

BOROUGH OF HELLERTOWN  
ZONING HEARING BOARD

**NOTICE OF DECISION**

Sheetz, Inc.  
Attn: Ms. Jessica Urbas  
5700 Sixth Avenue  
Altoona, Pennsylvania 16602

**RE: Request for §450-20A(2) off-street parking,  
§450-22C(4) number of signs, §450-22C(4)  
sign cartway setback and §450-22E distance  
between signs variances in connection with  
proposed construction of a one (1)-story, 6,132  
square foot convenience store with a gas station  
Property: 85 Kichline Avenue and 1706, 1730  
and 1740 Main Street, Hellertown  
(HC/Highway Commercial District/  
Flexible Redevelopment Overlay)  
Hearing held: May 15, 2024/No. 24-4**

Dear Ms. Urbas:

Please be advised that, by a unanimous vote (with one [1] member absent) but, subject to strict compliance by your company and by all subsequent owners and users of the subject property, the Hellertown Zoning Hearing Board (hereinafter "Board") approved your request for the off-street parking, sign and dimensional variances specified hereinbelow in connection with your construction and operation of a one (1)-story 6,132 square foot convenience store with a gas station on the above-referenced property, based and in reliance upon the information supplied in/with your application and the testimony and evidence offered at the time of hearing.

In arriving at its decision, the Board made and reached the following findings and conclusions:

**FINDINGS OF FACT:**

- (1) The Appellant maintains a valid (contingent) leasehold interest in the subject property; accordingly, this Appeal was properly before the Board;
- (2) At the commencement of the hearing, the following witnesses were sworn by the Board Chairman: Mr. David Smith, on behalf of the Appellant, represented by Attorney Julie Burkart, Stevens & Lee, with offices at 840 West Hamilton Street, Suite 521, Allentown, Pennsylvania, 18101; Ms. Mary Bachert, of Bohler Engineering, on behalf of the Appellant; Mr. John Wichner, of Bowman Consulting, on behalf of the Appellant; objector Diane Bachman, resident at 40 Kichline Avenue; Ms. Cheryl Falco, resident at 110 Kichline Avenue; and Mr. Kris Russo, Hellertown Borough Zoning Officer;
- (3) The application for hearing was proper and proper notice of the hearing was given; to-wit: the above-named Zoning Officer confirmed under oath that the meeting had been properly advertised in a local newspaper; specifically on April 29 and May 6, 2024, and that the subject property was posted in accordance with the mandate of the Zoning Ordinance; specifically, on May 7, 2024;

(4) The property is situated in the Flexible Redevelopment Overlay of the HC or Highway Commercial Zoning District, within which the proposed use itself is permitted by right under §450-17 of the Zoning Ordinance, the Appellant proposed fifty (50) off-street parking spaces in connection with their proposed one (1)-story, 6,132 square foot convenience store with a gas station, shy of the 102 spaces required under §450-20A(2) of the Ordinance; they also proposed to install six (6) attached business signs, in excess of the two (2) signs permitted under §450-22C(4); a sign cartway setback of 7.8', shy of the 30' setback required under §450-22C(4); and 22.5' between advertising signs, shy of the 100' requirement imposed by §450-22E; hence, the relief requested from the Board;

(5) At the request of Attorney Burkart, the entire zoning packet, including the legal notice, posting and advertisement, Planning Commission and Borough Council letters of support relative to the proposed Lanta Bus Stop shelter, the Zoning Application, Zoning Appeal, letter from Bohler Engineering dated April 12, 2024, the Bowman letter/parking study also dated April 12, 2024, Attachment 1 and Attachment 2, Convenience Store/Gas Station description with Time-of-Day Distribution for Parking Demand, Attachment 3, consisting of the sundry plans submitted, and the Zoning regulations applicable to this Appeal, was incorporated into the record, collectively, as Exhibit A-1, without objection;

(6) As educed from the opening statement of Attorney Burkart, they will (at the request of the Borough) consolidate the four (4) parcels that were previously occupied by Star Pontiac and redevelop the property for a convenience store, including sit-down eating, and a gas station, for which they have letters of support from the Planning Commission and Borough Council; particularly, with respect to the Lanta Bus Stop shelter to be included in the redevelopment plans at the Borough's request;

(7) As educed from the testimony of Mr. Smith, elicited in part via the inquiry of Attorney Burkart:

- a. He has been with Sheetz for 16 years, the last 8.5 years as its real estate site selector, in which capacity he searches for sites that are zoned properly for their proposed use(s);
- b. Referring to Exhibit A-1, they have a lease with the property owner, Vera Cruz Holdings, LLC, which, *inter alia*, gives them the authority to bring the present action before the Board;
- c. He presented Exhibit A-2, the deeds to the property establishing ownership by the above-named LLC;
- d. They are proposing a single-story 6,132 square foot convenience store with indoor/outdoor seating for those who purchase their made-to-order food items, and self-serve gas pumps;
- e. The square footage proposed is their standard sized store, with 2,264 square feet serving as the sales floor, 450 square feet dedicated for the proposed seating and 759 square feet for their made-to-order "kitchen";
- f. They are proposing twenty (20) outdoor seats during the warmer months of the year;

- g. Their business model depends on many of their customers needing more than one (1) of the services they offer and studies have shown this to be true of approximately thirty (30%) percent of their patrons;
- h. Their typical number of parking spaces is 32 to 40 but 50 is their “sweet spot”, based on other stores they operate;
- i. Though there will be no signs at the rear of the property, those proposed are needed for identification by, particularly, vehicular passers-by and for safety, especially since they will be located right off of the Route 78 exit;
- j. They do not have “events” at Sheetz, such as car shows and the like, which would attract larger gatherings, and they have a procedure in place to avoid such longer-term gatherings and/or problematic customers; and
- k. They will not have parking for tractor trailers and it is even difficult for trucks to get into the gas pumps area, in addition to which their diesel pumps are not high pressure and, therefore, it would take “forever” to fill the tank of a tractor trailer;

(8) As educed from the testimony of Ms. Mary Bachert, the Project Engineer/Project Manager for this proposed redevelopment, as also elicited in part via the inquiry of Attorney Burkart:

- a. She has been licensed for twenty (20) years and, for the past 7.5 years, has done land development plans with Bohler Engineering and, in that capacity, she prepared the letter dated April 12, 2024 which is part of the Zoning Packet that was incorporated by reference, as hereinabove;
- b. They have already secured Preliminary Plan approval from both the Planning Commission and Borough Council;
- c. There will be an entrance on Franklin Street and one on Route 412;
- d. The gas facility will have six (6) pumps, for a total of twelve (12) fueling stations;
- e. The Aerial which is part of the record depicts the four (4) parcels which they are consolidating at the request of the Borough;
- f. The above-required consolidation creates a signage hardship for them inasmuch as what they are proposing would be permitted by right if they were allowed to keep the four (4) parcels separate but the variance is needed since their standard number of signs will now be located on one (1) parcel, though the signage will still be less than what adorns the property presently at Star Pontiac, as shown on Exhibit A-11;
- g. Further to the foregoing, two (2) attached signs totaling 100 square feet are permitted by right in this zoning district and, though they are proposing total signage of only 87.6 square feet, it is spread “over” the proposed six (6) signs, which includes the Sheetz logo on the three (3) canopy signs, as shown on Exhibit A-3;

- h. Considering the 6' by 12' "Star" sign, the 80 square foot "Pre-Owned" sign, the "Cars" and "Trucks" signs, with the addition of the pole sign, the existing signage for Star totals 373 square feet, compared to the 87.6 square feet of signage they are proposing;
- i. The sign cartway setback they are proposing relates to the proposed Lanta Bus Stop shelter required by the Borough since, considering the width of the existing roadway and the "turn right only" lane, the location proposed for the shelter is the only one available therefor;
- j. The above shelter also relates to the distance between signs variance they are requesting, since that shelter will be situated only 22.5' from the existing (Adams Outdoor) billboard along the road;
- k. With regard to the requested off-street parking variance, while the Ordinance considers their proposal to consist of three (3) separate uses for the purpose of calculating the required spaces; to-wit, the retail sales, the gas station and the "restaurant"; they see it as one use since, per the testimony of Mr. Smith, their business model depends on their customers requiring the use of more than one (1) of the services they offer while on the property;
- l. She noted the other Sheetz stores in the area, all of which have fewer spaces than they are proposing for this site, and pointed to the Time-of-Day Distribution for Parking Demand exhibit, which was a compilation of needed parking on a weekday at five (5) study sites in an urban/suburban setting to support their position that the only time they would likely use nearly all of the parking spaces they are proposing would be during the noon hour, when serving lunch foods and, in doing so, pointed out that the Ordinance does provide for some shared spaces for overlapping usage;
- m. In connection with Mr. Smith's response to the Board inquiry regarding deliveries (wherein he responded that they average one [1] truck delivery per day), there is a delivery area in the rear of the building, with an oversized access aisle, which does not overlap the patron parking area;
- n. Likewise, the fuel delivery sites, which are demarcated in stripes on the Plan, are situated as separate areas for a tanker to park to fill the pumps; and
- o. There is no other room on the property to provide additional parking and, likewise, there is no adjacent property available for lease or purchase, the addition of which to this parcel would or may aid in helping them meet the off-street parking requirement imposed by the Ordinance;

(9) As deduced from the testimony of Mr. John Wichner, the office manager for Bowman Consulting, on behalf of the Appellant, likewise elicited via the inquiry of Attorney Burkart:

- a. His main duties consist of traffic and parking studies and analysis;
- b. Licensed in Pennsylvania and four (4) other states, he has been qualified to testify as an expert in over sixty (60) municipalities relative to applications for convenience stores and gas stations;
- c. They did the traffic and parking impact studies which are part of the record in this matter;
- d. PennDot has jurisdiction over its own roads (i.e., Route 412) and the HOP process, in connection with which they sometimes coordinate with LANTA for bus stop shelters such as that which is proposed for this site;
- e. Their "Bible" is the ITE manual, within which the proposed use is included as land use 945, part of the packet which is part of the record;
- f. Those studies were based on actual car counting at the noted area Sheetz stores which, he pointed out, are each in close proximity to Route 78 or Route 222 and each has fewer spaces than are proposed at this site; and
- g. He opined that the three (3) proposed uses here (retail, gas, food service) are symbiotic both in terms of the Zoning Ordinance and the ITE manual;

(10) Ms. Diane Bachman, a 25-year resident at 40 Kichline Avenue, objected to the proposal on the basis of parking, advancing that she is directly affected in that she has been dealing with parking difficulties since the days of Chevy 21, when they used all of the spaces available on Kichline, further indicating that she can't pull out of her garage without "taking her life into her own hands" with all of the traffic on that roadway, adding that she has known other Sheetz facilities to host car clubs and also observed that the street has a 6-ton capacity, opining that a full gas tanker weighs more than that and will adversely impact the roadway, in connection with all of which she presented a statement in opposition to the Appeal, ostensibly signed by sundry local property owners/occupants and entered as Exhibit O-1, without objection;

(11) Ms. Cheryl Falco, resident at 110 Kichline Avenue, also objected on the basis of parking, mirroring the testimony of Ms. Bachman relative to the difficulty of residents finding on-street parking spaces; and

(12) No other witnesses appeared at the time of hearing to testify in favor of nor opposition to this application and there was no further inquiry from nor any comment made by anyone from the public, either in person or virtually.

### CONCLUSIONS OF LAW:

In order to grant the relief requested, it is necessary for the Board to conclude that the application complies with the requirements necessary for the approval of a variance under applicable law, as set forth in the Pennsylvania Municipalities Planning Code and in the Hellertown Zoning Ordinance; specifically, Section 450-65 of the latter.

The Board seriously considered the testimony of the objectors present at the hearing but, with respect to Chevy 21, if in fact the parking on Kichline Avenue was related to that dealership, it was more likely the dealership itself parking cars there while awaiting repair, than it was patrons using those on-street spaces and walking onto the lot to peruse the inventory (but, in any event, also recognizing that Kichline Street is a public street) and, with respect to the proposed use, especially recognizing the evidence presented relative to like facilities (most of the same or larger size than that proposed, with fewer parking spaces, situated off of a major thoroughfare such as that proposed), felt it was more likely that, if there were intermittent noon hours when the majority of the off-street parking spaces were occupied, it was more likely that a potential patron would leave the premises in favor of one of the other nearby convenience stores than parking on Kichline Avenue and walking up to the store on this site. Accordingly, it was the unanimous conclusion of the Board, as constituted at this meeting, that the Appellant established its/their entitlement to the requested off-street parking, sign and dimensional variances in connection with their proposed construction of a one (1)-story 6,132 square foot convenience store with a gas station, provided that they and all subsequent owners and users of the subject property comply strictly with the conditions attached by the Board and set forth below, based upon the following:

- (1) The permitted (by right) nature of the proposed use itself within the zoning district in which it is to be situated, the required placement of the LANTA bus stop shelter which led to the requested dimensional variances and had nothing to do with the proposed use itself, location of the subject property right off of the Route 78 exit which necessitated the signage proposed (which would have been permitted by right were it not for the Borough's requirement that the Appellant consolidate the lots, noting also that the total square footage proposed is less than the maximum permitted in this zoning district and, in fact, is a significant reduction in signage from that which is presently situated on this property) and absence of any adjoining property available for lease or purchase, the addition of which to this property would or may aid the Appellant in meeting the off-street parking requirement imposed by the Ordinance, especially noting that any permitted use on this property is going to require significant off-street parking and, in this instance, further recognizing that other similarly situated Sheetz stores operate with fewer spaces than presently proposed, together, represent unique physical circumstances or conditions attributable to this property which, under the circumstances, create an unnecessary hardship and justify the approval of the requested off-street parking, sign and dimensional variances in this instance;
- (2) Because of the above unique physical circumstances and/or conditions, the property cannot be developed in strict conformity with the applicable provisions of the Zoning Ordinance and, therefore, authorization of the requested variances is necessary to enable the reasonable (permitted, by right) use of the property;

- (3) This Appellant did not create the unnecessary hardship(s);
- (4) Given that the subject property is surrounded by other (permitted, by right) commercial uses and again considering the evidence presented by/on behalf of the Appellant relative to the expected off-street parking needs associated with the proposed use, authorization of the requested variances will not alter the essential character of the neighborhood in which the property is located, nor substantially or permanently impair the appropriate use and/or development of adjacent properties; and
- (5) For all of the above reasons, authorization of the requested variances represents the minimum modification of the regulations in issue.

DECISION:

In consideration of all of the foregoing, a Motion was made by Mr. Mills and seconded by Ms. Fish to grant the requested off-street parking variance; provided that the Appellant and all future owners and users of the subject property strictly adhere to the following conditions:

1. The variances granted shall apply to the specified use by this Appellant only, such that any other use by any other potential occupant of the subject property shall be required to return to the Board for further consideration; specifically, with respect to off-street parking;
2. The fifty (50) off-street parking spaces to be provided shall be utilized by employees and patrons of Sheetz only and for no other purpose(s); and
3. There shall be no rental of any off-street parking space(s) to any other individual(s) and/or entity or entities for any purpose:

Ayes: Mr. Mills, Ms. Fish, Mr. Dietrich and Mr. Solt;

Nays: None;

Absent: Ms. Hutchison.

Thereafter, a motion was made by Ms. Fish and seconded by Mr. Mills to grant the requested number of signs variance:

Ayes: Ms. Fish, Mr. Mills, Mr. Dietrich and Mr. Solt;

Nays: None;

Absent: Ms. Hutchison.

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Finally, a motion was made by Ms. Fish and seconded by Mr. Solt to grant the two (2) requested dimensional variances:

Ayes: Ms. Fish, Mr. Solt, Mr. Dietrich and Mr. Mills;

Nays: None;

Absent: Ms. Hutchison.

BOROUGH OF HELLERTOWN  
ZONING HEARING BOARD

DATE: 31 May 24



Thomas Dietrich, Chairman

RAN/leh  
xc: Julie Burkart, Esquire  
Ms. Diane Bachman  
Ms. Cheryl Falco  
Zoning Board file