

RE: Carlisle Capital, LLC, : THE BOROUGH OF CARLISLE  
Applicant :  
 : CASE NO. 2020-02  
 :  
Request for Variances : **Date of Decision: May 7, 2020**

DECISION OF ZONING HEARING BOARD

I. Procedural and Factual Background

Carlisle Capital, LLC (the “Applicant”), has applied for multiple dimensional variances from the Carlisle Zoning Ordinances, to allow for the construction of a commercial convenience store with accessory gas pump fuel sales (the “Application”).<sup>1</sup> The Applicant proposes to redevelop the property located at 1003 South Hanover Street, Carlisle, Pennsylvania (the “Property”). The Property is 0.78 acres in size and is located in the Borough’s C-3 General Commercial District. The Property is currently used as a landscaping center, but previously was used as a service station with gasoline sales. The Property is bordered to the east and south by a large home improvement store and other commercial uses. To the west of the Property across South Hanover Street/Route 34 is a residentially used area. To the north of the Property are other commercial uses, a dine-in restaurant and Interstate 81. The Applicant proposes to construct and use a new 4,140 SF convenience store for occupancy by 7 Eleven with four (4) fueling stations.

A public hearing on the Application was held on May 7, 2020 in the Carlisle Borough Hall.<sup>2</sup> The Zoning Hearing Board (the “Board” or the “ZHB”) was represented by Kurt E.

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<sup>1</sup> The Application and accompanying exhibits was made an unmarked exhibit of the public hearing.

<sup>2</sup> The public hearing having taken place during the pendency of the COVID-19 pandemic, and in conformity with Pennsylvania Department of Health requirements to limit gatherings of more than ten (10) people, the hearing was held virtually, with members of the ZHB and the Applicant participating in person and the public participating remotely via Zoom in accordance with 35 Pa.C.S.A. §5741(f).

Williams, Esq. of Salzman Hughes, PC and the Applicant was represented by Tyler T. Prime, Esq. of Prime & Tuvel, Mount Laurel, New Jersey. The hearing was stenographically recorded. The Property was properly posted by Michael Skelly, AICP, on April 1, 2020, and the hearing was advertised in the *Sentinel* newspaper on April 22 and 29, 2020.<sup>3</sup> Alternate Board Member Britt Erney-Muniz participated in the hearing, but not the decision in this matter.

Jake Modestow (“Modestow”) of Stonefield Engineering, the civil engineer for the project, testified on behalf of the Applicant. Modestow testified that the Applicant had worked closely with the Borough staff to bring the Application to the Board. He further testified that the Property already exceeded the allowable impervious coverage for the C-3 district and that the property boundary with the adjacent Home Depot store has a zero foot setback. The first requested variance is from §255-80.E. (reducing paved area setback from 20 feet to 7.3 feet). Overall, the amount of impervious surface will be reduced by 10 percent with the project, increasing the amount of green space on the northeast and south sides of the Property.

Modestow continued that the second requested variance is from §255-80.G. (reducing side yard setback requirement for principal and accessory structures and uses from 20 feet to 5 feet). This variance would allow the fuel island canopy to run perpendicular with South Hanover Street.<sup>4</sup>

The third variance requested, as explained by Modestow, is for a reduction in off-street parking spaces required by §255-205. (from 26 spaces to 21 spaces). Modestow testified that 21 parking spaces is typical of what 7 Eleven sees for this use.

The fourth variance requested is for relief from §§255-220.B.(1) and 255-232 (reducing the required building setback for a freestanding sign from 50 feet to 12.6 feet). The proposed sign

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<sup>3</sup> In accordance with 35 Pa.C.S.A. §5741(e), notice of proposed action on Application 2020-02 was posted on the Carlisle Borough public website on or about May 1, 2020.

<sup>4</sup> Eight fueling positions are proposed over 4 pumps.

will be a pylon-type located at the northwest corner of the Property. Modestow testified that the proposed sign will be outside of any required site distance triangle for the nearby intersection. The sign size will meet the ordinance requirements except for the setback distance.

The fifth variance requested is for relief from §255-220.B.(2) (increasing the maximum area for canopy wall sign from 40.5 SF to 171 SF on the west facing canopy and from 9 SF to 31 SF on the north facing canopy). Modestow testified that the canopy signage will include the 7 Eleven logo and colored vinyl. Since the total area of the sign includes the colors alone, a variance is required for the full 7 Eleven logo and accompanying colors.

Modestow also testified that the Property is not located within any environmentally sensitive area such as the Letort Spring or subject to any additional environmental issues related to the Letort.

Member Guido inquired of Mr. Skelly regarding the sufficiency of off-street parking given the requested variance to reduce the number of spaces provided. Mr. Skelly stated that South Hanover Street is posted for no parking and that there is ample parking surrounding the Property, enough to avoid traffic hazards related to parking.

Member Rovegno inquired about the possibility of the Applicant contacting the owner of the Home Depot store to allow the Applicant to install steps to connect the parking lot of the Home Depot to the Property. The Applicant agreed that they would be willing to make a good faith effort, as part of the land development plan for the Property, to have discussions with the Home Depot to make such a connection.

Christine Nazzaro-Cofone, AICP (“Cofone”), testified on behalf of the Applicant. Cofone was offered by the Applicant as an expert witness in the field of community planning. The Board accepted Cofone as such. Cofone outlined the Property’s unique physical circumstances that

contribute to the relief that is required and that the proposed development will have a substantial improvement over what exists on the Property today. She further testified that there will be absolutely no issue with the requested variances altering or changing the character of the neighborhood; if it does, it will be in a beneficial way because it has the opportunity to clean up the Property. Cofone testified that the Application is consistent with the reuse and redevelopment goals of the Borough's 2019 Comprehensive Plan. Finally, in her opinion, the Application satisfied the criteria for variance relief in that the unique physical circumstances presented hardship to the Applicant to develop the Property as a 7 Eleven.

There were two comments/questions from the public via Zoom regarding the Application. The first was to display the 7 Eleven plan on the screen for public viewing. That request was promptly met by the Borough staff. The second question asked if the freestanding sign could be smaller than 18 feet tall. Mr. Prime responded that except for its location (setback), the proposed sign was compliant in every other dimension, both height and size, and appropriate for the traffic it intended to capture.

## **II. Order and Decision of the Board**

Based upon the Application as submitted and the testimony provided, the Board makes the above findings of fact and issues the following Order and Decision as set forth below.

It is hereby ordered and decided as follows:

- A. In accordance with 53 P.S. §10910.2., the Board finds that the Applicant has met its burden of establishing those criteria necessary for the grant of dimensional variances from the Carlisle Zoning Ordinances, to allow for the development and use of a commercial convenience store with accessory gasoline sales on the Property.
- B. Specifically, the dimensional variances unanimously approved by the Board are:


1. A dimensional variance from S. 255-80.E (paved area setback) from 20 feet to 7.3 feet;
2. A dimensional variance from S. 255-80.G.1 (side yard setback) from 20 feet to 5 feet;
3. A dimensional variance from S. 255-205 (parking for retail store) from 26 stalls to 21 stalls;
4. A dimensional variance from S. 255-220.B.1, and 232 (free-standing sign within required building setback area) from 50 feet to 12.6 feet; and
5. A dimensional variance from S. 255-220.B.2 (maximum area for canopy wall sign) from (15%) 40.5 ft<sup>2</sup> to 171 ft<sup>2</sup> on west canopy and from (15%) 9 ft<sup>2</sup> to 31 ft<sup>2</sup> on north canopy.

C. As a condition of approval, the Applicant agrees to make a good faith effort, as part of the land development planning for the Property, to have discussions with the owner of the adjacent Home Depot lot, to make a pedestrian connection between the Home Depot parking lot and the Property.

D. The representations made by the Applicant in the Application, the supporting documentation, and the testimony at the public hearing shall be considered conditions of the variance granted. Changes from said representations, documentation and testimony, other than minor technical changes, or failure to comply with the conditions of the variance approval, shall be considered a violation of the variance, and may result in revocation of the variance approval if not brought into full compliance within sixty (60) days of written notice of non-compliance from the Borough

In addition to the above, the Applicant shall comply with all applicable federal, state, local and Borough laws, ordinances and regulations.

**Borough of Carlisle Zoning Hearing Board**

By:   
Vincent Champion, Chair

MAILING DATE: ~~May 27~~ <sup>June 1</sup>, 2020  
*us*

**Any person aggrieved by this decision of the Zoning Hearing Board may appeal to the Court of Common Pleas of Cumberland County. The appeal must be taken within thirty (30) days of the date of this Decision.**