

*Cheltenham Township, believing that public input is appropriate on any item coming before the Commissioners, will recognize any citizen wishing to address a specific item prior to the vote on that issue. In order to be recognized, please raise your hand.*

## **BUILDING AND ZONING COMMITTEE**

**Wednesday, January 8, 2014  
8:00 P.M.  
Curtis Hall**

### **AGENDA**

1. Review of the Zoning Hearing Board Agenda for January 13, 2014 (see attached).
2. Review of the Zoning Hearing Board Agenda for January 21, 2014 (see attached).
3. Review of the Planning Commission Minutes dated December 23, 2013 (see attached).
4. Review of the Economic Development Task Force recommendations for issuance of Certificates of Appropriateness for signage (see attached).
5. Review of recent Decision(s) of the Zoning Hearing Board (see attached).
6. Report of the Building Inspector for December, 2013 (see attached).
7. Old Business.
8. New Business.
  - a. Announcement of Conditional Use Application filed for 1900 Ashbourne Road, Elkins Park, CTCU #1301.
9. Citizens' Forum.
10. Adjournment.



**Bryan T. Havir  
Township Manager**

**ZONING HEARING BOARD**

**AGENDA**

**FOR**

**JANUARY 13, 2014**

## NOTICE

**NOTICE IS HEREBY GIVEN** that an application for Zoning Relief for 621 Boyer Rd., Cheltenham, PA 19012 will be reviewed by the following Township Committees which will offer recommendations to the Zoning Hearing Board:

- a. Cheltenham Township Planning Commission on Monday, December 23, 2013, at 7:30 P.M. at the Township Board Room, at 8230 Old York Road, Elkins Park PA.
- b. Cheltenham Township Building and Zoning Committee on Wednesday, January 8, 2013 at 8:00 P.M. at Curtis Hall, at Curtis Arboretum, Greenwood Avenue and Church Road, Wyncote, PA 19095.

**This application will be heard by the Zoning Hearing Board on Monday, January 13, 2013 at 7:30 P.M. at Curtis Hall, at Curtis Arboretum, Greenwood Avenue and Church Road, Wyncote, PA 19095.**

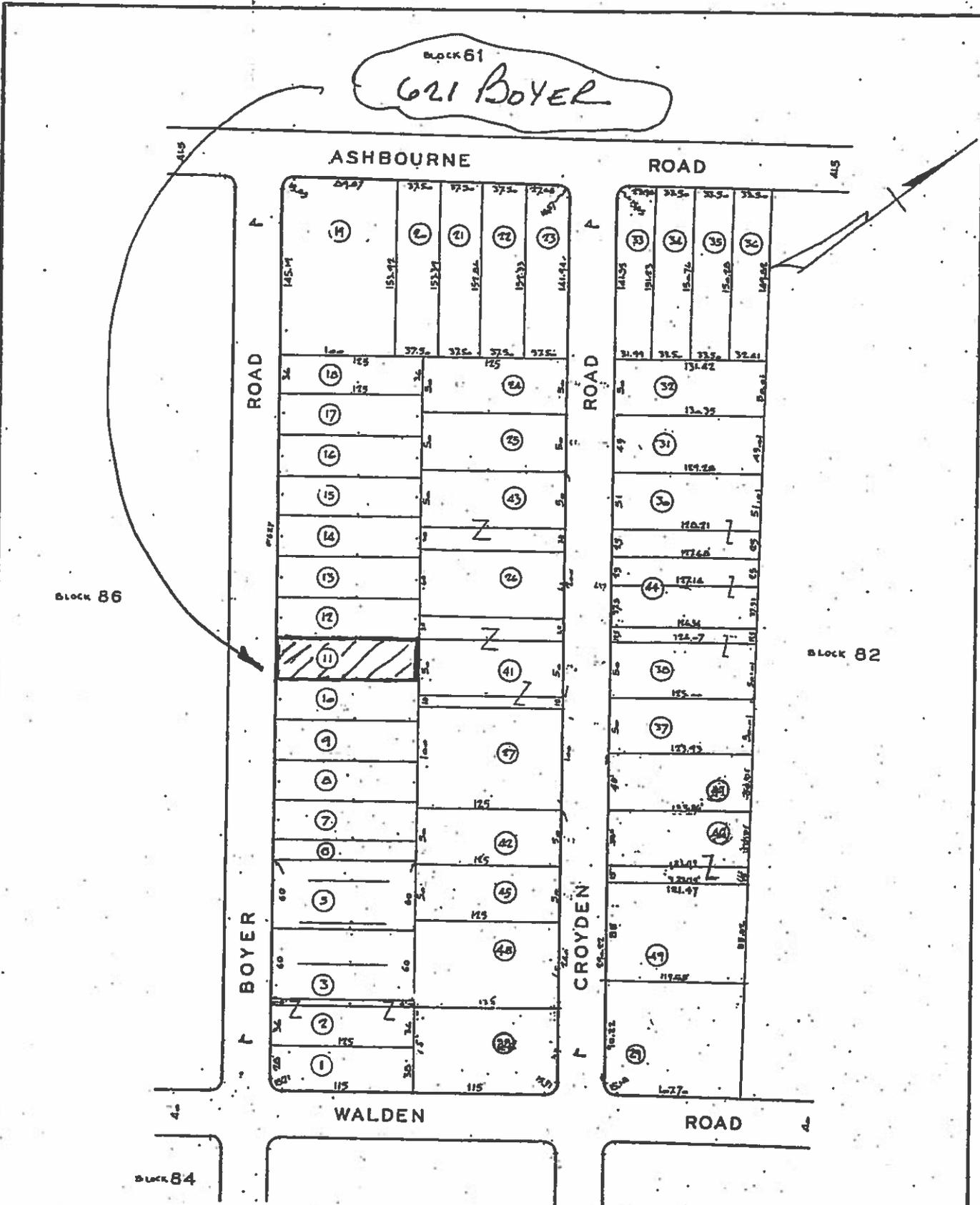
**APPEAL NO. 3478:** Appeal of Annie Nguyen, owner of premises known as 621 Boyer Rd., Cheltenham, PA, from the Decision of the Zoning Officer for a variance in accordance with the rules and regulations of the Class R-5 Residence District as outlined in CCS 295-46.C for a lesser rear yard setback of 3' instead of the minimum required 15' and CCS 295-46.B.(1) for a lesser side yard of 7' instead of the required 8' in order to install a 8' x 16' shed.

**The above application, including site plans, is on file in the Township Administration Building, Building and Zoning Department, Room 204, 8230 Old York Road, Elkins Park, PA, 19027 and are open for review, Monday thru Friday, 8:00 AM to 4:30 PM.**

**Any person or persons with a disability requiring a special accommodation to participate in the meeting should notify Nancy K. Gibson at 215-887-1000 at least 5 work days prior to the meeting.**

ZHB # 3478  
Zoning Officer

Block 61  
621 BOYER



Block 86

Block 82

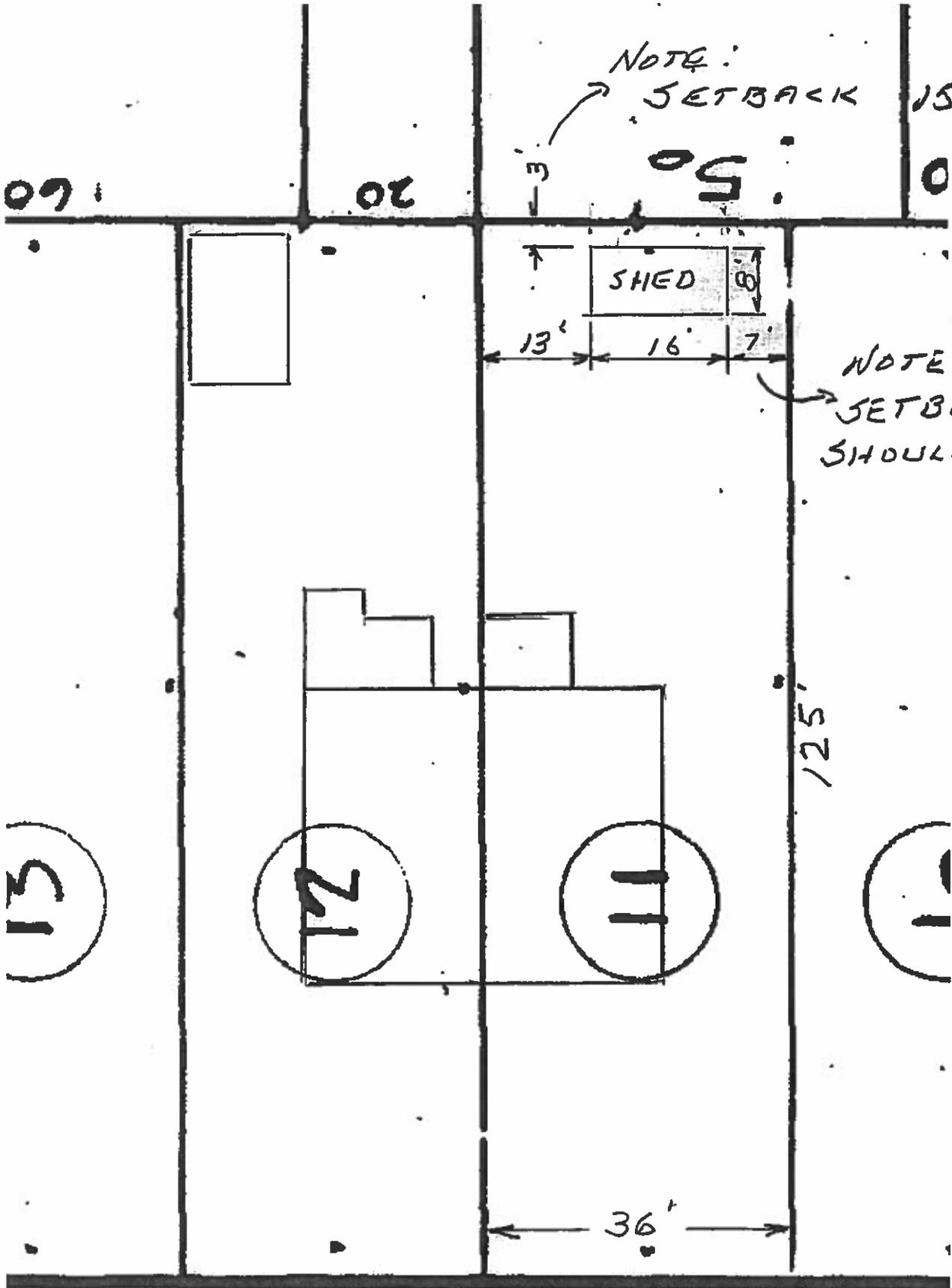
Block 84

Block 83

ZHB 3478-4

CHELLENHAM TOWNSHIP,  
MONTGOMERY CO. PA.  
REAL ESTATE REGISTRY  
**BLOCK 85**  
SCALE 1"=60' DRAWN BY H.A.R.  
JULY 1, 1936 CHECKED BY H.W.C.

REVISED



NOTE: SETBACK 15' FOR SHED

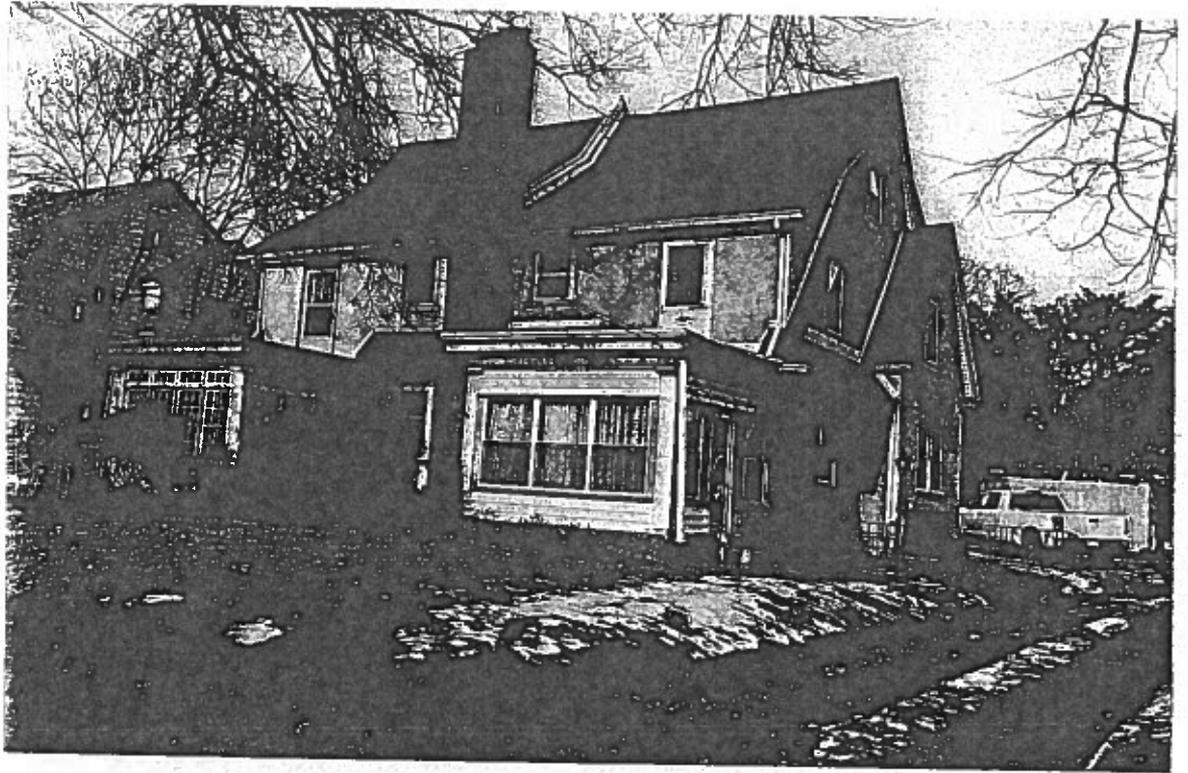
NOTE: SETBACK SHOULD BE 8

623

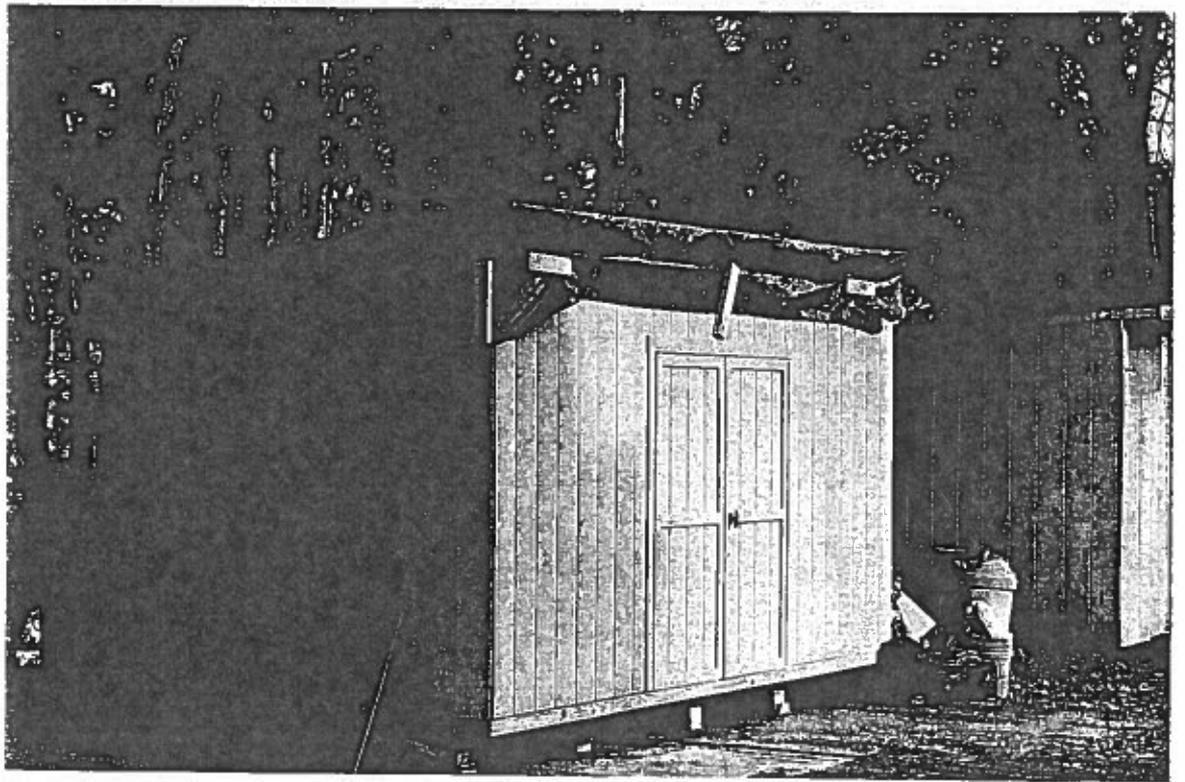
621

BOYER RD

ZHB 3478-7



FRONT VIEW 621 BOYER



ZMB 3478-

**NOTICE**

**NOTICE IS HEREBY GIVEN that an application for Zoning Relief for Hopkins Center, 8100 Washington Lane, Wyncote, PA 19095 will be reviewed by the following Township Committees which will offer recommendations to the Zoning Hearing Board:**

- a. **Cheltenham Township Planning Commission on Monday, December 23, 2013, at 7:30 P.M. at the Township Board Room, at 8230 Old York Road, Elkins Park PA.**
- b. **Cheltenham Township Building and Zoning Committee on Wednesday, January 8, 2013 at 8:00 P.M. at Curtis Hall, at Curtis Arboretum, Greenwood Avenue and Church Road, Wyncote, PA 19095.**

**This application will be heard by the Zoning Hearing Board on Monday, January 13, 2013 at 7:30 P.M. at Curtis Hall, at Curtis Arboretum, Greenwood Avenue and Church Road, Wyncote, PA 19095.**

**APPEAL NO. 3479 – Appeal of Hopkins Center, owner of premises known as 8100 Washington Lane, Wyncote, PA, from the Decision of the Zoning Officer in order to expand the existing parking field by 15 spaces and shift the location of the recyclable/trash enclosure.**

**The following Zoning Relief is required for the proposed project within the R-3 Residential District:**

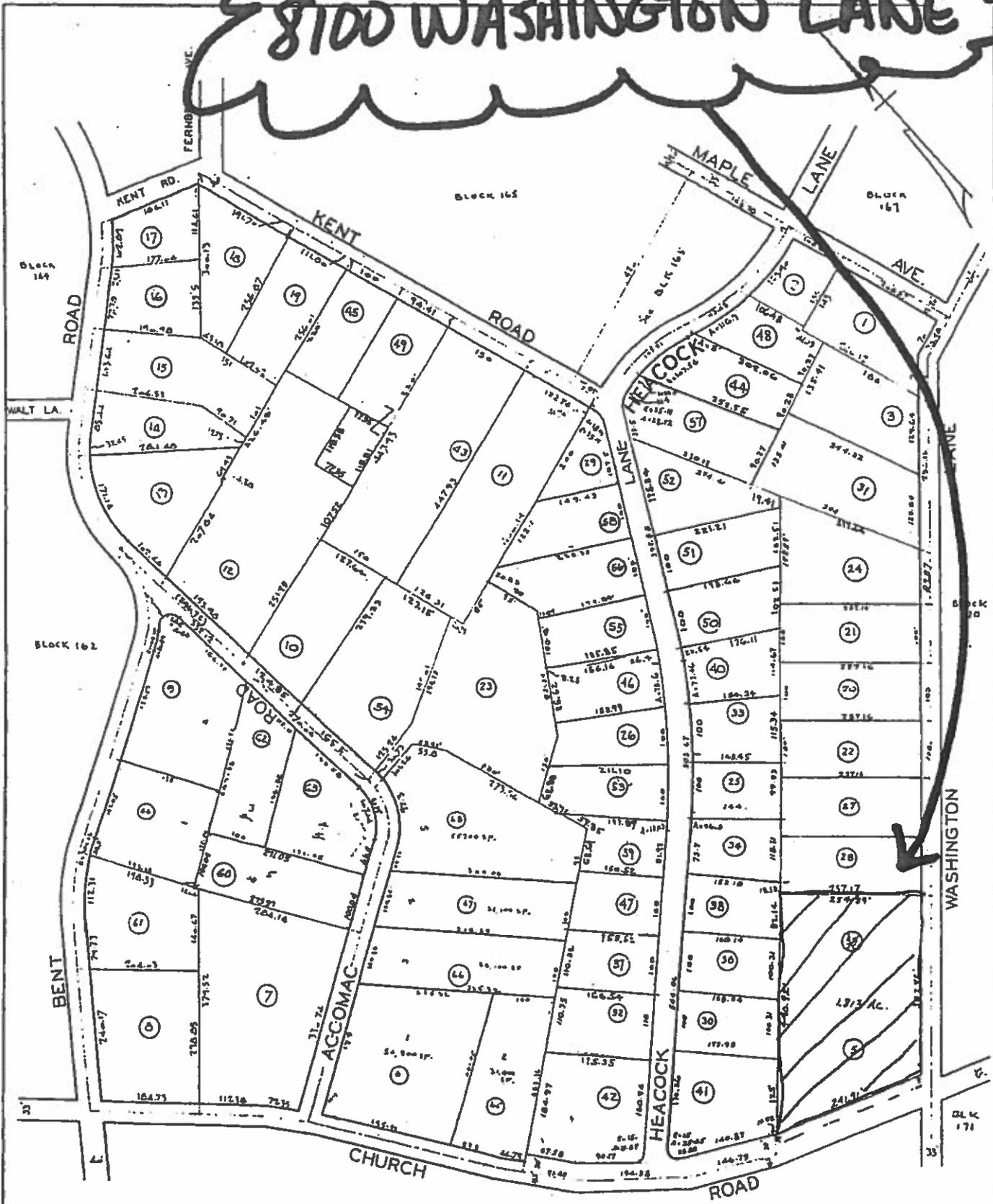
1. **A variance from CCS 295-221.B(5).(a) (Location of surface parking) to allow surface parking between the existing building and Washington Lane.**
2. **A variance from CCS 295-220B. (Side yard projections) to allow recyclables/trash and landscape wall to project within the side yard.**
3. **A variance from CSS 295-163 (Steep Slope Conservation District) to allow disturbance of slopes 15% or greater.**
4. **A variance from CCS 295-24A. (2) (Front Yard Setback) to allow construction of a landscape wall with railing 18' from the Right of Way instead of the allowed 50'.**

**The above application, including site plans, is on file in the Township Administration Building, Building and Zoning Department, Room 204, 8230 Old York Road, Elkins Park, PA, 19027 and are open for review, Monday thru Friday, 8:00 AM to 4:30 PM.**

**Any person or persons with a disability requiring a special accommodation to participate in the meeting should notify Nancy K. Gibson at 215-887-1000 at least 5 work days prior to the meeting.**

ZHB # 3479  
Zoning Officer

# 8100 WASHINGTON LANE



CHELTENHAM TOWNSHIP  
 MONTGOMERY CO. PA.  
**REAL ESTATE REGISTRY**  
**BLOCK 163**  
 SCALE: 1" = 100' DRAWN BY: P.P.M.  
 JULY 20, 1990 CHECKED BY: J.M.C.

16:

7112 3479-45



# GENESIS HEALTHCARE HOPKINS CENTER



APPLICANT  
**GENESIS HEALTHCARE**

PROJECT NUMBER  
DATE  
SCALE  
SHEET NO.  
TOTAL SHEETS



**SITE LOCATION MAP** T = 1000'

### SITE STATISTICS

- 1. TOTAL AREA: 100,000 SQ. FT.
- 2. TOTAL AREA OF THE CENTER: 10,000 SQ. FT.
- 3. TOTAL AREA OF THE DRIVE: 10,000 SQ. FT.
- 4. TOTAL AREA OF THE PARKING: 10,000 SQ. FT.
- 5. TOTAL AREA OF THE LANDSCAPE: 10,000 SQ. FT.
- 6. TOTAL AREA OF THE BUILDING: 10,000 SQ. FT.
- 7. TOTAL AREA OF THE DRIVEWAY: 10,000 SQ. FT.
- 8. TOTAL AREA OF THE SIDEWALK: 10,000 SQ. FT.
- 9. TOTAL AREA OF THE FENCE: 10,000 SQ. FT.
- 10. TOTAL AREA OF THE SIGNAGE: 10,000 SQ. FT.

### ZONING DATA

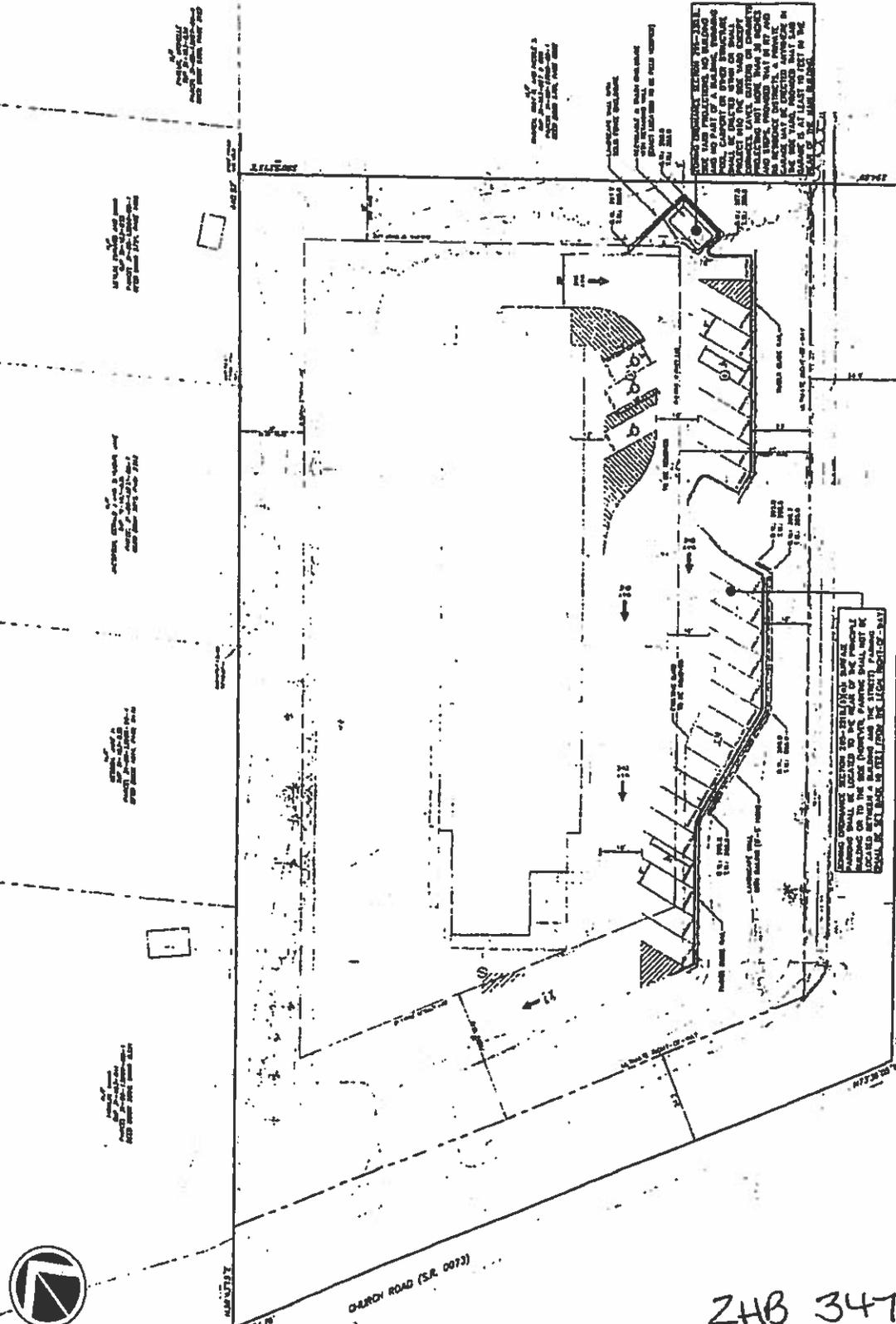
- 1. ZONING DISTRICT: R-1
- 2. ZONING DISTRICT: R-2
- 3. ZONING DISTRICT: R-3
- 4. ZONING DISTRICT: R-4
- 5. ZONING DISTRICT: R-5
- 6. ZONING DISTRICT: R-6
- 7. ZONING DISTRICT: R-7
- 8. ZONING DISTRICT: R-8
- 9. ZONING DISTRICT: R-9
- 10. ZONING DISTRICT: R-10

### GENERAL NOTES

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL PLUMBING CODE (IPC).
2. ALL MATERIALS SHALL BE OF THE HIGHEST QUALITY AND SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE LOCAL AUTHORITY.
3. ALL UTILITIES SHALL BE DEPTH MARKED AND SHALL BE PROTECTED BY AN APPROPRIATE METHOD.
4. ALL SIGNAGE SHALL BE IN ACCORDANCE WITH THE LOCAL SIGNAGE ORDINANCE.
5. ALL LANDSCAPING SHALL BE IN ACCORDANCE WITH THE LOCAL LANDSCAPING ORDINANCE.
6. ALL FENCE SHALL BE IN ACCORDANCE WITH THE LOCAL FENCE ORDINANCE.
7. ALL SIDEWALK SHALL BE IN ACCORDANCE WITH THE LOCAL SIDEWALK ORDINANCE.
8. ALL DRIVEWAY SHALL BE IN ACCORDANCE WITH THE LOCAL DRIVEWAY ORDINANCE.
9. ALL SIGNAGE SHALL BE IN ACCORDANCE WITH THE LOCAL SIGNAGE ORDINANCE.
10. ALL LANDSCAPING SHALL BE IN ACCORDANCE WITH THE LOCAL LANDSCAPING ORDINANCE.

### PARKING REQUIREMENTS

- 1. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.
- 2. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.
- 3. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.
- 4. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.
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- 7. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.
- 8. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.
- 9. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.
- 10. THE TOTAL NUMBER OF PARKING SPACES SHALL BE 100.



WASHINGTON LAKE (S.R. 0072)

CHURCH ROAD (S.R. 0073)

ZHB 3479-72

**ZONING HEARING BOARD**

**AGENDA**

**FOR**

**JANUARY 21, 2014**

**NOTICE**

Notice is hereby given that the Cheltenham Township Zoning Hearing Board will hold a public hearing on Monday, December 09, 2013, at 7:00 PM at Curtis Hall, Church Road and Greenwood Avenue, Wyncote, PA 19095, to consider the following applications for special exceptions and/or variances from the terms of the Cheltenham Township Code, Chapter 295 thereof, entitled Zoning.

**APPEAL NO. 3468:** (Continuation) Applicant is the equitable owner of a 3.65+ acre parcel of ground with frontage on Ogontz Avenue, Limekiln Pike, MacDonald Avenue and Clubhouse Lane. The property is located in a CI Zoning District and is currently vacant.

Applicant proposes to develop the property for a WaWa Convenience Store containing 5,585 square feet with fueling stations. In this regard, Applicant requests the following zoning relief:

1. A variance under Section 295-98 of The Cheltenham Zoning Ordinance of 1929, as amended (the "Ordinance") so as to permit the property to be used as a Wawa convenience store containing 5,585 square feet with fueling stations;
2. A variance under Section 295-102 of the Ordinance for a reduction in the width of the 15 foot wide buffer along a public highway. The area between the proposed driveway and the Limekiln Pike right-of-way is 11.1 feet;
3. A variance under Section 295-101.A of the Ordinance to permit a canopy along Limekiln Pike to be located less than 60 feet from Limekiln Pike;
4. An interpretation under Section 295-221.B.(5)(a) of the Ordinance or, in the alternative, a variance under Section 295-221.B.(5)(a) of the Ordinance, to permit parking to be located between the building and the street;
5. A variance under Section 295-221.F of the Ordinance so as to increase the allowable parking area. The convenience store and the fueling stations use requires 31 parking spaces. Applicant is proposing 66 parking spaces, which is in excess of the maximum parking standard;
6. A variance under Section 295-221.K.(1) of the Ordinance so as to permit service and loading behind the building. Applicant proposes to have the loading on the side of the building (along Clubhouse Lane);

7. A variance under Section 295-196.A.(3) of the Ordinance so as to permit five (5) directional signs, each exceeding 4 square feet; and
8. Variances under Section 295-197.C.(1)(a) of the Ordinance, so as to permit: (a) two (2) free-standing, internally illuminated, double sided signs with LED price changer, one (1) containing 189.04 square feet with a height of 40 feet (located on Ogontz Avenue), and one (1) containing 99.94 square feet with a height of 25 feet (located on Limekiln Pike); (b) three (3) parallel wall signs with logo, one (1) containing 66.69 square feet (facing Limekiln Pike), one (1) containing 37.47 square feet on the rear of the building (facing the Clubhouse Lane/MacDonald Avenue intersection); and (c) an additional 3.92 square feet of parallel wall signage (pump signage), as per the attached signage plan, all of which parallel wall signs total 108.08 square feet, which total exceeds the maximum square footage permitted;
9. A variance under Section 295-221.B.(5)(b) of the Ordinance so as to permit off-street parking on the corner lots;
10. A variance under Section 225-221.C.(2)(c) of the Ordinance so as to permit the width of driveway entrance along Limekiln Pike to exceed 24 feet in width. The proposed driveway width is 30 feet;
11. A variance under Section 225-223 of the Ordinance so as to permit the trash enclosure to be located approximately 20 feet from the rear yard setback area. The rear setback requirement is 50 feet;
12. To the extent that it is determined that the right-of-way line is located on the conservation easement boundary, Applicant requests additional relief under paragraphs 2 and 3 above as the setbacks may change; and
13. Applicant seeks such other variances, special exceptions and interpretations as may be required in order to develop the property in accordance with the plans submitted by Applicant

The Planning Commission ("PC") meeting was held tonight at the Township Administration Building. The following Planning Commission members were present: Messrs. Goldfarb, DiBenedetto, Leighton, Cross, Winneberger. Staff present was Carmen G. Reitano, Assistant to the Director of Planning, Zoning and Inspections.

**1. Acceptance of the November 25, 2013 meeting Minutes.**

The Commission members voted unanimously to accept the Minutes of the November 25, 2013 meeting.

**2. Review of the Zoning Hearing Board Agenda for January, 13, 2014.**

**APPEAL NO. 3478:** Appeal of Annie Nguyen, owner of premises known as 621 Boyer Road, Cheltenham, PA, from the Decision of the Zoning Officer for a variance in accordance with the rules and regulations of the Class R-5 Residence District as outlined in CCS 295-46.C for a lesser rear yard setback of 3' instead of the minimum required 15' and CCS 295-46.B.(1) for a lesser side yard of 7' instead of the required 8' in order to install a 8' x 16' shed.

Mr. Reitano presented the application and associated site plans and photographs to the committee.

Mr. Cross stated that the location of the shed is not going to set a precedent for its close proximity to the rear and side yard property lines. A number of sheds are located in similar locations on properties in the vicinity of this property.

Upon reviewing the application, Mr. Cross made a motion to recommend approval of this application as submitted.

The motion was seconded by Mr. Goldfarb.

**APPEAL NO. 3479:** Appeal of Hopkins Center, owner of premises known as 8100 Washington Lane, Wyncote, PA, from the Decision of the Zoning Officer in order to expand the existing parking field by 15 spaces and shift the location of the recyclable/trash enclosure.

The following Zoning Relief is required for the proposed project within the R-3 Residential District:

1. A variance from CCS 295-221.B (5). (a) of the location of surface parking to allow parking between the existing building and Washington Lane.
2. A variance from CCS 295-220B. of the side yard projections to allow recyclables/ trash and landscape wall to project within the side yard.
3. A variance from CCS 295-163 of the steep slope conservation district to allow disturbance of slopes 15% or greater.
4. A variance from CCS 295-24A.(2) of the front yard setback provisions to allow construction of a landscape wall with railing 18' from the Right-of-Way instead of the allowed 50'.

Mr. Reitano presented this application to the Committee.

Mr. Cross suggested that additional details should be included in the application as follows:

- a. Elevations depicting the view from the street frontage along Washington Lane.
- b. A report from the Cheltenham Township Fire Marshal with his review, comments and recommendations of this plan.
- c. Site lighting, details and shielding are to be included with a lighting plan.
- d. Sections and details of the landscape wall should be presented.
- e. Details for the dumpster should include sections and elevations to be submitted as well.

The Committee noted that this proposed reconfiguration of the parking lot will be reviewed during the Subdivision/Land Development process but because of the statement "in substantial compliance" usually accompanying a zoning decision, the application should include more details.

Mr. Leighton discussed the parking and traffic circulation through and around the center. Mr. DiBenedetto stated that the suggestions be incorporated into conditions of approval.

Mr. DiBenedetto made a motion that the application be approved as submitted with the conditions (as stated by Mr. Cross) be a part of this approval.

Mr. Winneberger seconded the motion.

**APPEAL NO. 3468: (Continuance)** Applicant is the equitable owner of a 3.65+ acre parcel of ground with frontage on Ogontz Avenue, Limekiln Pike, MacDonald Avenue and Clubhouse Lane. The property is located in a C1 Zoning District and is currently vacant. Applicant proposes to develop the property for a WaWa Convenience Store containing 5,585 square feet with fueling stations.

Mr. Cross stated that the Appeal No. 3468 Planning Commission decision from September, 2013 should be included in the minutes and the recommendation for denial be reaffirmed.

As referred to by Mr. Cross, see attached Page 9 of 9, Planning Commission Minutes dated June 24, 2013, paragraphs 3 and 4 which states "*Mr. Cross stated that he is troubled by the speed of this application and is worried about the ability of the Township and residents to vet through issues. Mr. Cross stated there are numerous issues that were brought up and that when development sites are being planned greater care needs to be taken into consideration for the impact of neighbors. Mr. Cross stated that he wants to see a project that is successful not only for the WaWa but for the community at large. Mr. Cross stated that there are issues with safety, buffering, traffic among other things. Mr. Cross stated that this is not a project that can be fast tracked and the Township needs time to thoroughly review everything.*"

*"Mr. Laughlin made a motion of Denial as presented; Mr. Cross seconded the motion; the motion passed 4 to 2."*

*Mr. Leighton made a motion that the decision be upheld.*

*The motion was seconded by Mr. DiBenedetto.*

Mr. Reitano introduced Ms. Lori Stopyra to discuss the Cedarbrook Plaza Planning Modules for Suites 410, 440, 450 and 490.

Mr. Cross commented that the Township Engineer stated that the substance of the planning module is acceptable and the revisions as recommended by the Township Engineer should be incorporated into the final planning module.

Mr. Leighton made a motion that this planning module be approved with the Township Engineer's additions being made a part of this approval process.

The motion was seconded by Mr. Winneberger.

As there was no Old Business or New Business to discuss, Mr. Cross made a motion to adjourn the meeting. The motion was seconded by Mr. Goldfarb.



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Bryan T. Havar  
Township Manager

Per Carmen Reitano

# Township of Cheltenham

Montgomery County, Pennsylvania

## Board of Commissioners

Art Haywood, *President*  
Harvey Portner, *Vice President*  
Kathy A. Hampton  
Charles D. McKeown  
Daniel B. Norris  
J. Andrew Sharkey  
Morton J. Simon, Jr.

## Township Manager

Bryan T. Havir



Administration Building  
8230 Old York Road  
Elkins Park, PA 19027-1589

Phone: 215 887-1000  
FAX: 215 887-1561  
WWW.CHELTENHAMDOWNSHIP.ORG

## MEMORANDUM

TO: David Jones, Interim Zoning Officer – Engineering, Zoning & Inspections

FROM: Bryan T. Havir, Township Manager

RE: Signage Applications

DATE: December 30, 2013

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The following signage permit applications which were recently filed with your department were reviewed by the Economic Development Task Force (EDTF) Design Committee and recommended for approval:

- 1.) **15 Limekiln Pike, Glenside** – *for façade signage*. Recommended approval of the signage based on the rendering submitted with the blue back-lit LED letters.
- 2.) **54 Limekiln Pike, Glenside** – *for façade signage*. Recommended approval to replace the medallion in-kind.
- 3.) **258 S. Easton Road, Glenside** – *for free-standing signage*. Recommended approval of the signage based on the rendering submitted provided the LED reader board meets zoning approval.

Please schedule Item #1, 2, and 3 for consideration of issuance of a COA on the January 8, 2013 Agenda of the Commissioner's Building and Zoning Committee.

- 4.) **8339 Old York Road, Elkins Park** - *for free standing signage*. EDTF had questions about the size of the existing free standing sign and requested photographs of the existing sign for review. Recommendation is withheld until photographs are reviewed by the full Task Force.

Thank you.

BTH/km

  
cc: Richard Parkes, Building and Zoning Department  
Sue Drucker, Building and Zoning Department  
David Kratzer, EDTF Design Committee

1737 Market Street, 51st Floor  
Philadelphia, PA 19103-7339  
Tel: 215.665.8500  
Fax: 215.664.8999  
www.ballardspahr.com

Neil Sklaroff  
Direct: 215.864.8514  
Fax: 215.864.8999  
sklaroffn@ballardspahr.com

December 18, 2013

Richard Berlinger, Esquire  
1494 Old York Road, Suite 200  
Abington, PA 19001

Mr. and Mrs. David Dobson  
425 Greenwood Avenue  
Wyncote, PA 190905

Re: Notice of Decision - Appeal 3475  
425 Greenwood Avenue, Wyncote, PA

Ladies and Gentlemen:

On December 17, 2013, the Zoning Hearing Board of Cheltenham Township voted to deny your application for zoning relief.

Enclosed are the Findings of Fact and Conclusions of Law. Please note that parties have 30 days from issuance of these findings in which they may elect to file an appeal to the Montgomery County Court of Common Pleas.

Please note that, pursuant to the Article XXVII, Section 295-210, where an application for special exception or variance has been refused or denied by the Zoning Hearing Board, the application may not be renewed within a period of one (1) year, unless there has been a change in conditions and unless the renewed application distinctly sets forth the changed conditions.

If you have any questions, please contact me directly

Sincerely,

Neil Sklaroff

NS/pei  
Enclosure

cc: David Jones, P.E., Interim Director-Engineering, Zoning & Inspections ✓  
Bryan T. Havar, Acting Township Manager, Township Secretary  
Amea S. Farrell, Chairman  
Zoning Hearing Board Members

RECEIVED

DEC 19 2013

CHELtenham TOWNSHIP

DMEAST #18156299 v1

**ZONING HEARING BOARD  
OF CHELTENHAM TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**APPEAL NO. 3475**

**Applicants:** Ethel and David Dobson  
425 Greenwood Avenue  
Wyncote, PA 19005

**Subject Premises :** 425 Greenwood Avenue

**Owner of Premises:** Ethel and David Dobson

**Nature of Application:** Applicants appeal from the determination of the Zoning Officer finding that subdivision of the subject property with less than required side yard and rear yard would violate the Cheltenham Zoning Ordinance of 1929, as amended, and, specifically, Article V, Sections 295-24(a) and 24(b), regulating front and rear yard setbacks.

Applicants seek two variances from the rules and regulations of the R-3 Residence District as follows:

- (1) a variance from Section 295-24(b) to allow a side yard setback measuring 3 feet instead of the minimum required 15 feet; and
- (2) a variance from Section 295-24(a) to allow a front yard setback measuring 17 feet 11 inches instead of the minimum required 50 feet.

**Time and Place of Hearing:** Monday, November 18, 2013 – 7:40 p.m.  
Curtis Hall  
Church Road and Greenwood Avenue  
Wyncote, Pennsylvania

## FINDINGS OF FACT

1. Applicants Ethel and David Dobson ("Applicants") are the owners of the premises known as 425 Greenwood Avenue, Wyncote, Pennsylvania (the "Property").

2. Prior to the holding of the hearing in this matter, an advertisement, noting the time and place of the hearing and the contents of the appeal, was placed in a newspaper of general circulation.

3. The Property is located in an R-3 Residence District and is improved by two single-family dwellings.

4. The following documents were made a part of the record:

ZHB-1. a listing of exhibits;

ZHB-2. a copy of the legal notice with regard to the holding of the hearing;

ZHB-3. an Application to the Zoning Hearing Board, referenced as Appeal No. 3475;

ZHB-4. a location map marked as Real Estate Registry Block 155, showing the location of the property;

ZHB-5. MEA Land Record Parcel Information dated October 21, 2013;

ZHB-6. Building and Zoning Committee recommendation letter dated November 18, 2013;

ZHB-7. Two site plans of the Property;

ZHB-8. Letter report of Lance R. Kraemer, Registered Architect;

ZHB-9. A copy of the Decision of the Zoning Hearing Board at Appeal No. 2391 dated November 17, 1991 including a copy of an Order of the Montgomery County Court of Common Pleas dated September 28, 1990;

ZHB-10. Proofs of publication;

A-1. a copy of the Order of Judge Anita Brody, dated August 27, 1992 including Stipulation;

A-2. a copy of the deed to the Property; and

A-3. site plan of the Property.

5. The Property is one of several large lots in the immediate area, irregular in shape and containing 67,400 square feet of land. The Property is bordered by Barker Road, Greenwood Avenue, Deaver Road and two privately owned parcels.

6. The Property was developed in the beginning of the twentieth century and contains a main house used as a single-family home and a carriage house. The main house consists of between 6,000 and 8,000 square feet, of which the owner claims 7,000 square feet as usable. The carriage house consists of 4,000 square feet.

7. The Property was developed prior to the adoption of Cheltenham Township's first zoning code in 1929.

8. Applicants contend that maintaining both residences is burdensome and that the proper preservation of both the main house and the carriage house can be better accomplished if each residence was held in single and separate ownership.

9. At some point, the previous owners appealed to the Zoning Hearing Board for relief in order to subdivide the Property so that the carriage house could be renovated for use as a single-family home. At Appeal No. 2224, the Zoning Board granted the owner zoning relief.

10. Applicants purchased the Property in 1988. The multi-story main house and the two-story carriage house were in need of substantial rehabilitation. Apparently, the Dobsons renovated the carriage house on the basis of the favorable Zoning Board decision. The carriage house has four bedrooms and two and one-half bathrooms.

11. However, Cheltenham Township appealed the decision favorable to the Dobsons, and the Zoning Board's decision was reversed by an Order of Court dated September 28, 1990.

12. Following the 1990 Order of Court, Applicants brought their own appeal to the Zoning Board for a grant of zoning relief in order to subdivide the Property into two parcels (Appeal No. 2391). Applicants sought dimensional variances in order to subdivide the Property and a use variance to use the carriage house as a single-family dwelling.

13. In deciding Applicants' appeal at Appeal No. 2193, the Zoning Board concluded that Applicants' plan of subdivision was substantially the same as proposed by the previous owners at Appeal No. 2224. The Zoning Board concluded that a variance had not been needed to renovate and preserve the important carriage house.

14. In a decision at Appeal No. 2391, dated November 17, 1991, the Zoning Board denied Applicants' appeal.

15. Applicants appealed the Zoning Board's unfavorable decision at Appeal No. 2391 to the Montgomery County Court of Common Pleas.

16. On August 27, 1992, Judge Anita B. Brody resolved the appeal by accepting a Stipulation agreed to by the parties.

17. The Stipulation required that a use variance be granted to use the carriage house as a single-family dwelling including its use as a rental dwelling.

18. The Stipulation also required the Applicants to withdraw their appeal of the Zoning Board denial of dimensional variances to allow a subdivision.

19. In this application, Applicants seek relief from the requirements of the zoning code requiring a minimum front yard and side yard in order to subdivide the Property into two parcels.

20. Applicants propose no exterior changes to the buildings. Each building has sufficient area for vehicle parking and would share portions of a driveway leading to the Property from Deaver Road. The parcels would continue to be independently serviced by utilities.

21. Since the decision on Applicants' application for zoning relief at Appeal No. 2391, there have been no changes in the physical circumstances or conditions at the Property or in the neighborhood.

22. In the R-3 Residence District, the Zoning Code requires a side yard of no less than 15 feet and a front yard of no less than 50 feet. The carriage house sits 3 feet from the closest property line, creating a nonconforming side yard. In the pending application, the applicants describe the distance to the front property line on Barker Road as measuring 17 feet 11 inches. In a previous application, the Zoning Board described the distance as 13 feet 6 inches.

23. Applicants have been renting the carriage house as a single-family dwelling since they completed the renovations.

24. Applicants' current application is substantially the same as their application at Appeal No. 2391. In both, Applicants sought the same dimensional variances in order to allow a subdivision of the Property into two lots.

25. Applicants currently occupy the main house as a single-family residence and rent the carriage house as a single-family dwelling.

26. Applicants have not demonstrated that the Property cannot be used for residential purposes as permitted in an R-3 Residence District and as permitted by Order of the Court of Common Pleas at Appeal No. 2391.

27. Applicants have not demonstrated a hardship.

### DISCUSSION

Applicants seek to subdivide their large Property into two parcels, each containing a single-family residence. Each parcel would meet the minimum lot size of 20,000 square feet as

required in an R-3 Residence District. The subdivision would meet the objectives expressed in the Zoning Code's statement of community development objectives to maintain the overall existing high quality of living and to promote a desirable residential community. Zoning Code, §295-1(A). The proposal is reasonable. However reasonable the project may be, the governing legal principles, the Municipalities Planning Code and the Cheltenham Zoning Code do not empower the Zoning Board to grant zoning relief because the proposal appeals to common sense. Applicants' relief requires legislative action which is beyond the Zoning Board's authority.

Applicants purchased the Property in 1988 in anticipation of, or in the wake of, the Zoning Board's approval of their predecessors' request for zoning variances. The zoning variances were necessary in order to subdivide the Property. Although the Applicants made substantial improvements to rehabilitate the carriage house, the Zoning Board's decision was ultimately reversed by the Montgomery County Court of Common Pleas.

Applicants then filed their own appeal to the Zoning Board, asking for the same zoning relief in order to subdivide the Property. The Zoning Board denied the application because it was substantially similar to the previous application and because the Zoning Board's approval of the similar application had been reversed by the Court. The Applicants appealed the Zoning Board's denial to Court, and the matter was resolved by a Stipulation which the Court accepted. By the terms of the Stipulation, the Applicants were granted a variance to use the carriage house as a single-family dwelling. Applicants, in addition, withdrew their appeal seeking dimensional variances, leaving the Zoning Board's denial in place.

The Court's Order of September, 1990, the Zoning Board's decision of November 17, 1991, and the Court approved Stipulation of August, 1992 are together determinative of the

outcome here. Because the facts of record are substantially the same in all three applications, the precedent and the principles of *res judicata* bind the Zoning Board and limit its discretion.

Pennsylvania courts narrowly apply the doctrine of *res judicata*. Commonwealth Court, however, instructs that the principle will bar relitigation of a request for variance if four elements occur: (1) the identity of the thing sued for; (2) the identity of the cause of action; (3) the identity of the person and parties to the action; and (4) the identity of the quality in the persons for or against whom the claim is made. Price v. Bensalem Twp. Zoning Hearing Bd., 569 A.2d 1990 (Pa. Commw. Ct. 1990), citing Schubach v. Silver, 336 A.2d 328 (Pa. 1975). The application of *res judicata* is only relevant when there are no substantial changes relating to the land itself. Id. citing Filanowski v. Zoning Bd. of Adjustment, 266 A.2d 670 (1970).

Comparing this application to Appeal No. 2391, the Property is the same property, the applicants are identical, the request for dimensional relief is identical, and the Zoning Board applies the same governing standards. Critically, Applicants did not allege and did not demonstrate changed physical circumstances. Accordingly, the Zoning Board must make the same decision and deny zoning relief.

Under traditional hardship standards, in addition, Applicants failed to demonstrate hardship under Pennsylvania's strict standards. Section 910.2(a) of the MPC clearly empowers the Board to grant a variance only in a matter where the Board can make all of the following findings where relevant:

- (1) That there are unique physical circumstances or conditions, including the 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 circumstance

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 reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(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 or development of adjacent property, nor be detrimental to the public welfare.

(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.

Here, there is just no showing that the Property cannot be utilized as provided in the governing Zoning Code. Section 295-21 permits use of property for a single-family detached dwelling. Indeed, the Property enjoys single-family use for the main house and, by Court ordered Stipulation, single-family use for the carriage house. Under these circumstances, there is no unnecessary hardship.

In order to grant a variance, the Board must be empowered by authority delegated through the MPC. The requirements for a variance are, in this case, clear and bind the Board's discretion. In addition, the Zoning Board decided this same case twice before and its decision in this matter is governed by those decisions. Accordingly, upon the record in this matter, the Zoning Board is without power to grant relief and must deny Applicants' request for variances.

### CONCLUSIONS OF LAW

I. Maintaining a lot with less than required front and side yards is not permitted by the Cheltenham Township Zoning Ordinance. However, in accordance with the Pennsylvania Municipalities Planning Code and the Cheltenham Zoning Ordinance, the

Cheltenham Township Zoning Hearing Board is empowered to hear and decide requests for variances where it is alleged that strict conformance with the governing ordinances would result in unnecessary hardship.

2. Under the circumstances of this matter, Applicants may use the Property for purposes permitted by the Zoning Code and applicable court decision without the need for zoning relief.

3. Applicants have failed to meet their burden in establishing that, due to the unique physical circumstances of the Property and those imposed by surrounding properties, a failure to grant relief to allow less than required front and side yards would result in an unnecessary hardship.

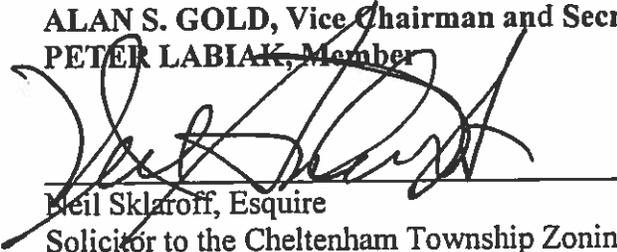
4. Since this Application meets the tests for the application of the principle of *res judicata*, the Zoning Board is constrained by its prior decisions to deny Applicants' request for zoning relief.

### **DECISION**

**WHEREFORE**, this 17th day of December, 2013, the Cheltenham Township Zoning Hearing Board, by a 3-0 vote, denies Applicants' request for zoning relief.

### **CHELTENHAM TOWNSHIP ZONING HEARING BOARD**

**AMEE S. FARRELL, Chairperson**  
**ALAN S. GOLD, Vice Chairman and Secretary**  
**PETER LABIAK, Member**



Neil Sklaroff, Esquire

Solicitor to the Cheltenham Township Zoning Hearing Board

**THIS DECISION IS OFFICIALLY ISSUED ON DECEMBER 18, 2013.**

December 26, 2013

COMMISSIONERS OF CHELTENHAM TOWNSHIP  
ELKINS PARK, PA 19027

COMMISSIONERS OF CHELTENHAM TOWNSHIP  
REPORT OF THE BUILDING INSPECTOR FOR DECEMBER, 2013

	# PERMITS	TOT. FEES	\$ VALUE
<b>RESIDENTIAL</b>			
RENOVATIONS / ALTERATIONS	50	3,197	159,850
<b>MULTI-FAMILY</b>			
RENOVATIONS / ALTERATIONS	0	0	0
<b>COMMERCIAL</b>			
RENOVATIONS / ALTERATIONS	2	218	10,900
<b>INSTITUTIONAL</b>			
RENOVATIONS / ALTERATIONS	0	0	0
<b>FENCE</b>	1	30	30
<b>DECEMBER, 2013</b>	53	3,445	174,225
<b>DECEMBER, 2012</b>	31	12,951	647,550
<b>YEAR-TO-DATE 2013</b>	794	336,313	16,810,520
<b>TOTAL 2012</b>	604	224,950	11,247,500
<hr/>			
<b>HEATING &amp; AIR CONDITIONING</b>			
<b>DECEMBER, 2013</b>	4	1,376	68,800
<b>DECEMBER, 2012</b>	9	1,754	87,700
<b>YEAR-TO-DATE 2013</b>	56	28,678	1,502,607
<b>TOTAL 2012</b>	48	20,671	1,033,550
<hr/>			
<b>ELECTRICAL</b>			
<b>DECEMBER, 2013</b>	3	777	38,850
<b>DECEMBER, 2012</b>	8	1,743	87,150
<b>YEAR-TO-DATE 2013</b>	98	37,164	1,843,207
<b>TOTAL 2012</b>	80	20,055	1,002,750
<hr/>			
<b>PLUMBING</b>			
<b>DECEMBER, 2013</b>	9	871	43,550
<b>DECEMBER, 2012</b>		NOT PREVIOUSLY RECORDED	
<b>YEAR-TO-DATE 2013</b>	105	25,255	1,261,750
<b>TOTAL 2012</b>		NOT PREVIOUSLY RECORDED	
<hr/>			
<b>FOG PERMITS, DECEMBER, 2013</b>	4	2,000	2,000
<b>GRADING PERMITS, DECEMBER, 2013</b>	0	0	0
<hr/>			

David R. Jones  
Interim Director - Zoning & Inspections



# Architects, PC

ARCHITECTS & PLANNERS

Harold Lichtman, AIA  
(NJ 7694, PA 7971, FL 8288)

## TRANSMITTAL

**CHELTENHAM TOWNSHIP**

Attn: **DAVID JONES**

**8230 OLD YORK ROAD**

**ELKINS PARK, PA 19027**

Date: **12/11/2013**

Project Number: **13025**

Project Name: **ASHBOURNE RD**

By this Cover We Are Sending the Following:

Print       Specs       Shop Drawings       Letter       Submittals       Other

Copies	Date	Description
1	12/11/2013	LETTER REQUESTING CONDITIONAL USE HEARING
1	12/11/2013	JOINDER
1	12/11/2013	FEE CHECK \$1,000.00 #8946
15	11/26/2013	PS-1 PROPOSED SITE DEVELOPMENT PLAN
15	11/26/2013	PS-2 SINGLE FAMILY SITE DEVELOPMENT PLAN

For Approval  
 As Requested  
 For Your Info

For Review & Comment  
 Returned and Noted  
 For Your Use

Comments:

**RECEIVED**  
DEC 11 2013  
CHELTENHAM TOWNSHIP

**RECEIVED**  
DEC 11 2013  
CHELTENHAM TOWNSHIP

Copy To:

Sincerely,  
Harold Lichtman, AIA

New Jersey  
120 Haddontowne Court  
Cherry Hill, NJ 08034  
Phone: 856.234.2389

E-Mail :GLP@GLPArch.com  
Web : GLPARCH.COM

Pennsylvania  
2063 Church Road  
Glenside, PA 19038  
Phone: 215 885.1500

**HUGHES, KALKBRENNER & OZOROWSKI, LLP**

ATTORNEYS AT LAW

SUITE 205

1250 COMMONS

1250 GERMANTOWN PIKE

PLYMOUTH MEETING, PENNSYLVANIA 19462

EDWARD J. HUGHES  
GEORGE J. OZOROWSKI

TELEPHONE (610) 279-6800  
TELECOPIER (610) 279-9390  
E-MAIL: ehughes@hkolaw.com

December 11, 2013

Board of Commissioners  
Cheltenham Township  
8230 Old York Road  
Elkins Park, PA 19027

**Re: Application of Swift and Choi Development, LLC  
Property Located at 1900 Ashbourne Road  
Parcel No. 31-00-01225-01-3 (Block 172, Unit 13)  
(the "Property")**

Dear Commissioners:

Please accept this as an Application for Conditional Use Approval by Swift & Choi Development, LLC, the owner of the Property, pursuant to the provisions of §295-191 (Conditional Uses) of the Preservation Overlay District of the Cheltenham Zoning Code. The Applicant proposes to develop the Property as a conventional development under the provisions of the underlying M2 - Multiple Dwelling District rather than the provisions of the Preservation Overlay District. The Applicant proposes to construct 146 multiple dwellings in a midrise building generally in accordance with the Plan attached hereto prepared by GLP Architects, PC titled Proposed Development Plan for Ashbourne Estates, 1900 Ashbourne Road, Elkins Park, PA 19027.

Enclosed are the Joinder of Swift & Choi Development, LLC, and the filing fee in the amount of \$1,000.00 payable to Cheltenham Township.

Very truly yours,

**HUGHES, KALKBRENNER & OZOROWSKI, LLP**

By: 

Edward J. Hughes, Esquire

EJH:mrk

Enclosure

cc: Harold Lichtman, AIA  
Swift and Choi Development, LLC  
Joseph M. Bagley, Esquire

JOINDER

The undersigned, being the owner of property located at 1900 Ashbourne Road, Cheltenham Township, Montgomery County, PA, Block 172, Unit 13, Parcel No. 31-00-01225-01-3, Deed Book 5887, page 01466 (the "Property"), joins in, approves and consents to the filing of the Conditional Use Application to the Board of Commissioners of Cheltenham Township for the right to develop the Property under the conventional development standards of the M2 Multiple Dwelling District of the Cheltenham Township Zoning Code, as authorized by Section 295-191 of the Preservation Overlay District.

Swift & Choi Development, LLC

Dated: 12-11-12

By: Robert A. Swift  
Robert A. Swift, Member



**ARCHITECTS, PC**  
 ARCHITECTURE  
 PLANNING  
 400 CREEKWOOD AVENUE  
 WYCHITIC, PA 19381  
 215.261.1200  
 120 HANCOCKBOURNE COURT  
 CHESTNUT HILLS, PA 19381  
 215.261.1200



**PROPOSED  
 DEVELOPMENT  
 PLAN**

**FOR**

**ASHBOURNE  
 ESTATES**

**1900  
 ASHBOURNE  
 ROAD**

**ELKINS PARK  
 PA 19027**

NOTE: ALL NOTES AND CONDITIONS ON THIS PLAN SHALL BE CONSIDERED PART OF THE CONTRACT. ALL UTILITIES AND EXISTING CONDITIONS SHALL BE VERIFIED BY THE CONTRACTOR TO VERIFY AND ADJUST FOR EXISTING CONDITIONS.

REVISION:

DATE: 26 NOV 2013

SCALE: AS NOTED

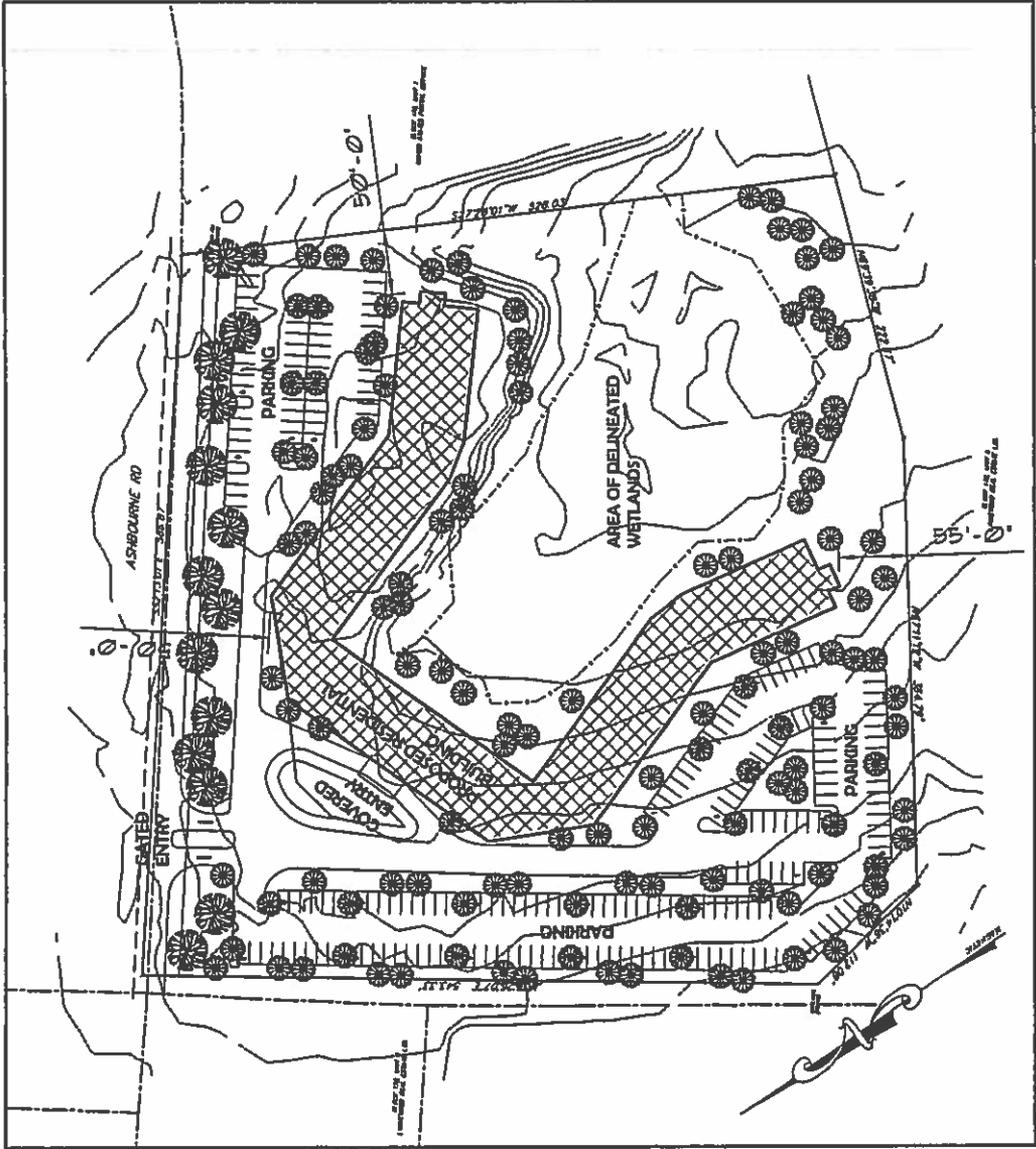
PROJ NO: 13075

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**PS-1**

**SITE INFORMATION**

PARCEL ID # 24-00-0025-04-3	BLOCK #2	LOT #3
OWNER: TRAFF & CHOI DEVELOPMENT LLC 1 SOUTH BROAD STREET - 25TH FLOOR PHILADELPHIA PA 19107		
ZONING DISTRICT: M2		PREL OVERLAY
SITE AREA: 24,000 SF MIN 34,000 SF ACTUAL		20,000 SF MIN
ROAD FRONTAGE: 607' MIN 876' MAX	540'	NOT SPECIFIED
BUILDING AREA: 876' MAX	15%	NOT SPECIFIED
SETBACKS: FRONT: 40' MIN SIDE: 20' MIN/50' MAX REAR: 40' MIN	50'	40' MIN
GREEN AREA: 25% MIN	40%	NOT SPECIFIED
BUILDING HEIGHT: 65' MAX	5'	65' MAX
PARKING: 28	28	21
DENSITY: 83 MAX	146	0
AREA OF DELINEATED WETLANDS: 34,000 SF		



**PROPOSED SITE DEVELOPMENT PLAN**

SCALE: 1" = 100'



**GTP ARCHITECTS, PC**  
 ARCHITECTURE  
 400 GREENWOOD AVENUE  
 WYNNICOTE, PA 19088  
 TEL: 610-398-1234  
 FAX: 610-398-1235

120 MADISON AVENUE COURT  
 CHERRY HILL, NJ 08002  
 TEL: 856-681-1234  
 FAX: 856-681-1235



**PROPOSED DEVELOPMENT PLAN**

FOR

**ASHBOURNE ESTATES**

**1900 ASHBORNE ROAD**

**ELKINS PARK PA 19027**

NOTE: ALL NOTES AND CONDITIONS ON THIS PLAN SHALL BE CONSIDERED PART OF THE CONTRACT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AUTHORITIES.

REVISION:

DATE: 26 NOV 2013

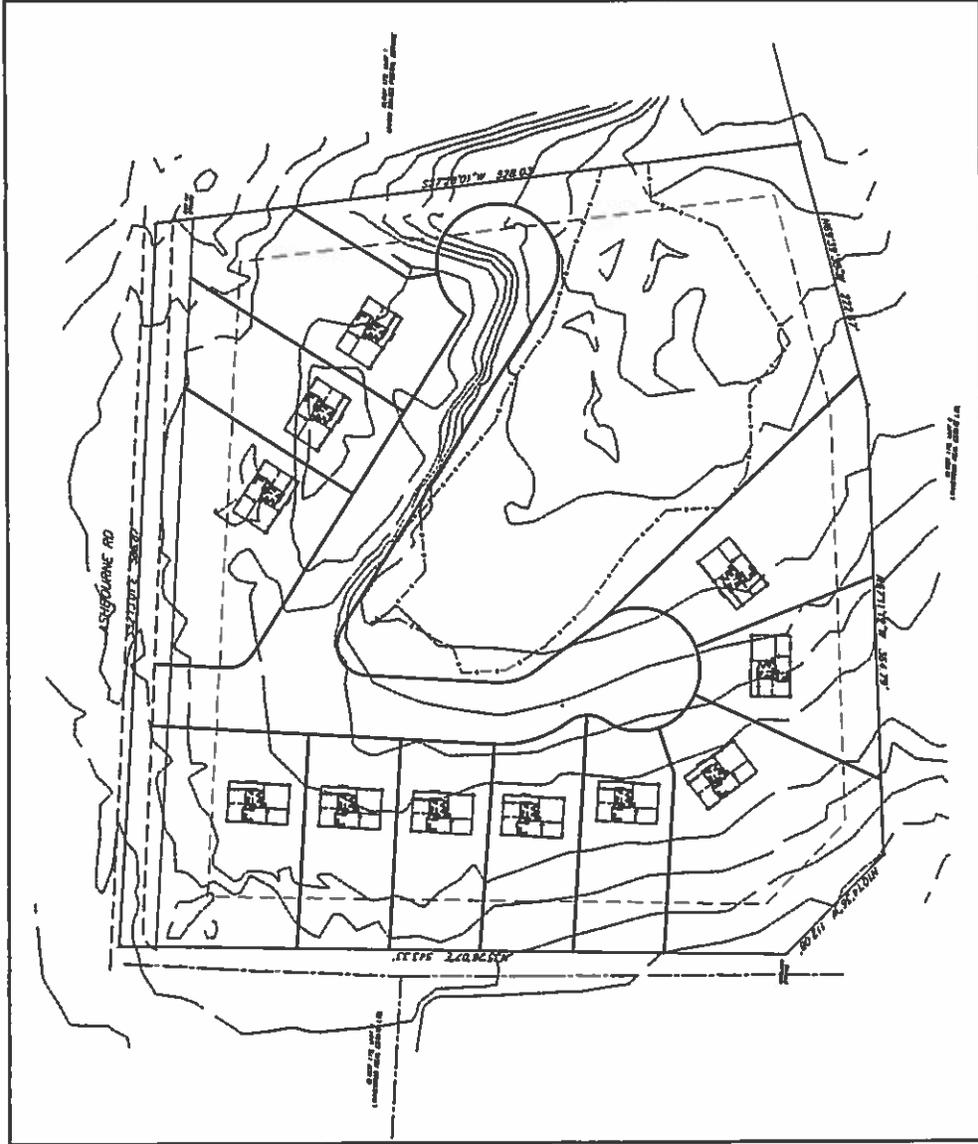
SCALE: AS NOTED

PROJ NO: 13023

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**PS-2**

SITE INFORMATION	
PARCEL ID # 24-00-0023-01-3	BLOCK 172 LOT 10
OWNER	TRUST & CO. DEVELOPMENT LLC 1 SOUTH BROAD STREET - 20TH FLOOR PHILADELPHIA PA 19107
ZONING DISTRICT:	M-2
SITE AREA	20,000 SF MIN 20,000 SF MAX
ROAD FRONTAGE	100' MIN 100' MAX
BUILDING AREA	80% MAX
SETBACKS	
FRONT	10' MIN
REAR	10' MIN
SIDE	5' MIN
GREEN AREA	20% MIN
BUILDING HEIGHT	15' MAX
PAVING	20%
DENSITY	10 UNITS PER ACRE
AREA OF DESIGNATED WETLANDS	10,000 SF
PRES OVERLAY	20,000 SF MIN
	NOT SPECIFIED
	NOT SPECIFIED
	40' MIN
	40' MIN
	40' MIN
	NOT SPECIFIED
	15' MAX
	20
	10



**PROPOSED SKETCH PLAN OF DETACHED SINGLE FAMILY SITE DEVELOPMENT PLAN**

( DESIGN BASED ON STANDARDS OF R-4 ZONING DISTRICT)

SCALE: 1" = 100'

