

**BEFORE THE ZONING HEARING BOARD OF  
UPPER GWYNEDD TOWNSHIP**

**APPLICATION OF  
PULTE HOMES OF PA, LIMITED PARTNERSHIP**

**Hearing Date: May 26, 2020**

**APPLICANT'S EXHIBITS**

- A-1 Zoning Hearing Board Application, Narrative of Requested Relief and Enclosure Letter dated January 15, 2020
- A-2 Upper Gwynedd Township Zoning Ordinance of 1987, as amended (*incorporated by reference*)
- A-3 Deed for Lots 1-4 between Newbury Mews LP and Pulte Homes of PA, Limited Partnership, dated November 6, 2019, effective November 18, 2019 and recorded in Deed Book 6162, Page 2707
- A-4 Deed for Lots 5-14 & 25-30 between Newbury Mews LP and Pulte Homes of PA, Limited Partnership dated February 6, 2020, effective February 7, 2020 and recorded in Deed Book 6171, Page 2244
- A-5 Sheet 2 of 21 of Final Plan, Record Plan for Newberry - Phase II, prepared by Woodrow & Associates, Inc., dated February 1, 2017 and last revised April 3, 2019
- A-6 Entry Sign Plan prepared by Pulte Homes, Inc. dated November 11, 2019
- A-7 Rendering of Proposed Sign prepared by Design Four Four Six (as submitted with application)
- A-8 Entry Sign Plan prepared by Pulte Homes, Inc. dated November 11, 2019 and last revised May 14, 2020
- A-9 Rendering of Proposed Sign prepared by Design Four Four Six (as proposed)

ALYSON M. ZARRO  
[alyson@rrhc.com](mailto:alyson@rrhc.com)  
Extension: 202



January 15, 2020

**Via Hand Delivery**

E. Van Rieker, Zoning Officer  
Upper Gwynedd Township  
Administration Building  
1 Parkside Place  
North Wales, PA 19454

**Re: Pulte/Gwynedd Park (Newbury-Phase II)  
Zoning Hearing Board Application**

Dear Mr. Rieker:

This firm represents Pulte Homes of PA, limited partnership (“Pulte”) in connection with the Gwynedd Park residential development located at the intersection of Hancock Road and Sanctuary Court in the Township (“Property”). Pulte is the builder of the homes in the Gwynedd Park development and is proposing to install a development identification sign in Open Space ‘A’ of the residential development. As the zoning applicable to the Property does not specifically permit a development identification sign or a ground sign larger than 0.75 square feet, Pulte is seeking variance relief in order to install the proposed development identification sign within Open Space ‘A’ as depicted on the record plan for the residential development.

Enclosed for filing in connection with Pulte’s Zoning Hearing Board Application (“Application”) are the following materials:

1. Twelve (12) copies of the Zoning Hearing Board Application Form and Narrative;
2. Twelve (12) copies of the Final Plan Record Plan for Newbury-Phase II prepared by Woodrow & Associates, Inc., Sheet 2 of 21, which depicts the location of the proposed sign;
3. Twelve (12) copies of an Entrance Sign Plan prepared by Pulte Homes, Inc. dated November 11, 2019;
4. Twelve (12) copies of a rendering of the proposed sign prepared by Design Four Four Six; and

E. Van Rieker, Zoning Officer  
Upper Gwynedd Township  
January 15, 2019  
Page 2

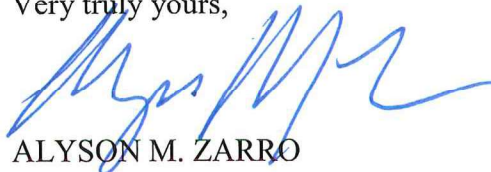
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5. A check in the amount of \$750.00 made payable to Upper Gwynedd Township, the Zoning Hearing Board Application fee.

Kindly forward the enclosed application materials to the Zoning Hearing Board for the scheduling of a hearing on the Application.

Should you have any questions or require any further information, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,



ALYSON M. ZARRO

AMZ/bas  
Enclosures

cc: Robert Hermley, Pulte Homes (w/enclosures - via email)  
Tony Maras, Esquire, Newbury Mews LP (w/enclosures - via email)

**ZONING HEARING BOARD**  
 UPPER GWYNEDD TOWNSHIP  
 MONTGOMERY COUNTY, PENNSYLVANIA  
 Zoning Ordinance of November 23, 1987 as Amended

Date: 2/15/19

APPLICATION FOR VARIANCE(S) Check One  
 APPLICATION FOR SPECIAL EXCEPTION(S) X  
 APPEAL FROM ZONING OFFICER'S  
 DECISION/DETERMINATION(S) \_\_\_\_\_

PROPERTY ADDRESS/ LOCATION Sanctuary Court Tract is 8 acres,  
North Wales, PA 19454 LOT SIZE Open Space ZONING DISTRICT R-4  
 A is 0.3709 acres

Check One (Applicant)  
 Owner - building lots only  
 Equitable Owner (under Agreement of Sale) - for building lots only  
 \_\_\_\_\_ Lessor  
 \_\_\_\_\_ Lessee

Applicant's Name: Pulte Homes of PA, Limited Partnership Check One  
150 Allen Road, Suite 303 Date Ownership Secured X Lots 1 through 4  
Basking Ridge, NJ 07920 Date of Agreement of Sale \_\_\_\_\_ 11/18/19  
908-204-4645 Date of Lease \_\_\_\_\_

Contractor's or Agent's Name \_\_\_\_\_ Public Water Yes X No \_\_\_\_\_  
 Public Sewer Yes X No \_\_\_\_\_

Address \_\_\_\_\_

Give full information as to Section of Zoning Ordinance involved and reasons why the Variance(s), Special Exception(s) or Appeal is desired and why it should be granted.  
 See attached sheet.

Newbury Mews LP By: Newbury Mews Associates, LLC, its general partner  
 Pulte Homes of PA, Limited Partnership By: PA 50 LLC, its general partner

By: [Signature] Applicant's Signature By: [Signature]  
 Owner's signature, if Applicant Please Print Name: JAMES P. MULLEN, MANAGER  
 is not Owner, agreeing to this Application  
 Attorney's Name: Alyson M. Zarro, Esquire  
 Address: Riley Ripper Hollin & Colagreco, P.O. Box 1265,  
 Telephone: 610-458-4400 Exton, PA 19341

Record of Secretary -- Zoning Hearing Board

Application No. \_\_\_\_\_ Hearing Date(s) \_\_\_\_\_ Decision Date \_\_\_\_\_

VARIANCE(S)	Granted _____	Denied _____
SPECIAL EXCEPTION(S)	Granted _____	Denied _____
APPEAL	Granted _____	Denied _____

RESTRICTIONS/CONDITIONS (if any)

- ( ) Zoning Officer
- ( ) Zoning Hearing Board
- ( ) Board of Commissioners
- ( ) Zoning Solicitor

Signature of Secretary \_\_\_\_\_



Application of Pulte Homes of PA, Limited Partnership  
Gwynedd Park  
Upper Gwynedd Township Zoning Hearing Board  
January 15, 2020

**NARRATIVE OF REQUESTED RELIEF**

Pulte Homes of PA, Limited Partnership (“Pulte”) is the builder of the homes in a residential development known as the “Gwynedd Park”, which is planned to contain a total of thirty (30) single-family semi-detached dwelling units and open space (“Residential Development”). The Residential Development zoned R-4 District and is located on an approximately 8 acre tract of land located at the intersection of Hancock Road and Sanctuary Court (which is the new road serving the Residential Development).

Pulte is proposing to install a ground sign identifying the name of the Residential Development and builder in Open Space ‘A’ of the Residential Development in the location identified as “Proposed Community Sign with Landscape Bed” on the enclosed Record Plan. The developer of the Project, Newbury Mews LP (“Newbury”), which is installing the improvements for the Residential Development, is the owner of Open Space ‘A’.

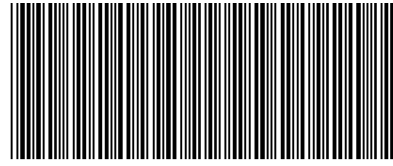
The R-4 District does not specifically permit an identification sign in connection with a single-family semidetached dwelling development. Pulte is seeking a variance from Section 195-35.J and Section 195 Attachment 1 (Schedule of Sign Regulations) in order to permit a ground sign identifying the name of the residential development and the builder larger than 0.75 square feet. The proposed signage including the lettering and background, but excluding the supports and bracing incidental to the display (per the definition of “Sign Area” in Section 195-35.C(1)) is approximately 7.8 square feet. Pulte is also seeking a variance from Section 195-35.N to permit the proposed sign to be internally illuminated. The reasons why this relief should be granted will be presented at the hearing.



RECORDER OF DEEDS  
MONTGOMERY COUNTY  
*Jeanne Sorg*

One Montgomery Plaza  
Swede and Airy Streets ~ Suite 303  
P.O. Box 311 ~ Norristown, PA 19404  
Office: (610) 278-3289 ~ Fax: (610) 278-3869

**DEED BK 6162 PG 02707 to 02718**  
INSTRUMENT # : 2019085755  
RECORDED DATE: 11/27/2019 09:25:17 AM



5706838-0020W

**MONTGOMERY COUNTY ROD**

**OFFICIAL RECORDING COVER PAGE**

Page 1 of 12

<b>Document Type:</b> Deed	<b>Transaction #:</b> 5951827 - 2 Doc(s)
<b>Document Date:</b> 11/06/2019	<b>Document Page Count:</b> 11
<b>Reference Info:</b>	<b>Operator Id:</b> sford
<b>RETURN TO:</b> (Simplifile) First American Abstract of PA Quakertown 2100 QUAKER POINTE DR STE 200 QUAKERTOWN, PA 18951 (267) 733-9321	<b>PAID BY:</b> FIRST AMERICAN ABSTRACT OF PA QUAKERTOWN


<b>* PROPERTY DATA:</b>			
Parcel ID #:	56-00-03640-00-9	56-00-03640-01-8	56-00-03640-02-7
Address:			
Municipality:	Upper Gwynedd Township (100%)	Upper Gwynedd Township (0%)	Upper Gwynedd Township (0%)
School District:	North Penn	North Penn	North Penn

**\* ASSOCIATED DOCUMENT(S):**

<b>CONSIDERATION/SECURED AMT:</b>	<b>\$760,000.00</b>
<b>TAXABLE AMOUNT:</b>	<b>\$760,000.00</b>
<b>FEES / TAXES:</b>	
Recording Fee:Deed	\$86.75
Additional Pages Fee	\$14.00
Additional Parcels Fee	\$45.00
Affordable Housing Pages	\$14.00
Affordable Housing Parcels	\$1.50
State RTT	\$7,600.00
Upper Gwynedd Township RTT	\$3,800.00
North Penn School District RTT	\$3,800.00
<b>Total:</b>	<b>\$15,361.25</b>

DEED BK 6162 PG 02707 to 02718  
Recorded Date: 11/27/2019 09:25:17 AM

I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office in Montgomery County, Pennsylvania.



**Jeanne Sorg**  
Recorder of Deeds

Rev1 2016-01-29

**PLEASE DO NOT DETACH**

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.

\*COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION

MONTGOMERY COUNTY COMMISSIONERS REGISTRY  
56-00-03640-00-9 UPPER GWYNEDD TOWNSHIP

NEWBURY MEWS LP \*\*\* NEW \*\*\* \$15.00  
B \*\*\* L NEW PARCEL NUMBER U \*\*\* 11/22/2019 JG

**Prepared By**

First American Abstract of PA, LLC  
2100 Quaker Pointe Drive, Suite 200  
Quakertown, PA 18951  
(215)538-1053

MONTGOMERY COUNTY COMMISSIONERS REGISTRY  
56-00-03640-01-8 UPPER GWYNEDD TOWNSHIP

NEWBURY MEWS LP \*\*\* NEW \*\*\* \$15.00  
B \*\*\* L NEW PARCEL NUMBER U \*\*\* 11/22/2019 JG

**Return To**

First American Abstract of PA, LLC  
2100 Quaker Pointe Drive, Suite 200  
Quakertown, PA 18951  
(215)538-1053

MONTGOMERY COUNTY COMMISSIONERS REGISTRY  
56-00-03640-02-7 UPPER GWYNEDD TOWNSHIP

NEWBURY MEWS LP \*\*\* NEW \*\*\* \$15.00  
B \*\*\* L NEW PARCEL NUMBER U \*\*\* 11/22/2019 JG

Order No.: **6125-QA ()**

Property Address: **Lots 1 through 4 Sanctuary Court,  
North Wales, Pennsylvania 19454**

Tax Parcel ID: **56-00-03640-00-9 (New)**

**56-00-03640-01-8 (New)**

**56-00-03640-02-7 (New)**

**56-00-03640-03-6 (New)**

Township of Upper Gwynedd, Montgomery County

MONTGOMERY COUNTY COMMISSIONERS REGISTRY  
56-00-03640-03-6 UPPER GWYNEDD TOWNSHIP

NEWBURY MEWS LP \*\*\* NEW \*\*\* \$15.00  
B \*\*\* L NEW PARCEL NUMBER U \*\*\* 11/22/2019 JG

**THIS INDENTURE**

Made the **6th day of November, 2019, effective the 18th day of November, 2019**, between **Newbury Mews LP, a Pennsylvania limited partnership** (hereinafter called the Grantor(s)) AND **Pulte Homes of PA, Limited Partnership, a Michigan limited partnership** (hereinafter called the Grantee(s)).

Witnesseth, That the said Grantor(s) in consideration of **SEVEN HUNDRED SIXTY THOUSAND** dollars (\$**760,000.00**) paid to the Grantor(s) by the Grantee(s), receipt of which is hereby acknowledged, does (do) grant, bargain, sell and convey to the said Grantee(s), his, her, their heirs, personal representatives, its successors and assigns. (See Attached Exhibit 'A')

Together with all and singular the buildings, improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor(s), as well at law as in equity, of, in and to the same.

To have and to hold the said lot or piece of ground above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee(s), his, her, their, heirs, personal representatives, its successors and assigns, to and for the only proper use and benefit of the said Grantee(s), his, her, their, heirs, personal representatives, its successors and assigns, forever.

**AND** the said Grantor(s), and his, her, their, heirs and personal representatives, its successors does (do) covenant, promise and agree, to and with the said Grantee(s), his, her, their heirs, personal representatives, its successors and assigns, by these presents, that the said Grantor(s) his, her, their, heirs, and personal representatives, its successors, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with appurtenances, unto the said Grantee(s), his,

(GENERAL/SPECIAL WARRANTY DEED/INDIVIDUAL or CORPORATE)

Order No.: **6125-QA ()**  
Page 2

her their heirs, its successors and assigns, against the said Grantor(s) and his, her their heirs, its successors, and against all and every person and persons whosoever lawfully claiming or to claim the same or any part thereof, by, from or under any of them, shall and will warrant **specially** the property hereby conveyed.

In Witness Whereof, the said Grantor(s) has (have) hereunto set his/her/its/their hands and seals. Dated the day and year first above written.

WITNESS:

Newbury Mews LP, a Pennsylvania limited partnership

By: Newbury Mews Associates LLC, a Pennsylvania limited liability company, general partner



By: \_\_\_\_\_  
Name: David Perlman  
Title: Sole Member

State of Pennsylvania }  
County of Philadelphia }

On this, the 6<sup>th</sup> day of November, **2019**, before me the undersigned officer, personally appeared David Perlman, who acknowledged himself to be the Sole Member of Newbury Mews Associates LLC, a Pennsylvania limited liability company, general partner of Newbury Mews LP, a limited partnership, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself as officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
JENNIFER QUINN - Notary Public  
Philadelphia County  
My Commission Expires Apr 11, 2022  
Commission Number 1232775

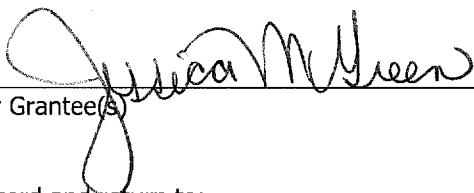
(GENERAL/SPECIAL WARRANTY DEED/INDIVIDUAL or CORPORATE)

Order No.: **6125-QA ()**  
Page **3**

**CERTIFICATE OF RESIDENCE**

I hereby certify that the precise residence of the grantee(s) herein is

**Attn: Robert Mandetta, Asst Controller, 150 Allen Road, Suite 303, Basking Ridge, NJ 07920**

  
\_\_\_\_\_  
For Grantee(s)

Record and return to:

**First American Abstract of PA, LLC**  
**2100 Quaker Pointe Drive, Suite 200, Quakertown, PA 18951**



***Carroll Engineering Corporation***

**DESCRIPTION – UNIT 1  
DECLARATION PLAT FOR NEWBURY MEWS  
UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA**

**November 6, 2019**

**ALL THAT CERTAIN** lot, tract or parcel of land situated in Upper Gwynedd Township, Montgomery County in the Commonwealth of Pennsylvania being Unit 1 as shown on the "Declaration Plat for Newbury Mews" prepared for Newbury Mews LP of Conshohocken Pa., by Carroll Engineering Corporation of Warrington Pa. dated October 14, 2019, bounded and escribed as follows:

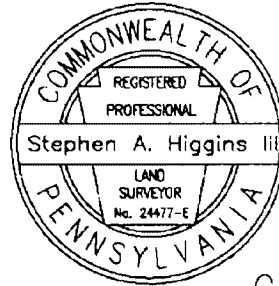
BEGINNING at a point on a curve on the northwesterly line of Sanctuary Court (50 feet wide – a Private Road), said point being a common corner of Unit 1 and Open Space 'A' as shown on the above referenced Declaration Plat; and running; thence

- 1) Extending along the line of Sanctuary Court on the arc of a circle curving to the right having a radius of 75.00 feet and an arc length of 2.85 feet, having a chord bearing South 56 degrees 45 minutes 16 seconds West and a chord distance of 2.85 feet to a point of tangent; thence
- 2) Continuing along the said line of Sanctuary Court, South 57 degrees 50 minutes 37 seconds West, a distance of 38.15 feet to a point, a corner of Unit 2; thence
- 3) Leaving the line of Sanctuary Court and extending along the line of Unit 2, North 32 degrees 09 minutes 23 seconds West, a distance of 112.00 feet to a point on the line of lands now or formerly PECO (Transmission Line), being Unit 59 in Block 26, another corner of Unit 2; thence
- 4) Extending along the said lands of PECO, North 57 degrees 50 minutes 37 seconds East and a distance of 41.00 feet to a point a corner of Open Space 'A'; thence
- 5) Along the said line, South 32 degrees 09 minutes 23 seconds East a distance of 111.95 feet to the first mentioned point and place of BEGINNING.

Containing 4,591.95 square feet or 0.1054 Acres

Being Unit 1 as shown on the Declaration Plat for Newbury Mews  
Parcel No. 56-00-03640-00-9 (New)

**Exhibit A**



A handwritten signature in cursive script that reads "Stephen A. Higgins III".

*Today's Commitment To Tomorrow's Challenges*

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Corporate Office:  
949 Easton Road  
Warrington, PA 18976  
(215) 343-5700

630 Freedom Business Center  
Third Floor  
King of Prussia, PA 19406  
610-489-5100

101 Lindenwood Drive  
Suite 225  
Malvern, PA 19355  
484-875-3075

105 Raider Boulevard  
Suite 206  
Hillsborough, NJ 08844  
908-874-7500





***Carroll Engineering Corporation***

**DESCRIPTION – UNIT 2  
DECLARATION PLAT FOR NEWBURY MEWS  
UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA**

**November 6, 2019**

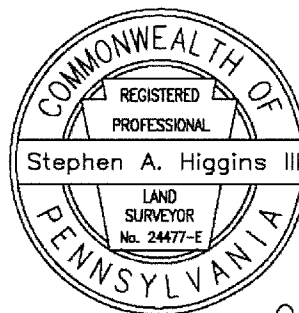
**ALL THAT CERTAIN** lot, tract or parcel of land situated in Upper Gwynedd Township, Montgomery County in the Commonwealth of Pennsylvania being Unit 2 as shown on the "Declaration Plat for Newbury Mews" prepared for Newbury Mews LP of Conshohocken Pa., by Carroll Engineering Corporation of Warrington Pa. dated October 14, 2019, bounded and escribed as follows:

BEGINNING at a point on the northwesterly line of Sanctuary Court (50 feet wide – a Private Road), said point being a common corner of Unit 1 and Unit 2 as shown on the above referenced Declaration Plat; and running; thence

- 1) Extending along the said line of Sanctuary Court, South 57 degrees 50 minutes 37 seconds West, a distance of 41.00 feet to a point, a corner of Unit 3; thence
- 2) Leaving the line of Sanctuary Court and extending along the line of Unit 3, North 32 degrees 09 minutes 23 seconds West, a distance of 112.00 feet to a point on the line of lands now or formerly PECO (Transmission Line), being Unit 59 in Block 26, another corner of Unit 3; thence
- 3) Extending along the said lands of PECO, North 57 degrees 50 minutes 37 seconds East and a distance of 41.00 feet to a point a corner of Unit 1; thence
- 4) Along the said line of Unit 1, South 32 degrees 09 minutes 23 seconds East a distance of 112.00 feet to the first mentioned point and place of BEGINNING.

Containing 4,592 square feet or 0.1054 Acres

Being Unit 2 as shown on the Declaration Plat for Newbury Mews  
Parcel No. 56-00-03640-01-8 (New)



A handwritten signature in cursive script that reads "Stephen A. Higgins III".

*Today's Commitment To Tomorrow's Challenges*

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Corporate Office:  
949 Easton Road  
Warrington, PA 18976  
(215) 343-5700

630 Freedom Business Center  
Third Floor  
King of Prussia, PA 19406  
610-489-5100

101 Lindenwood Drive  
Suite 225  
Malvern, PA 19355  
484-875-3075

105 Raider Boulevard  
Suite 206  
Hillsborough, NJ 08844  
908-874-7500

[www.carrollengineering.com](http://www.carrollengineering.com)



*Carroll Engineering Corporation*

**DESCRIPTION – UNIT 3  
DECLARATION PLAT FOR NEWBURY MEWS  
UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA**

**November 6, 2019**

**ALL THAT CERTAIN** lot, tract or parcel of land situated in Upper Gwynedd Township, Montgomery County in the Commonwealth of Pennsylvania being Unit 3 as shown on the “Declaration Plat for Newbury Mews” prepared for Newbury Mews LP of Conshohocken Pa., by Carroll Engineering Corporation of Warrington Pa. dated October 14, 2019, bounded and escribed as follows:

BEGINNING at a point on the northwesterly line of Sanctuary Court (50 feet wide – a Private Road), said point being a common corner of Unit 2 and Unit 3 as shown on the above referenced Declaration Plat; and running; thence

- 1) Extending along the said line of Sanctuary Court, South 57 degrees 50 minutes 37 seconds West, a distance of 41.00 feet to a point, a corner of Unit 4; thence
- 2) Leaving the line of Sanctuary Court and extending along the line of Unit 4, North 32 degrees 09 minutes 23 seconds West, a distance of 112.00 feet to a point on the line of lands now or formerly PECO (Transmission Line), being Unit 59 in Block 26, another corner of Unit 4; thence
- 3) Extending along the said lands of PECO, North 57 degrees 50 minutes 37 seconds East and a distance of 41.00 feet to a point a corner of Unit 2; thence
- 4) Along the said line of Unit 2, South 32 degrees 09 minutes 23 seconds East a distance of 112.00 feet to the first mentioned point and place of BEGINNING.

Containing 4,592 square feet or 0.1054 Acres

Being Unit 3 as shown on the Declaration Plat for Newbury Mews  
Parcel No. 56-00-03640-02-7 (New)



*Stephen A. Higgins*

*Today's Commitment To Tomorrow's Challenges*

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Corporate Office:  
949 Easton Road  
Warrington, PA 18976  
(215) 343-5700

630 Freedom Business Center  
Third Floor  
King of Prussia, PA 19406  
610-489-5100

101 Lindenwood Drive  
Suite 225  
Malvern, PA 19355  
484-875-3075

105 Raider Boulevard  
Suite 206  
Hillsborough, NJ 08844  
908-874-7500

[www.carrollengineering.com](http://www.carrollengineering.com)



***Carroll Engineering Corporation***

**DESCRIPTION – UNIT 4  
DECLARATION PLAT FOR NEWBURY MEWS  
UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA**

**November 6, 2019**

**ALL THAT CERTAIN** lot, tract or parcel of land situated in Upper Gwynedd Township, Montgomery County in the Commonwealth of Pennsylvania being Unit 4 as shown on the “Declaration Plat for Newbury Mews” prepared for Newbury Mews LP of Conshohocken Pa., by Carroll Engineering Corporation of Warrington Pa. dated October 14, 2019, bounded and escribed as follows:

BEGINNING at a point on the northwesterly line of Sanctuary Court (50 feet wide – a Private Road), said point being a common corner of Unit 3 and Unit 4 as shown on the above referenced Declaration Plat; and running; thence

- 1) Extending along the said line of Sanctuary Court, South 57 degrees 50 minutes 37 seconds West, a distance of 41.00 feet to a point, a corner of Unit 5; thence
- 2) Leaving the line of Sanctuary Court and extending along the line of Unit 5, North 32 degrees 09 minutes 23 seconds West, a distance of 112.00 feet to a point on the line of lands now or formerly PECO (Transmission Line), being Unit 59 in Block 26, another corner of Unit 5; thence
- 3) Extending along the said lands of PECO, North 57 degrees 50 minutes 37 seconds East and a distance of 41.00 feet to a point a corner of Unit 3; thence
- 4) Along the said line of Unit 3, South 32 degrees 09 minutes 23 seconds East a distance of 112.00 feet to the first mentioned point and place of BEGINNING.

Containing 4,592 square feet or 0.1054 Acres

Being Unit 4 as shown on the Declaration Plat for Newbury Mews  
Parcel No. 56-00-03640-03-6 (New)



A handwritten signature in cursive script that reads "Stephen A. Higgins III".

*Today's Commitment To Tomorrow's Challenges*

---

Corporate Office:  
949 Easton Road  
Warrington, PA 18976  
(215) 343-5700

630 Freedom Business Center  
Third Floor  
King of Prussia, PA 19406  
610-489-5100

101 Lindenwood Drive  
Suite 225  
Malvern, PA 19355  
484-875-3075

105 Raider Boulevard  
Suite 206  
Hillsborough, NJ 08844  
908-874-7500

[www.carrollengineering.com](http://www.carrollengineering.com)

**Prepared By**

First American Abstract of PA, LLC  
2100 Quaker Pointe Drive, Suite 200  
Quakertown, PA 18951  
(215)538-1053

**Return To**

First American Abstract of PA, LLC  
2100 Quaker Pointe Drive, Suite 200  
Quakertown, PA 18951  
(215)538-1053

Order No.: **6393-QA ()**

Property Address: **Lots 5-14 and 25-30 Sanctuary Court,  
North Wales, Pennsylvania 19454**

Tax Parcel ID: **56-00-03640-3/3 (New) REGISTERED NEW** HW 2/11/20

- 56-00-03640-10-9 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-11-8 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-12-7 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-13-6 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-14-5 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-15-4 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-16-3 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-17-2 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-18-1 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-20-9 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-21-8 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-22-7 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-23-6 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-24-5 (New) REGISTERED NEW** HW 2/11/20
- 56-00-03640-25-4 (New) REGISTERED NEW** HW 2/11/20

Township of Upper Gwynedd, Montgomery County

**THIS INDENTURE**

Made the **6th day of February, 2020**, effective the **7th day of February, 2020**, between **Newbury Mews LP, a Pennsylvania limited partnership** (hereinafter called the Grantor(s)) AND **Pulte Homes of PA, Limited Partnership, a Michigan limited partnership** (hereinafter called the Grantee(s)).

Witnesseth, That the said Grantor(s) in consideration of **THREE MILLION FORTY THOUSAND** dollars (\$**3,040,000.00**) paid to the Grantor(s) by the Grantee(s), receipt of which is hereby acknowledged, does (do) grant, bargain, sell and convey to the said Grantee(s), his, her, their heirs, personal representatives, its successors and assigns.

**(See Attached Exhibit 'A')**

Together with all and singular the buildings, improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in anywise appertaining, and the reversions and remainders,



rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor(s), as well at law as in equity, of, in and to the same.

To have and to hold the said lot or piece of ground above described, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantee(s), his, her, their, heirs, personal representatives, its successors and assigns, to and for the only proper use and benefit of the said Grantee(s), his, her, their, heirs, personal representatives, its successors and assigns, forever.

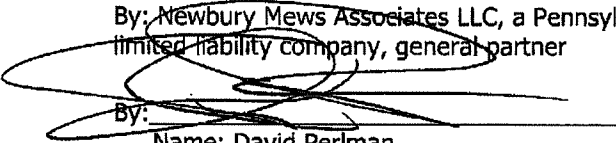
**AND** the said Grantor(s), and his, her, their, heirs and personal representatives, its successors does (do) covenant, promise and agree, to and with the said Grantee(s), his, her, their heirs, personal representatives, its successors and assigns, by these presents, that the said Grantor(s) his, her, their, heirs, and personal representatives, its successors, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with appurtenances, unto the said Grantee(s), his, her their heirs, its successors and assigns, against the said Grantor(s) and his, her their heirs, its successors, and against all and every person and persons whosoever lawfully claiming or to claim the same or any part thereof, by, from or under any of them, shall and will warrant **specialy** the property hereby conveyed.

In Witness Whereof, the said Grantor(s) has (have) hereunto set his/her/its/their hands and seals. Dated the day and year first above written.

WITNESS:

Newbury Mews LP, a Pennsylvania limited partnership

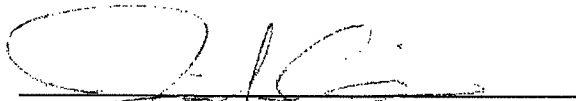
By: ~~Newbury Mews Associates LLC, a Pennsylvania limited liability company, general partner~~

By:   
Name: David Perlman  
Title: Sole Member

State of Pennsylvania }  
County of Philadelphia }

On this, the 16<sup>th</sup> day of February, 2020, before me the undersigned officer, personally appeared David Perlman, who acknowledged himself to be the Sole Member of Newbury Mews Associates LLC, a Pennsylvania limited liability company, general partner of Newbury Mews LP, a limited partnership, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the limited partnership by himself as officer.

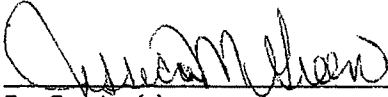
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public

**CERTIFICATE OF RESIDENCE**

I hereby certify that the precise residence of the grantee(s) herein is

**Attn: Robert Mandetta, Asst Controller, 150 Allen Road, Suite 303, Basking Ridge, NJ 07920**

  
\_\_\_\_\_

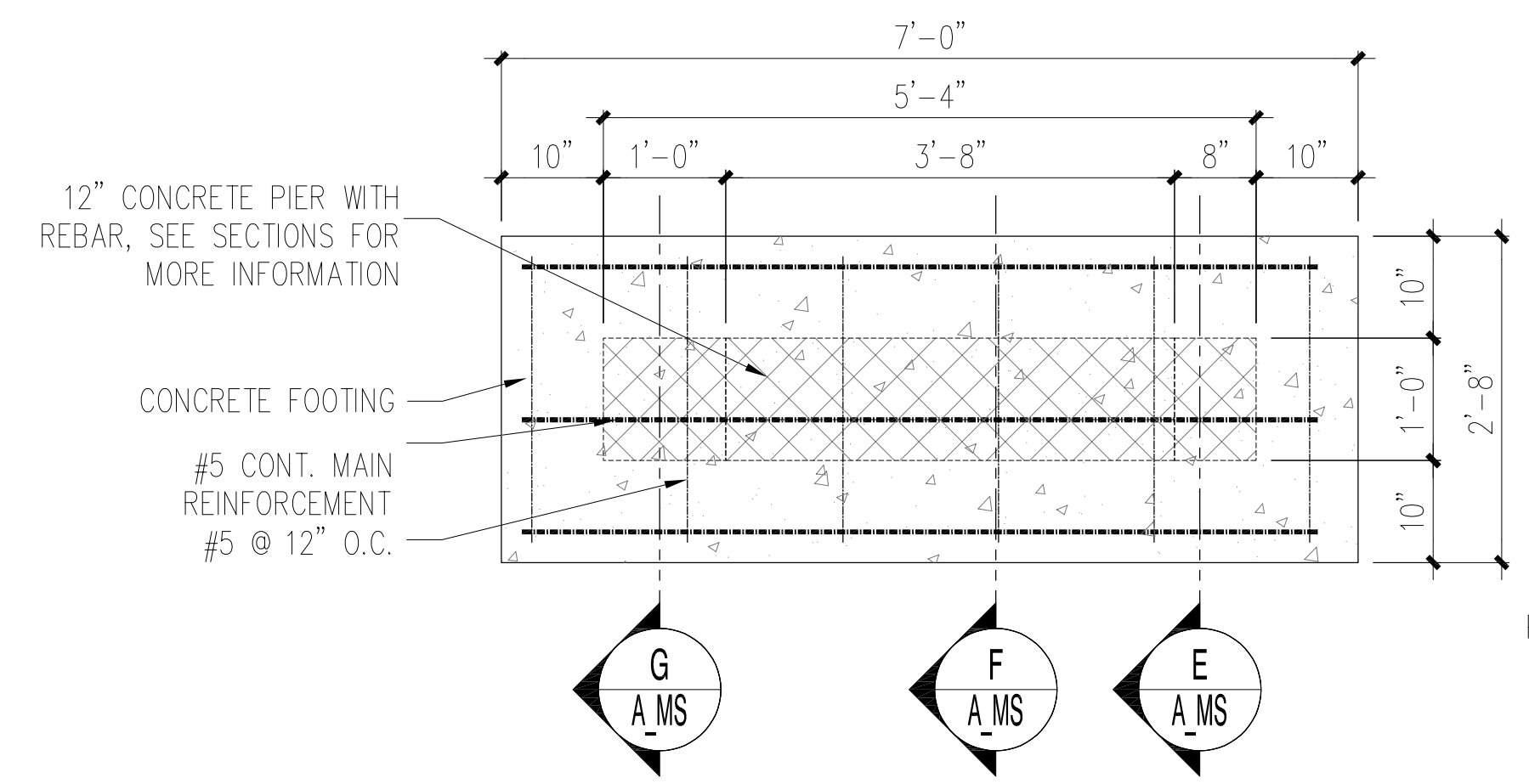
For Grantee(s)

Record and return to:

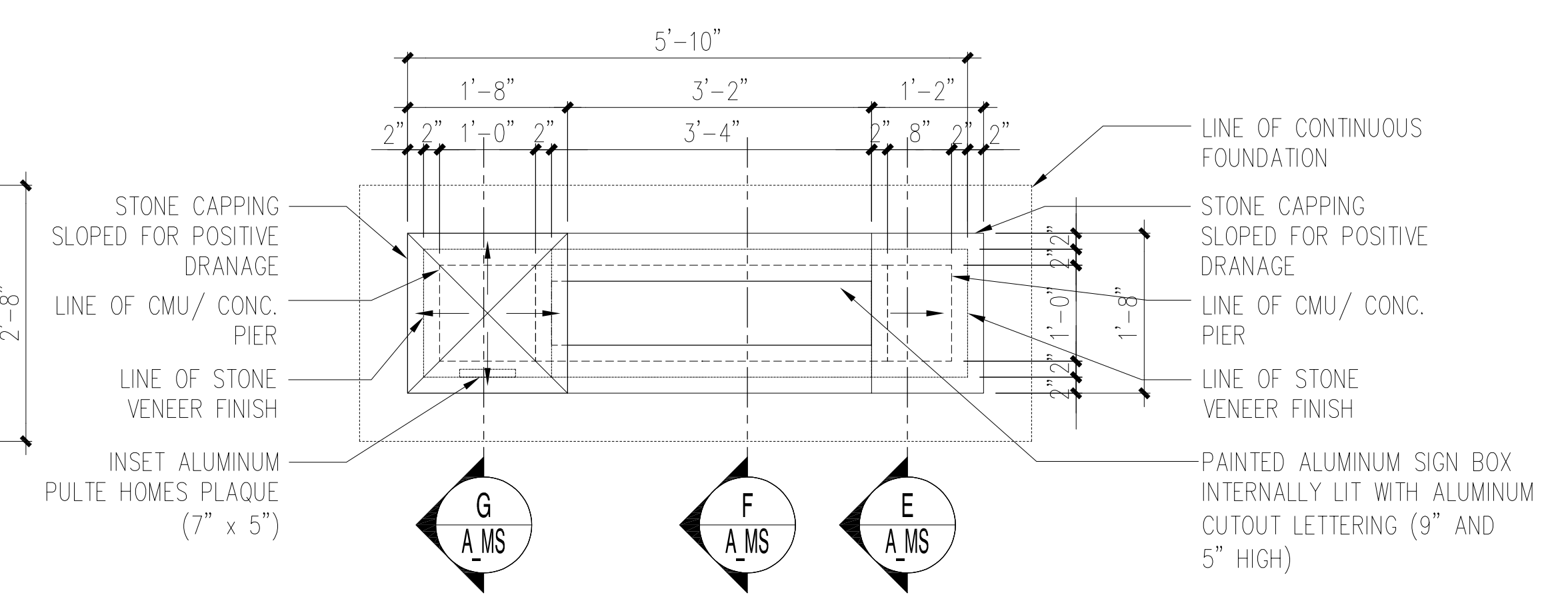
**First American Abstract of PA, LLC**  
**2100 Quaker Pointe Drive, Suite 200, Quakertown, PA 18951**



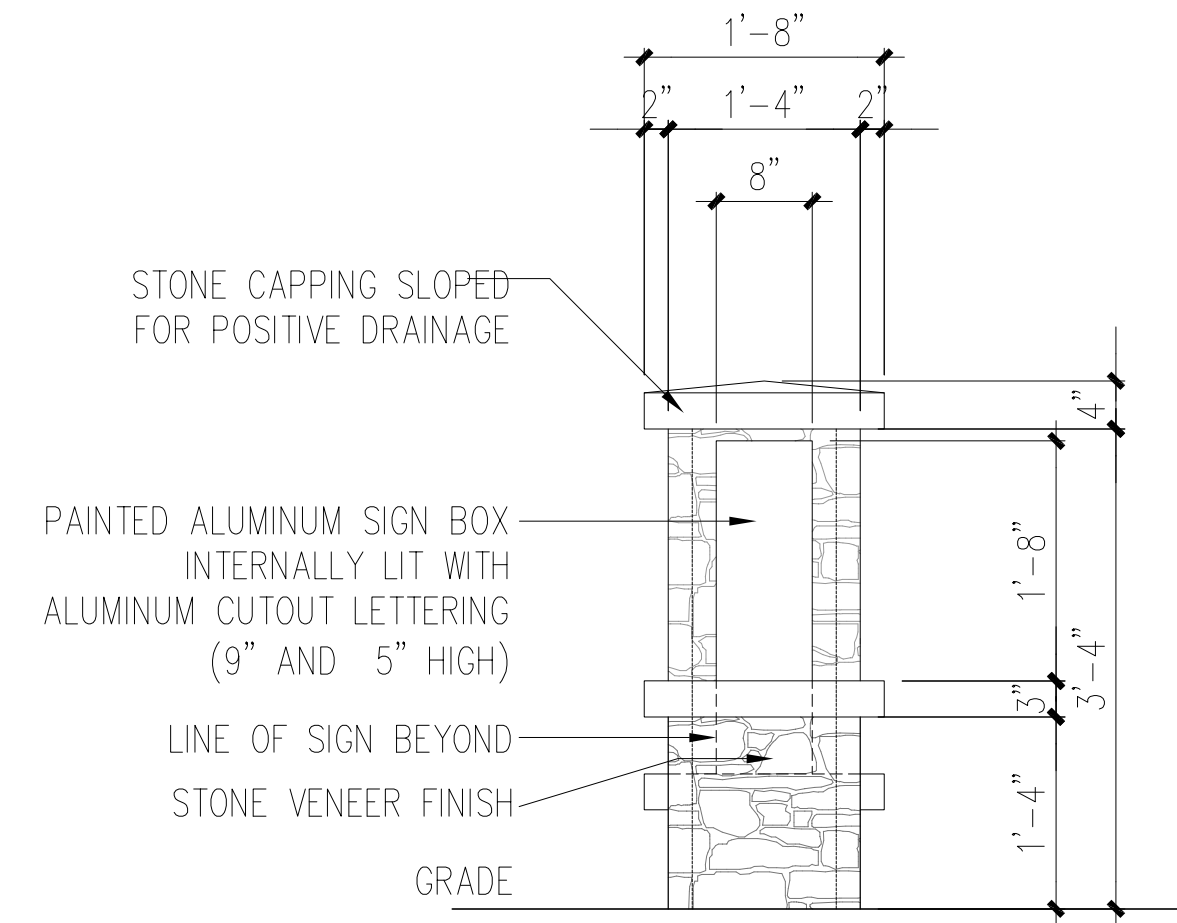




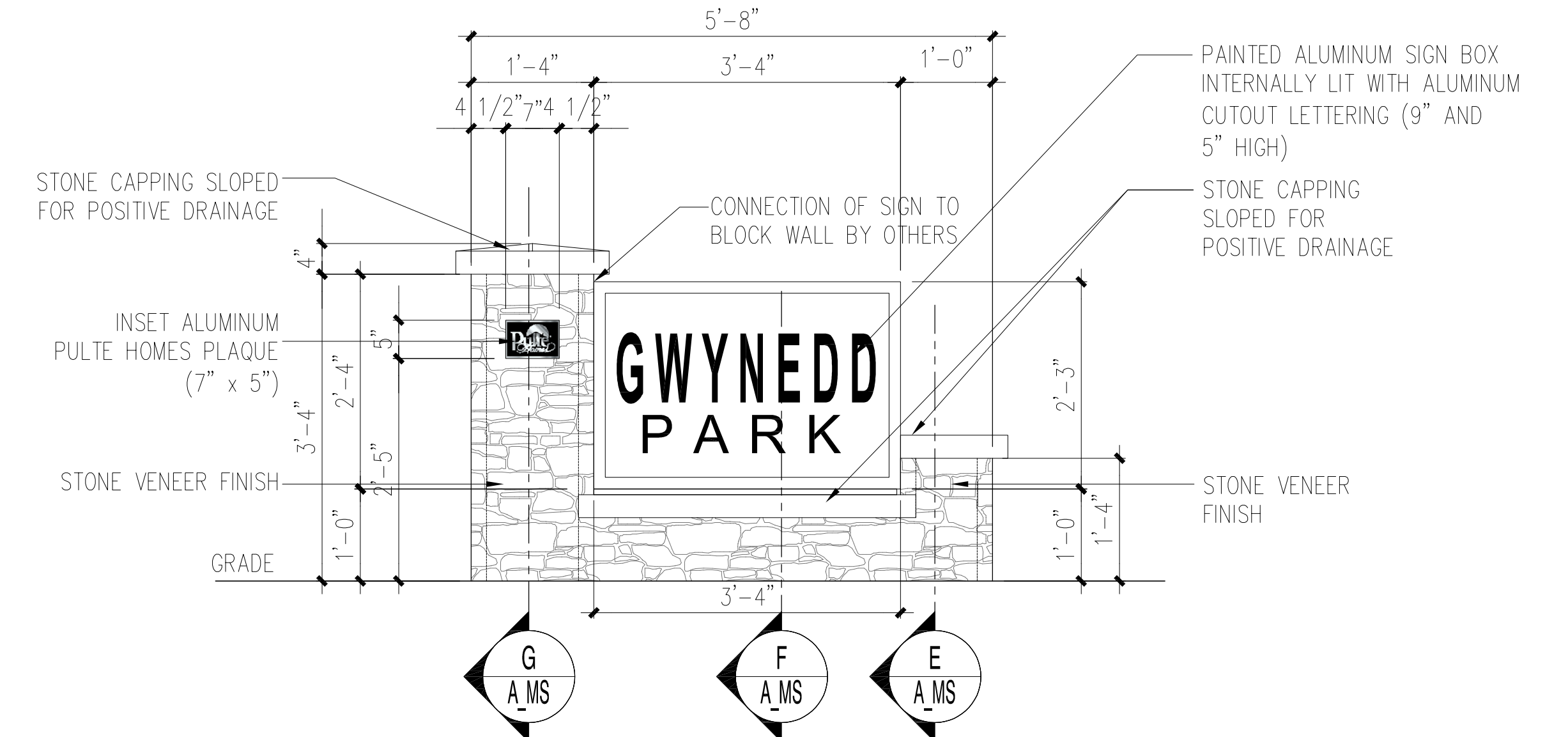
**B SIGN FOUNDATION PLAN**  
SCALE: 1/2" = 1'-0"



**A SIGN PLAN**  
SCALE: 1/2" = 1'-0"

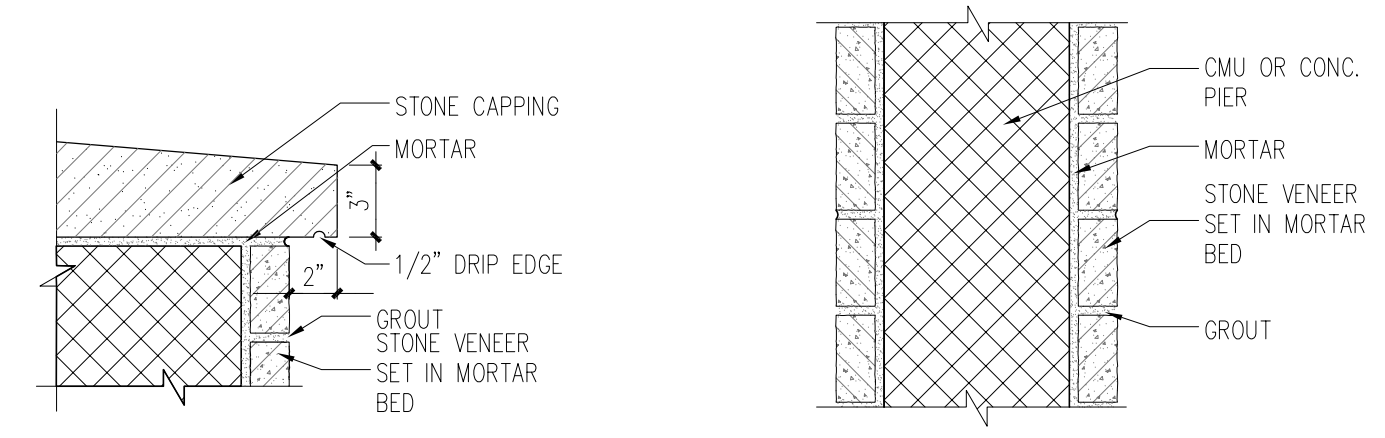


**D SIGN SIDE ELEVATION**  
SCALE: 1/2" = 1'-0"



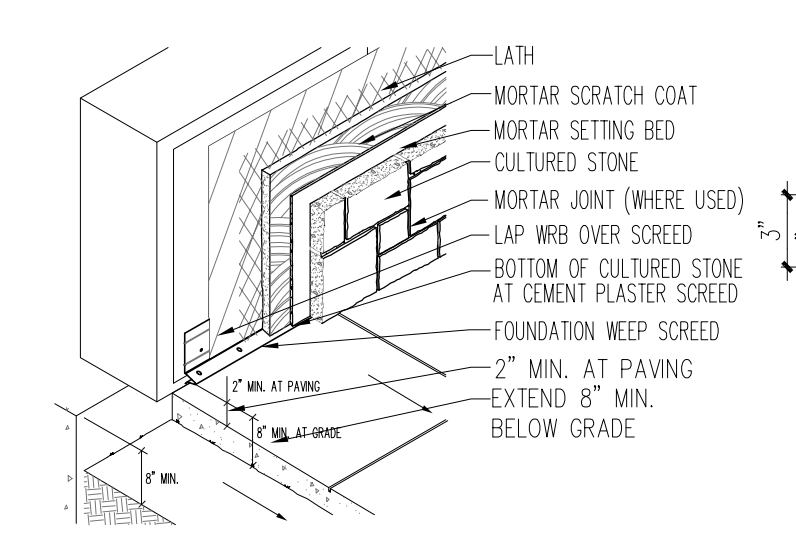
**C SIGN FRONT ELEVATION**  
SCALE: 3/4" = 1'-0"

**H SITE PLAN**  
SCALE: 1/16" = 1'-0"

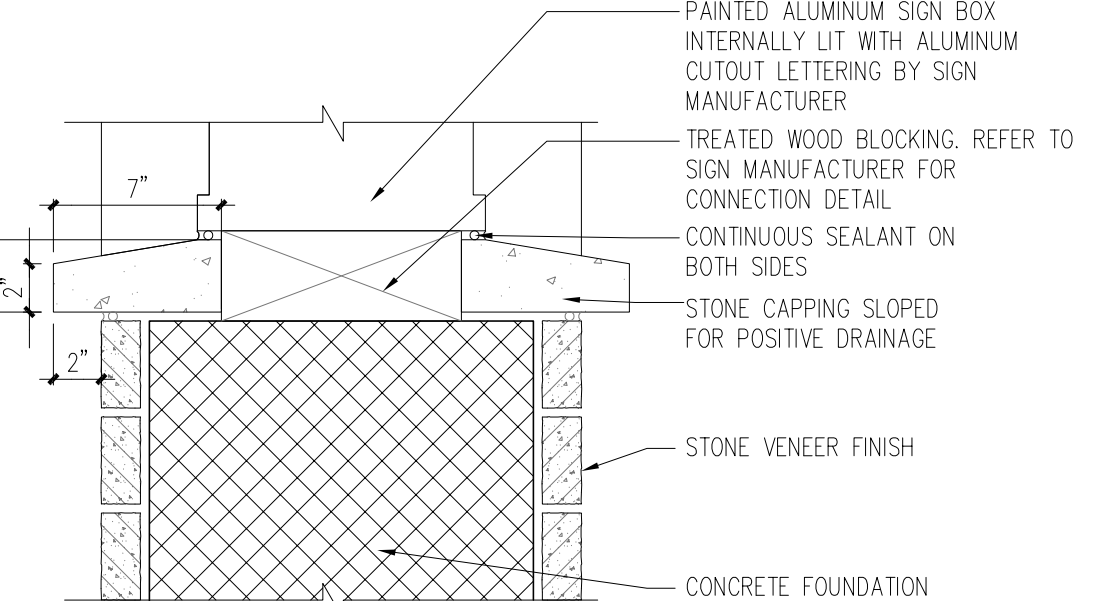


**J DETAIL AT STONE CAPPING**  
SCALE: 1 1/2" = 1'-0"

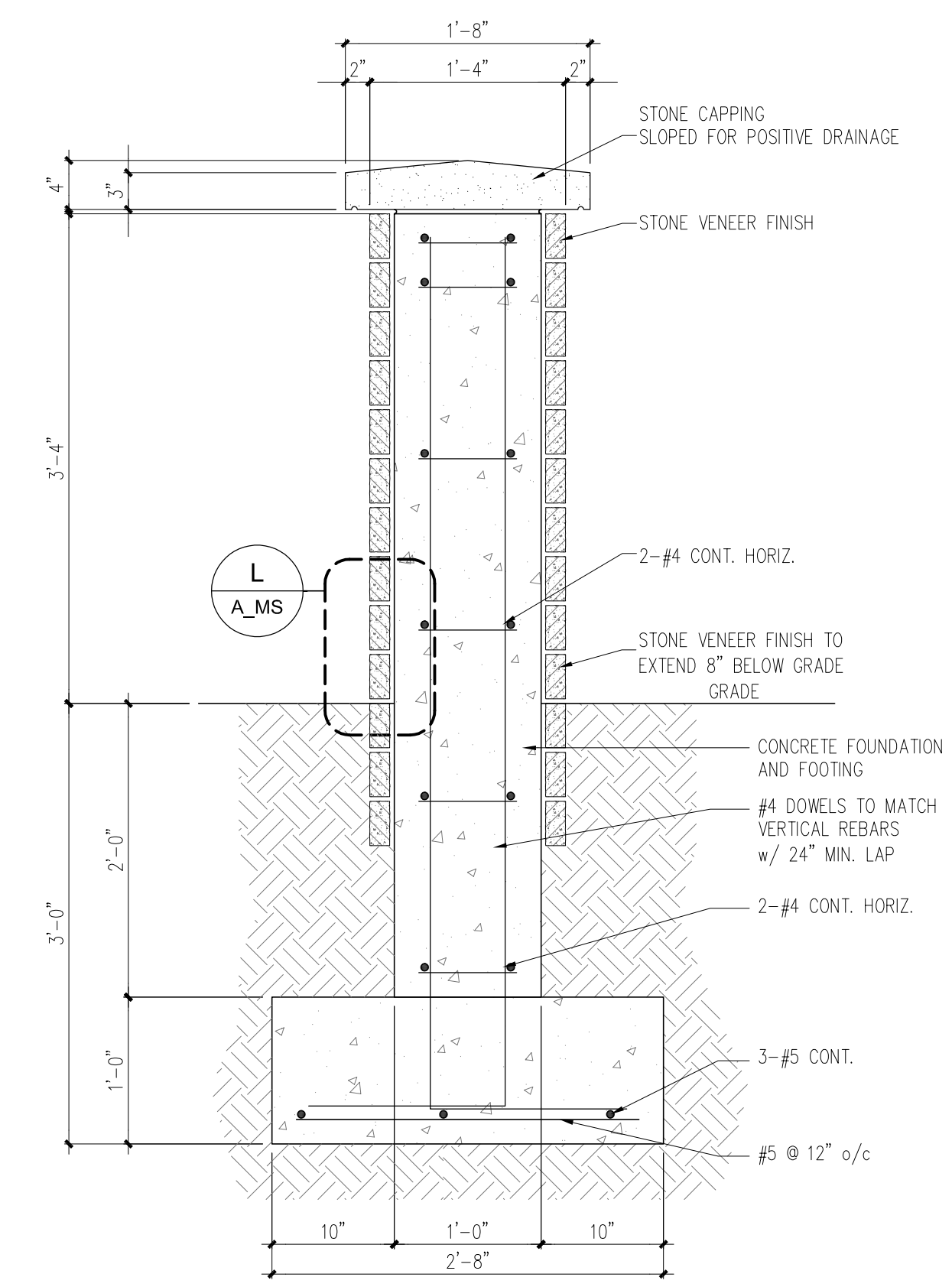
**K DETAIL AT STONE VENEER**  
SCALE: 1 1/2" = 1'-0"



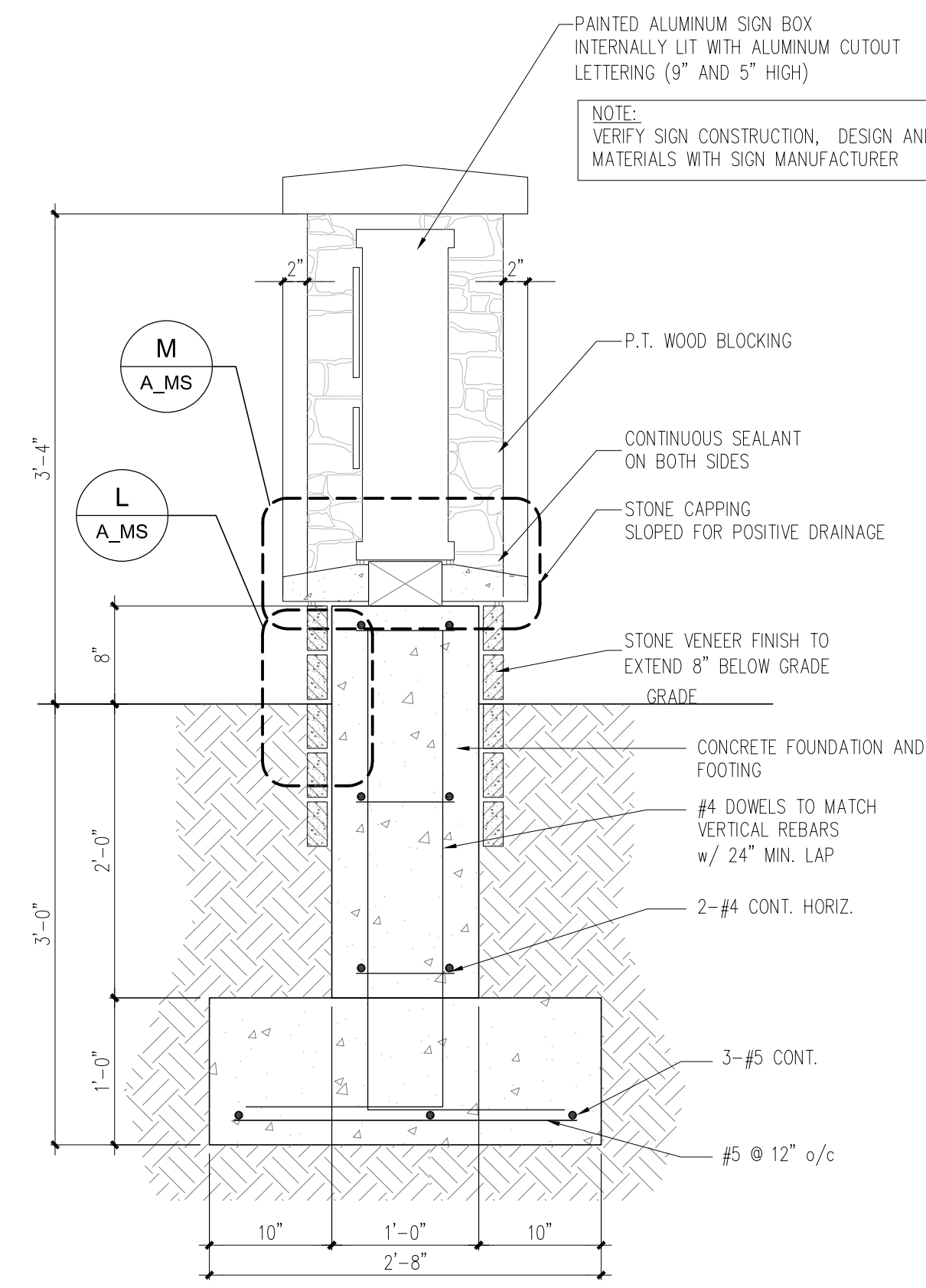
**L STONE VENEER @ WALL BASE**  
SCALE: N.T.S.



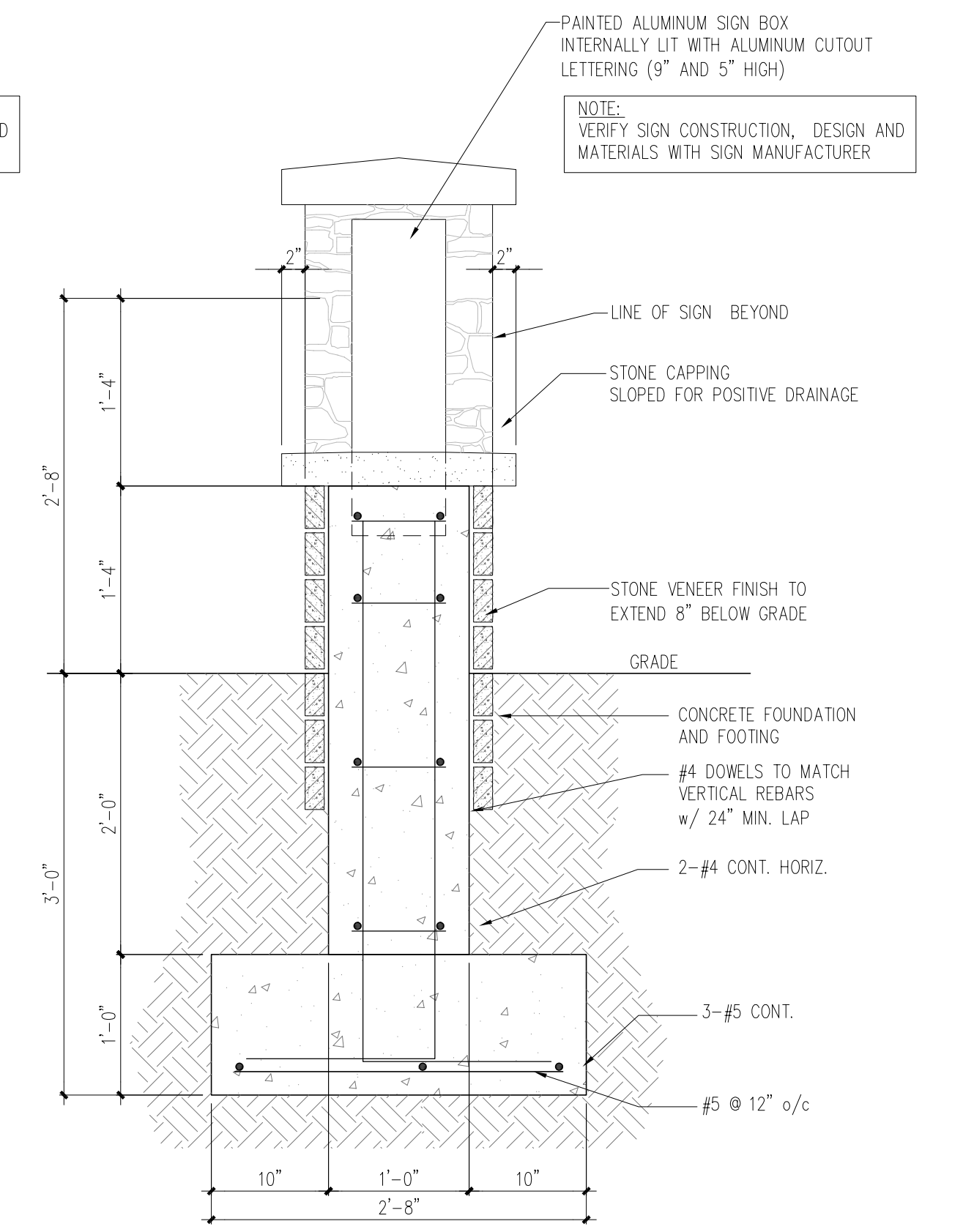
**M DETAIL AT STONE CAPPING**  
SCALE: 1 1/2" = 1'-0"



**G SIGN SECTION**  
SCALE: 1" = 1'-0"



**F SIGN SECTION**  
SCALE: 1" = 1'-0"



**E SIGN SECTION**  
SCALE: 1" = 1'-0"

**CODE SUMMARY**

- I APPLICABLE BUILDING CODES / STANDARDS
  - A. UNIFORM CONSTRUCTION CODE (N.J.A.C. 5:23) LATEST REVISION.
  - B. INTERNATIONAL BUILDING CODE / 2015 NEW JERSEY EDITION
  - C. NATIONAL ELECTRIC CODE / 2014 edition
- II ULTIMATE WIND SPEED
  - A. 115 MPH PER ASCE 7-10.
- III MINIMUM CONCRETE COMPRESSIVE STRENGTH
  - A. MINIMUM CONCRETE COMPRESSIVE STRENGTH: 3500 PSI.
  - B. ALL CONCRETE WORK SHALL BE IN ACCORDANCE WITH ACI 301, ACI 318 AND ACI 302 LATEST EDITIONS.
  - C. ALL MASONRY WORK SHALL BE IN ACCORDANCE TO: ACI 530/ASCE 5, "BUILDING CODE REQUIREMENTS FOR MASONRY STRUCTURES", ACI 530.1/ASCE 6, "SPECIFICATIONS FOR MASONRY STRUCTURES."
  - D. IN ADDITION TO THE REQUIREMENTS INCLUDED IN THESE STRUCTURAL NOTES, ALL CONSTRUCTION AND MATERIALS SHALL FURTHER CONFIRM TO THE APPLICABLE PROVISIONS OF THE FOLLOWING STANDARDS.
    - a. AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)
    - b. AMERICAN CONCRETE INSTITUTE
    - c. NATIONAL CONCRETE MASONRY ASSOCIATION
    - d. AMERICAN INSTITUTE OF STEEL CONSTRUCTION.
    - e. ASSUMED SOIL BEARING CAPACITY : 2000 PSF.

**GWYNEDD PARK**  
**ENTRANCE SIGN**  
 UPPER GWYNEDD TOWNSHIP, PA  
**PULTE HOMES**

SCALE: AS NOTED  
DATE: 11/11/19  
DRAWN BY: AO  
CHECKED BY: AO  
JOB NO.: -

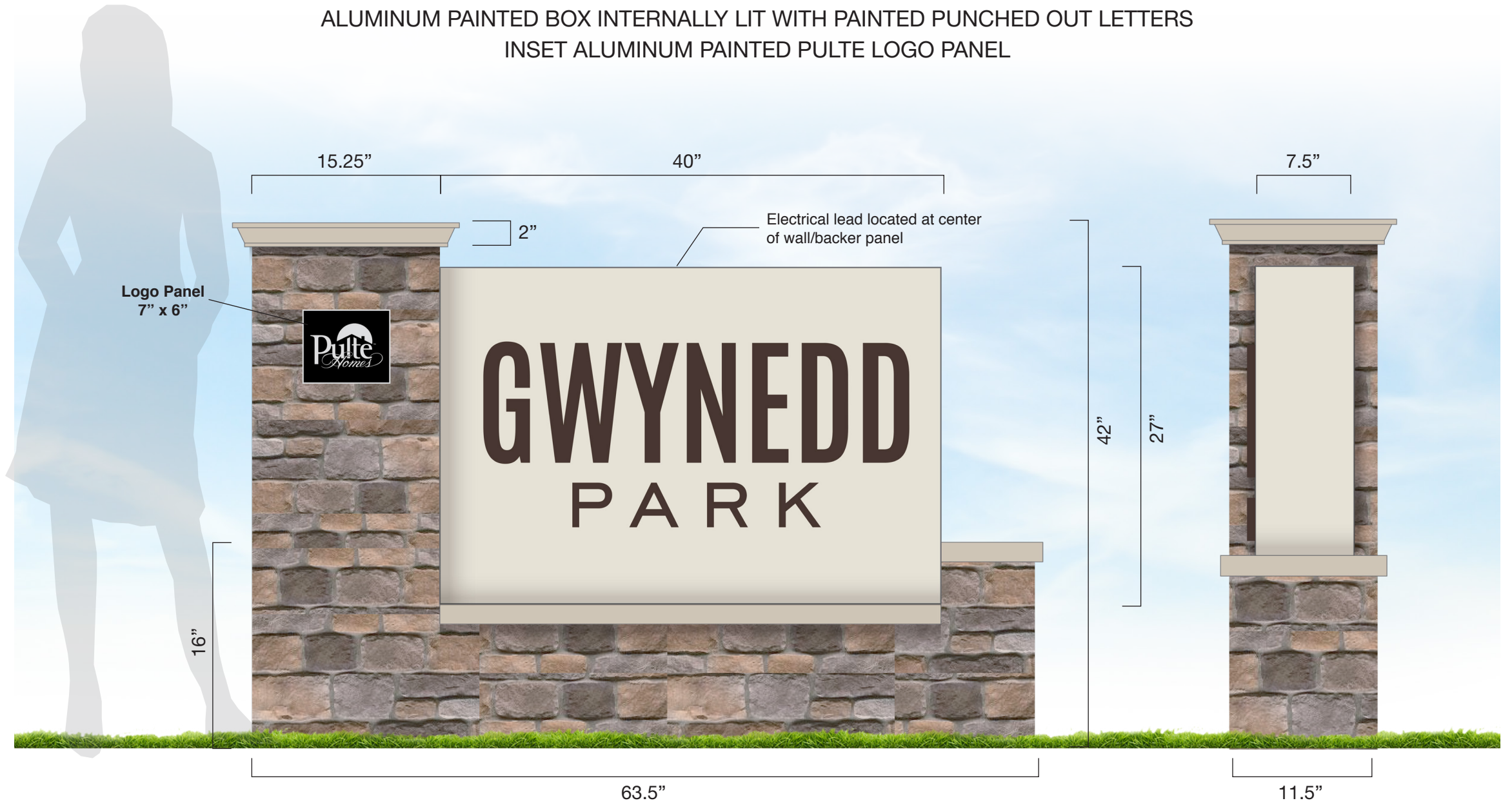
SUBMISSION/REVISION	
1.	7.
2.	8.
3.	9.
4.	10.
5.	11.
6.	12.

ENTRY SIGN  
PLAN, FOUNDATION PLAN  
ELEVATIONS, SECTIONS

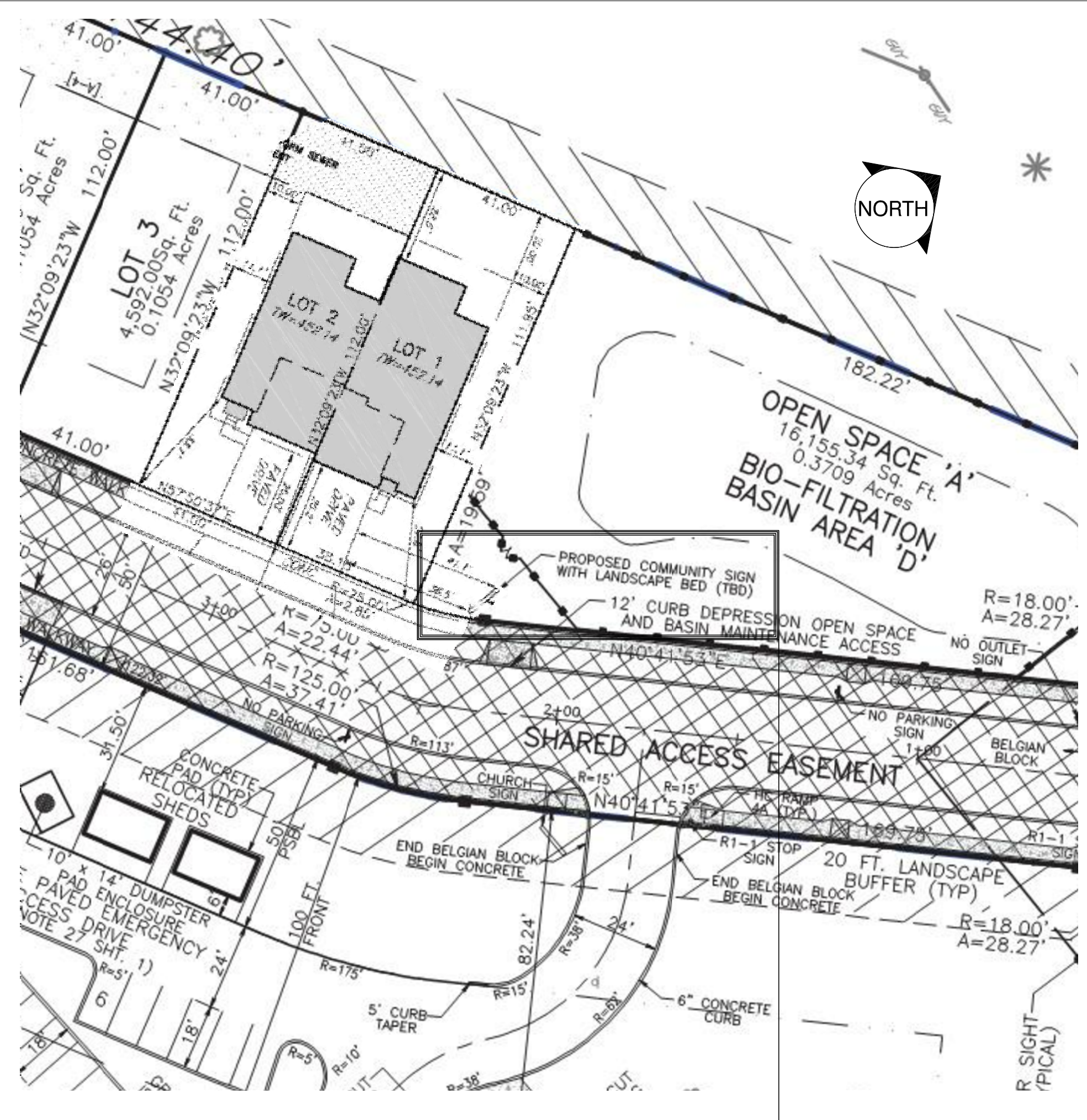
**A\_MS**



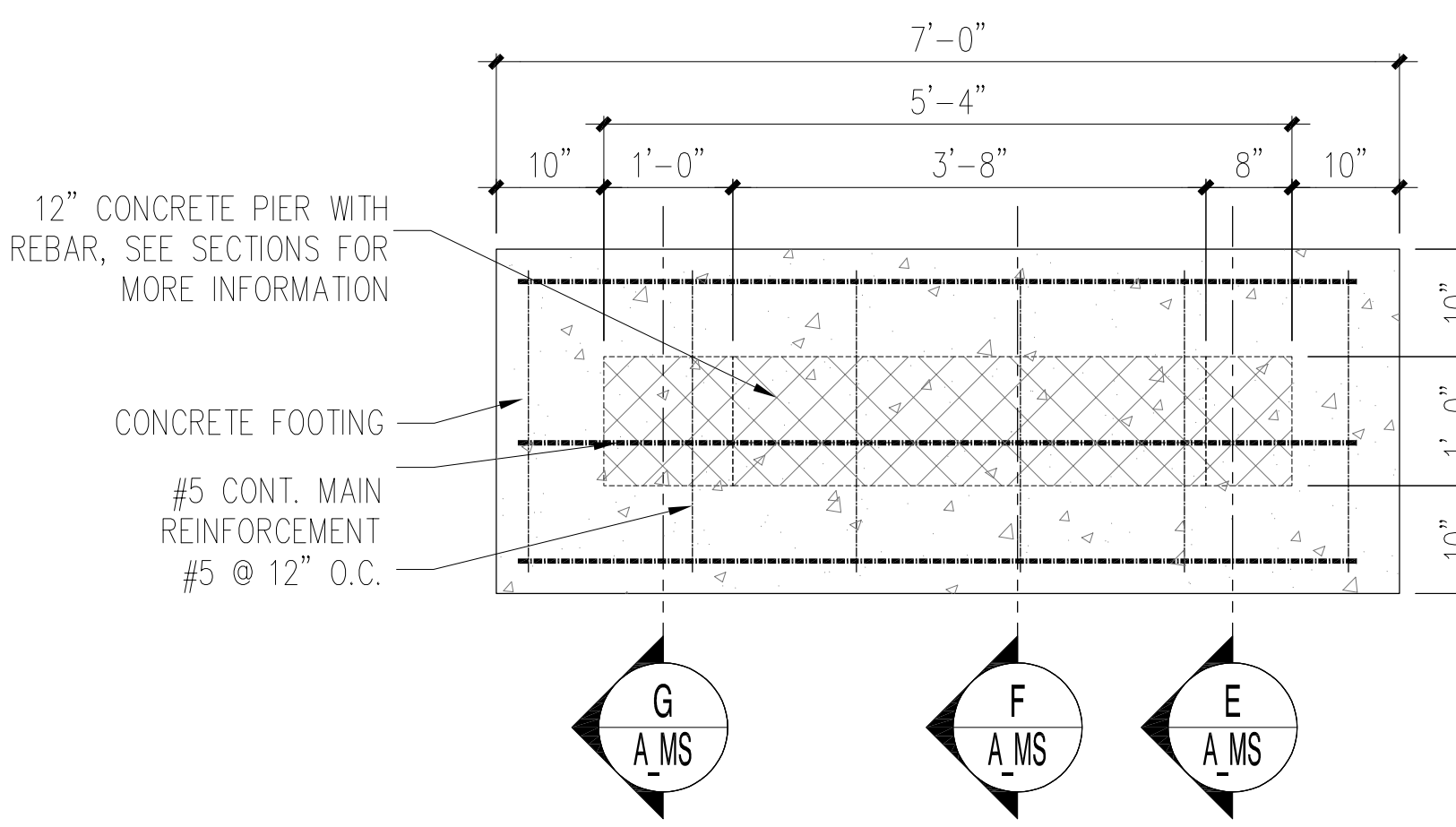
COLUMN AND BASE WITH CULTURED STONE VENEER TO MATCH EXISTING ARCHITECTURE  
ALUMINUM PAINTED BOX INTERNALLY LIT WITH PAINTED PUNCHED OUT LETTERS  
INSET ALUMINUM PAINTED PULTE LOGO PANEL



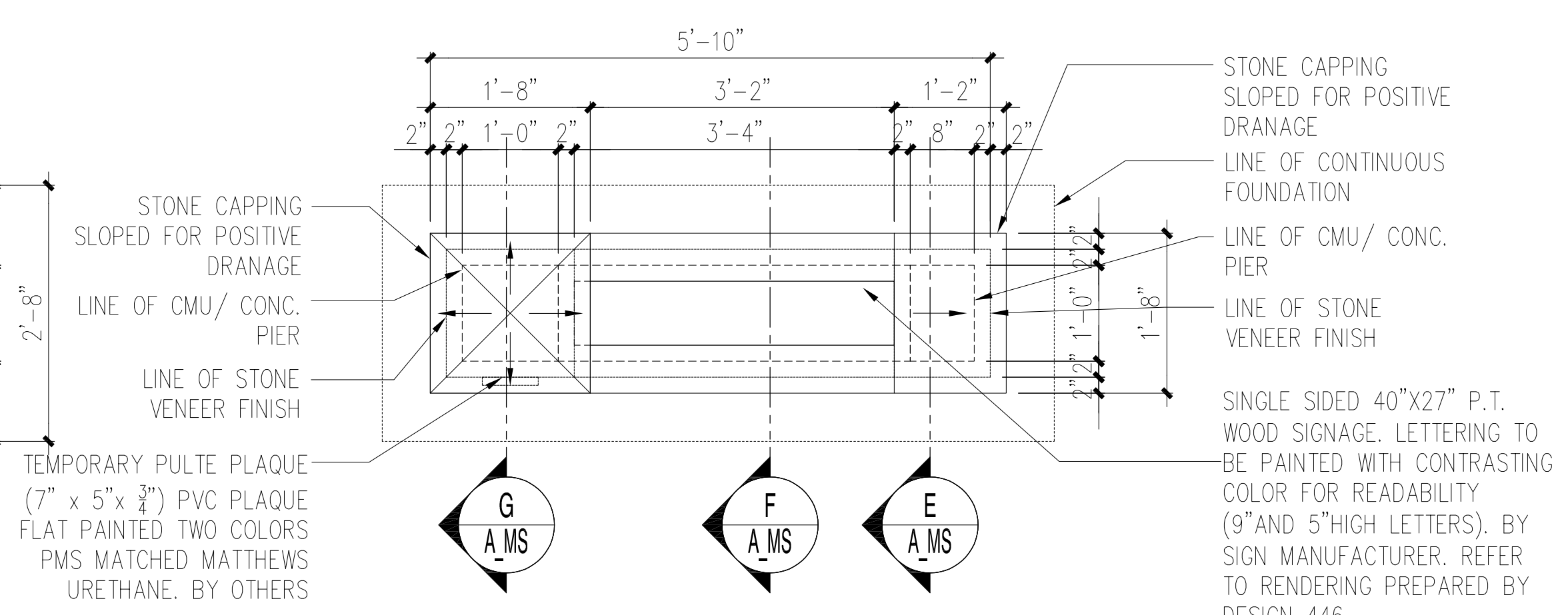




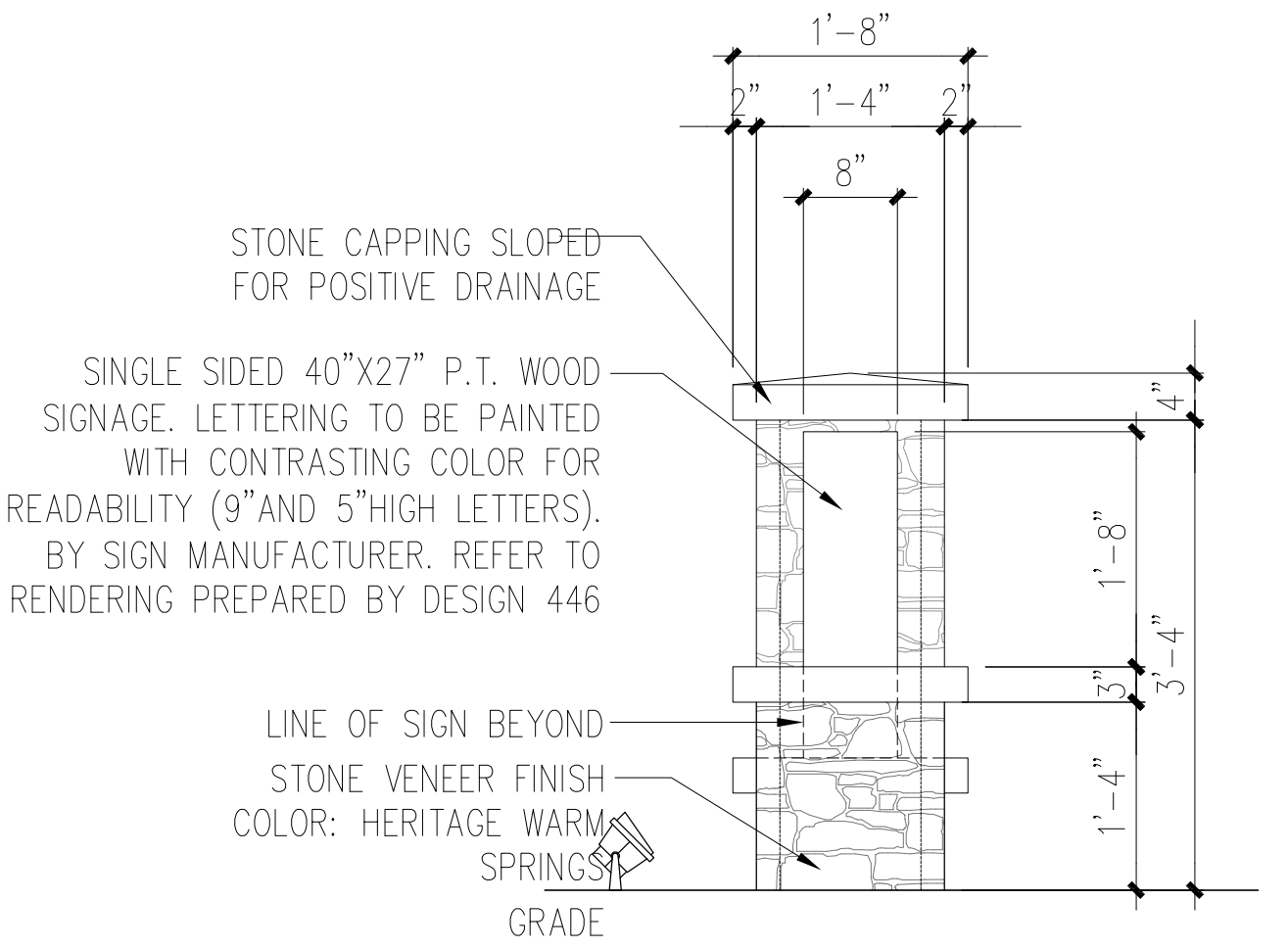
**H SITE PLAN**  
 SCALE: 1/16" = 1'-0"



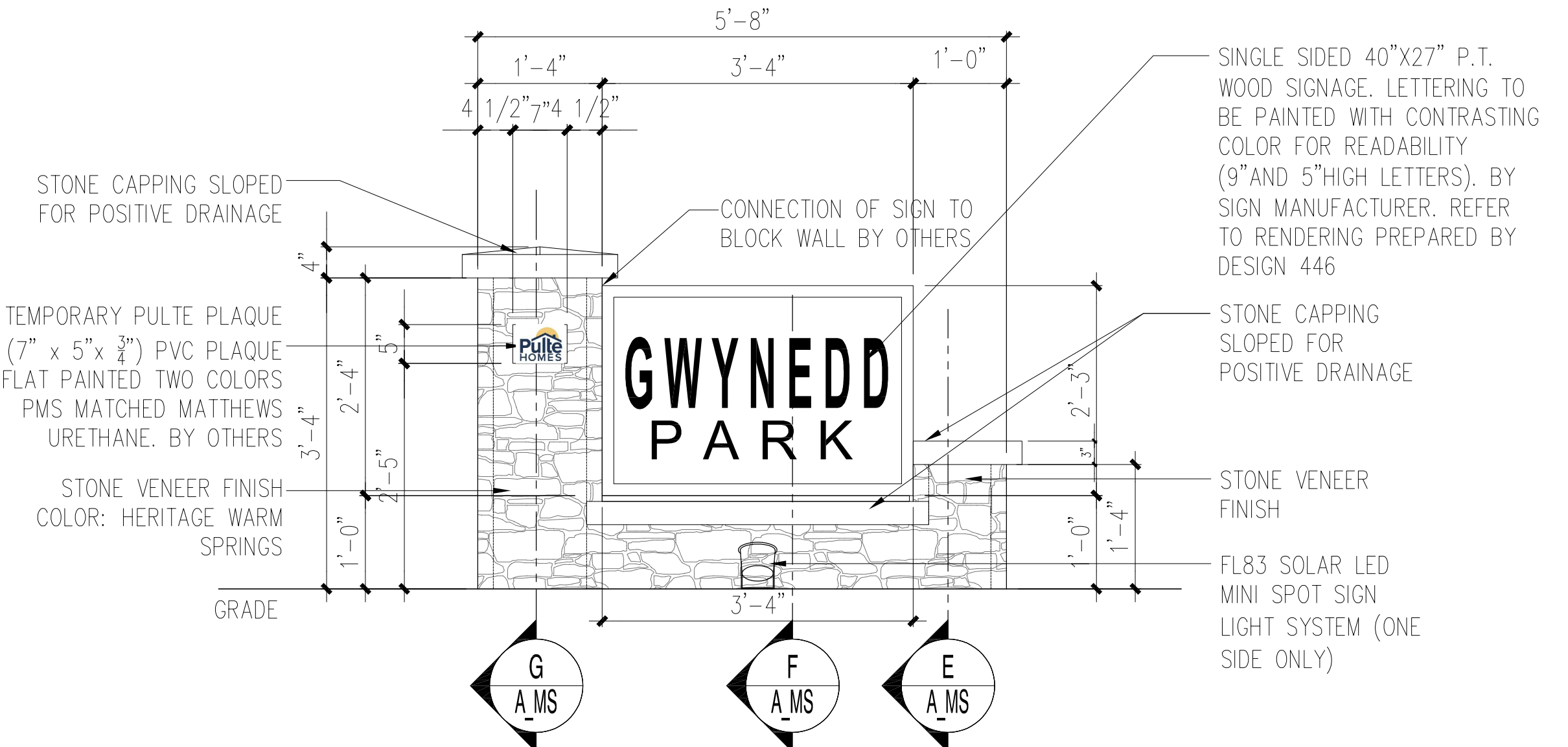
**B SIGN FOUNDATION PLAN**  
 SCALE: 1/2" = 1'-0"



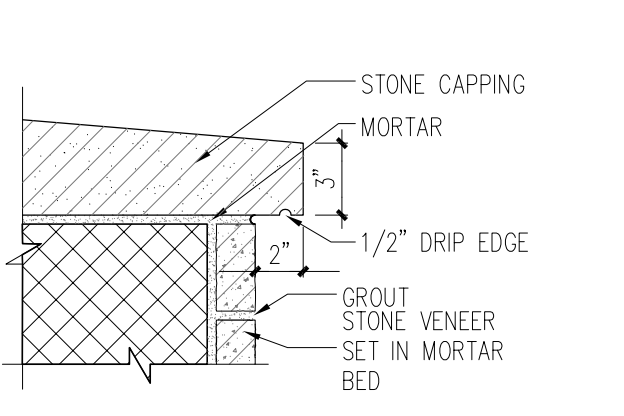
**A SIGN PLAN**  
 SCALE: 1/2" = 1'-0"



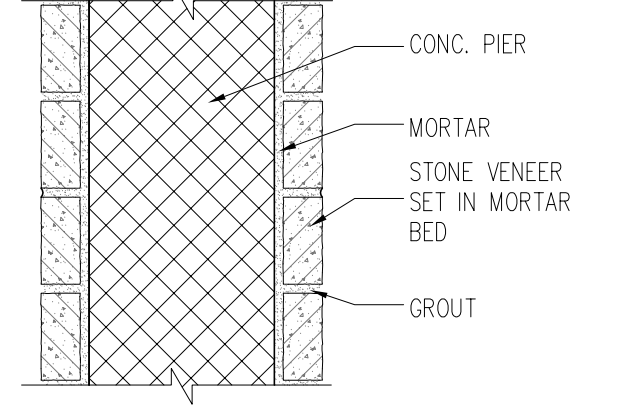
**D SIGN SIDE ELEVATION**  
 SCALE: 1/2" = 1'-0"



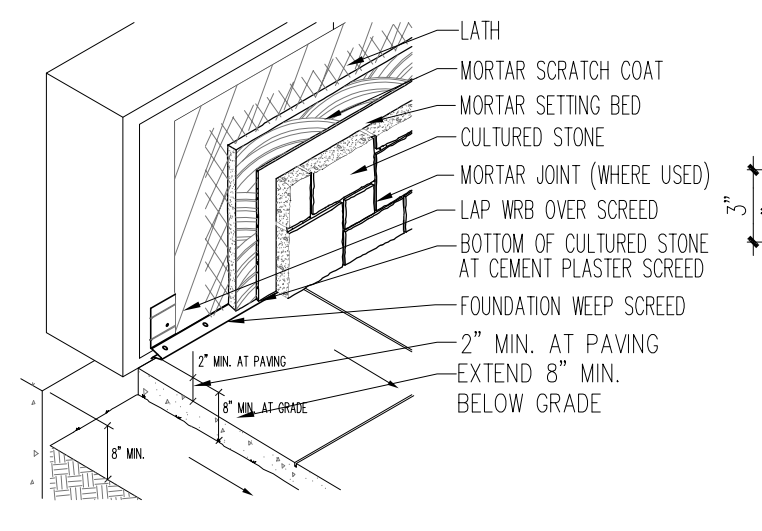
**C SIGN FRONT ELEVATION**  
 SCALE: 3/4" = 1'-0"



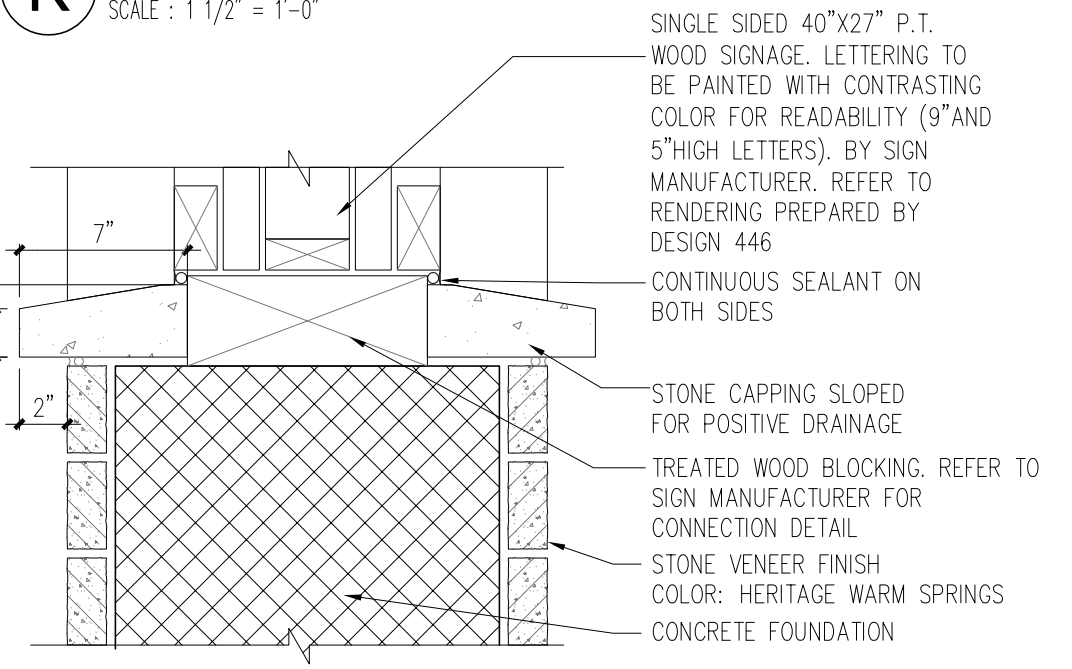
**J DETAIL AT STONE CAPPING**  
 SCALE: 1 1/2" = 1'-0"



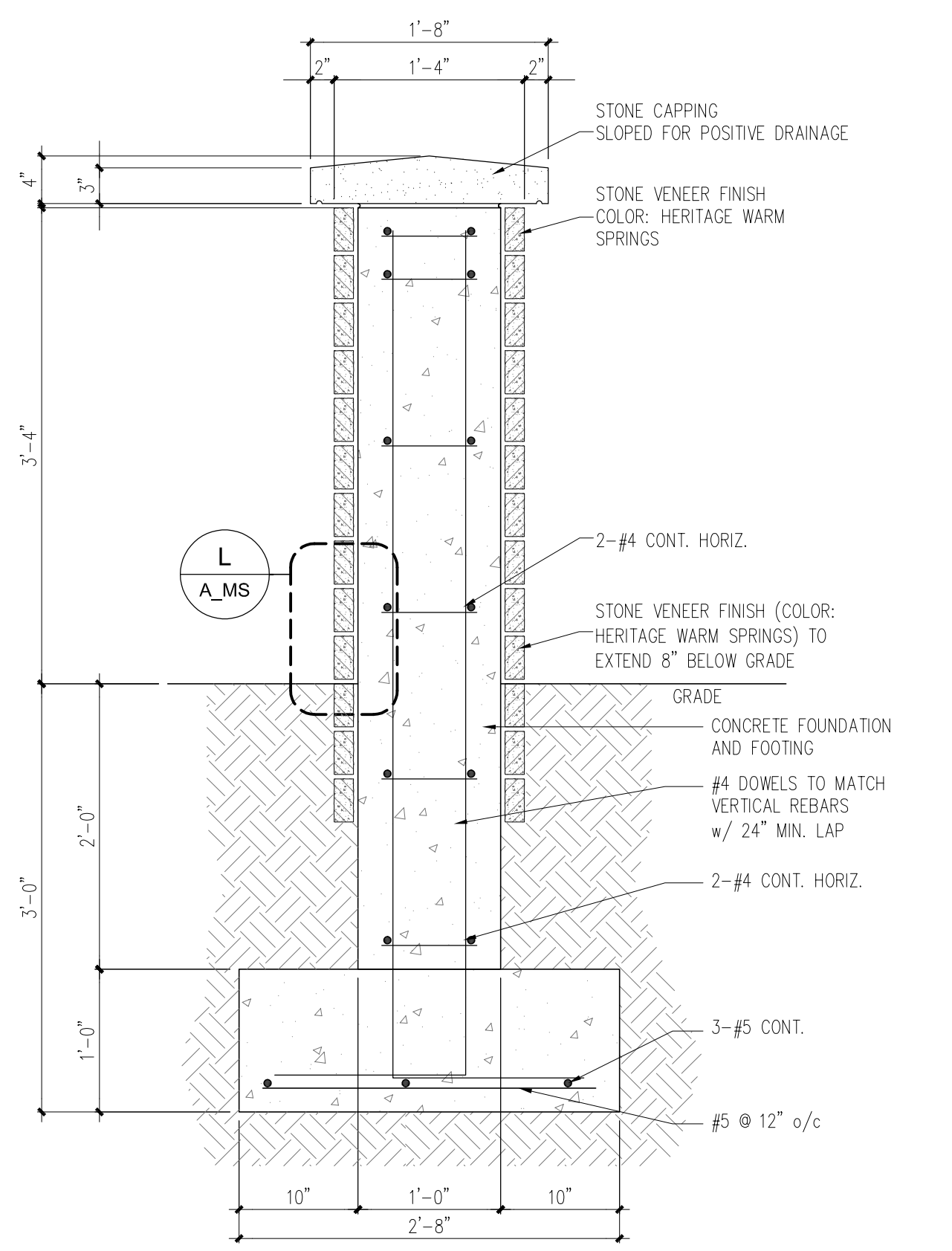
**K DETAIL AT STONE VENEER**  
 SCALE: 1 1/2" = 1'-0"



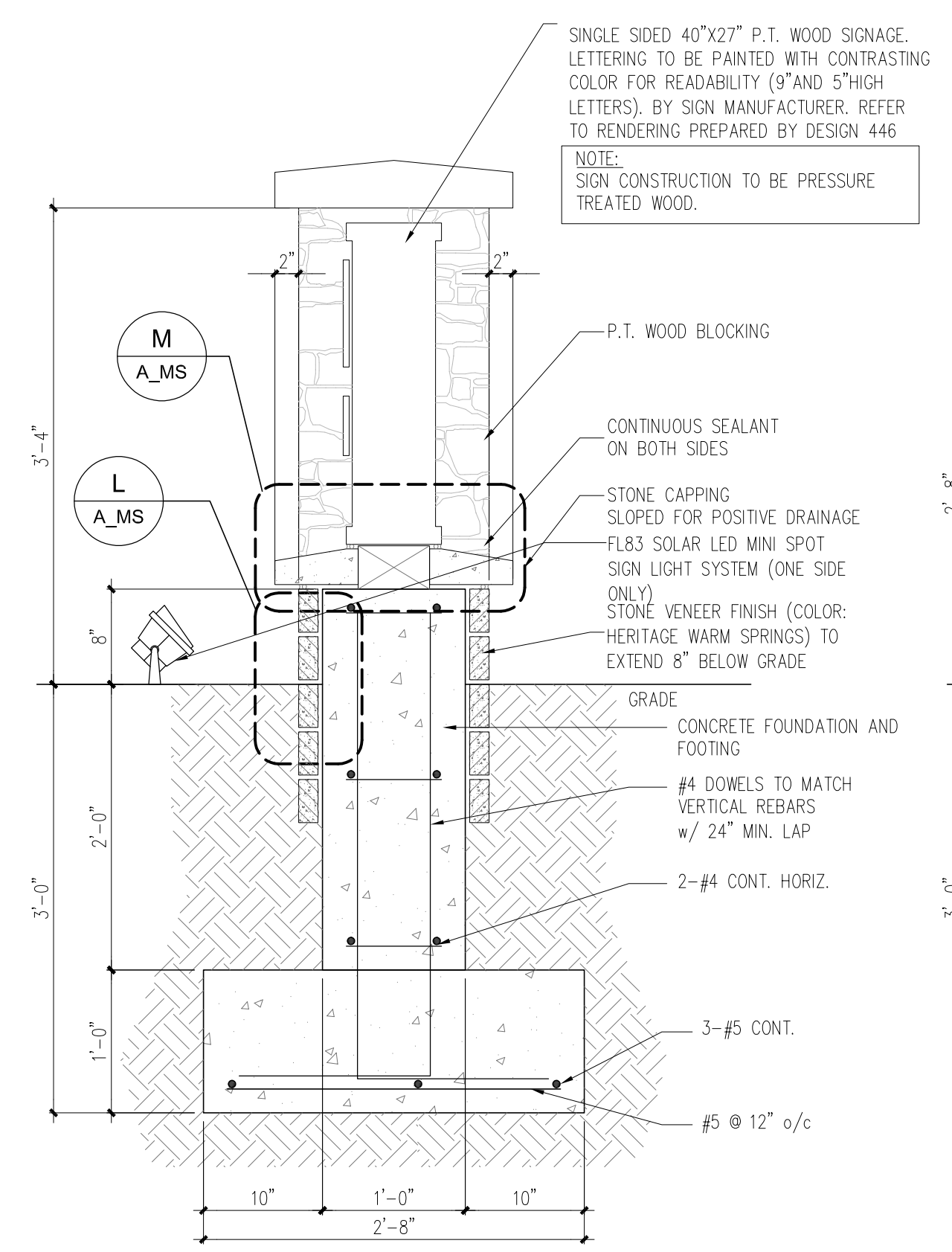
**L STONE VENEER @ WALL BASE**  
 SCALE: N.T.S.



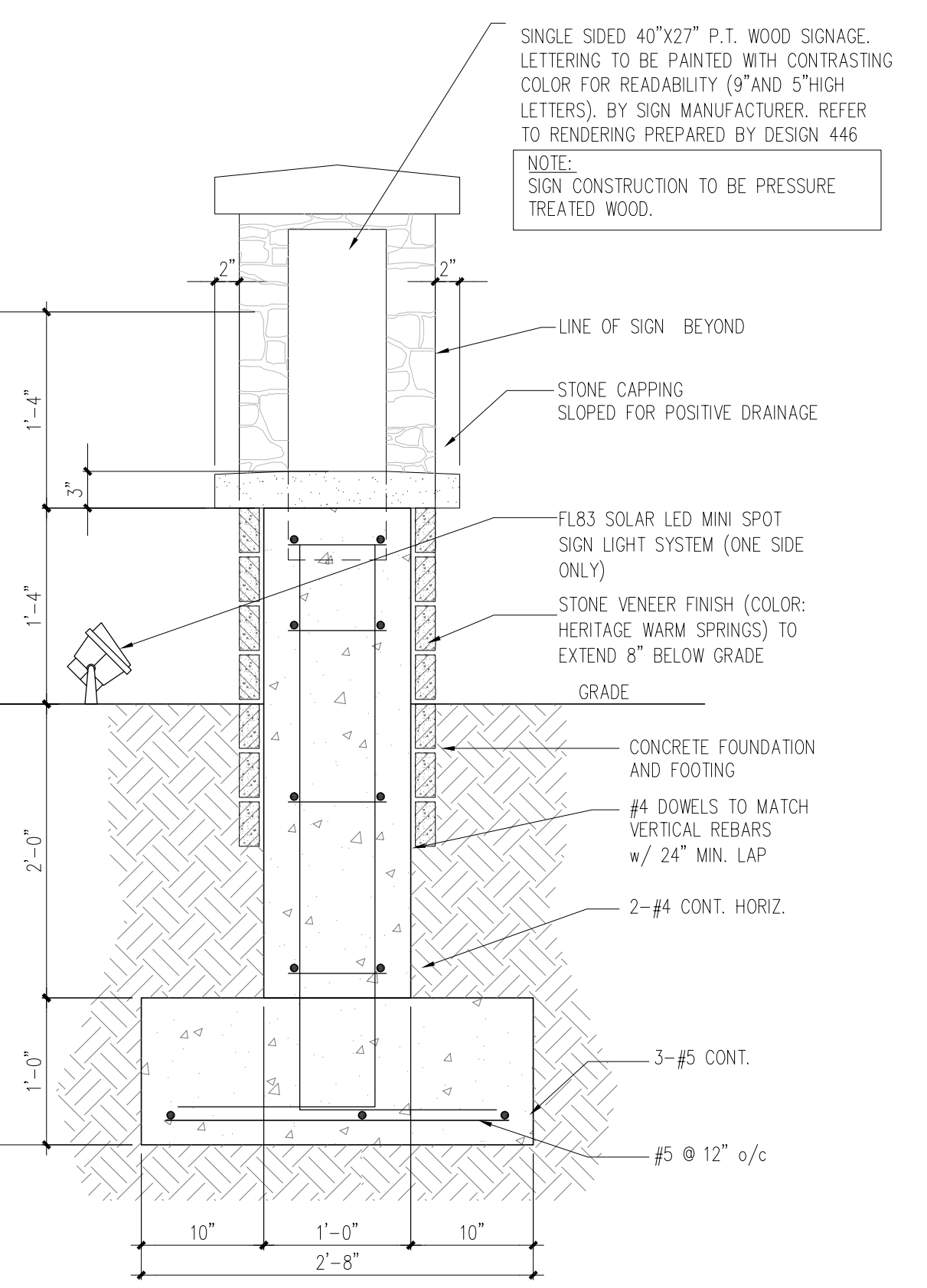
**M DETAIL AT STONE CAPPING**  
 SCALE: 1 1/2" = 1'-0"



**G SIGN SECTION**  
 SCALE: 1" = 1'-0"



**F SIGN SECTION**  
 SCALE: 1" = 1'-0"



**E SIGN SECTION**  
 SCALE: 1" = 1'-0"

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  - B. INTERNATIONAL BUILDING CODE / 2018 NEW JERSEY EDITION
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    - b. AMERICAN CONCRETE INSTITUTE
    - c. NATIONAL CONCRETE MASONRY ASSOCIATION
    - d. AMERICAN INSTITUTE OF STEEL CONSTRUCTION.
    - e. ASSUMED SOIL BEARING CAPACITY : 2000 PSF.

**GWYNEDD PARK**  
**ENTRANCE SIGN**  
 UPPER GWYNEDD TOWNSHIP, PA  
**PULTE HOMES**

SCALE: AS NOTED  
 DATE: 11/11/19  
 DRAWN BY: AO  
 CHECKED BY: AO  
 JOB NO.:

SUBMISSION/REVISION		
NO.	DATE	DESCRIPTION
1.	05-14-20	PERMIT SET
2.		
3.		
4.		
5.		
6.		

ENTRY SIGN  
 PLAN, FOUNDATION PLAN  
 ELEVATIONS, SECTIONS

**A\_MS**



SINGLE SIDED 40" X 27" X 8" WOOD PANEL CABINET  
RAISED LETTERS IN CONTRASTING COLOR

PULTE PLAQUE - 7" X 5" X 3/4" PVC PLAQUE - FLAT PAINTED  
Two-colors PMS matched MATTHEWS urethane.



Gwynedd Park - Single Sided Entry Monument - **OPTION A**

## E Van Rieker

---

**From:** Patrick Hitchens <patrick@skilkennylaw.com>  
**Sent:** Friday, April 24, 2020 2:50 PM  
**To:** John A. VanLuvanee  
**Cc:** 'kenamey@aol.com'; Sean Kilkenny; Rebecca Geiser; E Van Rieker; Lauren Gallagher; 'Scott C. Denlinger'; David Brooman; James J. Garrity; Mark Fischer; Zachary Sivertsen; Julie L. Von Spreckelsen  
**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

Counsel –

As a follow-up to my last email, I write to advise that the Upper Gwynedd Township Zoning Hearing Board (“ZHB”) will be holding a virtual meeting on **May 26, 2020, starting at 7:00PM**, which is its regular meeting date and time for May. Given the order of pending zoning applications, the ZHB would like to schedule/ hear your case on this date via an e-hearing. It is anticipated that there will be two cases heard that night and your case will be heard first.

Here is a brief summary of how the virtual meeting (e-hearing) will be conducted:

- This e-hearing will be conducted through the go-to-meeting platform. All ZHB members as well as me, the zoning officer and the stenographer, will be on the platform via audio and video. It is expected that all parties to the proceeding, including the applicant and any party opponent, as well as any witnesses will also participate on the via audio and video. All members of the public who are not parties to the proceeding and desire to either offer public comment or to listen to the proceedings will participate via audio (i.e. telephone) unless otherwise requested/ demanded and accommodations are necessary.
- Because the Township Building continues to be closed to the public and given the resulting technical difficulties in hand submitting exhibits to the ZHB (at the time of the hearing) or in making the same available to the public, the ZHB requests that all parties submit all intended exhibits or paper documents to be presented as evidence at least five (5) days in advance of the hearing to either myself or the zoning officer. These documents will then be made available to the ZHB members for the e-hearing and will also be posted along with the application on the Township website for public viewing during the e-hearing.
- During the hearing, and as is typical, the ZHB solicitor will rule on any objections that arise. This ruling can be overturned by the ZHB should it decide.
- If there is a need for an executive session during the meeting, the ZHB and Solicitor, may mute their microphones and disable their video camera and have a conference call for the executive session. The ZHB may also choose to have an executive session after the hearings to deliberate, in which case all parties, the stenographer and the public will be requested to leave e-meeting or terminate the call.
- The e-hearing may be recorded and a copy of the recording may be posted on the Township’s website in order to comply with Act 15 requirements.
- As is already permitted by Pennsylvania law, a hearing may be continued to a further date certain if needed. Additionally, following the close of a hearing, the ZHB may adjourn into executive session to deliberate and issue a decision at its next stated meeting or other date.
- Finally, notwithstanding the best efforts of the ZHB, staff, the parties or the public, it is anticipated that these e-hearings will proceed more slowly and carefully. As such, the ZHB requests that all parties and the public be patient and, when possible, accommodating so as to ensure a fair and efficient proceeding.

**I would ask that all parties review the above and please respond to me as soon as practicable to confirm your and your client's agreement to participate in a e-hearing on this matter on May 26, 2020 at 7:00PM.** If you are not agreeable to an e-hearing, I would ask that you kindly provide me with a waiver of deadlines until such time as the ZHB can reasonably and safely schedule in-person hearings. At this time, I do not know what date the ZHB will be able to resume in-person meetings. If you are not agreeable to participate in an e-hearing and you are not willing to provide a further waiver of deadlines, please be advised that the ZHB will have no choice but to proceed with your application without your participation and that may result in a denial.

**I would also ask that you send to me or the zoning officer copies of all exhibits that you intend to introduce at the e-hearing.** I am already in possession of the executed stipulation by the parties that I understand will be submitted as an exhibit. **If there will be no other exhibits, I would ask that you kindly confirm.** If there are other exhibits, I would ask that you provide them to me or the zoning officer as soon as possible but no less than five (5) days before the hearing.

Further, and in accordance with Act 15, please be advised that an Applicant has the right to request a hearing as may be required by law during the period of the ongoing COVID-19 disaster and emergency in accordance with the provisions of Act 15 and 35 Pa. C.S.A. § 5741 (relating to local meetings during COVID-19 disaster emergency). Additionally, please be aware that under Act 15, the Pennsylvania legislature has granted an automatic tolling of the applicable deadlines for the period between March 6, 2020 through May 20, 2020.

**If anyone has any questions with the above, please let me know. Assuming none, I look forward to everyone's response and confirmation as to: (1) participation in an e-hearing on May 26, 2020 at 7:00PM; and (2) anticipated additional exhibits.** I will wait to authorize the legal advertising until after I have received confirmation so as to not unnecessarily incur costs. Therefore, I would encourage you to respond as soon as practicable.

Thank you for your attention.

Best,  
Patrick

**Patrick M. Hitchens, Esq.**  
KILKENNY LAW, LLC  
519 Swede St.  
Norristown, PA 19401  
[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)  
Office Phone: (484) 679-8150  
Direct Dial: (484) 602-9284 ext. 3  
Fax: (610) 879-3778



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**From:** John A. VanLuvanee <JVanLuvanee@eastburngray.com>

**Sent:** Monday, March 16, 2020 12:35 PM

**To:** Patrick Hitchens <patrick@skilkennylaw.com>

**Cc:** 'kenamey@aol.com' <kenamey@aol.com>; Sean Kilkenny <sean@skilkennylaw.com>; Rebecca Geiser <rebecca@skilkennylaw.com>; 'E Van Rieker' <evrieker@uppergwynedd.org>; Lauren Gallagher <LGallagher@rudolphclarke.com>; 'Scott C. Denlinger' <sdenlinger@wispearl.com>; David Brooman <DBrooman@highswartz.com>; James J. Garrity <jgarrity@wispearl.com>; Mark Fischer <MFischer@highswartz.com>; Zachary Sivertsen <ZSivertsen@eastburngray.com>; Julie L. Von Spreckelsen <JVonSpreckelsen@eastburngray.com>

**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

Provco concurs.



**John A. VanLuvanee | Eastburn and Gray, PC**

60 East Court Street | PO Box 1389 | Doylestown, PA 18901

Phone: 215.345.1342 | Fax: 215.345.3528 | Email: [JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)

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**From:** Scott C. Denlinger <[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)>

**Sent:** Monday, March 16, 2020 11:55 AM

**To:** Patrick Hitchens <[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)>; David Brooman <[DBrooman@highswartz.com](mailto:DBrooman@highswartz.com)>; James J. Garrity <[jgarrity@wispearl.com](mailto:jgarrity@wispearl.com)>; John A. VanLuvanee <[JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)>; Julie L. Von Spreckelsen <[JVonSpreckelsen@eastburngray.com](mailto:JVonSpreckelsen@eastburngray.com)>; Mark Fischer <[MFischer@highswartz.com](mailto:MFischer@highswartz.com)>; Zachary Sivertsen <[ZSivertsen@eastburngray.com](mailto:ZSivertsen@eastburngray.com)>

**Cc:** 'kenamey@aol.com' <[kenamey@aol.com](mailto:kenamey@aol.com)>; Sean Kilkenny <[sean@skilkennylaw.com](mailto:sean@skilkennylaw.com)>; Rebecca Geiser <[rebecca@skilkennylaw.com](mailto:rebecca@skilkennylaw.com)>; 'E Van Rieker' <[evrieker@uppergwynedd.org](mailto:evrieker@uppergwynedd.org)>; Lauren Gallagher <[LGallagher@rudolphclarke.com](mailto:LGallagher@rudolphclarke.com)>

**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

Patrick,

The Township does not have an objection to continuing the Remand Hearing to the next scheduled meeting should the ZHB decide to cancel its March meeting. Thanks.

Scott



Scott C. Denlinger, Esquire

**Wisler Pearlstine, LLP**

Blue Bell Executive Campus  
460 Norristown Road, Suite 110  
Blue Bell, PA 19422-2323  
Telephone: (610) 825-8400  
Facsimile: (610) 828-4887

[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)  
<http://www.wislerpearlstine.com/>

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**From:** Patrick Hitchens <[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)>

**Sent:** Monday, March 16, 2020 11:43 AM

**To:** David Brooman <[DBrooman@highswartz.com](mailto:DBrooman@highswartz.com)>; Scott C. Denlinger <[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)>; James J. Garrity <[jgarrity@wispearl.com](mailto:jgarrity@wispearl.com)>; John A. VanLuvanee <[JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)>; Julie L. Von Spreckelsen <[JVonSpreckelsen@eastburngray.com](mailto:JVonSpreckelsen@eastburngray.com)>; Mark Fischer <[MFischer@highswartz.com](mailto:MFischer@highswartz.com)>; Zachary Sivertsen <[ZSivertsen@eastburngray.com](mailto:ZSivertsen@eastburngray.com)>

**Cc:** 'kenamey@aol.com' <[kenamey@aol.com](mailto:kenamey@aol.com)>; Sean Kilkenny <[sean@skilkennylaw.com](mailto:sean@skilkennylaw.com)>; Rebecca Geiser <[rebecca@skilkennylaw.com](mailto:rebecca@skilkennylaw.com)>; 'E Van Rieker' <[evrieker@uppergwynedd.org](mailto:evrieker@uppergwynedd.org)>; Lauren Gallagher <[LGallagher@rudolphclarke.com](mailto:LGallagher@rudolphclarke.com)>

**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

Counsel –

I just left a message for Mr. Sivertsen and Mr. Garrity and just spoke with Mr. Brooman regarding the remand hearing scheduled for March 24<sup>th</sup>.

It is my understanding that the Township building is currently closed to the public through March 20, 2020. I suspect that this may be extended depending on how events continue to unfold in Montgomery County and in the Commonwealth.

I am therefore reaching out to see whether counsel would have any objections and if the parties would all be agreeable to continue the hearing to the next scheduled meeting should the ZHB decide to cancel its March meeting.

Mr. Broom advised tome on the phone that Merck would have no objections and would be agreeable. I would be grateful if both the attorneys for the Township and Provco could also advise if they would be agreeable to such a continuance.

As always, thank you for your attention and assistance.

Best,  
Patrick

**Patrick M. Hitchens, Esq.**  
KILKENNY LAW, LLC  
519 Swede St.  
Norristown, PA 19401  
[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)  
Office Phone: (484) 679-8150  
Direct Dial: (484) 602-9284 ext. 3  
Fax: (610) 879-3778



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**From:** David Brooman <[DBrooman@highswartz.com](mailto:DBrooman@highswartz.com)>  
**Sent:** Wednesday, February 12, 2020 6:10 PM  
**To:** 'Scott C. Denlinger' <[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)>; Patrick Hitchens <[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)>; John A. VanLuvanee <[JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)>; 'E Van Rieker' <[evrieker@uppergwynedd.org](mailto:evrieker@uppergwynedd.org)>  
**Cc:** James J. Garrity <[jgarrity@wispearl.com](mailto:jgarrity@wispearl.com)>; Julie L. Von Spreckelsen <[JVonSpreckelsen@eastburngray.com](mailto:JVonSpreckelsen@eastburngray.com)>; Mark Fischer <[MFischer@highswartz.com](mailto:MFischer@highswartz.com)>; 'kenamey@aol.com' <[kenamey@aol.com](mailto:kenamey@aol.com)>; Sean Kilkenny <[sean@skilkennylaw.com](mailto:sean@skilkennylaw.com)>; Rebecca Geiser <[rebecca@skilkennylaw.com](mailto:rebecca@skilkennylaw.com)>  
**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

All,

I am fine with the public notice. Thanks, Scott.

David

**David J. Brooman, Esquire**  
(610) 275-0700 ext. 3039 (direct)  
(215) 915-9430 (mobile)  
(610) 275-5290 (fax)  
[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)





40 East Airy Street  
P.O. Box 671  
Norristown, PA 19401

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---

**From:** Scott C. Denlinger [<mailto:sdenlinger@wispearl.com>]  
**Sent:** Wednesday, February 12, 2020 11:19 AM  
**To:** Patrick Hitchens; John A. VanLuvanee; 'E Van Rieker'  
**Cc:** James J. Garrity; David Brooman; Julie L. Von Spreckelsen; Mark Fischer; 'kenamey@aol.com'; Sean Kilkenny; Rebecca Geiser  
**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

All,

In the interests of time, attached is the draft advertisement that I put together.

However, I am still awaiting confirmation from John that the March 24, 2020 date is acceptable. If Provco does not agree to the March 24, 2020 date, we also need to know because we may need to schedule a special meeting. Thanks.

Scott

Scott C. Denlinger, Esquire

**Wisler Pearlstine, LLP**

Blue Bell Executive Campus  
460 Norristown Road, Suite 110  
Blue Bell, PA 19422-2323  
Telephone: (610) 825-8400  
Facsimile: (610) 828-4887

[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)  
<http://www.wislerpearlstine.com/>

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---

**From:** Patrick Hitchens <[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)>  
**Sent:** Wednesday, February 12, 2020 9:54 AM  
**To:** John A. VanLuvanee <[JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)>; 'E Van Rieker' <[evrieker@uppergwynedd.org](mailto:evrieker@uppergwynedd.org)>  
**Cc:** James J. Garrity <[jgarrity@wispearl.com](mailto:jgarrity@wispearl.com)>; 'dbrooman@highswartz.com' <[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)>; Scott C. Denlinger <[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)>; Julie L. Von Spreckelsen <[JVonSpreckelsen@eastburngray.com](mailto:JVonSpreckelsen@eastburngray.com)>; Mark Fischer <[MFischer@highswartz.com](mailto:MFischer@highswartz.com)>; 'kenamey@aol.com' <[kenamey@aol.com](mailto:kenamey@aol.com)>; Sean Kilkenny <[sean@skilkennylaw.com](mailto:sean@skilkennylaw.com)>;



Rebecca Geiser <[rebecca@skilkennylaw.com](mailto:rebecca@skilkennylaw.com)>  
**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

John –

Email received with attachment this time. I think you sent this previously on Monday. I did review it and I saw that the parties agreed that advertising would be required, but there was no agreement or statement as to what that advertising would consist of. So again, if you have PA case law showing that posting and mailed notices are *not* required as part of advertising for a continued hearing (wherein the continued date was not previously announced on the record at the prior hearing), please share it so I can review.

Best,  
Patrick

**Patrick M. Hitchens, Esq.**  
KILKENNY LAW, LLC  
519 Swede St.  
Norristown, PA 19401  
[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)  
Office Phone: (484) 679-8150  
Direct Dial: (484) 602-9284 ext. 6  
Fax: (610) 879-3778



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**From:** John A. VanLuvanee <[JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)>  
**Sent:** Wednesday, February 12, 2020 9:34 AM  
**To:** 'E Van Rieker' <[evrieker@uppergwynedd.org](mailto:evrieker@uppergwynedd.org)>; Patrick Hitchens <[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)>  
**Cc:** 'jgarrity@wispearl.com' <[jgarrity@wispearl.com](mailto:jgarrity@wispearl.com)>; 'dbrooman@highswartz.com' <[dbrooman@highswartz.com](mailto:dbrooman@highswartz.com)>; 'Scott C. Denlinger' <[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)>; 'Julie L. Von Spreckelsen' <[JVonSpreckelsen@eastburngray.com](mailto:JVonSpreckelsen@eastburngray.com)>; 'mfisher@highswartz.com' <[mfisher@highswartz.com](mailto:mfisher@highswartz.com)>; 'kenamey@aol.com' <[kenamey@aol.com](mailto:kenamey@aol.com)>; Sean Kilkenny <[sean@skilkennylaw.com](mailto:sean@skilkennylaw.com)>; Alex Baumler <[alex@skilkennylaw.com](mailto:alex@skilkennylaw.com)>  
**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand

I had intended to forward the transcript of the June 24, 2019 remand hearing. It is attached.



**John A. VanLuvanee | Eastburn and Gray, PC**  
60 East Court Street | PO Box 1389 | Doylestown, PA 18901  
Phone: 215.345.1342 | Fax: 215.345.3528 | Email: [JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)

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**From:** John A. VanLuvanee  
**Sent:** Tuesday, February 11, 2020 2:21 PM  
**To:** 'E Van Rieker' <[evrieker@uppergwynedd.org](mailto:evrieker@uppergwynedd.org)>; Patrick Hitchens ([patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)) <[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)>  
**Cc:** [jgarrity@wispearl.com](mailto:jgarrity@wispearl.com); [dbrooman@highswartz.com](mailto:dbrooman@highswartz.com); Scott C. Denlinger ([sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)) <[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)>; Julie L. Von Spreckelsen <[JVonSpreckelsen@eastburngray.com](mailto:JVonSpreckelsen@eastburngray.com)>; [mfisher@highswartz.com](mailto:mfisher@highswartz.com); 'kenamey@aol.com' <[kenamey@aol.com](mailto:kenamey@aol.com)>; [sean@skilkennylaw.com](mailto:sean@skilkennylaw.com); [alex@skilkennylaw.com](mailto:alex@skilkennylaw.com)  
**Subject:** RE: Attached Image - UGT ZHB #19-05 Remand



**John A. VanLuvanee | Eastburn and Gray, PC**  
60 East Court Street | PO Box 1389 | Doylestown, PA 18901  
Phone: 215.345.1342 | Fax: 215.345.3528 | Email: [JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)

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**From:** E Van Rieker <[evrieker@uppergwynedd.org](mailto:evrieker@uppergwynedd.org)>  
**Sent:** Tuesday, February 11, 2020 11:42 AM  
**To:** Patrick Hitchens ([patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)) <[patrick@skilkennylaw.com](mailto:patrick@skilkennylaw.com)>  
**Cc:** John A. VanLuvanee <[JVanLuvanee@eastburngray.com](mailto:JVanLuvanee@eastburngray.com)>; [jgarrity@wispearl.com](mailto:jgarrity@wispearl.com); [dbrooman@highswartz.com](mailto:dbrooman@highswartz.com); Scott C. Denlinger ([sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)) <[sdenlinger@wispearl.com](mailto:sdenlinger@wispearl.com)>; Julie L. Von Spreckelsen <[JVonSpreckelsen@eastburngray.com](mailto:JVonSpreckelsen@eastburngray.com)>; [mfisher@highswartz.com](mailto:mfisher@highswartz.com); 'kenamey@aol.com' <[kenamey@aol.com](mailto:kenamey@aol.com)>; [sean@skilkennylaw.com](mailto:sean@skilkennylaw.com); [alex@skilkennylaw.com](mailto:alex@skilkennylaw.com)  
**Subject:** FW: Attached Image - UGT ZHB #19-05 Remand

Patrick,

Following up to recent communications from you and John, and hopefully to help expedite things, I have attached A partial set of exhibits and pertinent correspondence from the file. This is NOT everything in the file. I have copied all from the Previous email list.

Please note the following attached items:

1. ZHB Application (Received May 10, 2019) along with 3-page Addendum To Application.
2. Exhibits attached to the ZHB Application labeled: Appendix A and Appendix B.
3. Verification Of Posting Notice (The property was originally posted June 11, 2019).
4. Proof of Publication of the Legal Notices.
5. The Legal Notice (For the June 25, 2019 Hearing).
6. Letter to the applicant, dated June 5, 2019.
7. Letter to Property Owners, dated June 5, 2019 which included the Legal Advertisement (see item #5 above). This was sent to all property owners within 500 feet of the boundary of the subject property.

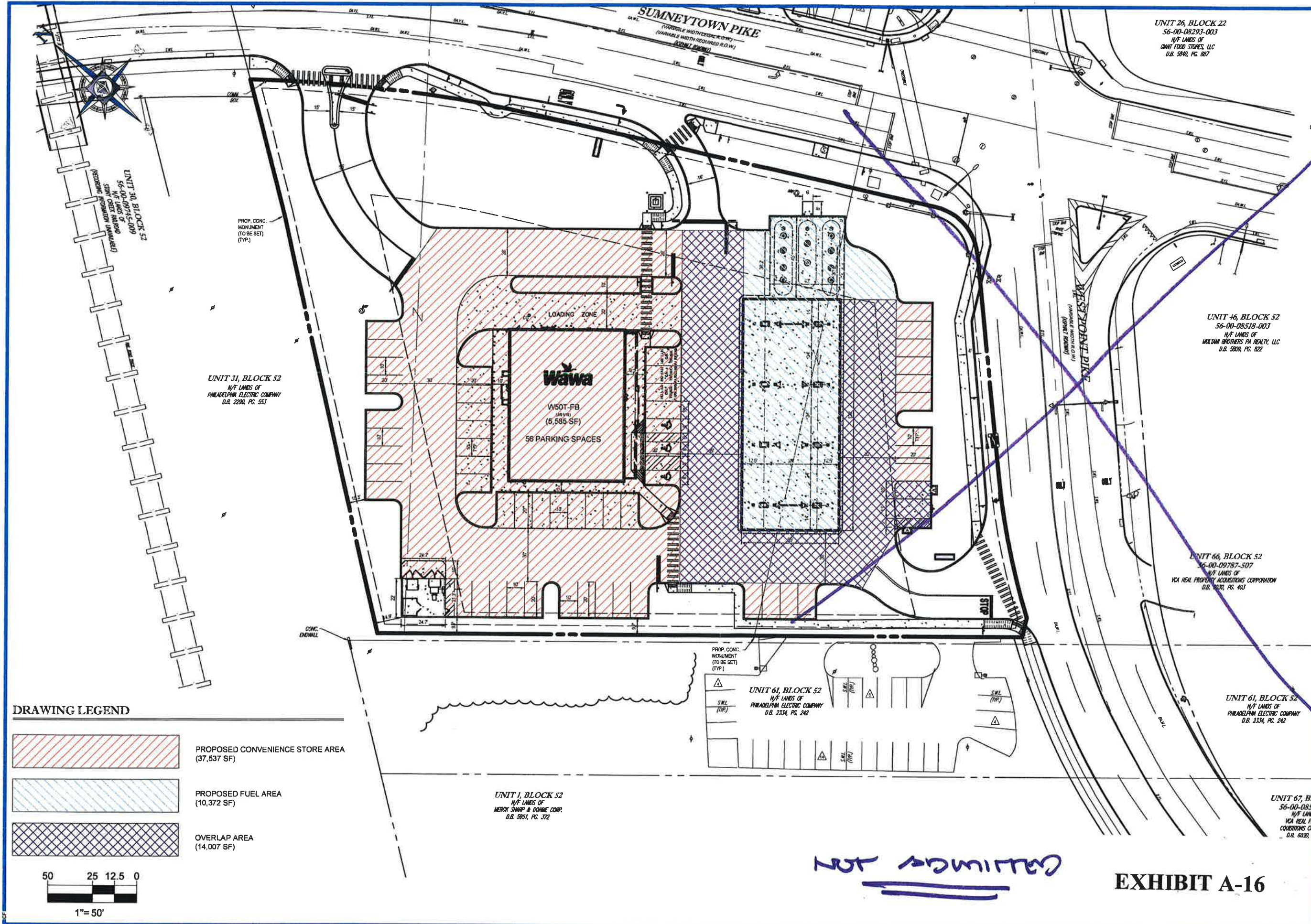
Perhaps the original notice is satisfactory but please weigh in with all parties then advise. To John's point the property was subject to posting, neighbors notice and legal notice advertisement previously.

Call with questions.  
Thanks everyone.

VAN  
E. Van Rieker, AICP  
Zoning Officer & Planning Coordinator

**From:** [scanner@uppergwynedd.org](mailto:scanner@uppergwynedd.org) [<mailto:scanner@uppergwynedd.org>]  
**Sent:** Tuesday, February 11, 2020 9:13 AM  
**To:** E Van Rieker  
**Subject:** Attached Image





**BOHLER ENGINEERING**  
 SITE CIVIL AND CONSULTING ENGINEERING  
 LAND SURVEYING  
 PROGRAM MANAGEMENT  
 LANDSCAPE ARCHITECTURE  
 SUSTAINABLE DESIGN  
 PERMITTING SERVICES  
 TRANSPORTATION SERVICES

**REVISIONS**

REV	DATE	COMMENT	DRAWN BY

THIS DRAWING IS INTENDED FOR MUNICIPAL AND/OR AGENCY REVIEW AND APPROVAL. IT IS NOT INTENDED AS A CONSTRUCTION DOCUMENT UNLESS INDICATED OTHERWISE.

PROJECT No: PC151228  
 DRAWN BY: J.C.F.  
 CHECKED BY: C.J.B.  
 DATE: 09/17/2019  
 SCALE: 1"=50'  
 CAD I.D.: PC151228EXAREA-0




PROJECT:  
**EXHIBIT**  
 FOR  
**PROVCO PINEGOOD SUMNEYTOWN, LLC**  
 PROPOSED WAWA FOOD MARKET  
 708 SUMNEYTOWN PIKE & 1818 WEST POINT PIKE  
 UPPER GWYNEDD TOWNSHIP  
 MONTGOMERY COUNTY  
 PENNSYLVANIA  
 19446

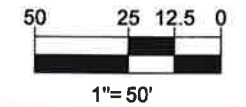
**BOHLER ENGINEERING**  
 1600 MANOR DRIVE, SUITE 200  
 CHALFONT, PA 18914  
 Phone: (215) 898-9100  
 Fax: (215) 898-9102  
[www.BohlerEngineering.com](http://www.BohlerEngineering.com)

**J.S. BARAN**  
 PROFESSIONAL ENGINEER  
 PENNSYLVANIA LICENSE No. PE-006607-E  
 NEW JERSEY LICENSE No. 24060083400

SHEET TITLE:  
**AREA EXHIBIT**  
 SHEET NUMBER:  
**1**  
 1 OF 1  
 REVISION 0 - 2019.06.17

**DRAWING LEGEND**

-  PROPOSED CONVENIENCE STORE AREA (37,537 SF)
-  PROPOSED FUEL AREA (10,372 SF)
-  OVERLAP AREA (14,007 SF)



*Callings for*

**EXHIBIT A-16**



**ZONING HEARING BOARD**  
 UPPER GWYNEDD TOWNSHIP  
 MONTGOMERY COUNTY, PENNSYLVANIA  
 Zoning Ordinance of November 23, 1987 as Amended



APPLICATION FOR VARIANCE(S) Check One   X   Date: \_\_\_\_\_  
 APPLICATION FOR SPECIAL EXCEPTION(S)   X    
 APPEAL FROM ZONING OFFICER'S  
 DECISION/DETERMINATION(S) \_\_\_\_\_

PROPERTY ADDRESS/ LOCATION 708 Sumneytown Pike Acres  
1610 West Point Pike LOT SIZE 1.8236 a ZONING DISTRICT   C    
32,400 Square Feet   C  

Check One (Applicant)  
 Owner  
 Equitable Owner (under Agreement of Sale)  
 Lessor  
 Lessee

Applicant's Name: Provco Pinegood Sumneytown LLC Check One  
 Date Ownership Secured \_\_\_\_\_  
 Address: 795 E. Lancaster Ave., Villanova Date of Agreement of Sale   6/24/16    
 Telephone: 610-520-4572 Date of Lease \_\_\_\_\_  
PA 19085

Contractor's or Agent's Name Bohler Engineering Public Water Yes   x   No \_\_\_\_\_  
Public Sewer Yes   x   No \_\_\_\_\_

Address 1600 Manor Drive, Suite 200, Chalfont, PA 18914

Give full information as to Section of Zoning Ordinance involved and reasons why the Variance(s), Special Exception(s) or Appeal is desired and why it should be granted.

See attached addendum

\_\_\_\_\_  
 Owner's signature, if Applicant  
 is not Owner, agreeing to this  
 Application

Applicant's Signature   
 Please Print Name: Bruce A Goodman

Attorney's Name: Julie Von Spreckelsen, Esquire  
 Address: 470 Norristown Rd, Suite 302, Blue Bell PA  
 Telephone: 215-345-7000 19422

Record of Secretary - Zoning Hearing Board

Application No. \_\_\_\_\_ Hearing Date(s) \_\_\_\_\_ Decision Date \_\_\_\_\_

VARIANCE(S)	Granted _____	Denied _____
SPECIAL EXCEPTION(S)	Granted _____	Denied _____
APPEAL	Granted _____	Denied _____

RESTRICTIONS/CONDITIONS (if any)

- ( ) Zoning Officer
- ( ) Zoning Hearing Board
- ( ) Board of Commissioners
- ( ) Zoning Solicitor

Signature of Secretary \_\_\_\_\_

COMMERCE BANK/PENNSYLVANIA, NA  
3-180/360

6658

**Pineville Properties, LLC**  
1288 Valley Forge Road, Unit 66 PO Box 987  
Valley Forge, PA 19482

6/29/2016

PAY TO THE ORDER OF **Upper Gwynedd Township**

\$ \*\*1,000.00

One Thousand and 00/100\*\*\*\*\* DOLLARS

Upper Gwynedd Township

*Denise M. Miller*

MEMO

⑈006658⑈ ⑆036001808⑆ 36 116332 2⑈

**UPPER GWYNEDD TOWNSHIP  
BOARD OF COMMISSIONERS**

P.O. Box 1  
WEST POINT, PENNSYLVANIA 19486  
Phone (215) 699-7777

CUSTOMER'S ORDER NO.		PHONE		DATE	
				7/5/16	
NAME <i>Pineville Properties LLC</i>					
ADDRESS <i>708 Springton Pike # 1610 West Point Pike</i>					
CASH	C.O.D.	CHARGE	ON ACCT.	MOISE. RET'D.	PAID OUT
<i>Zoning Hearing Ed. App.</i>					<i>1000 -</i>
<i>check # 6658</i>					
SOLD BY				RECEIVED BY	TOTAL
				<i>KH</i>	<i>1000 -</i>
					TAX

C PRODUCT 609 All claims and returned goods MUST be accompanied by this bill.

10392

Thank You

**ZONING HEARING BOARD**  
 UPPER GWYNEDD TOWNSHIP  
 MONTGOMERY COUNTY, PENNSYLVANIA  
 Zoning Ordinance of November 23, 1987 as Amended



APPLICATION FOR VARIANCE(S) Check One   X   Date: \_\_\_\_\_  
 APPLICATION FOR SPECIAL EXCEPTION(S)   X    
 APPEAL FROM ZONING OFFICER'S  
 DECISION/DETERMINATION(S) \_\_\_\_\_

PROPERTY ADDRESS/ LOCATION 708 Sumneytown Pike Acres  
1610 West Point Pike LOT SIZE 1.8236 a ZONING DISTRICT   C    
32,400 Square Feet   C  

Check One (Applicant)  
 Owner  
 Equitable Owner (under Agreement of Sale)  
 Lessor  
 Lessee

Applicant's Name: Provco Pinegood Sumneytown LLC Check One  
 Date Ownership Secured \_\_\_\_\_  
 Address: 795 E. Lancaster Ave., Villanova Date of Agreement of Sale   6/24/16    
 Telephone: 610-520-4572 PA 19085 Date of Lease \_\_\_\_\_

Contractor's or Agent's Name Bohler Engineering Public Water Yes   x   No \_\_\_\_\_  
Public Sewer Yes   x   No \_\_\_\_\_

Address 1600 Manor Drive, Suite 200, Chalfont, PA 18914

Give full information as to Section of Zoning Ordinance involved and reasons why the Variance(s), Special Exception(s) or Appeal is desired and why it should be granted.

See attached addendum

\_\_\_\_\_  
 Owner's signature, if Applicant  
 is not Owner, agreeing to this  
 Application

Applicant's Signature   
 Please Print Name: Bruce A Goodman

Attorney's Name: Julie Von Spreckelsen, Esquire  
 Address: 470 Norristown Rd, Suite 302, Blue Bell PA  
 Telephone: 215-345-7000 19422

Record of Secretary - Zoning Hearing Board

Application No. \_\_\_\_\_ Hearing Date(s) \_\_\_\_\_ Decision Date \_\_\_\_\_

VARIANCE(S)	Granted _____	Denied _____
SPECIAL EXCEPTION(S)	Granted _____	Denied _____
APPEAL	Granted _____	Denied _____

RESTRICTIONS/CONDITIONS (if any)

- ( ) Zoning Officer
- ( ) Zoning Hearing Board
- ( ) Board of Commissioners
- ( ) Zoning Solicitor

Signature of Secretary \_\_\_\_\_

COMMERCE BANK/PENNSYLVANIA, NA  
3-180/360

6658

**Pineville Properties, LLC**  
1288 Valley Forge Road, Unit 66 PO Box 987  
Valley Forge, PA 19482

6/29/2016

PAY TO THE ORDER OF **Upper Gwynedd Township**

\$ \*\*1,000.00

**One Thousand and 00/100**\*\*\*\*\* DOLLARS

Upper Gwynedd Township

*Denise M. Miller*

MEMO

⑈006658⑈ ⑆03600⑆1808⑆ 36 ⑆⑆6332 2⑈

**UPPER GWYNEDD TOWNSHIP  
BOARD OF COMMISSIONERS**

P.O. Box 1  
WEST POINT, PENNSYLVANIA 19486  
Phone (215) 699-7777

CUSTOMER'S ORDER NO.		PHONE		DATE	
				7/5/16	
NAME <i>Pineville Properties LLC</i>					
ADDRESS <i>708 Springton Pike # 1610 West Point Pike</i>					
CASH	C.O.D.	CHARGE	ON ACCT.	MOISE. RET'D.	PAID OUT
<i>Zoning Hearing Ed. App.</i>					<i>1000 -</i>
<i>check # 6658</i>					
SOLD BY				RECEIVED BY	TAX
				<i>KH</i>	
				TOTAL	<i>1000 -</i>

C PRODUCT 609 All claims and returned goods MUST be accompanied by this bill.

10392

Thank You



**UPPER GWYNEDD TOWNSHIP ZONING HEARING BOARD**

**ZONING HEARING BOARD APPLICATION OF:**

**PROVCO PINEGOOD SUMNEYTOWN, LLC**

**PROPERTIES: 708 SUMNEYTOWN PIKE  
1610 WEST POINT PIKE**

**TAX PARCEL NOS.: 56-00-08521-009  
56-00-08524-006  
56-00-08527-003**

**DATE: September 27, 2016**

**EXHIBIT BOOKLET**

Julie L. Von Spreckelsen, Esquire  
Eastburn and Gray, P.C.  
470 Norristown Road, Suite 302  
Blue Bell, PA 19422

Attorney for Applicant:  
Provco Pinegood Sumneytown, LLC

**ZONING HEARING BOARD**  
 UPPER GWYNEDD TOWNSHIP  
 MONTGOMERY COUNTY, PENNSYLVANIA  
 Zoning Ordinance of November 23, 1987 as Amended

APPLICATION FOR VARIANCE(S)  **Check One** Date: \_\_\_\_\_  
 APPLICATION FOR SPECIAL EXCEPTION(S)   
 APPEAL FROM ZONING OFFICER'S \_\_\_\_\_  
 DECISION/DETERMINATION(S) \_\_\_\_\_

PROPERTY ADDRESS/ LOCATION 708 Sumneytown Pike 1610 West Point Pike LOT SIZE 1.8236 32,400 Acres 3 ZONING DISTRICT C  
 Square Feet C

Check One (Applicant)  
 Owner  
 Equitable Owner (under Agreement of Sale)  
 Lessor  
 Lessee

Applicant's Name: Provco Pinegood Sumneytown LLC **Check One**  
 Date Ownership Secured \_\_\_\_\_  
 Date of Agreement of Sale 6/24/16  
 Date of Lease \_\_\_\_\_  
 Address: 795 E. Lancaster Ave., Villanova  
 Telephone: 610-520-4572 PA 19085

Contractor's or Agent's Name Bohler Engineering Public Water Yes  No \_\_\_\_\_  
 Public Sewer Yes  No \_\_\_\_\_

Address 1600 Manor Drive, Suite 200, Chalfont, PA 18914

Give full information as to Section of Zoning Ordinance involved and reasons why the Variance(s), Special Exception(s) or Appeal is desired and why it should be granted.

See attached addendum

Owner's signature, if Applicant is not Owner, agreeing to this Application

Applicant's Signature   
 Please Print Name: Bruce A Goodman

Attorney's Name: Julie Von Spreckelsen, Esquire  
 Address: 470 Norristown Rd, Suite 302, Blue Bell PA 19422  
 Telephone: 215-345-7000

Record of Secretary - Zoning Hearing Board

Application No. \_\_\_\_\_ Hearing Date(s) \_\_\_\_\_ Decision Date \_\_\_\_\_

VARIANCE(S)	Granted _____	Denied _____
SPECIAL EXCEPTION(S)	Granted _____	Denied _____
APPEAL	Granted _____	Denied _____

RESTRICTIONS/CONDITIONS (if any)

- ( ) Zoning Officer
- ( ) Zoning Hearing Board
- ( ) Board of Commissioners
- ( ) Zoning Solicitor

Signature of Secretary \_\_\_\_\_

**UPPER GWYNEDD TOWNSHIP ZONING HEARING BOARD  
ADDENDUM TO APPLICATION**

Applicant: Provco Pinegood Sumneytown, LLC  
795 E. Lancaster Avenue  
Building #2, Suite 200  
Villanova, PA 19085

Owners:	Edward & Patricia Burkholder 312 Gosling Drive North Wales, PA 19454	John Gawthrop, Jr. & Richard Abbott copartners t/a JAD Properties 1610 West Point Pike Lansdale, PA 19446
---------	--	--

Properties:	708 Sumneytown Pike TPNs. 56-00-08524-00-6 56-00-08527-00-3	1610 West Point Pike TPN. 56-00-08521-00-9
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Relief Requested: 1. An interpretation that a canopy over motor vehicle fueling stations is an accessory building and that motor vehicle fuel sales are a permitted accessory use and customarily incidental to a permitted retail store use pursuant to section 195-3 "Definitions - Accessory Building and Accessory Use" and 195-22.A(7) "C Commercial District – Use regulations";

and/or in the alternative,

A special exception pursuant to section 195-22.A(8)(c) "C Commercial District – Use regulations".

To permit a gasoline service station use or motor vehicle fuel sales as an accessory use to a permitted convenience store retail use.

2. Variations from section 195, attachment 3:1 "Schedule of Sign Regulations".

- a. to permit a total sign area of 325.64 square feet rather than the maximum permitted 40 square feet;
- b. to permit ground signs totaling 186 square feet rather than the maximum permitted 24 square feet;
- c. to permit façade signs totaling 139.64 square feet rather than the maximum permitted 40 square feet;

Addendum to Zoning Application: Provco Pinegood Sumneytown, LLC

- d. to permit 2 ground signs of 27 feet in height rather than the maximum permitted 12 feet in height; and
  - e. to permit 20 façade signs (16 gas pump, 2 building, and 2 spanner) rather than the maximum permitted 1 façade sign.
3. A variance from section 195-35.I(2)(b) "Prohibited signs".  
To permit a sign with red or green LEDs within 75 feet of the public right-of-way and within 200 feet of a traffic control signal.
4. A variance from section 195-35.J(2)(I)[5] "Permitted signs".  
To permit a sign with both red and green LEDs rather than the maximum permitted 1 color.

**BACKGROUND**

This application proposes the redevelopment of the southwest corner of Sumneytown Pike and West Point Pike with a convenience store with motor vehicle fuel dispensing facilities.

Provco Pinegood Sumneytown, LLC ("Landowner") is the equitable owner of 2 contiguous parcels located on the southwest corner of Sumneytown Pike and West Point Pike, Upper Gwynedd Township ("Township"), Pennsylvania, Montgomery County tax parcel nos. 56-00-08524-00-6, 56-00-08527-00-3, and 56-00-08521-00-9 (collectively, "Property"). The Property comprises approximately 2.43 acres, and is located in the Township's C Commercial District.

Current improvements to the Property include the Sumney Tavern restaurant and the Country Bride and Gent retail store. Both establishments have associated parking, lighting, and landscaping.

Landowner proposes demolition of the buildings, consolidation of the parcels, and the construction of a 5,585 square foot Wawa convenience store, with 8 fueling stations (16 fueling positions) and 56 parking spaces. Traffic and circulation will be significantly improved, as described below.

### **ZONING RELIEF**

Landowner requests the variances outlined above from the Upper Gwynedd Township Zoning Ordinance of 1987, as amended ("Ordinance"). Landowner is entitled to the requested interpretation or special exception to permit motor vehicle fuel sales at the Property, and the requested variances to permit additional signage, for the following reasons:

(1) Ordinance section 195-22.A(7) "C Commercial District – Use regulations" permits by right an accessory use on the same lot with and customarily incidental to the use permitted and utilized. The sale of motor vehicle fuels is customarily incidental to the convenience store use and thus is an accessory use as defined in Ordinance section 195-3. The vast majority of Wawa convenience stores have motor vehicle fuel sales, as do many other convenience stores such as Royal Farms, Sheetz, Turkey Hill, Cumberland Farms, and 7-11. The sale of motor vehicle fuels is subordinate to the principal convenience store use. The proposed canopy over the motor vehicle fueling stations is an accessory building as defined by Ordinance section 195-3. Thus, Landowner seeks an interpretation that the sale of motor vehicle fuels is a permitted accessory use and that the canopy over the motor vehicle fueling stations is a permitted accessory building requiring no additional zoning relief.

(2) Alternatively, Landowner seeks a special exception to permit motor vehicle fuel sales pursuant to Ordinance section 195-22.A(8)(c) which permits gasoline service stations by special exception. The Property is located at a major intersection of heavily travelled commercial roadways ideal for the sale of motor vehicle fuels to serve the travelling public.

The special exception, if granted, will not adversely affect the health, safety, or welfare of the community. To the contrary, the health, safety, and welfare of the community will be enhanced by Landowner's proposal to eliminate left turns into and out of the Property from Sumneytown Pike. Landowner is improving the parking configuration and internal circulation of the site. Further, the demolition of the Sumney Tavern and the construction of the aesthetically pleasing Wawa will bring the Property into conformance with the Ordinance in terms of building setback requirements making for safer sight distances at the intersection of Sumneytown Pike and West Point Pike. Also, enhanced stormwater management controls are proposed for the Property.

(3) The requested sign variances, if granted, will not alter the essential character of the neighborhood, nor will such variances substantially or permanently impair the appropriate use or development of adjacent parcels. Landowner proposes redevelopment and modernization of the Property with the construction of an aesthetically pleasing Wawa with enhanced architecture. The additional signage, both in number and square footage, is necessary to provide visibility and identification of the Wawa and the fuel dispensing facilities. Landowner requests 2 building signs as the Wawa building will have a front and rear entrance with parking located at both entrances.

Addendum to Zoning Application: Provco Pinegood Sumneytown, LLC

(4) The proposed signs do not face a residential neighborhood, nor are the proposed signs located in close viewing proximity to any residential properties. The relief requested poses no threat to public health, safety and welfare. The proposed signs are in keeping with the character of the neighborhood and are in proportion to other convenience store signs in the area. The proposed signage is proportionate to the size of the building, the canopy, and the fuel pumps.

(5) The requested variances to allow signs with red and green LEDs within 75 feet of a public right-of-way and within 200 feet of a traffic control signal meet the intent of the Ordinance in that Pennsylvania statute requires that fuel prices be displayed and there is no chance of confusion of red and green LED fuel pricing signage with that of a traffic control signal. The Property is a corner property and the Sumneytown Tavern parcel only has 66 feet of frontage on Sumneytown Pike.

(6) The variances requested represent the minimum variances that will afford relief and represent the least modification possible of the regulations in issue.

(7) The requested special exception and variances meet the standards set forth in section 910.2(a) the Pennsylvania Municipalities Planning Code, 53 P.S. § 10910.2(a), and Ordinance section 195-55 "Criteria for exceptions or variances".

**UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA  
ZONING HEARING BOARD**

June 28, 2016

Mr. Robert Hill  
Hartford Properties, LLC  
1000 South Lenola Hill,  
Building 2, Suite 100  
Maple Shade, NJ 08052

RE: *Hartford Properties, LLC Appeals*  
*Hearing No. 16-5*

**DECISION**

Dear Mr. Hill:

This is to advise you that the Upper Gwynedd Township Zoning Hearing Board (Board) at its public hearing held on Tuesday, June 28, 2016 GRANTED this Application requesting certain zoning relief to permit Applicant to construct and operate a facility for the sale of motor vehicle fuels on Lot #1, in conjunction with a convenience store on a proposed three (3) lot subdivision of property located at the corner of Church Road and Sumneytown Pike, Upper Gwynedd Township, PA, being tax parcel # 56-00-08293-00-3 which is in a C-Commercial Zoning District.

The following zoning relief is granted:

1. A determination that such proposed construction of the canopy over the proposed 16 fueling stations is an accessory building and the proposed sale of motor vehicle fuels is an accessory use to the permitted by right principal convenience store use in accordance with the Upper Gwynedd Zoning Code (Code) Article II Section 193-3 "accessory building and accessory use" definitions and Article V, sections 195-22 A (1) and (7) on Lot #1.

This zoning relief is granted based upon the following specific conditions:

1. Applicant shall first obtain Subdivision and Land Development approval by the Township Commissioners of the proposed three (3) lot subdivision. (SALDO).
2. The pine trees shown on Exhibit 8 shall remain and Applicant shall add lower plantings along the pine trees to add screening buffer for the residential apartments abutting this area.
3. There shall only be a right in from and a right out to Sumneytown Pike for safety reasons.



4. There shall not be any take out or delivery drive-throughs on any of the lots.
5. Cross access easements for internal traffic between the three lots shall be executed and recorded.
6. There shall not be any tractor trailer parking on any of the lots except temporarily for necessary pickups or deliveries.
10. The three (3) lots shall never be merged after the SALDO approval.
11. Applicant shall provide the Township Commissioners with a full and complete traffic study prepared by a qualified traffic study company.
12. Based upon all of the testimony and Exhibits presented at the time of the hearing.

This is not to be considered the grant of a Building Permit or a Use and Occupancy Permit.

Reference is made to §195-60 of the Zoning Code regarding expiration of special exceptions and variances that have been granted.

If you, or anyone else present at the hearing(s) and entering their appearance, disagree with this Decision in any way then there is a strict time limit of THIRTY (30) days from the date of the MAILING of this Decision within which to take an appeal of this Decision to the Court of Common Pleas of Montgomery County, PA

Thank you for your attendance at the hearing.

THE DATE OF MAILING OF THIS DECISION IS

0/29/10

Very truly yours,



HENRY V. RATKE,  
Chairman

RJE/mcd  
Enclosure

Cc: Bernadette A. Kearney, Esquire  
375 Morris Road  
PO Box 1479  
Lansdale, PA 19446-0773

James J. Garrity, Esquire  
460 Norristown Road, Suite 110  
Blue Bell, PA 19422

**RECORDER OF DEEDS  
MONTGOMERY COUNTY**  
*Nancy J. Becker*

One Montgomery Plaza  
Swede and Airy Streets ~ Suite 303  
P.O. Box 311 ~ Norristown, PA 19404  
Office: (610) 278-3289 ~ Fax: (610) 278-3869

**I hereby certify that the following is a true and correct  
copy of the original document  
recorded in Montgomery County, PA**



*Nancy J. Becker*

Certification signature by montgomery\_county.rod@propertyinfo.com, Validity  
Unknown

**Certified and Digitally Signed**

Validation may require Adobe® Windows Integration®

eCertified copy of recorded # 1995055639 (page cover of 3)  
Montgomery County Recorder of Deeds



This Deed, 020112  
made this 15th day of December 19 95  
Between, FREDERICK F. MUNTZ

①  
50  
13.50  
13.50  
6.00

(hereinafter called the "Grantor"  
of the one part, and EDWARD F. BURKHOLDER AND PATRICIA A. BURKHOLDER,  
husband and wife  
(hereinafter called the "Grantees"), of the other part.

Witnesseth, That in consideration of THE SUM OF  
FIVE HUNDRED FIVE THOUSAND (\$505,000.00) Dollars,  
in hand paid, the receipt whereof is hereby acknowledged, the said Grantor  
does hereby grant and convey unto the said  
Grantees, their heirs and assigns, as tenants by the entireties,

PARCEL A:

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected, Hereditaments and Appurtenances, SITUATE in the Township of Upper Gwynedd, County of Montgomery, and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the center line of Sunneytown Pike a corner of land now or late of Martin Century Farms, Inc.; thence extending along the center line of Sunneytown Pike, Southeastwardly on a line curving to the right with a radius of 650 feet, the arc distance of 54.40 feet to a point; thence continuing along the centerline of Sunneytown Pike, South 29 degrees 30 minutes East 203 feet to a point a corner of land about to be conveyed to Norman Eugene Seachrist; thence extending along said land, South 60 degrees 5 minutes West 312.79 feet to a point in line of land of Alfred M. Rader; thence along said land, North 42 degrees 1 minute West 198.49 feet to a point, a corner of land of Martin Century Farms, Inc., aforesaid; thence along said land North 49 degrees 57 minutes East 359.59 feet to the place of beginning.

PARCEL B:

ALL THAT CERTAIN lot or piece of land Situate in the Township of Upper Gwynedd, County of Montgomery and State of Pennsylvania, and more particularly bounded and described according to a survey made thereof by Herbert H. Metz, Registered Engineer of Lansdale, PA, on November 15, 1946, and revised April 28, 1949, as follows, to wit:

BEGINNING at a point in the center line of the Sunneytown Pike, as laid out 50 feet wide, said point being a corner of other land now or late of John J. Brien and Florence L., his wife, of which this was formerly a part, and being also at the distance of 334.91 feet Northwesterly from the intersection of the center line of the said Sunneytown Pike with the center line of Church Road, as laid out 33 feet wide; thence extending along said other land now or late of the said John J. Brien and Florence L., his wife, South 49 degrees 57 minutes West 359.59 feet to a point, a corner in line of land now or late of Alfred M. Roeder; thence extending along the same, North 42 degrees 1 minute West 15 feet to an iron pin set for a corner in line of land now or late of the Lehigh Valley Transit Company; thence extending along said land now or late of said Lehigh Valley Transit Company the 2 following courses and distances; North 35 degrees 7 minutes East 241.6 feet to an iron pin, and North 33 degrees 24 minutes East 133.35 feet to a point, a corner in the center line of the aforementioned Sunneytown Pike, as presently located; thence extending along the center line of the said Sunneytown Pike, along a curved line curving to the right with a

File No: 140073

95 DEC 22 AM 9: 29

DB5135PC1967



#20112  
U. SMYNEED TWP. 5050.00  
STATE STAMP 5050.00  
TOTAL 10100.00  
CHECK 5050.00  
CHECK 5050.00  
ITEM 2  
12-22-95 FRI #1 CASH-11 4887 11:19PM

DB5135P60948



radius of 650 feet, an arc of 115 feet to the first mentioned point and place of beginning.

BOUNDED on the Northeast by Sunnyside Pike; on the Southeast by other land now or late of John J. Brien and Florence L., his wife, of which this was formerly a part; on the Southwest by land now or late of Lehigh Valley Transit Company.

BEING the same premises which Frederick F. Muntz, Executor of the Estate of Olive F. Lang, deceased, by Indenture bearing date the 13th day of January A.D. 1994 and recorded in the Office for the Recording of Deeds in and for Montgomery County at Norristown, Pennsylvania, in Deed Book 5066 page 2402 &c., granted and conveyed unto Frederick F. Muntz, in fee.

PREMISES A: BEING PARCEL NUMBER 56-00-08524-00-6.  
PREMISES B: BEING PARCEL NUMBER 56-00-08527-00-3.

And the said Grantor do as hereby covenant to and with the said Grantee that he, the said Grantor, his heirs, executors, administrators and assigns SHALL and WILL BY THESE PRESENTS warrant and forever defend the herein above described premises, with the hereditaments and appurtenances, unto the said Grantee, their heirs and assigns, against the said Grantor and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof, by, from or under him, her, them or any of them.  
IN WITNESS WHEREOF, the said Grantor has caused these presents to be duly executed, the day and year first above written.  
SEALED AND DELIVERED In the Presence of:

*Jay C. Glickman*

*Frederick F. Muntz*  
FREDERICK F. MUNTZ

REALTY TRANS. TAX PAID
STATE 50.50.00
LOCAL 5.250.00
PER 2.25



State of Pennsylvania County of Montgomery  
On this 15th day of December  
undersigned officer, personally appeared Frederick F. Muntz

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal

NOTARIAL SEAL  
Carol A. Pearl, Notary Public  
Lansdale, Montgomery County, PA  
My Commission Expires Jan. 2, 1997

*Carol A. Pearl*  
Notary Public

MONTGOMERY COUNTY COMMISSIONERS REGISTRY  
56-00-08524-00-6 UPPER GWYNEDD  
SUNNYSIDE PIKE  
MUNTZ FREDERICK F  
B 052 U 029 L 4282 DATE: 12/22/95

MONTGOMERY COUNTY COMMISSIONERS REGISTRY  
56-00-08527-00-3 UPPER GWYNEDD  
SUNNYSIDE PIKE  
MUNTZ FREDERICK F  
B 052 U 055 L 2203 DATE: 12/22/95

T.A. TITLE INSURANCE COMPANY # 14007:  
Fidelity Abstract Company  
2605 North Broad Street  
Lansdale PA 19446  
PA-1428  
**Read**

GRANTOR:  
FREDERICK F. MUNTZ

GRANTEE:  
EDWARD F. BURKHOLDER AND  
PATRICIA A. BURKHOLDER,  
husband and wife

FOLIO/PARCEL # 56-00-08524-00-6 AND  
56-00-08527-00-3  
PREMISES:

608 SUNNYSIDE PIKE  
UPPER GWYNEDD TOWNSHIP  
MONTGOMERY COUNTY, PA

MAIL TAX BILL TO:  
50 Cart Lane Circle  
Chalfont PA 18914 CP

RECORDED in Deed Book \_\_\_\_\_ page \_\_\_\_\_  
GIVEN under my hand and the seal of the said  
office, the date above written.

Recorder of Deeds  
RETURN DOCUMENT TO:

08513560949



File No. 31840

Parcel ID No. 56-00-08521-009

150  
4  
Cen

**This Indenture**, made the 2nd day of September, 2004,

STATE TAX  
AFFIDAVIT  
FILED

Between

**JOHN H. GAWTHROP, JR. and DOUGLAS GAWTHROP, Copartners trading as JAD Properties**

(hereinafter called the Grantors), of the one part, and

**JOHN H. GAWTHROP, JR. and RICHARD G. ABBOTT, Copartners trading as JAD Properties**

(hereinafter called the Grantees), of the other part,

Witnesseth, that the said Grantors for and in consideration of the sum of **ONE AND 00/100 DOLLARS (\$1.00)** lawful money of the United States of America, unto them well and truly paid by the said Grantees, at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have granted, bargained and sold, released and confirmed, and by these presents do grant, bargain and sell, release and confirm unto the said Grantees, their heirs and assigns, as Sole Owner, his/her personal representatives and assigns, as partnership property, the same having been acquired with partnership funds and intended to be held for partnership purposes,

**ALL THAT CERTAIN** lot or piece of ground with the buildings and improvements thereon erected situate in the Township of Upper Gwynedd, County of Montgomery and Commonwealth of Pennsylvania bounded and described according to a Plan of Proposed Realignment of West Point Pike made by C. Raymond Weir, Registered Engineer, dated 2/6/1967 as follows to wit:

**BEGINNING** at a point on the center line of Sunneytown Pike (50.00 feet wide) a corner of said point measured from the intersection of said center line of Sunneytown Pike and the extended center of Church Road (50.00 feet wide), North 35 degrees 18 minutes West 23.10 feet; thence extending from said point of beginning South 54 degrees 42 minutes West crossing the Southwesterly side of Sunneytown Pike, a distance of 30.00 feet to a point to curve; thence along the realigned Northwest side of West Point Pike, the 3 following courses and distances viz: (1) on the arc of a curve curving to the right having a radius of 10.00 feet the arc distance of 12.47 feet to a point of tangent; (2) South 36 degrees 09 minutes West, 167.93 feet to a point of curve; and (3) on the arc of a curve curving to the left having a radius of 405.00 feet, the arc distance of 79.98 feet to a point of tangent; thence extending South 54 degrees 58 minutes West 11.14 feet to a point a corner; thence extending North 54 degrees 17 minutes East 312.79 feet to a point on the aforesaid center line of Sunneytown Pike; thence extending along said center line of Sunneytown Pike, South 35 degrees 18 minutes East 54.40 feet to the first mentioned point and place of beginning.

DE BK06524-0063  
2004178034 09/02/2004 02:17:37 PM  
RCDFEE: \$48.50

DT-0380

MONTGOMERY COUNTY REGISTER  
UPPER GWYNEDD TOWNSHIP 20 00 JUANCY BECKER RD

MONTGOMERY COUNTY COMMISSIONERS REGISTRY  
56-00-08521-00-9 UPPER GWYNEDD  
1610 WEST POINT PIKE  
GAWTHROP JOHN H JR & DOUGLAS P  
B 052 U 063 L 4281 DATE 09/02/04

*Handwritten initials*

133240-00181

---

Parcel No. 56-00-08521-009

**BEING** the same premises which A&J Property Group, a PA General Partnership by Deed dated 6/21/1999 and recorded 7/8/1999 in Montgomery County in Deed Book 5278 page 779 conveyed unto John H. Gawthrop, Jr. and Douglas P. Gawthrop, Co-Partners trading as JAD Properties, in fee.

**AND** by Amendments to the Partnership Agreement the said Douglas P. Gawthrop was replaced as one of the General Partners by Richard Abbott.

**This is a transfer from co-partners in a partnership to co-partners in the same partnership, and does not affect the continuity of the company and is therefore tax exempt.**

**Together with** all and singular the buildings and improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of her, the said grantor, as well at law as in equity, of, in and to the same

**To have and to hold** the said lot or piece of ground described above, with the buildings and improvements thereon erected, hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantees, their heirs and assigns, to and for the only proper use and behoof of the said Grantees, their heirs and assigns, forever.

**And** the said Grantor, for herself and her heirs, executors and administrators, does, by these presents, covenant, grant and agree, to and with the said Grantees, their heirs and assigns, that she, the said Grantor, and her heirs, all and singular the hereditaments and premises herein described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Grantees, their heirs and assigns, against her, the said Grantor, and her heirs, and against all and every other person and persons whosoever lawfully claiming or to claim the same or any part thereof, by, from or under him, her, it, or any of them, shall and will

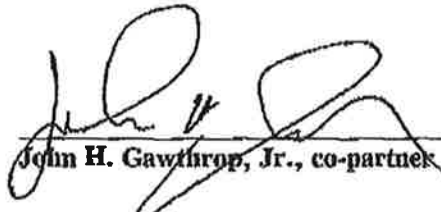


**Warrant and Forever Defend.**

**In Witness Whereof**, the parties of the first part have hereunto set their hands and seals Dated the day and year first above written

**Sealed and Delivered  
IN THE PRESENCE OF US**

\_\_\_\_\_

 {SEAL}  
John H. Gawthrop, Jr., co-partner

\_\_\_\_\_

 {SEAL}  
Douglas Gawthrop, co-partner

Commonwealth of Pennsylvania  
County of Montgomery : ss

On this the 2nd day of September, 2004, before me, a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Montgomery, the undersigned Officer, personally appeared John H. Gawthrop, Jr. and Douglas Gawthrop, co-partners, known to me (satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Debra L. Jakielaszek, Notary Public  
Lower Salford Twp. Montgomery County  
My Commission Expires Mar 27, 2008  
Member, Pennsylvania Association of Notaries

---

---

# DEED

**John H. Gawthrop, Jr. and Douglas Gawthrop  
Co-partners trading as JAD Properties**

TO

**John H. Gawthrop, Jr. and Richard G. Abbott  
Co-partners trading as JAD Properties**

Premises:  
**1610 West Point Pike, Lansdale, PA 19446  
Township of Upper Gwynedd  
Montgomery County, Pennsylvania**

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**Record and Return to:  
Evans Abstract  
272 Hunsberger Lane,  
Harleysville, PA 19438**

File No. 31840

The address of the above-named Grantees is:  
**1610 West Point Pike, Lansdale, PA 19446**

On behalf of the Grantees

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*Nancy J. Becker*

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
BUREAU OF INDIVIDUAL TAXES  
POST OFFICE BOX 8910  
HARRISBURG, PA 17105-8910

**REALTY TRANSFER TAX  
STATEMENT OF VALUE**

RECORDER'S USE ONLY	
State Tax Paid	0
Book Number	5529
Page Number	803
Date Recorded	9-2-04

See Reverse for Instructions

Complete each section and file in duplicate with Recorder of Deeds when (1) the full value/consideration is not set forth in the deed, (2) when the deed is without consideration, or by gift, or (3) a tax exemption is claimed. A Statement of Value is not required if the transfer is wholly exempt from tax based on (1) family relationship or (2) public utility easement. If more space is needed, attach additional sheet(s).

**A CORRESPONDENT - All inquiries may be directed to the following person:**

Name	Telephone Number
<b>Evans Abstract</b>	Telephone <b>215-513-1770</b> Fax <b>215-513-1780</b>
Street Address	City State Zip Code
<b>272 Hunsberger Lane</b>	<b>Hartysville, PA 19438</b>

**B TRANSFER DATA** Date of Acceptance of Document **09/02/04**

Grantor(s)/Lessor(s)	Grantee(s)/Lessee(s)
<b>John H Gawthrop, Jr and Douglas Gawthrop, Co-Partners Trading as JAD Properties</b>	<b>John H Gawthrop, Jr Richard G Abbott Co-Partners trading as JAD Properties</b>
Street Address	Street Address
<b>1610 West Point Pike,</b>	<b>1610 West Point Pike</b>
City State Zip Code	City State Zip Code
<b>Lansdale, PA 19446</b>	<b>Lansdale, PA 19446</b>

**C PROPERTY LOCATION**

Street Address	City, Township Borough
<b>1610 West Point Pike, Lansdale, PA 19446</b>	<b>Township of Upper Gwynedd</b>
County	School District
<b>Montgomery</b>	<b>North Penn S D</b>
	Tax Parcel Number
	<b>56-00-08521-009</b>

**D VALUATION DATA**

1 Actual Cash Consideration	2 Other Consideration	3 Total Consideration
<b>1 00</b>	<b>+ 00</b>	<b>= 1 00</b>
4 County Assessed Value	5 Common Level Ratio Factor	6 Fair Market Value
<b>396,470 00</b>	<b><del>1.00</del> 1.46</b>	<b>= <del>515,412 00</del> 578,846.20</b>

**E EXEMPTION DATA**

10 Percentage of Interest Conveyed	11 Exemption Code
<b>100</b>	<b>25%</b>

**2 Check Appropriate Box Below for Exemption Claimed**

- Will or intestate succession (Name Of Decedent) \_\_\_\_\_ (Estate File Number) \_\_\_\_\_
- Transfer to Industrial Development Agency
- Transfer to agent or straw party (Attach copy of agency/straw party agreement)
- Transfer between principal and agent (Attach copy of agency/straw trust agreement) Tax paid prior deed \$ \_\_\_\_\_
- Transfers to the Commonwealth, the United States, and Instrumentalities by gift, dedication, condemnation or in lieu of condemnation (Attach copy of resolution)
- Transfer from mortgagee to a holder of a mortgage in default Mortgage Book Number \_\_\_\_\_, Page Number \_\_\_\_\_
- Corrective deed (Attach copy of the prior deed)
- Statutory corporate consolidation, merger or division (Attach copy of articles)

Other (Please explain exemption claimed, if other than listed above) One partner bought out by another party, to be included in the partnership, the partnership still remains the same and does not affect the continuity of the company and the transfer of less than 80% of a partnership interest in Period is not subject to the imposition of transfer tax

Under penalties of law or ordinance, I declare that I have examined this Statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete

Signature of Correspondent or Responsible Party	Date
<i>Sub Chulz...</i>	<b>9/2/04</b>



## AGREEMENT OF SALE

Agreement made as of this 8<sup>th</sup> day of January, 2016, between PATRICIA A. BURKHOLDER and EDWARD F. BURKHOLDER, husband and wife (collectively, "Seller") and PROVCO PINEVILLE ACQUISITION L.L.C, a Pennsylvania limited liability company or its assignee or nominee ("Purchaser").

### WITNESSETH:

In consideration of the covenants and provisions contained herein, the parties agree as follows:

1. Agreement to Sell and Purchase. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, subject to the terms and conditions of this Agreement, that certain property located in Montgomery County, West Point, Pennsylvania consisting of the following:

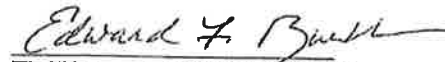
(a) all those certain tracts or parcels of land currently known as tax parcels 56-00-08524-00-6 and 56-00-08527-003, and also known as 708 Sumneytown Pike, West Point, Montgomery County, Pennsylvania. The parcels of land to be purchased hereunder are generally shown on the plans on Exhibit "A" attached hereto and made a part hereof, and legally described on Exhibit "B" attached hereto and made a part hereof, and together with all buildings and improvements situate thereon, if any, and the rights set forth in (b) below is hereafter collectively referred to as the "Property"; and

(b) any and all easements, interests and other rights and privileges of Seller appurtenant to the Property, including, without limitation, all right, title and interest of Seller in and to any land lying in the bed of any highway, street, road or avenue, opened or proposed, in front or abutting or adjoining the Property, and all right, title and interest of Seller in and to any unpaid award for the taking by eminent domain of any part of the Property or for damage to the Property by reason of a change or grade of any highway, street, road or avenue.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal  
as of the date first above written.

**SELLER:**

  
PATRICIA A. BURKHOLDER

  
EDWARD F. BURKHOLDER

**PURCHASER:**

PROVCO PINEVILLE ACQUISITION, LLC, a  
Pennsylvania limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal  
as of the date first above written.

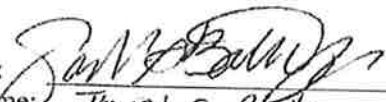
**SELLER:**

PATRICIA A. BURKHOLDER

EDWARD F. BURKHOLDER

**PURCHASER:**

PROVCO PINEVILLE ACQUISITION, LLC, a  
Pennsylvania limited liability company

By:   
Name: Joseph S. Batta  
Its: Member

**AGREEMENT OF SALE**

Agreement made as of this \_\_\_ day of April, 2016, between JAD PROPERTIES, a Pennsylvania general partnership ("Seller") and PROVCO PINEVILLE ACQUISITION LLC, a Pennsylvania limited liability company or its assignee or nominee ("Purchaser").

**WITNESSETH:**

In consideration of the covenants and provisions contained herein, the parties agree as follows:

1. Agreement to Sell and Purchase. Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, subject to the terms and conditions of this Agreement, that certain property located in Montgomery County, Lansdale, Pennsylvania consisting of the following:

(a) all those certain tracts or parcels of land currently known as tax parcel 56-00-08521-009, and also known as 1610 West Point Pike, Lansdale, Montgomery County, Pennsylvania. The parcels of land to be purchased hereunder are generally shown on the plans on Exhibit "A" attached hereto and made a part hereof, and legally described on Exhibit "B" attached hereto and made a part hereof, and together with all buildings and improvements situate thereon, if any, and the rights set forth in (b) below is hereafter collectively referred to as the "Property". It is expressly understood and agreed that Purchaser is not purchasing that certain Restaurant Liquor License related to the improvements located on the Property; and

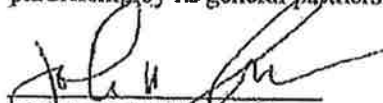
(b) any and all easements, interests and other rights and privileges of Seller appurtenant to the Property, including, without limitation, all right, title and interest of Seller in and to any land lying in the bed of any highway, street, road or avenue, opened or proposed, in front or abutting or adjoining the Property, and all right, title and interest of Seller in and to any unpaid award for the taking by eminent domain of any part of the Property or for damage to the Property by reason of a change or grade of any highway, street, road or avenue.




**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement under seal as of the date first above written.

**SELLER:**


**JAD PROPERTIES**, a Pennsylvania general partnership by its general partners

  
\_\_\_\_\_  
JOHN W. GAWTHROP, JR.

  
\_\_\_\_\_  
RICHARD G. ABBOTT

**PURCHASER:**

**PROVCO PINEVILLE ACQUISITION, LLC**, a Pennsylvania limited liability company

By:   
Name: Michael Cedeno  
Its: Vice President

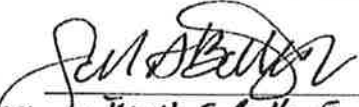
**ASSIGNMENT OF AGREEMENT OF SALE**

This Assignment is made as of this 29 day of June, 2016. Intending to be legally bound hereby, and for good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the undersigned, **PROVCO PINEVILLE ACQUISITION LLC**, a Pennsylvania limited liability company, as "Assignor", hereby assigns, transfers and sets-over unto **PROVCO PINEGOOD SUMNEYTOWN, LLC**, a Pennsylvania limited liability company, as "Assignee", all of Assignor's right, title and interest in and to that certain Agreement of Sale dated April 8, 2016,( the "Agreement"), by and between **JAD PROPERTIES**, as "Seller", and Assignor, as "Purchaser", with respect to the acquisition of that certain parcel of land and improvements located in Lansdale, Montgomery County, Pennsylvania, as more particularly described therein, together with all rights and obligations of Purchaser thereunder.

IN WITNESS WHEREOF, the undersigned, Assignor, has executed this Assignment as of the date first set forth above.

**ASSIGNOR:**

**PROVCO PINEVILLE ACQUISITION LLC**, a  
Pennsylvania limited liability company

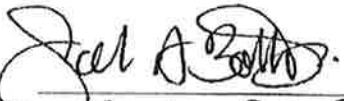
By:   
Name: Joseph S. Balle Jr.  
Its: Vice President

**ACCEPTANCE OF ASSIGNMENT**

Intending to be legally bound, the undersigned, Assignee, hereby acknowledges and approves the aforesaid assignment, and agrees to be bound by all of the terms and conditions of the Agreement applicable to Assignor, as of this \_\_\_\_ day of June 2016.

**ASSIGNEE:**

**PROVCO PINEGOOD SUMNEYTOWN, LLC**,  
a Pennsylvania limited liability company

By:   
Name: Joseph S. Balle Jr.  
Its: Vice President

**IN WITNESS WHEREOF**, Seller and Purchaser have duly executed this Amendment as of the day and year first written above.


**SELLER:**

  
PATRICIA A. BURKHOLDER

  
EDWARD F. BURKHOLDER

**PURCHASER:**

PROVCO PINEVILLE ACQUISITION LLC, a  
Pennsylvania limited liability company

By:   
Name: Joseph S. Bette Jr.  
Its: Member

**FIRST AMENDMENT  
TO AGREEMENT OF SALE**

This **FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT** (this "Amendment") is made and entered into as of the day of 8<sup>th</sup> April, 2016 ("Amendment Date"), by and between **PATRICIA A. BURKHOLDER** and **EDWARD F. BURKHOLDER**, husband and wife (collectively, "Seller") and **PROVCO PINEVILLE ACQUISITION LLC**, a Pennsylvania limited liability company or its assignee or nominee ("Purchaser").

**RECITALS**

A. WHEREAS, Purchaser and Seller entered into that certain Agreement of Sale dated January 8, 2016 (the "Agreement"), with respect to that certain real property located at 708 Sumneytown Pike, West Point, Montgomery County, Pennsylvania, as more particularly described in the Agreement.

B. Purchaser and Seller have agreed to modify certain provisions of the Agreement effective from and after the Amendment Date as set forth herein.

**NOW, THEREFORE**, for and in consideration of the covenants and premises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Purchaser, intending to be legally bound, Seller and Purchaser agree as follows:

**SECOND AMENDMENT  
TO AGREEMENT OF SALE**

This **SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT** (this "**Amendment**") is made and entered into as of the 24<sup>th</sup> day of June, 2016 ("**Amendment Date**"), by and between **PATRICIA A. BURKHOLDER** and **EDWARD F. BURKHOLDER**, husband and wife (collectively, "**Seller**") and **PROVCO PINEGOOD SUMNEYTOWN, LLC**, a Pennsylvania limited liability company ("**Purchaser**").

**RECITALS**

A. WHEREAS, Provco Pineville Acquisition LLC ("**Provco Pineville**") and Seller entered into that certain Agreement of Sale dated January 8, 2016, as amended by that certain First Amendment to Agreement of Sale dated April 8, 2016 (collectively, the "**Agreement**"), with respect to that certain real property located at 708 Sumneytown Pike, West Point, Montgomery County, Pennsylvania, as more particularly described in the Agreement.

B. WHEREAS, Provco Pineville assigned all of its right, title, and interest in and to the Agreement to Purchaser, and Purchaser assumed all of Provco Pineville's obligations under the Agreement, pursuant to that certain Assignment of Agreement of Sale dated as of the date hereof.

C. WHEREAS, Purchaser and Seller have agreed to further modify certain provisions of the Agreement effective from and after the Amendment Date as set forth herein.

**NOW, THEREFORE**, for and in consideration of the covenants and premises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Purchaser, intending to be legally bound, Seller and Purchaser agree as follows:

IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Amendment as of the day and year first written above.

**SELLER:**

  
PATRICIA A. BURKHOLDER

  
EDWARD F. BURKHOLDER

**PURCHASER:**

PROVCO PINEGOOD SUMNEYTOWN, LLC, a  
Pennsylvania limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, Seller and Purchaser have duly executed this Amendment as of the day and year first written above.

**SELLER:**

PATRICIA A. BURKHOLDER

EDWARD F. BURKHOLDER

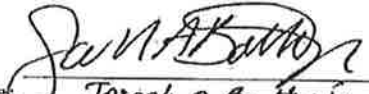
**PURCHASER:**

PROVCO PINEGOOD SUMNEYTOWN, LLC, a  
Pennsylvania limited liability company

By:

Name

Its:

  
Joseph S. Bork Jr.  
Vice President



jbaran@bohlereng.com

**EDUCATION:**

B.S. Civil Engineering,  
magna cum laude  
Villanova University (1996)

M.S. Civil Engineering,  
Villanova University (2000)

**PROFESSIONAL LICENSES:**

New Jersey Professional Engineer,  
#24-GE-04693400

Pennsylvania Professional Engineer,  
#PE- 056997-E

LEED AP Building Design +  
Construction

**PROFESSIONAL AFFILIATIONS:**

American Society of Civil Engineers,  
Member

National Society of Professional  
Engineers, Member

Pennsylvania Society of Professional  
Engineers, Member

Chi Epsilon National Civil  
Engineering Honor Society,  
Member

## JOSEPH S. BARAN, PE, LEED AP BD + C ASSOCIATE

Joe currently serves as Associate and Project Manager for Bohler Engineering's Chalfont Office, with over 20 years of experience in site civil engineering design. Joe is the Account Manager for some of Bohler's largest Pennsylvania clients, and is a member of the Leadership Team. He manages a team of approximately six staff members, and is responsible for the overall site design and management of his projects, as well as the workload of each of his staff. Joe's team works on a variety of projects including both light and heavy industrial sites, fueling stations, healthcare, mixed-use and residential projects.

Joe is responsible for the daily communication with his clients, sub-consultant teams, reviewing agencies and general contractors. Joe manages the financial aspect of his projects, developing proposals and contracts, tracking the budget, and monitoring invoicing.

Joe's design expertise includes grading, stormwater management systems, hydraulic stream modeling, truck circulation and roadway design.

### EXPERT TESTIMONY

Joe has testified on behalf of Bohler Engineering in over 50 municipalities before Planning Commissions, Board of Supervisors, Zoning Hearing Boards and related municipal entities in Pennsylvania.

### SELECTED PROJECT EXPERIENCE

**Einstein Medical Center Montgomery, East Norriton, PA:**

Master Planning for a 380,000 SF hospital facility and 75,000 SF medical office building, with helipad for the trauma center

**Lehigh Valley Crossings, Lower Macungie, PA:**

One million SF industrial park on 92 acres

**The Courts at Spring Mill Station, Whitemarsh, PA:**

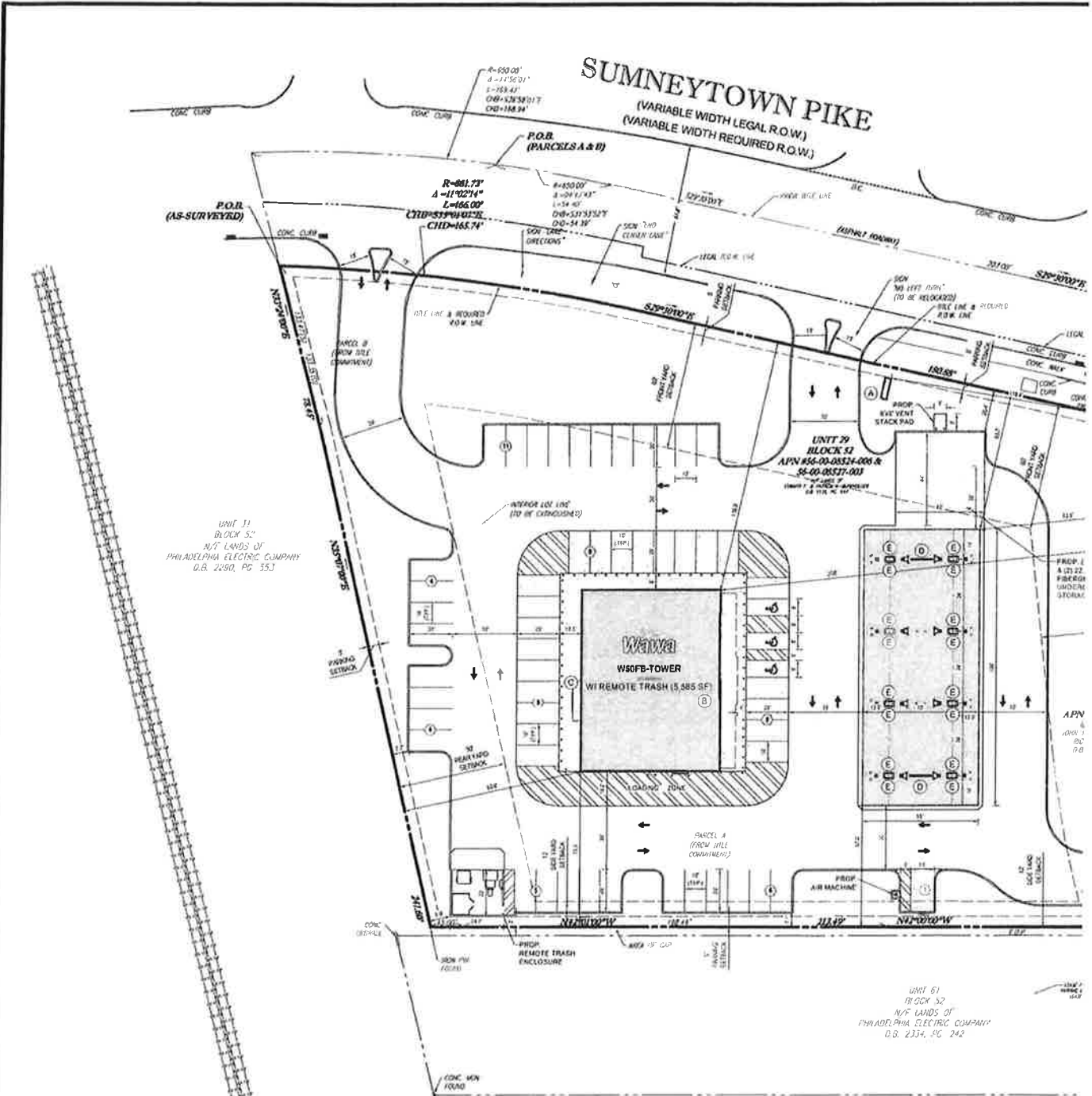
385 luxury apartments and refurbishment of "Miller's House" into retail



**BOHLER**  
ENGINEERING







UNIT 31  
BLOCK 52  
N/F LANDS OF  
PHILADELPHIA ELECTRIC COMPANY  
O.B. 2280, PG. 353

UNIT 1  
BLOCK 52  
N/F LANDS OF  
MERCX SHARP & SOMME CORP  
O.B. 5951, PG. 322

UNIT 61  
BLOCK 52  
N/F LANDS OF  
PHILADELPHIA ELECTRIC COMPANY  
O.B. 2134, PG. 342

**LIST OF SPECIAL EXCEPTION AND VARI  
REQUESTED FROM THE UPPER GWYN  
TOWNSHIP ZONING HEARING BOARD**

1. AN INTERPRETATION THAT A CANOPY OVER MOTOR VEHICLE FUELING STATIONS IS A VEHICLE FUEL SALES AND A PERMITTED ACCESSORY USE AND CUSTOMARILY INCORPORATED PERMISSIBLE TO SECTION 195-33 (2)(B) UNLESS ACCESSORY BUILDING AND ACCESSORY DETACH. USE REGULATIONS.

AND/OR IN THE ALTERNATIVE:

2. A SPECIAL EXCEPTION PURSUANT TO SECTION 195-22 (A)(3) COMMERCIAL DISTRICT TO PERMIT A GASOLINE SERVICE STATION USE OR MOTOR VEHICLE FUEL SALES AS AN CONVENIENCE STORE RETAIL USE.

3. VARIANCES FROM SECTION 195-33 ATTACHMENT 1, "PHYSICAL USE REGULATIONS"

- A. TO PERMIT A TOTAL SIGN AREA OF 229.28 SQUARE FEET RATHER THAN THE MAX
- B. TO PERMIT GROUND SIGNS TOTALING 98.74 SQUARE FEET RATHER THAN THE MA
- C. TO PERMIT FACADE SIGNS TOTALING 119.64 SQUARE FEET RATHER THAN THE M
- D. TO PERMIT 23 FACADE SIGNS (10 GAS PUMP, 2 BUILT IN, AND 2 SPANNER) RATH FACADE SIGN

4. A VARIANCE FROM SECTION 195-33 (2)(B) PROHIBITED SIGNS TO PERMIT A SIGN WITH RED OR GREEN LEDS WITHIN 25 FEET OF THE PUBLIC RIGHT CONTROL SIGNAL.

5. A VARIANCE FROM SECTION 195-33 (2)(A) UNPERMITTED SIGNS TO PERMIT A SIGN WITH BOTH RED AND GREEN LEDS RATHER THAN THE MAXIMUM P

# MATTHEW I. HAMMOND, P.E.

## EXECUTIVE VICE PRESIDENT



### YEARS OF EXPERIENCE

20 Years

### EDUCATION

Drexel University  
B.S. / 1999 / Civil Engineering

### REGISTRATIONS

Professional Engineer – PA, NJ, DE, VA, MD  
PA License # PE-071037

### PROFESSIONAL AFFILIATIONS

American Society of Highway Engineers (ASHE) –  
East Penn Section Past President

Mid-Atlantic Section of the Institute of  
Transportation Engineers (MASITE)

Chester County Planning Commission - Chairman

Institute of Transportation Engineers Parking  
Committee – Past Chairman

International Council of Shopping Centers (ICSC)

Adjunct Professor – Drexel University, 2000 – 2004

The Pledging Tree Foundation – Former Chairman  
of the Board

West Bradford Township, PA - Former Planning  
Commission Member

### AWARDS

2013: Rising Star Award, Civil Engineering News

2002: Young Alumnus of the Year, Drexel University

### PERSONAL EXPERIENCE

Mr. Hammond is a Principal at TPD, leading the firm's Private Planning and Design team, specializing in traffic engineering and transportation planning. Since joining Traffic Planning and Design, Inc. in 1995, he has conducted numerous traffic studies. His experience also includes capacity analyses, signal warrant analyses, trip generation studies and traffic modeling for numerous developments throughout Pennsylvania, Delaware and New Jersey.

Since 1998, Mr. Hammond has been the project manager on over 500 projects throughout the Mid-Atlantic region and manages the bulk of the firm's 150 Traffic Impact Studies each year. He is co-author on an article relating to the characteristics of convenience stores with gasoline facilities, published by the Institute of Transportation Engineers (ITE). Mr. Hammond has been accepted as an expert witness in numerous municipalities.

### PROJECT EXPERIENCE

#### King of Prussia Mall Expansion

*Upper Merion Township, Montgomery County, PA*

Traffic Study, Signal Design & Highway Occupancy Permit for 170,000+ expansion connecting the existing Court and Plaza buildings making the Mall the largest retail only Mall in the United States.

#### Highland Village / Route 209 & Bushkill Falls Road Project

*Lehman Township, Pike County, PA*

Traffic Study, Signal Design & Highway Occupancy Permit for a 5,860 residential dwellings, 2 hotel/resorts, 300,000 sf of retail space and a golf course.

#### Shoppes at Center Valley –Poag & McEwen / Route 378 & Saucon Valley Road Project

*Upper Saucon Township, Lehigh County, PA*

Traffic Study, Signal Design & Highway Occupancy Permit for a 500,000 sf Lifestyle Center.





**Retail, Restaurant & Hotel Development / Route 611 & PA Turnpike Interchange Project**  
*Upper Moreland Township, Montgomery County, PA*

Traffic Study, Highway Occupancy Permit Design, Signal Design, Pennsylvania Turnpike Ramp Design & Highway Occupancy Permit

**The Shire at Somerdale Residential Development / Cornell Avenue and Lafayette Avenue**  
*Borough of Somerdale, Camden County, NJ*

Traffic Study, Expert Testimony

**Concordville Town Centre**  
*Concord Township, Delaware County, PA*

Traffic Study, Highway Occupancy Permit Design and Signal Design for a 575,000sf+ Retail Center.

**Albert Einstein Regional Medical Center**  
*East Norriton Township, Montgomery County, PA*

Traffic Impact Study and Roadway Design for 380,000 s.f., 190-bed hospital, with 1,000 employees, as well as a 75,000 s.f. medical office building.

**Tropicana Hotel/Casino**  
*City of Allentown, Lehigh County, PA*

Prepared a Traffic Impact Study, Roadway and Access Layout Plans and Testified before the Pennsylvania Gaming Control Board for a new Casino/Resort.

**Upland Square**  
*West Pottsgrove Township, Montgomery County, PA*

Traffic Impact Study and Roadway Design for a 675,000 sf shopping center.

**Wawa Food Markets**  
*Various locations throughout PA, NJ and DE*

Prepared Traffic Impact Studies, Roadway Design, Traffic Signal Design and expert testimony for over 350 Wawa locations.

**TH Properties – Courts at the Ledges / Route 113 and Fillmore Street**  
*Phoenixville Borough, Chester County, PA*

Traffic Study, Highway Occupancy Permit Design

**McGinley Tract**  
*Skippack Township, Montgomery County, PA*

Traffic Study, Highway Design and Traffic Signal Design

**River Station Mixed-Use Development**  
*Borough of Downingtown, Chester County, PA*

Traffic Study, Highway Design, Bridge Design and Traffic Signal Design

**Northgate Mixed Use Development**  
*Upper Hanover Township, Montgomery County, PA*

Traffic Study, Highway Design, Bridge Design and Traffic Signal Design

**Beechwood Residential Development**  
*Bensalem Township, Bucks County, PA*

Traffic Study, Highway Design and Roundabout Design

**Waymart Wind Farm**  
*Canaan Township, Wayne County, PA*

Maintenance and Protection of Traffic Plans, Access Design and Truck Route Designation

**A Partial Listing of Matt Hammond's Accident Cases and Related Expert Testimony**

**Estate of T. Mandell vs Truck Stops of America**  
*Spartansburg, Sc*

Kemp, Smith, LLP  
Internal Circulation  
Pedestrian Safety



**II. The legal doctrine of *stare decisis* binds the ZHB to follow its decision in Hartford Properties.**

Applicant Provco Pinegood Sumneytown, LLC (“Applicant”) proposes to develop a Wawa convenience store with accessory motor vehicle fuel sales and an associated accessory fuel canopy structure on to be consolidated parcels located at 708 Sumneytown Pike and 1610 West Point Pike in the Township’s C Commercial zoning district (collectively referred to as the “Property”).

The Upper Gwynedd Township Code (“Code”) permits convenience store uses by right in the C Commercial zoning district. 195-22.A(1). The Code also permits accessory uses by right in the C Commercial zoning district. 195-22.A(7).

Very recently, the ZHB considered the application of Hartford Properties, LLC (“Hartford Properties”). Hartford Properties proposed the development of its property located at Sumneytown Pike and Church Road in the Township’s C Commercial zoning district, for the sale of motor vehicle fuels in conjunction with a convenience store. In its decision dated June 28, 2016 (attached hereto as Exhibit “A”), the ZHB interpreted the Zoning Code and determined as a matter of law that the:

[P]roposed construction of [a] canopy over [a] proposed 16 fuel stations is an accessory building and the proposed sale of motor vehicle fuels is an accessory use to the permitted by right principal convenience store use in accordance with the Upper Gwynedd Zoning Code (Code) Article II Section 193-3 “accessory building and accessory use” definitions and Article V, sections 195-22 A(1) and (7).

Exhibit A, p. 1.

The ZHB in Hartford Properties made a *legal determination* that motor vehicle fuel sales are an accessory use to the by right permitted convenience store use in the Township’s C Commercial District and that the canopy over the fuel stations is an accessory structure. It did

not grant a special exception or a use variance. The legal determination of the ZHB was neither opposed nor appealed.

The long-standing legal doctrine of *stare decisis*, meaning to stand by things decided, declares that for the sake of certainty, a conclusion reached by one tribunal in one case should be applied to those which follow where the facts are substantially the same. The doctrine applies even though the parties may be different. *Burke v. Pittsburgh Limestone Corp.*, 100 A.2d 595 (Pa. 1953). *Stare decisis* promotes the evenhanded, predictable, and consistent development of legal principles; fosters reliance on judicial decisions; and contributes to the actual and perceived integrity of the judicial process. *Tincher v. Omega Flex, Inc.* 104 A.3d 328 (Pa. 2014).

Applicant's Property is located catty-corner to, less than 100 feet from, and in the same C Commercial zoning district as the parcel that was the subject of the Hartford Properties Application. Applicant proposes the identical uses determined by the ZHB to be permitted by right in the C Commercial zoning district. As in Hartford Properties, Applicant's proposed accessory use of motor vehicle fuel sales is subordinate to and customarily incidental to the proposed by right convenience store use.

The legal determination by the ZHB in Hartford Properties was neither opposed nor appealed, as such, based upon the legal doctrine of *stare decisis*, Applicant's proposed convenience store with accessory motor vehicle fuel sales and accessory canopy is permitted by right in the C Commercial district.

**III. The Township is barred by collateral estoppel from re-litigating the legal determination made by the ZHB in the Hartford Properties application.**

The Township neither opposed nor appealed the ZHB's legal determination in the Hartford Properties zoning application that "construction of a canopy over the proposed 16 fueling stations is an accessory building and the proposed sale of motor vehicle fuels is an

accessory use to the permitted by right principal convenience store use in accordance with the Upper Gwynedd Zoning Code (Code) Article II Section 195-3 'accessory building and accessory use' definitions and Article V, sections 195-22 A(1) and (7) on Lot #1". This legal determination of the ZHB is a final determination which the Township did not appeal.

The ZHB did not grant a special exception or a use variance in Hartford Properties. Rather the ZHB made a legal determination that motor vehicle fuel sales are accessory to a convenience store use. Because the Township did not oppose the Hartford Properties zoning application and did not appeal the legal determination of the ZHB, the Township is estopped from now litigating this exact matter.

The doctrine of collateral estoppel, or issue preclusion, forecloses re-litigation in a later action of an issue of fact or law that was actually litigated and was necessary to the original judgment. *City of Pittsburgh v. Zoning Board of Adjustment*, 559 A.2d 896 (Pa. 1989). Collateral estoppel applies when: (1) the issue decided in the prior case is identical to the issue presented in a later case; (2) there was a final judgment on the merits; (3) the party against whom the doctrine is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding; and (5) the determination in the prior proceeding was essential to the judgment.

Here, the issue, whether motor vehicle fuel sales are accessory to a convenience store use, is identical to the issue presented in the Hartford Properties application. The ZHB made a final determination on the merits that motor vehicle fuel sales are accessory to a convenience store use. The Township was a party to the Hartford Township zoning hearing board proceeding. The Township, through its specially appointed solicitor, attended the ZHB hearing on the



Hartford Properties zoning application and had full and fair opportunity to litigate the issue at the ZHB hearing. The Township received a copy of the ZHB's written decision in the Hartford Properties zoning application and did not appeal the ZHB's decision. The ZHB's legal determination in the Hartford Properties zoning application was not only essential to the judgment, it was the judgment.

Because the Township failed to oppose or appeal the ZHB's determination in Hartford Properties that motor vehicle fuel sales are accessory to convenience store uses, the Township is collaterally estopped from litigating the issue now.

**IV. Motor vehicle fuel sales uses are customarily incidental to convenience store uses and based on the ZHB's legal determination in Hartford Properties, are a by right permitted accessory use in the C Commercial District.**

Section 195-22(A)(1) of the Ordinance identifies permitted uses in the C Commercial District. Specifically, section 195-22(A)(1) permits the:

Retail sale of dry goods, variety and general merchandise, clothing, food, flowers, beverages, drugs, household supplies or furnishings, sale or repair of jewelry, watches and clocks, optical goods or musical, professional or scientific instruments, job printing and any other use of the same general nature as those specifically enumerated in this subsection.

Ordinance § 195-22.A(1).

Applicant's proposed Wawa convenience store, which will sell a range of everyday items such as groceries, à la carte and snack foods, baked goods, toiletries, soft drinks, etc., falls squarely within this definition. Thus, the proposed convenience store is a principal use permitted by right in the C Commercial District.

Subsection (A)(7) of section 195-22 further permits an "[a]ccessory use on the same lot with and customarily incidental to the use permitted and utilized." An "accessory use" is defined

by the Ordinance as “a use subordinate to the principal use of land or a building or other structure on a lot and customarily incidental thereto.” Ordinance § 195-3 (emphasis added).

For a use to be customarily incidental to a principal use, it must be shown that it is usually found with that principal use. *Mitchell v. Zoning Hearing Bd. of the Borough of Mt. Penn*, 838 A.2d 819 (Pa. Cmwlth. 2003). It must be a use conducted on the same lot as the principal use and must be clearly incidental to and customarily found in connection with the principal use. *Adams Outdoor Advertising, Ltd. v. Hanover Tp. Zoning Hearing Bd.*, 633 A.2d 240 (Pa. Cmwlth. 1993).

Here it was shown that: (i) convenience stores are a recognized independent industry, (ii) the majority of the area of the property will be devoted to the convenience store use, (iii) the number of patrons who purchase items other than motor vehicle fuel exceeds the customers who only purchase motor vehicle fuel, and (iv) self-service motor vehicle fuel pumps are usually found with convenience stores.

In a case specifically on point, the Pennsylvania Supreme Court was asked to determine this exact issue—whether fuel sales are accessory to convenience store uses—in *Borough of Fleetwood v. Zoning Hearing Board of Borough of Fleetwood*, 649 A.2d 651 (Pa. 1994). In *Fleetwood* an existing convenience store applied for a building permit to install a gasoline pump and canopy in its parking lot. The zoning officer denied the permit and the applicant appealed to the zoning hearing board. On appeal the board overturned the zoning officer’s denial, finding that the proposed fuel pump was a “customary accessory use to the main use as a convenience store” and was “clearly incidental to the principal use.” *Id.* at 652.

The Borough appealed the board’s decision, asserting that a gas pump and canopy were not an accessory use to a convenience store. It also argued that, because a “gasoline service

station” was permitted by special exception in the applicable zoning district, even if gas sales were an accessory use, the applicant would still be required to satisfy the ordinance special exception criteria. After having the board’s decision reversed by the trial court and reinstated by the Commonwealth Court, the Pennsylvania Supreme Court agreed to hear the case. It determined that the board’s conclusion was adequately supported by the evidence presented. Specifically, the court pointed to evidence provided by the applicant that in 1990 approximately 78% of all convenience stores had associated gasoline sales. *As for the applicability of the special exception criteria to an accessory use, the court found that because the ordinance permitted accessory uses by right, once a use was found to be accessory it no longer had to satisfy any special exception criteria. Id. at 656-657.*

Only three months ago, the ZHB made a legal determination in the Hartford Properties Decision (*see* Exhibit A) that the “sale of motor vehicle fuels is an accessory use to the permitted by right principal convenience store use”. The prevalence of these combined uses in the Upper Gwynedd Township area supports the ZHB’s determination.

It is respectfully submitted that the ZHB must follow and reaffirm the legal interpretation and determination that it made in the Hartford Properties case that motor fuel sales are accessory to convenience stores in the Township’s C Commercial zoning district. Considering the close proximity of the subject properties to the Hartford Properties parcel, it would be illogical, unreasonable, and inequitable for the ZHB to reach a contrary conclusion.

**A. The proposed fuel canopy over the fueling stations constitutes a permitted accessory building in the C Commercial District**

As part of its accessory fuel sales use, the Applicant proposes to install a canopy to cover and protect the fueling stations. Because fuel sales is a permitted accessory use to a principal

convenience store use, the ZHB must interpret the Ordinance to permit the canopy structure as an accessory building in the C Commercial District.

A “building” is further defined as “[a]ny structure having a roof supported by columns, piers or walls located on the land.” §195-3. An “accessory building” is defined in the Ordinance as:

A detached subordinate building, the use of which is customarily incidental and subordinate to that of the principal building and which is located on the same lot as that occupied by the principal building.

Ordinance § 195-3.

The proposed fueling canopy is, essentially, a roof held up by support columns. It will be detached and subordinate to the proposed convenience store building, which will be the principal building on the Property. Accordingly, the canopy meets the definition of a “building” under the Ordinance definition. As the ZHB has previously determined that a fuel sales use is customarily incidental to a principal convenience store use in the Township’s C Commercial zoning district, the associated canopy qualifies as a permitted accessory building.

**V. In opposing the Applicant’s zoning application, the Township has violated the equal protection rights of Applicant.**

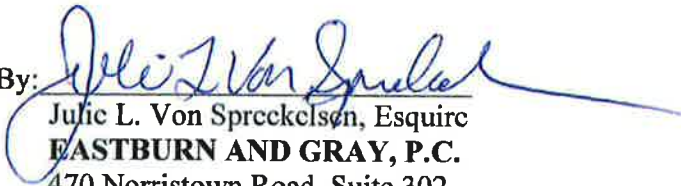
Land use matters may raise equal protection concerns even when there is no protected class. *Knipple v. Geistown Borough Zoning Hearing Board*, 624 A.2d 766 (Pa.Cmwlth. 1993). Conscious discrimination by a municipality demonstrated by disparate treatment of similarly situated applicants the municipality is a violation of the equal protection rights of the disparately treated applicant. *Korsunsky v. Housing Code Board of Appeals*, 660 A.2d 180, 183 (Pa. Cmwlth. 1995).

The Applicant here is similarly situated to the applicant in the Hartford Properties application. Both applicants seek to develop properties located at the same intersection, in the same zoning district, with the same use. The Township authorized a special/conflict solicitor to attend, and monitor only, the Hartford Properties ZHB hearing. The Township did not oppose the Hartford Properties zoning application and did not appeal the ZHB's decision/legal determination that the sale of motor vehicle fuels is accessory to a convenience store use.

The Township's opposition to Applicant's requested zoning relief which is identical to the zoning relief requested by and granted to Hartford Properties is arbitrary, irrational, and in violation of the equal protection rights of Applicant.

#### **VI. Conclusion**

For the foregoing reasons, Applicant, Provco Pinegood Sumneytown, LLC, respectfully requests that motor vehicle fuel sales be deemed an accessory use and the canopy an accessory structure to the Wawa convenience store consistent with the ZHB's decision/legal determination in the Hartford Properties, LLC zoning application and the provisions of the Zoning Code.

By:   
Julie L. Von Spreckelsen, Esquire  
**EASTBURN AND GRAY, P.C.**  
470 Norristown Road, Suite 302  
Blue Bell, PA 19422

Attorneys for Provco Pinegood Sumneytown, LLC

UPPER GWYNEDD TOWNSHIP  
**BOARD OF COMMISSIONERS**

BOX 1, WEST POINT, MONTGOMERY COUNTY, PA 19486

PHONE 215-699-7777

FAX 215-699-8846

2016-068

April 20, 2016

James J. Garrity, Esquire  
Wisler Pearlstine, LLP  
460 Norristown Road, Suite 110  
Blue Bell, PA 19422-2323

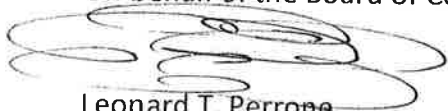
RE: Special Counsel for Land Development Application regarding Sumneytown Pike

Dear Mr. Garrity:

Please be advised that at the Workshop Meeting held on April 19, 2016, the Board of Commissioners approved your Proposal to act as special counsel to represent the Township in regard to a Land Development Application(s) on Sumneytown Pike.

Should you have any questions, please feel free to contact my office.

On behalf of the Board of Commissioners,



Leonard T. Perrone  
Township Manager

LTP/kmc

cc: Board of Commissioners  
Michael J. Lapinski  
E. Van Rieker



**John A. VanLuvanee**

60 East Court Street

P.O. Box 1389

Doylestown, PA 18901

215-345-1342

[jvanluvanee@eastburngray.com](mailto:jvanluvanee@eastburngray.com)

February 7, 2020

Patrick M. Hitchens, Esquire  
The Offices of Sean Kilkenny, LLC  
519 Swede Street  
Norristown, PA 19401

**RE: Upper Gwynedd Township Zoning Hearing Board –  
Application of Provco Pinegood Sumneytown, LLC  
Hearing No. 19-5**

Dear Patrick:

In 2016, Provco Pinegood Sumneytown, LLC filed an Application to the Upper Gwynedd Township Zoning Hearing Board requesting zoning relief associated with its proposed development of a Wawa convenience store on property located at the intersection of Sumneytown Pike and West Point Pike. At the conclusion of hearings on the Application, the Zoning Hearing Board issued a Decision dated November 22, 2016, granting zoning relief to enable the construction and operation of the proposed Wawa. The relief granted by the Zoning Hearing Board included an interpretation that a canopy over motor vehicle fueling stations is an accessory building and that the sale of motor vehicle fuels was an accessory use to a permitted “by right” principal convenience store retail use, but did not require Provco to demonstrate entitlement to a special exception for the proposed sale of motor vehicle fuels. In addition, the Board granted several variances with respect to signage.

The Decision was then appealed by Upper Gwynedd Township and Intervenor Merck, Sharpe and Dohme. Following the filing of the appeals, the Zoning Hearing Board issued Findings of Fact, Legal Discussion and Conclusions of Law supplementing its November 22, 2016 Decision. On March 23, 2018, Judge Clifford issued an Opinion and Order. The Order, *inter alia*, remanded the case to the Zoning Hearing Board “for the purpose of taking additional testimony at a public hearing in order to determine, pursuant to the Township Zoning Code, whether Provco’s application for the gasoline sales operation will be authorized as a special exception.” The parties had differing

interpretations of Judge Clifford's Order. Provco appealed Judge Clifford's Order to the Commonwealth Court.

By Order dated April 3, 2019, the Commonwealth Court held that Judge Clifford's March 23, 2018 Order was interlocutory. The Commonwealth Court quashed Provco's appeal resulting in the reinstatement of the Remand Order.

Because the parties disagreed regarding the scope of evidence that should be presented to the Zoning Hearing Board to satisfy Judge Clifford's Remand Order, Upper Gwynedd Township filed a motion requesting that Judge Clifford clarify his Remand Order. Judge Clifford denied the motion. Accordingly, the Zoning Hearing Board scheduled a hearing for June 25, 2019. That hearing was docketed as Appeal Hearing 19-05 and was deemed by the Zoning Hearing Board to be a continuation of Hearing No. 16-11.

Prior to the Remand Hearing, Hartford Properties intervened in the proceedings. The Zoning Hearing Board issued a subpoena to Wawa, Inc. at the request of the Township. Wawa filed a motion for a protective order and those issues were argued before Judge Clifford. On November 12, 2019, Judge Clifford issued an Order clarifying his March 23, 2018 Order. In that Order, he indicated that the accessory/principal use issue had already been determined and that the Zoning Hearing Board should hold a hearing to determine whether Provco's Application for the gasoline service station would be authorized as a special exception. Provco has declined to amend its Application to request a special exception.

The parties have now entered into a Stipulation, a copy of which is enclosed with this letter. In the Stipulation, the parties agree that in light of Judge Clifford's November 12, 2019 Order and in light of the fact that Provco has declined to amend its Application to request a special exception, there are no issues to be heard by the Zoning Hearing Board on remand. The prayer of the Stipulation is that the Zoning Hearing Board issue an Order in the form attached to the Stipulation as Exhibit "D" reissuing its prior Decision and its Findings of Fact and Conclusions of Law and return the Record to the Court of Common Pleas.

In addition to the Stipulation, I am enclosing copies of the Findings of Fact, Legal Discussion and Conclusions of Law issued by the Zoning Hearing Board subsequent to issuance of its November 22, 2016 Decision (Exhibit "B" to the Stipulation), as well as Judge Clifford's March 23, 2018 Opinion and the April 3, 2019 Commonwealth Court Opinion. The documents were not included as exhibits to the Stipulation.

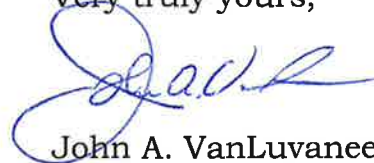


Patrick M. Hitchens, Esquire  
February 7, 2020  
Page 3 of 3

If you have any questions regarding these matters, please address those questions to all counsel. Counsel requests that the Zoning Hearing Board consider approval of this Stipulation and entry of the proposed Order at its next hearing.

Thank you for your consideration of this request.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J.A.V.", with a large, stylized flourish that loops back under the signature.

John A. VanLuvanee

JAV/eah



**UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA  
ZONING HEARING BOARD**

**IN RE: PROVCO PINEGOOD SUMNEYTOWN, LLC APPEAL  
Hearing No. 19-5**

**STIPULATION OF COUNSEL**

It is hereby stipulated and agreed by and between Applicant Provco Pinegood Sumneytown, LLC ("Provco"), by and through its attorneys, Eastburn and Gray, P.C.; Intervenor Upper Gwynedd Township Board of Commissioners ("Township"), by and through its special counsel, Wisler Pearlstine, LLP; Intervenor Merck Sharpe & Dohme Corporation ("Merck"), by and through its attorneys, High Swartz, LLP; and Hartford Properties, LLC ("Hartford"), by and through its counsel Hamburg, Rubin, Mullin, Maxwell & Lupin, PC as follows:

1. Provco filed an application ("Application") to the Upper Gwynedd Township Zoning Hearing Board ("ZHB") for certain zoning relief associated with the proposed development of three (3) contiguous parcels of land located at or near the intersection of Sumneytown Pike and West Point Pike in Upper Gwynedd Township, more particularly identified as Montgomery County Tax Parcel Nos. 56-00-08524-00-6, 56-00-08527-00-3 and 56-00-08521-00-9 (collectively, the "Property") which Application is attached hereto as Exhibit "A". The case was docketed before the ZHB as Appeal No. 16-11.

2. The Township and Merck intervened in ZHB Appeal Hearing No. 16-11 as parties to the Application of Provco.

3. During the hearings on ZHB Appeal Hearing No. 16-11, Provco, on the record, withdrew its request for special exception, and proceeded to present evidence on the remaining relief requested in its Application.

4. At the conclusion of public hearings, the ZHB issued a written decision dated November 22, 2016 ("ZHB Decision") granting certain zoning relief to Provco for the Property. The ZHB Decision is attached hereto as Exhibit "B".

5. Township and Merck appealed the ZHB Decision to the Montgomery County Court of Common Pleas. The appeals were consolidated to Docket No. 2016-29496 ("Appeal").

6. After briefing and argument on the merits of the Appeal, the Honorable Judge Daniel J. Clifford issued an Opinion and Order dated March 23, 2018 ("Remand Order") stating, in pertinent part, that:

This matter is **REMANDED** to the ZHB for the purpose of taking additional testimony at a public hearing in order to determine, pursuant to the Township Zoning Code, whether Provco's application for the gasoline sales operation would be authorized as a special exception.

7. The Remand Order further provided that "[t]he applicant [Provco] shall be permitted to reinstate its initial request for a special exception as opposed to requiring a new, additional filing." Provco did not request a special exception in its amended application in Appeal No. 16-11.

8. Provco appealed the Remand Order to the Commonwealth Court.

9. By Order dated April 3, 2019, the Commonwealth Court held that the Remand Order was interlocutory and quashed Provco's appeal, thereby reinstating the Remand Order.

10. Due to the disagreement of the parties regarding the scope of the remand hearings intended by the Remand Order, prior to the ZHB scheduling a hearing before the ZHB, the Township filed a motion requesting clarification of the Remand Order in order to resolve any ambiguity with regard to the nature and extent of the evidence that should be presented to the ZHB during hearings to be held by the ZHB pursuant to the Remand Order. The Township's motion was denied by the Court.

11. The ZHB scheduled a hearing pursuant to the Remand Order on June 25, 2019 (the "Remand Hearing"). That Application was deemed by the ZHB to be a continuation of ZHB Appeal Hearing No. 16-11 and was docketed by the ZHB as Appeal Hearing No. 19-05.

12. Prior to the Remand Hearing, the ZHB issued a subpoena to Wawa, Inc., at the request of the Township, to compel the attendance of a witness and production of certain documents that the Township asserted would be relevant to any re-examination of the accessory/principal use question.

13. On the same day as the Remand Hearing, Wawa, Inc. filed a Motion for Protective Order in the Court of Common Pleas of Montgomery County to Docket No. 2016-29496.

14. At the Remand Hearing, Provco advised the ZHB that it elected not to amend its application for relief by requesting a special exception on the

Property<sup>1</sup>. However, Provco advised the ZHB that it intended to offer additional testimony in support of its contention that the sale of motor vehicle fuels was a permitted accessory use to its retail sales use, an issue addressed in the ZHB's Decision issued on November 22, 2016.

15. Hartford intervened as a party in Appeal Hearing 19-05.

16. The ZHB, over the objection of the Township and Merck, permitted Provco to present additional evidence related to the accessory/principal use issue.

17. Following the testimony of one witness offered by Provco, the ZHB continued the Remand Hearing pending a decision by the Court of Common Pleas on Wawa's Motion for Protective Order.

18. Following oral argument on Wawa's Motion for Protective Order, Judge Clifford issued an Order dated November 12, 2019. A copy of the November 12, 2019 Order is attached to this Stipulation as Exhibit "C" and made part hereof.

19. Paragraph 11 of the November 12, 2019 Order reads as follows:

11. Accordingly, it is **ORDERED** that:

(a) The ZHB shall hold a hearing to determine, pursuant to the Township Zoning Code, whether Provco's application for the gasoline sales operation will be authorized as a special exception.

(b) The issue of accessory use is no longer before the ZHB.

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<sup>1</sup> Which request was previously withdrawn by Provco.

(c) The Motion for Protective Order filed by Wawa, Inc., dated June 25, 2019, is rendered **MOOT**.

(d) The Motion to Compel Production of Documents and Things filed by Upper Gwynedd Township, dated August 12, 2019, is rendered **MOOT**.

20. Because Provco elected not to amend its application for relief to request a special exception for gasoline sales and Judge Clifford's determination that the issue of accessory use is no longer before the ZHB, there are no issues before the ZHB on which the ZHB is required to take evidence pursuant to the Remand Order. Further testimony before the ZHB to the above docket number is unnecessary.

21. The additional evidence presented by Provco at the Remand Hearing was beyond the scope of the Remand Order and shall be stricken from the Record, specifically including pages 65-109 of the Transcript of the Remand Hearing and any and all Exhibits provided during the same.

WHEREFORE, Provco, Township, Hartford and Merck request that the ZHB issue an order in the form attached hereto, marked Exhibit "D," returning the record to the Montgomery County Court of Common Pleas for further proceedings under Docket No. 2016-29496 as the Court may deem appropriate.

[Signature page to follow]

**Provco Pinegood Sunneytown, LLC**

**By: Eastburn and Gray, P.C.**

By:  \_\_\_\_\_

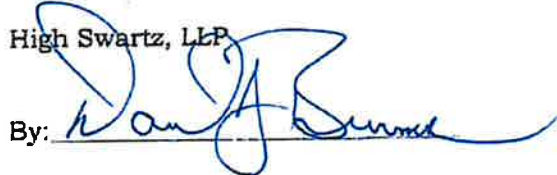
**Upper Gwynedd Township  
Board of Commissioners**

**By: Wisler Pearlstine, LLP**

By:  \_\_\_\_\_

**Merck Sharpe & Dohme Corporation**

**By: High Swartz, LLP**

By:  \_\_\_\_\_

**Hartford Properties, LLC**

**By: Hamburg, Rubin, Mullin, Maxwell &  
Lupin, PC**

By:  \_\_\_\_\_



# **Exhibit “A”**



**UPPER GWYNEDD TOWNSHIP ZONING HEARING BOARD  
ADDENDUM TO APPLICATION**

Applicant: Provco Pinegood Sumneytown, LLC  
795 E. Lancaster Avenue  
Building #2, Suite 200  
Villanova, PA 19085

Owners:	Edward & Patricia Burkholder 312 Gosling Drive North Wales, PA 19454	John Gawthrop, Jr. & Richard Abbott copartners t/a JAD Properties 1610 West Point Pike Lansdale, PA 19446
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Properties:	708 Sumneytown Pike TPNs. 56-00-08524-00-6 56-00-08527-00-3	1610 West Point Pike TPN. 56-00-08521-00-9
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Relief Requested: 1. An interpretation that a canopy over motor vehicle fueling stations is an accessory building and that motor vehicle fuel sales are a permitted accessory use and customarily incidental to a permitted retail store use pursuant to section 195-3 "Definitions - Accessory Building and Accessory Use" and 195-22.A(7) "C Commercial District – Use regulations";

and/or in the alternative,

A special exception pursuant to section 195-22.A(8)(c) "C Commercial District – Use regulations".

To permit a gasoline service station use or motor vehicle fuel sales as an accessory use to a permitted convenience store retail use.

2. Variances from section 195, attachment 3:1 "Schedule of Sign Regulations".

- a. to permit a total sign area of 325.64 square feet rather than the maximum permitted 40 square feet;
- b. to permit ground signs totaling 186 square feet rather than the maximum permitted 24 square feet;
- c. to permit façade signs totaling 139.64 square feet rather than the maximum permitted 40 square feet;

- d. to permit 2 ground signs of 27 feet in height rather than the maximum permitted 12 feet in height; and
  - e. to permit 20 façade signs (16 gas pump, 2 building, and 2 spanner) rather than the maximum permitted 1 façade sign.
3. A variance from section 195-35.I(2)(b) "Prohibited signs".  
To permit a sign with red or green LEDs within 75 feet of the public right-of-way and within 200 feet of a traffic control signal.
4. A variance from section 195-35.J(2)(I)[5] "Permitted signs".  
To permit a sign with both red and green LEDs rather than the maximum permitted 1 color.

### **BACKGROUND**

This application proposes the redevelopment of the southwest corner of Sumneytown Pike and West Point Pike with a convenience store with motor vehicle fuel dispensing facilities.

Provco Pinegood Sumneytown, LLC ("Landowner") is the equitable owner of 2 contiguous parcels located on the southwest corner of Sumneytown Pike and West Point Pike, Upper Gwynedd Township ("Township"), Pennsylvania, Montgomery County tax parcel nos. 56-00-08524-00-6, 56-00-08527-00-3, and 56-00-08521-00-9 (collectively, "Property"). The Property comprises approximately 2.43 acres, and is located in the Township's C Commercial District.

Current improvements to the Property include the Sumney Tavern restaurant and the Country Bride and Gent retail store. Both establishments have associated parking, lighting, and landscaping.

Landowner proposes demolition of the buildings, consolidation of the parcels, and the construction of a 5,585 square foot Wawa convenience store, with 8 fueling stations (16 fueling positions) and 56 parking spaces. Traffic and circulation will be significantly improved, as described below.

### **ZONING RELIEF**

Landowner requests the variances outlined above from the Upper Gwynedd Township Zoning Ordinance of 1987, as amended ("Ordinance"). Landowner is entitled to the requested interpretation or special exception to permit motor vehicle fuel sales at the Property, and the requested variances to permit additional signage, for the following reasons:

(1) Ordinance section 195-22.A(7) "C Commercial District – Use regulations" permits by right an accessory use on the same lot with and customarily incidental to the use permitted and utilized. The sale of motor vehicle fuels is customarily incidental to the convenience store use and thus is an accessory use as defined in Ordinance section 195-3. The vast majority of Wawa convenience stores have motor vehicle fuel sales, as do many other convenience stores such as Royal Farms, Sheetz, Turkey Hill, Cumberland Farms, and 7-11. The sale of motor vehicle fuels is subordinate to the principal convenience store use. The proposed canopy over the motor vehicle fueling stations is an accessory building as defined by Ordinance section 195-3. Thus, Landowner seeks and interpretation that the sale of motor vehicle fuels is a permitted accessory use and that the canopy over the motor vehicle fueling stations is a permitted accessory building requiring no additional zoning relief.

(2) Alternatively, Landowner seeks a special exception to permit motor vehicle fuel sales pursuant to Ordinance section 195-22.A(8)(c) which permits gasoline service stations by special exception. The Property is located at a major intersection of heavily travelled commercial roadways ideal for the sale of motor vehicle fuels to serve the travelling public.

The special exception, if granted, will not adversely affect the health, safety, or welfare of the community. To the contrary, the health, safety, and welfare of the community will be enhanced by Landowner's proposal to eliminate left turns into and out of the Property from Sumneytown Pike. Landowner is improving the parking configuration and internal circulation of the site. Further, the demolition of the Sumney Tavern and the construction of the aesthetically pleasing Wawa will bring the Property into conformance with the Ordinance in terms of building setback requirements making for safer sight distances at the intersection of Sumneytown Pike and West Point Pike. Also, enhanced stormwater management controls are proposed for the Property.

(3) The requested sign variances, if granted, will not alter the essential character of the neighborhood, nor will such variances substantially or permanently impair the appropriate use or development of adjacent parcels. Landowner proposes redevelopment and modernization of the Property with the construction of an aesthetically pleasing Wawa with enhanced architecture. The additional signage, both in number and square footage, is necessary to provide visibility and identification of the Wawa and the fuel dispensing facilities. Landowner requests 2 building signs as the Wawa building will have a front and rear entrance with parking located at both entrances.

(4) The proposed signs do not face a residential neighborhood, nor are the proposed signs located in close viewing proximity to any residential properties. The relief requested poses no threat to public health, safety and welfare. The proposed signs are in keeping with the character of the neighborhood and are in proportion to other convenience store signs in the area. The proposed signage is proportionate to the size of the building, the canopy, and the fuel pumps.

(5) The requested variances to allow signs with red and green LEDs within 75 feet of a public right-of-way and within 200 feet of a traffic control signal meet the intent of the Ordinance in that Pennsylvania statute requires that fuel prices be displayed and there is no chance of confusion of red and green LED fuel pricing signage with that of a traffic control signal. The Property is a corner property and the Sumneytown Tavern parcel only has 66 feet of frontage on Sumneytown Pike.

(6) The variances requested represent the minimum variances that will afford relief and represent the least modification possible of the regulations in issue.

(7) The requested special exception and variances meet the standards set forth in section 910.2(a) the Pennsylvania Municipalities Planning Code, 53 P.S. § 10910.2(a), and Ordinance section 195-55 "Criteria for exceptions or variances".



# **Exhibit “B”**

**UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA  
ZONING HEARING BOARD**

November 22, 2016

Mr. Bruce A. Goodman  
Provco Pinegood Sumneytown, LLC  
795 E. Lancaster Ave.  
Villanova, PA 19085

**RE: *Provco Pinegood Sumneytown, LLC Appeal  
Hearing No. 16-11***

**DECISION**

Dear Mr. Goodman:

This is to advise you that the Upper Gwynedd Township Zoning Hearing Board (Board) at its public hearing held on Tuesday, November 22, 2016, GRANTED this Application requesting various zoning relief to permit Applicant to construct and operate a Wawa convenience store with sales of motor vehicle fuels and a canopy over the fueling stations at properties located at 708 Sumneytown Pike, North Wales, PA 19454 and 1610 West Point Pike, Lansdale, PA 19446, of which Applicant is the equitable owner, both of which properties are in a C-Commercial Zoning District.

The following zoning relief is GRANTED:

1. An interpretation that the proposed canopy over the proposed motor vehicle fueling stations is an accessory building and that the proposed motor vehicle fuel sales is an accessory use to a permitted by right principal convenience store retail use pursuant to Article II, section 195-3 regarding "Definitions – Accessory Building and Accessory Use" and Article V, sections 195-22A(1) and (7) of the Upper Gwynedd Zoning Code (Code). Thus both are permitted.
2. Sign variances from Article VII, section 195-35 and attachments 3 and 3:1 " Schedule of Sign Regulations" thereto of the Code as follows:
  - a. A sign area variance of 199.38 sq. ft. to permit total sign area of 239.38 sq. ft. This is an amendment to the Application requested by Applicant at the first hearing.

- b. A total ground sign area variance of 51.74 sq. ft. to permit two (2) ground signs totaling 99.74 sq. ft. Each ground sign will be 49.87 sq. ft. with one (1) on each street frontage which is permitted by Code. This was also an amendment to the Application requested by Applicant at the first hearing. Additionally, two (2) ground sign area variances of 25.87 sq. ft. each to permit the two (2) ground signs of 49.87 sq. ft. each. The code only permits 24 sq. ft. per ground sign.
- c. A facade sign area variance of 99.24 sq. ft. to permit total facade signs of 139.64 sq. ft.
- d. A 19 facade signs variance to permit totally 20 facade signs.
- e. A variance to permit two (2) red or green LED signs within 75 ft. of the public right of way and within 200 ft. of a traffic control signal, one (1) on Sumneytown Pike and one (1) on West Point Pike, from Article VII, section 195-35I(2)(b) of the Code.
- f. A variance to permit two (2) red and green LED signs rather than only one color permitted sign, located on the roads as stated in subsection e. above, from Article VII, section 195-35J(2)(i)(5) of the Code.

Applicant's other alternative relief requesting (1) a special exception pursuant to Article V, section 195-22A(8)(c) of the Code to permit either a gasoline service station use or a motor vehicle fuel sales as an accessory use to a permitted convenience store retail use, and (2) the two ground sign height variances of 15 ft. each to permit two ground signs 27 ft. high, were withdrawn by the Applicant at the first hearing. Therefore, any and all issues relating thereto are rendered moot and no decision whatever is rendered with respect thereto.

This zoning relief is granted based upon the following specific conditions:

1. There shall only be a right in from and a right out to Sumneytown Pike which was agreed to by the Applicant in its testimony and which is shown on the Zoning Plan marked as Exhibit "A-9". This relates to the sign variances and public health, safety and welfare.
2. Subject to the final subdivision and land development approval of the Township Board of Commissioners.
3. Based upon and after consideration of all of the testimony and exhibits presented at the time of the hearings.

This is not to be considered the grant of a Building Permit or a Use and Occupancy Permit.


With respect to the variances granted in this Decision, Applicant is referred to Article X, §195-60 of the Zoning Code specifically regarding expiration of variances that have been granted.

If you, or anyone else present at the hearing(s) and entering their appearance, disagree with this Decision in any way then there is a strict time limit of THIRTY (30) days from the date of the MAILING of this Decision within which to take an appeal of this Decision to the Court of Common Pleas of Montgomery County, PA

Thank you for your attendance at the hearing.

THE DATE OF MAILING OF THIS DECISION IS NOV. 22, 2016.

Very truly yours,

  
HENRY V. RATKE,  
Chairman

RJE/mcd  
Enclosure

Cc: Julie Von Spreckelson, Esq.  
470 Norristown Road, Suite 302  
Blue Bell, PA 19422

James J. Garrity, Esquire  
460 Norristown Road, Suite 110  
Blue Bell, PA 19422

# **Exhibit “C”**

**IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW**

<b>UPPER GWYNEDD TOWNSHIP BOARD OF COMMISSIONERS</b>	:	<b>NO. 2016-29496</b>
<b>Plaintiff</b>	:	
	:	<b>LAND USE APPEAL</b>
	:	
<b>MERCK SHARPE &amp; DOHME CORPORATION</b>	:	06/25/19 Wawa Inc.'s Motion for a
<b>Plaintiff-Intervenor</b>	:	Protective Order, 08/12/19 Intervenor
	:	Merck, Sharp, & Dohme
	:	Corporation's Answer to Wawa
	:	Inc.'s Motion for a Protective Order,
<b>v.</b>	:	08/12/19 Upper Gwynedd
	:	Township's Response to Wawa Inc.'s
<b>UPPER GWYNEDD TOWNSHIP ZONING HEARING BOARD</b>	:	Motion for a Protective Order,
<b>Defendants</b>	:	08/12/19 Upper Gwynedd
	:	Township's Motion to Compel
<b>PROVCO PINEGOOD SUMNEYTOWN, LLC</b>	:	Production of Documents and Things
<b>Applicant</b>	:	

**ORDER**

AND NOW, this **12<sup>th</sup>** day of November, 2019, following oral argument placed on the record on October 15, 2019, it is hereby **ORDERED** and **DECREED** as follows:

1. On March 23, 2018, the Court entered an Opinion and Order remanding the within matter to the Zoning Hearing Board of Upper Gwynedd Township (hereinafter "ZHB") for the purpose of determining, pursuant to the Township Zoning Code, whether Provco's application for the gasoline sales operation will be authorized as a special exception.
2. As part of the March 23, 2018 Opinion and Order, the Court determined that there was insufficient evidence to support the ZHB's finding that the corporate applicant's principal use of the land would be for a proposed convenience store and that the gasoline service was "accessory" to that use was permitted in Subsection (7) of the Code provision.
3. That Opinion and Order was appealed by Provco on April 4, 2018.



2016-29496-0130 11/13/2019 8:38 AM # 12553453  
 Rept# Z3768426 Fee: \$0.00 Order  
**SENT ON 11/13/2019**  
 MontCo Prothonotary

**THIS DOCUMENT WAS DOCKETED AND SENT ON 11/13/2019**

*JB*

4. On April 3, 2019, the Commonwealth Court issued an Order quashing the appeal by Provco as interlocutory.<sup>1</sup>
5. As a result, the matter was to proceed with the ZHB in accordance with the March 23, 2018 Opinion and Order.
6. Notwithstanding the foregoing, the ZHB, on remand, scheduled a hearing for June 25, 2019 for the purpose of “determining whether Applicant needs and is entitled to special exception relief for the proposed fuel station *and whether the retail sales use and the fuel station use are principal or accessory uses.*” See Public Notice of Upper Gwynedd Township Zoning Hearing Board Agenda for June 25, *The Reporter*, Public Notice Section, June 18, 2019.<sup>2</sup>
7. Prior to the June 25, 2019 remand hearing, Upper Gwynedd Township issued a Subpoena to Wawa, Inc. requesting the production of information relating to sales and statistics at similar convenience store locations owned by the corporate applicant.<sup>3</sup>
8. Wawa, Inc. filed a Motion for Protective Order on June 25, 2019, seeking to prevent the Township from obtaining the subpoenaed information.
9. At argument on October 15, 2019, counsel for the Township represented to the Court that the information sought via its Subpoena was only relevant for the purposes of determining whether the gasoline service was accessory to the proposed convenience store, and that it was not necessary for purposes of determining whether a special exception was warranted.<sup>4</sup>
10. As the issue of accessory use has already been determined, the only issue the ZHB must determine, pursuant to the Remand Order, is whether a special exception is warranted.

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<sup>1</sup> The Commonwealth Court, in its Opinion, noted that Provco may ultimately appeal this Court’s March 23, 2018 determination that there was insufficient evidence to support a finding of accessory use for the gasoline service. The Opinion *only* quashed the appeal and did not remand for additional evidence on that matter.

<sup>2</sup> While the Notice subsequently proceeded to quote the March 23, 2018 Order regarding the scope of the hearing, both statements were ultimately included.

<sup>3</sup> Wawa, Inc. is not a party to the within matter, but is anticipated to be the occupant of the property.

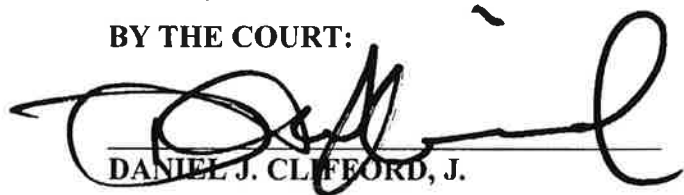
<sup>4</sup> See *N.T.* (October 15, 2019) at 15.



11. Accordingly, it is **ORDERED** that:

- (a) The ZHB shall hold a hearing to determine, pursuant to the Township Zoning Code, whether Provco's application for the gasoline sales operation will be authorized as a special exception.<sup>5</sup>
- (b) The issue of accessory use is no longer before the ZHB.
- (c) The Motion for Protective Order filed by Wawa, Inc., dated June 25, 2019, is rendered **MOOT**.
- (d) The Motion to Compel Production of Documents and Things filed by Upper Gwynedd Township, dated August 12, 2019, is rendered **MOOT**.

**BY THE COURT:**



DANIEL J. CLIFFORD, J.

**Copies sent via Prothonotary to:**

James J. Garrity, Esquire  
Scott C. Denlinger, Esquire  
Upper Gwynedd Township Zoning Hearing Board  
Zachary Sivertsen, Esquire  
Julie L. Von Sprecklesen, Esquire  
David J. Brooman, Esquire  
William Kerr, Esquire  
Mark R. Fischer, Esquire  
Matthew J. McHugh, Esquire

**Copies sent via Chambers to:**

Court Administration – Civil (*Interoffice*)



J. C. Mulla  
Judicial Assistant

<sup>5</sup> The applicant shall be permitted to reinstate its initial request for a special exception.

# **Exhibit “D”**

**UPPER GWYNEDD TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA  
ZONING HEARING BOARD**

**IN RE: PROVCO PINEGOOD SUMNEYTOWN, LLC APPEAL  
Hearing No. 19-5**

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2020, upon consideration of the Stipulation of Applicant Provco Pinegood Sumneytown, LLC, Upper Gwynedd Township Board of Commissioners, Hartford Properties, LLC and Merck Sharpe & Dohme Corporation, the Upper Gwynedd Township Zoning Hearing Board (the “Board”) enters the following Order:

1. Pursuant to the Order dated November 11, 2019 of the Honorable Daniel J. Clifford of the Montgomery County Court of Common Pleas entered at Docket No. 2016-29496, clarifying the intended scope of the his Remand Order dated March 23, 2018, the Board’s function was to hold a hearing on the issue of whether Provco’s proposed motor vehicle fuel sales would be permitted as a special exception on the Property.

2. At the first hearing on the Remand Order before the Board, Provco advised the Board that it did not seek to amend its application in Appeal No. 16-11/19-05 (“Application”), and therefore was electing not to reinstate its request for a special exception.

3. The Board has determined, based on Provco’s assertions described in paragraph 2, above, and the parties’ Stipulation, that no evidence will be presented to the Board in response to the Remand Order.

4. Any and all evidence presented at the June 25, 2019 remand hearing shall be stricken from the record as beyond the scope of the Remand Order, specifically including pages 65-109 of the transcript and any and all exhibits presented at said hearing.

5. The Decision of the Board and the Findings of Fact and Conclusions of Law previously issued by the Board are hereby re-issued by the Board and shall be returned, along with the Record in this matter, to the Court of Common Pleas of Montgomery County to the case docketed as No. 2016-29496.

6. Jurisdiction of the Zoning Hearing Board over this matter is hereby relinquished.

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**UPPER GWYNEDD TOWNSHIP  
ZONING HEARING BOARD**

**IN RE: ZONING APPLICATION OF PROVCO : HEARING NO. 16-11  
PINEGOOD SUMNEYTOWN, LLC :**

**FINDINGS OF FACT, LEGAL DISCUSSION AND CONCLUSIONS OF LAW**

**DECISION**

**FINDINGS OF FACT**

1. Provco Pinegood Sumneytown, LLC, (Applicant) is a Pennsylvania Limited Liability Company and the equitable owner of the subject contiguous properties (Property or Properties) located at 708 Sumneytown Pike, North Wales, PA 19454 and 1610 West Point Pike, Lansdale, PA 19466 both of which are in Upper Gwynedd Township, PA in a C-Commercial Zoning District. (C-Commercial). (Application, Exhibits A-1, A-4, A-5, A-6).
2. Applicant filed an application (Application) with the Upper Gwynedd Township Zoning Hearing Board (Board) on July 1, 2016, requesting the following zoning relief to construct and operate a Wawa convenience store with retail sales



(Convenience Store) along with outdoor sales of motor vehicle fuels (“fuel sales”) and a canopy (“canopy”) over the sixteen (16) fueling stations at the Properties:

- a. An interpretation that a canopy over motor vehicle fueling stations is an accessory building and that motor vehicle fuel sales is an accessory use to a permitted convenience store use pursuant to Article II section 195-3 “Definitions – Accessory Building and Accessory Use” and section 195-22A(7) of the Upper Gwynedd Zoning Code (Code).
- b. Alternatively, a special exception pursuant to Article V section 195-22 A(8)(c) of the Code to permit a gasoline service station use or motor vehicle fuel sales as an accessory use to a permitted convenience store retail use.
- c. Sign variances from Article VII section 195-35 and attachments 3 and 3:1 “Schedule of Sign Regulations” thereto of the Code as follows:
  1. Sign area variance of 285.64 sq. ft. to permit total sign area of 325.64 sq. ft.
  2. Ground sign variance of 162 sq. ft. to permit total ground signs of 186

sq. ft.

3. Façade sign variance of 99.24 sq. ft. to permit total façade signs of 139.64 sq. ft.
4. Two ground sign height variances of 15 ft. each to permit two 27 feet high ground signs.
5. 19 façade sign variance to permit 20 facade signs.
6. A variance to permit a red or green LED sign within 75 ft. of the public right of way and within 200 ft. of a traffic control signal from section 195-35I(2)(b) of the Code.
7. A variance to permit a red and green LED sign rather than only one permitted color from section 195-35J(2)(i)(5) of the Code.

(See Application). (“fuel sales” and “canopy” are shortened terms used by the Board hereafter).

3. A hearing was originally scheduled for August 23, 2016, duly advertised, posted and Notice given to the Applicant and adjacent property owners in accordance

with the requirements of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. Section 10908(1) and the Code Chapter 195. At Applicant's request the hearing was continued to September 27, 2016, and again duly advertised, posted and Notice given to the Applicant and adjacent property owners. Applicant filed a signed Continuance and Waiver Form for this and it was entered as Board's Exhibit A-1. (Notes of Testimony (NT hereafter), 9/27/16, p. 7).

4. Thereafter two (2) hearings were eventually held, September 27, 2016 and October 25, 2016. Julie Von Spreckelson, Esq. represented the Applicant and James J. Garrity, Esq. represented Upper Gwynedd Township (Township) in opposition to the Application.
  
5. At the first hearing the Applicant amended its Application by withdrawing the alternative request for the special exception for the fuel sales and for the two (2) ground sign height variances, and also reducing two (2) sign area variance requests as follows:
  - a. Total sign area variance from 325.64 sq. ft. to 239.38 sq. ft., and
  
  - b. Total ground sign area variance from 186 sq. ft. to 99.74 sq. ft. by reducing each ground sign to 49.87 sq. ft.

(NT 9/27/16, pp.9-14).

6. Upper Gwynedd Township (Township) is a First-Class Township in the Commonwealth of Pennsylvania with addresses of PO Box 1, West Point, PA 19486 and 1 Parkside Place, North Wales, PA 19454. (See the Township's website).
  
7. The Properties are located at the southwest corner of Sumneytown and West Point Pikes and together total 2.434 acres (106,009 sq. ft.) in size, are zoned C-Commercial and are served by both public water and sewer. The current structures on both properties will be demolished. The Sumney Tavern Restaurant (Restaurant) at the intersections' corner has only one traffic all access in and out with parking off West Point Pike and the Country Bride and Gent retail store (Bridal Shop) on Sumneytown Pike also has only one traffic all access in and out and parking off Sumneytown Pike. (Application, Exhibits A-9 and 13, NT 9/27/16 pp. 29-32, 59, 60).
  
8. The Applicant proposes to construct a 5585 sq. ft. Wawa Convenience Store with fuel sales from eight (8) outdoor detached fueling stations (comprising sixteen (16) separate fuel pumps) under a detached separate A-frame shed dormer canopy with the same roof, facade and brick or stone on the columns to match

the Convenience Store building with the entire site more residential in character than commercial. Fifty six (56) parking spaces are provided, three (3) of which are handicapped spaces. The current PECO easement used by the Restaurant over the years for parking is not part of this Application. There will be two restricted right hand turns in and out only on Sumneytown Pike in place of the current one only all access in and out on Sumneytown Pike. There will continue to be the all access in and out on West Point Pike the same as currently exists. There will not be any road improvements around the site because they have already been done previously and currently there are no issues with traffic flow. (Application, Exhibits A-9 and 13, NT 9/27/16 pages 29-32, 37-39, 59, 60, 69, 70, 73).

9. Mr. Bruce A. Goodman (Goodman) was sworn and testified that he is the owner of Goodman Properties, a commercial real estate developer specializing in shopping centers and specialty retail development for 38 years and is a preferred developer for Wawa having developed 16 Wawas over the years. (NT. 9/27/16, pp. 23, 24).

10. Goodman as such was qualified as an expert in the field of real estate development. His company owns about five (5) million sq. ft. of space. He described numerous large developments in Willow Grove, a Toys and Babies are Us, a Fresh Markets, a PNC Bank, and a couple of Wawas it developed. His

company is one of three (3) partners in the development of the proposed Wawa, in this matter, Provco, Goodman Properties and Pinegood Properties, the Applicant. (NT. 9/27/16, pp. 24-27, Application, Exhibit A-1).

11. Goodman testified that he is familiar with the subject Properties which currently have the Bridal Shop retail business on Sumneytown Pike and the Restaurant on the corner both of which will be demolished. The original proposal presented to Township staff was a bank with multiple drive-throughs on one lot and a Wawa with fuel sales and a canopy over the fuel dispensers on the other. Because of Township concerns about traffic, Applicant then eliminated the proposed bank use leaving only the now proposed Wawa Convenience Store use with fuel sales. (NT 9/27/16 pp. 27-28).

12. The proposed signage is relatively consistent with that which was granted by this Board years ago for the Wawa convenience store with fuel sales and a detached canopy located at Routes 202 and 63 in this Township (the 202 and 63 Wawa) with the proposed building front facade sign here being larger due to new Code sign calculations which now include the Wawa goose logo on the front of the building and the façade sign on the rear entrance which the other Wawa does not have. (NT 9/27/16, pp. 27-29).

13. Additionally, because of Township staff traffic concerns with ingress to and egress from the Properties on Sumneytown Pike, the Applicant changed its plan to provide for two (2) restricted right in and right out only access points on Sumneytown Pike. On West Point Pike there will be one all access point in and out located about 167 ft. down from the intersection of Sumneytown and West Point Pikes. Fifty six (56) parking spaces are provided, including three (3) handicap spaces, which meets Code parking requirements. (Exhibit A-9, NT 9/27/16, pp. 29-30).

14. Mr. Chris Hoffman (Hoffman) testified as the real estate project engineer for Wawa concerning this particular project. Some of his duties and responsibilities include, inter alia, overseeing the project and garnering the necessary developmental approvals. Wawa opened its first store in 1964 and until 1996 operated convenience stores only with no fuel sales. (NT 9/27/16 pp. 44, 45).

15. After 1996 Mr. Hoffman stated that the convenience store industry moved into gasoline sales also because the customers wanted it yet convenience stores are still an independent industry, the following credible testimony then transpired on the accessory use issue.

By applicant's attorney Ms. Von Spreckelsen:

"Q. And the fuel sales, are they secondary to the convenience store use?"

A. They are.

Q. And so the majority of the area of the property is going to be devoted to the sale of the retail product, correct?

A. Correct.

Q. And a majority of the Wawa convenience stores have self-service gas pumps is that correct?

A. That is correct.

Q. Is that also true of your competitors such as Royal Farms, Krogers?

A. Correct. And as is the industry as a whole.

Q. And are there any stand-alone Wawa self-service fuel pumps without a convenience store attached to them?

A. There are not.....

Q. And the fuel pumps are on the same lot as the convenience store is that correct?

A. They are, yes.

Q. And they're customarily incidental to the convenience store use?

A. Yes, they are.

Q. And the fuel pumps are subordinate to the convenience store use?...



Q. Can you explain why they're subordinate to the convenience store use?  
The fuel sales?

A. Yes. To support that argument we looked at all the stores in Pennsylvania over the 2015 calendar year and did an analysis as to how many customers visited the store versus how many customers visited the fuel pumps, and that analysis lead us to being able to state that three times as many customers visit the store - - three times as many customers ring up on the cash register. So that's how we did it. Cash register transactions versus fuel pump transactions. And there are three times as many transactions in the store versus at the fuel pumps". (NT 9/27/16 pages 46 – 47, 51).

16. The detached canopy is over the fuel pumping stations to give customers a shield from the elements and to provide lighting at night. (NT 9/27/16 p.48).

17. The proposed signs are as follows:

Two (2) "Wawa" freestanding ground signs with price changer each being 49.87 sq. ft., one located past the second entrance on Sumneytown Pike towards the intersection and the other located on the north side of the West Point Pike entrance.

A total of twenty (20) façade signs as follows:

Two (2) building facade signs, one on the front being 67.70 sq. ft. and the other on the back at the rear entrance being 36.90 sq. ft.

Eighteen (18) facade informational signs consisting of two (2) Wawa spanner signs on each end of the canopy each being 7.84 sq. ft. and sixteen (16) spanner signs with the Wawa name on the pumps each being 1.21 sq. ft.

The total free standing ground signs equal 99.74 sq. ft., the total building facade signs equal 104.60 sq. ft., the total pumps signs equal 35.04 sq. ft. with total signage on the entire property being 239.38 sq. ft.

(Exhibit A-10, NT 9/27/16, pp. 64, 65, 74, 75).

18. Hoffman testified that all the proposed signage is a significant reduction from the typical Wawa sign package, although there really is no standard package since they are generally tailored to a particular location based upon numerous factors like the township or Borough where located. (NT 9/27/16, p. 50)

19. The need for the proposed signage is:

- a. Customers are very gas price sensitive so it is very important that pricing be seen and in sufficient time to decide if they want to stop for fuel.
- b. Important for company branding and visibility.

(NT 9/27/16 pp. 48, 49, 64-66).

20. The proposed signage is consistent in size and height as that existing at the 202 and 63 Wawa previously granted by this Board, but is more subtle with modern design. It is also consistent generally with most Wawa's in Pennsylvania. (NT 9/27/16 pp. 50, 53, 64-67).

21. Joseph S. Barron (Barron) was sworn and qualified as an expert in civil engineering. He has a bachelor and master's in civil engineering degrees from Villanova University and has been working with Bohler Engineering for 20 years. He has worked on Wawa projects for the past 20 years from concept to construction completion. He has never prepared a plan for Wawa that has not included fuel sales with dispensing facilities along with the Convenience Store. (NT 9/27/16, pp. 55, 56, 64).

22. Barron prepared the zoning plan (Exhibit A-9) and the signage details (Exhibit A-10) submitted with the Application after reviewing the Township's zoning

ordinance and the subject Properties. Both current buildings on the Properties encroach on the Code's required setbacks with one full access into the Restaurant from West Point Pike and one full access into the Bridal Shop from Sumneytown Pike with no restrictions on either access. Full access or movement means "right and left turns in, right and left turns out". (NT. 9/27/16 pp. 58, 59, 60, 73).

23. The neighboring uses around the subject Properties are the PECO easement to the South and to the West is also the PECO easement as well as railroad tracks and bridge, and beyond that the Merck property. Across the Street on Sumneytown Pike are a diner and dry cleaners. Catty corner at the northeastern corner of the intersection will be a proposed Royal Farms convenience store with motor fuel sales and a separate canopy and other proposed commercial uses. Across from that on the Southeast corner of the same intersection is an existing Sunoco gasoline station with fuel sales and vehicular repairs. All the properties mentioned are in C-Commercial except for Merck which is in the LI Limited Industrial zoning district. (NT 9/27/16, p. 60).

24. Barron confirms the construction project details as noted earlier in these Findings of Fact and points out that the full access in and out from West Point Pike will be in the exact same location where it presently exists for the Restaurant. Additionally, he confirms there will be two (2) right in/right out access points on

Sumneytown Pike, one behind the Convenience Store building and the other would be between that building and would lineup with the drive aisle between the building and the canopy. Currently there is only one such access. (NT, 9/27/16, pages 60 – 61).

25. A retail store is a permitted by right use in C-Commercial which is the proposed Convenience Store use. Except for the proposed signage, the proposed project completely complies with all Code requirements including, inter alia, lot area, lot widths, setbacks, dimensional requirements, building height and coverage, and parking. The sixteen (16) fuel dispensing facilities, including the detached canopy, are located on the same lot as the Convenience Store, but not connected to it. (NT 9/27/16 pp. 61-63).

26. Barron reviewed the sign details provided in exhibit A-10 and states they are consistent with what one would see in any business that sells fuel, are proportionate to the size and scale of the proposed buildings and with other signage in the area, as well as at the 202 and 63 Wawa. He compares them to the existing signs on the Sunoco station across the street. The Sunoco has similar spanner signs on the gas pumps as well as two spanner signs at each end of its flat topped detached canopy. All gas sales facilities have spanner signs throughout the industry. All of the signs are for the purpose of branding and visibility not only for the Convenience Store front and rear entrances, but also for

the gasoline sales. This proposed Wawa is different than most Wawas since it also has a rear entrance, thus the need for the rear facade sign. (NT 9/27/16 pp. 64-68).

27. In comparing the proposed signage with that at the 202 and 63 Wawa, Barron states, inter-alia, the following:

“With respect to square footages of these signs versus the 202 and 63 Wawa, they are comparable in size. With respect to the pump signage, they are slightly smaller. With respect to the monument signage, they are approximately the same size, maybe three-tenths of a square foot difference, but nominally the same square footage.

The one on the front of the building is less than the combination of the Wawa and goose on the front of the route 202 and 63 building and the route 202 and 63 building, as was mentioned earlier, the goose was considered an architectural element so it wasn't considered in the overall signage.

This sign on this building is slightly different in the fact that the goose was a white color, on the 202 and 63 sign, and here it's yellow, and that's kind of what brought it into the overall signage square footage.

And the spanner signs are also at the 202 and 63 Wawa and they are on this site as well. And there are more of them on that (the 202 and 63) Wawa.”

(NT. 9/27/16 pp. 66, 67).

28. The building coverage shown on the plan marked Exhibit A-9 includes both the 5585 sq. ft. Convenience Store and the detached canopy. None of the 56 parking spaces provided will be needed for trees or landscaping. (NT 9/27/16, pp. 69, 70, 73).

29. There is a designated loading area for all delivery trucks during the 24/7 operation and none will be parked off premises. Sidewalks will be provided along Sumneytown Pike. (NT 9/27/16, p. 81, 82).

30. Mr. Matthew I. Hammond (Hammond) was sworn and qualified as an expert licensed civil engineer specializing in traffic and transportation engineering as well as sign and safety analysis. He is employed by Traffic Planning and Design, Incorporated. He has a Bachelor's degree in engineering from Drexel University and has been so employed for over 21 years. He is licensed in Pennsylvania, Maryland, Virginia, Delaware and New Jersey and this licensure covers traffic. (NT 9/27/16, pp. 87 - 89).

31. Hammond's daily duties include anything related to traffic, transportation, signage, planning access, roadway design, highway design, and anything else

dealing with traffic and transportation and specifically as it relates to developments. (NT 9/27/16, p. 88).

32. Sign visibility analysis is another aspect of his site reviews. This includes signage visibility, location, size and height and he has been accepted as and testified as an expert in relation to such in other tribunals. His traffic studies, or signal designs or highway occupancy permit reviews include the signage aspect of the site design and fall under the traffic study aspect of that site which is the planning document used for the design phase. (NT 9/27/16, pp. 88-90).

33. Hammond reviewed the Township's Code relating to signage as well as the signage plan prepared by Bohler Engineering marked as Exhibit A-10. Ground signs and monument signs mean the same thing. Exhibit A-10 refers to monument signs. There will be two (2) two sided ground signs one at the easternmost right in, right out Sumneytown access driveway and the other on West Point Pike where the Restaurant's current access is located. The ground signs will be internally illuminated and dual colored. Regular or unleaded gasoline will be in red and diesel fuel will be in green. (NT 9/27/16, pp 91, 92, 104).

34. The dual colored ground sign on Sumneytown Pike will be 118 feet from the intersection with West Point Pike. The West Point Pike ground sign will be



located 191 feet from the intersection with Sumneytown Pike. Both are next to the proposed access locations. (NT 9/27/16, pp 92, 98).

35. Hammond utilized the U.S. Sign Council manual which is the industry standard for signage as it relates to traffic and transportation, the issues and concerns of safety and visibility, and how those relate with roadway speed and location of signs. This translates into the size of the sign being appropriate for the safe and efficient movement of vehicles in and out of a particular facility. Reaction time or perception reaction time is a study done to determine how long it takes someone to visually see a sign, process that information and determine whether or not that person wants to make a safe maneuver to get in and out of that facility. (NT 9/27/16, pp. 94, 95).

36. Travel speed, perception reaction time, the geometry of the roadway, the type of area, any congestion or not, all apply to the standard of how to determine the size of a ground sign. (NT 9/27/16, p. 95).

37. Sumneytown and West Point Pikes are posted at 35 mph. Based on that, Hammond states that the U.S. Sign Council recommends a ground sign be approximately 50 sq. ft. and at 40 mph a 60 sq. ft. sign would be recommended for safe and efficient movement. In his expert opinion, the proposed ground signs of 49.87 sq. ft. each are appropriate and the variances proper for this purpose. At

40 mph a driver needs between 350 to 410 feet to see the proposed ground signs. (NT 9/27/16 p. 95, 96, 118).

38. Convenience store studies show that these facilities rely heavily on the roadways, traffic, passed by trips, and easy in and out access, thus heavily on impulse customers. They need to provide signage of such size to allow people to make a decision whether they need to stop and get something and then continue on their way. Perception/reaction time is important. (NT 9/27/16 pp. 97, 98, 106, 107).

39. The two dual colored pricing ground signs need a variance because they are two colored and within 200 feet of a traffic control device and within 75 feet of the public right of way. (Code sections 195-35 I and J, and NT 9/27/16, p. 100).

40. The industry standard throughout the country provides for different colors of pricing for regular gasoline and diesel fuel. The proposed red and green LED signs will not, in Mr. Hammond's opinion, be confused with the traffic control signals at the intersection. He points out that there are a number of locations within the township where this ... "exact color scheme is being utilized to depict unleaded gasoline and diesel gasoline". One Gulf station has such a sign right on the corner, the Sunoco station across the street from the Properties has one directly adjacent to the intersection and almost in the intersection, and the Gulf

station on Sumneytown Pike near its intersection with South Broad Street has two such LED signs where one is 100 feet from the intersection and the other is 194 feet from the intersection. (NT 9/27/16, pp. 100 -102).

41. The LED signs will be internally lit, but not flashing or animated. At most there may be a change once or twice in the course of the day concerning the price of fuel. (NT 9/27/16, pp. 102, 103).

42. The two (2) grounds signs are 10 feet high and are placed in such a way that they do not impede on sight distance so as to allow for a safe entry or exit from the Properties and there locations comply with required standards. (NT 9/27/16, pp. 108, 109).

43. For land development approval a traffic study is being prepared for the Township Commissioners which should include the impact of impulse shoppers and the other expansion project proposed in the area at the subject intersection as well as the impact on the entire surrounding area and neighborhood. (NT 9/27/16, pp. 111, 112, 114, 119, 120).

44. The Township did not present any testimony in support of its opposition to the Application. It did however enter Exhibits T-1 through T-5. Exhibits T-1 and T-4 comprised prior decisions of this Board.

45. In this Board's opinion, the Applicant factually established that the fuel sales and canopy are customarily incidental and subordinate to the by right permitted Convenience Store use and thus are a permitted accessory use and building respectively in C-Commercial.

### **LEGAL DISCUSSION**

A few basic principles of law must be set forth at the outset regarding a zoning hearing board and zoning hearings. The zoning hearing board is the only entity charged with the interpretation and application of the zoning ordinance. Smith v. Zoning Hearing Board of Huntingdon Borough, 734 A.2d 55 (1999); Code Section 195-53. It is well settled that a zoning hearing board's interpretation of its own zoning ordinance is entitled to great weight and substantial deference from a reviewing court. *Id.* At 57 (citing Borough of Milton v. Densberger, 719 A.2d 829 (1998), Latimore Township v. Latimore Township Zoning Hearing Board, 2013 Pa. Commw. LEXIS 6 (2013), Marshall v. City of Philadelphia, 97 A.3d 323 (2015) and Tidd v. Lower Saucon Township Zoning Hearing Board, 2341 C.D. 2013 (2015)). It is the function of a zoning hearing Board to weigh the evidence before it. Spargo v. Zoning Hearing Board of the Municipality of Bethel Park, 563 A.2d 213 (Pa. Commonwealth Ct. 1989). The board is the sole judge of the credibility of witnesses and the weight afforded their testimony.

Manayunk Neighborhood Council v. Zoning Board of Adjustment of the City of Philadelphia, 815 A.2d 652 (Pa Commonwealth Ct. 2002). A zoning board is free to reject even uncontradicted testimony it finds lacking in credibility, including testimony offered by an expert witness. Nettleton v. Zoning Board of Adjustment of the City of Pittsburgh, 574 Pa. 45 (2003). It does not abuse its discretion by choosing to believe the opinion of one expert over that offered by another. Berman v. Manchester Township Zoning Hearing Board, 540 A.2d 8 (Pa. Commonwealth Ct. 1988). A zoning hearing board does not abuse its discretion if its findings are supported by substantial evidence which is "...such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Pennsy Supply, Inc., 987 A.2d at 1250, Township of Exeter v. Zoning Hearing Board, 962 A.2d 653 (2009). Finally, "...it is the duty of the zoning board in the exercise of its discretionary power to determine whether a party has met its burden of proof." Pennsy Supply, Inc., 987 A.2d at 1250, (citing Shamah v. Hellam Township Zoning Hearing Bd., 648 A.2d 1299, 1304 (Pa. Commonwealth Ct. 1994) and "...determinations as to the credibility of witnesses and the weight to be given to the evidence are matters left solely to the Board in the performance of its fact finding role." Id.

I. **The legal doctrine of *stare decisis* binds the Board to follow its recent decision in Hartford Properties, LLC. at Hearing #16-5.**

Applicant here proposes to develop a Wawa convenience store with accessory motor vehicle fuel sales and an associated accessory fuel canopy structure on the

Properties. The Code permits convenience store uses by right in C-Commercial. Code § 195-22A(1). The Code also permits accessory uses by right in C-Commercial that are “on the same lot with and customarily incidental to the use permitted and utilized.” Code § 195-22A(7). Concomitant with this would be permitted accessory buildings as defined in Code section 195-3.

Very recently, on June 28, 2016, this Board considered the application of Hartford Properties, LLC (“Hartford Properties”) at Hearing # 16-5. Hartford Properties proposed the development of its property located at Sumneytown Pike and Church Road directly across the street from Applicant’s Properties for the sale of motor vehicle fuels and a canopy in conjunction with a convenience store use in C-Commercial. In our decision there (Exhibits T-1 and 4), we interpreted the Code and determined as a matter of law that the:

“[P]roposed construction of the canopy over the proposed 16 fuel stations is an accessory building and the proposed sale of motor vehicle fuels is an accessory use to the permitted by right principal convenience store use in accordance with the Upper Gwynedd Zoning Code (Code) Article II Section 193-3 “accessory building and accessory use” definitions and Article V, sections 195-22 A(1) and (7).”

Our decision made a *legal determination* that motor vehicle fuel sales are a permitted accessory use to a permitted by right convenience store use in C-Commercial, and that a canopy over the fuel stations is an accessory building. No special exception or use variance was granted by us in that decision. That legal determination was neither opposed nor appealed.

The legal doctrine of *stare decisis*, meaning to stand by things decided, provides that for the sake of certainty, a conclusion reached by a tribunal in one case should be applied in the same manner in subsequent cases where the facts are substantially the same. The doctrine applies even though the parties may be different. Burke v. Pittsburgh Limestone Corp., 100 A.2d 595 (Pa. 1953). *Stare decisis* promotes the evenhanded, predictable, and consistent development of legal principles; fosters reliance on judicial decisions; and contributes to the actual and perceived integrity of the judicial process. Tincher v. Omega Flex, Inc. 104 A.3d 328 (Pa. 2014).

Applicant's Property is located catty-corner to, across the street from, less than 100 feet from, and in the same C-Commercial district as the parcel that was the subject of the Hartford Properties decision. Applicant proposes identical principal and accessory uses and accessory building to those found to be permitted by right in C-Commercial in the Hartford Properties decision. Here as there we find from the substantial and credible facts established by Applicant, that Applicant's proposed accessory fuel sales with accessory canopy building will be subordinate to and customarily incidental to the proposed permitted by right principal convenience store use.

We believe from our findings of fact in this matter that the legal determination we made in the Hartford Properties decision is *stare decisis* and dictates that Applicant's proposed convenience store with accessory fuel sales and canopy are permitted by right in C-Commercial.

- II. **Accessory fuel sales and an accessory canopy, if factually established, are permitted in C-Commercial in conjunction with a permitted by right principal convenience store use, and a special exception for a “gasoline service station” is not required.**

**A. The Hartford Properties decision and the substantial credible evidence provided by Applicant establish that the fuel sales and the canopy are accessory to the principal convenience store use.**

Code section 195-22(A)(1) of the Code identifies permitted uses in C-Commercial as follows:

“Retail sale of dry goods, variety and general merchandise, clothing, food, flowers, beverages, drugs, household supplies or furnishings, sale or repair of jewelry, watches and clocks, optical goods or musical, professional or scientific instruments, job printing and any other use of the same general nature as those specifically enumerated in this subsection.”

Applicant’s proposed Wawa convenience store, which will sell a range of everyday items such as groceries, à la carte and snack foods, baked goods, toiletries, soft drinks and the like, undisputedly fits within this definition and thus is a principal use permitted by right.

Code section 195-22(A)(7) permits an “[a]ccessory use on the same lot with and customarily incidental to the use permitted and utilized”. Code section 195-3 defines an “accessory use” as “a use subordinate to the principal use of land or a building or other structure on a lot and customarily incidental thereto.”; and an accessory building is defined as “a detached subordinate building the use of which is customarily incidental



and subordinate to that of the principal building and which is located on the same lot as that occupied by the principal building. (Emphasis added).

For a use to be customarily incidental to a principal use, it must be shown that it is usually found with that principal use. Mitchell v. Zoning Hearing Bd. of the Borough of Mt. Penn, 838 A.2d 819 (Pa. Cmwlth. 2003). It must be a use conducted on the same lot as the principal use and must be clearly incidental to and customarily found in connection with the principal use. Adams Outdoor Advertising, Ltd. v. Hanover Twp. Zoning Hearing Bd., 633 A.2d 240 (Pa. Cmwlth. 1993).

Chris Hoffman, a real estate project manager for Wawa, provided the following testimony on behalf of Applicant at the hearing on September 27, 2016 on the accessory issues:

**“[BY MS. VonSPRECKELSEN:]**

**Q.** And convenience stores are still an independent industry; correct?

**[HOFFMAN].** They are.

...

**Q.** And so the majority of the area of the property is going to be devoted to the sale of the retail product; correct?

**A.** Correct.

**Q.** And a majority of the Wawa convenience stores have self-service gas pumps; is that correct?

**A.** That is correct.

**Q.** Is that also true of your competitors such as Royal Farms, Kroger's?

**A.** Correct. And as is the industry as a whole.

**Q.** And are there any stand-alone Wawa self-service fuel pumps without a convenience store attached to them?

**A.** There are not.

**Q.** But there are convenience stores that do not have fuel pumps; is that correct?

**A.** Correct.

**Q.** And the fuel pumps are on the same lot as the convenience store; is that right?

**A.** They are, yes.

...

**Q.** Can you explain why they're subordinate to the convenience store use? The fuel sales?

**A.** Yes. To support that argument we looked at all the stores in Pennsylvania over the 2015 calendar year and did an

analysis as to how many customers visited the store versus how many customers visited the fuel pumps, and that analysis lead us to being able to state that three times as many customers visit the store -- three times as many customers ring up on the cash register. So that's how we did it. Cash register transactions versus fuel pump transactions. And there are three times as many transactions in the store versus at the fuel pumps.

(NT 9/27/16, p. 46-47). (Finding of Fact #15, supra).

Barron said in the twenty some years that he has prepared plans for Wawa developments they all included a convenience store with fuel sales and canopy. (Finding of Fact #12, supra). Hoffman also stated that the canopy is for the protection of customers and to provide lighting at night. (Finding of Fact #16, supra).

This testimony establishes that, inter alia: (i) convenience stores are recognized as an independent industry, (ii) the fuel sales will be subordinate to the predominant principal convenience store use, (iii) the number of patrons who purchase non- motor fuel items far exceeds by a factor of three (3) the number who purchase motor vehicle fuel, (iv) self-service motor vehicle fuel pumps are usually found with convenience stores (v) the majority of the Property area will be used for retail sales of non-motor fuel items and (vi) the canopy is detached and necessary for the protection of customers using the fuel pumps and to provide lighting at night. With the Findings of Fact herein as compared to

the Hartford matter and the close proximity of the Properties to the Hartford property we believe we must follow the determination we made in Hartford Properties.

The evidence presented also establishes the accessory nature of the fuel sales and canopy in accordance with the analysis utilized by the the Courts in Borough of Fleetwood v. Zoning Hearing Board of Borough of Fleetwood, 538 Pa. 536 (1994) and Rivers Edge Funeral Chapel and Crematory, Inc. v. Zoning Hearing Board of Tullytown Borough, 22 C.D. 2016 (Commonwealth Ct.11/16/16).

- B. A special exception for a “gasoline service station” pursuant to section 195-22A(8)(c) is not required if a use is otherwise found to be a permitted accessory use under section 195-22A(7).**

The exact issue of whether special exception criteria apply once a use has been determined to be a permitted accessory use was decided by the Pennsylvania Supreme Court in Borough of Fleetwood v. Zoning Hearing Board of Borough of Fleetwood, supra. That case is on all fours with this case. That case involved nearly identical facts and zoning provisions as those at issue in this matter.

The Borough of Fleetwood’s Zoning Ordinance contained three key provisions:

- Section 403.1, identified uses permitted in the C-1 General Commercial Zone, and allowed “[r]etail stores or shops or service establishments for the

conduction of any retail business or service.” This provision was determined to permit a convenience store as a principal use in the C-1 zone.

- Section 403.2, identified what accessory uses were permitted in the C-1 zone, and included “Uses-Located on the same lot with the permitted principal use... (d) [that are] customary accessory uses and buildings, provided such are clearly incidental to the principal use.”
- Section 403.3, identified uses permitted by special exception in the C-1 zone, and included “[g]asoline service stations” in accordance with specific special exception criteria set forth in Section 802.10 of the zoning ordinance.

The applicable provisions of the Township’s Code are extremely similar:

- Section 195-22(A)(1) permits the “[r]etail sale of dry goods, variety and general merchandise, clothing, food, flowers, beverages, drugs, household supplies ... and any other use of the same general nature...” in the C Commercial District. This provision has been determined to permit a convenience store as a principal use in the C district.
- Section 195-22(A)(7) permits an “[a]ccessory use on the same lot with and customarily incidental to the use permitted and utilized.”

- Section 195-22(A)(8)(c) permits a “gasoline service station” by special exception in accordance with the general special exception criteria set forth in Section 195-55 of the Zoning Ordinance.

In Borough of Fleetwood, supra, Turkey Hill Mini Market wanted to install a gasoline pump and canopy in the parking lot of an existing convenience store it owned in the Borough’s C-1 zone. Initially, Turkey Hill submitted an application for a special exception and variance; however, it later filed an appeal from the Borough’s denial of a building permit to construct the proposed gas pump and canopy. At a subsequent hearing before the Borough’s Zoning Hearing Board (ZHB), **Turkey Hill withdrew its special exception and variance application, and only proceeded on the accessory use issue.**

In its appeal, Turkey Hill contended that a fuel sales use was a permitted accessory use. At the conclusion of the hearing, the ZHB reversed the permit denial, finding the proposed fuel sales use was a “customary accessory use to the main use as a convenience store and [was] clearly incidental to the principal [convenience store] use.” As such, the ZHB determined it was permitted by right in the C-1 zone and no special exception was required.

The Borough appealed the ZHB’s decision, arguing that installing the gas pump transformed the convenience store into a “gasoline service station,” which required a special exception. As such, even if fuel sales were a permitted accessory use, Turkey Hill still had to satisfy the special exception criteria for a “gasoline service station,” which is exactly the same argument made by the Township in the case before us. The Supreme

Court unequivocally denied this position and upheld the ZHB's decision. The Court first found that there was sufficient evidence of record for the ZHB to have determined that fuel sales were customarily incidental to a principal convenience store use. Next the Court concluded that once a ZHB has determined that fuels sales are an accessory use, special exception criteria are not applicable where the language of the zoning ordinance makes them an unconditionally permitted use. The Court specifically stated its reasoning as follows:

**"In this case the letter of the ordinance states that accessory uses are permitted as of right, and is devoid of any additional restrictions or requirements upon them. Moreover, [the gasoline service stations criteria] only applies to a use permitted by special exception. Furthermore, any doubt must be resolved in favor of the landowner and the least restrictive use of the land. Accordingly, the Board was correct when it did not apply [the gasoline service stations criteria] to Turkey Hill's proposed self-service gasoline pump.**

Borough of Fleetwood, 538 Pa. 536, 548, 649 A.2d 651, 656–57 (1994).

Therefore the unambiguous conclusion was that if one proves an accessory use, one does not need to also request and obtain a special exception for a gasoline service station or fuel sales and the detached accessory canopy for same.

Based on the similarities between the Borough of Fleetwood's zoning ordinance and our Township's Code noted above, we believe that we are correct in reaching the same conclusion, specifically that a special exception is not required and special exception criteria need not be applied to a proven accessory use permitted by right. By logical extension the same principal would apply to the accessory building canopy. The

Code allows accessory uses by right. No qualifications or additional restrictions on them are stated. The special exception criteria that the Township seeks to apply to the Application here are only applicable to uses which are requested and permitted by special exception, not for uses permitted by right. Since the request for a special exception was withdrawn, these criteria do not apply.

This Board believes that it is extremely important to note here that this exact same specific issue also arose in a 2014 Opinion of the Montgomery County Court of Common Pleas, (PA) involving this Township's appeal of this Board's decision in another Wawa with fuel sales case granting the fuel sales and canopy **as an accessory use and building by special exception.** In re Appeal of Township of Upper Gwynedd from the Decision Dated February 21, 2012 of the Zoning Hearing Board of Upper Gwynedd Township, No. 12-06799 (Jan. 6, 2014). (MCCCP Opinion). (See Exhibit A-14). In that case this Board made a determination analogous to that which is now advocated by the Township in this case, namely that fuel sales and the canopy can only be a permitted accessory use and building **by special exception, and not on their own.** The Court expressly **disagreed.** In remanding that case to this Board for further consideration, the Court described our decision as "confusing with regard to the Board's treatment of two separate and distinct zoning code sections: § 195-22A(7) for accessory uses and § 195-22A(8) for special exceptions for principal uses." It further stated that:

The addition of the gasoline pumps and the canopy to this property must be considered **either** as an additional principal use requiring a Special Exception, **or** as an Accessory Use with and Accessory Building, **but not both.** However, in its



Decision, the **Board has effectively conflated these two concepts.**

(Exhibit A-14 at p. 9). (Emphasis added).

Thus, our Montgomery County Court is consistent with the principal set forth in Borough of Fleetwood.

Based on the Pennsylvania Supreme Court's decision in Borough of Fleetwood and the MCCCOP Opinion, supra, it is clear that a special exception is not required nor can special exception criteria be applied once a use is found to be a permitted accessory use and/or building, regardless of this Board's prior decisions to that effect.

- C. This Board's prior decisions cited by the Township (Exhibits T-1 and 4) other than Hartford Properties for the proposition that fuel sales are a permitted accessory use to the by right principal convenience store use only by special exception are either inapplicable, distinguishable or irrelevant.**

The Township identified prior decisions of this Board and asserts therefrom that "the Board recognized the fact that the zoning ordinance required a special exception for gasoline sales, and ... there was an interpretation made that gasoline sales are permitted by special exception as an accessory use." (NT 9/27/16, p. 17).

However, these prior decisions are either inapplicable or distinguishable because the requested or granted relief differs from that sought in this Application, or were made in error as they inappropriately granted both an accessory use interpretation by way of a

special exception, and thus incorrectly “conflated” the two legal concepts as held by the MCCCCP Opinion, *supra*.

Three of those prior decisions are easily distinguishable. In the Amoco decision at #91-14 dated May 13, 1992 the applicant sought a use variance to allow two uses in C-Commercial and alternatively requested a determination that a food sales use was accessory to a principal fuel sales use. The latter is not the interpretation being sought by the Application here. In fact, this is the exact opposite relief from what is currently being requested. In any event we denied it, but specifically granted a use variance to permit two uses on the property, food sales and fuel sales.

In the Coughlin/Williamson decision at #03-5 dated November 20, 2003 the applicant was specifically granted a special exception for a gasoline service station which included fuel sales and an automobile repair shop. Here applicant is asking for fuel sales only. There is no automobile repair shop involved. The denial there of an interpretation that the proposed gasoline service station, which included fuel sales and an automobile repair shop, is an accessory use to a convenience store is a completely different issue. By the decision alone the Township has not established the basis of that denial. Was it based on the applicant’s failure to establish accessory use factually, or was it denied because it was the traditional gasoline service station and not just fuel sales? This decision is inapplicable to the issue presented in the present case.

In the Wawa decision at #06-15 dated March 18, 2008 (involving the 202 and 63 Wawa repeatedly referred to in the testimony in the present case) the applicant only

requested a special exception to permit gasoline sales as an accessory use to a permitted convenience store retail use in C-Commercial. No request was made for an interpretation or determination that fuel sales are an accessory use to a permitted convenience store use without a special exception. That decision is thus inapplicable to the issue in the present case. Moreover, in the MCCCCP Opinion, *supra*, (a subsequent and different Wawa appeal) the Montgomery County Court admonished this Board that in doing so it wrongly mixed and applied (conflated) the two legal issues of accessory use and special exception leaving this Board to conclude that the previous Wawa decision at #06-15 is incorrect precedent for the Township's present position.

The Board's prior decisions submitted by the Township that contain an analogous request for relief are the Wawa decision at #2000-14 dated November 30, 2000 ("2000 Decision"), the Coughlin/Williamson decision at #04-17 dated September 10, 2004 ("2004 Decision"), and the Hartford Properties decision at #16-5 dated June 28, 2016 ("2016 Decision").

These decisions show the progression of this Board's interpretation of the Code on the issue of whether fuel sales are a by right permitted accessory use to a by right permitted convenience store use.

In both the 2000 Decision and the 2004 Decision we granted both an interpretation that fuel sales are a permitted accessory use and customarily incidental to a permitted retail store use, and a special exception to permit gasoline sales as an accessory use to the permitted convenience store retail use. Neither of these decisions was appealed.

Again, based on the MCCCOP Opinion, the special exception grants would be considered redundant, conflated, incorrect, and only the accessory use findings would be necessary.

After the 2004 Decision, we then rendered the decision on February 21, 2012 on a different application submitted by Wawa, Inc. for its property located at Valley Forge Road and Sumneytown Pike requesting a special exception to allow, inter alia, fuel sales to be added to its existing convenience store use in C-Commercial ("2012 Decision"). We granted the special exception for fuels sales as an accessory use to the principal use of the retail Wawa convenience store. The Township appealed. From that appeal, the MCCCOP Opinion resulted clearly stating that we were incorrect in conflating the two concepts of accessory use by special exception and that the addition of the fuel sales with canopy must be considered **either** as an additional principal use requiring a Special Exception, **or** as an Accessory Use with and Accessory Building to the existing permitted convenience store use in C-Commercial, **but not both**. To emphasize, the Court found that we had effectively conflated these two concepts. (See Exhibit A-14 at page 9).

The Court remanded the case back to this Board to clarify whether the application was granted because the we had determined that fuel sales are a permissible primary use and entitled to a special exception, and if so whether a variance is required to permit a second building for the additional principal use, or that fuel sales and the canopy are an accessory use and building. Although remanded, Wawa did not pursue the case. Thus, this Board did not have the opportunity to clarify its 2012 Decision.

However, when next given the opportunity to do so and presented with this very issue, this Board did clarify its 2012 Decision when we decided the Hartford Properties, LLC application at Hearing #16-5. There Hartford Properties asserted that a convenience store that sells motor vehicle fuels with a canopy does not require a special exception because it is not a service station use and the sale of fuel is included as part of the permitted retail sales, or in the alternative, a special exception to allow the service station use. Hartford then amended its application to also include a request for a determination that the fuel sales and canopy are a permitted accessory use and building to the permitted by right convenience store use in C-Commercial. We granted the application solely on the legal determination that the sale of motor vehicle fuels and the canopy are an accessory use and building to the permitted by right principal convenience store use in C-Commercial and thus permitted. A special exception was neither required nor granted by us. (See Exhibits T-1 and 4, Hartford Properties, LLC Appeal Decision at #16-5). Nor was the Traffic Improvement and Reimbursement Agreement relevant to that decision as argued by the Township. (Exhibit T-2). Thus, we believe we then clarified our position as requested to do so by the Montgomery County Court. Because the Township had appealed that Wawa 2012 Decision and successfully argued this very issue there, inter alia, that this Board could not mix these concepts (accessory use by way of special exception) and had the Court agree and remand on that issue, we are perplexed as to why the Township now takes the converse position in opposition to this present Application arguing that we can only decide by way of special exception.

### **III. A fuel canopy is a permitted accessory building in our Code's C-Commercial**

As part of its accessory fuel sales use, the Applicant proposes to install a canopy to cover and protect the fueling stations and fuels sales customers and to provide lighting at night. Because we find that fuel sales is a permitted accessory use to a permitted by right principal convenience store use in C-Commercial, the Board finds by the Code's definition of an accessory building that the canopy is an accessory building in this instance and thus permitted.

A "Building" is defined as "[a]ny structure having a roof supported by columns, piers or walls located on the land". An "accessory building" is defined as:

"A detached subordinate building, the use of which is customarily incidental and subordinate to that of the principal building and which is located on the same lot as that occupied by the principal building".

Code section 195-3.

The proposed fueling canopy is, essentially, a roof held up by support columns. It will be detached and subordinate to the proposed convenience store building, which will be the principal building on the Property. Accordingly, the canopy meets the definition of a "building" under the Code definition. Since we have previously determined that a fuel sales use is customarily incidental to a principal convenience store use in C-Commercial, the associated canopy qualifies as a permitted accessory building.

**IV. Applicant established the necessary criteria for the grant of the sign variances by substantial and uncontradicted credible evidence.**

Since the sign variances involve dimensional variances, the principals enunciated in Hertzberg v Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249 (1998) apply. Gallagher v. Zoning Hearing Board of Haverford Township, 2013 WL 3984751, 1788 C.D. 2012 (5/21/2013, Memorandum Opinion). Thus, a more relaxed standard is applied for establishing unnecessary hardship. In Gallagher, supra, the Commonwealth Court affirmed the zoning board's grant of a sign variance allowing for a larger commercial sign in a residential district using the Hertzberg principals. In so holding the Court stated, at page 6,

"The ZHB found the proposed (larger) sign is necessary because the maximum sign allowed by Ordinance would be inadequate for motorists driving on Township Line Road to identify the Property. The character of the neighborhood surrounding the Property is largely commercial. The commercial buildings across the street have large signs and billboards.... Further, contrary to Objector's assertions, the ZHB's findings are supported by the evidence (which established that) Township Line Road is a busy, four lane road lined with commercial properties...the (permitted) sign would be inadequate for people driving on (that road) to identify the Property...the (requested larger) sign is necessary to enable motorists to identify the driveway and finally...the proposed sign would be large enough to identify the (proposed day care center), but not so large as to be a distraction."

The Court went on to hold that:

"Taking into consideration the commercial characteristics of the surrounding neighborhood, the busy four-lane road, the presence of the large (signs) nearby, and the relaxed hardship standard set forth in Hertzberg, Applicants have

demonstrated the requisite hardship if they are restricted to a (smaller permitted) sign for their business. We conclude that the ZHB did not err or abuse its discretion in granting the dimensional (sign) variance.”

In this Application before us the Applicant’s uncontradicted testimony established exactly this. It further established that the signs requested are, inter alia, similar to those of other commercial uses in the area; are almost identical to those at the 202 and 63 Wawa previously granted by this Board; are used throughout the industry; are reasonably related to and further safety, identification and branding; are the minimum needed and in fact smaller than is otherwise recommended by the U.S. Sign Council for safety reasons; are in accord with and will not alter the nature of the surrounding uses or the essential character of the neighborhood or district in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

Thus, with these principles in mind this Board finds that from the substantial, relevant and credible evidence presented by the Applicant’s witnesses and exhibits the requested sign variances should be granted.

**V. The Board was not requested to provide a purely advisory opinion, and within its power, has properly interpreted and applied the Accessory Use and Accessory Building defined terms under the applicable Code provisions to the Findings of Fact in this case.**



The Township argues that this since the special exception request was withdrawn at the first hearing this Board is without power and jurisdiction to render an “advisory opinion” in determining that the fuel sales and canopy are an accessory use and building respectively. We disagree. This matter does not involve a... “purely advisory opinion or amend the clear language of the ordinance as written by the governing body”. (Township’s Memorandum of Law at page 3).

The Municipalities Planning Code (MPC) in section 10603.1 concerning zoning and Zoning hearing boards states:

“Interpretation of Ordinance Provisions. In interpreting the language of zoning ordinances to determine the extent of the restriction upon the use of the property, the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.” 53 P.S. section 10603.1.

In line with this, the Township’s Code section 195-53 clearly provides that this Board is given the power...“(t)o interpret, upon the words, terms, ...provisions and restrictions of this (Code), where there is doubt as to the meaning thereof, **including determination in specific instances whether questionable uses are permissible by virtue of being similar to, or customarily incidental to, permitted uses as provided in this (Code).** (Emphasis and underlining added). So the Board does have the power to determine if a use is an accessory use and/or a building is an accessory building by the definitions provided in the Code and as applied to the facts presented and as found by

this Board in a particular case before it.

This Application came before the Board on both a request for a special exception (albeit subsequently withdrawn) or, alternatively, a determination of accessory use and building for the fuel sales and canopy, **as well as requests for sign variances which were not withdrawn.** Thus, the Board has jurisdiction and power to determine all issues before it relating to the proposed development. MPC section 10909.1. One of those related issues is an interpretation or determination of “accessory use” and “accessory building” pursuant to Code definitions. This is within the Boards powers as noted above. Code section 195-53.

On the fuel sales and canopy issue, even if the special exception request had remained, this Board nevertheless, on the facts presented here, would have decided the accessory use and building issue the same as and consistent with the Hartford Properties Appeal at #16-5 rendered by us just a few months before this case. We believe we have properly proceeded in accord with that and both the Borough of Fleetwood case as well as the MCCCCP Opinion, supra. In the latter case the Court stated on this issue, at page 12:

**“If the Board is asked to determine** that the gasoline sales are an Accessory Use and that the canopy is an Accessory Building which may be permitted, **then the Board must determine whether the proposed gasoline sales are “incidental” to and “subordinate “ to the retail sales”.** (citing Borough of Fleetwood). (underlining and emphasis added).

And, after finding that this Board conflated, conjoined, and confused the issues of special exception and accessory use, the Court, in remanding that case to this Board, instructed this Board to determine whether it granted the application because:

“(1) The Board has determined that the gasoline sales are a permissible primary use and entitled to a Special Exception under section 195-22A(7), and, if so, whether a variance is required to permit a second building for this additional principal use, OR

(2) The Board has determined that the gasoline sales are an Accessory Use, based upon specific findings of fact that in this case the fuel sales are subordinate to and customarily incidental to the retail sales, and, if so, whether the canopy is a permitted Accessory Building under section 195-22A(8)(c).”

Supra at page 12. (Emphasis, underlining and capitalization added).

When next given that opportunity this Board did so in the Hartford Properties decision at Hearing #16-5 and now do so in this decision. For all these reasons, this is not solely an advisory opinion. Finally, assuming for the sake of argument that it is, (and we do not for a moment that it is) it would seem appropriate in the interests of judicial time and economy that this matter be decided on the record presented rather than for this Board to send it back for a determination first by the Zoning Officer (ZO) only to then have it appealed to this Board again by whoever is dissatisfied with the ZO's determination.

## CONCLUSIONS OF LAW

1. Pursuant to the Municipalities Planning Code and the Upper Gwynedd Township Zoning Code, this Board is empowered to hear inter alia, applications for interpretations and determinations of accessory uses and buildings, variances, special exceptions and changes to nonconforming uses. MPC 10603.1, 10909.1 and Code section 195-53.

2. The proposed Wawa retail convenience store use is a by right permitted use on the Properties in C-Commercial. Code section 195-22A(1).

3. An Accessory Use is defined as “a use subordinate to the principal use of land or a building or other structure on a lot and customarily incidental thereto”. An Accessory Building is defined as “a detached subordinate building, the use of which is customarily incidental and subordinate to that of the principal building and which is located on the same lot as that occupied by the principal building”. Code section 195-3 regarding “Definitions of Accessory Building and Accessory Use.

4. Applicant presented substantial, relevant and credible evidence to support the

legal conclusion that the proposed fuel sales and canopy on the same lot as the convenience store are subordinate and customarily incidental to the principal convenience store use and as such constitute a legally permissible accessory use and accessory building respectively to the permitted by right Wawa convenience store retail use in C-Commercial. This does not violate Code §195-22A. See Code sections 195-3, 195-22A(1)and (7).

5. The doctrine of stare decisis applies to this Board's determination herein of the fuel sales and canopy as being accessory to the convenience store use based on our prior Hartford Properties, LLC decision.

6. A special exception is not required for the proposed fuel sales and canopy once it is determined that they are accessory to the convenience store use.

7. This Board's prior decisions on special exceptions and accessory uses and building referred to by the Township are either inapplicable or distinguishable.

8. The Township did not produce any evidence that such accessory use and building were not accessory.

9. Applicant presented substantial, credible and relevant evidence to support the conclusion that all the requested dimensional sign variances should be granted. In reaching its determination regarding the dimensional sign variances this

Board considered all the variance criteria set forth in Code section 195-55 and concludes that Applicant's proposed signs comply with them.

10. Moreover, Applicant's sign variances are the minimal necessary to ensure traffic, pedestrian and community health, safety and welfare.

11. Applicant has by sufficient, substantial, relevant and credible evidence established its right to the grant of its Application in its entirety subject to some conditions which will be specified.

12. This is not a purely advisory opinion and the Board properly applied the substantial, relevant and credible facts found to the Code's accessory use and building definitions.



IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

UPPER GWYNEDD TOWNSHIP BOARD OF  
COMMISSIONERS

Plaintiff

MERCK SHARPE & DOHME CORPORATION

Plaintiff-Intervenor

v.

UPPER GWYNEDD TOWNSHIP ZONING  
HEARING BOARD

Defendants

PROVCO PINEGOOD SUMNEYTOWN, LLC

Defendant-Intervenor

NO. 2016-29496

LAND USE APPEAL



2016-29496-0092 3/27/2018 9:29 AM # 11708710  
Rcpt#Z3357085 Fee:\$0.00 Order  
Main (Public)  
MontCo Prothonotary

OPINION

AND NOW, this <sup>23<sup>RD</sup></sup> day of March, 2018, following argument held on the record, the Court enters the within Opinion:

- A. On November 22, 2016, the Zoning Hearing Board of Upper Gwynedd Township (hereinafter "ZHB") issued a Decision approving the land use application of Provco Pinegood Sumneytown LLC ("Provco") for a proposed convenience store, with an accessory gasoline sales operation, as well as accessory signage.
- B. The aforementioned Decision of the ZHB determined that the entire land use application was permitted in its finding that the principal use of the land would be for the proposed convenience store and its interpretation



that the applicant's proposed gasoline operation would be an accessory use permitted by right.<sup>1</sup>

- C. The proposed gasoline operation consists of an overhead canopy and sixteen (16) individual fueling positions.
- D. The Township Zoning Code, however, has specifically identified "Retail Sales" and "Gasoline Service Station" in separate Subsections of the relevant Code provision pertaining to a Commercial District; specifically permitting "Retail Sales" of items in Subsection A.(1) and requiring a special exception for "Gasoline Service Station" in Subsection A.(8).<sup>2</sup>
- E. An applicant for a special exception has both the duty of presenting evidence and the burden of persuading the ZHB that its proposed use satisfies the objective requirements of the zoning ordinance for the grant of a special exception.<sup>3</sup>
- F. In contrast to permits by-right, a permit by special exception requires a consideration of important, additional, criteria including, but not limited to, environmental compliance, traffic requirements, health, safety and welfare concerns and, importantly, enabling the surrounding community to weigh in on all of these points.

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<sup>1</sup> At the beginning of the ZHB hearing, the applicant amended its zoning application by withdrawing its request for a special exception. (*See* N.T. 9/27/2016 at 10:17-23).

<sup>2</sup> Under the Upper Gwynedd Township Zoning Code, a "Gasoline Service Station" is permitted only by special exception in the Commercial District. (*See* Upper Gwynedd Township, Pennsylvania, Municipal Code, art. V, § 195-22(A)(8)(c), art. X, § 195-55(A-1)).

<sup>3</sup> *See* Manor HealthCare Corp. v. L. Moreland Twp. Zoning Hearing Bd., 139 Cmwlt. 206, 590 A.2d 65 (1991); *See also* Bray v. Zoning Board of Adjustment, 48 Pa.Cmwlt. 523, 410 A.2d 909, 912-12 (1980).

- G. The applicant's argument that the ZHB may have approved similar uses on other properties in the Township (whether as an accessory use or, as the Township asserts, as a special exception), does not override the responsibility of the ZHB to conduct an evidentiary hearing on this application to determine whether, on this particular property, the granting of a special exception is appropriate.
- H. Notably, the applicant objected to the request of the Township to incorporate the record from the Hartford property proceedings that had transpired previously before the same ZHB (and so relied upon by the applicant in this matter) thereby preventing the Court from any meaningful review of that argument on appeal.<sup>4</sup>
- I. The applicant's reliance on Borough of Fleetwood v. Zoning Hearing Bd. of Borough of Fleetwood, 538 Pa. 536, 649 A.d2 651 (1994) is also misplaced. The applicant in that case was seeking to install *a single gasoline pump* to a convenience store in 1990; not sixteen (16) pumps as in the within matter.
- J. Even if the Court were to accept the applicant's argument that it was an accessory use, based on the Court's review of the record, there was insufficient evidence to support the ZHB's finding that the corporate applicant's principal use of the land would be for the proposed

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<sup>4</sup> On remand, the applicant is not precluded from renewing this argument, as the ZHB considers whether to grant a special exception, with the proper introduction of testimony/evidence.

convenience store use and that the gasoline service was “accessory” to that use as permitted in Subsection (7) of the Code provision.<sup>5</sup>

K. Although Provco’s witness testified at the ZHB hearing about a study conducted wherein the corporate applicant had determined that approximately three times the number of customers purchased *something* in their convenience stores as compared to purchases made at the gas pumps, the study was not introduced into evidence and, further, there was a refusal to provide any specific information from the aforementioned study to substantiate their claim by asserting it was “proprietary” (including, as requested by Counsel for the Township, a breakdown as to the percentage of the gross revenues between in-store gasoline sales as opposed to the sale of other items inside the convenience store).<sup>6</sup>

L. In fact, the focus of the testimony at both of the ZHB hearings that were conducted was not on the health, safety and welfare of the community but on the proposed signage for the gas products.<sup>7</sup>

M. The ZHB’s approval of the relief for signage is not in dispute.

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<sup>5</sup> This is especially true given the request for *sixteen* (16) pumping stations as opposed to one or two which, in itself, might credibly imply the type of accessory use contemplated by Fleetwood, 649 A.d2 651. The availability of sixteen (16) pumping stations at a retail convenience store location, other than one located on the Pennsylvania Turnpike, is a relatively recent expectation within a community in a Commercial District.

<sup>6</sup> Since the applicant chose to proceed under Subsection (7) of the Code, and withdrew their initial request to proceed under a special exception, they had the burden of demonstrating to the Board that the use was accessory. As noted by the Court, the requested information from the study could have been provided to the ZHB *in camera* to protect any proprietary information from the public record.

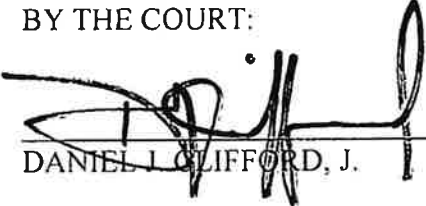
<sup>7</sup> Including different colors for separate sections of the signage for regular and diesel gasoline, particularly taking note of what are contained on signs at neighboring *gasoline stations*, further reinforcing the impression that the gasoline products to be offered by this applicant are less an accessory than a primary use (or, at the very least, a co-equal primary use).

ORDER

AND NOW, this **23<sup>RD</sup>** of March, 2018, it is hereby **ORDERED** and **DECREED** as follows:

1. The matter is **REMANDED** to the ZHB for the purpose of taking additional testimony at a public hearing in order to determine, pursuant to the Township Zoning Code, whether Provco's application for the gasoline sales operation will be authorized as a special exception.<sup>8</sup>
2. The ZHB shall ensure that proper notice of the new hearing is provided to the public.
3. The Motion to Dismiss filed by Provco Pinegood Sumneytown, LLC is **DENIED**. The Decision by the Zoning Hearing Board clearly states that there was a time period of thirty (30) days to appeal the Decision from the date of the mailing on November 22, 2016. The Township's appeal, filed on December 14, 2016, is valid. The Township was not required to file yet another appeal after the ZHB issued a more detailed Decision on January 9, 2017.

BY THE COURT:

  
\_\_\_\_\_  
DANIEL L. CLIFFORD, J.

Copies sent on **3/26/18** to:  
James J. Garrity, Esquire  
Scott C. Denlinger, Esquire  
Upper Gwynedd Township Zoning Hearing Board  
Robert J. Edelmayer, Esquire  
Zachary Sivertsen, Esquire  
Julie L. Von Sprecklesen, Esquire  
David J. Brooman, Esquire  
William Kerr, Esquire  
Melanie Murphy, Esquire  
Court Administration – Civil (*Inter-office*)

  
\_\_\_\_\_  
Judicial Assistant

<sup>8</sup> The applicant shall be permitted to reinstate its initial request for a special exception as opposed to requiring a new, additional, filing.



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: Appeal of the Board of Commissioners of Upper Gwynedd Township from the Decision Dated November 22, 2016 of the Zoning Hearing Board of Upper Gwynedd Township :  
: No. 502 C.D. 2018  
Appeal of: Provco Pinegood Sumneytown, LLC : Argued: March 12, 2019  
:

BEFORE: HONORABLE ROBERT SIMPSON, Judge  
HONORABLE MICHAEL H. WOJCIK, Judge  
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: April 3, 2019**

Provco Pinegood Sumneytown, LLC (Provco) appeals an order of the Court of Common Pleas of Montgomery County (trial court) that remanded to the Zoning Hearing Board of Upper Gwynedd Township (ZHB) for a hearing to determine whether Provco's proposed gasoline service station is entitled to special exception approval under the Upper Gwynedd Township Zoning Ordinance (zoning ordinance). Upon review, we quash Provco's appeal from the trial court's interlocutory remand order.

**I. Background**

In July 2016, Provco filed an application with the ZHB, seeking zoning relief for three contiguous tracts of land located at 708 Sumneytown Pike and 1610 West Point Pike, which lie in Upper Gwynedd Township's (Township) C Commercial zoning district (property). Provco is the equitable owner of the

property. Provco proposes to construct a 5,585-square-foot Wawa convenience store with accessory gasoline sales at 8 fuel dispensing facilities (16 individual fueling stations), a canopy, 56 parking spaces, and accessory signage.

Provco initially requested a determination that its proposed uses were permitted by right pursuant to Sections 195-3 and 195-22A(7) of the zoning ordinance. Alternatively, it requested a special exception to permit the gasoline sales operation and variances for accessory signage.

The ZHB held hearings in September and October 2016. At the first hearing, Provco orally amended its zoning application to withdraw its requested alternative relief for a special exception to permit the gasoline sales operation.

On November 22, 2016, the ZHB issued a decision approving Provco's application for the proposed convenience store as a principal use with an accessory gasoline sales operation, as well as accessory signage. The ZHB's decision stated, in relevant part:

The following zoning relief is GRANTED:

1. An interpretation that the proposed canopy over the proposed motor vehicle fueling stations is an accessory building and that the proposed motor vehicle fuel sales is an accessory use to a permitted by right principal convenience store retail use pursuant to Article II, [S]ection 195-3 regarding 'Definitions - Accessory Building and Accessory Use' and Article V, [S]ections 195-22A(1) and (7) of the [zoning ordinance]. Thus both are permitted.

Reproduced Record (R.R.) at 414a. Thereafter, two separate land use appeals were filed from the ZHB's decision, one by the Township on December 14, 2016, and, one by Merck Sharpe & Dohme Corp. (Merck) on December 22, 2016.

In January 2017, Merck filed a petition to intervene in the Township's land use appeal, in which the Township joined and filed a motion to consolidate the two land use appeals. Provco filed an answer, which opposed the Township's motion to consolidate. In May 2017, the trial court granted the Township's motion to consolidate the two land use appeals, stating, "the above-captioned matters are consolidated for all purposes ...." R.R. at 752a.

Prior to the trial court's order granting consolidation, Provco filed two separate motions to quash with the trial court, one in response to the Township's land use appeal, and one in response to Merck's land use appeal, with the only common assertion being that the appeals were filed prematurely. The trial court granted Provco's motion to quash Merck's land use appeal, but it denied Provco's motion to quash the Township's land use appeal. Merck appealed to this Court challenging the trial court's order quashing its land use appeal.

Thereafter, the Township filed a praecipe for argument related to its land use appeal. Provco also filed an application to quash Merck's appeal to this Court as interlocutory. Based on Merck's appeal to this Court, the trial court stayed the consolidated proceedings until further order.



In July 2017, a single judge of this Court heard argument on Provco's application to quash Merck's appeal. During argument, Provco offered to stipulate to Merck's status as a party so as to allow Merck's appeal to proceed. Shortly thereafter, the parties stipulated that the trial court's order quashing Merck's appeal was vacated, and based on that stipulation, this Court remanded to the trial court. The appeal to this Court was discontinued. The parties also stipulated that Provco preserved the right to oppose Merck's land use appeal on the basis that it was prematurely filed before the ZHB issued its written findings of fact and conclusions of law.

In September 2017, the parties entered into a second stipulation in which they agreed to lift the stay on the consolidated land use appeals filed by the Township and Merck. The parties filed briefs, and the trial court heard argument on the consolidated land use appeals; however, the trial court did not receive additional evidence. In its brief to the trial court in opposition to the consolidated land use appeals, Provco raised several issues regarding the merits of those appeals. Additionally, it argued the trial court should dismiss the consolidated land use appeals on procedural grounds, asserting

both the Township and Merck Appeals were premature. The 30-day appeal period from the ZHB's [w]ritten [d]ecision expired on February 8, 2017. Because the Township failed to file a timely appeal and the appeal period has expired, this Honorable Court lacks jurisdiction over the Consolidated Appeal[s] and [they] should be dismissed.

R.R. at 900a.

Thereafter, the trial court issued an order regarding the consolidated land use appeals (which is the order at issue in this appeal), which stated, in pertinent part: “The matter is **REMANDED** to the ZHB for the purpose of taking additional testimony at a public hearing in order to determine, pursuant to the [zoning ordinance], whether Provco’s application for the gasoline sales operation will be authorized as a special exception.” Tr. Ct. Order, 3/27/18, at 5 (footnote omitted). In its opinion, the trial court expressed several concerns, including differing proof standards for “Retail Sales” (permitted by right) and “Gasoline Service Station” (permitted by special exception), and uncertainty about which proposed use would be the principal use, and which the accessory use. Tr. Ct., Slip Op., 3/27/18, at 3-4.

The trial court’s order also stated: “The Motion to Dismiss filed by [Provco] is **DENIED.**” Tr. Ct. Order, 3/27/18, at 5 (emphasis added). The trial court noted that the ZHB’s decision clearly stated that there was a time period of 30 days to appeal the ZHB’s decision from the date of the mailing on November 22, 2016. As a result, the trial court determined, the Township’s appeal, filed on December 14, 2016, was valid. Consequently, the trial court stated, the Township was not required to file yet another appeal after the ZHB issued a more detailed decision on January 9, 2017. Provco appealed the trial court’s remand order to this Court. The trial court directed Provco to file a concise statement of the errors complained of on appeal pursuant to Pa. R.A.P. 1925, which it did.

The trial court subsequently issued an opinion pursuant to Pa. R.A.P. 1925(a) in which it noted that Provco raised 17 issues. Nevertheless, the trial court opined the order Provco appealed, through which the trial court remanded to the

ZHB for additional hearings, was interlocutory; therefore, this Court should quash Provco's appeal. In so doing, the trial court relied on several cases from this Court, which hold common pleas court orders remanding matters to local agencies for additional hearings are generally interlocutory, as well as its analysis of Pennsylvania Rules of Appellate Procedure 311, 312, 313, and 341, which pertain to interlocutory, collateral, and final orders, respectively.

Shortly after Provco's appeal to this Court, this Court issued an order, which stated that, because the trial court remanded this matter to the ZHB to determine whether the zoning ordinance permits Provco's application for a gasoline sales operation by special exception, it appeared the trial court's order was not a final order subject to appeal. See Pa. R.A.P. 341. As such, this Court directed the parties to address the appealability of the trial court's remand order in their principal briefs. See Pa. R.A.P. 311, 313, 341. This matter is now before us for disposition.

## **II. Discussion**

### **A. Contentions**

On appeal, Provco raises several issues. It first argues the trial court's March 2018 order was a final order that was appealable as of right because it disposed of all claims and all parties. Provco asserts it withdrew its request for special exception approval prior to commencement of the hearing before the ZHB, a fact specifically acknowledged by the trial court in its March 2018 order. Thus, Provco contends, it was improper for the trial court to remand for Provco to essentially submit a new application seeking relief it already withdrew. Provco maintains "the March 2018 order otherwise disposed of all issues before the ZHB

and before the [trial] [c]ourt on appeal.” Appellant’s Br. at 17. The ZHB joins Provco’s argument on this issue.

For its part, the Township Board of Commissioners (Commissioners) argues that the trial court’s March 2018 order is appealable because it decided issues that would ultimately evade appellate review at a later date. The Commissioners acknowledge that, in general, where a court remands a land use matter to a municipal body with a directive to conduct additional hearings and make a new decision, such an order is interlocutory and unappealable.

However, the Commissioners assert, when a court order remands to a municipal board and, in doing so, makes a determination on issues that would not be re-reviewed by a court on any subsequent appeal from a new decision, such an order is immediately appealable. Schultheis v. Bd. of Supervisors of U. Bern Twp., Berks Cty., 727 A.2d 145 (Pa. Cmwlth. 1999); see Vanvoorhis v. Shrewsbury Twp., 176 A.3d 429 (Pa. Cmwlth. 2017). Essentially, the Commissioners contend, any issues that would evade appellate review on a subsequent appeal of a new municipal decision after remand are appealable pursuant to Pa. R.A.P. 311(f).

Here, the Commissioners maintain, the trial court’s order determined: (1) Provco presented insufficient evidence to support a determination that the sale of gasoline would be an accessory use; and (2) special exception approval was necessary for both the principal or accessory sale of gasoline. Similar to Schultheis, the Commissioners argue, if the consolidated land use appeals are remanded to the ZHB for a special exception hearing, the only appealable issues after remand will be

those relating to the new decision on whether Provco satisfied the Township's special exception criteria and not on whether a special exception was required in the first place. Therefore, the Commissioners assert, the determinations in the trial court's March 2018 order are immediately appealable by right pursuant to Pa. R.A.P. 311(f), because the issue of whether a special exception was required would otherwise evade judicial review.

Merck responds that because the trial court's March 2018 order remanded to the ZHB for additional evidence, it was not a final order and, as such, it is interlocutory and not properly before this Court.

### **B. Analysis**

Pursuant to Section 762(a) of the Judicial Code, 42 Pa. C.S. §762(a), this Court's jurisdiction to hear appeals from decisions of common pleas courts is limited to final orders, unless otherwise permitted by statute or rule. Pennsylvania Rule of Appellate Procedure 341(b), which defines a final order, provides:

**(b) Definition of Final Order.**--A final order is any order that:

(1) disposes of all claims and of all parties; or

(2) RESCINDED

(3) is entered as a final order pursuant to paragraph (c) of this rule [(permitting entry of a final order as to less than all of the claims or parties upon the express determination by a court or governmental unit that an immediate appeal would facilitate resolution of the entire case)].

Pa. R.A.P. 341(b).

Where a ZHB makes inadequate factual findings, the trial court should remand to the ZHB to obtain the essential factual determinations. Brighton Enters., Inc. v. City of Philadelphia, 505 A.2d 1084 (Pa. Cmwlth. 1986). “We have repeatedly held that a court order remanding a matter to an administrative agency for additional hearings is interlocutory and is not a final order from which an appeal may be taken.” Domagalski v. Szilli, 812 A.2d 747 (Pa. Cmwlth. 2002) (citing Kramer v. Zoning Hearing Bd. of U. Saucon Twp., 641 A.2d 685 (Pa. Cmwlth. 1994); Roth v. Borough of Verona, 519 A.2d 537 (Pa. Cmwlth. 1986); Phila. Comm’n on Human Relations v. Gold, 503 A.2d 1120 (Pa. Cmwlth. 1986)).

The trial court here remanded to the ZHB for it to hear additional evidence in order to determine whether Provco’s proposed gasoline sales operation is authorized as a special exception under the zoning ordinance. Tr. Ct. Order, 3/27/18, at 5. Ultimately, this determination will depend on whether the proposed 16 pumping stations qualify as accessory to the by-right convenience store, and, if not, whether the gasoline sales operation satisfies the more extensive requirements of a special exception. As such, the order did not end the litigation or dispose of the entire case. Domagalski. Moreover, the trial court’s order is not expressly defined as final by statute. Therefore, the order is interlocutory and not final within the meaning of Pa. R.A.P. 341(b).

Nevertheless, Provco argues that the trial court’s order is, in fact, a final order within the meaning of Pa. R.A.P. 341(b) because, before the ZHB, Provco withdrew its request for a special exception and instead only sought an interpretation and determination that its proposed gas station use was permitted by right as an

accessory use under the zoning ordinance (as well as variances from the zoning ordinance's sign regulations). Because the trial court essentially ruled on these issues and remanded for further hearings on a theory of relief Provco previously withdrew, it contends, the trial court's order disposed of all claims presented to the ZHB.

Regardless of whether Provco withdrew its special exception request before the ZHB, the trial court reviewed the zoning ordinance, and it determined that a gasoline service station use, such as that proposed by Provco, is permitted only by special exception in the commercial district in which the property lies. Tr. Ct., Slip Op., 3/27/18, at 2. Because it was unclear which proposed use was the principal use, and which was accessory, and the ZHB did not receive evidence or make findings as to whether Provco satisfied the applicable special exception criteria, the trial court remanded for hearings. Provco's withdrawal of its special exception request cannot obviate the need for a determination as to whether it needs and is entitled to special exception relief for its proposed gas station use where the zoning ordinance only permits such uses by special exception in the commercial district in which the property lies. See Section 195-22(8)(c) of the zoning ordinance. Nor can Provco constrain the trial court's ability to obtain a record sufficient for reasonable decision-making.

Moreover, we reject the Commissioners' argument that the trial court's remand order is appealable under Pa. R.A.P. 311(f)(2) and our decision in Schultheis. In particular, the Commissioners assert, if this matter is remanded to the ZHB for a special exception hearing, the only appealable issues after a remand would

be those relating to the review and new decision on whether Provco satisfied the Township's special exception criteria and not whether a special exception was required in the first place. We disagree.

The trial court's order is not appealable under appellate Rule 311(f)(2), which provides for appeals as of right from an interlocutory order where the order remands a matter to an administrative agency and that matter would ultimately evade appellate review if immediate appeal were not permitted. In Domagalski, after a ZHB granted a property owner a variance, the objectors appealed. The common pleas court, without ruling on the merits of the appeal, twice remanded to the ZHB, once for the ZHB to clarify its decision and once for the ZHB to conduct a further hearing. This Court determined the trial court's order was not appealable under Rule 311(f)(2). In so doing, we explained, because the common pleas court did not decide the merits of the appeal before remanding to the ZHB, there was no issue capable of evading our review. If the objectors were aggrieved, this Court explained, they could question the propriety of the remand order in a later appeal.

In reaching our determination, we distinguished Schultheis. In that case, we permitted the appeal of an interlocutory order because the court of common pleas decided the merits of the case, by allowing a landowner an opportunity to correct defects in his preliminary plan rather than upholding the local governing body's denial of the plan, before it remanded to the ZHB. The common pleas court determined the defects in the preliminary plan were minor, warranting amendment rather than outright denial. A divided panel of this Court held the issues raised would evade appellate review if we were to deny immediate appeal. We stated, after the



landowner was provided an opportunity to revise his plan and the local governing body reviewed it on remand, the only appealable issues would be those relating to the local governing body's review of the landowner's *revised* preliminary plan. Thus, the issue of whether the landowner's preliminary plan *as submitted* to the local governing body was complete would evade review.

Here, the trial court's order remanded to the ZHB without ruling on the merits of the consolidated land use appeals filed by the Township and Merck. Thus, as in Domagalski, there is no issue capable of evading our review. If aggrieved, Provco may on later appeal question the propriety of the trial court's remand order, including the issue of whether Provco's proposed gas station use requires special exception approval or is permitted by right. Domagalski. As such, Pa. R.A.P. 311(f)(2) does not apply. Id.<sup>1</sup>

Further, no party asserts the trial court's remand order is appealable under Pa. R.A.P. 311(f)(1) (remand for matter that does not require exercise of discretion), 312 (interlocutory appeals by permission), or 313 (collateral orders).

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<sup>1</sup> Although not raised in its brief to this Court, at oral argument, Provco referenced its motion to dismiss premised on its assertion that the land use appeals from the ZHB's decision to the trial court were premature. Provco argued that, if not addressed now, this issue would ultimately evade appellate review. Provco waived this issue by failing to raise it in its brief to this Court. Commonwealth v. Walter, 985 A.2d 915 (Pa. 2009) (where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived). This is especially true here in light of this Court's prior order directing the parties to address the appealability of the trial court's remand order in their principal briefs. Cmwlth. Ct. Order, 4/23/18.

In any event, even if not waived, Provco's argument lacks merit. In its remand order, the trial court *expressly denied Provco's motion to dismiss* the consolidated land use appeals. Tr. Ct. Order, 3/27/18, at 5. The propriety of the trial court's ruling on Provco's motion to dismiss can be addressed in the future if there is an appealable order.

For these reasons, we quash Provco's appeal from the trial court's interlocutory remand order.<sup>2</sup>

  
ROBERT SIMPSON, Judge

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<sup>2</sup> As to the merits, Provco argues the trial court erred in: (1) denying Provco's motions to quash the land use appeals of the Township and Merck as untimely because the appeals were filed before the ZHB issued its written findings and conclusions and were never supplemented; (2) reversing the ZHB's determination that the proposed gasoline sales use is a permitted by-right accessory structure to the proposed by-right principal convenience store use; (3) reversing the ZHB's interpretation of the zoning ordinance that the special exception criteria for a "gasoline service station" are not applicable to the proposed gasoline sales use; (4) failing to find that the Township is barred by collateral estoppel from re-litigating the ZHB's determination in another decision (referred to as the Hartford Properties decision) that gasoline sales are a permitted by-right accessory use and a canopy is a permitted by-right accessory structure to a principal convenience store use in the commercial district; (5) not finding that the Township violated Provco's equal protection rights when it appealed the ZHB's decision but did not appeal the same legal determination that gasoline sales are a by-right accessory use to a by-right convenience store use in the commercial district made by the ZHB in the Hartford Properties decision; and (6) failing to find the ZHB was bound by *stare decisis* to follow its legal interpretation of the zoning ordinance in the Hartford Properties decision.

Based on our determination that the trial court's order is not a final, appealable order, we cannot address these issues here. As explained above, if aggrieved by an appealable order, Provco may raise these issues in a later appeal.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

In Re: Appeal of the Board of :  
Commissioners of Upper Gwynedd :  
Township from the Decision Dated :  
November 22, 2016 of the Zoning :  
Hearing Board of Upper Gwynedd :  
Township :  
: No. 502 C.D. 2018  
Appeal of: Provco Pinegood :  
Sumneytown, LLC :

**ORDER**

**AND NOW**, this 3<sup>rd</sup> day of April, 2019, Petitioner Provco Pinegood Sumneytown, LLC's appeal is **QUASHED**.

  
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ROBERT SIMPSON, Judge

**Certified from the Record**

**APR - 3 2019**

**And Order Exit**







