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September 24, 2020

Michael J. Gombar, Jr., Esquire
Masano Bradley
1100 Berkshire Boulevard, #201
Wyomissing, PA 19610

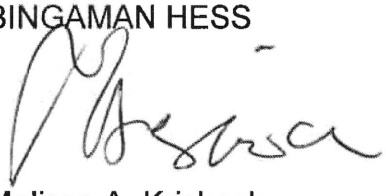
RE: Redner Properties, LP vs. Maidencreek Township Zoning Hearing Board
Our File No. 50154-1

Dear Mr. Gombar:

Enclosed please find a true and correct copy of a Notice of Appeal, the original of which was e-filed with the Office of the Prothonotary of Berks County, PA on this date.

Very truly yours,

BINGAMAN HESS



Melissa A. Krishock

MAK:dll
Enclosure
cc: Diane Hollenbach, Manager - Maidencreek Township (w/encl)
Eugene Orlando, Esquire (w/encl)
Dr. Melissa Shiner (w/encl)

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

BERKS County

For Prothonotary Use Only:	
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:
☐ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:	Lead Defendant's Name:
REDNER PROPERTIES, LP	MAIDENCREEK TOWNSHIP ZHB
Are money damages requested? ☐ **Yes** ☒ **No**	Dollar Amount Requested: (check one) ☐ within arbitration limits ☐ outside arbitration limits
Is this a *Class Action Suit*? ☐ **Yes** ☒ **No**	**Is this an *MDJ Appeal*?** ☐ **Yes** ☒ **No**

Name of Plaintiff/Appellant's Attorney: MELISSA A. KRISHOCK, ESQUIRE

☐ **Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)**

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your ***PRIMARY CASE.*** If you are making more than one type of claim, check the one that you consider most important.

TORT *(do not include Mass Tort)*
- ☐ Intentional
- ☐ Malicious Prosecution
- ☐ Motor Vehicle
- ☐ Nuisance
- ☐ Premises Liability
- ☐ Product Liability *(does not include mass tort)*
- ☐ Slander/Libel/ Defamation
- ☐ Other:

MASS TORT
- ☐ Asbestos
- ☐ Tobacco
- ☐ Toxic Tort - DES
- ☐ Toxic Tort - Implant
- ☐ Toxic Waste
- ☐ Other:

PROFESSIONAL LIABLITY
- ☐ Dental
- ☐ Legal
- ☐ Medical
- ☐ Other Professional:

CONTRACT *(do not include Judgments)*
- ☐ Buyer Plaintiff
- ☐ Debt Collection: Credit Card
- ☐ Debt Collection: Other
- ☐ Employment Dispute: Discrimination
- ☐ Employment Dispute: Other
- ☐ Other:

REAL PROPERTY
- ☐ Ejectment
- ☐ Eminent Domain/Condemnation
- ☐ Ground Rent
- ☐ Landlord/Tenant Dispute
- ☐ Mortgage Foreclosure: Residential
- ☐ Mortgage Foreclosure: Commercial
- ☐ Partition
- ☐ Quiet Title
- ☐ Other:

CIVIL APPEALS
Administrative Agencies
- ☐ Board of Assessment
- ☐ Board of Elections
- ☐ Dept. of Transportation
- ☐ Statutory Appeal: Other
- ☒ Zoning Board
- ☐ Other:

MISCELLANEOUS
- ☐ Common Law/Statutory Arbitration
- ☐ Declaratory Judgment
- ☐ Mandamus
- ☐ Non-Domestic Relations Restraining Order
- ☐ Quo Warranto
- ☐ Replevin
- ☐ Other:

Updated 1/1/2011

BINGAMAN, HESS, COBLENTZ & BELL, P.C.
By: Melissa A. Krishock, Esquire
Identification No. 82296
2 Meridian Blvd. Suite 100
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(610) 374-8377

Attorney for Appellant
Redner Properties LP

REDNER PROPERTIES, LP, a Pennsylvania Limited Partnership Appellant v. MAIDENCREEK TOWNSHIP ZONING HEARING BOARD Appellee	:	**IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA** NO.: LAND USE APPEAL

NOTICE OF APPEAL

REDNER PROPERTIES LP, a Pennsylvania limited partnership, by and through its attorneys, BINGAMAN, HESS, COBLENTZ & BELL, P.C., hereby appeals from the decision of the Zoning Hearing Board of Maidencreek Township, dated August 28, 2020 and in support thereof states the following:

1. The Appellant is Redner Properties, LP, a Pennsylvania limited partnership ("Redner"), with offices located at 3 Quarry Road, Reading, Berks County, Pennsylvania, 19605.

2. The Appellee is the Zoning Hearing Board of Maidencreek Township (the "ZHB"), which has an address of 1 Quarry Road, Blandon, Berks County, Pennsylvania 19510.

3. Redner's is the owner of Property located at the Intersection of SR 73 (Lakeshore Drive) and SR 222 (Allentown Pike) which is comprised of three (3) parcels: (a) 8381 Allentown Pike, Maidencreek Township, Berks County, PA bearing tax parcel number 61541118419530; (b) Allentown Pike, Maidencreek Township, Berks County, PA bearing tax parcel number

61541118418306; and (c) 8289 Allentown Pike, Maidencreek Township, Berks County, PA, bearing tax parcel number 61541118417320.

4. Maidencreek Township first enacted a Zoning Ordinance in 1993. Maidencreek Township subsequently amended this Zoning Ordinance in in 2017.

5. On June 29, 2020, Redner's filed a Maidencreek Township Zoning Application seeking: (a) a special exception under Sections 220-41(B)(4) and 220-65 in order to operate a car wash facility; (b) a variance from Section 220-65(C) to reduce the required stacking area for vehicles at the proposed car wash facility; (c) a special exception under Section 220-69 in order to operate motor vehicle fuel stations; (d) a variance from Section 220-69 (C) to locate the fuel pumps/stations within the required setback areas; and (e) a variance from Section 220-75 to maintain the existing building structure in its current location as a pre-existing non-confirming structure located within the required minimum regulations for developments abutting SR 222.

6. A public hearing on Redner's Application was scheduled for August 4, 2020 at 6:30 p.m. in the Maidencreek Township Municipal Building. Public notice of the hearing was timely posted and advertised to the public. Written notice of the public hearing was also provided to the property owners within 1,000 feet of the Property.

7. Redner's by its legal counsel, presented evidence in support of its Application at the August 4, 2020 public hearing.

8. Adjoining property owner, Dr. Melissa Shiner, attended the August 4, 2020 public hearing and entered an appearance as a party of record.

9. As a result of public hearing, the Zoning Hearing Board issued Findings and Conclusions of Fact, Conclusions of Law and Order ("Decision") dated August 28, 2020. ***See*** Exhibit "A", attached hereto and incorporated herein by reference.

10. As partof its Decision, ZHB noted the following:

> Based on this, the Board specifically finds that the Applicant has submitted credible evidence by and through its witnesses and exhibits to meet its burden of proof in establishing all requirements for the dimensional variances requested in the Application. Of note, Dr. Shiner (party of record) presented several issues for concern relative to the Project including, but not limited to, noise, **light**, traffic safety, parking and sanitation matters. While this Board is cognizant of these matters, the Board finds that these are matters outside its jurisdiction and more properly addressed by the Township Planning Commission, Township Board of Supervisors and PENNDOT in the land development process and review for the Project.

See Exhibit "A", p. 12 (emphasis added).

11. In its Decision, the ZHB granted Redner's Application for special exception from Sections 220-41(B)(4) and 220-65 of the Zoning Ordinance; granted Redner's Application for dimensional variance from Section 220-65; granted Redner's request for special exception from Section 220-69; and granted Redner's request for dimensional variance from Section 220-69(c) and Section 220-75. Exhibit "A", pp. 13-14.

12. In addition, the ZHB, in its Decision, placed the following conditions on the granting of Redner's Application:

a. the construction of the Project shall be in conformance with the testimony and evidence presented by the Applicant at the Public Hearing except as to be amended in order to comply with the condition(s) of this Decision and/or as approved by the Township Planning Commission and Board of Supervisors in the land development process.

b. The Applicant shall relocate and/or redesign the car wash facility at the Property as part of the Project so as to create a stacking area for the car wash facility to accommodate not less than six (6) motor vehicles.

c. The Applicant shall design and install exterior lighting for the project that will result in no light shining directly onto or **encroaching onto** the adjacent properties and the lighting system shall otherwise be in accordance with applicable Maidencreek Township lighting regulations and ordinances.

d. The Project shall otherwise comply with all other ordinances, regulations and requirements of Maidencreek Township with respect to obtaining land development final approval and building, zoning and/or occupancy permits.

e. No new permits for the Property shall be issued by Maidencreek Township unless all of the conditions set forth in this Decision have been

> complied with, and upon subsequent noncompliance, any of said issued permit(s) shall be immediately revoked.

See Exhibit "A", pp. 13-14 (emphasis added).

13. Redner's, for reasons set forth as follows, now appeals to this Honorable Court from the decision of the Maidencreek Township ZHB wherein it placed the restriction of "The Application shall design and install exterior lighting for the project that will result in no light shining directly onto or encroaching onto the adjacent properties and the lighting system shall otherwise be in accordance with applicable Maidencreek Township lighting regulations and ordinances".

14. Redner's does not appeal the remaining portions of the Decision of the Maidencreek Township ZHB.

15. The Decision of the Maidencreek Township ZHB in regard to requiring Redner's to design and install exterior lighting for the project so that no light will encroach onto the adjacent properties was arbitrary, capricious, an abuse of discretion and erroneous under the law in that:

a. The ZHB abused its discretion by imposing a lighting condition that was not properly before the ZHB, as evidenced by its own Decision wherein it acknowledged that the lighting issue was outside its jurisdiction and more properly addressed by the Township Planning Commission or Township Board of Supervisors in the land development process;

b. The ZHB committed an error of law by imposing a lighting condition that required Redner's exterior lighting not to encroach onto the adjacent properties as such condition is in violation of the Maidencreek Township Subdivision and Land Development Ordinance ("SALDO"). Specifically, §186-147(B)(1) and (2) of Maidencreek Township's SALDO states:

> (1)All outdoor lighting, whether or not required by this article, on private, residential, commercial, industrial, municipal, recreational or institutional property shall be aimed, located, designed, fitted and maintained so as not to present a disabling

glare hazard to drivers or pedestrians, or a nuisance glare concern to neighboring properties.

(2) Directional fixtures such as floodlights, spotlights and sign lights shall be installed or aimed so that they do not shine directly into the window of a neighboring residence, directly into a roadway, or skyward.

§186-47 (B)(1), (2), Maidencreek Township SALDO.

c. The ZHB committed an error of law by imposing a lighting condition that required Redner's exterior lighting not to encroach onto the adjacent properties as such condition imposes an impossible condition, which is in violation of the Municipal Planning Code.

d. The decision of the Maidencreek Township ZHB is not supported by substantial evidence.

16. Redner's hereby reserves the right to state additional grounds for relief upon a comprehensive review of any meeting minutes or other documents pertaining to the actions of the Maidencreek Township ZHB as submitted by the Appellee.

WHEREFORE, Appellant respectfully requests this Honorable Court to reverse the portion of the Decision of the Maidencreek Township ZHB which imposed a lighting condition that required Redner's exterior lighting not to encroach onto the adjacent properties.

Dated:

Respectfully submitted,

BINGAMAN, HESS, COBLENTZ & BELL, P.C.

By: _____

Melissa A. Krishock
Attorneys for Appellant,
Redner Properties, LP
Pennsylvania Limited
Partnership

EXHIBIT "A"

DECISION OF THE ZONING HEARING BOARD OF MAIDENCREEK TOWNSHIP, BERKS COUNTY, PENNSYLVANIA

IN RE: Application dated June 29, 2020 of Redner Properties LP seeking: (1) a special exception under Sections 220-41(B)(4) and 220-65 in order to operate a car wash facility; (2) a variance from Section 220-65(C) to reduce the required stacking area for vehicles at the proposed car wash facility; (3) a special exception under Section 220-69 in order to operate motor vehicle fuel stations; (4) a variance from Section 220-69(C) to locate the fuel pumps/stations within the required setback areas; and (5) a variance from Section 220-75 to maintain the existing building structure in its current location as a pre-existing, non-conforming structure located within the required minimum regulations for developments abutting US Route 222 (the "Application").

DATE OF HEARING: August 4, 2020

FINDINGS AND CONCLUSIONS OF FACT, DISCUSSION, CONCLUSIONS OF LAW AND ORDER

The Zoning Hearing Board of Maidencreek Township, Berks County, Pennsylvania (the "Board") finds as follows:

A. FINDINGS AND CONCLUSIONS OF FACT

1. The applicant is are Redner Properties LP, a Pennsylvania limited partnership, having a mailing address at 3 Quarry Road, Reading, Pennsylvania 19605 (the "Applicant").

2. The subject real estate for this Application is collectively comprised of the following three (3) adjacent parcels: (i) 8381 Allentown Pike in the Township of Maidencreek, Berks County, Pennsylvania, bearing tax parcel number 61541118419530, (ii) Allentown Pike in the Township of Maidencreek, Berks County, Pennsylvania, bearing tax parcel number 61541118418306, and (iii) 8289 Allentown Pike in the Township of Maidencreek, Berks County, Pennsylvania, bearing tax parcel number 61541118417320 (collectively, the "Property").

3. The Applicant is the owner of the Property by virtue of a certain Deed dated March 2, 2020, which is recorded as Instrument No. 2020007683, Berks County records.

4. The Property is physically located in the C-1 Local Commercial District Zoning District pursuant to the Maidencreek Twp. Zoning Ordinance (the "Zoning Ordinance").

5. On or about June 29, 2020, the Applicant filed the Application seeking: (i) a special exception under Sections 220-41(B)(4) and 220-65 in order to operate a car wash facility; (ii) a variance from Section 220-65(C) to reduce the required stacking area for

vehicles at the proposed car wash facility; (iii) a special exception under Section 220-69 in order to operate motor vehicle fuel stations; (iv) a variance from Section 220-69(C) to locate the fuel pumps/stations within the required setback areas; and (v) a variance from Section 220-75 to maintain the existing building structure in its current location as a pre-existing, non-conforming structure located within the required minimum regulations for developments abutting US Route 222. *See Exhibit ZHB-1.*

6. A public hearing on the Application was scheduled for August 4, 2020 at 6:30 p.m., prevailing time, at the Maidencreek Township Municipal Building located at 1 Quarry Road, Reading, Pennsylvania 19605 (the "Public Hearing").

7. The Property and the Maidencreek Township Municipal Building were duly posted with notice of the Public Hearing on July 20, 2020, by Keith Shuman, who is the Maidencreek Township Public Works Foreman. *See Exhibit ZHB-2.*

8. Public notice of the Public Hearing was timely advertised in the *Reading Eagle*, which is a newspaper of general circulation within Maidencreek Township, Berks County, Pennsylvania, on July 20, 2020 and July 27, 2020. *See Exhibit ZHB-3.*

9. A written notice of the Public Hearing was sent to the Applicant, the Applicant's attorney, the Maidencreek Township Manager, the Maidencreek Twp. Zoning Officer and the property owners within 1,000 feet of the Property by Michael J. Gombar, Jr., Esquire of Masano Bradley, LLP, who is the Special Conflict Solicitor for the Board (the "Solicitor") for the Application, on July 13, 2020. *See Exhibit ZHB-4.*

10. The Applicant was present and presented testimony and evidence at the Public Hearing by and through Steve Moatz, who is the Director of Store Planning for the Applicant.

11. The Applicant was represented by Melissa A. Krishock, Esquire of Bingaman Hess.

12. Also present at the Public Hearing as a witness on behalf of the Applicant was Gregg Bogia, P.E., of Bogia Engineering, Inc., who is a civil and traffic engineer.

13. Dr. Melissa Shiner, owner and resident of 5 Lakeshore Drive, Maidencreek Township, Berks Co., Pennsylvania, was the only member of the public in attendance at the Public Hearing that entered an appearance as party of record[1].

14. A stenographic record of the Public Hearing was made.

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[1] Heather Shaner of 431 Acer Drive and Helen Shiner of 5 Lake Shore Drive were also present for the Public Hearing via Zoom (telecommunication device) but they both expressly chose to not participate and become a party of record for the Public Hearing.

15. The witnesses were duly sworn according to law prior to giving any testimony.

16. The Public Hearing commenced on August 4, 2020 at the Maidencreek Township Municipal Building at 6:30 p.m., prevailing time, at which time the Board met, heard testimony from the witnesses, heard legal arguments from the Applicant's attorney and Dr. Shiner, deliberated in executive session, closed the evidentiary record for the Public Hearing and voted in open session to announce its decision on the Application to be followed with this written decision.

17. At the outset of the Public Hearing, the Board, by and through the Solicitor, introduced and, with the consent of all parties, entered certain exhibits into the evidentiary record of the Public Hearing, as follows:

a. The Application – *Exhibit ZHB-1;*

b. Proof of Posting of the Property with notice of the Public Hearing – *Exhibit ZHB-2;*

c. Proof of Publication of Public Notice of the Public Hearing in the *Reading Eagle – Exhibit ZHB-3;*

d. Proof of Mailing of notice of the Public Hearing – *Exhibit ZHB-4;* and

e. Correspondence dated July 20, 2020 from the Applicant's attorney to the Solicitor for Maidencreek Township indicating that the Applicant withdrew the conditional use request contained in the Application – *Exhibit ZHB-5.*

18. During the Public Hearing, the Applicant did not introduce any additional exhibits into the evidentiary record of the Public Hearing.

GENERAL FACTS

19. The Property is three (3) commercial lots comprised of approximately 1.75 acres in the aggregate, which the Applicant intends to combine into one (1) parcel of real estate in the near future.

20. The Property is an irregular lot shape located at the corner of the intersection of Allentown Pike (S.R. 222) and Lake Shore Drive (S.R. 73).

21. The Property is bounded on the East (front yard) by Allentown Pike (S.R. 222).

22. The Property is bounded on the South (side yard) by property known as 8261 Pottsville Pike owned by DKB Realty LLC (operating company is Maidencreek TV and Appliance).

23. The Property is partially bounded on the West (rear yard) by property known as 21 Lake Shore Drive owned by Axis 73 Storage LLC.

24. The Property is bounded on the North (side yard) by property known as 5 Lake Shore Drive owned by Dr. Melissa Shiner.

25. The Property currently contains an existing convenience store building connected (the "Main Building") with ten (10) fuel pumping stations covered by a canopy, which previously housed the business operations of a Top Star convenience store and fuel pumping station.

26. The Property and Main Building are currently vacant as the former Top Star convenience store and fuel pumping stations operated thereat in the past are closed.

27. The Property currently has ingress / egress to a public road through: (i) an existing ingress only access point in the front yard area from Allentown Pike (S.R. 222) via an existing open macadam driveway area with curbing at the road frontage; (ii) an existing egress only access point in the front yard area from Allentown Pike (S.R. 222) via an existing open macadam driveway area with curbing at the road frontage; and (iii) an existing ingress and egress access point on the side yard area from Lake Shore Drive (S.R 73) via an existing open macadam driveway area with curbing at the road frontage. *See Exhibit ZHB-1.*

28. Allentown Pike (S.R. 222) and Lake Shore Drive (S.R. 73) are "state roads" owned and operated by the Pennsylvania Department of Transportation ("PENNDOT").

29. PENNDOT has undertaken a project to widen Allentown Pike (S.R. 222) and improve the intersection of Allentown Pike (S.R. 222) and Lake Shore Drive (S.R. 73) in order to ease traffic congestion and to make the area safer for both vehicular and pedestrian traffic (the "PENNDOT Project").

30. As part of the PENNDOT Project, PENNDOT has or will in the future take ownership of a portion of the road frontage from the Property.

31. The Applicant currently operates a Redner's Quick Shoppe, which is a convenience store with fuel pumping stations, at the property known as 8380 Allentown Pike, Maidencreek Township, Berks County, Pennsylvania, which is directly across the street from the Property.

32. The Applicant intends to relocate the existing Redner's Quick Shoppe from 8380 Allentown Pike to the Property and proposes to also operate a car wash facility thereat (the "Project").

33. As part of the Project, the Applicant will utilize the Main Building for the Redner's Quick Shoppe convenience store operations which will be open and operational on a 24 hour/7 day per week basis.

34. The Applicant is not proposing any material changes to the exterior and/or footprint of the Main Building except for façade improvements for aesthetics reasons.

35. The operation of a convenience store is a use permitted by right in the C-1 Local Commercial District Zoning District pursuant to Section 220-41 of the Zoning Ordinance.

36. As part of the Project, the material changes to the Property will be that the Applicant will relocate the existing fuel pumping stations to a location further southwest on the Property along with the construction of the car wash facility. *See Exhibit ZHB -1.*

37. As part of the Project, the Applicant will also modify and improve the existing ingress and egress access points at the Property in order to comply with all applicable Maidencreek Township ordinances and regulations, as well as to be in accordance with PENNDOT standards.

38. As part of the Project, the Applicant will utilize the existing parking areas at the front of the Main Building and create more parking spaces for the Property to serve the employees and customers in accordance with Maidencreek Township standards. *See Exhibit ZHB-1.*

SPECIAL EXCEPTION - CAR WASH FACILITY

39. The use of a car wash facility is permitted by special exception in the C-1 Local Commercial District Zoning District pursuant to Sections 220-41(B)(4) and 220-65 of the Zoning Ordinance.

40. The Applicant proposes to locate the car wash facility at the southwest portion of the property. *See Exhibit ZHB-1.*

41. The car wash facility will be an automatic or semi-automatic facility (not self-service) which will be an enclosed structure constructed of material and aesthetics conforming to the surrounding neighborhood.

42. The car wash facility will service passenger cars and trucks only (no commercial vehicles).

43. The car wash facility will accommodate one (1) customer/vehicle at a time and will not have an employee or other attendant.

44. The car wash facility will operate so that the customer remains inside the vehicle at all times.

45. The hours of operation of the car wash facility are not yet known at this time by the Applicant but they are anticipated to match the hours of operation of the Redner's Quick Shoppe convenience store facility.

46. The car wash facility will not generate any noise or light noticeable beyond the Property in excess of Maidencreek Township regulations.

47. The Applicant currently operates a car wash facility at its Redner's Quick Shoppe in Muhlenberg Township.

48. The Applicant anticipates a minimum daily average of twenty-nine (29) uses of the car wash facility based on the historic data of uses at the existing Muhlenberg Twp. facility.

49. The car wash facility will be located at the Property no closer than 100 feet to any residential zoning district under the Zoning Ordinance.

50. The car wash facility will be located at the Property no closer than 100 feet to any intersection of public street right-of-ways.

51. The vehicle stacking area(s) for the car wash facility will not intrude into the required front yard area of the Property.

52. The lot area of the Property is sufficient to provide for the car wash facility, required yards and driveways.

53. With the exception of the required stacking area under Section 220-65(C) of the Zoning Ordinance, the Applicant has satisfied all conditions for the granting of a special exception to operate a car wash facility at the Property in the C-1 Local Commercial Zoning District.

DIMENSIONAL VARIANCE - VEHICLE STACKING AT CAR WASH FACILITY

54. Pursuant to Section 220-65(C) of the Zoning Ordinance, the stacking area for an automatic or semiautomatic car wash facility shall be sufficient area for not less than ten (10) vehicles.

55. The proposed stacking area for the car wash facility will accommodate two (2) vehicles. *See Exhibit ZHB-1.*

56. Due to the irregular shape of the Property and the improvements thereat (Main Building, fueling stations, canopy, required parking areas and stormwater detention area), the Applicant is not able to locate the car wash facility at a portion of the Property that will accommodate staking for ten (10) motor vehicles.

57. Due to the anticipated usage for the driving areas at the Property, a stacking area for the car wash facility accommodating only two (2) vehicles will result in undue congestion and unsafe driving / maneuvering conditions for vehicles and pedestrians at the Property.

58. The Applicant can locate the car wash facility at the Property in such a location and fashion to accommodate a stacking area for not less than six (6) motor vehicles which, in light of the anticipated average daily usage amount, will ensure safe driving / maneuvering conditions for vehicles and pedestrians at the Property.

SPECIAL EXCEPTION – MOTOR VEHICLE FUEL STATION

59. The use of a motor vehicle fuel station is permitted by special exception in the C-1 Local Commercial District Zoning District pursuant to Section 220-69 of the Zoning Ordinance.

60. The Property previously utilized ten (10) motor vehicle fuel stations from the prior convenience store uses at the Property.

61. The Applicant proposes to operate ten (10) motor vehicle fuel stations for the Redner's Quick Shoppe at the Property as part of the Project, which will be located on a portion of the Property farther southwest than the previous location of the fuel stations at the Property. *See Exhibit ZHB-1.*

62. The setback from the ultimate right-of-way line to the fuel pump island will be thirty (30) feet or more.

63. The distance from the fuel tanks associated with the fueling stations will be approximately twenty-eight (28) feet from the ultimate right-of-way line.

64. The distance from the edge of the canopy for the fuel stations to the edge of the ultimate right-of way will be twenty (20) feet or more.

65. The layout of the fuel stations for the Project will provide for adequate vehicle stacking lanes for the fueling stations which will not hinder vehicular flow within the Property nor cause congestion at the entrances to the Property.

66. The Applicant has satisfied all conditions for the granting of a special exception to operate motor vehicle fueling stations at the Property in the C-1 Local Commercial Zoning District.

DIMENSIONAL VARIANCE - SETBACK OF FUEL TANKS

67. Pursuant to Section 220-69(C) of the Zoning Ordinance, the minimum setback from the ultimate right-of-way line to the fuel pump island will be thirty (30) feet or more.

68. The distance of the location of the fuel tanks associated with the fueling stations will be approximately twenty-eight (28) feet from the ultimate right-of-way line.

69. In an abundance of caution, the Applicant has requested a variance to locate the fuel tanks within the required setback for the "fuel pump island."

70. To the extent necessary and for the sake of clarity if the fuel pump island is interpreted to include the fuel tanks, a dimensional variance is warranted to locate the fuel tanks approximately twenty-eight (28) feet from the ultimate right-of-way line.

DIMENSIONAL VARIANCE - DEVELOPMENT ABUTTING S.R. 222

71. Pursuant to Section 220-75 of the Zoning Ordinance, additions to existing structures located within developments abutting S.R. 222 shall extend or be located no closer to the road than the existing structures.

72. As part of the Project, the Applicant proposes to (1) locate the car wash facility, and (2) relocate the fueling stations and related canopy in an area that is closer to S.R. 222 than the Main Building.

73. The Applicant is not able to safely and adequately locate and construct the Project in locations that will comply with the requirements of Section 220-75 of the Zoning Ordinance.

74. A dimensional variance is warranted to locate and construct the Project in locations that will comply with the requirements of Section 220-75 of the Zoning Ordinance provided that said locations are otherwise in accordance with the evidence and testimony presented at the Public Hearing as to be amended in order to comply with the condition(s) of this Decision.

MISCELLEANOUS

75. Upon compliance with the condition(s) of this Decision, the Project will result in safer and more efficient vehicular / pedestrian flow of traffic at the Property, as well as improving on the aesthetic quality of the Property for the betterment of the entire community.

76. Subject to compliance with the condition(s) of this Decision, the Applicant is not able to complete the Project in any other fashion at the Property that would either

comply with all Maidencreek Township requirements and standards or not require the Applicant to seek the zoning relief requested in the Application for the Project.

77. The Applicant did not acquire an interest in the Property with the knowledge that it would subsequently need to seek the zoning relief requested in the Application.

78. Due to the impact by the PENNDOT Project on the Property along with the irregular lot shape of the Property and the location of the Main Building which pre-dated the existing requirements of the Zoning Ordinance, there exist unique physical circumstances or conditions peculiar to the Property and a necessary hardship has been created due to these conditions.

79. Said necessary hardship has not been created by the Applicant.

80. Subject to compliance with the condition(s) of this Decision, there is no possibility that the Project could be completed in strict conformity with the provisions of the Zoning Ordinance.

81. The authorization of the zoning relief requested in the Application is necessary to enable the reasonable use of the Property.

82. The zoning relief requested in the Application will not alter the essential character in the neighborhood in which the Property is located, nor substantially or permanently impair the appropriate use of development of adjacent properties, nor be detrimental to the public welfare.

83. The zoning relief requested in the Application will represent the minimum variances that will afford relief and will represent the least modification possible for the regulations in use.

B. DISCUSSION

The Applicant has requested the Board to grant:

(i) two (2) special exceptions from Sections 220-65 and 220-69 of the Maidencreek Township Zoning Ordinance in order to operate a car wash facility and motor vehicle fueling stations at the Property, and

(ii) three (3) dimensional variances from Sections 220-65(C), 220-69(C) and 220-75 of the Maidencreek Township Zoning Ordinance in order to complete the Project in a fashion that will: (1) violate the vehicle stacking requirements for an automatic/semiautomatic car wash facility, (2) encroach on the minimum building set back requirement for the fuel pump island, and (3) violate the minimum requirements for developments abutting S.R. 222.

Special Exceptions

On this issue of a special exception, the Appellate Courts of Pennsylvania have stated the following:

> "A special exception is not an exception to a zoning restriction, but, rather, a use that is expressly permitted, so long as the applicant can meet the statutory requirements of the zoning ordinance and show the absence of a detrimental effect on a community. *Greaton Properties v. Lower Marion Township, 796 A.2d 1038 (Pa. Cmwlth. 2002).*"

With respect to burden of proof:

> "An applicant for a special exception has the burden of going forward with the evidence and of persuasion in a hearing before the zoning hearing board. The applicant must prove that the proposed use satisfies the objective requirements of a special exception. *Manor Health Care Corporation v. Lower Moreland Township Zoning Hearing Board, 139 Pa. Commw. 206, 590 A.2d 65 (Pa. Cmwlth. 1991). Southdown, Inc. vs. Jackson Township Zoning Hearing Board, 809 A.2d 1059, 1063 (Pa. Cmwlth. 2002).*"

> "The exception has its origin in the zoning ordinance itself. It relates only to such conditions that are expressly provided for and enunciated by the terms of the ordinance... the rules that determine the grant or refusal of the exception are enumerated in the ordinance itself. *Broussard v. Zoning Board of Adjustment, 589 Pa. 71, 79-80, 907 A.2d 494, 499 (2006).*"

With respect to the Board's function on a special exception request:

> A special exception in a zoning ordinance is one allowable where facts and conditions detailed in the ordinance, are found to exist. The function of the zoning hearing board when an application for a special exception is made is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the zoning ordinance and merit the granting of the special exception. *Timber Place Associates v. Plymouth Township Zoning Hearing Board, 59 Pa. Cmwlth. 582, 585-586, 430 A.2d 403, 405 (1981).*

Further, Section 220-119(G) of the Maidencreek Township Zoning Ordinance sets forth additional criteria and standards for review and consideration by the Board in order to warrant the granting of a special exception.

Based on this, the Board specifically finds that the Applicant has submitted credible evidence by and through its witnesses and exhibits to meet its burden of proof in establishing all requirements for the special exceptions requested in the Application.

Dimensional Variances

Generally, an applicant for a variance must prove that (1) the proposed use is not contrary to public interest; and (2) the property involved is subject to an unnecessary hardship unique and particular to the property itself. Beecham Enterprises, Inc. v. Zoning Hearing Board, 556 A.2d 981 (Pa. Commw. 1989).

Further, Section 220-119(F) of the Maidencreek Township Zoning Ordinance requires that in order to obtain a variance the following must be shown:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions, and not the circumstances or conditions generally created by the provisions of the Zoning 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 Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

3. That such unnecessary hardship has not been created by the applicant.

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

5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

Necessary hardship may be shown by demonstrating either that physical characteristics of the property are such that the property could not be used for the permitted purpose or could only be conformed to such purpose at a prohibitive expense, or that the characteristics of the area are such that the lot has either no value or only a distress value for any permitted purpose. Allegheny West Civil Council, Inc. v. Zoning Board of the City of Pittsburgh, 547 Pa. 163, 689 A.2d 225 (1997).

However, in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998), the Supreme Court of Pennsylvania set forth a more relaxed standard for establishing unnecessary hardship for a dimensional variance, as opposed to a use variance. Under Hertzberg, the courts may consider multiple factors in determining whether the applicant established unnecessary hardship for a dimensional variance, including the cost of the strict compliance with the zoning ordinance, the economic hardship that will result from denial of a variance, and the

characteristics of the surrounding neighborhood.

Based on this, the Board specifically finds that the Applicant has submitted credible evidence by and through its witnesses and exhibits to meet its burden of proof in establishing all requirements for the dimensional variances requested in the Application. Of note, Dr. Shiner (party of record) presented several issues for concern relative to the Project including, but not limited to, noise, light, traffic safety, parking and sanitation matters. While the Board is cognizant of these matters, the Board finds that these are matters outside its jurisdiction and more properly addressed by the Township Planning Commission, Township Board of Supervisors and PENNDOT in the land development process and review for the Project.

C. CONCLUSIONS OF LAW

1. The Zoning Hearing Board of Maidencreek Township has jurisdiction to decide this Application pursuant to the Maidencreek Township Zoning Ordinance as amended, and the Pennsylvania Municipalities Planning Code of 1968, P.L. 805, No. 246 as reenacted and amended, *53 Pa. C.S. § 10901.1, et. seq.*

2. Pursuant to Sections 220-119(F) and (G) of the Maidencreek Township Zoning Ordinance, the Board shall hear and decide requests for special exceptions and variances filed with the Board in writing, as provided in the Maidencreek Township Zoning Ordinance and in accordance with all such standards and criteria contained in the Maidencreek Township Zoning Ordinance.

3. The Board specifically finds as follows:

a. The Applicant has met all of the requirements of the Maidencreek Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code in order to obtain a special exception to operate a car wash facility at the Property as part of the Project under Section 220-65 of the Zoning Ordinance;

b. Subject to compliance with the condition(s) of this Decision, the Applicant has met all of the requirement of the Maidencreek Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code in order to obtain a dimensional variance to have a stacking area for the car wash facility that will accommodate less than the required ten (10) motor vehicles under Section 220-65(C) of the Zoning Ordinance;

c. The Applicant has met all of the requirements of the Maidencreek Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code in order to obtain a special exception to operate a motor vehicle fueling station at the Property as part of the Project under Section 220-69 of the Zoning Ordinance;

d. The Applicant has met all of the requirements of the Maidencreek Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code in order to obtain a dimensional variance to locate the fuel tanks associated with the motor vehicle fueling stations at a distance of approximately twenty-eight (28) feet from the ultimate right-of-way line; and

e. Subject to compliance with the condition(s) of this Decision, the Applicant has met all of the requirements of the Maidencreek Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code in order to obtain a dimensional variance to construct and locate the Project in such a fashion and location that will violate the minimum requirements for developments abutting S.R. 222.

4. The Applicant is hereby granted the special exceptions and dimensional variances requested in the Application, as amended by and all in strict conformity with the testimony and evidence presented at the Public Hearing as well as the conditions of this Decision.

D. ORDER

AND NOW, the Maidencreek Township Zoning Hearing Board, by a unanimous vote of the quorum, rules as follows:

1. The Applicant's request for a special exception from Sections 220-41(B)(4) and 220-65 of the Zoning Ordinance is hereby **APPROVED** and the Applicant is permitted to operate a car wash facility at the Property as part of the Project;

2. Subject to compliance with the conditions of this Decision, the Applicant's request for a dimensional variance from Section 220-65(C) of the Zoning Ordinance is hereby **APPROVED** to the extent that the stacking area for the car wash facility shall accommodate less than the required ten (10) motor vehicles;

3. The Applicant's request for a special exception from Section 220-69 of the Zoning Ordinance is hereby **APPROVED** and the Applicant is permitted to operate a motor vehicle fueling station at the Property as part of the Project;

4. The Applicant's request for a dimensional variance from Section 220-69(C) of the Zoning Ordinance is hereby **APPROVED** to the extent that the fuel tanks associated with the motor vehicle fueling stations shall be located at a distance of approximately twenty-eight (28) feet from the ultimate right-of-way line, which would result in an encroachment into the minimum required setback line(s); and

5. The Applicant's request for a dimensional variance from Section 220-75 of the Zoning Ordinance is hereby **APPROVED** and the Applicant is permitted to construct and locate the Project in such a fashion and location that will violate the minimum requirements for developments abutting S.R. 222, provided that said locations are otherwise in accordance with the evidence and testimony presented at the Public Hearing as to be amended in order to comply with the condition(s) of this Decision.

It is FURTHER ORDERED that said relief is subject to the following conditions:

a. The construction of the Project shall be in conformance with the testimony and evidence presented by the Applicant at the Public Hearing except as to be amended in order to comply with the condition(s) of this Decision and/or as approved by the Township Planning Commission and Board of Supervisors in the land development process.

b. The Applicant shall relocate and/or redesign the car wash facility at the Property as part of the Project so as to create a stacking area for the car wash facility to accommodate not less than six (6) motor vehicles.

c. The Applicant shall design and install exterior lighting for the Project that will result in no light shining directly onto or encroaching onto the adjacent properties and the lighting system shall otherwise be in accordance with applicable Maidencreek Township lighting regulations and ordinances.

d. The Project shall otherwise comply with all other ordinances, regulations and requirements of Maidencreek Township with respect to obtaining land development final approval and building, zoning and/or occupancy permits.

e. No new permits for the Property shall be issued by Maidencreek Township unless all of the conditions set forth in this Decision have been complied with, and upon subsequent noncompliance, any of said issued permit(s) shall be immediately revoked.

[Remainder of this page intentionally left blank - order and signature page follows]

MAIDENCREEK TOWNSHIP ZONING HEARING BOARD

By: _____
Jan Williams, Chairman

By: _____
I. Richard Wick

By: _____
Joseph Rudderow III

Date of Issuance of Written Decision: August 18, 2020

ANY AGGRIEVED PERSON MAY APPEAL THIS DECISION TO THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA, WITHIN THIRTY (30) DAYS FROM THE DATE OF THE ISSUANCE OF THE WRITTEN DECISION.

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REDNER PROPERTIES, LP, a Pennsylvania Limited Partnership Appellant v. MAIDENCREEK TOWNSHIP ZONING HEARING BOARD Appellee	:	**IN THE COURT OF COMMON PLEAS OF BERKS COUNTY, PENNSYLVANIA** NO.: LAND USE APPEAL

CERTIFICATE OF SERVICE

I, Melissa A. Krishock, Esquire, of Bingaman, Hess, Coblentz & Bell, Counsel for Redner Properties, LP, a Pennsylvania Limited Partnership, Appellant named above, do hereby certify that a true and correct copies of the Notice of Appeal were served by my office on the 24 day of September 2020 by electronic and first-class mail, postage pre-paid, upon the following parties:

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