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IN RE: APPEAL OF YORK ROAD
REALTY CO., L.P. FROM THE
DECISION OF THE CHELTENHAM
TOWNSHIP ZONING HEARING
BOARD DATED APRIL 26, 2023

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY,
PENNSYLVANIA

No. 2023-09439

LAND USE APPEAL

SETTLEMENT AGREEMENT

This Settlement Agreement & Mutual Release (“**Settlement Agreement**” or “**Agreement**”) between YORK ROAD REALTY CO. L.P. (“Appellant”), Cheltenham Township Zoning Hearing Board (“**Board**”) and Cheltenham Township (“**Township**”) dated the 15th day of November, 2023.

BACKGROUND

Nature of the Appeal & Parties Involved

- A. The above-captioned appeal is a land use appeal from a decision by the Zoning Hearing Board of Cheltenham Township regarding the property at 8116 Church Road, Elkins Park, Cheltenham Township, Montgomery County, PA that is further identified as Montgomery County Tax Parcel No. 31-00-30076-00-7 (“**OYR Property**” or “**Property**”).
- B. Appellant, York Road Realty Co., L.P. is the record owner of the OYR Property, with its principal place of business located at PO Box 549, Abington, PA 19001.

- C. Appellee is the Zoning Hearing Board of Cheltenham Township located at 8230 Old York Road, Elkins Park, Cheltenham Township, Montgomery County, PA 19027
- D. Cheltenham Township, 8230 Old York Road, Elkins Park, Cheltenham Township, Montgomery County, PA 19027 intervened in the land use appeal.

The Subject Property & Zoning Classification

- E. The OYR Property is currently improved with a multi-story structure that housed a former ice-skating rink and associated locker rooms and assembly areas generally known as the former Old York Road Skating Rink, containing approximately 1.225 acres (+/-).
- F. The OYR Property is located in the Township's MU-1 Mixed Use District ("**MU-1 District**"), which does not permit indoor recreation, rendering the former skating rink a nonconforming use.

Application

- G. On December 29, 2021, Appellant submitted an application ("**Original Application**") to the ZHB seeking relief to operate a self-storage facility at the OYR Property, and then filed a revised application on October 7, 2022 ("**Revised Application**"), requesting the following relief:

1.) A VARIANCE FROM SECTION 295-1301.A TO PERMIT STORAGE FACILITY (SELF SERVICE) AND TO PERMIT INDOOR RECREATION IN MU-1 MIXED USE ZONING DISTRICT.

2.) A VARIANCE FROM SECTION 295-1302.G TO PERMIT A BUILDING HEIGHT OF FOUR STORIES IN LIEU OF THE REQUIRED MAXIMUM OF THE LESSER OF 3 STORIES OR 45 FEET.

3.) A VARIANCE FROM SECTION 295-2005 TO PERMIT ENCROACHMENT INTO ZONE 2 OF THE RIPARIAN CORRIDOR CONSERVATION DISTRICT, WHERE ZONE 2 AS MEASURED UNDER THE ZONING CODE IS OUTSIDE OF THE 100-YEAR FLOODPLAIN AND IS CURRENTLY IMPACTED BY THE EXISTING DEVELOPMENT.

4.) A VARIANCE FROM SECTION 295-2104 TO PERMIT ENCROACHMENT OF THE PROPOSED BUILDING AND PARKING WITHIN THE STEEP SLOPE CONSERVATION OVERLAY DISTRICT.

5.) A VARIANCE FROM SECTION 295-2301.E TO PERMIT 21 TOTAL PARKING SPACES IN LIEU OF THE 56 TOTAL SPACES REQUIRED FOR THE USE OF STORAGE FACILITY AND INDOOR/OUTDOOR RECREATION (SELF-SERVICE).

6.) A DETERMINATION THAT THE ON-SITE PARKING AS PROVIDED, MEETS THE DEFINITION OF A B-19 PARKING LOT, AND NOT A B-18 PARKING STRUCTURE, OR A VARIANCE IN THE ALTERNATIVE FROM SECTION 295-2301.G TO PERMIT THE PARKING AS PROPOSED IN LOCATION, CONFIGURATION, AND DESIGN.

7.) A DETERMINATION THAT THE BUILDING LENGTH AS PROVIDED MEETS THE REQUIREMENTS SET BY SECTION 295-1302.H, OR A VARIANCE FOR SECTION 295-1302.H TO PERMIT THE BUILDING AS PROPOSED.

8.) A VARIANCE FROM SECTION 295-2301.B TO PERMIT THE SITE TO BE DEVELOPED WITHOUT PEDESTRIAN ACCESS.

9.) A VARIANCE FROM SECTION 295-2301.H.(1) TO PERMIT LOADING TO BE LOCATED AT THE NORTH SIDE OF THE BUILDING INSTEAD OF THE REAR OF THE BUILDING.

10.) A VARIANCE FROM SECTION 295-2301.H.(3) TO PERMIT A BUILDING OVER 100,000 SQUARE FEET TO NOT HAVE A LOADING DOCK.

11.) A VARIANCE FROM SECTION 295-2301.A TO PERMIT PARKING AREAS WITHOUT PHYSICALLY DELINEATED PEDESTRIAN CONNECTIVITY FROM THE PUBLIC SIDEWALKS, STREET, AND PARKING AREAS TO THE BUILDING.

G. In the Revised Application, the Appellant incorporated by reference the relief requested in the Original Application and the testimony and exhibits from the June 13, June 21, and July 19, 2022 hearings.

H. In addition to the relief requested in the Original Application, Appellant requested the following relief in the Revised Application (the “Current Application”):

1. A determination that the rear yard setback, parking setback and residential buffer are all existing non-conformities;
2. A determination that the building length as provided meets the requirements of Section 295-1302.H., or, in the alternative, a variance from Section 295.1302.H to permit the building proposed in the Revised Application and Plan;
3. A variance from Section 295-2301.B. to permit the OYR property to be developed without pedestrian access;
4. A variance from Section 295-2301.H.1 to permit loading at the north side of the proposed building rather than the rear of the building;
5. A variance from Section 295-2301H.2 to permit loading spaces of 9’ by 28.5 feet rather than the required 12’ by 40 feet;

6. A variance from Section 295-2301.A. to permit parking areas without physically delineated connectivity from the public sidewalks, street and parking areas to the proposed building; and

7. A variance from Section 295-1301 to allow indoor recreation areas to be constructed a four (4) pickleball courts inside of the building where only outdoor recreation areas are permitted.

I. Appellant withdrew four (4) of the variance requests, as follows:

1. A variance from Section 295.1302B of the Ordinance to permit building coverage of 63.5% where 60% is permitted;

2. A variance from Section 295.1302.E.(2) of the Ordinance to permit a side yard of 2.1 feet where a minimum of 5 feet is required;

3. A variance from Section 295.2405.A.(3)(a)(1) and (2) of the Ordinance, to permit 3 parallel wall signs, for a total of 271 s. ft (+/-), where 2 signs of a maximum 100 sq. ft. each are permitted; and

4. A variance from Section 295-2405.A (3)(a)(1) of the Ordinance to permit 2 canopy signs for a total of 14.5 sq. ft. of signage where 1 canopy sign of a maximum of 15 sq. ft. is permitted.

J. Multiple hearings were held on the Application and the Amended Application from June 13, 2022 through March 13, 2023, at which time the hearings were closed.

K. On April 26, 2023, the Board issued its Decision, denying the relief requested, and finding the following conclusions of law:

1. The Applicant has legal standing to file and prosecute the

Application.

2. Notice of all hearings on the Applications were properly advertised and posted;

3. Neither of the proposed uses (Storage Facility- -Self Service-Use B-33 or Indoor Recreation – Use F-6) are permitted in the MU-1-Mixed Use Zoning District.

4. The Applicant failed to meet its burden of proving that the variances requested are the minimum variances required to afford relief.

5. The Applicant failed to meet its burden of proving that the hardship was not self-created.

6. The Applicant failed to meet all the criteria required to prove entitlement to a variance and the ZHB neither abused its discretion nor committed an error of law in denying the Application.

L. On May 11, 2023, Appellant filed a timely Notice of Land Use Appeal, indexed at the within Court term and number.

M. The Parties have engaged in discussions relating to the Application and the Decision, and have reached the following Stipulated Settlement Agreement.

AGREEMENT

NOW THEREFORE, intending to be legally bound hereby, the parties, through their counsel stipulate as follows:

1. Background/Exhibits. The above Background paragraphs information and all Exhibits referenced herein are incorporated by reference as if fully set forth herein.

2. All of the relief requested by the Applicant in the Current Application, as amended, which also incorporates the relief requested in the Original and Revised Applications, but excludes the four (4) variances listed in Paragraph “I” above, is hereby GRANTED, and the Use of the OYR Property as a Storage Facility- -Self Service-Use B-33 and Indoor Recreation – Use F-6 is hereby permitted, subject to the following conditions:

A. Approval of all of the variance and interpretation requests as set forth in the testimony, evidence and exhibits, except the requested variances specifically excluded above, is hereby GRANTED, with such testimony, evidence and exhibits incorporated herein by reference.

B. In addition to the self-storage Appellant shall construct four (4) indoor pickleball courts as depicted on the Plans submitted at the hearings on the Current Application and the testimony and evidence provided therein, which are incorporated herein by reference.

C. The pickleball courts shall be owned, operated, and maintained by Appellant or a third-party professional retained by Appellant.

D. Subject to review and approval by the Pennsylvania Department of Environmental Protection and the Federal Emergency Management Agency, Applicant shall replace the pedestrian bridge crossing the Tookany Creek which formerly connected the Property to Richard Wall Park.

E. The pedestrian footbridge and related approaches shall be for pedestrian use only and shall connect Wall Park to the existing easement.

F. Applicant shall ensure that there will be ADA accessibility on the Property and the building located on the Property.

G. Applicant shall ensure that the loading area door(s) allow for safe access to and from the facility from the designated loading/staging area. To this end, the loading area door(s) must open on a rolling up and down or left-to-right basis to ensure safe travel in, out and within the facility from the loading/staging area.

H. Cheltenham Township shall issue all necessary permits and easements to allow for the reconstruction and lighting of the pedestrian footbridge and related approaches, subject to any applicable application and fee requirements being satisfied.

I. The exterior of the proposed self-storage building shall be constructed in earth-tone building colors.

J. Appellant shall install and maintain two (2) EV mobile payment charging stations on the Property for use by the public with typical consumption and use agreements.

K. To the extent reasonably possible, Appellant shall design the self-storage building to support solar panels on the roof and may install solar panels to generate electricity for users of the self-storage building and the EV charging station or other elements to be determined by an engineer, PECO or the Public Utility Commission, without impact on the zoning height restrictions on the building.

L. The retail area located in the building shall be limited to the sale of equipment and supplies for the self-storage facility and the pickleball courts.

M. After construction has been completed, Appellant will file all documents necessary to extinguish the existing Zamboni easement between Appellant's property and Elkins Park Square.

N. Use of the subject Property shall be in accordance with the Applicant's testimony before the Zoning Hearing Board.

3. MCCP Local Rule 14 Verification. Counsel representing the parties participating in this Settlement Agreement shall sign this Settlement Agreement and shall also sign the Land Use Appeal Settlement Stipulation provided for in the form as attached hereto and made a part hereof as Exhibit A under Montgomery County Local Rule 14.i.
4. Submission for Court Approval. Appellant shall submit this Settlement Agreement to the Court for consideration of approval by filing a Joint Motion of the participating parties for approval of this Settlement Agreement and a proposed Court Order for approval. If not all of the parties are participating, the Joint Motion shall request a hearing before the Court to provide an opportunity for all parties to be heard on whether the Settlement Agreement should be approved despite the objections of any party withstanding that has elected not to participate in this Settlement Agreement.
5. Court Approval/Non-Approval. If the Court approves this Settlement Agreement the variances and other relief contemplated herein shall become effective, and upon the Court's approval of this Agreement any and all underlying appeals related to

the subject matter contemplated in this Settlement Agreement shall be immediately marked “settled, discontinued and ended” by the Prothonotary in accordance with the required verification under Montgomery County Local Rule 14.i. If the Court does not approve this Settlement Agreement this Agreement shall automatically terminate and shall be null and void when the Court’s decision becomes final based on the expiration of any applicable appeal period, or if an appeal is taken, a final order of a court with jurisdiction. In such case the Land Use Appeal shall continue in the normal course.

6. Approval of the Agreement. The Board of Commissioners of the Township of Cheltenham approved the signing of this Settlement Agreement a duly convened public meeting held on November 15, 2023. The Cheltenham Township Zoning Hearing Board approved the signing of this Settlement Agreement at a duly convened public meeting held on November 13, 2023.

7. Miscellaneous.

- a. The parties hereto agree that neither this Settlement Agreement nor the furnishing of consideration in exchange for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by either party of any liability or unlawful conduct of any kind.
- b. This Settlement Agreement represents the settlement of disputed claims which have been, or could have been, asserted by or against any of the parties hereto, and all parties hereto hereby release and forever discharge each other, and their respective representatives, officers, elected and appointed officials, and all employees, agents, and consultants from any and all claims or causes of actions

relating to the subject matter contemplated in this Settlement Agreement. It is not an admission of liability or of indebtedness by any party hereto, nor is it an admission that any of the assertions of any of the parties state a valid claim or cause of action under the law of Pennsylvania or any other jurisdiction. Appellant further agrees to indemnify and hold harmless the Township of Cheltenham and the Zoning Hearing Board of Cheltenham from any and all claims or causes of action against the same relating to the Settlement Agreement. This paragraph is not intended to preclude any party from taking action to enforce the terms of this Settlement Agreement or to seek redress for a violation of the same in the future.

- c. All remedies at law or in equity shall be available for the enforcement of this Settlement Agreement. This Settlement Agreement may be pleaded as a full bar to the enforcement of any claim arising from the transactions involved herein.
- d. This Settlement Agreement shall be construed pursuant to the laws of the Commonwealth of Pennsylvania and the terms contained herein are contractual and not a mere recital.
- e. This Settlement Agreement shall be effective upon execution and Court approval of the same and shall be binding on and inure to the benefit of the parties hereto and their respective heirs, successors, administrators and assigns.
- f. This Settlement Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter contemplated herein and no prior or contemporaneous communications or discussions shall be relevant or

admissible for determining the meaning or extent of any of the provisions in this Settlement Agreement.

- g. This Settlement Agreement may not be modified except with the written approval of all parties hereto.
- h. The individuals executing this Settlement Agreement represent and warrant that they have been authorized to execute this Settlement Agreement by their respective clients.
- i. This Settlement Agreement may be executed in any number of counterparts with the same effect as if all the signatures on such counterparts appeared on one document, each such counterpart shall be deemed an original, and an electronic copy is as valid as an original and shall be deemed an original.
- j. This Settlement Agreement shall be recorded and shall inure to the benefit of Appellant's successors, transferees and/or assigns, and shall be deemed to run with the land.

IN WITNESS WHEREOF, and intending to be legally bound by the terms hereof, the parties hereto through their respective counsel have executed this Stipulation.

By: _____

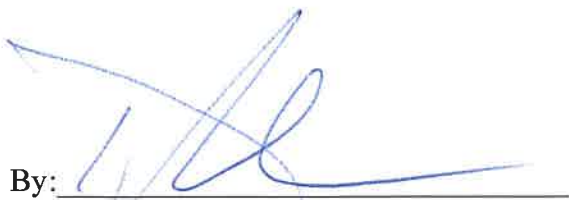
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Solicitor for Cheltenham Township ZHB

By: _____

Elkins Park Square

Linda Rosenberg

Date: 11/13/23

Date: _____