

12:28 PM 2/20/2020



MUNICIPALITY OF NORRISTOWN

A HOME RULE MUNICIPALITY
235 EAST AIRY STREET
NORRISTOWN, PENNSYLVANIA 19401-5003
(610) 272-8080
WWW.NORRISTOWN.ORG

FAX:

FINANCE: (610) 270-0445
ADMINISTRATION: (610) 275-0687
PUBLIC WORKS: (610) 279-3603
PLANNING: (610) 270-3892
CODE/REG.: (610) 279-7948

File No. _____

APPLICATION TO THE ZONING HEARING BOARD
(Please print or type)

1. Application for: Variance from Section
Special Exception from Section
 Interpretation (Explain) Substantive Validity Challenge
to Ordinance No. 20-03.

2. Name and Address of Applicant: KKR Investments, LLC
Phone # _____

3. Name and Address of Property Owner: c/o Catherine M. Harper, Esquire
Timoney Knox, LLP

4. Address of Property: 400 Maryland Drive

5. Zoning Classification of Property: P.O. Box 7544

6. Present Use of Property: Ft. Washington, PA 19034-7544

7. Proposed Use of Property: Tel: 215-646-6000

8. Reasons Application Should Be Granted: Please see attached Narrative.
Applicant is requesting that Ordinance No. 20-03 be
declared void ab initio.

9. Description of Improvements and/or Use: General Construction Thereof

10. The Undersigned do(es) hereby make application to the Zoning Hearing Board as indicated and affirms that the information contained herein is true and correct.

Signed *Cath M Harper* Date 2-19-2020
(Applicant)

Signed Catherine M. Harper, Esquire
Attorney for KKR Investment, LLC Date _____
(Owner)

\$ _____ Filing Fee Received, Date _____ By _____

(FILING FEE IS NON-REFUNDABLE)

Jayne Musonye, Zoning Officer

SUBSTANTIVE VALIDITY CHALLENGE TO ORDINANCE NO. 20-03 OF 2020

STATEMENT OF REASONS WHY RELIEF SHOULD BE GRANTED

COMES NOW, KKR Investments, LLC, a Pennsylvania Limited Liability Company that owns real estate at 1703 Markley Street, Norristown, PA (“Applicant”) (Deed for Applicant is attached as Exhibit “A”) by its attorney of record, Catherine M. Harper, Esquire of Timoney Knox, LLP, to file a substantive validity challenge to the recently enacted Ordinance No. 20-03 which amended Chapter 320, Zoning, of the General Laws of Norristown, Article XXVII entitled “Signs,” Section 320-328, Use Table by District, “CR Commercial Retail, MS-MU Main Street Mixed Use, to add to the “Use” column, a “Convenience store with gas pumps” use and allowing for additional sign forms and regulations. Ordinance No. 20-03 was enacted by Norristown Municipal Council on January 21, 2020. *See* Ordinance No. 20-03 attached as Exhibit “B”. Applicant is requesting that the Zoning Hearing Board declare Ordinance No. 20-03 void ab initio.

Prior to the enactment of Ordinance No. 20-03, the Norristown Zoning Hearing Board had granted numerous variances related to signage on a property being developed by property owners, Norristown Center A LP and Norristown Center B LP, who seek to build a Royal Farms gas station and convenience store (Collectively “Royal Farms”) at a property located at 1800 Markley Road, Norristown, PA. The property is located directly across the street from the Applicant’s property. Applicant has appealed the decision to grant these variances in the Court of Common Pleas of Montgomery County. Once Ordinance No. 20-03 takes effect, the variances requested will no longer be needed, as the new ordinance will allow for all of the signage that was previously requested by Royal Farms.

The Applicant challenges the validity of Ordinance No. 20-03 because it is, among other things, "spot zoning." Spot zoning is the singling out of one lot or a small area of land for

different treatment than that accorded to similar surrounding land uses indistinguishable from it in character for the economic benefit or detriment of the owner of that lot. *Takacs v. Indian Lake Borough Zoning Hearing Board*, 11 A.3d 587, 594 (Pa. Cmwlth. 2010). Further, the Applicant challenges the validity of Ordinance No. 20-03 is a direct product of contract zoning which is prohibited for the Municipality and Royal Farms to engage in especially for purposes of depriving Applicant of due process as Appellant in the Land Use Appeal currently pending in the Court of Common Pleas of Montgomery County at Docket No. 2019-18618.

Prior to the adoption of Ordinance No. 20-03, Royal Farms requested that the Zoning Hearing Board grant variances related to signage on the Royal Farms' property that would allow Royal Farms to erect and place numerous signs of different shapes and sizes outside of what is allowed under the Zoning Code. By Order dated August 8, 2019, the Zoning Hearing Board granted Royal Farms numerous sign variances allowing Royal Farms to erect and place twenty-four (24) signs when Zoning Code Section 320-328, Use Table, only allows for three (3) signs. See the Zoning Board Opinion and Order attached hereto as Exhibit "C".

Following the grant of the variances, Applicant filed a timely appeal which is currently pending in the Court of Common Pleas of Montgomery County at Docket No. 2019-18618. On January 21, 2020, the Municipal Council enacted Ordinance No. 20-03, which specifically made changes to Zoning Code Section 320-328, Use Table, to now allow Royal Farms to erect and place all of the signs it previously had requested variances to erect. In fact, Ordinance No. 20-03, went one step farther and now allows for gas canopy signs, a variance request of Royal Farms that was actually turned down by the Zoning Hearing Board. But now, pursuant to Ordinance No. 20-03, Royal Farms can erect the gas canopy signs it desires. The enactment of this Ordinance was clearly done to allow Royal Farms to erect and place signage that only Royal Farms desires and was done

without any consideration as to neighbors or the surrounding area. The Royal Farms' ability to erect all the signage it desires will have a beneficial financial impact on their business while hindering neighboring businesses who have followed the old signage codes.

The intent of the Zoning Code as to signage regulations is expressly stated in the Zoning Code, Section 320-315. The Zoning Code provides as follows:

It is the intent of this article to regulate signs to ensure that they are appropriate for their respective principal uses and in keeping with the appearance of the affected property and surrounding environment. Illustrations, which present typical examples of signs, are provided for to document the intent of the article.

A. Allow adequate signage for the economic vitality of businesses and the appropriateness of use while minimizing clutter, confusion and the unsightliness of excessive signage.

B. Establish criteria designed to encourage signs that are compatible with their surroundings, appropriate to the type of activity to which they pertain, expressive of the identity of individual proprietors, and legible in the environment in which they are seen.

C. Allow for the coordination of signs to reflect the character of the architecture, landscape and visual themes that the Municipality is supporting.

Clearly, the Municipal Council did not consider the intent of the Zoning Code concerning signage when it enacted this Ordinance. In making the changes to Zoning Code Section 320-328, Use Table, per Ordinance No. 20-03, Municipal Council did not follow the intent described in Section 320-315 of the Zoning Code. Zoning Code, Section 320-315, Subsection A states that the intent is to "minimize clutter, confusion and the unsightliness of excessive signage." By enacting Ordinance No. 20-03, Municipal Council failed to consider the potential for clutter, confusion and the unsightliness of excessive signage. Royal Farms intends to place at least twenty-four (24) signs on the property, and may add more as the signage allowed per Ordinance No. 20-03 will actually allow for additional signage including the gas canopy signs.

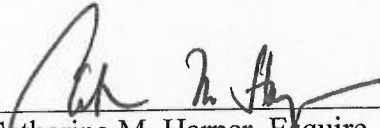
Zoning Code, Section 320-315, Subsection B states that the intent is to "encourage signs that are compatible with their surroundings." Allowing one property to erect in excess of twenty-four (24) signs, some as tall as 25 feet, is not making them compatible with their surroundings, especially when all other business and signage is abiding by the code already in place.

Zoning Code, Section 320-315, Subsection C states that the intent is to allow for the "coordination of signs to reflect the character of the architecture, landscape and visual themes that the Municipality is supporting." Again, Council did not take this into consideration when enacting Ordinance No. 20-03. Allowing one business to erect signage with the volume that Royal Farms intends to do will not reflect the character of the architecture, landscape and visual themes of the area.

Based on the above, it is clear that Ordinance No 20-03 was enacted to specifically allow Royal Farms to proceed with the signage plan that it always wanted, regardless of what the Zoning Code intends or states. Royal Farms wants to erect numerous signs of different shapes and sizes and now they are allowed to do so as a result of the Municipal Council having engaged in spot zoning. The amount of signage will clearly benefit Royal Farms and hinder surrounding businesses and properties who have abided by the Zoning Code. Clearly, the only intent of Ordinance No. 20-03 is to benefit Royal Farms as it allows for all desired signs including desired height and square footage. The ordinance specifically allows for the signage that was originally requested and sought by Royal Farms.

To state it plainly, Ordinance No. 20-03 is not substantially related to a legitimate governmental interest in sound land use planning and was specifically targeted at one singular property in the Municipality and should be invalidated and made void *ab initio*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Catherine M. Harper', written over a horizontal line.

Catherine M. Harper, Esquire
Attorney for Applicant



DEED BK 5895 PG 02250 to 02254.1
 INSTRUMENT # : 2013114860
 RECORDED DATE: 11/13/2013 11:16:35 AM



3009731-0006M

RECORDER OF DEEDS
 MONTGOMERY COUNTY
Nancy J. Becker

One Montgomery Plaza
 Swede and Alry Streets ~ Sulte 303
 P.O. Box 311 ~ Norristown, PA 19404
 Office: (610) 278-3289 ~ Fax: (610) 278-3869

MONTGOMERY COUNTY ROD


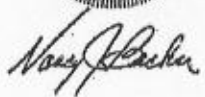
OFFICIAL RECORDING COVER PAGE

Page 1 of 6

Document Type: Sheriffs Deed	Transaction #: 2978706 - 7 Doc(s)
Document Date: 11/01/2013	Document Page Count: 4
Reference Info:	Operator Id: estagila
RETURN TO: (Pickup) SHERIFF COURTHOUSE NORRISTOWN, PA 19404	PAID BY: SHERIFF

* PROPERTY DATA:	
Parcel ID #:	13-00-23960-00-3
Address:	1703 MARKLEY ST
	PA
Municipality:	Norristown Borough (100%)
School District:	Norristown Area

*** ASSOCIATED DOCUMENT(S):**

CONSIDERATION/SECURED AMT: \$2,742.64	DEED BK 5895 PG 02250 to 02254.1	
TAXABLE AMOUNT: \$0.00	Recorded Date: 11/13/2013 11:16:35 AM	
FEES / TAXES:	I hereby CERTIFY that this document is recorded in the Recorder of Deeds Office In Montgomery County, Pennsylvania.	
Affidavit Fee		\$1.50
Recording Fee: Sheriffs Deed		\$78.00
Total:		\$79.50
	  Nancy J. Becker Recorder of Deeds	

PLEASE DO NOT DETACH

THIS PAGE IS NOW PART OF THIS LEGAL DOCUMENT

NOTE: If document data differs from cover sheet, document data always supersedes.
 *COVER PAGE DOES NOT INCLUDE ALL DATA, PLEASE SEE INDEX AND DOCUMENT FOR ANY ADDITIONAL INFORMATION.

Exhibit A

Certification signature by montgomery.county.rod@propertyinfo.com, Validity Unknown



eCertified copy of recorded # 2013114860 (page 1 of 6)
 Montgomery County Recorder of Deeds
 Only valid with epm-signature on cover page



Prepared By: Sheriff's Department, Court House, 1st Floor, P.O. Box 311, Norristown, PA 19404-0268

RECORDER OF DEEDS

Return To: Sheriff's Department, Court House, 1st Floor, P.O. Box 311, Norristown, PA 19404-0268

2013 NOV 13 AM 10:21

STATE TAX
AFFIDAVIT
FILED

MONTGOMERY COUNTY COMMISSIONERS REGISTRY
13-00-23960-00-3 NORRISTOWN
1703 MARKLEY ST
JW REAL ESTATE ENTERPRISES \$10.00
B 094 U 026 L 4231 DATE: 11/12/2013 BR

Know all Men by these Presents

THAT, I, **EILEEN WHALON BEHR** Sheriff of the County of MONTGOMERY

in the Commonwealth of Pennsylvania, for and in consideration of the sum of \$2,742.64

dollars, to me in hand paid, **do** hereby grant and convey to

KKR Investments, LLC
1 Bustleton Pike
Feasterville, PA 19053

ALL THOSE TWO CERTAIN premises together with the buildings and improvements thereon erected, situate and described as follows:

PREMSES "A" BEING ALL THOSE CERTAIN lots or piece of ground situate in the, Borough of Norristown, County of Montomery and State of Pennsylvania, being Lots Nos. 4, 5, 6, 7, 8 and 9 Block "A" on Plan of Lots of Elmwood Terrace which plan is recorded at Norristown in the Office for the Recording of Deeds in Deed Book 826 page 600, bounded and described as follows, to wit:

BEGINNING at a point a corner on the Northwesterly side of Markley Street at the distance of 78.57 feet Northeastwardly from the intersection of the said side of Markley Street with Northeastwardly side of Roberts Street (66 feet wide); thence extending along the line of Lot No. 3, Northwestwardly 135.2 feet to a point a corner in line of Lot No. 48; thence extending along the line of Lot No. 48, Northeastwardly 50.66 feet to a point a corner; thence extending along the rear of Lots Nos. 48 and 47 Northwestwardly 50 feet to a point a corner in line of Lot No. 46; thence extending Northeastwardly 101.32 feet to a point a corner of Lot No. 10; thence extending along the line of Lot No. 10

PARCEL NO.: 13-00-23960-00-3



H. B.
ED

Southeastwardly 143.34 feet to a point a corner on the Northwestwardly side of Markley Street, aforesaid, and extending along the said side thereof Southwestwardly 157.14 feet to the first-mentioned point and place of beginning.

PREMISES "B" BEING ALL THOSE TWO CERTAIN lots or pieces of ground, known and designated as Lots Nos. 47 and 48, Block A on plan of Elmwood Terrace recorded in Deed Book No. 826 page 600, situate in the Borough of Norristown, County of Montgomery and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the Northeast side of Roberts Avenue 66 feet in width laid out on the Borough Plan, unopened at the distance of 155.34 feet Northeastly from the Northwest side of Markley Street, 66 feet in width; thence extending along the said Northeast side of Roberts Street, North 50 degrees 18 minutes West 50 feet to a point a corner of Lot #46, Block A, on said plan; thence extending along said lot, North 41 degrees East 126.90 feet more or less, to a point a corner of Lot No. 6, Block A, on said plan; thence extending along said lot, South 49 degrees 34 minutes East 50 feet to a point a corner of Lot No. 5, Block A on said Plan; thence extending along said Lots Nos. 4, 3, 2 and 1, Block A, on said Plan, South 41 degrees West 126.58 feet to the first mentioned point and place of beginning.

BEING the same premises which Salvatore Amoroso and Elvira Amoroso, husband and wife by Indenture dated 7/15/99 and recorded 7/30/99 in the Office of the Recorder of Deeds in and for the County of Montgomery in Deed Book 5281 page 1708 granted and conveyed unto Center Square Associates, a Pennsylvania General Partnership.

BEING PARCEL NO.: 13-00-23960-00-3.

LOCATION of Property: 1701, 1703, and 1707 Markley Street, Norristown, Montgomery County, Pennsylvania 19401.

PARCEL NO.: 13-00-23960-00-3

