

**BEFORE THE ZONING HEARING BOARD OF THE TOWNSHIP
OF UPPER MERION, MONTGOMERY COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION NO. 2011-01 : REQUEST FOR EXPANSION
OF SUNOCO, INC. : OF NON-CONFORMING USE; FOR
: VARIANCE IN THE ALTERNATIVE**

DECISION

Public Hearings on the above Application having been held on Wednesday, May 21, 2011, at 7:00 p.m. and July 20, 2011, at 7:00 p.m. at the Upper Merion Township Freedom Hall, 175 West Valley Forge Road, King of Prussia, Pennsylvania, pursuant to Notice as required by Section 165-255 of the Zoning Code, last amended by Ordinance No. 2005-745 (hereinafter "Code"), and the Pennsylvania Municipalities Planning Code, and having considered the evidence and testimony presented, the Zoning Hearing Board of Upper Merion Township enters the following Decision:

FINDINGS OF FACT

1. This is Application No. 2011-01 of Sunoco, Inc. ("Sunoco" or "Appellant"), concerning property owned by Sun Company, Inc. situate at 1308 South Gulph Road (tax parcel no. 58-00-16957-00-4), Upper Merion Township, Montgomery County, Pennsylvania ("the Property").

2. The Property is approximately 2.1 acres in size and is located in the R-1A Zoning District.

3. On or about December 29, 2010, Appellant filed an Application to the Upper Merion Township Zoning Hearing Board ("the ZHB" or "the Board") seeking to expand the existing non-conforming convenience store use under Section 165-199(b)(1) and eliminate the non-conforming auto service use. In the alternative, Appellant seeks a use variance under Section 165-22 to expand the accessory convenience store to the existing gas station.

4. The Appellant also seeks a variance from Section 165-167 of the Zoning Code to permit the replacement of the existing signage with new signage on the Property.

5. The Appellant called the following witnesses in support of the Application: Robert Switala, Project Manager with Bergmann Associates; Dennis Glackin, Land Planner; Nicole Kline, Project Manager, McMahon Associates; Patty Hendel, Division Manager of Sunoco; and Steve McLaughlin, Owner/Operator of the Sunoco station on the subject Property.

6. **Robert Switala**, Project Manager for Bergmann Associates, testified as follows:

a. Mr. Switala has a Bachelor's Degree in Civil Engineering with over 12 years of experience in land development. He is a Project Manager for Sunoco on various projects across the northeast (N.T. 5/25/11 p. 14).

b. Mr. Switala presented Exhibit A-1 which is an aerial plan showing the existing conditions of the site (N.T. 5/25/11 p. 17).

c. Presently on the site today is a structure housing a gas station, service area and small convenience store (N.T. 5/25/11 p. 18).

d. The structure on the Property is approximately 1579 square feet. There are two existing fueling canopies on the site, with four fueling dispensers for a total of eight fueling positions (N.T. 5/25/11 p. 18).

e. The subject Property is located at 1308 South Gulph Road in the R-1A Zoning District. It is comprised of approximately 2.1828 acres in area with an irregular rectangular shape (N.T. 5/25/11 p. 17).

f. There are presently three uses on the site: the gas station use, the auto service use with three service bays, as well as a small convenience store area. The area of the convenience store is approximately 150 square feet (N.T. 5/25/11 pp. 19, 153).

g. The site has been in operation as a gas station since the 1920s. In 1995 a variance was obtained in order to relocate the fueling dispensers and canopy and redo the existing non-conforming signage (N.T. 5/25/11 p. 19).

h. In referring to Exhibit A-2, titled Sunoco A Plus Conversion, Mr. Switala testified that there are not really any improvements that are being proposed to the exterior of the building. There will be no expansion of the structure and it will remain at its current square footage (N.T. 5/25/11 p. 20).

i. Appellant plans to remove the auto service bays and replace them with a larger convenience store. As a result, one of the existing non-conforming uses will be eliminated altogether, while the non-conforming convenience store use will be expanded (N.T. 5/25/11 p. 21).

j. Mr. Switala referenced Exhibit A-7, floor plan, in describing the reconfiguration of the proposed facility. The service bays are to be replaced by a sales area, a cooler area, an upgraded restroom and new utility area. The new configuration will be as follows: sales and cashier area, 827 square feet; office area, 163 square feet; restroom, 43 square feet; utility room, 110 square feet; freezer storage area, 263 square feet, for a total of 1,403 square feet (N.T. 5/25/11 pp. 42-44).

k. In removing the auto service bays there will be some exterior improvements to the façade of the structure (N.T. 5/25/11 p. 20).

l. There will be no changes to the canopies or the number of gas dispensers. There is no proposed change to the access points to the site (N.T. 5/25/11 p. 21).

m. The Appellant proposes to reface the existing monument signs, but they will otherwise remain the same. With regard to the building signs, they presently constitute 81 square feet, and the proposal is to reduce them in size to 64.5 square feet (N.T. 5/25/11 pp. 21, 135). With regard to the site generally, the proposal does not include an increase in signage (N.T. 7/20/11 p. 171).

n. Mr. Switala explained that on Exhibit A-3, titled "Photo Metric Plan", the color yellow indicates where lighting is either the same or decreased, while pink indicates anywhere that the proposed lighting will increase. The use of LED fixtures will reduce glare and also provide more pinpoint lighting (N.T. 5/25/11 pp. 27-29). In accordance with Exhibit A-3, the overall lighting on the site will be reduced under the proposal (N.T. 5/25/11 pp. 24-29, 146).

o. As reflected on Exhibit A-2, landscaping will be added to the north and south boundaries of the Property and landscaped areas that had been removed in the past will be replaced (N.T. 5/25/11 pp. 30, 31).

p. Mr. Switala testified that there will be five deciduous trees added to the site, and 12 conifers (N.T. 5/25/11

pp. 107-108). The shade trees will be London Plain trees, and the flowering trees Ironwoods. The evergreen trees are Eastern Arborvitaes, and the shrubs are Chinese Junipers and Japanese Cypress and Yews (N.T. 5/25/11 p. 107).

q. The proposed plantings will be in such a manner that adequate site distances will be maintained (N.T. 5/25/11 p. 108).

r. There are no changes proposed to the parking layout on the property. Referencing Exhibit A-5, it was noted that there are seven parking spaces which will be maintained while the actual calculation is for 6.31 parking spaces (N.T. 5/25/11 p. 109).

s. Mr. Switala testified that the current Exhibit A-2 does have an unmarked area for trucks to park and unload product at the proposed convenience store, located on the south side of the property between the building and the dumpster (N.T. 5/25/11 pp. 123-126). An amendment was offered to Exhibit A-5 reflecting a change in that the proposed loading area, measuring 35 by 20 feet, has now been striped on the plan to clearly identify it (N.T. 7/20/11 p. 182).

t. Referencing Exhibit A-5, Mr. Switala was asked about some structures which are located behind the existing service station building. Two of them are for waste oil and motor oil storage, which will be removed as they are related to

the service bay operation. The third small building will remain, as it is for fuel oil for heating the main building (N.T. 5/25/11 pp. 134-135).

7. **Patty Hendel**, division manager for Sunoco operations for Philadelphia, surrounding counties and the state of Delaware, testified briefly, as follows:

a. Ms. Hendel testified that the dealer in this instance approached Sunoco about becoming an A Plus convenience store several years ago. This is something that Sunoco has done throughout the Northeast, essentially converting service bays into convenience stores while remaining inside the same footprint (N.T. 5/25/11 pp. 47, 48).

b. The relationship between Mr. McLaughlin, current operator, and Sunoco is that he is a dealer who leases the site from Sunoco. As division marketing manager for franchise operations, Ms. Hendel supervises Sunoco franchisees generally (N.T. 5/25/11 pp. 120-121; N.T. 7/20/11 p. 185).

c. The standard hours of operation for A Plus gas stations and convenience stores are 24 hours, seven days a week, and that is the proposal in this instance (N.T. 5/25/11 pp. 98-99).

d. The product mix that is generally sold from an A Plus convenience store includes coffee, a cooler with soft drinks and other beverages, three or four gondolas with chips,

and a small collection of grocery items including bread and milk (N.T. 5/25/11 pp. 121-122).

e. Ms. Hendel testified that in the five counties and state of Delaware for which she is responsible, there are 98 A Plus convenience stores, all of which operate on a 24 hour, seven day a week basis. While she is not aware of any that do not keep such hours, she indicated there may be some in outlying areas and perhaps Pittsburgh (N.T. 5/25/11 pp. 119, 120).

f. When asked in the Appellant would be amenable to restricting hours to perhaps 6:00 a.m. to 11:00 p.m., Ms. Hendel indicated that it would be acceptable (N.T. 5/25/11 pp. 122, 123; N.T. 7/20/11 pp. 197-199).

g. Ms. Hendel testified about planned product deliveries to the proposed site. She indicated that Sunoco prefers a single vendor, which is McClean Northeast, to deliver most everything, including cigarettes, bottled water, and bread. Some other products are delivered by both McClean as well as individual vendors, including various brands of soda and snack foods (N.T. 7/20/11 p. 191).

8. **Steve McLaughlin**, current operator of the Sunoco station, testified as follows:

a. His father first began operating the station on the Property in 1963, running it with service bays, the sale of gas, and some vending machines.

b. In 1990, Mr. McLaughlin began working with his father at the station, at which time a cooler and coffee machine were placed in the premises, and food such as snacks, crackers and cookies were sold. Eventually some prepared foods were sold from the premises as well (N.T. 5/25/11 pp. 49, 50).

c. At the present time, the Sunoco station is open from 6:00 a.m. to 10:00 at night, which includes the gas operation as well as the 160 square feet of retail (N.T. 5/25/11 p. 104). Additionally, the three service bays are open 7:30 a.m. to 4:00 or 5:00 p.m., five days a week (N.T. 5/25/11 p. 104).

d. Approximately five years ago, Mr. McLaughlin approached Sunoco about converting the Sunoco station by eliminating the service bays and expanding the convenience store use.

e. Steve McLaughlin and his brother, with whom he operates the Sunoco station, request that the Board grant the relief requested so that they can continue to operate the station without the service bays and with an expanded convenience store. Operating the service aspect of the business has become physically demanding and more difficult on Steve McLaughlin and his brother (N.T. 5/25/11 pp. 51-53).

f. In addition, because of the technical expertise required to work on modern vehicles, it is difficult to find

qualified mechanics as well as expensive to have the necessary equipment on site to service today's vehicles (N.T. 5/25/11 pp. 110-111).

9. **Nicole Kline**, a qualified transportation engineer (see Exhibit A-8, CV), was called to testify on behalf of the Appellant, as follows:

a. Nicole Kline testified with regard to the existing traffic volumes along two major roads in the vicinity of the site, South Gulph Road and New Gulph Road. Exhibit A-9, titled Existing Daily Traffic Volume, indicates that presently South Gulph Road carries over 14,000 vehicles in both directions, per day. New Gulph Road carries over 6,000 vehicles in both directions, for a total of over 20,000 vehicles a day passing by the site on those two roadways. The numbers presented were not based on an actual traffic survey, but are from published PennDOT daily traffic volume data (N.T. 5/25/11 pp. 55-57).

b. With regard to the existing morning peak hour traffic, occurring between 7:45 and 8:45 a.m., approximately 2,300 vehicles pass by the site on the two main roads, as indicated on Exhibit A-10 (N.T. 5/25/11 pp. 58-59).

c. During the afternoon peak traffic period between 5:00 and 6:00 p.m., over 2,000 vehicles pass by the site (N.T. 5/25/11 pp. 58, 59).

d. Peak hour traffic volume, as represented on Exhibit A-10, is based on an actual traffic count (N.T. 5/25/11 p. 57).

e. Generally speaking, and specifically with regard to the subject site, most of the traffic entering the site is what is known as "pass-by trips". That is, the cars stopping in for business are already on the road passing the premises (N.T. 5/25/11 pp. 60, 61).

f. Presently, during the morning peak hour, the Sunoco station generates 81 total trips, coming in and out. During the weekday afternoon peak hour, a similar number of approximately 80 trips enter and leave the Sunoco. On a typical weekday during a 24 hour period, a total of approximately 1,100 vehicles will enter and leave the Sunoco site (N.T. 5/25/11 pp. 59, 60).

g. Referencing Exhibit A-12, titled Daily and Peak Hour Site Trip Generation Comparisons, Ms. Kline testified as to the comparison of the existing trips to the Sunoco site and those projected to the proposed facility with the expanded convenience store (N.T. 5/25/11 p. 63).

h. Of the 1,100 daily trips presently to the Sunoco site, 649 are pass-by trips, and 470 are new trips where the primary destination is the Sunoco station (N.T. 5/25/11 p. 63).

i. Of the 81 morning peak hour trips, 47 are pass-by and 34 are new trips to the existing Sunoco. In the afternoon, there are 34 pass-by trips, leaving 46 new trips (N.T. 5/25/11 p. 64).

j. In order to calculate proposed trip generation data, Ms. Kline made use of information provided by the Institute of Transportation Engineers, in a publication called Trip Generation, which is a standard industry publication to develop such data for a specific land use (N.T. 5/25/11 p. 64).

k. Based on the data provided by the industry publication, it is estimated that the proposed Sunoco will generate approximately 200 more trips per day, totaling 1,300 during a 24 hour period. Of this number, approximately 807 would be pass-bys, and approximately 495 trips would be to the site itself (N.T. 5/25/11 p. 66).

l. Ms. Kline acknowledged that the national industry data used for purposes of comparison does not distinguish between suburban and urban locations, or single versus double lane roadways. Also, there was no data available to project the proposed use of the expanded convenience store and gas station during non-peak hours. However, she testified that the statistical measures used were accurate for a 24 hour period and the data is therefore reliable (N.T. 5/25/11 pp. 105, 106; N.T. 7/20/11 pp. 204-206).

m. Based on the data from ITE, the proposed Sunoco will generate approximately 81 total trips during the morning peak period, 50 pass-bys and 31 to the site. During the weekday peak hour, the proposed Sunoco will generate 107 total trips, of which 60 are pass-bys and 47 are new trips (N.T. 5/25/11 p. 66).

n. Based on the comparison data, the proposed Sunoco will generate approximately 183 additional trips on a typical weekday, 24 hour period. Most of the additional trips are pass-by and only approximately 25 new trips will be generated to the site during a 24 hour period (N.T. 5/25/11 p. 68).

o. Ms. Kline testified that the comparison data indicates that there will be no or a negligible number of additional trips during the morning peak hour. During the afternoon peak hour, the data shows a total increase in trips of 27, most of which are pass-by trips (N.T. 5/25/11 pp. 69-71).

p. As a result of the data evaluated, Ms. Kline concluded that most of the traffic that would go to the proposed site is already on the highway, as people generally aren't going to drive out of their way to go to a gas station and small convenience store such as proposed. Ms. Kline testified that under the proposal, the primary use remains as a gas station, where the majority of users are pass-by trips for gas only (N.T. 5/25/11 p. 72; N.T. 7/20/11 p. 205).

q. Offered into evidence as Exhibit A-13 is a letter from PennDOT indicating that it had also checked and relied on the standard ITE trip generation charts (Eighth Edition) which served to confirm Ms. Kline's testimony that the Appellant's proposal would only result in a negligible increase in trips (N.T. 5/25/11 p. 75; N.T. 7/20/11 pp. 208,209).

r. Based on the data evaluated, Ms. Kline's expert opinion as a traffic engineer is that there would, essentially, be no adverse impact as a result of the proposal to expand the convenience store (N.T. 7/20/11 p. 202).

s. Ms. Kline referenced Exhibit A-16 in testifying about the schedule of deliveries for the existing site as compared to the proposed operation. Under the existing use, there are approximately 30 total delivery vehicles per week, including 10 heavy vehicles, the latter defined as trucks of the size used by UPS and larger. This number would include the single weekly delivery by McClean Trucking in an 18 wheeler (N.T. 7/20/11 pp. 210-214).

t. With regard to the proposed A Plus mini market, the total number of deliveries per week is anticipated to decrease to 14, less than half the current number. Of those, seven would be made in heavy vehicles, again below the current number (N.T. 7/20/11 p. 215).

u. The reason for the decrease in number of deliveries is due to the number of current deliveries that are related to the service bay operation which would be eliminated (N.T. 7/20/11 p. 215).

10. **Dennis Glackin**, testified on behalf of the Appellant as an expert witness in the field of land planning, as follows:

a. Mr. Glackin's CV indicates he has a BA from Villanova and a Master's degree in regional planning from Syracuse University (N.T. 5/25/11 p. 76).

b. In referring to Exhibit A-1, Mr. Glackin noted that the closest residence is approximately 285 feet directly across from the service station, while the furthest house is approximately 725 feet away (N.T. 5/25/11 pp. 77,78).

c. Mr. Glackin noted that the subject property is bounded by a steep slope and railroad tracks to the rear, as well as the two roads that form an intersection and serve as boundaries to two other sides of the property (N.T. 5/25/11 p. 78). Additionally, non-residential uses, a restaurant across New Gulph Road and an office use directly across from the Sunoco station are located on two other corners of the intersection. Three of the four corners of the intersection are therefore occupied by non-residential uses, constituting a small cluster of commercial uses (N.T. 5/25/11 p. 78).

d. Mr. Glackin confirmed that there will be no additional building coverage or impervious coverage proposed for the site (N.T. 5/25/11 p. 79).

e. Mr. Glackin also noted that historically the gas station began operating in 1926, at which time fuel pumps and a general store constituted the uses on the property. Over time, the general store became a service station and essentially the proposal is a return to the site's original configuration (N.T. 5/25/11 p.80).

f. Due to the site's location, it will continue to serve as a pass-by location since it is not located near a factory or office park which would bring people over to get lunch (N.T. 5/25/11 pp. 79,80).

g. Mr. Glackin clarified the proposal as it pertains to signage. Currently, there is 81.25 square feet of building signage on the property. The proposal includes a reduction in this signage to 64.5 square feet (N.T. 5/25/11 pp. 80, 81).

h. In referencing Exhibit A-2, Mr. Glackin noted that landscaping will be added in three locations, which will provide buffering along the frontage of the property (N.T. 5/25/11 p. 81).

i. Mr. Glackin presented testimony in support of an argument that, due to the unusual characteristics and

limitations of the property, the relief requested may be warranted on the basis of a variance (N.T. 5/25/11 pp. 81-87).

j. However, according to Mr. Glackin, the strongest argument to support the relief requested is based on Article XXX, Section 165-199 of the Zoning Code, titled "Nonconforming Buildings, Structures and Uses". Specifically, Section 165-199(B)(1) provides that: "Any lawful nonconforming use of a portion of a building may be extended throughout the entire building" (N.T. 5/25/11 pp. 89, 113, 114, 118, 119).

11. **Judy Tellefsen**, of 125 Upper Gulph Road, offered testimony with respect to the application.

12. The following Exhibits were entered into evidence:

Applicant's Exhibits

A-1	Aerial context plan	5/25/11
A-2	Sunoco A Plus conversion	5/25/11
A-3A	Photometric plan for Sunoco	5/25/11
A-3B	Existing lighting plan	5/25/11
A-4	Building elevation plan	5/25/11
A-5	Zoning plan	5/25/11
A-5A	Zoning plan	7/20/11
A-6	Existing conditions plan	5/25/11
A-7	Proposed floor plan	5/25/11
A-8	Curriculum Vitae of Nicole Kline	5/25/11
A-9	Table one, existing daily traffic volume	5/25/11
A-10	Table two, existing peak hour traffic volume	5/25/11
A-11	Table three, existing site trip generation	5/25/11
A-12	Table four, daily and peak hour site trip generation comparisons	5/25/11
A-13	PennDOT letter addressed to Robert Padel	5/25/11
A-14	Curriculum Vitae of Dennis Glackin	5/25/11
A-15	Decision of the Upper Merion Township Zoning Hearing Board	5/25/11

A-16	Delivery schedules for current and proposed use	7/20/11
A-17	Opinion and Order of Upper Merion Township Zoning Hearing Board	7/20/11

Protestant's Exhibits

P-1	1995 land development approval	5/25/11
P-2	Photograph	7/20/11
P-3	Photograph	7/20/11
P-4	Photograph	7/20/11
P-5	Letter dated 11/09/1995	7/20/11
P-6	Letter dated 11/27/1995	7/20/11
P-7	License	7/20/11
P-8	Letter	7/20/11

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the subject matter of the Application.

2. Sunoco, Inc. is a proper party before the Board.

3. The Appellant asserts that it is entitled to expand the present convenience store use on the subject Property into the three bay service area as the legal expansion of a non-conforming use.

4. Alternatively, the Appellant asserts that it has established the necessary elements for a Use Variance for a convenience store on the subject Property.

5. The Appellant also seeks a Variance from Section 165-167 of the Zoning Code to permit the replacement of the existing signage on the Property in the R1A District.

6. There have been three separate non-conforming uses on the subject Property, a gas station, an auto service use with three bays, and a small convenience store, all of which have existed in various forms on the premises since approximately 1926 (N.T. 5/25/11 p. 80).

7. The non-conforming convenience store has included at various times vending machines and a cooler, and the retail sale of food products including snacks, crackers, cookies, coffee,

cigarettes and eventually some prepared foods (N.T. 5/25/11 pp. 49-50).

8. The Appellant's proposal is to expand the convenience store non-conforming use into the current service bay area of the structure, with no expansion of the existing building.

9. The Appellant's proposal does not include a request for any increase in signage, and actually provides for a reduction in the building signs. As a result, the Board finds that the proposed signage is in accordance with a previous variance granted authorizing the current sign package.

10. The Appellant has established that it is entitled to the extension of the convenience store non-conforming use into the service bay area of the subject structure under Article XXX, Section 165-199(1) of the Upper Merion Township Zoning Code which provides that, "Any lawful non-conforming use of a portion of a building may be extended throughout the entire building".

11. Accordingly, Appellant does not require a use variance for the proposed expansion of the convenience store.

12. The Appellant has agreed to the following conditions upon grant of relief:

a. The hours of operation for the gas station and proposed convenience store shall be between the hours of 6:00 a.m. and 10:00 p.m. (N.T. 7/20/11 pp. 283-284).

b. Appellant will make use of the loading zone for delivery of product, as designated by hash marks on Exhibit A-5A (N.T. 7/20/11 p. 284).

c. Signage will be limited to the signs shown on the plan, and no others (N.T. 7/20/11, p. 285).

d. Prior to commencement of operation of the convenience store, all landscaping will be completed so as to comply with code requirements, representations as to new landscaping, and restoration of that which was previously removed (N.T. 7/20/11 pp. 285, 286).

ORDER

Upon consideration of the evidence and testimony presented, the Appeal of Sunoco, Inc. to expand an existing non-conforming convenience store use into the service bay area of the service station is **GRANTED**, and it is hereby **ORDERED AS FOLLOWS**:

A. The Board grants the APPELLANT'S proposal to expand the convenience store use into the abandoned service bay area of the structure pursuant to Article XXX, Section 165-199 of the Upper Merion Township Zoning Code as the extension of a lawful non-conforming use into a portion of the existing building, subject to the conditions agreed to by APPELLANT as follows:

1. The hours of operation for the gas station and proposed convenience store shall be between the hours of 6:00 a.m. and 10:00 p.m.

2. APPELLANT shall make use of the loading zone as designated by hash marks on Exhibit A-5A for delivery of all product to the site.

3. Signage will be limited to that which is represented on plans submitted, and no others.
4. Prior to commencement of operation of the expanded convenience store, all landscaping will be completed so as to comply with Township code requirements, including newly proposed and restored landscaping.

B. APPELLANT'S alternative request for a use variance is **DENIED**.

C. APPELLANT'S request for a variance with regard to signage is **GRANTED**, as it is within the limits of a previously granted sign variance.

**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**

Robert J. Montemayor, Chairman

Mark DePillis, Esquire, Secretary

Gina LaMarra, Board Member