

**BEFORE THE BOROUGH OF MILLERSVILLE ZONING HEARING BOARD**

IN RE: :  
: :  
APPLICATION OF : Case No. 13-01  
BLACKFORD DEVELOPMENT, LTD. :  
FOR A VARIANCE :

**DECISION OF THE ZONING HEARING BOARD**

**A. FINDINGS OF FACT**

1. Applicant is Blackford Development, Ltd., 120 North Pointe Blvd., Suite 300, Lancaster, Pennsylvania 17601.

2. The subject property is a 5.9 acre tract, more or less, located at the intersection of Barbara Street and Millersville Road in the Borough of Millersville, Lancaster County, Pennsylvania.

3. Applicant is the equitable owner of the tract.

4. The legal owner of the tract is the Penn Manor School District.

5. A small portion of the subject tract is located in Lancaster Township, but no development is taking place on that portion of the tract.

6. In 2006, an application was filed to construct a Turkey Hill convenience store on the eastern 1.7 acres of the tract. Although approval was granted, the application expired. In 2007, Susquehanna Bank filed an application to develop the southwestern portion of the tract near Barbara Street with a bank and drive-through. Although approval was granted, that approval expired as well. In 2011, Applicant was granted a special exception for an automobile service station and to operate a bank with a drive-through facility, subject to a number of conditions.

7. At the present time, the property is still undeveloped.

8. On March 22, 2013, Blackford Development filed a request for three signage variances with respect to the subject property.

9. A hearing was held April 25, 2013, at which time Applicant, represented by Caroline Hoffer, appeared and testified.

10. The application was advertised, the property was posted, and adjoining property owners were notified.

11. The hearing was stenographically recorded.

12. Prior to the public meeting, an executive session was conducted by the board with its solicitor. An announcement was made during the public hearing to that effect.

13. James Sanchez and Vickie Usciak were absent.

14. Dave Fisher, the alternate, participated in the decision.

15. At the hearing, Applicant first introduced Applicant's Exhibit No. 1, an overall sketch plan of the general plans for development of the property. The 5.9 acres will be developed in three areas. Area A, the northern part of the tract, comprising 2.3 acres, would be improved with a 15,000 square foot building for retail use. Area C, on the eastern side of the property, will be devoted to a Sheetz gas station and convenience store. Area C comprises 2.2 acres. Area B to the southwest, comprising 1.3 acres, is still intended for a financial institution with drive-through facilities.

16. Although three separate commercial uses are proposed for the site, and although Areas A and B are divided from Area C by a proposed private driveway, the site is in single ownership.

17. The relief requested by Applicant relates to signage on Area A.

18. Although final plans for the structure on Area A have not been approved, it is anticipated the structure will be approximately 15,000 square feet in size. The building could hold up to approximately 10 retail tenants, depending upon the area each tenant requires.

19. The Millersville Borough zoning ordinance, as written, treats the entire property as one "lot" for signage purposes because it is in single ownership.

20. The signage ordinance allows a maximum of 200 square feet of signage per building.

21. Applicant produced an exhibit showing the maximum size of allowable tenant signs on the property if the retail space was occupied by 10 tenants and if the maximum sign area per building was 200 square feet.

22. The Millersville Borough zoning ordinance does not make allowance for signs on the rear of buildings to expedite deliveries.

23. All individual signs on the retail building would be internally eliminated.

24. No one testified in opposition to the proposal.

25. Marilyn Sachs, a member of the Planning Commission, testified that the Planning Commission was in support of the proposal.

26. Ed Arnold, Borough manager, stated that the Borough supported the proposed variances.

27. Following the conclusion of testimony, the Board voted unanimously to grant the three requested variances, as presented.

## **B. CONCLUSIONS OF LAW**

1. The subject property is partly in the General Commercial and partly in the Neighborhood Commercial District.

2. The Millersville Borough sign ordinance, as written, restricts the maximum number of signs and the size of the signs allowable in a Commercial zone based upon the number of lots in a commercial development, not upon the number of commercial uses in a proposed development.

3. Millersville Borough zoning ordinance makes no provision for delivery signs on the rear of commercial buildings except for 2 square feet incidental signs.

4. The Millersville Borough zoning ordinance restricts commercial uses to 200 square feet of signage for the commercial unit, regardless of the number of tenants.

## **C. DISCUSSION**

A variance may be granted, at the discretion of the zoning board, if a number of factors are met. The most important criteria is whether the zoning ordinance, as written, unreasonably interferes with the legitimate use of the property and does not impact the community health, safety and welfare. The variance requested must be the minimum

variance necessary to afford a reasonable use of the property. The variance must stem from unique physical circumstances affecting the property.

In considering whether a variance should be granted, the board must always consider whether the grant of the variance will involve any risk of harm to the community health, safety and welfare.

Taking these factors into account, we believe that Applicant is entitled to the variance relief requested. Although the property is one lot, there are three distinct areas of commercial development on the property. If Applicant wished to subdivide areas A, B and C into legally separate parcels, Applicant would not need the first variance at all. The need for Applicant's first variance, asking that the three separate commercial uses be separately considered, stems purely from the form of ownership. The board notes that the three areas on the property will function differently. The Sheetz convenience store/gas station will have its customers; the bank will have its customers, and the various small retail uses in the building on Area A will have their own customers. We see no reason why the three uses should be lumped together for purposes of signage. Therefore, the first variance to treat each property as if they were separate legal parcels, is appropriate.

The second request, concerning a different calculation for the maximum permitted sign area in a multi-tenant building, is justified by the facts. The 200 square foot limitation for the retail unit would be appropriate if there were only one or two tenants. However, given that up to 10 tenants are proposed, each tenant would be left with an impossibly small sign. The subject area is zoned for Commercial use – partly General Commercial and partially Neighborhood Commercial. The drafters of the Millersville Borough zoning ordinance intended to encourage a commercial development of this area. In particular, they sought to encourage small-community-oriented retail stores. Applying the signage ordinance in a way that would unreasonably restrict the ability of small tenants to advertise their space is not a warranted application of the zoning ordinance. Not only does it fail to promote the community good, it actively frustrates the intention of the ordinance to encourage viable businesses in the General Commercial and Neighborhood Commercial zones.

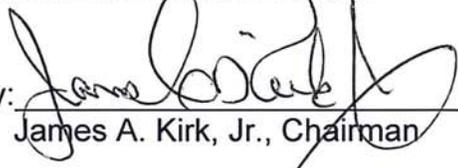
Applicant's third request for a variance is to allow small identification signs, no larger than 6 square feet, above each rear delivery door for each tenant. The present ordinance makes no provision for such signs, except for 2 square feet incidental signs, which would be too small to serve the intended purpose. Even though the signs are not directly related to attracting commerce, the ordinance fails to make realistic provision for what are, essentially, directional signs to aid deliveries. We do not discern any community detriment from allowing the signs. As a matter of fact, it is in the interest of the community to have deliveries made efficiently.

#### D. DECISION

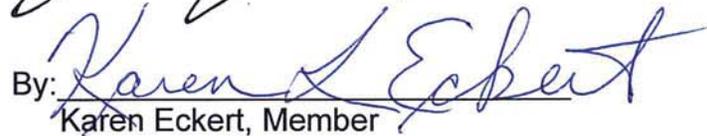
AND NOW, this 25<sup>th</sup> day of April, 2013, Applicant's request for variances are granted as follows:

1. Applicant is granted a variance from the definition of "lot" in the zoning ordinance for the purpose of allowing that Areas A, B and C to be each considered as separate "lots" for purposes of applying the signage requirements of the Millersville Borough zoning ordinance.
2. Applicant is granted a variance to allow a maximum total permitted building sign area of 1½ square foot of sign area per linear foot of façade of the tenant unit to which the sign is attached, up to a maximum total of 200 square feet of building sign per unit.
3. Applicant is granted a variance to erect a sign, for each tenant, not to exceed 6 square feet in size, on the rear of the multi-tenant building for purposes of identification for deliveries.
4. These variances are granted on the condition that Applicant erect and operate the center in accordance with the testimony offered and exhibits presented at the hearing.

THE MILLERSVILLE BOROUGH  
ZONING HEARING BOARD

By:   
James A. Kirk, Jr., Chairman

BY:   
Lindsay Gerner, Member

By:   
Karen Eckert, Member

By:   
Rev. David R. Fisher, Alternate

James R. Sanchez and Vickie Usciak were not present at the hearing.