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Attorneys for Applicants

**BEFORE THE ZONING HEARING BOARD
OF ABINGTON TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

In the Matter of:

**Bainbridge Roslyn, LLC and Peter Tiburzio
1331 Easton Road, Roslyn Shopping Center
Parcel ID No. 30-00-14616-00-6**

ADDENDUM TO ZONING HEARING BOARD APPLICATION

Bainbridge Roslyn, LLC and Peter Tiburzio, by and through their attorneys Marc B. Kaplin, Esquire and Craig R. Lewis, Esquire, hereby file this addendum to their Appeal to the Abington Township Zoning Hearing Board from the October 1, 2020 determination by the Abington Township Zoning Officer, and in support thereof state as follows:

1. **Name and Address of Applicant.** The Appellants are Bainbridge Roslyn, LLC and Peter Tiburzio (collectively herein “**Bainbridge**”), legal owners of the parcel identified as Montgomery County tax parcel number 30-00-14616-00-6, otherwise generally identified as 1331 Easton Road, Roslyn, PA and commonly known as the Roslyn Valley Shopping Center. (“**Property**”).

2. **Description of Property.** The Property is an approximately 2.65 acre (+/-) parcel located along Easton Road in Roslyn at the intersection of Easton Road and Woodland Road. In

accordance with the Abington Township Zoning Ordinance (“**Zoning Ordinance**”) and Abington Township Zoning Map the Property is located in the MS-VC Main Street-Village Center Zoning District. The Property is improved with two buildings which comprise an in-line retail shopping center that was first developed in 1966. The southern building is a one-story masonry building that consists of approximately 17,962 s.f. and is anchored by an approximately 11,890 s.f. (+/-) Rite Aid Pharmacy. The northern building is a one-story masonry building consisting of 11,530 s.f. (+/-). Between the two buildings is a two-lane drive-aisle serving a currently unused drive-thru window previously associated with an adjacent bank. The Property has three access points to public streets; one full movement access to Easton Road at the southern end of the Property, one right-in, right-out only access to Easton Road approximately at the middle of the site and off-set from Brookdale Ave, and one full-movement access to Woodland Road. The Property is currently non-conforming with respect to many of the area and bulk requirements of the MS-VC District including, but not limited to, off-street parking, minimum green area, rear yard setback, and building coverage.

3. **Zoning**. Pursuant to the Abington Township Zoning Map, the Property is located in the MS-VC Main Street Village Center (“**MS-VC District**”).

4. **Proposed Improvements and Prior Application to Zoning Hearing Board**. Applicant proposes to renovate a portion of the northern building within the shopping center to accommodate an in-line Wawa Convenience Store (“**Wawa Store**” or “**Proposed Use**”). This proposed renovation also includes (1) reconfiguring the vehicular access to Woodland Road to provide better definition, better lane control and safe movements, (2) reconfiguring existing parking along the northern portion of the Property to create better circulation patterns and to provide an additional fourteen (14) parking spaces, and (3) to provide additional green space

including landscaping and buffering between the northern building and Woodland Road (hereinafter collectively the “**Proposed Improvements**”). The Wawa Store and Proposed Improvements are depicted on a plan prepared by LandCore Engineering Consultants, P.C., entitled “Zoning Plan” dated February 17, 2020 last revised September 8, 2020 (“**Zoning Plan**”). A copy of the Zoning Plan is attached hereto as **Exhibit “A”**.

On May 19, 2020, Appellants filed an application to the Zoning Hearing Board seeking a Special Exception in accordance with §1005 and the Use Matrix to permit a Convenience Store in the MS-VC District, as well as a variance from Section 2103.C Use C-10, subsection (5) to permit a Convenience Store in the MS-VC district with a gross floor area in excess of 3,000 s.f. (“**Zoning Application**”). A hearing on the Zoning Application extended over two evenings, June 30, 2020 and July 14, 2020. At the close of the hearing, the Zoning Hearing Board voted to (1) grant the requested Special Exception and (2) deny the requested variance. The motion to grant the Special Exception was approved unanimously whereas the motion to deny the variance was approved by a 3-2 vote (“**ZHB Decision**”). A copy of the ZHB Decision is attached hereto as **Exhibit “B”**.

5. **Request for Zoning Determination.** During the hearing on the Zoning Application, a question arose whether zoning relief, in addition to the requested special exception and variance from §2103.C Use C-10, is required to permit the Proposed Use as depicted on the Zoning Plan. One specific inquiry was whether the Proposed Use complies with §2601.B.3 of the Zoning Ordinance. Therefore, on August 13, 2020, Bainbridge submitted a Request for Zoning Determination to Shaun Littlefield, Abington Township’s Zoning Officer, requesting that Mr. Littlefield determine that the Proposed Use, as depicted on the Zoning Plan,

complies with §2601.B.3 of the Zoning Ordinance (“**Request for Determination**”). A copy of the Request for Determination is attached hereto as **Exhibit “C”**.¹

6. **Zoning Determination.** By letter dated October 1, 2020, Shaun Littlefield, the appointed Zoning Officer of Abington Township determined that the alley separating the Property from the abutting residential zoning district does not constitute a “street” and therefore the Proposed Use is subject to the hour of operations restrictions set forth in §2601.B.3 (“**Zoning Determination**”). A copy of the Zoning Determination is attached hereto as **Exhibit “E.”**

7. **Analysis of Zoning Ordinance Section 2601.B.3**

As set forth in the Request for Determination, Zoning Ordinance §2601.B is entitled Community Development Standards and provides, in pertinent part, as follows:

3. Hours of Operation In order to ensure harmony with existing communities, the following shall be applicable:

a. No delivery of inventory, merchandise, goods or other products shall occur between the hours of 10:00 p.m. and 6:00 a.m. to any property adjoining a residential zoning district, unless such single site is larger than ten (10) acres in lot area.

b. No trash or rubbish removal shall occur between the hours of 10:00 p.m. and 6:00 a.m. to any property adjoining a residential zoning district, unless such single site is larger than ten (10) acres in lot area.

c. 24 hour operations are permitted by state Law to the extent they are not detrimental to the health, safety, and welfare of the community. Commercial (retail) uses abutting residential properties not separated by a street shall not operate between the hours of 12:00 midnight and 6:00 a.m. as this is determined to be detrimental to the health safety and welfare of the surrounding community.

Section 201 of the Zoning Ordinance defines a “street” as:

¹ In accordance with a notice from the Zoning Officer dated August 27, 2020, Bainbridge supplemented its Request for Determination on September 11, 2020; updating the zoning plan and providing additional background information. A copy of the September 11, 2020 letter supplementing the Request for Determination is attached hereto as **Exhibit “D”**.

A strip of land, including the existing right-of-way and not limited to a paved cartway, intended for use as a means of vehicular and pedestrian circulation to provide access to more than one lot, and which includes thoroughfare, alley, avenue, boulevard, court, expressway, highway, lane place and road. A street can be public or private.

Section 201 of the Zoning Ordinance defines an “alley” as:

A minor way which may or may not be legally dedicated and is used primarily for vehicular service access to the rear or side of properties abutting a street. Frontage on an alley shall not be considered street frontage.

As depicted on the Zoning Plan, the Property abuts a residential zoning district. As further depicted on the Zoning Plan, the Property is separated from the abutting residential zoning district by a “street”. Specifically, to the rear of the in-line retail buildings there is a private, non-dedicated “alley”. The alley is bisected by the property line shared by the Property and the abutting residential properties; a portion of the alley is located on the adjoining residential properties. The alley is unmistakably intended to provide vehicular service access to the rear of the Property. Further, as required by the abutting residential neighbors, the alley also provides pedestrian access between the Property and the abutting residential properties by way of an existing gate.

As was detailed in the September 11, 2020 supplement to the Request for Determination, the alley has been in existence and served the shopping center and abutting residences as long as the shopping center has been in existence. Approximately 25 years ago, the owner of the shopping center (the Tiburzio family) updated portions of the shopping center and in doing so was asked to install a fence on the residential side of the alley to provide a buffer between the residences and the shopping center. It was also requested that the fence include individual gates for numerous homeowners so that they could continue to access the alley and the shopping center; many of the homeowners used the alley to load and unload household goods and to

provide a pedestrian access to the shopping center and the greater Roslyn neighborhood. The fence and the gates were installed as requested. Approximately 8 years ago, the original fence had fallen into disrepair and needed to be replaced. When the fence was replaced many of the prior gates were not re-installed. However, at least one homeowner insisted that a gate remain to provide access for their property to the alley and the shopping center. This remaining gate is identified on the Zoning Plan.

The Zoning Ordinance specifically provides that any requirement for a “street” can be satisfied by an “alley”. Therefore, where a commercial use abuts a residential district but is separated from that residential district by an “alley”, the commercial use is permitted to be a 24 hour operation in accordance with state Law. Accordingly, Bainbridge contends that the Proposed Use, as depicted on the Zoning Plan and detailed in the Request for Determination, although constituting a commercial use abutting a residential district, is separated from the abutting residential district by a “street” and therefore not limited to hours of operation of 6:00 a.m. to 12:00 midnight but is permitted to operate 24hrs per day in accordance with state law.

WHEREFORE, Appellants request that the Zoning Hearing Board reverse the Zoning Officer’s Zoning Determination and conclude that the Proposed Use, as depicted on the Zoning Plan and detailed in the Request for Determination, although constituting a commercial use abutting a residential district, is separated from the abutting residential district by a “street” and

therefore not limited to hours of operation of 6:00 a.m. to 12:00 midnight but is permitted to operate 24hrs per day in accordance with state law.

Respectfully Submitted,

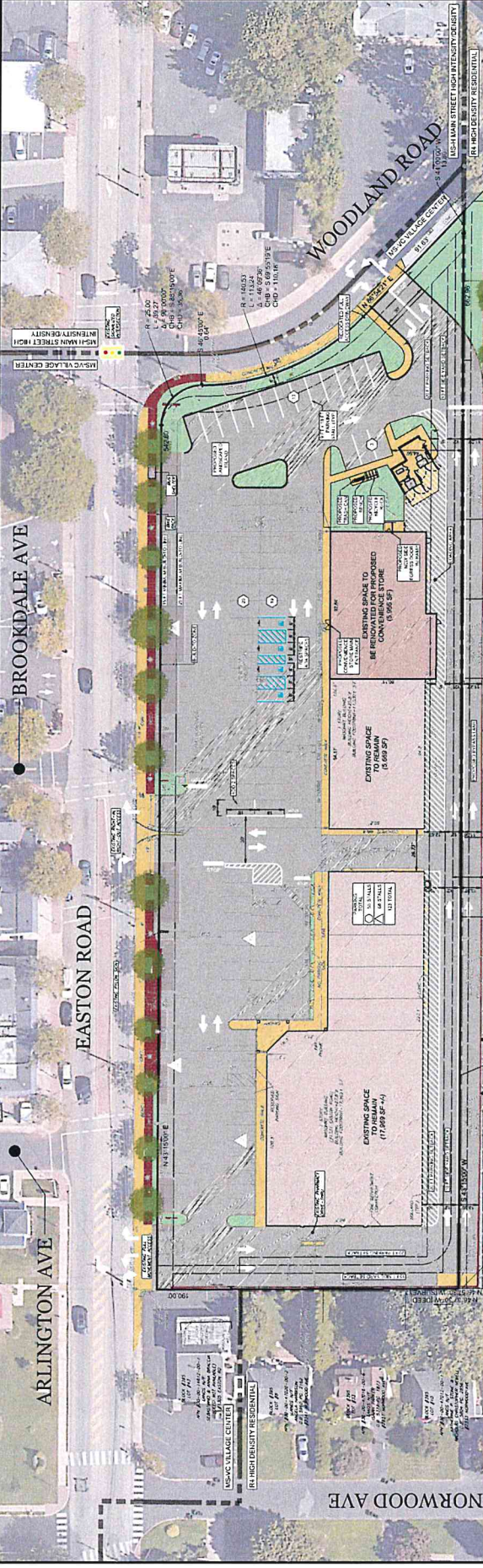


MARC B. KAPLIN, ESQUIRE
CRAIG R. LEWIS, ESQUIRE
Attorneys for Applicants

Date: October 6, 2020

EXHIBIT “A”

Zoning Plan



DISTRICT DIMENSIONAL REQUIREMENTS

REQUIREMENT	EXISTING	PROPOSED
LOT AREA (SQ FT)	7,711	7,711
LOT WIDTH (FT)	33	33
LOT DEPTH (FT)	233	233
FRONT YARD SETBACK (FT)	5	5
REAR YARD SETBACK (FT)	5	5
SIDE YARD SETBACK (FT)	5	5
MAXIMUM BUILDING HEIGHT (FT)	12	12
MAXIMUM GROUND COVER (%)	30	30
MAXIMUM LOT COVERAGE (%)	30	30
MINIMUM LOT COVERAGE (%)	10	10
MINIMUM FRONT YARD SETBACK (FT)	5	5
MINIMUM REAR YARD SETBACK (FT)	5	5
MINIMUM SIDE YARD SETBACK (FT)	5	5
MINIMUM FRONT YARD SETBACK (FT)	5	5
MINIMUM REAR YARD SETBACK (FT)	5	5
MINIMUM SIDE YARD SETBACK (FT)	5	5
MINIMUM FRONT YARD SETBACK (FT)	5	5
MINIMUM REAR YARD SETBACK (FT)	5	5
MINIMUM SIDE YARD SETBACK (FT)	5	5

PARKING REQUIREMENTS

TYPE OF PARKING	REQUIREMENT
STREET PARKING	100% OF REQUIRED PARKING
OFF-STREET PARKING	100% OF REQUIRED PARKING
BIKE PARKING	100% OF REQUIRED PARKING
EV PARKING	100% OF REQUIRED PARKING
ADA COMPLIANT PARKING	100% OF REQUIRED PARKING
SHARED PARKING	100% OF REQUIRED PARKING
SECURED PARKING	100% OF REQUIRED PARKING
UNSECURED PARKING	100% OF REQUIRED PARKING
COVERED PARKING	100% OF REQUIRED PARKING
UNCOVERED PARKING	100% OF REQUIRED PARKING
INDOOR PARKING	100% OF REQUIRED PARKING
OUTDOOR PARKING	100% OF REQUIRED PARKING
UNDERGROUND PARKING	100% OF REQUIRED PARKING
OVERGROUND PARKING	100% OF REQUIRED PARKING
ATTACHED PARKING	100% OF REQUIRED PARKING
DETACHED PARKING	100% OF REQUIRED PARKING
STREET PARKING	100% OF REQUIRED PARKING
OFF-STREET PARKING	100% OF REQUIRED PARKING
BIKE PARKING	100% OF REQUIRED PARKING
EV PARKING	100% OF REQUIRED PARKING
ADA COMPLIANT PARKING	100% OF REQUIRED PARKING
SHARED PARKING	100% OF REQUIRED PARKING
SECURED PARKING	100% OF REQUIRED PARKING
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COVERED PARKING	100% OF REQUIRED PARKING
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UNDERGROUND PARKING	100% OF REQUIRED PARKING
OVERGROUND PARKING	100% OF REQUIRED PARKING
ATTACHED PARKING	100% OF REQUIRED PARKING
DETACHED PARKING	100% OF REQUIRED PARKING

CONVENIENCE STORE REQ.

THIS ZONING PLAN REFERENCES A SURVEY PREPARED BY [Name] ON [Date].

OWNER'S RECORD

APPLICANT

USE C-10 CONVENIENCE STORE REQ.

CONVENIENCE STORES ARE PERMITTED IN THIS ZONING DISTRICT. THE FOLLOWING REQUIREMENTS APPLY TO ALL CONVENIENCE STORES:

- MINIMUM LOT AREA: 10,000 SQ FT
- MINIMUM LOT WIDTH: 40 FT
- MINIMUM LOT DEPTH: 100 FT
- MINIMUM FRONT YARD SETBACK: 10 FT
- MINIMUM REAR YARD SETBACK: 10 FT
- MINIMUM SIDE YARD SETBACK: 5 FT
- MAXIMUM BUILDING HEIGHT: 12 FT
- MAXIMUM GROUND COVER: 30%
- MAXIMUM LOT COVERAGE: 30%
- MINIMUM LOT COVERAGE: 10%
- MINIMUM FRONT YARD SETBACK: 5 FT
- MINIMUM REAR YARD SETBACK: 5 FT
- MINIMUM SIDE YARD SETBACK: 5 FT
- MINIMUM FRONT YARD SETBACK: 5 FT
- MINIMUM REAR YARD SETBACK: 5 FT
- MINIMUM SIDE YARD SETBACK: 5 FT
- MINIMUM FRONT YARD SETBACK: 5 FT
- MINIMUM REAR YARD SETBACK: 5 FT
- MINIMUM SIDE YARD SETBACK: 5 FT

GRAPHIC SCALE

1" = 100'

SCHEMATIC

CONVENIENCE STORE REQ.

CONVENIENCE STORES ARE PERMITTED IN THIS ZONING DISTRICT. THE FOLLOWING REQUIREMENTS APPLY TO ALL CONVENIENCE STORES:

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- MINIMUM REAR YARD SETBACK: 10 FT
- MINIMUM SIDE YARD SETBACK: 5 FT
- MAXIMUM BUILDING HEIGHT: 12 FT
- MAXIMUM GROUND COVER: 30%
- MAXIMUM LOT COVERAGE: 30%
- MINIMUM LOT COVERAGE: 10%
- MINIMUM FRONT YARD SETBACK: 5 FT
- MINIMUM REAR YARD SETBACK: 5 FT
- MINIMUM SIDE YARD SETBACK: 5 FT
- MINIMUM FRONT YARD SETBACK: 5 FT
- MINIMUM REAR YARD SETBACK: 5 FT
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CONVENIENCE STORE REQ.

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- MINIMUM SIDE YARD SETBACK: 5 FT
- MINIMUM FRONT YARD SETBACK: 5 FT
- MINIMUM REAR YARD SETBACK: 5 FT
- MINIMUM SIDE YARD SETBACK: 5 FT
- MINIMUM FRONT YARD SETBACK: 5 FT
- MINIMUM REAR YARD SETBACK: 5 FT
- MINIMUM SIDE YARD SETBACK: 5 FT

EXHIBIT “B”

Zoning Decision

APPLICATION NO. 20-09
Opinion and Order of the Board

The application of **Bainbridge Roslyn, LLC**, for property located at 1331 Easton Road, Roslyn, PA. 19001. The applicant requests a special exception for the proposed use Section 1005 Use C-10 (convenience store) and a dimensional variance from Section 2103.C-5, of the Zoning Ordinance of the Township of Abington to allow a 6,000 square foot new WAWA store as the gross floor retail area is limited to 3,000 SF for a convenience store. The applicant seeks approval to operate a WAWA convenience store from the site.

The property is located in the Main Street Village Center District (MS-VC) of Ward No. 14 of the Township of Abington.

Upon due advertisement, public hearings were held in a Virtual Hearing Zoom Application on Tuesday, June 30, 2020 commencing at 8:48 p.m. and July 14, 2020 commencing at 7:22 p.m.

Present at the hearings were:

Barbara M. Wertheimer, Chairperson
Jose Casalina, Vice-Chair
Michael O'Connor Secretary
John DiPrimio, Member
Laura Hanes, Member

Bruce J. Eckel, Esq., Solicitor for the Zoning Hearing Board
Shaun Littlefield, Zoning Officer

Findings of Fact

1. The name and address of the applicant is Bainbridge Roslyn, LLC ("Applicant") P.O. Box 225, Willow Grove, PA 19090.
2. The name and address of the owner of the property is Bainbridge Roslyn, LLC and Peter Tiburzio ("Owner") P.O. Box 225, Willow Grove, PA19090.

3. Applicant and Owner were represented by Marc B. Kaplin, Esq. 910 Harvest Drive, Blue Bell, PA 19422.
4. The property is located at 1331 Easton Road, Roslyn, PA 19001 (the "Property"), zoned in the Main Street Village Center District (MS-VC) in Ward No. 14 of the Township of Abington.
5. After proper advertising and posting, formal hearings were held on Tuesday, June 30, 2020 and July 14, 2020.
6. The following exhibits were submitted at the hearing on June 30, 2020:
 - a. B-1 Notice of Publication
 - b. B-2 Certification of Posting
 - c. A-1 Deed
 - d. A-2 Photograph of Thriftway
 - e. A-3 Photograph of existing conditions
 - f. A-4 Curriculum Vitae of Matthew Rutt
 - g. A-5 Existing Conditions Plan
 - h. A-6 Zoning Plan
 - i. A-7 Architectural Rendering
 - j. A-8 Application
7. The Property is improved with a retail shopping center on Easton Road in Roslyn.
8. The shopping center contains two separate masonry buildings. Building number one has a building footprint of 17,962 SF and contains a Rite Aid drugstore and other smaller retail stores. Building number two contains 11,530 S.F. and contains several retail stores.
9. The Owner wants to redevelop the 11,530 S.F. building by converting a 6,000 square foot area of the building into a Wawa convenience store.
10. The Wawa convenience store will not sell gasoline at this location.
11. The owner proposes to improve the entire shopping center.
12. The subject shopping center was built in the 1960s and originally had a Thriftway food center located there.
13. Over the years the Willow Grove Mall and other retail options has resulted in the Owners not being able to retain tenants and leasing to new tenants.
14. The vacancy rate of the shopping center has climbed over the years.

15. Because of the shopping center's condition, the owner stated that it has been difficult to attract and keep tenants to the subject shopping center.
16. The owner believes that obtaining Wawa as a tenant would increase the ability to rent space in the existing shopping center to other tenants.
17. Wawa currently has an existing convenience store in Roslyn.
18. If the Wawa convenience store can be constructed on the Property Wawa has committed to closing the already existing Roslyn convenience store.
19. The existing Roslyn Wawa location at Susquehanna Road and Bradfield Road is 1,800 square feet.
20. If granted the special exception for a Use C-10 convenience store the Applicant would be permitted to construct a store of 3,000 square feet which is almost twice as large as the existing Roslyn Wawa.
21. Wawa has built convenience stores that also sell gasoline. These stores are 5,000 to 6,000 square feet.
22. A Use C-10 convenience store is permitted in the Main Street Village Center District (MS-VC) by special exception.
23. A Use C-10 convenience store in the Main Street Village Center District (MS-VC) is limited by Section 2103.C-5, to no more than 3,000 square feet of gross retail floor area.
24. In order to open a convenience store in the Property the Applicant must obtain a special exception for the proposed use Section 1005 Use Matrix C-10 Convenience Store.
25. The Applicant applied for a special exception for the proposed use Section 1005 Use Matrix C-10 Convenience Store.
26. In order for the Applicant to operate a convenience store of 6,000 square feet on the Property the Applicant must obtain a variance from Section 2103.C-5.
27. The Applicant also applied for a dimensional variance from Section 2103.C-5, to allow it to lease to Wawa to operate a convenience store of 6,000 square feet.
28. Applicant intends to renovate the shopping center and lease a 6,000 square foot portion to Wawa to operate a convenience store.
29. The Property is directly abutted by residential properties to the West and South of the shopping center.

30. Several neighbors expressed concerns about the use of neighborhood streets for the traffic generated by the proposed convenience store.
31. Several neighbors expressed concerns about the amount of activity generated by the proposed convenience store.
32. The size of the convenience store affects the number of vehicles using the local streets. The larger the store the more traffic on the streets.
33. The size of the store also affects the number of parking spaces dedicated to the use of the convenience store.
34. The size of the store also affects the amount of lighting needed for the shopping center.
35. The size of the convenience store affects the trash and trash collection at the shopping center.
36. The Applicant has met the requirements for the granting of a special exception for a Use C-10 convenience store limited to 3,000 square feet which is permitted by special exception by section 1005 Use Matrix C-10.
37. The Applicant did not establish that the property could not be used as a convenience store that complied with the 3,000 square foot limitation of section 2103.C-5 of the Zoning Ordinance.
38. The applicant has failed to establish a hardship to justify the granting of a variance in this application.
39. The Applicant has not established that the requested 6,000 square foot convenience store is the minimum relief required.
40. The granting of the requested variance for a 6,000 square foot convenience store would be adverse to the public health, safety and welfare of this community.
41. With the grant of the special exception for a Use C-10 if the requested variance for a 6,000 square foot store were denied the Applicant would still be able to use the Property as zoned.
42. The variance relief requested is not a minimal request for relief but rather a large amount of relief, 100% greater than what is permitted under the Zoning Ordinance.
43. The Applicant's hardship is purely an economic hardship.
44. The Applicant did not establish a legal hardship for the Applicants proposed use of the Property.

45. With the grant of the special exception to permit a convenience store the Landowner has the reasonable use of the property as presently zoned.

Conclusions of Law

1. To allow the use as a Use C-10 convenience store the Applicant must obtain a special exception pursuant to the Abington Township Zoning Ordinance section 1005 Use C-10.
2. In order for the Applicant to operate a 6,000 square foot Wawa convenience store a variance from the zoning requirements of the Abington Township Zoning Ordinance Section 2103.C.5 must be obtained.

AS TO THE SPECIAL EXCEPTION

3. The Applicant has established that the proposed use as a convenience store complies with the Special Exception requirements of the Abington Township Zoning Ordinance section 1005 Use C-10.

AS TO THE VARIANCE REQUEST

4. As to the request for a variance from Section 2103.C.5 for a 6,000 square foot convenience store rather than the 3,000 square foot permitted, the following applies:
 5. The Applicant has failed to establish a legal hardship to justify the granting of a variance in this application.
 6. The Applicant has not established that the requested 6,000 square foot convenience store is the minimum relief required.
 7. The granting of the requested variance for a 6,000 square foot convenience store would be adverse to the public health, safety and welfare of this community.
 8. With the grant of the special exception for a Use C-10 if the requested variance for a 6,000 square foot store were denied the Applicant would still be able to use the Property as zoned.
 9. The variance relief requested is not a minimal request for relief but rather a large amount of relief, 100% greater than what is permitted under the Zoning Ordinance.
 10. The Applicant's hardship is purely an economic hardship.

11. The Applicant did not establish a legal hardship necessary for the granting of the requested variance in this application for the Applicants proposed use of the Property.

Order of the Board

The Board finds that the Applicant has met the requirements for granting a special exception under section 1005 Use C-10 convenience store. Therefore this application for the special exception is **APPROVED**.

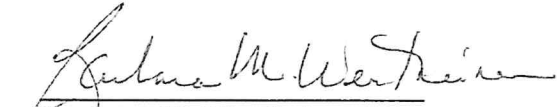
The Board finds that granting the requested variance from Section 2103.C-5. to allow a 6,000 square foot Wawa convenience store without gasoline sales instead of the permitted 3,000 square foot Wawa convenience store would adversely affect the health, safety, and welfare of the community. The Board finds the applicant failed to establish the hardship necessary for the granting of the variance and it is not the minimum relief required. Therefore, this application for the variance from Section 2130.C-5 is **DENIED**.

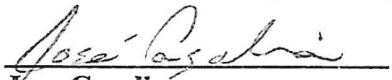
Zoning Hearing Board of the Township of Abington

The application for a special exception has been APPROVED by a decision rendered on July 14, 2020.

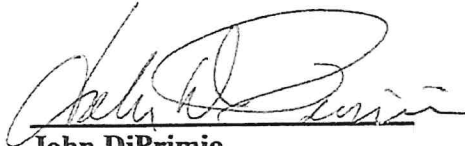
BOARD SIGNATURES

Vote


Barbara M. Wertheimer
Chairperson, Zoning Hearing Board
Aye: /
Nay:


Jose Casalina
Vice Chair, Zoning Hearing Board
Aye: /
Nay:


Michael O'Connor
Secretary, Zoning Hearing Board
Aye: /
Nay:



John DiPrimio
Zoning Hearing Board Member

Aye:
Nay:

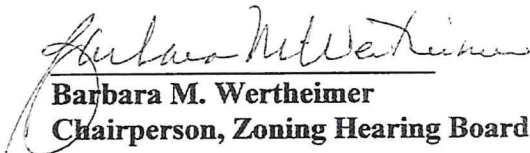
Laura Hanes
Zoning Hearing Board Member

Aye:
Nay:

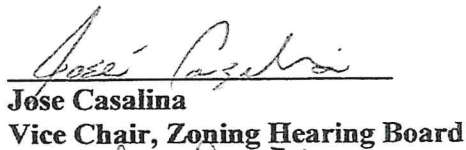
The application for a Variance has been DENIED, by decision rendered on July 14, 2020.

BOARD SIGNATURES

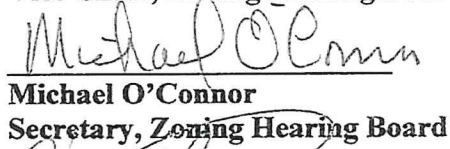
Vote


Barbara M. Wertheimer
Chairperson, Zoning Hearing Board

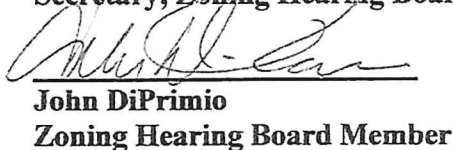
Aye:
Nay:


Jose Casalina
Vice Chair, Zoning Hearing Board

Aye:
Nay:


Michael O'Connor
Secretary, Zoning Hearing Board

Aye:
Nay:


John DiPrimio
Zoning Hearing Board Member

Aye:
Nay:

Laura Hanes
Zoning Hearing Board Member

Aye:
Nay:

There is a 30-day period after the date of this decision for an aggrieved person to file an appeal in court to contest an approval or denial by the Zoning Hearing Board. Applicants that take action on a Zoning Hearing Board approval during the 30-day appeal period, do so at their own risk.

All applicable application and/or permits must be secured from the Township of Abington within six months of the date of this decision or this decision becomes null and void.

Decision Date
July 14, 2020

Mailing Date
August 13, 2020

EXHIBIT “C”
Request for Determination

Craig R. Lewis
Direct Dial: (510) 941-2584
Direct Fax: (610) 684-2021
Email: rlewis@kaplaw.com
www.kaplaw.com

August 13, 2020

VIA EMAIL AND FIRST CLASS MAIL

Shawn Littlefield, Zoning Officer
Abington Township
1176 Old York Road
Abington, PA 19001

**RE: Request for Zoning Determination/Preliminary Opinion
1331 Easton Road, Roslyn, PA
Bainbridge Roslyn, LLC and Peter Tiburizo
Our Reference No. 16154.001**

Dear Shawn:

I represent Bainbridge Roslyn, LLC and Peter Tiburizo (collectively herein "**Bainbridge**"), the owners of the property located at 1331 Easton Road, Roslyn, Abington Township, PA ("**Property**"). In accordance with the Abington Township Zoning Ordinance ("**Zoning Ordinance**") and Abington Township Zoning Map, the Property is located in Abington Township's MS-VC Zoning District. The Property is an approximately 2.65 acre (+/-) parcel located along Easton Road at the intersection of Easton and Woodland Roads. The Property is improved with two buildings which comprise an in-line retail shopping center that was first developed in 1966 and is commonly known as the Roslyn Valley Shopping Center. The southern building is a one-story masonry building that consists of approximately 17,962 s.f. and is anchored by an approximately 11,890 s.f. (+/-) Rite Aid Pharmacy. The northern building is a one-story masonry building consisting of 11,530 s.f. (+/-). The Property has three access points to public streets; two to Easton Road and one to Woodland Road. The Property and the Shopping Center Property are depicted on a plan prepared by LandCore Engineering Consultants, P.C. entitled "Existing Conditions Plan" dated February 17, 2020 ("**Existing Conditions Plan**"), a copy of which is attached hereto.

As I believe you know, Bainbridge proposes to renovate a portion of the eastern building within the shopping center to accommodate an estimated 6,000 s.f. (+/-) in-line, 24-hour per day, 365 day per year, Wawa convenience store ("**Proposed Use**"). In conjunction with the Proposed Use, Bainbridge proposes to renovate portions of the shopping center including (1) reconfiguring the vehicular access to Woodland Road to provide better definition, better lane control and safe movements, (2) reconfiguring the existing parking along the northern portion

of the Property to create better circulation patterns and to provide an additional fourteen (14) parking spaces, and (3) to provide additional green space including landscaping and buffering between the northern building and Woodland Road. The Proposed Use and accompanying improvements are depicted on a plan prepared by LandCore Engineering Consultants, P.C., entitled “Zoning Plan” dated February 17, 2020 last revised May 13, 2020 (“**Zoning Plan**”). A copy of the Zoning Plan is attached hereto.

The Proposed Use is a use permitted by Special Exception in the MS-VC District. However, in accordance with Section 2103.C Use C-10, a convenience store in the MS-VC District is limited to no more than 3,000 s.f. Accordingly, on May 19, 2020, Bainbridge filed an application (“**Application**”) to the Abington Township Zoning Hearing Board (“**ZHB**”) seeking the required special exception and a variance from §2103.C Use C-10. A hearing on the Application was held on June 30, and July 14, 2020. At the conclusion of the Hearing the ZHB voted to grant Bainbridge’s request for a special exception but to deny Bainbridge’s request for a variance from §2103.C Use C-10. On July 15, 2020 the ZHB memorialized its oral vote in a one-page written decision (“**Zoning Decision**”). Bainbridge has appealed the Zoning Decision to the Montgomery County Court of Common Pleas.

During the hearing on the Application, a question arose whether zoning relief, in addition to the requested special exception and variance from §2103.C Use C-10, is required to permit the Proposed Use as depicted on the Zoning Plan. One specific inquiry was whether the Proposed Use complies with §2601.B.3 of the Zoning Ordinance. I am writing to request your determination that, the Proposed Use, as depicted on the Zoning Plan and described above complies with §2601.B.3 of the Zoning Ordinance.

Section 2601.B.3

Zoning Ordinance §2601.B is entitled Community Development Standards and provides, in pertinent part, as follows:

3. Hours of Operation In order to ensure harmony with existing communities, the following shall be applicable:
 - a. No delivery of inventory, merchandise, goods or other products shall occur between the hours of 10:00 p.m. and 6:00 a.m. to any property adjoining a residential zoning district, unless such single site is larger than ten (10) acres in lot area.
 - b. No trash or rubbish removal shall occur between the hours of 10:00 p.m. and 6:00 a.m. to any property adjoining a residential zoning district, unless such single site is larger than ten (10) acres in lot area.

c. 24 hour operations are permitted by state Law to the extent they are not detrimental to the health, safety, and welfare of the community. Commercial (retail) uses abutting residential properties not separated by a street shall not operate between the hours of 12:00 midnight and 6:00 a.m. as this is determined to be detrimental to the health safety and welfare of the surrounding community.

Section 201 of the Zoning Ordinance defines a “street” as:

A strip of land, including the existing right-of-way and not limited to a paved cartway, intended for use as a means of vehicular and pedestrian circulation to provide access to more than one lot, and which includes thoroughfare, alley, avenue, boulevard, court, expressway, highway, lane place and road. A street can be public or private.

Section 201 of the Zoning Ordinance defines an “alley” as:

A minor way which may or may not be legally dedicated and is used primarily for vehicular service access to the rear or side of properties abutting a street. Frontage on an alley shall not be considered street frontage.

As depicted on the Zoning Plan, the Property abuts a residential zoning district. As further depicted on the Zoning Plan, the Property is separated from the abutting residential zoning district by a “street”. Specifically, to the rear of the in-line retail buildings there is a private, non-dedicated “alley”. The alley is bisected by the property line shared by the Property and the abutting residential properties; a portion of the alley is located on the adjoining residential properties. The alley is unmistakably intended to provide vehicular service access to the rear of the Property. Further, as required by the abutting residential neighbors, the alley also provides pedestrian access between the Property and the abutting residential properties by way of existing gates. The Zoning Ordinance specifically provides that any requirement for a “street” can be satisfied by an “alley”. Therefore, where a commercial use abuts a residential district but is separated from that residential district by an “alley”, the commercial use is permitted to be a 24 hour operation in accordance with state Law. Accordingly, the Proposed Use complies with §2601.B.3 and is permitted to operate 24hrs per day.

Requested Determinations

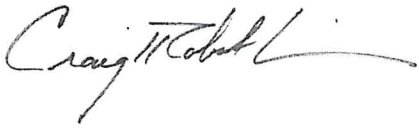
We are writing to request that you confirm, in your role as the Zoning Officer of Abington Township, that the Proposed Use, as depicted on the Zoning Plan and detailed herein, complies with §2601.B.3 of the Zoning Ordinance, in that the Proposed Use, although constituting a commercial use abutting a residential district, is separated from the abutting

Abington Township
August 13, 2020
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residential district by a "street" and therefore not limited to hours of operation of 6:00 a.m. to 12:00 midnight but is permitted to operate 24hrs per day in accordance with state Law.

Should you have any questions or require additional information in order to render your determinations, please do not hesitate to contact me.

Best Regards,

A handwritten signature in black ink, appearing to read "Craig R. Lewis". The signature is fluid and cursive, with a long horizontal stroke at the end.

Craig R. Lewis

Attachments

cc: Michael P. Clarke, Esq.
Marc B. Kaplin, Esq.
Bainbridge Roslyn, LLC

EXHIBIT “D”

Supplement to Request for Determination

Craig R. Lewis
Direct Dial: (510) 941-2584
Direct Fax: (610) 684-2021
Email: rlewis@kaplaw.com
www.kaplaw.com

September 11, 2020

VIA EMAIL AND FIRST CLASS MAIL

Shawn Littlefield, Zoning Officer
Abington Township
1176 Old York Road
Abington, PA 19001

**RE: Request for Zoning Determination/Preliminary Opinion
1331 Easton Road, Roslyn, PA
Bainbridge Roslyn, LLC and Peter Tiburizo
Our Reference No. 16154.001**

Dear Shawn:

As you know, I represent Bainbridge Roslyn, LLC and Peter Tiburizo (collectively herein "**Bainbridge**"), the owners of the property located at 1331 Easton Road, Roslyn, Abington Township, PA ("**Property**"). By letter dated August 13, 2020, I requested that you, in your official capacity as the Zoning Officer of Abington Township, issue a zoning determination ("**Request for Determination**"). Specifically, the Request for Determination sought your determination that the Proposed Use (as defined in my letter) as depicted on the Zoning Plan (attached to my letter) complies with §2601.B.3 of the Zoning Ordinance, in that the Proposed Use, although constituting a commercial use abutting a residential district, is separated from the abutting residential district by a "street" and therefore not limited to hours of operation of 6:00 a.m. to 12:00 midnight but is permitted to operate 24hrs per day in accordance with state Law. By letter dated August 27, 2020 you responded to my Request for Determination indicating that the Zoning Plan and accompanying information was inadequate for you to render a determination. Please accept the below and the attached updated Zoning Plan as a supplement to and renewal of my August 13, 2020 Request for Determination.

As set forth in more detail in the Request for Determination and depicted on the Zoning Plan, to the rear of the Property is an alley that serves as to principal service access to the stores within the shopping center. The alley is bisected by the property line shared by the Property and the abutting residential properties. The alley, although maintained by the owners of the Property, is located half on the Property and half on the abutting residential properties. The alley has been in existence and served the shopping center and abutting residences as long as the shopping center has been in existence. Approximately 25 years ago, the owner of the shopping center (the

Tiburzio family) updated portions of the shopping center and in doing so was asked to install a fence on the residential side of the alley to provide a buffer between the residences and the shopping center. It was also requested that the fence include individual gates for numerous homeowners so that they could continue to access the alley and the shopping center; many of the homeowners used the alley to load and unload household goods and to provide a pedestrian access to the shopping center and the greater Roslyn neighborhood. The fence and the gates were installed as requested. Approximately 8 years ago, the original fence had fallen into disrepair and needed to be replaced. When the fence was replaced many of the prior gates were not re-installed. However, at least one homeowner insisted that a gate remain to provide access for their property to the alley and the shopping center. This remaining gate has been added to the Zoning Plan and a copy of the revised zoning plan is enclosed herewith.

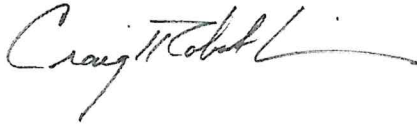
To summarize the Request for Determination:

- §2601.B.3 of the Zoning Ordinance prohibits commercial (retail) uses, abutting a residential district and not separated from the residential district by a street, from operating between the hours of 12:00 midnight and 6:00 a.m. All other commercial uses may operate 24hr/7 days/week in accordance with state law;
- a “street” is defined by the Zoning Ordinance as, inter alia, a public or private alley;
- an “alley” is defined in pertinent part as “A minor way which may or may not be legally dedicated and is used primarily for vehicular service access to the rear or side of properties abutting a street”;
- The Property abuts a residential district;
- The Property is separated from the residential District by an alley that serves the Property and the adjoining residential properties;
- The alley constitutes a “street”;
- The Property is separated from the adjoining residential district by a street;
- Commercial uses of the Property are not prohibited from operating 24hr/day 7 days/week;
- The Proposed Use complies with §2601.B.3 of the Zoning Ordinance.

I trust this additional information provided herein and the revised Zoning Plan answer any remaining question you may have. If not, and you require additional information in order to render your determination, please do not hesitate to contact me.

Abington Township
September 11, 2020
Page 3

Best Regards,

A handwritten signature in black ink, appearing to read "Craig R. Lewis". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Craig R. Lewis

Attachment

cc: Michael P. Clarke, Esq.
Marc B. Kaplin, Esq.
Bainbridge Roslyn, LLC

EXHIBIT “E”
Zoning Determination



Township of Abington

Engineering & Code Department

John L. Spiegelman, President
Thomas Hecker, Vice President

Richard J. Manfredi, Manager
Amy R. Montgomery, P.E., Director

October 1, 2020

Mr. Craig R. Lewis
Union Meeting Corporate Center
910 Harvest Drive, P.O. Box 3037
Blue Bell, PA 19422-0765

**Re: Request for Zoning Determination/Preliminary Opinion regarding ZHB
Case # 20-09, 1331 Easton Road, Roslyn, Abington Township**

Dear Mr. Lewis,

I am responding to your request for a Zoning Determination regarding Zoning Hearing Board Case # 20-09, 1331 Easton Road, Roslyn, PA. The application involved converting a portion of the existing eastern building within the shopping center to a new Wawa. Additional information was submitted on September 11, 2020 as requested.

After reviewing the information with the Township's Solicitor, it has been determined that the proposed use will require a variance from §2601.B.3.c in order to operate 24 hours per day. It is the opinion of this office that the alley in question does not constitute a "street" as defined within the Abington Township Zoning Ordinance.

If you have any questions regarding this letter, please feel free to contact me at 267-536-1013. Thank you.

Sincerely,

Shaun Littlefield
Interim Zoning Officer
Township of Abington
slittlefield@abingtonpa.gov
267-536-1013