

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF  
NORTH GRANGE, LLC**

**NO. 2020-11  
APPLICATION FOR VARIANCES**

**DECISION**

**I. BACKGROUND**

A public hearing on the above Application was held on July 28, 2020 at the Methacton High School Auditorium, pursuant to Notice as required by the Worcester Township Zoning Ordinance, as amended (hereinafter “Zoning Ordinance”) and the Pennsylvania Municipalities Planning Code. The Applicant/Owner, North Grange, LLC, proposes to modify the storm water detention system, expand the parking lot, provide for additional storage area on the Property, and to make other changes to the Property located at 3481 Germantown Pike, Worcester Township/Lower Providence Township, Montgomery County, PA. The Worcester portion of the Property is located in the AGR-Agricultural Zoning District.

The Applicant requested the following relief:

- (1) A variance from Section 150-11, so as to permit the installation of landscaping, detention basin, fence, paving and related improvements for the existing lawn care business use.
- (2) Variances from Sections 150-13.B(2) and 150-16.B, so as to locate the parking/storage areas and driveway at a 25' front yard setback, a 25' side yard setback, and a 25' rear yard setback, rather than complying with the 250' required front yard setback or the 125' side and rear yard setbacks.
- (3) A variance from Section 150-14.B, so as to permit impervious coverage of 44% of the Worcester portion of the Property, rather than 20% permitted.

(4) A variance from Section 150-182.B, so as to permit the relocation of the existing privacy/security fence within the required front, side and rear yard setbacks, so as to establish 25' setbacks for the fence.

(5) Variances from Sections 150-203.C. and 150-203.D, so as to permit a storm water detention structure to occupy more than 15% of the required rear yard area of the Worcester portion of the Property, and to be located under the vehicular circulation area on the Property.

(6) A variance from Section 150-225, so as to permit the Applicant two (2) years from the grant of any relief by the Zoning Hearing Board to obtain a permit for the proposed improvements.

A quorum of the Zoning Hearing Board participated in the public hearings and conducted a vote in accordance with law. The Applicant was represented by Frank Bartle, Esquire and Eric Wert, Esq. No neighboring property owners elected to enter appearance as parties, however one neighbor posed questions regarding the proposal, which questions were answered to his satisfaction. The witnesses were duly sworn or affirmed and Notes of Testimony for the hearings were transcribed and are hereby made a part of this record.

At a public meeting on August 25, 2020, the Board voted to grant the application in part and deny the application in part. The Board issues Findings of Fact and Conclusions of Law in support of the Decision and Order.

## **II. FINDINGS OF FACT**

1. The Applicant is North Grange, LLC (“Applicant”), the legal owner of the Property located partially (approximately 52,000 square feet) in Lower Providence Township and partially (approximately 47,000 square feet) in Worcester Township, at 3481 Germantown Pike, Parcel No. 67-00-05302-10-9 Worcester Township, Montgomery County, PA, (“Property”). (N.T. 07/28/20,

pp. 5, 19, Exhibits A-1, A-2, A-4).

2. The following Exhibits were marked and duly admitted into evidence:

**BOARD EXHIBITS:**

- B-1 Public Notice
- B-2 Proof of Publication
- B-3 Letter from the Township Solicitor dated July 27, 2020

**APPLICANT’S EXHIBITS:**

- A-1 Application and Narrative
- A-2 Deed
- A-3 Aerial Photo
- A-4 Site Plan
- A-5 Hibbeln C.V.
- A-6 ZHB Decision No. 10-10

3. The Property, as a whole, measures approximately 2.29 acres, bounded on two (2) sides by roads, with frontage on Germantown Pike, a major roadway, and is located in the AGR-Agricultural District. ((N.T. 07/28/20, pp. 5-6, Exhibits A-1, A-2, A-4)

4. In 2010, the Applicant sought and received certain approvals related to landscaping, detention basin, fence and paving on the Worcester portion of the Property, which approval was conditioned on certain actions by and restrictions on the Applicant. (N.T. 07/28/20, pp. 5-6, Exhibits A-1, A-6)

5. Among the restrictions and conditions on the approval of the application in 2010 were that “[t]here will be no buildings on the portion of the property situate in the Agricultural District in Worcester Township....” and... “[a]ll mulch, sand, stone, salt and materials associated with the Applicant’s snow removal operation shall be stored inside the buildings and there shall be no outside storage on the Worcester portion of the property.” (Exhibit A-6)

6. Frederick Oskanian testified that he is employed by, and part owner of, Terra Landscaping, which operates out of the Property and offers lawn care, landscaping and snow

removal services. (N.T. 07/28/20, pp. 14-17)

7. Office, warehouse space and a parking area are located in the Lower Providence portion of the Property. (N.T. 07/28/20, pp. 17-18, Exhibit A-3)

8. A detention basin, fence, landscape buffer, and a limited paved area are located in the Worcester portion of the Property. (N.T. 07/28/20, pp. 17-18, Exhibit A-3)

9. Prior relief was granted by this Board in 2010 to permit limited paving, landscaping, fencing and the detention basin, but subject to conditions that the Applicant install a 125' landscape buffer, provide solid fencing, store all mulch, sand, stone, salt and materials inside the building located in the Lower Providence portion of the Property, and no outdoor storage on the Worcester portion of the Property. (N.T. 07/28/20, pp. 22-23, Exhibit A-6)

10. The parking area associated with the application in 2010 was to be located in the Lower Providence portion of the Property, but it is evident that the Applicant is parking trailers and equipment, storing materials (including stone, mulch, wood, etc.), and has erected a structure to cover mulch in the Worcester portion of the Property, contrary to the Board's conditions imposed in ZHB Decision No. 10-10. (N.T. 07/28/20, pp. 28-32, Exhibits A-3, A-4, A-6)

11. The Applicant currently reclaims rain water from gutters on the building and stores the water in an underground 30,000 gallon water tank, for use in conjunction with the landscaping business. (N.T. 07/28/20, pp. 20-21)

12. The Applicant stated that he has never seen water in the detention basin installed as a result of ZHB Decision No. 10-10, but nevertheless proposes modifications to the storm water detention system. (N.T. 07/28/20, pp. 30-31)

13. It is obvious that the Applicant wishes to expand its commercial operations onto the Worcester portion of the Property, including outside storage of landscaping materials and

equipment, as well as the parking of trucks, associated with a commercial use over the area of the Property previously approved for a detention basin, and hence wishes to dedicate most of the approximately 1.1 acres of land in the Worcester portion of the Property to commercial use. (N.T. 07/28/20, pp. 29-35, Exhibits A-3, A-4)

14. The Applicant is therefore requesting both use and dimensional variances to expand the commercial use on the Property.

15. The Applicant presented Anthony Hibbeln, a licensed civil engineer (“Civil Engineer”), to provide expert testimony. (N.T. 07/28/20, pp. 35-37, Exhibit A-5)

16. The Civil Engineer prepared the Plan marked as Exhibit A-4 and testified at the hearing with respect to certain details regarding moving the fence, extending the paving and constructing the proposed underground storm water detention system. (N.T. 07/28/20, pp. 37-76, Exhibit A-4)

17. The proposal is to move the fence back, and more than double the size of the parking/storage and impervious coverage in the Worcester portion of the Property, including using the area for commercial storage and parking operations. (N.T. 07/28/20, pp. 41-42, Exhibit A-4)

18. The Applicant plans to increase the storm water retention capacity to the benefit of its business and commercial operations by installing an underground storage structure in Worcester Township, and discontinue the use of the rain garden/detention basin previously approved. (N.T. 07/28/20, pp. 41-44, Exhibit A-4)

19. The Pennsylvania Department of Environmental Protection encourages the reuse of rain water as proposed by the Applicant. (N.T. 07/28/20, pp. 42-44)

20. The Board determines it to be appropriate for the Applicant to increase the storm water retention capacity for the Property, if it so chooses, as it appears that the reclaimed rain water

will be reused by the Applicant in conjunction with the Applicant's landscaping business, but subject to certain conditions and restrictions.

21. However, changing the use of the portion of the Property in Worcester Township by significantly expanding the parking and storage areas in Worcester Township, as proposed by the Applicant, would be contrary to the limitations and restrictions set by this Board in its 2010 Order, and the Applicant is already in violation of such restrictions and limitations.

22. There is no reason why the Applicant has to move the fence back, or expand the parking/storage area on the Property in Worcester Township, except to expand the outside storage and parking related to its commercial business.

23. A temporary removal and reinstallation of the fence in its current location may, however, be necessary for installation of the new underground storm water detention system, as conditioned and approved by the Township as part of the land development process.

24. The granting of the Applicant's request to expand the paving and storage areas in Worcester Township would result in the legitimization of the expansion of outdoor storage undertaken by the Applicant in violation of the limitations to which the Applicant was subject according to this Board's decision in 2010. (Exhibits A-3, A-6)

25. The Applicant agreed to comply with all requirements of the Township with respect to applications for land development approvals and/or earth disturbance/grading permit approvals. (N.T. 07/28/20, pp. 45-46)

26. To accommodate the expanded parking/storage area, the Applicant proposed to move the fence closer to the property lines, and modify the landscape buffer required by ZHB Decision No. 10-10. (N.T. 07/28/20, pp. 46-47, Exhibit A-4)

27. The Applicant has not established a hardship related to the dimensional

requirements for the paving or fencing, or to modify the landscape buffer required by the ZHB Decision No. 10-10, and there was no hardship established for a use variance to expand the operations of its commercial use in the Worcester portion of the Property. (N.T. 07/28/20, pp. 47-48, Exhibit A-4)

28. The Applicant maintained that the commercial use of the Property is nonconforming; that is not accurate as such use is permitted only by prior variance granted by ZHB Decision No. 10-10. (N.T. 07/28/20, pp. 49-52)

29. The Applicant did acknowledge that a use variance was required, and the Applicant's Civil Engineer agreed. (N.T. 07/28/20, pp. 49-50)

30. The Applicant planned to install another row of parking on the Property, and intended to drive over and park trucks and/or equipment over the proposed new storm water detention system, neither of which was shown on the plans presented to the Zoning Hearing Board, and both of which would be contrary to the limitations and restrictions set in this Board's 2010 Order. (N.T. 07/28/20, pp. 55-56; Exhibit A-4)

31. The Applicant maintained that because the use is a "nonconforming use" the impervious coverage requirements under Section 150-14.B do not apply. (N.T. 07/28/20, pp. 56-58)

32. The Applicant's interpretation of Section 150-14.B is in error in that this lot is an "agricultural use lot" and the very limited commercial use of the lot is not nonconforming, rather such limited commercial use only exists by a prior use variance granted by the Zoning Hearing Board, subject to restrictions and limitations.

33. The uses permitted by right on this lot are residential, municipal and agricultural uses, and therefore this lot is a "residential, municipal or agricultural use lot"; the fact that a

variance was granted does not change the underlying zoning, convert the use to a nonconforming use, or exempt the Property from impervious coverage requirements.

34. Regardless, for the sake of argument, even if the impervious coverage requirement under Section 150-14.B somehow does not apply because a portion of the lot was permitted to be used accessory to the commercial use in Lower Providence Township, the activities proposed by the Applicant to occur on such impervious coverage still require a use variance, for which the Applicant failed to establish any hardship whatsoever.

35. The Applicant maintained that no relief was required from Section 150-203.C as such provision only applies to non-residential districts; but Section 150-203.A specifically references the criteria of Section 150-203.C for single-family residential districts (AGR) and therefore relief from Section 150-203.C is required. (N.T. 07/28/20, pp. 58-60, 100-102)

36. In fact, Section 150-203.A specifically references the AGR District as a residential district.

37. The Applicant established no hardship for any of the use or dimensional relief requested.

38. However, since use and dimensional variances were previously granted to permit the storm water detention facility associated with a commercial use to be located in its current position, the request to place the proposed storm water detention facility underground in virtually the same location, is de minimis.

39. The Property has already been developed for reasonable use and no further expansion is justified, and the Applicant presented no evidence of hardship to relocate the fence or expand the parking/storage area, other than for pure economic and commercial business reasons, which cannot be the sole reason for variance relief.

40. With reference to the use and dimensional variances requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following:

- (A) There are no unique physical circumstances or conditions peculiar to the particular Property, resulting in an unnecessary hardship which would justify the requested use and dimensional variances.
- (B) The Property can be used, and, in fact, has been consistently used in excess of the provisions of the Zoning Ordinance, and the prior relief granted; and therefore, the authorization of the use and dimensional variances is not necessary to enable the reasonable use of the Property.
- (C) Any alleged “hardship” has been created by the Applicant by proposing to use the Property contrary to the applicable zoning and the prior relief granted.
- (D) The granting of the variances, other than the de minimis variances granted below, will alter the essential character of the neighborhood, would substantially impair the use or development of adjacent property, and would be detrimental to public welfare.
- (E) The variances requested are not the minimum variances to afford relief under the circumstances.

41. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the variances denied herein would be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship.

42. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action with respect to the variances denied herein:

(A) The Property is not suitable for the use, and the variances are not consistent with the spirit, purpose and intent of the Zoning Ordinance.

(B) The relief will injure or detract from the use of neighboring property and from the character of the neighborhood, and considering the intensity of the proposed expansion of the use, the neighboring properties will not be adequately safeguarded.

(C) The proposal will not serve the best interest of the Township, the convenience of the community and the public welfare.

(D) There may not be an adverse impact upon the public services of police and fire protection by the proposed use, but such a finding does not require the granting of relief.

(E) The record does not support a determination that there would be proper disposal of waste resulting from the proposed use.

(F) The relocation of the storm water detention basin from above ground to below grade would not cause runoff water or drainage problems injurious to adjacent or nearby properties, but such determination only supports that variance request.

(G) The record does not support a determination that the expanded commercial activity on the Property would not cause congestion or hazard on Germantown Pike, a major street in the Township.

(H) There are no special circumstances or conditions applying to the Property for which the variances are sought, which would justify the conclusion that the application

of the provisions of the Zoning Ordinance would deprive the Applicant of the reasonable use and development of such Property.

(I) The circumstances for which the variances are sought were created by the Applicant, which circumstances result from general conditions in the zoning district in which the Property is located.

43. The provisions of the Zoning Ordinance do not impose an unnecessary hardship whatsoever on the land or Applicant and, therefore, the requested variances, other than as related to the proposed underground storm water detention facility, should be denied.

44. The variance requests under Section 150-203.C to occupy more than 15% of the required yard area and the setback provisions under Section 150-13.B(2) to permit the Applicant to construct an underground storm water detention structure in the same location of the above-ground storm water detention facility as previously approved at ZHB Decision No. 10-10, are de minimis.

### **III. DISCUSSION**

In Hertzberg v. Zoning Bd. of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Supreme Court of Pennsylvania determined that, in evaluating a hardship for a dimensional variance, the Zoning Hearing Board should consider various factors, including economics, and the characteristics of the surrounding neighborhood, in determining whether a variance would be appropriate. The Court also held that, when considering a dimensional variance, a Zoning Hearing Board should adopt a somewhat more relaxed standard of scrutiny than when the Board is considering a use variance.

In Marshall v. City of Philadelphia and Zoning Board of Adjustment, 626 Pa. 385, 97 A.3d 323 (2014), the Supreme Court recognized that a property does not have to be valueless in order

to obtain a use variance. The Court further indicated that economic considerations may be considered in a use variance case, if the property can only be brought into conformance at a prohibitive expense. The Supreme Court reiterated in the Hertzberg and Marshall cases, that an Applicant need not prove that the property cannot be used for any other permitted use in order to be entitled to a variance. Nevertheless, an applicant seeking a variance must prove that unnecessary hardship will result if the variance is denied, and must also prove that the proposed use is not contrary to the public interest. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983). “The burden on an applicant seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling.” Singer v. Zoning Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth. 2011).

A Zoning Hearing Board is the sole determiner of the credibility of witnesses. Taliaferro v. Darby Township Zoning Hearing Board, 873 A.2d 807 (Pa. Cmwlth. 2005), Tri-County Landfill, Inc. v. Pike Township Zoning Hearing Board, 83 A.3d 488 (Pa. Cmwlth. 2014). The Zoning Hearing Board has discretionary power to determine whether a party has met its burden of proof. Broussard v. Zoning Board of Adjustment, 831 A.2d 764 (Pa. Cmwlth. 2003), affirmed on appeal @ 589 Pa. 71, 907 A.2d 494 (2006), Cohen v. Zoning Board of Adjustment of the City of Philadelphia, 276 A.2d 352 (Pa. Cmwlth. 1971).

The case before the Board involves requests for numerous dimensional and use variances so as to permit the Property to be further developed for commercial use without any showing of hardship. The Property has actually been used in excess of what is permitted by the Code and prior zoning relief. The Applicant can and has made reasonable use of the land and there is no reason for further relief to further expand the commercial use in an Agricultural District.

The Board's decision to deny certain relief requested is fully in accordance with the appellate court rulings. The Board did not hold the Applicant to the high bar of proving that the Property has no value or cannot be used for any other permitted use. The Applicant presented evidence which can only support the conclusion that the Property can easily be used without expansion of the commercial use. There was no evidence of financial infeasibility presented. The evidence presented does not justify the variances, and the hardship presented for the relief requested was based purely on economics, which cannot be the only basis for a variance. Even though economic considerations are now appropriate for variance cases under Hertzberg and Marshall, the applicable case law still holds that variances cannot be granted for solely economic reasons, and economic considerations alone cannot support even a dimensional variance, let alone a use variance. Dunn v. Middletown Township Zoning Hearing Board, 143 A.3d 494 (Pa. Cmwlth. 2016). The Board found virtually no justification for the relief requested from a hardship standpoint. The relief requested is simply not required at all to reasonably use the Property, and surely not to the extent requested.

Unfortunately, the facts which would support a finding of unnecessary hardship required to grant variance relief with respect to the requests were not available, otherwise, the Applicant's very capable and experienced counsel would have surely presented same. The fact of the matter is that there is no hardship whatsoever which would allow the Board to grant the use and dimensional variances requested.

The Board notes that the five (5) criteria for a hardship variance need not be shown when the variance is de minimis. West Bradford Township v. Evans, 384 A.2d 1382 (Pa. Cmwlth. 1978), Stewart v. Zoning Hearing Board of Radnor Township, 531 A.2d 1180 (Pa. Cmwlth. 1987), Middletown Township vs. Zoning Hearing Board of Middletown Township, 682 A.2d 900

(Pa. Cmwlth. 1996), Lench v. Zoning Board of Adjustment of the City of Pittsburgh, 13 A.3d 576 (Pa. Cmwlth. 2011), Appeal of Ressler Mill Foundation, 573 A.2d 675 (Pa. Cmwlth. 1990). The Board determines that the relief requested to move the storm water detention facility from above ground to below grade in the same location as previously approved, represents a de minimis request, and therefore, that relief should be granted. Rigid compliance with these provisions is not required to protect the underlying public policy concerns of the applicable Ordinance provisions.

#### **IV. CONCLUSIONS OF LAW**

1. The Zoning Hearing Board has jurisdiction over the subject matter of the application.
2. The Applicant is the legal owner of the Property in question.
3. The Applicant and the subject matter are properly before the Board, and the Applicant has standing to submit the Application.
4. Hearing notices were duly published and posted in accordance with law, by advertisement in the newspaper and posting on the Property.
5. With reference to the use and dimensional variances requested, upon consideration of Section 910.2 of the Pennsylvania Municipalities Planning Code, and Section 150-219 of the Worcester Township Zoning Ordinance, the Board determines the following as a matter of law:
  - (A) There are no unique physical circumstances or conditions peculiar to the particular Property, resulting in an unnecessary hardship which would justify the requested use and dimensional variances.
  - (B) The Property can be used, and, in fact, has been consistently used in excess of the provisions of the Zoning Ordinance, and the prior relief granted; and

therefore, the authorization of the use and dimensional variances is not necessary to enable the reasonable use of the Property.

- (C) Any alleged “hardship” has been created by the Applicant by proposing to use the Property contrary to the applicable zoning and the prior relief granted.
- (D) The granting of the variances, other than the de minimis variances granted below, will alter the essential character of the neighborhood, would substantially impair the use or development of adjacent property, and would be detrimental to public welfare.
- (E) The variances requested are not the minimum variances to afford relief under the circumstances.

6. Under Section 150-217 of the Zoning Ordinance, the Board determines that granting the variances denied herein would be contrary to the public interest, and that a literal enforcement of the provisions of the Ordinance does not result in unnecessary hardship, as a matter of law.

7. Under Section 150-218 of the Zoning Ordinance, the Board has considered the following criteria and standards for Zoning Hearing Board action, and determines the following as a matter of law:

- (A) The Property is not suitable for the use, and the variances are not consistent with the spirit, purpose and intent of the Zoning Ordinance.
- (B) The relief will injure or detract from the use of neighboring property and from the character of the neighborhood, and considering the intensity of the proposed expansion of the use, the neighboring properties will not be adequately safeguarded.

(C) The proposal will not serve the best interest of the Township, the convenience of the community and the public welfare.

(D) There may not be an adverse impact upon the public services of police and fire protection by the proposed use, but such a finding does not require the granting of relief.

(E) The record does not support a determination that there would be proper disposal of waste resulting from the proposed use.

(F) The relocation of the storm water detention basin from above ground to below grade would not cause runoff water or drainage problems injurious to adjacent or nearby properties, but such determination only supports that variance request.

(G) The record does not support a determination that the expanded commercial activity on the Property would not cause congestion or hazard on Germantown Pike, a major street in the Township.

(H) There are no special circumstances or conditions applying to the Property for which the variances are sought, which would justify the conclusion that the application of the provisions of the Zoning Ordinance would deprive the Applicant of the reasonable use and development of such Property.

(I) The circumstances for which the variances are sought were created by the Applicant, which circumstances result from general conditions in the zoning district in which the Property is located.

8. The provisions of the Zoning Ordinance do not impose an unnecessary hardship whatsoever on the land or the Applicant and, therefore, the requested variances, other than as related to the proposed underground storm water detention facility, should be denied.

9. The variance requests under Section 150-203.C to occupy more than 15% of the required yard area and the setback provisions under Section 150-13.B(2) to permit the Applicant to construct an underground storm water detention structure in the same location of the above-ground storm water detention facility as previously approved at ZHB Decision No. 10-10, are de minimis as a matter of law.

10. No use variance is required with respect to the underground storm water detention structure, as such limited use variance was previously granted in ZHB Decision No. 10-10.

#### **V. OPINION**

Upon consideration of the evidence and testimony presented regarding the Application, the Zoning Hearing Board of Worcester Township determines that the Application should be granted in part and denied in part. The Board therefore enters the following Order.

**BEFORE THE ZONING HEARING BOARD OF WORCESTER TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF  
NORTH GRANGE, LLC**

**NO. 2020-11  
APPLICATION FOR VARIANCES**

**ORDER**

(1) A use variance from Section 150-11, which would have permitted the installation of landscaping, fence, paving and related improvements for the existing lawn care business use in the Worcester portion of the Property, is **DENIED**.

(2) Variances from Sections 150-13.B(2) and 150-16.B, which would have permitted the location of parking/storage areas and driveway at a 25' front yard setback, a 25' side yard setback, and a 25' rear yard setback, are **DENIED**.

(3) A variance from Section 150-14.B, which would have allowed impervious coverage of 44% of the Worcester portion of the Property, rather than 20% permitted, is **DENIED**.

(4) A variance from Section 150-182.B, which would have permitted the relocation of the existing privacy/security fence within the required front, side and rear yard setbacks, so as to establish 25' setbacks for the fence, is **DENIED**.

(5) A variance from Section 150-203.D, which would have permitted the storm water detention structure to be located under the vehicular circulation area on the Property, is **DENIED**.

(6) A dimensional variance from Section 150-203.C, so as to permit the proposed underground storm water detention structure to occupy more than 15% of the required rear yard area of the Worcester portion of the Property, is **GRANTED**.

(7) A dimensional variance from the setback requirements of Section 150-13.B(2), so as to permit the underground storm water detention structure to be installed below grade in the same location as the above ground rain garden detention basin currently on the Property, is **GRANTED**.

(8) A variance from Section 150-225, so as to permit the Applicant two (2) years from the grant of the relief by the Zoning Hearing Board to obtain a permit for the permitted improvements, is **GRANTED**.

(9) Except for the relief specifically granted herein, the Application is otherwise **DENIED**.

With respect to the relief granted, this Decision is subject to the following conditions:

1. The Applicant shall install the underground storm water detention structure substantially in accordance with the plan marked as Exhibit A-4, in the same location as the existing detention basin and comply with all requirements of the Township Engineer with respect to installation.

2. The Applicant shall apply for and obtain all applicable Township, County and State permits and approvals, including all PaDEP approvals relative to the construction and use of the storm water detention facility in a timely manner, and the Applicant shall comply with all requirements of the Township with respect to applications for land development approvals, and/or earth disturbance/grading permit approvals.

3. All use and development permitted by this Decision with respect to the underground storm water detention facility shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case these specific conditions shall take precedence.

4. No additional paving shall be placed over the underground storm water detention structure or anywhere on the Worcester portion of the Property. Allowing the placement of the storm water detention structure underground anticipates a grass or vegetated area on the surface of the ground above the structure, with only enough stone over the structure for filtration, and to protect from natural dead loads, such as soil and snow, but not to handle truck traffic or storage. A temporary removal of the fence to facilitate the installation is permitted, provided the fence is immediately reinstalled in the same location.

5. The Applicant shall monitor the quantity and quality of the water stored in the storm water detention structure, and make reports of same available for Township inspection upon request.

6. The Applicant shall strictly comply with all conditions set forth in the Board's Decision No. 10-10, including fencing and landscape buffering. As noted in Decision No. 10-10, there shall be no buildings or other storage structures on the Worcester portion of the property. There shall be no parking of trucks, vehicles or other equipment in the Worcester portion of the Property. All mulch, sand, stone, salt and materials associated with the Applicant's business operations shall be stored inside the buildings in the Lower Providence portion of the Property. There shall be no outside storage of materials on the Worcester portion of the property.

7. Except as permitted by prior Decisions of this Board, the use of the subject Property shall otherwise comply with the Worcester Township Code, including, but not limited to, all storm

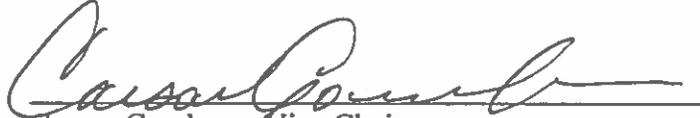
water management, fencing, setback, parking, lighting, sign and noise regulations, and all other codes, regulations and ordinances of Worcester Township. All conditions of ZHB Decision No. 10-10, especially all buffering requirements, are incorporated herein, except to the extent specifically modified hereby.

8. Pursuant to Section 150-225 of the Worcester Township Zoning Ordinance, a special exception or variance shall expire if the Applicant fails to obtain a permit in connection therewith within one (1) year of the date of authorization thereof. When land development/subdivision approval is required, the special exception or variance shall expire if the Applicant fails to make a diligent effort to obtain such approval within six (6) months following the date of the Zoning Hearing Board's Order. Upon receipt of land development/subdivision approval, the special exception or variance shall expire if a building permit is not obtained within six (6) months of the date of the land development/subdivision approval. It is noted that a variance from Section 150-225 has been granted, so as to permit the Applicant two (2) years from the grant of the relief by the Zoning Hearing Board to obtain a permit for the proposed improvements approved by this Decision and Order.

WORCESTER TOWNSHIP ZONING HEARING BOARD



Michael Libor, Chair



Caesar Gambone, Vice Chair



John D'Lauro, Secretary

Alternate

Bradford Smith

Order Entered: 9/2/20

Circulation Date: 9/2/20

This Decision and Order of the Board is final and any appeal of it must be filed with the Court of Common Pleas of Montgomery County within thirty (30) days following the Circulation Date set forth above.

The Board reserves the right to supplement these Findings of Fact and Conclusions of Law in support of this Decision if an appeal is filed.