

**Borough of Wind Gap
Wind Gap, Pennsylvania 18091
610.863.7288**

Zoning Hearing Board Legal Notice

The Wind Gap Zoning Hearing Board will hold a public hearing Wednesday, August 4th, 2010, at 7:30 p.m. at the Wind Gap Borough Hall, Council Chambers, 29 Mechanic Street, Wind Gap, PA to hear the following:

1. Case No. 02-2010

The Application of Percy D. Reimer, Co- Owner, of said property located at 404 Lehigh Avenue (PetroMart Gas Station) for an Appeal from Municipal Action that 2 of their 3 remaining Free Standing Signs are in Violation of Section 607 of the Wind Gap Zoning Ordinance. In the alternative, Applicant seeks a variance and/or variance by estoppel from that section. Note: Applicant's original Variance Decision dated March 15, 1984 states, "Only one (1) free standing sign shall be permitted on the premises. The total surface area of said sign shall not exceed thirty-two (32) square feet."

**This property is in the Medium Density Residential Zoning District (R-8).
Parcel ID ESW2810638.**

Proof of publication requested:

**Publish: July 22, 2010
Publish: July 28, 2010**

ZONING HEARING BOARD
BOROUGH OF WIND GAP
NORTHAMPTON COUNTY, PENNSYLVANIA

APPEAL NO.: 02-2010
APPELLANT: Percy D. Reimer
APPLICANT: Percy D. Reimer
LOCATION OF PROPERTY: 404 Lehigh Avenue, Wind Gap, Northampton County, Pennsylvania
OWNER: Percy D. Reimer and Bobbie B. Reimer
COUNTY UNIFORM TAX PARCEL NO.: E8SW2-8-1

OPINION

An Appeal was filed in the above-matter by the Appellant/Applicant, Percy D. Reimer, for property situate at 404 Lehigh Avenue, Wind Gap, Northampton County, Pennsylvania. This Appeal requests the following relief: (a) An Appeal from municipal action from an Enforcement Notice issued by the Zoning Officer dated June 9, 2010; and (b) in the alternative a variance by estoppel;

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Pursuant to proper legal notice, a public hearing in connection to this appeal was held on August 4, 2010, at 7:30 p.m. in Council Chambers, at Wind Gap Borough Hall, 29 Mechanic Street, Wind Gap, Northampton County, Pennsylvania.
2. Testimony and evidence were heard and received by Zoning Hearing Board members, Sam Nittle, Debra Rosenberry, and Robert Matlock.

3. The Zoning Officer Darlene C. Plank-Turlington was present and offered testimony and documentary evidence. The Zoning Officer presented the application, the legal notices, a list of residents within two hundred (200) feet that were notified as required by the Wind Gap Borough Zoning Office, Northampton County Tax Records and photographs. The Zoning Officer further testified that the property was properly posted and advertised. The Zoning Officer submitted a copy of the advertisement that appeared in The Express-Times.

4. The subject premises is located at 404 Lehigh Avenue, Wind Gap, Northampton County, Pennsylvania, bearing Northampton County Uniform Tax Parcel identifier number E8SW2-8-1. The subject premises is located in low density residential zoning district R-8. Located on the subject premises is a convenience store and gas station named PetroMart Gas Station.

5. Testifying at the Hearing, in addition to the Zoning Officer was Jack Reimer the property manager for the Applicant/Owner. In addition, there were several interested citizens/property owners that supported the position of the Applicant/Owner.

6. The Zoning Officer issued an Enforcement Notice on June 9, 2010. The Enforcement Notice asserted the following:

1. Owner of Record: Percy D. & Bobbie B. Reimer
2. Location of Property: 404 Lehigh Avenue (PetroMart)
3. Violation: Zoning code: 607 (Prohibited Signs)
4. Date for start of compliance: 15 JUN 10
5. Date for compliance to be completed: 30 JUN 10
6. You have the right to appeal within fifteen (15) days to the Zoning Hearing Board
7. Failure to comply with this notice within the time specified above, unless extended by appeal, constitutes a violation of the above referenced ordinance. Civil enforcement may result in a fine of up to \$500 a day.
8. This is the only written notice, documented future violations

of this type will result in automatic fines.

7. The Applicant appealed the Enforcement Notice and in the alternative sought a variance on the theory of Variance by Estoppel.

8. Subject premises was the subject of a Zoning Hearing Board Decision on March 15, 1984. A copy of the Decision is attached hereto, made a part hereof and marked as Exhibit "1". The Zoning Hearing Board decided that only one freestanding sign shall be permitted on the premises. The total surface area of the said sign shall not exceed thirty-two square feet. The Zoning Hearing Board Decision was entered into evidence at the hearing by the Zoning Officer.

9. The Zoning Officer submitted photographs that depicted the signage on the subject premises at or about the time of the issuance of the Enforcement Notice.

10. The Applicant also presented exhibits showing photographs that had been in existence over a number of years. The Applicant also presented a permit from the Zoning Officer in 1993.

11. The 1993 permit issued by the Zoning Officer is attached hereto made a part hereof and marked as Exhibit "2". The permit was issued on May 19, 1993 by then Zoning Officer Stan Lysek. The permit stated the following:

This certifies that the subject named above has complied with the requirements of the Wind Gap Borough Zoning Ordinance of 1978 and has been issued a Zoning/Bldg permit for work or use being performed at this site.

This permit card is to be displayed at the subject site until all Construction work or use has been completed.

Date: 5-19-93
Signed: Stan Lysek
Wind Gap Borough
Zoning Enforcement Officer

12. The doctrine of equitable estoppel can be applicable to the zoning cases and has been generally regarded by the Courts as an unusual remedy and that an order be granted extraordinary circumstances need to be presented . See *In Re: Appeal of Kreider* 808 A.2nd 340 Pa. Cmwltth 2002.

13. In order for the doctrine of equitable estoppel to apply, the person asserting the claim must show that the municipal agency, (a) must have intentionally or negligently misrepresented some material fact, (b) knowing or having reason to know the other party would justifiably rely on the misrepresentation and (c) inducing the other party to act in his detriment because of the justifiable elements of the misrepresentation. See *Strunk v. Zoning Hearing Board of Upper Milford Township*, 684A.2nd 682 (Pa Cmwltth 1996).

14. The Board finds that the Applicant has failed to present evidence of intentional or negligent misrepresentation on behalf of the Borough. Further, the Board finds that the burden is on the Applicant as landowner to meet all the requirements of equitable estoppel. The Board finds that the Doctrine of Equitable Estoppel is inapplicable to the case presented to the Board.

15. Although the Zoning Hearing Board finds that the doctrine of equitable estoppel to be inapplicable in this situation, the Board does find that the Wind Gap Zoning Officer on May 19, 1993 issued a permit which is pertinent to the Board's decision. A copy of the 1993 permit is attached hereto as Exhibit "2".

16. It is clear that the 1993 permit issued by Zoning Officer Stan Lysek certified that the subject premises complied with all the requirements of the Zoning

Ordinance. The Board finds that the signage that is currently in existence is similar to the signage that was in existence at the time Zoning Officer Lysek issued the 1993 permit.

17. The Decision of the Board was by a majority vote of 2 to 1 in favor of reversing the Zoning Officer's Enforcement Notice. Voting in favor of the reversal were Sam Nittle and Debra Rosenberry with Robert Matlock dissenting.

18. The Board finds as a result of the Zoning Officer's 1993 permit and since the existing signage in 1993 was similar to the signage in existence at the time of the enforcement notice, the Board determines that the existing signage shall remain in effect. The Board's decision is based solely on the 1993 permit issued by Zoning Officer Lysek.

19. Because of the length of time from the issuance of the 1993 permit to the present, the Board finds that the signage that was in existence at the time of the 1993 shall be permitted to continue. The Board further finds that the Zoning Hearing Board Decision of 1994 attached as Exhibit "1" shall remain in effect except as modified by the 1993 permit by Zoning Officer Lysek.

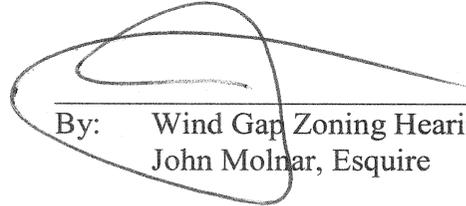
20. The Board suggests that the Zoning Officer inventory and document the existing signage as of this date so that there is no discrepancy or controversy in the future about the signage.

ORDER

AND NOW, this 17th day of September, 2010, the Board reverses the enforcement notice in action by the Zoning Officer on the basis that the Zoning Officer on May 19, 1993 issued a permit approving the signage at that time and the current signage now in existence is similar to the 1993 permit. The Zoning Officer was aware of the existing signage in 1993 and did not cite any violations to the property owner at that time. In fact,

the Zoning Officer certified the land owner was in compliance with the requirements of the
Wind Gap Borough Zoning Ordinance.

WIND GAP ZONING HEARING BOARD



By: Wind Gap Zoning Hearing Board Solicitor
John Molnar, Esquire

Dated: September 17, 2010

EXHIBIT 1

Wind Gap Borough

PERMIT

REMODEL
TO SWITCH TO
SUNDLO

NORTHAMPTON COUNTY

29 Mechanic Street Wind Gap, PA 18091
Established 1893 PHONE (215) 863-7288

PERMIT Number: 1340

PERMIT Type: Zoning/Bldg

NAME: REIMER, BOBBIE & PERCY

ADDRESS: 416 N LEHIGH AVE

WIND GAP, PA. 18091

Effective Date: 5-19-93

Expiration Date: 5-19-94

This certifies that the subject named above has complied with the requirements of the Wind Gap Borough Zoning Ordinance of 1978 and has been issued a Zoning/Bldg permit for work or use being performed at this site.

This permit card is to be displayed at the subject site until all construction work or use has been completed.

DATE: 5-19-93

SIGNED: Stan Lysek
Stan Lysek, Wind Gap Borough
Zoning Enforcement Officer

Exh. b. + 2

EXHIBIT 2

Gas Station
A.M. - P.M. mini market

ZONING HEARING BOARD
BOROUGH OF WIND GAP
NORTHAMPTON COUNTY, PENNSYLVANIA

APPLICANT: Bobbie B. Reimer

LOCATION OF PROPERTY: 404 Lehigh Avenue, Wind Gap, Northampton County, Pennsylvania

OWNER: Percy D. Reimer, Jr. and Bobbie B. Reimer, Co-Partners.

OPINION

An Appeal was filed to the Zoning Hearing Board of the Borough of Wind Gap by Bobbie Reimer, 12 North Franklin Street, Pen Argyl, Pennsylvania. Applicant requests permission to operate a mini-market/gas station on the premises referenced above. Specifically, applicant seeks a variance from the use requirements contained in Section 5-3, et seq.; and from the sign requirements of Section 15-4.

After hearing held on March 15, 1984, this Board finds that:

(1) Pursuant to proper legal notice, a public hearing in connection with this Appeal was held on the aforementioned date at 7:30 p. m. at the Wind Gap Borough Municipal Building, 29 Mechanic Street, Wind Gap, Northampton County, Pennsylvania at which time Bobbie Reimer, Blaine Reimer, and Elio Uliana offered sworn testimony.

(2) The subject premises is located on the corner of Lehigh Avenue and Alpha Road in the Borough of Wind Gap, County of Northampton and Commonwealth of Pennsylvania, in an R-8 Medium Density Residential District. The applicant is one of the

co-partners having a legal interest in the subject premises.

(3) The subject premises is trapezoidal in shape, having a frontage along Lehigh Avenue of approximately 85 feet; a frontage along Alpha Road of approximately 160 feet; a rear property line of approximately 133.5 feet; and a dimension of 140 feet, more or less, along the property line of the premises situate at 416 Lehigh Avenue, said premises being owned and occupied by George H. Troxell and Georganna Troxell, his wife.

(4) Bobbie B. Reimer and Percy D. Reimer, Jr., received title to the premises by deed of Leroy J. Knitter and Ruth N. Knitter, his wife, dated July 29, 1983, and recorded in the Office for the Recording of Deeds at Easton, Pennsylvania in Deed Book Volume 653, page 383. The Reimers are engaged in the fuel oil business, and due to expansion of business needs, have decided to purchase a property in Wind Gap for the operation of an "ARCO AM/PM Mini-Market".

(5) Applicant intends to remodel and refurbish the existing building on the premises, which formerly housed a gas station/automobile repair garage for the last several years.

(6) Final site plan review and approval has heretofore been received by applicant from the Wind Gap Planning Commission.

(7) No adjoining property owners appeared at the hearing to offer comments or objections, nor has applicant himself received any such comments or objections concerning the proposed use.

(8) The lot in question allows sufficient off-street parking for the proposed gas station/mini-market.

(9) This Board is empowered to grant variances under the provisions of Section 16-9 of the Wind Gap Zoning Ordinance.

(10) The Board finds that an unnecessary hardship is created as to the use requirements due to the past business failures which have been experienced on these premises, and due to the fact that the permitted gas station business use necessarily requires a supplementary business use to make this project economically feasible. The unnecessary hardship has not been created by applicant.

 (11) The Board finds that applicant has failed to establish an unnecessary hardship as to his variance request concerning an increase of the approximately 32 square foot pre-existing sign on the premises.

(12) The Board finds that the applicant cannot develop this property in strict conformity with the provisions of the Wind Gap Zoning Ordinance due to the pre-existing uses conducted thereon prior to the enactment of the Ordinance.

(13) The variance as to the mini-market will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent properties, nor be detrimental to the public welfare.

(14) The use variance requested will offer the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

(15) The Board is unable to grant applicant's request for variance as to expansion of the existing non-conforming sign on the premises since applicant has failed to show that such a grant would not alter the essential character of the neighborhood.

* DECISION

Upon consideration of the foregoing findings of fact, the Board enters the following:

(1) The variance application of Bobbie Reimer to operate a gas station/mini-market is hereby granted.

(2) It is ordered that no repairing of automobiles nor service of automobiles shall hereafter be permitted on the premises.

* (3) Only one (1) free standing sign shall be permitted on the premises. The total surface area of said sign shall not exceed thirty-two (32) square feet.

(4) Any lights erected or maintained on the premises shall be in strict conformity to Section 11-10-6 of the Zoning Ordinance.

(5) This decision is contingent upon applicant receiving a favorable determination from the Commonwealth of Pennsylvania, Department of Environmental Resources, pursuant to the provisions of the Act of May 23, 1945, P. L. 926 (Act 369), within sixty (60) days of the date hereof.

BY THE ZONING HEARING BOARD:



William Pysker, Chairman

Victor Zucal

Victor Zucal

Kim Davis

Kim Davis

Dated: 4 - 1 - 64