
**BEFORE THE ZONING HEARING BOARD OF CARROLL TOWNSHIP
YORK COUNTY, PENNSYLVANIA**

IN RE:	:	
	:	
	:	
ALDI, INC.	:	Docket No.: 2023-005
<i>Applicant,</i>	:	Hearing Date: July 24, 2023
	:	

FINAL DECISION

AND NOW, this 24th day of July, 2023, after consideration and hearing upon the application for five (5) separate variances from the Zoning Ordinance of Carroll Township (§ 450-416.E; § 450-416.F; § 450-421.F.2.c.1; § 450-421.F.2.a; and § 450-421.F.2.a) filed by Aldi Inc., the Zoning Hearing Board of Carroll Township hereby grants each of the requested variances as set forth more fully herein.

FINDINGS OF FACT

1. On June 14, 2023, Aldi Inc. (“Applicant”) submitted an application to the Zoning Hearing Board of Carroll Township (“Board”), requesting five (5) variances (“Application”) from § 450-416.E; § 450-416.F; § 450-421.F.2.c.1; § 450-421.F.2.a; and § 450-421.F.2.a. of the Zoning Ordinance (“Ordinance”).
2. Harry H. Fox, Jr. is the owner of an approximately 15-acre parcel of land situated directly southwest of the intersection of Spring Lane Road and Gettysburg Pike (UPI #: 20-000-PC-0054.D0-00000) (“Property”).
3. Applicant has entered into an agreement with Mr. Fox to lease 4.79 acres on the easternmost portion of the Property.
4. The Property is located in the Commercial Zoning District of Carroll Township.
5. Currently, the Property does not have any improvements located thereon (undeveloped) and is vacant.
6. A hearing upon this Application (“Hearing”) was held before the Board on July 24, 2023 at approximately 6:05 P.M.

7. The Board conducted the Hearing at the Carroll Township Municipal Building located at 555 Chestnut Grove Road, Dillsburg, PA 17019.

8. Due to the absence of one of the Boards members, Chairman Reihart designated an alternate member, Mark Heishman, to serve on the Board as a voting member for this Application, pursuant to 53 P.S. § 10906(b).

9. Accordingly, Chairman Reihart, Board Member Setlak, and Alternate Member Heishman constituted the quorum of Board members that attended the Hearing, participated in the proceeding, and voted on the Application.

10. At the Hearing, Applicant was represented in a legal capacity by Attorney Derek Dissinger, Esq. of Barley Snyder.

11. At the Hearing, Applicant offered testimony and evidence by and through the following parties:

- (a) Joshua M. Sewald, PE, with Dynamic Engineering Consultants; and
- (b) Rachel Kegerise, with Aldi Inc.

12. Accordingly, Applicant's above-referenced witnesses and Zoning Officer Slatt were duly sworn in at the beginning of the Hearing.

13. Zoning Officer Slatt provided the following general testimony:

- (a) the Property was posted and notice was provided to the appropriate parties in accordance with the law;
- (b) the hearing was advertised in accordance with the Ordinance; and
- (c) the application fee was paid by the Applicants.

14. Following Zoning Officer Slatt's testimony, the Applicant called Mr. Sewald as its first witness, who testified as follows:

- (a) The Property is located directly southeast of the Gettysburg Pike and Spring Lane Road intersection;
- (b) The southeast corner of the Property is 20 feet higher in elevation than the northeast corner of the Property;
- (c) The northeast corner of the Property is 50 feet higher in elevation than the northwest corner of the Property;
- (d) The western half of the Property is heavily wooded with vegetation, includes wetlands, and is not viable for development;
- (e) To the east of the Property are two commercial neighbors (Arby's and Rutter's);
- (f) To the north of the Property is a recently-built out warehouse;
- (g) To the south of the Property is a self-storage facility;

- (h) The Applicant is proposing an approximately 22,000 square foot ALDI grocery store to be located on the southeastern portion of the Property;
- (i) The Applicant is proposing a parking area with 96 parking spaces to be used for Applicant's customers and employees;
- (j) By reducing the amount of required interior landscaping within the parking area, Applicant will be able to pave and grade less impervious coverage, and in doing so, leave more of the natural green space on the Property;
- (k) Based on Applicant's proposed development, only 13.4% of the Property would be developed (lot coverage);
- (l) There are delineated wetlands on approximately two-thirds of Property, which are located on the western and heavily wooded portion of the Property;
- (m) The natural features of the Property (e.g., grade changes, wetlands, wooded regions) impact the ability to develop the Property;
- (n) These natural features directly correlate to the variances being requested in the Application;
- (o) The 96 parking spaces being proposed are sufficient for Applicant's proposed use and exceed Applicant's internal operating threshold for required parking spaces;
- (p) The 96 parking spaces being proposed exceed the number of spaces called for in the Institute of Transportation Engineers Trip Generation Manual;
- (q) The signage being proposed by Applicant is consistent with the signage of neighboring commercial uses;
- (r) The signage will not be overbearing, as the proposed signage facing Gettysburg Pike will only constitute 3.3% of the building's side area and the proposed signage facing Spring Lane Road will only constitute 1.8% of the building's side area;
- (s) Applicant is proposing four signs on the Property, two of which will on the proposed building façade and the other two will be pole mounted signs located at the southeastern corner of the Property and the intersection of Spring Lane Road and Gettysburg Pike; and
- (t) All of the above-referenced signage, when combined together, equates to approximately 228 square feet of total sign area.

15. The Applicant then called Ms. Kegerise as its second witness, who testified as follows:

- (a) As of March 30, 2023, a lease agreement was executed by both the Applicant and Mr. Fox with respect to the Property;

- (b) Other than slight modifications, the signage being proposed in this Application is consistent with the existing signage at other ALDI locations;
- (c) The 96 parking spaces being proposed in this Application are sufficient to meet Applicant's needs and are consistent with other ALDI locations;
- (d) The previously-mentioned physical conditions of the Property are natural and were not created by the Applicant;
- (e) The variances being requested will not alter the essential character of the surrounding neighborhood; and
- (f) The variances being requested are the minimal variances needed to afford the necessary relief.

16. Following Ms. Kegerise's testimony, Attorney Dissinger presented brief legal argument in relation to the zoning relief being requested.

17. Following Attorney Dissinger's legal arguments, the Board asked a number of clarifying questions, and the responses to these questions were as follows:

- (a) Board Member Setlak inquired as to why, given the available space, the parking area was not extended towards the west to meet the parking space requirements. Mr. Sewald responded that the parking area was not extended westward due to the elevation grade changes, the associated need for excavation, the retaining walls that would be required, and the impact that this would have on the Property's overall lot coverage;
- (b) Chairman Reihart asked Zoning Officer Slatt whether the number of parking spaces being proposed was consistent with other retail sales uses in the Township. Zoning Officer Slatt responded by stating that the Ordinance does not differentiate between retail sales uses of varying intensities. Zoning Officer Slatt also observed that the Applicant has a direct interest in providing a sufficient number of parking spaces;
- (c) Zoning Officer asked the Applicant whether the proposed signage would include both the logo and the phrase "Food Market." The Applicant stated that the proposed signage would not include the phrase "Food Market."

18. Dale Brubaker, who resides at 105 Locust Way, Dillsburg, PA 17019, provided testimony generally in favor of the proposed application and remarked on the affordability and availability of Applicant's retail stores.

19. Jeremiah Jones, who resides at 182 Martel Circle, Dillsburg, PA 17019, asked the Applicant whether there were any restrictions memorialized between the Applicant and Mr. Fox regarding the future development of the remaining western

portion of the Property. Ms. Kegerise testified that due to the characteristics of the western portion of the Property, the restrictions on future development are limited (e.g., locating a competitor directly adjacent to proposed development).

20. Mr. Jones then asked Zoning Officer Slatt if he had advised the Applicant regarding anticipated improvements being considered along Spring Lane Road. Zoning Officer Slatt stated that the Township has communicated with the Applicant regarding certain traffic concerns.

21. William Nace, who resides at 112 Martel Circle, expressed concern regarding light intrusion that may affect the residents of the Martel Circle community and caused by the proposed signage due to its increased height.

22. At the conclusion of the Hearing, a motion was made by Alternate Member Heishman, and seconded by Board Member Setlak, to move the following exhibits into the record:

- (a) Applicant's Exhibit A-1 – Aerial Map Image;
- (b) Applicant's Exhibit A-2 – Overall Zoning Plan (colored);
- (c) Applicant's Exhibit A-3 – Survey of the Property;
- (d) Applicant's Exhibit A-4 – Topographical Map of the Property;
- (e) Applicant's Exhibit A-5 – Overall Zoning Plan (non-colored); and
- (f) Applicant's Exhibit A-6 – Sign Specifications Exhibit.

23. The Board voted unanimously to accept the above-referenced exhibits into the record.

24. At this time, the Board concluded testimony on the Application.

CONCLUSION OF LAW

25. Pursuant to § 450-416.E of the Ordinance, which provides a schedule of required parking spaces for permitted uses in the Township, a retail sales use must provide one parking space for every 150 square feet of gross floor area up to 800 total parking spaces plus one space per employee on the two largest shifts.

26. Based on Applicant's proposed use, the gross floor area of the proposed use, and the number of employees on Applicant's two largest shifts, Applicant would be required to provide a total of 163 parking spaces per § 450-416.E of the Ordinance.

27. Pursuant to § 450-416.F of the Ordinance, which regulates the amount of interior landscaping required within certain parking areas, at least 10% of the area of a parking facility containing more than 20 cars must devoted to interior landscaping.

28. Based on the number of parking spaces in Applicant's proposed parking area, Applicant would be required to devote at least 10% of its proposed parking area to interior landscaping.

29. Pursuant to § 450-421.F.2.c.1 of the Ordinance, which regulates the amount of total allowable sign area throughout the Township, the total sign area of applicable signage may not exceed a total of 200 square feet.

30. Based on the type of signage being proposed by Applicant, Applicant would be limited to no more than 200 square feet of total sign area for Applicant's proposed signage.

31. Pursuant to § 450-421.F.2.a of the Ordinance, which regulates *inter alia* the maximum sign area per face for certain types of signage, a wall sign may not exceed 40 square feet in sign area per face.

32. Based on the type of signage being proposed by Applicant, Applicant would be limited to no more than 40 square feet of sign area per face for each of its proposed wall signs.

33. Pursuant to § 450-421.F.2.a of the Ordinance, which regulates *inter alia* the maximum permitted height of sign faces for certain types of signage, the sign face of a wall sign may not exceed 30 inches in height (measured vertically).

34. Based on the type of signage being proposed by Applicant, Applicant would be limited to no more than 30 inches in height for the sign face of each of Applicant's proposed wall signs.

35. Under Pennsylvania land use law, when a property owner is seeking a "dimensional variance," the property owner is asking only for reasonable adjustment of zoning regulations in order to utilize property in manner consistent with applicable regulations; thus, grant of dimensional variance is of lesser moment than grant of "use variance," since latter involves proposal to use property in manner that is wholly outside zoning regulation. *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998).

36. Under the relaxed, *Hertzberg* standard for granting a dimensional variance from a zoning ordinance, when addressing the element of unnecessary hardship, the quantum of proof needed to establish an unnecessary hardship as would support an application for a variance is lower for dimensional variances, and courts may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements, and the characteristics of the surrounding neighborhood. *Pequea Twp. v. Zoning*

Hearing Bd. of Pequea Twp., 180 A.3d 500 (Pa. Commw. Ct. 2018); *McCarry v. Haverford Twp. Zoning Hearing Bd.*, 113 A.3d 381, 385 (Pa. Commw. Ct. 2015).

37. Each of the variances requested by the Applicant is a dimensional variance, and thus, subject to the relaxed, *Hertzberg* mode of analysis.

38. For all five of the requested variances, Applicant presented evidence and testimony sufficient to establish each of the criteria for obtaining a variance, as set forth in § 450-605.C of the Ordinance.

A motion was made by Board Member Setlak, and seconded by Alternate Member Heishman, to approve Applicant's request for a variance from § 450-416.E, by allowing the Applicant to provide no less than 96 parking spaces for the proposed use. The Board voted unanimously to approve the motion.

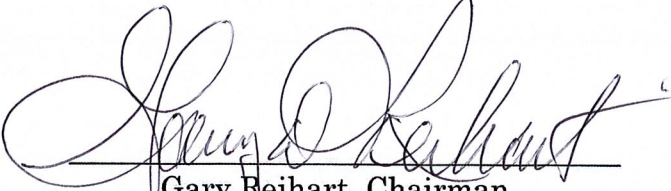
A motion was made by Board Member Setlak, and seconded by Alternate Heishman, to approve Applicant's request for a variance from § 450-416.F, by allowing the Applicant to devote no less than 3.3% of the area of its proposed parking facility to interior landscaping. The Board voted unanimously to approve the motion.

A motion was made by Alternate Member Heishman, and seconded by Chairman Reihart, to approve Applicant's request for a variance from § 450-421.F.2.c.1, by allowing no more than 228.8 square feet of total sign area for the proposed signage. The Board voted unanimously to approve the motion.

A motion was made by Board Member Setlak, and seconded by Alternate Heishman, to approve Applicant's request for a variance from § 450-421.F.2.a, by allowing no more than 76.4 square feet of maximum sign area per face for Applicant's proposed wall signs. The Board voted unanimously to approve the motion.

A motion was made by Board Member Setlak, and seconded by Alternate Heishman, to approve Applicant's request for a variance from § 450-421.F.2.a, by allowing the faces of proposed signage to have a vertical height of no more than 113.5 inches. The Board voted unanimously to approve the motion.

BOARD SIGNATURES:



Gary Reihart, Chairman

Mark Heishman



Frank Setlak, Secretary

Dated: 9-6-23

Date of Mailing: 9-6-23

Note: Any party aggrieved by this decision that made a timely appearance of record before the Board may appeal to the Court of Common Pleas of York County within thirty (30) days of the date of this written decision.