



Whitemarsh TOWNSHIP

616 GERMANTOWN PIKE – LAFAYETTE HILL, PA 19444-1821
TEL: 610-825-3535 FAX: 610-825-9416
www.whitemarshwp.org

BOARD of SUPERVISORS

Laura Boyle Nester– Chair
Fran McCusker– Vice Chair
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Township Manager

WHITEMARSH TOWNSHIP ZONING HEARING BOARD PUBLIC HEARING OF WEDNESDAY, APRIL 22, 2020 7:00 PM ZOOM MEETING PARTICIPATION INFORMATION

The Whitemarsh Township Zoning Hearing Board will conduct a public hearing on **Wednesday, April 22, 2020 at 7:00 PM for case ZHB #2020-08, MHP Conshohocken, LLC**, 10 Ridge Pike, Conshohocken, PA; Parcel #65-00-09997-00-9; Block 001; Unit 001. In response to the Governor’s Stay Home Order due to the COVID 19 health pandemic, this hearing will be conducted via ZOOM. All members of the Board, staff and public will participate remotely. The public may join this hearing by either telephone using the dial in number or entering the URL on an internet browser. Below you will find instructions on how to access and participate in the hearing:

- **Hearing Date:** Wednesday, April 22, 2020
- **Hearing Time:** 7:00 PM
- **Hearing URL:** <https://zoom.us/j/97539172254?pwd=YzREKzhRUeFJR3dOTy9BVHFNVmhKdz09>
- **Hearing via Zoom App:** if you have the Zoom App on your smartphone, tablet, or computer, open the program, click join a meeting, and enter the Meeting ID: 975 3917 2254
- **Hearing dial in number (no video):** 1-312-626-6799
- **Hearing ID number (to be entered when prompted):** 975 3917 2254
- **Hearing Password:** 412663

THE PUBLIC MAY ALSO SUBMIT QUESTIONS OR COMMENTS PRIOR TO THE HEARING BY E-MAIL TO CGUTTENPLAN@WHITEMARSHTWP.ORG; THESE MUST BE RECEIVED NO LATER THAN 12 NOON ON APRIL 21, 2020.

PERSONS WHO WISH TO BECOME PARTIES TO THE APPLICATION MUST DO SO DURING THE HEARING ON THE RECORD THROUGH THE ZOOM LINK AS INSTRUCTED, FOLLOWED BY WRITTEN ENTRY OF APPEARANCE FORM. PERSONS MAY ALSO REQUEST PARTY STATUS IN WRITING IN ADVANCE OF THE HEARING, BY E-MAIL TO CGUTTENPLAN@WHITEMARSHTWP.ORG RECEIVED NO LATER THAN 12 NOON ON APRIL 21, 2020 AND THEN BEING AVAILABLE THROUGH THE ZOOM CONFERENCE LINK ON THE DATE AND TIME OF THE HEARING. A SAMPLE FORMAT FOR THE WRITTEN REQUEST FOR ENTRY OF APPEARANCE WILL BE POSTED ON THE TOWNSHIP WEBSITE.

Persons with a disability who wish to participate in the public hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Whitemarsh Township at 484-594-2625.

“A GREAT PLACE TO LIVE AND WORK”

**WHITEMARSH TOWNSHIP ZONING HEARING BOARD
ENTRY OF APPEARANCE AS A PARTY**

I/We _____

request to be granted party status in Application ZHB #2020-08,

Applicant: MHP Conshohocken, LLC.

Please Print Name and Address Below:

Please Sign Below:

**WHITEMARSH TOWNSHIP
ZONING HEARING BOARD AGENDA**

APRIL 22, 2020

7:00 PM

**THIS HEARING WAS POSTPONED FROM APRIL 1, 2020 DUE TO COVID-19 HEALTH EMERGENCY
CASE WILL BE CONDUCTED VIA THE INTERNET USING 'ZOOM' TELECOMMUNICATION TECHNOLOGY
INSTRUCTIONS FOR PARTICIPATING IN THE MEETING WILL BE POSTED ON THE TOWNSHIP'S WEBSITE**

**ALL OTHER APPLICATIONS ORIGINALLY SCHEDULED FOR APRIL 1, 2020 WILL BE RESCHEDULED TO A
LATER DATE. PLEASE CHECK AGENDAS TO BE POSTED**

___ Bacine ___ Behr ___ Casacio ___ Kramer ___ Weinstein ___ Rubin (Alt.)

1. CALL TO ORDER

2. ANNOUNCEMENTS & CORRESPONDENCE

- Applicants are requested NOT to remove signs after the hearing has concluded due to the current health emergency.

3. ZONING HEARING BOARD APPLICATION

- **ZHB#2020-08:** MHP Conshohocken, LLC, 10 Ridge Pike, Conshohocken, PA; Parcel #65-00-09997-00-9; Block 001; Unit 001; CRH-Commercial Retail (High) District. The Applicant is requesting a Special Exception under Section 116-104.A.(6)(b) to permit an American Family Care (AFC) Urgent Care clinic in the new building, currently under construction at the Property. This section allows any use permitted in the Institutional Overlay District as a special exception in the CR-H District. A "clinic" is a permitted special exception use in the Institutional Overlay District (Section 116-175.K.).

4. ADJOURNMENT

ZHB APPEAL #2020-08
SUMMARY

APPLICANT: MHP Conshohocken, LLC

PROPERTY LOCATION: Parcel #65-00-09997-00-9
Block 001, Unit 001
10 Ridge Pike
Conshohocken, PA 19428

ZONING DISTRICT: CRH – Commercial Retail (High) District

SUMMARY OF RELIEF REQUEST:

The Applicant is requesting a **Special Exception under Section 116-104.A.(6)(b)** to permit an American Family Care (AFC) Urgent Care clinic in the new building, currently under construction at the Property. This section allows any use permitted in the Institutional Overlay District as a special exception in the CR-H District. A “clinic” is a permitted special exception use in the Institutional Overlay District (Section 116-175.K.).

PRIOR DECISIONS

ZHB#2018-29 Variances / Parking
ZHB#2016-16 Variances/Cellular Antennas
ZHB#2010-20 Variance/Signage
ZHB#2009-34 Variance/Addition
ZHB#2006-58 Variance/Signage
ZHB#2004-47 Variance/Outdoor Dining – Denied
ZHB#2002-52 Variance/Outdoor Dining – Denied
ZHB#1997-26 Variance/Signage
ZHB#1997-07 Variance/Signage
ZHB#1996-18 Variance/Signage
ZHB#1994-18 Special Exception/Use
ZHB#1994-03 Variance & Special Exception/New Building, Parking & Use
ZHB#1975-23 Special Exception/Dumpsters
ZHB#1974-14 Special Exception/Use – Denied
ZHB#1962 Variance/Parking
ZHB#1956 Variance/Signage - Denied

Respectfully Submitted,

Charles L. Guttenplan, AICP
Director of Planning and Zoning/Zoning Officer

APPEAL TO ZONING HEARING BOARD
WHITEMARSH TOWNSHIP
COMMONWEALTH OF PENNSYLVANIA

APPEAL NO: 2020-08

Applicant/Appellant: MHP Conshohocken LLC

Address: 610 Conshohocken State Road, Penn Valley, PA 19072

Phone #: 215-825-3195 **Cell Number:** _____ **E-Mail:** mmaiorino@afcurgentcare.com

Owner: Glenmont Associates Limited Partnership

Address: c/o Brixmor Property Group, One Fayette Street, Suite 150, Conshohocken, PA 19420

Phone #: 212-869-3000 **Cell Number:** _____ **E-Mail:** _____

Location of the Property Involved: Whitemarsh Shopping Center, Ridge and Butler Pikes, Conshohocken PA, Store B-5

Block #: _____ **Unit #:** _____ **Parcel #:** _____

NATURE OF APPLICATION (Describe proposed use and/or construction: type of appeal requested and specific section(s) of Whitemarsh Township Zoning Code which is (are) relied upon):

Applicant requests a special exception pursuant to Section 116-104(A)(6)(b) to permit an AFC Urgent Care clinic/ physician office at the Property. The Property is located in the CR Commercial Retail District. A "clinic" is a permitted special exception use in the Institutional Overlay District (Section 116-175(k)) and is therefore permitted by special exception in the CR Commercial Retail District. "Physician office" is a use permitted by right in the CR Commercial Retail District.

GROUND(S) FOR APPEAL (State reasons for appeal and nature of hardship, if claimed):

****Attach additional sheets if necessary**

A "clinic" is a use permitted by special exception in the CR Commercial Retail District. The Applicant's proposed use is more specifically described in Exhibit "A" attached hereto and incorporated herein. The Applicant's proposed use satisfies all requirements for the grant of a special exception both under the Whitemarsh Township Zoning Code and under the Pennsylvania Municipalities Planning Code.

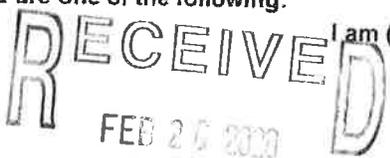
Legal Counsel (if represented): Alfred Fuscaldo, Esq. (Fuscaldo Law Group LLC)

Address: P.O. Box 147, Valley Forge, PA 19481

Phone #: 484-302-5481 **E-Mail:** al@fuscaldolaw.com

My (Our) signature(s) authorize(s) permission to pose my (our) property and permission to the Zoning Hearing Board and their representative to enter thereon for inspection purposes.

I (We) certify the information provided on this application and supporting documentation and plans are true and correct to the best of my (our) knowledge, information, and belief. You are required to submit proof that you are one of the following:



I am (We are)

- Owner(s) of Legal Title
- Owner(s) of Equitable Title
- Tenant(s) with permission of Owner(s) of Title (Enclose letter attesting to same)

WHITEMARSH TOWNSHIP
ZONING & ENGINEERING
Date: February 25, 2020

Signature of Applicant/Appellant: Matthew Maiorino
Managing Member, MHP Conshohocken LLC

Signature of Applicant/Appellant:

EXHIBIT "A"

American Family Care (AFC) is a network of physician practices that provides affordable, efficient and convenient healthcare to patients of all ages who require treatment for high-acuity, non-life-threatening illness or injury, including ailments such as colds, coughs, sore throats, ear infections, pinkeye, flu or flu-like symptoms, sprains, strains, fractures and minor lacerations. AFC also provides workers compensation and occupational health services to area employers with an offering that includes pre-employment physicals, breath alcohol testing, DOT physicals and drug testing.

AFC operates over 240 offices across the country. Each AFC office is open every day of the year – holidays and weekends included – from 8 am to 8 pm on weekdays and from 8 am to 5 pm on weekends. AFC accepts most major health insurances and neither appointments nor referrals are required. Every patient in an AFC practice is under the care of a board-certified Family Practice or Emergency Medicine physician and AFC's costs are typically five times less than the cost of an Emergency Room visit. The wait time to see a clinical professional in AFC offices averages less than 15 minutes and AFC strives to have every patient discharged within one hour from the time that they register. Across AFC's entire network of care, AFC averages 65 minute door-to-door service. AFC achieves this through a digital patient check-in system that is accessible to patients; in-clinic, online, and via mobile app. An AFC patient will never be "admitted" or stay overnight.

AFC averages 3-4 patients per hour, and its clinics reach an average patient volume of 40 patients per day. As a result, AFC patients have a minimal parking impact. At 40 patients per day, AFC's operational needs will dictate staffing of approximately five employees. Staff parking for this AFC will be located behind the building.

After over 35 years of operation, AFC knows that its peak hours of operation will occur between 8-10am (40%) and 4-6pm (30%). Based on AFC's average patients per day, this equates to; 8-10am – 16 patients per day, 4-6pm – 12 patients per day, Other – 12 patients per day.

AFC is not an Emergency Room, a specialty clinic, or a surgical center. AFC is a physician practice that offers an affordable and efficient alternative to the Emergency Department with more convenient hours and services than many traditional primary care options.

AFC physician offices maintain a digital X-Ray platform for basic imaging requirements and that are most commonly used to view possible sprains or fractures, but never for treatment of major trauma, compound fractures or any other life-threatening ailment that would be better treated in a hospital. AFC does not "set" or cast fractures, nor does AFC treat chronic illnesses presented by its patients, but rather AFC stabilizes its patients and refers such injuries or illnesses to the appropriate specialty practice physicians in the area or to a primary care physician, as required. AFC also maintains a small laboratory onsite to support basic phlebotomy and the various types of "rapid" testing that are commonly found in a physician's office (i.e., strep, flu, mono, etc.). AFC does not use medical gases in its lab and the vast majority of the tests ordered by AFC physicians are sent out to a third-party laboratory for interpretation, the results of which are communicated back to the AFC clinical team over a secure electronic system and directly into AFC's Electronic Medical Record platform.

AFC patients always arrive to the AFC practice under their own power, never by ambulance, and in the rare instance when a patient arrives with a condition that AFC physicians deem critical, AFC dials 911 immediately and the patient is cared for by an AFC physician until EMT's arrive. With AFC's "crash cart" and defibrillator on hand, AFC physicians have the training, experience and ability to follow emergency protocols to support any critical patient until help arrives by administering aspirin, epi, intubation, EKG, etc.

AFC physicians order and administer basic medications (ibuprofen, Tylenol, etc.) and vaccinations required for school, work, travel or following injury (Varicella, Hepatitis, TDap, etc.), but do not dispense any medications, nor does AFC ever maintain narcotics or any kind of addictive, controlled substances on the premises.

AFC prides itself on being good corporate citizens by sponsoring local not-for-profits and community events that promote the health and wellness of those who live, study and work in the area.

The proposed AFC location is located within the approximately 8973sf retail space approved by Whitmarsh Township and shown on the recorded Site Plan prepared by Langan dated March 29, 2019, last revised December 4, 2019, a copy of which Site Plan is submitted as part of this application. The proposed AFC location is an approximately 3400sf portion of that approved retail space and is highlighted in yellow on the Site Plan.

A copy of the floorplan for this proposed AFC location is attached to this application as Exhibit "B".

Elevations of this proposed AFC location is attached to this application as Exhibit "C".

Photos of representative AFC locations are attached to this application as Exhibit "D".

Charles L. Guttenplan
Director of Planning and Zoning
Whitemarsh Township
616 Germantown Pike
Lafayette Hill, PA 19444

March 6, 2020

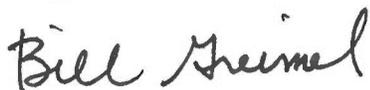
Re: Whitemarsh Shopping Center
American Family Care (AFC)- Special Exception Application

Dear Mr. Guttenplan,

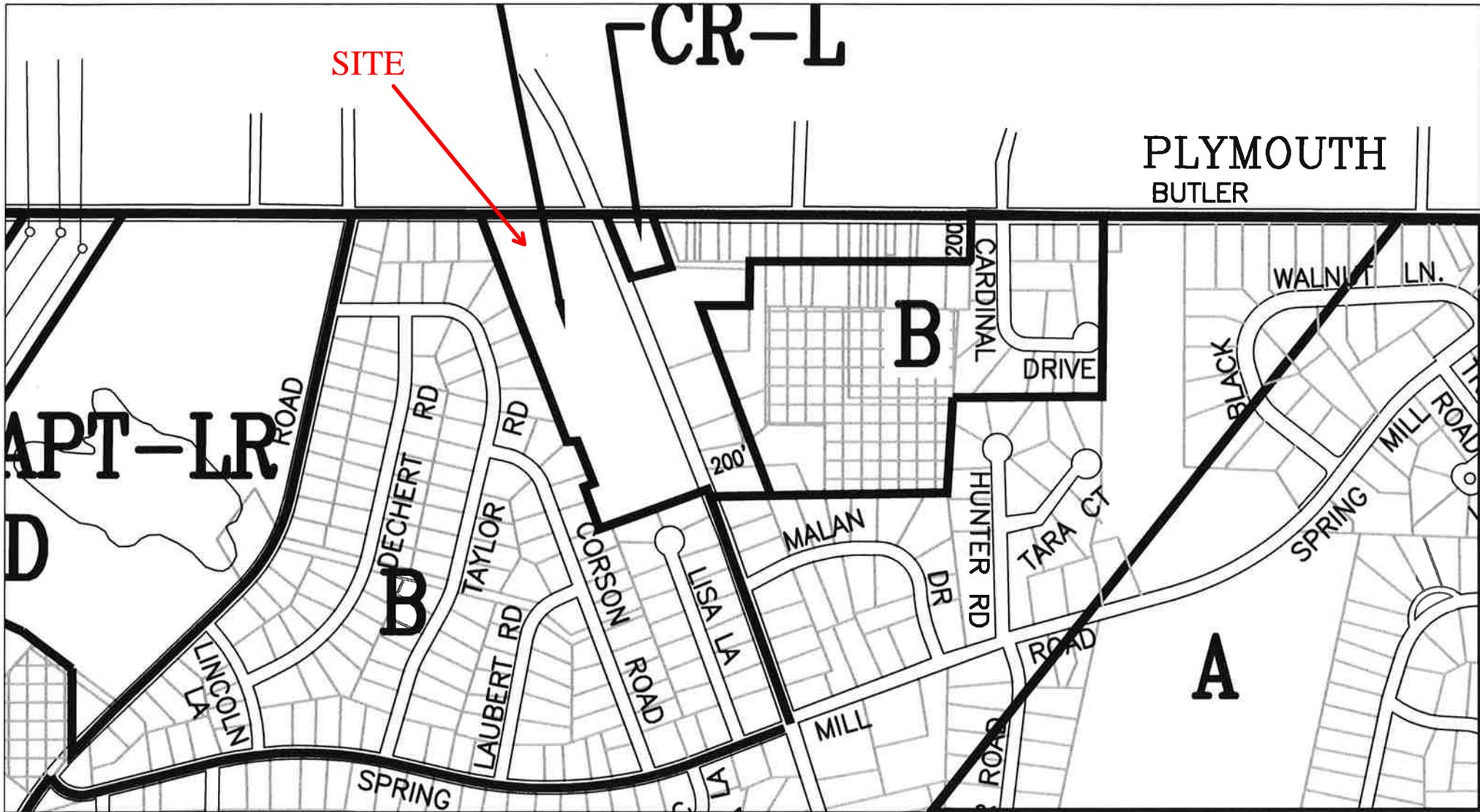
Please accept this letter as authorization by the ownership of this property to allow AFC (Tenant under Lease) to make application for Special Exception.

If you have any questions on this matter please do not hesitate to contact me at your earliest convenience.

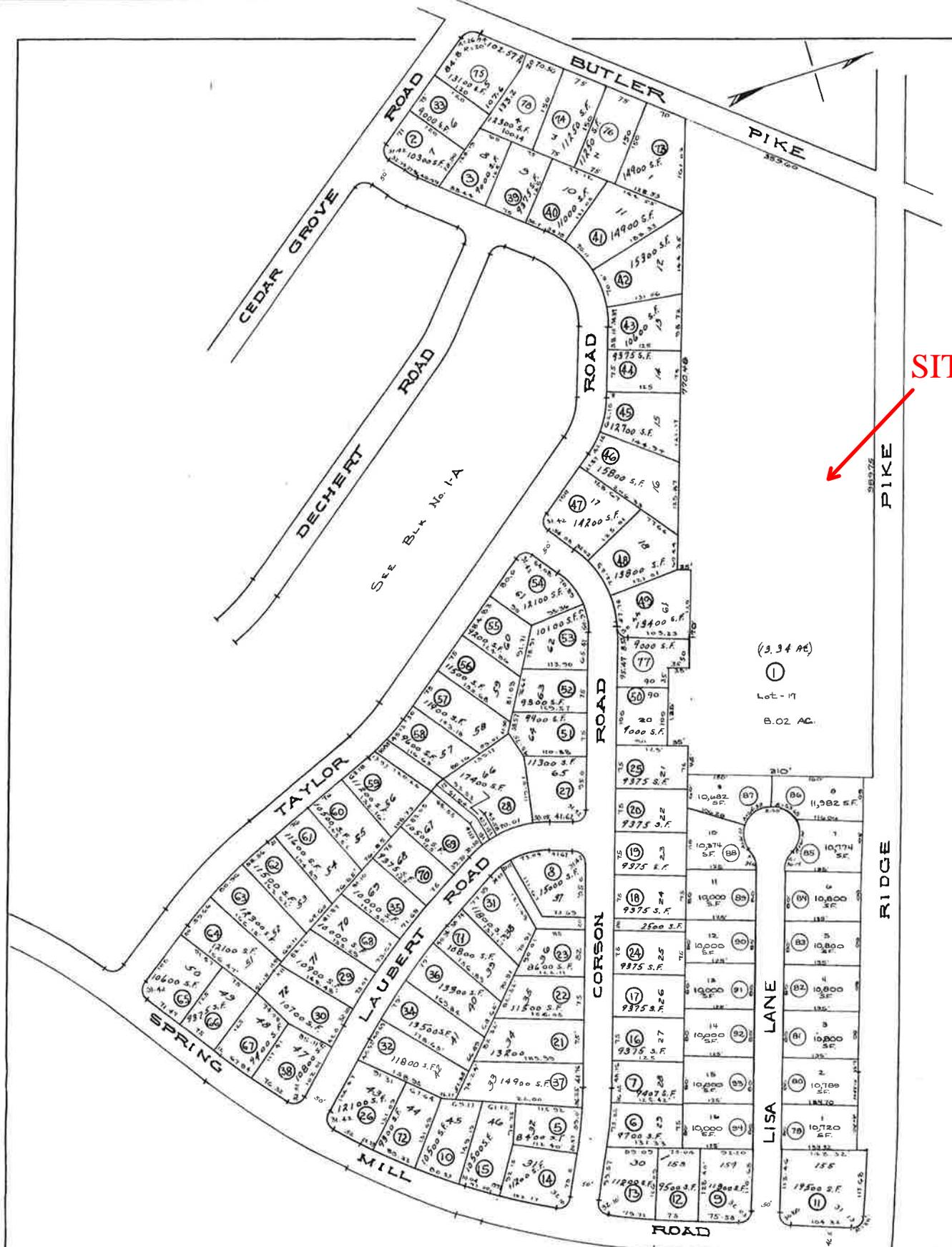
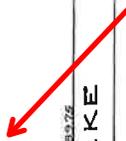
Regards,



Bill Greimel
Vice President/ Redevelopment



SITE



WHITEMARSH TOWNSHIP

BLOCK NO. 1

SCALE 1" = 100'

GENERAL SITE NOTES:

- 1. THE CONTRACTOR SHALL FURNISH INITIAL TEST AND COMPLETE ALL WORK TO THE SATISFACTION OF THE ENGINEER AND OWNER IN ACCORDANCE WITH THE CONTRACT DOCUMENTS...

SITE CONSTRUCTION NOTES:

- 1. ALL UTILITIES SHALL BE LOCATED AND DEPTH VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION...

OVERALL SITE SUMMARY

Table with 2 columns: Category and Value. Includes District Summary, Total Existing Building, Total Existing Parking, etc.

EXISTING PARKING STALL SUMMARY

Table with 3 columns: Dimensions, Orientation, Quantity. Lists various parking stall sizes and their counts.

PROPOSED PARKING STALL SUMMARY

Table with 3 columns: Dimensions, Orientation, Quantity. Lists proposed parking stall sizes and their counts.

WHITMARSH SHOPPING CENTER

Table with 2 columns: Category and Value. Includes Zoning Summary, Permitted Uses, Area of Site, etc.

RECORDING INFORMATION

OWNER OF RECORD: GLENHART ASSOCIATES, LP. ENGINEER: BRIAN M. COOK, P.E. DATE: 1/15/20.

TRUCK DELIVERY NOTES:

- 1. THESE TRUCK AND DELIVERY LIMITATIONS SHALL SUPERSEDE THOSE AS NOTED ON THE 2015 LAND DEVELOPMENT PLAN AND ANY OTHER PREVIOUSLY RECORDED NOTES...

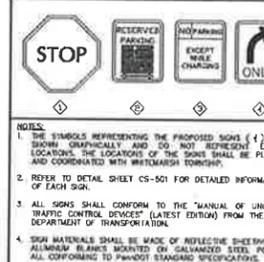
WAIVERS GRANTED

- 1. 100-304 - FROM THE REQUIREMENT TO PROVIDE SIDEWALKS AND STREET TREES ALONG ROSE PIKE...

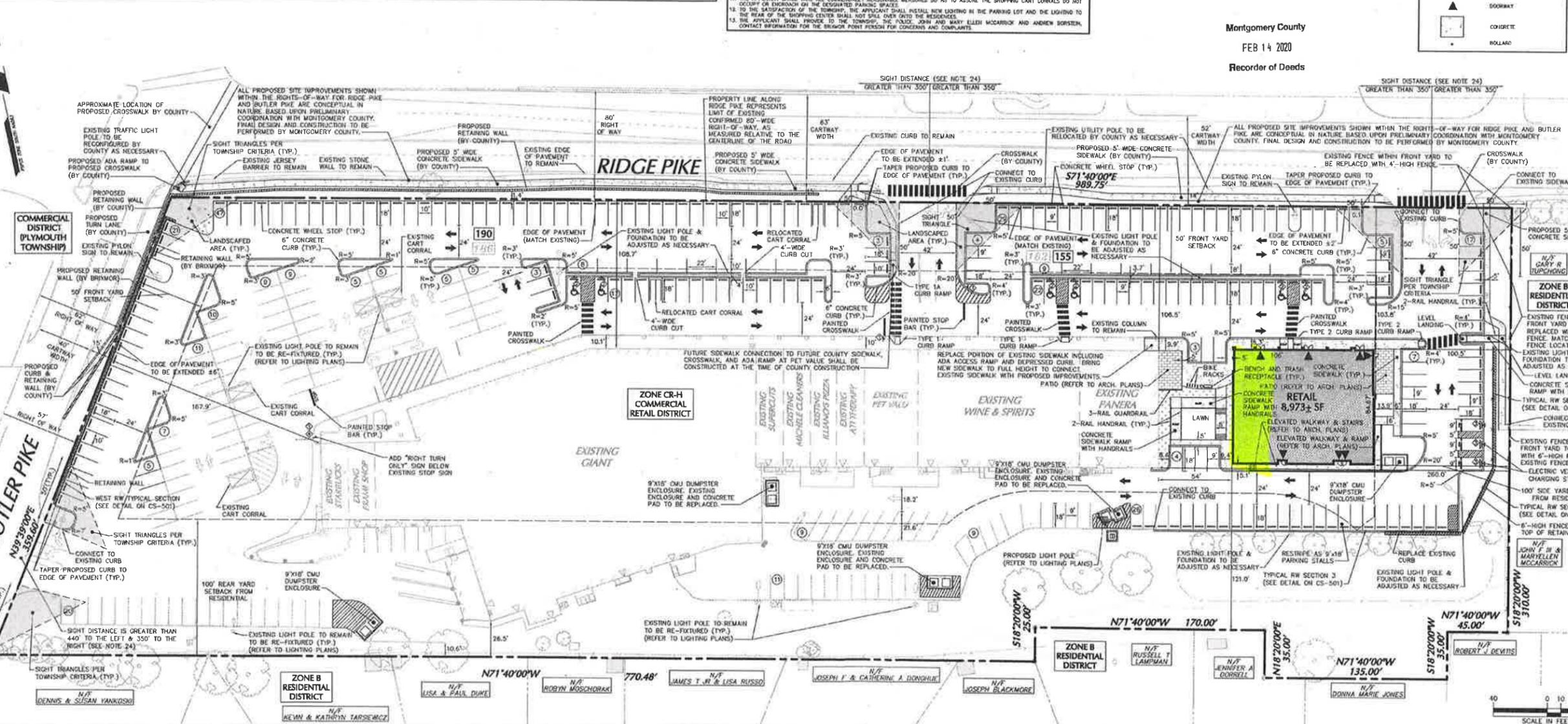
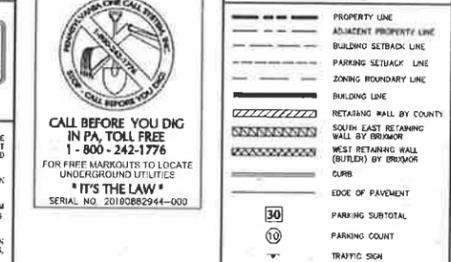
ZONING HEARING BOARD CONDITIONS OF APPROVAL

- 1. ALL USE AND DEVELOPMENT PERMITTED BY THIS DISTRICT SHALL SUBSTANTIALLY CONFORM TO THE EXHIBITS AND TESTIMONY PRESENTED BY THE APPLICANT...

SIGN LEGEND



LEGEND



Montgomery County Recorder of Deeds FEB 14 2020. CALL BEFORE YOU DIG IN PA. TOLL FREE 1-800-242-1776.

Table with 2 columns: Date and Description. Lists revision history from 12/4/19 to 8/14/19.

Professional Engineer seal for Brian M. Cook, PA Lic. No. PE061782, dated 1/15/20.

LANGAN logo and address: 1818 Market Street, Suite 3300, Philadelphia, PA 19103.

WHITMARSH SHOPPING CENTER SITE CONSTRUCTION PLAN. Drawing Title.

Project No. 220076701, Date 29 MARCH 2019, Scale 1"=40', Drawing No. CS-101, SHEET 6 OF 26.



WHITEMARSH CENTER EXPANSION

BUTLER PIKE & RIDGE PIKE
CONSHOHOCKEN, PA 19428
9423 5/8/18

BRIXMOR

BRIXMOR PROPERTY GROUP - NEW YORK

ONE FAYETTE STREET
CONSHOHOCKEN, PENNSYLVANIA 19428

Ignarri Lummis
ARCHITECTS

601 Chapel Avenue East • Cherry Hill, New Jersey 08034
P 856.428.8677 F 856.429.6379 ignarrilummis.com



WHITEMARSH CENTER EXPANSION

BUTLER PIKE & RIDGE PIKE
CONSHOHOCKEN, PA 19428
9423 5/8/18

BRIXMOR

BRIXMOR PROPERTY GROUP - NEW YORK

ONE FAYETTE STREET
CONSHOHOCKEN, PENNSYLVANIA 19428

 **Ignarri Lummis**
ARCHITECTS

601 Chapel Avenue East • Cherry Hill, New Jersey 08034
P 856.428.8977 F 856.429.6379 ignarrilummis.com

Exhibit "D"

Representative AFC Urgent Care Photos



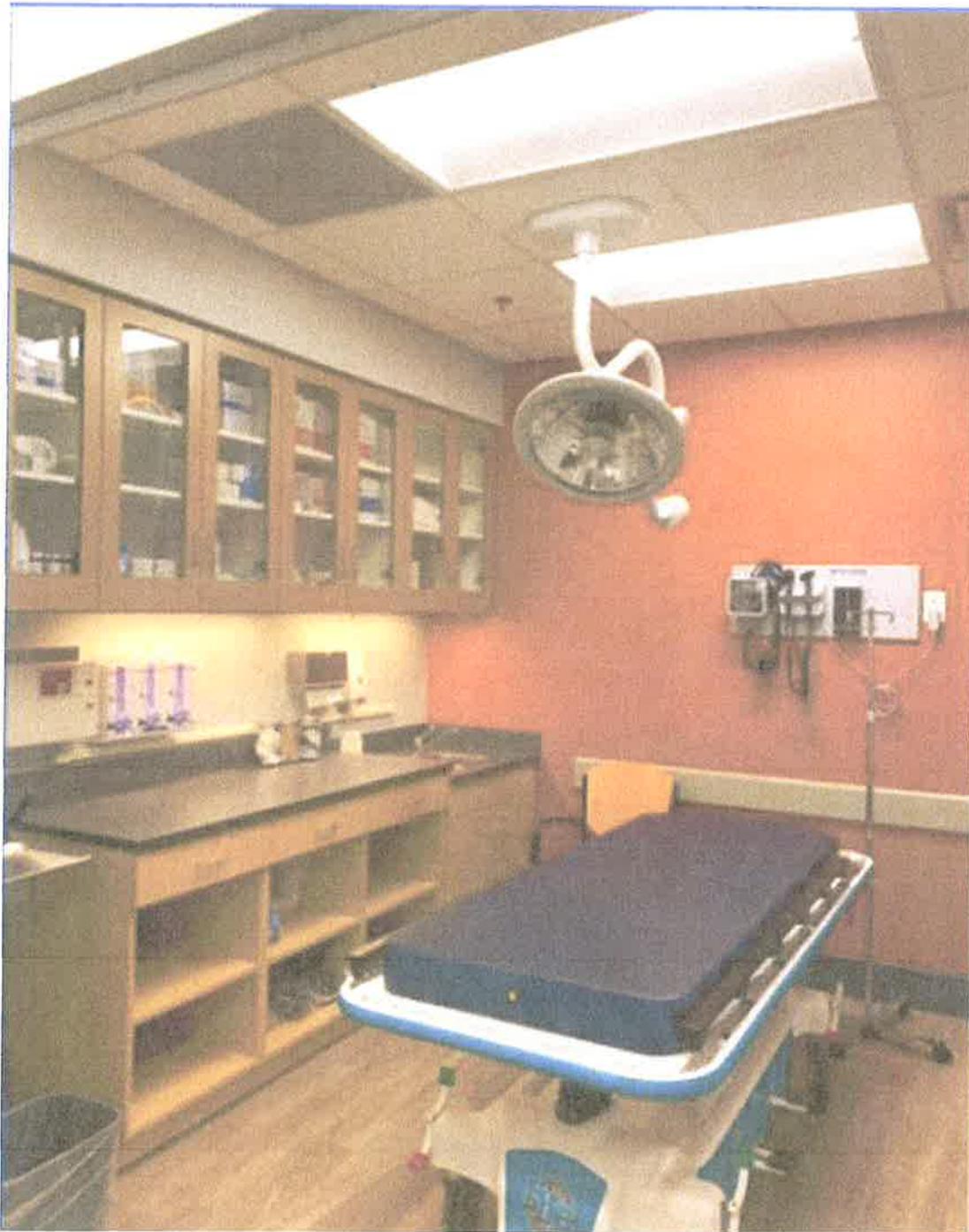
Sample AFC Signage



Sample AFC Waiting Room

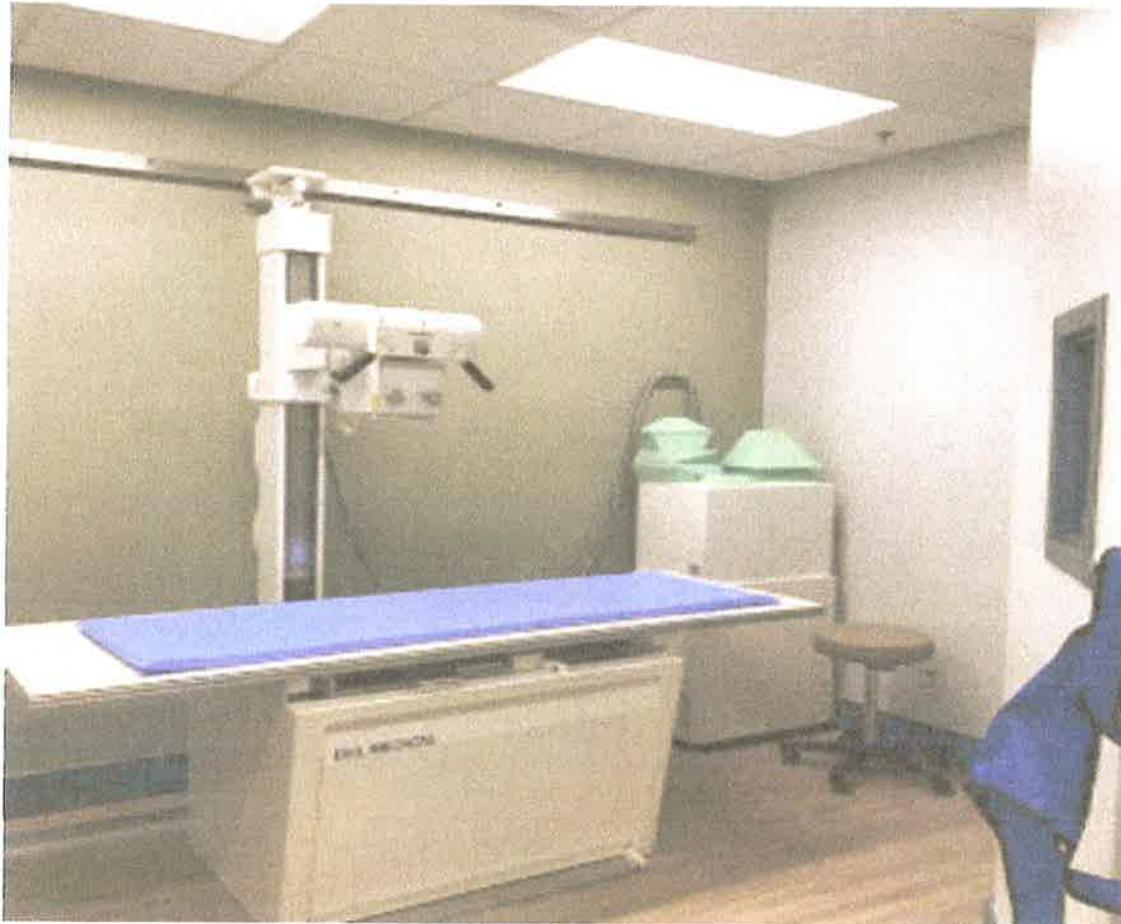


Sample AFC Signage



Sample AFC Examination Room

Sample AFC Examination Room



BEFORE THE ZONING HEARING BOARD OF WHITEMARSH TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: BRIXMOR PROPERTY GROUP

NO. 2018-29

DECISION

I. BACKGROUND

The Applicant, Brixmor Property Group, filed an application with the Zoning Hearing Board, regarding the property located at 10 E. Ridge Pike. Public hearings were conducted on December 5, 2018, January 9, 2019 and February 6, 2019.

The Applicant proposed to construct a new 8,973 square foot multi-tenant retail building and make modifications to the parking layout and traffic circulation within the Whitemarsh Shopping Center. The property is zoned CR-H Commercial Retail High District.

The Applicant requested the following relief:

1. A variance from Section 116-24.D(3), so as to permit the existing 49% of the rear yard area to be devoted to accessory uses (90° parking in place of angled parking), rather than the 30% allowed.
2. Variances from Section 116.93.E and 116.24.E(3)(a), so as to permit modifications to parking in the front yard adjacent to Butler Pike.
3. A variance from Section 116-184, so as to permit 340 parking spaces, rather than the 1,717 spaces required.
4. A variance from Section 116-184.E, so as to permit parking areas and double rows of parking to be separated from each other by planting strips less than 10 feet in width.
5. A variance from Section 116-184.F, so as to permit several new parking spaces located less than the required 10 feet from the proposed building.

The Zoning Hearing Board members participating in the hearings were Marc Weinstein, who served as Chair, Robert A. Bacine, James Behr, Stanley A. Casacio and William E. Kramer. The Applicants were represented by Marc Kaplin, Esquire. The following neighboring property owners entered appearances as parties in opposition to the application:

John and Mary Ellen McCarrick

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. After the hearings and public discussion, the Board voted February 6, 2019 to grant the application, by a vote of 4 to 1, with Mr. Behr dissenting. The Board issues Findings of Fact and Conclusions of Law in support of the Decision and Order.

II. FINDINGS OF FACT

1. The Applicant is Brixmor Property Group, which owns and operates the Whitemarsh Shopping Center located at the corner of Ridge Pike and Butler Pike (10 E. Ridge Pike), Whitemarsh Township, Montgomery County, Pennsylvania.

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

TOWNSHIP EXHIBITS:

- T-1A Proof of Publication
- T-1B Meeting Notification
- T-1C Posting of Notice
- T-2 Zoning Map
- T-3 Tax Map
- T-4 Planning Commission Report dated November 28, 2018

APPLICANT'S EXHIBITS:

- A-1 List of Existing Legal Non-Conformities
- A-2 List of Variances Granted in 1994
- A-3 List of Requested Variances
- A-4 Brian M. Conlon, PE - CV
- A-5 Aerial
- A-6 Whitemarsh Township Zoning Hearing Board Decision of April 7, 1994
- A-7 Charles L. Guttenplan, AICP April 18, 2018 Review Letter
- A-8 Wendi Kapustin, AICP August 28, 2018 Correspondence
- A-9 Charles L. Guttenplan, AICP September 24, 2018 Email Response
- A-10 Aerial Overlay Photograph
- A-11 Sketch Plan
- A-12 Plan
- A-13 Land Development Plan
- A-14 Peace and Good Order Ordinance
- A-15 Excerpt From Tenant Leases
- A-16 Section 51-1 of the Whitemarsh Township Code
- A-17 Parking Lot Buffering Exhibit
- A-18 Modified Parking Lot Buffering Exhibit

OBJECTORS' EXHIBITS:

McCarrick-1 - Statement

3. The Applicant proposes to construct a new 8,973 square foot multi-tenant retail building and make modifications to the parking lot layout and traffic circulation within the Whitemarsh Shopping Center. (N.T. 12/05/18, pp. 14-20, 44, Exhibits A-11, A-12, A-13)
4. The Property is located in the Commercial Retail High District (CRH). (N.T. 12/05/18, p. 18, Exhibit T-2)
5. The Property measures approximately 8 acres. (N.T. 12/05/18, pp. 26-27, Exhibits A-11, A-13)
6. The Township Planning Commission unanimously recommended approval of the application. (Exhibit T-4)
7. The Applicant presented the testimony of Brian Conlon, PE, as an expert in civil engineering ("Engineer"). (N.T. 12/05/18, pp. 24-26, Exhibit A-4)
8. The Engineer prepared the plans showing the existing shopping center as well as the plans for the new building and redesigned parking lot. (N.T. 12/05/18, p. 25, Exhibits A-11, A-12, A-13)
9. The property has numerous zoning nonconformities, and has been the subject of previous Zoning Hearing Board relief, most notably, a 1994 Decision which permitted a total of 390 parking spaces for that expansion of the shopping center. (N.T. 12/05/18, pp. 28-40, Exhibits A-1, A-2, A-6, A-7, A-8, A-9)
10. The Applicant intends to improve the parking and circulation of the shopping center and add curbs, sidewalk, pedestrian accesses, landscaped islands in the parking lot, lighting and trash enclosures. (N.T. 12/05/18, pp. 45-49, 102)
11. The Applicant will install new landscaping and fencing along the rear of the shopping

center. (N.T. 12/05/18, p. 49, Exhibit A-18)

12. There will be a slight reduction in impervious coverage. (N.T. 12/05/18, p. 54)

13. The Applicant's Engineer presented testimony supporting a finding that the parking requirement of 1,717 parking spaces is not necessary for the proper functioning of the shopping center. (N.T. 12/05/18, pp. 66-93)

14. Brixmor has the authority with its tenants' leases to require tenants' employees to park to the rear of the building and to comply with the Township noise ordinances. (N.T. 12/05/18, pp. 70-74, N.T. 01/09/19, p. 12, Exhibit A-15)

15. The Applicant will no longer rent out space in the parking lot for seasonal sales. (N.T. 12/05/18, pp. 86-90)

16. The Land Development Plan from 1995 required posting of signage associated with the Panera Bread restaurant prohibiting trucks over 30 feet long. (N.T. 01/09/19, pp. 3-6, Exhibit A-13)

17. The Whitemarsh Township Peace and Good Order Ordinance restricts noise from truck loading and unloading operations between 6:00 P.M. and 7:00 A.M. (N.T. 01/09/19, pp. 7-10, Exhibit A-14)

18. Concerns were raised by the Board and the neighboring property owners that Brixmor has not been enforcing policies over the last 12 years which would control employee parking, truck traffic, loading and unloading operations and noise, in spite of recent complaints; however, most recently Brixmor has been diligent in responding to neighbor complaints. (N.T. 12/05/18, pp. 95-105, 122, 123; N.T. 01/09/19, pp. 6-19; N.T. 02/06/19, pp. 41-42, 91-94)

19. Brixmor affirmatively agreed to take on the responsibility for the tenants' failures to comply with the noise ordinances of the Township and the conditions imposed by any approval hereunder. (N.T. 01/09/19, pp. 15-17, 32)

20. The Applicant will install dense 6' -12' high landscaping, a 3' wall and solid 6' fencing

to buffer the neighboring properties to the side and rear of the shopping center. (N.T. 01/09/19, pp. 38-52; N.T. 02/06/19, pp 5-6, Exhibit A-18)

21. Any restaurant planned for the 8,973 square foot building would require a Special Exception not granted herein, but the Applicant agreed that no such restaurant would exceed 3,500 square feet. (N.T. 01/09/19, pp. 92, 131, 143-144, 164-167)

22. Objectors, John and MaryEllen McCarrick, expressed concerns regarding lights, car exhaust, trash and outdoor dining. (N.T. 01/09/19, pp. 56-90, 145-149)

23. The Applicant agreed to not install 3 parking spaces shown on the plans and shall be required to post "No Idling" signs at the other parking spaces closest to Mr. and Mrs. McCarrick's property. (N.T. 01/09/19, pp. 78-90, 157-158; N.T. 02/06/19, p. 6, Exhibit A-18)

24. The proposal reduces the existing parking spaces to no less than 340 spaces. (N.T. 01/09/19, pp. 112-113, 118-128)

25. There are still approximately 5 more parking spaces shown on the Plans in addition to the 340 requested, and the removal of the 3 spaces near the McCarrick property will not affect the relief requested. (N.T. 01/09/19, pp. 157-158)

26. The property is unique in that the current use includes a number of zoning nonconformities existing for years, and memorialized by prior Decisions of this Board (Exhibits A-1, A-2)

27. Except for the variance from the number of required parking spaces, all relief requested is merely related to reconfiguration of existing parking areas, which conditions exist either as lawful nonconformities or by prior relief granted, and therefore such requested relief is de minimis in nature.

28. The Applicant's engineer presented uncontroverted, persuasive expert evidence that the proposed parking count of 340 parking spaces exceeds the parking required for the existing and proposed uses. (N.T. 12/05/18, pp. 66-83; N.T. 02/06/19, pp. 6-9)

29. The parking required under the Ordinance, 1,717 parking spaces, is an unnecessary requirement causing a hardship as applied to this particular property considering the existing nonconformities and past relief granted, as well as current and proposed uses.

30. With reference to the variances requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, the Board determines the following:

- A. There are unique physical circumstances and conditions, including the size of the property as related to the existing use, and existing lawful nonconforming conditions peculiar to this property, creating an unnecessary hardship which justifies the granting of the parking variances.
- B. The Applicant presented uncontroverted credible evidence for the Board to conclude that the property cannot be developed, and, for that matter, cannot be modified, updated, or improved, in strict conformity with the Zoning Ordinance.
- C. The hardship arises from the physical circumstances and conditions unique to this property, and has not been created by the Applicant.
- D. The granting of the variances will not frustrate the intent of the Zoning Ordinance, and considering the conditions imposed by the Board, the proposal will not adversely impact the development of adjoining properties, or alter the essential character of the neighborhood.
- E. The variances requested are the minimum variances to afford relief.

31. Under Section 116-217 of the Zoning Ordinance, the Board determines the following:

- A. The use will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood, and the use of property adjacent to the area of the proposed use will be adequately safeguarded by the conditions imposed by the Board.
- B. The proposed use will not have a harmful effect on local vehicular and pedestrian traffic.
- C. The proposed use is consistent with the legislative intent of the CR-H Commercial Retail High District.
- D. The surrounding neighborhood will not be subjected to objectionable noise, lighting, glare, heat, ventilation, smoke, fumes, vapors, dust, dirt, gases or radioactive or electrical disturbances from the proposed use, provided that the Applicant strictly complies with the extensive conditions imposed by this Decision and Order.

E. The proposed use will not unduly burden sanitary, school, police, fire, park or other public facilities.

32. The majority of the relief requested is de minimis in nature, and the required parking count provisions of the Zoning Ordinance, strictly applied, impose an unnecessary hardship on the property and the Applicant. Therefore, the requested variances should be granted.

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 consider various factors, including economics, and the characteristics of the surrounding neighborhood, in determining whether a variance would be appropriate. The Court also held that, when considering a dimensional variance, a Zoning Hearing Board should adopt a somewhat more relaxed standard of scrutiny than when the Board is considering a use variance.

The case before the Board involves the request for dimensional variances, most of which are technical in nature, represent modifications to existing nonconforming conditions, or conditions existing as a result of prior relief granted, and are now required only because of the much-improved reconfiguration of the parking lot. Therefore, four (4) of the variance requests (involving five sections of the Zoning Code) are de minimis, requiring no showing of hardship.

Virtually any modification to the shopping center would require zoning relief. The building addition is permitted from use and dimensional standpoints. The variances apply to the parking lot accessory to the permitted expansion of the use. The parking count variance request is fully supported by the finding of unnecessary hardship. It is impossible for the Applicant to install 1,717 parking spaces with required drive aisles and landscaping for this shopping center. Even if all of the required parking spaces could be installed, there would be vast areas of impervious asphalt virtually unused, and there is no practical reason to require same. The hardship imposed by the Zoning

Ordinance is clearly unnecessary, as the Applicant could never comply with the parking provisions on this particular property. So, the Board is left with a decision as to what degree to grant relief from the parking provisions, or just deny virtually every request to modify, add to, or simply improve the operation of the shopping center. This is not a situation where a vacant lot can support a building and required parking for a permitted use, but the applicant wishes to construct a larger building on the lot with less parking merely for economic reasons. The conditions causing the hardship on this property currently exist, and it is impossible for the Applicant to comply with the parking requirements for the existing permitted uses, even without adding the additional retail space. The Applicant simply cannot comply with the current parking requirements as applied to this property because of the size of the lot, numerous nonconforming conditions, and conditions existing as a result of prior relief from this Board. Under these circumstances, the Board is authorized to grant the dimensional variance for the reduction of parking spaces. Monmalt Partners v. Zoning Hearing Board of the Municipality of Monroeville. 2017WL1737927 (Unreported Commonwealth Court Decision cited for its persuasive value and not as binding precedent). The expert testimony of the Applicant's engineer has assured the Board that the parking variances would have no adverse impact, the proposed parking will be adequate, and the shopping center will now function better than ever before.

The Zoning Hearing Board is sympathetic to the concerns of the Objectors regarding lights, car exhaust and trash, and the Board has imposed strict conditions in this approval to address such concerns. It must be noted however, that the Objectors' main concerns were with reference to the operation of the shopping center in general, not the parking count. Their main complaints were with reference to the area of existing lawful parking areas near their property. In fact, the Objectors advocated for a further reduction in parking spaces in that area of the lot. It must also be noted that the conditions about which the Objectors complained must be expected to exist when one buys a house adjoining the rear of an existing shopping center. No doubt, the proposed improvements and

extensive buffer proposed will help to limit and control such objectionable conditions.

IV. CONCLUSIONS OF LAW

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application.
2. The Applicant is the owner/operator of the property in question.
3. The Applicant and the subject matter are properly before the Board. The Applicant has standing to submit the application. The Objectors have standing to oppose 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 variances requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, the Board determines the following as a matter of law:
 - A. There are unique physical circumstances and conditions, including the size of the property as related to the existing use, and existing lawful nonconforming conditions peculiar to this property, creating an unnecessary hardship which justifies the granting of the parking variances.
 - B. The Applicant presented uncontroverted credible evidence for the Board to conclude that the property cannot be developed, and, for that matter, cannot be modified, updated, or improved, in strict conformity with the Zoning Ordinance.
 - C. The hardship arises from the physical circumstances and conditions unique to this property, and has not been created by the Applicant.
 - D. The granting of the variances will not frustrate the intent of the Zoning Ordinance, and considering the conditions imposed by the Board, the proposal will not adversely impact the development of adjoining properties, or alter the essential character of the neighborhood.
 - E. The variances requested are the minimum variances to afford relief.
6. Under Section 116-217 of the Zoning Ordinance, the Board determines the following, as a matter of law:
 - A. The use will not substantially injure or detract from the use of neighboring property or from the character of the neighborhood, and the use of property adjacent to the area of the proposed use will be adequately safeguarded by the conditions imposed by the Board.

- B. The proposed use will not have a harmful effect on local vehicular and pedestrian traffic.
- C. The proposed use is consistent with the legislative intent of the CR-H Commercial Retail High.
- D. The surrounding neighborhood will not be subjected to objectionable noise, lighting, glare, heat, ventilation, smoke, fumes, vapors, dust, dirt, gases or radioactive or electrical disturbances from the proposed use, provided that the Applicant strictly complies with the extensive conditions imposed by this Decision and Order.
- E. The proposed use will not unduly burden sanitary, school, police, fire, park or other public facilities.

7. The majority of the relief requested is de minimis in nature, and the required parking count provisions of the Zoning Ordinance, strictly applied, impose an unnecessary hardship on the property and the Applicant. Therefore, the following variances should be granted on a de minimis basis:

- 1. A variance from Section 116-24.D(3), so as to permit the existing 49% of the rear yard area to be devoted to accessory uses (90° parking in place of angled parking), rather than the 30% allowed.
- 2. Variances from Section 116.93.E and 116.24.E(3)(a), so as to permit modifications to parking in the front yard adjacent to Butler Pike.
- 3. A variance from Section 116-184.E, so as to permit parking areas and double rows of parking to be separated from each other by planting strips less than 10 feet in width.
- 4. A variance from Section 116-184.F, so as to permit several new parking spaces located less than the required 10 feet from the proposed building.

The following variance should be granted on the basis of hardship:

A variance from Section 116-184, so as to permit 340 parking spaces, rather than the 1,717 spaces required.

V. OPINION

Upon consideration of the Findings of Fact and Conclusions of Law, the Board hereby determines that the application should be granted as set forth hereinafter in the Decision and Order.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO.:	2018-29	FIRST HEARING DATE:	12/05/18
APPLICANT:	Brixmor Property Group	CONT'D HEARING DATES:	01/09/19
	Block 001, Unit 001		02/06/19
	10 East Ridge Pike	VOTE:	02/06/19
	Conshohocken, PA 19428	WRITTEN DECISION:	03/12/19
	CR-H – Commercial Retail High District	COPY MAILED:	03/12/19

After completion of public hearings on the above-referenced Application, pursuant to public notice as required by law, the Zoning Hearing Board of Whitemarsh Township decided and orders as follows:

1. A variance from Section 116-24.D(3), so as to permit the existing 49% of the rear yard area to be devoted to accessory uses (90° parking in place of angled parking), rather than the 30% allowed, is **GRANTED**.
2. Variances from Section 116.93.E and 116.24.E(3)(a), so as to permit modifications to parking in the front yard adjacent to Butler Pike, are **GRANTED**.
3. A variance from Section 116-184, so as to permit a minimum of 340 parking spaces, rather than the 1,717 spaces required, is **GRANTED**.
4. A variance from Section 116-184.E, so as to permit parking areas and double rows of parking to be separated from each other by planting strips less than 10 feet in width, is **GRANTED**.
5. A variance from Section 116-184.F, so as to permit several new parking spaces located less than the required 10 feet from the proposed building, is **GRANTED**.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development permitted by this Decision shall substantially conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
2. The Applicant shall apply for and obtain all permits required by the Township Codes in a timely manner.
3. The Applicant shall comply with all requirements of the Township related to Land Development approvals. The Applicant shall provide copies of the Land Development Plans to the Objectors, McCarrick, as well as notice of any public meetings with respect to such proceedings.
4. The Applicant shall install and maintain new 6' high fencing (to the extent permitted by Code) and 6'-12' high landscaping along the eastern boundary of the property, as shown on the plan marked as Exhibit A-18, to the satisfaction of the Township.
5. The Applicant shall not permit seasonal sales with tents or trailers.
6. The Applicant shall take all commercially reasonable measures, to the satisfaction of the Township, and to the maximum extent permitted by law, including, but not limited to, actions in court, so as to assure that tenants require employees to utilize parking behind the buildings. All future leases shall also require same.
7. The Applicant shall take all commercially reasonable measures, to the satisfaction of Township, and to the maximum extent permitted by law, including, but not limited to, actions in court, so as to assure that tenants comply with the Peace and Good Order Ordinance and noise ordinances of the Township as related to truck deliveries and trash removal.
8. Any restaurant in the proposed new building (which would require a future Special Exception not granted hereby) shall not exceed 3,500 square feet.
9. The Applicant shall post signs prohibiting cars or trucks idling near the adjacent McCarrick property, and the Applicant shall take all commercially reasonable measures to enforce this restriction.
10. The Applicant shall take all commercially reasonable measures so as to assure that trash is regularly cleared from the property, and that trash remains in the trash containers.
11. The Applicant shall take all commercially reasonable measures so as to assure the shopping cart corrals do not occupy or encroach on the designated parking spaces.

12. To the satisfaction of the Township, the Applicant shall install new lighting in the parking lot and the lighting to the rear of the shopping center shall not spill over onto the residences.
13. The Applicant shall provide to the Township, the Police, John and Mary Ellen McCarrick, and Andrew Borstein, contact information for the Brixmor point person for concerns and complaints.

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 copy mailing date set out above.

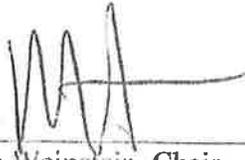
The Board reserves the right to supplement these Findings of Fact and Conclusions of Law in the event of an appeal.

Section 116-223 of the Zoning Ordinance provides as follows:

Expiration of granted appeals. Unless otherwise specified by the Board, all approvals granted by the Zoning Hearing Board shall automatically expire 365 days after the date of the decision unless: (1) the applicant has acted upon the approval by obtaining the required permit(s) and paying the prescribed fees for same, or (2) the Zoning Hearing Board decision is on appeal to the courts, at which point, the approval, if upheld on appeal, shall expire 365 days after final determination on appeal.

The Zoning Hearing Board may extend the expiration date of approvals for a 180 day period upon request by the applicant, provided that the applicant is, in the opinion of the Zoning Hearing Board, diligently pursuing governmental and/or regulatory approvals as required. Requests for extensions shall be in writing and submitted to the Zoning Hearing Board at least 30 days before any applicable expiration date. Only one (1) extension may be provided for any application.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD:



Marc Weinstein, Chair



Stanley Casacio, Vice Chair



Robert A. Bacine



James Behr

DISSENT

Alternate



William E. Kramer

Randi Rubin

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO.:	2016-16	FIRST HEARING DATE:	07/13/16
APPLICANT:	Cellco Partnership d/b/a	CONT'D HEARING DATES:	08/03/16,
	Verizon Wireless		10/05/16
	Block 001, Unit 001	VOTE:	10/05/16
	10 East Ridge Pike	WRITTEN DECISION:	10/11/16
	Conshohocken, PA 19428	COPY MAILED:	10/11/16
	CR-H – Commercial Retail District		

The Applicant proposes to replace an existing 25' light pole with a 30' light pole and add two (2) cellular antennas at a height of 30' 9". The Applicant will also install an equipment cabinet and utility backboard on a 36 square foot concrete pad.

After completion of a public hearing on the above-referenced Application, pursuant to public notice as required by law, the Zoning Hearing Board of Whitemarsh Township decided and orders as follows:

1. Variances from Section 116-93C, to allow a 36 square foot increase in impervious coverage and a 36 square foot reduction in minimum green space area, are **GRANTED**.
2. Variances from Section 116-302A(1) and 116-302A(4)(c) to allow the proposed telecommunications facility to be within 500' of a lot in residential use and a residential district boundary, are **GRANTED**.
3. Variances from Section 116-302A(4)(c) to allow the proposed telecommunications facility to be within the front yard setbacks of both Butler and Ridge Pikes so as to be located 22' 2" from the Butler Pike ultimate right of way line, and 20' from the East Ridge Pike ultimate right of way line, are **GRANTED**.
4. A Variance from Section 116-302F(1), to allow the installation of the proposed telecommunications facility without a security fence, is **GRANTED**.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development permitted by this Decision shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
2. The Applicant shall apply for and obtain all permits required by the Township Codes in a timely manner.
3. The Applicant shall provide to the Township a copy of a fully-executed redacted lease with respect to the Applicant's use of the property, and a revised plan showing the correct impervious coverage percentages based on the relief granted.
4. The equipment cabinet shall be screened with evergreen landscaping, so as to shield the view of the equipment cabinet.
5. In the event that the facility is not in use for a continuous period of one (1) year, the equipment shall be removed at the cost of the Applicant/Owner within six (6) months.

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 copy mailing date set out above.

Section 116-223 of the Zoning Ordinance provides as follows:

Expiration of granted appeals. Unless otherwise specified by the Board, all approvals granted by the Zoning Hearing Board shall automatically expire 365 days after the date of the decision unless: (1) the applicant has acted upon the approval by obtaining the required permit(s) and paying the prescribed fees for same, or (2) the Zoning Hearing Board decision is on appeal to the courts, at which point, the approval, if upheld on appeal, shall expire 365 days after final determination on appeal.

The Zoning Hearing Board may extend the expiration date of approvals for a 180 day period upon request by the applicant, provided that the applicant is, in the opinion of the Zoning Hearing Board, diligently pursuing governmental and/or regulatory approvals as required. Requests for extensions shall be in writing and submitted to the Zoning Hearing Board at least 30 days before any applicable expiration date. Only one (1) extension may be provided for any application.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD:



Robert A. Bacine, Chair



William E. Kramer, Vice Chair



Marc Weinstein



Stanley A. Casacio



James Behr

Alternate

Randi Rubin

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO.: 2010-20

FIRST HEARING DATE: 12/01/10

APPLICANT: Giant Food Stores, LLC
Block 001, Unit 001
10 Ridge Pike
Conshohocken, PA 19428
CR-H Commercial Retail District

DECISION: 12/01/10

COPY MAILED: 12/02/10

The Applicant proposes to install an additional sign mounted on the building front thereby increasing the overall area of signage from 151.25 square feet to 215.45 square feet for an aggregate increase of 64.2 square feet.

After completion of a public hearing on the above-referenced Application, pursuant to public notice as required by law, the Zoning Hearing Board of Whitemarsh Township decided and orders as follows:

1. A variance from Section 116-206.A(2)(b) to permit a 64.2 square foot increase in signage is **GRANTED**.
2. A modification to Zoning Hearing Board Case No. 2006-58 is **GRANTED**.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development permitted by this Decision shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
2. The Applicant shall apply for and obtain all permits required by the Township Codes in a timely manner.

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 copy mailing date set out above.

Section 116-223 of the Zoning Ordinance provides as follows:

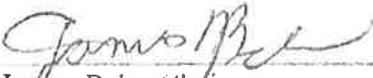
Expiration of granted appeals. Unless otherwise specified by the Board, all approvals granted by the Zoning Hearing Board shall automatically expire 365 days after the date of the decision unless: (1) the applicant has acted upon the approval by obtaining the required permit(s) and paying the prescribed fees for same, or (2) the Zoning Hearing Board decision is on appeal to the courts, at which point, the approval, if upheld on appeal, shall expire 365 days after final determination on appeal.

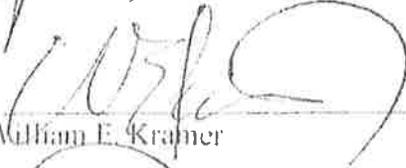
The Zoning Hearing Board may extend the expiration date of approvals for a 180 day period upon request by the applicant, provided that the applicant is, in the opinion of the Zoning Hearing Board, diligently pursuing governmental and/or regulatory approvals as required. Requests for extensions shall be in writing and submitted to the Zoning Hearing Board at least 30 days before any applicable expiration date. Only one (1) extension may be provided for any application.

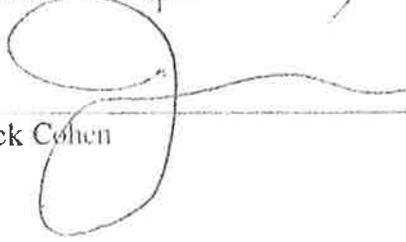
However, note:

Act 46 of 2010 provides for a suspension of the expiration of certain governmental approvals under the Pennsylvania Municipalities Planning Code until July 1, 2013.

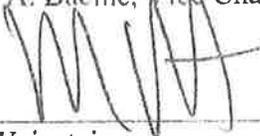
WHITEMARSH TOWNSHIP ZONING HEARING BOARD:


James Behr, Chair


William E. Kramer


Jack Cohen

(ABSENT)
Robert A. Bacine, Vice Chair


Marc Weinstein

(ALTERNATE)
Randi Rubin Goldsfein

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO.: 2009-34
APPLICANT: Giant Food Stores, LLC
Block 001, Unit 001
10 Ridge Pike
Conshohocken, PA 19428
CR-H Commercial Retail District

FIRST HEARING DATE: 12/14/09
DECISION: 12/14/09
COPY MAILED: 12/15/09

After completion of a public hearing on the above-referenced Application, pursuant to public notice as required by law, the Zoning Hearing Board of Whitemarsh Township decided and orders as follows:

1. A variance from Section 116-93D of the Zoning Ordinance so as to permit a 4.33' additional encroachment into the 100' required rear yard, in addition to the existing encroachment, to construct a 309.34 square foot addition onto the southern side of the Whitemarsh Shopping Center in order to accommodate a new elevator and elevator equipment room located 21.53' from the property line is **GRANTED**.
2. A special exception pursuant to Section 116-203 of the Zoning Ordinance so as to permit the additional encroachment into the required rear yard is **NOT NECESSARY**.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development permitted by this Decision shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.
2. The Applicant shall apply for and obtain all permits required by the Township Codes in a timely manner.

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 copy mailing date set out above.

Section 116-223 of the Zoning Ordinance provides as follows:

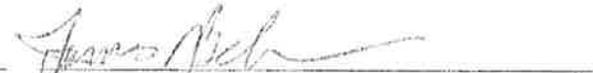
Expiration of granted appeals. Unless otherwise specified by the Board, all approvals granted by the Zoning Hearing Board shall automatically expire 365 days after the date of the decision unless: (1) the applicant has acted upon the approval by obtaining the required permit(s) and paying the prescribed fees for same, or (2) the Zoning Hearing Board decision is on appeal to the courts, at which point, the approval, if upheld on appeal, shall expire 365 days after final determination on appeal.

The Zoning Hearing Board may extend the expiration date of approvals for a 180 day period upon request by the applicant, provided that the applicant is, in the opinion of the Zoning Hearing Board, diligently pursuing governmental and/or regulatory approvals as required. Requests for extensions shall be in writing and submitted to the Zoning Hearing Board at least 30 days before any applicable expiration date. Only one (1) extension may be provided for any application.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD:



Jack Cohen, Chair



James Behr, Vice Chair



Robert A. Bacine

(ABSENT)

William E. Kramer



Marc Weinstein



Randi Rubin Goldstein

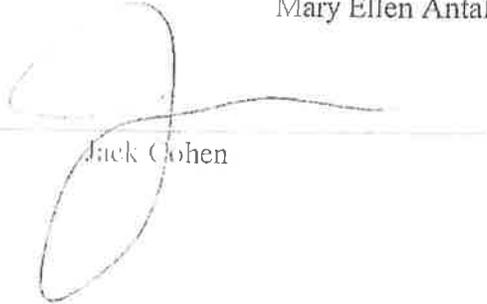
WHITEMARSH TOWNSHIP ZONING HEARING BOARD:


William E. Kramer, Chair


Marc Weinstein, Vice Chair


Robert A. Bacine

(DID NOT PARTICIPATE)
Mary Ellen Antal


Jack Cohen

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 copy mailing date set out above.

§116-223 of the Whitemarsh Township Code provides that all Applications granted by the Board shall automatically expire 365 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if the Applicant has failed during that time to act upon the granted Application by obtaining the granted permit and paying the required fee for same. Any request for an extension must be submitted in writing to the Board at least thirty (30) days prior to the expiration date.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO. : 2004-47

APPLICANT: Starbucks Coffee Company
10 Butler Pike
Conshohocken, PA 19428

FIRST HEARING DATE: ~~10/06/04~~ 10/16/04

DECISION: ~~10/06/04~~ 10/16/04

COPY MAILED: 10/21/04

After completion of a public hearing on the above-referenced Application, the Zoning Hearing Board of Whitemarsh Township decided and orders as follows:

1. A Variance from §116-104(A)(6)(a) of the Code of the Township of Whitemarsh to permit outdoor eating and dining on portions of premises located within the shopping center located at West Ridge Pike and Butler Pike, Conshohocken, Whitemarsh Township is ~~GRANTED~~/DENIED.
2. A Variance from §116-184(D)(6)(a) of the Code of the Township of Whitemarsh to permit outdoor patron seating without providing required additional parking spaces for outdoor dining on portions of premises located within the shopping center located at West Ridge Pike and Butler Pike, Conshohocken, Whitemarsh Township is ~~GRANTED~~/DENIED.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development permitted by this Decision shall conform to the exhibits and testimony presented by Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.

Mary Ellen Antal

Mary Ellen Antal, Chairman

Gordon W. Gerber

Gordon W. Gerber, Vice Chairman

Robert A. Bacine

Robert A. Bacine, Member

William F. Kramer

William F. Kramer, Member

Kevin McBurney DISSENT

Kevin McBurney, Member

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 30 days following the copy mailing date set out above.

§116-223 of the Whitemarsh Township Code provides that all Applications granted by the Board shall automatically expire 365 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if the Applicant has failed during that time to act upon the granted Application by obtaining the granted permit and paying the required fee for same. Any request for an extension must be submitted in writing to the Board at least thirty (30) days prior to the expiration date.

DECISION AND ORDER

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

APPLICATION 02-52
American Bread Company
d/b/a Panera Bread

First Hearing 2/10/03 Decided 3/10/03 Copy Mailed 3/11/03

At a public hearing of the above application, the Zoning Hearing Board decides and orders as follows:

1. The Variance required from Section 116-104.A of the Whitemarsh Township Code to allow a portion of the walk way at the shopping center located at 48 Ridge Pike to be used for seasonal exterior dining is hereby ~~granted~~ / denied.
2. The Variance required from Section 116-184.D(6) of the Code to allow no additional parking spaces for the dining use is hereby ~~granted~~ / denied.

/

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development allowed by any granted application shall conform to the exhibits and testimony presented at the hearing unless inconsistent with these conditions in which case these conditions shall take precedence.

/

Robert A. Bicine

Ray Allen Antal

James P. ...

Gordon W. ...

The Board is presently without a fifth member

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 30 days following the copy mailing date set out above.

Section 116-223 of the Whitemarsh Township Code provides that all applications granted by the Board shall automatically expire 365 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if, during that time, the applicant has not acted upon the granted application by obtaining the granted permit and paying the required fee for same. Any request for an extension must be submitted in writing to the Board at least thirty (30) days prior to the expiration date.

DECISION AND ORDER

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

APPLICATION 97-07

Clemens Market

First Hearing 4/7/97 Decided 4/7/97 Copy Mailed 4/8/97

At a public hearing of the above application, the Zoning Hearing Board decides and orders as follows:

1. The Variance from Section 116-206.A(2) of the Whitemarsh Township Code necessary to allow a *156* square foot sign to be installed on the existing supermarket at 10 Ridge Pike is hereby granted / ~~denied~~.

2. *The Special Exception in accordance with Section 116-212 D.K. is hereby denied.*

3. *The request for an interpretation of the Code was withdrawn.*

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development allowed by any granted application shall conform to the exhibits and testimony presented at the hearing unless inconsistent with these conditions in which case these conditions shall take precedence.

Gordon W. Gerty

Robert A. Racine

Donna Jean

Richard J. Kline

John C. Gandy

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 30 days following the copy mailing date set out above.

Section 116-223 of the Whitemarsh Township Code provides that all applications granted by the Board shall automatically expire 365 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if, during that time, the applicant has not acted upon the granted application by obtaining the granted permit and paying the required fee for same. Any request for an extension must be submitted in writing to the Board at least thirty (30) days prior to the expiration date.

DECISION AND ORDER

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

APPLICATION 96-18

E & L Ventures, Inc.
d/b/a Movie Gallery

First Hearing 8/7/96 Decided 8/7/96 Copy Mailed 8/8/96

At a public hearing of the above application, the Zoning Hearing Board decides and orders as follows:

1. The Variance from Section 116-206.A(2)(b) of the Whitemarsh Township Code necessary to allow a sign on the side of a building located in the Whitemarsh Shopping Center at the intersection of Ridge and Germantown Pikes is hereby ~~granted~~ / denied.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development allowed by any granted application shall conform to the exhibits and testimony presented at the hearing unless inconsistent with these conditions in which case these conditions shall take precedence.

NOTE: The public hearing of the Board began at 8 PM. This hearing began at 9:40 PM. No one appeared on behalf of the applicant nor had the Board or zoning officer received any notice that a delay or continuance was required for any reason.


Gordon W. Forten


Dixie Blair

Bob Racine (absent)

John McCarthy (absent)

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 30 days following the copy mailing date set out above.

Section 116-223 of the Whitemarsh Township Code provides that all applications granted by the Board shall automatically expire 365 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if, during that time, the applicant has not acted upon the granted application by obtaining the granted permit and paying the required fee for same. Any request for an extension must be submitted in writing to the Board at least thirty (30) days prior to the expiration date.

DECISION AND ORDER
WHITEMARSH TOWNSHIP
ZONING HEARING BOARD

APPLICATION 94-18 of Bagel Cafe, Inc.

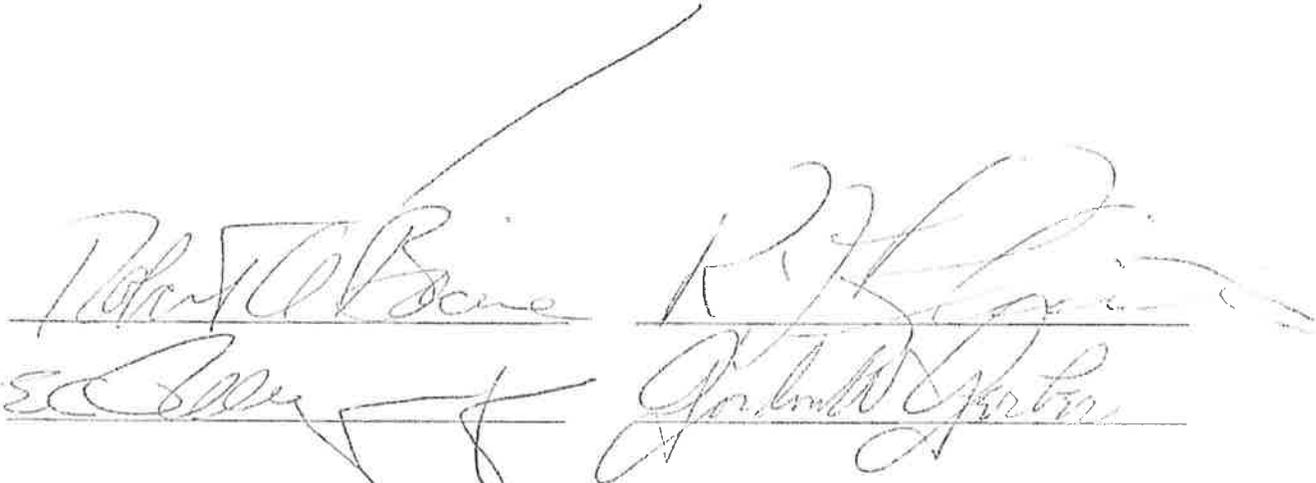
First Hearing Date 8/3/94 Date Decided 8/3/94 Copy Mailed 8/4/94

At a public hearing of the above application, the Zoning Hearing Board decides and orders as follows:

1. The Special Exception in accordance with Section 116-104.A(6) of the Whitmarsh Township Code necessary to allow use of a location in the Whitmarsh Shopping Center at Ridge and Butler Pikes as a bagel restaurant/cafe and for catering is hereby granted / ~~denied~~.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development allowed by any granted application shall conform to the exhibits and testimony presented at the hearing unless inconsistent with these conditions in which case these conditions shall take precedence.



NORMA ELIAS (absent)

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 30 days following the copy mailing date set out above.

Section 116-223 of the Whitmarsh Township Code provides that all applications granted by the Board shall automatically expire 365 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if, during that time, the applicant has not acted upon the granted application by obtaining the granted permit and paying the required fee for same. Any request for an extension must be submitted in writing to the Board at least thirty (30) days prior to the expiration date.

DECISION AND ORDER
WHITEMARSH TOWNSHIP
ZONING HEARING BOARD

APPLICATION 94-03 of Glenmont Associates, Limited Partnership

First Hearing Date 3/3/94 Date Decided 4/7/94 Copy Mailed 4/8/94

At a public hearing of the above application, the Zoning Hearing Board decides and orders as follows:

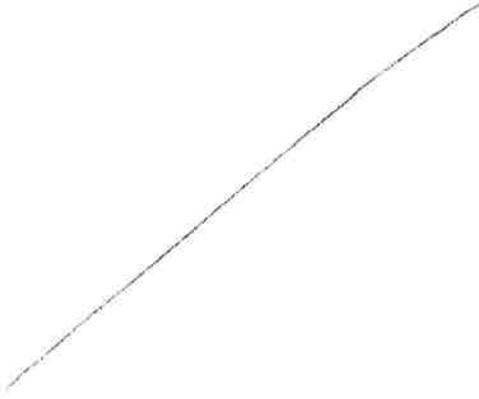
1. The Variance from Section 116-93.D of the Whitemarsh Township Code necessary to allow an additional 1300 square feet of new building space to encroach into the required rear yard setback is hereby granted / ~~denied~~.
2. The Variance from Sections 116-93.E and 116-24.E(3)(a) of the Code necessary to allow an additional 26 parking spaces to be constructed in the front yard setback is hereby granted / ~~denied~~.
3. The Variance from Section 116-24.D(3) of the Code necessary to allow 49% of the rear yard to be used for parking and loading is hereby granted / ~~denied~~.
4. The Variance from Section 116-184.F necessary to allow an additional 2 parking spaces to be located within 10 feet of the building is hereby granted / ~~denied~~.
5. The Special Exception in accordance with Section 116-104.A(6)(a) to allow a restaurant use on the premises is hereby granted / ~~denied~~.
6. The Special Exception in accordance with Section 116-93.D to allow parking spaces to be located 20 feet from the B Residential District (i) on the eastern edge of the property (16 spaces), and (ii) at the western end of the southern edge of the property (16 spaces) is hereby granted / ~~denied~~.
7. The Board decides that the property is not presently legally nonconforming with respect to planting strips otherwise required between parking areas by Section 116-184.E so that such planting strips would be required for the proposed renovation of the tract.
8. The Variance from Section 116-184.E necessary to allow parking areas and double parking rows without planting strips between them is hereby granted / ~~denied~~.
9. The Variance from 116-184 to allow a minimum of 345 parking spaces on the property provided it is developed as set out in Exhibit A-2 and provided that no more than 67 spaces to the rear of the building be less than 10x18sq ft. and all other parking spaces on the property be no less than 10x20sq ft. is hereby granted.

CONTINUED ON NEXT PAGE

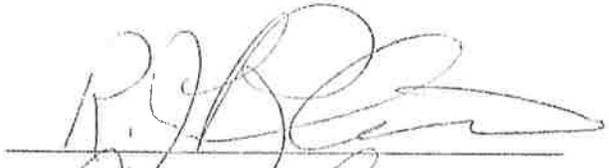
Note: Mr. Kline dissents from
all decisions set out above
except paragraph 5.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development allowed by any granted application shall conform to the exhibits and testimony presented at the hearing unless inconsistent with these conditions in which case these conditions shall take precedence.




Robert A. Farnsworth


Norman Elias (absent)


Gordon W. Gorton

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 30 days following the copy mailing date set out above.

Section 116-223 of the Whitmarsh Township Code provides that all applications granted by the Board shall automatically expire 180 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if, during that time, the applicant has not acted upon the granted application by obtaining the granted permit and paying the required fee for same.

ZHB APPEAL #90-36

APPLICANT: K & M Shah Associates - USA VIDEO
PROPERTY ADDRESS: 20 E. Ridge Pike, Conshohocken
ZONING DISTRICT: CRH

REQUESTED RELIEF

The applicant is requesting a variance from Section 116-206 B for the number of signs allowed for a single property.

SUMMARY OF REQUEST

Currently at this property there is a free-standing pole sign, the applicant wishes to construct an additional sign attached to the building of 35 sq.ft. It is noted that this sign is currently constructed without benefit of a Building or Zoning permit.

This case was withdrawn.

APPLICANT: K & M Shah Associates
PROPERTY ADDRESS: 20 E. Ridge Pike
ZONING DISTRICT: CRH-Commercial Retail

REQUESTED RELIEF

The applicant is requesting a variance from Section 116-209 B. and Section 116-209 F. to allow for construction of a 35 sq.ft. rooftop sign.

SUMMARY OF REQUEST

The applicant currently has an existing free-standing sign to the front of the property. They wish to construct a 35 sq.ft. rooftop sign which would require a variance to allow an additional sign as well as sign which would project higher than the roofline of the building.

SUMMARY OF HEARING

At the Zoning Hearing Board meeting of October 2, 1991, this case was withdrawn.

ZONING HEARING BOARD
WHITEMARSH TOWNSHIP

ORDER

Appeal No. 23-75

Applicant: Wynnewood Shopping Center, Inc.

We the members of the Whitemarsh Township Zoning Hearing Board, hereby adopt the following order:

The special exception is granted subject to the following conditions:

1. All garbage and trash shall be kept indoors until day of pickup, and on day of pickup, shall be placed outdoors in a dumpster.

2. Applicant shall submit a letter in a form acceptable to the Board indicating that Applicant will comply with the Building Inspector's requirements regarding ventilation system and odor removal.

s/William H. Potterton, Jr.

s/Charles S. Hough

s/Henry S. Miller

Date: November 3, 1975

ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF WHITEMARSH

CHARLES H. ANTARAMIAN (SCOTTIE CLEANERS)

DECISION

Appeal No. 56 Dated October 31, 1963

Hearing Held November 19 1963

1. INTERPRETATION: The Board adopted the following order which states its interpretation of the Zoning Ordinance or Zoning Map as requested in your appeal:

2. SPECIAL EXCEPTION: By order of the Board, it was determined that a special exception _____ be granted _____ be denied _____ be granted subject to the following conditions:

Pursuant to Article _____, Section _____, Subsection, _____ Paragraph _____ of the Zoning Ordinance, and the decision of the Building Inspector _____ be reversed _____ be confirmed _____ be modified, because:

3. VARIANCE: By order of the Board, it was determined that:

a. Strict application of the ordinance ~~(would)~~ (would not) produce undue hardship because: _____ is possible for this property to be used for many purposes within the zoning classification as it exists.

b. The hardship created ~~(is)~~ (is not) unique and (would) ~~(not)~~ be shared by all properties alike in the immediate vicinity of this property and in the same use district, because: _____ are only certain permitted uses under the CR-H commercial zoning classification.

c. The variance (would) ~~(not)~~ ^{change} the character of the district, because: this is one of the _____ specifically prohibited under CR-H and specifically allowed under CR-L zoning. and therefore, it was further determined that the requested variance _____ be granted

_____ be denied _____ be granted subject to the following conditions:

and that the previous decision of the Building Inspector be confirmed _____ ~~be reversed~~

~~be modified.~~

A list of findings of fact, as determined by the Board, is attached and is part of the decision.

(If no stenographic report was made, a brief summary of testimony is also attached.)

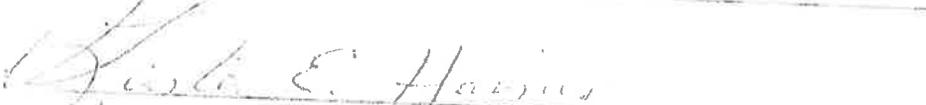
Unless otherwise stated, any authorization by the Board for special exception, variance or conditional use shall expire if the applicant fails to obtain a building permit within six (6) months from the date of authorization of such special exception, variance, or conditional use.

TOWNSHIP OF WHITEMARSH

BOARD OF ADJUSTMENT


SECRETARY

APPROVED:


NOTE: Any person aggrieved by the decision of the Board of Adjustment may appeal to the Court of Common Pleas of Montgomery County. Appeal must be taken within thirty (30) days after decision of the Board.

FINDINGS OF FACT

1. The uses permitted under CR-H zoning are varied and there was no showing of any hardship in that any of these uses was impossible because of the substantial change in the character of the neighborhood.

2. The building in question is a frame structure and it was the finding of the Board that the structure was less than adequate for the proposed operation of the Applicant.

3. It was established by the Applicant that the real owner, Andorra Nurseries, Inc., contemplates a permanent type shopping center development to be constructed in and about the site in question and that under the terms of the lease adequate provisions would have been made for the Applicant in that development.

4. The proposed use is prohibited under the applicable zoning classification but specifically allowed under CR-L Commercial zoning classification.

NOTICE IS HEREBY GIVEN that the Zoning Hearing Board of Whitemarsh Township will conduct a public hearing on Monday, May 6, 1974, at 8:00 p.m. in the Township Building, Joshua Road, Lafayette Hill, Pennsylvania, to consider the following:

APPEAL 13-74 of James T. Fitzpatrick for permission to construct a garage on the premises located at 4017 South Warner Road, Lafayette Hill. The proposed structure violates the side and rear setback requirements of §33-409 of the Whitemarsh Zoning Code.

APPEAL 14-74 of Wynnewood Shopping Center, Inc. for permission to use a portion of the premises located on the southeast corner of Ridge and Butler Pikes as a restaurant. §33-1313.A.6(a) permits the proposed use only by special exception in an area zoned CR-H Commercial Retail - High.

All interested persons are invited to appear and be heard.

Zoning Hearing Board of
Whitemarsh Township

Robert E. Bradshaw,
Secretary

OPINION AND ORDER
BOARD OF ADJUSTMENT
WHITEMARSH TOWNSHIP

APPLICATION AND NOTICE OF APPEAL OF
ANDORRA NURSERIES, INC.

On April 26, 1962, the Board of Adjustment met to consider the above application which was advertised as a request for a special exception to use a 4½ acre tract adjacent to the CR-H property at Bethlehem Pike and Ridge Pike for parking area. After due consideration it was decided that the Board could not hear the matter as a special exception but if the facts so developed were able to hear the case as a request for a variance. The transcript of testimony is attached hereto.

The Board makes reference in this decision to only one question which goes beyond all others in marking this ground as being subject to a severe hardship if the owner is forced to comply with the B Residential requirements of the Whitemarsh Township Zoning Ordinance. The topography of this property, the natural drainage in the area surrounding the subject tract of ground and the state of development in and about this tract of ground have created a serious drainage problem both as to this tract and as to the properties to the rear of it on Corson Road and beyond. After extended conferences with the Township Engineer it was learned that to remedy the present situation would require a substantial investment, something in excess of \$30,000.00. Without such a drainage remedy the property in its present state is useless. The Board is of the opinion that the use as B Residential would invoke a unique hardship as to this ground.

Subject to the following conditions a variance is granted to the applicant to use the $4\frac{1}{2}$ acre tract in question for parking.

1. The variance is granted conditionally on the submission and approval of plans by the Township Engineer and the installation of a drainage system which shall conform in its minimal aspects to the following specifications:

- a. Increase inlets in the present parking area CR-H at the Corson Road side to the requirements as set forth by the Township Engineer.
- b. The existing 30 inch storm sewer line is to remain and join the lift station to be installed.
- c. Install a 30 inch sewer line through the present drainage ditch in the middle of the proposed parking lot at right angles to Ridge Pike and extending back to the lift station to be installed. The proposed parking area is to contain drainage inlets as required by the Township Engineer.
- d. Extend an adequate forced main line from the lift station to a junction chamber in Spring Mill Road to be located approximately 200 feet from Ridge Pike on Spring Mill Road toward Corson Road.
- e. Install a new storm sewer line in Spring Mill Road from Ridge Pike to the proposed road adjacent to the desilting basin and continue said line into the desilting basin.
- f. The proposed lift station is to be maintained by Andorra Nurseries, Inc.

2. The variance is granted on the specific condition that the following landscape requirements are met.

- a. Shrubs to be planted for the entire perimeter of the existing parking lot CR-H and proposed parking lot.
- b. A chain link fence is to be installed along the rear of the existing and proposed parking lot to run parallel to Corson Road for the entire length of said area for a height of five feet.

- c. Developer shall endeavor to maintain as many trees along the rear property line running parallel to Corson Road as is possible.
- d. All parking areas are to be curbed at their perimeter as follows: 12 inch curbing on the Corson Road side and 6 inch curbing on the Spring Mill Road side.

3. This variance is granted subject to the following set back requirements.

- a. A 35 foot buffer zone is to be maintained for the entire perimeter of the proposed parking area with the exception of the Ridge Pike frontage.
- b. Any slope easement which occurs as a result of regrading shall end at the above mentioned buffer zone.

4. This variance is strictly conditioned on ingress and egress from the proposed parking area being limited to Ridge Pike. There shall be no entrances or exits to Spring Mill Road or Corson Road.

5. This variance is granted on the condition that a plan be submitted for lighting the proposed parking area in the following manner.

- a. Lighting facilities shall be of a modern shielded type and in all cases shall be shielded and reflect away from the residential areas on Corson Road and Spring Mill Road.

6. Maintenance and cleaning of the proposed parking area is to be provided by Andorra Nurseries, Inc. and in all cases the buffer zone is to be thoroughly cleaned once a week.

It is understood and agreed by Petitioner that this variance is granted subject to the above conditions and that it is not precedent for further extension and variance but applies only to the tract in question. Petitioner has been advised of

July 25, 1956

Mr. Clark Zantzinger
12 South 12th Street
Philadelphia 7, Pa.

Dear Mr. Zantzinger:

Your petition in half of Andorra Nurseries filed with the Whitemarsh Township Zoning Board of Adjustment requesting the board for permission to erect a large advertising sign at Butler Pike and Ridge Pike is hereby accordingly denied.

The board felt that there was sufficient advertisement with the signs that were to be placed on the front and side of the building and there was no need for a larger sign than requirements under the buisness zoning at this location.

Very truly yours,

Michael J. Laputka
Secretary
Whitemarsh Township
Zoning Board of Adjustments

MJL/ph

DECISION AND ORDER

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

APPLICATION 97-26

Beneficial Savings Bank

First Hearing 9/8/97 Decided 9/8/97 Copy Mailed 9/9/97

At a public hearing of the above application, the Zoning Hearing Board decides and orders as follows:

1. The Variance from Section 116-206.A(2)(b) of the Whitmarsh Township Code necessary to allow a 35 square foot sign on the front of the existing supermarket at 10 Ridge Pike is hereby granted.

THIS DECISION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. All use and development allowed by any granted application shall conform to the exhibits and testimony presented at the hearing unless inconsistent with these conditions in which case these conditions shall take precedence.


The block contains three handwritten signatures in cursive script, each written over a horizontal line. The signatures are arranged in two rows: two in the top row and one centered in the bottom row. The names are difficult to decipher but appear to be Robert C. Bean, James Deas, and another name.

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 30 days following the copy mailing date set out above.

Section 116-223 of the Whitmarsh Township Code provides that all applications granted by the Board shall automatically expire 365 days after the expiration of the last day to appeal to the Court of Common Pleas of Montgomery County or to an Appellate Court, if, during that time, the applicant has not acted upon the granted application by obtaining the granted permit and paying the required fee for same. Any request for an extension must be submitted in writing to the Board at least thirty (30) days prior to the expiration date.