BOROUGH OF CONSHOHOCKEN

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ZONING NOTICE

JUNE 15TH, 2020 ZONING HEARING BOARD MEETING TO OCCUR VIA REMOTE MEANS

ZONING HEARING PZ-2014-04 and 2015-04

NOTICE IS HEREBY given that the Conshohocken Zoning Hearing Board will conduct a public hearing on June 15th, 2020 at 7:00 p.m. prevailing time via remote means. The public is encouraged to participate as set forth below.

In response to the Governor's Stay at Home Order due to COVID-19, this meeting will be held using a Go-To-Meeting Platform. To the extent possible, members of Conshohocken Zoning Hearing Board and Borough staff/professionals will participate via both video and audio. (INSTRUCTIONS ON SECOND PAGE)

At this time, the Conshohocken Zoning Hearing Board will hear testimony and accept evidence on the following request.

PETITIONER:	Millennium Waterfront Associates, LP c/o O'Neill Property Group 2701 Renaissance Blvd., 4th Floor, King of Prussia, PA 19406
PREMISES INVOLVED:	200 Block of Washington Street, Conshohocken, PA 19428 Behind 225 and 227 Washington Street Specially Planned 2 Zoning District
OWNER OF RECORD:	Same as Petitioner

The Petitioner is requesting an extension of variances originally granted in 2014 and 2015 from the following sections of the Conshohocken Zoning Ordinance: 27-1509.B – building bulk; 27-1504.D.5 – orientation of a garage; 27-1705 – flood proofing of amenities in the floodway; 27-1503 – height; 27-1505.B.2 – minimum building setback from a private or internal driveway; and 27-1504.F.2 – impervious coverage.

Persons who wish to become parties to the application must notify the Borough of their intent to ask for party status at least five (5) days prior to the scheduled hearing by emailing the attached entry of appearance form to zoning@conshohockenpa.gov. Said persons must be available to participate in the zoning hearing on the scheduled date and time. It is noted that submitting the attached entry of appearance form does not guarantee that you will be granted party status. The Zoning Hearing Board decides who may participate in the hearing before it as a party, subject to Section 908(3) of the Municipalities Planning Code (MPC). The MPC permits party status to any person "affected" by the application. Having taxpayer status alone is not enough to claim party status; however, a person whose property or business abuts the property that is the subject of the appeal is affected and should qualify as a party. Ultimately, the ZHB makes the party status determination after reviewing the request.

Thank you,
Zoning Hearing Board

ZONING HEARING REMOTE SESSION ACCESS INSTRUCTIONS

The public is encouraged to participate as follows:

Audio Feed Participation: You may dial-in to access the audio feed of the meeting. All participants (whether listening or providing comments) must use this method of audio participation, even those using Go-To-Meeting to access the video feed. To access audio, please use the below number and access code/ password information.

You can also dial in using your phone.
United States (Toll Free): 1 866 899 4679

Access Code: 633-884-013

We ask that you please keep your phones on mute at all times, unless giving a public comment as set forth in the Public Comment section below.

Video Feed Participation: The public may access the video feed by using the link provided below.

Please join my meeting from your computer, tablet or smartphone. (Link is also on the Borough of Conshohocken website: www.conshohockenpa.gov)

https://global.gotomeeting.com/join/633884013

New to GoToMeeting? Get the app now and be ready when your first meeting starts:
https://global.gotomeeting.com/install/633884013

If you have already downloaded the Go-To-Meeting application, the link will redirect you to the application itself. Please follow the instructions.

It is recommended that you download the application in advance of the meeting time. If you attempt to sign in prior to the start of the meeting, the Go-To-Meeting application will inform you that the meeting has not started. Please close the application and log back in at the time of the meeting (7:00 PM).

Public Comment: There will be a designated time on the agenda for public comment. Those with public comment shall state their name and address. Prior to the start of the meeting, you may submit written comments by e-mailing them to Bmyrsiades@conshohockenpa.gov. Similarly, during the meeting, you may submit written comments by e-mailing them to bmyrsiades@conshohockenpa.gov.

Public comments submitted in this manner will be read by a member of Borough Administration during the public comment period. Because the actual time of the public comment period is determined by the pace of the meeting, please submit all comments as soon as possible, whether before or during the meeting. Written comments shall include the submitting person's name, address and property in question.

The Conshohocken Zoning Hearing Board thanks you in advance for your cooperation during the remote meeting. If you encounter problems participating during the meeting, or have questions regarding the above prior to the meeting, please contact the Borough at bmyrsiades@conshohockenpa.gov.

The Borough of Conshohocken Zoning Hearing Board
Entry of Appearance as a Party

I/We _____

Request to be granted party status in Application Z _____.

Applicant: _____

Please print name and address below:

_____

_____

_____

_____

Please Sign Below:

_____

_____

Please return form via mail or e-mail to the below:
(Entry must be received no later than Wednesday June 10th, 2020)

MAIL:
Borough of Conshohocken
Attn: Bobbi Jo Myrsiades
400 Fayette St.
Conshohocken, PA 19428

E-MAIL:
zoning@conshohockenpa.gov

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BOROUGH OF CONSHOHOCKEN

December 17, 2019

Edmund J. Campbell, Jr., Esq.
Campbell Rocco Law, LLC
2701 Renaissance Blvd., 4th Floor
King of Prussia, PA 19406

Re: Millennium Waterfront Associates, LP
200 Block of Washington Street

Dear Mr. Campbell,

Pursuant to your request to continue the hearing for the extension of zoning relief granted in 2014 and 2015 for the above referenced project; the Conshohocken Zoning Hearing Board granted a 120-day continuance of the hearing. The new hearing date will be April 20, 2020 at 7:00 p.m. at Conshohocken Borough Hall, 400 Fayette Street, Conshohocken PA.

Prior to the hearing, you are required to submit at minimum a sketch plan for the new project; and a narrative describing the differences between the relief previously granted and the relief required by the new plan.

Do not hesitate to contact Conshohocken's Zoning Officer, if you have questions prior to the hearing.

Sincerely,

Christine M. Stetler

Christine M. Stetler
Community Development and Zoning Officer

Cc: S. Cecco
M. Peters, Esq.
M. McHugh, Esq.
A. Glassman, Esq.
Conshohocken Zoning Hearing Board

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BOROUGH OF CONSHOHOCKEN

Office of the Borough Manager

ZONING NOTICE

ZONING EXTENSION HEARING PZ-2014-04; Z-2015-04

NOTICE IS HEREBY given that the Conshohocken Zoning Hearing Board will conduct a public hearing on Thursday. January 17, 2019 at 7:00 p.m. prevailing time at the Conshohocken Borough Hall, 400 Fayette Street, Conshohocken, PA. At this time, the Conshohocken Zoning Hearing Board will hear testimony and accept evidence on the following request for an extension of zoning relief:

PETITIONER:	Millennium Waterfront Associates, LP c/o O'Neill Property Group 2701 Renaissance Blvd., 4th Floor King of Prussia, PA 19406
PREMISES INVOLVED:	200 Block of Washington Street, Behind 225 and 227 Washington Street Specially Planned 2 Zoning District
OWNER OF RECORD:	Same as Petitioner

The Petitioner is requesting an extension of variances granted in 2014 and 2015 from the following sections of the Conshohocken Zoning Ordinance: 27-1509 B – Building Bulk, 27-1504 D. 5 – Orientation of a Garage, 27-1705 – Flood Proofing of Amenities in the Flood Way, 27-1503 – Height, 27-1505 B. 2 – Minimum Building Setback from a Private or Internal Driveway, and 27-1504 F. 2 – Impervious Coverage.

The Petitioner proposes to construct an office building, a parking garage, and public amenities along the Schuylkill River.

Interested parties are invited to participate in the hearing. Anyone requiring special accommodations to attend this hearing should contact Conshohocken Borough Administration Office at 610-828-1092 as soon as possible to make arrangements.

Borough of Conshohocken
Zoning Hearing Board

CAMPBELL CR ROCCO

LAW LLC

Edmund J. Campbell
Direct Dial: (610) 992-5885
Email: ecampbell@campbellroccolaw.com

November 26, 2018

VIA ELECTRONIC AND FIRST CLASS MAIL

Christine Stetler
1 West First Avenue
Suite 200
Conshohocken, PA 19428

RE: Millennium Waterfront Associates, L.P.
Z-2014-04
Z-2015-04

Dear Ms. Stetler,

Millennium Waterfront Associates, L.P. ("MWA") is the owner of certain units of the Millennium Condominium ("Millennium"), and the successor to Washington Street Associates IV, L.P. Please accept this letter as a request on behalf of MWA to extend the above referenced zoning approvals through December 31, 2019.

Thank you in advance for your time and attention to his matter.

Respectfully yours,

Edmund J. Campbell, Jr.

EJC/aw

cc: Richard Heany

2701 RENAISSANCE BOULEVARD • FOURTH FLOOR • KING OF PRUSSIA, PA 19406
PHONE AND FAX: (610) 337-5585

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BOROUGH OF CONSHOHOCKEN

MEMORANDUM

Date: December 12, 2018

To: S. Cecco, B. Rogers, Zoning Hearing Board, Zoning Board Solicitor

From: C. Stetler

Re: 200 Block of Washington Street, Millennium Block A, Millennium IV
Request for Extension of Zoning Relief Granted in 2014 and 2015
Request Summary

History of the Site and Current Request:

Zoning relief remains in effect for six (6) months following the Zoning Hearing Board's approval. Petitioners are required to draw permits for their specific project within that time. However, complex projects such as that proposed on the 200 Block of Washington Street (Millennium IV) often take longer to go through the approval process and secure project financing. For that reason, Petitioners often request an extension of time to draw construction permits for a project.

With regard to the 200 Block of Washington Street, zoning relief was granted in 2014 and 2015. A one (1) year extension of the relief granted was approved January 30, 2018. This approval will expire in January 2019. A second extension of relief granted through December 31, 2019 has been requested.

In 2016, an amendment to the height requirement in the Specially Planned – 1 and 2 Zoning Districts was approved. The amendment permitted a height in those districts of 230 feet with Conditional Use approval by Conshohocken Borough Council. In June, 2017, the Developer of the site requested Conditional Use approval for a height of up to 230 feet. Hearings on the Conditional Use application have been continued since its submission through October, 15, 2018, at which time the application was withdrawn.

Because zoning relief for the project has not been completed, the project has not proceeded through the Land Development process. The overall project has not been approved by Borough Council, and therefore no permits have be secured.

At the present time, it is not known if the Developer will submit a new application for Conditional Use approval of a height increase for the office building and garage. It should be noted; that garages are not exempt from the height requirements of the Specially Planned – 2 Zoning District. Also, there is now indication if the size of the building will remain at 617,000 square feet, which is the remaining Floor Area Ratio allowable for Millennium Block A.

Following is a description of relief granted in 2014 and 2015 for the proposed project.

Z-2014-04: 200 Washington Street Block A. Decision May 5, 2014

Proposal: The Developer proposed a 300,000 square foot office building with a five (5) story parking garage, and public amenities including an amphitheater, public garden and improved public access. It should be noted that the design of the project was a direct result of the needs of the single tenant being sought to occupy the building.

Relief Requested and Granted:

1. §27-1509.2 Building Bulk: Relief was requested to increase the building bulk of the new proposed office building from 250 feet to 384 feet, and increasing the non-conforming building bulk of 227 Washington Street through connection to the proposed building, making the building bulk 543.8 feet. Variances were approved on condition that the connector between the existing building at 227 Washington Street and the new office building be used for the transient movement of employees only, and not for additional office space or gathering areas. Relief was approved for the building bulk of the proposed garage of 274.8 feet

2. §27-1504 D. 5: Interpretation and in the alternate a variance was requested regarding the proposed orientation of the parking garage parallel to the Schuylkill River. The Ordinance does not permit visible parking structures parallel to the river or between a principal building and the river. Despite arguments that there was intervening land between the proposed parking garage and the actual river bank, the Zoning Board granted a variance to orienting the parking garage parallel to the river, on condition that the structure be concealed in some way other than wire mesh so that it does not appear to be a parking structure when viewed from the river side of the building in the opinion of the Borough's Design Review Committee.

3. §27-1705: Utilization of the Flood Plain Conservation District: Relief was requested from conditional use requirements for development of amenities in the floodway. All proposed buildings related to the project were located in the floodway fringe, and no relief was requested from flood proofing requirements. However grading and amenities to be constructed in conjunction with the project were located in the floodway. Relief was granted for the following activities in the floodway:

    a. An amphitheater with a plaza, walkway and paved parking areas;
    b. Paved walkways, sidewalks, parking areas, plazas, courtyards and meeting areas; and
    c. Grading, re-grading, disturbance of earth, removal and deposit of topsoil and construction of retaining walls.

4. §27-1503 Height: Building height is limited to eighty-five (85) feet, and may be increased to 250 feet by conditional use. The project does not meet the requirements for conditional use approval and therefore a variance was requested. Relief was granted for a building height not to exceed ninety (90) feet. The need for a variance was due to slope at the site and the fact that the elevation of the building had not been finalized at that time.

Z-2015-04: 200 Block of Washington Street Block A. Decision September 29, 2015

Proposal: The Developer proposed a 420,000 square foot office building, a garage of twelve (12) to thirteen (13) stories. Amenities to be constructed remained the same. It should be noted that the changes to the project were the result of requests from the single tenant proposed to occupy the building. Also of note was the Borough of Conshohocken's support for the relief being requested.

Relief Requested and Granted:

1. §27-1509 2 Building Bulk: The proposed building bulk was 400 lineal feet, which was sixteen (16) feet longer than the 384 lineal fee approved in 2014. There was no discussion regarding any changes in the bulk of the garage, which was granted relief in 2014. Note: Garages are not exempt from building bulk requirements.

2. §27-1503 Height: The proposed height of the building was 135 feet, which was a significant increase (45 feet) over the five (5) foot increase granted in 2014. Garage height also was increased, and was considered to be roughly the same as the proposed office building. The variance was granted.

3. §27-1504 D. 5 Interpretation of the Orientation of the Garage Parallel to the Schuykill River: The parking garage associated with the project continued to be oriented parallel to the river. There was no change in consideration of the garage's orientation or change in the prior approval or condition of approval.

4. §27-1505 B.2 Minimum Building Setback from a Private or Internal Drive: The distance of the parking garage from the drive leading to the garage is less than twenty-five (25) feet. The variance was granted.

5. §37-1504 F. 2. Impervious Coverage: The Developer proposed eighty percent (80%) impervious coverage on the lot, where seventy percent (70%) is permitted. The variance was granted.

2015 variances approved were granted without conditions.

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BOROUGH OF CONSHOHOCKEN

Conshohocken Zoning Hearing Board

Tuesday, January 30, 2018 ~7:00 p.m.
Conshohocken Borough Hall ~400 Fayette Street
Conshohocken, PA 19428

Extension of 2014 and 2015 Zoning Relief Granted for the 200 Block of Washington Street – Millennium Block A

Present: Richard Barton, Chairman – Zoning Hearing Board, Board Members: Gregory F. Scharff, Janis B. Vacca, PE, Mark S. Danek Esq., Russell Cardamone; Zoning Board Solicitors Michael P. Clarke, Esq., Alexander Glassman, Esq.; Edmund J. Campbell, Jr., Esq. – Attorney for the Applicant; Christine M. Stetler, Zoning Officer,

The meeting was called to order by Mr. Richard Barton, Chairman of the Conshohocken Zoning Hearing Board. Mr. Barton explained that there was a request to extend the zoning relief granted in 2014 and 2015 for a proposed project on the 200 Block of Washington Street known as Millennium Block A.

Mr. Edmund J. Campbell, Jr., Attorney for the property owners, described the zoning relief granted in both 2014 and 2015 which included: building bulk, building height, orientation of the proposed garage, development in the floodway fringe, development of public amenities in the floodway, and grading. Conditions related to the relief granted were that the garage be "skinned" on the exterior to reduce the appearance of a garage, that the proposed design be reviewed and approved by the Borough's Design Review Committee; and that the connection between the proposed building and Millennium III (227 Washington Street) be used for pedestrian traffic only and not for additional office or meeting space.

Mr. Campbell explained that the Developer is seeking to attract a single tenant for the proposed project which is a Fortune 50 company. He was not at liberty to identify the tenant being sought. The proposed tenant still is evaluating its needs and has narrowed the list of potential sites for its headquarters. The selection of a site by the tenant has delayed the implementation of the project.

The public in attendance at the meeting were given the opportunity to ask questions or make statements regarding the extension request. There were no questions or statements from the public.

Russell Cardamone commented that this Developer has consistently returned to the Zoning Hearing Board requesting additional relief to accommodate the proposed project.

Question was raised by the Board as to what the garage would look like. Mr. Campbell explained that, at present, there is no final design for the garage.

Mr. Barton asked when the original relief for the project expired. Relief expired as of July 1, 2016.

An extension of relief previously grant was requested until December 31, 2018.

MOTION: THAT THE REQUEST FOR THE EXTENSION OF RELIEF GRANTED IN 2014 AND 2015 BE GRANTED THROUGH DECEMBER 31, 2018. (Vacca/Danek)

Vacca	yes
Scharff	yes
Danek	yes
Cardamone	no
Barton	yes

BEFORE THE ZONING HEARING BOARD OF CONSHOHOCKEN

IN RE: APPLICATION OF
WASHINGTON STREET ASSOCIATES, IV, L.P.

REGARDING

200 BLOCK of WASHINGTON STREET- MILLENIUM BLOCK A

DECISION OF THE BOARD

I. History of the Case:

By application and addendum dated February 26, 2014 and admitted as Exhibit P-2 (collectively, the "Application"), Washington Street Associates, IV, L.P. (the "Applicant") is seeking zoning relief from the Zoning Hearing Board (the "Board"), in the nature of variances (each a "Variance" and collectively, the "Variances") from the following sections of the Conshohocken Borough Zoning Ordinance of 2001 (together with all amendments thereto, the "Zoning Ordinance"): (i) the § 27-1509.2 requirement that buildings be no more than 250 feet in length or 350 feet in length, provided certain conditions are satisfied; (ii) the § 27-1504.D.5 requirement that parking structures not be fronting parallel to the Schuylkill River or be located between the primary structure and the Schuylkill River; (iii) the § 27-1705 requirement restricting the permissible uses of property located in the floodway; and (iv) the § 27-1503 requirement that buildings be no taller than 85 feet in height.[1] The Variances relate to the Applicant's land development plan (the "Project") for property located on the 200 block of Washington Street, Conshohocken (collectively, the "Property"). The Applicant is requesting that it be

[1] The Applicant originally also requested relief under Section 27-1511.8 with respect to parking areas; however, the Borough determined that Section 27-1511.8 applies only to residential uses and would be inapplicable in this case.

permitted to construct a 300,000 square foot office building in two (2) connected structures, an associated parking structure and several outdoor amenities (collectively, the "Proposed Use").

The Zoning Ordinance permits the Board to grant a variance when failure to do so would "inflict unnecessary hardship" upon an applicant. See id. at § 27-611.1.A.

A public hearing was held before the Board on the evening of April 7, 2014, at 7:30 p.m. prevailing time at the Borough Hall in Conshohocken, Pennsylvania. The initial hearing was continued, with the continuation heard on May 5, 2014 at 7:30 p.m. prevailing time at the Borough Hall in Conshohocken, Pennsylvania. At the final conclusion of the continuation, the Board discussed the remaining issues and rendered a decision. Due notice was given for the public hearing.

After the final conclusion of the hearing, the Board found as follows:

II. Findings of Fact:

1. The Applicant is Washington Street Associates, IV, L.P., and the Applicant is also the owner of the Property. The Applicant was represented by Edmond J. Campbell, Jr., Esquire ("Campbell") at the hearing, and its principal witnesses were Brian O'Neill ("O'Neill") and Michael Engel, the engineer on the Project ("Engel").

2. The property involved is the 200 block of Washington Street Conshohocken, Pennsylvania. The Property is presently zoned Specially Planned District-2 ("SP-2").

3. At the initial hearing, the Applicant provided a computerized digital rendering of the Project and O'Neill described each of the different models to the Board. As illustrated by the computerized digital renderings and the testimony of O'Neill, the

Applicant described the Project as the next sequence in its waterfront development, and indicated that some of its design choices were based upon the needs of a targeted tenant (the "Tenant").

4. O'Neill stated that if the Tenant were to choose this location for its offices, it would bring 1,000 jobs to Conshohocken. The Tenant envisioned a space with fewer floors and more employees on each floor to encourage collaborative work. The Tenant also specifically requested a large congregational space to host speeches to all of its employees. O'Neill indicated that in response to this request, the Applicant was proposing an outdoor amphitheater that would provide seating for all employees during these speeches, and would also be open to the public in the evenings. In addition to the planned amphitheater, the Applicant also proposed to add a public garden and increased public access to the existing trail system along the riverfront.

5. O'Neill next described the proposed office buildings themselves, designated as B-1 and B-2, respectively, on the site plan admitted as Exhibit P-3 (and detailed in Findings of Fact #s 9 and 10, below), as being constructed of all glass, including an employee "life center" on the top floor which includes amenities such as an outdoor garden, gym, a coffee shop and meeting rooms. B-1 and B-2 are connected via a glass "connector" and the parking structure is also connected to the existing M-3 building, as identified on Exhibit P-3, via a second glass "connector" (each, a "Connector," and collectively, the "Connectors").

6. Campbell next asked O'Neill to confirm that the Proposed Use is suitable for the area. O'Neill indicated that the Proposed Use was the original plan submitted for the Property, dating back to 1996 or 1997. Campbell asked O'Neill whether the

Proposed Use would change or detract from the use of the neighboring property. O'Neill stated that it would not detract but safeguard the neighboring uses.

7. The Board then posed the following questions to O'Neill:

a) The Chairman of the Board, Richard Barton (the "Chairman") asked whether the Connectors were structural parts of the buildings. O'Neill responded that the Connectors would be structural in that people could walk back and forth through the Connectors. O'Neill also indicated that the Connectors would be climate-controlled.

b) Vivian Angelucci ("Angelucci") next asked whether the Connectors would just be used as walkways. O'Neill indicated that they were meant to be winter gardens, such that they may have tables and chairs, but that a tenant could use the space for seating or a conference room.

c) Russ Cardamone ("Cardamone") next asked whether the gray area depicted on Exhibit P-3, would be part of the proposed buildings. Campbell indicated that Engel would testify as to the specific dimensions of the buildings.

8. The Chairman than asked for questions from the audience. There were no questions.

9. At the request of Campbell, Engel, using a red pen, outlined the dimensions of the buildings on Exhibit P-3. Engel also cross-hatched the glass Connector that connects B-1 and B-2 to indicate where it would be located. Exhibit P-3 shows B-1 and B-2 connected via the proposed glass Connector as well as a second glass Connector connecting B-2 and M-3, the existing building.

10. Engel further testified regarding the specific dimensions of M-3. He indicated that M-3 is approximately 360 feet long, which includes 335 feet in building

bulk and a bump out, which adds twenty-five (25) additional feet. The proposed Connector would add an additional 35 feet. B-2, from the glass Connector to the Schuylkill River (the "River"), Engel indicated, is 120 feet. The Connector between B-2 and M-3 is an additional fifty (50) feet in length. Engel testified that the proposed B-1 would be 213 feet in length. Engel concluded the dimensional discussion by indicating that if the proposed B-1 and B-2 were constructed with the glass Connectors, the total length would be 520 feet. B-1 through B-2 constitutes 389.4 feet, approximately. Engel added these calculations to Exhibit P-3.

11. As a result of these calculations, Campbell indicated that the Applicant was seeking a variance from Section 1509.2 of the Code relating to building bulk. Section 1509.2 limits building bulk in the SP-2 district to 250 feet, and by meeting certain conditions, 350 feet. Both B-1 and B-2, however, would exceed 350 feet in length. The conditions required to permit 350 feet in building length include: (1) a change in elevations every fifty (50) feet, (2) five percent (5%) of open space added for every fifty (50) feet of increased building length, and (3) no visible parking structure that is fronting parallel to the River and is located between a primary structure and the River.

a) As for the first condition to exceed 250 feet in building length, Engel testified that the façade on the existing M-3 will not change as the building already exists. He did indicate, however, that all new construction from the end of M-3 to the end of B-2 would include changes in the architectural façade in excess of every fifty (50) feet, including a slight arc to the building frontage.

b) The second requirement to exceed 250 feet in building length is that five percent (5%) open space be added for each additional fifty (50) feet in building

length. Engel indicated that there would be two (2) open space components of the Proposed Use. The open space would include the 100 foot strip of open space along the River that is owned by the Borough, as well as the proposed amphitheater which would also be available to the public. When the actual land development plans are prepared, Engel indicated, he would be able to quantify the amount of additional open space, but he was confident that it exceeds the requisite five percent (5%).

c) With respect to the conditions regarding the parking structure, Engel stated that the proposed parking structure would not be located between any buildings on the Property and the River. Campbell asked Engel whether the terms "fronting," "parallel," or "visible" were defined in the Code. Engel indicated that they were not. Campbell also asked Engel to address the undulating nature of the River, and Engel indicated that the River has an arc and a structure could only be parallel to the River if the structure matched the exact arc of the River. The parking structure, Engel stated, does not front the River because an adjacent property owner has land located between the location of the proposed parking structure and the River, and the 100 foot strip of land owned by the Borough would also be between the parking structure and the River. Engel stated that in his opinion, the conditions for the extension of building length to 350 feet were met.

12. Campbell next asked Engel to testify with respect to uses in the floodway. Engel confirmed that the Property is located in the floodplain of the River. Engel defined the floodplain as the combination of the floodway and the floodway fringe. He indicated that all of the proposed buildings would be located in the floodway fringe and that some amenities would be located in the floodway. Engel stated that development of the

Property is limited in that the Property is bordered by the River and the railroad tracks. Due to the fact that the Property is located within the floodplain, all habitable space must be located at least eighteen (18) inches above the flood height, and therefore, Engel indicated, parking was the most logical use of the first floor of the structures on the site. Engel also testified that the construction in the floodplain would be consistent with the standards set by the Army Corps of Engineers.

13. Campbell indicated he had additional questions for Engel regarding parking. Campbell asked about the number of parking decks in the proposed parking structure. Engel stated there would be five (5) parking decks above the surface parking level. Engel indicated that each parking level would be about twelve (12) feet high. Engel also stated that it was too early in the planning process to indicate the exact number of parking spaces to be provided, but he anticipates about 900 parking spaces in the structure.

14. Campbell raised the point that in addition to the conditions imposed by Section 27-1509.C of the Code with respect to parking structures, the Applicant is also seeking relief from restrictions on parking structures with respect to construction in the floodway under Section 27-1705 of the Code. Section 27-1705 identifies certain uses permissible in the floodway by conditional use. However, Campbell stated that on the advice of the Borough, conditional use in the floodway required the prior approval of the Pennsylvania Department of Environmental Protection ("DEP") as well as the Borough Engineer. Engel testified, however, that DEP approval was contingent upon municipal approval because the key storm water permit needed in order to get approval from the Borough would be a permit from the DEP. Due to the conflicting requirements, the

Applicant, Campbell summarized, was requesting the Variance from the conditional use requirements of Section 27-1705. Campbell also reviewed the requested uses in the floodway with Engel, including: an amphitheater, plaza, walkway, paved parking area, trash and utility facilities, sewer facilities, storm water facilities, sidewalks, courtyards and meeting areas, grading and regarding of land, disturbance of earth, removal of topsoil, construction of retaining walls, deposit of topsoil, parking facilities and structures, utility transmission lines, fencing during construction.

15. Campbell next asked Engel to address the requested height variance. The maximum height permitted under Section 27-1503 is eighty-five (85) feet. The Applicant requested a Variance in the amount of five (5) feet because the height of B-1 and B-2 had not yet been determined due to the slope on the site.

16. Campbell concluded Engel's testimony by posing questions similar to those posed to O'Neill. Engel indicated that the Property was suitable for the Proposed Use and that it was a permissible use. Engel also confirmed that public facilities such as water and sewer are available to the site. Engel also stated that the Applicant had agreed to finance a portion of the Borough's global traffic study, a summary of which was admitted as Exhibit P-6. The global traffic study anticipates additional office space on the Property of about 225,000 square feet, and indicates that the proposed Project was consistent with the global traffic study.

17. The Chairman then asked Zoning Officer Christine Stetler ("Stetler") when the Project would be before the Planning Commission. Stetler indicated that there has been no submission to the Planning Commission, so May or June would be earliest possible timing before the Planning Commission. The Chairman also posed a technical

question to Engel asking Engel to delineate the floodway boundary on Exhibit P-3, and Engel confirmed that none of the proposed buildings would be constructed in the floodway. The Chairman then opened the hearing up to questions from the remainder of the Board:

a) Cardamone asked whether any structure could be built between the proposed parking structure and the River. Engel responded that an existing parking lot was located along the River on the adjacent property owner's land and that there were woods between the two properties. He indicated that buildings would not be built in the floodway. Cardamone also asked Engel to confirm that the Applicant's position was that the proposed parking structure was not parallel to the River. Engel confirmed and indicated that it was separated from the River by a mature stand of trees, which served as a natural buffer. Engel also confirmed that parking on the first level of B1 and B2 would permit flood waters to flow through the area. Cardamone also asked about parking for M2 and M3. Engel indicated that some existing parking for these buildings would be removed, but that exact numbers had not been finalized.

b) Angelucci asked about the height of the buildings. O'Neill indicated that they would be less than ninety-five (95) feet. The Chairman indicated that the request in Exhibit P-2 was for the Variance to permit height to ninety (90) feet. O'Neill indicated that 90 feet would be sufficient to accommodate the Proposed Use.

c) Gregory Scharff ("Scharff") asked about the scale of the proposed buildings, with respect to the existing neighboring Londonbury complex. O'Neill confirmed that the projected height of B-1 and B-2 would be equal to the height of

Londonbury. Scharff also asked about the height of the proposed parking structure, which Engel stated would be sixty (60) feet.

d) Janis Vacca ("Vacca") asked to confirm the cumulative length of B-1, B-2 and the Connector, which Campbell indicated would be 520 feet and that the distance from B-1 Connector to B-2 would be 384 feet. Campbell also confirmed that the request for relief is with respect to the length of both buildings on both sides, stating that the Applicant recognized that if it were to connect B-2 and the Connector to M-3, there would be a single building going the length of 520 feet and that the proposed B-1 to B-2 Connector would be 34 feet in excess of the permissible building bulk. Vacca also raised a procedural question as to whether the Applicant was asking the Board to grant a variance from the Code's requirement that the Applicant obtain conditional use approval for the planned construction in the floodway. Campbell indicated that it was the Applicant's position that it met the standards of Section 27-1509 for the expansion of building bulk, but that the Applicant was requesting the Variance due to the hardship associated with the Property. Campbell reminded the Board that the Code does not define "visible," "fronting" or "parallel." O'Neill added that the proposed parking structure could not be considered fronting because of the neighboring landowner's property, as illustrated by an additional plan of the property, which was marked as Exhibit P-7. The Applicant also used a Google aerial photo, which was admitted as Exhibit P-8, to illustrate the location of the property line. Stetler confirmed that the wooded area between the neighbor's property and the Property was a remnant of the Schuylkill Canal and that it constituted preserved open space. Vacca stated that in her opinion, the intent of the Code was to avoid having a parking structure visible along the

River. O'Neill stated that the Applicant was not trying to split hairs, but to adequately address the requests of the Tenant for the space. O'Neill also commented on the proposed length of the buildings with reference to the historic factory structures in Conshohocken that were interconnected via walkways and connectors, which the Project was designed to imitate. Vacca asked whether it would be possible to rotate the parking structure ninety degrees (90°). Campbell indicated that the rotation would place the parking structure closer to Washington Street. Vacca also suggested an L-shape, but O'Neill indicated an L-shape would prevent the grid design of the Project.

e) The Chairman next commented that the B-1 and B-2 Connector structure would result in 384 feet in building length. He stated the issue becomes that these buildings, unlike M-2 and M-3 are closer to the River. M-2 and M-3 are 360 feet in length, but Stetler stated that these buildings were constructed in 2000, prior to the current building bulk requirements. Stetler confirmed, however, that building bulk relief would be necessary in the present case because the request was to expand on what was originally permitted. The Chairman continued this discussion with reference to the requested relief from conditional use. The Chairman expressed concern regarding floodplain issues and overstepping the role of Borough Council. He also stated the Board would need expert review by the Borough Engineer on technical information. Specifically, the Chairman cited page 3 of the Applicant's addendum to the Application, including items 1 through 10. Campbell indicated that items 1 through 10 include buildings and reiterated that the Applicant's plans do not include buildings in the floodway. The Chairman suggested items in the floodway that require conditional use approval should have conditional use approval with the benefit of review by the Borough

Engineer. Engel responded indicating the contradiction that the DEP is requiring zoning approval. O'Neill indicated that this issue has caused a dispute. Nasatir stated that he was not aware of this issue and offered to discuss the issue with the Borough Solicitor. The Chairman indicated that at a minimum, he would like the Borough Engineer to weigh in on the improvements in the floodway.

f) Stetler asked whether the public access ways to the River would be recorded so that the Borough is protected in terms of access to the River. Campbell indicated that the Applicant was agreeable.

18. The Chairman opened the hearing up to questions from the audience. No questions were asked. Stetler commented that the floor area ratio and impervious coverage would need to be evaluated with respect to other buildings situated on Millennium Block A. Campbell indicated that the Applicant had obtained preliminary review on that topic. The Chairman also asked for statements from the audience. There were no public statements.

19. The Chairman indicated his preference to continue the hearing to allow the Borough Engineer to weigh in on the technicalities of the proposal. Cardamone also requested that the Applicant provide a plan with the building dimensions at the next hearing as well as a Google map photo showing the trees separating the Property and the River. O'Neill agreed to provide both. The Chairman also requested that the Borough Engineer be available at the next hearing. The Board voted to continue the hearing.

20. The hearing was continued on May 5, 2014. The Applicant submitted correspondence from both Remington, Vernick and Beach Engineers ("RVB"), the Borough Engineer, and Engel's engineering firm, Right Angle Engineering ("RAE"),

with respect to the floodway issue. Plans for review by the Borough Engineer were submitted to RVB under cover letter dated April 23, 2014, the plans being admitted as Continuation Exhibit P-7 and the accompanying cover letter as Continuation Exhibit P-8. A response letter from RVB regarding the floodplain use review dated April 29, 2014 was admitted as Continuation Exhibit P-8A. The RAE response letter dated May 3, 2014 accompanying revised plans from RAE was admitted as Continuation Exhibit P-9. The revised plans submitted with the May 3, 2014 letter, which include the building dimensions, were separately admitted as Continuation Exhibit P-12. An additional review letter dated as of May 5, 2014 from RVB was admitted as Continuation Exhibit P-10. Campbell also submitted a Google map image of the site, with the proposed development superimposed, which was admitted as Continuation Exhibit P-11. Per the request of the Board, James Watson ("Watson") of RVB was also present to respond to questioning.

21. Campbell opened the Applicant's presentation by reviewing Continuation Exhibit P-11. Campbell indicated that the Google image showed that the parking structure was not clearly visible from the other side of the Schuylkill River through the foliage. O'Neill also commented that his team had developed a "skin," including colors and LED lighting, for the parking structure so that it does not have to look like a parking structure. The Chairman asked about the landscaped area between the development and the River visible on Continuation Exhibit P-11. O'Neill indicated that the landscaped property is not part of the Property and may actually have been dedicated to the Borough by the neighboring property owner. Campbell added that the fact that the landscaped

area is between the Property and the River means that the parking structure does not front the River.

22. In support of this notion, Campbell cited the language of Section 1504.D.5 with respect to "No lot shall be developed with a parking structure fronting parallel to the Schuylkill River, nor shall a parking structure be located on any lot area between the primary structure and the Schuylkill River." The Chairman asked the Applicant to clarify with respect to the "primary structure." O'Neill indicated that the primary structure in this case was the proposed office buildings. Campbell also cited Section 1509.2.C, reciting "The lot shall not be developed with a visible parking structure fronting parallel to the Schuylkill River, nor shall a stand-alone parking structure be located in any lot area between the primary structure and the Schuylkill River." Campbell indicated that the Applicant believed the Project complied with Section 1509.2.C because the lot is separated from the River by the neighboring property and the structure would be camouflaged. Stetler commented that the camouflage should be a condition to any relief granted with respect to the parking structure. Cardamone commented his belief that the parking structure would still be fronting and parallel to the River. Angelucci voiced agreement with Cardamone's comments. O'Neill responded by comparing the Property to a beach house in that a beach house located a block from the beach would not be considered beach front. Vacca asked how many stories were intended for the parking structure. O'Neill indicated there would be five (5) stories, and that the structure would be camouflaged with wire mesh and LED lighting. Vacca voiced her concern that the LED lighting would make the structure more visible. O'Neill indicated that the lights highlight the screen, not the garage and result in a luminescent glow on the screen.

Vacca asked whether the LED screen would be on at all times. O'Neill indicated that during the day, light would reflect from the screen disguising the parking structure and then at night, the lights would help disguise the interior lights of the parking structure.

23. The Chairman requested questions from the public on the parking structure, and there were no questions. O'Neill provided an image of the LED lighting from the internet. The image was admitted as Continuation Exhibit P-13. Vacca asked if the planned wire mesh system would be similar to the Murano parking structure in downtown Philadelphia. O'Neill indicated the proposed would be similar, but that technology had improved and described it as a metal wall with holes in it which is lit up at night so that the parking structure profile does not show from the parking structure lights. O'Neill also provided a picture of the utility building at the University of Pennsylvania, which was admitted as Continuation Exhibit P-14, to show the metal screening which is similarly lit up at night. O'Neill indicated his intention to use more color than used in the University of Pennsylvania project.

24. Campbell stated that the Applicant was also seeking relief from the building bulk requirements. Referring to Continuation Exhibit P-12, Campbell indicated that the distance from the Washington Street side of M-3 all the way to the front of B-2 would be approximately 520 feet. M-3, itself, is 334.3 feet and the Connector between M-3 and B-2 would result in 62.1 feet, while the Connector to the front of B-2 would be 138.4 feet, for a total of 543.8 feet. The Chairman asked specifically about the function of the 62.1 feet Connector between M-3 and B-2. O'Neill described the area as a connection between the two (2) office buildings in similar style to the historic factories in Conshohocken. Campbell added that the ground floors of B-1, B-2 and M-3 would be

parking, so there would be connectivity there. O'Neill confirmed that the Connector would be a true structural element and would permit someone to walk the full 543.8 feet, and that it would be designed as a winter garden with a glass exterior. Campbell also referenced Continuation Exhibit P-12 to highlight the subtle arc on the front façade of the building, which had been designed to echo the proposed amphitheater.

25. The Chairman opened the discussion up to questions from the Board and Stetler:

a) Cardamone asked whether a pedestrian bridge had been considered, rather than the Connector which would include meeting and office space. O'Neill indicated that the reason a bridge would not work is that the Tenant needs the ability to collaborate, but that the Applicant would be willing to narrow the Connector so that it was more like a bridge than additional meeting space.

b) Vacca asked whether the existing Londonbury complex would block the building bulk view of the Property from the Schuylkill Expressway. O'Neill indicated that only Londonbury would be visible from the Expressway. He added that the Applicant's intent was to replicate the historic buildings in Conshohocken. Vacca also asked about the façade of M-3. O'Neill indicated that the existing façade is red brick. O'Neill confirmed that B-1 and B-2 would not be red brick, but that there would be red brick in the courtyard of the new buildings.

c) The Chairman asked whether relief would also be necessary for building bulk with respect to the proposed parking structure. Campbell indicated that the length of the parking structure was proposed to be 274.8 feet, which would require a variance. O'Neill indicated the size of the parking structure was directly related to the

Proposed Use, and that the parking structure includes thirty to fifty (30-50) spaces for the public trail system on the Property.

d) Stetler asked whether the public parking would accommodate the parking being eliminated between the two Millennium buildings. Campbell indicated that some parking would be lost with the Project, but that parking would still conform to the Code. O'Neill indicated that the Tenant requested visitor parking at each entrance. Stetler also asked about the existing public access to the River between the Millennium buildings. Campbell indicated that the public access between M-2 and M-3 is somewhat limited due to the slope there. Campbell stated public access points exist from Washington Street along Millennium 2 to a sidewalk that goes down to the River, as well as a sidewalk along Ash Street and a sidewalk along Poplar. O'Neill added that there would be a bridge and an archway between the parking garage and the buildings that would be visible from Washington Street.

26. The Chairman requested questions from the public with respect to the requested building bulk relief. There were no questions.

27. Next, Campbell highlighted the boundary lines of the floodplain and the floodway on Continuation Exhibit P-12. .Campbell stated that since the original hearing, the relief requested for construction in the floodway had narrowed from ten (10) categories of use to two (2). Pointing to the comments on Continuation Exhibit P-10, Campbell asked if Watson could testify with respect to his review. Watson stated that the Borough Engineer's comments were adequately addressed in the revised plans received in response to its letter dated April 29, 2014 (Continuation Exhibit P-8A). Watson stated that some requested items would be available at the time of the National Pollutant

Discharge Elimination System (NPDES) application. Campbell clarified that some of the changes requested by the Engineer could not be completed until complete site engineering had taken place. The Board had no questions for Watson. Campbell reiterated that the original request for construction in the floodway had changed, specifically that no portion of the parking structure is proposed in the floodway, but strictly in the floodplain. Campbell confirmed that the relief being requested for construction in the floodway was limited to grading and the disturbance of earth relating to the walkway and one half of one parking space along Poplar Street. The Chairman asked and Campbell confirmed that the amphitheater, plaza, paved walkways, sidewalks and parking areas, grading and regarding of land were still being proposed in the floodway.

28. The Chairman asked for questions from the public regarding construction in the floodway:

a) Jane Garbacz ("Garbacz"), 149 Sutcliffe Lane, asked how much of the floodway would be paved. Campbell indicated that a small sidewalk is proposed in the public plaza.

b) Stetler also commented, asking whether the grading and regarding would raise the flood elevation. Campbell stated that it would not. Stetler indicated the Borough's preference to have Flood Elevation Certifications on file at the Borough, and not just with the Borough Engineer. Stetler also asked for hydrology reporting which showed the Project, as proposed, would comply with the FEMA flood insurance program. Campbell agreed.

29. Campbell briefly addressed the Applicant's requested relief with respect to height. He stated that the request for relief was due to the fact that the precise architecture of B-1 and B-2 was not yet complete, and that the slopes on the Property may impact the final height of the proposed buildings. There were no questions from the public or the Board regarding the height relief request.

30. The Chairman asked for statements from the public:

a) Garbacz voiced concerns over traffic congestion and environmental risks. She stressed the importance of the Floodplain Conservation District to the region, and the fact that the Borough does not have an emergency management plan in place to relocate flood victims. She also cited contaminated soil along the brownfield sites of the Conshohocken riverfront. Garbacz stated that the requested relief was to please an incoming Tenant, but at the expense of the residents of Conshohocken. She also referenced the capacity of the Conshohocken Waste Water Treatment Plant.

b) There were no other statements from the public and O'Neill indicated he wished to respond. O'Neill stated that the Conshohocken sewer facility is operating at fifty percent (50%) of capacity currently. Secondly, he indicated that the properties the Applicant purchased had zero access to the River and the Applicant introduced the 100 foot strip to create public access. Lastly, O'Neill stated that the Property has five (5) points of entry to the riverfront.

31. The Chairman asked for questions from the Board:

a) Cardamone asked what the elevations would look like, specifically with respect to the Connector on the rear side of the proposed buildings, and asked whether the rear Connector could be revised in conformity with the front Connector, as

more of a bridge than a meeting space. O'Neill indicated that the rear Connector would actually be smaller in size. O'Neill agreed that the Connector could be just a connection space, although he indicated it would need to be fourteen (14) feet wide.

b) Vacca asked whether the riverside of the parking structure could be opaque, not with the wire mesh, but opaque so as it is not visible as a parking structure. O'Neill indicated this could be done. Vacca indicated her preference that an opaque parking structure would be more in line with the Code in that the ordinance prohibits a parking structure parallel to the River. The Chairman suggested that the Borough Design Review Committee ("DRC") review the plans to make the parking structure opaque and that any relief granted be contingent upon DRC approval, which is ultimately subject to the approval of Borough Council. Stetler also commented that the Project will be required to go before the DRC because it is to be located on the waterfront. The Chairman asked if the parking structure could be rotated such that it would be narrower along the River. O'Neill indicated that there are tenants in buildings M-2 and M-3, and they would be blocked if the parking structure was rotated. He also added that the rotation would encroach on existing parking.

32. Stephen Forster ("Forster"), a consultant for the Applicant, presented an image showing the rear of the proposed building with the architectural center which was admitted as Continuation Exhibit P-15. A second image, admitted as Continuation Exhibit P-16, showed the same building with a view from the riverside.

33. The Board finds that the matter was properly advertised pursuant to the Zoning Ordinance and the Pennsylvania Municipal Planning Code ("MPC").

III. Discussion

As detailed above, the Proposed Relief that the Applicant wishes to obtain is comprised of the Variances in order to permit the development of the Project, all in accordance with the plans submitted by the Applicant and the testimony offered at the hearing. The Proposed Relief would (i) permit the Project to include buildings in excess of 350 feet in length; (ii) construct a visible parking structure fronting parallel to the Schuylkill River; (iii) utilize portions of the Property in the floodway without first obtaining conditional use approval; and (iv) construct buildings in excess of the eighty-five (85) feet height limit. The Applicant believes that the requested Variances constitute the minimal relief necessary to complete the Project.

Section 27-611 of the Zoning Ordinance permits the Board to grant a variance when the "Zoning Ordinance inflicts unnecessary hardship upon the Applicant." See id. at 27-611(1)(A). Unnecessary hardship is to be determined to be present when the Board determines, as applicable, that:

a) there are unique physical circumstances or conditions to the property;

b) there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and thus the Variance is necessary to enable reasonable use of the property;

c) the unnecessary hardship has not been created by the Applicant;

d) the granting of the Variance, if authorized, would not alter the essential character of the neighborhood; and

e) the granting of the Variance, if authorized will represent the minimum variance to afford the relief and represent the least modification possible to the regulation in issue.

Id. at § 27-611. See also MPC, at 53 P.S. §10910.2.

Some of the requested Variances, including from Section 27-1503, in particular, are of a dimensional nature. In such situations, the Supreme Court of Pennsylvania has found, "the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations." See Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh, 721 A.2d 43, 47 (Pa. 1998). Thus, the Pennsylvania Supreme Court has stated, the level "of proof required to establish unnecessary hardship is indeed lesser." See id. at 48.

The Board has reviewed the Proposed Relief carefully in connection with the requirements of Section 27-611 as well as the MPC standards for granting the Proposed Relief. See MPC, at 53 P.S. §10910.2.

The Board has noted the heavy volume of testimony and exhibits entered into evidence on this matter.

With respect to the Variance requested under Section 27-1509.2 in connection with building bulk, the Board considered the use of the proposed Connector space between buildings M-3 and B-2 and of the Connector between buildings B-1 and B-2. With respect to the new construction buildings, B-1 and B-2, the proposal would result in a total building bulk of 384 feet or thirty-four (34) feet in excess of the 350 permissible feet in building length. The Board considered the thirty-four (34) feet to be a de minimus variance, and unanimously agreed to grant the Variance. With respect to the larger

Connector between the existing building, M-3 and the new building, B-2, the Board expressed the intent that the Connector be as narrow as possible and used solely as a walkway. The Board unanimously agreed to grant the Variance with respect to the proposed Connector between buildings M-3 and B-2, on the condition that the area of the space in that Connector only be used for the transient movement of employees, with no office space or gathering areas (the "Building Bulk Condition").

The Applicant is also seeking relief related to building bulk with respect to the proposed parking structure. The proposed parking structure would have a length of 274.9 feet, which exceeds the 250 foot limit of Section 27-1509.2. The Board, with Cardamone opposing, agreed to grant the Variance to permit the parking structure to exceed the 250 foot maximum up to a 275 foot length.

With respect to the parking structure, the Applicant also sought a Variance under Section 1504.D.5 and Section 27-1509.2.C in connection with the prohibition on the erection of a visible parking structure that is fronting and parallel to the River. The Board agreed, with Cardamone opposing, to grant the Variance to permit the parking structure to be visible, located parallel to and fronting the Schuylkill River, on the condition that the structure be concealed by some method other than wire mesh such that the parking structure does not appear to be a parking structure when viewed from the riverside, in the opinion of the Borough Design Review Commission, which is ultimately subject to the approval of Borough Council (the "DRC Condition," and collectively, together with the Building Bulk Condition, the "Conditions").

The Board also considered the Applicant's request for relief with respect to uses in the floodway. The proposed uses in the floodway include the proposed amphitheater,

plaza, the paved parking area, paved walkways and other meeting areas, grading and regarding of land, disturbance of earth, removal or deposit of topsoil and the construction of retaining walls, as identified as items 1, 6 and 7 in Exhibit P-2. The Board unanimously agreed to grant the Variance to permit the following uses in the floodway: (1) an amphitheater, plaza, walkway, paved parking areas; (6) paved walkways, sidewalks, parking areas, plazas, courtyards, meeting areas; and (7) grading and regarding of land, disturbance of earth, removal and or deposit of topsoil, construction of retaining walls.

The Board also considered the Applicant's request for relief from the building height requirements of Section 27-1503. The Board noted that the Applicant has requested an allowance of an additional five (5) feet in building height to accommodate the slope in the Property, but that no structure would exceed ninety (90) feet in height. The majority of the Board believes that granting the requested Variance is both prudent and appropriate in relieving an undue hardship upon the Applicant, and further believes that the dimensional relief requested is a "reasonable adjustment of the zoning regulations in order to utilize the property in an manner consistent with the applicable regulations" as required under the Hertzberg decision. See Hertzberg, 721 A.2d at 47, 48. The Board, with Cardamone opposing, agreed to grant the Variance.

IV. Conclusions of Law

1. The matter was properly presented before the Board.

2. The matter was properly advertised and the hearings both timely and appropriately convened in accordance with the provisions of both the Zoning Ordinance and the MPC.

3. The Zoning Ordinance and the MPC both give the Board the necessary discretion to determine whether or not to grant the Proposed Relief, as well as to subject same to the Conditions.

ORDER

The Board grants the Applicant's request for the Proposed Relief from the following Sections of the Zoning Ordinance: 27-1509.2, subject to the Building Bulk Condition; 27-1504.D subject to the DRC Condition; 27-1705 limited to Items 1, 6 and 7 of Exhibit P-2, respectively; and 27-1503. Such relief is granted subject to the Applicant maintaining the Proposed Use in conformity with the information provided to the Board as well as all other regulations of the Borough.

CONSHOHOCKEN ZONING HEARING BOARD[2]

Richard D. Barton

Richard D. Barton, Chairman

Vivian Angelucci

Vivian Angelucci

Russ Cardamone

Janis Vacca

Janis Vacca

[2] Gregory Scharff did not attend the continuation hearing, and therefore, did not take part in the decision.

BEFORE THE ZONING HEARING BOARD OF CONSHOHOCKEN

IN RE: APPLICATION OF WASHINGTON STREET ASSOCIATES IV, L.P. AND MILLENNIUM WATERFRONT ASSOCIATES, L.P.

REGARDING PROPERTY LOCATED AT THE

200 BLOCK OF WASHINGTON STREET- MILLENNIUM BLOCK A

DECISION OF THE BOARD

I. HISTORY

On or about June 8, 2015, Washington Street Associates IV, L.P. and Millennium Waterfront Associates, L.P., (hereinafter called "Appellants"), filed the within Appeal for five variances and/or interpretations of the terms of Sections 27-1509.2, 27-1504(D), 27-1503, 27-1505(B)(2) and 27-1504(F) of the Conshohocken Borough Zoning Ordinance of 2001 (together with all amendments thereto, the "Zoning Ordinance"), seeking permission to construct a 420,000 square foot office building which is 400 lineal feet, 135 feet high, having impervious coverage of 80% and having internal setbacks between the building and curb of less than 25 feet at the property located at the 200 Block of Washington Street, Conshohocken, Pennsylvania (hereinafter called "Subject Property"). The applicant also further proposes orientation of a parking structure fronting parallel to the Schuylkill River.

After notice was duly given and advertised, two hearing were held on said Appeal at Borough Hall on July 6, 2015 and September 29, 2015.[1]

At the hearing, the following Exhibits were introduced and admitted:

P-1 – Public Notice of the Case.

P-2 – Zoning Application.

A-1 – Zoning Application and Addendum.

[1] The July 6, 2015 hearing was continued until August 3, 2015. At the August 3, 2015 hearing the Appellants requested a continuance, which was granted. There was no testimony heard at this date.

A-2- Letter of Amendment to Zoning Application.

A-3- Resume for Dale T. Stesko R.A.

A-4- Resume for Michael Minervini, P.E.

A-5- Executed Deed for Units E,F,G,H and J.

A-6- Overall Site Plan.

A-7- Millennium Corporate Center Front Elevations.

A-8- Millennium Corporate Center Rear Elevations.

A-9- Prototypes of Parking Garage Exterior.

Applicants' Supplemental Exhibits

A-1- Resume for Thomas E. Hall, AIA.

A-2- Pixar Photo Study.

A-3- Black and White Profiles of Proposed Building.

A-4- Roof Top Images.

A-5- Garage Exterior Image.

II. FINDINGS OF FACT

1. The Subject Property is located at the 200 Block of Washington Street and is owned by Washington Street Associates IV, L.P.

2. The Subject Property is located in the Specialty Planned Two Zoning District ("SP-2").

3. The Appellants have a business address of 2701 Renaissance Boulevard, 4th Floor, King of Prussia, PA 19406.

4. The Subject Property previously filed for variances by Application and addendum on February 26, 2014.

5. The previously requested variances were granted by the Zoning Hearing Board after hearings took place on April 7, 2014 and May 5, 2014.

6. The Appellants filed this application essentially requesting to amend the previously granted relief.

7. The Appellants were represented by Edmond J. Campbell, Jr., Esquire.

8. Mike Savona, Esquire, solicitor to the Borough of Conshohocken (hereinafter "Borough"), represented the Borough at the September 29, 2015 hearing date. At said hearing, Mr. Savona stated that Borough Council supports the proposed application.

9. Mr. Campbell stated that the Appellants have a potential tenant for the Subject Property who is requiring additional modifications of the Subject Property, which is why the Appellants filed a new application even though it was granted relief last year.

10. The Subject Property, if the proposed relief is granted, would be leased to a single tenant who is looking to consolidate their operations in a single building in Conshohocken.

11. The zoning code permits development of FAR at a ratio of 1.5. Block A is about 750,000 square feet. Pursuant to the ratio, the zoning code would allow development of 1,125,000 square feet. There is currently between 500,000 and 550,000 square feet on the site, which leaves approximately 650,000 square feet left that can be potentially built upon.

12. The Appellants cannot develop the allowable 650,000 square feet without the requested variances. Even if the variances are granted, the Appellants are only seeking to build 420,000 square feet, so the site is not being developed to the fullest as allowed by the FAR ratio.

13. Because the Subject Property is located adjacent to the river, that presents economic challenges to developing the site since it needs to be elevated out of the floodplain, which is a unique characteristic of the Subject Property.

14. The proposed plan would have about 75% to 76% impervious coverage while the Zoning Ordinance allows 70% by right.

15. The proposed plan included an internal driveway that would provide access to the proposed parking structure. Because the internal driveway would come within the setbacks within the Zoning Ordinance, the Appellants are seeking relief to allow this internal driveway.

16. At the hearing on July 6, 2015, Mr. Campbell called Mr. Dale Stesko to testify. The Board accepted Mr. Stesko as an expert in architecture. Mr. Stesko testified to the following:

a. He is an architect who is licensed in Pennsylvania.

b. He is primarily employed by O'Neill Properties but also does work for Valley Forge Planning.

c. The development would be approximately five acres. To the north and south the boundaries would be Millennium II and III on the Washington Street side. The Schuylkill river is the boundary opposite Washington Street. The western boundary would be Ash Street.

d. The site is in the flood plain.

e. The applicant is requesting variances for building height, building bulk, impervious coverage and setbacks from internal drives. However, the Applicant is not changing the footprint of the building from what was approved by the Board last year.

f. The office building would have eight levels plus a penthouse.

g. If the variance for the parking garage height was granted to allow a garage which would be 135 feet high, that would equate to 12 or 13 floors and would provide approximately 1,500 cars. This would accommodate the parking need for the 420,000 square foot office building on the site.

h. It is not possible to develop another 600,000 square feet of office or residential use on the site within the 85-foot height limitation that's provided in the code.

i. Because of the surroundings, the only way to capture the available FAR is to go higher, which would also require more parking.

j. The Applicant would be willing to design the parking garage in order to mask the façade that faces the river.

k. As a professional architect, he cannot come up with any design that would allow a roadway to get vehicles into a building for the purposes of parking unless it actually meets the building. As such, the Applicant is requesting relief for the internal driveways.

l. The Subject Property is suitable for the proposed office development.

m. The Subject Property would be in the best interest of the public welfare and the Borough.

n. There is adequate sewer and water to serve the property.

o. The variances are the minimum needed to accomplish the proposed development.

17. After a few questions from the Board Members, mostly related to how this application is different from the previous application that was granted relief, and why the Applicant is asking for more relief, Mr. Campbell asked to continue the hearing. This request was granted.

18. The next hearing when testimony was heard occurred on September 29, 2015.

19. Mr. Campbell called Mr. Brian O'Neill to testify. Mr. O'Neill testified as follows:

    a. New office buildings are being designed to have a series of central spaces designed to attract collaboration amongst employees.

b. The proposed lobby would extend all the way to the back of the building where there is a proposed amphitheater. There would also be a restaurant in the lobby as a part of the proposed active internal streetscape.

c. The roof of the building will be about 50,000 square feet and would include spaces that would be utilized by the potential tenant.

d. City Tap House restaurant is a potential tenant who may utilize a portion of the roof space. This would be in addition to the restaurant in the lobby.

e. When compared to all of the building in the Borough, the proposed office building would not be the largest building in the Borough. Additionally, the proposed Equis building is taller than the Applicant's proposed building.

f. 400 Four Falls, Five Tower Bridge and the Marriott are all taller in height than the proposed office building.

g. This application was filed due to the specific requests of a specific tenant who would be utilizing the entire office building.

h. The way the parking garage is designed, if needed, the proposed garage could have a floor added in very little time.

i. He has owned and developed property in the Borough for over 30 years.

j. The proposed building would be roughly 33% larger than the relief that was granted by the Board previously.

k. The proposed tenant is requesting enough parking for five spaces per thousand square feet. At a maximum, the total amount of cars would be 2,100.

l. The proposed tenant currently occupies close to 400,000 square feet at their current location.

20. Mr. Campbell then called Mr. Hall to testify. Mr. Hall testified as follows:

a. He is an architect licensed in Pennsylvania and 11 other states.

b. His firm particularly focuses on designing office buildings and had designed millions of square feet since 1988.

c. He designed the exhibits which show all of the buildings heights in the Borough, and to a reasonable degree of architectural certainty, using information provided by Google Maps, the exhibits accurately reflect the building sizes in the Borough.

d. The requirement for garages, due to ventilation reasons, is to be 50% open.

21. No members of the public spoke out against the Application.

III. DISCUSSION

Section 27-1509.2 states, "In the SP-2 District, a maximum building profile, as seen from end-to-end from any side or elevation, and measured perpendicular to such side or elevation, shall not exceed 250 linear feet in total horizontal length on any floor or floors. Council may permit an increase in the maximum building profile to 350 linear feet by conditional use approval, subject to the following specific conditions:

A. There shall be adequate architectural controls in the form of breaks in the facade, so no more than 50 feet of the building is a consistent facade;

B. For every additional 50 feet of building length, there shall be an additional 5% of open space provided on the lot or parcel; and

C. The lot shall not be developed with a visible parking structure fronting parallel to the Schuylkill River, nor shall a stand-alone parking structure be located on any lot area between the primary structure and the Schuylkill River."

Section 27-1504(D) states "Riverfront Access and Open Space in SP-2 District.

(1) Purpose: the intent of the riverfront access and open space provision is to provide year-round opportunities for outdoor recreation within this district, provide visual relief within the built environment and facilitate circulation for pedestrians to and throughout these districts.

(2) Area: a minimum of 15% of each lot within this district shall be provided and maintained as open space. Slopes along roadways and the riverbank may be included as part of the required open space if such areas are landscaped and designed to fulfill the intent of this Section. Open space shall be restricted from further subdivision and development by a restriction in a deed and/or by a conservation easement.

(3) So long as the landowner is immune from liability pursuant to the Recreational Use of Land and Water Act, 68 P.S. 477-1 et seq.:

(a) For every development within the SP-2 District, there shall be twenty-four-hour daily emergency (i.e., fire and police) and dawn to dusk public access between Washington Street and the riverfront trail. Required public access must be provided via an easement or public right-of-way, recorded on the land development plans.

(b) There shall also be twenty-four-hour daily public access for walking, fishing, and sitting at the riverfront area between the extension of Ash Street and the eastern boundary of the SP Districts at the riverfront via a walkable surface installed at the top of the riverbank as developed.

(c) There shall be public access Monday through Friday from 6:00 p.m. until dusk and weekends and holidays from dawn until dusk for walking, fishing, and sitting in a designated riverfront strip from Fayette Street to the eastern boundary of the SP Districts at the riverfront via a walkable surface installed at the top of the riverbank as developed.

(4) Transfer of open space between lots within the SP-2 District shall be permitted by the Borough Council with conditional use approval subject to the following specific standards:

(a) Lots for which the transfer is proposed must be contiguous.

(b) All lots must be part of a common, unified and single land development application.

(c) The aggregate of all open space area must be equal to 15% of the total aggregate lot area of those lots contained in the common, unified and single land development application.

(d) For lots with frontage on the Schuylkill River, the open space must be provided along the riverfront area.

(e) Open space must be preserved in perpetuity through a conservation easement or transferred in fee simple to the Borough, as may be required by the Borough.

(5) No lot shall be developed with a parking structure fronting parallel to the Schuylkill River, nor shall a parking structure be located on any lot area between the primary structure and the Schuylkill River."

Section 27-1503 states, "...

1. The highest elevation of any building shall be 85 feet. For buildings with flat roofs, building height is measured from grade to the top of the building wall, excluding parapets of not more than eight feet. For buildings with pitched roofs, building height is measured from grade to the midpoint of the slope. The height excludes aerials, communication towers, or the like, as well as elevators, machine rooms, cooling towers, and their enclosing walls.

2. Notwithstanding any other provision of this Part, building height may be increased to 250 feet by conditional use, provided that the following conditions are met:

A. The location of the proposed building is within close proximity to the Fayette Street Bridge, as depicted on the map of the Fayette Street Bridge Development Area;

B. The maximum impervious surface coverage on the lot shall be not more than 60%;

C. A minimum of 15% of the lot shall be devoted to green space, excluding all impervious areas;

D. Not more than 5% of the required parking shall be permitted in surface parking areas on the lot;

E. The design of the proposed building must be submitted to the Borough Design Review Committee for review and approval prior to conditional use approval;

F. The plan must include riverfront access deeded to the Borough in perpetuity providing unrestricted public access to the riverfront areas in perpetuity;

G. For properties situated on the riverfront, the plan must meet the provisions of § 27-1610; and

H. Maximum floor area ratio of 2.5 for all uses, excluding parking garages, may be permitted."

Section 27-1505(B)(2) states, "The minimum building setback shall be 15 feet from ultimate roadway right-of-way, and 25 feet from the curbline of any private or internal drive."

Section 27-1504(F) states, "Impervious Coverage.

(1) In the SP-1 District, not more than 70% of the area of any lot in the district shall be covered by impervious surface.

(2) Notwithstanding any other provisions of this Part, in the SP-2 District, not more than 70% of the area of any lot in the district shall be covered by impervious surface."

In a request for a variance, the Board is guided by Section 27-611 of the Ordinance and Section 910.2 of the Pennsylvania Municipalities Planning Code (hereinafter called "MPC"). An applicant for a variance has the burden of establishing that a literal enforcement of the provisions of the Ordinance will result in an unnecessary hardship as that term is defined by law, including court decisions, and that the allowance of the variance will not be contrary to the public interest.

Section 27-611 of the Ordinance and Section 910.2 of the MPC permit the Board to grant a variance where it is alleged that the provisions of the Ordinance inflict unnecessary hardship upon the Appellant and when the Board can make certain prescribed findings where relevant in a given case.

The requested variances and/or interpretations are of a dimensional nature. In such situations, the Supreme Court of Pennsylvania has found, "the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations." See Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh, 721 A.2d 43, 47 (Pa. 1998). Thus, the Pennsylvania Supreme Court has stated, the level "of proof required to establish unnecessary hardship is indeed lesser." See id. at 48.

As the testimony and evidence presented to the Board in this case has shown, the Project attempts to accommodate both a positive use of the Property with minimal relief being requested.

As a result of all the above, the Application meets the requirements of "unnecessary hardship" required under the MPC. See id. The majority of the Board, upon thorough and deliberate review of the materials submitted and testimony offered, has determined that the proposed Variances are appropriate in consideration of the unique characteristics of the Property.

The requested variance will not adversely affect the public interest.

IV. CONCLUSIONS OF LAW

From the facts presented, it is the judgment of the Board that Appellants have proven an unnecessary hardship unique or peculiar to the property and that the variance is not contrary to the public interest. Accordingly, the Board is able to make the following relevant findings under Section 910.2 of the MPC:

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

2. That because of such physical circumstances or conditions there is no possibility that the property can be developed in strict conformity with the provisions of the Ordinance and that the authorization for a variance is therefore necessary to enable the reasonable use of the Subject Property;

3. That the variance will not alter the essential character of the neighborhood or district in which the Subject property is located, nor substantially or permanently impair the appropriate use or development of the adjacent property, or be detrimental to the public welfare;

4. That the unnecessary hardship has not been created by the Appellants; and,

5. That the variance will represent the minimum variance that will afford relief and will represent the least modification possible under Section 27-611.

ORDER

AND NOW, this 29th day of September 2015, the Appeal Washington Street Associates IV, L.P. and Millennium Waterfront Associates, L.P., seeking variances from Sections 27-1509.2, 27-1504(D), 27-1503, 27-1505(B)(2) and 27-1504(F), to construct a 420,000 square foot office building which is 400 lineal feet, 135 feet high, having impervious coverage of 80% and having internal setbacks between the building and curb of less than 25 feet in addition to the constructing a parking structure which would front parallel to the Schuylkill River is GRANTED.

The Appellants are directed to apply to the Borough Zoning Officer/Building Inspector to obtain any appropriate permits.

CONSHOHOCKEN ZONING HEARING BOARD

Richard Barton

Richard Barton, Chairman

Mark Danek

Gregory Scharff

Russ Cardamone, dissenting

Janis B. Vacca

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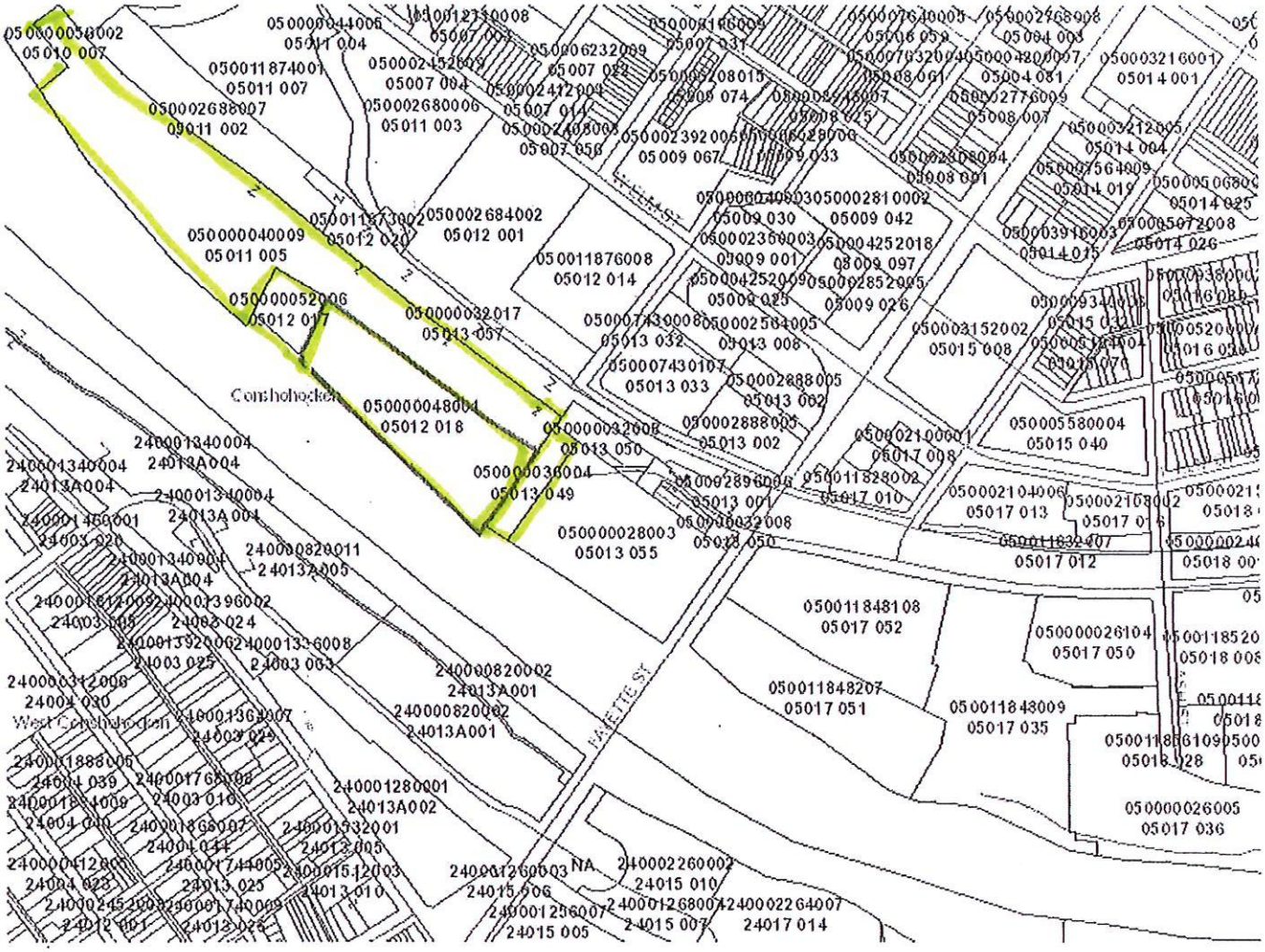
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