

Application No. \_\_\_\_\_

Date: \_\_\_\_\_

**EAST VINCENT TOWNSHIP**  
**ZONING HEARING APPLICATION**

Applicant: Penn Hurst Holdings DE LLC Phone # 392-593-6682

Address of Applicant: 100 S. Rockland Falls Road, P.O. Box 139, Rockland, DE 19732

Attorney: Matthew J. McHugh, Esq. / Leonard B. Altieri, III, Esq. Phone # 215-569-1662

Address of Attorney: 1835 Market Street, Suite 1400, Philadelphia, PA 19103

Owner of Property: Same as Applicant Phone # \_\_\_\_\_

Address of Owner: Same as Applicant

Location of Property: 1205 Commonwealth Drive, Spring City, PA 19475

Uniform Parcel Identifier: See Attached Addendum Zoning District: IMU

Brief description of the property, its present use and existing improvements: \_\_\_\_\_  
See attached Addendum

Type of Application/Appeal: (Check at least one)

- Appeal from decision of Zoning Officer.
- Application for a Variance from Section(s) \_\_\_\_\_ of  
the East Vincent Township Zoning Ordinance (EVTZO).
- Application for a Special Exception as authorized by Section(s) \_\_\_\_\_  
of the East Vincent Township Zoning Ordinance (EVTZO).
- Other (specify): Substantive Validity Challenge

Statement of legal grounds for application/appeal (state the provision(s) of the EVTZO  
or Municipalities Planning Code relied upon to justify application/appeal:  
See attached Addendum.

Has any previous application or appeal been filed for the subject property? If yes, specify: \_\_\_\_\_

N/A

Description of proposed additions or changes:

N/A

I (we) hereby certify that the above information is true and correct to the best of my (our) knowledge, information or belief.

  
Applicant(s) Counsel

List below or on a separate paper the names and addresses of all property owners:  
- on the same street, within 500 feet.  
- not on the same street, within 150 feet.

See attached.

**Applicant must submit the required filing fee with this Application, together with a plot plan of the premises and a plan showing existing and proposed improvements, together with dimensions.**

Fee: Residential: \$ \_\_\_\_\_

Check # \_\_\_\_\_

All Others: \$ 10,000 & \$5,000 \_\_\_\_\_

Check # 10330 & 10329 \_\_\_\_\_

EAST VINCENT TOWNSHIP ZONING HEARING BOARD  
ADDENDUM TO ZONING HEARING BOARD APPLICATION

Applicant: Penn Hurst Holdings DE LLC  
100 S. Rockland Falls Road  
P.O. Box 139  
Rockland DE 19732

Owner: Penn Hurst Holdings DE LLC (UPI Nos.: 21-1-92.7; 21-7-76; 21-1-92.8;  
21-1-92.9; 21-1-92.10  
Matthew Herzog (UPI No.: 21-1-91)

Subject Property: 1205 Commonwealth Drive  
Spring City, PA 19475  
UPI No.: 21-1-92.7; 21-7-76; 21-1-92.8; 21-1-91; 21-1-92.9; 21-1-92.10

Attorney: Matthew J. McHugh, Esquire  
Leonard B. Altieri, III, Esquire  
Klehr Harrison Harvey Branzburg LLP  
1835 Market Street, Suite 1400  
Philadelphia, PA 19103  
(215) 569-1662  
[mmchugh@klehr.com](mailto:mmchugh@klehr.com)  
(215) 569-4362  
[laltieri@klehr.com](mailto:laltieri@klehr.com)

*Summary of Application*

The Applicant is the owner of the Subject Properties. The Applicant asserts a substantive validity challenge to the East Vincent Township Zoning Ordinance (the “Zoning Ordinance”) pursuant to Sections 909.1(a)(1) and 916.1(a)(1) of the Pennsylvania Municipalities Planning Code (the “MPC”). In particular, the Applicant substantively challenges the existing Zoning Ordinance on the basis that the Zoning Ordinance, as it currently reads, constitutes a *de jure* and *de facto* exclusion of modern data center development which is recognized as legitimate land uses under Pennsylvania law and includes the following uses (collectively, the “Data Center Uses”):

- Data Center – a building or buildings which are occupied primarily by computers and/or telecommunications and related equipment, including supporting equipment, where information is processed, transferred and/or stored
- Data Center Equipment – outdoor mechanical equipment adjacent to a data center that provides redundant power capacity to a data center, including but not limited to, battery storage facilities, backup generators (diesel or natural gas), and natural gas storage facilities
- Data Center Accessory Uses/Structures – ancillary uses or structures associated with a data center including but not limited to: utilities; utility lines; administrative, logistical, fiber optic, storage, and security buildings or structures; electrical substations; domestic and non-contact cooling water and waste-water treatment facilities; water holding facilities;

- pump and/or compression/booster stations; water towers; environmental controls (heating, air conditioning or cooling towers, fire suppression, evaporators and related equipment); natural gas transmission, distribution, storage (including liquified natural gas storage) and compression; redundant data communications connections; and security features
- Private Power Generation Facility – a facility owned and operated by an entity, other than a governmental body or public utility, which generates, transmits and/or distributes energy for both (i) sale to a governmental body, public utility or other private user; or (ii) on-site use. All such facilities shall use natural gas or other renewable/sustainable fuel sources and meet all applicable federal and state air quality standards

None of the proposed Data Center Uses are expressly permitted under the Township's existing Zoning Ordinance. The Subject Property is located within the IMU – Industrial Mixed Use District. Although Section 27-2802(3)(E) authorizes a “planned commercial development” by conditional use, and further permits “any use otherwise permitted by right, special exception, and/or conditional use in the GI District, *subject* to the provisions set forth in Sections 27-1103.2 and 27-1104.2,” this framework does not meaningfully accommodate modern data center development. While the GI – General Industrial District includes, at Section 27-1302(4)(F), a broad conditional-use provision allowing a building to be “erected or used and a lot or premises used or occupied for any lawful purpose,” this catchall authorization is illusory in practice. The cross-referenced requirements of Sections 27-1103.2 (“Area and Bulk Regulations”) and 27-1104.2 (“Building Form, Size and Spacing Requirements”) impose dimensional, height, form, and spatial limitations that are fundamentally incompatible with the scale, configuration, infrastructure demands, and operational characteristics inherent to contemporary data center facilities.

Furthermore, the Zoning Ordinance contains no regulatory framework to address essential and defining components of Data Center Uses, including but not limited to the associated on-site power generation, energy redundancy systems, cooling and mechanical equipment yards, and other mission-critical infrastructure. These elements are not merely ancillary; they are indispensable to the safe, continuous, and reliable operation of a data center. By failing to provide any mechanism, standards, or allowance for such infrastructure, the Zoning Ordinance effectively renders data center development infeasible, even where the text appears to permit a broad category of industrial uses.

Accordingly, although the Ordinance may facially suggest that a data center could fall within the range of “lawful purposes” permitted conditionally in the GI District and cross-applied to the IMU District, the combined effect of the Ordinance’s dimensional, design, and unaddressed infrastructure requirements is to exclude Data Center Uses in practice. Under Pennsylvania law, a zoning ordinance that, either on its face or in its application, prohibits an otherwise legitimate land use for which there is a demonstrated need is considered exclusionary and substantively invalid. Here, the Ordinance operates as a *de jure* and *de facto* exclusion of Data Center Uses. Because no district within the Township provides reasonable provisions for the development of a modern data center, and because the Ordinance’s structural and regulatory constraints make such development impossible, the Zoning Ordinance is substantively invalid as applied to the Data Center Uses.

*Summary of Requested Relief*

The Applicant requests that the Zoning Hearing Board determine that the Zoning Ordinance, is unlawfully exclusionary and constitutes a *de jure* and *de facto* exclusion of the Data Center Uses and therefore substantively invalid.

The Applicant reserves the right to further modify, amend and/or supplement this Application. The Applicant requests that the Zoning Hearing Board hold a hearing on its challenge and issue a decision as required by Section 916.1 of the MPC.