Tuesday, December 19, 2017, 6:00 PM

CALL TO ORDER

The Tuesday, December 19, 2017 Derry Township Board of Supervisors public hearing was called to order at 6:03 p.m. by Chairman John W. Foley, Jr. in the meeting room of the Administration Building in the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA.

ROLL CALL

Supervisors Present:

John W. Foley, Jr., Chairman Susan M. Cort, Vice Chairwoman Justin C. Engle, Secretary Marc A. Moyer Matthew A. Weir

Supervisors Absent:

None.

Also Present:

Chuck Emerick, Director of Community Development
James N. Negley, Township Manager/Township Treasurer
Jon A. Yost, Township Solicitor
Jill Henry, Assistant Township Manager
Lauren Zumbrun, Economic Development Manager
Jenelle Stumpf, Community Development Secretary (stenographer)

Public Registering Attendance: John Payne, BIR; Jay States, Grove Miller Engineering; Ron Lucas, Stevens & Lee; Jim Snyder, Snyder Secary & Associates; Mike LaCesa, Brent Brubaker - Sheetz, Inc.; Doug Ednie, 47 Peach Avenue, Hershey; David Kray, C&S Kray Real Estate, LLC; Larry Moyer; Anne Searer, 2125 Carey Way; James H. Carter, 2097 Raleigh Road; Marlene Kanuck, 1156 Galway Court; Sue Kellner, Philip Jurus – 58 Locust Avenue, Hershey; Bill Henschke, 111 Elm Avenue, Hershey; Marie McAndrews, 115 Oak Lane, Hershey; Anne Newman, 531 Elm Avenue, Hershey; Mary Beth Backenstose, 218 West Governor Road, Hershey; Iris Bard, 77 Leearden Road, Hershey; Thomas A. Wimmer, 619 Appenzell Drive; Irene Youngman, 14 Golden Court; Judy Shulley, 77 Leearden Road; Michael Leader, 830 Cherry Drive, Hershey; Tom Stang, 25 Boxwood Drive; Geoffrey Crout, 319 Beech Avenue, Hershey; Scott and Jeannie Harvey, 961 Sunnyside Road, Hummelstown; Jon Stepanian, 1249 Cocoa Avenue, Hershey; Bruce and Sally McKinney, 139 Elm Avenue, Hershey; Chadd Blannett, 256 Elm Avenue; Ed Leppold, 23 Peach Avenue; Brennan and Lesa Brackbill, 37 East Areba Avenue; Bonnie Rice, 219 West Areba Avenue; Jenny Hammer, 38 Penzance Road; Ted and Sally Farrar, 945 Greenlea Road; Theresa Wilkins, 194 Governor Road; Michael Weidner, 5053 South Deerfield Avenue; Sandy Ballard; Rich Gamble; Todd Shaffer, 508 Sophia Circle; Alexia Hozella, 112 Robin Road; Sue Edris, 26 Glasgow Court; Corrie Edris, 170 West

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Governor Road; Kathy Cantore, 420 Elm Avenue, Hershey; James Heck, 53 Locust Avenue, Hershey

NEW BUSINESS

A. Public hearing regarding Conditional Use Application No. 2017-04 as filed by C&S Kray Real Estate, LLC and Sheetz, Inc. for a 'Large-Scale Retail' establishment and a 'Major Fuel Service' establishment at The Crossing

Chuck Emerick, Director of Community Development, reported the applicants request that Conditional Use authorizations be granted under the provisions of Chapter 225 (Zoning), Section 225-501.19 of the Derry Township Code of Ordinances regarding the development of a 'Major Fuel Service' establishment and from Section 225-501.29 regarding the development of a 'Large-Scale Retail' establishment on an assemblage of properties located at the southwest corner of the intersection of Governor Road and Fishburn Road. The subject site contains approximately 6.9 acres of developable land, after the proposed relocation of Sand Hill Road. Access to the site is to be provided by one right-in driveway from Governor Road, one right-in/right-out driveway from Fishburn Road, and a full movement driveway from Sand Hill Road. An 8-foot-wide combined bicycle/pedestrian path is proposed in lieu of required sidewalks along the site's perimeter.

The site is proposed to contain 35,525 square feet of large-scale retail space within two buildings, anchored by the Hershey Pharmacy (which includes the "Hershey Care" services); a 5,988-square-foot convenience store with fuel pumps to serve 12 vehicles, and indoor/outdoor dining; and a 7,282-square-foot speculative medical or professional office building. Details of the stormwater management facilities are not shown on the sketch submitted with this Conditional Use application; however, the applicants/developer will be required to meet the current Township stormwater management regulations.

The applicants submitted Zoning Hearing Board Petition 2017-17, which was heard by the Zoning Hearing Board on December 13, 2017. Relief was sought in the form of a special exception to permit larger signs than what is normally prescribed by the Ordinance, and a variance to allow 67.5% impervious coverage (a maximum of 60% is permitted by Ordinance). The Board will not render a Decision until January 17, 2018.

Mr. Emerick noted that the Derry Township Planning Commission and Township staff recommend that the Conditional Use authorizations be granted.

Per the Zoning Ordinance, the Board of Supervisors may attach reasonable conditions to the authorization of a Conditional Use. Mr. Emerick suggested the following conditions for the Board's consideration:

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- a. The applicants shall comply with the zoning regulations governing the uses and design of the property or obtain any zoning relief necessary to develop the plan in general conformance with the plans presented at the Conditional Use hearing.
- b. Comments offered by Township staff and Derck & Edson in the review of the Conditional Use application shall be adequately addressed at the time of land development plan approval.
- c. All parcels included in the proposed development shall be consolidated into one parcel.
- d. Building designs for all units shall be substantially in compliance with the plans presented as part of these Conditional Use requests.
- e. Parking shall be shared with other uses based upon a shared parking agreement as permitted by §225-402.4.
- f. The grant of approval of the Conditional Use requests shall not relieve the applicants from filing and having the Township approve any permit, land development, subdivision, or site plan which may be required by other Township regulations or from otherwise complying with all applicable Township regulations.
- g. The grant of these Conditional Uses shall expire if a zoning permit, building permit, or certificate of use and occupancy is not obtained within 24 months from the date of the grant of the Conditional Uses or if a phase of the development is not under review or active construction within 24 months from the date of the grant of the Conditional Uses.
- h. The uses shall meet all other requirements of the Township that may apply.

APPLICANT COMMENTS

Andrew Giorgione, attorney with Buchanan Ingersoll and Rooney, P.C., stated that the conditions recommended by Mr. Emerick are acceptable to his client (C&S Kray Real Estate, LLC).

Jim Snyder (also representing C&S Kray Real Estate, LLC) stated that he is a civil engineer and a principal and managing partner of Snyder Secary and Associates, a civil engineering/land planning firm in Harrisburg. Mr. Snyder submitted his resume to be included in the record. Regarding the existing conditions of the site, Mr. Snyder explained that this project represents the consolidation of 23 parcels and the relocation of a portion of Sand Hill Road to enable the redevelopment of the site. His client's part of the Conditional Use Application pertains to the

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establishment of a Large-Scale Retail facility at the corner of Governor Road and Fishburn Road. The applicant has worked with the Township for over a year in developing the sketch in order to get a prominent location on the site relative to the building, to keep the parking inward to the site, and to work with the various access points and layout and design. The applicant has had multiple meetings with Township staff and multiple sketches have been prepared over the past year to arrive at the configuration represented in the Conditional Use Application. An 8-footwide bike/walking trail is proposed along the periphery of the project, as desired by the Township. There will be interconnectivity between the various uses on the site with sidewalks and internal accessways, as well as connections to the street and to the bike path at several locations on the property. The applicant has not requested any other major variances from the Township ordinances beyond their request regarding maximum impervious coverage.

Mr. Snyder summarized the project's conformance with the performance standards listed in Section 225-501.29 (Retail, Large-Scale) of the Zoning Ordinance as follows:

- A. Within the Palmdale Mixed Use zoning district, Large-scale Retail shall only be permitted within the East Chocolate Avenue and Palmdale Future Development Area overlay zoning districts. Mr. Snyder stated that the project is not within the Palmdale Mixed Use zoning district; therefore, this standard does not apply.
- B. Within the Hershey Mixed Use zoning district, Large-scale Retail shall only be permitted within the Downtown Core, Southern Core and Compact Development overlay zoning districts. Mr. Snyder stated this condition has been met since the property is in the Hershey Mixed Use zoning district and the Southern Core Overlay.
- C. Parking shall not be located between the front building façade and the front lot line. On a corner lot, parking shall not be closer to the secondary frontage than the building face on that side. Mr. Snyder stated the project meets this condition. The applicant has worked hard to have the retail building positioned prominently on the corner of Governor Road and Fishburn Road and all of the parking located within the interior of the site.
- D. Where feasible, parking shall be shared with another use based upon findings from a completed parking study submitted as part of the proposed development. Mr. Snyder stated that all of the subject parcels will be joined into one property to a site condominium. All of the uses will share parking, and the applicant has provided parking calculations with the Conditional Use Application submission.
- E. Any structure containing a street fronting façade wall of more than 100 horizontal feet shall provide horizontal and vertical breaks in the building to reduce the appearance of a long flat building face. Mr. Snyder stated the project complies with this standard. As part of the application, the applicant has submitted preliminary

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architectural elevations that depict what the building will look like from the public street frontages and the interior of the site.

F. Large-scale retail within the Planned Campus West zoning district shall only be permitted as part of a Master Plan development area. Mr. Snyder stated that the project is not within the Planned Campus West zoning district; therefore, this standard does not apply.

Mr. Snyder summarized the project's conformance with Section 225-501.K (Specific Criteria for Conditional Uses) of the Zoning Ordinance as follows:

- 1. That the use will not adversely affect the health or safety of residents in the neighborhood or district in which the use is located. Mr. Snyder stated it is his opinion that this plan is consistent with the Township's Ordinances as anticipated. The proposed uses (retail, offices) are permitted uses under the Zoning Ordinance.
- 2. That the use will not overburden existing public services, including water, sanitary sewer, public roads, storm drainage or other public improvements. Mr. Snyder stated the uses will not overburden the existing public services. There is adequate utility capacity to serve the project, and any impacts occasioned by this plan, whether it be traffic, stormwater, etc., will be fully mitigated as part of the design of the plan. Given the infrastructure improvements in and around it, the project will be an enhancement to the area.
- 3. That the use will not be detrimental to the use or development of, or change the essential character of, the neighborhood or district in which the use is proposed. The Township Board of Supervisors shall consider, at a minimum, the impact of noise, dust, light, odor and adequacy of parking. Mr. Snyder stated that the project will not be detrimental to the neighborhood. These are customary uses and will not create light pollution or excessive noise or dust.

David Kray, C&S Kray Real Estate, 731 Cherry Drive, noted that his father, Chuck Kray, had been present at this hearing but had to leave suddenly due to illness. David read Chuck's prepared statement into the record: "As a local businessman, we have worked on this project for many years, and very closely with Derry Township officials for the past two years. We have listened to Derry Township's suggestions, from staff to the Planning Commission to the Board of Supervisors and we will continue to refine this site per community and official input. We know that traffic in this area is an immense problem, even though the traffic study shows that we are only about a 5% contributor, we are dedicating enough land, totaling almost 12% of our property to alleviate the traffic issues for many years to come. These are issues that we did not create. An immediate lane on 322, a future lane on 322, a lane on Fishburn Road, and the total relocation and widening of Sand Hill Road to allow a light at that new intersection. The bike

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path, which will connect to the existing path, will provide increased safety for those utilizing the area and coming from the village core. In addition to long-term traffic relief, we will be providing about \$200,000 in real estate taxes annually. We will create many jobs on this site, which will pay additional taxes as well as provide employment in our town. We are striving to do everything we can to help our community because we live here and love this town. Sara and I have lived within a half mile of this site for 35 of our 40 years together. Sara has been in Hershey for over 50 years and I have been here for over 40 years. I have served on our school board, church board, tax collection association, and as a committeeman. I have coached our kids in multiple sports and led our church youth group and tried with all my efforts to make Hershey a better place and I know my sons and daughter also share this philosophy of service to the betterment of our community. We simply love Hershey. We would like to have all local business, but the simple reality is that economically that does not work. Sites like this need other business and pad sites to sustain the investment and provide the funding for the infrastructure improvements. The focal point of the site is our independently-owned community pharmacy, not a national chain. We have been blessed to own and operate Hershey Pharmacy and Gift for over 25 years. We have tried to provide exceptional care to our patients and community, My hope is that my kids and grandkids will serve this community long after I am gone. I ask for your support in following the Planning Commission recommendation to approve the requests before you this evening."

Ron Lucas, attorney with Stevens & Lee in Harrisburg, entered Sheetz, Inc.'s Exhibit S-1 (lease with Equitable Owner of Property [redacted]), Exhibit S-2 (photos of new canopy design to be used), Exhibit S-3 (testimony outline for Michael A. LaCesa), and Exhibit S-4 (testimony outline for Brent M. Brubaker, P.E.) into the record. Michael LaCesa, Director of Real Estate for Sheetz, Inc., 5700 Sixth Avenue, Altoona, Pennsylvania, confirmed the accuracy of Exhibits S-1, S-2, and S-3. He stated that the proposed gas canopy is different than the canopies at other Sheetz locations. The canopy will not be backlit, and its illumination will be directed inward and downward.

Brent Brubaker, Sheetz, Inc., 5700 Sixth Avenue, Altoona, Pennsylvania, confirmed the accuracy of Exhibit S-4. Regarding the revised site plan and the proposed Sheetz location specifically, Mr. Brubaker noted that the drive aisles have been relocated; a 24-foot-wide drive aisle that went to the rear of the building has been eliminated; and the underground storage tanks were brought closer to the canopy, which allowed for the increase of greenspace. The Sheetz building, fueling pumps, and canopy are in a different location than they would usually be. The canopy and the front façade of the building are facing inward towards the site, and the back façade is facing towards Sand Hill Road. The building will also be further away from Fishburn Road than Sheetz would typically design it to be.

PUBLIC COMMENTS

Jonathan Crist, attorney, commented that the biggest concern that any store of this type has is the in-and-out and the traffic. It is a problem that there is only one exit from the site, and it is on

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Sand Hill Road so vehicles will have to make a left turn out of the site and a left turn at Fishburn Road to get back to 322. Traffic traveling westbound on 322 will have to get into the left-turn lane to get to the site, and a stacking lane will have to be added to accommodate the number of vehicles turning left onto Fishburn Road. This will block the intersection of Governor Road and Elm Avenue and add more time to the light cycle.

Jim Snyder stated that traffic will be addressed with the land development plan submission. Traffic studies have been submitted to PennDOT and the Township for review. Regarding Mr. Crist's comments, Mr. Snyder explained that there will be right-in movement from Governor Road, a right-in/right-out movement on Fishburn Road, and a signalized intersection at relocated Sand Hill Road and Fishburn Road. There will be lengthening of turning lanes on Fishburn Road, a northbound left-turn lane, and capacity improvements that are being done in conjunction with the Township's project.

Doug Ednie, 47 Peach Avenue, stated that his house is located approximately 300 feet from the edge of the site, and he is in support of the project. He is not fond of the loud music that Sheetz plays; however, he spoke with Mr. LaCesa prior to the start of the hearing and was assured that the music will be mitigated. Mr. Ednie thinks Sheetz is a great use for the site. The relocation of Sand Hill Road and the additional turn lanes will be huge improvements. He also appreciates the Krays' donation of land for additional right-of-way.

Bonnie Rice, 219 West Areba Avenue, complimented the Krays for proposing to have their local business on this site, but she has concerns about increased traffic, impervious coverage, and potential flooding. Ms. Rice noted the surrounding residents will not appreciate that Sheetz operates 24 hours a day, 7 days a week. The proposed pharmacy is acceptable, but Ms. Rice does not think a Sheetz facility is the highest and best use of the site. There is an existing Sheetz one mile away. She is opposed to the project.

Iris Bard, 77 Leearden Road, read her statement into the record: "Until I read The Sun yesterday, I did not know there was a Sheetz planned for the old Don's Pier area. How many others were unaware of this? I feel like this is being shoved down our throats without much thought behind it. Hershey is sure not upscale anymore. Why don't the residents of this fine community have a say when these monsters are proposed and have a chance to say 'We don't want another Sheetz in our backyard'? Tourists don't come to Hershey because there's a Sheetz, they go somewhere because there's something different, not the same old crap we have at home. We need some unique businesses. Let's leave the ho-hum stuff outside town limits. In town should be special. When I was a child living in the Reading area, my family came to Hershey to eat at the Cocoa Inn because it was special. Where is that today? We should have some things in Hershey that may not be found within a 50-mile radius. We do not need another bank, pizza shop, Italian restaurant, gas station, Subway, drugstore, fast food restaurant, motel, etc. Wouldn't it be nice to have a family-style restaurant? That would be a novel idea. You are doing a great disservice to the community by even thinking of a Sheetz on that corner. Years ago we

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fought against a Wawa on the corner of Cocoa and Governor Road and we won. We need to fight against you now to prevent this from happening. Let the residents have a say in this."

Philip Jurus, 58 Locust Avenue, Hershey, stated that while going door to door on Sand Hill Road, Governor Road, Maple Avenue, Hillcrest Avenue, Cherry Drive, and Fishburn Road two weeks ago, he learned that people had no idea this project is proposed, and the majority are not in favor of a Sheetz facility and do not think it will be an enhancement to the neighborhood.

Alexia Hozella, 112 Robin Road, commented that she works at the Medical Center and existing traffic conditions are horrendous for people to come to the Medical Center. The community needs to address existing deficiencies without outside financial interests involved before this development is approved. Also, there are already two Sheetz facilities in the Township to meet people's needs.

Mary Beth Backenstose, 218 West Governor Road, stated that her sister, Amy H. Backenstose, who resides at 731 Sand Hill Road, was unable to attend the hearing but asked that her statement be read into the record: "I am asking you to not grant the variances sought here tonight and to deny the changes in the Zoning Ordinance also sought here tonight by Kray Real Estate and Sheetz. While I agree a change must be made at the bottom of Sand Hill Road, I do not think the changes proposed are the ones that best suit the needs and the safety of the residents of all the surrounding neighborhoods. Adding a Sheetz will overburden the existing roads and the changes will not be adequate to meet the demands that Sheetz will bring to the roads in addition to the already existing burdens. Lastly, Sheetz will absolutely change the character of iconic Elm Avenue, Maple Avenue, Linden Avenue, Governor Road from the square to the school district, all for the worse. Fishburn Road and its unique homes will be destroyed and lastly, the changes on Sand Hill Road will be irreparable and detrimental to the residents of Sand Hill and there are many of us. First of all, the effect upon all of the neighborhoods will be an obstruction of sunlight, which is a nuisance; photopollution; noise pollution; and groundwater pollution which is detrimental to all of us, especially in this time of climate change. Secondly, Sand Hill is an inherently dangerous road in that with a few changes it could be made safer and fatalities and accidents could be avoided. Many young children and elderly people live on Sand Hill Road, as well as people who chose a seemingly country road that is close to downtown and grocery stores and yet somewhat quiet and not full of traffic, but with all the urban sprawl and the developments up the road, Sand Hill has become very busy and the speed limit is ignored and our daily lives, such as mowing our lawns, walking, playing outside, have become dangerous. Now with the traffic of the Hershey Medical Center coming off of Hope Drive onto the bottom of Sand Hill, our commute is also greatly impaired. At this time, before the Medical Center adds more to Hope Drive, which in time it will, I propose that Sheetz is not allowed to go on as planned with three entrances and only two exits. Lastly, Sheetz will forever change the nature of the whole town of Hershey. Who wants to live next to a Sheetz that is open 24 hours a day? In this time of so much trouble with the opioid epidemic, no one should change their surrounding neighborhoods for the worse. Good people live here, they take care of their

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homes and they chose to live in a quiet but convenient town. These are lovely homes and should be recognized as that and not brought down by pavement, increasing traffic for 24 hours a day. Also, why do we need a second Sheetz when there is one only two miles from the other one? Hershey could be a Mt. Gretna or a Lititz or a Savannah, Georgia. We had all the charm, beautiful buildings, trolleys, and surrounding farms, mountains, and waterways. Now we are in danger of becoming the Carlisle Pike or Route 22, Colonial Park. Please use your power for good and protect the residents who voted you here. Don't make Chocolate Town the Sheetziest place on Earth."

Randy Haldeman, 618 Appenzell Drive, asked if there is a study on the current and projected traffic counts. With development on Hope Drive, it is difficult to access Sand Hill Road. Also, the residents who live in the neighborhoods to the south of the site will be affected because they often need to find other ways to get down the hill to avoid the Medical Center traffic.

Mr. Emerick stated that the Township recently commissioned a Governor Road traffic study and is working toward adding a right-turn lane from Governor Road onto Fishburn Road. There have been multiple other studies over the years. He added that this is a conditional use hearing. There is still a land development plan process that has to take place, at which time the developer's traffic study will be further scrutinized to see that there are ample offsets for the impacts.

James Carter, 2097 Raleigh Road, asked if the developer has conducted a feasibility study. Do we need another Sheetz facility? With three Sheetz facilities within one mile of each other, Mr. Carter is concerned about unfair competition for the smaller gas stations in the area. If conducted, the feasibility study should be made available to other property owners in the area. Mr. Carter is also concerned that a traffic problem will be created as a result of there only being one exit out of the site.

<u>Vice Chairwoman Cort</u> commented that it is important for the public to be aware that the Board of Supervisors has to operate within regulations and ordinances. The Sheetz facility is a by-right permitted use at this site. Tonight's hearing has to do with Sheetz's request for Conditional Use authorization to have the ability to serve fuel to more than 8 vehicles simultaneously. Mr. Emerick added that the Comprehensive Plan envisioned these types of uses in different parts of the Township, but we want them to fit in with Hershey and that is why the Conditional Use standards for a Major Fuel Service use require the canopy to be inward facing and the parking to be interior to the site. The developer has worked with the Township for over a year, trying to get the Sheetz facility in the best location on the site in conformance with the regulations.

Rich Gamble, 39 Hockersville Road, asked how many Sheetz facilities the Township needs. The people of the community have spoken, and the Board of Supervisors needs to listen. We spent so much time and money on a Comprehensive Plan that represents what we want our town to look like. Why do we need 5 gas stations within a one-mile radius? There is an existing traffic

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problem and this development will make it worse. The Township should get the traffic situation under control first.

Tom Stang, 25 Boxwood Drive, stated that he was pleasantly surprised with the site layout because he had expected Sheetz to be located right on the corner of Governor Road and Fishburn Road. The Krays' donation of land for additional right-of-way and the relocation of Sand Hill Road are positive things. Mr. Stang is in support of the project and asked the Board to consider granting the application for the Conditional Uses.

Lindsey Drew, 73 Carousel Circle, congratulated the Hershey Pharmacy on the ability to expand in a time when many independent community pharmacies are struggling and large retail chains are taking over. Regarding the proximity to the Sheetz facility on Hersheypark Drive, Ms. Drew stated that for her, going to Hersheypark Drive for gas is usually not feasible because of traffic during tourist season and when there are events at the Giant Center. It is important to address the 9,000 Medical Center employees who come into the Township and to look at the revenue that would be realized as a result of these employees utilizing additional business in this area. She encouraged the approval of this application and suggested that other residents take the time to learn the ordinances. The time for commentary on whether or not the Sheetz facility should be allowed was during the formulation of the Comprehensive Plan and the Zoning Ordinance.

Lynn Schuck, 850 Zermatt Drive, Hummelstown, is concerned that the proposed development will add to existing traffic problems in this area. She does not think the Township needs a gas station at this location, and the additional impervious coverage will add to existing flooding problems. Ms. Schuck added that when Hershey gets too built up, tourists will not want to visit anymore.

ADJOURNMENT

On a motion by Secretary Engle, seconded by Supervisor Moyer, and a unanimous vote, the hearing adjourned at 7:12 p.m.

SUBMITTED BY:	
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Justin C. Engle	Jenelle F. Stumpf
Township Secretary	Community Development Secretary
	(stenographer)

Derry Township Board of Supervisors **Public Hearing re: Conditional Use Application No. 2017-04**December 19, 2017

6:00 p.m.

<u>Name</u>	<u>Address or Company</u>
John Payne	BIR
JAY STACES	<u>GME</u>
RONLUGAS	STEVENS 4 LEE
Dim Snypen	SNYDEN, SECONY
Mike LA Cosa	Sh & & + 2
BRENT BRUBAKER	SHEETZ
Dong Ednie	47 Reach Ave. Hershey
Davilkon	C S Kray
LARRY, MOYER	,
Anne Searer	2125 Carey Way
James A Carton	2097 Raleigh Rd
Markne Lanuck	1156 Galwayet.
Sue Kellner	58 Locust Ace Heasha
Philip Junis	JE To cust his Heisluy

Derry Township Board of Supervisors **Public Hearing re: Conditional Use Application No. 2017-04**December 19, 2017

6:00 p.m.

Bill Henschke
Mare McAndrews
Anne Newman
May Both Balento
Dry Bard
Chenos A. Wanuer
IRene Yamaman
Judy Shulley
Milal Leader
TanStang
Geoffley Cloud
Sout tolannie Harmy
Jon Stepanian
Land Solly Ma fine

Name

Address or Company HENZEL MIVE Beech Ave, Hershey Surryside rd. Hommelstown

Derry Township Board of Supervisors **Public Hearing re: Conditional Use Application No. 2017-04**December 19, 2017

6:00 p.m.

<u>Name</u>	Address or Company
Chadal Blannett	256 Eln Aue
ED LEPPOLD	23 PEACH RUE
Brennan & Lesa Brackbill	37 E. Areba Are.
Bungip Bica	219 M. Arebe, Ave
Jenny Hammer	38 Penzance Rd.
They dichers	101 Nyc Rd
18 FARRAR	945 GREBULER
Sally Laurer	, ,
Theorem Willias	194 Governor Rd
Michael Weidner	1053 S, Destrill he
Sandy Ballard	Rich Gamble
1000 Shalfee	509 Sophia Circle
Alexia Hozella	112 Robin Road
Sue Edris	26 Glasgow Ct.

Derry Township Board of Supervisors **Public Hearing re: Conditional Use Application No. 2017-04**December 19, 2017

6:00 p.m.

<u>Name</u>	Address or Company
Corrie Edris	170 W. Governor Pd.
Kathy Cantre	420 Elm Ave, Hersh
Corrie Edris Kathy Contre James Hell	33 Locust Are Husley

RESUME James S. Snyder, P.E. Principal / Managing Partner

EDUCATION:

Bachelor of Science, Civil / Structural Engineering, with distinction

Pennsylvania State University, 1989

Master of Business Administration (M.B.A.)

Pennsylvania State University, 1998

REGISTRATION:

Professional Engineer, PA: PE-038108-E, 08/26/1988

Professional Engineer, MD: 18350, 12/19/1990 Professional Engineer, NJ: 24GE05266700, 2016

AFFILIATIONS:

American Society of Professional Engineers National Society of Professional Engineers Pennsylvania Society of Professional Engineers Greater Harrisburg Association of Realtors Harrisburg Home Builders Association

Pennsylvania Bar Institute - Faculty / Continuing Education

EMPLOYMENT:

Snyder, Secary & Associates, LLC

Harrisburg, Pennsylvania. Principal / Managing Partner

EXPERIENCE:

Mr. Snyder has over 25 years of experience in the civil engineering and land development field and has represented many diverse clients and projects during this period. Mr. Snyder's experience has included all major sectors of development and construction including residential, commercial, industrial and institutional facilities. Mr. Snyder's design experience has ranged from small land development consulting projects to large, multi-faceted or mixed-use developments such as Traditional Neighborhood Developments (TNDs) exceeding 1,000 units, power plants, regional retail power centers and several large warehouse/distribution centers over several million square feet.

Presently, Mr. Snyder serves as the Managing Partner for the firm and is responsible for managing and directing business and other corporate activities in addition to serving as principal and project/client manager for the firm's key clients. From an engineering perspective Mr. Snyder's duties typically include site evaluation, zoning analysis, feasibility studies and due diligence activities, site design, utility and infrastructure design, obtaining project entitlements, construction administration, right-of-way acquisition, development of cost proformas, project budgeting and scheduling, value engineering and other related project management activities.

Mr. Snyder has also served several large municipalities as a municipal engineer and also routinely serves as an expert witness to the legal profession on litigation pertaining to eminent domain, construction, infrastructure, storm water and other various engineering and development matters.

DERRY TOWNSHIP BOARD OF SUPERVISORS

CONDITIONAL USE HEARING - December 19, 2017

SHEETZ EXHIBIT LIST

EXHIBIT S-1	Lease with Equitable Owner of Property (redacted)
EXHIBIT S-2	Photos of new canopy design to be used
EXHIBIT S-3	Testimony outline for Michael A. LaCesa
EXHIBIT S-4	Testimony outline for Brent M. Brubaker, P.E.

LEASE AGREEMENT

THIS LEASE AGREEMENT made this day of , 2016 (the "Effective Date", which is the date that this Lease Agreement is executed by the last of the parties hereto), between C & S KRAY REAL ESTATE, LLC, a Pennsylvania limited liability company, with an address of 731 Cherry Drive, Hershey, PA 17033 (hereinafter, "Landlord"), and SHEETZ, INC., a Pennsylvania corporation, having its principal place of business located at 5700 Sixth Avenue, Altoona, Blair County, PA 16602 (hereinafter, "Tenant").

RECITALS

- A. Landlord is the fee owner, under agreement or under pending agreement of a six (6) ± acre tract of land consisting of all or parts of 21 separate Dauphin County tax parcels and located at the intersection of West Governor Road (SR 322) and Fishburn Road, Derry Township, Dauphin County, PA. The various tax parcels are identified on the spreadsheet attached hereto as Exhibit "A" and are hereinafter together referred to as "Landlord's Property".
- B. Landlord is developing Landlord's Property for a retail project known as Governor's Square (hereinafter "Landlord's Project").
- C. A preliminary concept plan for Landlord's Project is attached hereto as Exhibit "B".
- D. Landlord intends to create a $2.00 \pm$ acre parcel within Landlord's Project of the dimensions as highlighted in bold on the preliminary concept plan attached hereto as Exhibit "B".
- E. The $2.00 \pm$ acre parcel, together with any and all rights and easements benefitting the parcel, is hereinafter referred to as the "Demised Premises".
- F. The remaining balance of Landlord's Property less the Demised Premises is hereinafter referred to as "Landlord's Remaining Lands".
- G. Tenant proposes to construct upon, occupy, and use the Demised Premises for a prototypical Sheetz Convenience Store, operating 24 hours per day, with petroleum dispensing pumps, inside and outside seating, and an automated car wash facility ("Tenant's Intended Uses") in general accordance with the preliminary site plan attached hereto as Exhibit "B" (hereinafter "Tenant's Project").
- H. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the Demised Premises upon the terms, conditions, covenants, and agreements set forth herein.

EXHIBIT

Tenant's internal construction schedule for its various projects, provided, however, that (i) any such delay shall not delay or affect Tenant's obligations as to Lease Commencement or its obligations to pay rent, taxes, and insurance rent after the Lease Commencement Date; (ii) Tenant's commencement of construction shall not be delayed more than twelve (12) months after Tenant's acceptance of Landlord's Improvements under Exhibit "C" hereof; and (iii) Tenant shall use reasonable and good faith efforts to ensure that Tenant's delayed construction shall neither hinder nor impact the opening or operations of any tenant/occupant in Landlord's Project, and in furtherance thereof, Tenant shall hold a pre-construction meeting at least two (2) weeks prior to commencement of construction and provide to Landlord a construction schedule with work times and establish construction entrances and staging areas with provisions for dust control;

- (d) <u>Contractor's Insurance</u>. Tenant shall obtain (or if Tenant engages a general contractor, require its general contractor to obtain) so long as construction activity is occurring with respect to Tenant's Improvements on the Demised Premises, the following minimum insurance coverages: (i) worker's compensation insurance as required by applicable law or regulation; (ii) employer's liability insurance in the amount of each accident for bodily injury; (iii) commercial general liability insurance covering all operations by or on behalf of the contractor, which shall have minimum limits of liability and coverages of (A) each occurrence for bodily injury and property damage; (B) for personal injury liability; and (C) general aggregate applying separately to Tenant's project.
- (e) <u>Lien Indemnification</u>. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all actions, claims, and demands arising out of or related to the filing of mechanic's liens against the Demised Premises by Tenant's contractors or subcontractors, as the case may be.

ARTICLE III TERM AND RENEWAL TERM

Section 3.1 <u>Initial Term.</u> The initial term of the Lease ("Initial Term") shall be for a period of fifteen (15) years commencing on the Lease Commencement Date. The "Lease Commencement Date" is defined as the last to occur of the following: (a) thirty (30) after Tenant's Notice of Satisfaction under Section 1.3(d) but in no event later than the expiration of the Permitting Period, as may be extended; and (b) the date of Tenant's acceptance of Landlord's Improvements under Exhibit "C" hereof. Promptly upon the occurrence of both of the foregoing events, the parties shall confirm in writing the occurrence of such events and the Lease Commencement Date.

Section 3.2 Renewal Term. Landlord hereby grants to Tenant seven (7) successive renewal options of five (5) years each (the "Renewal Term" or collectively with the Initial Term, the "Term"). The Initial Term and each subsequent Renewal

Term will be automatically renewed unless Tenant gives notice of termination as set forth in Section 3.3 below. The terms and conditions for each Renewal Term shall be the same as for the Initial Term hereof, except that the monthly rental, then in effect, shall be increased by ten percent (10%) over the then current rent in effect as specified in Article IV of this Lease.

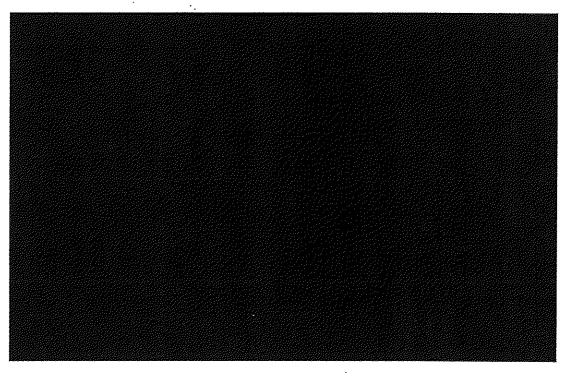
Section 3.3 <u>Termination; Non-renewal</u>. If Tenant elects not to renew the Lease, Tenant will provide written notice to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term or the then current Renewal Term.

Section 3.4 <u>Memorandum of Lease</u>. This Lease Agreement will not be recorded, but rather a Memorandum of Lease may be recorded, at the option of Landlord or Tenant. If recorded by Tenant, Tenant shall pay any realty transfer taxes that may be due as a result of the recordation of any Memorandum of Lease covering this Lease Agreement.

Section 3.5 <u>Lease Year.</u> During the Term of this Lease, a "Lease Year" shall mean a period of twelve (12) consecutive months, except that the first Lease Year shall begin on the Lease Commencement Date and shall end the following calendar year on the last day of the calendar month which precedes the month of the Lease Commencement Date.

ARTICLE IV RENT

Section 4.1 Rent During Initial Term.



Premises, and shall reasonably endeavor to give Tenant at least twenty-four (24) hours advance notice of such entry (except in the event of an emergency).

Tenant's Renovations/Remodel/Rebuild. During the Term of this Lease, Tenant may elect to renovate, remodel or rebuild Tenant's improvements on the Demised Premises. Tenant shall provide copies of building and utility plans for any re-constructed improvements. Landlord shall not have the right to object to any such future renovation, remodeling or rebuild so long as the size of the store building and the value of the Tenant's improvements is not less than that existing prior to any such renovation, remodeling or rebuild. If the approval of any future remodel or rebuild requires that Landlord, in its capacity as owner of the Demised Premises, enter into or sign governmental agreements or permits relating to Tenant's work (including stormwater maintenance facilities), Landlord agrees to promptly execute and deliver such permits and to Tenant so long as Tenant agrees to perform any and all obligations imposed upon, and to assume any liabilities arising against Landlord under such permits and agreements as if Tenant were the landowner. Tenant's assumption of obligations and liabilities arising during the Term of the Lease Agreement under any such permits and agreements shall automatically terminate and pass to Landlord upon the expiration or earlier termination of the Lease Agreement, provided, however, that any outstanding maintenance or indemnity obligation or liability arising during the Term of the Lease for which Tenant had notice that remains uncured or unsatisfied by Tenant as of the date of such expiration or termination shall nevertheless survive such expiration or termination until cured, satisfied, or resolved by Tenant.

Section 8.4 Condominium; Assignment of Landlord's Rights and Obligations as Unit Owner. In the event Landlord develops Landlord's Property (including the Demised Premises) as a condominium, Landlord and Tenant shall execute an assignment and assumption agreement (in a form which is mutually acceptable to Landlord and Tenant) pursuant to which, among other things, Landlord shall assign to Tenant, and Tenant shall agree to assume for the Term of this Lease, Landlord's rights and obligations under the Condo Declaration as the owner of the unit which comprises the Demised Premises.

ARTICLE IX ASSIGNMENT

- Section 9.1 <u>Assignment and Subletting by Tenant.</u> Provided that at the time of any such assignment or subletting Tenant is not then in default of this Lease, Tenant may assign or sublet the Demised Premises, for the uses and purposes permitted under this Lease, as follows:
- (a) Tenant obtains the prior consent of Landlord, which consent shall not be unreasonably withheld or denied by Landlord;
- (b) Notwithstanding Section 9.1(a) above, Tenant may assign this Lease, without the written consent of Landlord, to: (i) any corporation, partnership or .

other entity, which may, as a result of a reorganization, merger, acquisition, consolidation, or sale of all or substantially all of Tenant's assets, succeed to the business now being carried on by Tenant in central Pennsylvania; or (ii) any subsidiary or affiliated entity of Tenant, so long as such entity remains a subsidiary or affiliate of Tenant;

(c) Upon any assignment or sublet by Tenant, Tenant shall remain jointly and severally liable for rents and other obligations due under this Lease upon any default by the assignee or the subtenant. In the event that the Landlord's mortgagee requires approval of assignments, then Landlord agrees to reasonably cooperate in obtaining such mortgagee approval.

Section 9.2 <u>Assignment by Landlord</u>. This Lease is fully assignable and transferable by Landlord, subject to Tenant's Right of First Refusal in Article XII hereof and provided further that Landlord may not assign this Lease to any person, business or entity which is a business competitor of Tenant. For the purposes of this Section 9.2 only, a business competitor is defined as convenience store business with gasoline sales such as those conducted by and similar operators.

ARTICLE X PERSONAL PROPERTY

Section 10.1 Personal Property. Tenant, at its sole cost and expense, shall place or install such fixtures, furniture, furnishings, equipment and other personal property on the Demised Premises as Tenant shall deem necessary for the efficient conduct of Tenant's business.

Section 10.2 Signs. Tenant may, at its sole cost and expense (i) place a sign or signs on the Demised Premises announcing the future establishing of its business as well as Tenant's organization, function and program; and (ii) place such sign or signs on the Demised Premises as may establish a definite landmark for said business or appropriately advertise the same; provided that, all of the signs hereinabove referred to shall conform in every respect to all lawful governmental regulations pertaining thereto.

Section 10.3 Tenant's Right to Remove Personal Property. Any of the personal property which may be placed on the Demised Premises by Tenant are to remain the property of Tenant and it shall have the right to remove the same at any time, except that Tenant shall be responsible for the cost of any repairs of any damage to the Demised Premises caused by the removal of such personal property. The canopies, signage, the car wash building and related equipment (if constructed), and the underground storage tanks with related product lines and pumps are all deemed to be personal property. Any equipment not removed by the Tenant within sixty (60) days after the termination of this Lease shall become the property of Landlord and may be kept or removed from the Demised Premises by Landlord at the cost of

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

2002

LANDLORD:

C & S KRAY REAL ESTATE, LLC, a Pennsylvania limited liability company

By:__(Name:

Managing Member

WITNESS/ATTEST:

John K. Kachur Assistant Secretary

WITNESS/ATTEST:

TENANT: SHEETZ, INC.

a Pennsylvania corporation

By:_

Joseph S. Sheetz,

President

Parcel ID	Address	Öwner	Acres
24-044-001	308 W Governor Rd	C & S KRAY REAL ESTATE LLC	0.49
24-044-002	620 Fishburn Rd	C & S KRAY REAL ESTATE LLC	0.23
24-044-003	626 Fishburn Rd	C & S KRAY REAL ESTATE LLC	0.29
24-044-004	636 Fishburn Rd	C & S KRAY REAL ESTATE LLC	1.30
24-044-005	343 Sand Hill Rd	C & S KRAY REAL ESTATE LLC	0.22
24-044-006	662 Fishburn Rd	C & S KRAY REAL ESTATE LLC	0,42
24-044-030	320 W Governor Rd	C & S KRAY REAL ESTATE LLC	0.27
24-044-031	326 W Governor Rd	C & S KRAY REAL ESTATE LLC	0,27
24-044-032	334 W Governor Rd	C & S KRAY REAL ESTATE ILC	0.27
24-044-042	322 Sand Hill Rd	C & S KRAY REAL ESTATE ILC	0.44
24-044-043	330 Sand Hill Rd	C & S KRAY REAL ESTATE LLC	0.27
24-044-044	338 Sand Hill Rd	C & S KRAY REAL ESTATE LLC	0.27
24-044-045	346 Sand Hill Rd	C & S KRAY REAL ESTATE LLC	0.27
24-044-046	354 Sand Hill Rd	C & S KRAY REAL ESTATE LLC	0.27
24-044-048	364 Sand Hill Rd	C & S KRAY REAL ESTATE LLC	0.18
24-044-051	349 Sand Hill Rd	C & S KRAY REAL ESTATE LLC	0,35
24-044-052	359 Sand Hill Rd	Plebani - Under Agreement	
24-044-053	# W at		
24-044-054	n de la companya de l		
	•		
24-044-047	360 Sand Hijl Rd.	Lerch - Pending	
24-044-058	23 Peach Ave.	Leppold - Pending	

EXHIBIT "A"
PARCELS FORMING LANDLORD'S
PROJECT





MICHAEL A. LACESA Testimony

Conditional Use Hearing

Board of Supervisors of Derry Township

December 19, 2017

Michael A. LaCesa, Director of Real Estate, East Region, Sheetz, Inc., 5700 Sixth Avenue, Altoona, PA

Duties include finding sites for new stores and seeing through to opening Over 23 years with Sheetz, Inc.

Sheetz is a family owned business with 564 stores in 6 states

Sell fuel, retail and food 24 hours a day, 7 days a week and 365 days a year

EXHIBIT S-1 Lease with Legal or Equitable Owner of Property

Fuel Service - Major

Permitted use by conditional use in the Hershey Mixed Use District

Definition - a facility which may include retail and/or food service with the ability to serve fuel to more than eight (8) vehicles simultaneously

5,988 s.f. building includes retail and food service Fuel canopy with 6 fuel pumps capable of serving 12 vehicles simultaneously

Fuel Service - Major

Specific requirements in Section 225-501.19

- A. Property is located in the Hershey Mixed Use District and area utilized by Sheetz is located entirely within the Southern Core Overlay District
- B. Pump areas and canopy will be located between the front façade of the principal building and the rear setback line since building will be facing away from any public street.

On this corner lot the canopy is not closer to the secondary road than the face of the principal building.

This layout of facing away from the two public streets adjacent to the Sheetz area is different from typical Sheetz stores including the two current stores in Derry Township. The layout is also not normal for convenience stores.

1

Exhibit

- C. Fuel canopy and support structure will not have interior illumination designed to attract attention to the canopy.
 Under canopy lighting will be flush mounted and directed downward.
- D. Fuel canopy will serve more than 8 vehicles and provides a visual break in canopy size and projection by the use of exposed trusses and the free floating canopy signs.

EXHIBIT S-2 PHOTO EXAMPLES OF NEW CANOPY DESIGN

Photos of current store in Morgantown, WVA show sloped truss roof style.

The new style is different than the two current stores in Derry Township as well as the typical Sheetz store built throughout PA with the large curved canopy border that is typically internally illuminated.

- E. Property will be separated from any residential properties by Fishburn Road and Sand Hill Road, both public streets. Since the use is not adjacent to any residential uses the requirement is not applicable.
- F No outdoor storage of equipment or materials will occur.
- G. No building or structure associated with the fuel service establishment will be located within 200 feet of a residential dwelling that is not separated by either Fishburn Rd or Sand Hill Rd, both existing streets.

BRENT M. BRUBAKER, P.E Testimony

Conditional Use Hearing

Board of Supervisors of Derry Township

December 19, 2017

Brent M. Brubaker, Engineering and Permits Project Manager, Sheetz, Inc., 5700 Sixth Avenue, Altoona, PA

Duties include managing consultants for design, obtaining all permits and approvals, and working with contractors through opening of new stores

Licensed P.E. in Pennsylvania since 1998 and worked for an engineering firm designing subdivision/land development plans, water systems and wastewater systems for 8 years. Served as Director of Public Works and Township Engineer for Patton Township, Centre County for 15 years

Has been responsible, working with consultants, for the approvals for the Sheetz store at the proposed retail development at Governor Road and Fishburn Road to be known as The Crossing.

Familiar with Sheetz operations and the experience Sheetz has in over 65 years of designing, constructing and operating 564 convenience stores in 6 states including PA.

The Sheetz store meets the definition for a Fuel Service – Major use as a conditional use in the Hershey Mixed Use District subject to the Southern Core Overlay District., as detailed in the testimony outline of Mike LaCesa.

The Sheetz store meets the specific requirements for a Fuel Service – Major use in Section 225-501.19, as described in the testimony of Mike LaCesa.

The Sheetz store meets the Specific Criteria (general standards) for conditional uses in Section 225-501.K

1. Use will not adversely affect the health or safety of residents in the neighborhood or district where the use is located.

District specifically planned for this type of use at this location and nothing about the store or its operation will cause an adverse impact on residents.

The store will face into the property and away from the two public streets adjacent to the Sheetz area. This layout is different from typical Sheetz stores including the two existing stores Derry Township. The layout is not normal for convenience stores.

Exhibit

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The use will not create any objectionable odors, noise, dust or light beyond and definitely better than what is normally expected from a fueling station

The use will meet the Township ordinance standards, including lighting standards.

2. Use will not overburden existing public services.

Public utilities are all available for the property and sufficient to handle the use including water, sanitary sewer, or other public improvements. Impacts from traffic will be mitigated on adjacent public roads. Storm drainage will meet the requirements of Township ordinances as well as the requirements of PA DEP.

3. Use will not be detrimental to the use or development of, or change the essential character of, the neighborhood or district in which the use is proposed.

The Sheetz store meets the Zoning Ordinance requirements for the permitted use at this location and will comply with requirements for this use including setback, landscaping and buffering.

The property is zoned for commercial uses, is adjacent to three public streets, adjacent to a commercial development and across Governor Road from an existing fueling station.

The Sheetz store will have adequate parking for the proposed use.

4. The use will meet the other requirements of the Zoning Chapter.