Whitemarsh TOWNSHIP

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

BOARD of SUPERVISORS

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Fran McCusker– Vice Chair
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Vincent Manuele
Jacy Toll

Richard L. Mellor, Jr.
Township Manager

WHITEMARSH TOWNSHIP ZONING HEARING BOARD
PUBLIC HEARINGS FOR WEDNESDAY, JULY 1, 2020 6:30 PM
ZOOM MEETING PARTICIPATION INFORMATION

The Whitemarsh Township Zoning Hearing Board will conduct public hearings on **Wednesday, July 1, 2020 at 6:30 PM for the cases as listed on the agenda for this date.**

In response to the Governor's Stay Home Order due to the COVID 19 health pandemic, these hearings will be conducted via ZOOM. All members of the Board, staff and public will participate remotely. The public may join these hearings 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, July 1, 2020
- **Hearing Time:** 6:30 PM
- **Hearing URL:** https://us02web.zoom.us/j/82406033682?pwd=WUVLREovYnIxVTU5SUpRVDc2MC9lZz09
- **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: 824 0603 3682
- **Hearing dial in number (no video):** 1 646 558 8656
- **Hearing ID number (to be entered when prompted):** 824 0603 3682
- **Hearing Password:** 774952

THE PUBLIC MAY ALSO SUBMIT QUESTIONS OR COMMENTS PRIOR TO THE HEARINGS BY U.S. MAIL ADDRESSED TO CHARLES GUTTENPLAN, ZONING OFFICER, WHITEMARSH TOWNSHIP, 616 GERMANTOWN PIKE, LAFAYETTE HILL, PA 19444 RECEIVED NO LATER THAN JUNE 29, 2020 OR BY E-MAIL TO CGUTTENPLAN@WHITEMARSHTWP.ORG NO LATER THAN 12 NOON ON JUNE 30, 2020.

PERSONS WHO WISH TO BECOME PARTIES TO ANY OF THE APPLICATIONS 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 HEARINGS, BY E-MAIL TO CGUTTENPLAN@WHITEMARSHTWP.ORG RECEIVED NO LATER THAN 12 NOON ON JUNE 30, 2020 AND THEN BEING AVAILABLE THROUGH THE ZOOM CONFERNCE 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.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD
ENTRY OF APPEARANCE AS A PARTY

I/We_____

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

Applicant: _____

Please Print Name and Address Below:

_____

_____

_____

_____

Please Sign Below:

_____

_____

WHITEMARSH TOWNSHIP
ZONING HEARING BOARD AGENDA
JULY 1, 2020
6:30 PM
DUE TO THE COVID-19 HEALTH EMERGENCY, THESE CASES WILL BE CONDUCTED VIA THE INTERNET USING 'ZOOM' TELECOMMUNICATION TECHNOLOGY
INSTRUCTIONS FOR PARTICIPATING IN THE MEETING WILL BE POSTED ON THE TOWNSHIP'S WEBSITE

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

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1. CALL TO ORDER

2. ANNOUNCEMENTS & CORRESPONDENCE

- Applicants are requested not to remove signs after the hearing at this time; Township staff will remove them once the hearing is completed.

3. ZONING HEARING BOARD APPLICATIONS

- **ZHB#2020-17:** Daniel E. and Cathrine L. Ryan, 301 Williams Road, Fort Washington, PA; Parcel #65-00-12955-00-3; Block 049E; Unit 003; AAA-Residential District. The Applicants are proposing to construct an inground pool and patio to the rear of their property. In order to do so the following is being requested: a **Variance from Section 116-169.A.** which allows a maximum of 9% impervious ground cover based on the Property's location in the AAA-Residential District and having a steep slope ratio between 50% to 75% (this property has a steep slope ratio of 55.29%). An impervious ground cover of 12.16% is proposed and a **Variance from Section 116-194.A.** to allow an increase in nonconforming impervious ground cover of 10.18% (to the proposed 12.16%). This section permits expansions/alterations as long as existing nonconformities are not increased.

- **ZHB#2020-10:** Whitemarsh Hotel Associates, L.P., 432 Pennsylvania Avenue, Fort Washington, PA; Parcel #65-00-08764-00-9; Block 051; Unit 001; CR-L—Commercial Retail (Low) District; Floodplain Conservation Overlay District; Riparian Corridor Conservation Overlay District. The applicant is proposing to add a 2600-square foot (+/-) free-standing, drive-through Starbucks coffee shop restaurant/café with outdoor seating immediately adjacent to the existing Holiday Inn Express and Suites. The following relief is requested: a **Special Exception pursuant to Section 116-104.A.(6)(a)** to permit a freestanding restaurant/café in the proposed location; **Variance from Section 116-104.A.(6)(a)** to permit outdoor seating at a restaurant/café; **Variance from Section 116-184.** to permit 192 parking spaces for the hotel and restaurant, where 251 are required; **Variance from Section 116-206.A.(2)(a)** to permit two (2) free standing monument signs on the property where one is permitted (one exists for the hotel); **Variance from Section 116-206.A**. to permit a drive-through sign package as depicted on Applicant's plans, where the Zoning Ordinance does not contemplate such signage; **Variance from Section 116-206.A.(2)(b)** to permit commercial signage on more than one façade of a commercial building and to permit a maximum of 110 square feet of such signage on the proposed building; a maximum of 75 square feet on the front of the restaurant is permitted given the proposed building's location; and a **Variance from Sections 116-165. and 116-166.** to permit the proposed improvements within the floodplain.

- **ZHB#2019-32:** Verity Associates, LP, 6020 Cricket Road, Flourtown, PA; Parcel #65-00-02794-00-3; Block 053; Unit 046; AA-Residential District. ***Continued from June 22, 2020. Board discussion and vote.***

4. ADJOURNMENT

ZHB APPEAL #2020-17
SUMMARY

APPLICANTS: Daniel E. and Cathrine L. Ryan

PROPERTY LOCATION: Parcel #65-00-12955-00-3
Block 049E, Unit 003
301 Williams Road
Fort Washington, PA 19034

ZONING DISTRICT: AAA-Residential District

SUMMARY OF RELIEF REQUEST:

The Applicants are proposing to construct an inground pool and patio to the rear of their property. In order to do so the following is being requested:

1. **Variance from Section 116-169.A.** which allows a maximum of 9% impervious ground cover based on the Property's location in the AAA-Residential District and having a steep slope ratio between 50% to 75% (this property has a steep slope ratio of 55.29%). An impervious ground cover of 12.16% is proposed.

2. **Variance from Section 116-194.A.** to allow an increase in nonconforming impervious ground cover of 10.18% (to the proposed 12.16%). This section permits expansions/alterations as long as existing nonconformities are not increased.

PRIOR DECISIONS:

NONE

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: 2020-17

Applicant/Appellant: Dan and Cathrine Ryan

Address: 301 Williams Road, Ft. Washington, PA

Phone #: [redacted] **Cell Number:** [redacted] **E-Mail:** [redacted]

Owner: Dan and Cathrine Ryan

Address: 301 Williams Road, Ft. Washington, PA

Phone #: [redacted] **Cell Number:** [redacted] **E-Mail:** [redacted]

Location of the Property Involved: 301 Williams Road

Block #: 49E **Unit #:** 3 **Parcel #:** 65-00-12955-00-3

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):

To construct an inground pool and patio in a steep slope overlay district AAA. Request is to allow for a max impervious of 12.16% instead of 9% as stated in chapter 116-169.A which calls for a max of 9%. Also for expansion of existing non-conforming use as stated in 116-194A.

GROUNDS FOR APPEAL (State reasons for appeal and nature of hardship, if claimed):
****Attach additional sheets if necessary**

An adequate storm water system is designed to handle rain water run off and no steep slopes are bing altered or changed.

Legal Counsel (if represented): N/A

Address:

Phone #: **E-Mail:**

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)**

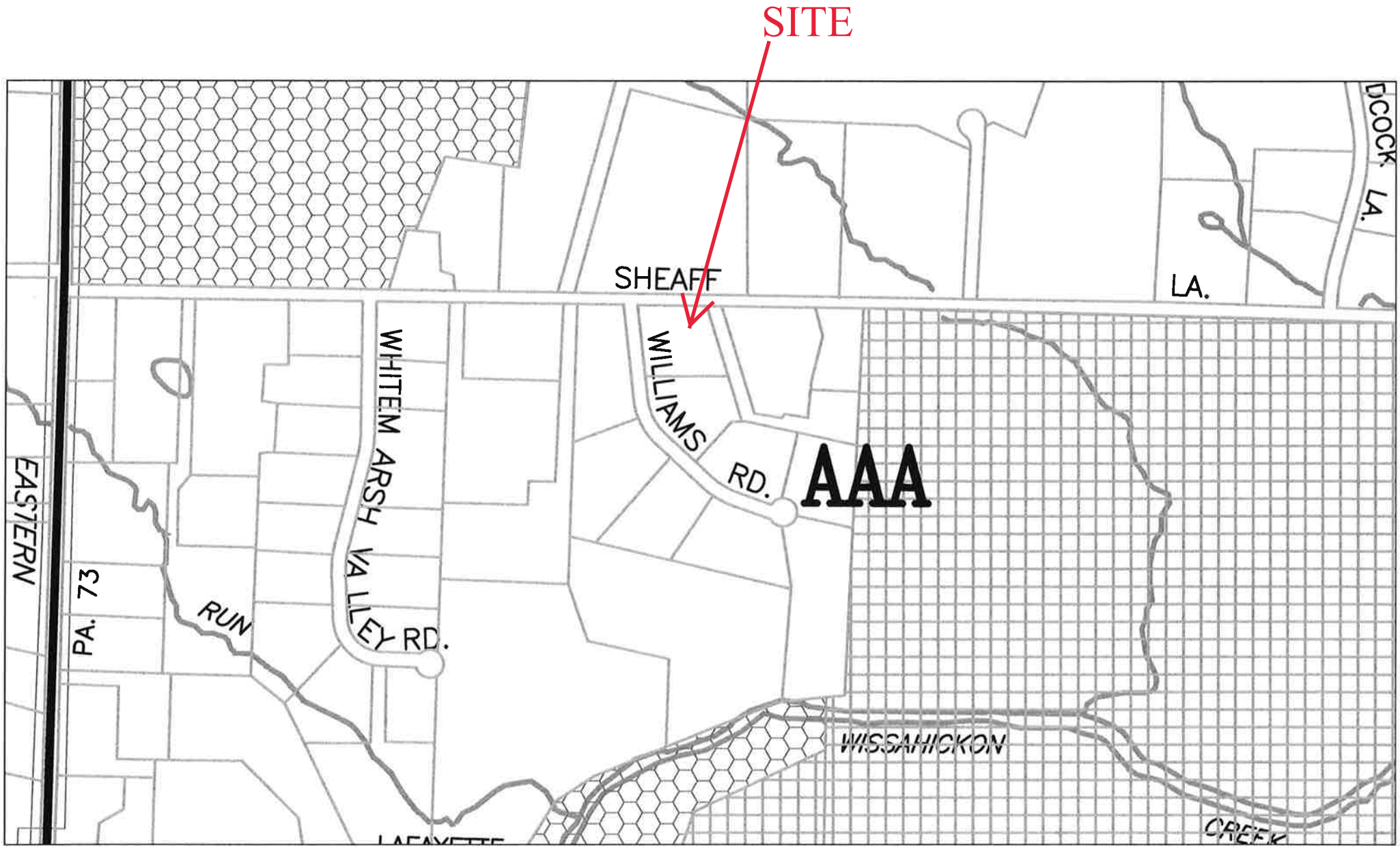
RECEIVED
JUN 01 2020
WHITEMARSH TOWNSHIP
ZONING & ENGINEERING

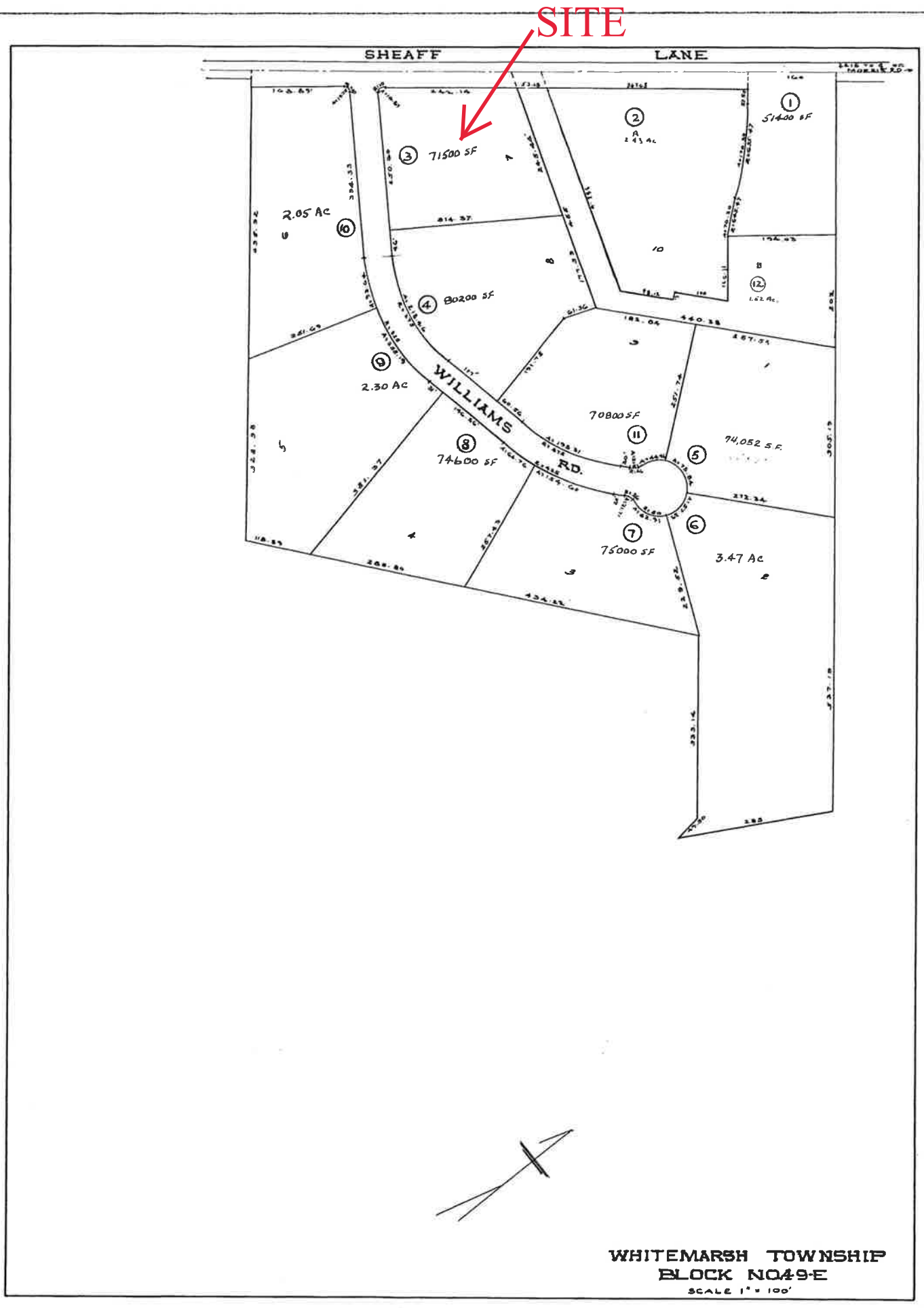
Date: 7/01/2020

Signature of Applicant/Appellant:

Cathrine Ryan

Signature of Applicant/Appellant:


SITE
SHEAFF
LA.
COCK LA.
WILLIAMS
RD.
AAA
WHITEM ARSH VALLEY RD.
EASTERN
PA. 73
RUN
WISSAHICKON
CREEK


SITE
SHEAFF LANE
WILLIAMS RD.
1
51400 SF
2
A
2.43 Ac
3
71500 SF
4
80200 SF
5
74,052 S.F.
6
3.47 Ac
7
75000 SF
8
74600 SF
9
2.30 Ac
10
2.05 Ac
11
70800 SF
12
1.62 Ac.
WHITEMARSH TOWNSHIP
BLOCK NO49-E
SCALE 1" = 100'

GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

65 E. Butler Avenue, Ste 100
New Britain, PA 18901
(215) 345-4330
Fax (215) 345-8606
www.gilmore-assoc.com

MEMORANDUM

Date: June 24, 2020

To: Charles L. Guttenplan, AICP - Director of Planning and Zoning

From: Jim Hersh, P.E., Township Engineer

Reference: 301 Williams Road
ZHB#2020-17
G&A Project No. 2020-01116

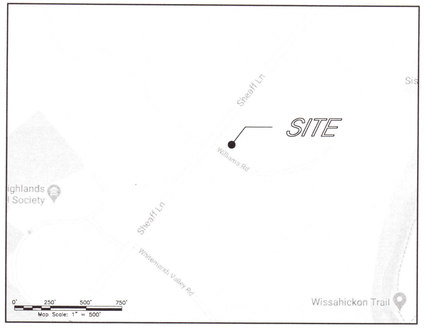
In reference to the above-mentioned property, we have reviewed the application prepared by Woodrow & Associates, Inc. and offer the following comments for your consideration.

The applicants are requesting zoning relief to construct an in-ground swimming pool and patio in the rear yard of their residence, resulting in an increase of approximately 1,389 square-feet in impervious surface coverage. The calculations indicate that the steep slope ratio for this property is approximately 55.29%, and therefore the maximum impervious coverage for the lot is 9%.

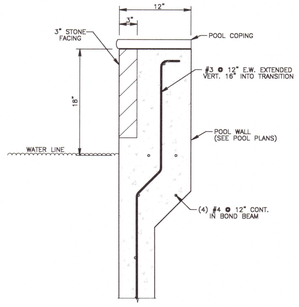
The proposed improvements would result in an increase of approximately 1,389 square-feet in impervious surface coverage which will increase the impervious coverage from 10.18% to 12.16%, which is greater than the allowable amount of 9%.

There are no engineering objections to or environmental impacts associated with the proposed increase in impervious surface. Please note that the applicant has applied for an Earth Disturbance Permit, which is being reviewed for compliance with Chapter 58 and Resolution 2004-8 of the Whitemarsh Township Code.

Should you have any questions or need further information regarding this matter, please do not hesitate to contact me at this office.

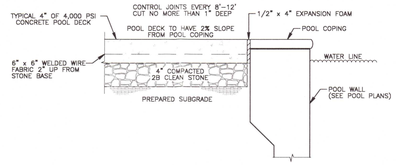


LOCATION MAP



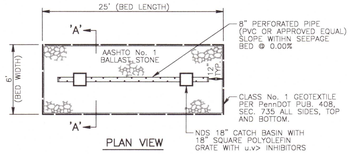
RAISED BOND BEAM DETAIL

NOT TO SCALE

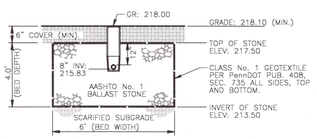


CONCRETE POOL DECK DETAIL

NOT TO SCALE



PLAN VIEW



SECTION 'A-A'

SEEPAGE BED CALCULATION

NET SITE IMPERVIOUS INCREASE = (1,389) Sq. Ft.

RUN-OFF CAPTURE STORAGE REQUIRED:

Rv = 2.00 In. x (Total Impervious area in Sq. Ft.) = Cu. Ft. of Recharge / 12

Rv = 2.00 In. x (1,389) / 12 = (231.50) Cu. Ft. of Recharge

Rv = (231.50)/0.40 Stone Voids = (578.75) Cu. Ft. SAY 580

Vp = (6) Ft. Width x (25) Ft. Length x (4.00) Ft. Depth = (600.0) Cu. Ft. Provided

DOUBLE INLET IN-LINE SEEPAGE BED

Not To Scale

POST CONSTRUCTION MAINTENANCE PROGRAM:

The applicant/owner, its assigns shall be responsible for the ownership and maintenance of the proposed BMP's shown on this plan in perpetuity. All BMP's shall be maintained in accordance with all applicable Township Standards and Specifications as so designated in the Ownership and Maintenance agreement as entered into between the Owner and the Township.

MAINTENANCE OF YARD DRAIN AND PERIMETER DRAIN SYSTEM:

1. The applicant/owner, its assigns shall be responsible to ensure that the perimeter drain system shown along the proposed wall and the collection system is free and clear of debris that would reduce the effectiveness of the system as designed. Inspection of the system shall be conducted after each major runoff event.

MAINTENANCE OF THE SEEPAGE BED:

1. The applicant/owner, its assigns shall be responsible to ensure that the seepage bed is free and clear of any debris. The system shall be inspected after each major runoff event to ensure the system is functioning as designed.

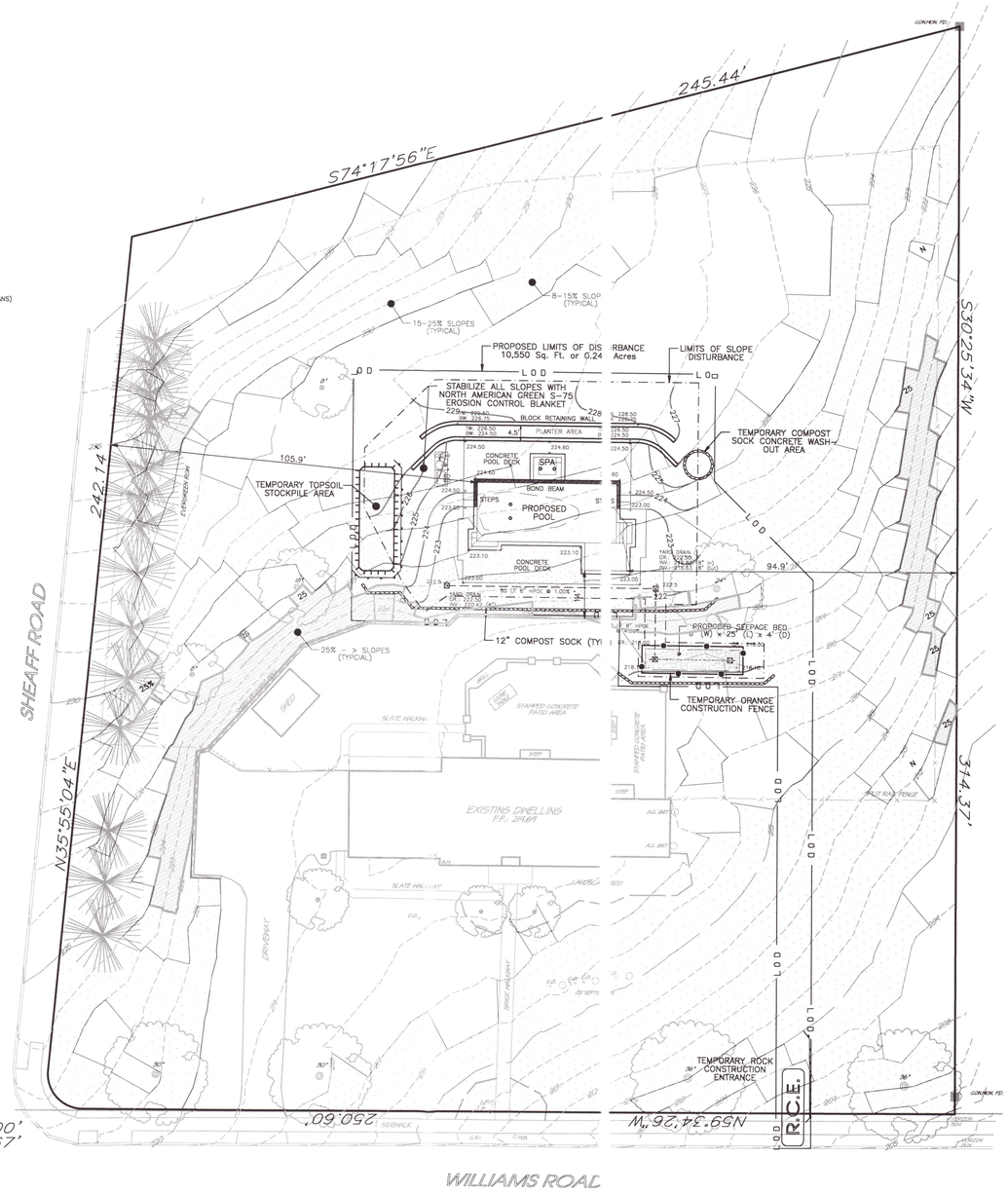
Should any of the BMP's shown on this plan fail to function as designed, the applicant/owner shall be responsible for all corrective measures including but not limited to cleaning, flushing, repair or replacement as necessary or directed by the Township Engineers Office.

ONWER ACKNOWLEDGEMENT:

I/we _____, acknowledge that the stormwater management facilities shown on these plans can only be altered or removed after approval of a revised plan by the applicable municipality. owner also agrees to all above listed BMP maintenance program requirements.

_____ Signature:

_____ Date:



PLAN LEGEND

- Tract Boundary Line
- Existing Right-of-Way Line
- Existing Right-of-Way Centerline
- Municipal Boundary Line
- Existing Zoning Boundary
- Existing Topographic Contour
- Existing Soil Series Limits
- Mapped Wetlands Limit
- Existing Storm Sewer Piping
- Existing Sanitary Sewer Piping
- Existing Gas Main
- Existing Water Main / Service
- Existing Overhead Wires
- Existing Fence Line
- Existing Woodlands Dripline
- Proposed Storm Sewer Piping
- Proposed Roof Leader System
- Proposed Contour
- Proposed Limits of Disturbance
- Proposed 18" Silt Fence
- Proposed Compost Filter Sock
- Proposed Clearing

GENERAL NOTES:

1. Outbound & topographic survey information was taken from a field survey performed by Woodrow & Associates, Inc. during the month of May 2020.
2. All existing/proposed fence enclosures for swimming pools shall meet the minimum requirements of the Pennsylvania Uniform Construction Code as amended. All gates must open in an outward direction and be equipped self closing and latching gate hardware.
3. All proposed pool construction shall be in strict accordance with all applicable Township Zoning and Subdivision and Land Development Ordinance sections. The pool contractor shall acquire any and all permits prior to any construction.
4. Temporary construction fence must be installed around the pool area once excavated and until such time the pool is filled and final perimeter pool fencing has been installed.

IMPERVIOUS SURFACE TABULATION:

ZONED:	AAA RESIDENTAL DISTRICT	
MAX. IMPERVIOUS SURFACE:	9.00%	
LOT AREA:	70,245.88	S.F. (net)
EXISTING:		
DWELLING:	2,637	S.F.
DRIVEWAY:	2,118	S.F.
F. WALKWAYS:	405	S.F.
R. WALKWAYS:	134	S.F.
REAR PATIOS:	1,667	S.F.
SHED:	192	S.F.
SUBTOTAL:	7,153	S.F.
POOL PERMIT PLAN:		
DWELLING:	2,637	S.F.
DRIVEWAY:	2,118	S.F.
F. WALKWAYS:	405	S.F.
R. WALKWAYS:	134	S.F.
REAR PATIOS:	1,667	S.F.
SHED:	192	S.F.
CONCRETE POOL DECK:	1,196	S.F.
WALLS:	157	S.F.
MECH. PAD:	36	S.F.
SUBTOTAL:	8,542	S.F.
NET INCREASE:	1,389	S.F.
PREDEVELOPMENT:	7,153 S.F. OR 10.18%	
POST DEVELOPMENT:	8,542 S.F. OR 12.16% [1]	

[1] VARIANCE REQUIRED

STEEP SLOPE DATA

NET TRACT AREA: 70,245.88 S.F. (net)

SLOPE RANGE:	SQUARE FOOTAGE:	PERMITTED DISTURBANCE:	MAX. DISTURBANCE: PERMITTED IN S.F.:	PROPOSED DISTURBANCE:
8-15% SLOPES	26,191.45 S.F.	N/A		1,449.69 S.F. or 2.06%
15-25% SLOPES	10,124.86 S.F.	30%	3,037.46 S.F.	1,795.04 S.F. or 2.56%
25%-> SLOPES	2,521.76 S.F.	15%	378.26 S.F.	46.13 S.F. or 0.07%

TOTAL: 38,838.07 S.F. OR 55.29 %

REVISIONS

No.	DATE:	DESCRIPTION:

PLAN NORTH

10' 0' 20'

Scale in Feet (1" = 20')

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PROJECT SERIAL NUMBER FOR DESIGN:

Parcel Information:

65-00-12955-00-3
Block 49E Unit 3

Deed Area:	70,245.88 Sq. Ft.
Legal RW:	N/A
Ult. RW:	N/A
NET Area:	70,245.88 Sq. Ft.

Applicant:

Daniel and Cathrine Ryan

301 Williams Road
Fort Washington, PA 19034

REGISTERED PROFESSIONAL
TIMOTHY P. WOODROW
ENGINEER
No. 038735-E

FINAL PLAN
POOL PERMIT PLAN
301 WILLIAMS ROAD
WHITEMARSH TOWNSHIP – MONTGOMERY COUNTY – PENNSYLVANIA

WOODROW & ASSOCIATES, INC.
MUNICIPAL / CIVIL CONSULTING ENGINEERS
1108 North Bethlehem Pike, Suite 5 – Lower Gwynedd – PA 19002
Phone: (215) 542-5648 Web: www.Woodrowinc.com

Layer List: PPP-01

Job No: 19-0501-D20-12

Plan Date: MAY 22, 2020

Sheet No: 1 of 2

Print Date: May 28, 2020 (13:33)
File Name: C:\2019\19-0501\2020 Permit Plans\19-0501D20 - 12 - 301 Williams Road\Post Permit Plan.pmp
Print Scale: 1" = 20.00'

EROSION and SEDIMENTATION CONTROL

I. GENERAL NOTES:

1. All earth disturbance activities shall proceed in accordance with the following construction sequence. each stage shall be completed before any following stage is initiated. Clearing and grubbing shall be limited to those areas described in each stage.
2. At least 7 days before starting any earth disturbance activities, the operator shall invite all contractors involved in those activities, the landowner, all appropriate municipal officials, the erosion and sediment control plan preparer, and the local County Conservation District to an on-site, preconstruction meeting.
3. At least 3 days before starting any earth disturbance activities, all contractors involved in those activities shall notify the Pennsylvania One Call System, Inc. (1-800-242-1776) for locations of all buried utilities within the permitted area.
4. All structures associated with the construction of sediment removal facilities must be in placeand functional prior to any earth disturbance within the tributary area.
5. If at any time prior to stabilization any E&S problems occur which require additional measures, immediate action must be taken to correct the problem.
6. The local County Conservation District must be notified at least three days prior to any earth disturbance activity.
7. This Erosion and Sedimentation Control Plan was prepared by the staff of Woodrow & Associates, Inc. under the direction of Mr. Timothy P. Woodrow, P.E.
8. Any sediment removed from the BMP's may be used in landscaped areas stablized with a temporary seed and mulch applied at the recommended rates.
9. The Sedimentation Basin shall be structurally sound.

II. RECEIVING WATERSHED:

Stormwater run-off from this site enters an unnamed tributary to the Wissahickon Creek which has a chapter 93 designation of TSF, MF as published in Title 25. Environemental Resources.

III. INTENT OF CONSERVATION PROGRAM:

The intent of this program is to prevent accelerated erosion of the exposed Site soils during the construction and permanent life periods of the Development. The program requires retention of all sediments on the construction site while minimizing the impact of development on existing streams and adjacent properties.

These objectives will be achieved by minimizing exposure time of potentially erosive soils to runoff and installation of the temporary and permanent conservation practices in proper sequence with construction. The intent of this program should be understood and implemented throughout the entire development. The various construction trades should be appraised of this program and directed to prevent undue disturbance of prepared and protected surfaces.

IV. SURFACE STABILIZATION CRITERIA:

All denuded soil surfaces including soil stockpiles that are subject to erosion shall be stabilized either temporarily or permanently immediately. Crushed stone on pavement subgrades is considered adequate protection. Disturbed areas which are not at finished grade and which will be redisturbed within one (1) year may be stabilized with a quick growing, temporary seeding mixture and mulch. During non-germination periods, mulch shall be applied at recommended rates. Germination period shall be from April 1st to June 15th and August 15th to October 15th, during non-germination periods mulched areas shall be limed, fertilized, seeded and remulched.

Contractor/Applicant shall assume responsibility for the maintenance and operation of all erosion and sediment control facilities.

Erosion and sediment control measures must be constructed, stabilized and functional prior to any site disturbance within the tributary area.

Silt fence must be installed parallel to existing contours and constructed in level alignments. The ends of the fence must be extended a minimum of eight (8) feet up slope and at forty-five (45) degrees to the main fence alignment.

If any of the measures contained within this plan prove inadequate of removing sediment from flows prior to discharge of stabilizing of the surfaces involved, additional measures must be immediately implemented by the Contractor/Applicant to eliminate all such problems. Said measures shall be approved by the local soil conservation district.

Until the site is adequately stabilized, all erosion and sediment control measures must remain in place and functional. Maintenance must include inspection of all erosion and sediment control measures after each runoff event and on a weekly basis. All preventative and remedial maintenance work including clean-out, repair, replacement, regrading, reseeding, remulching and renetting must be performed immediately.

After final site stabilization has been achieved, temporary erosion and sediment control measures must be removed. Areas disturbed during removal of the controls must be stabilized immediately.

A reserve supply of crushed stone, silt fence, temporary seed and hay bales shall be maintained on site for emergency replacement of any failing erosion and sediment control measures.

V. EROSION CONTROL DEVICES / MAINTENANCE PROGRAM:

STABILIZED CONSTRUCTION ENTRANCE:
Entrances are to be constructed per Ch. 102 Standard Construction Detail #16 and the details provided with this plan set. The stabilized construction entrance(s) shall be maintained so that tire scrubbing activity does not become ineffective. Any buildup of mud or soil on the street shall be cleaned at the end of each working day by hand or mechanical sweeping.

SILT FENCES:
Silt fence shall be installed per Ch. 102 Standard Construction Details #19-22 the construction details provided, with rock outlets at existing and graded low points. Sediment shall be removed from silt fences when it reaches 1/2 the fence height or as directed by the local soil conservation district. Silt fencing which has been undermined or over topped shall be replaced with rock filter outlets immediately.

SEDIMENT TRAPS:
Sediment Traps shall be constructed per Ch. 102 Standard Construction Details #11-13 and the details provided with this plan set. Clean-out stakes shall be placed near the center of each trap. Accumulated sediment shall be removed when it reaches the clean-out elevation marked on the stake.

SEDIMENT BASINS:
Sediment Basins shall be constructed per Ch. 102 Standard Construction Details #1-10 and the details provided with this plan set. Clean-out stakes shall be placed half the distance from points of concentrated flow entering the basin to the riser. Accumulated sediment shall be removed when it reaches the clean-out elevation marked on the stake.

STORM INLET PROTECTION:
Inlet protection devices shall be constructed per Ch. 102 Standard Construction Details #28-32 and the details provided with this plan set. Inlet protection shall be mainteined until all earthwork within the tributary drainage area has been completely stabilized.

SEDIMENT DISPOSAL:
Silt removed from temporary erosion and sediment control devices shall be disposed of on-site in landscaped areas located outside the 100 year flood plains, wetlands, steep slopes and drainage swales. Areas of sediment disposal shall be considered a critical vegetation area requiring immediate stablization.

Each drainage sub-area will require separate and unique erosion and sediment control measures. The contractor shall follow the specific construction sequence deemed appropriate by the local soil conservation district.

All BMP shown above require inspection weekly and after each runoff event. All required repairs and or replacement of BMP's must be done immediately.

VI. UTILITY TRENCH EXCAVATION:

GENERAL REQUIREMENTS:
Exposed trench excavations have high potential for accelerated erosion and sediment pollution. Since these excavations are usually located at lower elevations along or across earth disturbance sites, open trenches serve to concentrate sediment laden runoff and convey it to site boundaries or waterways. The most important erosion and sediment pollution control consideration for trench construction is the limiting and specific scheduling of work activities.

CONSTRUCTION REQUIREMENTS:
Limit advance clearing and grubbing operations to a distance equal to two times the length of pipe installation that can be completed in one day.

Work crews and equipment for trenching, placement of pipe, plug construction and backfilling will be self contained and separate from clearing and work crews and site restoration and stabilization operations.

Limit daily trench excavation to the length of pipe placement, plug installation and backfilling that can be completed the same day.

Water which accumulates in the open trench will be completely removed by pumping in accordance with item b.5 of section m, before pipe placement and/or backfilling begins.

On the day following pipe placement and trench backfilling, the disturbed area will be graded to final contours and appropriate temporary erosion and sediment pollution control measures/facilities will be installed. seeding and mulching of all disturbed areas will be done at the end of each week.

EXCEPTIONS:
In certain cases trenches cannot be backfilled until the pipe is hydrostatically tested, or anchors and other permanent features are installed. In these cases, all with the following exceptions:

a. Daily backfilling of the trench may be delayed for six (6) days. All pressure testing and the complete backfilling of the open trench must be completed by the seventh working day.
b. If daily backfilling is delayed, the disturbed area will be graded to final contours appropriate temporary erosion and sediment control measures / facilities will be installed, and the areas seeded and mulched within the next two calander days.

VII. FERTILIZATION, SEEDING AND MULCHING:

TEMPORARY COVER ON DISTURBED AREAS:
Disturbed areas not at finished grade which will be redisturbed within one (1) year may be seeded and mulched with a temporary seed cover.

PERMANENT COVER ON DISTURBED AREAS:
Disturbed areas which are either at finish grade or will not be redisturbed within one (1) year period must be seeded and mulched with a permanent seed mixture.

All disturbed area shall be stabilized immediately with a temporary seed and mulch mixture applied at the recommended rates. Site preparation of mulch and maintenance shall be performed in accordance with the Penn State University's Erosion Control & Conservation Plantings on Noncropland manual and Pennsylvania Department of Transportation publication form 408 specifications (latest edition). During nongermination periods, mulch must be applied at the recommended rates.

VIII. SEEDING SCHEDULE:

TEMPORARY SEEDING SPECIFICATION – FORMULA E:
ANNUAL RYE GRASS (LAWN MULTIFLORUM)

PERMANENT SEEDING SPECIFICATION – FORMULA D:
70% Fescue, Kentucky 31, tall (Festuca Arunainacea var., Kentucky 31)
20% Fescue Pennlawn Red (Festuca Rubra var., Pennlawn)
10% Weeping Alkali Grass (Fults' Puccinellia Distans)

SEEDING RATES FOR THE ABOVE MIXTURES:
Hay or straw mulch shall be applied at the rates of at three (3) tons per acre and at least four (4) tons per acre during winter months (Dec. 01 to Mar. 01) due to cold weather soil erosion problems.

Pulverized agricultural limestone and commercial fertilizer shall be applied to all disturbed areas which are to be seeded except for temporary seed areas at the following rates:

Pulverized agricultural limestone = 2 tons/acre (permanent use)
= 1 ton/acre (temporary use)

10-20-20 analysis commercial fertilizer = 100 lbs/acre
5- 5- 5 analysis commercial fertilizer = 100 lbs/acre

Seeded areas that washout must be filled and regraded as necessary and then processed. Some type of anchoring method should then be used to hold seed and mulch in place. This is especially important around water courses, in swales, and areas of concentrated flow on slopes.

IX. RECYCLING and DISPOSAL METHODS:

The contractor shall follow all Local Ordinances when handeling and disposing of construction trash including any Local Recycling Programs.

IMPORT OR EXPORT OF MATERIAL:

If the site will need to import or export material from the site, the responsibility for the performing environmental due diligence and determination of clean fill will rest with (responsible party).

CLEAN FILL

CLEAN FILL is defined as: Uncontaminated, non-water soluble, non-decomposable inert, solid material. The term includes soil, rock, stone dredged material, used asphalt, and brick, block or concrete from construction and demolition activities that is separate from other waste and is recognized as such. The term does not include materials placed in or on the waters of the Commonwealth unless otherwise authorized. (the term "used asphalt" does not include milled asphalt or asphalt that has been prcoessed for re-use.)

CLEAN FILL AFFECTED BY A SPILL OR RELEASE OF REGULATED SUBSTANCE: Fill materials affected by a spill or release of a regulated substance still qualifies as clean fill provided the testing reveals that the filled material contains concentrations of regulated substances that are below the residential limits in Table FP-1a and FP-1b found in the Department's poilcy "Management of Fill".

Any person placing clean fill that has been affected by a spill or release of a regulated substance must use form FP-001 to certify the origin of the fill material and the results of the analytical testing to qualify the material as clean fill. Form FP-001 must be retained by the property owner receiving the fill. A copy of the FP-001 can be found at the end of these instructions.

ENVIRONMENTAL DUE DILIGENCE: The applicant must perform environmental due diligence to determine if the fill materials associated with the project qualify as clean fill.
Environmental Due Diligence is defined as: Investigation techniques, including, but not limited to, visal property inspections, electronic data base searches, review of property ownership, review of property use history, Sanborn maps, environmental questionnaires, transaction screens, analytical testing, environmental assesments or audits. Analytical testing is not a required part of due diligence unless visual inspection and/or review of the past land use of the property indicates that the fill may have subjected to a spill or release of regulated substance. If the fill may have been affected by a spill or release of a regulated substance, it must be tested to determine if it qualifies as clean fill. Testing should be performed in accordance with Appendix A of the Department's policy "Managemnt of Fill".

Fill material that does not qualify as clean fill is regulated fill. Regulated fill is waste and must be managed in accordance with the department's municipal or residual waste regulations based on 25 PA Code Chapter 287 Residual Waste Management or 271 Municipal Waste Managment, whichever is applicable. These regualtions are available on-line @ www.pacode.com.

X. SOILS RESOLUTIONS:

Winter Grading
Contractor to ensure proper stablization. Methods to include, seeding and mulching at the recommended rates and were necessary the placement of an approved erosion control blanket.

Road Fill
Contractor to ensure all fill used for roadway construction is placed and compacted in appropriate lifts. Should material not be suitable for roadway construction the contractor may import suitable material from an area within the permitted area.

Topsoil
Contractor to ensure proper stablization. Methods to include, seeding and mulching at the recommended rates and were necessary the placement of an approved erosion control blanket.

Contractor shall consider soils testing to ensure topsoil is suitable to produce and sustain proper growth. Should the topsoil be lacking of the nutrients to produce growth the contractor shall consider applying lime and/or fertilizers at the rates recommended by the project landscape consultant and/or local county coservation district.

Topsoil may be imported from an area within the permitted area proven to be suitable.

Ponds, Dikes and Levees Embankments
Contractor to ensure all fill used for basin embankment construction is placed and compacted in appropriate lifts. Should material not be suitable for basin construction the contractor may import suitable material from an area within the permitted area.

Contractor to ensure proper stablization. Methods to include, seeding and mulching at the recommended rates and were necessary the placement of an approved erosion control blanket.

Terraces, diversions and waterways
Contractor to ensure all earthwork associated with swales, diversion berms and/or watercourses is adequately stabilized with an approved erosion and sediment control blankets and/or seeding and mulching applied at the recommended rates.

Should erosion continue the contractor shall consult the design engineer, the local county conservation district and take appropriate measures to correct the problems. Corrective measure may include but are not limited to the following:

Additional seeding and mulching, the placement of sod, armoring the channel with a stronger stabilization blanket, or the placement of rip-rap.

Season Highwater Table
Appropriate earthwork construction techniques, including importing suitable soils and utilizing local sumps and pumps (to approved sediment removal facilities) to keep excavations dry, as recommended by a qualified geotechnical engineer, should be implemented if seasonal high water table soil limitations are encountered. The local County Conservation District shall be consulted if such limitations are encountered.

STANDARD PLAN NOTES

1. 102.2(a): This chapter requires persons proposing or conducting earth disturbance activities to develop, implement and maintain BMPs to minimize the potential for accelerated erosion and sedimentation.
2. Stockpile heights must not exceed 35 feet. Stockpile slopes must be 2:1 or flatter.
3. The operator/resposible person (O/RP) on site shall assure that the approved erosion and sediment control plan is properly and completely implemented.
4. Immediately upon discovering unforeseen circumstances posing the potential for accelerated erosion and/or sediment pollution, the O/RP shall implement appropriate Best Management Practices (BMPs) to eliminate potential for accelerated erosion and/or sediment pollution.
5. The O/RP shall assure that an erosion and sediment control plan has been prepared, approved by the local Conservation District, and is being implemented and maintained for all soil and/or rock spoil and borrow areas, regardless of their locations.
6. All pumping of sediment-laden water shall be through a sediment control BMP, such as pumped water filter bag discharging over undisturbed areas.
7. A copy of the approved erosion and sediment control plan must be available on the project site at all times.
8. Erosion and sediment BMP's must be constructed, stabilized and functional before site disturbance begins within the tributary areas of those BMP's.
9. After final site stabilization has been achieved, temporary erosion and sediment BMP controls must be removed. Areas disturbed during removal of the BMPs must be stabilized immediately.
10. At least (7) days before starting any earth disturbance activity, the O/RP shall invite all contractors involved in that activity, the landowner, all appropriate municipal officials, the erosion and sediment control plan designer and the local Conservation District to a pre-construction meeting. Also, at least 3 days before starting any earth disturbance activity, all contractors involved in that activity shall notify the Pennsylvania One Call System Inc. at 1-800-242-1776 to determine any underground utility locations.
11. Immediately after earth disturbance activities cease, the O/RP shall stabilize any areas disturbed by the activity. During non-germinating periods, mulch must be applied at the specified rates. Disturbed areas which are not at finished grade and which will be redisturbed within one year must be stabilized in accordance with the temporary vegetative stabilization specifications. Disturbed areas which are at finished grade or which will not be redisturbed within one year must be stabilize in accordance with the permanent vegetative stabilization specifications.
12. An area shall be considered to have achieved final stabilization when it has a minimum uniform 70% (percent) vegetative cover or other permanent non-vegetative cover with a density sufficient to resist accelerated surface erosion and subsurface characteristics sufficient to resist sliding and other movements.
13. Upon the installation of temporary sediment basin riser(s), a qualified site representative shall conduct as immediate inspection of the riser(s), whereupon the Conservation District shall be notified in writing that the riser is sealed (watertight).
14. At stream crossing, a 50-foot buffer shall be maintained. On buffers, clearings, sod disturbances and excavations, equipment traffic should be minimized. Activity such as stacking logs, burning cleared brush, discharging rainwater from trenches, welding pipe sections, refueling and maintaining equipment should be avoided within buffer zones.
15. Until a site is stabilized, all erosion and sediment BMP's must be maintained properly. Maintenance must include inspections of all erosion control BMP's after each runoff event and on a weekly basis. All preventative and remedial maintenance work, including cleanout, repair, replacement, re-grading, re-seeding, re-mulching and re-netting must be performed immediately. If erosion and sediment control BMP's fail to perform as expected, replacement BMP's, or modifications of those installed, will be required.
16. Sediment removed from BMP's shall be disposed of on-site in landscape areas outside of steep slopes, wetlands, floodplains or drainage swales and immediately stabilized or placed in soil stockpiles and stabilized.
17. All building materials and wastes must be removed from the site and recycled in accordance with DEP's Solid Waste Regulations (25 PA Code 260.1 et seq., 271.1 et seq., and 287.1 et seq.), and/or any additional local, state or federal regulations. No building materials (used or unused) or waste materials shall be burned, buried, dumped or discharged at the site.

Pool Construction Sequence:

Site Developement operations should be performed in accordance with the following general sequence of operations. The contractor may deviate slightly from the staging of permanent site improvement construction items, however, considerabel deviation from the relative order of erosion and sendiment control measures should not occur without consultation with the Site Engineer and Conservation District.

Should any measure contained within these plans prove incapable of adequately removing sediment from on-site flows prior to discharge and/or stabilizing the surfaces involved, additional measures must be immediately implemented by the operator/resposible person to eliminate any such event.

1. Install stabilized rock construction entrance as shown.
2. Install silt fence and compost filter on downslope side of lot as shown.
3. Strip and stockpile topsoil in designated area as shown.
4. Begin demolition and excavation for pool.
5. Begin excavation as needed for pool construction.
6. Begin pool construction.
7. Install required utilities as needed for pool area.
8. Finalize Pool Construction.
9. Install stone and concrete patio. Place topsoil on all disturbed areas. seed disturbed immediately with a permanent seed and mulch applied at the recommended rate.
10. Install stone seepage bed as shown and detailed on this plan. The seepage bed shall only be installed once the tributary area has been adequately stabilized.
11. Vegetated areas shall be considered permanently stabilized when a uniform 70% vegetative cover of erosion resistant perennial species have been achieved, or the disturbed area is covered with an acceptable BMP which permanently minimizes accelerated erosion and sedimentation. Until such time as this standard is achieved, interim stabilization measures and temporary erosion and sediment control BMPs that are used to treat project runoff may not be removed.
12. Upon the defined stabilization to each device the contractor shall remove all temporary erosion and sediment control measures. Stabilize all disturbed areas immediately with permanient seed and mulch mixture applied at the recommended rates.

CROSS SECTION 'A-A'

1. STOCKPILE HEIGHTS MUST NOT EXCEED 35 FEET.
2. SIDE SLOPES MUST BE NO GREATER THEN 2:1. 2 FEET HORIZONTALLY TO ONE FOOT VERTICALLY.
3. 18" SILT FENCE SHALL BE INSTALLED ON THE DOWN SLOPE SIDE OF THE STOCKPILE AT A MINIMUM OF 5 FEET FROM THE TOE OF SLOPE.
4. SHOULD THE NEED ARISE WHERE ADDITIONAL STOCKPILE AREAS ARE REQUIRED, THOSE AREAS MUST BE APPROVED BY THE LOCAL AUTHORITY OR COUNTY CONSERVATION DISTRICT.
5. STOCKPILE AREA MUST BE SEEDED AND MULCHED IMMEDIATELY AFTER THE PLACEMENT OF ANY STOCKPILE MATERIAL.

TEMPORARY STOCKPILE AREA

Not To Scale

* MOUNTABLE BERM USED TO PROVIDE PROPER COVER FOR PIPE

[illegible]OVE TOPSOIL PRIOR TO INSTALLATION OF ROCK CONSTRUCTION ENTRANCE. EXTEND [illegible]K OVER FULL WIDTH OF ENTRANCE.

[illegible]OFF SHALL BE DIVERTED FROM ROADWAY TO A SUITABLE SEDIMENT REMOVAL BMP [illegible]OR TO ENTERING ROCK CONSTRUCTION ENTRANCE.

[illegible]NTABLE BERM SHALL BE INSTALLED WHEREVER OPTIONAL CULVERT PIPE IS USED [illegible] PROPER PIPE COVER AS SPECIFIED BY MANUFACTURER IS NOT OTHERWISE PROVIDED. [illegible] SHALL BE SIZED APPROPRIATELY FOR SIZE OF DITCH BEING CROSSED.

[illegible]NTENANCE:

[illegible]K CONSTRUCTION ENTRANCE THICKNESS SHALL BE CONSTANTLY MAINTAINED TO THE [illegible]CIFIED DIMENSIONS BY ADDING ROCK. A STOCKPILE SHALL BE MAINTAINED ON SITE [illegible] THIS PURPOSE. ALL SEDIMENT DEPOSITED ON PAVED ROADWAYS SHALL BE REMOVED [illegible] RETURNED TO THE CONSTRUCTION SITE IMMEDIATELY. IF EXCESSIVE AMOUNTS OF [illegible]MENT ARE BEING DEPOSITED ON ROADWAY, EXTEND LENGTH OF ROCK CONSTRUCTION [illegible]RANCE BY 50 FOOT INCREMENTS UNTIL CONDITION IS ALLEVIATED OR INSTALL WASH [illegible]K. WASHING THE ROADWAY OR SWEEPING THE DEPOSITS INTO ROADWAY DITCHES, [illegible]ERS, CULVERTS, OR OTHER DRAINAGE COURSES IS NOT ACCEPTABLE.

STANDARD CONSTRUCTION DETAIL #3-1

ROCK CONSTRUCTION ENTRANCE

NOT TO SCALE

* NON-WOVEN GEOTEXTILE FILTER BAG WHICH RETAINS ALL SEDIMENT PARTICLES LARGER THAN 150 MICRONS.

PLACE FILTER BAGS ON STABLE OR WELL VEGETATED AREAS WHICH ARE FLATTER THAN 5% AND WHICH WILL NOT ERODE WHEN SUBJECTED TO BAG DISCHARGES.

CLAMP PUMP DISCHARGE HOSES SECURELY INTO FILTER BAGS.

LIMIT PUMPING RATE TO 1/2 THE MANUFACTURER'S MAXIMUM PUMPING RATE.

WHEN SEDIMENTS FILL 1/2 THE VOLUME OF A FILTER BAG, IMMEDIATELY REMOVE THAT BAG FROM SERVICE. PROPERLY DISPOSE OF SPENT BAGS WITH THEIR SEDIMENTS.

THE DISCHARGE FROM THE FILTER BAG SHOULD NOT PASS THROUGH A DISTURBED AREA OR CAUSE AN EROSION PROBLEM DOWN SLOPE.

SEDIMENT FILTER BAG FOR PUMPED WATER

Not To Scale

NOTES:
1. Install on flat grade for optimum performance
2. 18" diameter filter sock may be stacked onto double 24" Dia. socks in pyramidal configuration for added height.

A suitable impervious geomembrane shall be placed at the location of the washout prior to installing the sock.

COMPOST SOCK CONCRETE WASHOUT AREA

Not To Scale

NOTES:
1. ALL MATERIAL TO MEET FILTREXX SPECIFICATIONS
2. FILTER MEDIA FILL TO MEET APPLICATION REQUIREMENTS.
3. COMPOST MATERIAL TO BE DISPERSED ON SITE, AS DETERMINED BY ENGINEER.

SLOPE PERCENT	Maximum Slope Length Above Sediment Control in Feet (meters) *				
	8" (200mm) SEDIMENT CONTROL	12" (300mm) SEDIMENT CONTROL	18" (450mm) SEDIMENT CONTROL	24" (600mm) SEDIMENT CONTROL	32" (800mm) SEDIMENT CONTROL
	6.5" (160mm) **	9.5" (240mm) **	14.5" (360mm) **	19" (480mm) **	26" (650mm) **
2 (or less)	600 (180)	750 (225)	1000 (300)	1300 (400)	1650 (500)
5	400 (120)	500 (150)	550 (165)	650 (200)	750 (225)
10	200 (60)	250 (75)	300 (90)	400 (120)	500 (150)
15	140 (40)	170 (50)	200 (60)	325 (100)	450 (140)
20	100 (30)	125 (38)	140 (42)	260 (80)	400 (120)
25	80 (24)	100 (30)	110 (33)	200 (60)	275 (85)
30	60 (18)	75 (23)	90 (27)	130 (40)	200 (60)
35	60 (18)	75 (23)	80 (24)	115 (35)	150 (45)
40	60 (18)	75 (23)	80 (24)	100 (30)	125 (38)
45	40 (12)	50 (15)	60 (18)	80 (24)	100 (30)
50	40 (12)	50 (15)	55 (17)	65 (20)	75 (23)

BASED ON A FAILURE POINT OF 36" (0.9 m) SUPER SILT FENCE (WIRE REINFORCED) AT 1000 Ft. (303 m) OF SLOPE, WATERSHED WIDTH EQUIVALENT TO RECEIVING LENGTH OF SEDIMENT CONTROL DEVICE, 1"/24 hr (25 mm/24 hr) RAIN EVENT.

* EFFECTIVE HEIGHT OF SEDIMENT CONTROL AFTER INSTALLATION AND WITH CONSTANT HEAD FROM RUNOFF AS DETERMINED BY OHIO STATE UNIVERSITY.

FILTREXX SOXX BRAND or APPROVED EQUAL

COMPOSTE FILTER SOCK

Not To Scale

JOINING FENCE SECTIONS

SECTION VIEW

NOTES:

FABRIC SHALL HAVE THE MINIMUM PROPERTIES AS SHOWN IN TABLE 4.3 OF THE PA DEP EROSION CONTROL MANUAL.

FABRIC WIDTH SHALL BE 30 IN. MINIMUM. STAKES SHALL BE HARDWOOD OR EQUIVALENT STEEL (U OR T) STAKES.

SILT FENCE SHALL BE PLACED AT LEVEL EXISTING GRADE. BOTH ENDS OF THE FENCE SHALL BE EXTENDED AT LEAST 8 FEET UP SLOPE AT 45 DEGREES TO THE MAIN FENCE ALIGNMENT.

SEDIMENT SHALL BE REMOVED WHEN ACCUMULATIONS REACH HALF THE ABOVE GROUND HEIGHT OF THE FENCE.

ANY SECTION OF SILT FENCE WHICH HAS BEEN UNDERMINED OR TOPPED SHALL BE IMMEDIATELY REPLACED WITH A ROCK FILTER OUTLET (STANDARD CONSTRUCTION DETAIL # 4-6).

FENCE SHALL BE REMOVED AND PROPERLY DISPOSED OF WHEN TRIBUTARY AREA IS PERMANENTLY STABILIZED.

STANDARD CONSTRUCTION DETAIL #4-7

STANDARD SILT FENCE (18" HIGH)

NOT TO SCALE

CHANNEL INSTALLATION

NOTE: HORIZONTAL STAPLE SPACING SHOULD BE ALTERED IF NECESSARY TO ALLOW STAPLES TO SECURE THE CRITICAL POINTS ALONG THE CHANNEL SURFACE.

REFER TO GENERAL STAPLE PATTERN GUIDE FOR CORRECT STAPLE RECOMMENDATIONS FOR CHANNELS.

CRITICAL POINTS
A. OVERLAPS AND SEAMS
B. PROJECTED WATER LINE
C. CHANNEL BOTTOM/SIDE SLOPE VERTICES

1. PREPARE SOIL BEFORE INSTALLING BLANKETS, INCLUDING APPLICATION OF LIME, FERTILIZER, AND [illegible]ED.
2. BEGIN AT THE TOP OF THE CHANNEL BY ANCHORING THE BLANKET IN A 6" DEEP X 6" WIDE TRENCE. BACKFILL AND COMPACT THE TRENCH AFTER STAPLING.
3. ROLL CENTER BLANKET IN DIRECTION OF WATER FLOW ON BOTTOM OF CHANNEL.
4. PLACE BLANKETS END OVER END (SHINGLE STYLE) WITH A 6" OVERLAP. USE A DOUBLE ROW STAGGERED STAPLES 4" APART TO SECURE BLANKETS.
5. FULL LENGTH EDGE OF BLANKETS AT TOP OF SIDE SLOPES MUST BE ANCHORED IN 6" DEEP X 6" WIDE TRENCH. BACKFILL AND COMPACT THE TRENCH AFTER STAPLING.
6. BLANKETS ON SIDE SLOPES MUST BE OVERLAPPED 4" OVER THE CENTER BLANKET AND STAPLE (2" FOR C350 MATTING).
7. IN HIGH FLOW CHANNEL APPLICATIONS, A STAPLE CHECK SLOT IS RECOMMENDED AT 30 TO 40 FOOT INTERVALS. USE A ROW OF STAPLES 4" APART OVER ENTIRE WIDTH OF THE CHANNEL. PLACE A SECOND ROW 4" BELOW THE FIRST ROW IN A STAGGERED PATTERN.
8. THE TERMINAL END OF THE BLANKETS MUST BE ANCHORED IN A 6" DEEP X 6" WIDE TRENCH. BACKFILL AND COMPACT THE TRENCH AFTER STAPLING.

NORTH AMERICAN GREEN
14649 HIGHWAY 41 NORTH
EVANSVILLE, INDIANA 47711
USA 1-800-772-2040

STRAW EROSION CONTROL BLANKET

Not To Scale

NOTES:
1. LANDSCAPE PLANTINGS WITHIN THE AREA ESTABLISHED AS THE REINFORCEMENT ZONE (THAT AREA WHERE GEOGRIDS ARE PLACED) WILL BE RESTRICTED TO SHALLOW ROOTED PLANTINGS AND SHRUBS. IN NO CASE SHALL TREES CAPABLE OF SIGNIFICANT HEIGHT BE PERMITTED WITHIN THIS AREA.
2. SEE GRADING PLAN FOR TOP AND BOTTOM OF WALL ELEVS.

(KEYSTONE BLOCK – COMPACT UNIT/NEAR VERTICAL)

BLOCK RETAINING WALL DETAIL

Not to Scale

No.:	DATE:	DESCRIPTION:

REVISIONS

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811

PROJECT SERIAL NUMBER FOR DESIGN:

Parcel Information:
65-00-12955-00-3
Block 49E Unit 3

Deed Area: 70,245.88 Sq. Ft.
Legal RW: N/A
Ult. RW: N/A
NET Area: 70,245.88 Sq. Ft.

Applicant:
Daniel and Cathrine Ryan
301 Williams Road
Fort Washington, PA 19034

COMMONWEALTH OF PENNSYLVANIA
REGISTERED PROFESSIONAL
TIMOTHY P. WOODROW
ENGINEER
No. 038735-E

FINAL PLAN
CONSTRUCTION DETAILS SHEET 'A'
301 WILLIAMS ROAD
WHITEMARSH TOWNSHIP – MONTGOMERY COUNTY – PENNSYLVANIA

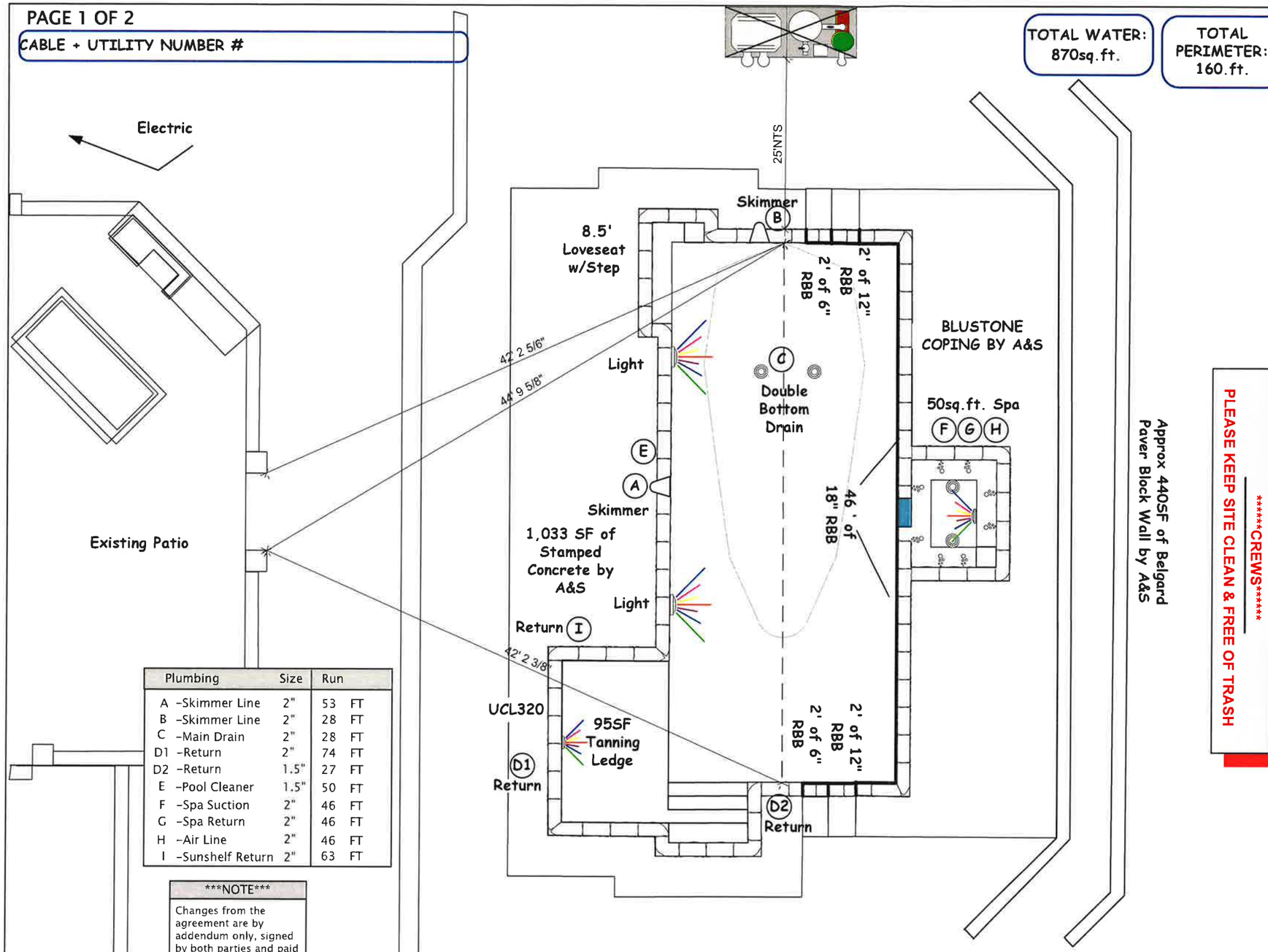
WOODROW & ASSOCIATES, INC.
MUNICIPAL / CIVIL CONSULTING ENGINEERS
1108 North Bethlehem Pike / Suite 5 – Lower Gwynedd – PA 19002
Phone: (215) 542-5648 Web: www.Woodrowinc.com

Layer List: Sht02_CDS
Job No: 19-0501-D20-12
Plan Date: MAY 22, 2020
Sheet No: 2 of 2

Print Date: May 26, 2020 (13:28) Print Scale: 1" = 20.00'
File Name: G:\2019\19-0501D\2020 Permit Plans\19-0501D20-12 - 301 Williams Road\Pool Permit Plan.pro

PAGE 1 OF 2

CABLE + UTILITY NUMBER #



TOTAL WATER: 870sq.ft.

TOTAL PERIMETER: 160.ft.

PLEASE KEEP SITE CLEAN & FREE OF TRASH

******CREWS******

Plumbing	Size	Run
A -Skimmer Line	2"	53 FT
B -Skimmer Line	2"	28 FT
C -Main Drain	2"	28 FT
D1 -Return	2"	74 FT
D2 -Return	1.5"	27 FT
E -Pool Cleaner	1.5"	50 FT
F -Spa Suction	2"	46 FT
G -Spa Return	2"	46 FT
H -Air Line	2"	46 FT
I -Sunshelf Return	2"	63 FT

NOTE

Changes from the agreement are by addendum only, signed by both parties and paid in full at time of affixing signature. No changes will occur prior to signing addendum.

ANTHONY & SYLVAN POOLS

BUILT FOR LIFE

DRAWING SCALED AT 1/8" = 1'
1" = 8'

ACCESS

NOTE: TO BE NUMBERED AND REFERRED TO ON PLAN VIA SYMBOL	
0	T.O.C. =
2	---
3	---

REVISIONS	
Date	Description
05.08.20	Initial Draft
------	------

Concrete Pool

Ryan JOB NO: 2001110128

CUSTOMER INFORMATION

LAST NAME:	Ryan	HOME PHONE	[redacted]
FIRST NAME:	Dan	CELL PHONE:	-
ADDRESS:	301 Williams Rd	POOL/SPA TYPE	Concrete Pool
CITY:	Fort Washington	STATE:	PA
ZIP:	19034	COUNTY:	Montgomery
SUBDIVISION:	NE	DAY TELE DESCR:	
EMAIL ADDRESS:	[redacted]		

POOL SHELL SPECIFICATIONS

POOL SHAPE:	Custom		MAX. LENGTH	40' 00	FT
POOL AREA:	800	SF	MAX. WIDTH	17' 00	FT
DEPTH:	3'-0" 8'-0"	LF	PERIMETER (POOL ONLY):	130	LF
DIVING POOL:	Yes		PERIMETER (TOTAL):	160	LF
STEPS:	Classic - Standard Template - 4 Steps - 32SF		APRX. VOLUME (TOTAL):	34,969	GAL
SWIMOUT SIZE:	8	FT	RETURNS:	2	
SWIMOUT INSIDE/OUTSIDE:	Inside Loveseat - LF		SKIMMERS:	2	
BENCH:	0	FT	BENCH LOCATION:	n/a	
COZY CORNER:		SF	OVERFLOW LINE:	n/a	FT
Play Pool/SunShelf-Outside	0	SF	CLEANER LINE:	Pressure	
Play Pool/SunShelf-Inside	95	SF			

RAISED BOND BEAM SPECIFICATIONS

6" RBB:	4	LF	RBB VENEER MAT'L:	n/a	
12" RBB:	4	LF	RBB VENEER AREA:	0	SF
18" RBB:	46	LF	NOTCH BEAM:	58	LF
24" RBB:	0	LF	HANDHOLD REQ'D:	0	
30" RBB:	0	LF	SHEER DESCENT SIZE/#:	0	
36" RBB:	0	LF	FOUNTAIN(S):	N/A	
OTHER WATER FEATURE:	n/a				

SPA SPECIFICATIONS

SPA AREA:	50	SF	SPA PLBG RUN:	45	LF
SPA PERIM:	29		SPA RAISED HEIGHT:	Raised Spa	IN
SPA LIGHT(S) TYPE:	1 LED Spa Light		DAM WALL:	Stone	
AIR BLOWER:			SPA FACING MAT'L:	Stone	
JETS (QTY):	6		SPA VENEER AREA:	n/a	SF
SPA COPING:	Qty		SPILLWAY TYPE:	Stone	
WATER FEATURE(S)	n/a		DECK JETS:	0	

TILE - COPING - INT. FINISH

TILE CHOICE:	TBD - Add'm Req'd	INT. FINISH TYPE/COLOR:	Ansylbrite Quartz Finish - TBD
COPING:	one 2"x 24" straights (Geometric Pools	ACCENT TILE:	
CENTER SECTION TRIM:	0 LF - Center Section Trim Selections	BENCH TILE LOC:	n/a
TRIM TILE SIZE/TYPE:	LF - Trim Tile Selections	STEP TILE LOC:	n/a
GROUT:	White	FITTINGS:	White

EQUIPMENT

FILTER TYPE:	1 - 60 SF DE		FILL LINE / DISTANCE:	n/a	LF
FILTER PUMP SIZE:	1 - 2.0 HP		MAIN DRAINS:	1 Dual	
BOOSTER PUMP SIZE/QTY	LISTED ABOVE		CHLORINATOR TYPE:	1 Fusion Soft0	
AUTO CLEANER:	Polaris TR35P		CLEAR VISION:	0	
CLEANER PUMP:	1 - 3/4 HP Pump		CONTROLLER MODEL:	1 PDA-PS6 (6 FUNCTION/5 AUX)0	
	0		CONTROLLER ADD ONS:	IQ900RS	
Add'l Lights (Sunshelf)	1 LED UCL 320		FLOOR SYSTEM:	0	
POOL LIGHT(S):	2 LED Pool Light		GAS LINE LENGTH	0	LF
HEATER TYPE & SIZE:	1 399K BTU NG0		DIVING BOARD:	0	
			POOL COVER:	800 Solid Cover - TBD - SF0	
HEATER VENT (If Req'd):	0		AUTO COVER LID:	n/a	
SRS	1		Mosaics	0	
COVER PUMP:	1		OTHER EQUIPMENT:	n/a	

APPURTENANCES

POOL DECK AREA:	0 1033	SF	DECK PIERS:	0	EA
POOL DECK DRAINAGE:	0	LF	WALL AREA IN SF:	0	SF
POOL DECK MATERIAL:	Patterned Concrete (250-399) - Ashlar Slate		WALL AREA IN LF:	440	LF
OTHER DECK DRAINAGE:	n/a		WALL TYPE:	ls - Upgraded Style SF (Belgard Belair	
EXISTING DECK TOPPING:	n/a		WALL CONTRACTOR:	A&S	
EXISTING DECK AREA:	n/a		WALL VENEER:	ls - Upgraded Style SF (Belgard Belair	
DECK CONTRACTOR:	A&S		WALL CAP MAT'L:	0	
ELECTRIC CONTRACTOR:	A&S		POOL DECK STEPS	24	LF
FENCE CONTRACTOR:	Owner		STEP TREAD/RISER:	Yes	
GAS CONTRACTOR:	Owner		CHILD SAFETY FENCE:	n/a	

MISCELLANEOUS

Topo inlcuded

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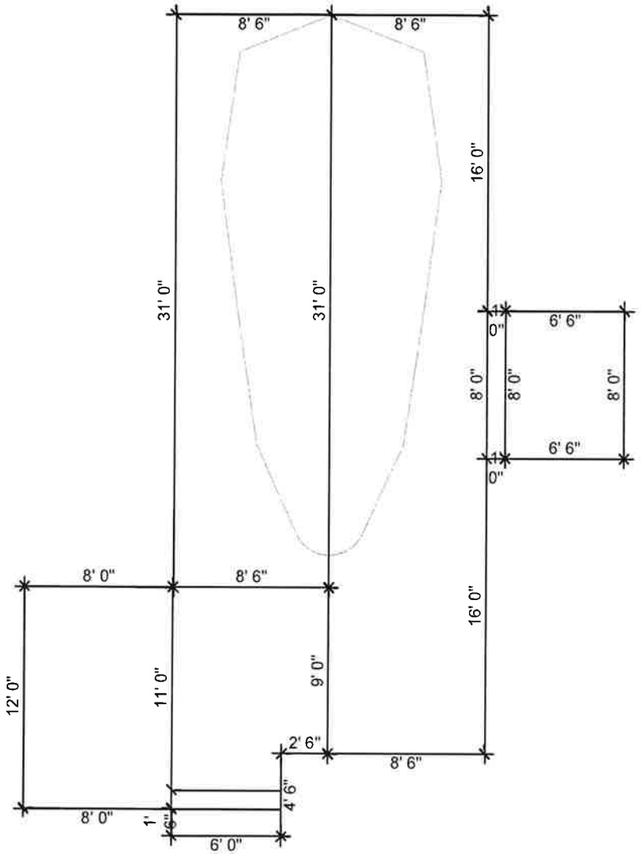
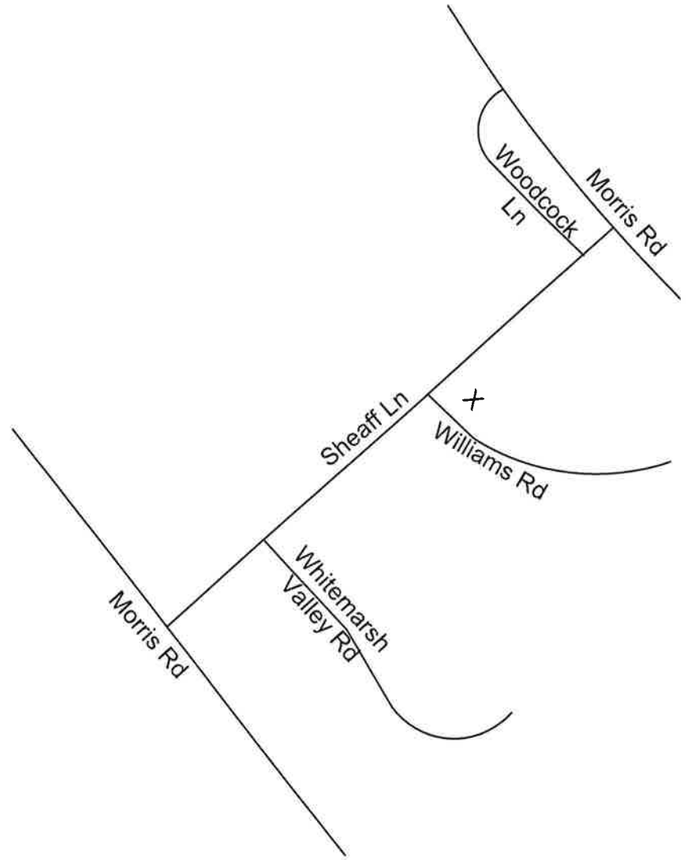
Pool Layout Detail

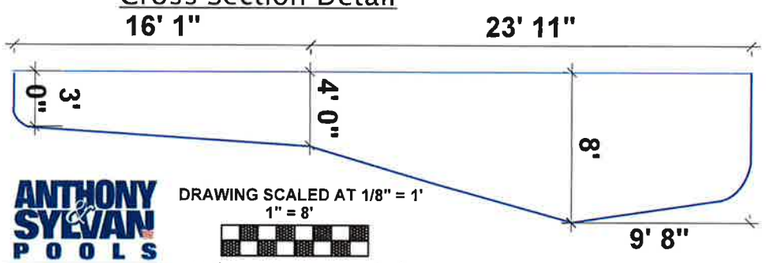


SITE CONDITIONS					
ADD'L EXC. GRADING:	0	HRS	WATER SOURCE:	City	
DIG TYPE:	Standard		SEWER or SEPTIC:	Septic	
DIRT HAUL:	Yes		DRAIN REQ'D / TYPE:	n/a	
FENCE REMOVAL:	Yes		LAWN SPRINKLERS:	n/a	
SLAB REMOVAL:	1 Section		TEMP FENCE:	Yes	
POWER LINES:	n/a		SILT FENCE:	1	
STUMP REMOVAL/QTY:	No Stumps				
POOL SETBACKS					
REAR:	20'	FT.	EQUIPMENT:	Same	FT.
SIDES:	15'	FT.	FENCE:	PL	FT.
HOUSE:	0	FT.	OTHER SETBACKS:	50' from Adhacent House	FT.
ANTHONY & SYLVAN CONTACT INFORMATION					
DESIGNER:	Rob McCubbin		CELL PHONE NO:	(215) 431-3404	
A&S OFFICE:	BuxMont314		OFFICE PHONE NO:	(215) 489-5600	
ADDRESS:	3739 Easton Rd, Doylestown, PA 18901				
REGIONAL MANAGER	Tom Casey		PERMIT OFFICE:	Whitemarsh	
SIGN DATE:	5/1/2020		PERMIT OFFICE TEL:	610-825-3535	
PM	Alex Wilhour		PM CELL PHONE NO:	(215) 239-7401	

Map



Cross Section Detail



ANTHONY & SYLVAN POOLS
BUILT FOR LIFE

DRAWING SCALED AT 1/8" = 1'
1" = 8'
Unless otherwise noted

Survey Plan
Not to Scale

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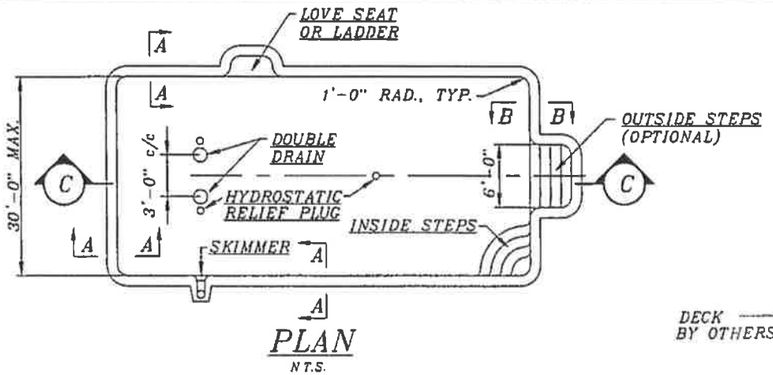
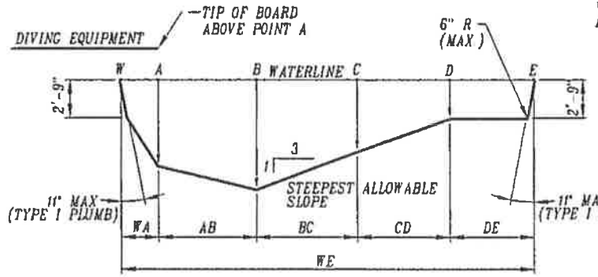
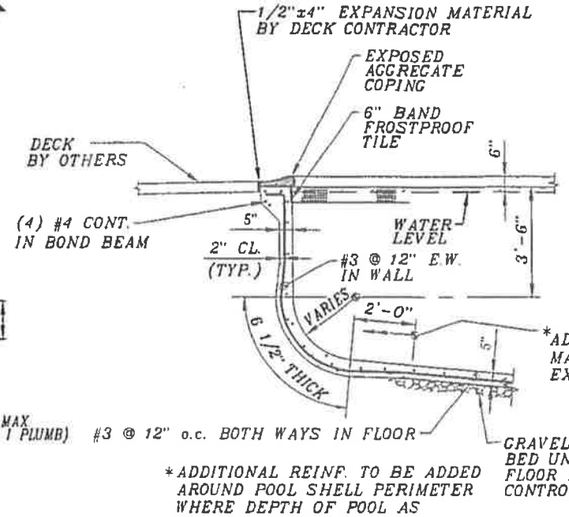


PLAN

N.T.S.



MINIMUM CONTOUR OF SECTION THROUGH CENTERLINE OF DIVING EQUIPMENT



*ADDITIONAL REINF. TO BE ADDED AROUND POOL SHELL PERIMETER WHERE DEPTH OF POOL AS MEASURED FROM TOP OF DECK EQUALS OR EXCEEDS 7'-0"

GRAVEL OR CRUSHED STONE BED UNDER ENTIRE POOL FLOOR FOR CAPILLARY WATER CONTROL

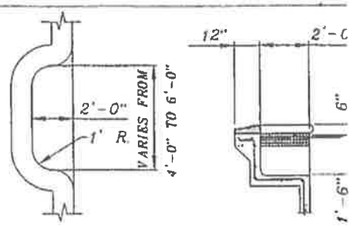
*ADD #3 x 10'-0" LONG @ 12" VERT. MAKING A TOTAL OF #3 VERT. @ 6" o.c. EXTENDING UPWARD INTO WALL

SECTION A-A

DEEP END (N.T.S.)

NOTES:

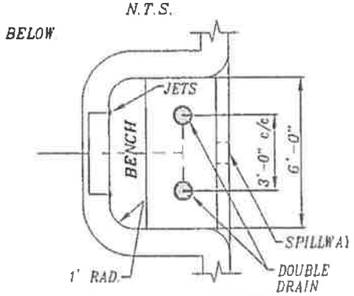
1. POOL FLOOR TO BE PLACED ON UNDISTURBED NATURAL SOIL.
2. POOL STRUCTURE DESIGNED IN ACCORDANCE WITH THE AMERICAN CONCRETE INSTITUTE (A.C.I.) STANDARD FOR "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE - 318".
3. POOL CONCRETE SHALL COMPLY WITH DRY-MIX SHOTCRETE PER ACI 506R GUIDE TO SHOTCRETE MIX SHALL BE PROPORTIONED WITH PORTLAND CEMENT, FINE SAND AGGREGATES & WATER.
4. ALL STEEL REINFORCING SHALL BE DEFORMED BARS COMPLYING WITH AMERICAN SOCIETY FOR TESTING AND MATERIALS (A.S.T.M.) SPECIFICATIONS A615-40. LAP BARS A MINIMUM OF 12 INCHES.
5. OWNER SHALL INSTALL ADEQUATE FENCE AND ELECTRIC APPROVED BY LOCAL BUILDING DEPARTMENT.
6. THESE CONSTRUCTION SPECIFICATIONS ARE STANDARD AND APPLY TO ALL SHAPES.
7. INSTALL ROPES & FLOATS ACCORDING TO REGULATIONS. SEE SECTION C-C BELOW.
8. POOL AND SPA SUCTION OUTLETS SHALL HAVE A COVER CONFORMING TO ANSI / ASME A112.19.8M.
9. DUAL OUTLETS SHALL BE SEPERATED BY A MINIMUM OF 3 FEET MEASURED FROM CENTER TO CENTER OF THE SUCTION PIPES. DIFFERENT PLANES, i.e., ONE ON THE BOTTOM AND ONE ON THE VERTICAL WALL, OR ONE EACH ON TWO SEPERATE VERTICAL WALLS.



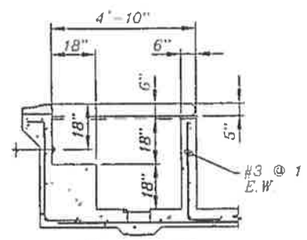
PLAN VIEW SECTION

LOVE SEAT DETAIL

N.T.S.



PLAN VIEW

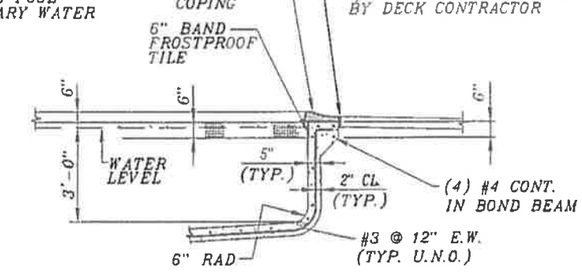


SECTION

SPA DETAIL

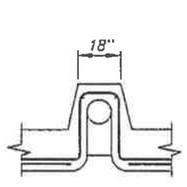
N.T.S.

1/4/16

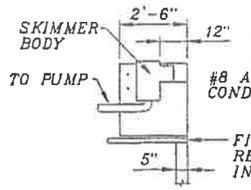


SECTION B-B

SHALLOW END (N.T.S.)



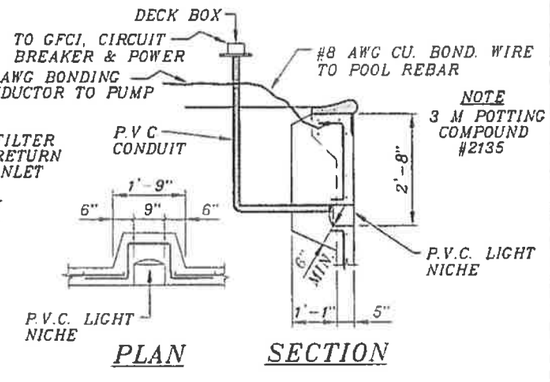
PLAN



SECTION

SKIMMER DETAIL

N.T.S.



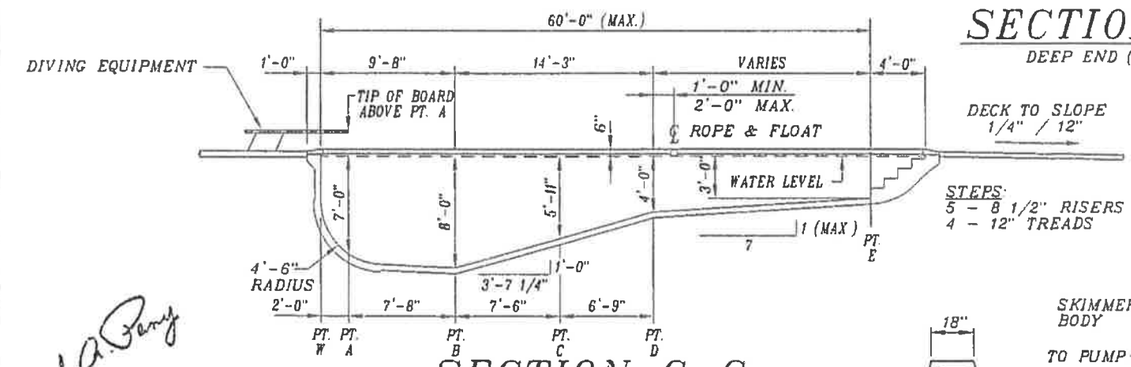
PLAN SECTION

LIGHT NICHE DETAIL

N.T.S.

	DE - IRC 2003	
DIVING BOARD MANUFACTURER SHALL CONFIRM DIVING ENVELOPE FOR BOARD SPECIFIED.	NJ - IRC 2015	ISPSC 2015
	NY - NYSC 2015	ISPSC 2015
	PA - IRC 2009	ANSI/APSP/ICC-5 2011

POOL	MINIMUM DEPTHS AT POINT				MINIMUM WIDTHS AT POINT				MINIMUM LENGTHS BETWEEN POINTS					
TYPE	A	B	C	D	A	B	C	D	WA	AB	BC	CD	DE	WE
I	6'-0"	7'-6"	5'-0"	2'-9"	10'-0"	12'-0"	10'-0"	8'-0"	1'-6"	7'-0"	7'-6"	VARIES	6'-0"	28'-9"



SECTION C-C

N.T.S.

PANY & ENTZ ENGINEERING COMPANY

609 Hamilton Street • Allentown, PA 18101

STEPHEN A. PANY, P.E.

DE LICENSE# 12523

NJ LICENSE# GE41689

NY LICENSE# 076161

PA LICENSE# 32805-E

STANDARD CONSTRUCTION DETA

-TYPE 1 POOL-

ANTHONY & SYLVAN POOL

WHERE AMERICA SWIMS

Route 611, Doylestown, PA 18901 (800) 499-09

ZHB APPEAL #2020-10
SUMMARY

APPLICANT: Whitemarsh Hotel Associates, L.P.

PROPERTY LOCATION: Parcel #65-00-08764-00-9
Block 051, Unit 001
432 Pennsylvania Avenue
Fort Washington, PA 19034

ZONING DISTRICT: CR-L—Commercial Retail (Low) District
Floodplain Conservation Overlay District
Riparian Corridor Conservation Overlay District

SUMMARY OF RELIEF REQUEST:

The applicant is proposing to add a 2600-square foot (+/-) free-standing, drive-through Starbucks coffee shop restaurant/café with outdoor seating immediately adjacent to the existing Holiday Inn Express and Suites. The following relief is requested:

1. **Special Exception pursuant to Section 116-104.A.(6)(a)** to permit a freestanding restaurant/café in the proposed location.
2. **Variance from Section 116-104.A.(6)(a)** to permit outdoor seating at a restaurant/café.
3. **Variance from Section 116-184.** to permit 192 parking spaces for the hotel and restaurant, where 251 are required.
4. **Variance from Section 116-206.A.(2)(a)** to permit two (2) free standing monument signs on the property where one is permitted (one exists for the hotel).
5. **Variance from Section 116-206.A.** to permit a drive-through sign package as depicted on Applicant's plans, where the Zoning Ordinance does not contemplate such signage.
6. **Variance from Section 116-206.A.(2)(b)** to permit commercial signage on more than one façade of a commercial building and to permit a maximum of 110 square feet of such signage on the proposed building; a maximum of 75 square feet on the front of the restaurant is permitted given the proposed building's location.
7. **Variance from Sections 116-165. and 116-166.** to permit the proposed improvements within the floodplain.

PRIOR DECISIONS:
ZHB#2018-08 Restaurant Use
ZHB#2015-26 Signage
ZHB#2014-07 Redevelopment of Property
ZHB#2000-07 Dumpster Enclosure & Rear Entrance Canopy
ZHB#1975-19 Free Standing Sign
ZHB#1973-24 Parking

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: 2020-10

Applicant/Appellant: Whitemarsh Hotel Associates, L.P.

Address: c/o Amee S. Farrell, Esq. Kaplin Stewart, PO Box 3037, Blue Bell, PA 19422

Phone #: (610) 941-2547 **Cell Number:** **E-Mail:** afarrell@kaplaw.com

Owner: Whitemarsh Hotel Associates, L.P.

Address: See above

Phone #: **Cell Number:** **E-Mail:**

Location of the Property Involved: 432 Pennsylvania Avenue

Block #: 051 **Unit #:** 001 **Parcel #:** 65-00-08764-00-9

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):

Modification of prior approval related to restaurant, to include outdoor seating and drive-through access.

GROUNDS FOR APPEAL (State reasons for appeal and nature of hardship, if claimed):
****Attach additional sheets if necessary**

See attached Addendum.

Legal Counsel (if represented): Amee S. Farrell, Esquire

Address: Kaplin Stewart, P.O. Box 3037, Blue Bell, PA 19422

Phone #: (610) 941-2547 **E-Mail:** afarrell@kaplaw.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:

RECEIVED
FEB 27 2020
WHITEMARSH TOWNSHIP
ZONING & ENGINEERING

Date: 2/27/2020

I am (We are)

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

Amee S. Farrell

Signature of Applicant/Appellant:
by: Amee S. Farrell, Esquire
Counsel for Owner/Applicant

Signature of Applicant/Appellant:

Kaplin Stewart Meloff Reiter & Stein, PC
Union Meeting Corporate Center
910 Harvest Drive
Post Office Box 3037
Blue Bell, PA 19422
Amee S. Farrell, Esquire
Identification No. 93338
(610) 941-2547
afarrell@kaplaw.com

Attorneys for Applicant

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

In the Matter of:	*Premises:*
Whitemarsh Hotel Associates, L.P.	**432 Pennsylvania Avenue** **Fort Washington, PA 19034**

ADDENDUM TO ZONING HEARING BOARD APPLICATION

Whitemarsh Hotel Associates, L.P. ("**Associates**"), by and through its attorney Amee S. Farrell, hereby files this addendum to the Whitemarsh Township Zoning Hearing Board application seeking the relief necessary to add a free-standing, drive-through coffee-shop restaurant/café with outdoor seating to the existing Holiday Inn hotel located at 432 Pennsylvania Avenue, Whitemarsh Township ("**Property**") and in support thereof states as follows:

1. **Name and Address of Applicant** Applicant Associates is the title-owner of the Property by virtue of a Deed, dated February 20, 2015 and recorded March 19, 2015 with the Montgomery County Recorder of Deeds at Book 5947, Page 00600. A copy the Deed evidencing Associates' interest in the Property is included herewith as **Exhibit "A"** and made a part hereof.

2. **Description of Property**

A. **Physical Features & Use**

Associates Property is located at 432 Pennsylvania Avenue and consists of approximately 4.492 acres (+/-) with frontage on Pennsylvania Avenue. The Property is irregularly shaped, bounded to the North by Pennsylvania Avenue, to the South by SEPTA commuter train tracks, to the East by a BMW auto dealers and to the West by an Audi automobile dealer. Pennsylvania Avenue also marks the municipal boundary separating Whitemarsh Township and Upper Dublin Township. A mix of office and retail development exists across Pennsylvania Avenue in Upper Dublin Township.

The Property was previously part of a larger 7.301 acre (+/-) parcel, improved with a 230-room hotel, a single-story conference center of approximately 9,170 s.f. (+/-), two (2) restaurants of 3,072 s.f. (+/-) and 2,560 s.f. (+/-), respectively, and an outdoor swimming pool, together with a 435-car parking lot and related improvements.

In or about May 2014 through November of 2015, Associates received the zoning and land development approvals necessary to redevelop the Property (as it was then configured) to: (i) remove most of a single-story portion of the existing hotel building, including the two (2) existing restaurants and the 9,170 s.f. (+/-) conference center, and to renovate the remainder to accommodate the hotel lobby and a small 2,250 s.f. (+/-) meeting room; (ii) renovate and rebrand the hotel, thereby reducing the number of hotel rooms from 230 to 168 rooms; (iii) construct two (2) new free-standing restaurants, one immediately adjacent to the hotel (8000 g.s.f. (+/-)) and one adjacent to the Fort Washington Train Station property (1,822 g.s.f., (+/-)); and (iv) permit an illuminated freestanding pylon sign of 52 s.f. and an illuminated wall sign of 405 s.f. on the eastern façade of the hotel building (collectively, "**2015 Redevelopment Approvals**"). Copies

of the 2015 Redevelopment Approvals are included herewith at **Exhibit "B"** and made a part hereof.

Associates thereafter undertook substantial portions of the proposed renovation and redevelopment. As a result, the Property is now improved with a 168-room multi-story hotel, with associated 2,250 s.f. meeting room and hotel lobby, together with an outdoor swimming pool, 178-car parking lot, and associated commercial signage.

Prior to construction of either of the previously approved restaurants, Associates entered into an agreement whereby Associates agreed to convey a portion of its then-existing property to Audi Fort Washington ("**Audi**"), subject to Audi receiving all necessary approvals to finalize a subdivision. By Resolution 2015-16, dated April 23, 2015 the Board of Supervisors of Whitemarsh Township granted Final Land Development and Major Subdivision approval ("**Subdivision Approval**") to permit the subdivision of the existing property into two lots and development by Audi of the newly created lot. Lot 1 is the portion of the lot containing the existing hotel and was retained by Associates (hereinafter defined as "**Associates Property**"). Lot 2 was thereafter developed with the Audi car dealership. A copy of the Record Plan confirming the subdivision of the Property and the development of the Audi car dealership is included herewith as **Exhibit "C"** and made a part hereof.

Associates thereafter modified the proposed restaurant development on the remaining Associates Property by physically separating the restaurant from the hotel, reducing the overall proposed square footage of the restaurant from 8,000 s.f. (+/-) as originally approved, to 6,049 s.f. (+/-), and abandoning development of the second restaurant. Associates received Zoning Hearing Board approval on June 11, 2018 and a waiver from land development via Board of Supervisors Resolution #2019-10 for the modified restaurant development (collectively, "**2019**

Redevelopment Approvals"). A copy of the 2019 Redevelopment Approvals are included herewith as **Exhibit "D"** and made a part hereof. The existing conditions of the Associates Property and the adjoining Audi Property are depicted on Sheet 1, Existing Conditions, of a five-sheet set, prepared by Momenee, Inc., dated February 19, 2020, which depicts existing and proposed conditions on Associates Property and which is included herewith as **Exhibit "E"** and made a part hereof ("**Proposed Plans**").

B. **Zoning**

According to the Whitemarsh Township Zoning Code ("**Code**"), Associates Property is located in the CR-L Commercial Retail District Low ("**CR-L District**") and is further subject to the Floodplain Conservation District Overlay and Riparian Corridor Conservation District Overlay.[1]

3. **Proposed Improvements**

A. **Drive-Through Coffee-Shop – Café/Restaurant**

The restaurant as previously approved was not constructed. Associates now proposes to develop the area of Associates Property previously approved for a 6,049 s.f. +/- restaurant with a 2,600 s.f. (+/-) Starbucks drive-through coffee shop with outdoor seating ("**Starbucks**"). The proposed development is depicted on Sheet 2, Proposed Site Plan, of the Proposed Plans included herewith.

B. **Parking Modifications**

As depicted on Sheet 1, Existing Conditions, of the Proposed Plans, the Associates Property is currently improved with 178 parking spaces. Per the Code, the hotel requires 213

[1] Associates Property is not adjacent to any stream but is deemed to be within the Riparian Corridor Overlay because of its location with the Floodplain Overlay.

parking spaces and the Starbucks will require 38 parking spaces,[2] for a total parking requirement of 251 parking spaces. Once reconfigured, the Property will include 192 parking spaces serving both the hotel and the Starbucks. A parking study, justifying the reduction, will be provided at the zoning hearing on this matter.

C. **Café/Restaurant Signage**

As depicted on Sheet 3 (Signage Plan), Sheet 4 (Signage Details), and Sheet 5 (Building Signage Details), Associates proposes a mixture of signage for the proposed Starbucks. Specifically, Associates proposes three (3) primary categories of signage based on Starbucks sign brand packages for a drive-through coffee shop with outdoor dining:

a) Freestanding monument signage: one (1) internally illuminated freestanding Starbucks directional monument sign, measuring 2'-1" x 6'- 1 1/2" (12.76 s.f. +/- overall) to be located adjacent to the primary entry driveway to the Property ("**Monument Sign**"), *See* "DTE-Monument Sign" at Sheet 4, Signage Details, of Proposed Plans;

b) Directional and Drive-Through signage: a standard drive-through directional signage package consisting of one (1) internally illuminated directional entry sign, one (1) internally illuminated directional exit only/thank you sign, one (1) clearance bar with clearance signage, one (1) internally illuminated freestanding pre-menu board, one (1) internally illuminated freestanding menu board, and one (1) internally illuminated freestanding order screen with canopy (collectively, "**Directional/Drive-Through Signage**"), *See* Sheet 3 (Signage Plan) and Sheet 4 (Signage Details) of the Proposed Plans; and

---

[2] Section 116-184 of the Code provides for two distinct parking calculations for a restaurant or café in the CR-L District, requiring that the greater of the two calculations be utilized to determine required parking: (i) 1 parking space per every 50 s.f. of patron area (1,870 s.f. of patron area = 38 spaces); or (ii) 1 parking space per 3 occupants, based on maximum allowable occupancy under applicable building codes (87 occupants maximum = 29 spaces).

c) Building wall signage: As depicted on Sheet 5, Building Signage Details, Starbucks is evaluating several different options for internally illuminated building wall signage that would include a combination of "Starbucks" copy, the Starbucks logo, and "Drive Thru" signage. The maximum area of wall signage proposed under any package is 110 s.f. (+/-)[3] and would include signage on all facades of the building to provide both vehicles and pedestrians with visual cues to access the building and properly circulate through the area in a safe and efficient manner (collectively, "**Wall Signage**"). *See,* Sheet 5, Building Signage Details, of the Proposed Plans.

4. **Relief Requested**.

In order to carry out the proposed restaurant/café component of the redevelopment, Associates requests the following relief from the Zoning Code:

A. A special exception pursuant to §116-104.A.(6)(a) to permit a free-standing restaurant/cafe;

B. A variance from §116-104.A(6)(a) to permit outdoor seating at a restaurant/café;

C. A variance from §116-184 to permit 192 parking spaces, where 251 are required;

D. A variance from §116-206.A(2)(a) to permit two (2) freestanding monument signs where one is permitted;

E. A variance from §116-206.A to permit a drive-through sign package as depicted on the plans, where the Code does not contemplate such signage;

---

[3] Section 116-206.A(1)(b) of the Code permits a maximum of 35 s.f. of wall signage, plus one (1) additional s.f. of signage for each 2 feet of excess front yard setback. In the CR-L District, the minimum front yard setback is 50' and the Starbucks is setback 130.5' (i.e. 80.5 feet more than the required setback) – allowing for an additional 40 s.f. of wall signage, or a maximum of 75 s.f. of commercial wall signage.

F. A variance from §116-206.A(2)(b) to permit commercial signage on more than one façade of a commercial building and to permit a maximum of 110 s.f. of such signage on the proposed building, where a maximum of 75 s.f. is permitted at this location; and

G. A variance from §§116-165 and 116-166 to permit the proposed improvements within the floodplain.[4]

5. **Grounds for Relief.**

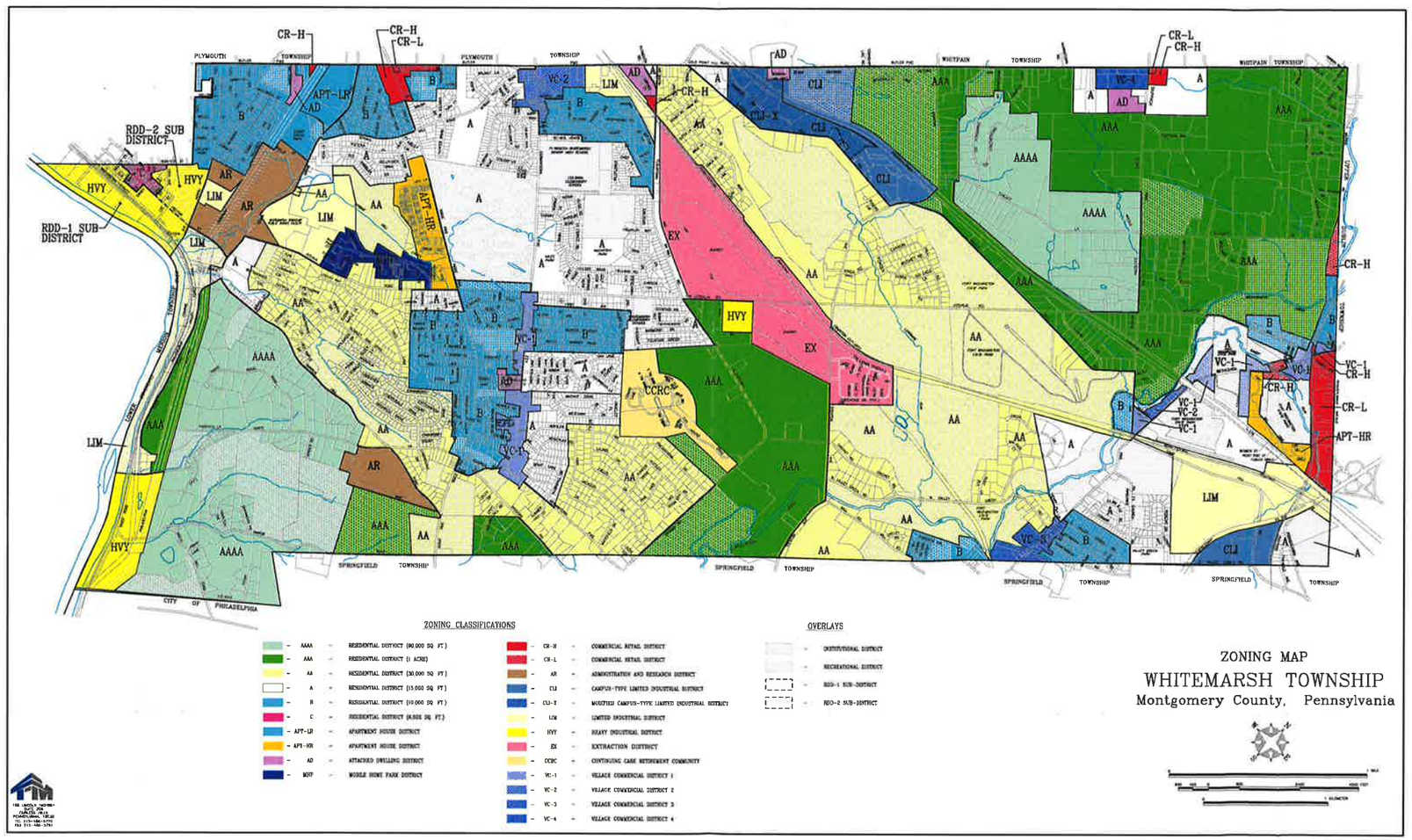
Associates requests the zoning relief outlined herein to allow reasonable use of Associates Property, consistent with the existing use of Associates Property, the nature and character of the surrounding uses, and the prior approvals of the Zoning Hearing Board and Board of Supervisors. The proposed project will continue the revitalization of Associates Property undertaken to date, and will greatly enhance the appearance of the site, without adverse impact on the health, safety, and general welfare of the public.

Respectfully Submitted,

AMEE S. FARRELL, ESQUIRE
Attorney for Applicant

Date: February 27, 2020

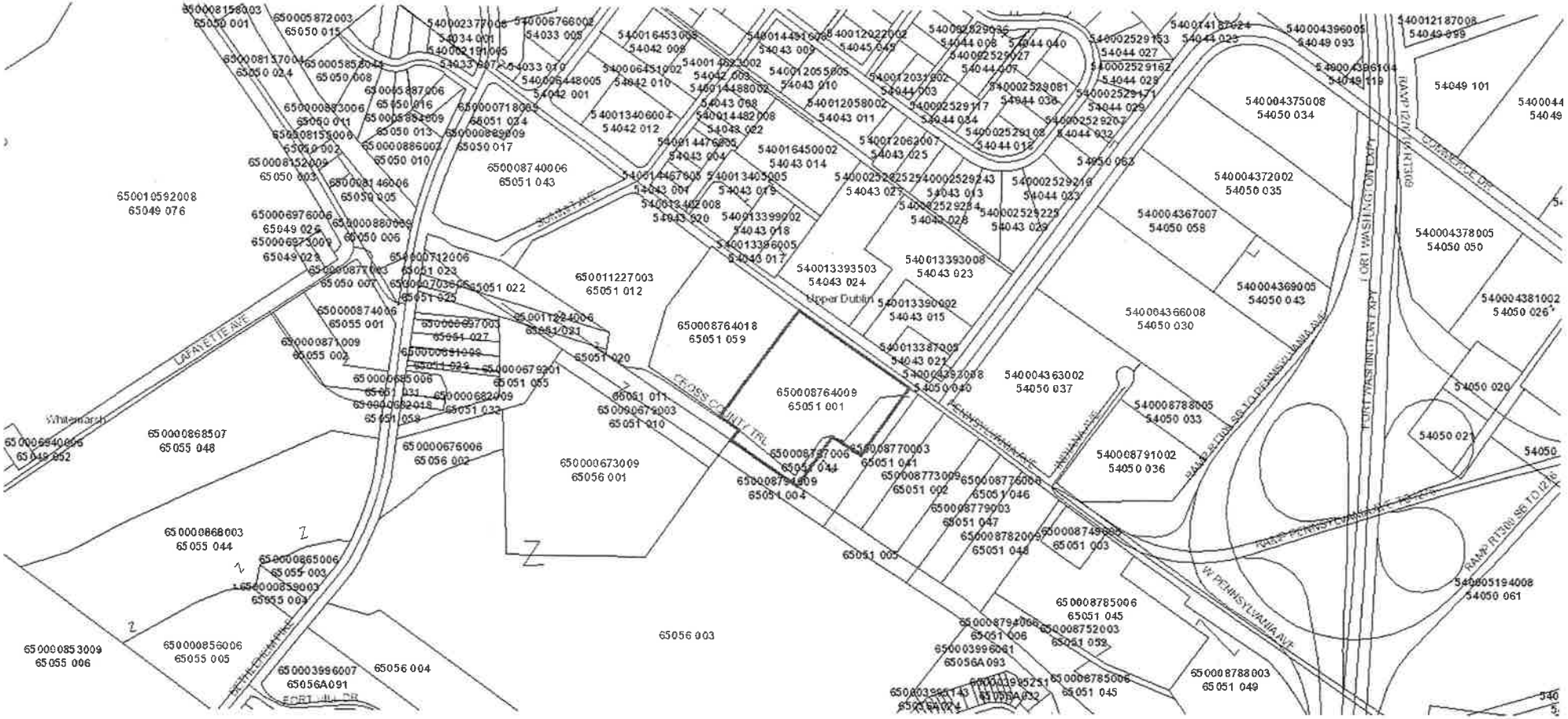
[4] Variance relief to permit construction within the floodplain on this Property was previously granted under Application 2014-07 (to permit hotel redevelopment and construction of 8,000 s.f. +/- restaurant) and Application 2018-08 (to permit construction of 6,049 s.f. +/- restaurant). The current proposal is within the same footprint as previously approved construction. However, out of an abundance of caution, Applicant again requests this relief. Per prior decision of the Board at Application 2018-08, additional relief for construction within the Riparian Corridor is not required for a plan change in the area of the proposed restaurant.



ZONING MAP

WHITEMARSH TOWNSHIP

Montgomery County, Pennsylvania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Upper Dublin
Whitemarsh
LAFAYETTE AVE
CROSS COUNTY TRL
PENNSYLVANIA AVE
INDIANA AVE
W PENNSYLVANIA AVE
FORT WASHINGTON EXPY
RAMP PENNSYLVANIA AVE
RAMP RT309 SB TO PENNSYLVANIA AVE
RAMP RT309 SB TO 12
FORT HILL DR
BETHLEHEM PIKE
SUMMIT AVE
COMMERCE DR

PARID: 650008764009
WHITEMARSH HOTEL ASSOCIATES LP 432 PENNSYLVANIA AVE

Parcel

TaxMapID	65051 001
Parid	65-00-08764-00-9
Land Use Code	4225
Land Use Description	C - HOT/MOT 101+ UNITS W/OUT RESTAURANT
Property Location	432 PENNSYLVANIA AVE
Lot #	1
Lot Size	4.49 ACRES
Front Feet	496
Municipality	WHITEMARSH
School District	COLONIAL
Utilities	ALL PUBLIC//

Owner

Name(s)	WHITEMARSH HOTEL ASSOCIATES LP
Name(s)	
Mailing Address	919 CONESTOGA RD
Care Of	
Mailing Address	STE 214 BLDG 3
Mailing Address	ROSEMONT PA 19010

Current Assessment

Appraised Value	Assessed Value	Restrict Code
8,052,500	8,052,500	

Estimated Taxes

County	27,854
Montco Community College	3,140
Municipality	19,030
School District	183,372
Total	233,396
Tax Lien	Tax Claim Bureau Parcel Search

Last Sale

Sale Date	20-FEB-15
Sale Price	$5,350,000
Tax Stamps	53500
Deed Book and Page	5947-00600
Grantor	FORT WASHINGTON LAND LP
Grantee	WHITEMARSH HOTEL ASSOCIATES LP
Date Recorded	19-MAR-15

GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

65 E. Butler Avenue, Ste 100
New Britain, PA 18901
(215) 345-4330
Fax (215) 345-8606
www.gilmore-assoc.com

MEMORANDUM

Date: June 24, 2020

To: Charles L. Guttenplan, AICP - Director of Planning and Zoning

From: Jim Hersh, P.E., Township Engineer

Reference: 301 Williams Road
ZHB#2020-17
G&A Project No. 2020-01116

In reference to the above-mentioned property, we have reviewed the application prepared by Woodrow & Associates, Inc. and offer the following comments for your consideration.

The applicants are requesting zoning relief to construct an in-ground swimming pool and patio in the rear yard of their residence, resulting in an increase of approximately 1,389 square-feet in impervious surface coverage. The calculations indicate that the steep slope ratio for this property is approximately 55.29%, and therefore the maximum impervious coverage for the lot is 9%.

The proposed improvements would result in an increase of approximately 1,389 square-feet in impervious surface coverage which will increase the impervious coverage from 10.18% to 12.16%, which is greater than the allowable amount of 9%.

There are no engineering objections to or environmental impacts associated with the proposed increase in impervious surface. Please note that the applicant has applied for an Earth Disturbance Permit, which is being reviewed for compliance with Chapter 58 and Resolution 2004-8 of the Whitemarsh Township Code.

Should you have any questions or need further information regarding this matter, please do not hesitate to contact me at this office.

WHITEMARSH TOWNSHIP

TO: ZONING HEARING BOARD MEMBERS

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

SUBJECT: PLANNING COMMISSION REVIEW OF ZHB #2020-10; WHITEMARSH HOTEL ASSOCIATES, LP ADDITION OF 2600± SQUARE FOOT STARBUCKS RESTAURANT/CAFE

DATE: JUNE 15, 2020

CC: Michael E. Furey, Esq., ZHB Solicitor
Richard L. Mellor, Jr., Township Manager

ZHB #2020-10, application of Whitemarsh Hotel Associates, LP, for its proposal to construct a 2600± square foot Starbucks restaurant/café adjacent to the Holiday Inn Express and Suites on this site, was discussed by the Planning Commission at their May 26, 2020 (Zoom) meeting. There have been previous proposals for larger freestanding restaurants adjacent to the hotel, but none have been built. The Starbucks would have a drive-through and a small outdoor seating area.

The relief requested is the following:

1. **Special Exception pursuant to Section 116-104.A.(6)(a)** to permit a freestanding restaurant/café in the proposed location.
2. **Variance from Section 116-104.A.(6)(a)** to permit outdoor seating at a restaurant/café.
3. **Variance from Section 116-184.** to permit 192 parking spaces for the hotel and restaurant, where 251 are required.
4. **Variance from Section 116-206.A.(2)(a)** to permit two (2) free standing monument signs on the property where one is permitted (one exists for the hotel).
5. **Variance from Section 116-206.A**. to permit a drive-through sign package as depicted on Applicant's plans, where the Zoning Ordinance does not contemplate such signage.
6. **Variance from Section 116-206.A.(2)(b)** to permit commercial signage on more than one façade of a commercial building and to permit a maximum of 110 square feet of such signage on the proposed building; a maximum of 75 square feet on the front of the restaurant is permitted given the proposed building's location.
7. **Variance from Sections 116-165. and 116-166.** to permit the proposed improvements within the floodplain.

The applicant's team presented the proposal using a short PowerPoint, including a brief history of the prior proposals on this site (including when it was larger and included the lot that the Audi auto dealership now sits on). At the conclusion of the presentation, the Planning Commission discussed various points with the applicant and raised a number of concerns and questions. The discussion included clarification of the total sign square footage and whether that included the signs on all sides of the building; would the interior layout be a standard Starbucks layout; whether or not the extra parking spaces are necessary in view of the floodplain on the site, pointing out that the more green and the more stormwater infiltration possible, the better; clarification of hours of operation; and since the special exception standards in CR-L require a showing of need in the market area, what are the differences between Starbucks and the Donkin Donuts (further east on Pennsylvania Avenue).

At the conclusion of the discussion, the Planning Commission passed a unanimous motion to recommend that the Zoning Hearing Board grant the special exception and requested variances conditioned upon the applicant taking an ecosystem approach with respect to greenspace.

A brief conversation followed that motion concerning the 5 alternative sign packages and exterior color schemes presented.

A second unanimous motion was then passed in which the Planning Commission recommended design options #1 & #5 above the other choices.

If you have any questions prior to the hearing on July 1, 2020, please feel free to be in touch with me (cguttenplan@whitemarshtwp.org or 484-594-2625).

G:\ZONING HEARING BOARD\ZHB 2020\PC Recommendations\Whitemarsh Hotel Assoc ZHB#2020-10 PC Rec.doc

Charles L. Guttenplan, AICP
Director of Planning and Zoning/Zoning Officer
616 Germantown Pike
Lafayette Hill, PA 19444
Phone: 484-594-2625 Fax: 610-825-6252
Email: cguttenplan@whitemarshtwp.org

EXHIBIT A

RECORDER OF DEEDS
MONTGOMERY COUNTY
Nancy J. Becker

One Montgomery Plaza
Swede and Airy Streets ~ Suite 303
P.O. Box 311 ~ Norristown, PA 19404
Office: (610) 278-3289 ~ Fax: (610) 278-3869

DEED BK 5947 PG 00600 to 00603.1
INSTRUMENT # : 2015018022
RECORDED DATE: 03/19/2015 10:37:04 AM

3180815-0014O

MONTGOMERY COUNTY ROD

OFFICIAL RECORDING COVER PAGE

Document Type:	Deed	**Transaction #:**	3180253 - 1 Doc(s)
Document Date:	02/20/2015	**Document Page Count:**	3
Reference Info:		**Operator Id:**	dcane

RETURN TO: (Simplifile)
Land Services USA (West Chester 2)
1 S Church Street
West Chester, PA 19382

PAID BY:
LAND SERVICES USA WEST CHESTER 2

*** PROPERTY DATA:**

Parcel ID #:	65-00-08764-00-9
Address:	432 PENNSYLVANIA AVE
	PA
Municipality:	Whitemarsh Township (100%)
School District:	Colonial

*** ASSOCIATED DOCUMENT(S):**

CONSIDERATION/SECURED AMT: $10.00
TAXABLE AMOUNT: $5,350,000.00

FEES / TAXES:

Recording Fee:Deed	$95.00
Affidavit Fee	$1.50
State RTT	$53,500.00
Whitemarsh Township RTT	$26,750.00
Colonial School District RTT	$26,750.00
NonCompliance Fee	$25.00
Total:	$107,121.50

DEED BK 5947 PG 00600 to 00603.1
Recorded Date: 03/19/2015 10:37:04 AM

I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office in Montgomery County, Pennsylvania.

RECORDER'S OFFICE · MONTGOMERY COUNTY, PA ·

Nancy J. Becker
Recorder of Deeds

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
***COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.**

Certification signature by montgomery.county.rod@propertyinfo.com, Validity Unknown
Certified and Digitally Signed
Validation may require Adobe 'Windows Integration'

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
65-00-08764-00-9 WHITEMARSH TOWNSHIP
432 PENNSYLVANIA AVE
FORT WASHINGTON LAND LP $15.00
B 051 L U 001 4222 03/19/2015 CS

After recording, please return to:
Thomas R. Castiello
Arent Fox LLP
1717 K Street, N.W.
Washington, D.C. 20036-5342
Parcel No. 65-00-08764-00-9

SPECIAL WARRANTY DEED

FORT WASHINGTON LAND LIMITED PARTNERSHIP, a Delaware limited partnership ("Grantor") having an address of 1919 M Street NW, Suite 320, Washington, DC 20036, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, has granted, bargained and sold, released and confirmed, and by these presents does grant, bargain and sell, release and confirm, unto WHITEMARSH HOTEL ASSOCIATES LP, a Pennsylvania limited partnership, ("Grantee") having an address of 919 Conestoga Road, Suite 214, Building 3, Rosemont, PA 19010, (i) all that real property situated in Montgomery County, Pennsylvania, and more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, and (ii) together with all improvements now or hereafter situated thereon (collectively, the "Property").

This conveyance is expressly made subject to all easements, covenants, conditions and restrictions of record insofar as they lawfully affect the Property.

Together with all and singular the buildings and improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the Property belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all estate, right, title, interest property, claim and demand whatsoever of it, the said Grantor, as well at law as in equity, of, in and to the same.

TO HAVE AND TO HOLD the Property, with the buildings and improvements thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors and assigns, to and for the only proper use and behoof of the said Grantee, its successors and assigns, forever.

AND the said Grantor, for itself, its successors and assigns, does, by these presents, covenant, grant and agree, to and with the said Grantee, its successors and assigns, that it, the said Grantor, and its successors and assigns, all and singular the hereditaments and premises herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors and assigns, against it, the said Grantor, and its successors and assign, will warrant and defend against the lawful claims of all persons claiming by, through or under the said Grantor but not otherwise.

[The Remainder of this Page is Intentionally Left Blank]

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed on February 20, 2015 and made effective March 13, 2015.
FEBRUARY 20, 2015 AND MADE EFFECTIVE MARCH 13, 2015.

Witness:

GRANTOR:

FORT WASHINGTON LAND LIMITED PARTNERSHIP, a Delaware limited partnership

By: FORT WASHINGTON LAND GP, LLC, a Delaware limited liability company, its general partner

Name: Meghan Hottel-Cox

By: _____
Edward H. Kaplan, President

~~CITY/COUNTY~~ OF: District of Columbia)
)
~~STATE/COMMONWEALTH OF~~: _____) To Wit

On this, the 20th day of February, 2015, before me, a notary public, the undersigned officer, personally appeared Edward H. Kaplan, who acknowledged himself to be the President of Fort Washington Land GP, LLC, which is the general partner of FORT WASHINGTON LAND LIMITED PARTNERSHIP, and that he, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of FORT WASHINGTON LAND LIMITED PARTNERSHIP by himself as President of Fort Washington Land GP, LLC, which is the general partner of FORT WASHINGTON LAND LIMITED PARNTERSHIP.

IN WITNESS WHEREOF, I hereunto set my hand and official seal the day and year aforesaid.

CATHERINE N. GETZOFF NOTARY PUBLIC EXP: 6-14-2015 DISTRICT OF COLUMBIA

_____
Notary Public

My Commission Expires 6/14/15

The precise residence and the complete post office address of the above named Grantee is:

_____

On behalf of the Grantee

AFDOCS/10555773

EXHIBIT A

Legal Description

ALL THAT CERTAIN tract or parcel of land with the buildings and improvements thereon erected, situate in the Township of Whitemarsh, County of Montgomery, Commonwealth of Pennsylvania, and described according to a Subdivision Plan of property of Rochester Airport Inn Inc. 700 Monticello Avenue, Norfolk, Virginia, by C. Raymond Weir Associates, Inc., Civil Engineers & Surveyors, Ambler, Pennsylvania, dated 02/05/1974 and last revised on 03/15/1974 as follows:

BEGINNING at a point on the Southwesterly side of Pennsylvania Avenue (formerly Township Line Road) (60 feet wide) a corner of land now or late of Warner Company; thence extending along said side of Pennsylvania Avenue, South 55 degrees, 37 minutes, 30 seconds East, 110.5 feet to a point a corner of land now or late of Anita Rapp; thence extending along said land, South 34 degrees, 17 minutes West, 199.74 feet to a point thence extending still along said land, South 58 degrees, 51 minutes, 30 seconds East, 229.50 feet to a point; thence extending along said land of Anita Rapp and now or late William T. and Beatrice Freeland, North 34 degrees, 17 minutes East 187 feet to a point on the Southwesterly side of Pennsylvania Avenue, aforesaid, thence extending along said side of Pennsylvania Avenue, South 55 degrees, 37 minutes, 30 seconds East, 496.56 feet to a point, from that point said point being the two following courses and distances from the center line of Commerce Drive (70 feet wide): (1) North 34 degrees, 22 minutes, 30 seconds East, 30 feet to the center line of Pennsylvania Avenue (60 feet wide); (2) thence along the center line of Pennsylvania Avenue in a Southeasterly direction a distance of 106.07 feet to the center line of Commerce Drive, aforesaid; thence extending along line of land now or late of Philadelphia Electric Company, the three following courses and distances: (1) South 35 degrees, 17 minutes West, 283.21 feet to a point; (2) North 57 degrees, 48 minutes West, 110.16 feet to a point; (3) South 35 degrees, 17 minutes West, 200 feet to a point in line of land of North Pennsylvania Railroad Company (Bethlehem Branch – Reading Company); thence extending along line of last mentioned land, the three following courses and distances: (1) North 57 degrees, 48 minutes West, 261.78 feet to a point; (2) North 35 degrees, 27 minutes East, 50.08 feet to a point; (3) North 57 degrees, 51 minutes, 40 seconds West, 385.35 feet to a point in line of land now or late of Warner Company; thence extending along line of last mentioned land and the three following courses and distances; (1) North 15 degrees, 14 minutes 08 seconds East, 217.81 feet to a point; (2) North 34 degrees, 20 minutes, 50 seconds East, 50.1 feet to a point; (3) North 34 degrees, 17 minutes East, 206.15 feet to the first mentioned point and place of beginning.

eCertified copy of recorded # 2015018022 (page 4 of 5)
Montgomery County Recorder of Deeds

REV-183 EX (10-14)

pennsylvania
DEPARTMENT OF REVENUE
Bureau of Individual Taxes
PO BOX 280603
Harrisburg, PA 17128-0603

REALTY TRANSFER TAX STATEMENT OF VALUE

See reverse for instructions.

RECORDER'S USE ONLY	
State Tax Paid	[redacted]
Book Number	5947
Page Number	00600
Date Recorded	03/19/2015 10:37:04 AM

Complete each section and file in duplicate with Recorder of Deeds when (1) the full value/consideration is not set forth in the deed, (2) the deed is without consideration or by gift, or (3) a tax exemption is claimed. If more space is needed, please attach additional sheets. A Statement of Value (SOV) is not required if the transfer is wholly exempt from tax based on family relationship or public utility easement. However, it is recommended that a SOV accompany all documents filed for recording.

A. CORRESPONDENT – All inquiries may be directed to the following person:

Name	Telephone Number:		
Edward H. Kaplan, President	[redacted]		
Mailing Address	**City**	**State**	**ZIP Code**
[redacted]	[redacted]	DC	20036

B. TRANSFER DATA

Date of Acceptance of Document 02 / 20 / 2015

Grantor(s)/Lessor(s)	Telephone Number:	Grantee(s)/Lessee(s)	Telephone Number:
Fort Washington Land LP	(202) 857-6399	Whitemarsh Hotel Associates, LP	[redacted]
Mailing Address		**Mailing Address**	
1919 M Street NW, Suite 320		919 Conestoga Road, Suite 214, Building 3	
City	**State / ZIP Code**	**City**	**State / ZIP Code**
Washington-District or Columbia	DC 20036	Rosemont	PA 19010

C. REAL ESTATE LOCATION

Street Address	City, Township, Borough	
432 Pennsylvania Avenue	Fort Washington, Whitemarsh Township	
County	**School District**	**Tax Parcel Number**
Montgomery County	Colonial	65-00-08764-009

D. VALUATION DATA

Was transaction part of an assignment or relocation? ☐ Y ☒ N

1. Actual Cash Consideration	2. Other Consideration	3. Total Consideration
[redacted]	+0.00	[redacted]
4. County Assessed Value	**5. Common Level Ratio Factor**	**6. Fair Market Value**
[redacted]	[redacted]	= [redacted]

E. EXEMPTION DATA – Refer to instructions for exemption status.

1a. Amount of Exemption Claimed	1b. Percentage of Grantor's Interest in Real Estate	1c. Percentage of Grantor's Interest Conveyed
$ 0.00	[redacted] %	[redacted] %

2. Check Appropriate Box Below for Exemption Claimed.

☐ Will or Intestate succession. _____ (Name of Decedent) _____ (Estate File Number)

☐ Transfer to a trust. (Attach complete copy of trust agreement identifying all beneficiaries.)

☐ Transfer from a trust. Date of transfer into the trust _____
If trust was amended attach a copy of original and amended trust.

☐ Transfer between principal and agent/straw party. (Attach complete copy of agency/straw party agreement.)

☐ Transfers to the commonwealth, the U.S. and Instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (If condemnation or in lieu of condemnation, attach copy of resolution.)

☐ Transfer from mortgagor to a holder of a mortgage in default. (Attach copy of mortgage and note/assignment.)

☐ Corrective or confirmatory deed. (Attach complete copy of the deed to be corrected or confirmed.)

☐ Statutory corporate consolidation, merger or division. (Attach copy of articles.)

☐ Other (Please explain exemption claimed.) _____

Under penalties of law, I declare that I have examined this statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party	Date
[signature]	03/13/15

FAILURE TO COMPLETE THIS FORM PROPERLY OR ATTACH REQUESTED DOCUMENTATION MAY RESULT IN THE RECORDER'S REFUSAL TO RECORD THE DEED.

eCertified copy of recorded # 201503022 (page 5 of 5)
Montgomery County Recorder of Deeds

EXHIBIT B

FUREY & BALDASSARI, P.C.

ATTORNEYS AT LAW
1043 S. PARK AVENUE
AUDUBON, PA 19403

MICHAEL E. FUREY
JOSEPH J. BALDASSARI*

(610) 666-7500
fax (610) 666-7200

*also member NJ bar

May 8, 2014

Whitemarsh Hotel Associates, LP
919 Conestoga Road, Suite 214
Building 3.
Rosemont, PA 19010

RE: Whitemarsh Township Zoning Hearing Board
Application of Whitemarsh Hotel Associates, LP No. 2014-07

Dear Applicant:

Enclosed herewith please find a true and correct copy of the Decision and Order of the Whitemarsh Township Zoning Hearing Board rendered at its meeting on May 7, 2014. Please note that your application was granted, subject to conditions as recited in the Decision and Order.

You are also hereby advised that all parties have thirty (30) days from the issuance of the Board's Decision and Order to file an appeal to the Court of Common Pleas of Montgomery County.

Sincerely,

MICHAEL E. FUREY
Attorney for the Zoning Hearing Board
Whitemarsh Township

MEF/sr
Enclosure

cc: Charles Guttenplan, Zoning Officer (w/enclosure)
Barbara Merlie, Esquire (w/enclosure)
George W. Broseman, Esquire (w/enclosure)

MAY 12 2014

SCANNED AND
PROFILED

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO.: 2014-07
APPLICANT: Whitemarsh Hotel Associates, LP
Block 051, Unit 001
432 Pennsylvania Avenue
Fort Washington, PA 19034
CR-L – Commercial Retail District
Floodplain Conservation Overlay District
Riparian Corridor Conservation Overlay District

FIRST HEARING DATE: 05/07/14
DECISION: 05/07/14
COPY MAILED: 05/08/14

The Applicant proposes to redevelop this Property. Currently on the site is a 230-room hotel (Holiday Inn) with conference facilities, two internal restaurants, an outdoor pool and 435 parking spaces. The Applicant proposes to renovate and rebrand the hotel to result in a limited-service hotel with fewer rooms (168), smaller meeting space, two external free-standing restaurants and improved parking and circulation.

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 Special Exception under Section 116-104B(1) to permit the construction of an approximate 8,000 gross square foot free-standing restaurant is **GRANTED**.

2. A Special Exception under Section 116-104B(1) to permit the construction of an approximate 1,822 gross square foot free-standing restaurant is **GRANTED**.

3. A Variance from Section 116-99 to permit the existing landscaping and screening to remain is **GRANTED**.

4. Variances from Sections 116-165 and 116-166 to permit the proposed redevelopment within the floodplain are **GRANTED**.

5. A Variance from Section 116-184E to permit continuation of the unaffected parking areas in their present configuration is **GRANTED**.

6. Variances from Sections 116-95 and 116-184C & D to permit parking as depicted on the redevelopment plan are **GRANTED**.

7. A Variance from Section 116-93E to reduce the front yard setback from 50' to 40.48' for the proposed approximate 1,822 gross square foot restaurant is **GRANTED**.

8. Variances from Sections 116-258, 116-259, and 116-260 to permit the proposed redevelopment within the Riparian Corridor are not required.

9. All requested determinations or interpretations are not required.

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. If it is determined during the land development and permitting process that the parking shown on the plans exceeds the required parking, the Applicant shall remove all parking spaces which are in excess of 10 spaces over the required parking.

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:
The Development Permit Extension Act, 53 P.S. §11703.1 et. seq., provides for a suspension of the expiration of governmental approvals under the Pennsylvania Municipalities Planning Code until July 1, 2016.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD:

Jack Cohen, Chair

James Behr, Vice Chair

Robert A. Bacine

William E. Kramer

Alternate

Marc Weinstein

Randi Rubin

WHITEMARSH TOWNSHIP BOARD OF SUPERVISORS
RESOLUTION #2015-16

BE IT RESOLVED, and it is hereby resolved by the Board of Supervisors of Whitemarsh Township, as follows:

A. Whitemarsh Hotel Associates, L.P. (the "**Applicant**") and Fort Washington Land, L.P. (the "**Owner**"), have caused to be prepared and filed with the Township a Plan of Land Development, designated as ***Plan SLD #02-14***, entitled "**432 Pennsylvania Avenue**," dated July 7, 2014, last revised February 24, 2015, consisting of nineteen (19) sheets, prepared by Momenee & Associates, Inc., including a three-sheet landscaping plan (the "**Plan**").

B. The Plan proposes the development of a parcel of land containing approximately 7.301 acres, more or less, located at 432 Pennsylvania Avenue, in Whitemarsh Township, Montgomery County, known as ***Tax Map Parcel No. 65-00-08764-00-9*** (the "**Property**"), for the first phase of the Plan, consisting of redevelopment of an existing 230-room hotel with two internal restaurants and conference spaces, to convert the building to a 168-room hotel, to modify parking areas and to construct one sit-down restaurant in the rear of the hotel (collectively, the "**Project**").

C. By Resolution 2014-32, dated October 23, 2014, a copy of which is attached hereto as ***Exhibit "A"*** and incorporated herein by reference, the Board of Supervisors granted Conditional Preliminary Land Development Approval for a prior plan (the "**Original Plan**").

D. The Applicant submitted a revision to the Original Plan on February 19, 2015, in order to amend the Original Plan to extend the lobby footprint to the rear of the hotel to capture current exterior impervious coverage as internal lobby space and to have the originally proposed freestanding restaurant now abut against the hotel.

E. The Township Engineer has reviewed the Plan as revised and has submitted to the Board of Supervisors a Letter of Review dated April 3, 2015.

F. The Director of Planning and Zoning/Zoning Officer has reviewed the Plan as revised and has issued a Zoning Ordinance Compliance Review dated April 9, 2015.

G. Heinrich & Klein Associates, Inc., has reviewed the Applicant's Traffic Engineering Review for the Project, as revised, and has submitted to the Township Engineer a Letter of Review dated February 6, 2015, updating a previous Letter of Review dated November 12, 2014.

H. The Whitemarsh Township Planning Commission has reviewed the Plan and recommended Conditional Amended Preliminary/Final approval of the Plan to the Board of Supervisors, subject to the Applicant's compliance with the comments provided by the Township Engineer and the Director of Planning and Zoning/Zoning Officer.

NOW, THEREFORE, the Plan is hereby granted ***Conditional Amended Preliminary/Final Land Development Approval*** subject to the satisfaction of the following conditions by the Applicant:

1. Execution of a Site Improvements Agreement, in a form acceptable to the Township Solicitor;

2. Posting of financial security, in an amount to be determined satisfactory by the Township Engineer and in a form acceptable to the Township Solicitor, to ensure completion of the public improvements, and execution of a Site Improvements Security Agreement in a form acceptable to the Township Solicitor;

3. Execution of a Stormwater Operations and Maintenance Agreement, by the Owner, in a form acceptable to the Township Solicitor, which shall provide, *inter alia*, for the maintenance and operation of stormwater BMPs that are to be privately owned;

4. Compliance with all comments as outlined in the Letter of Review of the Plan dated April 3, 2015, prepared by T&M Associates, Township Engineer, attached hereto as ***Exhibit "B"*** and incorporated herein by reference;

5. Compliance with all comments as outlined in the Zoning Ordinance Compliance Review of the Plan, dated April 9, 2015, prepared by Charles L. Guttenplan, AICP, Director of Planning and Zoning/Zoning Officer, attached hereto as ***Exhibit "C"*** and incorporated herein by reference;

6. Compliance with all comments as outlined in the Letter of Review, dated February 6, 2015, prepared by Heinrich & Klein Associates, Inc., attached hereto as ***Exhibit "D"*** and incorporated herein by reference;

7. Compliance with the Conditional Preliminary Land Development Approval, as memorialized in Resolution 2014-32 (Exhibit "A" hereto);

8. Compliance with the Decision and Order of the Whitemarsh Township Zoning Hearing Board in No. 2014-07, dated May 8, 2014, attached as Exhibit "C" to Resolution 2014-32.

9. Submission to the Zoning Officer of written confirmation from the appropriate municipal authority indicating the availability and supply of water for the Project; and

10. Submission to the Zoning Officer of written confirmation from the appropriate municipal authority indicating the availability of public sanitary sewer facilities for the Project.

The Conditional Amended Preliminary/Final Land Development Approval granted herein shall be rescinded automatically upon the Applicant's failure to accept, in writing, all conditions herein imposed within seven (7) days of receipt of this Resolution, as evidenced by Applicant's signature below.

ADOPTED, as a Resolution by the Whitemarsh Township Board of Supervisors this 23rd day of April, 2015.

ATTEST:

RICHARD L. MELLOR, JR.,
SECRETARY

WHITEMARSH TOWNSHIP
BOARD OF SUPERVISORS

By: _____
ROBERT R. HART, CHAIR

THE UNDERSIGNED HEREBY REPRESENTS THAT HE IS AUTHORIZED ON BEHALF OF THE APPLICANT TO AGREE, AND HEREBY AGREES TO THE ABOVE CONDITIONAL AMENDED PRELIMINARY/FINAL LAND DEVELOPMENT PLAN APPROVAL RESOLUTION:

APPLICANT:
WHITEMARSH HOTEL ASSOCIATES, L.P.
By its General Partner: Whitemarsh Hotel GP, LLC

By: _____

Dated : April 23, 2015

Name/Title: Joseph R. Staggaard III
Managing Member

12379-4

FUREY & BALDASSARI, P.C.

ATTORNEYS AT LAW
1043 S. PARK AVENUE
AUDUBON, PA 19403

MICHAEL E. FUREY
JOSEPH J. BALDASSARI*

(610) 666-7500
fax (610) 666-7200

*also member NJ bar

November 6, 2015

NOV - 9 2015

Whitemarsh Hotel Associates, L.P.
432 Pennsylvania Avenue
Fort Washington, PA 19034

RE: Whitemarsh Township Zoning Hearing Board
Application of Whitemarsh Hotel Associates, L.P., No. 2015-26

Dear Applicant:

Enclosed herewith please find a true and correct copy of the Decision and Order of the Whitemarsh Township Zoning Hearing Board pursuant to the vote at its meeting on November 4, 2015. Please note that your application was granted, subject to conditions as recited in the Decision and Order.

You are also hereby advised that all parties have thirty (30) days from the issuance of the Board's Decision and Order to file an appeal to the Court of Common Pleas of Montgomery County.

Sincerely,

MICHAEL E. FUREY
Attorney for the Zoning Hearing Board
Whitemarsh Township

MEF/sr
Enclosure

cc: Charles Guttenplan, Zoning Officer (w/enclosure)
Sean Kilkenny, Esquire (w/enclosure)
Amee S. Farrell, Esquire (w/enclosure)

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO.: 2015-26
APPLICANT: Whitemarsh Hotel Assoc., L.P.
Block 051, Unit 001
432 Pennsylvania Avenue
Fort Washington, PA 19034
CR-L Commercial Retail District

HEARING DATE: 11/04/15
VOTE: 11/04/15
WRITTEN DECISION: 11/06/15
COPY MAILED: 11/06/15

The Applicant proposes new signage at this hotel.

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 116-206A(2)(a) to permit an illuminated freestanding sign in excess of the permitted 25 square feet, so as to allow a freestanding sign measuring 52 square feet, is **GRANTED**.

2. A variance from Section 116-206A(2)(b) to install an illuminated wall sign on the side of the building measuring 405 square feet, rather than a permitted 73 square foot sign on the front of the building, 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.

WHITEMARSH TOWNSHIP ZONING HEARING BOARD:

James Behr, Chair

Robert A. Bacine, Vice Chair

William E. Kramer

Marc Weinstein

Absent

Alternate

Stanley A. Casacio

Randi Rubin

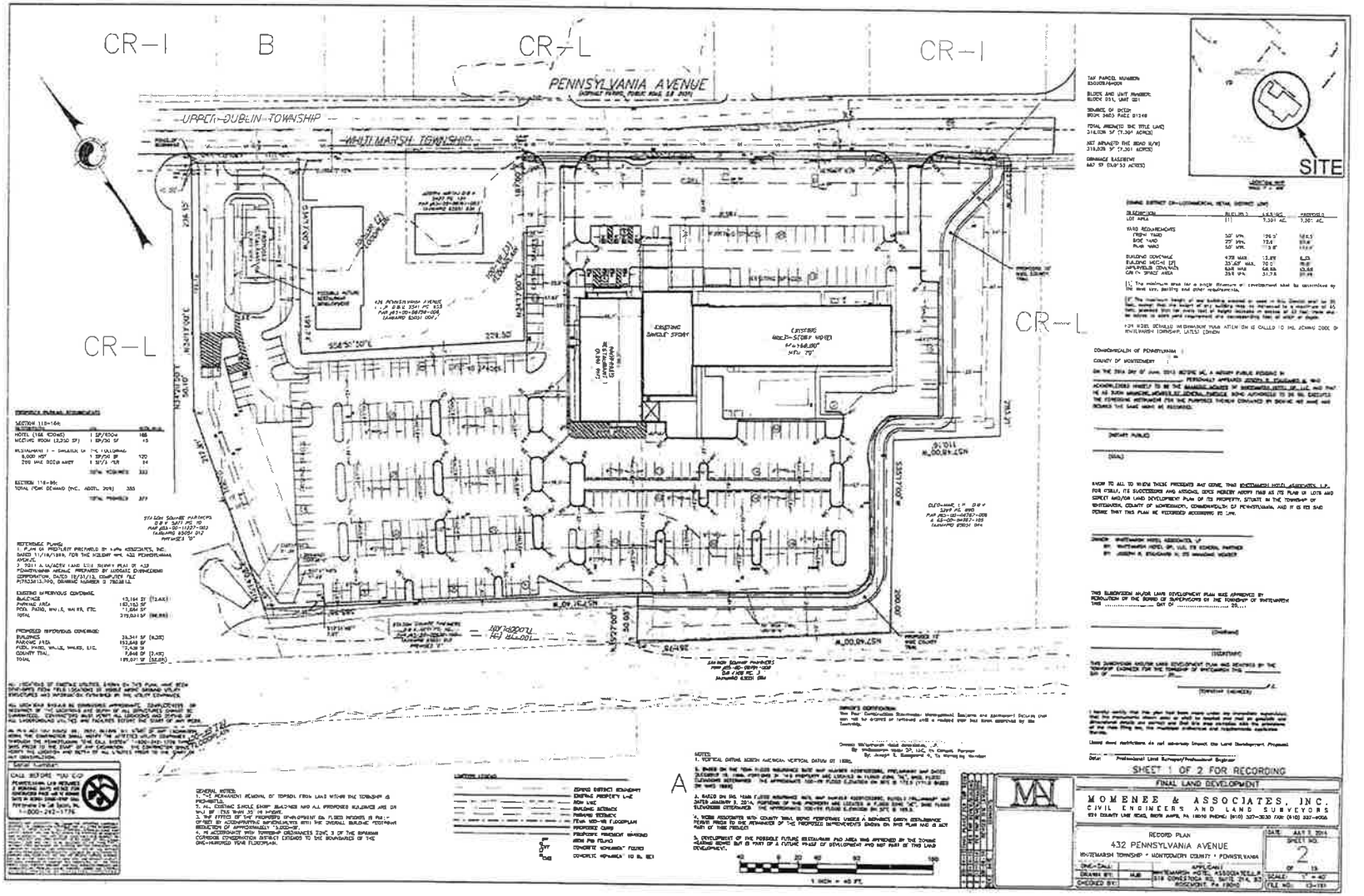
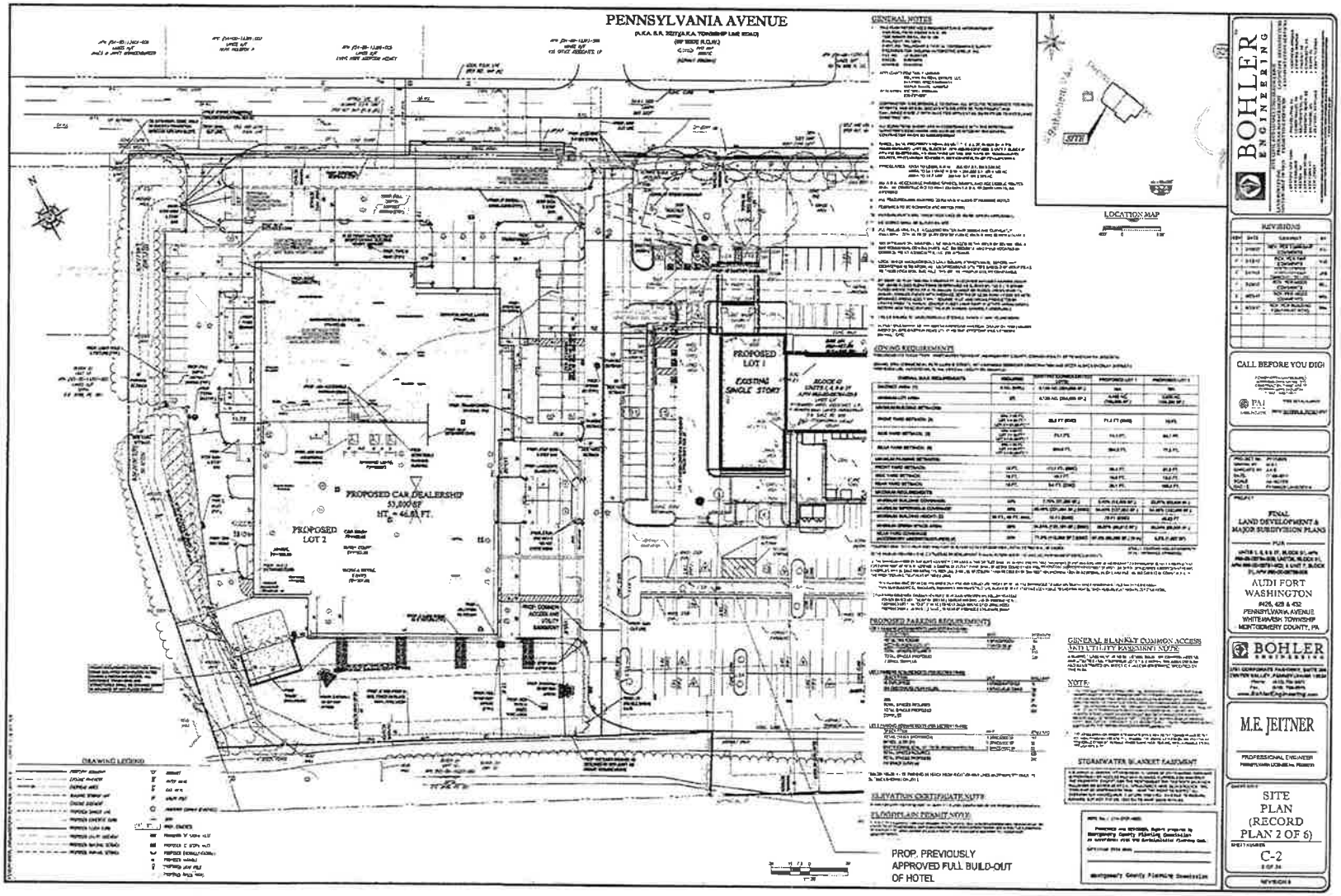

CR-I
B
CR-L
CR-I
PENNSYLVANIA AVENUE
UPPER DUBLIN TOWNSHIP
WHITEMARSH TOWNSHIP
CR-L
CR-L
SITE
SHEET 1 OF 2 FOR RECORDING
FINAL LAND DEVELOPMENT
MOMENEE & ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
RECORD PLAN
432 PENNSYLVANIA AVENUE
WHITEMARSH TOWNSHIP • MONTGOMERY COUNTY • PENNSYLVANIA
SHEET NO.
2
OF 15
SCALE: 1" = 40'
FILE NO.: 13-191

EXHIBIT C



BOHLER ENGINEERING

REVISIONS

CALL BEFORE YOU DIG!

FINAL LAND DEVELOPMENT & MAJOR SUBDIVISION PLANS

AUDI FORT WASHINGTON
PKDL 429 & 430
PENNSYLVANIA AVENUE
WHITEMARSH TOWNSHIP
MONTGOMERY COUNTY, PA

BOHLER ENGINEERING

M.E. JEITNER
PROFESSIONAL ENGINEER

SITE PLAN (RECORD PLAN 2 OF 6)

SHEET NUMBER
C-2

EXHIBIT D

FUREY & BALDASSARI, P.C.

ATTORNEYS AT LAW
1043 S. PARK AVENUE
AUDUBON, PA 19403

MICHAEL E. FUREY
JOSEPH J. BALDASSARI*

(610) 666-7500
fax (610) 666-7200

*also member NJ bar

June 11, 2018

Whitemarsh Hotel Associates, LP
c/o Amee Farrell, Esquire
Kaplin Stewart Meloff Reiter & Stein, PC
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, PA 19422-0765

RE: Whitemarsh Township Zoning Hearing Board
Application of Whitemarsh Hotel Associates, LP No. 2018-08

Dear Applicant:

Enclosed herewith please find a true and correct copy of the Decision and Order of the Whitemarsh Township Zoning Hearing Board rendered at its meeting on June 6, 2018. Please note that your application was granted, subject to conditions as recited in the Decision and Order.

You are also hereby advised that all parties have thirty (30) days from the issuance of the Board's Decision and Order to file an appeal to the Court of Common Pleas of Montgomery County.

Sincerely,

MICHAEL E. FUREY
Attorney for the Zoning Hearing Board
Whitemarsh Township

MEF/js
Enclosure

cc: Charles Guttenplan, Zoning Officer (w/enclosure)
Sean Kilkenny, Esquire (w/enclosure)

WHITEMARSH TOWNSHIP ZONING HEARING BOARD

DECISION AND ORDER

APPLICATION NO.: 2018-08
APPLICANT: Whitemarsh Hotel Associates, LP
Block 051, Unit 001
432 Pennsylvania Avenue
Fort Washington, PA 19034
CR-L – Commercial Retail District
Floodplain Conservation Overlay District
Riparian Corridor Conservation Overlay District

HEARING DATE: 05/09/18
CONT'D HEARING DATE: 06/06/18
VOTE: 06/06/18
DECISION: 06/11/18
COPY MAILED: 06/11/18

The Applicant proposes a restaurant on the property as anticipated under Application No. 2014-07.

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 Special Exception under Section 116-104B(1), so as to permit the construction of an approximate 6,049 gross square foot free-standing restaurant, is **GRANTED**.

2. Variances from Sections 116-165 and 116-166, so as to permit the proposed development within the floodplain, are **GRANTED**.

3. Variances from Sections 116-95 and 116-184, so as to permit 182 parking spaces as depicted on the development plan, are **GRANTED**.

4. Variances from Sections 116-258, 116-259 and 116-260, so as to permit the proposed development in the Riparian Corridor Conservation District, are not required.

5. All requested determinations or interpretations are not required.

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 comply with all requirements imposed by the Township during the land development process.

4. The restaurant shall be a non-franchised, non-chain, independently operated restaurant.

5. All existing shared parking arrangements of nearby property owners shall be terminated once the restaurant opens.

6. The Applicant shall arrange to offer valet parking on an as-needed basis, or as required by the Township. Valet parking shall be made available for the restaurant patrons at any time the restaurant is open and the hotel occupancy exceeds 85%,

As required by Section 116-227.D of the Zoning Ordinance, the Applicant is on notice that:

> Certain relief from floodplain regulations may result in increased premium rates for flood insurance and/or may increase the risks to life and property.

The development of the property in the floodplain is entirely at the risk of the Applicant.

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:

Marc Weinstein, Chair

Stanley A. Casacio, Vice Chair

Robert A. Bacine

James Behr

Alternate

William E. Kramer

Randi Rubin

WHITEMARSH TOWNSHIP BOARD OF SUPERVISORS
RESOLUTION NO. 2019-10

A RESOLUTION AUTHORIZING A CONDITIONAL WAIVER OF A LAND DEVELOPMENT

WHEREAS, Section 105-10, "Exception to literal enforcement of standards," Chapter 105, "Subdivision and Land Development" of the Code (the "***Code***") of Whitemarsh Township (the "***Township***") provides that the Board of Supervisors (the "***Board***") may waive or modify any mandatory provision of Chapter 105, when literal compliance with same is shown to the satisfaction of the Board to be unreasonable or to cause undue hardship, and further provided that any such modification will not be contrary to the public interest; and

WHEREAS, Whitemarsh Hotel Associates, L.P. (the "***Applicant***"), owner of the property located at 432 Pennsylvania Avenue, Whitemarsh Township, Montgomery County, (the "***Property***"), proposes the erection of a 6,049 square-foot restaurant on the Property (the "***Project***"), as depicted on ***Plan S/LD #07-18***, entitled "432 Pennsylvania Avenue", submitted by the Applicant, consisting of two (2) sheets dated December 3, 2018, with no revisions, prepared by Momenee, Inc. (the "***Plan***"). The proposed restaurant is being constructed in place of an 8,000 square-foot restaurant that was approved by Resolution #2015-16; and

WHEREAS, on December 11, 2018, the Applicant submitted an application for Land Development Waiver, attached hereto as ***Exhibit "A"*** and incorporated herein by reference, and requested that the Board consider a waiver of the requirement that a land development application be filed for the Project (the "***Waiver Request***"); and

WHEREAS, on February 26, 2019, the Whitemarsh Township Planning Commission reviewed the Applicant's Waiver Request and recommended that the Waiver Request be approved, subject to the Applicant obtaining an Earth Disturbance Permit, as noted in the Township Engineer's review; and

WHEREAS, the Township Director of Planning and Zoning/Zoning Officer reviewed the Applicant's Waiver Request and identified certain zoning issues regarding the proposed Project, in a Zoning Ordinance Compliance Review letter dated January 9, 2019, attached hereto as ***Exhibit "B"*** and incorporated herein by reference; and

WHEREAS, the Township Engineer has reviewed the Applicant's Waiver Request and has recommended its approval, subject to the Applicant obtaining an earth Disturbance Permit, as indicated in the Township Engineer's review letter dated January 2, 2019, attached hereto as ***Exhibit "C"*** and incorporated herein by reference; and

WHEREAS, the Township Fire Marshal has reviewed the Applicant's Waiver Request and has issued a memo to the Township Director of Planning and Zoning/Zoning Officer dated January 3, 2019, acknowledging that he has no access issues with the Plan. A true and correct copy of the Fire Marshal's memo is attached hereto as ***Exhibit "D"*** and incorporated herein by reference; and

WHEREAS, the Applicant received relief from the Whitemarsh Township Zoning Hearing Board at Case #2018-08 by decision dated June 11, 2018, a copy of which is attached hereto as ***Exhibit "E"*** and incorporated herein by reference; and

WHEREAS, the Board has determined that the Applicant has satisfactorily established through testimony that, due to the limited scope of the Project, combined with the reduction in area of the proposed restaurant, the Waiver Request will not be contrary to the public interest.

NOW, THEREFORE, BE IT RESOLVED, and it is hereby resolved by the Board of Supervisors of Whitemarsh Township that Land Development for the Project is hereby waived subject to the satisfaction of the following conditions:

1. The Applicant shall submit to the Township Engineer an earth disturbance plan and permit application (the "***Earth Disturbance Plan***"), complete with plans, calculations and such other information as the Township Engineer may require, to confirm the Project's compliance with the earth disturbance provisions of Chapter 58 and Chapter 105 of the Code.

2. The Applicant shall pay all Township fees and costs, including but not limited to legal, engineering and administrative fees, for all Township reviews associated with the Project (the "***Review Fees***") and, at the Township's request, shall establish an escrow account to guarantee payment of the Review Fees.

3. The Applicant shall comply with the comments of the Director of Planning and Zoning/Zoning Officer dated January 9, 2019.

4. The Applicant shall comply with all conditions set forth in the Zoning Hearing Board decision dated June 11, 2018 at Case #2018-08.

5. The Applicant shall comply with all conditions of Conditional Preliminary/Final Plan approval set forth in Resolution #2015-16, a copy of which is attached hereto as ***Exhibit "F"*** and incorporated herein by reference, except as revised by this Resolution.

6. The Applicant shall comply with all applicable laws, ordinances and regulations.

7. The Applicant shall obtain and shall comply with all permits and approvals required by any other governmental agency.

Should the Applicant violate any of the foregoing conditions, this Conditional Waiver of Land Development shall be deemed rescinded and the Applicant shall be required to proceed with Land Development pursuant to Chapter 105 of the Code.

This Conditional Waiver of Land Development Application does not and shall not authorize the construction of improvements or buildings exceeding those shown on the Plan. Furthermore, this Conditional Waiver of Land Development Application shall be rescinded automatically upon the Applicant's or the Applicant's agent's failure to accept, in writing, all conditions herein imposed within seven (7) days of receipt of this Resolution, such acceptance to be evidenced by Applicant's or Applicant's agent's signature below.

ADOPTED, as a Resolution by the Whitemarsh Township Board of Supervisors this 14th day of March, 2019.

ATTEST:

RICHARD L. MELLOR, JR.,
SECRETARY

WHITEMARSH TOWNSHIP
BOARD OF SUPERVISORS

By: _____
MELISSA STERLING, CHAIR

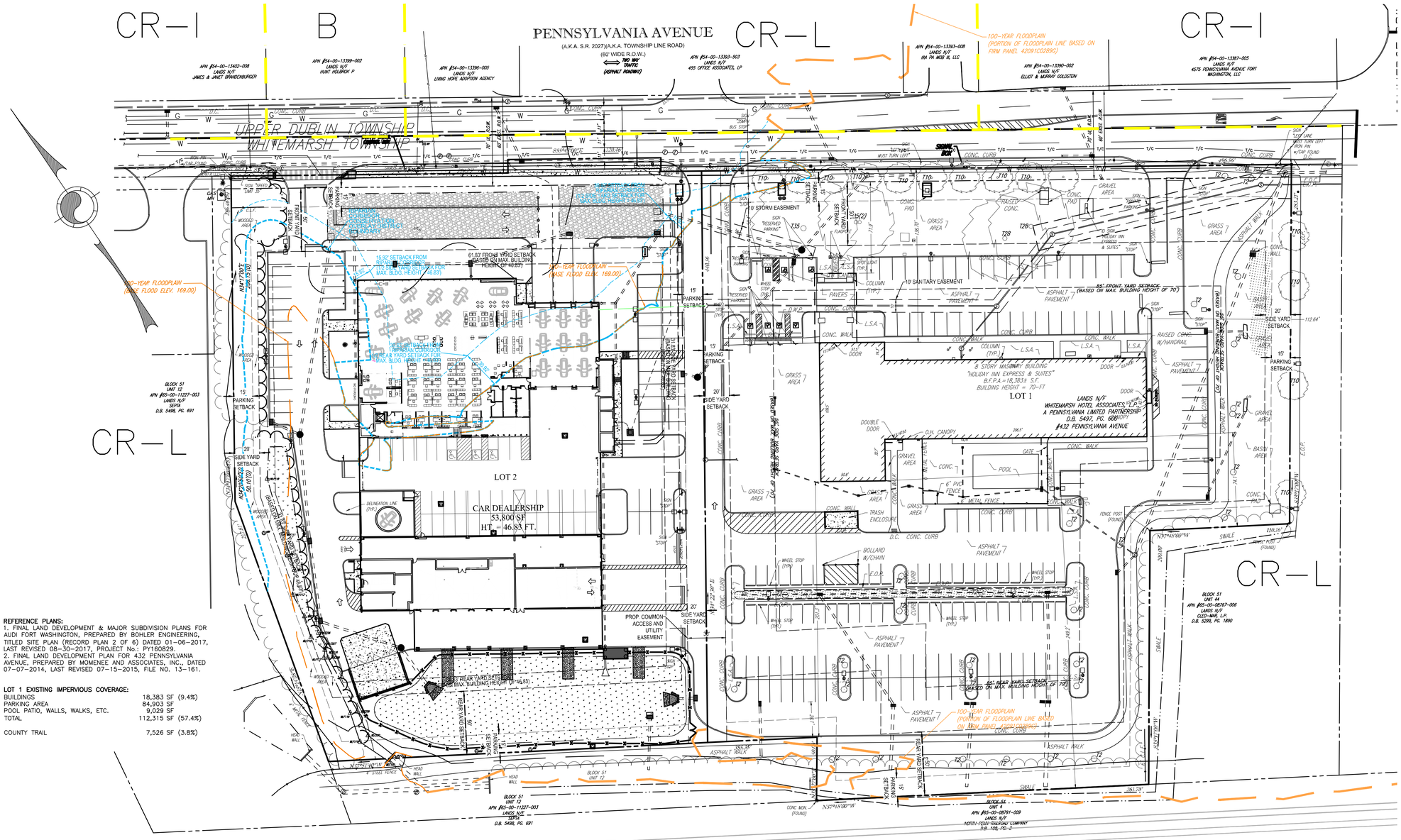
THE UNDERSIGNED HEREBY AGREES TO THE ABOVE CONDITIONAL WAIVER OF LAND DEVELOPMENT APPLICATION:

APPLICANT:
WHITEMARSH HOTEL ASSOCIATES, L.P.

By: _____
D. Charles Haider, Manager of General Partner

Dated: March 14, 2019

EXHIBIT E



LOCATION MAP
SCALE: 1" = 800'

LOT DATA:
GROSS AREA = 200,310 SF (4.598 ACRES)
NET AREA = 195,665 SF (4.492 ACRES)

PARCEL No.: 650008764009
BLOCK: 051
UNIT: 001
DEED BOOK: 5947
PAGE: 00600

REFERENCE PLANS:
1. FINAL LAND DEVELOPMENT & MAJOR SUBDIVISION PLANS FOR AUDI FORT WASHINGTON, PREPARED BY BOHLER ENGINEERING, TITLED SITE PLAN (RECORD PLAN 2 OF 6) DATED 01-06-2017, LAST REVISED 08-30-2017, PROJECT No.: PY160829.
2. FINAL LAND DEVELOPMENT PLAN FOR 432 PENNSYLVANIA AVENUE, PREPARED BY MOMENEE AND ASSOCIATES, INC., DATED 07-07-2014, LAST REVISED 07-15-2015, FILE NO. 13-161.

LOT 1 EXISTING IMPERVIOUS COVERAGE:

BUILDINGS	18,383 SF (9.4%)
PARKING AREA	84,903 SF
POOL PATIO, WALLS, WALKS, ETC.	9,029 SF
TOTAL	112,315 SF (57.4%)
COUNTY TRAIL	7,526 SF (3.8%)

ALL LOCATIONS OF EXISTING UTILITIES, SHOWN ON THIS PLAN, HAVE BEEN DEVELOPED FROM FIELD LOCATIONS OF VISIBLE ABOVE GROUND UTILITY STRUCTURES AND INFORMATION FURNISHED BY THE UTILITY COMPANIES.

ALL LOCATIONS SHOULD BE CONSIDERED APPROXIMATE. COMPLETENESS OR ACCURACY OF THE LOCATIONS AND DEPTH OF ALL STRUCTURES CANNOT BE GUARANTEED. CONTRACTORS MUST VERIFY ALL LOCATIONS AND DEPTHS OF ALL UNDERGROUND UTILITIES AND FACILITIES BEFORE THE START OF ANY WORK.

AS PER ACT 187 HOUSE BILL 2627, BEFORE THE START OF ANY EXCAVATION WORK THE CONTRACTOR SHALL NOTIFY THE AFFECTED UTILITY COMPANIES THROUGH THE PENNSYLVANIA "ONE CALL SYSTEM" 1-800-242-1776 THREE DAYS PRIOR TO THE START OF ANY EXCAVATION. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO THE START OF ANY CONSTRUCTION.

LINETYPE LEGEND
- ZONING DISTRICT BOUNDARY
- EXISTING PROPERTY LINE
- ROW LINE
- BUILDING SETBACK
- PARKING SETBACK
- FEMA 100-YR FLOODPLAIN

NOTES:
1. VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988.
2. BASED ON THE FEMA FLOOD INSURANCE RATE MAP NUMBER 42091C0289G, DATED MARCH 2, 2016, PORTIONS OF THIS PROPERTY ARE LOCATED IN FLOOD ZONE "AE", BASE FLOOD ELEVATIONS DETERMINED. THE APPROXIMATE 100-YR FLOOD ELEVATION ON SITE IS 169.0.
3. DEVELOPMENT OF THE POSSIBLE FUTURE RESTAURANT PAD AREA WAS PREVIOUSLY APPROVED BY THE ZONING HEARING BOARD.
4. IMPROVEMENTS SHOWN ON LOT 2 REPRESENT APPROVED IMPROVEMENTS CURRENTLY UNDER CONSTRUCTION.

40 0 20 40 80 160
1 INCH = 40 FT.

COPYRIGHT: THE INFORMATION, DESIGN AND CONTENT OF THIS PLAN ARE PROPRIETARY AND SHALL NOT BE COPIED OR USED FOR ANY PURPOSE WITHOUT PRIOR WRITTEN AUTHORIZATION FROM MOMENEE, INC. ONLY APPROVED, SIGNED AND SEALED PLANS SHALL BE UTILIZED FOR CONSTRUCTION PURPOSES.
©MOMENEE INC. 2020

Serial Number:

CALL BEFORE YOU DIG!
PENNSYLVANIA LAW REQUIRES 3 WORKING DAYS NOTICE FOR CONSTRUCTION PHASE AND 10 WORKING DAYS IN DESIGN STAGE-STOP CALL
Pennsylvania One Call System, Inc.
1-800-242-1776

I:\MOMENEE, INC\2020\20-17\2241 Rt. 1\PRELIM\20-17-BOBT.MAP.LSP\A-MNGD\130927

EXISTING CONDITIONS

FILE NO.: 18-097

MOMENEE, INC.
a Karins Company
ENGINEERING | PLANNING | SURVEYING
924 COUNTY LINE ROAD - BRYN MAWR - PA - 19010 610 - 527 - 3030

ZONING APPEAL

432 PENNSYLVANIA AVENUE

WHITEMARSH TOWNSHIP • MONTGOMERY COUNTY • PENNSYLVANIA

REGISTERED PROFESSIONAL
MICHAEL J. BOWKER
ENGINEER
PE061543

REV.	DATE	COMMENTS
ONE-CALL:		
DRAWN BY:	MJB	
CHECKED BY:		

APPLICANT
WHITEMARSH HOTEL ASSOCIATES,L.P.
919 CONESTOGA RD, SUITE 214, B3
ROSEMONT, PA 19010

SHEET 1 OF 5
DATE: FEBRUARY 19, 2020
SCALE: 1" = 40'

LOCATION MAP
SCALE: 1" = 800'

LOT DATA:
GROSS AREA = 200,310 SF (4.598 ACRES)
NET AREA = 195,665 SF (4.492 ACRES)

PARCEL No.: 650008764009
BLOCK: 051
UNIT: 001
DEED BOOK: 5947
PAGE: 00600

ZONING DISTRICT CR–L:(COMMERCIAL RETAIL DISTRICT LOW)

DESCRIPTION	REQUIRED	LOT 2 (AS APPROVED)	LOT 1 EXISTING	LOT 1 PROPOSED
DISTRICT AREA [1]	5.0 AC MIN.	N/A	N/A	N/A
MINIMUM LOT AREA	[2]	3.636 AC (158,390 SF)	4.492 AC (195,665 SF)	4.492 AC (195,665 SF)
MINIMUM YARD REQUIREMENTS:				
FRONT YARD [3]	50 FT MIN.	73.0 FT	71.9 FT (ENC)	130.5 FT
SIDE YARD [3]	20 FT MIN.	64.1 FT	74.1 FT	40.0 FT
REAR YARD [3]	50 FT MIN.	77.5 FT	201.3 FT	225.1 FT
MINIMUM PARKING SETBACKS:				
FRONT YARD SETBACK	15 FT MIN.	51.0 FT	58.4 FT	58.4 FT
SIDE YARD SETBACK	15 FT MIN.	15.0 FT	21.9 FT	15.0 FT
REAR YARD SETBACK	15 FT MIN.	165.8 FT	28.1 FT	28.1 FT
MAXIMUM REQUIREMENTS:				
BUILDING COVERAGE	40% MAX.	34.0% (53,800SF)	9.4% (18,383SF)	10.7% (20,984 SF)
IMPERVIOUS COVERAGE	65% MAX.	64.96%(102,885SF)	57.4%(112,315SF)	61.5% (120,353 SF)
BUILDING HEIGHT [3]	35',65' MAX.	46.83 FT	70.0 FT **(ENC)**	70.0 FT **(ENC)** 18.0 FT (PROP BLDNG)
GREEN SPACE AREA	35% MIN.	35.04% (55,505SF)	38.75% (75,824SF)	34.6% (67,786SF)

(ENC) = EXISTING NON–CONFORMITY

[1] DISTRICT AREA. THE MINIMUM AREA WHICH MAY BE CLASSIFIED AS A CR COMMERCIAL RETAIL DISTRICT SHALL BE 5 ACRES.

[2] THE MINIMUM AREA FOR A SINGLE STRUCTURE OR DEVELOPMENT SHALL BE DETERMINED BY THE LAND USE, PARKING AND OTHER REQUIREMENTS.

[3] THE MAXIMUM HEIGHT OF ANY BUILDING ERECTED OR USED IN THIS DISTRICT SHALL BE 35 FEET, EXCEPT THAT THE HEIGHT OF ANY BUILDING MAY BE INCREASED TO A MAXIMUM OF 65 FEET, PROVIDED THAT FOR EVERY FOOT OF HEIGHT INCREASE IN EXCESS OF 35 FEET THERE SHALL BE ADDED TO EACH YARD REQUIREMENT ONE CORRESPONDING FOOT OF WIDTH OR DEPTH.
* 35–FT SHALL BE ADDED TO EACH BASE MINIMUM REQUIRED YARD SETBACK BASED ON THE HEIGHT OF THE EXISTING HOTEL BUILDING WHICH IS 70–FT FOR THOSE PORTIONS OF THE BUILDING ABOVE 35–FT IN HEIGHT (THE PROPOSED RESTAURANT IS LESS THAN 35–FT IN HEIGHT AND THE MINIMUM REQUIRED SETBACK SHALL APPLY TO THE PROPOSED STRUCTURE)
** 11.83–FT SHALL BE ADDED TO EACH BASE MINIMUM REQUIRED YARD SETBACK BASED ON THE PROPOSED HEIGHT OF THE BUILDING ON LOT 2 OF 46.83–FT

FOR MORE DETAILED INFORMATION YOUR ATTENTION IS CALLED TO THE ZONING CODE OF WHITEMARSH TOWNSHIP, LATEST EDITION.

REFERENCE PLANS:
1. FINAL LAND DEVELOPMENT & MAJOR SUBDIVISION PLANS FOR AUDI FORT WASHINGTON, PREPARED BY BOHLER ENGINEERING, TITLED SITE PLAN (RECORD PLAN 2 OF 6) DATED 01–06–2017, LAST REVISED 08–30–2017, PROJECT No.: PY160829.
2. FINAL LAND DEVELOPMENT PLAN FOR 432 PENNSYLVANIA AVENUE, PREPARED BY MOMENEE AND ASSOCIATES, INC., DATED 07–07–2014, LAST REVISED 07–15–2015, FILE NO. 13–161.

LOT 1 EXISTING IMPERVIOUS COVERAGE:

BUILDINGS	18,383 SF (9.4%)
PARKING AREA	84,903 SF
POOL PATIO, WALLS, WALKS, ETC.	9,029 SF
TOTAL	112,315 SF (57.4%)
COUNTY TRAIL	7,526 SF (3.8%)

LOT 1 PROPOSED IMPERVIOUS COVERAGE:

BUILDINGS	20,984 SF (10.7%)
PARKING AREA	88,748 SF
POOL PATIO, WALLS, WALKS, ETC.	10,621 SF
TOTAL	120,353 SF (61.5%)
PREVIOUSLY PROPOSED	122,171 SF (62.4%)
COUNTY TRAIL	7,526 SF (3.8%)

PROPOSED PARKING REQUIREMENTS

LOT 1 PARKING REQUIREMENTS (PER § 116–184):

DESCRIPTION	UNIT	REQUIRED
HOTEL (168 ROOMS)	1 SP/ROOM	168
MEETING ROOM (2,250 SF)	1 SP/50 SF	45
SPACES REQUIRED		213
CAFE – GREATER OF THE FOLLOWING		
1,870 SF DEVOTED TO PATRON USE*	1 SP/50 SF	38
87 MAX OCCUPANCY*	1 SP/3 PER	29
SPACES REQUIRED		38
TOTAL REQUIRED		251

* INCLUDES OUTDOOR SEATING AREA

TOTAL PARKING SPACES PROVIDED LOT 1 — 192

LOT 2 PARKING REQUIREMENTS (PER § 116–184):

DESCRIPTION	UNIT	REQUIRED
RETAIL (14,625 SHOWROOM)	1 SP/100 SF	147
OFFICE (5,731 SF)	1 SP/200 SF	29
OTHER COMMERCIAL (51,177 SF SRVC/PARTS/TECH)	1 SP/50 SF	45
SPACES REQUIRED		228

TOTAL PARKING SPACES PROVIDED LOT 2 — 340

ALL LOCATIONS OF EXISTING UTILITIES, SHOWN ON THIS PLAN, HAVE BEEN DEVELOPED FROM FIELD LOCATIONS OF VISIBLE ABOVE GROUND UTILITY STRUCTURES AND INFORMATION FURNISHED BY THE UTILITY COMPANIES.

ALL LOCATIONS SHOULD BE CONSIDERED APPROXIMATE. COMPLETENESS OR ACCURACY OF THE LOCATIONS AND DEPTH OF ALL STRUCTURES CANNOT BE GUARANTEED. CONTRACTORS MUST VERIFY ALL LOCATIONS AND DEPTHS OF ALL UNDERGROUND UTILITIES AND FACILITIES BEFORE THE START OF ANY WORK.

AS PER ACT 187 HOUSE BILL 2627, BEFORE THE START OF ANY EXCAVATION WORK THE CONTRACTOR SHALL NOTIFY THE AFFECTED UTILITY COMPANIES THROUGH THE PENNSYLVANIA "ONE CALL SYSTEM" 1–800–242–1776 THREE DAYS PRIOR TO THE START OF ANY EXCAVATION. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO THE START OF ANY CONSTRUCTION.

GENERAL NOTES:
1. THE PERMANENT REMOVAL OF TOPSOIL FROM LAND WITHIN THE TOWNSHIP IS PROHIBITED.
2. ALL EXISTING SINGLE STORY BUILDINGS AND ALL PROPOSED BUILDINGS ARE OR WILL BE LESS THAN 35' IN HEIGHT.
3. THE EFFECT OF THE PROPOSED DEVELOPMENT ON FLOOD HEIGHTS IS FULLY OFFSET BY ACCOMPANYING IMPROVEMENTS WITH THE OVERALL BUILDING FOOTPRINT REDUCTION OF APPROXIMATELY 15,000–SF.
4. IN ACCORDANCE WITH TOWNSHIP ORDINANCES ZONE 2 OF THE RIPARIAN CORRIDOR CONSERVATION DISTRICT EXTENDS TO THE BOUNDARIES OF THE ONE–HUNDRED YEAR FLOODPLAIN.

LINETYPE LEGEND
- ZONING DISTRICT BOUNDARY
- EXISTING PROPERTY LINE
- ROW LINE
- BUILDING SETBACK
- PARKING SETBACK
- FEMA 100–YR FLOODPLAIN

- PROPOSED BUILDING
- PROPOSED WALK

NOTES:
1. VERTICAL DATUM: NORTH AMERICAN VERTICAL DATUM OF 1988.
2. BASED ON THE FEMA FLOOD INSURANCE RATE MAP NUMBER 42091C0289G, DATED MARCH 2, 2016, PORTIONS OF THIS PROPERTY ARE LOCATED IN FLOOD ZONE "AE", BASE FLOOD ELEVATIONS DETERMINED. THE APPROXIMATE 100–YR FLOOD ELEVATION ON SITE IS 169.0.
3. DEVELOPMENT OF THE POSSIBLE FUTURE RESTAURANT PAD AREA WAS PREVIOUSLY APPROVED BY THE ZONING HEARING BOARD.
4. IMPROVEMENTS SHOWN ON LOT 2 REPRESENT APPROVED IMPROVEMENTS CURRENTLY UNDER CONSTRUCTION.

40 0 20 40 80 160
1 INCH = 40 FT.

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Serial Number:
CALL BEFORE YOU DIG!
PENNSYLVANIA LAW REQUIRES 3 WORKING DAYS NOTICE FOR CONSTRUCTION PHASE AND 10 WORKING DAYS IN DESIGN STAGE–STOP CALL
Pennsylvania One Call System, Inc.
1–800–242–1776

©MOMENEE INC,20200226.17224801
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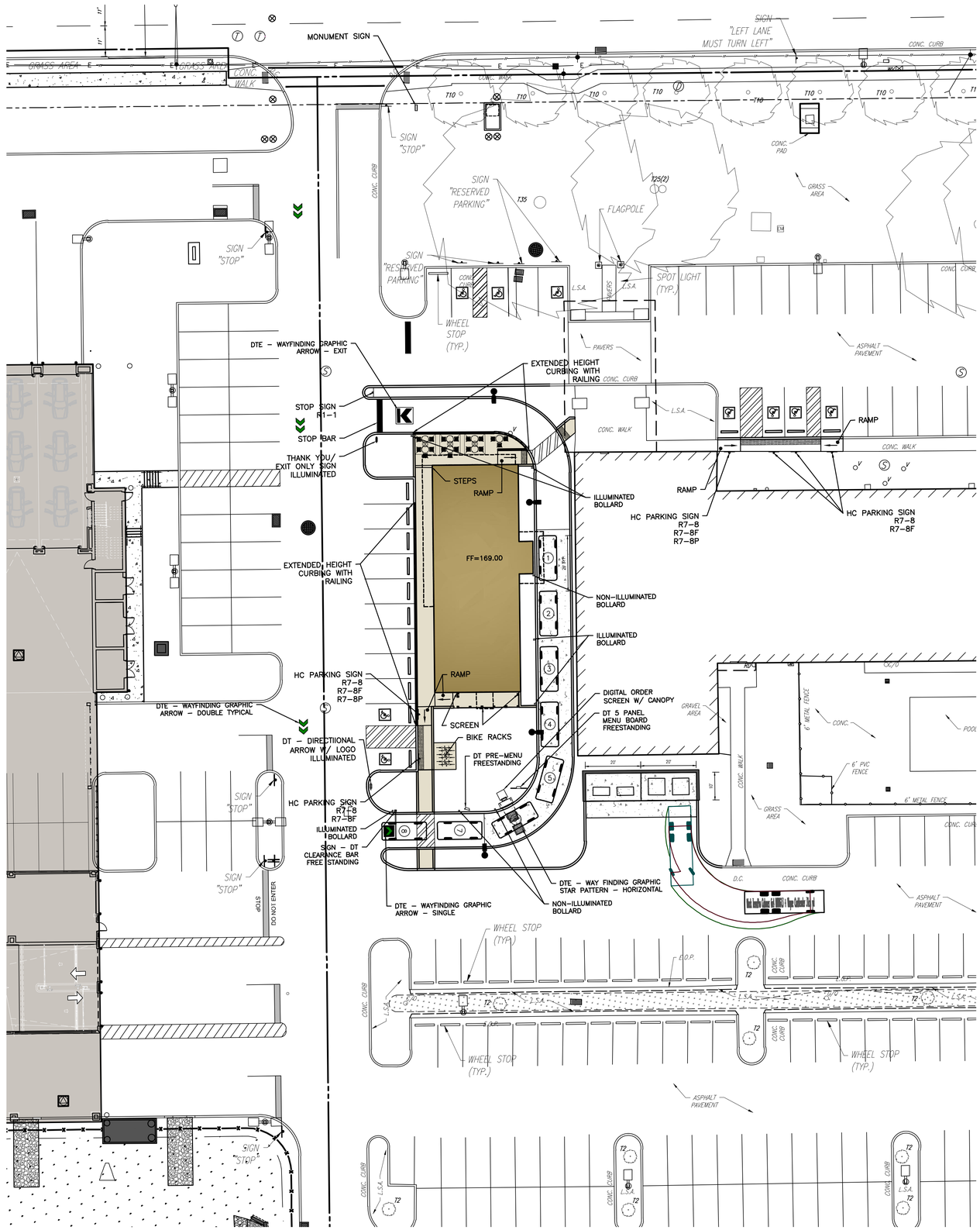
PROPOSED SITE PLAN		FILE NO.: 18–097
MOMENEE, INC. a Karins Company ENGINEERING | PLANNING | SURVEYING 924 COUNTY LINE ROAD - BRYN MAWR - PA - 19010 610 - 527 - 3030		COMMONWEALTH OF PENNSYLVANIA REGISTERED PROFESSIONAL MICHAEL J. BOWKER ENGINEER PE061543
ZONING APPEAL 432 PENNSYLVANIA AVENUE WHITEMARSH TOWNSHIP * MONTGOMERY COUNTY * PENNSYLVANIA		SHEET 2 OF 5
ONE–CALL:	APPLICANT WHITEMARSH HOTEL ASSOCIATES,L.P. 919 CONESTOGA RD, SUITE 214, B3 ROSEMONT, PA 19010	DATE: FEBRUARY 19, 2020
DRAWN BY: MJB		SCALE: 1" = 40'
CHECKED BY:		

COMMENTS
DATE
REV.



LOCATION MAP
SCALE: 1" = 800'

LOT DATA:
GROSS AREA = 200,310 SF (4.598 ACRES)
NET AREA = 195,665 SF (4.492 ACRES)

PARCEL No.: 650008764009
BLOCK: 051
UNIT: 001
DEED BOOK: 5947
PAGE: 00600

REFERENCE PLANS:
1. FINAL LAND DEVELOPMENT & MAJOR SUBDIVISION PLANS FOR AUDI FORT WASHINGTON, PREPARED BY BOHLER ENGINEERING, TITLED SITE PLAN (RECORD PLAN 2 OF 6) DATED 01-06-2017, LAST REVISED 08-30-2017, PROJECT No.: PY160829.
2. FINAL LAND DEVELOPMENT PLAN FOR 432 PENNSYLVANIA AVENUE, PREPARED BY MOMENEE AND ASSOCIATES, INC., DATED 07-07-2014, LAST REVISED 07-15-2015, FILE NO. 13-161.

LINETYPE LEGEND
- PROPERTY LINE
- ROW LINE
- FENCE LINE
- PROPOSED BUILDING
- PROPOSED WALK/PATIO

ALL LOCATIONS OF EXISTING UTILITIES, SHOWN ON THIS PLAN, HAVE BEEN DEVELOPED FROM FIELD LOCATIONS OF VISIBLE ABOVE GROUND UTILITY STRUCTURES AND INFORMATION FURNISHED BY THE UTILITY COMPANIES.

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AS PER ACT 187 HOUSE BILL 2627, BEFORE THE START OF ANY EXCAVATION WORK THE CONTRACTOR SHALL NOTIFY THE AFFECTED UTILITY COMPANIES THROUGH THE PENNSYLVANIA "ONE CALL SYSTEM" 1-800-242-1776 THREE DAYS PRIOR TO THE START OF ANY EXCAVATION. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO THE START OF ANY CONSTRUCTION.

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Serial Number:

CALL BEFORE YOU DIG!
PENNSYLVANIA LAW REQUIRES 3 WORKING DAYS NOTICE FOR CONSTRUCTION PHASE AND 10 WORKING DAYS IN DESIGN STAGE-STOP CALL
Pennsylvania One Call System, Inc.
1-800-242-1776

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M:\PROJECTS\13161.1\DGN\13161.1SIGNAGE.DWG,18097

20 0 10 20 40 80
1 INCH = 20 FT.

SIGNAGE PLAN

FILE NO.: 18-097

MOMENEE, INC.
a Karins Company
ENGINEERING | PLANNING | SURVEYING
924 COUNTY LINE ROAD - BRYN MAWR - PA - 19010 610 - 527 - 3030

ZONING APPEAL

432 PENNSYLVANIA AVENUE

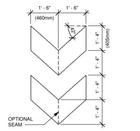
WHITEMARSH TOWNSHIP * MONTGOMERY COUNTY * PENNSYLVANIA

REGISTERED PROFESSIONAL
MICHAEL J. BOWKER
ENGINEER
PE061543

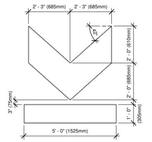
REV.	DATE	COMMENTS
ONE-CALL:		APPLICANT
DRAWN BY:	MJB	WHITEMARSH HOTEL ASSOCIATES,L.P.
CHECKED BY:		919 CONESTOGA RD, SUITE 214, B3 ROSEMONT, PA 19010

SHEET 3 OF 5
DATE: FEBRUARY 19, 2020
SCALE: 1" = 20'

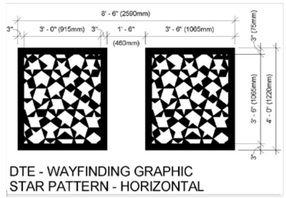
DTE - WAYFINDING GRAPHIC ARROW - SINGLE



DTE - WAYFINDING GRAPHIC ARROW - DOUBLE



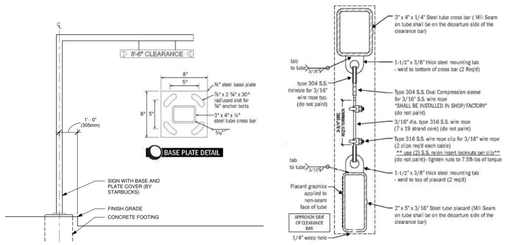
DTE - WAYFINDING GRAPHIC ARROW - EXIT



DTE - WAYFINDING GRAPHIC STAR PATTERN - HORIZONTAL

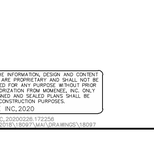
Note: Star pattern to be painted in a contrasting color from the concrete color

NOTE: ALL WAYFINDING GRAPHICS TO BE PAINTED



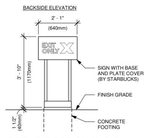
DTE - CLEARANCE BAR

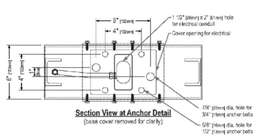
NOTE: FOOTING DETAILS FOR SIGNAGE AND CLEARANCE BAR TO BE PROVIDED BY VENDOR UNDER SEPARATE COVER.



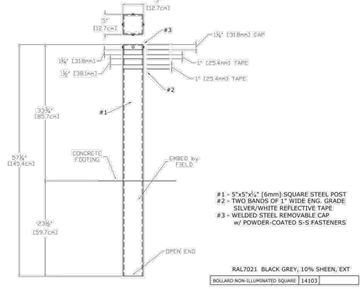
DTE - MONUMENT SIGN

DTE - DIRECTIONAL SIGN WITH LOGO - ENTRY



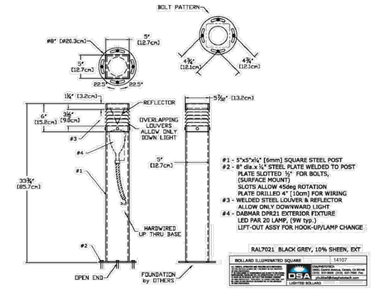


DTE - DIRECTIONAL SIGN



NON-ILLUMINATED BOLLARD

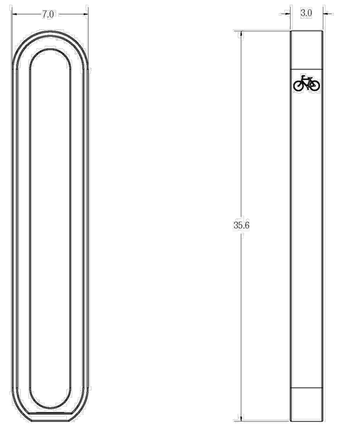
Scale: 1 1/2" = 1'-0"

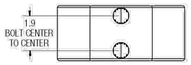


ILLUMINATED BOLLARD

Scale: 1 1/2" = 1'-0"

NOTE: FOOTING DETAILS TO BE PROVIDED BY VENDOR UNDER SEPARATE COVER.





OLYMPIA BIKE RACK
SKOLY

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MOMENEE, INC.,20200205-172256
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COMMENTS	DATE	REV.

SIGNAGE DETAILS

FILE NO.: 18-097

MOMENEE, INC.
a Karins Company
ENGINEERING | PLANNING | SURVEYING
924 COUNTY LINE ROAD - BRYN MAWR - PA - 19010 610 - 527 - 3030

REGISTERED PROFESSIONAL ENGINEER
MICHAEL J. BOWKER
PE061543

ZONING APPEAL

432 PENNSYLVANIA AVENUE

WHITEMARSH TOWNSHIP * MONTGOMERY COUNTY * PENNSYLVANIA

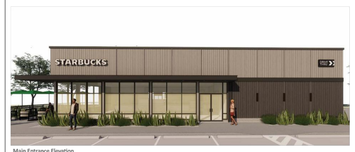
ONE-CALL:		APPLICANT
DRAWN BY:	MJB	WHITEMARSH HOTEL ASSOCIATES,L.P.
CHECKED BY:		919 CONESTOGA RD, SUITE 214, B3
		ROSEMONT, PA 19010

SHEET 4 OF 5

DATE: FEBRUARY 19, 2020

SCALE: AS NOTED

Elevations / Option 1



Main Entrance Elevation

Patio Elevation

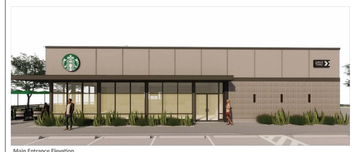
Drive Thru Lane Elevation

Back Elevation

STARBUCKS 2020 | STARBUCKS COFFEE COMPANY - CONFIDENTIAL - **NOT FOR CONSTRUCTION** | *Last Edit 03.11.2020*

STB-A - OPTION 01 | LANDLORD DESIGN CRITERIA SITE AND BUILDING PLAN CRITERIA | STARBUCKS | NOT FOR CONSTRUCTION | DRAWING NOT TO SCALE

Elevations / Option 2


Main Entrance Elevation

Patio Elevation

Drive Thru Lane Elevation

Back Elevation

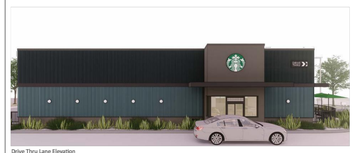
STARBUCKS 2020 | STARBUCKS COFFEE COMPANY - CONFIDENTIAL - **NOT FOR CONSTRUCTION** | *Last Edit 03.11.2020*

STB-A - OPTION 02 | LANDLORD DESIGN CRITERIA SITE AND BUILDING PLAN CRITERIA | STARBUCKS | NOT FOR CONSTRUCTION | DRAWING NOT TO SCALE

Elevations / Option 3

Main Entrance Elevation

Patio Elevation


Drive Thru Lane Elevation

Back Elevation

STARBUCKS 2020 | STARBUCKS COFFEE COMPANY - CONFIDENTIAL - **NOT FOR CONSTRUCTION** | *Last Edit 03.11.2020*

STB-A - OPTION 03 | LANDLORD DESIGN CRITERIA SITE AND BUILDING PLAN CRITERIA | STARBUCKS | NOT FOR CONSTRUCTION | DRAWING NOT TO SCALE

Elevations / Option 4

Main Entrance Elevation

Patio Elevation

Drive Thru Lane Elevation

Back Elevation

STARBUCKS 2020 | STARBUCKS COFFEE COMPANY - CONFIDENTIAL - **NOT FOR CONSTRUCTION** | *Last Edit 03.11.2020*

STB-A - OPTION 04 | LANDLORD DESIGN CRITERIA SITE AND BUILDING PLAN CRITERIA | STARBUCKS | NOT FOR CONSTRUCTION | DRAWING NOT TO SCALE

Elevations / Option 5

Main Entrance Elevation

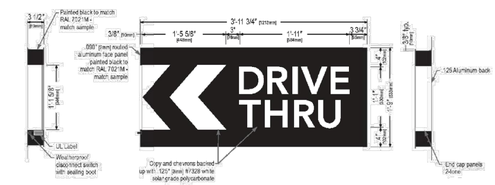
Patio Elevation

Drive Thru Lane Elevation

Back Elevation

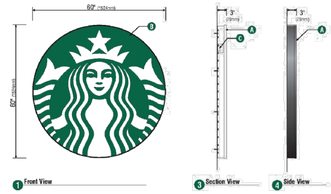
STARBUCKS 2020 | STARBUCKS COFFEE COMPANY - CONFIDENTIAL - **NOT FOR CONSTRUCTION** | *Last Edit 03.11.2020*

STB-A - OPTION 05 | LANDLORD DESIGN CRITERIA SITE AND BUILDING PLAN CRITERIA | STARBUCKS | NOT FOR CONSTRUCTION | DRAWING NOT TO SCALE



Left Side View | **Front Elevation View** | **Right Side View**

DRIVE THRU ILLUMINATED ARROW SIGN, FLUSH MOUNTED



1 **Front View** | 3 **Section View** | 4 **Side View**

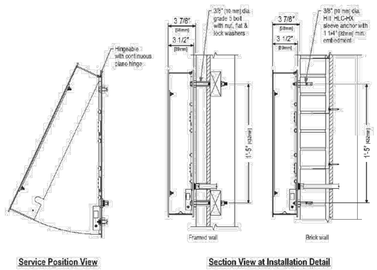
SPECIFICATIONS:

A 60" (1524mm) Single faced internally illuminated wall mount logo disk. Cabinet to be 3" (76mm) deep, fabricated aluminum sidewalls and back. Paint cabinet black polyurethane. Faces to be 3/16" (5mm) Acrylite 015-2GP 1" (25mm) black trimcap with square head screws retainer edging.

B Graphics of logo to be 1st surface 3M Translucent Scotchcal vinyl- Holly Green #3630-76. Smm to show thru White.

C Internally illuminate logo disk with Lumificient® white LED's installed to back of disk. Power with self-contained Lumificient® power supply contained with an U.L. enclosure covered in white vinyl film. Fasten to wall with required fasteners.

60" ILLUMINATED LOGO DISK, FLUSH MOUNTED



Service Position View | **Section View at Installation Detail**

DRIVE THRU ILLUMINATED ARROW SIGN, FLUSH MOUNTED

1 **Front View**

SPECIFICATIONS:

A Internally illuminated channel letters to be fabricated from 0.040 / 3003 aluminum with pre painted White interiors and painted Black polyurethane exteriors, 3" (76mm) deep. Letters backs to be .063 Black & White aluminum pop-riveted to sidewalls and sealed.

B Faces to be 3/16" (5mm) White acrylic with 1" (25mm) Black Trimcap retainer edging. Letter face vinyl is 1st surface 3M 3630-20 White vinyl with scotch borders.

C Internally illuminate letters with Lumificient® White LED's attached to inside of letter backs. Power with 120v Lumificient® power supplies. Power to be located behind wall.

D Fasten letters flush to wall with requirec fasteners.

3 **Letter Section View typ.**

ILLUMINATED WORDMARK SIGNAGE, FLUSH MOUNTED

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BUILDING SIGNAGE DETAILS

FILE NO.: 18-097

MOMENEE, INC.
a Karins Company
ENGINEERING | PLANNING | SURVEYING
924 COUNTY LINE ROAD - BRYN MAWR - PA - 19010 610 - 527 - 3030

COMMONWEALTH OF PENNSYLVANIA REGISTERED PROFESSIONAL
MICHAEL J. BOWKER
ENGINEER PE061543

ZONING APPEAL

432 PENNSYLVANIA AVENUE

WHITEMARSH TOWNSHIP * MONTGOMERY COUNTY * PENNSYLVANIA

ONE-CALL:		APPLICANT
DRAWN BY:	MJB	WHITEMARSH HOTEL ASSOCIATES,L.P.
CHECKED BY:		919 CONESTOGA RD, SUITE 214, B3 ROSEMONT, PA 19010

SHEET 5 OF 5
DATE: FEBRUARY 19, 2020
SCALE: AS NOTED

REV. | DATE | COMMENTS

ZHB#2019-32: Verity Associates, LP
Parcel #65-00-02794-00-3
Block 053; Unit 046
6020 Cricket Road
Flourtown, PA

- Legal Brief on Behalf of Landowner
- Legal Brief on Behalf of Protestants

BEFORE THE ZONING HEARING BOARD
OF WHITEMARSH TOWNSHIP

Application No. 2019-32

APPLICATION OF VERITY ASSOCIATES, LP, FOR THE PROPERTY LOCATED AT 6020 CRICKET ROAD, WHITEMARSH TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA

BRIEF FOR LANDOWNER

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I. INTRODUCTION

Verity Associates, LP ("Landowner"), seeks to subdivide and construct a second single-family dwelling on the 2.9 acre property located at 6020 Cricket Road, Whitemarsh Township (the "Township"), tax parcel no. 65-00-02794-00-3 (the "Property").

The Property is located in the Township's AA Residential district (the "AA District") and is improved with an existing residential dwelling, accessory buildings, and a tennis court. The 2 subdivided lots would consist of a lot measuring approximately 1.01 acres ("Lot A") containing the existing tennis court and a second lot measuring approximately 1.93 acres ("Lot B"). The existing tennis court on Lot A will be removed and replaced with a new 3,624 sq. ft. single-family dwelling, associated improvements, and stormwater management facilities. Lot B will contain the existing single-family residence, driveway, landscaping, and accessory buildings

The size of the proposed house is complimentary in character and scale to houses in this neighborhood. Its size fits in between the sizes of the 3 objectors' houses directly across Cricket Road.

The net result of the subdivision would be 2 houses on 2.9 acres of land, just 0.1 acre short of a 1.5 acre/lot density. Abutting proposed Lot A is a state-owned undeveloped parcel comprising approximately $^4/_5$ acre.

The AA District zoning permits 30,000 square foot lots, except where the property is not served by public sewer or water. In such circumstances, the minimum lot area is markedly increased to 1.5 acres. The Cricket Road neighborhood is not served by public sewer. None of the lots on Cricket Road, including those of the objectors to this application

is served by public sewer. Yet, the large percentage of developed lots in this neighborhood does not comply with the 1.5 minimum acres required by zoning.

To subdivide the Property and construct the new single-family dwelling, Landowner requests the following relief from the Whitemarsh Township Zoning Hearing Board (the "ZHB"):

- a variance from section 116-23.B of the Whitemarsh Township Zoning Ordinance (the "Zoning Ordinance") to permit a minimum lot area of 1 acre where a minimum lot area of 1.5 acres is required;
- a variance from section 116-169.A of the Zoning Ordinance to permit impervious coverage of 21% on proposed Lot A and 15% on proposed Lot B where no more than 12% impervious coverage is permitted on lots in the AA District with a steep slope ratio of 15%-50%;
- a variance from section 116-169.B of the Zoning Ordinance to permit more than 30% of the man-made steep slopes to be re-graded on Lot A.[1]; and
- a substantive validity challenge to section 116-23.B of the zoning ordinance, which requires properties without public sewer or public water to have minimum lot sizes of 1.5 acres. This differentiation in required minimum lot size between properties with or without public water and sewer is arbitrary, capricious, unreasonable, discriminatory, and confiscatory. The regulation bears no rational relation to any legitimate health, safety, or welfare

[1] Landowner also requested a variance from section 116-24.E(3)(a) of the Zoning Ordinance to permit an accessory structure that is farther forward than the front principal building plane. This request was related to an existing, legally nonconforming garage/accessory building, a building which received a front yard variance in 1957. This request was withdrawn during the hearing on June 22, 2020 after the Township zoning officer acknowledged that the building had previously been granted variance relief.

concern. As will be discussed later in this brief, the Pennsylvania Supreme Court recognized the sufficiency of a 1-acre residential lot for on-lot sewage disposal systems.

The owners of 6017 West Valley Green Road, 6015 Cricket Road, 6017 Cricket Road, and 6019 Cricket Road ("Objectors)", appeared in opposition to Landowner's application. The lots and houses of the Objectors vary in size, when compared to proposed Lot A and the proposed house – some are larger, others smaller.

II. LEGAL ARGUMENT

A. Substantive Validity Challenge to section 116-23.B

> *It is obviously sheer fantasy for the township to claim that, because of an on-site sewerage problem, houses cannot be built on a one-acre lot, but can be built on a three-acre lot.*

Concord Twp. Appeal, 268 A.2d 765, 769 (Pa. 1969) (emphasis added).

More than 50 years ago, the Pennsylvania Supreme Court rejected the notion of large lot zoning based on sewerage concerns. The Court upheld the reasonableness of a 1-acre minimum lot size for properties requiring on-lot septic systems in *Concord.* Directly addressing the argument that an on-lot septic system cannot be installed on a 1-acre lot, the Court stated:

> [W]e cannot ignore the fact that in the narrow confines of the case before us, Concord Township's argument that three-acre minimum zoning is necessary for adequate on-site sewerage is patently ridiculous. The township does not argue that on-site sewerage is impossible for the lots in question; instead it maintains that if houses are built on lots of one acre, as envisioned by appellee, not on lots of three acres, onsite sewerage will become unfeasible. This argument assumes that all of the lot where the house is not is necessary for waste effluence, which simply is not what happens. The difference in size between a three-acre lot and a one-acre lot is irrelevant

> to the problem of sewage disposal, absent the construction of a house of an unimaginably enormous magnitude.

Concord, 268 A.2d at 769.

Consistent with the uncontroverted evidence presented to the ZHB, Objectors' contentions have been resoundingly and unequivocally rejected by the Pennsylvania Supreme Court as a justification for requiring minimum lot sizes greater than 1 acre.

Landowner has submitted a substantive validity challenge to section 116-23.B of the Zoning Ordinance, which imposes a 1.5-acre minimum lot size requirement on properties not served by either public water or public sewer. The significant discrepancy in required minimum lot size between properties served with and without public water or sewer is arbitrary, capricious, unreasonable, discriminatory, and confiscatory. This discrepancy has no rational relation to any legitimate health, safety, and welfare concern, and does not further a lawfully defensible purpose.

Pursuant to section 916.1 of the Pennsylvania Municipalities Planning Code ("MPC"), the ZHB has jurisdiction over challenges to the substantive validity of an ordinance that prohibits or restricts the use or development of land in which the challenger has an interest. 53 P.S. § 10916.1(a).

Property owners have a constitutionally protected right to enjoy private property, and this right may only be limited by zoning ordinances to the extent that the zoning ordinance protects or preserves the public health, safety, and welfare. *Twp. of Exeter v. Zoning Hearing Bd.*, 962 A.2d 653, 659 (2009).

The standards employed to evaluate and analyze a substantive validity challenge to a zoning ordinance were explained by the Pennsylvania Supreme Court in *In re Realen Valley Forge Greenes Associates*, 838 A.2d 718 (Pa. 2003) as follows:

> [A] zoning ordinance must be presumed constitutionally valid unless a challenging party shows that it is unreasonable, arbitrary, or not substantially related to the police power interest that the ordinance purports to serve[;] nevertheless, [a]mong other reasons, an ordinance will be found to be unreasonable and not substantially related to a police power purpose if it is shown to be unduly restrictive or exclusionary.... Similarly, an ordinance will be deemed to be arbitrary where it is shown that it results in disparate treatment of similar landowners without a reasonable basis for such disparate treatment.... Moreover, in reviewing an ordinance to determine its validity, courts must generally employ a substantive due process inquiry, involving a balancing of landowners' rights against the public interest sought to be protected by an exercise of the police power.
>
> Moreover, [t]he substantive due process inquiry, involving a balancing of landowners' rights against the public interest sought to be protected by an exercise of the police power, must accord substantial deference to the preservation of rights of property owners, within constraints of the ancient maxim of our common law, *sic utere tuo ut alienum non laedas*. 9 Coke 59--So use your own property as not to injure your neighbors. A property owner is obliged to utilize his property in a manner that will not harm others in the use of their property, and zoning ordinances may validly protect the interests of neighboring property owners from harm.
>
> Hence, the function of judicial review, when the validity of a zoning ordinance is challenged, is to engage in a meaningful inquiry into the reasonableness of the restriction on land use in light of the deprivation of landowner's freedom thereby incurred.

Realen, 838 A.2d at 728 (internal quotations and citations omitted).

The Pennsylvania Supreme Court in *Concord Township Appeal* ruled that requiring lot sizes greater than 1 acre for properties requiring on-lot septic systems because such systems are infeasible on 1-acre lots is “sheer fantasy” and would require the construction of a house of “unimaginably enormous magnitude.”

The Supreme Court further expounded on why a “potential sewerage problem” is not a legitimate basis for requiring excessively large minimum lot sizes. Echoing

testimony presented to the ZHB, the Court pointed to state regulations that impose requirements under which on-lot septic systems can be installed. If these requirements are not met, a system cannot be installed. Specifically the Court cited minimum acceptable percolation rates. At the time, 330 square feet of absorption area was required per bedroom, meaning that a 3-bedroom house would require an absorption area of a little over 1,000 square feet. As one acre contains 43,560 square feet, it was unreasonable to argue that houses with on-lot septic systems could not be built on one-acre lots.

The indefensibility of a 1.5-acre minimum lot based on sewerage concerns was recognized in Montgomery County as far back as 1957. In *Davis Appeal*, 13 Pa. D.&C.2d 619 (C.P. Montgomery 1957), ***the Montgomery County Court of Common Pleas held that a 1.5 acre minimum lot size requirement was not justified by the municipality's desire to accommodate on-lot septic systems***. The court concluded that the evidence did not support this assertion because there were numerous surrounding developments that consisted of *30,000 square foot lots* with on-lot septic systems that had no reported drainage or septic problems. The court stated that:

> The application of the zoning ordinance requiring a minimum lot area of 60,000 square feet to appellants' seven acres of land is confiscatory and discriminatory and bears no reasonable relation to the public health safety, morals or general welfare.

Davis Appeal, 13 Pa.D.&C.2d 619, 628 (C.P. Montgomery 1957).

In a marked parallel to the facts in *Davis*, the Whitemarsh Zoning Ordinance permits 30,000-foot lots in the AA District, but requires a 1.5-acre lot if the property lacks public sewer.

Landowner's expert engineer testified that Landowner will require permits from the Pennsylvania Department of Environmental Protection ("DEP") after land development approval is obtained, but before any construction can begin. N.T. 2/12/20, p. 34.

No state statutes or DEP regulations prevent an on-site septic system from being installed on a 1-acre property.

Landowner's expert engineer has designed projects with on-site septic systems on lots as small as 18,000 sq. ft. N.T. 2/12/20, p. 32, 36. He explained (and Objectors' engineer agreed) that DEP regulations use separation distance requirements rather than minimum lot area requirements. N.T. 2/12/20, pp. 32–33; Exhibit A-9.

The approximate areas for the primary disposal beds and reserve disposal beds have been identified on the Property, and the soils have been tested. N.T. 2/12/20, p. 34. These locations comply with all required DEP separation distances. N.T. 2/12/20, p. 34. Objectors' engineer did not dispute this evidence. He had no first-hand knowledge about the physical conditions and characteristics of the Property.

Objectors' engineer essentially corroborated the key points in the testimony of Landowner's expert engineer. The testimony of Objectors' engineer can be summarized as follows:

- on-lot septic systems can safely be installed on properties smaller than an acre and half;
- on-lot septic systems can be installed on properties as small as 18,000 square feet;
- in his opinion, a 1-acre lot is the minimum lot size for on-site septic systems;

- the standards requiring larger lots for on-lot sewage disposal date back almost 100 years;
- on-lot septic systems are just as likely to fail on larger properties as they are on smaller properties;
- the size of the property has no bearing on the likelihood that the system will fail;
- the system proposed by Landowner is approved by DEP; and
- the same system would be used if the property were 1.5 acres.

The testimony from both engineers established that the requirement in section 116-23.B of the Zoning Ordinance is arbitrary, capricious, unreasonable, discriminatory, and confiscatory; bears no rational relation to any legitimate health, safety, and welfare concern; and does not further a lawfully defensible purpose.

It is of particular significance that the Township did not authorize its solicitor to attend the hearings and defend its ordinance against Landowner's validity challenge. This is a tacit acknowledgment that this provision of the Zoning Ordinance is indefensible, unreasonable, and invalid. It is virtually unheard of for a municipality not to defend the validity of its zoning ordinance. Reading between the lines, it is not unreasonable to expect the Township to review and modify this regulation in the near future, prompted by the challenge in this application.

B. Minimum Lot Size Variance

In the matter before the ZHB, the zoning relief sets the stage for the development of 2 houses on almost 3 acres. Added to the context of the proposed 2-lot subdivision is the $^{4}/_{5}$ acre state-owned parcel immediately abutting Lot A. Assuming the validity and

legitimacy of the 1.5-acre minimum lot requirement, the net result of the subdivision is consistent with that regulation.

No competent, credible evidence presented supports a conclusion that the proposed subdivision and 1 additional home would be contrary to the public interest or general welfare. The impact of the relief sought is insignificant (notwithstanding Mr. Bilko's expressed disingenuous concern about the "noise" generated by the occupants of 1 single-family detached dwelling).

The AA District requires a 30,000 sq. ft. (approximately 0.69 acres) minimum lot. Zoning Ordinance § 116-49.A. However, section 116-23.B of the Zoning Ordinance increases the required minimum lot size to 1.5 acres. This more than doubles the 30,000 square foot minimum lot size otherwise applicable solely related to an on-lot sewage disposal system.

A variance from the requirements of a zoning ordinance may be granted if an applicant establishes that:

> (1) an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions of the property; (2) because of such physical circumstances or conditions the property cannot be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (3) the hardship is not self-inflicted; (4) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (5) the variance sought is the minimum variance that will afford relief."

Tidd v. Lower Saucon Twp. Zoning Hearing Bd., 118 A.3d 1, 12-13 (Pa. Cmwlth. 2015); 53 P.S. § 10910.2; Zoning Ordinance § 116-217.B.

Courts utilize a relaxed standard for establishing unnecessary hardship for dimensional variances than for use variances, although the same criteria apply. *Tidd*, 118

A.3d at 8; *Tri-Cnty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 520 (Pa. Commw. Ct. 2014). A dimensional variance is merely a request to adjust zoning regulations to use a property in a manner that is otherwise consistent with the zoning regulations, while a use variance is a request for permission to use a property in a manner wholly outside the zoning regulations. *Id*. Further, when seeking dimensional variances, an applicant does not have to show that the property cannot be used for any other purpose. *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 721 A.2d 43, 47 (Pa. 1998).

The Pennsylvania Supreme Court established this relaxed standard for dimensional variances in *Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 721 A.2d 43 (Pa. 1998). Under *Hertzberg,* courts may consider multiple factors when determining whether an applicant has established an unnecessary hardship that would warrant the grant of a dimensional variance. These factors include, but are not limited to: "the economic detriment to the applicant if the variance was denied*,* the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood." *Id.* at 50. While so-called "economic detriment" alone will not establish an unnecessary hardship to justify a dimensional variance, it may be considered along with other factors related to the property, to justify the variance. *Id*.

Where a requested variance is *de minimis* in nature, meaning it is so minor that compliance is unnecessary to preserve the public interest, the zoning hearing board's standard of review is even further lessened. *Pequea Twp. v. Zoning Hearing Bd. of Pequea Twp.*, 180 A.3d 500, 504 (Pa. Commw. Ct. 2018). The grant of a *de minimis*

variance is a matter of discretion with the zoning hearing board. *Hawk v. City of Pittsburgh Zoning Bd. of Adjustment*, 38 A.3d 1061, 1066 (Pa.Cmwlth. 2012). A zoning hearing board may grant a *de minimis* variance even where the strict requirements for a variance have not been met when the request is a minor deviation from the zoning ordinance and rigid compliance is not absolutely necessary to protect the public policy concerns inherent in the ordinance. *Twp. of Middletown v. Zoning Hearing Bd. of Middletown Twp.*, 682 A.2d 900, 901-02 (Pa.Cmwlth. 1996).

There are no set criteria for determining what constitutes a *de minimis* variance. *Bailey v. Zoning Bd. of Adjustment of the City of Phila.*, 801 A.2d 492, 504 n. 21 (Pa. 2002). Rather, the grant of *de minimis* relief depends upon the circumstances of each case. *Id*.

A *de minimis* variance is not directly dependent on the dimensional variation. It is more a matter of the effect of the variation.

Zoning hearing boards "should not consider the mere size of the proposed deviation in determining whether a *de minimis* variance should be granted." *Middletown*, 682 A.2d at 902. As the Commonwealth Court explained in *Township of Middletown v. Zoning Hearing Board of Middletown Township*, 682 A.2d 900 (Pa.Cmwlth. 1996), in which a ***50% variance*** from the minimum lot size requirement was granted as *de minimis* relief and affirmed on appeal:

> The Township's proposition that the grant or denial of a *de minimis* variance should be based on the size of the proposed deviation is belied by this Court's holding in *West Bradford Township v. Evans*, 35 Pa.Cmwlth. 167, 384 A.2d 1382 (1978). In *West Bradford*, a property owner sought a variance from an ordinance that required all lots to be at least one acre; specifically, the property owner sought to divide a one-acre lot into two 1/2-acre lots. Despite the size of the proposed

> deviation, the Board granted the variance on the condition that the property owner install new sewage lines and agree to preserve one of the lots as an open space.
>
> In granting the variance in the case *sub judice*, the Board emphasized that because the objections had been cured by the express conditions imposed on the property owner, the effect of the variance on the community was *de minimis*. Although a board should consider the size of the proposed deviation in determining whether a variance is *de minimis*, this Court reiterates that **it is equally important for a board to consider whether rigid compliance is necessary to preserve the public interests sought to be protected by the ordinance**. *See West Bradford*; *Andreucci*.

Middletown, 682 A.2d at 902 (footnote omitted) (emphasis added).

Notably, the "*de minimis* zoning doctrine authorizes a variance in the absence of a showing of the unnecessary hardship traditionally required to support such relief where the violation is insignificant and the public interest is protected by alternate means." *Nettleton v. Zoning Bd. of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1038 (Pa. 2003)

Landowner's property essentially satisfies the larger 1.5-acre lot size requirement at 2.9 acres. Due to the location of existing, lawful buildings on the property that would otherwise have to be demolished, the proposed subdivision creates one lot that is approximately 1.9 acres and another that is approximately 1 acre.

Exhibit A-19 reveals that two-thirds (66%) of the properties in the immediate neighborhood surrounding the Property, all of which must utilize on-lot septic systems, have lot sizes of less than 1.5 acres, and 4 properties are smaller than an acre in size.

None of Objectors' properties, located across the street and immediately behind the Property, complies with the 1.5-acre minimum lot size requirement.

The abutting $^{4}/_{5}$ acre state-owned property abutting Lot A is part of the context and the ZHB's consideration in concluding that the lot size variance is *de minimis*. In *Moyerman v. Glanzberg*, 138 A.2d 681 (Pa. 1958), the Pennsylvania Supreme Court upheld the grant of a variance for a side yard setback, due to the presence of a 25-foot open space between the reduced setback and the neighboring property. The Court specifically affirmed of the zoning hearing board's conclusion that *"[i]t would be a hardship which is unnecessary and of no benefit to the public to disregard entirely the fact that there is a 25-foot open space between the petitioner's property and the abutting property*." *Id.* at 687. The Court opined:

> We are in full accord with this conclusion of the Board of Adjustment. It is hard to imagine a situation in which the requisite 'unnecessary' hardship could be more clearly depicted that [sic] it was in the instant case. It is manifestly clear that the Board of Adjustment, had it refused to grant the variance under the instant circumstances, would have been guilty of a flagrant abuse of discretion when, as here, there is a distance of some 38 feet separating the appellee's dwelling from the dwelling next door and the grant of a variance *could cause no conceivable detriment to the public health, safety and general welfare.*

Moyerman, 138 A.2d at 687 [emphasis added].

The Court reasoned that the purpose of requiring a side yard setback is to protect property owners from a hazard of fire and to provide light and air. As the reduced setback plus the 25-foot open space resulted in a 38-foot separation between the proposed building and the building on the adjacent property, this protection was achieved even with the reduced setback.

As discussed above, concerns relating to sewage cannot support an arbitrary regulation -- the zoning ordinance's marked increase in minimum lot size. The legitimate purpose of imposing minimum lot size requirements is to control density and ensure

adequate light and air. Thus, if density can be maintained and there is adequate space surrounding the Property, these protections are maintained, and there is no detriment to the public, health, safety, and general welfare. Lot A meets all of the AA District setback standards.

Similar to *Moyerman*, immediately adjacent to the portion of the Property that will become Lot A is an open, undeveloped 4/5-acre property owned by the Commonwealth of Pennsylvania. Any claim of a negative impact of the 1-acre Lot A—which is approximately 45% larger than the 30,000 sq. ft. minimum lot size otherwise required in the AA District—is negated by the fact that the Property as a whole nearly satisfies the 3-acre requirement, and there is an adjacent preserved open space. In the words of the Pennsylvania Supreme Court, there is "no conceivable detriment" arising from the proposed 1-acre Lot A.

Finally, with regard to the Objectors' argument that the larger lot size is required to install an on-lot septic system, Landowner's expert engineer testified that 1.5 acres is not necessary to install an on-lot septic system, which meets all governing DEP regulations. N.T. 2/12/20, p. 32.

An on-lot septic system can be installed on as little as 18,000 sq. ft., which is less than half an acre. N.T. 2/12/20, p. 36. This opinion was confirmed by Objectors' engineer, who conceded that no state or other health regulations for on-lot sewage disposal systems require a minimum lot size, and further, that it is possible to install systems on smaller lots. (He was questionably vague and evasive in responding to questions about the size of lots served by on-lot sewage disposal systems in land use projects in which he was involved.)

Objectors' engineer, who was not qualified as a land planner, after attempting to defend the 1.5 minimum acre regulation, admitted that a 1-acre lot is the "minimum" he views necessary for on-lot sewage disposal systems. He confirmed that the proposed on-lot sewage disposal systems for Lots A and B were "approved" systems, and even if both lots were 1.5 acres in size, those would be the systems of choice. Objectors' engineer had no knowledge about the groundwater or soil conditions on the Property. He admitted that the properties of his clients, the 3 objectors directly across the street, are (1) served by on-lot sewage disposal systems, (2) do not comply with the 1.5-acre minimum lot size, and (3) have fully functioning on-lot systems.

The Pennsylvania Supreme Court ruled on the reasonableness of a 1-acre minimum lot size for properties requiring on-lot septic systems in *Concord Township Appeal*. Objectors' argument has been rejected by the Pennsylvania Supreme Court as a justification for requiring minimum lot sizes greater than 1 acre on basis of sewerage concerns.

The proposed one-acre Lot A will have no conceivable detrimental impact on the surrounding neighborhood and is consistent in scale with a majority of nearby properties that do not satisfy the 1.5 acre minimum lot size requirement., Rigid compliance is not absolutely necessary to protect the public policy concerns inherent in the zoning ordinance.

Landowner has established entitlement to the requested dimensional variance relief. The requested variance is *de minimis* in nature and should be granted on that basis.

C. Steep Slopes; impervious coverage

Landowner seeks relief from section 116-169.B of the zoning ordinance to permit more than 30% of areas with steep slopes of 15% to 25% to be regraded. As noted in the Township's legal notices for this application, the slopes on Lot A are man-made.

The area of the property where the smaller lot is proposed is presently improved with a tennis court. To construct the tennis court, the gradually sloping topography of the property was cut and filled to create a level playing surface. This cut and fill resulted in two small areas of steep slopes at either corner of the tennis court where dirt was removed or filled. N.T. 12/11/19, pp. 38–39.

Removal of the man-made steep slopes will improve existing conditions, by removing the tennis court, restoring the topography to its original, gradually sloping condition to construct the proposed single-family dwelling, and adding stormwater management. By removing these man-made steep slopes, Landowner exceeds the maximum 30% disturbance requirement imposed by section 116-169.B of the Zoning Ordinance, thereby necessitating the requested relief.

Steep slope regulations are imposed to address construction in hilly terrain and are meant to apply to natural features, not man-made features. *See Zappala Grp., Inc. v. Zoning Hearing Bd. of the Town of McCandless*, 810 A.2d 708, 711 (Pa. Cmwlth. 2002) ("Steep slope ordinances are designed to protect natural resources."); 53 P.S. § 10603(b)(5) (zoning ordinances…may permit, prohibit, regulate, restrict and determine: (5) Protection and preservation of natural and historic resources…").

Section 603(1)(5) of the MPC, 53 P.S. § 10603(1)(5) provides the enabling legislation for the regulation of "natural and historic resources." Court decisions have

acknowledged that man-made steep slopes are not “natural resources” as that term is defined. The Zoning Ordinance does not expressly refer to man-made steep slopes, regulating only the slope of “land”.

Section 116-168 of the Zoning Ordinance recites the Township’s legislative intent in creating the steep slope overlay district. It identifies the minimization of stormwater runoff and accelerated soil erosion as the primary basis for creating the limitations on disturbance of steep slopes. The removal of the tennis court and regrading of that land are not inconsistent with the legislative intent of the steep slope regulations in the Zoning Ordinance.

To the contrary, the elimination of the man-made steep slopes can and will result in a more stable condition on the Property that will mitigate erosion and stormwater runoff.

This combined engineering reality and benefit was recognized in a Commonwealth Court opinion. In *Pohlig Builders, LLC v. Zoning Hearing Board of Schuylkill Twp.*, 25 A.3d 1260 (Cmwlth. Ct. 2011) the Commonwealth Court affirmed the grant of variance relief to eliminate steep slopes from a property on the basis that “removal of steep slopes…will result in eliminating the potential undesirable elements that such slopes, by their existence creates [sic].” The Court observed that steep slope variances have "a less stringent hardship requirement" than use variances.” *Pohlig*, 25 A.3d at 1267. Specifically, the Commonwealth Court noted that this conclusion was justified where the applicant demonstrated that removal of the steep slopes “would not cause increases in erosion or run-off….”

In the matter before the ZHB, the removal of the man-made steep slopes will not cause any increase in erosion or run-off. This was acknowledged by Objectors’ engineer:

removing the man-made steep slopes can lessen erosion and runoff from the Property. Added to this is are stormwater management measures which the Township will require as part of the subdivision process.

The evidence shows that removal of the man-made steep slopes will have no adverse impact. The Township engineer's memorandum to the ZHB, dated November 26, 2019, concludes that "[t]here are no engineering objections to or environmental impacts associated with above noted variance request provided the applicant demonstrates compliance with the grading, erosion control, storm water management, and best management practices ordinance, Chapter 58." Exhibit ZHB-4.

A zoning hearing board's determination that a variance is *de minimis* is not dependent on satisfying a mathematical calculation of the degree of variation, but rather focuses on the effect of the proposed variation. Here, none of the detrimental effects for which the steep slope overlay was adopted—avoiding increased stormwater runoff and erosion—will occur due to the removal of the tennis court. In fact, leveling these man-made steep slopes will reduce stormwater runoff and erosion. As rigid compliance with is not absolutely necessary to protect the public policy concerns inherent in the Zoning Ordinance, *de minimis* relief from the steep slope requirements is warranted.[2]

Relating to the steep slopes, Landowner also seeks relief from section 116-169.A of the zoning ordinance, which limits impervious coverage to 12% on lots in the AA District with a steep slope ratio of 15% to 50%.

[2] Alternatively, if Landowner's validity challenge is upheld, Landowner will be entitled to subdivide the Property into a lot as small as 30,000 square feet, the otherwise applicable minimum lot size. The effect of the steep slope requirement and its applicability to the man-made steep slopes created for the tennis court would be to prevent any reasonable use or development of Lot A. For any use to be made of Lot A, the tennis court must be removed and the topography regraded. The steep slope requirement renders this impossible.

This relief is likewise *de minimis*. Rigid compliance with the impervious coverage requirements is not necessary to protect the public policy concerns for which the restrictions were imposed; namely stormwater runoff. The overall impervious coverage on the Property will be reduced by approximately 826 sq. ft.,[3] which will reduce the amount of stormwater runoff. Landowner will also be required to install stormwater management facilities. Neither the Property, nor Objector's abutting property to the south has stormwater management facilities. The addition of stormwater management facilities will further manage and/or reduce the stormwater runoff flowing from the Property and improve the stormwater condition on neighboring properties.

The Property presently has legally nonconforming impervious coverage of 19%, or 24,353 sq. ft. Landowner proposes impervious coverage on proposed Lot A of 6,572 sq. ft. or 15%, and 17,313 sq. ft., or 21%, on proposed Lot B. This constitutes a 4% decrease for Lot A, and only a 2% increase for Lot B in impervious coverage, in relation to the legally nonconforming coverage that presently exists. While the percentage of impervious coverage is increasing on Lot B by only 2%, thereby necessitating the requested relief, and decreasing on Lot A by 4%, the total impervious coverage on the two lots in total will decrease by approximately 826 square feet. This reduced impervious coverage, coupled with the installation of new stormwater management facilities will reduce the amount of stormwater runoff leaving the property relative to its present condition.

[3] Landowner's engineer testified at the December 2019 hearing that the decrease in impervious coverage will be "about 800 square feet." The revised plan submitted to the ZHB at the June 2020 hearing has a smaller proposed residential dwelling. The overall net reduction in impervious coverage between what exists and what is proposed is 826 sq. ft. *See* Ex. A-14.

Received into the record of these hearings was exhibit A-17, a list of 11 decisions of this ZHB in applications seeking relief from steep slope regulations. Landowner requested that the ZHB take judicial notice of these decisions. There was no objection.

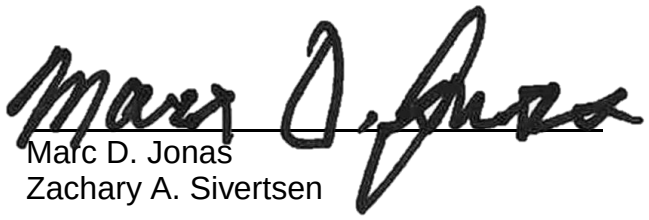
These decisions were obtained in response to a right-to-know request. In 10 of the 11 applications, some of which involved man-made steep slopes, the ZHB granted variance relief. The decisions reflect the ZHB's recognition of the justification for reasonable relief from steep slope disturbance limitations.[4]

Given the man-made nature of the steep slopes, the removal of a tennis court, the positive impact of the regrading of the land, the addition of stormwater management, and the evidence presented, the ZHB should similarly grant Landowner's request for relief.

III. CONCLUSION

Applicant Verity Associates, LP respectfully requests that the Whitemarsh Township Zoning Hearing Board sustain the substantive validity challenge and grant its requested relief.

EASTBURN AND GRAY, P.C.



Marc D. Jonas
Zachary A. Sivertsen

[4] The one decision denying relief from steep slope requirements involved a large 270-unit multi-family residential complex along the Schuylkill River that involved disturbances of significant areas of both natural and man-made slopes. The ZHB specifically found, based on the testimony of the applicant's engineer, that the disturbance of these steep slopes, both natural and man-made, unlike the present matter, would detrimentally impact stormwater runoff and increase the likelihood of erosion.

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IN RE: APPLICATION OF :
VERITY ASSOCIATES, L.P. : ZHB #2019-32
:

PROTESTANTS' BRIEF IN OPPOSITION TO

APPLICANT'S REQUESTED ZONING RELIEF

Protestants Joseph and Kelly Bilko, h/w, Robert and Jill Bown, h/w, Douglas and Sharon Miller, h/w, and Henry and Meredith Russel, h/w, submit the following brief in opposition to the zoning relief sought by Applicant Verity Associates, L.P.:

I. PRELIMINARY STATEMENT

The applicant, Verity Associates, L.P. (the "Applicant"), a Pennsylvania limited partnership, seeks variances from certain provisions of Whitemarsh Township's (the "Township") duly enacted zoning ordinance in order to subdivide an already-developed lot located at 6020 Cricket Road Flourtown, Montgomery County, PA, tax parcel 650002194003 (the "Property"), for the purpose of constructing a separate dwelling on a proposed undersized lot. Applicant proposes to subdivide the Property into lots "A" and "B". Lot "B" would include the already-constructed 3,842-square foot home together with a swimming pool and "party house". Lot "A" would include a proposed 3,624-square foot home with a swimming pool.

Additionally, Applicant challenges the substantive validity of Whitemarsh Township Zoning Ordinance Section 116-23.B as arbitrary, capricious, unreasonable, discriminatory, confiscatory and not rationally related to the health, safety or general welfare of the community.

In Applicant's opening remarks before the Township's Zoning Hearing Board (the "Zoning Board"), counsel for the Applicant argued that the Zoning Board should infer that the Township believes Section 116-23.B is invalid by virtue of the Township's absence from the hearing in this matter.

To the contrary, however, the Township Board of Supervisors (the "Board of Supervisors") is a deliberative and legislative body. If the Board of Supervisors believed Section 116-23.B to be invalid, it would have repealed and/or replaced it itself.

Moreover, as set forth at length herein, the Board of Supervisors' position as to whether or not Section 116-23.B is valid is not the standard on which the Zoning Board decides the validity of a zoning ordinance. See Boundary Drive Assoc. v. Shrewsbury Township Board of Supervisors, 507 Pa. 481, 491 A.2d 86 (1985).

II. THE APPLICANT HAS NOT PROVEN AN UNNECESSARY HARDSHIP AS TO PERMIT THE GRANT OF A VARIANCE.

In order to establish a right to a variance an applicant must prove:

(1) an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions of the property; (2) because of such physical circumstances or conditions the property cannot be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property; (3) the hardship is not self-inflicted; (4) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (5) the variance sought is the minimum variance that will afford relief.

Taliaferro v. Darby Twp. Zoning Hearing Bd., 873 A.2d 807, 811-12 (Pa. Cmwlth. 2005) (citations omitted); 53 P.S. § 10910.2.

"Unnecessary hardship may be established by proof 'that the physical or topographical features of the property are such that it cannot be used for the permitted purpose or that the physical features are such that the property can be arranged for such use only at a prohibitive expense." Vitale v. Zoning Hearing Board of Upper Darby Township, 63 Pa. Commonwealth Ct. 604, 608, 438 A.2d 1016, 1018 (1982) (citing Marlowe v. Zoning Board of Haverford Township, 52 Pa. Commonwealth Ct. 224, 232, 415 A.2d 946, 950 (1980))(internal quotations omitted). However, "[a] mere showing of economic hardship, standing alone, does not justify the granting of a variance." Buckingham Developers, Inc. Appeal, 61 Pa. Commonwealth Ct. 408, 412, 433 A.2d 931, 933 (1981) (citing A & D, Inc. v. Zoning Hearing Board of East Nottingham Township, 32 Pa. Commonwealth Ct. 367, 379 A.2d 654 (1977)).

"The test is not whether the desired use of the property by its owner is the more desirable or even the best use. Rather, in a variance case, the question is whether the property may be used in a reasonable manner within the restriction provisions of the zoning ordinance or regulation." Marple Gardens, Inc. v. Zoning Board of Adjustment, 8 Pa. Commonwealth Ct. 436, 443, 303 A.2d 239, 242-243 (1973).

In this case, Protestants' expert, Vincent W. Fioravanti, P.E., credibly testified that: (1) an unnecessary hardship will **not** result if the variances are denied; (2) the Property had **no unique physical circumstances or conditions** that would prohibit it from being developed in strict conformity with the provisions of the zoning ordinances and that a **variance is not necessary** to enable the reasonable use of the property; (3) any alleged hardships are **self-inflicted**; (4) granting the variances **will alter the essential character of the neighborhood and will be detrimental to the public welfare**; and (5) the variances sought are **not the minimum variance(s)** that will afford relief.

Applicant provided no testimony that an unnecessary hardship will result if the variances are denied, and, similarly, Applicant provided no testimony that the Property has unique physical circumstances or conditions creating an unnecessary hardship.

a. <u>Variance from 116-169.A (impervious coverage)</u>

Mr. Fioravanti further testified that Applicant's requested variance for 15% and 21% impervious ground cover did not represent the minimum variance to afford relief on proposed parcels A & B, respectively, which form part of tax parcel 650002194003.

Mr. Fioravanti testified that by removing the "party house" on proposed parcel B and/or reducing the size of parcel B's driveway, Applicant would need substantially less zoning relief, if any.

Mr. Fioravanti further testified that he has observed the Property and nothing about the Property prohibited its development in strict conformity with the provisions of the Township's zoning ordinance. Rather, Mr. Fioravanti stated it is already developed as a single-family dwelling in conformity with the Township's zoning ordinances.

Applicant presented no testimony that a hardship existed or that unique physical conditions of the property prevented the Property's development in strict conformity with the Township's zoning ordinance.

Joseph Bilko, a neighbor and protestant whose property is directly adjacent to the Property and proposed lot "A", testified that Cricket Road and West Valley Green Road flood on a regular basis and are often closed to traffic by police. Mr. Bilko also testified that his property, at 2017 West Valley Green Road, and the township or county owned property directly adjacent to proposed Lot "A" and the Bilko property are prone to standing water during periods of rain; that his property is at a lower elevation than the proposed lot "A"; and, the Applicant's proposed development will

detrimentally impact his property and the neighborhood by exacerbating water drainage problems and changing the neighborhood's character.

Mr. Fioravanti and Mr. Bilko testified that the proposed development will alter the character of the neighborhood.

Thus, the Applicant has failed to show a hardship, any alleged hardship shown is self-imposed, the relief sought is not the minimum necessary, the Property is already developed as a single-family dwelling in conformity with the zoning ordinances, and the proposed development will detrimentally impact the public and alter the character of the neighborhood.

b. <u>Variance from 116-23.B (minimum lot size)</u>

Applicant presented no testimony of a hardship other than references to a map of the neighborhood showing certain lots that were subdivided into lots smaller than 1.5 acres. However, Applicant conceded that approximately 90% of the lots on the map are larger than the proposed subdivided lot "A". Additionally, the neighborhood was subdivided *circa* 1929 prior to the enactment of the Township's zoning ordinances.

Similarly, Mr. Fioravanti testified that the Applicant could seek a *de minimus* variance from Section 116.23.B by razing the "party house" and drawing a subdivision line that would equally divide tax parcel 650002194003 into two near-1.5 acre lots.

That Applicant presented no plans to the Zoning Board showing a removal of the "party house", in order to achieve the minimum relief necessary, makes it obvious that Applicant's alleged hardship is self-imposed and merely economic.

Mr. Fioravanti further testified that the Property (and proposed lot "A") exists partially within the Floodplain Conservation District's Boundary. Mr. Fioravanti testified that the

Applicant's proposed septic system is only used where soil quality is poor and where the soil cannot accommodate a traditional septic tank.

Thus, the Applicant has failed to show a hardship, any alleged hardship shown is self-imposed, the relief sought is not the minimum necessary, the Property is already developed as a single-family dwelling in conformity with the zoning ordinances, and the proposed development will detrimentally impact the public and alter the character of the neighborhood.

b. Variance from 116-169.B(1) (steep slopes)

Applicant presented no further testimony of any hardship related to steep slopes other than that the steep slopes were manmade during construction of a tennis court which is situated on proposed lot "A".

Thus, the Applicant has failed to show a hardship, any alleged hardship shown is self-imposed, the relief sought is not the minimum necessary, the Property is already developed as a single-family dwelling in conformity with the zoning ordinances, and the proposed development will detrimentally impact the public and alter the character of the neighborhood

III. WHITEMARSH TOWNSHIP ZONING ORDINANCE SECTION 116-23.B IS VALID.

It is well established that a zoning ordinance is presumed to be valid, and that therefore, one who challenges the validity of the zoning ordinance has a heavy burden of establishing its invalidity. Schubach v. Silver, 461 Pa. 366, 380, 336 A.2d 328, 335 (1975).

Further, where the validity of the zoning ordinance is debatable, the legislative judgment of the governing body must control. Bilbar Constr. Co. v. Bd. of Adjustment, 393 Pa. 62, 71, 141 A.2d 851, 856 (1958).

In Pennsylvania, the constitutionality of a zoning ordinance is reviewed under a substantive due process analysis. Boundary Drive, 491 A.2d at 90; Shohola Falls Trails End Property Owners Ass'n v. Zoning Hearing Board of Shohola Township, 679 A.2d 1335 (Pa. Cmwlth. 1996), appeal denied, 548 Pa. 651, 695 A.2d 788 (1997).

Under such analysis, the zoning ordinance is considered constitutional as a valid exercise of the police power, when it promotes public health, safety and welfare and is substantially related to the purpose it purports to serve. Boundary Drive, 491 A.2d at 90.

A significant factor in determining the reasonableness of a land use restriction is whether the restriction is consistent with the stated purpose of the particular zoning district. Hock v. Board of Supervisors of Mount Pleasant Township, 154 Pa. Commw. 101, 107, 622 A.2d 431, 434 (Pa. Cmwlth. 1993).

It is well established that zoning for density, such as a zoning provision regulating minimum lot sizes, is a legitimate exercise of the police power. National Land & Investment Co. v. Easttown Township Board of Adjustment, 419 Pa. 504, 523, 215 A.2d 597, 608 (1965).

Further, the MPC authorizes municipalities to enact zoning ordinance regulating "the siting, density and design of residential, commercial, industrial and other developments in order to assure the availability of reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources." 53 P.S. § 10603 (d).

A minimum acreage requirement is not unconstitutional *per se*, and its constitutionality must be determined on a case-by-case basis because every case involves a different set of facts and circumstances. National Land, 215 A.2d 597.

Cases in which minimum lot restrictions have been overturned on the basis of being unduly restrictive, concerned relatively large tracts of undeveloped land suitable for human habitation.

For example, the tract zoned four acres minimum in National Land was eighty-five acres of undeveloped land; the two and three acre lot restrictions in Concord Township Appeal, 439 Pa. 466, 268 A.2d 765 (1970), involved a 140-acre tract ready for development; the ten acre minimum lot size in Martin v. Township of Millcreek, 50 Pa. Commonwealth Ct. 249, 413 A.2d 764 (1980), concerned a 160 acre tract of undeveloped land which the owner sought to subdivide for residential use.

Pennsylvania Courts have routinely upheld minimum lot sizes imposed by zoning ordinances where they are not unduly restrictive and when they are substantially related to the municipality's police power. See Kirk v. Zoning Hearing Bd., 713 A.2d 1226, 1231 (Pa. Commw. Ct. 1998); see Boundary Drive, 491 A.2d 86, 92-93 (Pa. 1985); see Fisher v. Viola, 789 A.2d 782, 785 (Pa. Commw. Ct. 2001); see Volpe Appeal, 384 Pa. 374, 121 A. 2d 97 (1956).

In Fisher v. Viola, the Pennsylvania Commonwealth Court addressed the issue of "whether the increase in lot size for rural residential zoning districts (R-1) to 1.5 acres for lots without public sewage and 1.25 acres for lots with public sewage is arbitrary, capricious, or unrelated to the public health, safety and welfare." 789 A.2d at 785.

The Fisher court found, "[t]his appeal is essentially an attack on the concept of zoning as an improper exercise of the police power granted to a municipality's governing body, which is an issue that was long ago settled by the United States Supreme Court in Euclid v. Ambler Realty Co., 272 U.S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926). Further, the issue of maximum profitability has also been put to rest; it is not a legitimate issue that can be raised in the context of the exercise of a municipality's police power. Penn Central Transportation Co. v. New York City, 438 U.S. 104, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978)." Id. at 788.

In this case, Mr. Fioravanti testified that a 1.5-acre lot, not served by public water or sewer, was better able to mitigate the environmental impact of a septic failure than a 1-acre lot. He testified that septic failures in floodplains, such as the proposed septic system here—specifically near the Wissahickon Creek, pose greater risks to public safety, health and welfare than do septic failures not within a floodplain. Mr. Fioravanti testified that the nonconforming undersized and developed lots that presently exist in the neighborhood were subdivided *c*. 1929 prior to the zoning restrictions at issue. Mr. Fioravanti testified that the minimum lot size of 1.5 was common in zoning ordinances to mitigate the adverse environmental impact of residential septic failures. Mr. Fioravanti opined that without the 1.5 minimum lot size required by Section 116.23.B for lots not served by public water and sewer would likely lead to a need for public sewer and a pumping substation.

While Applicant did not establish proposed lot "A" is able to safely accommodate a private septic system, Applicant also failed to provide any testimony that 1-acre lots within the Township, which are not served by public water or sewer, other than proposed lot "A" could accommodate a private septic system.

Thus, the Applicant has not overcome its heavy burden of proving the invalidity of Section 116.23.B.

IV. CONCLUSION

For all the foregoing reasons, the Applicant has failed to prove any unnecessary hardship or that Section 116.23.B does not promote public health, safety and welfare and is substantially related to such purpose.

DAVIS BUCCO MAKARA DORSEY

By: */s/ Peter K. Maganas*
PETER K. MAGANAS, ESQUIRE

Date: June 26, 2020