

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

Morton J. Simon, Jr. - Chair
Harvey Portner - Vice Chair
Baron B. Holland - Member
Charles D. McKeown - Member
Daniel B. Norris - Member
Ann L. Rappoport - Member
J. Andrew Sharkey - Member

**Wednesday, February 4, 2015
8:00 PM
Curtis Hall**

AGENDA

1. Action on Zoning Hearing Board Agenda items for February 9, 2015 (see attached).
2. Receipt of the Planning Commission Minutes dated January 29, 2015 (under separate cover).
3. Review of Applications for Certificates of Appropriateness for signage.
4. Report of the Building Inspector for January, 2015 (see attached).
5. Review of Zoning Hearing Board Decisions.
6. Old Business.
7. New Business.
8. Citizens' Forum.
9. Adjournment.



Bryan T. Havir
Township Manager

ZONING HEARING BOARD

AGENDA

FOR

FEBRUARY 9, 2015

NOTICE

NOTICE IS HEREBY GIVEN that an application for Zoning Relief for 333 Bent Rd. 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, January 26, 2015, at 7:30 P.M. at the Township Board Room, at 8230 Old York Road, Elkins Park PA 19027.**
- b. **Cheltenham Township Building and Zoning Committee on Wednesday, February 4, 2015 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, February 9, 2015 at 7:30 P.M. at Curtis Hall, at Curtis Arboretum, Greenwood Avenue and Church Road, Wyncote, PA 19095

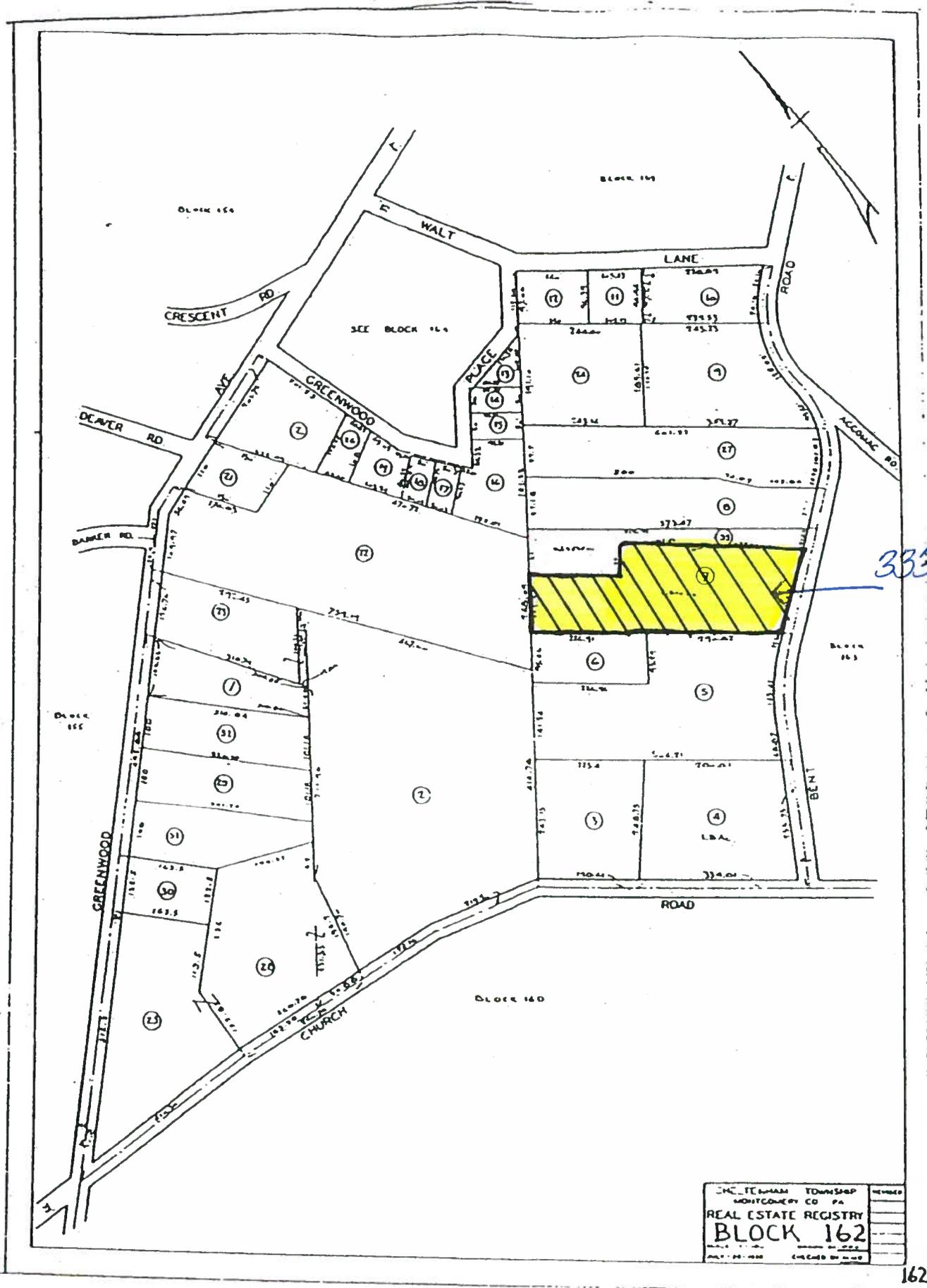
APPEAL NO. 15-3510: Appeal of Salisbury Behavioral Health, Inc. d/b/a PAHrtners Deaf Services, tenant of premises known as 333 Bent Road, Wyncote, PA from the Decision of the Zoning Officer for the following Zoning Relief in order to use the premises as a Group Home for up to fifteen (15) unrelated deaf children with co-existing mental health disabilities, and a range of from two(2) to six(6) scheduled staff personnel at the premises at any one time; said premises being within the Class R-3 Residence District:

- a. The Applicant requests a reasonable accommodation in accordance with the rules and regulations of "Zoning Hearing Board" as outlined in CCS 296-2, 295-206, 295-207 and 295-209.1. The Applicant is proposing a child residential facility as that term is defined in 55 Pa.Code §3800.5 in order to use the premises as a Group Home with associated staff.
- b. A determination as to the number of parking spaces required for the Group Home with associated staff.

The above application, including site plans, is on file in the Township Administration Building, Planning 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.

Anyone requiring a special accommodation to participate in the meeting should notify the Public Information Officer at 215-887-1000 ext. 230, five (5) days prior to the meeting.

**ZHB #15-3510
Zoning Officer**



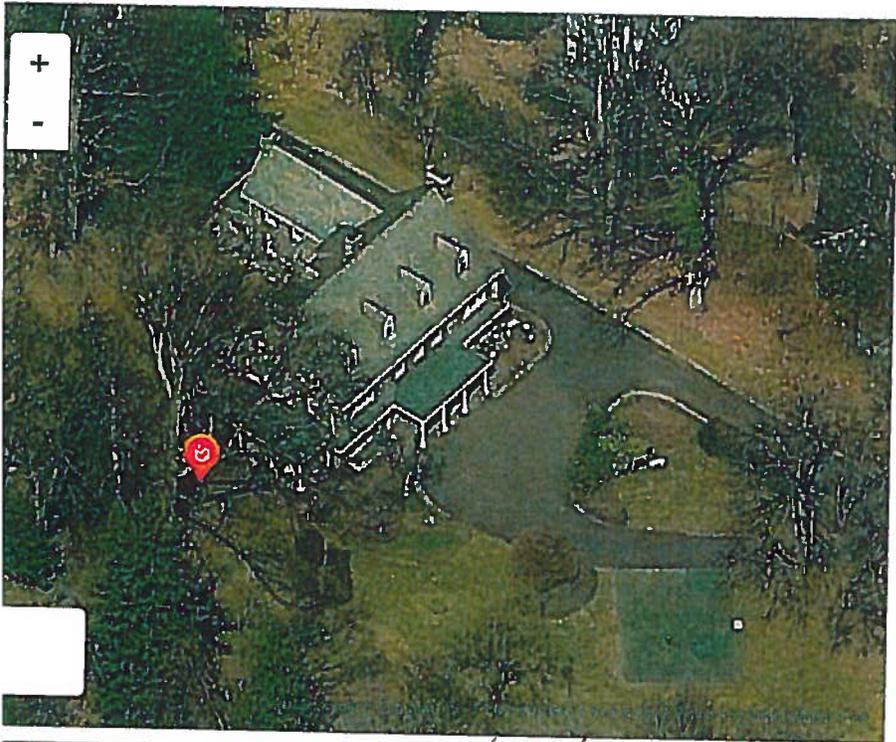
333 BENT ROAD

TENTHMAN TOWNSHIP
 MONTGOMERY CO PA
 REAL ESTATE REGISTRY
 BLOCK 162
 CHECKED BY

333 BENI KUTU

PARKING
AREA





333 Bent Rd



333 Bent Rd Front



333 Bent Rd



333 Bent Rd Rear Exterior

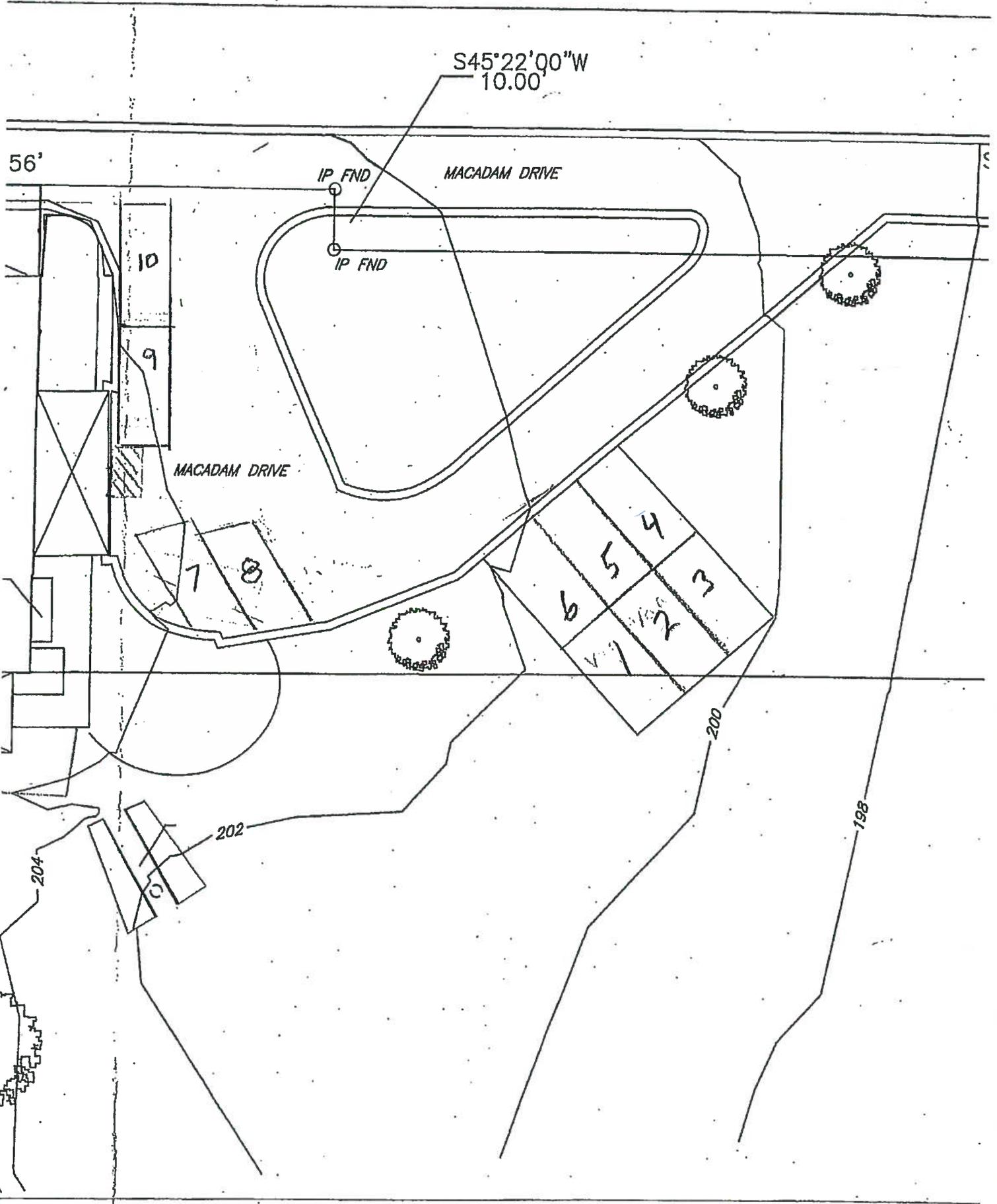


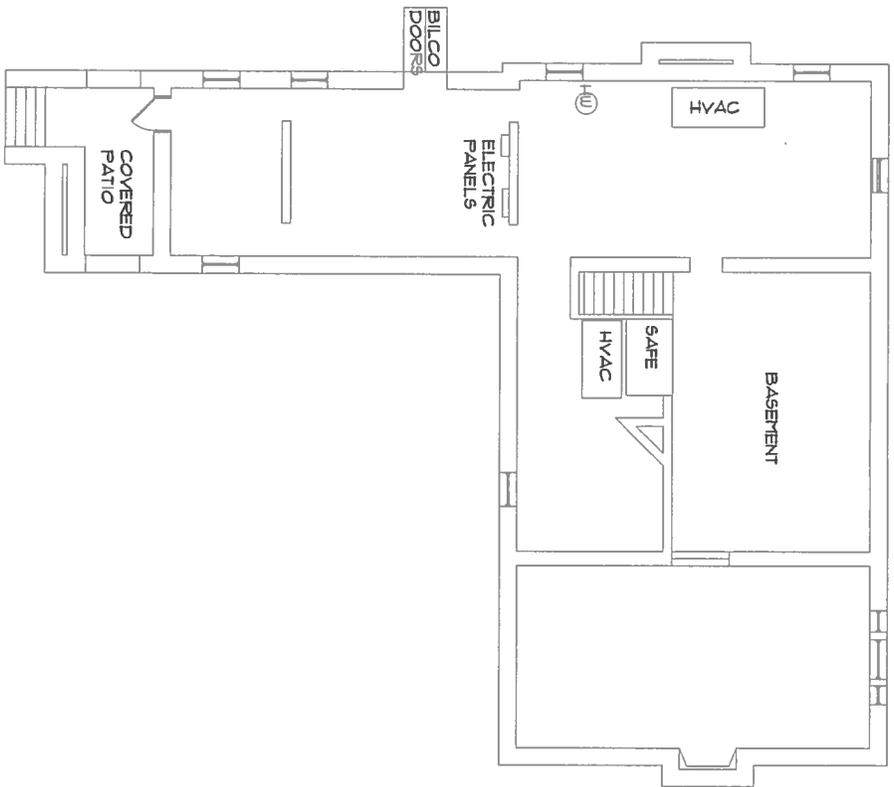
333 Bent Rd Rear Yard



333 Bent Rd Backyard

555 BENT ROAD PARKING PLAN LAYOUT



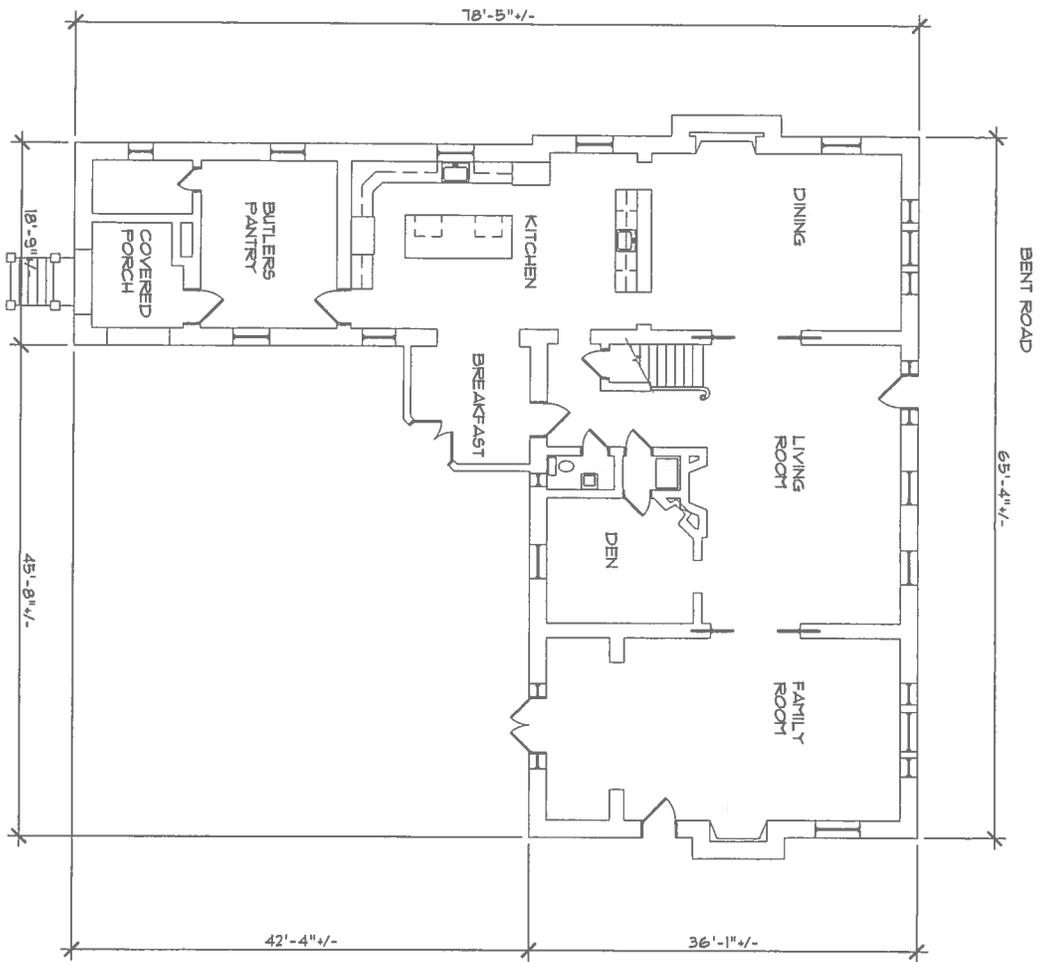
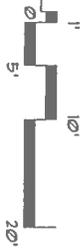


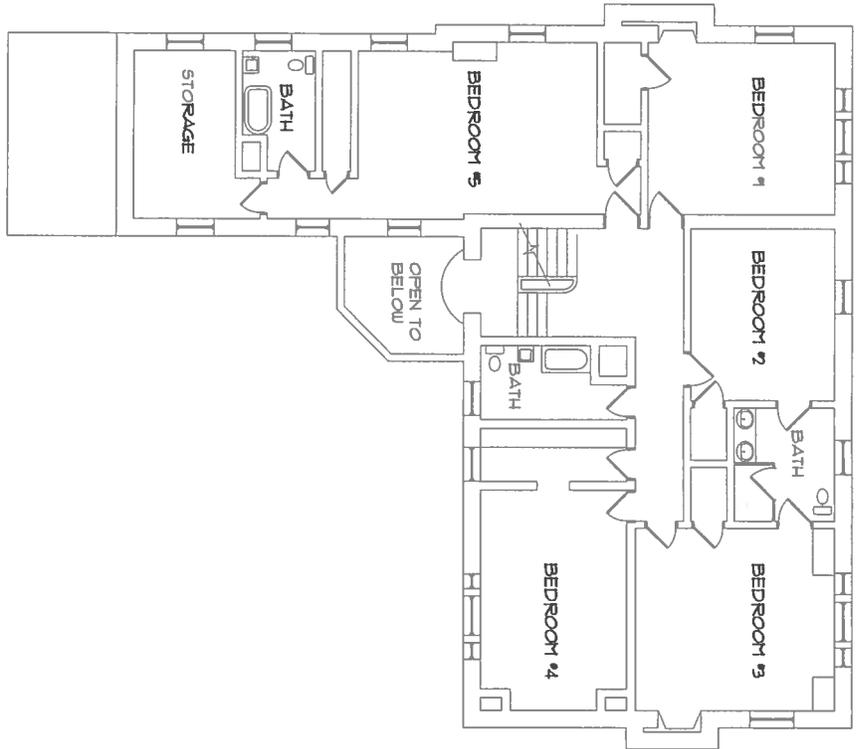
2540 GROSS SQ. FT.
EX. BASEMENT PLAN





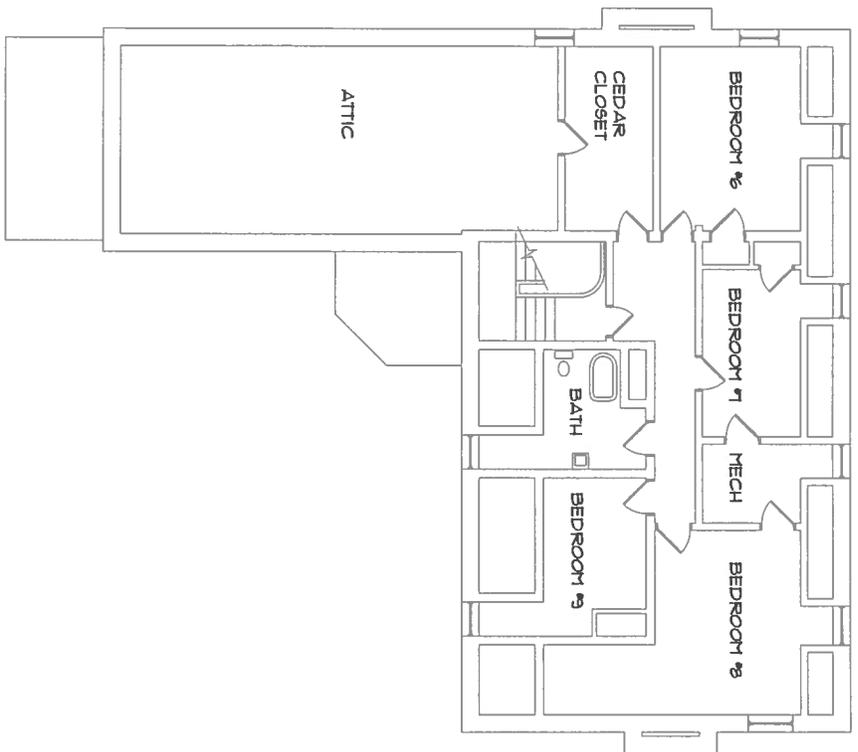
2,745 GROSS SQ. FT.
EX. FIRST FLOOR PLAN
SCALE: 3/32" = 1'-0"





2,540 GROSS SQ. FT.
 EX. SECOND FLOOR PLAN
 SCALE: 3/32" = 1'-0"





1,455 GROSS SQ. FT.
 EX. THIRD FLOOR PLAN
 SCALE: 3/32" = 1'-0"



Zoning Hearing Board Application

11. The Applicant is requesting a reasonable accommodation pursuant to Section 295-2, 295-206, 295-207 and 295-209.1 of the Cheltenham Township Zoning Ordinance. The Applicant is proposing a child residential facility as that term is defined in 55 Pa.Code §3800.5. The home on the property at 333 Bent Road in Cheltenham Township will be utilized for children from ages 13 to 21, male and female, who are deaf and have mental health diagnoses and thus have emotional support needs. The individual's placement is permanent although the length of stay varies, usually not less than a year to several years. The individual can stay at the home until age 21 or graduation from high school if that is later. The requested reasonable accommodation enables deaf individuals with mental health diagnoses equal access to housing in residential districts of Cheltenham Township.

As set forth in Section 295-209.1, Criteria for granting reasonable accommodations, the proposed residents are handicapped as that term is defined by 42 U.S.C.S. §3602 and the Cheltenham Township Zoning Ordinance. The premises are to be used as a dwelling for the proposed persons who have handicaps. The specific accommodations to the rules and regulations of the Township ordinances is necessary to afford the proposed residents an equal opportunity to housing in the Township. The requested accommodation will not cause any undue fiscal or administrative burdens upon the Township as the Applicant will pay real estate taxes and will not require a fundamental alteration in a legitimate Township rule, policy or procedure. The property is located in the R3 Residence District which permits single family detached dwellings. The existing permitted single family detached dwelling will continue to be used as a residential dwelling and the Applicant will meet all requirements for licensing as a child residential facility. The maximum occupancy of the home will be 15 adolescents and the average number of staff at the home during the day is 4 and at night is 2.

28748-000

January 8, 2015

Cheltenham Township Zoning Hearing Board
8230 Old York Road
Elkins Park, PA 19027

Re: Zoning Hearing Board Application
Applicant: Salisbury Behavioral Health, Inc. d/b/a PAHrtners Deaf Services
Property: 333 Bent Road, Wyncote, PA 19095

Dear Cheltenham Township Zoning Hearing Board:

Please allow this letter to serve as notice that the owner of the above-referenced property, Volos Properties III, LLC is a co-applicant of the Zoning Hearing Board application and agrees to be bound by the terms of the Zoning Hearing Board decision.

Very truly yours,

VOLOS PROPERTIES III, LLC

By:  _____
DAVID VOLOSOV
Managing Member

PLANNING COMMISSION

MINUTES

DATED

JANUARY 29, 2015

(To follow under separate cover)

**REQUESTS FOR CERTIFICATES
OF APPROPRIATENESS FOR
SIGNAGE**

(To follow under separate cover)

Township of Cheltenham

Montgomery County, Pennsylvania

Board of Commissioners

Harvey Portner, *President*
Morton J. Simon, Jr., *Vice President*
Baron B. Holland
Charles D. McKeown
Daniel B. Norris
Ann L. Rappoport
J. Andrew Sharkey

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.cheltenhamtownship.org

MEMORANDUM

TO: Henry Sekawungu, Director of Planning & Zoning

FROM: Bryan T. Havir, Township Manager

RE: Signage Application

DATE: January 26, 2015

The following signage permit applications filed with your department were reviewed on January 20, 2015 at the Economic Development Task Force (EDTF) meeting and below is a summary of the recommendations for issuance of Certificates of Appropriateness.

- 1.) 433 W. Cheltenham Avenue, Elkins Park (All Stars Haircut) – for facade and free-standing signage.** As you will recall, the EDTF had concerns at the December meeting regarding the sign material and questioned whether the old message would be seen through the signage material when reversed. Upon subsequent inspection of the signs, Mr. Kratzer noted that he saw no objection to the new signage. The EDTF subsequently recommended issuance of a Certificate of Appropriateness upon the condition, that if in the future, evidence of the old signage print is visible from street level, it will be the responsibility of the property owner to remake the panels.
- 2.) 2636 Mt. Carmel Avenue, Glenside (Red House Asian Cuisine) – for facade signage.** The EDTF recommended acceptance of the proposed sign as submitted and issuance of a Certificate of Appropriateness.

Please schedule these applications for Certificates of Appropriateness for the Building and Zoning Committee to consider at its meeting on February 4, 2015.

Thank you.

BTH/km

cc: Heather Hubert, Planning and Zoning Department
Sue Drucker, Planning and Zoning Department
David Kratzer, EDTF Design Committee

BUILDING INSPECTOR'S

REPORT

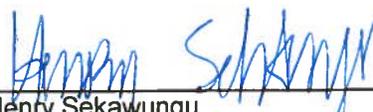
FOR JANUARY, 2015

January 28, 2015

COMMISSIONERS OF CHELTENHAM TOWNSHIP
ELKINS PARK, PA 19027

COMMISSIONERS OF CHELTENHAM TOWNSHIP
REPORT OF THE BUILDING INSPECTOR FOR JANUARY, 2015

	# PERMITS	TOT. FEES	\$ VALUE
RESIDENTIAL			
RENOVATIONS / ALTERATIONS	62	18,817	940,850
MULTI-FAMILY			
RENOVATIONS / ALTERATIONS	0	0	0
COMMERCIAL			
RENOVATIONS / ALTERATIONS	0	0	0
INSTITUTIONAL			
RENOVATIONS / ALTERATIONS	2	998	49,900
FENCE	1	30	30
JANUARY, 2015	65	19,845	990,780
JANUARY, 2014	38	9,263	463,150
YEAR-TO-DATE 2015	65	19,845	990,780
TOTAL 2014	889	242,178	13,037,971
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HEATING & AIR CONDITIONING			
JANUARY, 2015	12	2,418	120,900
JANUARY, 2014	3	498	24,900
YEAR-TO-DATE 2015	12	2,418	120,900
TOTAL 2014	115	32,826	1,637,850
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ELECTRICAL			
JANUARY, 2015	14	2,821	141,050
JANUARY, 2014	4	1,256	62,800
YEAR-TO-DATE 2015	14	2,821	141,050
TOTAL 2014	147	42,731	2,136,550
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PLUMBING			
JANUARY, 2015	10	2,798	139,900
JANUARY, 2014	3	777	38,850
YEAR-TO-DATE 2015	10	2,798	139,900
TOTAL 2014	161	36,262	1,778,793
<hr/>			
FOG PERMITS, JANUARY, 2015	3	1,500	1,500
GRADING PERMITS, JANUARY, 2015	0	0	0
<hr/>			


Henry Sekawungu
Director - Planning and Zoning

**REVIEW OF
ZONING HEARING BOARD
DECISIONS**

**IN AND BEFORE THE ZONING HEARING BOARD
OF CHELTENHAM TOWNSHIP, PENNSYLVANIA**

**IN RE: Application of 509 Ashbourne Road, L.P.
 NO. 3457**

FINDINGS OF FACT, OPINION AND ORDER

I. PETITION

This matter is before the Board on the application of 509 Ashbourne Road, L.P. for property located at 1509 Ashbourne Road, Elkins Park, PA 19027, Zoned R-4, from the decision of the Zoning Officer for the following modification to Zoning Relief granted under Appeal 3277 in order to demolish the existing mansion and convert it into green space. The following modification to Zoning Relief is required to remove the existing structure located on the premises:

1. Modification of Condition #1 of the Decision, so as to eliminate the retention of the three-story mansion.
2. Modification or elimination of Finding of Fact #10, which provided that the Applicant proposed to demolish three (3) of the four (4) buildings then existing on the property leaving the mansion to be renovated.

3. Modification or elimination of Finding of Fact #14, which provided for the conversion of the existing mansion into eight (8) dwelling units.

4. Modification or elimination of Finding of Fact #41 through #46 and #48 through #53 which referred to the conversion of the existing mansion into eight apartment units.

5. Modification or elimination of Conclusions of Law #1 through #4 which referenced the conversion of the existing mansion.

II. HEARING

The Petition is dated December 14, 2012 and was originally scheduled before the Zoning Hearing Board for February 11, 2013. At the Applicant's request, in cooperation with the Township, the matter was not heard by the Board until November 10, 2014.

The Hearing was held before Anee Farrell, Esq., Chairperson; Alan S. Gold, Vice Chairperson; Peter R. Labiak, Board Member; Carol M. Lauchmen, Esq., Solicitor, Carmen Reitano, Assistant Township Zoning Officer and Zoning Board Secretary. Peter S. Friedman, Esquire was also present on behalf of the Applicant.

The Zoning Hearing Board rendered its decision on November 10, 2014.

III. FINDINGS OF FACT

The following findings were made following competent testimony before the Board.

1. The landowner/applicants are 509 Ashbourne Road, L.P. holding which jointly developed the property into age restricted housing in 2008, under the name Federated Housing, Inc. (Exhibit ZHB-8; N.T. pg. 23, 48)

2. Federated Housing, Inc. is a non-profit corporation, but the Township receives real estate taxes from the developed parcels. (N.T. p 21)

3. In a new building, there are 85 units on site, 84 rental and 1 manager unit. There are employees on site, including building and grounds maintenance, a social worker, and a manager. Meal services and other services are provided. (N.T. p. 21)

4. The 2008 Zoning Hearing Board Decision concerning the development of this site contemplated the conversion of an old large house into 8 rental units in addition to the 85 units in the new building. (Exhibit ZHB -8)

5. The conversion of the large old house has become cost prohibitive given unexpected initial development costs (e.g., sewerage holding tank, rebuilding existing stone wall) and the cost to renovate the building. After development of the new building and adjustments for slopes on site, the first floor of the new building is 6 feet below the first floor of the old building/house. Because the buildings are 15 feet apart, a ramp (must be handicapped accessible) would be too steep and the buildings couldn't be connected. In addition, the building was flooded when vandals broke water pipes. (N.T. pg. 22, 23, 50, 51)

6. The big house had been stripped/left in deplorable condition by its prior owner, and would cost almost three million dollars to rehab. (Exhibit A-2, A-3; N.T. pg. 25)

7. The Applicants, in good faith, independently and in cooperation with the Township of Cheltenham, attempted to find a user or sell the building, to no avail. Applicant's real estate expert opined that the building/old house could not be converted to a productive use. (N.T. pg. 29-32, 42, 61-64)

8. The subject building/big house was built in the 1920's and has no historical or architectural significance. This was the opinion of the Applicant's expert and is accepted by the Zoning Hearing Board. (N.T. pg. 49, 73-74)

9. Current residents and immediate neighbors wish the building were removed and changed into a park space, especially given how beautifully the site is currently landscaped and maintained. (Exhibit A-4; N.T. pg. 12-19, 54)

10. The quarter acre parcel on which the large house is located would be developed into a park area with walkways, benches and garden areas, and would be "green" in perpetuity. The area will also remain open to the public. (Exhibit A-5; N.T. pg. 33, 35, 43)

11. The old building has been used for training by the local fire and police departments and the Township agrees it should be demolished. (Exhibit ZHB-6)

IV. DISCUSSION

In this matter, the Zoning Hearing Board is not deciding a variance or special exception request nor any other specified jurisdictional issue, but rather a derivative of such. It is within the Zoning Hearing Board's authority to grant zoning relief requests and impose conditions on that relief to minimize the impact on the neighborhood. Deriving from that, courts have found that the Zoning Hearing Board may amend, modify, or eliminate such a condition. In *Ford v. Zoning Hearing Board of Caernarvon Township*, 616 A.2d 1089 (1992), the PA Commonwealth Court determined that conditions could be changed if the Applicant showed changed circumstances rendering the condition inappropriate and the absence of injury to the public interest. In the instant matter, the Applicants have met both prongs of this test.

The changed circumstances are several. Most significantly, the new and old buildings were to be joined for the cohesive use of the residents. After actual on site development of the new 85 unit building and necessary slope adjustments were made, the floors of the old and the new building were 6 feet off in elevation. Handicap accessibility necessitates ramps, not just stairs and the buildings are, as planned 15 feet apart. Obviously ramping would be either very steep or very long.

The old building has been exposed to water and other damage. The cost to insulate, install all new electrical, mechanical, fire safety, and accessibility systems is not reasonable.

There is no adverse impact because the building has no historical significance.

V. ORDER

The Zoning Relief granted by decision on May 21, 2008 on Appeal #3277 as set forth in the Zoning Hearing Board's Order for same is modified as follows:

The condition that the three story "mansion" be retained and converted into 8 dwelling units is eliminated and references thereto in the 2008 Order are so modified with two (2) conditions:

1. The park to be installed where the old building was standing shall be public open space in perpetuity.
2. Prior to demolition, access will be provided to the Township Historical Commission to view the premises.

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 the specific conditions shall take precedence.

CHELTENHAM TOWNSHIP ZONING HEARING BOARD

AMEE FARRELL, CHAIRPERSON

ALAN S. GOLD, VICE CHAIRPERSON

PETER R. LABIAK, BOARD MEMBER

**IN AND BEFORE THE ZONING HEARING BOARD
OF CHELTENHAM TOWNSHIP, PENNSYLVANIA**

IN RE: Application of Stenton Property LLC

NO. 3499

FINDINGS OF FACT, OPINION AND ORDER

I. PETITION

This matter is before the Board on the application of Stenton Property LLC, owner of premises known as 1627 W. Cheltenham Avenue, LaMott, PA 19027, from the Decision of the Zoning Officer for the following Zoning Relief in order to construct a four (4) bay automobile repair facility, measuring 60 feet by 60 feet (3600 square feet) on the vacant rear portion of the property, with 17 off-street parking spaces, as well as the installation of two (2) parallel wall signs, and a free standing sign at the front of the property. The following zoning relief is required in an R-6 Residence District:

- a. A variance from CCS 295-50 to permit an automobile repair center in an R-6 Residence District.
- b. From CCS 295-221B(5)(a) for a surface parking lot located between the building and the street.
- c. From CCS 295-221.B (5)(b) for the location of a surface parking lot on a corner lot on an arterial road (Cheltenham Ave.) as defined by the Cheltenham Township Comprehensive Plan.

- d. From CCS 295-163 to permit the disturbance of existing steep slope in conjunction with the construction of the proposed site improvements.
- e. From CCS 295-197A. in order to install:
 - i. One (1) free standing 25' high internally lit sign with a maximum area of 40 square feet in addition to the existing free standing sign for the existing business, Enterprise Rent A Car and,
 - ii. One internally lit parallel wall sign with a maximum area of 20 square feet facing Cheltenham Avenue in addition to the existing wall sign for the existing business.

II. HEARING

This matter was initially scheduled for September 8, 2014; however, at that Hearing, after the Petition was read and the Zoning Hearing Board exhibits were entered, and Applicant, through counsel , requested the matter be continued until November 10, 2014. The Hearing on the subject application was held on November 10, 2014.

The Hearing was held before Anee Farrell, Esq., Chairperson; Alan S. Gold, Vice Chairperson; Peter R. Labiak, Board Member, Carol M. Lauchmen, Esq., Solicitor, Henry Sekawungu, Director of Planning and Zoning, and Carmen Reitano, Assistant Township Zoning Officer and Zoning Board Secretary. Sam Hwang, Esquire was also present on behalf of the Applicant.

The Zoning Hearing Board rendered its decision on December 8, 2014.

III. FINDINGS OF FACT

The following findings were made following competent testimony before the Board.

1. The subject property is a 42,000 square foot lot at the corner of Cheltenham and Sycamore Avenues. It is zoned R-6 Residential and located within the LaMott Historical District. (Exhibit ZHB-3; N.T. p. 6, 10, 11)

2. The property is improved with an existing building and parking area that was approved by the Zoning Hearing Board to be an Enterprise Car Rental agency in June, 2011. Almost one-half of the lot area is not utilized or leased by Enterprise. (Exhibit ZHB-14; N.T. p. 6)

3. Prior uses of the portion of the lot facing Cheltenham Avenue where Enterprise currently is located included an auto repair center and a gasoline filling station. There is an approximate 2 foot difference in grade between the front and vacant rear portions of the lot. The Zoning Hearing Board does not find the grade difference significant. (N.T. p. 6, 7, 16)

4. Within several blocks of the subject site, along Cheltenham Avenue, are commercial uses including a shopping center and a car service station. (N.T. p. 8)

5. The Applicant, owner of the parcel, proposes to add a large building onto a part of the back wall of the Enterprise building to become a four (4) bay automobile service station. The Applicant is willing to accept a condition that there will not be any auto body repair done on site. (N.T. p. 5, 7, 9)

6. The proposed use and building comports with all dimensional requirements of the R-6 District and with Zoning Code parking requirements. (N.T. p. 9)

7. The Applicant would install landscaping buffer along the north and west property lines, including to the north a 6 foot high solid board fence. The property is surrounded by residential uses. There would be buffering and landscaping in addition to

what is required by the Zoning Ordinance. Along the western boundary, but not on the subject property, is an existing 8 foot high brick fence. Along the Sycamore Avenue frontage there would be a continuation of the open fence similar to the Enterprise fence. (Exhibit P-1; N.T. p. 10, 13, 21, 30, 31)

8. Two signs are requested - one pylon sign on Cheltenham Avenue and one wall sign facing Cheltenham Avenue. The access to the proposed new business would be on Sycamore Avenue. (Exhibit ZHB-14; N.T. p. 11, 21, 22)

9. The proposed bays are drive through; i.e., 2 doors facing Sycamore Avenue and 2 doors opposite on the west side of the building. (N.T. p. 13)

10. The addition of the proposed use would add a second district business use to the property, with each tenant occupying their respective portion of the added onto building, sharing essentially a party wall. The portions of the lot occupied by each business would be separate. Currently, the Enterprise area is fenced off. (N.T. p. 16)

11. Services to be provided to the public and to Enterprise include muffler, oil changes, brakes, tires. There will not be a retail sales area for parts or supplies. (N.T. p. 17, 19)

12. There was opposition from neighbors whose concerns included:

a. Traffic to the proposed use making more difficult turns into and out of Sycamore Avenue because there is no traffic light and because Sycamore Avenue is narrow, with congested parking, and the only two-way street in the area. (N.T. p. 28, 32, 36, 39, 42, 44, 46, 62, 66)

b. Alter the residential character of the community. (N.T. p. 39, 42, 43, 46, 50, 67, 71)

c. Historical area shouldn't have auto repair shops or lit signs. (N.T. p. 41, 49, 51, 62, 64)

IV. DISCUSSION

Section 912 of the Municipalities Planning Code provides in part as follows:

The Board may grant a variance provided the following findings are made where relevant in a given case:

(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 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; 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."

The crux of this matter is the use variance; i.e., to locate an automobile repair center on the vacant portion of the property located in the R-6 residential zoning district. The requested parking, steep slope and sign variances are mooted if the proposed use is not permitted.

There are no unique physical conditions on the subject parcel that prevent the reasonable use of the property. Indeed, the Applicant successfully sought variance relief in 2011 to locate a car rental business on the front portion (nearest Cheltenham Avenue) of the lot where there had been a history of automotive related businesses. Reasonable use is being made of the lot. The vacant portion of the lot could be developed residentially, as zoned. The Applicant presented not one iota of testimony or evidence of any kind, that the vacant portion of the property couldn't be developed residentially.

The Applicant has created its own "hardship". It leased out a defined portion of the lot and received approval from the Zoning Hearing Board in 2011 for the use in the then existing building. Now the Applicant wants to build/"add-on" a much larger building for a second prohibited use.

The surrounding uses are residential and many neighbors testified to their reasonable belief that the proposed use would negatively impact their community.

Given the denial of the proposed use variance, the other requests are mooted. In any event, the same analysis applies.

V. ORDER

AND NOW, this day of , 2015, upon consideration of the application of Stenton Property, LLC, their requests for the following variances are denied for the reasons above stated:

- a. From CCS 295-50 to permit an automobile repair center in an R-6 Residence District.
- b. From CCS 295-221B(5)(a) for a surface parking lot located between the building and the street.

c. From CCS 295-221.B (5)(b) for the location of a surface parking lot on a corner lot on an arterial road (Cheltenham Ave.) as defined by the Cheltenham Township Comprehensive Plan.

d. From CCS 295-163 to permit the disturbance of existing steep slope in conjunction with the construction of the proposed site improvements.

e. From CCS 295-197A. in order to install:

i. One (1) free standing 25' high internally lit sign with a maximum area of 40 square feet in addition to the existing free standing sign for the existing business, Enterprise Rent A Car and,

ii. One internally lit parallel wall sign with a maximum area of 20 square feet facing Cheltenham Avenue in addition to the existing wall sign for the existing business.

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 the specific conditions shall take precedence.

CHELTENHAM TOWNSHIP ZONING HEARING BOARD

AMEE FARRELL, CHAIRPERSON

ALAN S. GOLD, VICE CHAIRPERSON

PETER R. LABIAK, BOARD MEMBER

**IN AND BEFORE THE ZONING HEARING BOARD
OF CHELTENHAM TOWNSHIP, PENNSYLVANIA**

IN RE: Application of John Jay Institute

NO. 3503

FINDINGS OF FACT, OPINION AND ORDER

I. PETITION

This matter is before the Board on the application of John Jay Institute, owner of premises known as 8201 Fenton Avenue, Glenside, PA 19038 from the Decision of the Zoning Officer for a variance in accordance with the rules and regulations of the Class R-3 Residence District in order to convert a single family residence into a residential study center. The applicant seeks the following zoning relief:

- a. A variance from CCS 295-21 to allow a residential study center instead of one of the permitted enumerated uses.
- b. An interpretation from CCS 295-21.E. that use of the barn for administrative offices and a handicapped accessible residential unit is an accessory use to the principal use of the property.
- c. In the alternative, a variance from CCS 295-21.E. to allow the barn containing administrative offices and a handicapped accessible residential unit as an accessory use to the principal use of the property.

d. A variance from CCS 295-221.H. to allow ten parking spaces for use by the property instead of the required 22 spaces.

II. HEARING

This matter was initially scheduled for November 10 2014; however, it was continued; and the Hearing was then held on November 18, 2014.

The Hearing was held before Anee Farrell, Esq., Chairperson; Alan S. Gold, Vice Chairperson; Peter R. Labiak, Board Member, Carol M. Lauchmen, Esq., Solicitor, Henry Sekawungu, Director of Planning and Zoning, and Carmen Reitano, Assistant Township Zoning Officer and Zoning Board Secretary. Michael Yanoff, Esquire was also present on behalf of the Applicant. Joseph Beller, Esquire appeared for a number of protestants. Additional parties present were: Michael Patron, Warren H. Marshall, John Baum, J. Scott Laughlin, Rev. Lady Savage, Morton Wolpert, and Marci Wolpert.

The Zoning Hearing Board rendered its decision at its public hearing on December 8, 2014.

III. FINDINGS OF FACT

The following findings were made following competent testimony before the Board.

1. The subject site of 2+/- acres is improved with a barn/garage/gym and a beautiful large three-story colonial house of approximately 8600 square feet and is in a residential zoning district. (Exhibits A-3, P-1; N.T. p. 60)

2. The property has been and currently is used as a single family dwelling. (N.T. p. 56, 57, 88, 113)

3. The Applicant, John Jay Institute, is a non-profit educational organization that prepares people for public service through residential programs. Its academic schedule includes three semesters - spring, summer and fall. (Exhibit A-1, N.T. p. 17, 28)

4. The Applicant proposes using the property at 8201 Fenton Avenue, Cheltenham Township as the permanent site of the Institute and wishes to be in the Philadelphia area. The use requested by the Applicant is "residential study center". The Zoning Hearing Board finds that the proposed use is educational. (Exhibit ZHB-3; N.T. p. 33)

5. Students are college graduates and for the spring and fall semester programs, live and study for one semester at a location in cohorts of no more than sixteen. They take five core courses. The Institute does not charge tuition. (N.T. p. 18, 19, 52)

6. There is no laundry or food service and no truck deliveries of any kind. (N.T. p. 20)

7. The summer study program is for six weeks and the students are junior officers in the U.S. Armed Forces, again sixteen in number. (N.T. p. 21)

8. The academic program includes assigned reading of 100 to 150 pages per day, writings on the assigned readings, and three hours of discussion on the writings and reading four days per week. (N.T. p. 22)

9. Currently the barn has been converted into a garage on its first floor and a gym for the owners and children on the second floor. The Applicant proposes to convert the first floor into a dwelling unit with kitchen, living room, dining area, bedroom and bathroom, and the second floor into offices and adding a bathroom. (N.T. p. 63, 64, 66)

10. The Board takes notice that Section 295-21(c) has a footnote indicating that in 2003 a subsection allowing educational or religious use in the R-3 District was repealed. (N.T. p. 84; Zoning Code)

11. The property was placed on the multiple listing service; i.e., listed for sale “167 days” prior to the hearing date according to the seller’s realtor, which would be approximately the beginning of June, 2014. The Agreement of Sale, at full list price, between the seller and the Applicant is dated July 18, 2014. (Exhibit ZHB-10; N.T. p. 99, 120)

12. In effect, the property was marketed for a single family use for a month and one-half before the Applicant and seller entered their agreement. (N.T. p. 100, 101, 128)

13. The current listing agent testified that he had some knowledge that the property was listed prior to his agency, but did not sell. The Zoning Hearing Board does not give that testimony any weight because the Board has no information; e.g., was the list price overpriced? How was it marketed? (N.T. p. 99, 100)

14. A neighbor in opposition, also a real estate agent, stated the subject property list price was too high. (N.T. p. 157)

15. The most conservative estimate of the number of parking spaces that would be required under the proposed use is twenty-four. The existing rear lot would contain ten spaces and the rest could be stacked in the driveway. (N.T. p. 67-70)

16. There is a driveway in from Fenton Road that becomes a large turnaround at the house and the driveway is also connected to the parking area to the rear. (Exhibits ZHB -7, A-3; N.T. p. 58)

17. Applicant's activities on site would include a weekly tea to which community members are invited and a large dinner party at the end of each semester. (N.T. p. 23, 24)

18. Currently, the Applicant leases a large house in Bala Cynwyd with parking for ten vehicles. The site is close to public transportation. There hasn't been a need for more than ten spaces and the Applicant doesn't anticipate there'd be regular need for more than the ten spaces on the subject site. (N.T. p. 24, 25)

19. On site, in addition to the students, would be three staff members and a visiting professor who may be in residence. (N.T. p. 27,33)

20. The Applicant is willing to negotiate a payment to the Township in lieu of real estate taxes. (N.T. p. 28, 29)

21. There were many neighbors of the subject site who objected to the Applicant's proposes use(s). Their concerns included:

a. The current use of the subject property is as a single family dwelling which comports with the rest of the neighborhood and with the zoning requirements. The proposed use would alter the character of the neighborhood. (N.T. p. 132-134, 136-138, 140, 143-144, 147, 153, 156)

b. The proposed use would have a negative impact on use of the roads in the neighborhood. (Exhibit B-1; N.T. p. 134, 147)

c. Because variances run with the land, the extra dwelling unit and uses permanently change the neighborhood. (N.T. p. 135)

d. It's not compatible with single family dwelling neighborhood and raises safety concerns to have new groups of people moving in and out three times a year. (N.T. p. 132, 134, 137, 141, 153)

IV. DISCUSSION

Section 912 of the Municipalities Planning Code provides in part as follows:

The Board may grant a variance provided the following findings are made where relevant in a given case:

(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 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; 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."

The request on which the others turn is that of the use variance. Were it granted, the Zoning Hearing Board would then have to review and decide each other request carefully.

Were it denied in this case, the other uses become moot as will be spelled out below.

The rule of law under our Constitution requires levels of proof be put forward. A plaintiff doesn't prevail on oratory alone and a defendant isn't found guilty because he's scruffy and not clean shaven. Here, the Applicant is an honorable organization educating young people in public policy leadership.

Firstly, the use being requested is educational, not residential. Although living and learning together likely has the benefit of making each cohort a cohesive connected group as its individuals spread throughout the land, the primary purpose of the Institute's program is to educate. The Institute's website refers to "academic schedule" and calls itself an educational organization. Three groups of sixteen students cycle through in one year pursuing a rigorous study program.

The Zoning Hearing Board concludes however that the place the Applicant wishes to use is not suitable. The subject property has been occupied and used continuously through to the present as a single family residence. It is nestled in a neighborhood of single family homes, albeit smaller. It is zoned for single family residential use.

The Applicant did not show in any way that the property couldn't be used as zoned. The Applicant's witnesses admitted it could be. The Applicant attempted to show that the property had no market value as a single family dwelling, but failed. The only facts presented concerning the marketability of the property were that it had been listed once before, at an unknown price, and under the current listing it was on the market approximately six weeks before the Applicant made a full list offer and entered into an Agreement of Sale. The Applicant did not prove the threshold of hardship and therefore the variance for the educational use is denied.

Given that the primary use variance is denied, it follows that the request for an interpretation that administrative office use and a handicapped accessible use are accessory uses is denied.

Denied also is the variance allowing the barn office and dwelling unit uses as accessory uses. This request indicates the circular arguments of the Applicant; i.e., if the proposed use is really just a residential use why does it need administrative offices and accessibility for the handicapped? A single family dwelling doesn't need them, and they're not accessory uses to a residential use.

A residence in this district doesn't require more than ten parking spaces already on site.

V. ORDER

AND NOW, this day of , 2015, upon consideration of the application of John Jay Institute, their requests for the following variances are denied for the reasons above stated:

- a. A variance from CCS 295-21 to allow a residential study center instead of one of the permitted enumerated uses.
- b. An interpretation from CCS 295-21.E. that use of the barn for administrative offices and a handicapped accessible residential unit is an accessory use to the principal use of the property.
- c. In the alternative, a variance from CCS 295-21.E. to allow the barn containing administrative offices and a handicapped accessible residential unit as an accessory use to the principal use of the property.

d. A variance from CCS 295-221.H. to allow ten parking spaces for use by the property instead of the required 22 spaces.

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 the specific conditions shall take precedence.

CHELTENHAM TOWNSHIP ZONING HEARING BOARD

AMEE FARRELL, CHAIRPERSON

ALAN S. GOLD, VICE CHAIRPERSON

PETER R. LABIAK, BOARD MEMBER

OLD BUSINESS

NEW BUSINESS