

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

In the Matter of:

Elizabethtown Mount Joy Associates, L.P.

Tax Account Nos. 461-00486-0-0000 and 461-82176-0-0000

Property Address: Northeast Quadrant of the Intersection of St. Rt. 230 and Cloverleaf Rd.

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This is an application by Elizabethtown Mount Joy Associates, L.P. and Pennmark Management Company, Inc. seeking relief with respect to the property located at located at the northeast quadrant of the intersection of Cloverleaf Road and State Route 230 being Tax Account Nos. 461-00486-0-0000 and 461-82176-0-0000 (“**Property**”).

I. FINDINGS OF FACT

A. THE APPLICATION; PARTIES & THE HEARING

1. The Applicant in this matter Elizabethtown Mount Joy Associates, L.P. is an affiliate of Pennmark Management Company, Inc. (collectively herein “**Pennmark**”), 1000 Germantown Pike, A-2, Plymouth Meeting, PA 19462. *Exhibits A-1 and A-2.*

2. By virtue of a Deed dated August 10, 1977, Pennmark is the owner of the Property. *Exhibit A-1.*

3. The Property is identified as Lancaster County Tax Account numbers 461-00486-0-0000 and 461-82176-0-0000. The Property is an irregularly shaped approximately 22.12-acre (+/-) tract of undeveloped land located at the northeast quadrant of the intersection of Cloverleaf Road and State Route 230 in Mt. Joy Township (“**Township**”), Lancaster County, PA. the Property has substantial grade change sloping downward from the Northeast corner to the southwest corner. *Exhibits A-1, A-3 and A-4.*

4. On March 7, 2023, Pennmark filed an application (“**Application**”) to the Mt. Joy Township Zoning Hearing Board (“**Board**”) requesting variances from Sections 135-111, 135-122, 135-256.A(1) and 135-126.A(3) of the Mount Joy Township Zoning Ordinance (“**Zoning**”).

Ordinance”) to permit the development of the Property as a retail shopping center consisting of an approximately 5,600 s.f. Wawa convenience store with gas fueling station, a 22,100 s.f. (+/-) ALDI Grocery store, an approximately 6,950 s.f. multi-tenant retail building, as well as three retail out parcels; two of which are proposed to have drive-thru facilities. *Exhibit A-2*.

5. A hearing on the Application was held on two evenings June 7, 2023, and July 26, 2023, Pennmark was represented by Craig R. Lewis, Esquire. Josele Cleary, Esquire, was introduced as Counsel representing Mt. Joy Township. *Notes of Testimony (“N.T.”) 06/07/23 p. 5*.

6. Board members Gregory R. Hitz, James E. Hershey, and Robert F. Newton attended the hearings, as did the Board’s Solicitor, John Henry, Esquire.

7. In addition to Pennmark and the Township three individuals Dale and Carol Hess, and Jay Brubaker were granted party status (collectively herein “**Party Opponents**”). *N.T. 06/07/23 at pp. 10-11*.

8. Pennmark completed its case in chief on July 26, 2023. *N.T. 07/26/23, p. 25*.

9. The Party Opponents were given the opportunity to present testimony and evidence on July 26, 2023. The Party Opponents did not present any documentary evidence or expert testimony. *N.T. 07/26/23, pp. 29-36*. The June 6th and July 27th hearings will be collectively referred to as the “**Hearing**”.

10. The Township did not present any evidence or testimony. Rather the Township requested that if the Board is inclined to grant the Application that the conditions set forth in Applicant’s *Exhibit A-6* be imposed upon such grant of relief. *N.T. 07/26/23 pp.47-8*. Thereafter the Board allowed for public comments and questions and closed the evidentiary portion of the Hearing. *N.T. 07/26/23 pp. 36-41*.

11. The Board requested that the parties submit proposed Findings of Fact and Conclusions of Law and stated that it would render a decision at its public meeting on October 6, 2023¹. *Id.*

12. The Party Opponents declined the opportunity to present proposed findings of fact and conclusions of law.

13. Pennmark presented testimony of the following witnesses in support of the Application: Todd Smeigh, PE, a civil engineer (*N.T. 06/07/23 pp.20-47*); Greg Creasy, PE, a professional transportation engineer (*N.T. 06/07/23 pp. 48-100*); and Brian Seidel, a certified land planner (*N.T. 06/07/23 pp. 102-177 and 07/26/23 pp. 5-28*). Todd Smeigh was accepted by the Board as an expert in civil engineering, (*N.T. 06/07/23 p. 22*); *Exhibit A-16*. Greg Creasy was accepted by the Board as an expert in traffic engineering (*N.T. 06/07/23 pp. 49-50*); *Exhibit A-18*. Brian Seidel was accepted by the Board as an expert in landscape architecture and land planning. *N.T. 06/07/23, p. 104; Exhibit A-17*.

B. ZONING, PROPERTY LOCATION AND SURROUNDING AREA

14. According to the Mt. Joy Township Zoning Ordinance and Mt. Joy Township Zoning Map, the Property is located in the C-1 Limited Commercial Zoning District (“**C1-District**”). *N.T. 06/07/23 p.25*.

15. The stated purpose of the C1-District is to allow “existing small-scale commercial uses to continue outside of the designated growth area”. *N.T. 06/07/23 p. 106*.

16. The Property is an irregularly shaped approximately 22.12-acre (+/-) tract of undeveloped land located at the northeast quadrant of the intersection of Cloverleaf Road and State Route 230 in Mt. Joy Township, Lancaster County, PA. the Property has substantial grade change sloping downward from the Northeast corner to the southwest corner. *N.T. 06/07/23 20-3; Exhibit A-3*.

17. The Property abuts the Penn Medicine Lancaster General Hospital medical complex to the North, the Tyson Foods hatchery to the northeast, agricultural lands owned by

¹ Counsel for Pennmark granted, on the record, an extension of the timeframe prescribed by the Municipalities Planning Code (“MPC”), within which the Board must render its written decision up to and including October 6, 2023.

Applicant to the east, West Main Street to the South and Cloverleaf Road to the west. *N.T. 06/07/23 pp. 23-5; Exhibit A-3.*

18. The C-1 District prescribes a minimum lot area of just 10,000 s.f. As such, at more than 22 acres (963,746+ s.f.) the Property is inconsistent with the C-1 District regulations and its stated purpose to allow “small scale commercial uses”. *N.T. 06/07/23 pp. 106-07.*

F. PENNMARKE’S PROPOSED DEVELOPMENT OF THE PROPERTY

19. Pennmark proposes to develop the Property as a retail shopping center (“**Proposed Development**”). *N.T. 06/07/23 pp. 26-8; Exhibit A-4.*

20. the Proposed Development consists of an approximately 5,600 s.f. Wawa convenience store with gas fueling station, a 22,100 s.f. (+/-) ALDI Grocery store², an approximately 6,950 s.f. multi-tenant retail building, as well as three retail out parcels; two of which are proposed to have drive-thru facilities. *Id.*

21. Pennmark proposes, consistent with the official Township map, to construct an extension of Norlanco Drive on a portion of the Property as well as on the adjacent property that it owns. The Norlanco Drive extension will intersect State Route 230 to form a signalized intersection. Pennmark will offer the Norlanco Drive extension for dedication to the Township, but unless and until the Township accepts dedication thereof, Pennmark will maintain the Norlanco Drive extension as well as the proposed signal. *N.T. 06/07/23 p. 28. Exhibit A-4*

22. Access to the Proposed Development will include three connections to the Norlanco Drive extension, one Right-in/Right-out only access to Cloverleaf Road (identified as Access Drive “D”), one right-in only access point along Cloverleaf Road, and one right-in only access along state route 230. *N.T. 06/07/23 pp. 27-8. Exhibit A-4*

23. The Proposed Development Complies with all of the applicable area and bulk requirements of the C-1 District, e.g. minimum lot size, maximum impervious coverage, building

² As depicted on the Site Plan, the initial development will propose a 19,650 s.f. Aldi’s grocery store with a possible future expansion of 2,450 s.f.

coverage, building setbacks, building height, and required off-street parking facilities. *N.T. 06/07/23 p. 34. Exhibit A-4.*

24. The Proposed Development Complies with Code Section 135-256 which sets for the regulations applicable to all retail stores and shopping centers. Specifically:

- Not more than 15% of the total development tract utilized for a shopping center use shall be occupied by buildings (§135-256.A(2)). As detailed on Exhibit A-4, the Proposed Development provides a building coverage of only 12%;
- Individual uses of a shopping center may be located in detached and attached structures and shall include only uses permitted by right or by special exception within the zoning district the shopping center is to be located. Adult-oriented businesses, nightclubs, and manufactured home parks shall not be permitted as part of a shopping center development (§135-256.A(3)). As detailed on Exhibit A-4, the Proposed Development complies with this requirement. Additionally, Applicant specifically testified that no adult-oriented businesses, nightclubs and/or manufactured home parks are proposed as part of the Proposed Development.
- The distance, at the closest point of any two building or groups of units of attached buildings, shall not be less than 20 feet, unless a more stringent separation requirement is specified in this chapter (§135-256.A(4)). As detailed on Exhibit A-4 the Proposed Development complies with this requirement.
- Retail stores and shopping centers furnishing shopping carts or mobile baskets shall provide a definite area or areas on the site for the storage of said items. Storage areas shall be clearly marked and designated for the storage of shopping carts. If such spaces are located within the parking areas, they shall not be counted toward the required minimum off-street parking area (§135-256.A(5)). As detailed on Exhibit A-4, the Proposed Development provides designated shopping cart storage facilities. These storage facilities are not counted towards the required minimum off-street parking facilities.

- Retail stores and shopping centers in excess of 50,000 square feet of gross floor area shall be connected to and use public water and public sewer. The applicant shall present evidence that sewer and water capacity have been obtained or reserved from the applicable provider (§135-256.A(6)). The Proposed Development will be served by public sewer and public water. Applicant presented evidence of the same as Exhibit A 20 and A-21 respectively.
- Drive-through facilities shall be permitted subject to § 135-255 (§135-256.A(7)). The Proposed Development includes drive-thru facilities which comply with the requirements of Section 135-255.
- Retail stores and shopping centers shall contain lighting facilities for buildings, signs, accessways, and parking areas shall be provided and arranged in a manner which will protect the highway and neighboring properties from glare or hazardous interference of any kind (§135-256.A(8)). As detailed on the plans entitled “Site Lighting Calculations” prepared by Independence Lighting, dated February 28, 2023, consisting of 8 sheets (“**Lighting Plans**”), a copy of which was marked as Applicant’s Exhibit A-8, the Proposed Development complies with the lighting requirements of this section.
- Buffer yards shall be provided alongside and rear property lines which are adjacent to a residential district. The buffer yards shall have a width of 80 feet, measured from the side and rear property lines. Required buffer yards may overlap any required yard; and in the case of conflict, the larger yard requirement shall apply. The buffer yard shall be planted with ground cover, trees and shrubs and a landscape screen. The landscape screen shall consist of one row, staggered, of mixed evergreen and deciduous trees, which shall be at least six feet in height when planted and shall not be spaced more than 10 feet apart on center, and two rows, staggered, of mixed broadleaf and needle evergreen shrubs, which shall be at least three feet in height when planted and shall not be spaced more than five feet apart on center. The trees shall be of such species so as to attain a height at maturity of not less than 20 feet. The shrubs shall be of such species as to provide continuous screening from the ground to a

height of six feet at maturity. Deciduous plant materials shall comprise no more than 30% of the number of plants in the buffer. Trees shall be planted so that, at maturity, they shall not be closer than 10 feet to any property line (§135-256.B(1)). The side and rear yards of the Property do not abut a residential district and therefore these regulations do not apply. Nonetheless, the Proposed Development includes substantial landscaping proposals which are detailed on plans prepared by Seidel Planning and Design, entitled “Mount Joy Towne Center” dated March 1, 2023 (“**Landscape Plan**”) a copy of which was marked as Applicant’s Exhibit A-9.

- Parking areas shall not be located within the side or rear buffer yards. A landscape strip and screen shall be provided around the perimeter of all parking areas adjacent to land within a residential district or land which is principally a residential use at the time of application. The landscape strip and screen shall be installed, maintained and contain such materials as required by § 135-299 (§135-256.B(2)). As detailed on Applicant’s Exhibit A-4 and A-9, the Proposed Development complies with these requirements.
- If the drainage swales or easements or basins interfere with the buffer or screening areas, the buffers or screens shall be placed further toward the interior of the lot to accomplish the intent of this § 135-256. All buffer areas and landscape areas shall be maintained and kept free of all structures, rubbish and debris. Required plant material located in these areas which become diseased or dies shall be replaced by the property owner in order to maintain the requirements of this § 135-256B (§135-256.B(3)). As detailed on Applicant’s Exhibits A-4 and A-9, the Proposed Development complies with these requirements.
- A landscape plan shall be submitted to the Zoning Hearing Board to demonstrate compliance with this Section 135-256B (§135-256.B(4)). Applicant submitted a Landscape Plan marked as Applicant’s Exhibit A-9.
- Any retail store or shopping center in excess of 30,000 square feet shall be required to contain at least two separate points of ingress and egress to the

development tract. The development tract shall front on an arterial or collector street, as established by § 135-301 of this chapter (§135-256.C(1)). The Proposed Development provides more than 2 separate points of ingress and egress and the Property fronts on an arterial or collector street, thus satisfying the requirements of this section. *Exhibit A-4.*

- All developers and/or applicants for a retail store or shopping center use that is in excess of 30,000 square feet of gross floor area shall submit a traffic impact study which meets the requirements of Chapter 119, Subdivision and Land Development. The study shall be presented to the Zoning Hearing Board at the time of special exception application (§135-256.C(2)). A traffic study for the Proposed Development was prepared by Grove Miller Engineering, Inc. and is dated February 2023 (“Traffic Study”), a copy of which was marked as Applicant’s Exhibit A-10. The Traffic Study complies with the requirements set forth in the Subdivision and Land Development Ordinance as well as PennDOT regulations.
- A retail store or shopping center in excess of 50,000 square feet of gross floor area shall provide an improved bus stop which shall be conveniently accessible for patrons who would travel to and from the site by bus. Such bus stop shall include a shelter, seating, a waste receptacle, and at least one shade tree. The location of the required bus stop shall be reviewed by and be acceptable to the Red Rose Transit Authority. If service is currently unavailable along the subject property, the applicant shall provide a cash escrow fund in lieu of constructing the bus shelter or enter into an agreement with the Township to install such bus shelter at the time bus routes are added or changed to provide access to the retail or shopping center use; such agreement shall be recorded at the Lancaster Recorder of Deeds Office, shall be referenced on the land development plan and shall be in a form acceptable to the Township Solicitor. An easement area shall be designated on the plans for the future location of the bus stop. The easement area shall be reviewed and be acceptable to the Red Rose Transit Authority (§135-256.C(3)). As detailed on Exhibit A-4, the Proposed Development

includes the required bus facilities. Additional details of the bus facilities including approval of the same by SCTA were demonstrated by Applicant's Exhibits A-7 and A-11.

- Any retail store or shopping center in excess of 50,000 square feet of gross floor area that is located within one mile of a Route 283 interchange shall integrate a portion of the required off-street parking spaces for public use as a park-and-ride facility. The facility shall be readily identifiable and conveniently accessible to passing motorists. At least 3% of the parking spaces provided for the use shall be for public use as a park-and-ride area. The Zoning Hearing Board may permit the required number of parking spaces to be provided for public use as a park-and-ride area to be reduced by special exception in accordance with the following criteria (§135-256.C(4)). As detailed on Applicant's Exhibits A-4 and A-11 the Proposed Development complies with this requirement.
- All retail stores and shopping centers shall contain pedestrian walkways which shall provide safe and convenient pedestrian linkages to any nearby residential-zoned properties and neighborhoods and other commercial or industrial developments (§135-256.C(5)). As detailed on Applicant's Exhibit A-4, the Proposed Development provides pedestrian walkways providing safe and convenient pedestrian linkages. Additional details of the proposed pedestrian facilities were provided on Applicant's Exhibit A-12.
- All retail stores and shopping centers shall be constructed in accordance with an overall plan and shall be designed as a single architectural style with appropriate landscaping. Retail stores and shopping centers that are located in the C-1 District shall contain an architectural style that is reminiscent of the residential and rural areas of the Township which are located in close proximity to the C-1 Zoning District. A "Commercial Village" style of development shall be utilized to the greatest extent possible in the C-1 District (§135-256.D(1)). Applicant demonstrated compliance with this section by virtue of Applicant's Exhibits A-13, A-14 and A-15.

- Whenever an individual building of 30,000 square feet of gross leasable floor area or greater on the ground floor is proposed, the applicant shall provide for all of the following building design elements:

(a) The building shall not have a flat roof, unless it has a parapet wall screening all mechanical equipment from public view along streets and sidewalks; and

(b) The length of the façade of any new building which exceeds 32 feet in length shall have vertical design elements, such as pilasters, columns, piers, or recesses or projections of one to four feet, so that no new vertical bay or section of a building façade exceeds 32 continuous feet in length.

(§135-256.D(2)). Compliance with these requirements was demonstrated by Applicant's Exhibits A-4 and Exhibits A-13 and A-15.

- In accordance with § 603(c)(6) of the MPC,[1] this §135-256E provides an optional set of design standards that can be applied to shopping centers which increase the permissible density. These optional design standards seek to achieve a "Main Street Environment" that is pedestrian oriented. All of the design standards are vital if this environment is to be achieved. Should developers opt to utilize these standards, the opportunity for substantial density bonuses exist, and are, therefore, considered voluntarily self-imposed by prospective developers, but are enforceable by the Township. The substantial density bonuses have been provided to offset the increased costs of providing a "high-quality" development that features aesthetically appealing building and streetscape design with authentic construction materials (e.g., stone, brick, wood, slate), abundant and diverse native landscape materials, and other streetscape and public amenities often overlooked within contemporary suburban shopping centers (§135-256.E(1)). Applicant demonstrated the Proposed Development is consistent with the intent of this section and satisfies the requirements necessary to achieve the noted design incentives.
- In addition to the purposes and community development objectives identified in Article II of this chapter, the following purposes shall apply to this § 135-256E:

(a) Enhance the existing commercial areas with additional amenities and improvements to the streetscape and design of commercial buildings.

(b) Provide multi-modal transportation opportunities including mass transit facilities, pedestrian trail connections and sidewalk connections.

(c) Encourage a mix of uses with a focus on shopping and retail with community facilities including, green spaces, plazas, promenades and other gathering places.

(d) Foster a commercial-village or main street type of environment and not strip commercial development.

(e) Devise techniques to limit and/or tame big-box retail uses so they do not dominate the remaining landscape of the commercial areas of the Township.

(§135-256.E(2))The Proposed Development satisfies the purposes and goals of the noted shopping center design incentives. *N.T. _____, see also, Exhibits A-4, A-11, A-12, and A-13.*

- Developments that comply with all of the following requirements shall be eligible to increase the maximum impervious coverage by an additional 5%. (§135-256.E(6))Applicant demonstrated compliance with all applicable requirements. *Exhibit A-4 and Exhibit A-12.*

25. The Proposed Development will not detrimentally impact other properties in the area, or the public health, safety or welfare. *N.T. 3/12/14 pp. 23-24; 77; 98.*

II. DISCUSSION

A. General Standard For Granting A Variance

A variance must be granted where an applicant establishes that there is unnecessary hardship unique to the property that prevent the use or development of the property in accordance with the applicable zoning regulations, and that the proposed variance will not be adverse to the health, welfare and safety of the community. *Carman v. Zoning Board of Adjustment, 638 A.2d 365 (Pa. Cmwlth. 1994); Pennsylvania Municipalities Planning Code*

("MPC"), 53 P.S. 10910.2. Section 910.2 of the MPC provides that an applicant shall be entitled to a variance where she establishes:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance applicable to the neighborhood or district in which the property is located;

(2) That because of such physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

(3) That such unnecessary hardship has not been created by the applicant;

(4) That the variance if authorized will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impact the appropriate use or development of adjacent property not be detrimental to the public welfare; and

(5) That the variance if authorized will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

53 P.S. 10910.2.

B. Hardship

1. General Principles.

In general, unnecessary hardship may be shown by demonstrating either that the physical characteristics of the property are such that the property could not be used for the permitted purpose or could only be conformed to such purpose at a prohibitive expense, or that the characteristics of the area are such that the lot has either no value or only a distress value for any permitted purpose. *Allegheny West Civic Council, Inc. v. Zoning Board of the City of Pittsburgh*, 547 Pa. 163, 689 A.2d 225 (1997). An applicant for a use variance is NOT required to eliminate every possible permitted use. *Marhsall v. Phila. Zoning Bd. Of Adjustment*, 626 Pa. 385, 97 A.3d 323 (2014).

2. A Reasonable Use of The Property Cannot be made in strict conformity with the C-1 District Regulations.

Penmark's expert testimony demonstrated that although the Property could be used for permitted purposes as zoned, such use would not be reasonable. Specifically, Penmark demonstrated that strict application of the C-1 District regulations would effectively prohibit meaningful development of the property because the identical regulations intended to apply to 10,000 s.f. lots would be applied to a tract of more than 22 acres. Penmark's experts further testified that not only does the size of the Property impose a hardship upon development consistent with the C-1 District regulations, but the shape of the property, particularly the depth of the lot in comparison to its street frontage would prohibit the subdivision and development of the lot consistent with the C-1 District regulations.

C. The Hardship is Not Self-Created

Penmark established that none of the physical circumstances warranting the grant of the requested relief were created by the Applicant. Penmark has owned the Property for nearly forty-seven (47) years and throughout that ownership Penmark has sought, unsuccessfully to make a reasonable use of the Property. The Pennsylvania Supreme Court has concluded that a property owner's purchase of the property with full knowledge that a variance would be necessary to make a reasonable use thereof does not render the hardship self-created and therefore does not preclude the granting of a variance. *Id.* As in *Grace*, in *Garber*, the hardship was inherent to the property and regardless of the price paid or the identity of the owner the hardship would still be present. Accordingly, the Court concluded that the purchase of the Property with knowledge of the impacts of the applicable zoning restrictions could not render the hardship self-created. *See also, Ferry v. Kownack, 396 Pa. 283, 152 A.2d 456 (1959).*

Under the applicable law, and facts of this case, there is no basis to conclude that Pennmark created the hardship for which it seeks relief.

D. Minimum Variance

To minimize the variance relief, Pennmark has request variances as to only two requirements applicable to the C-1 District (each requirement appears twice and therefore a total of 4 variances are requested). Those requests are to permit (1) a shopping center in excess of 50,000 s.f. and (2) to permit accessory fuel pumps. None of the requests for relief deviate from the use or area and bulk requirements applicable to the C-1 District. Rather, Pennmark's request merely asks for adjustments to the applicable regulations to afford a reasonable use of the; a use that is appropriate in scale to the size of the Property. Pennmark's effort to minimize the relief necessary to make a reasonable use of the property is epitomized by the fact that it seeks relief necessary to develop a shopping center consisting of only 110,650 s.f. By contrast, Pennmark's witnesses testified that the Land Use Assumptions report adopted by Mt. Joy Township assumes development consisting of approximately 400,000 s.f. Indeed, the Proposed Development complies with the area and bulk requirements for the C-1 District, further evidencing that the scale and magnitude of the Proposed Development are appropriate for the C-1 District and thus the requested relief has been minimized.

E. Community Impact and Public Welfare

The testimony presented showed that the Proposed Development would comply with the use requirements and area and bulk requirements of the C-1 District. Pennmark demonstrated that the Proposed Development would be consistent with the adjoining properties and that all impacts of the Proposed Development (e.g. Traffic, lighting, noise) would be mitigated to the same or greater extent as would any permitted by-right use. Indeed, Pennmark presented extensive testimony as to the improvements that would be made by Pennmark to mitigate any

traffic impacts. Those improvements include, inter alia, construction of the Norlanco extension and payment of a traffic impact fee of approximately \$1,300,000.00.³ Party Opponents presented no evidence to the contrary. Indeed, Party Opponents' objections to the Application were general objections to development of the Property at all. To the contrary, Pennmark demonstrated that if the requested relief were granted and the Proposed Development were constructed, the impacts complained of by Party Opponents would be lessened when compared to by-right development of the Property. In short, the uncontradicted testimony and evidence produced by Pennmark establishes that the Proposed Development will not alter the essential character of the neighborhood or be detrimental to the community.

F. Summary

For all of the reasons described above, and as will be summarized in short form below, the Board determines that a variance is warranted under the law described above. The size, configuration, and location of the Property are unique physical circumstances and conditions that create unnecessary hardship. This unnecessary hardship has, in no way been created by the Applicant. Pennmark has minimized the relief necessary by limiting such relief only to the magnitude of the Shopping Center proposed and the inclusion of fuel pumps; the proposed uses are not only permitted uses of the Property but are in scale with the Property and in keeping with the surrounding uses. Finally, as discussed above, granting the requested variance will have no detrimental impact on the public welfare, will not alter the essential character of the neighborhood or impair the appropriate use or development of adjacent property when compared to any conceivable by-right development of the Property. By contrast, any by-right development of the Property would result in greater impacts to the surrounding roadways without the

³ As testified to by Pennmark's expert witnesses, Pennmark's \$1.3mm traffic impact fee is paid to the Township and the Township who can then utilize those funds to pay for necessary roadway improvements.

availability of mitigation that can be implemented with the Proposed Development. Accordingly, variance relief is appropriate.

III. CONCLUSIONS OF LAW

1. As owner of the Property, Pennmark has legal standing to make and proceed with the Application. *MPC 53 P.S. §10107(a), 10913.3.*

2. Pennmark's exhibits were entered into and form part of the record in this matter.

3. The applicable standards for a variance detailed in the Municipalities Planning Code and the Mount Joy Township Zoning Code in Sections 910.2 and 135-383.C respectively are satisfied as described herein.

4. The physical features of the Property including its size and shape constitute unique physical circumstances and conditions peculiar to the Property.

5. As a result of the physical features of the Property, as described in the evidence and as summarized herein, the Property cannot be used in strict conformity with the C-1 District regulations set forth in the Zoning Code.

6. When combined with the physical features of the Property, strict application of the C-1 District regulations imposes an unnecessary hardship on the Property. Thus, the Property cannot reasonably be used as zoned.

7. A variance from Section 1282.02 is necessary to enable a reasonable use of the Property.

8. The hardship was not created by Pennmark.

9. The Proposed Development represents the least modification of the applicable requirements of the Zoning Ordinance that will afford relief.

10. The Proposed Development will not alter the essential character of the neighborhood or district in which the Property is located, not substantially or permanently impair the appropriate use or development of the adjacent properties.

IV. ORDER

Penmark's request for a variances from Sections 135-122.C, 135-256.A(1) and 135-256.A(3) of the Mt. Joy Township Zoning Ordinance are hereby GRANTED.

MOUNT JOY TOWNSHIP
ZONING HEARING BOARD

By: _____

By: _____

By: _____