

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF
DAVID SIGNORE AND ROBERT SIGNORE**

**NO. 2019-02
APPLICATION FOR A VARIANCE**

DECISION

I. BACKGROUND

Public hearings on the above Application were held on January 22, 2019 and February 26, 2019, at the Worcester Township Community Hall, 1031 Valley Forge Road, Fairview Village, Pennsylvania, pursuant to Notice as required by the Worcester Township Zoning Ordinance, as amended (hereinafter “Zoning Ordinance”) and the Pennsylvania Municipalities Planning Code. The Applicants/Owners, David Signore and Robert Signore, propose to lease the property located at 2918 W. Germantown Pike, Worcester Township, to Dynamic Marble and Granite for the operation of a retail marble and granite showroom with an outdoor display and storage area. The property is located in the C-Commercial Zoning District.

The Applicants requested the following relief:

A use variance from Section 150-118.E of the Zoning Ordinance, so as to permit an outdoor display and storage area associated with a marble and granite showroom.

A quorum of the Zoning Hearing Board participated in the public hearings and conducted a vote in accordance with law. The Applicants were represented by Frederic Wentz, Esquire. No neighboring property owners elected to enter appearance as parties, however one neighbor posed a question regarding the location of the proposed outdoor display and storage area, which question was answered to her satisfaction.

The witnesses were duly sworn or affirmed and Notes of Testimony for the hearings were transcribed and are hereby made a part of this record.

At the meeting on February 26, 2019, the Board voted to deny the application. The Board issues Findings of Fact and Conclusions of Law in support of the Decision and Order.

II. FINDINGS OF FACT

1. The Applicants are David Signore and Robert Signore (“Signores”), the legal owners of the property located at 2918 W. Germantown Pike, Parcel No. 67-00-01627-00-7, Worcester Township, Montgomery County, Pennsylvania (“Property”). (N.T. 01/22/19, pp. 3-4, Exhibit A-1)

2. The following Exhibits were marked and duly admitted into evidence:

BOARD EXHIBITS:

B-1	Public Notice
B-2	Proof of Publication

APPLICANT’S EXHIBITS:

A-1	Application and Deed
A-2	Aerial Photo
A-3	Site Plan
A-4	Property Layout Plan
A-5	Full Sized Plan

3. The Property measures approximately 1.5 acres and is located in the C-Commercial District. (Exhibit A-1)

4. Ricardo Cruz, co-owner of Dynamic Marble and Granite (“Dynamic”), testified that Dynamic has negotiated a lease with the Signores to use the existing retail building on the Property as a marble and granite showroom, with an outdoor display and storage area for slabs of marble and granite (“Outdoor Slab Yard”). (N.T. 01/22/19, pp. 3-9, Exhibits A-1, A-2, A-3, A-4)

5. The lease is contingent upon approval of a zoning variance to allow use of the Outdoor Slab Yard on the Property, which is prohibited under Section 150-118.E of the Zoning Ordinance. (N.T. 01/22/19, p. 5).

6. The proposed Outdoor Slab Yard would measure approximately 45 feet by 45 feet and contain 27 slab racks, proposed to hold 50 to 70 slabs of marble and granite measuring 50 to 60 square feet each. (N.T. 01/22/19, pp. 3-9, 12, 14, Exhibits A-2, A-3, A-4)

7. The Outdoor Slab Yard would have no cover, would not be fenced, and would be serviced by a forklift, which would also be stored outdoor under a "tent". (N.T. 01/22/19, pp. 11-12)

8. Dynamic has a separate, main fabrication facility and outdoor slab yard in Harleysville, and wishes to expand its operations by establishing the proposed retail showroom and Outdoor Slab Yard at this Property. (N.T. 01/22/19, pp. 5-7, 14)

9. Although currently vacant, the Property has been consistently used for retail uses since the building was built in 1952. (N.T. 01/22/19, pp. 9-10)

10. Inside the showroom will be kitchen displays with sample countertops and cabinets showing Dynamic's workmanship. (N.T. 01/22/19, pp. 8, 13)

11. Once the customer agrees on a design, the customer would then view the marble or granite slabs in the Outdoor Slab Yard and select a color, which slab is then picked up by the forklift, loaded onto a pickup truck and brought to Dynamic's Harleysville fabrication shop for cutting and shaping, and ultimately installation in the customer's home. (N.T. 01/22/19, pp. 8, 13-14)

12. The slab selected, however, may not be the actual slab installed, if the same or similar slab of marble or granite is located in the slab yard at Dynamic's Harleysville fabrication location, and in that event, the slab already at the fabrication shop would be used. (N.T. 01/22/19, pp. 13-15)

13. The same selection process as noted above can be performed at Dynamic's

Harleysville location, but Dynamic wishes to “branch out to this area” because it would be a “good area” for the business. (N.T. 01/22/19, pp. 13-15, 17)

14. In addition to the slab selection process noted above, the slabs stored and displayed in the proposed Outdoor Storage Yard would also be used for marketing purposes. (N.T. 01/22/19, pp, 16-17)

15. While it may be true that it would be beneficial to Dynamic’s business to establish a retail showroom in this area, which is permitted by right, Dynamic wishes to also have an Outdoor Slab Yard, which is prohibited in the Zoning District where the Property is located.

16. The building on the Property measures 45 feet by 70 feet, with ample door access, including two sets of double doors measuring 6 feet wide with ramps, which could surely accommodate the indoor display and storage of smaller granite and marble pieces, but this is not the use proposed. (N.T. 01/22/19, pp. 9, 14-17)

17. Section 150-112.A of the Zoning Ordinance permits retail stores by right in the C-Commercial District, but Section 150-118.E of the Zoning Ordinance prohibits outdoor storage of goods or materials in the C-Commercial District, other than nursery stock plants, as follows:

Outdoor land use. There shall be no outdoor storage or display of goods or materials, other than nursery stock plants, for marketing, storage or any other purpose. The outdoor storage of trash shall be designed and maintained to be completely screened from view by a landscape buffer.

18. Outdoor storage of goods and materials is permitted in the Limited Industrial Zoning District (Section 150-134.E) and the Industrial Research Zoning District (Section 150-134.8.E), but not permitted in the Commercial Zoning District.

19. With reference to the use variance requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester

Township Zoning Ordinance, the Board determines the following:

- (A) There are no unique physical circumstances or conditions peculiar to the particular Property, resulting in an unnecessary hardship which would justify the requested use variance.
- (B) The Property can be used, and, in fact, has been consistently used in strict conformity with the provisions of the Zoning Ordinance; and therefore, the authorization of the use variance is not necessary to enable the reasonable use of the property.
- (C) The hardship has been created by the Applicants by proposing to use the Property contrary to the applicable zoning.
- (D) The granting of the variance will frustrate the intent of the ordinance.
- (E) The variance requested is not the minimum variance to afford relief under the circumstances.

20. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the requested variance will be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship.

21. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action:

- (A) The property is not suitable for the use, and the variance is not consistent with the spirit, purpose and intent of the Zoning Ordinance.
- (B) The relief will injure or detract from the use of neighborhood property and from the character of the neighborhood, and considering the intensity of the use, with the

movement of large slabs of granite and marble in and out of the Outdoor Slab Yard with a forklift and pickup trucks, the neighboring properties will not be adequately safeguarded.

(C) The proposal will not serve the best interest of the Township, the convenience of the community and the public welfare.

(D) There may not be an adverse impact upon the public services of police and fire protection by the proposed use, but such a finding does not require the granting of relief.

(E) The record does not support a determination that there would be proper disposal of waste resulting from the proposed use.

(F) The record does not support a determination that the use would not cause runoff water or drainage problems injurious to adjacent or nearby properties.

(G) The record does not support a determination that the proposed industrial-type activity in the Commercial District would not cause congestion or hazard on Germantown Pike, a major street in the Township.

(H) There are no special circumstances or conditions applying to the Property for which the variance is sought, which would justify the conclusion that the application of the provisions of the Zoning Ordinance would deprive the Applicants of the reasonable use and development of such Property.

(I) The circumstances for which the variance is sought were created by the Applicants, which circumstances result from general conditions in the zoning district in which the property is located.

22. The provisions of the Zoning Ordinance do not impose an unnecessary hardship whatsoever on the Applicants and, therefore, the requested variance should be denied.

III. DISCUSSION

In Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Supreme Court of Pennsylvania determined that, in evaluating a hardship for a dimensional variance, the Zoning Hearing Board should adopt a somewhat more relaxed standard of scrutiny than when the Board is considering a use variance.

In Marshall v. City of Philadelphia and Zoning Board of Adjustment, 626 Pa. 385, 97 A.3d 323 (2014), the Supreme Court recognized that a property does not have to be valueless, or not able to be used for any other permitted use, in order to obtain a use variance. The Board did not require any such a level of proof in this case. The Court further indicated that economic considerations may be considered in a use variance case, if the property can only be brought into conformance at a prohibitive expense, but no such evidence was presented in this case.

The case before the Board involves the request for a use variance to permit an industrial-type use of outdoor display and storage of goods and materials in a Commercial District. The testimony supported the conclusion that the Property may be a good location for the expansion of Dynamic's business by the establishment of a retail showroom, but the Property is simply not located in a zoning district which allows for the outdoor storage of goods and materials. Even though the location may be advantageous to Dynamic from an economic standpoint, and the use by Dynamic would benefit the owners of the Property with rental income, these considerations are not sufficient to satisfy the criteria to justify the granting of a use variance. Economic considerations alone cannot support even a dimensional variance, let alone a use variance. Dunn v. Middletown Township Zoning Hearing Board, 143 A.3d 494 (Pa. Cmwlth. 2016)

Unfortunately, the facts which would support a finding of unnecessary hardship required to grant variance relief were not available, otherwise, the Applicant's very capable and experienced

counsel would have surely presented same. The fact of the matter is that there is no hardship whatsoever which would allow the Board to grant the use variance requested.

IV. CONCLUSIONS OF LAW

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application.

2. The Applicants are the legal owners of the Property in question, and the proposed tenant had authority from the owners to present the application.

3. The Applicants and the subject matter are properly before the Board, and the Applicants have standing to submit the Application.

4. Hearing notices were duly published and posted in accordance with law, by advertisement in the newspaper and posting on the property.

5. With reference to the use variance requested from the provisions of Section 150-118.E, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following as a matter of law:

- (A) There are no unique physical circumstances or conditions peculiar to the particular Property, resulting in an unnecessary hardship which would justify the requested use variance.
- (B) The Property can be used, and, in fact, has been consistently used in strict conformity with the provisions of the Zoning Ordinance; and therefore, the authorization of the use variance is not necessary to enable the reasonable use of the property.
- (C) The hardship has been created by the Applicants by proposing to use the

Property contrary to the applicable zoning.

(D) The granting of the variance will frustrate the intent of the ordinance.

(E) The variance requested is not the minimum variance to afford relief under the circumstances.

6. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the requested variance will be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship.

7. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action, and determines the following as a matter of law:

(A) The property is not suitable for the use, and the variance is not consistent with the spirit, purpose and intent of the Zoning Ordinance.

(B) The relief will injure or detract from the use of neighborhood property and from the character of the neighborhood, and considering the intensity of the use, with the movement of large slabs of granite and marble in and out of the Outdoor Slab Yard with a forklift and pickup trucks, the neighboring properties will not be adequately safeguarded.

(C) The proposal will not serve the best interest of the Township, the convenience of the community and the public welfare.

(D) There may not be an adverse impact upon the public services of police and fire protection by the proposed use, but such a finding does not require the granting of relief.

(E) The record does not support a determination that there would be proper disposal of waste resulting from the proposed use.

(F) The record does not support a determination that the use would not cause runoff water or drainage problems injurious to adjacent or nearby properties.

(G) The record does not support a determination that the proposed industrial-type activity in the Commercial District would not cause congestion or hazard on Germantown Pike, a major street in the Township.

(H) There are no special circumstances or conditions applying to the Property for which the variance is sought, which would justify the conclusion that the application of the provisions of the Zoning Ordinance would deprive the Applicants of the reasonable use and development of such Property.

(I) The circumstances for which the variance is sought were created by the Applicants, which circumstances result from general conditions in the zoning district in which the property is located.

8. The provisions of the Zoning Ordinance do not impose an unnecessary hardship whatsoever on the Applicants and, therefore, the requested variance should be denied.

V. OPINION

Upon consideration of the evidence and testimony presented regarding the Application, the Zoning Hearing Board of Worcester Township determines that the use variance from Section 150-118.E of the Zoning Ordinance, so as to permit the outdoor display and storage of marble and granite associated with a marble and granite showroom, should be denied.

The Board therefore enters the following Order.

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF
DAVID SIGNORE AND ROBERT SIGNORE**

**NO. 2019-02
APPLICATION FOR A VARIANCE**

ORDER

The request for a variance from Section 150-118.E of the Zoning Ordinance, so as to permit an outdoor display and storage area associated with a marble and granite showroom, is **DENIED**.

WORCESTER TOWNSHIP ZONING HEARING BOARD



Michael Libor, Chair



Caesar Gambone, Vice Chair



John D'Lauro, Secretary

Alternate

Bradford Smith

Order Entered: 3/4/19

Circulation Date: 3/4/19

This Decision and Order of the Board is final and any appeal of it must be filed with the Court of Common Pleas of Montgomery County within thirty (30) days following the Circulation Date set forth above. The Board reserves the right to supplement these Findings of Fact and Conclusions of Law in support of this Decision if an appeal is filed.