

**LAW OFFICE OF
SMITH AND PORTER, P.C.**
THE STOCKING WORKS
301 SOUTH STATE STREET
NEWTOWN, PA 18940-1997
phone 215-860-2171
fax 215-860-5171

CRAIG A. SMITH
Direct Dial 215-860-9756
csmith@smithandporter.com

CATHERINE ANNE PORTER*
Direct Dial 215-860-6641
caporter@smithandporter.com
*Admitted in PA & NJ

August 8, 2024

J.G. Petrucci Company, Inc.
Attn: Gregory T. Rogerson - grogerson@jgpetrucci.com
171 State Route 173, Suite 201
Asbury, NJ 08802

RE: DIGIROLAMO TRACT – WAREHOUSE – LAND DEVELOPMENT PLAN (LD 2023-04) TMP #06-004-016 AND TMP #06-004-017-001 BUCKINGHAM TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA COLD SPRING CREAMERY ROAD AND STONEY LANE PRELIMINARY LAND DEVELOPMENT PLAN

Dear Mr. Rogerson:

At its public meeting held July 24, 2024¹, the Buckingham Township (hereinafter "Township") Board of Supervisors (hereinafter "Supervisors") DENIED the above-referenced application for Preliminary Land Development Plan Approval of the "Preliminary-Final Land Development Plans for Proposed Warehouse-DiGirolamo Tract" (Sheets 1 to 76 of 76) dated May 17, 2023, last revised April 9, 2024, and prepared by Gilmore and Associates, Inc, as last revised and submitted to the Township, and as accompanied by supporting documentation as submitted to the Township (hereinafter "Plan").

The supporting documentation ("Supporting Documentation") submitted with the Plan included:

- Waiver Requests last revised April 9, 2024, and prepared by Gilmore and Associates, Inc.

¹ Counsel for the Applicant graciously agreed at the public meeting to extend the time within which Plans may be approved under the requirements of 53 P.S. § 10508 to September 1, 2024.

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- “DiGirolamo Tract – Warehouse Development – Transportation Impact Study” dated May 11, 2023, last revised April 8, 2024, and prepared by Traffic Planning and Design, Inc.
- “Erosion & Sediment Control Narrative” dated May 2023, last revised April 2024, and prepared by Gilmore and Associates, Inc.
- “Post-Construction Stormwater Management (PCSM) Report” dated May 2023, last revised April 2024, and prepared by Gilmore and Associates, Inc.
- “Site Analysis and Resource Conservation Plan” dated April 2024 and prepared by Gilmore and Associates, Inc.
- Cut/Fill Report last revised April 8, 2024 and prepared by Gilmore and Associates, Inc.
- “Home Owner Notice” and Information Packet dated December 15, 2023, prepared by Gilmore and Associates, Inc and sent certified mail to surrounding property owners within 1,000 feet in accordance with Buckingham Township Subdivision and Land Development Ordinance, enacted December 29, 2003 as amended to October 14, 2009 (hereinafter "SALDO") § 5.1 E.
- Engineering Response Letter to Bucks County Planning Commission dated December 15, 2023, revised April 9, 2024, and prepared by Gilmore and Associates, Inc.
- Engineering Response Letter to Knight Engineering, Inc. dated December 15, 2023, revised April 9, 2024, and prepared by Gilmore and Associates, Inc.
- Engineering Response Letter to Landscape Review Consultant dated December 15, 2023, revised April 9, 2024, and prepared by Gilmore and Associates, Inc.
- VW Consultants, LLC Draft Planning Module and Bucks County Health Department Correspondence.
- National Flood Insurance Program Map Panel 305 of 532 last revised March 16, 2015.
- National Flood Insurance Program Map Panel 303 of 532 last revised March 21, 2017.
- “As-Built Monumentation Plan – Doylestown Airport” (Sheet 1 to 2 of 2) dated April 12, 2011, and prepared by Gilmore and Associates, Inc.

- “Boundary & Topographic Survey – Boyce Tract Subdivision” (Sheet 1 of 1) dated June 23, 2021 and prepared by Gilmore and Associates, Inc.
- “Doylestown Airport – Airport Property Map” dated November 28, 2022, and prepared by TranSystems Corporation (formerly L.R. Kimball)
- “ALTA/NSPS Land Titles Survey – Progress Meadow Lots 2 & 3 06-004-016 & 06-004-017-001” (Sheet 1 to 1 of 2) dated February 13, 2023, and prepared by Gilmore and Associates, Inc.
- Transmittal Letter dated December 19, 2023, and prepared by Gilmore and Associates, Inc.
- Buckingham Township Subdivision and Land Development Application received December 20, 2023 with the assigned Identification No. of LD 2023-04
- Email Correspondence dated December 19, 2023 from Gilmore and Associates, Inc. to Plumstead Township
- Deeds for TMP# 06-004-016 and TMP# 06-004-017-001
- Component 2 Sewage Facilities Planning Module
- Existing Tree Survey dated April 4, 2024 and prepared by Gilmore and Associates, Inc.
- Landscape Renderings prepared by Gilmore and Associates, Inc.

I. BACKGROUND AND HISTORY:

The within land development and lot line change application has garnered significant community attention and opposition. The lands, in part, were the subject of a prior land development application called "Progress Meadow" that proposed a self-storage facility and two 40,000 square foot warehouses divided into 4,000 square foot sub units with a loading dock for each sub unit. The Progress Meadow Plan was approved by Buckingham Resolution 1662 on September 22, 1999. The approved plan was recorded with the Bucks County Recorder of Deeds on March 23, 2000 at Book 300, page 11. The self-storage facility was constructed, but the warehouse was not.

The current submitted Buckingham Township Subdivision and Land Development Application proposes a Lot Line Change to Tax Map Parcels #06-004-016 (DiGirolamo), #06-004-017-001 (DiGirolamo), and #06-004-012-001

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(Bucks County Airport Authority) and the Land Development of the remaining lands of DiGirolamo as a G3 - Warehouse and Distribution Use. A Warehouse and Distribution Use is a Use Permitted by Right in the PI-2 Planned Industrial District-2. However, whether what, in fact, was being proposed is a G3 Warehouse and Distribution Use or a G6 Truck Terminal Use became a prime issue of contention between the Applicant and the community opposition.

As part of the Lot Line Change, a 7.60 Acre (gross) parcel (identified as Parcel A) is proposed to be transferred from the properties owned by DiGirolamo (58.15 Gross Acres before the transfer) to the property owned by the Bucks County Airport Authority (11.97 Gross Acres before the transfer), resulting in the Bucks County Airport Property being provided with 19.57 Acres (Gross). The 7.6 acre tract would be restricted from development, Furthermore, the two (2) DiGirolamo Parcels (TMP #06-004-016 and TMP #06-004-017-001) are proposed to be consolidated into a single 50.54 Acre (Gross) parcel.²

The consolidated 50.54 Acre (Gross) DiGirolamo parcel is then proposed to be developed to support the construction of a 150,000 square foot Warehouse Building with thirty (30) Loading Docks, 145 proposed parking spaces, 167 reserve parking spaces, the extension of Progress Meadow Drive onto the DiGirolamo parcel, the construction of a new cul-de-sac, a new internal access drive for passenger vehicles to the Progress Meadow Drive Cul-de-Sac, and a new access drive for the delivery vehicles (up to a WB-62 design vehicle) to Stoney Lane through TMP 06-004-019-002, formerly known as the Boyce Tract (currently owned by the Bucks County Airport Authority), stormwater management facilities, landscaping and lighting improvements. At the public meeting, the Applicant further agreed to place a conservation easement over 21.18 acres of the tract as a condition of approval.

The present application was submitted to Buckingham Township on December 20, 2023. The Application has been the subject of: a January 2, 2024 Email from Alan Blean, Plumstead Township Public Works Director to Brian

² The proposed Plan integrated the lot line change proposing the transfer of 7.60 Acres from TMP 06-004-017-001 (DiGirolamo) to TMP 06-004-012-001 (the Bucks County Airport Authority). The Board notes that its denial of the Plan, also, by necessity, denies the lot line change. The Plan also proposes the relocation of the previously conditionally approved subdivision lot line between Lot 1 and Lot 2 of the subdivision of the Boyce Tract (TMP 06-004-019-002). However, in response to inquiry from the Township Engineer, the Applicant's engineer indicated that the relocation of the conditionally approved lot line of the Boyce Tract is not part of this application. Accordingly, the Plans were revised to identify the Boyce Tract lot lines (TMP 06-004-019-002) as "Previous Conditional Approved Subdivision Line by Others" and "Proposed Subdivision Line by Others".

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Hensel, Applicant's engineer, a February 6, 2024 written review of the Township Engineer, Knight Engineering, Inc., a February 29, 2024 written review of the Bucks County Planning Commission, an April 22, 2024 written review of the Buckingham Township Landscape Review Consultants, an April 29th, 2024 second written review of the Township Engineer, Knight Engineering, Inc., a July 19, 2024 email from the Township Zoning Officer reiterating a February 28, 2023 review of a prior version of the plan submittal, an initial February 6th, 2024 meeting of the Buckingham Township Planning Commission and a subsequent May 1, 2024 meeting, where the plan was recommended for approval to the Board of Supervisors by a six to one vote. The Township also received correspondence dated May 9, 2024 from Peter Nelson, Esq. of Grim Biehn and Thatcher representing the "Stop the Warehouse" community group; a May 10th, 2024 letter from Jonathan J. Reiss, Esq. of Grim Biehn and Thatcher, Solicitors for neighboring Plumstead Township; and a June 28th, 2024 letter from State Senator Steven J. Santarsiero and State Representative Timothy Brennan, all opposing the application.

Having reviewed and considered the foregoing, the Township at its meeting on July 24, 2024 considered the proposed plan and the majority of the Board of Supervisors voted to deny the proposed plan.³

³ The Township is aware there is no mandatory requirement that a hearing be held prior to the approval of a land development plan. *Eastern Consolidation and Distribution Services, Inc. v. Board of Com'rs of Hampden Tp.*, 701 A.2d 621 (Pa. Cmwlth. Ct. 1997). The MPC provides, "the governing body ...may hold a public hearing." 53 P.S. § 10508(5). "While Section 508(5) of the Code authorizes hearings, the language is permissive rather than mandatory. (Citations omitted.)" *Edwards Engineering Corp. v. Davies*, 471 A.2d 119, 80 Pa. Cmwlth. 47 (Pa. Cmwlth. Ct. 1984). "In other words, public hearings are not required." *In re Provco Pinegood Sumneytown, LLC*, 216 A.3d 512 (Pa. Cmwlth. Ct. 2019).

As previously noted, the instant proposed subdivision is a *cause celebre*. It has been widely covered in the press, social media, by mail and literature drops in addition to notice pursuant to SALDO § 5.1 E. Accordingly, given the controversy, even though "the MPC places virtually no procedural requirements on a [local governing body] considering subdivisions and land development proposals.'...", *Miravich v. Township of Exeter*, 6 A.3d 1076 (Pa. Cmwlth. 2010), the Township determined that at its public meeting it would allow residents and groups to establish party status in order to guarantee they had procedural standing so as maintain the right of appeal of any Township decision. *Miravich v. Twp. of Exeter, supra* 6 A.3d 1076 at 1078 ("i.e., whether one has asserted his right to participate sufficiently early.") This is because "the law is well established that appeals from governing bodies' decisions rendered in their adjudicatory (rather than legislative) capacities are taken to trial courts pursuant to the Local Agency Law." *Worthington v. Mount Pleasant Twp*, 212 A.3d 582 (Pa. Cmwlth. Ct. 2019). As to standing, Section 752 of the Local Agency Law (2 Pa.C.S. § 752) provides that "[a]ny person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals" *Id.* 212 A.3d 582 at 589.

II. Basis for Denial.

Knight Engineering review letter of April 29, 2024:

The Township Engineer in a 27 page review letter consisting of 124 substantive paragraphs with subparts, issued a review of the Plan and Supporting Documents with the requirements of SALDO and incidentally the Buckingham Township Zoning Ordinance, (incorporating amendments enacted to September 22, 2021) (hereinafter "ZO"). As this is a preliminary plan submission, it is to "present a basis for consideration prior to preparation of a final plan." SALDO § 2.2. The Township SALDO stipulates, "[t]he township may approve plans subject to conditions which require the consent of the Applicant in which event the Applicant shall advise the Board of Supervisors prior to the final vote by the Board of Supervisors on the plan as to whether he accepts or rejects said conditions." SALDO § 5.1 G.

At the July 24, 2024 meeting the Applicant indicated that they would accept as conditions, or "will comply" with all the items in the Township Engineer's review letter for which they had not requested a waiver and all items in the landscape review consultants' and Bucks County Planning Commission's review letters. SALDO § 5.1 G. The Pennsylvania Municipalities Planning Code ("MPC") authorizes the imposition of conditions upon a land development plan. *Blue Mt. Pres. Ass'n v. Twp. of Eldred*, 867 A.2d 692 (Pa. Cmwlth. Ct. 2005);⁴ *Doylestown Township v. Teeling*, 160 Pa. Commw. 397, 635

Further, the Township, to assure a full and complete record was made, assured that no party was denied an opportunity to be heard fully, or had testimony offered and excluded. *Eastern Consolidation and Distribution Services, Inc. v. Board of Com'rs of Hampden Tp.*, 701 A.2d 621 at 624. 53 P.S. § 11005-A. So that a reviewing court would not have to entertain the presentation of additional evidence, the Township had a court reporter present, had witnesses sworn and allowed all parties to present such evidence as they desired. While the Township sought to offer the parties the right to cross examine each side's sworn witnesses, counsel for the "Stop the Warehouse" group declined to allow that party's witnesses to be cross examined, as was his right. *In re Provco Pinegood Sumneytown, LLC*, 216 A.3d 512 (Pa. Commw. Ct. 2019). ("Because Section 508(5) of the MPC does not require a public hearing on land development applications, we cannot interpret that provision as permitting a right of cross-examination of witnesses at a public meeting of the Commissioners.") Nonetheless, the Township considered all parties' evidence.

⁴ "[W]hile imposition of a condition to bring a non-conforming special exception application into compliance with the zoning ordinance is improper, see *Lafayette College (v. Zoning Hearing Board)*, 138 Pa. Cmwlth. 579, 588 A.2d 1323 (1991)), the MPC authorizes the imposition of conditions upon a land development plan." (Citation omitted.) *Id.*, 867 A.2d 692.

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A.2d 657 (Pa. Cmwlth. 1993). A "preliminary plan containing minor defects correctable by amendment must be approved subject to a condition that necessary corrections be made. *Shelbourne Square Assoc. v. Board of Supervisors of Township of Exeter*, 794 A.2d 946 (Pa. Cmwlth. 2002), appeal denied, 572 Pa. 727, 814 A.2d 679 (2002)." *CACO Three, Inc. v. Bd. of Supervisors*, 845 A.2d 991, 994 (Pa. Cwlth. Ct. 2004). As such, "If a preliminary plan is conditionally approved as aforesaid, it shall not be given final approval by the Board of Supervisors until all preliminary plan approval conditions are met and corrected on the final plan." SALDO § 5.1 G. Consequently, the Applicant having agreed to conform with all the items in the Township review letters other than the requested waivers, this Board need not here consider those items in the Township review letters.

However, the Applicant did not agree to comply with all the Township SALDO requirements. Instead, the Applicant submitted a written waiver (from the SALDO) request, last revised on April 9, 2024. The waiver request is apparently to comply with SALDO § 9.39's requirement that the requests for a modification (waiver of a SALDO requirement) shall be in writing, shall be a part of the preliminary plan application, shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the Ordinance involved, and the minimum modification requested. *Id.* The Applicant further at the July 24, 2024 meeting withdrew certain of the waiver requests; specifically, with reference to the paragraphs in the Township Engineer's April 29, 2024 letter review: (i) the Applicant indicated it would comply with Paragraph 4.2 (SALDO §§ 3.3.C.2.r and 5.2.B.18.m) at final plan application, but currently have no architectural elevations and renderings of the proposed buildings; (ii) the Applicant indicated it would withdraw the waiver set out at Paragraph 4.8 (SALDO § 9.17.A.12) by virtue of reducing the number of docks to 15 located on one side of the building; (iii) the Applicant indicated it would withdraw the waiver set out at Paragraph 4.12 (SALDO § 9.20.D.3.a.iii) as they will comply with the Landscape Review Consultant letter; (iv) while not withdrawing the waiver request, the Applicant indicated it may be able to comply with Paragraph 4.14 (SALDO § 9.22.B) with the plan reconfiguration. The remaining requested waivers the Applicant continues to seek relief from this Board for.

The grant of waivers is made pursuant to the requirements of the Pennsylvania Municipalities Planning Code ("MPC") § 512.1 (53 P.S. § 10512.1) and the SALDO § 9.39.⁵ The Pennsylvania courts have expounded upon this

⁵ The Municipalities Planning Code (hereinafter "MPC") at Section 512.1(a) provides that:

statutory language explaining that it is appropriate to grant a waiver “where a development offers a substantial equivalent to a subdivision requirement, where an additional requirement would offer little or no additional benefit, and where literal enforcement of a requirement would frustrate the effect of improvements.” *Monroe Meadows Hous. P’ship, LP v. Mun. Council*, 926 A.2d 548, 553 (Pa. Cmwlth. 2007), citing *Levin v. Township of Radnor*, 681 A.2d 860 (Pa. Cmwlth. 1996). See also, *Tioga Pres. Group v. Tioga County Planning Comm’n*, 970 A.2d 1200, 1205 (Pa. Cmwlth. 2009). The grant of waivers from SALDO provisions requires less robust proof than the proof necessary for the granting of a variance from a zoning ordinance requirement. *Telvil Constr. Corp. v. Zoning Hearing Bd. of E. Pikeland Twp.*, 896 A.2d 651, 656 (Pa. Cmwlth. 2006). The decision to grant waivers is within the discretion of the Board of Supervisors. *Miravich v. Twp. of Exeter*, 54 A.3d 106, 114 (Pa. Cmwlth. 2012). However, A township may grant waivers only where such waivers are deemed to be appropriate in the interest of the township. *Hallett’s Wood*, 688 A.2d 748, 751 (Pa. Cmwlth. 1997). Ultimately, this Board’s duty is to actively oppose schemes of development unreasonably proposed and conceived, but also to sanction well planned development. *CGR Real Estate, LLC v. Borough Council of the Borough of Franklin Park*, 165 A.3d 1059 (Pa. Cmwlth. 2017, unreported.) The Board also takes note of the instruction of the Commonwealth Court in *Ruf v. Buckingham Twp.*, 765 A.2d 1166 (Pa. Cmwlth. Ct. 2001):

In deciding whether to grant a modification pursuant to Section 512.1(a) of the MPC, “[the governing body’s] duty is to actively oppose schemes of development unreasonably proposed and

(a) The governing body or the planning agency, if authorized to approve applications within the subdivision and land development ordinance, may grant a modification of the requirements of one or more provisions if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modifications will not be contrary to the public interest and that the purpose and intent of the ordinance is observed.

53 P.S. §10512.1(a). The Buckingham SALDO, at Section 9.39, provides,

The Board of Supervisors may grant modification of the requirements of one or more provisions of this Ordinance in accordance with the provisions of the MPC (Municipalities Planning Code). All requests for a modification shall be in writing and shall accompany and be a part of the preliminary plan application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the Ordinance involved, and the minimum modification requested. If additional relief is requested during the Final Plan review process, the Applicant shall submit an updated waiver request letter, in accordance with the above, with the submission of Final Plans.

conceived, but likewise, [its] duty is to sanction well planned development." *Raum v. Board of Supervisors of Tredyffrin Township*, 29 Pa. Commw. 9, 370 A.2d 777, 781 (Pa. Cmwlt. 1977). Further, where literal enforcement of a requirement under the subdivision and land development ordinance will frustrate the effect of the improvements designed to implement other requirements, grant of a waiver is proper under Section 512.1(a) of the MPC. *Levin v. Township of Radnor*, 681 A.2d 860 (Pa. Cmwlt. 1996).

Id., 765 A.2d 1166 at 1169. But *cf.*, *Soliday v. Haycock Twp.*, 785 A.2d 139 (Pa. Cmwlt Ct. 2001). In applying the foregoing parameters, the following is the Board's disposition of each waiver request.

1. A waiver is denied from SALDO § 5.2.B.16 requiring the Land Development Plans to identify the existing features (including buildings, driveways, wastewater lines, storm drains, etc.) within 500 feet of and within the site. The Applicant claims available underground utility data within this area is incomplete, particularly regarding utility service connections on adjacent private properties and that applicant has no authority to go on private property. The Board finds this justification wanting. No showing was made of any effort to ask landowners for permission to enter their properties. The Board does not find the proffered aerial photograph offers a substantial equivalent to the subdivision requirement. *Monroe Meadows Hous. P'ship, LP v. Mun. Council, supra.*, 926 A.2d 548 at 553; *Levin v. Township of Radnor, supra.*, 681 A.2d 860. This Board finds such information as is sought to be omitted is crucial to this application especially considering the ecological, safety, and development concerns amply expressed by the "Stop the Warehouse" group. This Board's obligation is to sanction well planned development. *CGR Real Estate, LLC v. Borough Council of the Borough of Franklin Park, supra.*, 165 A.3d 1059. However, we cannot do so without the required information. Further, this Board finds the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question, and will be consistent with the public interest. 53 P.S. §10512.1(a); SALDO 9.39. Finally, the Applicant has not shown that the SALDO's mandatory provision is unreasonable, SALDO § 9.39.

2. A waiver is denied from SALDO §§ 3.3.C.2.r and 5.2.B.18.m requiring architectural elevations and renderings of the proposed buildings be provided with the Preliminary Plans and in the Site Analysis and Resource Conservation (SARC) Plan. One of this Board's crucial considerations of this Plan is the visibility of this structure from Cold Spring Creamery and other

surrounding roads. Waiting for the final plan application as Applicant proposes would make a meaningful consideration of these aspects of the Plan occur too late. This requirement offers significant benefit to this Board's consideration of the Plan. *Cf. Monroe Meadows Hous. P'ship, LP v. Mun. Council, supra.*, 926 A.2d 548 at 553 (Board should waive requirement that would offer little or no additional benefit.) Additionally, were this waiver granted, this Board could not determine whether Applicant's scheme of development is unreasonably proposed and conceived or is a well planned development. *Raum v. Board of Supervisors of Tredyffrin Township, supra.*, 370 A.2d 777 at 781; *CGR Real Estate, LLC v. Borough Council of the Borough of Franklin Park, supra.* Further, this Board finds the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question. 53 P.S. §10512.1(a); SALDO § 9.39. Further, the Applicant has not shown that the SALDO's mandatory provision is unreasonable, SALDO § 9.39.

3. A waiver is denied from SALDO § 9.2.D requiring that all subdivision and land developments avoid the necessity for excessive cuts and fills.⁶ The Applicant represents the request is due to the existing topography of the site that requires a need for cut & fill for areas throughout the site to appropriately accommodate the building pad, operational needs and stormwater management. The Applicant notes the proposed grading design seeks to minimize excessive cut and fill. The Township Engineer observes that the layout of the 30 "Cross- Dock" Loading Bays are creating some of the excessive cut and fill volumes on this site and indicates the Applicant should consider revising the design to eliminate the "cross-dock". The Applicant conceded at the meeting that its agreement to a condition stipulating only 15 docks on one side of the building may make this waiver unnecessary. As it appears the reconfigured Plan with 15 docks likely will make the waiver unnecessary, this Board concludes the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question. Rather, it appears the peculiar conditions pertain to Applicant's design not to the land in question. 53 P.S. §10512.1(a); SALDO § 9.39. And, the Applicant has not shown that the SALDO's mandatory provision is unreasonable, SALDO § 9.39.

4. A waiver is denied from SALDO § 9.7.A.6 prohibiting the construction of dead-end streets (with the exception of stub streets that are provided for connection for future developments) and Cul-de-Sac Streets. The Applicant states it needs the waiver to allow the installation of a Cul-de-Sac at the end of Progress Meadow Drive. However, there has been no demonstration

⁶ Excessive cut or fill is defined as site improvements requiring greater than four (4) feet of excavation or backfill.

that literal enforcement of the requirement would frustrate the effect of the improvements. *Monroe Meadows Hous. P'ship, LP v. Mun. Council, supra*. There has been no showing that the SALDO's mandatory provision is unreasonable, SALDO § 9.39. This Board finds that this is a scheme of development unreasonably proposed and conceived. *Ruf v. Buckingham Twp., supra*, 765 A.2d 1166 at 1169. Further, this Board finds the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question, and will be consistent with the public interest. 53 P.S. §10512.1(a); SALDO § 9.39.

5. A waiver is denied from SALDO § 9.7.A.13 requiring where a Land Development abuts or contains an existing street of inadequate width or substandard construction, the Applicant shall be required to widen and/or reconstruct the roadway to meet current Township standards. The Applicant requests the waiver for the site frontage of Cold Spring Creamery Road, "as no site access is proposed along that road, and it was previously (partially) improved along the frontage." In lieu of improvements to Cold Spring Creamery Road the Applicant proposed to improve Stony Lane to Township standards from the site access driveway to Landisville Road, even though the site has no frontage along the majority of Stony Lane. The Board concludes that the potential for increased traffic along Cold Spring Creamery Road merits improvement to the Road. The Board concludes that this is a scheme of development unreasonably proposed and conceived. *Ruf v. Buckingham Twp., supra*, 765 A.2d 1166 at 1169. Further, this Board finds the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question, and will not be contrary to the public interest. 53 P.S. §10512.1(a); SALDO § 9.39. Finally, the Applicant has not shown that the SALDO's mandatory provision is unreasonable, SALDO § 9.39. The improvements to Stony Lane are a separate consideration from this waiver request.

6. A waiver is denied from SALDO § 9.17.A.1.a that specifies that the standard parking space dimension shall be 12 feet by 20 feet, the compact parking space dimension shall be 9 feet by 18 feet, and 25% of the parking spaces required by the ZO shall be "compact" spaces. The Applicant seeks a waiver to allow 100% of the required parking spaces to measure 10 feet by 20 feet. The Applicant justifies the request suggesting 10' x 20' parking spaces provide adequate space for a vehicle to park and that utilizing 10' x 20' parking spaces, reduces the amount of proposed impervious area. This Board finds these justifications unpersuasive. The Applicant alleges no undue hardship on cause of this requirement because of peculiar conditions pertaining to the land in question. 53 P.S. §10512.1(a); SALDO § 9.39. It is readily apparent that the

Township values 12' x 20' parking spaces as well planned development. *Raum v. Board of Supervisors of Tredyffrin Township, supra*, 370 A.2d 777 at 781. Otherwise, the requirement would not be part of the Township ordinance's requirements. As such, this Board finds what is proposed by this waiver request to be a scheme of development unreasonably proposed and conceived. *Id.* Further, the Applicant has not shown literal enforcement of this requirement will be contrary to the public interest or that the SALDO's mandatory provision is unreasonable. 53 P.S. §10512.1(a); SALDO § 9.39.

7. A waiver is denied from SALDO § 9.17.A.11 that requires raised pedestrian crosswalks incorporating a distinguished paving material and refuge islands within landscape areas be provided at intervals not exceeding one hundred feet along the length of each parking area and designed so that pedestrians will be out of the direct flow of traffic. The Applicant is requesting relief of this ordinance requirement to allow proposed Parking Area #1 (northwest of warehouse) and #3 ("Reserve") to contain crosswalks and refuge islands at a maximum interval length of 160 feet. Here again, this Board is mindful of the safety concerns expressed by the "Stop the Warehouse" group. The Board concludes that an interval length of 100 feet is safer than 160 feet for pedestrian transit. This Board finds: the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question, the requirement's waiver will be contrary to the public interest and the Applicant has not shown that the SALDO's mandatory provision is unreasonable. 53 P.S. §10512.1(a); SALDO § 9.39.

8. A waiver is denied from SALDO § 9.18.A.1 requiring the construction of curbs along all existing and proposed streets/roads. The Applicant relates that a partial waiver is being requested for the majority of Access Drive 'A' as the stormwater management design for along Access Drive 'A' was devised to allow stormwater runoff to drain directly into the proposed vegetated swales to be managed. The Applicant asserts the installation of curb along Access Drive 'A' would result in numerous additional inlets & piping to achieve adequate drainage. This Board does not perceive the construction of numerous additional inlets & piping to achieve adequate drainage as exacting undue hardship because of peculiar conditions pertaining to the land in question. The Applicant did not show that this SALDO's mandatory provision is unreasonable. 53 P.S. §10512.1(a); SALDO § 9.39. Nor does this Board find that literal enforcement of a requirement of curbs along Access Drive 'A' will frustrate the effect of the improvements designed to implement other requirements of the SALDO, particularly the stormwater management requirements. Rather than frustrate those requirements, all it does is impose upon the Applicant the additional

expense of additional inlets & piping. *Levin v. Township of Radnor, supra*, 681 A.2d 860.

9. A waiver is granted from SALDO § 9.18.A.2 requiring that all curbing is to be Belgian block curbing providing a minimum reveal of seven inches. The Applicant is requesting relief of this ordinance requirement to allow plain cement concrete curbing throughout the land development based on Applicant's preference and cost advantage over Belgian block curbing. This Board notes that the Applicant's Plan is for the Township's industrial zoning district. As such, the Board perceives that concrete curbing offers a substantial equivalent to the subdivision requirement of Belgian block curbing, and the requirement of Belgian Block Curbing would offer little or no additional benefit. *Monroe Meadows Hous. P'ship, LP v. Mun. Council, supra.*, 926 A.2d 548 at 553. Additionally, The Township Engineer supports the waiver request. *Ruf v. Buckingham Twp., supra*, 765 A.2d 1166 at 1169. Finally, this Board concludes that the SALDO's mandatory provision of Belgian block curbing in the industrial zone is unreasonable. SALDO § 9.39.

10. A waiver is denied from SALDO § 9.18.B.1 and § 9.18.C requiring the construction of sidewalks or bicycle/pedestrian paths along all existing and proposed streets/roads with the Township's intent of accommodating safe pedestrian and bicycle access to all parts of the Township. The Applicant justifies the waiver for the Cold Spring Creamery Road frontage of the site, as a multi-use trail currently exists along the southeast side of Cold Spring Creamery Road and seeks a "deferral" of the requirement along Stony Lane "so as to coordinate with any future development of Lot 1 of the Bucks County Airport Authority's Boyce Tract subdivision." While this Board agrees that requiring a duplicate bicycle/pedestrian path across Cold Spring Creamery Road would offer little or no additional benefit, *Monroe Meadows Hous. P'ship, LP v. Mun. Council, supra.*, 926 A.2d 548 at 553, and hence is unreasonable, SALDO § 9.39, we do not agree the same is true for Stony Lane. The "Stop the Warehouse" protestants expressed legitimate concern about pedestrian safety along Stony Lane. Clearly a bicycle/pedestrian path would go some way to address that concern. Additionally, Buckingham Township has a policy of creating connecting bicycle/pedestrian paths when facilitated by development proposals. Accordingly, this Board concludes that the potential for increased traffic along Stony Lane merits a bicycle/pedestrian path sooner rather than later. To do otherwise is a scheme of development unreasonably proposed and conceived. *Ruf v. Buckingham Twp., supra*, 765 A.2d 1166 at 1169. Further, this Board finds the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question, will promote

the public interest and that Applicant has not shown that as to Stony Lane, the SALDO's mandatory provision is unreasonable. 53 P.S. §10512.1(a); SALDO § 9.39.

11. A waiver is denied from SALDO § 9.20.E.3 requiring a 10-foot-wide planting strip with suitable plantings between every 20 contiguous parking spaces to serve as physical separation. The Applicant is requesting relief of this ordinance requirement to maintain a compact parking design and maximize perimeter buffer plantings by proposing to relocate the required plantings to the parking lot perimeter. Accordingly, the waiver request is to relocate the trees rather than to not provide them. Nonetheless, this Board finds plantings between every 20 contiguous parking spaces to serve the Township's objective of a well planned development. *Raum v. Board of Supervisors of Tredyffrin Township, supra.*, 370 A.2d 777 at 781. It serves to grant visual and impervious surface relief to what otherwise is a ribbon of paving. As this Board's obligation is to sanction well planned development, *Id.*, we decline to grant this waiver. This Board finds the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question, the requirement's waiver will be contrary to the public interest and the Applicant has not shown that the SALDO's mandatory provision is unreasonable. 53 P.S. §10512.1(a); SALDO § 9.39.

12. A waiver is denied from SALDO § 9.22.B requiring no excavation or fill be made with a face steeper than three (3) horizontal to one (1) vertical feet. The Applicant is requesting partial relief of this ordinance requirement to allow a proposed grade of 2.5:1 in the area between the proposed loading dock ramps and the loading dock garage doors in lieu of providing retaining walls. At the meeting, the Applicant noted that the layout of the 30 "Cross-Dock" Loading Bays are creating some of the excessive grades on this site and indicated that given Applicant's agreement to a condition stipulating only 15 docks on one side of the building, this waiver may be unnecessary. As it appears the reconfigured Plan with 15 docks likely will make the waiver unnecessary, this Board concludes the literal enforcement of this requirement will not exact undue hardship because of peculiar conditions pertaining to the land in question. Rather, it appears the peculiar conditions pertain to Applicant's design not to the land in question. 53 P.S. §10512.1(a); SALDO § 9.39. Further, the Applicant has not shown the requirement's waiver will be consistent with the public interest and has not shown that the SALDO's mandatory provision is unreasonable. *Id.*

13. A waiver is granted from SALDO § 9.22.J requiring that proposed grading only be permitted within the building envelope and for driveways, unconventional wastewater disposal systems, and stormwater facilities. The SALDO also requires the maximum width of grading for driveways outside of the building envelope to be 15 feet in width. The Applicant is requesting relief of this ordinance requirement because based on the existing topography of the site, the proposed grading requires greater than the allowable maximum width of 15 feet in order to tie the proposed accessways back into existing grade. The Township Engineer supports the waiver request writing, "based on the complicated access arrangement to Stoney Lane and that the width of the required non-residential driveway (26 feet) is inconsistent with the maximum permitted width for the driveway improvements (15 feet) specified by this requirement." *Ruf v. Buckingham Twp., supra*, 765 A.2d 1166 at 1169. In short, this Board concludes literal enforcement of the requirement would frustrate the effect of the proposed improvements. *Monroe Meadows Hous. P'ship, LP v. Mun. Council, supra.*, 926 A.2d 548 at 553.

14. A waiver is denied from SALDO § 9.23.K.1. requiring all stormwater management facility outlet piping be Type B (PennDOT) reinforced O-ring concrete pipe and that a minimum of two (2) concrete anti-seep collars be provided for each outlet pipe. The Applicant requests relief of this ordinance requirement (separately listing in the waiver request both SALDO sections 9.23.K.1 and its subsection 9.23.K.1.g) alleging "HDPE pipe is a sufficient alternative pipe material for this type of application and is commonly used as it tends to have superior watertight performance in comparison to RCP (reinforced concrete pipe)." And, further alleging "[t]he utilization of anti-seep collars is more commonly associated with outlet piping that is being discharged through an embankment in fill." The Township Engineer supports this requirement only for any basin outlet pipe that is less than or equal to 6" in diameter and is designed to discharge entirely below the existing grade (i.e., not through a compacted basin embankment). For Basin outlet pipes larger than 6" in diameter or pipes that discharge through a compacted basin embankment, the Township Engineer stipulates such pipes should comply with the SALDO and provide pipes constructed of Reinforced Concrete that shall be provided with at least two (2) anti-seep collars. So conditioned, the Township Engineer supports the waiver request. *Ruf v. Buckingham Twp., supra*, 765 A.2d 1166 at 1169. As such, the Board adopts the Township Engineer's recommendation and while permitting any basin outlet pipe that is less than or equal to 6" in diameter and is designed to discharge entirely below the existing grade to be HDPE pipe, as offering a substantial equivalent to the SALDO requirement, *Monroe Meadows Hous. P'ship, LP v. Mun. Council, supra.*, the waiver request to use universally HDPE

pipe is denied. Rather, basin outlet pipes larger than 6" in diameter or pipes that discharge through a compacted basin embankment shall comply with the SALDO and be constructed of Reinforced Concrete provided with at least two (2) anti-seep collars. Further, this Board finds the Applicant has not shown: the literal enforcement of this requirement will exact undue hardship because of peculiar conditions pertaining to the land in question, is consistent with the public interest, nor that this SALDO mandatory provision is unreasonable. 53 P.S. §10512.1(a); SALDO § 9.39.

As many of the waiver requests have been denied, the Plan as proposed does not comply with the Township's SALDO. Hence the Board acted to deny the Applicant's Plan and by this written decision explains that judgment. It is important to observe that as here, the denial of a subdivision plan may be properly based on the rejection of an applicant's waiver requests. *Herr v. Lancaster County Planning Commission*, 155 Pa. Cmwlth. 379, 625 A.2d 164, 170 (Pa. Cmwlth. 1993); *In re Appeal of the J.W. McGrath Org.*, 2010 Pa. Commw. Unpub. LEXIS 809 (Commw. Ct. Dec. 1, 2010). Where, as here, a Board of Supervisors denies the approval of a plan for multiple reasons, "the denial of approval for a plan can stand if supported by any one of the reasons set forth for the denial." *Kassouf v. Township of Scott*, 584 Pa. 219, 234, 883 A.2d 463, 473 (2005). Consequently, many of Applicant's waiver requests having been denied, Applicant's Plan is denied for those reasons, any one of which can serve to support the within denial.

III. Warehouse and Distribution Use versus Truck Terminal Use.

The principal contention of the "Stop the Warehouse" group is that what is proposed is not a G3 "Warehouse and Distribution" Use under the ZO, but rather is a G6 "Truck Terminal" use. The importance being that while a G3 "Warehouse and Distribution" Use is a permitted stand-alone use in the Planned Industrial District-2, a G6 Truck Terminal is not.⁷ The ZO provides as to both:

G3 Warehousing and Distribution

A commercial building for storage of goods or merchandise used by manufacturers, importers, exporters, wholesalers, transport businesses, customs, etc. They may provide loading docks to load

⁷ While use G6 Truck Terminal is not allowed as a stand-alone use in the PI-2 Planned Industrial District-2, it is allowed as a component of a permitted G14 Industrial Park Use although access for an industrial park shall be from an arterial highway. ZO §§ 405 G14 C. and F.

and unload trucks; or be loaded directly from railways or airports. They also may employ cranes and forklifts for moving goods.

Parking: one (1) off-street parking space for every five hundred (500) square feet of gross floor area, plus one (1) space for each company vehicle normally stored on the premises.

G6 Truck Terminal

A use of land or structures for the storage of trucks or the transfer of freight from one truck to another, excluding the transfer or storage of solid waste:

- A.** Short term warehousing may be permitted under this use.
- B.** The truck terminal shall be licensed by the Public Utilities Commission.
- C.** The use shall be located no closer than five hundred (500) feet to a residential or agricultural district.
- D.** Trucks with compressors running twenty-four hours a day shall be located within a quadrangle of buildings or walls.
- E.** Parking: no less than nine (9) off-street parking spaces for every ten (10) employees, or one (1) space for every five hundred (500) square feet of gross floor area, whichever requires the greater number of spaces, plus one (1) space for each company vehicle normally stored on the premises.
- F.** If fuel is dispensed, fuel pumps and canopies shall be at least twenty-five (25) feet from any ultimate street right-of-way.
- G.** All truck parts and similar articles shall be stored within a building.
- H.** All refuse shall be stored within a building or enclosed area.
- I.** Paint spraying or body and fender work shall not be permitted.

- J.** Lubrication, oil changes, tire changes, and minor repairs are permitted if entirely within a building.
- K.** Junk vehicles or unlicensed vehicles may not be stored in the open at any time.
- L.** Approval shall be secured from the State Police Fire Marshal for the storage of fuel.
- M.** This use shall not be permitted within 1000 feet of any pre-existing public or private drinking water supply system or well.
- N.** Applicant shall present a plan to demonstrate the methods by which any spills of liquids will be contained and shall also demonstrate that the stormwater management system is designed to capture volatile organic compounds, oils, and solids. Applicant shall also provide to the Township a copy of a maintenance agreement setting forth the terms for the management of the facilities. Such maintenance agreement shall be subject to approval by the Township Solicitor and the Township Engineer and shall provide for monitoring points accessible to Township personnel for inspection purposes as well as an easement in favor of the Township for access to such monitoring points. The maintenance agreement shall also include the applicant's spill containment protocol as well as Township review of Water Quality (MS-4) test reports. In addition, applicant shall enter into an agreement with the Township to permit access to monitoring and sampling of stormwater runoff areas.

The "Stop the Warehouse" group's principal evidence in this regard was presented by Mr. Tim Cathers, a resident with many years' experience in the trucking industry, distribution industry, and transportation logistics. The first part of the protestants' presentation was the notation of trucking industry definitions for a "Warehouse" and a "Truck Terminal/Distribution Center/Fulfillment Center".⁸ These definitions are different from the specification of the G3 "Warehouse and Distribution" Use and a G6 "Truck Terminal" use in the ZO. Specifically, where the G3 use is entitled as a

⁸ The "Stop The Warehouse" group's evidence was presented in the form of a narrated power point presentation and as noted above, while the witnesses were sworn, their "testimony" was not subjected to cross examination by Applicant's Counsel.

"Warehouse and Distribution" use, the citizen's group severs the "Distribution" part of the G3 use from those provisions and attributes them instead to their ""Truck Terminal/ Distribution Center/ Fulfillment Center" definition. This Board is compelled to adhere to the ZO provisions.

A principal focus of the "Stop the Warehouse" presentation was the number of loading docks portrayed on the Plan. It was emphasized that the proposed configuration of Applicant's warehouse with 30 "cross docks" implied by industry definitions that what was proposed is a "Last Mile Distribution/Fulfillment Center/Trucking Terminal".⁹ The protestants noted that a 150,000 square foot structure, if by industry standards a warehouse rather than a truck terminal, would only need eight to a maximum of 24 doors. Protestants then offered information relating the number of doors to how fast the "throughput" went through the structure; noting that the faster the "throughput", the greater the number of doors required. The implication is that faster "throughput" meant there was little warehouse storage occurring. Accordingly, where the inventory in the warehouse was turned over every 4.4 days, 35 doors are required. The fewer the doors, the longer the "throughput" period, or the length of time material stayed in the warehouse. In further emphasis on the number of doors, an analysis was offered that the ratio of docks to warehouse size indicates use. Hence it is noted that a 150,000 square foot warehouse with thirty (30) doors has a door to square foot ratio of 5,000, which is consistent with distribution and "last mile" delivery centers.¹⁰ The difficulty with this analysis/presentation is twofold. First it relies on industry norms and definitions rather than the ZO specifications. Second, the analysis is undermined by the Applicant's offer, made before the protestants' presentation, to, as a condition of approval, limit the number of docks to 15 rather than 30 and to array them on one side of the warehouse structure only. This would comport with protestants' testimony that a warehouse would have a ratio of one dock or door per every 10,000 square feet. Protestant's facile response to this development was they (the Applicant) would just double the shifts, so the reduction to 15 doors is of no matter. This Board finds this to impugn the substance of Protestants' prior testimony concerning the number of doors.

⁹ "Cross Docks" are loading docks aligned opposite to each other on either side of a typically long thin structure with the notion that a truck comes in to the dock on one side and is immediately offloaded in full or in part to a truck waiting at the opposite dock.

¹⁰ It is worthy of note that the 1999 prior approved warehouse plan was for two 40,000 square foot warehouses 100 feet wide and 400 feet long each, divided into 4,000 square foot sub units with a loading dock for each. Given the dock to square footage ratios, by protestants' analysis, this too would be a truck terminal.

The protestants further posit that the proposed location is "optimal for trucking terminal/distribution". However, even assuming *arguendo* that a location is optimal for a particular use, that does not mean that is the use an Applicant is proposing to make of a development.

In contravention of this "testimony" the Applicant noted that their Plan did not include many of the elements required by the ZO of a G6 Truck Terminal use. The Plan did not propose that the facility be licensed by the Public Utilities Commission. The use is proposed to be located closer than five hundred (500) feet to a residential district. The Plan does not propose overnight truck parking and hence does not provide a quadrangle of buildings or walls for truck parking and noise abatement. The parking proposed by the Plan is what is required of a G3 Warehouse and Distribution" Use and not that required of a G6 "Truck Terminal". No fuel dispensing is provided and hence neither fuel pumps nor canopies are proposed. Approval is not being sought from the State Police Fire Marshal for the storage of fuel. The storage of truck parts and similar articles is not proposed. Lubrication, oil changes, tire changes, and minor repairs are not proposed. Junk vehicles or unlicensed vehicles are not proposed to be stored either in the open or within the structure at any time. This proposed use is located within 1000 feet of a pre-existing public drinking water supply system. Adherence to the requirements of ZO § 405 G6 N. is neither proposed nor provided. In short, the Plan proposes and adheres to the requirements of a G3 rather than a G6 use.

The Applicant also introduced the conclusions as to use of the Township Zoning Officer, Richard Myers, and the Township Engineer, Daniel Gray. Mr. Myers offered that he is familiar with the instant application and pursuant to his review of the Plan, he sees nothing that is inconsistent with the G3 "Warehouse and Distribution" use per the ZO. He indicated if permits were sought for another use that was inconsistent with the G3 use and not permitted by the ZO, they would be denied. Similarly, as a matter of procedure were a property, in fact, being used in contravention of what is permitted on the property by the ZO, that an Enforcement Notice would issue.¹¹ Mr. Gray also offered that he is intimately familiar with the Plan and that he views the application as for a G3 rather than G6 use. He indicated that truck terminals are typically 70 to 80 feet wide and the instant proposal is for a building three times that, or 250 feet wide, which

¹¹ Pursuant to Section 617 of the MPC, 53 P.S. § 10617, "In case any ... land is ... maintained or used in violation of any ordinance enacted under this act (the MPC) or prior enabling laws, the governing body... in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct or abate such ... act, conduct, business or use constituting a violation."

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limits the "throughput" ability of goods. He further noted Truck Terminals require a significant amount of parking for empty or partially filled trailers and bobtails. However, here in order for a truck to back into a loading dock, the entire paved surface of the loading dock area is used. There is no room for empty or partially filled trailers. Continuing, Mr. Gray noted truck terminals are typically provided with full concrete pavement areas to support the shuffling of trucks to and from the site and the expected parking of trailers throughout the site. However, conversely the instant plans propose an asphalt paving specification, with concrete pads only provided in front of the loading bays where the trailers parked.

Ultimately, "[t]he question of whether a proposed use, as factually described in the application, falls within a given category specified in a zoning ordinance is one of law...." *Warren v. Collier Tp. Bd. of Com'rs*, 437 A.2d 86, 62 Pa.Cmwlth. 481 (Pa. Cmwlth. Ct. 1981) citing, *Warminster Area Child Day Care Association, Inc. v. The Upper Southampton Township Zoning Hearing Board*, 35 Pa. Cmwlth. 541, 386 A.2d 1076, 1080 (1978); *Crary Home v. DeFrees*, 16 Pa. Cmwlth. 181, 184-185, 329 A.2d 874, 876-877 (1974). The issue has arisen before in the context of whether a zoning application correctly applies for a "single-family dwelling" or whether the use should be recategorized as a "group home." Faced with an effort to recast a zoning application as one for a group home rather than a single-family dwelling, the Commonwealth Court in *City of Clairton, PA v. Zoning Hearing Bd. of Clairton, PA*, 246 A.3d 890 (Pa. Cmwlth. Ct. 2021) looked to the applicable zoning ordinance definitions and determined that as the applicant was not offering "special care", the application could not be transformed into one for a group home. *Id.* 246 A.3d 890 at 908. *See also, Appeal of Lynch Community Homes, Inc.*, 554 A.2d 155, 123 Pa. Cmwlth. 278 (Pa. Cmwlth. Ct. 1989) (Where appellant filed an application with the Board seeking a special exception under the Ordinance's 'group home' exception would not be transformed into "a special exception under the Ordinance's 'family' provisions.)

Looking to the Township ZO Definitions here, Use G3 is defined as "Warehousing and Distribution" and provides it is "[a] commercial building for storage of goods or merchandise used by manufacturers, importers, exporters, wholesalers, transport businesses, customs, etc. They may provide loading docks to load and unload trucks; or be loaded directly from railways or airports. They also may employ cranes and forklifts for moving goods." The Applicant's Plan says that is the use they are applying for and provides the requisite parking for that use. The Plan has no indicia that Applicant is seeking a G6 Truck Terminal Use. While there is some overlap in the uses: like a warehouse - "warehousing may be permitted under this (G6) use" - the Plan proposes no

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storage of trucks or indicia that the Applicant is proposing to comply with the use G6 requirements. Rather, the Plan does not propose that the facility be licensed by the Public Utilities Commission as is required for a truck terminal. The use is proposed to be located closer than five hundred (500) feet to a residential district, which is proscribed for truck terminals. The Plan does not propose overnight truck parking and hence does not provide a quadrangle of buildings or walls for truck parking and noise abatement. The parking proposed by the Plan is what is required of a G3 Warehouse and Distribution" Use and not that required of a G6 "Truck Terminal". No fuel dispensing is provided and hence neither fuel pumps and canopies are proposed. Approval is not being sought from the State Police Fire Marshal for the storage of fuel. The storage of truck parts and similar articles is not proposed. Lubrication, oil changes, tire changes, and minor repairs are not proposed. Junk vehicles or unlicensed vehicles are not proposed to be stored either in the open or within the structure at any time. The proposed use is located within 1000 feet of a pre-existing public drinking water supply system. Plainly, adherence to the requirements of ZO § 405 G6 N. is neither proposed nor provided. The use applied for in the application and depicted in the Plan only fits the ZO's definition of a G3 Warehouse and Distribution" use and not that of a G6 "Truck Terminal". This Board concludes that any other finding would likely be the subject of Applicant's successful challenge.

IV. Conclusion.

In conclusion, the majority of Buckingham Township Board of Supervisors finds that the Applicant's Plan proposes a G3 "Warehouse and Distribution" use and not a G6 "Truck Terminal". Nonetheless, on cause of this Board's denial of several of Applicant's waiver requests as set forth above, Applicant's "Preliminary-Final Land Development Plans for Proposed Warehouse-DiGirolamo Tract" (Sheets 1 to 76 of 76) dated May 17, 2023, last revised April 9, 2024, and prepared by Gilmore and Associates, Inc, as last revised and submitted to Buckingham Township, and as accompanied by Applicant's Supporting Documentation bearing Township designation LD 2023-04 and concerning Bucks County Tax Map Parcels #06-004-016 And TMP #06-004-017-001 is DENIED.

Very truly yours,
SMITH & PORTER, P.C.


Craig A. Smith

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CAS/ap

cc: Dana Cozza, Township Manager (email)
Dan Gray, P.E., Township Engineer (email)
Edward F. Murphy, Esq. (email)
Greg Glitzer, Gilmore & Associates, Inc. (email)
Peter Nelson, Esq (Email)
Luke Rosanova, AICP, Bucks County Planning Commission (email)
Carol Manicone, Landscape Review Consultants (email)