

IN RE: : **BEFORE THE ZONING HEARING BOARD**
: **OF EAST HANOVER TOWNSHIP**
APPLICATION FOR VARIANCE OF :
SHEETZ, INC. : **HEARING: September 7, 2016**
: :
No. 2016.04 : **DECISION: September 7, 2016**
: :
: **WRITTEN DECISION MAILED:**
: **October 21, 2016**
:

DECISION OF THE ZONING HEARING BOARD

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted a properly advertised and properly posted public hearing on September 7, 2016, commencing at approximately 7:00 p.m., upon the Application for a Special Exception of Sheetz, Inc., with respect to the properties which were the subject of the hearing, being four parcels located on the northeast intersection of Laudermilch Road (Route 743) and Allentown Boulevard (Route 22), to wit: Tax Parcel No. 25-011-019; Tax Parcel Nos. 25-011-065 and 25-011-020 at 9940 Allentown Boulevard, East Hanover Township, Grantville, PA; and Tax Parcel No. 25-011-017 on N. Faith Road, Grantville, PA.

Notice of the hearing was published in *The Sun* on August 18, 2016, and August 25, 2016, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with Section 603.1.1 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on August 22, 2016, on and about the tracts of land which are the subject of the hearing. Jackie Wilbern, the East Hanover Township Zoning Officer, was present at the hearing and confirmed that the notice was posted. Furthermore, Ms. Wilbern confirmed that she had provided written notice and mailed the notices on August 17, 2016, of the hearing to those property owners

adjacent to the subject properties as identified in the Application for a Special Exception as well as to the Applicant.

Members of the Zoning Hearing Board were JoLynn M. Stoy, Chairperson, Shirley Allison, Member and Kenneth Wolensky, Alternate Member, who were present throughout the hearing. Also present were: Michael Lacesa, Director of Real Estate for the Eastern Region of Sheetz, Inc.; Todd Wilson, of Alpha Consulting Engineers, Inc.; and Brent Brubaker, Permit Manager for Sheetz, Inc.; Ronald M. Lucas, Esquire, of Stevens & Lee, was present and represented Sheetz, Inc. with respect to the presentation of its application. Various members of the public were also present offering testimony and cross-examination of witnesses presented by Applicant. All of the foregoing individuals were duly sworn and offered testimony during the course of the hearing.

FINDINGS OF FACT

The subject properties are contiguous and located at the northeast corner of Laudermilch Road and Allentown Boulevard. All of the four parcels previously identified are located within the Highway Commercial (HC) District with the exception of Tax Parcel No. 25-011-017 adjoining N. Faith Road (hereinafter the "Herr Property"), which is located in the Village Residential (VR) District pursuant to the East Hanover Township Zoning Ordinance. The properties which are the subject of the request for a special exception have a total area of approximately 3.3 acres. Tax Parcel No. 25-011-019, is owned by Cali, LLC, Tax Parcel Nos. 25-011-065 and 25-011-020 are currently owned by GPCCIM, LLC, a sole member entity of Giovanni Cali, who is also the Managing Member of Cali, LLC. A 5,429 square foot portion of

the Herr Property is currently owned by the Estate of John Herr and identified as Tax Parcel No. 25-011-017.

Cali, LLC has entered into an Agreement of Sale to purchase the Herr Property with an intention to consolidate all four parcels into a single lot for development. Applicant, Sheetz, Inc., has entered into a Lease Agreement for the properties, with the landlord, Cali, LLC, and has standing to submit this application for zoning relief.

At the hearing of the matter, Applicant has submitted various exhibits, which have been admitted as part of the record, in support of its Application for a Special Exception including:

- Exhibit 1 Deed to Cali, LLC – Tax Parcel 21-011-019
- Exhibit 2 Deed to GPCCIM, LLC – Tax Parcels 25-011-065 and 25-011-020
- Exhibit 3 Deed to John Herr – Tax Parcel 25-011-017
- Exhibit 4 Agreement of Sale between Estate of John M. Herr to Cali, LLC (redacted)
- Exhibit 5 Amended and Restated Lease with Cali, LLC (redacted)
- Exhibit 6 Dauphin County Tax Assessment Map and Key
- Exhibit 7 Existing Features Plan
- Exhibit 8 Aerial Photograph of surrounding area of Township
- Exhibit 9 Aerial Photograph showing new access drive to Laudermilch Road
- Exhibit 10 Conceptual Plan
- Exhibit 11 Zoning Officer Determination letter dated June 28, 2016
- Exhibit 12 Zoning Applications
- Exhibit 13 Definition of automobile filling station §112.3
- Exhibit 14 Specific Criteria for automobile filling stations §406
- Exhibit 15 General Criteria for special exceptions §604.3.2
- Exhibit 16 Sign Packet
- Exhibit 17 Photographs of surrounding hotel, restaurant, auto and retail uses
- Exhibit 18 Todd Wilson Resume
- Exhibit 19 Letter dated July 14, 2016, and Determination of Jackie Wilbern, Zoning Officer with attachments

Applicant, Sheetz, Inc., is a Pennsylvania corporation with an address of 5700 Sixth Avenue, Altoona, Pennsylvania (hereinafter “Sheetz”). The Applicant is proposing to develop the properties upon consolidation into one tract with a 5,963 square foot Sheetz Store to operate an Automobile Fueling Station and provide for the retail sale of various goods and services. The

Sheetz Store will be open 24 hours a day, seven-days a week and will have approximately eight employees on the premises on its largest shift. Applicant's six (6) pumps will service twelve (12) vehicles including diesel fuel for passenger vehicles. Applicant's Exhibit 10 is a Conceptual Plan identifying the proposed location and nature of the improvements to be made to the property including but not limited to the positioning of the primary store facility, pump stations and parking and access drives as well as other improvements.

Applicant's facility shall accommodate a right turn only from traffic off of Allentown Boulevard as this is a divided roadway. Along the northernmost property line of the tract, Sheetz shall be locating its access drive directly across from Kelley Court. The alignment of this access drive with Kelley Court will allow traffic to both enter and exit Applicant's property onto Lauder Milch Road and include the installation of a left turn lane to allow entrance into the facility. Applicant's Exhibit 9 identifies the proposed traffic plan and design that has been arranged in consultation with PennDOT for purposes of obtaining a Highway Occupancy Permit approval.

The Sheetz Store and its fueling pumps with canopy will be essentially located in the central portion of the property. The one story structure shall have a walkway around the entire building consisting of patio type pavers. Tables for patron use shall be located both outside and inside of the store. The store shall have three entrances being along the front, side and rear of the structure.

Parking is designed to be located adjacent to the structure and surrounding its entire perimeter. Additional parking spaces are located to the rear and east of the building as set forth on Applicant's Exhibit No. 10. The design of the premises is to enhance the free flow

circulation of traffic on and off the premises. No curbing shall be installed however lighted safety bollards shall be constructed in front of the parking spaces.

In order to align the northern access drive with Kelley Drive, Sheetz is acquiring 5,429 square feet of the adjoining Herr Property. In exchange an easement will be granted by Sheetz to the Herr Estate for access to the remainder of the Herr properties. This area and access drive will be located approximately forty (40) feet to the north of the existing entrance from Laudermilch Road to the Villa Rosa Restaurant. Along Allentown Boulevard is located a driveway access also to this restaurant. This driveway access will be relocated approximately 100 feet further to the east and as far as the applicable Township Ordinances and PennDOT requirements will allow.

Included within Applicant's improvements to the subject property will be the addition of six (6) business signs. These signs will consist of and be positioned upon the property as follows:

- (1) One Sheetz logo sign, 25.5 square feet in area, placed above the front (south) building entrance facing Allentown Boulevard;
- (2) One Sheetz logo sign, being 25.5 square feet in area, placed above the rear (east) building entrance;
- (3) One Sheetz logo sign, being 35.5 square feet in area, centered on the fuel pump canopy facing Allentown Boulevard;
- (4) One Sheetz logo sign, being 35.5 square feet in area, centered on the fuel pump canopy facing Laudermilch Road;
- (5) One freestanding monument sign located at the Allentown Boulevard and Laudermilch Road intersection, being 15 feet in height and having an area of 65.67 square feet, which shall contain the Sheetz logo and fuel prices; and
- (6) One freestanding informational monument sign, being 38.04 square feet in area, at the northern driveway access entrance on Laudermilch Road, which will contain only fuel prices.

The rear of the building which faces east will have several faux windows. Cars traveling from the east will be able to view the rear of the building and the entrance. Generic graphics and pictures will be placed in these windows to obstruct view of the various equipment and store refrigeration coolers which are located in that area of the building.

Allentown Boulevard is an arterial road with two (2) lanes each eastbound and westbound together with left and right turn lanes at its intersection with Laudermilch Road. The Laudermilch Road corridor connects Hershey Park entertainment area to the south ultimately with the Penn National Race Track and Hollywood Casino to the north of Jonestown Road and Interstate Route 81 accommodating many tourists as well as local traffic. A dedicated left turn lane heading south on Laudermilch Road will be included in the subsequent Land Development Plans to be submitted to the Township for approval. The intersection extending north along Laudermilch Road is subject to a significant rise in topography challenging visibility of the property and signage.

All four corners of the Allentown Boulevard and Laudermilch Road intersection are located in a HC District. A variety of business operations are located within this neighborhood including but not limited to Mainstay Inn, Villa Rosa Restaurant, Farmstead Farmers Market, Fabe's Corner Car and Truck Sales, Days Inn, Hampton Inn, Shell Gas Station, Kline Brothers Metal Fabrication and other businesses all of which have an assortment of freestanding, monument and/or building mounted signage whether lighted or unlighted.

Lighting upon the subject property shall be primarily LED and the majority of it will be recessed within the fuel pump canopy as well as directed downward. Safety bollards being three feet in height will be installed about the perimeter of the building between the walkways and

parking spaces. The bollards will be lighted which shall be directed downward. Additional lighting around the perimeter of the property will be directed inward and down as well.

Located to the north of the subject property is the Faith United Church of Christ which operates a part-time nursery school. A Determination of the East Hanover Township's Zoning Officer was issued July 14, 2016, finding that the nursery school operated by the church three days per week was an accessory use to the principal use of the structure and facility and not subject to Section 406.4 setback requirements.

No public water is available to the subject property and area in which it is located. Water service for the property will be provided by a new private well which shall be installed, tested and operated in accordance with all applicable DEP permitting, Commonwealth and other Township requirements. The existing well on the property will be capped. The property will be connected to public sewer and a grinder pump installed.

Applicant shall be providing fifty-two (52) parking spaces on the property. Fuel is delivered by tractor trailers as needed and dependent upon the volume of sales. Wide aisles and driving lanes are designed and incorporated into the improvements to accommodate adequate truck turning movements and safety and convenient access for passenger vehicles on and about the premises.

An enclosed dumpster area, to be constructed of the same brick material as the main building, will include the storage of hazard materials that are required for spills and otherwise in the operation of the fueling station. A commercial hauler will be engaged for regular trash removal.

Three 8,000 gallon underground storage tanks are to be located to the west of the proposed fuel pumps and at a distance in excess of 100 feet from residential zoned property

located to the north. Upon construction of all improvements, Applicant shall have a total lot coverage of 49.4%. Visual screening consisting of a mix of evergreens, deciduous trees and shrubs will be installed along the northern property line to provide a dense buffer to the adjoining residential and other properties.

DISCUSSION AND CONCLUSIONS

Applicant has filed at East Hanover Township Zoning Hearing Board Docket No. 2016.03 a Request for a Special Exception to operate an automobile fueling station as part of a Sheetz Store for the retail sale of goods and services at the Intersection of Allentown Boulevard and Laudermilch Road. The Board's decision at Docket No. 2016.03 granting a special exception is incorporated herein by reference. The testimony and evidence presented in record of Docket 2016.3 and this matter have been consolidated for purposes of hearing, however, separate written decisions are being issued by the Board with respect to each of Applicant's requests.

In order to implement the development and operation of a Sheetz Store as a use in a Highway Commercial District together with an Automobile Fueling Station, Sheetz has filed a request for certain dimensional variances from the following Zoning Ordinance requirements: Section 210.5 in order to increase lot coverage from 45% to 49.4% of the subject property; Section 314.3 (Table) to allow six (6) business signs instead of one (1) business sign; and Section 314.3 (Table) to allow a 1.67 square foot increase in the area of one freestanding monument sign from 64 square feet to 65.67 square feet.

As a general matter, a variance may be granted only where there is an unnecessary hardship. Even when there is a finding of an unnecessary hardship, a variance may be granted only if the Board finds where relevant that the standards as set forth in Section 604.4 of the

Zoning Ordinance have been met. It is Applicant's burden of proof to establish that an unnecessary hardship exists. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1987).

Both of the requested variances from the Zoning Ordinance provisions are only dimensional in nature as opposed to a change in the use of the property in a manner that is wholly outside of the zoning regulations. A distinction has been recognized by the Pennsylvania Supreme Court that the quantum of proof needed to establish an unnecessary hardship for a dimensional variance is lower than for a change of use variance. Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998). Multiple factors, including economic detriment to an Applicant, financial hardship created by work required to bring a building into strict compliance with design requirements and the characteristics of the surrounding neighborhood may be considered in the determination for granting a dimensional variance. Id. The Board is persuaded that due to the dimensional nature of Applicant's requests such a relaxed standard of proof as authorized by Hertzberg is applicable under the circumstances presented.

The Board is persuaded that an unnecessary hardship exists under this standard and that the property is subject to unique circumstances and conditions, topography and location. The property is situated on and has direct access to two (2) state highways at their intersection. These thoroughfares provide direct access to a substantial amount of traffic in the area from Hershey to Grantville and points north of Interstate Route 81. Commercial uses are prevalent in the area adjoining and surrounding the subject property. The Board is not unmindful that commercial uses are typically accommodated by both sewer and water facilities. As a result, higher

percentages of lot coverage, are more commonly imposed to accommodate such development as so stated by Applicant's expert testimony.

Public water however is not available to the Township and the location of this property. However, public sewer is available to which Applicant shall connect. The Board is persuaded that this circumstance combined with a lower maximum lot coverage requirement of 45% under Section 210.5 of the Zoning Ordinance creates an undue hardship for development of this property in strict conformity with the Ordinance in respect to a permitted retail sales use and Automobile Fueling Station special exception. A need exists for a higher lot coverage and adequately signed structures, parking facilities and sufficiently wide aisle ways and travel lanes for both trailer trucks and passenger vehicles to safely move about the subject property and provide access from the roadways.

Applicant has requested an increase in the overall lot coverage of 4.4% from 45% to a total of 49.4%. The Board is persuaded that an increase of 4.4% is a reasonable adjustment under the standards of Hertzberg to the East Hanover Township zoning regulations at issue in order to accommodate development without detriment to the Applicant or public policy. For a 3.3 acre tract of land of 4.4% increase in the coverage requirements constitutes an approximate 9.8% increase in the maximum lot coverage requirements. Although the Board is not persuaded that nearly a 10% variance of the Ordinance requirements is necessarily De Minimis it does find that the hardship imposed on this property warrants a deviation from Zoning Ordinance lot coverage requirements.

The Board further finds that the present physical circumstances and conditions attenuated with this property were not created by the Applicant but the hardship is due to the imposition of Ordinance lot coverage requirements upon those physical conditions. The Board is persuaded

opposite Kelley Drive is informational and appropriate to accomplish this purpose. The fuel pump station canopy signs fronting each roadway provide visibility and early recognition to multi-directional traffic on both Allentown Boulevard and Laudermilch Road. For customers signs above the front and rear doors are intended and appropriate to direct the on-site patrons to the appropriate entrances of the store. Parking is available around the entire perimeter of the structure, as well as to the rear of the building, which entrance location is not a common feature for a Sheetz Store, therefore customers need to be able to expeditiously park and find the appropriate entrances. The entrance at the rear of the building is necessary though to make efficient and safe use of available space.

These hardships are a result of the location and configuration of the property in relation to the physical and topographical conditions existing on and around the subject property. As such the Board is persuaded the hardship is not created by the Applicant.

Signage proposed for this commercial operation is consistent with other commercial businesses in this area. Multiple building structure signs and freestanding signs are located in the vicinity of the property as well as the general area. Such signs are varying sizes and some even greater in height to provide visibility to roadway traffic along Interstate Route 81. The Board is persuaded that six (6) signs proposed by Applicant shall not alter therefore the essential commercial character of this neighborhood and zone. Such signs are placed strategically and efficiently about the property for informational and directional purposes as well as advertising to the general public and therefore will not interfere with the appropriate development of adjacent properties or be detrimental to the public interests. The Board is also persuaded that the variance requested is a minimum variance to afford relief. Applicant's proposed size, type and location are provided on the property only as and where necessary to provide functional utility.

Lastly, one freestanding sign with a Sheetz logo and fuel prices is to be located at the southwest corner of the lot and will have an area of 65.67 square feet. This is only a 1.67 square foot increase in area representing a 2.6% deviation in the Ordinance requirements. The Board recognizes that a primary function of an Automobile Fueling Station is the sale of fuel both regular and diesel. It is quite common place to see roadside advertised fuel prices to attract customers. Given the nature and the location of Applicant's proposed use at the intersection of Allentown Boulevard and Laudermilch Road, the Board is persuaded that a 1.67 square foot increase in one free standing sign is sufficiently De Minimis such that strict compliance with Section 314.34 by this one sign is not required and an adjustment reasonably warranted.

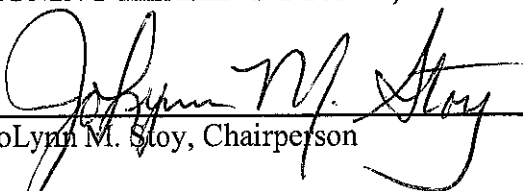
DECISION

For all the reasons previously set forth, evidence and testimony presented, the East Hanover Township Zoning Hearing Board does hereby GRANT Applicant's request for a variance as and subject to the following:

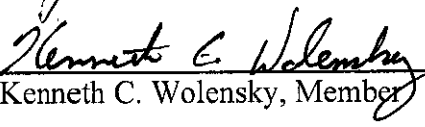
(1) The maximum lot coverage for the subject property pursuant to Section 210.5 shall not exceed 49.4%;

(2) A maximum of six (6) individual business signs shall be constructed upon the property consisting of two (2) located over the building structure entrances, two (2) located on the fuel pump canopy, one (1) monument sign at the intersection of Laudermilch Road and the access drive aligned with Kelley Drive, and one (1) free standing sign at the intersection of Laudermilch Road and Allentown Boulevard not to exceed 65.67 square feet in area.

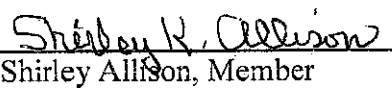
ZONING HEARING BOARD, EAST HANOVER TOWNSHIP



JoLynn M. Stoy, Chairperson



Kenneth C. Wolensky, Member



Shirley Allison, Member

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