITNESSES EXAMINATION

PHIL BISHOP

(By Mr. McKeegan) 12

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2 Site plan 11

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PROCEEDINGS

MS. JOCHIMS: I'll call the meeting to order . Go ahead, Mr. 2 > Vitti, administer the oath , please .

MR. VITTI: All those who are going to offer testimony tonight, would you please raise your right hands .

ALL PROSPECTIVE WITNESSES ,

herein, having been first duly sworn,

testified as follows:

MR. VITTI: Thank you .

MS. JOCHIMS: First hearing, Number 12-07 , Joanne Sarver .

MR. TAIT: My name is Lee Tait of Tait Engineering. I'm representing Ms. Joanne Sarver requesting five variances . The purpose of this is we have a proposed subdivision that's taking her existing property and dividing it into two .

The situation with the property right now, it has a main house and then we would like to subdivide a portion of the property that has three what is now rental units. As it stands now she's having a hard time selling her main house with those three rental units . We would like just to subdivide those three off.

As you can see on the plan, there's a few things that are keeping us from doing that . One is the three-acre-- Well, one of the ordinances is one dwelling per acre. So then , therefore , she would need three acres, and we feel that that would be a detriment to the main property if those three rental units would take up three acres of property .

The other issues would be the lot width of the street right-of-way of 50 feet . We obviously do not have that . We're requesting a variance to have it as shown , which is zero . There's another front yard setback that the existing condition is a non conforming existing situation there with the porch being over the 50 -foot building line . There's not much you can do about that .

Again, a lot with the street right-of-way, there's a couple of these ordinances that are just repeating issues . The main issues are the acre per dwelling and the 50 -foot setback and the 50 -foot width at the right-of-way . The 50 -foot width at the right-of-way, she has a greenhouse there you can see that would not be pertinent for enough easement, 50 -foot right-of-way down there.

MR. VITTI: Maybe you ought to explain what it is you want to do. You run through the variances that you're suggesting. We're looking at your draft here, and if I'm looking at it you're proposing you're going to do three lots ?

MR. TAIT: No , no. Those lots have nothing to do with the property. Her property is the overall dark boundary .

MS. JOCHIMS: So you want lot one and lot two and you're trying to subdivide lot one with the three dwellings from the entire parcel ?

MR. TAIT: Exactly .

MR. VITTI: Those three dwellings are already there ; right ?

MR. TAIT: They're already there.

MS. JOCHIMS: And they're serviced by this gravel drive?

MR. TAIT: Yes. There's an existing ten-foot private right-of-way .

MS. JOCHIMS: Any idea when these were built ?

MR. TAIT: Joanne, do you know that?

MS. SARVER: The original house was built in 19 22, and the three existing dwellings on the out parcel was prior to that . They were probably in the 1800s .

MS. JOCHIMS: And you're saying that you want to keep the six acres. So theoretically you could make the lot one three acres to accommodate three parcels ?

MR. TAIT: Yes , it could. But, as I said before, if you see the property in the field the property does not go with the three rental units . If anytime in the future obviously she wouldn't be rebuilding three houses, it would be one house . We would like to just keep that as is .

At one time this was, there's a faint line running parallel to those houses there . That was the original deed line there. For some reason back in the early '70s/early '80s they consolidated this piece to put the three rental units on to the main property . That was prior to her 1 > owning it .

We more or less want to restore it to that condition with obviously a different line . But we think three acres wouldn't be unreasonable .

MS. KANE: Do you have any pictures of the lay of the land at that point ?

MR. TAIT: No, I do not . I'm sorry .

MS. JOCHIMS: These are currently being rented ?

MS. SARVER: They're fully rented now , yes .

MR. VITTI: Pretty much what I was trying to get to before . This is already in existence ?

MR. TAIT: Yes .

MR. VITTI: So you want to get it done after the fact ?

MR. TAIT: Pretty much , I mean, yeah . We're creating a new line . So , therefore , yeah , it's --

MR. VITTI: It's already there ?

MR. TAIT: Yeah .

MR. VITTI: Thank you. That's what I needed .

MR. TAIT: I'm sorry.

MR. VITTI: That's okay. Margo wanted to make sure she let me know the other hand .

MS. JOCHIMS: I want you to make a well- informed decision . All right .

MR. TAIT: Right now there is no way to get a 50 -foot frontage there . It's serviced by a ten -foot private drive .

MS. JOCHIMS: Is there a maintenance agreement on that ?

MR. TAIT: Joanne, is there a maintenance agreement ?

MS. SARVER: No .

MS. JOCHIMS: That's right .

MS. SARVER: I'm the only one that goes back there .

MS. JOCHIMS: Any questions , 2 % > Betsy ?

MS. KANE: The five -foot ease ment is needed because ?

MR. TAIT: That's just for her benefit. I'm proposing a five-foot ease ment just in case there's any maintenance she would at least, if she sells this property off, she can at least have a little bit more room to make the driveway a little bit wider , construction .

MS. KANE: Okay . Well , I guess I was interested in maybe seeing some pictures that might show the lay of the land back here . Does it slope off ?

MR. TAIT: The crest of the hill -- I don't know if you can see on there -- there is a U-shaped fence. It used to be a horse stable .

MS. SARVER: I have some really small photos -- I don't know if these will help you at all -- of the property as it's listed . I don't know if this is going to help you . But this is

what it looks like . This is the field. These are the rental properties . So this is the field looking straight on from this view . It's very level . This is all level .

MS. KANE: Is this the fence that this is referring to here?

MS. SARVER: Right here.

MS. KANE: The trees are beyond it ?

MS. SARVER: Beyond here there are, these back in here .

MS. KANE: But not along here ?

MR. TAIT: There's an obvious little break where that proposed line is .

MS. SARVER: This is the drive .

MS. KANE: You drew the line here to get the gravel drives going with the house but not much more ?

MR. TAIT: Correct .

MS. KANE: Do you envision that-- I mean, I can see one of the reasons to take it to a three-acre . You could then subdivide the three houses each with an acre and be a conforming lot again .

MR. TAIT: That's true . We would need a 50- foot right -of -way going down there then . That's not desired to take the greenhouse down at this point .

MS. KANE: Okay .

MR. VITTI: Anybody in the audience ?

MS. JOCHIMS: Anybody else here to speak on this issue ?

(No response .)

MS. JOCHIMS: Any questions ?

MS. KANE: No . It's a tough call because they are so old and they've been there and they predate everything else .

MR. VITTI: Since the flood .

MS. KANE: It wasn't anything that fell to you to make it any differently , you know . I'm inclined to go with the lot as it is and say that it's been non conforming, it would

continue to be nonconforming .

You're right, at some point in time somebody may buy that, tear the houses down, and build one house on that lot, 1 > and that would probably be the most preferable use of it. That would bring it into conformance as opposed to turning it into three separate lots .

Your intent then is to keep these rental properties ?

MS. SARVER: Yeah .

MS. KANE : Or sell them as a unit maybe at some point in the future.

MS. SARVER: My intent is just to keep them .

MS. KANE: Well, I move that the variances be granted on this property .

MR. VITTI: Second.

MS. JOCHIMS: All in favor.

MS. KANE: Aye.

MR. VITTI: Aye.

MS. JOCHIMS: Aye.

MR. TAIT: Thank you .

MS. KANE: You're welcome.

MR. TAIT: Have a good night .

MS. JOCHIMS: Hearing 13- 07, Echo Richland Associates .

MR. McKEEGAN: Good evening . My name is Kevin McKeegan with the law firm of Meyer Unkovic & Scott . I'm here tonight on behalf of Echo Richland Associates , L. P. With me is Phil Bishop from Echo Real Estate Development Company , the general partner of the partnership . Phil will be the primary witness tonight .

Before we get started I just want to note for the record a slight correction on your agenda so there's no misunderstanding as to what we're asking for tonight . This really goes back 1 > to a typographical error on the application .

The variance that we are requesting tonight is not to go from 150 square feet to 185 square feet, but rather to go from 150 square feet of ground signs to 313 .9 square feet

. There was a bit of a mathematical error there or at least a grammatical error when it was presented . We just wanted to make sure that's clear on the record .

Perhaps to simplify the hearing, since we're it and it doesn't look like there's going to be a lot of folks speaking to this other than us , I do have three exhibits which I can turn in now or go through them during the course of the presentation . That will save a little bit of time .

Without further adieu , that package will be Exhibit Number 1 , this package will be Exhibit Number 2 , and this last package will be Exhibit Number 3 .

(Whereupon, the documents were marked as exhibit Nos. 1, 2, and 3 for identification.)

MR. McKEEGAN: We will have full -size drawings or board -size drawings to aid in the presentation .

DIRECT EXAMINATION

BY MR. McKEEGAN:

Q. So with that , Phil , would you like to step up to the plate .

A. Sure.

Q. State your name for the record , please.

A. My name is Phil Bishop .

Q. By whom are you employed , Phil?

A. Echo Real Estate Services Company out of 1 % > Pittsburgh .

Q. Could you briefly describe for the board and for the record your professional background ?

A. I'm a professional engineer registered in both Pennsylvania and Ohio . I've been registered in the state of Pennsylvania since 1994 .

Q. Could you briefly describe some of your responsibilities with Echo Real Estate Services ?

A. I'm the vice president of engineering, oversee design aspects of various projects that we undertake throughout the state and the country .

Q. You've been involved with the Grandview Crossing project ?

A. From its inception , yes .

Q. And this Sonic Restaurant we're going to be discussing tonight is part of the Grandview Crossing project ; right?

A. It's one of the outparcels we're providing .

Q. All right. Is this the first time that the Sonic Restaurant has been before this board ?

A. No. We were here last month for a special exception consideration based upon the ordinance drive-throughs and fast-food restaurants require a special exception. Last month we were here and presented and received that special exception approval from the zoning hearing board. So this would be the second time we're in front of the hearing board for this applicant .

Q. Exhibit Number 1 which I've previously given to the board is a letter addressed to you from Richland Township . Does that conform the granting of the special exception ?

A. Yep. It was addressed to me August 23rd relaying 1 > the granting of the special exception .

Q. During that special exception presentation was the operation or description of how a Sonic Restaurant operates presented to the board ?

A. Yes .

Q. Just for the purposes of this record -- and we'll try to keep it brief -- could you briefly describe or quickly describe how a Sonic Restaurant operates, particularly in comparison to your typical fast-food restaurant?

A. Yes. Sonic, albeit a drive-through facility, does not have any indoor seating. It goes back to the old, probably in this area, the Eat'n Park days where it's curbside service where the patrons not only can go through the drive-through, which is to be located along the easterly portion of the property, but there's also a number of locations where they can drive in , order their meals from a system, and then the food is delivered to the car and then patrons would eat their food from their car .

Q. Is there any access to the restaurant building itself by customers ?

A. No , there's no access to the restaurant itself . There are bathroom facilities to the rear that are accessible to the public, and there is an outdoor seating area provided with a canopy above it .

Q. But unlike a McDonald's or a Wendy's or an Arby's , you don't go into 1 > this restaurant to order your food?

A. That's correct .

Q. All the order ing is done from out side?

A. Correct.

Q. That process was described as part of the special exception hearing ; correct ?

A. Yes .

Q. Now , is this the first time you've been up in Richland Township this week ?

A. No. Actually it's the second of the third evening I'll be spending in Richland . Last night we received recommendation for preliminary and final approval of the site plan for this applicant .

Q. That was from ?

A. The planning commission .

Q. Okay . In front of the planning commission did you review this particular site plan that we have on the board right now ?

A. We were actually before the planning commission three times , in June and July , with a sketch plan application. Prior to the rendering of the decision by the zoning hearing board on the special exception the planning commission would not take any action. With a favorable consideration of the special exception we then were able to present our preliminary and final plans last evening . So yes .

Q. Now , with reference to the site plan -- and just to get everybody oriented we probably should have done this earlier -- is Route 8 on that drawing on the top or the bottom of the drawing ?

A. Route 8 is on the bottom of the drawing, and it's also on the eastern side of the property .

Q. What street or road is on the 1 > top or westerly side of it ?

A. On the top of the drawing in the westerly side is the internal road servicing our development, Grandview Crossing Drive .

Q. Where on the site plan with relation to the east or west side of the plan are customers to park and place their orders ?

A. Actually, at a request of the planning commissioner laid out in one of the sketch plans, we relocated the area where the customers will be placing their orders to the

backside, I'll call it, of the site and/or the westerly side facing Grandview Crossing Drive and the interior of the development.

Q. Okay. Around the parking areas are there any, could you describe for the zoning hearing board, any landscaping features that are part of this proposal ?

A. Again , not only this board through the special exception hearing last month, but we did provide additional landscaping at the delivery areas as well as we do provide significant landscaping to both screen the front of the building as well as the canopy areas and the areas facing towards Grandview Drive as well as facing Route 8 .

MR. McKEEGAN: Okay. Now, if the board wouldn't mind, if you would flip that Exhibit 2 , please . I think we have a large version of that on the board .

BY MR. McKEEGAN :

Q. Now , Exhibit 2 1 > is a site plan, but it's been reoriented so that east and west are on the left and right side of the drawing as opposed to the top and bottom ; right?

A. Yeah. Just because of the scale of the drawing, we had to rotate the drawing.

Q. Again, just to confirm, the parking area and the order boards, et cetera, will be on the west side of the parcel ?

A. That is correct .

Q. Facing Grandview Drive ?

A. Yes .

Q. Now , are the menu boards, which we're going to describe later on in the hearing as part of the ground signs we're asking for, are the menu boards visible from Route 8 ?

A. We actually drew a section to give the board a perspective of that visibility or nonvisibility of the menu boards . You can see from Route 8 the section at the bottom of the page. Route 8 sits at a considerable amount below the site , approximately 20 feet , 18 to 20 feet below . So it's my opinion that you would not be able to see the menu boards from Route 8 since they will be above and behind the proposed building .

Q. And Section A-A on Exhibit 2 demonstrates that graphically ; correct ?

A. Yeah. What we've shown here in this exhibit is a section across the site 2 > starting at Route 8, going up to Grandview Drive , cutting through the building, and showing the orientation not only Route 8 but its relationship to the building and the menu boards.

Q. So travelers on Route 8 are going to see the building, but really that's about it, they're not going to see the menu boards ?

A. Correct.

Q. Now , if you're on Grandview Crossing will you be able to see the menu boards ?

A. At times , again, with the landscaping we're proposing, we do have a hedgerow along the front here not only to sort of not hide it but accent that area as well as deter it from the headlights shining out into the area . So there may be occasions where you will see the menu boards as you travel down Grandview Crossing Drive.

Q. Maybe to be a little bit more precise, will you be able to read the menu boards from Grandview Crossing Drive ?

A. No . In further testimony, when we get into the physical features of the signs, they're intended to be used only when you pull into the individual stalls.

Q. So you'll see blips, in effect, almost as you're driving down Grandview Crossing Drive ?

A. Correct .

MR. McKEEGAN: Now , we don't have full board size drawings . They didn't quite come out the way we would like them . But if you flip to the next two pages of Exhibit 2 , please , I can probably summarize this just for the board .

The first rendering is a view of the Sonic Restaurant building and the outdoor seating area that Phil mentioned earlier , essentially looking from what would be the northeast corner of the site towards the southwest ; so , in other words , looking from this corner or somewhere in this corner back in this perspective . You can see the building and the signage on the building and certain of the menu boards and the picnic area .

Then the next drawing or next rendering , I should say, is a view down the parking area from the entrance drive just to give you some idea of the menu boards and how they will sit in relation to the building and the parking facility .

Now , if we could , please , could we turn , Phil , to Exhibit 3. I apologize for the board, but, again, because of the scale this exhibit is rotated back so that Route 8 is at the bottom and Grandview Crossing is to the top . So south would be to the left and north would be to the right on this drawing .

BY MR. McKEEGAN :

Q. Now , Mr. Bishop , although not at issue before the board here tonight , why don't we start by describing for the board the signage that's proposed for the building itself . How many signs will Sonic be placing on the building ?

A. If you turn to the second page in your Exhibit 3 you can see the proposed signage,

and they're denoted by the letters F and G , G being really ornamental signs dictating food on the face of the building, on both faces of the building, on the east side and the west side . Then we have the Sonic sign obviously that shows you where the Sonic building is on the taller piece of the building, again, facing both east and west on the building .

Q. If the board needed to see that sort of in a graphic form, you can go back to the colored photograph that's Exhibit 2, a computer rendering, where you can see the Sonic sign on the chimney structure, so to speak, and the graphic lower down on the building ?

A. That's correct .

Q. How large in total will the building signs be , Mr. Bishop, or how many square feet in total will the building signs encompass ?

A. In total the building signs will encompass 183 square feet .

MS. JOCHIMS: I have a question . Looking at the exhibit, just Exhibit 3, that top left rendering you have here , is that a sign here that's not shown here or am I looking at this incorrectly ?

MR. BISHOP: The rendering is inaccurate as such, the architectural rendering. The actual elevations represent what is proposed for the sign . That was actually eliminated . So these two and this one are the only signs proposed on the east and west side .

MS. JOCHIMS: So there is no --

MR. BISHOP : There is no sign . I did misspeak, Mr. McKeegan. Total building signage is 98 square feet .

BY MR. McKEEGAN :

Q. Ninety -eight square feet ?

A. Yes .

Q. That 98 square feet of building signage , is it your opinion that that is permitted under the Richland Township zoning ordinance?

A. Under the current ordinance you're allowed 15 percent of building area per side of building on two sides since we face Route 8 and Grand view Drive . That, once you take 1 > the calculation of total building area per side of 1,224 square feet, we would be allowed 183.7 square feet per side or a grand total of 367 .4 square feet of signage . As I indicated before, we're only proposing 98 square feet of building signage .

Q. So although we could have 367 square feet of signage on the building, we're only going to put up about 98, correct, just to summarize that?

A. Yes.

Q. Now, let's talk about the reason we're here tonight. Again referring to the first page of Exhibit 3, could you describe for the board and just confirm it on the drawing the location of the menu board signs that we previously mentioned?

A. Yeah. There are 23 stalls denoted with the letter A on the exhibit indicating the location of the menu boards.

Q. Are there other ground signs that Sonic is proposing and where would they be located?

A. We are also proposing or Sonic is also proposing as denoted by the letter D a ground monument sign on top of the site along Route 8. There are also menu board signs, both the preview sign and the actual menu board, which are denoted by the letters B and C 1 > at the drive-in location. Then there are directional signs indicating where the entrance and exits are going to be placed. They are denoted by the letter E on Exhibit A.

MR. McKEEGAN: Let's start with the signs denoted by the exhibit or by the letter A. I think if the board would flip to the third page of Exhibit 3, Phil is looking at a copy of that.

BY MR. McKEEGAN:

Q. Is that a rendering of the menu board sign in the parking area?

A. Yes, it is.

Q. Could you again just briefly describe for the board how this particular menu board works in terms of a customer?

A. The customer pulls into the stall. Akin to walking into a restaurant where the menu board is up on the wall, it is sitting next to you driver's side height when you pull into the stall. It has the current menu available. You're able to place your order through a speaker system. Once your order is placed and you pay for it, then the food is actually brought out to you by one of the Sonic employees.

Q. How close to any property line will any of the signs marked by the letter A be located?

A. There are three stalls to the north approximately 20 feet away from the northerly property line. The rest 1 > of the signs are placed in interior locations, minimum

location approximately 55 feet from any surrounding property line .

Q. On Grandview Crossing ?

A. On Grandview Crossing. And then in excess of probably 200 feet from Route 8.

Q. How large are these menu board signs ?

A. Square footage, the menu boards are 8 .1 square feet in size .

Q. There's going to be a total of 23 of those in the parking area . Will there be any in the patio area ?

A. There will be one menu board located in the patio area, again, for the walk -up customers who want to have the outdoor seating, again, to be able to place their order there, sit down, and then the Sonic employees bring the food out to them .

Q. In total then what is the total square footage of all of the menu board signs on the property?

A. The 23 stalls, as I indicated as denoted by the letter A, total 202. 5 square feet.

Q. All right. Let's take a look then--

MS. JOCHIMS: What is the keypad for ?

MR. BISHOP : In case you pay with a credit card or a debit card you're able to keypad in your PIN number .

MS. JOCHIMS: Got it .

BY MR. McKEEGAN :

Q. Again, just for the record for this hearing -- and I know this was discussed last night -- will the volume control on these signs be regulated such that it complies with Richland Township 's 3 > ordinances ?

A. Yes .

Q. And that requires no more than 50 decibels to the property line ?

A. Correct .

Q. Now , let 's turn next , I believe , in the Exhibit 3 package to the drive -through signs . Again , Mr. Bishop , if you could just point out where those are and describe how large they'll be for the board .

A. There's actually two , the first one being a preview board that, you know, tells about the daily or weekly specials or seasonal specials as denoted by the letter C. That sign totals 17 .6 square feet . Then the actual menu /order board akin to a typical drive-through, that's denoted by the letter B on the exhibit. That order board is 26 .3 square feet .

Q. So the drive-through signs, in other words, total 43 . 9, the two signs?

A. Yes .

Q. Then, very briefly, the monument sign which is marked by D on Exhibit 3, how large will that sign be ?

A. It's going to be placed in the northwest portion of the property and , I'm sorry , northeast location, and it totals 56 . 7 square feet .

Q. That's just a typical monument sign like you see in front of--

A. Typical monument sign -- it's in the package -- indicating Sonic , America 's Drive- In .

Q. Last, but certainly not least , the direction signs at the exits, how many of those will there be 1 > and how large will they be ?

A. Two at each exit , each at 5.4 square feet, totaling 10.8 square feet .

Q. So, to sum up, the total amount of ground signage, whether the menu boards or the monument sign or the directional signs, is 313 .9 square feet ?

A. Correct .

Q. Again , going back to the building, there was 98 square feet of building signage used basically leaving 269 square feet unused ; correct ?

A. That's correct .

Q. And the 313 square feet of ground signage is about 163 square feet in excess of the ordinance requirements for ground signs ; correct ?

A. Yes .

MR. McKEEGAN: I just wanted to point out for the board that, in effect, we're using less on the building even than what we're proposing for the ground .

BY MR. McKEEGAN :

Q. Now, let 's go back to the parking lot , the menu boards for just a minute . Those menu boards, in effect, are menus ; correct ?

A. Yes .

Q. How are they similar to how a typical fast -food restaurant would work ? What are they akin to ?

A. Akin, again, to, as I mentioned previously, if you would walk in side a typical fast-food restaurant you see the menu boards behind the counter above you 1 > present ing the menu that you can order from . Since this is an outdoor situation the operations require outdoor menu boards . It's akin to walking inside, but you're actually sitting in your car looking at a menu board .

Q. But functionally they work the same way as the typical menus behind the counter at a McDonald 's or a--

A. Right . You place your order off of that menu board and then the food arrives .

Q. Could the Sonic Restaurant operate without those menu boards in the parking lot ?

A. No .

Q. Again , why is that ?

A. That's their mode of operation . Again , as I stated previously, there's no internal use for the public . Everything is outside use .

MR. McKEEGAN: That's our testimony in case in chief . I do have a very short bullet point legal memo, as it were, to present to the board and just two points I want to make very quickly .

First of all, we indicated this in the application and I just want to confirm it again for the record . Frankly, it's our opinion that the menu boards don't even qualify as signs under the Richland Township ordinance . The ordinance definition of a sign is any panel containing a message designed to be viewed by the public .

As the testimony from Mr. Bishop I think on Exhibit 2 demonstrated, the menu boards themselves are not viewable by the public, they're only viewable by customers who actually come on to the site . I think that interpretation is consistent with Pennsylvania 's zoning law to the extent that that law is that zoning ordinances ought to be construed in a manner most favorable to the property owner .

The other legal point we'd like to make is that to the extent you disagree with that interpretive argument there is a line of cases starting with the Hertzberg decision that dimensional variances such as this are entitled to a slightly lower standard of review

in terms of whether they should be granted or not and that you are entitled or are permitted to consider when deciding a dimensional variance request the economic hardship that may accrue to the applicant if the variance is not granted.

In this case you have a special exception for a particular kind of restaurant that's been approved . It's gone through the planning commission process with a recommendation of approval . But, frankly, the restaurant as it's been presented to the township can't function without 1 > these menu boards .

So this very short --

MS. JOCHIMS: I'm going to assume that this hasn't been cited in Pennsylvania .

MR. McKEEGAN: Well, actually I didn't ask Mr. Bishop this question , but he did check with Sonic . They have several hundred restaurants across the country, and this is the first time that any municipality has taken the position that the menu boards should be treated as signs . So , no , we've not encountered this anywhere else .

MS. JOCHIMS: In here it indicates, I think I was under the impression that this is not a 24 -hour business ?

MR. BISHOP: No. Operating hours are from, I believe, 11:00 a.m. in the morning until midnight .

MS. JOCHIMS: Your sign indicates it's open 24 hours .

MR. BISHOP: No, that's not the case .

MS. JOCHIMS: All right .

MR. McKEEGAN: They're not serving breakfast ?

MS. JOCHIMS: I thought you showed breakfast items on here or something .

MR. BISHOP: I'm familiar with the closing hours of being midnight . Whether it opens at 7:00 a.m. or 11:00 a.m. I'm not sure of .

MS. JOCHIMS: Because it says breakfast menu . Any questions ?

MR. VITTI: Yeah . The people are going to come in and read these signs and they're going to put in their orders for food1 > . Is that right ?

MR. BISHOP: That's correct .

MR. VITTI: So it's going to convey a message to them as to what they have to do ?

MR. BISHOP: The individual that uses it , yes .

MR. VITTI: This is not for private use, it's for anybody that wants to drive in . Is that correct ?

MR. BISHOP: Yes .

MR. VITTI: All right . Thank you .

MS. JOCHIMS: Betsy ?

MS. KANE: When the restaurant is open all these signs will be lit up regard less of the amount of patronage you have at that time of day ?

MR. BISHOP: Yeah. We dealt with that at the planning commission level by presenting a lighting plan which does not exceed the township lighting requirements of 12-foot candles maximum on the site .

MS. KANE: I guess I'm getting, you know, a little bit more particular . At 10:00 at night in the winter and you have an average of three customers an hour, you're still going to light up 23 menu boards and you're not considering having that amount and just encouraging them to come to the first six stalls on either side ?

MR. BISHOP: I'm not aware of any operation where they would shut down a certain amount of stalls . Again , the point being that that issue came up with the planning commission . We actually modified the lighting plan numerous times to conform to the ordinance .

MS. KANE: Well, I mean , despite the fact that it's, according to you, not defined as a sign, I think , in fact , it is a sign . But I do appreciate that you did not over indulge the building signage at the same time . What happens when your menu changes such that you need additional room to put more items on there ?

MR. McKEEGAN: Well , Phil can answer this. But my impression is that basically it works the same way as the menu board inside. Like McDonald's does, when the menu changes the menu board change s. It doesn't get bigger .

MR. BISHOP: You can see they have all the various items or item A under Exhibit 3 -- burgers, salad wraps, toasters , breakfast . As this standard menu, which I'm sure is uniform across Sonic 's trade area, changes then they simply change the panel . There's no add-ons , no tack-ons here or there .

MS. KANE: For Sonic, is this a universal size ?

MR. BISHOP: Yes . It's their prototype sign .

MS. KANE: So you can't ask them to do without the pictures and make the sign a little bit smaller ?

Madam Chairman , no more questions .

MS. JOCHIMS: To be honest, I'm having a problem with the ordinance as written -- I've never given this particular issue any thought . It's not only containing a message that's going to be viewed by the public --

MR. McKEEGAN: Well, don't get hung up on interpretation. I have an obligation to present all arguments for the client and to make those arguments part of the record . But I think we also, particularly given the special exception that's been granted and the fact that without this that really is meaning less, I think we're also entitled to a variance .

MS. JOCHIMS: Any motion on the initial question , whether or not --

MS. KANE: What's the initial question ?

MS. JOCHIMS: Actually we have to interpret our ordinance, our sign ordinance, as to whether or not the menu, these particular signs fall within the signage ordinance or not , their argument being obviously that they don't even apply .

MR. VITTI: I make a motion that it is a sign and falls within the definition of the ordinance and it is a sign under the ordinance .

MS. KANE: I second that .

MS. JOCHIMS: All in favor.

MR. VITTI: Aye.

MS. JOCHIMS: Aye.

MS. KANE: Aye.

MS. JOCHIMS: All right. Second question , seeing we're in agreement it's a sign, do I have a motion on whether or not they're entitled 1 > to a variance ?

MS. KANE: I'm still trying to look for a compromise here . The number of slots is, I mean, you cannot change that , that changes the whole proforma .

MR. BISHOP: When asked that question to Sonic, they said they could lose the three slots to the north of the property .

MR. McKEEGAN: Which would be those three on that side .

MS. KANE: It's not that significant because --

MR. BISHOP: Well, then you take about 24 .3 square feet off the total square footage of the menu boards .

MS. KANE: That mistake that you pointed out, it doesn't get me down to the 150 .

MR. McKEEGAN: No .

MS. KANE: I mean, initially it would have gotten me close if we're talking that 183 to 150 . Well , I don't know . To me they're kind of hanging out there any way and more likely to be visible since they're not screened by the building .

I'm not so much concerned as to people from Route 8 seeing the signs as I am about people who live at a higher elevation across Route 8 and will look over and notice the signs .

MR. BISHOP: Again, as I briefly stated before, at the request of the planning commission we are, in effect, screening around the entire perimeter with Hick's yews, which grow three to four to five feet in height; J1 evergreen; M1 hedgerows, per se; and then a number of plants similar to We're trying to carry the theme that was started with PNC Bank on the corner all across the fronts .

As I did make at the planning commission, being a commercial use, it is intent for the restaurant to be seen so that the customer knows where to go. As provided testimony, it's our opinion that the menu boards won't be seen as much as the building signage and the monument sign, again realizing these signs only sit two to three feet off the ground .

It's not 23 towering structures that can be seen from everywhere . They are under canopies . Only one from a higher elevation looking down would see a canopy before they see a sign .

MS. KANE: Except for the three that are freestanding out there .

MR. BISHOP: Correct .

MS. KANE: Is that a compromise that we would consider?

MR. VITTI: No.

MS. KANE: I love the way Lou just lets us guess what he thinks.

MS. JOCHIMS: Yes.

MR. VITTI: Didn't you call for a motion already?

MS. JOCHIMS: Yes.

MS. KANE: She did, but no one has made it.

MS. JOCHIMS: There's nobody in the audience, is there?

MR. McKEEGAN: Well, if it would help -- I'm not entitled to make a motion -- but if it would help we would amend our variance request so that rather than 23 menu boards in the parking area there would be a total of 20 limited to the stalls immediately adjacent to or to the west of the building, eliminating the three menu boards in the parking stalls to the north of the building, which would reduce the menu board size, if my math is correct, 20 2.5 minus 24 .3 is 178 .2.

MR. BISHOP: Yes.

MR. VITTI: I make a motion that the proposal --

MS. JOCHIMS: Shush. Let me ask a question first. It's not 24 hours. When you close shop do those go off?

MR. BISHOP: One of the conditions the planning commission made last night when we discussed the lighting was that emergency lighting only be placed on after hours of operation. All of the parking lot signs/ menu board signs would be shut down.

MS. JOCHIMS: It's a tougher use. That's part of the problem. It's just there's so many of them. Do you have anything?

MS. KANE: I don't know. I should have put down what you said. Yes, I move to grant the variance for the excessive signage square footage provided that three menu boards on the north side of the property be eliminated.

MR. McKEEGAN: That's fine.

MS. JOCHIMS: I agree. I'm going to second it. All in favor?

MS. KANE: Aye.

MS. JOCHIMS: Aye.

MR. VITTI: Opposed .

MR. McKEEGAN: Thank you .

MS. JOCHIMS: Motion to adjourn ?

MS. KANE: So moved .

MS. JOCHIMS: All in favor.

MS. KANE: Aye.

MS. JOCHIMS: Aye.

MR. VITTI: Aye.

(Whereupon, at 7:55 p.m., the proceedings adjourned.)

C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this copy is a correct transcript of the same.

Dated at Economy Borough, Pennsylvania this 11th day of October 2007.

Karen L. Cross

Reporter - Notary Public

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