

BEFORE THE ZONING HEARING BOARD OF MOUNT JOY TOWNSHIP,
LANCASTER COUNTY, PENNSYLVANIA

IN RE: Application for Special Exception :
Filed by PDC Northeast LPIV, LLC :
:
PROPERTY: 2843 Mount Pleasant Road, : Zoning Case No. 230001
Mount Joy, PA 17552 :
:
ZONING :
DISTRICT: LI- Light Industrial District :

DECISION OF THE BOARD

I. FINDINGS OF FACT.

A. Procedural; Parties

1. The Applicant is PDC Northeast LPIV, LLC, a Delaware limited liability company with a principal address of 2442 Dupont Drive, Irvine, California 92612 (the “Applicant”). The Applicant is a subsidiary of Panattoni Development Company, Inc. (“Panattoni”).

2. The Applicant is the equitable owner of an approximately 106.5-acre tract of land located at 2843 Mount Pleasant Road in Mount Joy Township (the “Township”), Lancaster County, Pennsylvania, identified as Tax Parcel No. 4618992200000 (the “Property”).

3. Franklin B. Greiner, Jr. is the legal owner of the Property.

4. The Applicant intends to construct an approximately 1,006,880-square-foot (620’ x 1,624’) warehouse or distribution building on the Property (the “Facility”), along with associated access drives, loading/docking areas, parking, stormwater management facilities, landscaping, and related improvements (collectively, the “Proposed Development”).

5. The Applicant submitted a Zoning Hearing Board Application with supporting documentation (Exhibit A-1), including a Concept Plan (Exhibit A-4), to the Mount Joy Township Zoning Hearing Board (the “Board”) on December 7, 2022 (the “Application”).

6. The Application is for two special exceptions, pursuant to Sections 135-163.B and 135-163.C of the Mount Joy Township Zoning Ordinance of 2012 (the “Zoning Ordinance”), to authorize an industrial use involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of all reasonable materials, goods, and products in a building larger than 50,000 square feet (i.e., the Facility) on the Property (the “Proposed Use”).

7. Hearings on the Application were held before the Board on January 17, 2023 (the “First Hearing”), February 15, 2023 (the “Second Hearing”), March 9, 2023 (the “Third Hearing”), April 18, 2023, and April 27, 2023. The testimony was closed on April 27, 2023.

8. Notice of the hearings was duly posted, advertised, and provided in the record in accordance with the applicable provisions of the Pennsylvania Municipalities Planning Code (“MPC”), 53 P.S. § 10101, *et seq.*, and the Zoning Ordinance. The hearings were held in Elizabethtown Area School District, Middle School’s auditorium.

9. Board members Thomas A. Campbell, James E. Hershey, Gregory Hitz, Sr., and Robert R. Newton, Jr. (alternate member) attended the hearings or, when unable to attend in person, reviewed the transcripts of the hearings. Mr. Campbell moved out of the Township after the hearing on April 18, 2023. He did not attend the hearing on April 27, 2023, because he no longer was a member of the Board. Mr. Newton, the alternate Board member, replaced Mr. Campbell on the Board.

10. The Township was represented by its counsel Josele Cleary, Esquire of Morgan, Hallgren, Crosswell & Kane P.C. The Board recognized Mount Joy Township as a party.

11. The Applicant was represented by its counsel Jeffrey E. McCombie, Esquire of McNees Wallace & Nurick LLC.

12. The following persons appeared and were recognized as parties to the matter:

- a. Donna Bucher, 680 Cloverleaf Road, Elizabethtown.
- b. Diane Edmond, 2622 Mount Pleasant Road, Mount Joy.
- c. Andrew Goodman, 2337 Mount Pleasant Road, Mount Joy.
- d. Sarah Haines, 1489 Grandview Road, Mount Joy.
- e. Michelle Kennedy, 2635 Stauffer Road, Mount Joy, co-owner of abutting land with Bobbi Thompson.
- f. Joelle Myers, 2706 Mount Pleasant Road, Mount Joy.
- g. Allen Sollenberger, 1437 Grandview Road, Mount Joy.
- h. Ryan Spahr, 2588 Mount Pleasant Road, Mount Joy.
- i. Randy Stevens, 2541 Mount Pleasant Road, Mount Joy.
- j. Bobbi Thompson, 8226 Elizabethtown Road, Elizabethtown, Co-owner of abutting land with Michelle Kennedy.

13. Party member Ms. Myers was represented by her counsel William J. Cluck, Esquire of the Law Office of William J. Cluck.

14. Those individuals having party status in opposition to the Application are collectively referred to herein as “Objectors.”

15. At the hearing on January 17, 2023, Applicant presented a package of pre-marked exhibits A-1 through A-13 labeled as follows:

- A-1 Zoning Application.
- A-2 Jeramy Bittinger Resume.
- A-3 Aerial Map of Property.
- A-4 Concept Plan with Potential Future Building.
- A-5 Landscape and Lighting Plan.
- A-6 Lighting Details Sheet.
- A-7 Performance Report by Landworks Civil Design.
- A-8 Building Rendering.
- A-9 Building Elevations.
- A-10 Conditions of Approval.
- A-11 Jarred Neal Resume.
- A-12 TPD Letter dated 12/22/22.
- A-13 Steel Way/Cloverleaf Road Improvement Plan dated 1/11/23.

16. Applicant presented Exhibits A-14, A-15, and A-16, a series of photographs, at the hearing on April 27, 2023.

B. Witnesses; Experts

17. Testimony was offered on behalf of the Applicant by the following individuals: Jeramy Bittinger, E.I.T., Project Manager with Landworks Civil Design; Jarred Neal, P.E., Senior Project Manager with Traffic Planning and Design (“TPD”); Joe Peters, Development Manager with Panattoni and Applicant.

18. Mr. Bittinger testified at the First Hearing and the Second Hearing.

19. Mr. Bittinger is an Engineer in Training.

20. The Board accepted Mr. Bittinger as an expert in site design and zoning compliance.

21. Mr. Bittinger prepared the Concept Plan (Exhibit A-4), Landscape and Lighting Plan (Exhibit A-5), and Performance Report (Exhibit A-7).

22. Mr. Neal testified at the First Hearing and the Second Hearing.

23. Mr. Neal is a professional engineer licensed in the Commonwealth of Pennsylvania

24. The Board accepted Mr. Neal as an expert in traffic planning and design for warehouses and distribution centers and similar uses.

25. Mr. Neal prepared the Traffic Report dated December 22, 2022 (Exhibit A-12) and the Steel Way/Cloverleaf Road Plan dated January 11, 2023 (Exhibit A-13).

26. Joe Peters testified at the First Hearing and the Second Hearing.

27. Mr. Peters has worked for Panattoni and the Applicant for approximately one year.

28. Testimony was offered on behalf of Joelle Myers by the following individuals: John Nawn, P.E., PTOE, F. NSPE, with Delon Hampton Associates Chartered, and Alan S. Peterson, MD, with Lancaster General Health.

29. John Nawn testified at the Third Hearing.

30. Mr. Nawn is a professional engineer licensed in the Commonwealth of Pennsylvania.

31. Mr. Nawn has thirty-six years of experience in civil highway traffic municipal engineering and is a former municipal engineer and municipal traffic engineer.

32. Mr. Nawn was accepted as an expert in transportation engineering.

33. Dr. Allen Peterson testified at the Third Hearing.

34. Dr. Peterson was the Director of Environmental and Community Health at Lancaster General Health for 23 years. He took emeritus status in 2013.

35. Dr. Peterson was accepted as an expert in environmental and community health.

C. Characteristics of the Subject Property and Surrounding Neighborhood

36. The Property contains approximately 106.5 acres. *Tr. Day 1, pp. 21.*

37. The Property is presently principally agricultural fields with an area of woodlands. *Tr. Day 1, pp. 21-23; Exhibit A-3.*

38. The Property is in the Township's LI- Light Industrial District (the "LI-District"). *Tr. Day 1, p. 22; Zoning Map.*

39. The Property is not located within the designated growth area. *Tr. Day 4, pp. 499-502; Stevens Exhibits 1 and 2.*

40. The LI-District extends to the west and south of the Property and the Agricultural (A) District extends east and north of the Property. *Tr. Day 1, p. 22; Zoning Map.*

41. The Property is located north of the Route 283 highway. *Exhibit A-1; see also Tr. Day 1, p. 22.*

42. The Property abuts State Road 4010, under the jurisdiction of the Pennsylvania Department of Transportation ("PennDOT"), which is known as Mount Pleasant Road. *See Exhibit A-1, Narrative, p. 1; Tr. Day 1, p. 46.*

43. Mount Pleasant Road is a public street designated as a collector road by Section 135-301.B of the Zoning Ordinance. *Tr. Day 1, p. 22.*

44. Mount Pleasant Road intersects with Cloverleaf Road to the northwest and Stauffer Road to the southeast. *See Exhibit A-1.*

45. Cloverleaf Road is west of the Property, Stauffer Road abuts the Property, and Schwanger Road is south of the Property. *See Exhibit A-1.*

46. Cloverleaf Road is a state highway under PennDOT jurisdiction. *Tr. Day 1, p 88.*

47. There are wetlands, streams, and wooded lands located on the northeastern portion of the Property and the southwestern portion of the Property. *Tr. Day 1, pp. 23, 76; Exhibit A-1.*

48. The Property is in an area serviced by police and fire protection. *Tr. Day 1, p. 23.*

49. Located opposite and south of the Property on Mount Pleasant Road is an industrial manufacturing facility known as Greiner Industries. *Tr. Day 1, pp. 21-22, 42.*

50. Woodlands, farmlands, and single family residents abut the Property to the north and east. *See Exhibit A-1.*

51. The property of party Allen Sollenberger is a preserved farm. *Tr. Day 3, p. 365.*

52. The preserved Sollenberger farm abuts the Property. *Id.*

53. To the north of the Sollenberger farm is Hidden Valley, another preserved farm. *Id.*

54. The adjoining property at 2619 Stauffer Road is a working farm with cattle, free range chickens, and crops. *Tr. Day 4, pp. 469-471.*

D. The Application and Proposed Development

55. The Proposed Development includes an approximately 1,006,880-square-foot (620' x 1,624') warehouse or distribution building (i.e., the Facility), two access drives from Mount Pleasant Road, 440 employee parking spaces, 212 trailer parking spaces, approximately 154 dock positions, stormwater management facilities, screening and landscaping, and other related improvements. *Exhibit A-4*.

56. Applicant described the proposed use of the Facility as “warehouse and distribution”. *Tr. Day 1, p 25*.

57. Applicant presented a “Special Exception Report” which identified the Facility as “a modern, high-bay, cross-docked facility with full size truck courts.” *Exhibit A-7, unnumbered page 2*.

58. Applicant proposes a future second warehouse building on the Property, but the second building is not part of the current application. *Tr. Day 1, pp 24, 162*.

59. The proposed location of the Facility on the Property is situated to be able to fit two buildings on the Property. *Tr. Day 1, p. 54*.

60. The proposed height of the Facility is approximately 40 to 50 feet depending on the final design. *Tr. Day 1, p. 25*.

61. The Building Rendering and Building Elevations were prepared by Providence Engineering and provide a general depiction of what the proposed Facility might look like. *Tr. Day 1, pp. 40-41; Exhibit A-8; Exhibit A-9*.

62. The Property has a lot width larger than 1,000 feet. *Tr. Day 1, p. 26; Exhibit A-4*.

63. The Property’s lot depth is several hundred feet. *See Tr. Day 1, p. 43; Exhibit A-4*.

64. The Facility is set back greater than 40 feet from the ultimate street right-of-way; off-street parking is set back more than 15 feet from the ultimate street right-of-way and no off-street loading is proposed in the front yard; off-street parking lots and loading areas are setback more than 15 feet from each side lot line; off-street parking lots and loading areas are setback more than 30 feet from the rear lot line; and all buildings, dumpster locations, parking areas and loading areas are setback greater than 80 feet from lots used for residential purposes and lots in the Agricultural District, within which single-family dwellings are permitted. *Tr. Day 1, pp. 26-28; Exhibit A-1, Narrative, pp. 3-4; Exhibit A-4.*

65. The loading docks will be located on the east and west sides of the Facility. *Tr. Day 1, p. 25; Exhibit A-4.*

66. The Proposed Development includes access drives to Mount Pleasant Road at two points. *Tr. Day 1, p. 26; Exhibit A-4.*

67. Applicant will not install an access drive along the Stauffer Road frontage of the Property. *Exhibit A-4; Tr. Day 1, p. 47, 51.*

68. The access drives from Mount Pleasant Road are designed to accommodate trucks and emergency vehicles and provide circulation throughout the Proposed Development. *Tr. Day 1, p. 26; Exhibit A-3; Exhibit A-4.*

69. The Property is a corner lot, and the intersection of Mount Pleasant Road and Stauffer Road will be unobstructed. *Tr. Day 1, p. 28; Exhibit A-4.*

70. With respect to lighting, the Application proposes cut off features, lighting directed toward the interior, trespass of 0.1 footcandle or less onto any residential use, and vegetation screens, among other features. *Tr. Day 1, pp. 38-39; Exhibit A-5; Exhibit A-6.*

71. The Proposed Development will utilize 30-foot-tall pole-mounted lights and 25-foot-tall wall packs that will be directed down with cutoff. *Tr. Day 1, pp. 38-39.*

72. Those portions of the Property not used for structures, loading areas, parking areas, driveways, access drives, storage areas and walkways will be planted or landscaped in accordance with a landscaping plan to be approved by the Township. *Tr. Day 1, pp. 35-36; Exhibit A-4; Exhibit A-5; Exhibit A-10.*

73. There will be a 10-foot-wide or wider landscape strip in all yards, and landscape screening from adjacent residential properties or properties available for residential use. *Tr. Day 1, p. 36; Exhibit A-4; Exhibit A-5.*

74. In total, approximately 270 trees are proposed to be planted on the Property as part of the Proposed Development and, where possible, healthy existing trees are proposed to be preserved and protected. The Landscape Plan depicts landscaping strips for parking areas and that at least 55% of the total area of the parking lots are devoted to interior landscaping. *Tr. Day 1, p. 33; Exhibit A-4; Exhibit A-5.. Tr. Day 1, p. 33; Exhibit A-4; Exhibit A-5.*

75. The Property contains wetlands and Applicant “proposes to place wetland locations on the Property within a conservation easement as described in section 135-307.E” of the Zoning Ordinance. *Exhibit A-7, unnumbered page 8.*

76. There will be a 25-foot buffer around all wetlands. *Tr. Day 1, pp. 37-38; Exhibit A-4; Exhibit A-7.*

77. Riparian corridors of 30 feet are provided on each side of any stream or watercourse on the Property. *Tr. Day 1, pp. 36-37; Exhibit A-4; Exhibit A-7; Exhibit A-10.*

78. The Proposed Development includes four retaining walls: Wall Number 1 is proposed between the employee lot and access drive; Wall Number 2 is proposed between the

employee lot and the western access drive; Wall Number 3 is proposed at the northeastern portion of the Proposed Development between Luke Road and the proposed basin; Wall Number 4 is proposed between the western access drive and the truck port from the western access drive. *Tr. Day 1, pp. 28-30; Exhibit A-4.*

79. A structural engineer shall design the proposed retaining walls in accordance with Section 135-135.B of the Zoning Ordinance and the UCC. *Tr. Day 1, p. 30.*

80. Wall Number 1 and Wall Number 3 face dwellings and both are set back more than 15 feet from the shared lot line. *Tr. Day 1, p. 31; Exhibit A-4.*

81. The Applicant testified that the proposed loading/docking positions on the Property are not located within 600 feet of residential development according to a letter from the Township Zoning Officer; the Board notes that said letter was not entered into the record as an exhibit or otherwise corroborated. *Exhibit A-4.*

82. Objector Meyers testified that her residence is located within 600 feet of the Property; Applicant did not cross-examine Ms. Meyers regarding the same. *Tr. Day 3, pp. 351-352.*

83. The Proposed Development will be served by public water and sewer, and the utilities will be extended by Applicant from the Route 283 interchange with Cloverleaf Road (the “283 Interchange”) and Steel Way Drive. *Tr. Day 1, pp. 25-26.*

84. Fire protection for the Facility will be handled by an automatic sprinkler system and on-site water tank. *Tr. Day 1, p. 26.* In addition, public police protection and fire protection will service the Property. *Tr. Day 1, p. 23.*

85. Applicant did not provide any service commitment letter or other documentation confirming public water and sewer connectivity, or capabilities for public police protection and fire protection.

86. Other than signage required by the Township or PennDOT, Applicant is not currently proposing any signage with the Application.

87. No outdoor storage is proposed. *Tr. Day 1, p 27.*

88. The Application proposes 440 parking spaces for employees, such that the largest shift will not exceed 440 employees. *Tr. Day 1, pp. 26-27; Exhibit A-1, Narrative, p. 10; Exhibit A-4.*

89. Applicant will institute a no idling policy for the Warehouse. *Tr. Day 2, pp. 156, 190.*

90. Exhibit A-10 included conditions which Applicant agrees the Board may impose if the Board grants its application. *Tr. Day 1, pp. 41, 86 – 87.*

91. Artificial light can wreak havoc on natural body rhythms in both humans and animals. The Proposed Development would include artificial light at nighttime seven days a week. *Tr. Day 3, p. 338-339.*

92. Truck vehicles are a major air pollution contributor to serious health problems, producing significant amounts of nitrogen oxides, carbon monoxides, and other pollution. *Tr. Day 3, p. 330-337.*

E. Operation of Facility

93. Applicant intends to lease the Facility to a third-party. *Exhibit A-1.*

94. Applicant did not identify a third-party, end-user tenant.

95. Applicant does not know how the end-user tenant plans to operate the Facility. *Tr. Day 2, p. 176.*

96. Applicant will have a lease agreement with the end-user tenant which requires the tenant to comply with the terms of Section 326 of the Zoning Ordinance. *Tr. Day 2, pp. 156-158.*

97. Applicant will provide a copy of the lease for the Facility after it is executed to the Township. *Tr. Day 2, pp. 187 – 188.*

98. The Facility would operate 24 hours a day and seven days a week. *Tr. Day 1, p. 116.*

F. Traffic; Access

99. The northern access drive into the Property will create a four-way intersection with an extension of Steel Way Drive. *Exhibit A-4.*

100. Applicant will extend Steel Way Drive from its present terminus through lands of Landowner identified as 1650 Steel Way Drive. *Tr. Day 1, pp. 31-32, 93-94; Exhibit A-4.*

101. If permitted by PennDOT, Applicant will make improvements to the intersection of Steel Way Drive and Cloverleaf Road shown on the concept plan presented as *Exhibit A-13; Tr. Day 1, pp. 87-88.*

102. The proposed Steel Way Drive extension may reduce projected truck traffic on Mount Pleasant Road by moving it into the commercial and industrial areas along Steel Way Drive, provided that the trucks use said extension on a regular basis. *Tr. Day 1, pp. 31-32.*

103. The eastern access drive for the Proposed Development is proposed as employee access only and Applicant proposes to install geometric design elements and signage to

deter, if not prohibit, left turns by any motor vehicle out of the Proposed Development onto Mount Pleasant Road. *Tr. Day 1, pp. 91-94.*

104. Applicant presented testimony from its traffic engineer that it “will be able to implement something to largely make it difficult to make exiting movement and would have to push traffic in the way that you are saying to keep it from exiting left in movement. So that will be done through geometric design elements. We can use various different types of things to really prevent those movements. Signing will be added as well.” *Tr. Day 1, p. 93.*

105. Applicant’s witness acknowledged that there must be road improvements to safely accommodate traffic for the Facility. *Tr. Day 2, pp. 205-206.*

106. Applicant’s counsel agreed on the record that “the current roadways are not up to standards for the trucks”. *Tr. Day 3, p. 325.*

107. The Warehouse is a cross-dock building with loading bays on the east and west sides. *Tr. Days 1 and 2, pp. 25, 169.*

108. A cross-dock warehouse has docks across either side of the building. *Tr. Day 2, p. 175.*

109. A cross-dock warehouse is a facility where product is brought to the facility from one truck, is broken down and processed in some manner, and is moved across the dock and loaded onto another truck. *Tr. Day 3, p. 299.*

110. Applicant’s traffic expert conducted a trip generation evaluation to calculate the number of vehicular trips the Proposed Development will generate during the following time period: average weekday; weekday A.M. peak hour; and weekday P.M. peak hour.

111. To conduct a trip generation analysis, one uses trip generation rates published by the Institute of Traffic Engineers (“ITE”) in its Trip Generation Manual; there are particular Land Use Codes applicable to various land uses. *Tr. Day 1, p. 81.*

112. Usage of a particular ITE Land Use Code gives a general sense of the number of trips a development is projected to generate. *Tr. Day 1, p. 81.*

113. Applicant’s traffic expert relied upon Land Use Code 150 in its study. *Exhibit A-12.*

114. Land Use Code 150 is the classification for warehouse, generally used for speculative warehouses. *Tr. Day 2, p. 219.*

115. The ITE Trip Generation Manual provides that a warehouse is defined as being primarily devoted to the storage of materials, but it may also include office and maintenance areas. High-cube transload and short-term storage warehouse, which is Land Use 154, and high-cube fulfillment center warehouse, which is Land Use 155, high-cube parcel hub warehouse, which is Land Use 156, and high-cube cold storage warehouse, which is Land Use 157, are listed as related uses. *Tr. Day 3, p. 297; Meyers Exhibit 3.*

116. In order to determine the number of trips for the Proposed Development using Land Use Code 150, Applicant’s traffic expert looked at 31 different studies. *Tr. Day 3, p. 297; Meyers Exhibit 3.*

117. The average size of all 31 warehouses studied was 292,000 square feet, which is roughly 29 percent of the size of the proposed Facility. The largest warehouse that comprised that set of 31 points was 560,000 square feet, which is 56 percent of the size of the proposed Facility. *Tr. Day 3, p. 297; Meyers Exhibit 3.*

118. Using Land Use Code 150, the Proposed Development would generate 1,629 average weekday trips, 144 trips in the morning peak hour, and 147 trips in the evening peak hour. *Exhibit A-12.*

119. Applicant's traffic evaluation did not use a NAICS Industrial Code for the end-user tenant or the commodity type, both of which are material for a proper, accurate analysis. *Meyers Exhibit 3.*

120. Applicant's usage of Land Use Code 150 was in error. *Tr. Day 3, pp. 299-300.*

121. Depending on the ultimate occupant of the Facility, the traffic generated may be in excess of that forecasted by Applicant's traffic expert using Land Use Code 150. *Tr. Day 3, pp. 300-304.*

122. The proposed Facility is more appropriately classified as a high-cube warehouse under Land Use Code 154 or 156, depending on the ultimate end-user and the type of operation to be conducted within the Facility. *Tr. Day 3, pp. 300-304.*

123. Given the height of the Warehouse and the cross-dock design, it is possible that the use may be a hub or parcel warehouse, ITE Land Use Code 156. *Tr. Day 3, p. 301.*

124. Usage of Land Use Code 156, which cannot be ruled out based upon the Applicant's testimony, would result in 4,662 average weekday trips, 886 trips in the morning peak hour, and 715 trips in the evening peak hour. *Meyers Exhibit 3.*

125. The ITE defines a fulfillment center to be an "e-commerce warehouse" as ITE Land Use Code 155. *Tr. Day 3, p. 298.*

126. Applicant presented testimony that the Warehouse would not be a fulfillment center. *Tr. Day 2, p. 168.*

127. Applicant agreed on the record that if the Board granted the application, Applicant would conduct a post-occupancy study to determine the actual trip generation and would make whatever roadway improvements were required by such study. *Tr. Day 3, pp. 310-311; 315.*

II. CONCLUSIONS OF LAW

A. Procedural Conclusions

128. Public hearings on the Application were held pursuant to appropriate public notice provided in accordance with the terms of the Zoning Ordinance and the MPC and due process was afforded to all parties during those hearings.

129. Section 135-385 of the Zoning Ordinance and Section 908(9) of the MPC, 53 P.S. § 10908(9), require the Board to render a written decision within forty-five (45) days of the last hearing. The parties stipulated on the record to a schedule that permitted the Board to not render a written decision within the forty-five (45) day period. Rather, this written decision was agreed to be due 30 days after Applicant and Objectors submitted proposed findings of fact and conclusions of law, and such submission was due and delivered to the Zoning Hearing Board Solicitor on June 14, 2023 by Applicant, Objector Meyers, and the Township.

130. Section 135-163.B of the Zoning Ordinance permits an industrial use involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of all reasonable materials, goods and products in a building larger than 50,000 square feet by special exception in the LI-District.

131. Section 135-163.C permits industrial uses involving warehousing, manufacturing, processing, packaging, production, wholesaling, storage, distribution, or repair of items not specifically referenced by Section 135-162.E of the Zoning Ordinance by special exception in the LI-District.

132. The Application is properly within the jurisdiction of the Board as a special exception pursuant to Sections 135-163.B and 135-163.C.

B. Special Exception Standards

133. A special exception is not an exception to a zoning ordinance, but instead, is a use which is expressly permitted absent a showing of a detrimental effect on the community. *Greaton Props. v. Lower Merion Twp.*, 796 A.2d 1038, 1045 (Pa. Commw. Ct. 2002). In the context of the Zoning Ordinance, a warehouse or distribution center in excess of 50,000 square feet is not an exception from what the Zoning Ordinance permits. Rather, that use is specifically permitted in the LI-District if the applicable requirements for the special exception are met.

134. Uses permitted by special exception evidence a legislative decision that the particular type of use is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community. *Northampton Area Sch. Dist. v. East Allen Twp. Bd. of Supervisors*, 824 A.2d 372, 376 (Pa. Cmwlth. 2003); *Abbey v. Zoning Hearing Bd. of East Stroudsburg*, 559 A.2d 107, 109 (Pa. Cmwlth. 1989).

135. In a special exception hearing, the applicant bears the burden of demonstrating that the use satisfies the applicable objective requirements of the zoning ordinance. Once the applicant meets their burden, there is a presumption that the use is consistent with public health, safety and welfare, and the burden shifts to the opponents. *See Abbey*, 559 A.2d at 109.

136. If the applicant fails to satisfy his burdens of proof and production, the burden never shifts to opponents to demonstrate that the applicant's proposed use will have an adverse effect on the general public. That adverse effect can be inferred from the applicant's failure to meet his burden. *Agnew v. Bushkill Twp. Zoning Hearing Bd.*, 837 A.2d 634, 640 (Pa. Cmwlth. 2003).

137. If the burden shifts, the objectors must present evidence and persuade the zoning board that the proposed use would have a generally detrimental effect on public health, safety and welfare or will conflict with the expressions of general policy contained in the ordinance. *E. Manchester Twp. Zoning Hearing Bd. v. Dallmeyer*, 609 A.2d 604, 610 (Pa. Cmwlth. 1992).

138. Objectors cannot meet their burden by merely speculating as to possible harm, but instead must show a high degree of probability that the proposed use will substantially affect the health and safety of the community. *Id.*

139. If the objectors to the issuance of a special exception raise specific issues concerning health, safety and general welfare, then the burden would continue to be with the applicant. The applicant would be required to come forward to meet the objections so as to show that the intended use would not violate the health, safety and general welfare of the community with relation to such objections. *Butler v. Derr Flooring, Co.*, 285 A.2d 538, 542 (Pa. Cmwlth. 1971).

140. A board is permitted to impose reasonable conditions on the use of a property to mitigate any potential adverse impacts from the proposed use. *Edgmont Township v. Springton Lake Montessori School*, 622 A.2d 418 (Pa. Cmwlth. 1993).

141. The “proper function of conditions is to reduce the adverse impact of a use allowed under a special exception, not to enable the applicant to meet his burden of showing that the use which he seeks is one allowed by the special exception.” *Elizabethtown/Mt. Joy Associates, L.P. v. Mount Joy Township Zoning Hearing Board*, 934 A.2d 759, 768 (Pa. Cmwlth. 2007).

C. Applicable Ordinance Criteria & Regulations

142. Article XXII of the Zoning Ordinance (Specific Use Regulations) does not provide use-specific regulations, objective or subjective, for the uses described in Sections 135-163.B and 135-163.C (i.e., the Proposed Use).

143. Section 135-161 of the Zoning Ordinance sets forth the purpose and intent of the LI-District: to “provide for a wide range of light industrial and office development within the designated growth area, while avoiding heavy industrial uses that are mostly likely to cause nuisances and hazards; to also provide for commercial uses compatible with neighboring residential areas; to encourage a coordinated interior road system; and to control noise and annoyances.”

144. Pursuant to Section 135-163 of the Zoning Ordinance, “[t]he burden shall be upon the applicant to prove that the approval of the application will not be detrimental to the health, safety and general welfare of the community.”

145. Article XVII of the Zoning Ordinance sets forth the requirements for uses in the LI-District and refers to other applicable articles of the Zoning Ordinance, including Article XXIII (General Regulations), Article XXIV (Sign Regulations), and Article XXV (Parking Regulations).

146. Section 135-383.B of the Zoning Ordinance sets forth standards that apply to all uses permitted by special exception.

147. As provided in detail in the Findings of Fact above, the Applicant, through its Application and demonstrative and oral testimony, including expert testimony, presented during the hearing, met its burden of proof to establish that the Application and Proposed Use comply with the applicable objective requirements of the Zoning Ordinance in Article XVII, Section 135-

165 (Area and bulk requirements) and Section 135-166 (Landscaping and screening requirements), Article XXIV (Sign Regulations), and Article XXV (Parking Regulations).

148. Applicant failed to demonstrate, through substantial evidence, compliance with the objective criteria set forth in Article XXIII, namely Section 135-326 of the Zoning Ordinance (“Performance and Design Standards for all Nonresidential Uses”), including subsections 326(D) (discussed in detail, below), (G)¹, (H)², (I)³, (J)⁴, (K)⁵, and (L)⁶.

149. Importantly, at the outset, the Board finds the testimony of Applicant’s expert Mr. Bittinger regarding Applicant’s proposed compliance with Section 135-326 to be not credible.

150. The application Narrative (Exhibit A-1) asserts that, at the hearing, Applicant will show evidence establishing compliance with the requirements set forth in Section 135-326, including Sections 135-326(G), (H), (I), (J), (K), and (L). *Exhibit A-1*.

151. At the First Hearing, Mr. Bittinger testified several times, when questioned on how Applicant meets the burden of proof as to the objective criteria of Section 135-326, that such proof was set forth in his January 4, 2023 report entered as Exhibit A-7. *Tr. Day 1, pp. 62-70*. Mr. Bittinger’s testimony was conclusory at best, inaccurate, and not credible.

¹ “No activities which emit radioactivity at any point are permitted.” *135-326(G)*.

² “No electrical disturbances of adversely affecting the operation of any equipment other than that of the creator of such disturbance shall be permitted.” *135-326(H)*.

³ “No fly ash, dust, fumes, vapors, gasses or other forms of air pollution emissions which can cause any excessive soiling upon another property shall be permitted.” *135-326(I)*.

⁴ “No vibration which is discernible to the human sense of feeling on an adjacent property for three minutes or more in duration is permitted in any hour of the day between 7:00 a.m. and 7:00 p.m. or for 30 seconds or more between the hours of 7:00 p.m. and 7:00 a.m.” *135-326(J)*.

⁵ “No activities producing heat, cold, dampness or movement of air are permitted which shall produce any material effect on the temperature, motion or humidity of the atmosphere at the lot line or beyond.” *135-326(K)*.

⁶ “No emission of odorous gasses or other odorous matter in such quantities as to be detectable to the human sense of smell when measured at the lot line shall be permitted.” *135-326(L)*.

152. The January 4, 2023 letter—Exhibit A-7—does not address, or even attempt to address, the objective criteria or performance standards required by Section 135-326. Said letter only addresses compliance with Sections 135-304 through 135-307 of the Zoning Ordinance. *See Exhibit A-7.*

153. At most, Applicant’s representative Mr. Peters testified that Applicant would have a lease agreement with the end-user tenant requiring compliance with the standards set forth in Section 135-326, and that Applicant would enforce its lease. *Tr. Day 2, pp. 156-158.*

154. Mr. Bittinger’s inaccurate and incomplete testimony, and Mr. Peter’s testimony, does not amount to sufficient evidence to support a finding that Applicant demonstrates compliance with several of the objective criteria in Section 135-326.

155. The Board finds that Applicant, via the Narrative, Mr. Peter’s and Mr. Bittinger’s testimony, has failed to meet its burden to demonstrate compliance with the above-noted specific criteria of Section 135-326 at the time of the hearing.

156. Additionally, Section 135-326(D) requires Applicant to demonstrate that “[n]o shipping or receiving shall be permitted within 600 feet of a residential zoning district or existing residential development between the hours of 9:00 p.m. and 8:00 a.m.”

157. As testified by Applicant, operation of the Facility—including shipping and receiving—will occur 24 hours a day, seven days a week.

158. The Zoning Ordinance defines the term “development” as “any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion or alteration of buildings or other structures...” *See, Section 135-32.*

159. Applicant's Narrative (Exhibit A-1) provides the following uncorroborated statement: "The Facility's proposed loading/docking positions on the Property are not located within 600 feet of a residential zoning district or existing residential development, as determined by the Township's Zoning Officer." Applicant did not submit any documentation of the Zoning Officer's alleged determination, or otherwise corroborate the statement in the Narrative.

160. Conversely, Objector Meyers testified that her residence is located within 600 feet of the Facility. Applicant did not cross-examine Ms. Meyers on such testimony to rebut or refute her testimony.

161. Ms. Meyers' testimony was credible.

162. The Board hereby determines that Ms. Meyers' residence constitutes "residential development" mentioned in Section 135-326(D), in accordance with the definition of "development" set forth in the Zoning Ordinance.

163. Applicant's failure to corroborate its statement regarding the alleged Zoning Officer determination, together with Ms. Meyers' testimony which Applicant declined to cross-examine or otherwise rebut, leads this Board to find that Applicant failed to meet its burden to demonstrate compliance, through substantial evidence, with the requirements of Section 135-326(D). Thus, the Application should be denied.

164. Although the Application merits denial based upon Applicant's failure to establish compliance with the objective criteria as set forth above, the Board also finds that the Applicant failed to establish credible evidence of its compliance with Section 135-383(B)(2) of the Zoning Ordinance.

165. Section 135-383(B)(2) provides that “the applicant shall establish by credible evidence” that the “peak traffic generated by the subject of the application shall be accommodated in a safe and efficient manner or improvements made in order to effect the same.”

166. The Board finds Mr. Nawn, Objector Meyers’ traffic expert’s testimony to be more credible than the testimony of Applicant’s traffic expert.

167. Mr. Nawn testified that Applicant’s traffic expert’s usage of Land Use Code 150 and the conclusions based thereon was in error.

168. Applicant’s determination of the peak traffic to be generated by the Proposed Development, as testified and set forth in Exhibit A-12, was erroneous and inaccurate, pursuant to Mr. Nawn’s testimony rebutting the same.

169. The Board concludes that the erroneous usage of Land Use Code 150, and the inaccurate peak traffic determinations derived therefrom, renders Applicant unable to demonstrate that peak traffic can be accommodated in a safe and efficient manner, despite any testimony regarding improvements to be constructed by Applicant. Moreover, without an accurate report, it is unclear whether the proposed roadway improvements offered and testified to, and described within Exhibit A-10 would be sufficient to safely and efficiently accommodate the peak traffic generated by the Proposed Development.

170. Although the Application merits denial based upon the foregoing, the Board also determines that the Objectors can meet their burden of demonstrating that the Proposed Development is inconsistent with the stated intent, policy, and purpose of the LI Zoning District in Section 135-161 of the Zoning Ordinance. *See, E. Manchester Twp. Zoning Hearing Bd. v. Dallmeyer*, 609 A.2d 604, 610 (Pa. Cmwlth. 1992).

171. Namely, it is without dispute that the Property is not located within the designated growth area in the Township.

172. Additionally, there is substantial evidence that the 1,006,880 square feet cross-dock warehouse, with 440 employees on shift, 212 trailer parking spaces, and 154 dock positions, with the potential for 4,662 trips per day if Land Use Code 156 is applicable to the trip generation analysis—which is certainly conceivable—is not a *light* industrial use. The Board is cognizant that not every warehouse exceeding 50,000 square feet would be contradictory to the stated purpose and intent of the LI District, but as set forth in the Findings of Fact herein, the Proposed Development exceeds what is intended by the Zoning Ordinance in the LI District.

173. Moreover, and despite the Application meriting denial based upon the foregoing, Dr. Peterson’s expert testimony regarding the effects of noise, air, and light pollution, and the havoc the same can wreak on the human body and animals, was credible.

174. The Property, and Proposed Development, is located adjacent to numerous properties which are used as residences and working farms with animals.

175. The Objectors, through testimony from experts Mr. Nawn and Mr. Peterson, and as set forth in the Findings of Fact herein, have met their burden to demonstrate that the Proposed Development will substantially affect the health, safety, and welfare of the community to a greater extent than would be expected normally from a warehouse exceeding 50,000 square feet.

176. Applicant failed to present sufficient evidence in response to the Objectors’ evidence to demonstrate that the Proposed Development is not detrimental to the health, safety or welfare of the neighborhood, or that the Proposed Development shall not substantially injure or detract from the use of the neighboring properties or from the character of the neighborhood.

177. Applicant's proposed conditions (Exhibit A-10) and those agreed to at the hearings do not obviate or relieve the Applicant from meeting its burden of demonstrating compliance with the specific and general criteria set forth in the Ordinance.

178. Based on the Application and the testimony and evidence presented at the hearings, the Board concludes that the Applicant is not entitled to an approval of its special exception application.

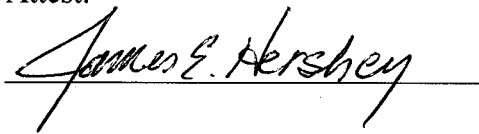
III. Decision

179. The Board hereby denies the Application for two special exceptions pursuant to Sections 135-163.B and 135-163.C of the Zoning Ordinance.

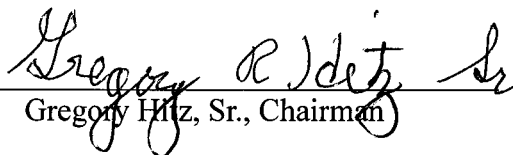
Decision made this 13th day of July, 2023.

ZONING HEARING BOARD FOR THE
TOWNSHIP OF MOUNT JOY

Attest:



By:



Gregory Hitz, Sr., Chairman

The undersigned certifies that a copy of this Decision has been personally or by First Class Mail, postage prepaid, served upon:

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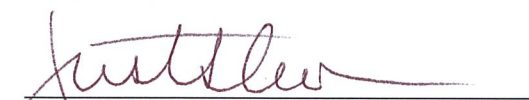
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