



MEMORANDUM IN SUPPORT OF CONDITIONAL USE APPLICATION

This firm has been retained by Sheetz, Inc. (“Sheetz”) to provide legal assistance in obtaining zoning approval for a proposed commercial retail store and self-serve fuel dispensing facility at the northeast corner of the intersection of I-77 and Ghent Road in the B-1 Gateway Business District and GI-O Ghent Interchange Mixed Overlay District. Under the Bath Township Zoning Resolution, “retail commercial uses” are a permitted use in the B-1 zoning district, and a “gasoline station” is a conditional use. Moreover, conditional use approval is necessary for the proposed mobile pick-up window under Table 701-1 and Section 701-D(7) of the Bath Township Zoning Resolution, which provides that a proposed “drive-through facility” is a conditional use in the B-1 zoning district. Thus, this Memorandum has been prepared to show that the proposed self-serve fuel dispensing facility and mobile pick-up window complies with the general and specific conditional use standards in Sections 309-C, 503-S, and 701-D(7) of the Bath Township Zoning Resolution.

A. Description of Proposed Convenience Store and Fuel Dispensing Facility

The proposed Sheetz convenience store and fuel dispensing facility will be located on approximately 3.22 acres of a 16.11 acre tract of land (the “Property”) located to the north of the Ghent Road/I-77 intersection in Bath Township. The 3.22-acre parcel will be leased by VOH – Bath Township, LLC to Sheetz (“Sheetz Parcel”) and will be located directly across from the existing signalized intersection at the I-77 exit on Ghent Road. I-77 runs along the eastern border of the Sheetz Parcel, and Ghent Road runs along the southern border of the Sheetz Parcel. The design and size of the proposed store is similar to the proposed Sheetz convenience store that was approved by the Board of Zoning Appeal for construction on Springside Drive.

The proposed location for Sheetz at the intersection of a major thoroughfare (I-77) and a minor arterial roadway (Ghent Road) fully complies with Section 503-S of the Bath Township Zoning Resolution, which provides that “gasoline stations” shall be located on “major thoroughfares or at intersections of arterial and/or collector streets as defined by the Summit County Subdivision Regulations.” *Id.* Moreover, the proposed site plan complies with the applicable setback and parking requirements and will be constructed with the same building materials as the proposed Sheetz that was recently approved by the Bath Township ARC and BZA on Springside Drive. Thus, as discussed below, the proposed fuel dispensing facility and mobile drive-up window complies with the applicable conditional use criteria set forth in the Bath Township Zoning Resolution.

B. Compliance with General and Specific Conditional Use Criteria

1. General Conditional Use Criteria

Section 309-C of the Bath Township Zoning Resolution sets forth the following general conditional use standards that should be considered by the Board of Zoning Appeals in deciding whether to grant conditional use approval:

- (1) The use is a conditional use, permitted with approval by the BZA, in the district where the subject lot is located;
- (2) The use is in accordance with the objectives of the Bath Township Comprehensive Plan and zoning resolution;
- (3) The conditional use will not substantially and/or permanently injure the appropriate use of neighboring properties and will serve the public convenience and welfare.
- (4) The BZA shall also consider the following as applicable to the subject application:
 - (A) The comparative size, floor area and mass of the proposed structure(s) in relationship to adjacent structures and buildings in the surrounding properties and neighborhood;
 - (B) The frequency and duration of various indoor and outdoor activities and special events and the impact of these activities on the surrounding area;
 - (C) The number of transit movements generated by the proposed use and relationship to the amount of traffic on abutting streets and on minor streets in the surrounding neighborhood;
 - (D) The capacity of adjacent streets to handle increased traffic in terms of traffic volume;
 - (E) The added noise level created by activities associated with the proposed use and the impact of the ambient noise level of the surrounding area and neighborhood;
 - (F) The requirements for public services where the demands of the proposed use are in excess of the individual demand of adjacent land uses in terms of police and fire protection, and the presence of any potential fire or other hazards created by the proposed use;
 - (G) The general appearance of the neighborhood will not be adversely affected by the location of the proposed use on the parcel;
 - (H) The impact of night lighting in terms of intensity and duration and frequency of use as it impacts adjacent properties and in terms of presence in the neighborhood;

(I) The impact of the landscaping of the proposed use in terms of maintained landscaped areas versus areas to remain in a natural state, and the openness of landscape versus the use of buffers and screens;

(J) The impact of a significant amount of hard-surfaced areas for building, sidewalks, drives, parking areas and service areas in terms of noise transfer, water runoff and heat generation;

(K) The potential for the proposed use to remain in existence for a reasonable period of time and not become vacant or unused. Consideration should also be given to unusual single purpose structures or components of a more temporary nature; and

(L) Any other physical or operational feature or characteristic that may affect the public health, safety and welfare.

Here, the first three (3) conditional use criteria set forth in Sections 309-C(1), (2), and (3) are clearly met because the proposed use as a commercial retail store is a permitted use, and the Bath Township Board of Trustees has previously determined in accordance with the Bath Township Zoning Resolution and Bath Township Comprehensive Plan that a “gasoline station” and a “drive through facility” shall be conditional uses in the B-1 zoning district. Moreover, the proposed self-service fuel dispensing facility and mobile pickup window will not substantially and/or permanently injure the appropriate use of neighboring properties and will serve the public convenience and welfare because the proposed use will be located immediately adjacent to the intersection of I-77 and Ghent Road and is not in close proximity of any non-commercial uses.

With respect to the other conditional use factors set forth in Section 309-C(4), they also weigh strongly in favor of granting conditional use approval for the following reasons:

- First, the proposed use is intended to rely on existing traffic at this major intersection, and will not cause motorists on I-77 or Ghent Road to use any abutting streets or other minor streets in Bath Township.
- Second, the proposed use does not cause an unreasonable amount of noise, and does not require public services that exceed the normal demand for police and fire protection services in a commercial or business zoning district.
- Third, the general appearance of the store is the same as the general appearance of the store that was approved for the proposed Sheetz on Springside Drive, and will not adversely affect any neighboring parcels. Moreover, the impact of night lighting will not negative impact any adjacent parcels because the lighting plan calls for zero candles at the property boundary lines.

- Fourth, the proposed site plan includes appropriate landscaping and buffering, including the installation of new landscaping bufferyards in the front and back of the store and the installation of a 6 ft. white vinyl fence along the western boundary of the Sheetz parcel.
- And, finally, there is no potential in this case that the proposed use will remain in existence for a short period of time or will become vacant or unused. The proposed use does not call for the construction of an “unusual single purpose structure” or any “temporary” structures.

Accordingly, the BZA should conclude that the general criteria for conditional use approval in Section 309-C has been met.

2. Specific Conditional Use Criteria

a. The Proposed Fuel Dispensing Facility Complies With The Specific Conditional Use Standards for “Gasoline Stations.”

Section 503-S of the Bath Township Zoning Resolution set forth additional conditional use standards for “gasoline stations.” In particular, Section 503-S provides that the following criteria shall apply to gasoline stations:

- (1) Such establishments shall be located on major thoroughfares or at intersections of arterial and/or collector streets as defined in the Summit County Subdivision Regulations.
- (2) Gasoline stations should be designed so as to not interfere with pedestrian connectivity between various commercial areas in and around the township.
- (3) All activities, except those required to be performed at fuel pumps, shall be carried on inside a building. If any services are to be provided for vehicles (e.g., service, oil changes, etc.), such services shall be provided within a fully enclosed building.
- (4) No more than two driveway approaches shall be permitted directly from any thoroughfare and shall not exceed 30 feet in width at the lot line.
- (5) If the property fronts on two or more streets, the driveways shall be located as far from the street intersection as is practical.
- (6) Outdoor storage and display shall be regulated by Sec. 701: Accessory Use Regulations.

Id.

Here, all of the specific conditional use standards in Section 503-S have been met. First, as previously discussed, the proposed self-serve fuel dispensary facility will be located on a major thoroughfare (I-77) and will be located at the intersection of I-77 and Ghent Road, which is classified as a minor arterial roadway. Moreover, the use has been designed in a manner that will not interfere with pedestrian connectivity, and in fact will be located immediately across from the exit and entrance to I-77 on Ghent Road. While there will be some minor outdoor storage of certain products, as permitted by Section 701 of the Bath Township Zoning Resolution, there will not be other activities that will take place outside of the store, except for self-serve fueling, electric charging stations, and access to air pumps for tire pressure. The property does not front upon two or more streets, and there will be only one primary driveway approach from Ghent Road that has been designed with sufficient width to line up with the existing signalized intersection at I-77 and Ghent Road. Thus, the BZA should conclude that the specific conditional use factors in Section 503-S of the Bath Township Zoning Resolution have been met.

b. The Proposed Mobile Pick-Up Window Complies With The Specific Conditional Use Standards for “Drive-Through Facilities.”

Table 701-1 lists “drive-through facilities” as a conditional use in the B-1 zoning district, and Section 701-D(7) sets forth specific conditional use standards for “drive-through facilities.” In particular, Section 701-D(7) provides, in relevant part, as follows:

(A) Drive-through facilities shall be subject to the vehicle stacking requirements of Sec. 1206: Vehicle Stacking Requirements.

(B) Audible electronic devices such as loudspeakers, automobile service order devices, and similar instruments shall be set back a minimum of 300 feet from any residential dwelling unit and shall be subject to all applicable noise resolutions and ordinances.

(C) No service shall be rendered, deliveries made, or sales conducted within the required front yard; customers served in vehicles shall be parked to the sides and/or rear of the principal structure.

(D) All drive-through areas, including but not limited to menu boards, stacking lanes, trash receptacles, loudspeakers, drive up windows, and other objects associated with the drive-through area shall be located in the side or rear yard of a property to the maximum extent feasible, and shall not cross, interfere with, or impede any public right-of-way.

(E) A fence or screen between four and six feet in height shall be constructed along any lot line abutting a residential district.

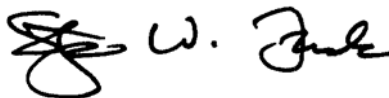
Id.

Here, the proposed mobile pick-up window is not a typical drive-through in that it does not provide for the ordering of items at the site through the use of loud speakers and menu boards. Since the proposed convenience store is not a “restaurant,” Sheetz does not need to provide eight (8) stacking spaces under Section 1206-A. Rather, given that the pickup window will only be used for mobile pickup orders, there is more than sufficient room for stacking behind the store to accommodate this particular use. Additionally, the mobile pickup window complies with the other conditional use standards in Section 701-D(7) because it will be located at the rear of the store, is not adjacent to any residential zoning districts, and does not cross, interfere with, or impede any public right-of-way. Accordingly, the BZA should conclude that the mobile pickup window complies with all of the conditional use standards in Section 701-D(7).

C. Conclusion

Under Ohio law, it is well-established that a local government “may not deny a conditional zoning certificate merely because the conditionally permitted use proposed is no longer desired for the proposed location.” *Gillespie v. City of Stow* (1989), 65 Ohio App.3d 601, 607 (9th Dist. 1989). Here, the Bath Township Board of Trustees has provided, by resolution, that gasoline stations and drive-thru facilities shall be permitted in the B-1 Zoning District if the relevant conditional use criteria in Sections 309 and 503 of the Bath Township Zoning Resolution has been met. Accordingly, based upon the conditional use criteria set forth in Sections 309, 503 and 701, we respectfully request that the BZA grant conditional use approval for the self-serve fuel dispensing facility and mobile pick-up window that will be provided at the Sheetz commercial retail store at the northeast corner of the intersection of I-77 and Ghent Road in Bath Township, Ohio.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen W. Funk". The signature is stylized and cursive.

Stephen W. Funk