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VIA ELECTRONIC MAIL

Frank DiCicco, Chairman
c/o Sharon Suleto, Esquire
Zoning Board of Adjustment
City of Philadelphia
1515 Arch Street, 18th Floor
Philadelphia, PA 19102
suletozba@gmail.com

**Re: 10 Bethlehem Pike (the “Property”)
Application No. ZP-2021-002274 (the “Application”)**

Dear Chairman DiCicco,

This law firm represents the Applicant of ZP-2021-002274, 10 Bethlehem Pike Property Owner, LLC, which is also the owner of the Property (the “Owner or Applicant”) in the above referenced Appeal. A third-party appeal of the by-right issuance of the Application’s Issued Zoning Permit was filed on behalf of the Chestnut Hill Civic Association and additional neighbors (the “Appellants”) on May 25, 2021 (the “Appeal”).

As outlined below, all the Appellants’ claims have either been rendered moot by the issued permit or are clear misinterpretations of the code. Therefore, we respectfully request that the Zoning Board of Adjustment (“ZBA”) deny the Appeal. Below you will find an outline each of the Appellants’ claims and our subsequent responses.

Claim #1: The proposed project does not meet the dimensional standards o the Zoning Code at Phila. Code. §14-701(1)(c).

Appellants are attempting to conflate zoning provisions to create non-existent restriction at the primary frontage on Bethlehem Pike. They are relying on the incorrect interpretation of the cited Code provisions. The Appellants’ appeal relies heavily on Section §14-701(1)(c) of the Philadelphia Zoning Code (the “Code”), which states the following:



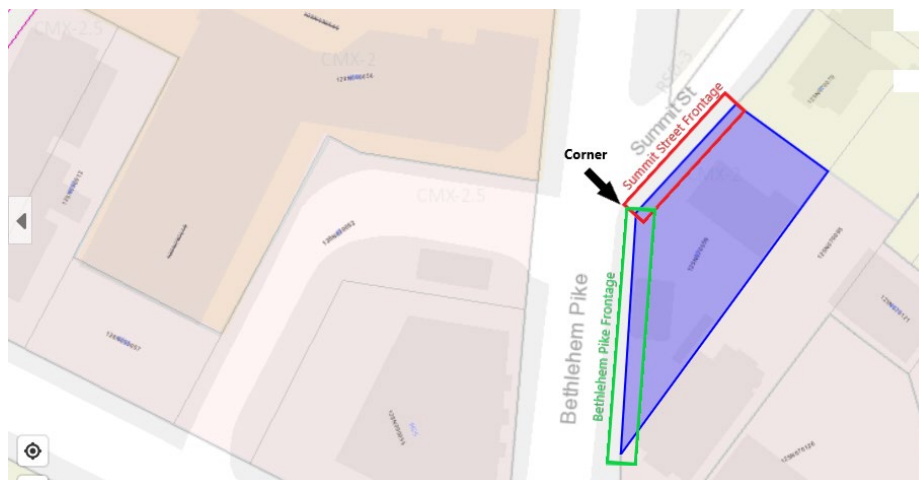
Where any **block frontage** on one side of a street is divided into two or more districts, no structure shall be erected nearer to the street line than is permitted under the regulations for the district that covers the largest percentage of the street frontage on that block face; provided, however, that, when residential districts are included, the front yard depth shall be the highest required of the applicable residential districts.

Appellants go on to explain that the RSD-1 zoning district covers the highest percentage of parcels on the Summit Street Block Face thus subjecting the frontages on that block frontage to a 35 feet setback. Appellants erroneously ignores that fact that the subject property sits on more than one block frontage and thus subject to two separate analysis under §14-701(1)(c.) of the Code.

The Code defines block frontage as “The distance along any street line between the nearest streets intersecting it.” See *Phila. Code §14-203(40)*. As such, the block frontage along Summit Street stretches along Summit Street from the intersection of Bethlehem Pike and Summit Street to the intersection of Prospect Ave and Summit Street (the “Summit Street Frontage”). But the property is not subject to the Summit St frontage only.

The Property is also subject to the street frontage that stretches along Bethlehem Pike from the intersection of Summit St and Bethlehem Pike to the intersection of Bethlehem Pike and Germantown Ave (the “Bethlehem Pike Frontage”).

It is clear from the arial map below that the Property is a corner lot that sits at the intersection of Bethlehem Pike and Summit Street.



The Appellants acknowledge this fact multiple time within their own appeal exhibit. See below:



The Block² containing the Property is bounded by Bethlehem Pike, Summit Street, Prospect Avenue, Evergreen Avenue, and Evergreen Place. The Block is depicted on the below portion of the zoning map from ATLAS (the Property is right on the corner of Bethlehem Pike and Summit Street, and is depicted in red with blue shading below):

The Property in this case is a corner lot fronting on two streets. § 14-701(1)(d) of the Phila. Code (“Requirements for Lots with Multiple Street Frontages.”) states:

The CMX-2 zoning district covers the 100% of the Bethlehem Pike Frontage. Therefore, the CMX-2 setback requirement controls when applying §14-701(1)(c) of the Code to the Bethlehem Pike Frontage. CMX-2 zoning district does not require any front yard setback. The Commercial Dimensional Standards table below clearly shows that:

Table 14-701-3: Dimensional Standards for Commercial Districts⁵⁸¹

Previous District Name	C1	C2/RC2	Commercial Corridor Overlays	C3/RC3	C4 C5	C7/NSC	ASC
District Name	CMX-1	CMX-2	CMX-2.5	CMX-3	CMX-4/CMX-5	CA-1	CA-2
See § 14-701(3)(a) (Notes for Table 14-701-3) for information pertaining to bracketed numbers (e.g., “[2]”) in table cells.							
Denotes zoning requirements not applicable							
District and Lot Dimensions							
Min. District Area (sq. ft.)							80,000
Min. Street Frontage as taken from the front lot line (ft.)	[1]					50	100
Min. Lot Width (ft.)	[1]						
Min. Lot Area (sq. ft.)	[1]					5,000	15,000
Max. Occupied Area (% of lot)	[1]	Intermediate: 75 Corner: 80	Intermediate: 75 Corner: 80	Intermediate: 75 Corner: 80	Buildings ≤ 5 stories with 1 or more dwelling units: 90; Others: 100	60	100
Yards							
Min. Front Yard Depth (ft.)	[1][3]		Must be built to front lot line				
Min. Side Yard Width, Each (ft.)	[1]	5 if used	5 if used	8 if used for buildings containing dwelling units	If used: Buildings ≤ 4 stories with three or fewer dwelling units = 5; Others = 8	5 if used	
Min. Rear Yard Depth (ft.)	[1]	The greater of 9 ft. or 10% of lot depth	The greater of 9 ft. or 10% of lot depth			5 if used	
Height							
Max. Height (ft.)	[1]	38	55			38	38
Min. Cornice Height (ft.)	[1]		25				
Floor Area Ratio							
Max. Floor Area (% of lot area)	[1]			500	CMX-4: 500 CMX-5: 1,200 [2] See also § 14-701(5) (CMX-4 and CMX-5 Bulk and Massing Controls)		

Additionally, the Appellants’ challenges to the Summit Street Frontage setback is rendered moot by the current language of § 14-701(1)(c) of the code. Both the legislative history and the facial language of the Code makes it clear that the § 14-701(1)(c) applies only to Front Yard Depths. The section is unambiguously titled “**Front Yard Depths for Zone Blocks with More than One Zone**” obviously intending the restrictions to apply to Front Yards. See table below:



(c) **Front Yard Depths for Zone Blocks with More than One Zone.** ^{556.1}

Where any block frontage on one side of a street is divided into two or more districts, no structure shall be erected nearer to the street line than is permitted under the regulations for the district that covers the largest percentage of the street frontage on that block face.

Furthermore, the Legislative history shows that the Philadelphia City Council (“City Council”), clearly intended to clarify that § 14-701(1)(c) applies ONLY to front yards in Bill No. 210075 (the “Bill”). The Bill, passed on March 29, 2021, swapped out the term “Setbacks” for “Front Yard Depth” in both the title and body of § 14-701(1)(c).

- Pre-Bill Language:

[Setbacks] for Zone Blocks with More than One Zone.

Where any block frontage on one side of a street is divided into two or more districts, no structure shall be erected nearer to the street line than is permitted under the regulations for the district that covers the largest percentage of the street frontage on that block face; provided, however, **[that]** when residential districts are **[included]** the **[setback]** shall be the highest required of the applicable residential districts.

- Post-Bill Language:

Front Yard Depths for Zone Blocks with More than One Zone.

Where any block frontage on one side of a street is divided into two or more districts, no structure shall be erected nearer to the street line than is permitted under the regulations for the district that covers the largest percentage of the street frontage on that block face; provided, however, **that**, when residential districts are **included**, the **front yard depth** shall be the highest required of the applicable residential districts.

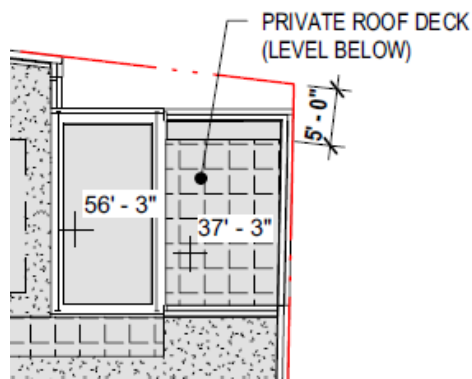
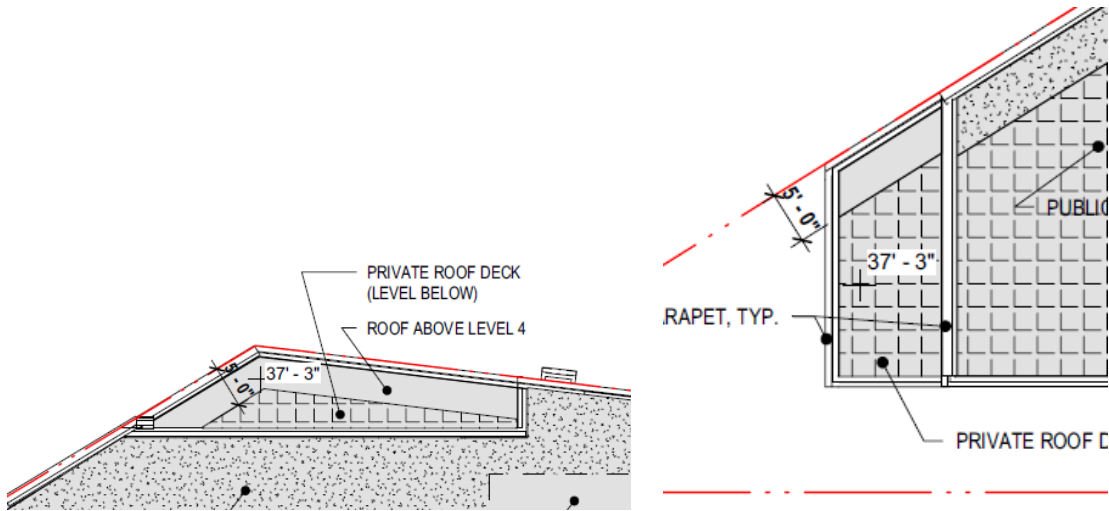
Plainly put, the Summit Street frontage is not the “front yard” or the “front” of the Property. The Planning Commission has determined the Bethlehem Pike Frontage is the front of this property.¹ As such, the Summit Street is not subject to §14-701(1)(c). Therefore, this Project is in full compliance with the Code and the ZBA should dismiss this appeal.

¹ Bethlehem Pike Frontage is the logical choice for the front of the property for the following reasons: (1) The Address of the Property is 10 Bethlehem Pike, (2) Bethlehem Pike is the largest frontage on the proper (144 feet), (3) The proposed building is oriented toward Bethlehem Pike, (4) All other properties on Bethlehem Pike Block face are CMX-2.



Claim #2: One of more of the Roof Decks of the proposed project do not meet the dimensional standards of the Zoning Code at Phila. Code. 14-604 (5).

Appellants' claims have no basis in fact. All roof decks in the proposed project have at least a 5 ft minimum from all building lines on a street frontage. As we established above, the building frontages for the Project are on Bethlehem Pike and Summit Street. As you can see from below the proposed roof decks both the deck circled by the Appellant in their appeal is set back from Summit Street Frontage 5 feet and 5 inches:





Claim #3: An Outdoor Lighting Plan was required and must be submitted in order for the proposed project to meet the standards of the Zoning Code at Phila. Code. 14-707.

Although separate lighting plans are rarely submitted for zoning permits that are not proposing an athletic field, we do have a lighting plan that reflects and incorporates the over-all proposal that was reviewed and approved by L&I. We can provide it to the Board should they deem it necessary.

As such, the Appellant's claim is moot.

Conclusion

The Appellants' claims have either been rendered moot or is clearly erroneous under the Code. As such this project is clearly by-right and L&I was correct in issuing the Zoning Permit. Therefore, the ZBA must dismiss Appellants' appeal and reject this attempt to delay the Applicants project. Any other decision would be a miscarriage of justice and severely prejudice the Applicant.

Thank you for your time and attention to this request. Please do not hesitate to contact me with any questions.

Very truly yours,

Carl S. Primavera

cc: Tanya Sunkett (ZBA Administrator)