

**BEFORE THE
CHELTENHAM TOWNSHIP ZONING HEARING BOARD**

**IN RE: APPLICATION OF 165 TOWNSHIP
LINE ROAD OWNER, LLC TO THE
CHELTENHAM TOWNSHIP ZONING
HEARING BOARD** : **APPEAL NO. 19-3630**

DECISION

A. FINDINGS OF FACT

1. On October 10, 2019, 165 Township Line Road Owner, LLC (the "Applicant") filed an Application (the "Application") to the Cheltenham Township Zoning Hearing Board (the "ZHB") seeking relief to construct a 4-level parking garage with 5,000 square feet of retail and restaurant use and 10,000 square feet of office use at 165 Township Line Road, Jenkintown, PA 19046, being Montgomery County Tax Parcel No. 31-00-26662-00-1 (the "Property"). N.T. 1/13/20 at p. 29.

2. On November 18, 2019, December 9, 2019, January 13, 2020, and February 3, 2020, the ZHB held hearings on the Application.

3. The following exhibits were marked and entered into the record by the Zoning Hearing Board:

- a. B-1 – Zoning Hearing Board Exhibits Listing
- b. B-2 – Legal notice for all applications heard on November 18, 2019
- c. B-3 – the Application
- d. B-4 – Location map depicting the property
- e. B-5 – Land Record Parcel Information dated October 7, 2019
- f. B-6 – November 7, 2019 memorandum to the ZHB from the Cheltenham Township Planning Commission and the Cheltenham Township Building and Zoning Committee
- g. B-7 – Site Plan
- h. B-8 – Elevation and Parking Levels Layout Plan
- i. B-9 – Renderings of Proposed Structure
- j. B-10 – Zoning Determination Letter dated October 3, 2019
- k. B-11 – Neighbor notification list and map
- k. B-12 – Proof of publication for November 18, 2019 hearing
- l. B-13 – Proof of posting of the Property consisting of 6 photographs
- m. B-14 – Posting certification
- n. B-15 – Letter to Peter Friedman from Bryan Havar dated November 18, 2019
- o. B-16 – Legal Notice for re-advertisement with new variance for 12/9/19 hearing
- p. B-17 – Proof of publication for December 9, 2019 hearing
- q. B-18 – Proof of posting of the Property for December 9, 2019 hearing consisting of 6 photographs
- r. B-19 – Posting certification for December 9, 2019 hearing
- s. B-20 – Letter from Township Engineer to Henry Sekawungu dated December 9, 2019 regarding steep slopes

4. The following exhibits were marked and entered into the record by the Applicant:
 - a. A-1 - Letter from Peter Friedman to Henry Sekawungu dated November 18, 2019
 - b. A-2 - Deed for 165 Township Line Road
 - c. A-3 - Curriculum Vitae for Jerry K. Roller
 - d. A-4 - Plan sheet C101
 - e. A-5 - Proposed Building/Garage
 - f. A-6 - View from Greenwood Avenue
 - g. A-7 - View from West Avenue
 - h. A-8 - View from Summit Avenue
 - i. A-9 - View from South Lot
 - j. A-10 - Reference photos
 - k. A-11 - Plan sheet C002
 - l. A-12 - Plan sheet C001 (with red dots)
 - m. A-13 - Plan sheet C001 (with blue dots)
 - n. A-14 - Curriculum Vitae for Lisa L. Thomas
 - o. A-15 - Examples of "green screen"
 - p. A-16 - Curriculum Vitae for David C. Babbitt
 - q. A-17 - Planning Report dated December 9, 2019
 - r. A-18 - Letter from Robert Habgood to the Applicant dated January 13, 2020
 - s. A-19 - Letter from Peter Friedman to Henry Sekawungu dated January 13, 2020
 - t. A-20 - Biography for Richard A. Stoneback
 - u. A-21 - Zoning Plan dated October 10, 2019
 - v. A-22 - Steep Slopes Disturbance Plan dated October 25, 2019
 - w. A-23 - Curriculum Vitae for Guido DiMartino
 - x. A-24 - Transportation Impact Study dated October 28, 2019
 - y. A-24a - Reduced version of Transportation Impact Study dated October 28, 2019
 - z. A-25 - Letter from Frank Tavani to Henry Sekawungu dated December 13, 2019
 - aa. A-26 - Letter from Earl W. Armitage, III to George K. Locke dated January 13, 2020
 - bb. A-27 - Letter from Guido W. DiMartino to George K. Locke dated January 29, 2020
 - cc. A-28 - Letter from Robert Habgood to Peter Friedman dated January 30, 2020

5. The following exhibit was marked and entered into the record by Jenkintown Borough:
 - a. J-1 - Letter from Guido DiMartino to George K. Locke dated January 29, 2020, containing additional language written in by Jenkintown Borough's attorney

6. The following exhibit was marked and entered into the record by Emily Stine:
 - a. S-1 - Photograph of St. Joseph's University - Post Learning Commons dated December 5, 2019

7. The Application requested the following relief. All cited sections refer to the Cheltenham Township Zoning Ordinance (the "Ordinance"):

- a. A variance from Section 295-1401. to allow for a parking garage use, Use B-18 , to be developed in the MU-2 Mixed Use Zoning District;
- b. A variance from Section 295-1402.E.(1) to allow for a 20-foot front yard setback where a 40-foot front yard setback is required;
- c. A variance from Section 295-1402.E.(2) to allow for a 0-foot side yard setback where an 8-foot side yard setback is required;
- d. A variance from Section 295-1402.G. to allow for a building height of 36 feet, 3 inches where 35 feet is permitted;
- e. A variance from Section 295-405.B.(18)(a) and 295-2301.G.(2) to allow for a reduction in the required 20-foot planting strip between the face of the parking structure and the public right-of-way;
- f. A variance from Section 295-2301.D.(6) to allow for an increase in the maximum allowable off-street parking spaces of 120%;
- g. Section 295-2301.G. (5) to allow for the parking structure setback to not be at least 10 feet but not more than 15 feet from the front of the building;
- h. Section 295-2502.D.(2) to allow for an expansion of the existing non-conforming use of a parking garage by more than 25% as part of the proposed new garage¹;
- i. Section 295-2301.E. to allow a reduction in the required number of parking spaces by 50 spaces²;
- j. A determination that the proposed living wall landscaping from the roof to the ground level on t here (3) sides of the parking structure complies with the requirement under Sections 295-405.B.(18)(b) and 295-2301.G.(3) and (4), or, in the alternative, a variance from Sections 295-405.B.(18)(b) and 295-2301.G.(3) and (4);
- k. An exemption under Section 295-2101.B. from the Township Engineer that the steep slopes are manmade, or, in the alternative, a variance from Section 295-2104.A. to allow for a Use B-18 (Parking Structure) within the Steep Slope Overlay District and a variance from the requirements set forth under Section 295-2105³;

¹ This request for relief was not made as part of the original Application. The Applicant requested this relief at the November 18, 2019 hearing (see Exhibit A-1), and it was advertised for consideration by the ZHB at the December 9, 2019 hearing.

² This request for relief was withdrawn by the Applicant on February 3, 2020. N.T. 2/3/20 at p. 49.

³ It was determined by the Township Engineer during the hearing that the steep slopes on the Property were manmade, thus no relief is required pursuant to this request and it will not be addressed by the ZHB. See Exhibit B-20; N.T. 12/9/19 at p. 6.

l. A determination that the proposed location of the loading area is sufficiently screened and located to comply with the requirements under Section 2950405.B.(18)(b) and 295-2301.G.(3) and (4), or, in the alternative, variances from Sections 295-405.B.(18)(b) and 295-2301.G.(3) and (4).

m. A determination that the loading area is required under Section 295-2301.H.(1) and (3) since there is only 15,000 square feet of "active" space, or in the alternative, a variance from Sections 295-2301.H.(1) and (3) for the location of the loading area.

8. The Property is zoned MU-2 -- Mixed Use Zoning District 2.

9. The Applicant is the legal owner of the property, having acquired the Property (also known as "Pitcairn Place") on October 20, 2017. Notes of Testimony ("N.T.") 11/18/19 at p. 27; See Exhibit A-2.

10. Party status was granted to the following:

- a. Emily Stine, 101 Cliff Terrace, Wyncote, PA 19095;
- b. Leslie Williams, 100 Cliff Terrace, Wyncote, PA 19095;
- c. Ralph Williams, 100 Cliff Terrace, Wyncote, PA 19095;
- d. Jenkintown Borough, 700 Summit Avenue, Jenkintown, PA 19046. (See N.T. 12/9/19 at p. 10)

11. The Applicant was represented at the hearings by Peter S. Friedman, Esquire. Jenkintown Borough was represented by Alexander Glassman, Esquire. Emily Stine, Leslie Williams, and Ralph Williams appeared *pro se*.

12. There is one two-story office building and one three-story office building located on the Property. N.T. 11/18/19 at p. 27.

13. Lawrence R. Botel ("Botel") testified for the Applicant. N.T. 11/18/19 at pp. 34-53.

14. Botel is the managing partner of JOSS Realty Partners, a real estate investor, that will be responsible for developing the Property. N.T. 11/18/19 at pp. 35-36, 38.

15. The two buildings currently located on the Property are office buildings known as "Pitcairn One" (built in 1985) and "Pitcairn Two" (built in 2000) and collectively contain 104,000 square feet of rentable office space. N.T. 11/18/19 at p. 36; N.T. 12/9/19 at p. 93.

16. The two existing office buildings are currently fully leased. N.T. 11/18/19 at p. 37.

17. The Applicant has discussed an arrangement with SEPTA whereby SEPTA would lease, on a long-term basis, 308 parking spaces in the proposed parking garage, leaving 90 spaces in the garage to be used for parking for the existing office buildings on the Property and the proposed retail and office space. N.T. 11/18/19 at p. 39.

18. There is currently no agreement between the Applicant and SEPTA. N.T. 11/18/19 at p. 40.

19. Botel testified that the proposed parking garage will not be built unless the Applicant enters into an agreement with SEPTA for parking in the proposed parking garage. N.T. 11/18/19 at p. 41.

20. Jerry K. Roller ("Roller") was qualified as an expert in architecture and testified for the Applicant. See Exhibit A-3; N.T. 11/8/19 at pp. 54-114.

21. The proposed parking garage has four stories and provides for parking on the roof. N.T. 11/18/19 at pp. 61-61.

22. The proposed parking garage will be built on, and thus replace, the existing surface parking lot that currently serves the Pitcairn One and Pitcairn Two office buildings. N.T. 11/18/19 at p. 62.

23. Access to the proposed parking garage will be from the existing driveway that serves the Property. N.T. 11/18/19 at p. 62.

24. Due to substantial variations in the grade of the Property, the average height of the proposed building is 36 feet, 3 inches, where the Ordinance requires a maximum height of 35 feet. N.T. 11/18/19 at pp. 62-64.

25. The Applicant intends to use Wissahickon Schist along with complementary limestone color and materials in the design of the proposed building and parking garage. N.T. 11/18/19 at pp. 65, 73.

26. The Applicant is requesting a variance from the required 40-foot front yard setback to provide a 20-foot front yard setback in order to create a street-oriented building with activity on the street. N.T. 11/18/19 at p. 65.

27. The proposed garage will include electric charging stations for electric cars, bicycle parking, and a green roof. N.T. 11/18/19 at p. 66.

28. The bottom portion of the proposed parking garage will be screened from view from Township Line Road by the proposed office building. It is the intention of the Applicant to show all office building or retail/commercial space from Township Line Road. N.T. 11/18/19 at p. 67.

29. The Applicant is requesting a variance for a 0-foot side yard setback because the proposed parking garage is being built to most efficiently access the railroad tracks at the Jenkintown Train Station, immediately adjacent to the proposed parking garage. N.T. 11/18/19 at P. 68.

30. Placement of the loading area behind the proposed parking garage as required by the Ordinance would not adequately serve the retail/commercial and office aspects of the proposed building because deliveries would be required to proceed through the entire parking garage in order to reach the retail/commercial and office uses. N.T. 11/18/19 at p. 72.

31. A 42-inch high wall will be built on each level of the proposed parking garage to screen car headlights from view, and the ceiling lights in the proposed parking garage will be screened from view from outside the building. N.T. 11/18/19 at p. 74.

32. All trash and other materials from the loading area will be inside the building, and there will be no outside storage or dumpsters located in the loading area. N.T. 11/18/19 at pp. 74-75.

33. The loading area will be screened from view along Township Line Road with landscaping. N.T. 11/18/19 at p. 75.

34. The Applicant's goal is to provide lighting for the roof level of the proposed parking garage by providing low-level illumination that will cast light on the parked cars, but not in the sky, and the lighting will not rise above the parapet wall nor be visible from the outside the building. N.T. 11/18/19 at p. 89.

35. The proposed parking garage will be a pay garage, and the tenants and visitors to the office space will have parking cards to gain access. N.T. 11/18/19 at p. 90.

36. There will be no outside storage of trash containers at the proposed building. N.T. 11/18/19 at p. 98.

37. At the November 18, 2019 hearing, the hearing was continued on the record to December 9, 2019.

38. Lisa L. Thomas ("Thomas") was qualified as an expert in landscape architecture and testified for the Applicant. N.T. 12/9/19 at pp. 12-49; See Exhibit A-14.

39. Thomas designed a "green screen" for a building at St. Joseph's University and a green screen is proposed for one side of the proposed parking garage building. N.T. 12/9/19 at pp.16-17.

40. A green screen consists of a wire trellis structure that gets attached to the structure of a building and then plants are planted on the ground level and woven into the trellis so that they can climb the side of the building to create a screen for the building. N.T. 12/9/19 at pp. 17-18.

41. With regard to the proposed building, the green screen will be planted on the south façade and maintenance will involve pruning, mulching, fertilization, and irrigation, and replanting as plant material dies. N.T. 12/9/19 at p. 19.

42. The area of the proposed parking garage facing Township Line Road and Greenwood Avenue will be landscaped to screen the street-level parking. N.T. 12/9/19 at p. 20.

43. Ms. Stine presented Exhibit S-1, a photograph of the green screen at St. Joseph's University taken on December 5, 2019, depicting no greenery whatsoever, and only brown vines. N.T. at pp. 25-26; Exhibit S-1.

44. Thomas testified that the proposed deciduous vines that would be used for the green screen will not screen the south façade of the proposed parking garage in the winter months and testified that the green screen is a three-season screen. N.T. 12/9/19 at p. 27.

45. Thomas testified that the use of evergreen plants for the green screen is not recommended due to the possibility that they will attach themselves to the building itself and harm the building materials. N.T. 12/9/19 at p. 28.

46. Thomas testified that it would take between five and seven years for the green screen to grow from the ground to the top of the proposed parking garage structure. N.T. 12/9/19 at pp. 29-30.

47. Leonard Nardone ("Nardone") testified for the Applicant. N.T. 12/9/19 at pp. 50-84.

48. Nardone is the senior program manager in the engineering, maintenance, and construction division of SEPTA, which manages and oversees the regional rail division's capital construction program. N.T. 12/9/19

49. There is a shortage of parking at the Jenkintown-Wyncote regional rail station. N.T. 12/9/19 at p. 52.

50. SEPTA plans to perform improvements to the Jenkintown-Wyncote train station in the form of installing ADA-compliant ramps and high-level platforms, a new canopy, and an elevator that will lead to an overpass to cross between the inbound and outbound platforms, plus the addition of some additional handicapped parking spaces. This work will result in a loss of 50 existing parking spaces. N.T. 12/9/19 at pp. 53-54.

51. The proposed beautification of the south parking lot of the SEPTA train station would result in a loss of an additional 45 to 50 parking spaces, thus totaling a loss of approximately 95 to 100 parking spaces in the south parking lot. N.T. 12/9/19 at pp. 77-78. (N.B.: In its consideration of this appeal, the ZHB did not consider SEPTA's proposed improvements to the south parking lot or other off-site improvements.)

52. Based on studies performed by DVRPC, there are currently 589 parking spaces at the train station and there is a need for 811 parking spaces, a shortage of 222 parking spaces. N.T. 12/9/19 at pp. 54-55.

53. If additional parking is made available to SEPTA in the proposed parking garage, SEPTA will be able to beautify the south parking lot with trees and plantings, improve stormwater management in the parking lot, remove some macadam, improve traffic circulation and create dedicated parking for any business that would lease the station building. Most of these improvements will not be possible if the proposed parking garage does not move forward. N.T. 12/9/12 at p. 56. (N.B.: In its consideration of this appeal, the ZHB did not consider SEPTA's proposed improvements to the south parking lot or other off-site improvements.)

54. David C. Babbitt ("Babbitt") was qualified as an expert in land planning and zoning and testified for the Applicant. N.T. 12/9/19 at pp. 84-114; Exhibit A-16.

55. Babbitt prepared a Land Use Report dated December 9, 2019 for the proposed project. N.T. 12/9/19 at p. 92; Exhibit A-17.

56. The land uses surrounding the Property are a mix of residential, non-residential, multi-family residential, commercial and office uses. N.T. 12/9/19 at p. 94.

57. There are three (3) non-conforming uses currently on the Property: A use E-1 – Office Building, a use B-18 – Parking Structure, and a Surface Parking Lot which, pursuant to Section 295-2301.C.(5) of the Ordinance, is not permitted to be located on a corner lot located on major collector roads or higher classification. N.T. 12/9/19 at pp. 94-95.

58. The proposed use is a Use B-17 – Mixed Use Building under the Ordinance, and consists of the following distinct uses: Either a Use B-25 – Restaurant or a Use B-27 – Retail Shop, Use E-1 Office Building, and Shared Parking for those uses, the existing Pitcairn One and Pitcairn Two office buildings and the trail station. N.T. 12/9/19 at pp. 95-96.

59. Homes located on Cliff Terrace, across the railroad tracks from the Property, are located approximately 420 feet away from the proposed building. N.T. 12/9/19 at p. 99.

60. The SEPTA parking lot that serves the Jenkintown-Wyncote train station is effectively filled by 9:00 AM. N.T. 12/9/19 at p. 100; N.T. 2/3/20 at p. 71.

61. The proposed uses encourage economic development to enhance the quality of life, encourages off-street and shared parking, increases the commercial and industrial tax base, and meets the retail and service needs of the population. N.T. 12/9/19 at p. 101.

62. The total real estate tax revenue that will be generated by the proposed project is anticipated to be approximately \$509,000 per year. N.T. 12/9/19 at p. 102.

63. There will also be additional revenue for the Township from the proposed project in the form of the 1% earned income tax, the \$52 per worker per year local services tax, and the 1.5% mercantile or business privilege tax. N.T. 12/9/19 at p. 102.

64. Adding the proposed parking garage will help improve the chances of survival of a retail or restaurant use in the historic Trumbauer station where prior restaurants have failed due to lack of parking. N.T. 12/9/19 at p. 103.

65. The proposed parking garage will help promote the use of public transit which will help decrease carbon emissions and improve air quality, thus complying with the sustainability element of the comprehensive plan. N.T. 12/9/19 at p. 104.

66. The provision of parking on the east side of the railroad tracks will obviate the need for all train riders coming from the east (Jenkintown and east) to cross the existing bridge into the Wyncote side of the railroad tracks. N.T. 12/9/19 at pp. 111-113; N.T. 1/13/20 at pp. 52-53.

67. The hearing was continued on the record to January 13, 2020. N.T. 12/9/19 at pp. 115-117.

68. Richard Stoneback (“Stoneback”) was qualified as an expert in civil engineering and testified for the Applicant. N.T. 1/13/20 at pp. 16-40; Exhibit A-20.

69. There are areas of steep slopes on the Property that will be disturbed by the proposed project. N.T. 1/13/20 at p. 19.

70. The Township Engineer issued a letter dated December 9, 2019 confirming that the steep slopes on the Property are man-made. N.T. 1/13/20 at pp. 20-21; Exhibit B-20.

71. The Township's Zoning Officer issued a letter dated January 13, 2020 confirming that the steep slopes on the Property are man-made. Thus, the Applicant does not require a determination or relief from the steep slope provisions of the Zoning Ordinance. N.T. 1/13/20 at p. 21-23; Exhibit A-18.

72. The impervious coverage on the Property will increase 3.7%, from its current 46% to 49.7%. The proposed 49.7% impervious coverage is well-below the maximum 65% permitted by the Ordinance. N.T. 1/13/20 at p. 23.

73. The Applicant proposes to capture the stormwater from the proposed parking garage, filter it underground, and ultimately discharge the water with a reduced rate and a reduced volume through the existing collection system near the existing Pitcairn One building. N.T. 1/13/20 at pp. 24-25.

74. The proposed stormwater management system will control runoff from the proposed project and improve existing conditions and will not aggravate any existing flooding. N.T. 1/13/20 at pp. 26, 40.

75. Stoneback testified that the proposed new office, restaurant, and retail uses would require 55 off-street parking spaces pursuant to the Ordinance. N.T. 1/13/20 at pp. 29-30.

76. Guido DiMartino ("DiMartino") was qualified as an expert in transportation engineering and testified for the Applicant. N.T. pp. 41-69; Exhibit A-23.

77. DiMartino prepared a detailed transportation impact study for the proposed project dated October 28, 2019. N.T. 1/13/20 at pp. 44-45; Exhibits A-24 and A-24A.

78. Traffic counts were taken at all intersections surrounding the proposed project and peak AM and PM hours were identified. N.T. 1/13/20 at pp. 46-47.

79. In performing the traffic impact study, DiMartino factored in PennDOT growth rate factors and determined trip generation for the proposed new uses using the ITE Trip Generation Manual. N.T. 1/13/20 at pp. 47-48.

80. DiMartino's study considered the functioning of all pertinent intersections surrounding the proposed project under two (2) build-out scenarios: (a) the proposed project only, and (b) the proposed project and SEPTA's proposed parking lot and roadway improvements. N.T. 1/13/20 at p. 48.

81. Because SEPTA's proposed improvements to the south train station parking lot and intersections proximate to the project are not before the ZHB, the ZHB did not consider those improvements when analyzing the impact of the proposed project on traffic in the area of the Property.

82. As a result of the proposed project, there will be minor improvements in the functioning of the Greenwood Avenue/Township Line Road intersection during the AM peak. N.T. 1/13/20 at p. 49.

83. Taking into account only the improvements associated with the proposed project, all levels of service would stay the same or be improved from no-build conditions to build conditions. N.T. 1/13/20 at p. 50.

84. The northbound approach of Glenside Avenue to its intersection with Greenwood Avenue will improve from a level of service D to a level of service B in the morning peak hour, and from a level of service D to a level of service C in the evening peak hour, and the queue of vehicles at the intersection will be reduced. N.T. 1/13/20 at pp. 51-52.

85. The existing roadways can accommodate the traffic projected to be produced by the proposed mixed-use building. N.T. 1/13/20 at p. 53.

86. The access driveway to the proposed mixed-use building from Township Line Road will operate in a safe and efficient manner, and any modifications or improvements to that access driveway will require a PennDOT highway occupancy permit since Township Line Road is a State road. N.T. 1/13/20 at p. 54.

87. The Applicant will address all comments raised by the Township's Traffic Engineer via a revised traffic study and through the PennDOT approval process. N.T. 1/13/20 at p. 55; N.T. 2/3/20 at p. 27.

88. The hearing was continued on the record to February 3, 2020. N.T. 1/13/20 at p. 73.

89. DiMartino conducted a gap analysis and determined that there are sufficient gaps available in traffic traveling on Township Line Road to allow both right turns and left turns out of the access driveway onto Township Line Road. N.T. 2/3/20 at pp. 10-11.

90. The Applicant agreed to coordinate the provision of a crosswalk crossing Township Line Road at its intersection with Greenwood Road and Summit Avenue with Jenkintown Borough, Cheltenham Township, and PennDOT, and to coordinate options to provide a pick-up/drop-off area with Jenkintown Borough and Cheltenham Township. N.T. 2/3/20 at pp. 12-14, 18, 44; Exhibit J-1.

91. The hearing was closed on February 3, 2020. N.T. at p. 133.

92. Following deliberation, the ZHB issued a verbal decision on March 9, 2020.

B. CONCLUSIONS OF LAW

1. The Applicant has legal standing to file and prosecute the Application.

2. The hearing was duly advertised and posted in accordance with law.

3. The Applicant met its burden of proving that there is an unnecessary hardship that requires relief to allow the proposed mixed-use building on the Property, that the relief granted is necessary to allow the reasonable use of the Property, that the variances herein granted are the minimum variances required to afford relief, that the hardship is not self-created, and that the variances herein granted will not alter the essential character of the neighborhood or district in which the

property is located, nor substantially or permanently impair the appropriate use of the development of adjacent property, nor be detrimental to the public welfare.

4. The ZHB neither abused its discretion nor committed an error of law in issuing the below Order.

C. DISCUSSION

An applicant for a variance bears the burden of meeting the requirements set forth in Section 910.2 of the Pennsylvania Municipalities Planning Code (hereinafter the "MPC"), where relevant, which are as follows:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- (3) That such unnecessary hardship has not been created by the Applicant;
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use of the development of adjacent property, nor be detrimental to the public welfare; and
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

An applicant must meet all the applicable criteria required to support the authorization of a variance. In this case, the Applicant has met all the applicable requirements of the MPC to support the authorization of variances to allow the proposed mixed-use building on the Property.

The uncontradicted testimony of the Applicant's experts and lay witnesses conclusively showed that the Property is located on the corner of Township Line Road and Greenwood Avenue, is irregularly shaped, has man-made steep slopes affecting it, and that the SEPTA rail line abuts the Property. The ZHB determines that the construction of the proposed parking garage is in the best interests of the health, safety, and general welfare of the residents of the Township because it will allow more residents to be able to utilize the Jenkintown-Wyncote train station for commuting, thus reducing the carbon footprint from vehicles that otherwise would drive to their ultimate destination. The use variance requested for the proposed parking garage is warranted in order to serve both the proposed retail/restaurant/office uses and the need for additional parking at the train station in addition to supporting the existing retail/restaurant space in the historic Trumbauer train station building that has

been unable to remain viable due to parking deficiencies at the train station. The dimensional variances requested are directly related to the physical characteristics of the Property. Reasonable conditions are required to ensure the public health, safety, and welfare and are therefore attached to the Order below.

In conclusion, the ZHB neither abused its discretion nor committed an error of law in approving the relief requested by the Applicant.

D. ORDER

AND NOW, this 17 day of March, 2020, the ZHB hereby grants the following relief:

I. RELIEF

a. A variance from Section 295-1401 to allow for a parking garage use (Use B-18) to be developed as part of a otherwise-permitted Mixed-Use Building (Use B-17) with retail, restaurant, and office uses.

b. A variance from Section 295-1402.E.(1) to allow for a minimum 20-foot front yard setback where a 40-foot front yard setback is required.

c. A variance from Section 295-1402.E.(2) to allow for a minimum 0-foot side yard setback where an 8-foot side yard setback is required.

d. A variance from Section 295-1402.G. to allow for a maximum building height of 36'3" where a maximum of 35' is allowed.

e. A variance from Sections 295-405.B.(18)(a) and 295-2301.G.(2) to allow for a reduction in the required 20-foot wide planting strip between the face of the parking structure and the public right-of-way.

f. A variance from Section 295-2301.D.(6) to allow for an increase in the maximum allowable off-street parking spaces of no more than 120%.

g. A variance from Section 295-2301.G.(5) to allow for the parking structure setback to not be at least 10 feet but no more than 15 feet from the front of the building.

h. A variance from Section 295-2301.H.(1) to allow the proposed loading area to be located as shown on the plans submitted with the Appeal.

II. DETERMINATIONS

a. The proposed living wall landscaping from the roof to the ground level on three (3) sides of the parking structure does not comply with the requirement under Sections 295-405.B.(18)(b) and 295-2301.G.(3) and (4). Requests for variances from those Sections are denied.

b. The proposed location of the loading area is not sufficiently screened and located to comply with the requirements of Sections 295-405.B.(18)(b) and 295-2301.G.(3) and (4). Requests for variances from those Sections are denied.

c. The proposed loading area is required under Sections 295-2301.H.(1) and (3). A variance from Section 2301.H.(1) is granted pertaining to the location of the proposed loading area, as set forth in section h. of "Relief", above. A variance from Section 295-2301.H.(3) is denied.

The forgoing relief is granted subject to the Applicant's compliance with the following:

III. CONDITIONS

1. Prior to the issuance of a building permit for the parking garage, the Applicant (or its successors or assigns) must provide the Township with a copy of a lease with SEPTA (or its successors or assigns) for parking in the parking garage.

2. All relief is conditioned on the Applicant complying with the comments in Exhibit A-26 (Pennoni's traffic review letter dated January 13, 2020), and the comments in Exhibit J-1 (Traffic Planning & Design, Inc.'s responsive traffic review letter dated January 29, 2020 with additional language added in the response to paragraph 6).

3. Prior to the issuance of a building permit for the project, the Applicant shall obtain all permits and approvals for the project including, but not limited to, land development approval from Cheltenham Township and all permits and approvals required by PennDOT.

4. The HVAC fixtures shall either be installed inside the building or, if installed on the exterior of the building, shall be screened from view.

5. All ceiling lighting inside the parking garage shall be screened from view from the exterior of the parking garage.

6. Lighting on the top level of the parking garage shall be low-level lighting and it shall be located no higher than the parapet.

7. The Applicant shall provide the following: (a) security cameras monitoring all portions of the parking garage and mixed-use properties that are actively monitored on a live 24-hour basis, (b) emergency phones, and (c) parking garage attendants.

8. The architectural elements of all facades of the parking garage shall be consistent with the façade of the street-facing portion of the proposed mixed-use building and shall incorporate natural Wissahickon schist.

9. The Applicant shall construct a wall or solid fence around 3 sides of the loading area in accordance with the Zoning Ordinance's requirements for walls or fences, as applicable.

This decision does not affect signage for the proposed uses.