

**LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD**

Meeting of March 27, 2008

Members in Attendance

Jeffrey Staub, Chairman
Sara Jane Cate, Vice Chairperson
David Dowling
Richard Freeburn
Gregory Sirb

Also in Attendance

James Turner, Solicitor
Dianne Moran, Planning & Zoning Officer

**Docket # 1243
Appeal**

Applicant: Michael True

Address: 166 Campbell Court, Harrisburg, PA 17112

Property: 6290 Allentown Boulevard
35-034-003

Interpretation: Appeal of the Township's Zoning Officer's decision to follow the newly adopted sign ordinance. The applicant believes that the signs are incidental to the development under the Sheetz plan, and should be reviewed under the former ordinance.

The following were sworn in: Michael LaCesa, Director of Real Estate for Sheetz; Brian Soyka, Engineering and Permitting Manager for Sheetz; and Dianne Moran, Lower Paxton Township Planning and Zoning Officer. Ron Lucas, attorney for the applicant was also present on behalf of the applicant.

The applicant had no objection to entering the application, site plans and attachments as exhibits.

Ms. Moran testified that the appropriate fees were paid on March 3, 2008. Proper advertisements were made in The Paxton Herald on March 12 & 19, 2008. The property was posted March 17, 2008.

Mr. Lucas stated that the legal owner of the property is Michael True, and Sheetz is a long-term lessee of the front lot. The property was formerly the Geo's Restaurant, and a motel. Geo's has been demolished for the Sheetz, and the rear portion had the mobile homes on it.

Mr. Lucas stated that on July 5, 2006, a conditional use application was filed for a gasoline service station at that property, which was zoned Commercial General at that

time. The Township adopted a new zoning ordinance in July 2006. The application was reviewed under the old ordinance, and the conditional use was approved by the Board of Supervisors in fall of 2006, and the subdivision/land development plan was approved by the Township in late 2006 or early 2007.

During 2007, the delay of the plan was the result of the HOP process with PennDOT. There were no issues necessarily, but PennDOT experienced a lot of delays in general.

In December 2007, Mr. Soyka applied for the building permit and sign permit. The building permit was issued and construction is under way. There was discussion with the zoning officer regarding the sign permit. Lori Wissler felt the current zoning ordinance would apply to the sign permit. The Sheetz is a non-conforming use because the property has been rezoned to CN, Commercial Neighborhood District. The verbal decision was made in February 2008.

Mr. Lucas explained that the typical time period to apply for a sign permit is not until after the building permits. In this situation, the zoning officer determined that the sign permit was to be issued based on the application date. Mr. Lucas stated that sign permits are not typically applied for until after the land development plans are approved, so it is not something that would typically be applied for at the time of the conditional use application. Sheetz waited to apply for the demolition permit and the sign permit until after PennDOT issued the HOP.

Mr. Lucas asked if the facts with regard to when permits were applied for and when they could be applied for and when the Township issued them, was consistent with the zoning officer's interpretation. Ms. Moran agreed.

Mr. Lucas stated that Sheetz is a convenience store operator based in Altoona, PA, which operates over 300 stores in six states. Every store has signage, a freestanding or pylon sign, indicating the use, the user, and what is being sold there. These days, gasoline prices are more important than ever. Sheetz has changed their image by disconnecting the canopy from the store, so as to emphasize the sale of food and coffee.

Mr. Lucas stated that under the old ordinance, a 40 foot freestanding sign was permissible at that location. What was applied for is a freestanding sign at 28' 10".

Mr. LaCesa agreed that the facts Mr. Lucas presented were accurate. He noted that Sheetz has changed its image, there are other companies that have changed their signs and colors to look like Sheetz, so the sign is very important.

Mr. LaCesa noted that this building will be slightly different than the one on Colonial Road, and more like the new one at Tec Port, an all brick building detached from the canopy. Sheetz wants people to think more of the food than the gasoline so they want to draw more attention to the store and away from the canopy. The logo and the

entire look of the property has been changed, and is much different than the Sheetz on Colonial Road.

Mr. LaCesa explained that Sheetz has gone to a fancy coffee program similar to Starbuck's and others, called Sheetz Brothers Coffee. Of the 348 stores, the newer ones have this coffee, and the older ones will be getting it in the next few months. It is critical to the business, and it is important to let the customers know that that product is available at this location.

Mr. Lucas stated that this location will also have a carwash. Mr. LaCesa stated that there are about 57 carwashes at Sheetz's now. Where there is room and it is permitted, they will be adding carwashes. They are touch-less tunnels that can be paid for in the store, at the gas pump or at the carwash. Mr. Lucas stated that is something that is new to this area.

Mr. Lucas presented a photo of the site, to show the approach from the west. Mr. LaCesa noted that it is a unique site in that there are many poles and traffic control devices that would be in the way of a freestanding sign. The photo was marked as exhibit 1.

The next photo shows the property being approached from the east. Mr. LaCesa stated there is a significant left turn lane onto Blue Ribbon Avenue from Allentown Boulevard. If a bus or a larger vehicle is in that lane, or if the lane is full as is the case at peak times, you cannot see the freestanding sign unless it has some height to it.

Mr. Lucas presented another photo, exhibit 3, showing the billboard sign and the old restaurant.

Mr. Soyka confirmed that the testimony given by Mr. Lucas with regard to the time of the application of the HOP permit. He added that another permit was required by PennDOT for a right turn lane at the intersection with Blue Ribbon Avenue.

Mr. Lucas asked if applying for sign permit is part of the completion of the site plan. Mr. Soyka answered yes. Mr. Lucas asked if other municipalities expect indication of signage on the land development plan. Mr. Soyka stated that sign permits are applied for after the land development plan is approved, similar to Lower Paxton Township.

Mr. Lucas asked about the definition of a marquee sign under the old ordinance. Ms. Moran stated that the canopy at the Linglestown Road Sheetz was viewed as a marquee sign, so the entire area was allowed to be used. Mr. Dowling asked what if the Board doesn't agree with the zoning officer. Ms. Moran felt that was fine.

Mr. Lucas stated that a variance is being sought for a second marquee sign, two places on the canopy, one facing south and one facing east-bound traffic. That variance is being sought if the sign permit is reviewed under the old ordinance.

Mr. Lucas stated that 508.4 of the Municipalities Planning Code, subsection 4.2.i, talks about a land development plan entitling you to protection from subsequent change or amendment for any aspect of the approved development. Ms. Cate questioned “approved” development. Mr. Lucas stated that the development is the use that was approved. The use was a convenience store, gas pumps, and carwash.

Mr. Dowling asked when the application for land development was filed. Mr. Lucas stated that was filed in the fall of 2006. Mr. Dowling stated that was after the new ordinance was adopted. Mr. Lucas stated that section 917 of the MPC states that if you have a conditional use or special exception filed, that is under the ordinance in effect on that date. If you file a subdivision or land development plan within six months of the approval, you are protected for the same regulations. Mr. Lucas stated that means that the application date of the land development plan doesn’t matter as long as the application for the conditional use was filed prior to the new ordinance. Mr. Dowling stated that is the position of the applicant. Mr. Lucas stated that is section 917 of the Municipalities Planning Code, and the wording is very clear.

Mr. Dowling asked for the Township’s position. Ms. Moran stated that it is the zoning officer’s decision that the date of the sign permit application determines the ordinance that should be used.

Mr. Sirb assumed that the applicant knew that the new ordinance was coming, so they hurried to get in before that. Mr. Lucas answered yes, because after that, the property was to be zoned CN, Commercial Neighborhood District, in which a gas service station is not permitted. Mr. Lucas added that, at that time, the zoning officer questioned which ordinance it would be reviewed under, and the Township Solicitor determined that it was to be judged under the old ordinance since the new one was not in effect yet. After that was approved, the land development plan was applied for and was approved based on the approved conditional use which was approved under the old ordinance.

Ms. Cate stated that the sign permit was not applied for until the new ordinance was in effect. Mr. Lucas stated the sign permit was applied for in 2008, as part of the completion of the development. Ms. Cate asked if signage was shown on the land development plan. Mr. Lucas stated that is not typically done, and as the zoning officer indicated to him, he could not apply for the sign permit until after the land development plan was approved.

There is only one similar case. That case had to do with a change in the amount of tapping fees changing. None of that was shown on the land development plan, as signs were not shown on Sheetz’s plan. Commonwealth Court said it was an aspect of the development and that they cannot change the fees and force the developer to pay the significantly higher fees after the plan was approved. Mr. Lucas stated that the signage is an important aspect of the approved development, and should be under the old ordinance.

Mr. Sirb asked if the Conditional use was filed before the ordinance change because the use would not be permitted after. Mr. Lucas answered yes.

Mr. Sirb asked if when the building permits were applied for, the Township agreed the applicant was under the old ordinance. Mr. Lucas answered yes, that the use was still permitted because it is protected under the old ordinance.

Mr. Lucas stated that the sign permit is not protected under the old ordinance according to the zoning officer.

Mr. Staub asked if the building code had changed significantly between the application for the conditional use and the application for the building permit, would the building permit be reviewed under the old code. Mr. Lucas stated that in accordance with the Toll Brothers case, yes, if it were a significant change such as sprinklering every home.

Mr. Lucas surmised that if the sign locations were shown on the land development plan, the Township would have taken the position that they do not approve the sign simply because it is shown on the land development plan.

Mr. Staub asked how the applicant could have a right to something that wasn't shown in any form on the approved land development plan.

Mr. Lucas stated that every Sheetz store has signage, and has a free standing sign. Mr. LaCesa confirmed that statement. Mr. Lucas stated that the Township would not approve a sign that is shown on the land development plan until a sign permit application is filed. Mr. Moran confirmed that statement. She stated that normally, sign permits are not applied for until the buildings are constructed.

Mr. Freeburn questioned the issue that the terms of the approval do not include signage. Mr. Lucas did not deny that the sign information was not provided, but noted that every other aspect of this development the Township agreed was to be reviewed under the old ordinance. It is not typical during the land development process to identify all the signs in a project.

Mr. Sirb was not concerned that the applicant didn't put sign information on the land development plan, he assumes that Sheetz comes with signs. He noted that even if they were reviewed under the old ordinance, they would be before the Zoning Hearing Board asking for a variance anyway. He felt that was a non-issue.

Mr. Sirb did not question the zoning officer's decision. He questioned if the change is significant. Mr. Lucas stated that the significant difference is that the old ordinance permitted a freestanding sign 40 feet high along Route 22. The new ordinance permits a freestanding sign to be 10 feet.

Mr. Sirb asked if that would significantly change the development. Mr. LaCesa stated that the visibility of the sign would be significantly impacted. He noted that when Sheetz looks for a location, they look at the permitted signage, and that can impact their decision on where to locate a new store.

Mr. Staub asked which sign ordinance would apply if a residential subdivision was approved a few years ago, and they then come in today asking for a community sign. Ms. Moran stated that it would be under the current ordinance. Mr. Turner stated that is the same issue, whether it is correct or not. Mr. Turner did not think you could argue that signage is not an aspect of the approved development. Mr. Sirb agreed that signage is an aspect of development. Mr. Sirb asked if the change is significant enough to change the development. He stated that a sign is still permitted, just smaller than the applicant wants. He also felt that it did not have a significant change in the development of the land. Mr. Turner stated that the regulation Mr. Lucas cited does not say the change has to be significant.

Mr. Freeburn asked when the land development plan was filed. Mr. Lucas stated it was filed in late 2007/early 2008. Mr. Freeburn noted that 508.4.i provides that a filed application for subdivision or land development is pending, and questioned how the plan is pending prior to July 2007. Mr. Lucas answered the provisions of the conditional use connect it to the land development plan. Section 917 deals with special exceptions and conditional uses. Mr. Freeburn stated that just because you are allowed to proceed with applying for a land development plan within six months, doesn't mean the land development plan is pending. Mr. Lucas stated that Section 917 says that if there is a conditional use filed, and within six months of the approval you apply for a land development plan, then you have all the protections of Section 508.4. Mr. Freeburn didn't disagree with the right to file for an application for land development, but it was filed after the ordinance changed. Mr. Lucas stated that Mr. Stine interpreted it that once the conditional use application was filed, the use was under the old ordinance.

Mr. Lucas stated they are asking for a freestanding sign height of 20' 10", where under the old ordinance 40' height is permitted. However, under the old ordinance, they are not permitted as many wall signs as the new ordinance. Mr. Lucas asked if Mr. LaCesa considered the freestanding sign more significant than the wall sign. Mr. LaCesa stated yes.

Mr. Sirb felt that in the case of the Toll Brothers, the significant amount of money would have adversely impacted the project. He didn't see that the sign ordinance change would adversely affect the applicant, just because it is smaller.

Mr. Soyka stated that, under the new ordinance, they are permitted two freestanding signs at 10 feet high and forty square feet. That is an awkward sign.

Mr. Sirb asked if the difference in signs would cost more money to build a different type of sign, not business generation. Mr. LaCesa stated it will adversely affect

the business. Mr. Sirb didn't argue that. Mr. Sirb stated that the other case dealt specifically with the cost put on that applicant. Mr. Lucas stated that Sheetz considers signage allowances when looking for a location. Mr. LaCesa stated that when the signage is that restricted, they will apply for a sign variance before anything else, because if the sign isn't big enough they may not want that location. With gas prices being so expensive, that is what people look for. Sheetz doesn't want to rely on people knowing Sheetz, they want people to see the sign, make a conscious decision, make a lane change and get into the facility. People will drive 10 miles to save a penny a gallon.

Mr. Dowling made the observation that Sheetz has about the most competitive gas prices in the market. Mr. LaCesa agreed that Sheetz has the philosophy to be a low cost provider.

Mr. Dowling didn't think Sheetz needs a sign at all to do a good business. Ninety-nine percent of the business at that store will be people who know where it is, and about 100% of the customers will live within 5 miles. Mr. Sirb noted that the location is genius, and absolutely ideal, with or without a sign.

Mr. Dowling stated that every month the Zoning Hearing Board hears the tall sign argument, and they all say the same thing. Ms. Cate noted that people drive facing front, not up. Mr. LaCesa stated that, at 10 feet high, looking straight ahead, you will not see the sign.

Mr. LaCesa stated that they had no indication that the township would look at the sign permit under a different ordinance, or they would have applied in July 2007. He didn't know that a municipality could apply different ordinances to the same project. Mr. Sirb agreed with that. He felt that it didn't adversely affect the project though. He didn't want to overrule a decision that doesn't adversely affect an applicant.

Mr. LaCesa asked if, prior to this application, the Zoning Hearing Board was aware that Sheetz has carwashes. Some members shook their heads no. Mr. LaCesa stated that they only have 57, and none in this area. They want to put a carwash sign on the freestanding sign so the public knows it's there. You cannot see the carwash.

Mr. Lucas stated that if the sign were 10 feet tall, it would only have the name, and one gas price.

Ms. Cate made a motion to deny the appeal. Mr. Sirb seconded the motion.

The Chairman called for discussion on the motion. Mr. Freeburn noted that he doesn't care for the old ordinance, however, it appears that the law is in the applicant's favor. He doesn't like it, but must follow the law. Mr. Dowling was not convinced that Section 917 affords protection of Section 508.4. Mr. Dowling felt that altering the size of the sign would not impact the development.

A role call vote followed: Mr. Freeburn-No; Mr. Sirb-Aye; Mr. Dowling-Aye; Ms. Cate-Aye; and Mr. Staub-Aye. The appeal has been denied.

The hearing ended at 7:58 pm.

**Docket # 1244
Variance**

Applicant:	Michael True
Address:	166 Campbell Court, Harrisburg, PA 17112
Property:	6290 Allentown Boulevard 35-034-003
Interpretation:	Variance from number of signs, height and area limitations of the signs.
Grounds:	Section 714.A, of the Lower Paxton Township Codified Ordinances pertains to this application.

The following were sworn in under the previous hearing: Michael LaCesa, Director of Real Estate for Sheetz; Brian Soyka, Engineering and Permitting Manager for Sheetz; and Dianne Moran, Lower Paxton Township Planning and Zoning Officer. Ron Lucas, attorney for the applicant was also present on behalf of the applicant.

The applicant had no objection to entering the application, site plans and attachments as exhibits.

Ms. Moran testified that the appropriate fees were paid on March 5, 2008. Proper advertisements were made in The Paxton Herald on March 12 & 19, 2008. The property was posted March 17, 2008.

Mr. Turner stated it would be appropriate to incorporate the testimony from Docket #1243, the appeal of the zoning officer's decision. Mr. Lucas agreed that was appropriate.

Mr. Lucas stated that the ordinance allows two signs-one on Blue Ribbon Avenue and one on Allentown Blvd, 10 feet tall, 40 square feet each. The applicant is asking for one freestanding sign on Route 22, 18 feet high, 71 square feet. That sign would include Sheetz, the espresso bar, coffee, carwash, and one gas price.

The new ordinance allows a 20 foot sign on Route 22 where properties are zoned CG, Commercial General District, but a 10 foot sign in the CN, Neighborhood

Commercial District. There is a very small section of Route 22 that is CN, which Mr. Lucas speculated was done when Wal-Mart was being considered. If this was anywhere else on Route 22, a variance wouldn't be needed.

Mr. Lucas stated that at 8:15 this morning, driving westbound on Route 22, a school bus was at the intersection, and was blocking everything on-site.

The new ordinance has a specific provision for gas canopies. It allows up to three signs of 25 square feet each. They are proposing two, at 51 square feet each; one on the front of the canopy (facing Route 22) and one on the east for the westbound traffic.

Mr. LaCesa stated that there is only one canopy at this location, so they want the name in the middle to break up the large run of red. Drivers traveling eastbound will see the canopy, and have time to get into the left turn lane and move onto Blue Ribbon. The reason to have one facing to the east, so that westbound traffic can see it, is that you will be able to see the edge of the canopy.

Ms. Cate questioned the location of the side-facing sign. Mr. Soyka explained that a driving decision has to be made to get into the left turning lane to turn left onto Blue Ribbon. Those driving westbound, will have the chance to use the Blue Ribbon entrance or the right-in/right-out driveway as they pass.

Mr. Staub questioned the method for measuring the sign area. He noted that if you only measure the letters, the area is significantly smaller. Ms. Moran explained that the ordinance instructs you to draw the smallest box to encompass the graphics and letters, then measure that box. The rays around the letters are to be included in the sign area.

Mr. Lucas stated that the applicant is requesting two variances, one for a single sign with greater height and area, and another for two canopy signs.

Mr. Sirb asked about the canopy. Mr. Soyka stated there is one canopy, which is detached from the store. The older stores had a canopy that was connected with a walkway, but the newer do not have that, they only cover the gas pumps.

Mr. Staub asked if approval could be conditioned upon eliminating a freestanding sign on Blue Ribbon Avenue, and a canopy sign on the east side. Mr. Turner answered that would be acceptable.

There was no comment from the audience.

Ms. Cate made a motion to grant the variance request, conditioned upon there being no canopy sign facing east, and that there be only one freestanding sign. Mr. Dowling and Mr. Sirb seconded the motion. A roll call vote followed: Mr. Freeburn-

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Aye; Mr. Sirb-Aye; Mr. Dowling-Aye; Ms. Cate-Aye; and Mr. Staub-Aye. The variance was granted.

The hearing ended at 8:12 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary