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February 26, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Petition of PECO Energy Company for a Finding of Necessity Pursuant to 53 P.S. § 10619 that the Situation of Two Buildings Associated with a Gas Reliability Station in Marple Township, Delaware County Is Reasonably Necessary for the Convenience and Welfare of the Public

Docket No. P-2021-_____

Dear Secretary Chiavetta:

Enclosed please find the Petition of PECO Energy Company (“PECO”) for a Finding of Necessity Pursuant to 53 P.S. § 10619 that the Situation of Two Buildings Associated with a Gas Reliability Station in Marple Township, Delaware County Is Reasonably Necessary for the Convenience and Welfare of the Public.

Copies have been served in accordance with the enclosed certificate of service, and PECO will serve additional parties as the Commission may direct.

Thank you for your attention to this matter.

Respectfully,

/s/ Christopher A. Lewis

Christopher A. Lewis

Enclosures

cc: Certificate of Service List (*w/enclosures, via U. S. First Class Mail*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding	:	
of Necessity Pursuant to 53 P.S. § 10619 that the	:	
Situation of Two Buildings Associated with a Gas	:	Docket No. P-2021-
Reliability Station in Marple Township, Delaware	:	
County Is Reasonably Necessary for the	:	
Convenience and Welfare of the Public	:	
	:	

**PETITION OF PECO ENERGY COMPANY
FOR A FINDING PURSUANT TO 53 P.S. § 10619**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PECO Energy Company (“PECO”) hereby petitions the Pennsylvania Public Utility Commission (“Commission” or “PUC”), pursuant to 52 Pa. Code § 5.41 and Section 619 of the Municipalities Planning Code (the “MPC”), 53 P.S. § 10619, for a finding that: (1) the situation of two buildings (“Buildings”) for a proposed gas reliability station (the “Gas Reliability Station”) is reasonably necessary for the convenience and welfare of the public and, therefore, exempt from any zoning, subdivision, and land development restriction of the Marple Township Subdivision and Land Development Ordinance and the Marple Township Zoning Code pursuant to MPC § 619, and (2) a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements.

In support of this Petition, PECO avers as follows:

I. INTRODUCTION

1. PECO is a public utility corporation organized and existing under the laws of Pennsylvania, supplying natural gas to customers in southeastern Pennsylvania, and, more particularly, in Delaware County, including Marple Township.

2. PECO proposes to construct and operate the Gas Reliability Station on a subdivided 0.536 acre portion of a larger 7.186-acre property, currently known as 2014 to 2090 Sproul Road, Marple Township, Delaware County, Pennsylvania, 19008, (folio no. 25-00-04487-00). The 0.536 acre parcel is identified as Lot 2 on the Plan of Subdivision which subdivision is currently pending subject to being scheduled at PECO's request (the "Property"). PECO is the equitable owner of the Property and expects the Property to be known as 2090 Sproul Road.

3. The Gas Reliability Station will allow PECO to comply with its statutory obligation to provide an adequate, safe and reliable supply of natural gas to meet growing demand in Delaware County. *See* 66 Pa. C.S. § 1501. The Gas Reliability Station will consist of public utility facilities and two associated Buildings.

4. Certain facilities, including electronic and telecommunications facilities, will be housed within the two Buildings to protect the facilities from the elements, facilitate maintenance, dampen any ambient sound generated by the Gas Reliability Station, and create a more aesthetic appearance.

5. PECO files this Petition with the Commission because the situation of the Buildings associated with the Gas Reliability Station is reasonably necessary for the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.

II. DESCRIPTION OF PETITIONER

6. The name and address of the Petitioner is:

PECO Energy Company
2301 Market Street
Philadelphia, PA 19101

7. Petitioner's counsel are:

Christopher A. Lewis, Esq.
Frank L. Tamulonis, Esq.
Stephen C. Zumbrun, Esq.
Blank Rome LLP

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8. Petitioner's counsel are authorized to receive all notices and communications regarding this Petition.

9. PECO is a "public utility" as defined in Section 102 of the Pennsylvania Public Utility Code, 66 Pa, C.S. § 102, and a "public utility corporation" as the term is used in the MPC.

III. DESCRIPTION OF PROJECT

10. PECO's current natural gas distribution system in Delaware County is experiencing, or soon will be experiencing, design day constraints. That is, if the system experiences extreme weather and other parameters that represent the characteristics for which the system is and must be designed, PECO expects that it does not have or soon will not have sufficient firm natural gas transportation capacity to fully supply the natural gas demands that would be expected on such a design day. PECO has not been able to subscribe for additional firm transportation capacity from the existing third-party natural gas transportation pipelines that supply Delaware County. Consequently, in order to alleviate the expected design day constraints, PECO plans to utilize an existing Liquified Natural Gas ("LNG") tank located elsewhere on its system (in West Conshohocken) as a source of supply for Delaware County generally and Marple Township in particular. This Natural Gas Reliability Project (the "Reliability Project") consists

of: (i) upgrading PECO's natural gas plant in West Conshohocken; (ii) installing 11.5 miles of new gas main south from the West Conshohocken Plant to Marple Township, with approximately two miles situated in Marple Township, Delaware County, to transport natural gas from the West Conshohocken plant and associated PECO system southward toward the constrained areas in Delaware County; and (iii) constructing the Gas Reliability Station in Marple Township, Delaware County to receive and distribute the natural gas transported by the full Reliability Project. This Petition pertains only to the Gas Reliability Station. The Reliability Project, including the Gas Reliability Station, are necessary to meet the growing current and future demand for natural gas public utility service in Delaware County.

11. The Gas Reliability Station will be an unmanned facility, serviced periodically by a technician. Accordingly, there will be no deliveries or truck traffic associated with the Station. On an around the clock schedule of 24 hours, seven days a week, PECO will continuously monitor the Station from its monitoring facility at its West Conshohocken plant. A site map showing the location of the proposed Gas Reliability Station is attached hereto as **Exhibit "A"**. A graphical representation of the same is attached hereto as **Exhibit "B"**.

12. The Gas Reliability Station will involve the construction of a station building, new natural gas piping, valves, meters, electronics, batteries, a telecommunications building and equipment, along with gas line heaters, a backup generator, driveways, stormwater conveyances and a security fence measuring approximately 8 feet in height ("Security Fence") (collectively, the "Facilities"). The Security Fence will be constructed around the perimeter of the Gas Reliability Station and, because the Facilities are unmanned, will serve the important functions of securing the sensitive Facilities located at the Property from tampering, vandalism, and other damage. The Security Fence will have the added public benefits of providing an absorptive barrier for sound as well as enhancing aesthetic appearance. PECO is continuing to engage with local government

officials regarding certain enhanced architectural elements to the Security Fence intended to benefit the local community which may result in portions of the Security Fence being higher than 8 feet.

13. The Gas Reliability Station will receive gas from the new 11.5-mile gas main. The gas will then be heated, if needed, to preserve gas pressure and then reintroduced to the existing gas main network at an appropriate pressure. The Marple Township area experiences low pressure as compared to other areas in Delaware County, which will be alleviated by locating the Gas Reliability Station in Marple Township. The construction of the Gas Reliability Station will support the public interest by providing an adequate, safe and reliable supply of natural gas to Delaware County to meet growing demand. In the absence of these necessary upgrades, the natural gas system in Delaware County will become constrained no later than some point within the next 10 years. The resulting capacity limits will interfere with the reliability of natural gas service to existing customers and will prohibit new customers from connecting to the system. In addition, under existing supply constraints, on a design day it might be necessary for PECO to procure natural gas supply on the spot market, with the price volatility that would be expected from accessing the spot market on an extreme weather day. The Reliability Project will reduce or eliminate the need to access the spot market.

14. The Gas Reliability Station is proposed to be located at the Property, which is currently a vacant lot, but was most recently occupied by a Texaco gasoline filling station. Surrounding land uses include a mix of residential and commercial properties. Single-family residences are located to the north, east, and west of the property. A commercial property is located to the south side of the Property.

15. The site chosen for the Gas Reliability Station has several advantages: (i) it is proximate to the new gas main terminus and the existing downstream network of gas mains serving

Delaware County; (ii) it is an adequate size to support the construction of the Gas Reliability Station; (iii) it was available for sale; and (iv) it is zoned for a public utility facility by special exception. Further, the surrounding community will benefit from the construction of the Gas Reliability Station because PECO will remove and/or cap soil pollutants that currently remain at the Property following a prior owner's remediation conducted pursuant to Pennsylvania's Land Recycling Program, known as "Act 2", thereby reducing potential exposure pathways of historical contaminants. PECO considered at least ten sites in the vicinity but eliminated these alternatives due to size restrictions, zoning codes, availability, or distance from the gas main terminus.

16. The Gas Reliability Station will include two new Buildings: 1) a 2,073-square foot ("SF") 74-foot by 28-foot, steel station building with a sound insulating absorptive layer (the "Main Building"), and 2) a 160-SF, 16-foot by 10-foot, fiber building (the "Fiber Building").

17. The Main Building will house valves, piping, electronics, electric batteries, and remote monitoring necessary to reduce the pressure of the natural gas and direct it to the downstream natural gas network. The Fiber Building will house telecommunications equipment that links the Gas Reliability Station to PECO's own telecommunications systems and, in particular, to the 24/7 monitoring station at PECO's West Conshohocken plant. The monitoring station will manage operations of the Gas Reliability Station in real time with the ability to close individual valves, meters, and the entire Station if necessary.

18. PECO engaged in extensive public outreach with local residents with respect to the construction of the Gas Reliability Station. In July 2020, PECO held a virtual briefing for residents living adjacent to or in close proximity to the Gas Reliability Station. In October 2020, PECO held four virtual open house style public meetings in the immediate neighborhood to provide the public with information regarding the proposed substation and to receive input from the public regarding its views on the appropriate construction of the Gas Reliability Station. In addition,

PECO conducted one-on-one meetings and engaged in extensive written communications with numerous local residents. In response to PECO's outreach efforts, PECO has altered the design and construction plans for the Gas Reliability Station in order to address the public's concerns. PECO continues to engage in public outreach to discuss matters relating to the construction of the Gas Reliability Station.

19. PECO's original construction schedule for the Gas Reliability Station anticipated a construction start date of April 2021. However, in light of developments in PECO's Zoning Application described below (*see* Paragraph 30, *infra*), and PECO's ongoing community outreach efforts, PECO currently anticipates that construction of the Gas Reliability Station will commence no earlier than September 2021.

IV. EXEMPTIONS FROM LOCAL ZONING ORDINANCES

20. Pennsylvania courts have established as an enduring principle that municipalities do not have the power to zone with respect to utility structures other than buildings that are not necessary for the public convenience or welfare. *See Duquesne Light Co. v. Upper St. Clair Twp., et al.*, 377 Pa. 323, 105 A.2d 287 (1954); *Newtown Twp. v. Philadelphia Elec. Co.*, 140 Pa. Cmwlth. 635, 642, 594 A.2d 834, 837 (Pa. Commw. Ct. 1991) (discussing *Duquesne Light, supra*, and its progeny finding that the MPC § 619 exemption applied to zoning ordinances and subdivision regulations).

21. In view of this long-standing precedent, the Commission has held that a zoning exemption is not needed for any public utility facilities, as a "blanket exemption" exists. *See Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg. to Shelter the Walnut Bank Valve Control Station in Wallace Twp., Chester Cty., Pennsylvania Is Reasonably Necessary for the Convenience or Welfare of the Pub. Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg. to Shelter the Blairsville Pump Station in Burrell Twp., Indiana Cty., Pennsylvania Is Reasonably*

Necessary for the Convenience or Welfare of the Pub. (hereinafter, “SPLP”), No. P-2014-2411941, 2014 WL 5810345, at *25 (Opinion and Order, Oct. 2, 2014); *accord Petition of Pennsylvania-American Water Company for a Finding on an Expedited Basis that Two Buildings to Shelter Booster Pumps to be Constructed in Dunbar Township, Fayette County, Pennsylvania, are Reasonably Necessary for the Convenience or Welfare of the Public*, (hereinafter, “PAWC”), No. P-2014-2513587, 2016 WL 1689629, at *10 (Opinion and Order April 21, 2016).

22. The Public Utility Code, 66 Pa. C.S. § 102, broadly defines the term “facilities” as:

All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility.

See also S. Coventry Twp. v. Philadelphia Elec. Co., 94 Pa. Cmwlth. 289, 299, 504 A.2d 368, 373 (Pa. Commw. Ct. 1986) (where the court upheld a trial court ruling that siren towers of a siren alert system were “facilities”, “thus properly fall within the zoning-exempt operations of a public utility.”)

23. The Commission and the Pennsylvania Commonwealth Court have both indicated that the term “facilities” as used in the Public Utility Code is to be broadly construed. *See Application of Duquesne Light Co. for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, No. R-00974104, 1998 Pa. PUC LEXIS, *173 (Recommended Decision March 18, 1998)(citing *Country Place Waste Treatment Co., Inc. v. Pa. P.U.C.*, 654 A.2d 72, 76 (Pa. Commw. Ct. 1995)).

24. Here, the Facilities comprising the Gas Reliability Station fall within the broad definition of “facilities” under the Public Utility Code and are therefore subject to a blanket exemption from zoning requirements. The Security Fence, in particular, constitutes a “facility”

because it is integral to the security of the Gas Reliability Station and the public's safety, and thus constitutes an "instrumentalit[y] in any manner owned [or] controlled, ... in connection with, the business of any public utility." 66 Pa. C.S. § 102.

25. With respect to the Buildings, MPC Section 619, 53 P.S. § 10619, provides in relevant part:

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

26. Thus, a municipality may not exercise its zoning powers over a public utility building if the Commission determines, pursuant to MPC § 619, that the "site is reasonably necessary for the public convenience or welfare." *See, e.g., SPLP, supra* at *10; PAWC, *supra*, *11; *see also Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 679 (Pa. Commw. Ct.), *appeal denied*, 648 Pa. 281, 192 A.3d 1106 (2018) ("In sum, the trial court observed, Pennsylvania courts consistently construe Section 619 narrowly and hold a township has no power to regulate a public utility by zoning ordinances with regard to uses and structures that are not buildings.")

27. To prove that proposed buildings are reasonably necessary for the convenience or welfare of the public does not require the utility to prove that the site it has selected is absolutely necessary or that it is the best possible site. *SPLP, supra* at *10. Instead, the utility need only show that the site chosen is "reasonably necessary" for the convenience or welfare of the public. *Id.*, citing *O'Connor v. Pa. PUC*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990), abrogated on other grounds, *City of Lancaster v. Pennsylvania Pub. Util. Comm'n*, No. 251 M.D. 2019, 2020 WL 864986, at *5, n. 8 (Pa. Commw. Ct. Feb. 21, 2020), *reconsideration denied* (Apr. 7, 2020); *Petition of UGI Penn Natural Gas Inc. for a Finding that Structures to Shelter Pipeline Facilities*

in the Borough of West Wyoming, Luzerne County, To the Extent Considered To be Buildings under Local Zoning Rules, Are Reasonably Necessary for The Convenience or Welfare of the Public, Docket No. P-2013-2347105 (Order entered December 19, 2013).

28. As this Commission has held, the appropriate scope of inquiry under MPC § 619 is not “whether it is appropriate to place the [public utility facilities] in certain areas, but, rather, ... whether the buildings proposed to shelter those facilities are reasonably necessary for the public convenience or welfare of the public.” *SPLP, supra*, at *26; *PAWC, supra*, at *10 (proper scope of inquiry is not whether facilities are necessary, “but rather a determination that the buildings are necessary to shelter the facilities.”)

29. The Property is located in Marple Township’s N Neighborhood Center District (the “N Zoning District”). Under the presently effective zoning code in Marple Township, a public utility requires a special exception pursuant to Chapter 300, Article V, Sections 300-37 and 39 in N Zoning Districts, and a dimensional variance is required for fences exceeding six feet in height under Article XIII Section 300-111(B). A copy of the relevant portions of the Marple Township Zoning Code are attached hereto as **Exhibit “C”**.

30. Following extensive public outreach, and consistent with the spirit of the Commission’s policy statement, 52 Pa. Code § 69.1101, PECO filed a Zoning Application with Marple Township in accordance with the provisions governing the N Zoning District. *See Exhibit “D”*, attached hereto. On November 18, 2020, the ZHB voted to deny the Zoning Application and issued an Order (the “Order”) denying PECO’s request for (1) a special exception to operate the Gas Reliability Station, a public utility facility, at the Property; and (2) a variance to erect the Security Fence measuring 8 feet in height around the Station in lieu of the permitted fence of 6 feet in height. *See Exhibit “E”*, attached hereto. On December 18, 2020, PECO appealed the Order to the Court of Common Pleas of Delaware County, which appeal is currently pending. *See*

Exhibit “F”, attached hereto. The Property is therefore unavailable under the Marple Township zoning code unless the Order is overturned on appeal or the Commission shall find that the situation of the proposed Buildings is reasonably necessary for the convenience or welfare of the public pursuant to MPC § 619.

31. The proposed situation of the Buildings is reasonably necessary for the public convenience and welfare. Specifically:

- i. The Facilities to be housed in the Buildings are essential to the safe, efficient, and economical operation of the Gas Reliability Station.
- ii. The Facilities and the Buildings must be located in close proximity to the new gas main in order that the connection be as short as practicable, thereby minimizing the risk of operation and reducing the cost of maintenance.
- iii. The Buildings will protect the Facilities from the elements, facilitate maintenance, dampen any ambient sound, and create a more aesthetic appearance.
- iv. The Buildings will protect sensitive Facilities, including electronics and telecommunications, from damage, vandalism, theft, and tampering.
- v. As explained in Paragraphs 10-13 above, the Gas Reliability Station is needed to meet growing demand in Delaware County and to prevent capacity constraints from interfering with the reliability of natural gas service in the region.

32. A height of at least 8 feet, rather than the 6 feet permitted as of right by the Marple Township zoning code, for the proposed Security Fence is reasonably necessary for the public convenience and welfare because the additional height will provide more security and aesthetic screening for the Station.

33. The Gas Reliability Station project and appurtenant Security Fence are on hold because local zoning approvals could not be obtained, despite the clear public need.

34. Without a finding of necessity by this Commission, PECO may be unable to obtain all the governmental approvals required to comply with its statutory obligations under 66 Pa. C.S. § 1501 (regarding adequate, efficient, safe, reasonable, and reliable service).

35. PECO is committed to continuing to work in good faith with the local government and residents to bring the Gas Reliability Station on-line as smoothly as possible once the Commission determines that the situation of the Buildings associated with the Gas Reliability Station is reasonably necessary. On February 2, 2021, PECO, through its consultant, provided revised plans in support of its Subdivision and Land Development Application which addressed comments from Marple Township and, among other things, provided a revised Landscape Plan and a revised Post-Construction Stormwater Management Plan (“PCSM”). **See Exhibit “G”**, attached hereto.

36. Pursuant to 52 Pa. Code § 5.41(b), PECO is serving this Petition upon the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, and the Office of the Small Business Advocate. Additionally, PECO is serving counsel for Marple Township and the Marple Township Zoning Hearing Board. PECO will also provide notice of the filing to individuals who have engaged in PECO’s public outreach program. PECO will serve additional parties as may be directed by the Commission.

37. PECO respectfully requests Commission approval of this Petition as soon as reasonably possible while protecting the due process rights of interested parties and no later than mid-August 2021 in order to ensure that the construction start date of September 2021, already delayed to address community concerns, is not further delayed.

WHEREFORE, for all the foregoing reasons, PECO requests that the Commission: (1) find that the proposed situation of the Buildings for the Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, and therefore exempt from the Marple Township

Zoning Code pursuant to MPC § 619, and (2) the proposed Security Fence is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from the local zoning requirement limiting its height to 6 feet.

Respectfully Submitted

/s/ Christopher A. Lewis

Christopher A. Lewis, Esq.

Frank L. Tamulonis, Esq.

Stephen C. Zumbrun, Esq.

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Philadelphia, PA 19101-8699

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Fax: 267-324-8426

Email: ward.smith@exeloncorp.com

Counsel for PECO Energy Company

Dated: February 26, 2021

VERIFICATION

I, Steven A. Singh, hereby declare that I am the Vice President, Technical Services, for PECO Energy Company; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

DATE: 2/26/21



Steven A. Singh

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Petition upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) via U. S. First Class Mail and will serve additional parties as may be directed by the Commission.

Tanya McCloskey
Acting Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Forum Place – 5th Floor
Harrisburg, PA 17101-1921

Richard Kanaskie
Director and Chief Prosecutor
Bureau of Investigation and Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
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John R. Evans
Small Business Advocate
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/s/ Frank L. Tamulonis

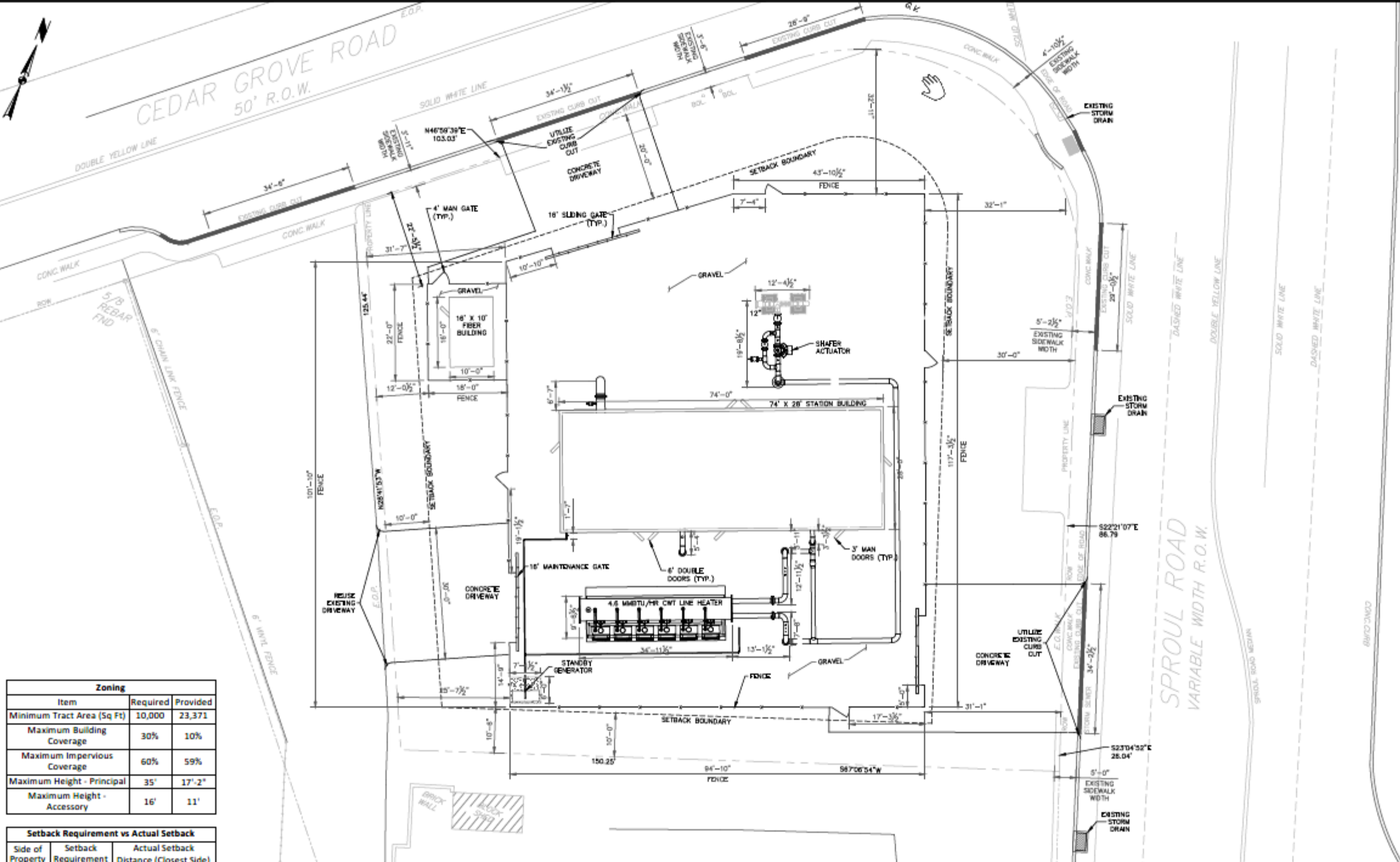
Counsel to PECO Energy Company

Dated: February 26, 2021

EXHIBIT A



CEDAR GROVE ROAD
50' R.O.W.



Zoning		
Item	Required	Provided
Minimum Tract Area (Sq Ft)	10,000	23,371
Maximum Building Coverage	30%	10%
Maximum Impervious Coverage	60%	59%
Maximum Height - Principal	35'	17'-2"
Maximum Height - Accessory	16'	11'

Setback Requirement vs Actual Setback		
Side of Property	Setback Requirement	Actual Setback Distance (Closest Side)

EXHIBIT B



EXHIBIT C

§ 300-37. Permitted uses.

The Table of Permitted Uses - Commercial is included at the end of this chapter.

§ 300-39. N Neighborhood Center District.

- A. Intent. The intent of the N Neighborhood Center District is to provide appropriate locations and development standards for low-intensity commercial uses where more intensive commercial use would have adverse effects on adjacent and neighboring residential areas. The regulations that apply within the district provide for retail and office uses of limited scale that primarily serve nearby residents, affording opportunities for pedestrian access to local services. Buildings in this district should be compatible in size and scale with those in adjacent residential areas.
- B. Permitted uses. Uses are permitted in N Neighborhood Center districts in accordance with § 300-37. Specified uses are allowed as special exceptions in accordance with § 300-36B when authorized by the Zoning Hearing Board. Accessory uses are permitted in accordance with Article XIII.
- C. Development standards. Uses shall occur in accordance with the standards of § 300-38.
- D. Building size and spacing. The greatest dimension of a structure, measured parallel to exterior walls, shall not exceed 75 feet. The minimum distance between structures shall be 10 feet, except that all structures connected by a common roofline or covered walkways shall be considered as one structure.

§ 300-111. Fences and walls.

- A. Location. No fence or wall shall be permitted within the minimum required front yard for each lot with the exception of fences erected within the front yard of residential-zoned properties, provided the fence does not exceed four feet in height and has at least 50% of the area of the fence open and provided further that retaining walls required to stabilize changes in elevation be permitted to a height of one foot above the average ground elevation retained. **[Amended 8-12-2002 by Ord. No. 2002-5]**
- B. Height. The maximum height for a fence or wall shall be six feet, measured from finished grade.

- C. Appearance. Any portion of a fence construction intended or utilized for the support of the fence shall be located on the inside of the fence, facing the principal portion of the tract upon which the fence is erected. The finished portion of the fence shall face the property or right-of-way adjacent to the fence.
- D. Permit required. No fence or wall shall be constructed without first obtaining a permit. Permit applications shall be accompanied by a property survey or plot plan with the proposed location of the fence or wall shown thereon. A permit application for a retaining wall must be approved by the Township Engineer before such a permit may be issued.

ZONING

300 Attachment 5

Section 300-37: Permitted Uses - Commercial Township of Marple [Amended 3-10-2003 by Ord. No. 2003-3]

Use Classification	Districts				
	O	O-1	N	B	B-1
Retail commerce, including: 1. Stores, supermarkets, general service shops dealing directly with customers, except tattoo parlors (see Table of Permitted Uses, § 300-45). 2. Banks, restaurants excluding drive-in facilities, or other similar establishments 3. Cinemas or similar recreational or cultural establishments 4. Exercise or fitness facilities 5. Studios for dance, art, music or photography 6. Nursery schools or day-care centers.	SE SE	SE SE SE SE SE	P P P P SE	P P P P SE	P P P P SE
Business or professional offices, including: 1. Operations designed to attract and serve customers or clients on the premises, such as the offices of physicians, lawyers, other professions (but excluding veterinarians), insurance and stock brokers, travel agents and governmental entities, provided that an office or clinic of doctors or dentists shall not exceed 10,000 square feet of gross floor area 2. Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use	P P	P P	P P	P P	P P
Hospitals, nursing homes, offices or clinics of doctors or dentists exceeding 10,000 square feet of gross floor area					P
Hotels, motels or inns		SE		P	P
Not-for-profit museums, libraries or other educational, cultural, religious, civic or philanthropic uses of a similar nature	SE	P	SE	P	P
Transit stations, public utility facilities	SE	P	SE	P	P
Animal hospital, veterinarian			SE	P	P
Public garage, motor-vehicle sales, service or repair shop, gasoline service station and motor vehicle parking lot			SE	SE	P
Residences, in mixed-use commercial-residential buildings	SE	SE	SE	SE	SE
Municipal/Governmental facility	P	P	P	P	P

NOTES:

P = Permitted

SE = Special Exception

EXHIBIT D



DIRECT DIAL NUMBER:
215-575-7353

Neil Sklaroff
nsklaroff@dilworthlaw.com

August 26, 2020

Mr. Joseph Romano, Director of Code
Marple Township
227 S. Sproul Road
Broomall, PA 19008-2397


Re: PECO Energy Company
Application to Zoning Hearing Board

Dear Mr. Romano:

On behalf of PECO Energy Company, equitable owner of 2090 Sproul Road, we submit the enclosed Notice of Appeal to the Marple Township Zoning Hearing Board. Four copies of the zoning site plan are being sent to you under separate cover as is payment for the filing fee.

Thank you for your attention to this matter. If you have any questions, please contact me directly.

Sincerely,



Neil Sklaroff

Enclosures

NOTICE OF APPEAL

Do not write in this space. For office use only.

Date hearing Advertised: _____ Appeal No. _____

Fee Paid: _____ Receipt No.: _____

ZONING HEARING BOARD

TOWNSHIP OF MAPLE

Phone: 267-664-9991 Email address: DSL@DSLPA.COM Date: 8/26/2020

I/We PECO ENERGY CO. BY of 1500 MARKET ST., STE. 3500E
Name NEIL SKAROFF, ESQ. Mailing Address PHILA. PA 19102

Request that a determination be made by the Zoning Hearing Board on the following appeal, which was denied by the Building Inspector on 12/1, 2019.

☐ An Interpretation ☒ A Special Exception ☒ A Variance relating to the ☐ Area ☐ Frontage

☐ Yard ☒ Height ☒ Use or

(state, if request is for purpose other than those enumerated)

Is requested to

Article V Section 300-37 Paragraph _____

Article XIII Section 300-11 Paragraph B

Article _____ Section _____ Paragraph _____

The description of the property involved in this appeal is as follows:

Location: 2090 GPROCK ROAD

Present Use: VACANT Zone District: N

Proposed Use: PUBLIC UTILITY FACILITY

I/We believe that the Board should approve this request because: (include the grounds for appeal or reasons both with respect to law and fact for granting the appeal or special exception or variance, and if hardship is claimed, state the specific hardship)

SEE ATTACHED

Sworn to and subscribed before me this _____
Day of _____ 20____.

Signature of Petitioner

Notary Public

Signature of Petitioner

**SUPPLEMENT TO PECO'S ENERGY COMPANY'S
APPLICATION FOR SPECIAL EXCEPTION AND VARIANCE**

PECO Energy Company (PECO") proposes to build and operate a gas reliability station (the "Station") at 2090 Sproul Road in Marple Township, Delaware County, Pennsylvania (the "Property"). The Station is a critical component of a major infrastructure improvement project that includes 11.5 miles of new natural gas main (the "Project"). As PECO meets its goal to deliver a source of reliable natural gas to satisfy the growing demand in Chester County, PECO has chosen this site for its Station.

The Project proposes to occupy the Property, which measures a little more than ½ acre (23,371 square feet). While most of the gas main lines will be underground or inside the Station building that measures 28 feet by 74 feet, a few pipes will extend above ground as well as equipment designed to heat the gas when necessary. A small building will house the fiber optic equipment that is part of PECO's vast wireless network that monitors the site. The entire working area will be secured by a fence. Outside of the fence will be a grass and landscaped area that occupies about 40% of the site.

Accordingly, PECO asks the Zoning Hearing Board to grant the following:

(1) **Special Exception.** The Station is proposed for the Property which is located in an N Neighborhood Center District (the "N District"). A public utility facility is permitted by special exception in the N District. Marple Twp. Zoning Code, § 300-39(B) and § 300-37. Operation and placement of the Station is regulated by the Pennsylvania Public Utility Commission ("PUC") as a public utility facility. PECO's highest priority in the construction and operation of the Station is safety – to the public and to its employees and contractors. The on-site equipment and layout of structures is designed to ensure safety and result in no harm to the surrounding community. The operation of the facility will result in no extraordinary adverse effect to the neighborhood. Indeed, the Station will enable PECO to provide a continued reliable gas service to Chester County.

PECO therefore respectfully requests that the Zoning Hearing Board grant a special exception to PECO in order to operate this public utility facility.

(2) **Variance.** PECO's security and safety standards require that this unmanned facility be surrounded by a fence/wall measuring no less than 8 feet in height. The height is designed to prevent trespassers from climbing over the fence/wall and into the facility. The fence/wall itself is of advanced design. It is constructed of a solid sheeting sandwiching several inches of an insulating material, specifically designed not only to shield the view to the equipment but also to provide an extra layer of sound absorption to the already specially designed equipment. A public utility facility is customarily enclosed by a fence and so the basic design is consistent with the ordinary design of any like facility. A shorter fence of the same construction would be permitted as-of-right in the N District. The additional two feet that exceed the N District limits as found in the Marple Twp. Code, § 300-111 (B) will not result in any adverse effect to the community. Because the Station is an unmanned facility housing highly technical equipment, security and safety create a unique adaptation of a permitted use of the land. This application for an additional two feet in fence/wall height meets all of the Zoning Code's hardship requirements.

PECO, therefore, respectfully requests that the Zoning Hearing Board grant a variance from the limitation of § 300-111(B) in order to operate a public utility facility enclosed by a fence/wall measuring 8 feet in height.

EXHIBIT E



Eckell, Sparks, Levy, Auerbach, Monte,
Sloane, Matthews & Auslander, P.C.

Direct Extension: 252
E-Mail: mbilker@eckellsparks.com
File No. 23974-66

November 19, 2020

ATTORNEYS AT LAW

MURRAY S. ECKELL*
W. DONALD SPARKS*
DAVID E. AUERBACH
JOSEPH L. MONTE, JR.*¹
JOSEPH E. LASTOWKA, JR.*
LEONARD A. SLOANE²
GUY F. MATTHEWS^{1,3}
SAM S. AUSLANDER*
STEPHEN J. POLAHA
DAVID R. BLACK*
CRAIG B. HUFFMAN²
PATRICK T. HENIGAN²
JAY M. LEVIN²
MICHAEL J. DAVEY²
MATTHEW J. BILKER²
DANIEL R. COLEMAN
CHRISTOPHER M. BROWN
JONATHAN E. BECKER^{1,4,5,6,7}
MELANIE E. TUNAITIS

**Of Counsel*

NICHOLAS D. VADINO, JR.
1961-1977

¹LL.M. Taxation

²Admitted to New Jersey

³Admitted to New York

⁴Admitted to Maryland

⁵Admitted to Ohio

⁶Admitted to Virginia

⁷Admitted to District of Columbia

Peco Energy Company
c/o Neil Sklaroff, Esquire
1500 Market Street
Suite 3500E
Philadelphia, PA 19102

Re: Marple Township Zoning Hearing Board
Applicant: PECO Energy Co.
Premises: 2090 Sproul Road, Broomall, PA
Case No.: 2020-13

Dear Mr. Sklaroff:

As you know, I am Solicitor to the Marple Township Zoning Hearing Board.

At the regular meeting of the Board held on October 21, 2020, the Board denied your Application for a special exception to Chapter 300, Article V, Sections 300-37 and 39 of the Marple Township Code as amended, on the premises at 2090 Sproul Road, Broomall, Marple Township, Delaware County, Pennsylvania. It also denied your request for a variance from Section 300-111(B) to permit a 8' high security fence in height, extending the variance of 2 feet, along the perimeter of PECO located at the above referenced property.

Enclosed is the Order executed by the Board.

Please Reply to Media Office Address

300 W. State Street, Suite 300 • P.O. Box 319 • Media, PA 19063
610-565-3700 • Fax: 610-565-1596 • www.eckellsparks.com

Additional Offices

113 E. Evans Street • Matlack Bldg., Suite D-1 • West Chester, PA 19380 • 610-431-4650

November 19, 2020

Page 2

If you are not satisfied with the conditions which have been imposed as part of the Board's approval, you have a right file an appeal in the Court of Common Pleas of Delaware County. The appeal must be filed within 30 days.

Very truly yours,

Eckell, Sparks, Levy, Auerbach, Monte,
Sloane, Matthews & Auslander, P.C.,

By: 
Matthew J. Bilker

MJB/cah
Enclosure

cc: Joseph Romano, Code Enforcement Officer
Lee Gentile, Township Manager
Joseph Patti, Chairperson
Adam Matlawski, Esquire –Marple Township Solicitor

EXHIBIT F

Supreme Court of Pennsylvania

Court of Common Pleas

Civil Cover Sheet

DELAWARE

County

For Prothonotary Use Only:

Docket No:

20-8477

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- ☐ Complaint
 ☐ Writ of Summons
 ☒ Petition
 ☐ Declaration of Taking

Lead Plaintiff's Name:
PECO ENERGY COMPANY

Lead Defendant's Name:
MARPLE TOWNSHIP ZONING HEARING BOARD

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☒ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: NEIL SKLAROFF, ESQ., THOMAS BIEMER, ESQ.

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other

☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☒ Zoning Board

☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations Restraining Order
☐ Quo Warranto
☐ Replevin
☐ Other:

DILWORTH PAXSON LLP

Neil Sklaroff, Esquire

PA Attorney ID# 43399

Thomas S. Biemer, Esquire

PA Attorney ID# 62644

Christopher C. Nana-Sinkam, Esquire

PA Attorney ID# 320189

1500 Market St., Suite 3500E

Philadelphia, PA 19102

(215) 575-7000

*Attorneys for Appellant PECO
Energy Company*

PECO ENERGY COMPANY,

Appellant,

v.

MARPLE TOWNSHIP ZONING
HEARING BOARD,

Appellee.

**COURT OF COMMON PLEAS
OF DELAWARE COUNTY,
PENNSYLVANIA**

**LAND USE APPEAL
NO.**

ZHB Case No. 2020-13

Premises:

**2090 Sproul Road, Broomall,
Marple Township, Pennsylvania
19008**

NOTICE OF APPEAL

PECO ENERGY COMPANY ("PECO"), a Pennsylvania corporation, hereby appeals from the Order of the Marple Township Zoning Hearing Board (the "Zoning Board") dated November 18, 2020, which denied PECO's application for a special exception in order to construct and operate a public utility facility and PECO's application for a variance in order to construct and allow a security fence measuring 8 feet in height (which in this case was proposed

to be a solid eight foot wall nearly six inches thick). In support of this appeal, PECO states the following:

1. PECO is a registered public utility having been granted a Certificate of Public Convenience in 1929 by the Public Service Commission of the Commonwealth of Pennsylvania.
2. The Zoning Board is the agency created by the Marple Township Board of Commissioners in accordance with the Zoning Code of the Township of Marple (the “Zoning Code”) and the Pennsylvania Municipalities Planning Code (“MPC”) tasked to hear and render decisions on applications over which the Zoning Board has jurisdiction in accordance with Article IX of the MPC.
3. PECO is the equitable owner of the property known as 2090 Sproul Road, Broomall, Marple Township, Delaware County, Pennsylvania, 19008 (the “Property”).
4. The Property is located in Marple Township’s N Neighborhood Center District (the “N Zoning District”). Regulations governing the N Zoning District are included in the Zoning Code.
5. On or about August 26, 2020, PECO filed and the Township accepted a Notice of Appeal and Supplement to PECO’s Application for Special Exception and Variance (“Supplement”) (together the “Zoning Application”). A true and correct copy of the Notice of Appeal and Supplement are attached hereto at Exhibit “A.”¹
6. By its Zoning Application, and in accordance with the provisions governing the N Zoning District, PECO sought (1) a special exception to operate a gas reliability station, a public utility facility, at the Property (the “Gas Reliability Station”); and (2) a variance to erect a fence measuring 8 feet in height around the Station in lieu of the permitted fence of 6 feet in height.

¹ In drafting the Supplement, PECO’s land use counsel erred in identifying Chester County in the Supplement as the county intended to benefit from the public utility facility when PECO made clear that the public utility facility is intended to benefit Delaware County.

7. PECO's Gas Reliability Station will accept natural gas from a new gas main leading from PECO's West Conshohocken plant directly to the Gas Reliability Station and then re-distribute that natural gas to an existing and expanding network of gas mains servicing Delaware County.

8. PECO's Gas Reliability Station will not produce or store natural gas.

9. On October 21, 2020, the Zoning Board held a virtual, public hearing on PECO's Zoning Application (the "Public Hearing").

10. At the Public Hearing, PECO presented credible evidence, including expert and lay testimony, to meet its burden to support the Zoning Application and demonstrating that PECO met the general and specific requirements of the Zoning Code sufficient to warrant a grant of a special exception for the operation of the Gas Reliability Station. The credible evidence presented by PECO at the Public Hearing included, but was not limited to, the following:

- a. PECO is a public utility;
- b. PECO's Gas Reliability Station is a public utility facility;
- c. PECO's Gas Reliability Station will not be contrary to the public interest but will, in fact, support the public interest by providing an adequate, safe and reliable supply of natural gas to Delaware County;
- d. PECO's Gas Reliability Station will not result in any extraordinary adverse effects to the community that were not anticipated by the Township Commissioners when the Commissioners adopted the Zoning Code;
- e. PECO's Gas Reliability Station will not generate high levels of vehicular traffic, nor noise, noxious odors, air pollution, or glare;

- f. PECO's Gas Reliability Station will be an unmanned facility, serviced periodically by a technician and for which there will be no deliveries;
- g. PECO's Gas Reliability Station will not increase vehicular traffic above those levels normally generated by this type of use or create abnormal levels of traffic that will threaten the safety of the surrounding community;
- h. PECO will improve, repair and replace adjacent sidewalks thereby improving pedestrian access to adjacent and nearby properties;
- i. PECO will remove ground pollutants left behind by prior owner's Act II remediation and decrease the current impervious condition of the Property by 34 percent;
- j. PECO's Gas Reliability Station will not interfere with adjacent residential uses in the manner, location and hours of operations;
- k. PECO will remotely monitor all operations at the Gas Reliability Station on a 24 hour, seven day per week basis;
- l. PECO can remotely and immediately close portions or all of the Gas Reliability Station should the need arise; and
- m. PECO's Gas Reliability Station will contain redundant safety and security measures that will contribute to the community's general safety, including, without limitation, if approved, an eight foot high safety fence/wall.

11. At the Public Hearing, PECO presented credible evidence to meet its burden to establish that a failure to grant a variance would result in a hardship to the Property.

12. At the Public Hearing, PECO's expert consultants answered numerous questions posed by the ZHB members and the general public.

13. At the Public Hearing, objectors failed to present credible evidence – substantial or otherwise – that the operation of the Gas Reliability Station by PECO would result in any adverse effect to the public interest. More specifically, objectors failed to present credible evidence that the Gas Reliability Station would result in an adverse effect to the public health, safety and welfare because objectors failed to meet the requisite legal standard.

14. Furthermore, no credible evidence was presented at the Public Hearing – substantial or otherwise – that the operation of the Gas Reliability Station by PECO would increase vehicular traffic above those levels normally generated by this type of use or create abnormal levels of traffic that would threaten the safety of the surrounding community.

15. While a security fence measuring 6 feet in height would be in compliance with the Zoning Code, PECO's request to the Zoning Board for a fence measuring 8 feet in height stems from PECO's internal security protocols developed by PECO as a result of PECO's experience in operating public utility facilities that routinely require a fence to measure 8 feet in height or higher in order to discourage intruders and trespassers from climbing over the fence to gain access to PECO's facilities and equipment.

16. The additional two feet in fence height will have no effect to the functioning of neighboring uses or the character of the community.

17. On November 18, 2020, the ZHB voted to deny the Zoning Application and issued an Order confirming the ZHB's decision (the "Order"). A true and correct copy of the Order is attached hereto as **Exhibit "B."**

18. By its decision, the Zoning Board erred in its application of governing law, violated PECO's constitutional rights, and abused its discretion because its findings were not based on any substantial or credible evidence presented at the hearing.

19. The Zoning Board did not publish findings of fact, conclusions of law or its reasoning to support its decision (the "Findings").

20. PECO reserves the right to amend the above statement and reasons for its appeal when the Findings are published to PECO.

21. By denying PECO's application, the Zoning Board ignored its obligation to construe the words of the Zoning Code as broadly as possible to give the landowner the benefit of the least restrictive use of the Property.

WHEREFORE, PECO respectfully requests that the Honorable Court reverse the decision of the Zoning Board and grant to PECO a special exception to operate the Gas Reliability Station as a public utility facility at the Property and a variance to allow a fence that measures 8 feet in height.

Respectfully Submitted,



DILWORTH PAXSON LLP

Neil Sklaroff, Esquire
Thomas S. Biemer, Esquire
Christopher C. Nana-Sinkam, Esquire
1500 Market Street, Suite 3500E
Philadelphia, PA 19102-2101
T: 215-575-7000
F: 215-575-7200

*Attorneys for Appellant PECO Energy
Company*

DATED: December 18, 2020

VERIFICATION

I, Daniel F. Pacheco, Manager of Acquisition and Taxes of Appellant PECO Energy Company, hereby verify that I am authorized to make this verification on behalf of PECO Energy Company and further verify that the statements included in the attached Notice of Appeal are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsifications to authorities.

DATE: December 17, 2020

BY: Daniel F. Pacheco

Daniel F. Pacheco
Manager of Acquisition and Taxes,
PECO Energy Company

EXHIBIT A



DIRECT DIAL NUMBER:
215-575-7353

Neil Sklaroff
nsklaroff@dilworthlaw.com

August 26, 2020

Mr. Joseph Romano, Director of Code
Marple Township
227 S. Sproul Road
Broomall, PA 19008-2397

Re: PECO Energy Company
Application to Zoning Hearing Board

Dear Mr. Romano:

On behalf of PECO Energy Company, equitable owner of 2090 Sproul Road, we submit the enclosed Notice of Appeal to the Marple Township Zoning Hearing Board. Four copies of the zoning site plan are being sent to you under separate cover as is payment for the filing fee.

Thank you for your attention to this matter. If you have any questions, please contact me directly.

Sincerely,



Neil Sklaroff

Enclosures

NOTICE OF APPEAL

Do not write in this space. For office use only.
Date hearing Advertised: _____ Appeal No. _____
Fee Paid: _____ Receipt No.: _____

ZONING HEARING BOARD
TOWNSHIP OF MAPLE

Phone: 267-669-9941 Email address: neilsulzaro@att.net Date: 8/26/2020
neilsulzaro@att.net
I/We PELO ENHART CO. BY of 1500 MARKET ST. 6TH. 35006
Name NEILSULZAROFF, EDO Mailing Address PHILA. PA 19102

Request that a determination be made by the Zoning Hearing Board on the following appeal, which was denied by the Building Inspector on 12/2, 2019.

☐ An Interpretation ☒ A Special Exception ☒ A Variance relating to the ☐ Area ☐ Frontage
☐ Yard ☒ Height ☐ Use or
(state, if request is for purpose other than those enumerated)

Is requested to

Article V Section 300-37 Paragraph _____
Article XIII Section 300-11 Paragraph B
Article _____ Section _____ Paragraph _____

The description of the property involved in this appeal is as follows:

Location: 2090 SPROUL ROAD
Present Use: VACANT Zone District: N
Proposed Use: PUBLIC-UTILITY FACILITY

I/We believe that the Board should approve this request because: (include the grounds for appeal or reasons both with respect to law and fact for granting the appeal or special exception or variance, and if hardship is claimed, state the specific hardship)

SEE ATTACHED

Sworn to and subscribed before me this _____
Day of _____ 20____.

Signature of Petitioner

Notary Public

Signature of Petitioner

**SUPPLEMENT TO PECO'S ENERGY COMPANY'S
APPLICATION FOR SPECIAL EXCEPTION AND VARIANCE**

PECO Energy Company (PECO") proposes to build and operate a gas reliability station (the "Station") at 2090 Sproul Road in Marple Township, Delaware County, Pennsylvania (the "Property"). The Station is a critical component of a major infrastructure improvement project that includes 11.5 miles of new natural gas main (the "Project"). As PECO meets its goal to deliver a source of reliable natural gas to satisfy the growing demand in Chester County, PECO has chosen this site for its Station.

The Project proposes to occupy the Property, which measures a little more than ½ acre (23, 371 square feet). While most of the gas main lines will be underground or inside the Station building that measures 28 feet by 74 feet, a few pipes will extend above ground as well as equipment designed to heat the gas when necessary. A small building will house the fiber optic equipment that is part of PECO's vast wireless network that monitors the site. The entire working area will be secured by a fence. Outside of the fence will be a grass and landscaped area that occupies about 40% of the site.

Accordingly, PECO asks the Zoning Hearing Board to grant the following:

(1) **Special Exception.** The Station is proposed for the Property which is located in an N Neighborhood Center District (the "N District"). A public utility facility is permitted by special exception in the N District. Marple Twp. Zoning Code, § 300-39(B) and § 300-37. Operation and placement of the Station is regulated by the Pennsylvania Public Utility Commission ("PUC") as a public utility facility. PECO's highest priority in the construction and operation of the Station is safety – to the public and to its employees and contractors. The on-site equipment and layout of structures is designed to ensure safety and result in no harm to the surrounding community. The operation of the facility will result in no extraordinary adverse effect to the neighborhood. Indeed, the Station will enable PECO to provide a continued reliable gas service to Chester County.

PECO therefore respectfully requests that the Zoning Hearing Board grant a special exception to PECO in order to operate this public utility facility.

(2) **Variance.** PECO's security and safety standards require that this unmanned facility be surrounded by a fence/wall measuring no less than 8 feet in height. The height is designed to prevent trespassers from climbing over the fence/wall and into the facility. The fence/wall itself is of advanced design. It is constructed of a solid sheeting sandwiching several inches of an insulating material, specifically designed not only to shield the view to the equipment but also to provide an extra layer of sound absorption to the already specially designed equipment. A public utility facility is customarily enclosed by a fence and so the basic design is consistent with the ordinary design of any like facility. A shorter fence of the same construction would be permitted as-of-right in the N District. The additional two feet that exceed the N District limits as found in the Marple Twp. Code, § 300-111 (B) will not result in any adverse effect to the community. Because the Station is an unmanned facility housing highly technical equipment, security and safety create a unique adaptation of a permitted use of the land. This application for an additional two feet in fence/wall height meets all of the Zoning Code's hardship requirements.

PECO, therefore, respectfully requests that the Zoning Hearing Board grant a variance from the limitation of § 300-111(B) in order to operate a public utility facility enclosed by a fence/wall measuring 8 feet in height.

EXHIBIT B

BEFORE THE MARPLE TOWNSHIP
ZONING HEARING BOARD

IN RE: APPLICATION OF
Peco Energy Co.

CASE NO. 2020-13

VARIANCE:
Article V, 300-37, 39
Article XIII, 300-111, Paragraph B

PREMISES:
2090 Sproul Road
Broomall, Marple Township, PA

ORDER

AND NOW, this 18th day of November, 2020, following a hearing held in this matter on October 21, 2020, it is **ORDERED** that the above Application for a special exception to Chapter 300, Article V, Sections 300-37 and 39 of the Marple Township Code as amended, on the premises at 2090 Sproul Road, Broomall, Marple Township, Delaware County, Pennsylvania, is **DENIED**. It is further ordered that the above application for a variance from Article XIII Section 300-111(B) to permit a 8' high security fence (6' high fence is the maximum height) on the premises at 2090 Sproul Road, Broomall, Marple Township, Delaware County, Pennsylvania, is **DENIED**.

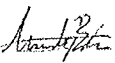
Applicant and other parties will receive formal Findings of Fact and Conclusions of Law (if required) upon completion of same by the Zoning Hearing Board. Appeal must be taken within thirty (30) days of the indicated Date of Notice to the Applicant, that being December 21, 2020.

MARPLE TOWNSHIP
ZONING HEARING BOARD

Joseph Patti/s/
Joseph Patti, Chairperson

Barbara Harvey/s/
Barbara Harvey

Giuliano Spigonardo/s/
Giulano Spigonardo


A.J. Baker

Anthony Vechercofski/s/
Anthony Vechercofski

Steve Reynolds
Steve Reynolds

DILWORTH PAXSON LLP

Neil Sklaroff, Esquire

PA Attorney ID# 43399

Thomas S. Biemer, Esquire

PA Attorney ID# 62644

Christopher C. Nana-Sinkam, Esquire

PA Attorney ID# 320189

1500 Market St., Suite 3500E

Philadelphia, PA 19102

(215) 575-7000

***Attorneys for Appellant PECO
Energy Company***

PECO ENERGY COMPANY,

Appellant,

v.

MARPLE TOWNSHIP ZONING HEARING
BOARD,

Appellee.

**COURT OF COMMON PLEAS OF
DELAWARE COUNTY,
PENNSYLVANIA**

**LAND USE APPEAL
NO.**

ZHB Case No. 2020-13

Premises:

**2090 Sproul Road, Broomall, Marple
Township, Pennsylvania 19008**

CERTIFICATE OF SERVICE

I, Christopher Nana-Sinkam, do hereby certify that on December 18, 2020, I caused a true and correct copy of Appellant PECO Energy Company's Notice of Appeal, including any and all exhibits thereto, to be served upon the below parties of record via first class, U.S. mail, postage prepaid:

MARPLE TOWNSHIP ZONING HEARING BOARD


227 S Sproul Road

Broomall, PA 19008-2397

Ph: (610) 356-4040

Fax: (610) 356-8751

Dated: December 18, 2020



Christopher Nana-Sinkam, Esq.

EXHIBIT G



Stantec Consulting Services Inc.
1060 Andrew Drive Suite 140, West Chester PA 19380-5602

February 2, 2021
File: 213403282

Attention: Joe Romano, Director of Code Enforcement
Marple Township
227 S. Sproul Road
Broomall, PA 19008-2397

Dear Mr. Romano,

Reference: PECO Energy Company – WCG LNG Expansion Project
Phase III –Marple Station Preliminary/Final Subdivision and Land Development
Marple Township, Delaware County, Pennsylvania

Stantec Consulting Services, Inc. (Stantec) is providing the enclosed revised plans for the Subdivision and Land Development Application to construct a new natural gas reliability station on the corner of Sproul Road and Cedar Grove Road.

For your review, Stantec has provided the following information in support of this Subdivision and Land Development application:

- Preliminary/Final Land Development Plans last revised January 28, 2021 (14 Copies)
- Subdivision Plan last revised December 16, 2020 (prepared by Barry Isett) (14 Copies)
- Phase III Post-Construction Stormwater Management (PCSM) Narrative last revised January 28, 2021 (1 copy)
- One (1) copy of the letter from DEP Dated December 22, 2020 indicating no planning modules are required.
- One (1) copy of the letter from the Fire Marshal Dated January 12, 2021 confirming his review of the plans.
- An electronic link of the submission to Code Enforcement and Township Engineer

The plans have been revised per the review letter from the Township of Marple dated November 17, 2020. Our response to each of those comments are as follow:

Zoning

1. Use of the property as a public utility facility is permitted as a Special Exception in the N Neighborhood Center Zoning District, requiring approval by the Zoning Hearing Board (§300-37).

Stantec Response: An Application has been submitted to the Zoning Hearing Board for this Special Exception use. PECO has appealed the denial of the special exception to the Delaware County Court of Common Pleas. PECO will accept as a condition of SALDO approval a requirement to obtain use approval for this site.

2. The requested variance from §300-111.B to allow for an 8-foot-high wall allows for additional security on the site and acts as a noise barrier from the nearby residential areas. Construction specifications for the wall/fence are to be submitted to confirm that a sound and visual barrier is provided. The applicant should also supplement the proposed buffer landscaping to conceal large

February 2, 2021

Joe Romano, Director of Code Enforcement

Page 2 of 6

Reference: PECO Energy Company – WCG LNG Expansion Project
Phase II – West Conshohocken Gas Plant Improvements
Borough of West Conshohocken, Montgomery County, Pennsylvania

wall sections visible from adjoining residential properties and the road right-of-way.

Stantec Response: Preliminary wall details have been included on Construction Details (C-502 sheet 13). The wall is a security wall designed with sound absorptive qualities. Final wall design, details and plans will be provided to the Township prior to construction. The proposed buffer landscaping has been revised on the Landscape Plan (L-101 sheet 8) to provide additional screening.

3. Update the Site Data table on sheet CS-102 to include all applicable standards for Lot 2; and provide a Site Data table for Lot 1 to verify zoning compliance is maintained on the parent tract (§300-38).

Stantec Response: The Site Data table on the Site Plan (CS-102 sheet 3) has been updated to include all applicable standards for Lot 2. A Site Data table for Lot 1 has been provided to verify zoning compliance is maintained on the parent tract.

4. Due to the proposed subdivision, a variance is required for the minimum lot frontage on Lot 1, where the minimum width in the N Neighborhood District is 60 feet; however, the new frontage of Lot 1 along Cedar Grove Road is 57.25 feet.

Stantec Response: The parcel lines have been revised to provide a 60-foot width at the building setback line as shown on the Subdivision Plan SUB-1 and on the Site Plan Sheet (CS-102 sheet 3).

5. The following existing non-conforming zoning conditions on Lot 1 remain unchanged due to the proposed subdivision and land development (§300-38):
 - a. The minimum distance between surface parking areas and an arterial street ultimate right-of-way is 20 feet in both N Neighborhood Center and O Office Districts; however, surface parking abuts the Sproul Road right-of-way.
 - b. The minimum principal structure setback from a residential district boundary line in the O Office District is 40 feet; however, the Wawa at 2050 Sproul Road is located 38 feet from the boundary of the R1 Residential District.
 - c. The minimum principal structure setback from a nonresidential district boundary line is 20 feet in the O Office District and 10 feet in the N Neighborhood Center District; however, the Wawa at 2050 Sproul Road is located across the tract boundary line and thus has no setback.
 - d. The minimum surface parking area setback from a non-residential district boundary line is 5 feet in both the O Office and N Neighborhood Center Districts; however, the parking spaces outside of the Wawa at 2050 Sproul Road are located across the tract boundary line and thus have no setback.

Stantec Response: The existing non-conformities have been added to the plans on Subdivision Plan SUB-1 and on the Site Plan Sheet (CS-102 sheet 3).

6. A buffer consisting of six-foot-high solid cedar or spruce fencing, one canopy tree per 40 linear feet, one flowering tree per 60 linear feet, and one evergreen per 10 linear feet is required along the north, east, and west sides of the property due to the adjacent R1 Residential District boundaries. Please note that the section of Lot 1 that separates Lot 2 from the R1 Residential District boundary

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does not negate the necessary buffer requirement for Lot 2. The proposed noise barrier wall may satisfy the fencing requirement, if approved. In the event that the Board will not accept the wall as proposed, PECO is prepared to face the wall with cedar or spruce.

Stantec Response: As discussed with the Township Engineer, the landscape plan has been revised as shown on Landscape Plan (L-101 sheet 8) to provide additional plantings along the perimeter of the property. The applicant is requesting the Board to review the proposed wall to be utilized in lieu of fencing.

SUBDIVISION AND LAND DEVELOPMENT

7. The following Preliminary/Final Plan information is required:

a. The cartway widths of existing streets adjacent to the tract (§265-9.B(11)).

Stantec Response: The cartway widths of existing streets adjacent to the tract has been shown on the Subdivision Plan (SUB-1 sheet 1 of 1).

b. Permanent reference monuments (§265-14.C(17)).

Stantec Response: Permanent reference monuments have been shown on the Subdivision Plan (SUB-1 sheet 1 of 1) and Site Plan (CS-101 sheet 2).

c. 75-foot clear sight triangles consistent with PennDOT standards at the driveways and at the intersection of Sproul Road and Cedar Grove Road (§265-28.C(17)).

Stantec Response: The plans have been revised to show 75-foot clear sight triangles have been provided at the driveways and at the intersection of Sproul Road and Cedar Grove Road as shown on the Site Plan (CS-101 sheet 2).

8. Driveways at street intersections are to provide access to the street of lesser classification (§108-3.B(5)). The driveway on Sproul Road should be removed to eliminate excessive curb cuts.

Stantec Response: The driveway at Sproul Road has been reviewed and determined to be necessary for access into the site. The site originally had two curb cuts on Sproul Road and two curb cuts on Cedar Grove Road. The proposed project includes elimination of one curb cut on each roadway. The result is one curb cut on Cedar Grove Road and one curb cut on Sproul Road. As illustrated on the revised site plan and as permitted by Municipal code Section 108.3(B)(5), each street frontage is greater than 50 feet and the property is served by two driveways. One driveway accesses Cedar Grove Road, the street of lesser classification. Accordingly, and as confirmed with the director of Code enforcement, the plan complies with the ordinance.

9. The applicant is requesting a waiver from Section §264-14.D(3) of the Maple Township Code. The project does not propose new streets; therefore, this section of the code is not applicable, and a waiver is not required.

Stantec Response: The waiver request has been withdrawn.

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STORMWATER MANAGEMENT

10. Although the site reduces impervious coverage by 34% and is exempt from stormwater rate reduction requirements, a stormwater management facility that satisfies the following is required:

- a. The post-development peak rate for the 2-year storm is to be less than the pre-development peak rate for the 1-year storm to minimize the impact of stormwater runoff on stream bank erosion (§257-16.A).

Stantec Response: Two underground pipe systems with corresponding outlet structures have been added to the plans. The calculations within the stormwater management report have been revised to show the 2 year to 1 year reduction.

- b. A minimum of the first one inch of runoff from the new/replacement impervious surfaces is to be infiltrated (§257-14.B(2)(b)). Should infiltration not be feasible, since the site is categorized as a stormwater hotspot due to its previous use as a vehicle fueling station, water quality treatment is to be provided prior to discharge (§257-10.T(1)(b)).

Stantec Response: The site now proposes a Husky Guard Above Drain Oil and Sediment Stormwater filter as shown on the Post Construction Stormwater Management Plan (PCSM-101 sheet 13).

11. Provide an easement for Township inspection of any proposed stormwater facility (§159-22).

Stantec Response: Note 5 indicating a blanket easement has been provided on the Grading Plan (ES-130 sheet 4) allowing the Township the right for inspection of any proposed stormwater facility.

12. Evaluate the capacity of the storm sewer system at the corner of Sproul Road and Crum Creek Road to confirm capacity is provided to convey the redirected flow associated with the proposed grading (§257-10.F).

Stantec Response: The capacity of the storm sewer system at the corner of Sproul Road and Crum Creek Road has been evaluated and found there is capacity to convey the redirected flow associated with the proposed grading. Calculations can be found in the Stormwater Management Report in Appendix E.

GENERAL

13. The plans are to be reviewed by the Fire Marshall.

Stantec Response: The Fire Marshal has reviewed the plan and, in a letter, dated January 12, 2021 has determined them to be acceptable. The letter is provided with this submission.

14. Provide a detail for the wash rack collector channel.

Stantec Response: A detail has been provided for the wash rack collector channel on the Erosion Control Details (ES-502 sheet 7).

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15. Provide mounting heights for proposed lighting.

Stantec Response: Mounting heights have been provided for the proposed lighting in plan view (next to light fixture) and with a note added to the Lighting Plan (E-101 sheet 10). All lights will be mounted at 10 feet.

16. The applicant is reminded that the following are required prior to Final Plan approval:

- a. Land Development/Improvement Securities Agreement and proposed utility and drainage easements for approval by the Township Solicitor (300-32.B(7); §265-16.C;-32(C and E)).

Stantec Response: Agreements and securities will be provided prior to final plan approval.

- b. An NPDES and Erosion and Sediment Pollution Control Permit approved by PA DEP (§257-21.A(4)).

Stantec Response: An NPDES permit has been submitted to PADEP. A copy of the permit approval will be provided upon receipt.

- c. Sewage Facilities Planning Module, or an exemption issued by PA DEP.

Stantec Response: A letter from DEP is included with this submission indicating that planning modules are not required.

- d. PennDOT Highway Occupancy Permit.

Stantec Response: An HOP permit application will be submitted to PennDOT. Copies of approvals will be provided upon receipt.

- e. An Operations and Maintenance Agreement with the Township covering stormwater controls and BMPs in accordance with §257-36.

Stantec Response: To be provided.

- f. A contribution to the Township Stormwater Control and BMP Operation and Maintenance Fund to defray the cost of inspection for a 10-year period in accordance with §257-37.

Stantec Response: To be provided.

- g. Fee-in-lieu of recreation areas as determined by the Board of Commissioners (§265-18).

Stantec Response: To be provided.

February 2, 2021

Joe Romano, Director of Code Enforcement

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Stantec appreciates your review of the PECO WCG LNG Expansion Project. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

Stantec Consulting Services Inc.



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