

DATE OF DECISION: 5-27-21

DATE OF MAILING: 5-27-21

**BEFORE THE NORTHAMPTON TOWNSHIP
ZONING HEARING BOARD**

CASE NO. 2021-12

**RE: APPEAL OF MOHAN RANADE *ET AL.*, FROM THE
ACTION OF THE ZONING OFFICER REGARDING THE
PROPERTY LOCATED AT 287 HOLLAND ROAD, HOLLAND,
NORTHAMPTON TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NOS. 31-26-25-1 AND 31-26-26**

FINDINGS OF FACT

A. Procedural History.

1. On Monday, April 12, 2021, at 6:30 p.m., the Northampton Township Zoning Hearing Board (“Board”) opened a duly noticed hearing on Case No. 2021-12, the appeal of Mohan Ranade *et al.* (“Ranade” or the “Appellant”).

2. Ranade and several other individuals are identified as “Appellants, Residents of Holland” in the Memorandum of Appellants (Exhibit B-7) attached to the official appeal form. In this written Decision, any reference to “Ranade” or “Appellant” includes all the individuals whose name and signatures appear on Exhibit B-7, unless the context clearly indicates otherwise.

3. The Board conducted the hearing through the use of an authorized telecommunications device¹, specifically the Zoom meetings platform. Such platform permits video and audio communication between individuals over a computer application.

4. The Board, the Board’s stenographer, the Appellant, the Appellant’s witnesses and representatives, intervening parties, and interested members of the public were all able to view, hear and communicate over the authorized telecommunications device.

5. Notice of the April 12, 2021, hearing was published in advance of the hearing in the March 28, 2021, and April 4, 2021, editions of The Advance, a newspaper publication of general circulation in Northampton Township. *See* Exhibit B-10.

6. Notice of the April 12, 2021, hearing was sent by first class mail on March 19, 2021, by Michael Solomon (“Solomon” or the “Zoning Officer”), the Northampton Township Director of Planning and Zoning, to (a) all record owners of properties in Northampton Township

¹ During the pendency of the Governor’s emergency declaration regarding the COVID-19 virus, Act 15 of 2020 (“Act 15”) authorizes the Board to conduct a hearing through the use of an “authorized telecommunication device,” defined as “any device which permits, at a minimum, audio communication between individuals.” Hearings conducted pursuant to Act 15 do not require individual Board members to be physically present at the same location to achieve a quorum.

within five hundred (500) feet of the Property (defined below); and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See* Exhibit B-4.

7. Notice of the April 12, 2021, hearing was posted on the Property on March 23, 2021. *See* Exhibit B-11.

8. Pursuant to Act 15, notice of the April 12, 2021, hearing was posted on the Northampton Township website. The notice described the authorized telecommunications device technology (Zoom platform) to be used at the hearing.

9. Following the presentation of the evidence and closure of the factual record at the April 12, 2021, hearing, the Board continued the hearing on the record to April 22, 2021, for the purpose of taking a vote on the appeal.

10. At the Board's April 22, 2021, hearing, the Board unanimously voted to deny the Appellant's appeal and to uphold the Determination (defined below) of the Zoning Officer. This written Decision is issued in furtherance of the Board's vote.

B. Parties, Properties, Appeal and Witnesses.

11. The Appellant is a record co-owner of the property located at 144 Hope Road, Holland, Northampton Township, also known as Bucks County Tax Map Parcel No. 31-30-29 (the "Ranade Parcel").

12. The properties that are the subject of the instant appeal are located at 287 Holland Road, Holland, Northampton Township, also known as Bucks County Tax Map Parcel Nos. 31-26-25-1 ("Lot A") and 36-26-26 ("Lot B"). *See* Exhibit B-14, Viewer.

13. Lot A and Lot B are collectively referred to herein as the "Property."

14. The Property is located in the C-2, Commercial, zoning district under the Northampton Township Zoning Ordinance (the "Zoning Ordinance"). The Property is also located in the Village Overlay District ("Village District").

15. The Ranade Parcel, and the tracts owned by the other named appellants, are located in the R-1, Residential, zoning district under the Zoning Ordinance. These parcels are not in the Village District.

16. The Ranade Parcel is located directly across Rocksville Road from Lot A. Tracts owned by the other appellants are located near the Ranade Parcel, or directly across Holland Road from the Property. *See* Exhibits B-14, Viewer; and A-2, Plans.

17. Pursuant to Zoning Ordinance §27-1302 and §27-1402.1, Ranade appeals the action of the Zoning Officer in connection with a subdivision and land development application submitted by Provco Pinegood Northampton, LLC, ("Provco") for the Property. *See* Exhibit B-2, Appeal.

18. In the Land Development Submission (defined below), Provco proposes a Wawa Food Market convenience store with gasoline and motor fuel pumps and dispensing stations on a portion of the Property. *See* Exhibit A-2, Land Development Submission.

19. In processing the Land Development Submission, the Zoning Officer concluded that Provco's proposed use of the Property is a permitted principal retail store with an accessory fuel sales and dispensing use (the "Determination"). See Exhibit A-2, Land Development Submission.

20. Ranade challenges the Determination and maintains that Solomon misinterpreted and/or misapplied the applicable Zoning Ordinance provisions in reviewing the Land Development Submission. See Exhibit B-1, Appeal.

21. Ranade asserts that the uses and structures proposed by Provco for the Property are a principal gasoline service station use under the Zoning Ordinance. See Exhibit B-1, Appeal.

22. As a record co-owner of the Ranade Parcel, the Appellant is aggrieved by the Determination and thus has the requisite standing to prosecute this appeal before the Board. See Exhibit B-14, Viewer; see also 53 P.S. §10908(3) and §10913.3.

23. Provco is a for-profit limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania. Provco is the equitable owner of the Property. See Exhibits B-12, Letter; and A-2, Land Development Submission.

24. As the equitable owner of the Property, Provco requested, was granted and appeared as a party through counsel at the hearing. Provco did not present any witnesses. See Exhibit B-12, Letter.

25. Northampton Township (the "Township") appeared at the hearing, represented by its solicitor. Solomon testified in support of the Determination.

26. Introduced as exhibits at the hearings are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

27. In addition to Ranade, counsel for the Appellant offered the following individuals to testify in support of the appeal at the hearing:

- a. Joseph Kruczynski ("Kruczynski"), resident, owner and occupant, 131 Hope Road, Holland, Northampton Township, TMP No. 31-30-33. Kruczynski is a signatory appellant. See Exhibit B-7.
- b. Arvind Cavale ("Cavale"), resident, owner, and occupant, 90 Hope Road, Holland, Northampton Township, TMP No. 31-30-18.
- c. Ilya Breyman ("Breyman"), resident, owner and occupant, 290 Holland Road, Holland, Northampton Township, TMP No. 31-26-20-2.

28. None of the Appellant's proposed witnesses were offered as experts or having experience in the fields of land use or planning, nor in interpreting zoning ordinance provisions. As such, the Board requested an offer of proof for each of the Appellant's proposed witnesses.

29. The Appellant's attorney submitted that Ranade, Kruczynski, Cavale and Breyman would each testify about their personal experiences with the Wawa Food Market use at other locations in other jurisdictions outside Northampton Township.

30. The Appellant's attorney further submitted that Ranade, Kruczynski, Cavale and Breyman would each testify about their personal views on such use's negative effect on neighboring land values.

31. The Board excluded these witnesses on the grounds that their proffered testimony was not probative of the purely legal question raised in the appeal. Provco's attorney also objected to the suggested lay testimony of these witnesses, which the Board sustained.

C. Properties; Land Development Submission.

32. The Property has frontage on 3 streets: Rocksville Road, Buck Road, and Holland Road. Due to this configuration, the Property is considered a multi-road frontage lot under the Zoning Ordinance. *See Exhibit A-2, Plans; see also Zoning Ordinance §27-201.4.*

33. The Property is presently 2 separate lots. Lot A is the larger tract. It is located along the northwest side of Buck Road near its intersection with Rocksville Road and Holland Road. *See Exhibits B-14, Viewer; and A-2, Plans.*

34. Lot B is a smaller parcel, located at the southeast corner of the intersection of Holland Road and Rocksville Road. Lot A surrounds the rear and side yards of Lot B. *See Exhibits B-14, Viewer; and A-2, Plans.*

35. The Property is oddly shaped. It most closely resembles a trapezoid. Lot A is 5.321 gross acres in size. Lot B's lot area is 1.16 gross acres. Combined, the Property's lot area is 6.481 gross acres (5.594 net acres). *See Exhibits B-5, Pizzo Letter; B-14, Viewer; and A-2, Plans.*

36. Lot B has 242.3 feet of frontage along Rocksville Road. Lot A has 347.6 feet of frontage along Rocksville Road. Together, the Property has 589.9 feet of frontage along Rocksville Road. *See Exhibits B-14, Viewer; and A-2, Plans.*

37. Lot B has 215 feet of frontage along Holland Road. Lot A has 440 feet of frontage along Holland Road. Combined, the Property has 655 feet of frontage along Holland Road. *See Exhibits B-14, Viewer; and A-2, Plans.*

38. Lot A provides the Property's only frontage along Buck Road. This street frontage exceeds 900 linear feet. The Property's shortest lot line is the southern side lot line of Lot A. This lot line is 194.97 feet long. *See Exhibits B-14, Viewer; and A-2, Plans.*

39. Lot B is improved with a single-family detached residential dwelling constructed in or around 1954. The dwelling's front wall is oriented toward Holland Road. Lot A is presently unimproved. *See Exhibits B-14, Viewer; and A-2, Plans.*

40. Solomon stated, and the Board finds, that in or around January 2020, Provco submitted a land development application with related plans for the Property pursuant to the Northampton Township Subdivision and Land Development Ordinance (the "SALDO"). *See Exhibit A-2, Land Development Submission.*

41. Solomon stated, and the Board finds, that Provco's submission consisted of (a) the completed Northampton Township Application for Subdivision & Land Development form; (a) General Project Description with Stormwater Management; and (c) Preliminary Land Development and Major Subdivision Plans (collectively the "Land Development Submission"). See Exhibit A-2, Land Development Submission.

42. Solomon stated, and the Board finds, that the Land Development Submission proposes to demolish the dwelling on Lot B, and reconfigure Lot A and Lot B to create new Lot 1 and Lot 2. Lot 1 and Lot 2 will be separated by a realigned Holland Road and Buck Road intersection. See Exhibit A-2, Plans.

43. Solomon stated, and the Board finds, that Lot 1 and Lot 2 will each be in excess of 15,000 square feet in size, which is the required minimum lot area for a property in the C-2 zoning district. See Exhibit A-2, Plans; *see also* Zoning Ordinance §27-502.3.A.

44. Solomon stated, and the Board finds, that the Lot 1 will contain "a 5,585 square feet Wawa Food Market with 8 multi-product [motor fuel] dispensers." This equates to 16 individual diesel fuel and gasoline pumps. See Exhibit A-2, Project Description.

45. Solomon stated, and the Board finds, that Lot 1 will be located at the existing Rocksville Road and Buck Road intersection, with the realigned Holland Road abutting the new southwest curvilinear border. See Exhibit A-2, Plans.

46. Solomon stated, and the Board finds, that Lot 2 will remain "in its existing condition" (i.e., unimproved). Lot 2 will be along the south side of the newly realigned Holland Road and Buck Road intersection. See Exhibit A-2, Project Description; and Plans.

47. Solomon stated, and the Board finds, that he received and processed the Land Development Submission in accordance with Part 3, Procedures and Requirements, of the SALDO. See SALDO, §22-301 *et seq.*

48. Solomon stated, and the Board finds, that he reviewed the Land Development Submission for completeness, and forwarded it to the Township Manager, Township Solicitor, the Township's consultants, and the Township's relevant committees. See SALDO, §22-301 *et seq.*

49. Solomon stated, and the Board finds, that he reviewed the Land Development Submission for compliance with the Zoning Ordinance. This includes his analysis of Provco's proposed uses of and structures on the Property in the Land Development Submission. See SALDO, §22-301 *et seq.*

D. Zoning Use Determination.

50. Solomon stated, and the Board finds, that he has been the Northampton Township Director of Planning and Zoning since 2008. In that capacity, he serves as the Northampton Township Zoning Officer.

51. Solomon stated, and the Board finds, that he holds a master's degree in land planning and public administration. He regularly reviews and interprets the language and provisions of numerous zoning ordinances when determining the nature of a proposed use.

52. The Board received Solomon as an expert in analyzing zoning ordinance provisions, interpreting and evaluating proposed uses, and assigning such uses to their appropriate categories.

53. Solomon stated, and the Board finds, that his Determination is memorialized in the writings identified as Exhibits B-5, Pizzo Letter; and B-6, Pellegrino Email. Solomon did not issue a separate writing.²

54. Solomon stated, and the Board finds, that the Determination concludes that “the proposed use of Lot 1 for a Wawa Food Market is a permitted use within the...C-2 zoning district, and that the proposed gasoline dispensing pumps are an accessory use to the permitted Retail Store use proposed for the [P]roperty.” *See* Exhibit B-5, Pizzo Letter.

55. Solomon stated, and the Board finds that his Determination is based on two analytical bases: first, the Zoning Ordinance’s express language; and second, an existing identical Wawa use elsewhere in Northampton Township in the same underlying zoning districts.

56. Solomon stated, and the Board finds, that the C-2 zoning district designation has been assigned to the Property since at least 2008, when he began working for Northampton Township.

57. Solomon stated, and the Board finds, that convenience stores like the proposed Wawa Food Market are an independent industry within the retail use category. A retail store use and related accessory uses are permitted by right in the C-2 district. *See* Zoning Map; *see also* Zoning Ordinance §27-502.2.A(2) and D.

58. Solomon stated, and the Board finds, that Wawa’s convenience store sells many of the examples listed in the Zoning Ordinance’s description of a “retail store” use. Those items include baked goods, hot and cold beverages, pharmaceutical products, dry goods, newspapers, magazines, and tobacco. *See* Zoning Ordinance §27-502.2.A(2).

59. Solomon stated, and the Board finds, that based upon this description, he readily concluded that the proposed 5,585 square feet non-residential Wawa building qualifies as a “retail store” use under the Zoning Ordinance. *See* Exhibits A-2, Project Description.

60. Regarding the sale of diesel fuel and gasoline, Solomon stated, and the Board finds, the enumerated 33 retail goods and/or activities is not an exclusive or exhaustive list. The Zoning Ordinance specifically permits other “similar retail uses” when defining a retail store use. *See* Zoning Ordinance §27-502.2.A(2).

61. Solomon stated, and the Board finds, that the Zoning Ordinance’s “retail use” definition does not mention nor exclude the sale of motor vehicle fuel or dispenser structures; nor does it require that all salable items be made available for purchase from the primary retail building. *See* Zoning Ordinance §27-502.2.A(2).

² The Pellegrino Email (Exhibit B-6) states that, at Provco’s counsel’s request, Solomon also reviewed Provco’s proposed use before the Land Development Submission was officially tendered. As the parties do not dispute that Exhibits B-5 and B-6 collectively set forth the Determination, the timing of Solomon’s review is immaterial to the issues before the Board.

62. Solomon stated, and the Board finds, that the only product specifically proscribed from sale by a retail store use is “books (excluding adult uses).” Solomon stated that the Wawa store does not offer for sale adult related books, magazines or uses. *See* Exhibit B-2, Project Description; *see also* Zoning Ordinance §27-502.2.A(2).

63. Solomon stated, and the Board finds, that based upon this permissive wording, he reasoned that motor fuel and other similar consumer items are sellable by the proposed Wawa retail store use. *See* Exhibit B-6, Pellegrino Email.

64. Having concluded that a retail store may sell gasoline and other fuels, Solomon stated, and the Board finds, that he next analyzed whether such sale through dispensing stations is a use accessory to the retail store or a separate primary use.

65. The Zoning Ordinance’s general definition section defines “accessory use” as “a subordinate use of a portion of a lot which is customarily incidental to the main or principal use of land or of the building or structure on a lot.” *See* Zoning Ordinance §27-201.4.

66. In the C-2 district regulations, an accessory use is defined as “any use which is entirely incidental and subordinate to the above-permitted uses and is located on the same lot or parcel.” *See* Zoning Ordinance §27-502.2.D.

67. The Zoning Ordinance’s general definition section defines “accessory building or structure” as “a subordinate building or structure to the principal building on a lot which is customarily incidental to the principal building and utilized as an accessory use on the lot occupied by the principal building.” *See* Zoning Ordinance §27-201.4.

68. Solomon stated, and the Board finds, that he interprets “accessory structures” to be subsumed under the accessory use concept, since the Zoning Ordinance defines such structures as being utilized in furtherance of the accessory use. *See* Zoning Ordinance §27-201.4.

69. Solomon stated, and the Board finds, that gasoline and diesel fuel sales and distribution are conducted through the dispenser stations. These structures are all located on Lot 1. *See* Exhibit A-2, Land Development Submission.

70. Solomon stated, and the Board finds, that by law, motor fuels cannot be sold at retail except through an authorized dispenser. As such, Solomon concluded that dispenser stations are necessarily “entirely incidental and subordinate” to the primary retail building and activity. *See* Exhibit A-2, Land Development Submission.

71. Solomon stated, and the Board finds, that motor vehicle fuel sales and dispensing stations are customarily found at retail convenience stores. Solomon stated that he statistically confirmed Provco’s representation that roughly 80% of all convenience stores sell motor fuels through dispensing stations. *See* Exhibit B-15, Fact Sheet.

72. Solomon stated, and the Board finds, that applying these precepts, the sale of motor fuels through separate dispensing stations is customary, subordinate and entirely incidental to the proposed Wawa Food Market convenience store retail use, and therefore a permitted accessory use. *See* Exhibit B-5, Pizzo Letter; and B-6, Pellegrino Email.

73. Solomon stated, and the Board finds, that he also examined whether the sale of fuels through the dispensing stations made the use proposed for Lot 1 to be a “gasoline service station use” under the Zoning Ordinance. Solomon stated that after analyzing the relevant language, he rejected that interpretation.

74. In the C-2 zoning district, a “gasoline service station” use is permitted upon conditional use approval by the Northampton Township Board of Supervisors. *See* Zoning Ordinance §27-502.2.B(2).

75. Solomon stated, and the Board finds, that the Zoning Ordinance defines a “gasoline service station” to be an activity “limited to the sale of gasoline, oil products, tires, batteries, automotive service products, lubrication, engine repair, State inspection, [and] interior washing.” *See* Zoning Ordinance §27-502.2.B(2).

76. Solomon stated, and the Board finds, that this definition limits the activities allowable under a “gasoline service station use.” A retail use unrelated to these functions is not permissible within a “gasoline service station” use. *See* Exhibit A-2, Land Development Submission; *see also* Zoning Ordinance §27-502.2.B(2).

77. Solomon stated, and the Board finds, that the “gasoline service station” use also specifically permits automotive and engine repairs, which are *services* that are not associated with the proposed Wawa retail use. *See* Exhibit A-2, Land Development Submission; *see also* Zoning Ordinance §27-502.2.B(2).

78. Solomon stated, and the Board finds, that based upon this plain language, the mere inclusion of motor vehicle fuel sales and dispenser stations to a retail use does not convert the retail store use to a gasoline service station. *See* Exhibit A-2, Land Development Submission; *see also* Zoning Ordinance §27-502.2.B(2).

79. Regarding the second basis for the Determination, Solomon stated, and the Board finds, that the same Wawa retail and fuel sale and dispenser use and structures proposed by Provco for Lot 1 have been previously approved for a tract in the Addisville section of Northampton Township (the “Addisville Wawa”).

80. Solomon stated, and the Board finds, that the Addisville Wawa is part of a large multi-commercial shopping center use known as “Addisville Commons.” Addisville Commons is a land development project that was approved under the SALDO and constructed in 2017-2018.

81. Solomon stated, and the Board finds, that the Addisville Wawa is a similar size building to the convenience store building proposed for Lot 1. The Addisville Wawa also has 16 fuel dispensing stations. *See* Exhibit A-7, Right-to-Know Response.

82. Solomon stated, and the Board finds, that Addisville Commons and the Addisville Wawa, like the instant Wawa Food Market use, are located in the C-2 zoning district and Village District. *See* Exhibit A-7, Right-to-Know Response.

83. Solomon stated, and the Board finds, that he conducted the review of the land development plans submitted for the Addisville Wawa in 2017. He concluded that the Addisville

Wawa is a principal retail convenience store use and an accessory motor vehicle fuel sale and dispenser use under the Zoning Ordinance. *See* Exhibit A-7, Right-to-Know Response.

84. Solomon stated, and the Board finds, that no one challenged his use determination in connection with the Addisville Wawa. No one sought to overturn his reasoning, nor seek to reclassify the Addisville Wawa as a principal gasoline service station use. The Addisville Wawa has been operating since 2018.

85. Solomon stated, and the Board finds, that no reason exists to reach a different conclusion for the uses and structures proposed for Lot 1 than he arrived at for the Addisville Wawa, since the uses and structures are identical in both the applicable zoning districts and the activities' description.

86. Lastly, Solomon stated, and the Board finds, that the Appellant's appeal seeks to have the Board afford the Appellants their "due process rights" by conducting a factual inquiry as to the suitability of the proposed Wawa use for the Property. *See* Exhibits B-2, Appeal; and B-7, Memorandum.

87. The Board finds that were it to carry out such an examination, the Board would be improperly conducting a *de facto* special exception or conditional use type hearing not authorized under the Zoning Ordinance or relevant law. *See* Exhibit B-7, Memorandum.

88. The Board is cognizant that it lacks the jurisdiction to (a) oversee a special exception style fact-finding hearing for a use permitted by right under the Zoning Ordinance; and (b) intrude upon the exclusive jurisdiction of the Northampton Township Board of Supervisors to conduct conditional use hearings.

CONCLUSIONS OF LAW

1. Required advanced notice of the authorized telecommunications device to be used at the April 12, 2021, hearing was made by sufficient posting on the Northampton Township publicly accessible internet website.

2. As required by Act 15, allowance for public participation at the April 12, 2021, hearing was made through the authorized telecommunications device and through the submission of written comments or questions by regular mail or email to Solomon's attention at Northampton Township.

3. In Pennsylvania, the zoning officer is charged with the administration of the zoning ordinance. The zoning officer acts in "a gate-keeper-type capacity." The zoning officer, not the Board, is statutorily authorized to render initiatory decisions as to zoning compliance. *See* 53 P.S. §10614; *see also Borough of Jenkintown v. Board of Commissioners of Abington Township*, 858 A.2d 136 (Pa. Commw. 2004).

4. The Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.* (the "MPC") recognizes that the zoning officer makes determinations in the context of land development proposals as to whether a use is permitted and whether zoning relief is necessary for a particular use. *See Borough of Jenkintown*, at 140.

5. The MPC provides relief from a zoning officer's determinations by its jurisdictional grant to the Board. Pennsylvania law states that all issues involving zoning in land development should be resolved before the governing body acts on the final plan. *See Graham v. Zoning Hearing Board of Upper Allen Township*, 555 A.2d 79 (Pa. 1989).

6. Section §10909.1(a)(3) of the MPC and Zoning Ordinance §27-1302 and §27-1402.1 vest the Board with exclusive jurisdiction to hear and render final adjudications on appeals from a determination of the zoning officer.

7. Specifically, the Board's jurisdiction under Zoning Ordinance §27-1402.1 and MPC §10909.1(a)(3) includes an appeal where it is alleged that the zoning officer has failed to follow prescribed procedures or has misinterpreted or misapplied any provision of the Zoning Ordinance.

8. The MPC confers appellate jurisdiction upon the Board over appeals from zoning officer determinations. *See Orange Stones Co. v. Borough of Hamburg Zoning Hearing Board*, 991 A.2d 996 (Pa. Commw. 2010).

9. Appellate jurisdiction is properly discharged when the Board reviews whether the zoning officer committed an error or law or abused his discretion when making a determination. *See Diversified Health Assocs., Inc. v. Zoning Hearing Board of Borough of Norristown*, 781 A.2d 244 (Pa. Commw. 2001).

10. An abuse of discretion occurs where the determination is not supported by substantial evidence, which is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *See Smith v. Zoning Hearing Board of Huntingdon Borough*, 734 A.2d 55 (Pa. Commw. 1999).

11. An error of law is made if the determining authority erroneously interprets or misapplies the law to the facts of the case. *See In re: Land Use Appeal of Southeastern Chester County Refuse Authority*, 2006 Pa. D&C Dec. LEXIS 92 (2006).

12. A zoning officer's interpretation of the zoning ordinance is entitled to deference and should not be disregarded unless shown to be clearly erroneous. *See Carol Lines v. Pennsylvania Public Utility Commission*, 477 A.2d 601 (Pa. Commw. 1984); *see also Kohl v. New Sewickley Township Zoning Hearing Board*, 108 A.3d 961 (Pa. Commw. 2015).

13. The question of whether an individual's proposed use of his property falls within a zoning ordinance's specified category is a question of law. *See Ellis v. Zoning Hearing Board of North Cornwall Township*, 571 A.2d 541 (Pa. Commw. 1990).

14. Applied to the instant appeal, Solomon's testimony, unless clearly erroneous or legally in error, constitutes "substantial evidence" upon which the Board can rely. *See McIntyre v. Board of Supervisors*, 614 A.2d 335 (Pa. Commw. 1992).

15. The Board is the exclusive authority and sole arbiter of witness credibility and evidentiary weight. The Board is free to reject uncontradicted testimony that it finds lacking in credibility. *See Pham v. Upper Merion Township Zoning Hearing Board*, 113 A.3d 879 (Pa. Commw. 2015).

16. The MPC defines a “determination” as “the final action by an officer, body or agency charged with the administration of any land use ordinance or applications thereunder.” *See* 53 P.S. §10107.

17. In this matter, the “final action” is the Zoning Officer’s Determination as set forth in Exhibits B-5 and B-6, to wit, that the Wawa Food Store use is a permitted retail store use with an accessory motor fuel sales and dispensing use and structures.

18. The Board finds Solomon’s testimony to be credible in all respects.

19. The Board concludes that Solomon applied the proper analysis by reviewing the numerous relevant terms, definitions and uses in the Zoning Ordinance. He correctly applied that review to the Land Development Submission in assessing whether Provco’s proposed use of the Property qualifies as a permitted primary and accessory use in the C-2 zoning district.

20. The Board concludes the Solomon accurately determined that the 5,585 square feet non-residential building proposed for Lot 1 will be a “retail store or outlet” under the Zoning Ordinance.

21. Solomon’s credible testimony, as well as the uncontroverted description of Wawa’s activities, confirms that Lot 1 and the building thereon will sell “baked goods, hot and cold beverages, pharmaceutical products, dry goods, newspapers, magazines, tobacco” and similar retail products and uses. *See* Zoning Ordinance §27-502.2.A(2).

22. As such, the Board concludes that whether or not the entire Wawa Food Market qualifies as a “retail use” turns on whether the sale of motor vehicle fuel through 16 dispensing stations is an accessory use or a separate principal use under the Zoning Ordinance. *See Borough of Fleetwood v. Zoning Hearing Board*, 649 A.2d 651 (Pa. 1994); *see also V.S.H. Realty, Inc. v. Zoning Hearing Board of Sharon Hill*, 365 A.2d 670 (Pa. Commw. 1976).

23. Based upon the credible testimony and evidence, the Board concludes that the sale of motor vehicle fuel through 16 dispenser stations constitutes a retail activity that is secondary to the primary retail convenience store use, and therefore is a permitted accessory use under the Zoning Ordinance.

24. The Board concludes that Solomon correctly determined that the sale of gasoline and other motor vehicle fuels to the general public is a “similar retail use” to the activities listed in the Zoning Ordinance’s description of a retail store. *See* Zoning Ordinance §27-502.2.A(2).

25. The only products that the Zoning Ordinance proscribes from a retail store are adult books and adult uses. If the Township’s governing body intended to ban the sale of motor vehicle fuel from a retail store, it easily could have done so explicitly. The Board declines to conjure that exclusion.

26. The Board concludes that Solomon correctly determined that the fuel sales and the dispenser stations will be on Lot 1, which is the same tract upon which the Wawa retail convenience store use and building will be located. *See* Exhibit A-2, Plans; *see also* Zoning Ordinance §27-201.

27. The Board concludes that Solomon correctly determined that only the sale of gasoline and other motor vehicle fuels will be offered through mandatory dispensers in connection with the primary convenience store use. No other “automotive” type products or services are offered.

28. This reinforces that all of Lot 1 will be devoted to the sale of retail products, making the sale and delivery of gasoline to customers “incidental and subordinate” to the primary retail convenience store use.

29. The Board concludes that Solomon correctly determined that motor vehicle fuel is routinely sold at retail convenience stores. Provco’s uncontroverted statistics confirm that motor vehicle fuel is sold at nearly 80% of all retail convenience stores nationwide.

30. The Board’s conclusions are supported by Pennsylvania cases that address whether the sale of motor vehicle fuel through dispensing stations is a permitted accessory use in connection with a retail convenience store.

31. Motor vehicle fuel sales activity can be a separate principal activity or supportive accessory use, depending upon the individual circumstances and the express language of the relevant zoning ordinance. *See Food Bag, Inc. v. Mahoning Township*, 414 A.2d 421 (Pa. 1980).

32. Pennsylvania decision law recognizes that where a zoning ordinance allows accessory uses as of right without qualification, the sale of gasoline through dispenser stations is a customary and incidental activity to a primary retail convenience store use. *See Borough of Fleetwood, supra*.

33. The Board concludes that the Zoning Ordinance’s language is nearly identical to the zoning ordinance wording deemed dispositive in *Borough of Fleetwood*.

34. The Board rejects Ranade’s argument that the mere sale of gasoline and the addition of the fuel dispensing stations transforms the retail convenience store into a gasoline service station use. *See V.S.H. Realty v. Zoning Hearing Board of Sharon Hill*, 365 A.2d 670 (Pa. Commw. 1976).

35. Unlike the instant Wawa, a principal gasoline service station use may also provide engine repairs, car inspection and other vehicle related services. This reservation is critical when determining whether the sale and distribution of gasoline alone recategorizes the retail convenience store use as a gasoline service station use.

36. Under Ranade’s theory, *any* use that sells motor vehicle fuels is deemed to be a “gasoline service station,” even if it does not offer any of the other “gasoline service station” products or services. The Board declines to endorse this position.

89. Critical to the Board’s conclusions herein is the fact that Solomon had already made the exact same determination for the Addisville Wawa prior to conducting his review of the Wawa Food Market use proposed for the Property. No one challenged Solomon’s prior decision.

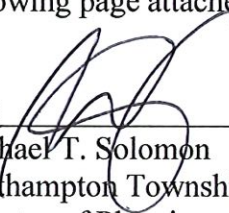
37. The Board concludes that Solomon's determination that Provco's proposed use is not a gasoline service station use under the Zoning Ordinance is entitled to deference and is without error.

38. Finding no error in the Determination, the Board concludes that the proposed Wawa Food Market for the Property is a principal retail store with an accessory fuel sales and dispensing use; and that such uses and structures are permitted by right in the C-2 zoning district under the Zoning Ordinance.

DECISION

AND NOW, this 27th day of MAY, 2021, upon consideration of the foregoing Findings of Fact, Discussion and Conclusions of Law, the Northampton Township Zoning Hearing Board hereby **DENIES** the appeal of Mohan Ranade *et al.* and **UPHOLDS** and **AFFIRMS** the Zoning Officer's Determination that the proposed use of the Property (Lot 1) is a permitted principal retail store with an accessory fuel sales and dispensing use, permitted by right in the C-2 zoning district under the Zoning Ordinance.

The signatures of the Northampton Zoning Hearing Board members that appear on the following page attached hereto and incorporated herein, confirms the Board's decision and order.

BY: 
Michael T. Solomon
Northampton Township
Director of Planning and Zoning

Date: 5-27-21

Thomas J. Walsh III, Esquire
Solicitor, Northampton Township Zoning Hearing Board
3655 Route 202, Suite 105
Doylestown, PA 18902

Note to Applicant: This Decision is NOT an authorization to build. Zoning and building permits must be obtained from Northampton Township prior to the commencement of any construction.

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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Memorandum to ZHB from Michael Solomon dated 3/15/21
B-2	Zoning Hearing Board appeal for Case No. 2021-12
B-3	Proof of payment of all fees applicable to Application
B-4	List of property owners within 500 feet; affidavit of mailing dated 3/19/21
B-5	Letter dated 1/19/2021 from J. Pizzo, Esq., Northampton Township solicitor
B-6	Email message dated 1/22/21 from R. Pellegrino Northampton Township Manager
B-7	Memorandum of Appellant in support of Appeal, submitted by C. Papa, Esq.
B-8	Email correspondence to The Advance of Bucks County requesting advertisement of public notice
B-9	Public Notice
B-10	Proof of publication of public notice in the 3/28/21 and 4/4/21 editions of The Advance
B-11	Affidavit of posting, notice of hearing posted on Property on 3/23/21
B-12	Letter from J. VanLuvanee, Esq., attorney for Provco, dated 4/5/21, requesting party status to appeal
B-13	Communications between Attorneys and M. Solomon regarding instructions on how to attend hearing via Zoom meetings platform
B-14	Bucks County Viewer Aerial and Map
B-15	Memorandum of Intervenor in opposition to Appeal, together with Industry Fact Sheet
A-2	Land Development Submission consisting of (a) Application; (b) General Project Description; and (c) Preliminary Land Development and Major Subdivision Plans
A-7	Request under Right-to-Know Law

NORTHAMPTON TOWNSHIP

Zoning Hearing Board

SIGNATURE PAGE

RE: Case No. 2021-12

Mohan Ranade, et al.

John C. Fenningham, Esquire, Chairman



Mike Hartey, Vice Chairman



Ted Hauptman, Secretary

