

## MEMORANDUM IN SUPPORT OF VARIANCE APPLICATIONS

This Memorandum is being submitted in support of two (2) area variances that are being requested by VOH – Bath Township, LLC (“VOH”) and Sheetz, Inc. (“Sheetz”) (the “Applicants”) 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.

Section 309-B(2) of the Bath Township Zoning Resolution set forth a number of factors that should be considered and weighed by the BZA in determining whether to grant an area variance. No one factor is controlling. Rather, as the Ohio Supreme Court has held, the inquiry “should focus on the spirit rather than the strict letter of the zoning ordinance so that substantial justice is done.” *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83, syllabus (1986). Here, the Applicants are requesting two area variances:

- (1) A variance from the requirement in Section 503-S(4) of the Bath Township Zoning Resolution, which provides that a driveway approach for a gasoline station “shall not exceed 30 feet in width at the lot line.”
- (2) A variance from the maximum building footprint of 3,000 square feet and maximum gross floor area of 6,000 square feet set forth in Section 504-B(4) of the Bath Township Zoning Resolution.

We address the merits of the two variances more fully below:

### DISCUSSION

#### **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 store will be similar in design and in size to the proposed Sheetz convenience store that was recently approved by the Bath Township Board of Zoning Appeals 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.* Indeed, given its unique size and location, the Sheetz Parcel is different from all other properties in Bath Township because it is bordered by I-77 to the east,

vacant land to the north and west, and Ghent Road to the south. Thus, there are no adjacent properties that will be negatively impacted by the proposed variances.

The proposed site plan complies with all of the general conditional use criteria and the specific conditional use criteria for a “gasoline station” in Section 503-S of the Bath Township Zoning Resolution, except for one (1) minor area requirement relating to the width of the driveway approach on Ghent Road. Section 503-S(4) of the Bath Township Zoning Resolution provides that “[n]o more than two driveway approaches shall be permitted directly from any thoroughfare and shall not exceed 30 feet in width at the lot line.” Here, while the proposed Sheetz will have only one driveway approach on Ghent Road, a variance from the 30 ft. width requirement is being requested in order to ensure that the width of the driveway on Ghent Road lines up with the existing signalized intersection at I-77 and Ghent Road and provides for the sufficient turning radius for fuel delivery trucks.

The proposed Sheetz also complies with all of the general development standards in the B-1 Zoning District, except that the maximum building footprint for the proposed convenience store is 6,139 square feet. A variance is being requested, therefore, because Section 504-B(4) of the Bath Township Zoning Resolution provides “the maximum building footprint shall be 3,000 square feet and the maximum total gross floor area shall be 6,000 square feet” in the B-1 and B-5 zoning districts. The existing building on the Property is over 17,000 square feet, so the new Sheetz will substantially reduce the existing building footprint on the Property.

## **B. Compliance with Relevant Factors For Granting Area Variance**

The Ohio Supreme Court has established a “practical difficulties” standard for area variances that recognizes that variances should be granted by a township board of zoning appeals if strict compliance would impose a practical difficulty upon the property owner. In this regard, the question of whether to grant an area variance must be based on a balancing of the following seven, non-exclusive factors:

- (1) whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without a variance;
- (2) whether the variance is substantial;
- (3) whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- (5) whether the property owner purchased the property with knowledge of the zoning restriction;

- (6) whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
- (7) whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

*Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). No single factor is determinative. *Id.* Rather, the relevant inquiry “should focus on the spirit rather than the strict letter of the zoning ordinance so that substantial justice is done.” *Id.*

Section 309-B of the Bath Township Zoning Resolution adopts the same non-exclusive *Duncan* factors for granting an area variance, but adds two additional factors that may be considered – (1) “whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district” and (2) “whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.” *Id.* As was explained by the Supreme Court in *Duncan*, however, Section 309-B also provides that “[n]o single factor listed above may control, and not all factors may be applicable in each case.” *Id.* Thus, Section 309-B provides that “[e]ach case shall be determined on its own facts.”

### **1. Variance From 30 Ft. Driveway Width Requirement.**

As previously discussed, a variance for the driveway approach on Ghent Road is being requested in order to ensure that the width of the driveway lines up with the existing signalized intersection at I-77 and Ghent Road and provides for the sufficient turning radius for fuel delivery trucks. Indeed, this case presents a unique and special circumstance because ODOT and Summit County are the regulatory entities that regulate the width of driveway approaches at major intersections with an interstate exit, and they generally mandate that a driveway approach must line up with the width of the existing signalized intersection at an interstate exit ramp. Given the close proximity of the existing signalized intersection to the proposed Sheetz driveway, therefore, it would result in an unnecessary conflict with the intersection and an unnecessary safety hazard if the width of the Sheetz driveway approach was smaller and cars were forced to merge into a smaller driveway upon leaving the intersection.

Under the circumstances, therefore, a variance clearly should be granted based upon the seven (7) *Duncan* factors and the other non-exclusive factors set forth in Section 309-B. Strict compliance with the 30 ft. width requirement would cause a practical difficulty for the proposed Sheetz, which must comply with applicable ODOT and Summit County standards for the width of any driveway approach that is located directly across from a signalized intersection. Indeed, given the unique and special circumstances presented by this case, the proposed variance is not substantial, and will not have a negative impact on the essential character of the neighborhood or cause a substantial detriment to adjoining properties. Moreover, the variance will not adversely affect the delivery of governmental services, but will actually improve the ability of fire trucks and

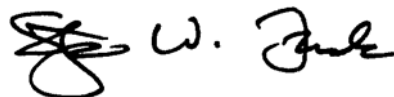
other large EMS vehicles to access the site. Further, it would not violate the spirit and intent behind the zoning requirement to permit Sheetz to construct a driveway approach that matches the width of the existing signalized intersection, particularly given that Section 503-S is primarily focused on ensuring that there are no more than two driveway approaches, and this site has only one driveway approach directly across from the existing intersection at I-77 and Ghent Road. Thus, for all of these reasons, substantial justice will be done by granting the variance.

## **2. Variance from Maximum Building Footprint Requirement**

As previously discussed, the Applicants are requesting a variance from the maximum building footprint of 3,000 square feet and the maximum total gross floor area of 6,000 square feet set forth in Section 504-B(4) of the Bath Township Zoning Resolution. The proposed Sheetz is 6,139 sq. feet, which is a standard size for most Sheetz convenience stores that is similar in size to the proposed store that was approved by the BZA at Springside Drive. Moreover, it will be substantially smaller than the existing building on the Property.

Indeed, given that the proposed store is located in at the intersection of I-77 and Ghent Road, this case presents unique and special circumstances because the proposed Sheetz is located at a signalized intersection that runs immediately adjacent to I-77, and there are no adjacent properties to the north or the west that will be negatively impacted by the construction of the store. The granting of a variance, therefore, will not negatively impact the character of the surrounding neighborhood, will not be detrimental to adjacent properties, and will not adversely affect the delivery of governmental services. Moreover, given that the size in the store is substantially in conformity with the 6,000 total gross floor area requirement and similar in size to the store that was approved on Springside Drive, a variance will not violate the spirit and intent behind the zoning requirement, which broadly applies to all properties in the B-1 and B-5 zoning districts, and does not take into account the unique and special circumstances presented by this particular intersection at I-77 and Ghent Road. Thus, for all of these reasons, substantial justice will be done by granting the variance.

Respectfully submitted,



Stephen W. Funk