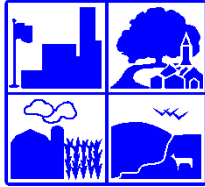


**FERGUSON TOWNSHIP ZONING HEARING BOARD  
REGULAR MEETING AGENDA  
Tuesday, May 23, 2023  
7:00 PM**

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. CITIZEN INPUT: LIMITED TO UP TO FOUR (4) MINUTES PER INDIVIDUAL
- IV. INTRODUCTION OF BOARD MEMBERS
- V. SWEARING IN OF THOSE WHO WISH TO TESTIFY
- VI. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VARIANCE
- VII. ZONING ADMINISTRATOR EXPLAINS THE BASIS OF THE VARIANCE
- VIII. VARIANCE REQUEST OF MERLE EYER, 2616 TADPOLE ROAD, PENNSYLVANIA FURNACE
- IX. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING AN APPEAL
- X. ZONING ADMINISTRATOR EXPLAINS THE BASIS OF THE APPEAL
- XI. APPEAL REQUEST OF 1004 WEST COLLEGE, LLC, 1004 W. COLLEGE AVENUE
- XII. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VALIDITY CHALLENGE
- XIII. ZONING ADMINISTRATOR EXPLAINS THE BASIS OF THE VALIDITY CHALLENGE
- XIV. VALIDITY CHALLENGE OF 1004 WEST COLLEGE, LLC, 1004 W. COLLEGE AVENUE
- XV. APPROVAL OF THE MEETING MINUTES FROM APRIL 25, 2023
- XVI. ADJOURNMENT



## TOWNSHIP OF FERGUSON

3147 Research Drive • State College, Pennsylvania 16801  
Telephone: 814-238-4651 • Fax: 814-238-3454  
www.twp.ferguson.pa.us

April 25, 2023

**VIA EMAIL**

Legal Advertising Department  
CENTRE DAILY TIMES  
Post Office Box 89  
State College, Pennsylvania 16804

Please insert the following legal notice so that it appears in the Legal Section of the Centre Daily Times on **Tuesday May 9, 2023 and Tuesday May 16, 2023**

### LEGAL NOTICE

The Ferguson Township Zoning Hearing Board will hold a Public Hearing at the Ferguson Township Municipal Building, 3147 Research Drive, State College, Pennsylvania on Tuesday May 23, 2023 at 7:00 PM and to hear the following requests:

The variance request of Merle L. Eyer of 734 S. Nixon Road, P.O. Box 103 Pine Grove Mills, PA 16868 regarding his property at 2616 Tadpole Road, PA Furnace, PA 16865, tax parcel number 24-006-046B. The applicant is requesting a variance to Chapter 27-209.1 setback requirements to construct a 20' by 30 addition to the existing camp structure. The additions would be located in the required side yard setback for the property. The property is located in the RR Zoning District.

The appeal and validity challenge of 1004 West College, LLC of 250 E. Beaver Ave., Suite 700, State College, PA 16801, regarding the property at 1004 West College Avenue, State College, tax parcel 24-002A-057. The applicant is represented by Charles M. Suhr, Esq.. The applicant is appealing the Zoning Administrator's Determinations regarding Chapter 27-304.3.B.3., and that the 2023 Fee in Lieu cannot be applied to the plan. The applicant is filing a substantive validity challenge to the provisions of Chapter 27-716 that requires an applicant to provide for Workforce Housing Units or pay fee-in-lieu. The property is located in the Terraced Street Scape (TSD) Zoning District.

The public may attend the meeting in-person in the Main Meeting Room of the Ferguson Township Municipal Building

For the Ferguson Township Zoning Hearing Board  
Jeffrey S. Ressler, Zoning Administrator

The Proof of Publication Notice and the invoice related to this advertisement should be sent to the attention of Ms. Traci Miller, the Township Accountant. Please call me if you should have questions or if you will be unable to process this request.

Sincerely,

Jeffrey S. Ressler  
Zoning Administrator



---

## TOWNSHIP OF FERGUSON

3147 Research Drive • State College, Pennsylvania 16801  
Telephone: 814-238-4651 • Fax: 814-238-3454  
[www.twp.ferguson.pa.us](http://www.twp.ferguson.pa.us)

---

**TO:** ZONING HEARING BOARD MEMBERS  
JEFFREY STOVER, SOLICITOR

**FROM:** Liza Ruhf, Planning and Zoning Administrative Assistant

**DATE:** May 15, 2023

**SUBJECT:** ZONING HEARING BOARD MEETING

The Ferguson Township Zoning Hearing Board will hold a public hearing at the Ferguson Township Municipal Building, 3147 Research Drive, State College, Pennsylvania, on Tuesday, May 23, 2023, at 7:00 PM to hear the following requests:

*The variance request of Merle L. Eyer of 734 S. Nixon Road, P.O. Box 103, Pine Grove Mills, PA 16868, regarding his property at 2616 Tadpole Road, Pennsylvania Furnace, PA 16865, tax parcel number 24-006-046B. The applicant is requesting a variance to Chapter 27-209.1 setback requirements to construct a 20 by 30 foot addition to the existing camp structure. The addition would be located in the required side yard setback for the property. The property is located in the Rural Residential (RR) Zoning District.*

*The appeal and validity challenge of 1004 West College, LLC, of 250 E. Beaver Avenue, Suite 700, State College, PA 16801, regarding the property at 1004 West College Avenue, State College, PA, tax parcel 24-002A-057. The applicant is represented by Charles M. Suhr, Esq. The applicant is appealing the Zoning Administrator's determination regarding Chapter 27-304.3.B.3. and the determination that the 2023 Fee in lieu will apply to the plan. The applicant also is filing a substantive validity challenge to the provisions of Chapter 27-716 that require an applicant to provide for Workforce Housing units or pay the Fee in lieu. The property is located in the Terraced Street Scape (TSD) Zoning District.*

Members and the public may attend the meeting in person at the Ferguson Township Municipal Building Main Meeting Room.

Thank you.

Copy: Office File



Township of

RECEIVED APR 24 2023

Planning & Zoning Department

Pennsylvania

**Ferguson Township, Centre County, Pa.  
Application for Zoning Variance/Appeal Hearing**

Application for a Hearing must be filed in the name of the owner of record or in the name of the holder of an option or a contract to purchase, or in the name of the lessee if authorized under a lease.

The application must be completed in full and the following must accompany the application:

1. Thirteen (13) copies of the application.
2. Thirteen (13) copies of a diagram or site plan (as outlined on page 3).
3. For a Variance Hearing a non-refundable filing fee of \$300.00 (make check payable to Ferguson Township).
  - For an Appeal Hearing a filing fee of \$500.00 (make check payable to Ferguson Township). The Appeal Hearing fee is refundable if the applicant prevails in the appeal of a notice of violation.
  - If applying for both a Variance Hearing and an Appeal Hearing both the Variance fee of \$300.00 and the Appeal fee of \$500.00 must be paid to the Township.
4. A copy of the applicant's deed or other instrument showing authority to file this application must be attached.
  - If the instrument attached does not contain a legal description, a legal description must be provided.

All material should be submitted to the Ferguson Township Zoning Office no later than 5:00 PM on the fourth Monday of the month. All incomplete applications will not be processed.

Email m/e103@comcast.net

**ENTRY OF APPEARANCE**

Name Merle L. Eyer

Address 734 S. Nixon Road, P.O. Box 103 Pine Grove Mills, PA. 16868

I am appearing on my own behalf  (Check if this is true.)

I am representing \_\_\_\_\_

Please send me notice at the above address of any final decisions in this matter.

**WAIVER OF STENOGRAPHIC RECORD**

I agree to waive the requirements of Section 908(7) of the Pennsylvania Municipalities Planning Code which requires that a stenographic record of the proceedings be made, and consent that a record of the proceedings be prepared from a tape recording of the hearing and the recording secretary's minutes.

Applicant's Signature Merle L. Eyer

Date April 18, 2023

The undersigned hereby applies to the Ferguson Township Zoning Hearing Board for a hearing under the provisions of the Ferguson Township Zoning Ordinance affecting the following premises in the manner herein described.

Applicant Merle L. Eyer

Address 2616 Tadpole Rd., Penna. Furnace, PA. 16865

Phone FAX \_\_\_\_\_

Owner Merle L. Eyer

Address 734 S. Nixon Rd, P.O. Box 103, Pine Grove Mills, PA. 16868

Phone FAX \_\_\_\_\_

1. Location of premises Intersection of Tadpole & Gatesburg Roads - on left

2. Centre County Tax Map Parcel Number 24-006, 046 B, 0000

3. Present zoning RR

4. How long has the applicant held an interest in the property? 60 years

5. Present use of the premises Camp

6. Proposed use of the premises CAMP

7. Explain extent of proposed alteration(s), if any: 10' x 20' Addition of bed room AREA to current 20' x 30' structure.

8. Describe all existing structures, including type size and height: \_\_\_\_\_

20 ft. wide x 30 ft. long, 12 ft high at roof peak

9. Has the property been involved in previous zoning hearing(s)? No If so, describe date of hearing, nature of hearing and outcome of hearing:

10. For new construction or alterations:

a) Have plans been submitted to the Zoning Officer? Yes

b) Has he/she reviewed, approved, and signed the plans? Denied

c) Has he/she issued a permit? No

11. For a variance hearing, describe the provisions or regulations of the Ferguson Township Zoning Ordinance under which application for a variance is sought: Chapter 27-209.1

End of current structure is on a 30 ft. setback from property line, proposed addition would extend into the 30 ft. setback. By Ten Feet.

12. For an appeal hearing, describe the alleged misinterpreted or misapplied provision of the ordinance which will be relieved by granting this appeal:

13. A variance will be granted only upon the showing of an unnecessary hardship meeting all of the following criteria:

a) The unnecessary hardship is caused by unique physical circumstances in the size, shape or topography of the lot.

b) Because of the unnecessary hardship so caused, the lot cannot be developed in conformity with the Zoning Ordinance.

c) The unnecessary hardship was not created by the applicant. a) Key map showing the generalized location of the property.

d) The variance, if granted, would not alter the essential character of the neighborhood, impair the use or development of adjacent property or be detrimental to the public welfare.

e) The variance would be the minimum necessary to afford relief and would be the least possible modification of the Zoning Ordinance.

Describe hardship, as listed above, which will be relieved by granting this variance:

Current bedroom is 8' wide x 12' long, with a King size bed it's impossible to walk around the bed. At 76 years of age it's really hard to crawl over the bed to get to the other side of the room. Also Melanie has a lot of back problems and will need to use a walker in the future which she will be unable to use in the current space. So, the main purpose of this addition is to make the bedroom more Handicapped Accessible.

14. Attach a diagram or site plan showing the following:

- a) Key map showing the generalized location of the property.
- b) North point.
- c) Name and address of all abutting property owners.
- d) Total tract boundaries of the property showing approximate distances and a statement of total acreage of the tract.
- e) All existing streets including streets of record (recorded but not constructed) on or abutting the tract including names and right-of-ways.
- f) If relevant to the application, existing sewer lines, water lines, fire hydrants, utility lines, culverts, bridges, railroads, watercourses, and easements.
- g) All existing buildings or other structures and approximate location of all tree masses.

15. List all abutting property owners. Include full name, address, and telephone numbers

Roy Campbell

4607 W Whitehall Road

Penna. Furnace, PA. 16865

814-237-3770

FOR STAFF USE ONLY:

- Plans submitted
- Advertised
- Posted
- Fee Paid

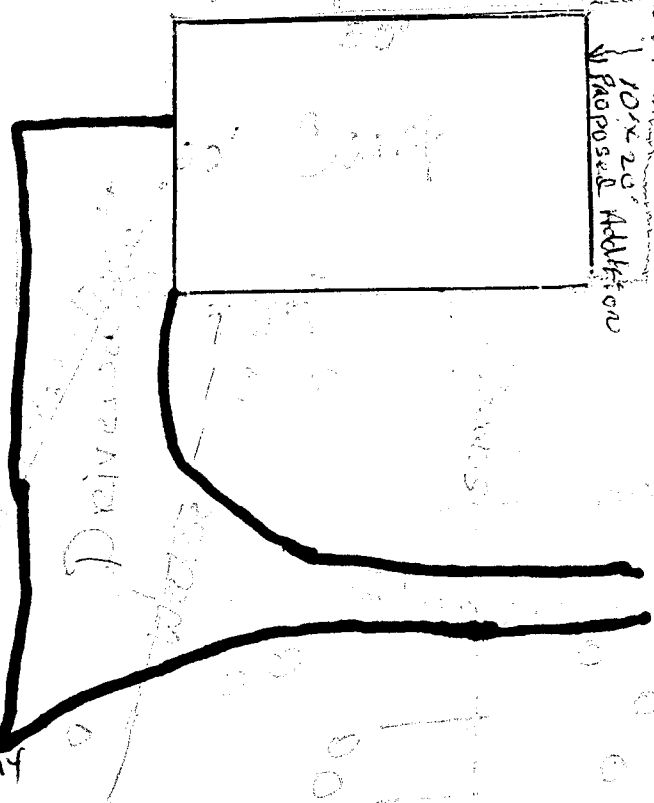
Revised  
09/14/2017

Lot total  
100 X 160

Key layout

S

Property  
100' West  
811-231-3710  
Utility pole



30' setback

10' x 20' Addition

Lot 100' x 160'

W

Midpole Rd

Others





30' x 20'

20'

20' From Proposed Addition to W. Boundary Line





30' From line to current structure



View Beyond West Boundary Line - All wooded

25.

ENTERED FOR RECORD

96 DEC 12 PM 3:33

25  
WARRANTY DEED

# Deed

WILLIAM H. EYERS  
RECORDER OF DEEDS  
CENTRE COUNTY

MADE the 12<sup>th</sup> day of December, in the year nineteen hundred and ninety-six (1996).

BETWEEN:

GERALDINE K. EYER, Widow, of Pine Grove Mills, Centre County, Pennsylvania, party of the first part, GRANTOR,

- A N D -

MERLE L. EYER of Pine Grove Mills, Centre County, Pennsylvania, party of the second part, GRANTEE.

WITNESSETH, That in consideration of ONE (\$1.00) DOLLAR, in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantee,

FERGUSON TOWNSHIP

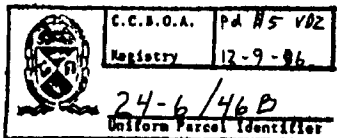
ALL that certain message, tenement and tract of land situate on the Southerly side of the Township Road, known as the "Tadpole Road," being Township Route No. 14047, which point is 366 feet West of the intersection of the Township Road 14047, and the Township road leading to Gatesburg; thence along other premises now or formerly of Charles H. Campbell in a Southerly direction a distance of 160 feet to stake; thence along other lands of Charles H. Campbell in a Westerly direction a distance of 100 feet to a stake; thence still along land now or formerly of Charles H. Campbell in a Northerly direction a distance of 160 feet to the right-of-way of Route No. 14047; thence along said Township Route No. 14047 in an Easterly direction a distance of 100 feet to the place of beginning.

SUBJECT to a right-of-way over the northerly 10 feet of the above described premises as set forth in Deed Bk. 266 at page 454.

GRANTING AND CONVEYING to the Grantee herein, his heirs and assigns, a right-of-way over the old road which leads from the Township Route No. 14047 near the intersection with the Gatesburg Road in a westerly direction to the above described lot as set forth in Deed Bk. 266 at page 454.

BEING known as Centre County Uniform Parcel Identifier Tax Parcel Number 24-6/46B.

BEING the same premises which became vested in Calvin L. Eyer and Geraldine K. Eyer, his wife, by deed of Charles H. Campbell, et ux, dated April 15, 1963, and recorded in Centre County Deed Bk. 266 at page 453. The said Calvin L. Eyer departed this life March 14, 1986, vesting fee title in his surviving spouse Geraldine K. Eyer, the Grantor herein.



UNDER AND SUBJECT, NEVERTHELESS to existing easements and restrictions of record.

THIS TRANSFER IS A CONVEYANCE BETWEEN MOTHER AND SON.

AND the said Grantor will specially WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, said Grantor has hereunto set her hand and seal, the day and year first above-written.

Sealed and delivered in the presence of

Polly D. Shavelly Geraldine K. Eyer (SEAL)  
GERALDINE K. EYER

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CENTRE ) SS:

On this, the 12th day of December, 1996, before me a Notary Public, the undersigned officer, personally appeared Geraldine K. Eyer, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Polly D. Shavelly  
My Commission Expires

NOTARIAL SEAL  
POLLY D. SHAVELLY, NOTARY PUBLIC  
STATE COLLEGE BORO., CENTRE CO., PA.  
MY COMMISSION EXPIRES NOV. 21, 1998

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the Grantee herein is as follows:

P.O. Box 103  
138 Nixon Road  
Pine Grove Mills, PA 16868

  
\_\_\_\_\_  
Attorney or Agent for Grantee

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CENTRE ) SS:

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Record Book No. 904, Page 354.

WITNESS my hand and official seal this 12<sup>th</sup> day of December, 1996.

  
\_\_\_\_\_  
Recorder of Deeds

TERRY J. WILLIAMS, ESQUIRE  
MILLER, KISTLER, CAMPBELL, MILLER & WILLIAMS, INC.  
ATTORNEYS-AT-LAW  
1500 SOUTH ATHERTON STREET  
STATE COLLEGE, PA 16801

## Chapter 27. Zoning

### Part 2. DISTRICT REGULATIONS

#### § 27-209. Yard Requirements.

[Ord. No. 1049, 11/18/2019]

1. No structure shall be placed in the front, side or rear yard setback areas specified for each use, except where specifically permitted below or in other sections of this chapter.
  - A. Where two or more primary structures for nonresidential use are proposed to be placed upon a lot in single ownership, the front, side and rear yard setback areas are required only at lot lines abutting other property.
  - B. Where two or more primary structures for residential use are proposed to be built upon a lot in single ownership, the front, side and rear yard setback areas are required as though each structure were on an individual lot. Within the lot, the minimum horizontal distance between facing walls of any buildings on the lot shall be as follows:
    - (1) Twenty feet between facing walls for single-family detached and semidetached dwellings, except that a distance of not less than 10 feet between zero lot line homes shall be permitted. A zero lot line home is a type of single-family detached dwelling.
    - (2) Thirty feet between facing walls (which are not party walls) for townhouse dwellings, single-family attached dwellings and two-family semidetached dwellings.
    - (3) Forty feet between facing walls (which are not party walls) for two-family attached dwellings, multifamily semidetached dwellings and attached dwellings, i.e., apartments, garden apartments.
    - (4) In instances when two types of principal buildings are located on one lot, then the distance between buildings shall be the larger distance based on the building of higher intensity.
  - C. Where a lot abuts upon a collector or arterial street with a right-of-way of less than 50 feet in width, the front yard setback shall be measured from a line parallel to, and 25 feet from, the center line of the street cartway.
  - D. Fences, walls and signs are permitted in any yard setback area unless otherwise restricted or prohibited by other provisions of this chapter.
  - E. Balconies, bay windows, chimneys and flues, columns, cornices and eaves, fire escapes, gutters and downspouts, sills, decks, patios, HVAC unit and pad and unenclosed porches may project into the specified yard setback areas of a lot, but not more than three feet.
  - F. On corner lots, nothing, including structures, fences, walls and vegetation, shall be erected, placed, planted or allowed to grow in such a manner as to impede vision between a height of 2 1/2 feet and 10 feet above the center line grades of the intersecting streets and within an area bounded by the street right-of-way lines of such corner lots and a line joining points on these street right-of-way lines 25 feet from their intersection.

- G. On a corner lot, the side yard abutting the street shall have a setback area equal to the depth of the front yard setback area required for the use and shall be governed by all front yard setback requirements of this chapter.
- H. On a through lot, the rear yard setback width shall be either the rear or front yard setback width designated for the use, whichever is greater.
- I. Where a tract of land zoned Rural Agricultural (RA) is rezoned to a different zoning classification, then a buffer yard of not less than 50 feet in width shall be provided on the rezoned property when that land adjoins land of the Rural Agricultural (RA) Zoning District.  
[Amended by Ord. No. 1076, 3/15/2022]
  - (1) This revised buffer shall be applicable to any acreage which currently contains the previously established 200-foot buffer.
  - (2) No structure, including decks, patios or building additions may encroach in this fifty-foot buffer yard other than the placement of an accessory structure/shed of less than 144 square feet, which is permitted to be located within the buffer and as close as three feet from the property line. Swimming pools shall be prohibited from being located within the fifty-foot buffer yard.
- J. Where a tract of land zoned Rural Agricultural (RA) on the effective date of this Part 2, or thereafter, is changed to a different zoning classification, then a buffer yard of not less than 50 feet in width shall be provided on the property which has been rezoned when the rezoned land adjoins land in the (FG) Forest Gameland Zone.  
[Amended by Ord. No. 1076, 3/15/2022]
- K. In all zoning districts, the lot width may vary as long as the minimum lot width at the street line and the building setback line are in compliance.



ZONING

27 Attachment 3

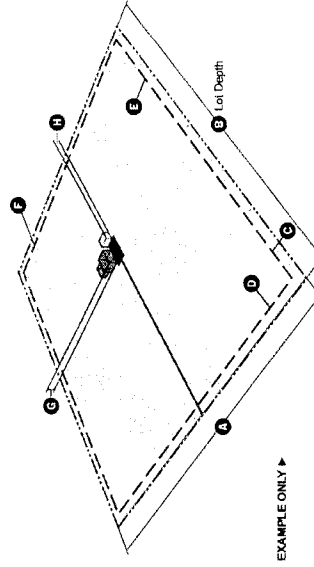
Township of Ferguson

§ 27-205.3 Agricultural Research (AR) District Quick [Amended by Ord. No. 1076, 3/15/2022]

AREA AND BULK CATEGORY	PRINCIPAL USES	ACCESSORY USES				
		Use	Area and Bulk Categories			
1	Administrative Office Buildings (associated with Advanced Agricultural Research)	P	1	2	3	4
1	Advanced Agricultural Research	P	P	P	P	P
1	Agriculture	P	P	P	P	P
1	Agriculture/Environmental Education Program	P	P	P	P	P
1	Any Use Performed by the State Game Commission	P	P	P	P	P
1	Bird and Wildlife Sanctuaries/Fish Hatcheries	P	P	P	P	P
1	Exhibit Halls and Museums	P	P	P	P	P
1	Forestry	P	P	P	P	P
1	General Natural Resource Research	P	P	P	P	P
1	General Weather, Radio and Satellite Research	P	P	P	P	P
1	Nature Education Centers	P	P	P	P	P
1	Recreation Facilities for Employees, Faculty & Students	P	P	P	P	P
1	Storage of Land Clearing Material	C	P	P	P	P
2	Farm Markets	C	P	P	P	P
2	Tasting Facilities	P	P	P	P	P
3	Archery and Shooting Ranges, Indoor	P	P	P	P	P
3	Community Gardens	P	P	P	P	P
3	Emergency Services (Ambulances, Fire, Police)	P	P	P	P	P
3	Essential Services - Type 1	C	P	P	P	P
3	Park and Outdoor Recreational Facilities, Neighborhood, Public	P	P	P	P	P
3	Park and Outdoor Recreational Facilities, Community, Public	P	P	P	P	P
3	Park and Outdoor Recreational Facilities, Regional, Public	P	P	P	P	P
3	Places of Assembly, Neighborhood	P	P	P	P	P
3	Places of Assembly, Community	P	P	P	P	P
3	Places of Assembly, Regional	P	P	P	P	P
3	Solar Energy Systems (PSES)	C	P	P	P	P
4	Communication Facilities	P	P	P	P	P
4	Communications Towers	P	P	P	P	P
4	Wind Energy Systems	C	P	P	P	P

DIMENSIONS	AREA AND BULK CATEGORIES				
	1	2	3	4	5
Minimum	Lot Size	10 ac	2 ac	n/a	n/a
	at Building Setback Line	300 ft	150 ft	150 ft	150 ft
Minimum	at Street Line	300 ft	150 ft	150 ft	150 ft
	Front Yard, for Principal Use on Local/Collector Street	50 ft	50 ft	50 ft	500 ft
Minimum	Front Yard, for Principal Use on Arterial Street	50 ft	50 ft	50 ft	500 ft
	Side Yard, for Principal Use	100 ft	100 ft	100 ft	500 ft
Minimum	Rear Yard, for Principal Use	75 ft	75 ft	75 ft	500 ft
	Principal Structure	40 ft	40 ft	40 ft	200 ft
Minimum	Accessory Structure	40 ft	40 ft	60 ft	20 ft
	Building Coverage	10%	30%	n/a	n/a
Maximum	Impervious Surface Coverage	10%	50%	10%	n/a
	Lot Depth	n/a	n/a	n/a	n/a

- AREA AND BULK CATEGORIES:
- 1 - agricultural, conservation, research, and institutional uses
  - 2 - agriculture-related businesses
  - 3 - non-agricultural/non-residential/other uses
  - 4 - utility and communication facilities



EXAMPLE ONLY ▶

P = Permitted Use by Right C = Conditional Use SE = Use by Special Exception

RECEIVED MAR 24 2023



Township of

Planning & Zoning Department

Pennsylvania

**Ferguson Township, Centre County, Pa.  
Application for Zoning Variance/Appeal Hearing**

Application for a Hearing must be filed in the name of the owner of record or in the name of the holder of an option or a contract to purchase, or in the name of the lessee if authorized under a lease.

The application must be completed in full and the following must accompany the application:

1. Thirteen (13) copies of the application.
2. Thirteen (13) copies of a diagram or site plan (as outlined on page 3).
3. For a Variance Hearing a non-refundable filing fee of \$300.00 (make check payable to Ferguson Township).
  - For an Appeal Hearing a filing fee of \$500.00 (make check payable to Ferguson Township). The Appeal Hearing fee is refundable if the applicant prevails in the appeal of a notice of violation.
  - If applying for both a Variance Hearing and an Appeal Hearing both the Variance fee of \$300.00 and the Appeal fee of \$500.00 must be paid to the Township.
4. A copy of the applicant's deed or other instrument showing authority to file this application must be attached.
  - If the instrument attached does not contain a legal description, a legal description must be provided.

All material should be submitted to the Ferguson Township Zoning Office no later than 5:00 PM on the fourth Monday of the month. All incomplete applications will not be processed.

Email charles.suhr@stevenslee.com

**ENTRY OF APPEARANCE**

Name Charles M. Suhr, Esq. Stevens & Lee

Address 17 N. Second St., 16th Floor, Harrisburg, PA 17101

I am appearing on my own behalf  (Check if this is true.)

I am representing the Applicant

Please send me notice at the above address of any final decisions in this matter.

~~WAIVER OF STENOGRAPHIC RECORD~~

NO waiver!

I agree to waive the requirements of Section 908(7) of the Pennsylvania Municipalities Planning Code which requires that a stenographic record of the proceedings be made, and consent that a record of the proceedings be prepared from a tape recording of the hearing and the recording secretary's minutes.

Applicant's Signature Christall Sulu, Attorney for Applicant

Date March 23, 2023

The undersigned hereby applies to the Ferguson Township Zoning Hearing Board for a hearing under the provisions of the Ferguson Township Zoning Ordinance affecting the following premises in the manner herein described.

Applicant 1004 West College, LLC

Address 250 E. Beaver Ave., Suite 700, State College, PA 16801

Phone FAX \_\_\_\_\_

Owner Same as Applicant

Address \_\_\_\_\_

Phone FAX \_\_\_\_\_

1. Location of premises 1004 West College Avenue

2. Centre County Tax Map Parcel Number 24-002A,057-0000

3. Present zoning Terraced Streetscape (TS)

4. How long has the applicant held an interest in the property? + 1 year

5. Present use of the premises Commercial buildings, alley, parking areas

6. Proposed use of the premises Vertical mixed-use building

7. Explain extent of proposed alteration(s), if any: Land development plans pending for 75' tall mixed-use building, with first floor commercial and 107 residential units

\_\_\_\_\_  
\_\_\_\_\_

8. Describe all existing structures, including type size and height: \_\_\_\_\_

1) Former WTAJ-TV Building ± 3 stories \_\_\_\_\_

2) Former Nittany Property Management Building ± 1 story \_\_\_\_\_

9. Has the property been involved in previous zoning hearing(s)? No If so, describe date of hearing, nature of hearing and outcome of hearing:

\_\_\_\_\_  
\_\_\_\_\_

10. For new construction or alterations:

a) Have plans been submitted to the Zoning Officer? Yes

b) Has he/she reviewed, approved, and signed the plans? Yes - No - No

c) Has he/she issued a permit? No

11. For a variance hearing, describe the provisions or regulations of the Ferguson Township Zoning Ordinance under which application for a variance is sought:

N/A

12. For an appeal hearing, describe the alleged misinterpreted or misapplied provision of the ordinance which will be relieved by granting this appeal:

See attached narrative

13. A variance will be granted only upon the showing of an unnecessary hardship meeting all of the following criteria:

- a) The unnecessary hardship is caused by unique physical circumstances in the size, shape or topography of the lot.
- b) Because of the unnecessary hardship so caused, the lot cannot be developed in conformity with the Zoning Ordinance.
- c) The unnecessary hardship was not created by the applicant. a) Key map showing the generalized location of the property.
- d) The variance, if granted, would not alter the essential character of the neighborhood, impair the use or development of adjacent property or be detrimental to the public welfare.
- e) The variance would be the minimum necessary to afford relief and would be the least possible modification of the Zoning Ordinance.

Describe hardship, as listed above, which will be relieved by granting this variance:

N/A

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14. Attach a diagram or site plan showing the following:

- a) Key map showing the generalized location of the property.
- b) North point.
- c) Name and address of all abutting property owners.
- d) Total tract boundaries of the property showing approximate distances and a statement of total acreage of the tract.
- e) All existing streets including streets of record (recorded but not constructed) on or abutting the tract including names and right-of-ways.
- f) If relevant to the application, existing sewer lines, water lines, fire hydrants, utility lines, culverts, bridges, railroads, watercourses, and easements.
- g) All existing buildings or other structures and approximate location of all tree masses.

15. List all abutting property owners. Include full name, address, and telephone numbers

See attached listing

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**FOR STAFF USE ONLY:**

- Plans submitted
- Advertised
- Posted
- Fee Paid

Revised  
09/14/2017

**LIST OF ADJOINING PROPERTY OWNERS**

**1004 - 1006 West College Avenue**

	<b>Property Address</b>	<b>Owner Name, Address, Phone # *</b>	<b>Tax Parcel #</b>
1	1012 W. College Ave.	Kai DU 2364 Longfellow Court State College, PA 16803	24-002A,055-.0000-
2	1005 W. College Ave.	The Pennsylvania State University PSU IN-Lieu Pay Co. Municipal SCH. c/o University Real Estate Services Benedict House University Park, PA 16802-2311	24-002A,060-.0000-
3	938 W. College Ave.	MUCOY Limited Inc. c/o Nittary Property Management 938 W. College Avenue State College, PA 16801	24-002A,019-.0000-
4	123 S. Osmond St.	Thomas O. Beebee JiZelda F. Galvao 123 Osman Street State College, PA 16801	24-002A,054-.0000-
5	1027 Harley Alley	Sandra R. Ross 257 South Osmond Street State College, PA 16801	24-002A,053-.0000-
6	1023 Harley Alley	Skidder Ventures LLC 345 Mary Eliabeth Street Boalsburg, PA 16827	24-002A,052-.0000-
7	1005 Harley Alley	GRT LLC c/o Ray Terrizzi 3090 Stonebridge Drive State College, PA 16801	24-002A,050-.0000-
8	118 S. Butz St.	Bruce K. Ebel and SCPA Realty II LP PO Box 321 State College, PA 16804	24-002A,049-.0000-
9	115 S. Butz St.	West Side Manor I, LP 140 N. Gill Street State College, PA 16801	24-002A,020-.0000-

\* Note – Telephone numbers of owners not readily available

**Narrative Attachment**

**1004 WEST COLLEGE, LLC**

**FERGUSON TOWNSHIP ZONING HEARING BOARD**

1004 West College, LLC, is a Delaware limited liability company, with an address of 250 E. Beaver Avenue, Suite 700, State College, PA 16801 (“Applicant”). Applicant is the owner of certain real estate located at 1004 West College Avenue, consisting of combined tracts totaling approximately 1.535 acres (gross), 1.4 acres (net), as set forth in the Deed recorded with the Recorder of Deeds of Centre County at Book 2297, Page 745 (hereinafter, the “Property”). The Property is located within Ferguson Township’s (the “Township”) Terraced Streetscape Zoning District pursuant to the Township Zoning Ordinance (the “Ordinance”).

On or about March 14, 2022, Applicant filed an application to the Township (the “Application”) for a “*Preliminary Land Development Plan for West College Avenue Vertical Mixed-Use Development*,” last revised January 31, 2023 (the “Plan”). Specifically, the Plan proposes the redevelopment of the Property with a seven-floor, 75-foot tall, mixed-use building. Vertical mixed use buildings are a permitted use within the Terraced Streetscape provisions of Ordinance § 27-304.2.A(9).

The proposed mixed-use building will include two below-ground parking levels, first floor commercial space, and six floors of residential units, with 107 total units. At the time the Application was filed, the following Ordinance provisions applied:

1. Ordinance § 27-304.3.A(2)(a), which provided that on corner lots of .4 acres of size with frontage on an arterial street, buildings are permitted by right to be 55 feet in height.
2. Ordinance § 27-304.3.A.(2)(b) which provided that:

Additional height up to 75 feet for lots of at least one acre may be obtained through the use of incentives set forth in § 27-304, Subsection 3B below; use of any incentives(s) other than Subsection 3B retains the requirement to obtain conditional use approval.

3. Ordinance § 27-304.3.B.(3) which provided that:

If 15% of the total residential units in a vertical mixed-use building are established and maintained as age-restricted units, an additional 20 feet may be added to the permitted maximum.

4. Ordinance § 27-304.3.B.(2) which provided that:

If a building is complying with §27-716, Workforce Housing, the by right maximum height of 55 feet may be increased to accommodate bonus market rate units, not to exceed 65 feet.

As stated in Note 2(b) on the Plan Cover Sheet, Applicant is proposing at least 15% of the proposed residential units within the building to be subject to an age-restriction allowing for use of the height incentive of Ordinance § 27-304.3.A(2)(b) to increase the allowable building height to 75 feet.

The Plan also Notes that Applicant will be providing a “fee-in-lieu” for workforce housing for 107 units in accordance with Ordinance § 27-716.

Copies of the first 5 pages of the pending Plan showing the existing and proposed configuration of the Property, as well as development details of the vertical mixed-use building, are included with this Application.

The Application and Plan was subject to several reviews by the Township Staff, the Township Engineer, the Centre Regional Planning Agency, the Centre Region Council of Governments Office of Administration Regional Refuse and Recycling Program, and other reviewing agencies. The last such review resulted in the issuance of review letters in and around September and October, 2023. In response to those review letters, Applicant submitted a revised Plan, along with a written response to the prior review letters, on or about January 31, 2023.

On or about February 24, 2023, the Township’s Director of Zoning & Planning issued a new Plan review letter (the “Review Letter”)<sup>1</sup> raising the following relative to the Plan’s compliance with provisions of the Ordinance, to wit:

- (a) “It is staff’s determination that the [Applicant’s] utilization of § 27-304.3.B.3. Building Height Incentives, would not meet the intent nor spirit of the ordinance as established by § 27-304.1.D. by designating age-restricted units for residents at least 21 years and over.”
- (b) “Additionally, staff has determined the invalidity of the building height incentive found in § 27-304.3.B.3.”
- (c) “Additionally, the Township updates the Workforce fee-in-lieu amounts every year by Resolution (2022-28). The draft Workforce Housing Development Agreement will reflect those updated amounts. . . Multifamily Unit Workforce fee-in lieu: \$107,000.”

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<sup>1</sup> The review letter consisted of a cover letter from Jenna Wargo to Ken Beldin, Engineer for the project, and incorporated five technical review memoranda on the pending Plans. The Review Letter attached to this Application is the letter from Jenna Wargo and the memorandum from Zoning Officer Jeffrey Ressler.



The aforementioned “determinations” were not previously set forth in any of the prior review letters issued to the Applicant. A copy of the Review Letter is included with the Application.

This Application requests the following relief:

## **I. APPEAL FROM DETERMINATIONS OF ZONING OFFICER**

The Review Letter purports to incorporate by reference “staff determinations” made by the Township Zoning Administrator, Jeffrey Ressler, in his memo dated February 15, 2023; specifically, the determinations related to the Plan’s compliance with the “intent” of the Building Height Incentives allowed by Ordinance § 27-304.3.B.3, as well as the substantive “validity” of Ordinance § 27-304.3.B.3. However, the Zoning Administrator’s memo enclosed with the Review Letter makes no such specific determinations and simply makes reference back to the Review Letter.

Nevertheless, as the Review Letter purports to represent staff “determination” on these zoning issues, Applicant is appealing these “determinations” to this Board pursuant to the Pennsylvania Municipalities Code (MPC), 53 P.S. 10909.1(a)(3).

The Zoning Administrator’s determinations with respect to § 27-304.3.B.3 are erroneous and an abuse of discretion for the following reasons:

### **A. APPLICANT’S PROPOSAL TO PROVIDE FOR 15% OF THE BUILDING UNITS AS “AGE-RESTRICTED UNITS” COMPLIES WITH THE EXPRESS LANGUAGE OF ORDINANCE § 27-304.3.B.3.**

As stated above, the express language of Ordinance § 27-304.3.B.3 allows for an additional 20 feet to be added to the permitted maximum building height -- “If 15% of the total residential units in a vertical mixed-use building are established and maintained as age restricted units.” The Ordinance defines the term “age-restricted” as “Housing that restricts ownership and/or residency to individuals to a certain age range.” § 27-1102.

The Township Staff purportedly determined that the proposal to establish an age restriction requiring at least one individual within the age-restricted unit to be 21-years old did not meet the “intent nor spirit” of the Ordinance as established by § 27-304.1.D. This determination is in error for three reasons.

First, MPC § 614 provides that “The Zoning officer shall administer the zoning ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to the zoning ordinance.” 53 P.S. § 614. The Ordinance here contains no provision requiring that an “age restricted” property is limited to housing that restricts ownership and/or residency to individuals over a specific age. Accordingly, Applicant’s proposal to include an age restriction on certain units to require residency of at least 1 resident above the age of 21 years old meets the express language of the definition.

Second, provisions of the Statutory Construction Act, 1 Pa. C.S. §§ 1501–1991, are followed in construing a local ordinance. *Patrica v. Zoning Board of Adjustment*, 527 Pa. 267, 274, 590 A.2d 744, 747 (1991); *Council of Middletown Township v. Benham*, 514 Pa. 176, 523 A.2d 311 (1987). Words and phrases of local ordinances shall be construed according to the rules of grammar and according to their common and approved usage. 1 Pa.C.S. § 1903(a); *Patrica*, 527 Pa. at 274, 590 A.2d at 747–48. Where the language of an ordinance is free from all ambiguity, the letter of the ordinance may not be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b). In interpreting provisions of a zoning ordinance, undefined terms must be given their plain, ordinary meaning (1 Pa.C.S. § 1903(a)), and any doubt must be resolved in favor of the landowner and the least restrictive use of the land. *Appeal of Mt. Laurel Racing Association*, 458 A.2d 1043, 1044–45 (Pa. Cmwlth. 1983). Where a word or phrase in a zoning ordinance is defined, a court is bound by the definition. *Hughes v. Sch. Dist. of Pgh.*, 379 Pa. 145, 108 A.2d 698, 699 (1954). Finally, the MPC requires that “the language shall be interpreted, where doubt exists as to the intended meaning of the language written and enacted by the governing body, in favor of the property owner and against any implied extension of the restriction.” 53 P.S. § 10603.1.

The express language of Ordinance § 27-304.3.B.3 requires that, to be entitled to the 20-foot building height incentive, only 15% of the proposed units within a vertical mixed-use building be reserved as “age-restricted”. Applicant’s proposal to include an age restriction requiring that at least one resident in 15% of the units must 21 years or older meets the plain definition of “age restriction” and establishes Applicant’s entitlement to utilize this incentive. The Zoning Officer erred by ignoring the plain, unambiguous language of the § 27-304.3.B.3 and the definition of “age-restricted” in favor of suggesting that the “intent and spirit” of the provision was to require an age-restriction of 55-years or older. There is no language of the Ordinance that supports such a restriction.

Third, the Township Staff purportedly determined that the proposed age restriction of requiring at least one resident in a restricted unit to be 21 years or older was inconsistent with the intent of the Ordinance established by §27-304.3.B.3. That section provides only that one of the purposes of the Terraced Streetscape Districts was to provide “opportunities to integrate age and income groups through the provision of a wide range of housing alternatives that are suitably mixed through the zoning district.” It is unclear how the proposed age restriction is inconsistent with or fails to satisfy this purpose.

Applicant requests that this Board reverse the Zoning Officer’s “determination” that the proposed age restriction that at least one resident of the unit be 21-years or older in 15% of the proposed dwellings in the vertical mixed used building does not comply with the requirement of Ordinance § 27-304.3.B.3.

**B. THE ZONING ADMINISTRATOR HAS NO AUTHORITY TO DETERMINE THAT § 27-304.3.B.3. IS SUBSTANTIVELY INVALID.**

The Township Zoning Administrator also purportedly determined that the incentive established by Ordinance § 27-304.3.B.3 is “invalid” and, therefore, not applicable. This determination is in error for several reasons.

First, the Township Zoning Officer has no authority under the MPC to render determinations regarding the validity or invalidity of zoning provisions. Rather, the Zoning Administrator is limited to administering the ordinance in accordance with its literal terms. 53 P.S. § 614.

Second, jurisdiction over substantive validity questions is exclusively vested with the Zoning Hearing Board or Governing Body pursuant to MPC § 916.1, where a validity challenge has been raised by either a landowner or a person aggrieved by a use or development of land permitted on the land of another. 53 P.S. § 10916.1. No such validity challenge to § 27-304.3.B.3 has been filed. As such, this Board does not have jurisdiction to determine that the provision is invalid under the Fair Housing Act (FHA).

Third, even if the validity of the Ordinance § 27-304.3.B.3 were at issue, the Zoning Administrator had neither the expertise nor the authority to determine that the provisions of the Ordinance “require or permit any action” that would be a “discriminatory housing practice” under the FHA. Simply put, any determination as to whether the restrictions proposed by the Applicant do or do not violate the FHA are solely within the purview of the State and Federal Courts.

Finally, even if the validity of Ordinance § 27-304.3.B.3 were at issue, the language of that section does not “require or permit” any action that would be a “discriminatory housing practice” so as to violate the provisions of the FHA. Rather, the FHA provides that it is unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of . . . familial status . . .” or to “make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . familial status, . . . or an intention to make any such preference, limitation or discrimination.” 42 U.S.C. § 3604(b)&(c). The imposition of an age restriction on 15% of the residential units in this building requiring that at least one resident of those units be 21 years or older does not discriminate based on “familial status.” Moreover, nothing in the language of Ordinance § 27-304.3.B.3 suggests that an owner is required to or permitted to discriminate based on “familial status,” and there are many different potential age restriction regimes that could be imposed that do not result in a violation of the FHA.

To the contrary, it is only the Staff’s interpretation of Ordinance § 27-304.3.B.3 that could potentially result in a violation of the FHA. Specifically, Staff’s insistence that all occupants of the age-restricted unit must meet the age restriction -- a requirement that is not found in the language of the provision -- is the requirement that could result in a violation of the FHA.<sup>2</sup> In attempting to ascertain the intent of the governing body in adopting the ordinance, it must receive a sensible construction and should be construed, if possible, to avoid a construction that would be absurd, unreasonable or impossible of performance. 1 Pa. C.S.A. § 1922(a). The

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<sup>2</sup> It should be noted that under FHA § 3607(b)(2), the prohibition on discriminating based on familial status does not apply to “housing for older person”. However, even the definition for “housing for older persons” provided in that section related to housing occupied by persons 55 years or older requires only “one person” who is 55 years or older. Moreover, as the Ordinance does not use or reference the provisions of the FHA, that statute has no applicability here.

Staff's interpretation of Ordinance § 27-304.3.B.3 is directly contrary to this rule of interpretation, in that it creates a scenario in which it would be impossible to perform. Accordingly, this Board should reverse the determination of the Zoning Administrator.

**C. THE 2023 FEE-IN LIEU OF WORKFORCE HOUSING DOES NOT APPLY TO THE PLAN.**

**1. The increased 2023 fee-in-lieu cannot be applied to the Plan under the provisions of MPC § 508(4)(i)**

The Application was filed on or about March 14, 2022. At the time of filing, the fee-in-lieu of Workforce Housing established pursuant to § 27-716(8)(b) was \$53,000 per unit. In January, 2023, the Township adopted a revised fee schedule which raised the fee-in-lieu amount to \$107,000 per unit. The Review Letter "determined" that the January, 2023, revised fee applied to the Application. This determination is contrary to the dictates of the MPC and Pennsylvania law and must be reversed.

Specifically, MPC § 508(4)(i) provides, in part:

From the time an application for approval of a plat, whether preliminary or final, is duly filed as provided in the subdivision and land development ordinance, and while such application is pending approval or disapproval, no change or amendment of the zoning, subdivision or other governing ordinance or plan shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances as or plans as they stood at the time the application was duly filed.

53 P.S. § 10508(4)(i).

The Pennsylvania Courts have held that the protections for subdivisions and land development plan applications under MPC § 508 apply where there has been a revision and increase in the fees applicable to the plan. Specifically, in *Board of Com'rs of South Whitehall Tp., Lehigh County v. Toll Bros. Inc.*, 607 A.2d 824 (Pa. Cmwlth. 1992), the Court held that increased water and sewer connection fees could not be applied to a previously-approved plan. Likewise, in *Raum v. Board of Supervisors of Tredyffrin Township*, 370 A.2d 777 (Pa. Cmwlth. 1977), the Court held that the subsequently-enacted increased fee schedules could not be applied to approved plans.

Here, the Board effectively amended the fee amount established by the Ordinance through the adoption of the 2023 Fee Schedule. As this change to the fee amount occurred after the filing of the Application, it cannot be applied to the Plan. This substantially increased fee materially and adversely affects the Applicant. Accordingly, this Board should reverse the determination of the Director of Zoning & Planning and determine that the Plan is subject to the 2022 fee-in-lieu of Workforce Housing.

## **2. The 2023 Fee-in-lieu amount is an unlawful and unenforceable tax.**

In the alternative, Applicant challenges the imposition of the 2023 fee-in-lieu amount as an unlawful special tax collected for revenue purposes, and not an appropriate “fee.” The Pennsylvania Courts have long held that a municipality may not use its power to charge fees for issuing licenses or permits for the purpose of raising revenue and, further, that the fees charged must be directly related to the costs incurred by the municipality in issuing the permit. *See Raum, supra.*; *Martin Media v. Hempfield Township Zoning Hearing Board*, 671 A.2d 1211 (Pa. Cmwlth. 1996); *Skepton v. Borough of Wilson*, 755 A.2d 1267 (Pa. 2000). “A license fee is distinguishable from a tax[,] which is a revenue producing measure characterized by the production of a high proportion of income relative to the costs of collection and supervision.” *Thompson v. City of Altoona Code Appeals Bd.*, 934 A.2d 130, 133 (Pa. Cmwlth. 2007). A municipality cannot impose a tax upon a business under the guise of exercising its police power, and, therefore, a license fee will be struck down if its amount is “grossly disproportionate to the sum required to pay the cost of the due regulation of the business.” *Flynn v. Horst*, ... 51 A.2d 54, 60 ([Pa.] 1947). *See, County of Northumberland v. Township of Coal (unreported)*, 288 A.3d 138, 2022 WL 10766760, (Pa. Cmwlth. 2022).

Here, there is no relationship between the amount of the “fee” imposed and the costs incurred by the Township in administering any license or permit program. Moreover, even if there were a relationship between the amount of the “fee” and the costs of administering the program, there can be no rational explanation for the 100% increase in the amount of the fee between 2022 and 2023. Finally, by its express terms, the purpose of the “fee” imposed here is to generate revenue for a Workforce Housing Fund to be “used to further the Township’s mission to maintain and further Workforce Housing within Ferguson Township.” § 27-716(8)(b)(v). As laudable as this mission may be, the imposition of what is clearly a revenue-generating tax that is only imposed on residential developers is not authorized by Pennsylvania’s Local Tax Enabling Act, 53 P.S. § 6924.101, et. seq.

Accordingly, this Board should determine that the 2023 fee-in-lieu is an unlawful and unenforceable tax which cannot be enforced against the Applicant. To the extent the Applicant agrees to make a contribution to the Township’s Workforce Housing Fund, a condition of Plan approval is up to the Applicant.

## **3. The “Workforce Housing Ordinance” provisions (Ordinance § 27-716) mandating that Applicant provide for “workforce housing units” or pay a fee-in-lieu of providing such units are invalid and unenforceable.**

In the alternative, Applicant challenges the substantive validity of the provisions of Ordinance § 27-716 that require a residential developer to provide “workforce housing units” as part of the development or pay a fee-in-lieu of providing such units pursuant to MPC § 909.1(a)(1). 53 P.S. § 10909.1(a)(1). Specifically, Applicant challenges the substantive validity of Ordinance § 27-716.4 (Applicability) and § 27-716.6 (Standards), which provide:

§27-614.4 “Workforce Housing **must be provided** in the following Developments and minor additions within the Terraced Streetscape (TS) Zoning District and the Traditional Town Development (TTD) Zoning Districts that results in:

- a) Ten or more residential dwelling units;
- b) Renovation of a residential structure that results in ten or more additional residential dwelling units within five years; and
- c) Conversion of a nonresidential property to a residential property that results in ten or more residential dwelling units within five years.

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§ 27-716.6 (Standards)-- “Workforce Housing **must be provided**, or a fee-in-lieu of providing Workforce Housing must be paid, according to the following standards....”

The provisions of Ordinance § 27-716.6 go on to impose a mandatory obligation on certain residential developers to either a) dedicate portions of their properties for use as subsidized housing; b) construct subsidized housing at an off-site location; or c) pay substantial monetary fees-in-lieu of providing the first two options. The requirement to provide “workforce housing” units or pay a fee-in-lieu of such units is mandatory regardless of whether the landowner is pursuing or utilizing an “incentive” for its project.

As such, the above Ordinance provisions are unlawful, invalid and unenforceable under Pennsylvania law for the following reasons:

First, as stated by the Pennsylvania Supreme Court in *Kline v. City of Harrisburg*, 362 Pa. 438, 68 A.2d 182, 184-185 (1949):

“Municipalities are not sovereigns. Their powers are limited. It has been said that: ‘Nothing is better settled than that a municipal corporation does not possess and cannot exercise any other than the following powers: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable. Any fair, reasonable doubt as to the existence of power is resolved by the courts against its existence in the corporation, and therefore denied.’

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A zoning ordinance is confined by the limitations fixed in the enabling statute, and a particular zoning ordinance or provision thereof may be declared void because it exceeds the power granted by the zoning statutory or charter provision.”

*Id.* (citations omitted). *See also, Naylor v. Township of Hellam*, 565 Pa. 397, 773 A.2d 770 (Pa. 2001).

The power to legislate zoning is reserved to a municipality’s governing body, and the extent of the provisions that can be included in a zoning ordinance is established by MPC § 603. 53 P.S. § 10603. However, the MPC does not contain any provision authorizing municipalities to require residential developers to dedicate portions of their property for subsidized housing or pay a fee in-lieu-of such dedication. *See MPC generally.* As such, the Township does not have authority to require as part of the Zoning Ordinance that residential developers dedicate or provide for “workforce housing units” or pay a fee-in-lieu of providing such units.

Second, the MPC does contain provisions allowing for municipalities to require dedication of land for public purposes or the payment of fees-in-lieu of such dedication as part of the Subdivision and Land Development Ordinance. 53 P.S. § 10503(11). However, the provisions of § 27-716 at issue here were not adopted as part of the Township’s SALDO pursuant to this provision of the MPC. In any event, MPC § 503(11) does not allow for provisions of the SALDO requiring dedication of land for “workforce housing units,” construction of “workforce housing units” off site, or the payment of a fee-in-lieu of providing “workforce housing.” Likewise, the requirement to provide “workforce housing units” was not adopted pursuant to or in accordance with MPC Article V-A, 53 P.S. § 10501-A et seq., which authorizes a municipality to enact impact fee ordinances applicable to any new development or subdivision to fund offsite public transportation capital improvements. Moreover, the fact that the Legislature believed it necessary to delegated the power to municipalities to require dedication of land and/or the payment of fees-in-lieu of such dedication in § 503(11) and Article V-A, belies any argument that such power is “implied in or incident to” the zoning powers expressly granted to the Township under the MPC.

Third, the challenged provisions of Ordinance § 27-716 are directly contrary to and prohibited by the MPC § 10503-A(b). That section of the MPC expressly provides as follows:

(b) No municipality shall have the power to require as a condition for approval of a land development or subdivision application the **construction, dedication or payment of any offsite improvements or capital expenditures of any nature whatsoever or impose any contribution in lieu thereof**, exaction fee, or any connection, tapping or similar fee except as may be specifically authorized under this act.

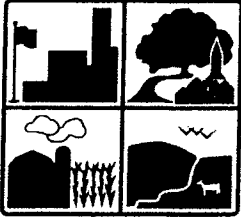
53 P.S. §10503–A(b). (emphasis added).

The challenged provisions of Ordinance § 27-716 require the Applicant to either dedicate a portion of the proposed units for subsidized “workforce housing” (subsidized by the Developer, not the Township), make dedication of offsite units, or make a contribution in lieu thereof as a condition of receiving approval of the Plan. These provisions are clearly prohibited by and violate MPC § 503-A(b) and are, therefore, invalid. *See, Trojnacki v. Board of Supervisors Solebury Tp.*, 842 A.2d 503, 510 (Pa. Cmwlth. 2004) (holding that provisions of the township’s “Tree Replacement Ordinance” were invalid under MPC § 503-A(b)); *In re Maibach, LLC*, 26 A.3d 1213 (holding that condition imposed on conditional use approval that required developer to pay “contribution in lieu of” capital expenditure violated MPC § 503-A(b)).

Finally, even assuming *arguendo*, that the challenged provisions of § 27-716 are authorized under the MPC and do not violate MPC § 503-A(b), the requirement that a landowner dedicate a portion of the property for subsidized “workforce housing” is an uncompensated regulatory taking in violation of the Takings Clause of the Fifth Amendment. *See Nollan v. California Coastal Com’n*, 483 U.S. 825, 107 S.Ct.3141 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309 (1994). Under the well-settled doctrine of “unconstitutional conditions,” the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit. There is no “essential nexus” between the approval of a proposed residential development and the requirement that the developer dedicate a portion of its property to provide subsidized housing units for the general public benefit. *See, Bd. of Sup’rs of West Marlborough Tp. v. Fiechter*, 566 A.2d 370, 373 (Pa. Cmwlth. 1989) and *Meixsell v. Ross tp. Bd. of Sup’rs*, 623 A.2d 429 (Pa. Cmwlth. 1993) (holding that a municipality may not require a dedication of right-of-way along an adjacent street as a condition of subdivision plan approval).

For the above reasons, the Board should conclude that the challenged provisions of Ordinance § 27-716 are unlawful, invalid and unenforceable.





# TOWNSHIP OF FERGUSON

3147 Research Drive • State College, Pennsylvania 16801  
Telephone: 814-238-4651 • Fax: 814-238-3454  
www.twp.ferguson.pa.us

February 24, 2023

Ken Beldin  
Gwin, Dobson & Foreman  
3121 Fairway Drive  
Altoona, PA 16602

## RE: 1004 West College Vertical Mixed Use Preliminary Land Development Plan—3rd Review

Dear Mr. Beldin,

Thank you for submitting the 1004 West College Avenue Vertical Mixed Use Preliminary Land Development Plan, dated, March 14, 2022, and last revised January 31, 2023, for our review. The submission has been reviewed by staff and agencies as required by the Township's Code of Ordinances.

Please review and respond to the following comments and resubmit at your earliest convenience. Feel free to contact staff with any questions.

- Please delineate all 11 age-restricted units on the plan. **Comment addressed.**
- The entire unit (all bedrooms) that is designated as age restricted must have all occupants in that unit meeting the age restriction. **Comment not addressed. It is staff's determination that the owner's utilization of §27-304.3.B.3. Building Height Incentives, would not meet the intent nor spirit of the ordinance as established by §27-304.1.D. by designating age-restricted units for residents that are at least 21 years and over. Additionally, staff has determined the invalidity of the building height incentive found in §27-304.3.B.3. In order for a facility to be exempt from discriminating based on familial status, 80% of the total units need to be 55 and older, not 15%. Compliance with a local ordinance is not a defense under the Fair Housing Act (FHA), which contains a preemption provision stating that "any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under the FHA shall to that extent be invalid.**
- Please include a note on the plan that will include yearly checks and inspections by the Zoning Officer to ensure each age restricted unit is being rented to that age. The applicant will need to provide proof that the individuals in those units are of the appropriate age. **Not applicable. This comment can be stricken from the plan. The age-restricted units, as proposed, cannot be utilized because that incentive is invalid.**
- You are proposing 107 units in your development, and you are required to provide 11 workforce housing units. Please indicate on the plan if you will be providing workforce units on site (delineate those units) or will be paying fee-in-lieu. The current fee-in-lieu for a multifamily unit is \$53,000.00. Please include a note on your plan indicating how you will meet §27-716. **Partially addressed. Thank you for providing a draft Workforce Housing Development Agreement. It is currently being**

***reviewed by the Township Solicitor for consistency with regional agreements. The Township engages with Centre County Housing & Land Trust (CCHLT) to manage the Workforce Housing Program and the Trust prefers agreements to be similar to other regional agreements that are being managed by CCHLT. The draft will be updated to reflect the accurate unit count without the age-restricted units and building height incentive included. Additionally, the Township updates the Workforce fee-in-lieu amounts every year by Resolution (2022-28). The draft Workforce Housing Development Agreement will reflect those updated amounts.***

***I summarized those changes and calculations below:***

***Total Proposed: 71 Residential Units***

***Workforce Housing Units: 7 Units***

***Multifamily Unit Workforce fee-in-lieu: \$107,000***

***Total Fee-in-Lieu: \$749,000 for 7 Workforce Housing Units***

New Comment:

- The draft road maintenance agreement has been reviewed by staff and will need to be amended to include all property owners who access the existing private street. §22-504.2.A.(2).
  - Property owners with rights to access Calder Alley can be determined by identifying the parcels created when the original subdivision created Calder Alley.

Should you have any additional questions, please contact me at [jwargo@twp.ferguson.pa.us](mailto:jwargo@twp.ferguson.pa.us) or 570-452-5102.

Sincerely,



Jenna Wargo, AICP  
Director of Planning & Zoning

**cc:** Kristina Bassett, Community Planner  
**LF:** 2022-1

**TO:** Jenna Wargo, Planning Director

**FROM:** Jeffrey Ressler, Zoning Administrator

**DATE:** February 15, 2023

**SUBJECT:** West College Mixed Use Development Preliminary Plan 3rd Review

1. Proposed street address and address for each unit, if applicable, must be included on the plan. (Chapter 22, Section 401.1.A.3.q) **Comment Remains.**
2. A time extension must be submitted with any revised plan. (Chapter 22, Section 303) **Comment Remains.**
3. A digital copy of the plan in accordance with Township requirements must be provided to the Township prior to final plan signature. (Chapter 22, Section 307.7) **Comment Remains.**
4. The plan lists a proposed height of 75' though the use of incentives. The incentive proposed is to restrict 15% of the residential units to age restricted units. What is the age range for the restricted units? **Comment Not Addressed. Please refer to the Planning Director's letter.**
5. The plan lists the height of the building at 75'. The Zoning Ordinance in Chapter 27210.1.B Computation details that height of a structure shall be computed as the vertical distance measured from the mean level of the ground surrounding the structure to it's highest point. Please provide the documentation on the height was calculated. **Comment Addressed.**
6. The property is in the Source Water Protection Overlay District Zone 2. All land development plans for regulated land uses Zone 2 must comply with the requirements of Chapter 22-514. Source Water Protection Overlay District Design Standards. **Comment Addressed.**
7. The plan lists proposed uses as commercial. Chapter 27-405 list specific commercial uses as regulated land uses and provides standards that must be complied with. Please reference the Source Water Protection Overlay District Requirements on the Plan. **Comment Addressed with Plan Note**
8. Final house numbers as approved by the township must be included on the final plan. (Chapter 22, Section 402.D) **Comment Remains.**
9. Bicycle parking for the site was calculated for the site for commercial (general retail) use. If the use changes to other general retail additional bicycle parking will be required. **Comment Addressed.**
18. Proposed bicycle parking must be in compliance with the standards listed in Chapter 225C02. **Comment Addressed.**

**NOTES:**

- PROPERTY INFORMATION:**  
 LOT CONSOLIDATION PLAN RECORDED ON AUGUST 25, 2022, IN DEED BOOK 98, PAGE 6.  
 OWNER/DEVELOPER: 1004 WEST COLLEGE, LLC,  
 A DELAWARE LIMITED LIABILITY COMPANY  
 250 E BEAVER AVENUE, SUITE 700  
 STATE COLLEGE, PA 16801  
 SITE ADDRESS: 1004 W COLLEGE AVENUE  
 STATE COLLEGE, PA 16801  
 MUNICIPALITY: FERGUSON TOWNSHIP  
 TAX ID NO.: 24-002A,057-0000-  
 DEED: RECORD BOOK 2297, PAGE 745  
 GROSS LOT SIZE: 66,870 S.F. (1.535 AC.)  
 NET LOT SIZE: 60,987 S.F. (1.400 AC.)
- TERRACED STREETScape DISTRICT ZONING INFORMATION:**  
 A. EXISTING SITE USE: COMMERCIAL BUILDINGS  
 PROPOSED SITE USE: VERTICAL MIXED USE BUILDING  
 B. **BUILDING HEIGHT:** 55' MAXIMUM BY RIGHT, WITH 55' MINIMUM ON CORNER LOTS - §27-304.3.A.(2)(A)  
 WITH ADDITIONAL HEIGHT UP TO 75' FOR LOTS OF AT LEAST ONE ACRE WHICH MAY BE OBTAINED THROUGH THE USE OF INCENTIVES. THE VERTICAL MIXED USE BUILDING INTENDS TO RESTRICT 15% OF THE TOTAL RESIDENTIAL UNITS AS AGE-RESTRICTED UNITS, THEREFORE AN ADDITIONAL 20' MAY BE ADDED TO THE PERMITTED MAXIMUM HEIGHT FOR A TOTAL BUILDING HEIGHT OF 75' [§27-304.3.B.(4)].  
 C. **YARD REGULATIONS:**  
 FRONT: BUILDINGS SHALL BE LOCATED ON THE SIDEWALK LINE OF THE PRIMARY STREET. SIDEWALKS SHALL BE 12 FEET DEEP FROM THE BACK EDGE OF THE CURB ON WEST COLLEGE AVENUE AND A MINIMUM OF 5 FEET DEEP FROM THE BACK EDGE OF THE CURB ON ALL SIDE STREETS AND CROSS STREETS OFF OF WEST COLLEGE AVENUE. - §27-304.3.D.(1)(a)  
 SIDE: 0' FOR PROPERTIES WITH FRONTAGE ON WEST COLLEGE AVENUE, 10' OTHERWISE - §27-304.3.D.(2)  
 REAR: ON EACH LOT THERE SHALL BE A REAR YARD, THE DEPTH OF WHICH SHALL BE 5'. HOWEVER, IF THE REAR YARD IS ADJACENT TO A PROPERTY WITH A SINGLE-FAMILY RESIDENTIAL DWELLING UNIT, OR A PROPERTY OUTSIDE OF THE TS DISTRICT, A 12' LANDSCAPED BUFFER SHALL BE PROVIDED AT THE PROPERTY LINE AND SHALL CONSTITUTE THE REQUIRED SETBACK. - §27-304.3.D.(3)(A).  
 IF THE REAR YARD OF A LOT ABUTS AN ALLEY, WHETHER IN OR OUT OF THE DISTRICT, A 5' CONCRETE SIDEWALK SHALL BE PROVIDED ALONG THE ENTIRE LENGTH OF THE PROPERTY ADJACENT TO THE ALLEY. BUILDINGS MAY DIRECTLY ABUT THE SIDEWALK. - §27-304.3.D.(3)(B).  
 D. **IMPERVIOUS LOT COVERAGE:** 75% - §27-304.3.F  
 MAXIMUM ALLOWABLE IMPERVIOUS COVERAGE = 60,987 S.F. x 0.75 = 45,740 S.F.  
 EXISTING IMPERVIOUS COVERAGE = 57,644 S.F. (57,644/60,987 S.F. = 94.5%)  
 PROPOSED IMPERVIOUS COVERAGE = 42,328 S.F. (42,328/60,987 S.F. = 69.4%)  
 PROPOSED PERVIOUS COVERAGE = 18,659 S.F. (18,659/60,987 S.F. = 30.6%)  
 PROPOSED BUILDING COVERAGE = 36,019 S.F.
- THE DATE OF APPLICATION FOR ZONING PERMIT IS MARCH 14, 2022.**
- SITE INFORMATION:**  
 A. SOIL LIMITS AND DESCRIPTIONS HAVE BEEN TAKEN FROM THE USDA NATURAL RESOURCES CONSERVATION SERVICE WEB SOIL SURVEY, SURVEY AREA DATA VERSION 21, DATED AUGUST 31, 2021.  
 B. THE ENTIRETY OF THE SUBJECT PROPERTY IS LOCATED WITHIN ZONE X AS SHOWN ON FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FIRM NUMBER 42027C0636F FOR THE TOWNSHIP OF FERGUSON, BOROUGH OF STATE COLLEGE, AND TOWNSHIP OF COLLEGE, EFFECTIVE DATE MAY 4, 2009.  
 C. THERE ARE NO WETLANDS ON THE SUBJECT PROPERTY ACCORDING TO THE NATIONAL WETLANDS INVENTORY (U.S. FISH & WILDLIFE SERVICE) FOR STATE COLLEGE, PA, LAST UPDATED JUNE 2020.  
 D. ALL STORMWATER FACILITIES AS-BUILT SHALL BE PROVIDED BY THE DEVELOPER TO FERGUSON TOWNSHIP PRIOR TO OCCUPANCY OR RELEASE OF ANY SURETY.  
 E. THE DEVELOPER WILL ENTER INTO A WORKFORCE HOUSING AGREEMENT, AS REQUIRED UNDER §27-716, PROVIDING FOR EITHER THE REQUIRED NUMBER OF WORKFORCE UNITS TO BE PROVIDED ONSITE, OR IN THE ALTERNATIVE, THE REQUIRED FEE-IN-LIEU PAYMENT TO FERGUSON TOWNSHIP.  
 F. REFER TO "TRIP GENERATION ANALYSIS - 1004 & 1006 W COLLEGE AVENUE - FERGUSON TOWNSHIP, CENTRE COUNTY, PA," PREPARED BY DAVID E. WOOSTER AND ASSOCIATES, INC. FOR ADDITIONAL INFORMATION.  
 G. REFER TO "STORMWATER MANAGEMENT SITE PLAN FOR WEST COLLEGE AVENUE VERTICAL MIXED USE DEVELOPMENT," PREPARED BY GWIN, DOBSON & FOREMAN, INC. FOR FURTHER INFORMATION.  
 H. PRIOR TO STARTING WORK AT THE SITE, THE OWNER AND CONTRACTOR ARE REQUIRED TO SCHEDULE AND ATTEND A PRE-CONSTRUCTION MEETING WITH FERGUSON TOWNSHIP PRIOR TO CONSTRUCTING STORMWATER IMPROVEMENTS AND TO SCHEDULE AND ATTEND A SEPARATE PRE-CONSTRUCTION MEETING WITH FERGUSON TOWNSHIP PRIOR TO CONSTRUCTING PUBLIC IMPROVEMENTS.  
 I. THE OWNER MUST OBTAIN A PAVEMENT CUT PERMIT FROM FERGUSON TOWNSHIP PRIOR TO ANY WORK WITHIN THE BUTZ STREET RIGHT-OF-WAY AND A HIGHWAY OCCUPANCY PERMIT FROM PENNDOT PRIOR TO ANY WORK WITHIN THE COLLEGE AVENUE RIGHT-OF-WAY. BOTH OF THESE PERMITS MUST BE OBTAINED PRIOR TO ISSUANCE OF THE BUILDING PERMIT.  
 J. **FIRE PROTECTION:**  
 A. THE PROPOSED BUILDING IS REQUIRED TO BE SPRINKLERED BASED ON THE USE/OCCUPANCY.  
 B. EXISTING FIRE HYDRANT FLOW DATA:  
 HYDRANT #30212  
 LOCATION: NORTH CORNER OF THE INTERSECTION OF W COLLEGE AVENUE AND BUCKHOUT STREET  
 DATE TESTED: 5/14/21  
 TEST RESULTS: 35 PSI STATIC, 22 PSI RESIDUAL, 1300 GPM  
 HYDRANT #30216  
 LOCATION: SOUTH CORNER OF THE INTERSECTION OF W COLLEGE AVENUE AND OSMOND STREET  
 DATE TESTED: 5/14/21  
 TEST RESULTS: 33 PSI STATIC, 20 PSI RESIDUAL, 1300 GPM

# PRELIMINARY LAND DEVELOPMENT PLAN FOR WEST COLLEGE AVENUE VERTICAL MIXED USE DEVELOPMENT

## FERGUSON TOWNSHIP CENTRE COUNTY, PENNSYLVANIA

MARCH 14, 2022  
LAST REVISED JANUARY 31, 2023



GWIN  
DOBSON &  
FOREMAN  
ENGINEERS

3121 Fairway Drive  
Altoona, PA 16602  
814.943.5214  
gdfengineers.com

**WORK FORCE HOUSE FEE-IN-LIEU NOTE:**

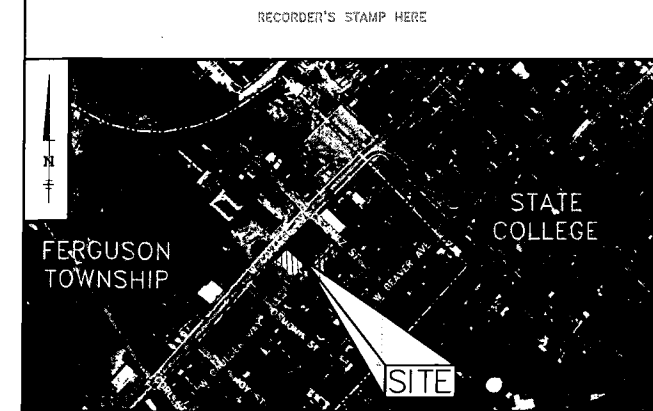
REGULATORY WORKFORCE HOUSING:  
THE OWNER HAS ELECTED TO PROVIDE A FEE-IN-LIEU FOR WORKFORCE HOUSING FOR 107 UNITS IN ACCORDANCE WITH §27-716.

VEHICLE PARKING SUMMARY	
<b>PARKING MATRIX FOR 107 UNITS</b>	
1 BR (1 SPACE PER UNIT) = 7 x 1 = 7 VEHICLE SPACES REQUIRED	
2 BR (1.5 SPACES PER UNIT) = 52 x 1.5 = 78 VEHICLE SPACES REQUIRED	
3 BR (1.5 SPACES PER UNIT) = 48 x 1.5 = 72 SPACES VEHICLE REQUIRED	
COMMERCIAL = 10,810 S.F. x 1/500 = 22 VEHICLE SPACES REQUIRED	
OUTDOOR SEATING = 1,473 S.F. x 1/500 = 3 VEHICLE SPACES REQUIRED	
7 + 78 + 75 + 22 + 3 = 182	
<b>REQUIRED PARKING SUBTOTAL = 182 VEHICLE SPACES</b>	
<b>BICYCLE SPACE/PARKING SPACE REDUCTION</b>	
TOTAL BICYCLE SPACES PROVIDED = 22 + 144 = 166	
6 BICYCLE PARKING SPACES = REDUCTION OF 1 VEHICLE PARKING SPACE	
166/6 = REDUCTION OF 27 VEHICLE PARKING SPACES	
182 VEHICLE SPACES - 27 SPACE REDUCTION = 155 VEHICLE SPACES	
<b>155 VEHICLE SPACES REQUIRED</b>	
<b>TOTAL PARKING PROVIDED</b>	
LOWER LEVEL 1 = 96 VEHICLE SPACES	
LOWER LEVEL 2 = 63 VEHICLE SPACES	
96 + 63 = 159 VEHICLE SPACES	
<b>TOTAL 159 VEHICLE SPACES PROVIDED</b>	

BUILDING USE SUMMARY					
LEVEL	USE	GROSS FLOOR AREA	EXTERIOR SPACE	GROSS OCC FLOOR AREA	DESCRIPTION
LOWER LEVEL 2	PARKING (S-2)	23,988 S.F.		23,988 S.F.	
	BLDG COMMON (MIXED USE)	3,586 S.F.		2,202 S.F.	STAIRS, MECH, ELEVATOR, STORAGE, CORRIDOR
LOWER LEVEL 1	PARKING (S-2)	45,938 S.F.		45,938 S.F.	
	BLDG COMMON (MIXED USE)	2,985 S.F.		2,040 S.F.	STAIRS, MECH., ELEVATOR,
1ST FLOOR	ARCADE		4,706 S.F.		
	RES LOBBY (R-2)	925 S.F.		925 S.F.	
	COMMERCIAL (M)	10,810 S.F.		10,810 S.F.	
	BLDG COMMON (MIXED USE)	5,229 S.F.		2,097 S.F.	STAIRS, ELEC., ELEVATOR, LOADING, TRASH RM., CORRIDOR
2ND FLOOR	APARTMENT (R-2)	18,884 S.F.		18,884 S.F.	17 APARTMENT UNITS
	RES AMENITY (A-3)		8,427 S.F.		RESIDENT AMENITY DECK
3RD FLOOR	RES AMENITY (A-3)	1,284 S.F.		1,284 S.F.	RESIDENT CLUB ROOM
	BLDG COMMON (MIXED USE)	3,894 S.F.		120 S.F.	STAIRS, TRASH RM., CORRIDOR
4TH FLOOR	APARTMENT (R-2)	20,127 S.F.		20,127 S.F.	18 APARTMENT UNITS
	BLDG COMMON (MIXED USE)	882 S.F.		120 S.F.	STAIRS, TRASH RM., CORRIDOR
5TH FLOOR	APARTMENT (R-2)	20,127 S.F.		20,127 S.F.	18 APARTMENT UNITS
	BLDG COMMON (MIXED USE)	882 S.F.		120 S.F.	STAIRS, TRASH RM., CORRIDOR
6TH FLOOR	APARTMENT (R-2)	20,127 S.F.		20,127 S.F.	18 APARTMENT UNITS
	BLDG COMMON (MIXED USE)	882 S.F.		120 S.F.	STAIRS, TRASH RM., CORRIDOR
7TH FLOOR	APARTMENT (R-2)	20,127 S.F.		20,127 S.F.	18 APARTMENT UNITS
	BLDG COMMON (MIXED USE)	882 S.F.		120 S.F.	STAIRS, TRASH RM., CORRIDOR
TOTAL		222,548 S.F.	13,133 S.F.	209,503 S.F.	

BICYCLE PARKING SPACE SUMMARY			
GENERAL USE CATEGORY	SPECIFIC USE	NUMBER OF SHORT-TERM BICYCLE PARKING SPACES REQUIRED	NUMBER OF LONG-TERM BICYCLE PARKING SPACES REQUIRED
RESIDENTIAL	MULTIFAMILY DWELLING, MORE THAN 4 UNITS:	0.05 PER BEDROOM = 255 x 0.05 = 12.75	0.5 PER BEDROOM = 255 x 0.05 = 12.75
	A. WITHOUT PRIVATE GARAGE OR EQUIVALENT SEPARATE STORAGE SPACE FOR EACH UNIT	13 SHORT-TERM SPACES REQUIRED	128 LONG-TERM SPACES REQUIRED
		13 SHORT-TERM SPACES PROVIDED	142 LONG-TERM SPACES PROVIDED
NONRESIDENTIAL	COMMERCIAL	1 PER 5,000 S.F. OF FLOOR AREA = 10,810/5,000 = 2.16	1 PER 10,000 TO 12,000 S.F. OF FLOOR AREA = 10,810/10,000 = 1.08
		3 SHORT-TERM SPACES REQUIRED	2 LONG-TERM SPACES REQUIRED
		9 SHORT-TERM SPACES PROVIDED	2 LONG-TERM SPACES PROVIDED
TOTALS		22 SHORT-TERM SPACES PROVIDED	144 LONG-TERM SPACES PROVIDED

UNIT MATRIX				
FLOOR	1BR	2BR	3BR	TOTAL
2	2	7	8	17 UNITS/40 BEDROOMS
3	1	9	8	18 UNITS/43 BEDROOMS
4	1	9	8	18 UNITS/43 BEDROOMS
5	1	9	8	18 UNITS/43 BEDROOMS
6	1	9	8	18 UNITS/43 BEDROOMS
7	1	9	8	18 UNITS/43 BEDROOMS
TOTAL	7	52	48	107 UNITS/255 BEDROOMS



KEY MAP  
1" = 400'

**CERTIFICATE OF OWNERSHIP AND STATEMENT OF INTENT**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CENTRE

ON THIS, THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED ALEX D. SAHAKIAN, BEING PRESIDENT OF 1004 WEST COLLEGE, LLC, THE OWNER OF THE PROPERTY SHOWN ON THIS PLAN, THAT HE IS AUTHORIZED TO EXECUTE SAID PLAN, THAT THE PLAN IS HIS ACT AND DEED AND HE DESIRES THE SAME TO BE RECORDED AS SUCH.

SIGNATURE -- ALEX D. SAHAKIAN, PRESIDENT \_\_\_\_\_

SIGNATURE OF NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_, 20\_\_\_\_

**DESIGN PROFESSIONAL CERTIFICATION**

I, KENNETH WILLIAM BELDIN, JR., PE, HAVE REVIEWED AND HEREBY CERTIFY THAT THIS LAND DEVELOPMENT MEETS ALL DESIGN REQUIREMENTS OF THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, ZONING ORDINANCE AND ALL OTHER APPLICABLE CHAPTERS OF THE FERGUSON TOWNSHIP CODE.

**FERGUSON TOWNSHIP ENGINEER CERTIFICATION**

I, \_\_\_\_\_, HAVE REVIEWED AND HEREBY CERTIFY THAT THE PLAN MEETS ALL ENGINEERING STANDARDS AND CRITERIA OF THE FERGUSON TOWNSHIP CODE OF ORDINANCES.

**FERGUSON TOWNSHIP BOARD OF SUPERVISORS**

FERGUSON TOWNSHIP BOARD OF SUPERVISORS

PLAN APPROVED ON \_\_\_\_\_

SECRETARY \_\_\_\_\_

CHAIR \_\_\_\_\_

**FERGUSON TOWNSHIP PLANNING COMMISSION**

FERGUSON TOWNSHIP PLANNING COMMISSION

PLAN RECOMMENDED FOR APPROVAL ON \_\_\_\_\_

SECRETARY \_\_\_\_\_

CHAIR \_\_\_\_\_

**FIRE CHIEF CERTIFICATION**

I HAVE REVIEWED AND HEREBY CERTIFY THAT THE LOCATION OF FIRE LANES AND FIRE HYDRANTS SHOWN ON THIS PLAN ARE ADEQUATE.

FIRE CHIEF \_\_\_\_\_ DATE \_\_\_\_\_

SHEET NO: CS-1

DATE: 3/14/22 JOB: 21108 SCALE: AS SHOWN  
FILE: 21108 CS-1 DRAWN BY: DLK CHECKED BY: DWP

**DRAWING INDEX**

- CS-1 COVER SHEET
- CS-2 REFERENCE SHEET
- 1 EXISTING CONDITIONS PLAN
- 2 SITE DEMOLITION PLAN
- 3 SITE LAYOUT PLAN
- 4 SITE GRADING AND UTILITY PLAN
- 5 CURB RAMP ENLARGEMENT PLAN
- ESC-1 EROSION AND SEDIMENT CONTROL (ESC) PLAN STAGE 1
- ESC-2 EROSION AND SEDIMENT CONTROL (ESC) PLAN STAGE 2
- ESC-3 EROSION AND SEDIMENT CONTROL (ESC) PLAN
- LS-1 LANDSCAPING PLAN
- D-1 PENNDOT DETAILS
- D-2 SITE DETAILS
- D-3 SITE DETAILS
- D-4 UTILITY DETAILS
- D-5 EROSION AND SEDIMENT CONTROL (ESC) DETAILS
- D-6 EROSION AND SEDIMENT CONTROL (ESC) DETAILS
- D-7 EROSION AND SEDIMENT CONTROL (ESC) NOTES
- D-8 EROSION AND SEDIMENT CONTROL (ESC) NOTES AND TABLES
- D-9 LANDSCAPING DETAILS
- SL1 SITE LIGHTING PLAN WITHOUT STREET LIGHTS
- SL2 SITE LIGHTING PLAN WITH STREET LIGHTS
- SL3 POOL DECK LIGHTING
- EL.01 ELECTRICAL - SITE PLAN
- E1.1 ELECTRICAL - SITE PLAN
- P1.1 PLUMBING - GARAGE PLAN
- P1.2 PLUMBING - RISER DIAGRAMS



**COMMONWEALTH OF PENNSYLVANIA ACT NO. 287**

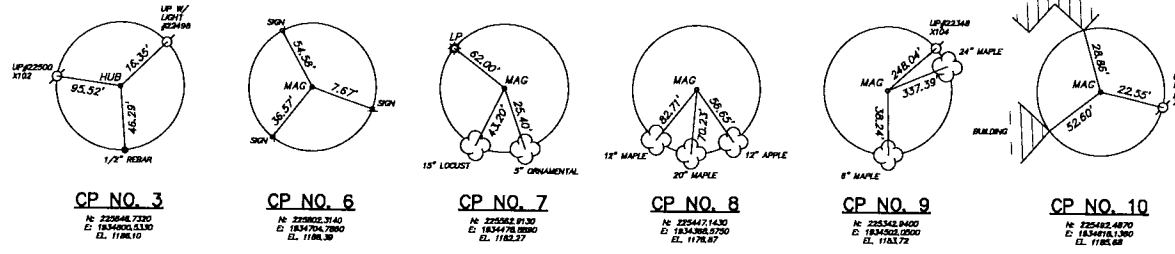
THE CONTRACTOR SHALL COMPLY WITH ALL THE APPLICABLE REQUIREMENTS OF ACT NO. 287 OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, AS AMENDED BY ACT 50 (73 P.S. § 176 ET. SEQ.) ON APRIL 28, 2018. THE FOLLOWING IS A LIST OF KNOWN PUBLIC UTILITIES AND INVOLVED PARTIES LOCATED WITHIN THE PROJECT AREA:

SERIAL NUMBER: 20213632061 (DECEMBER 29, 2021)  
PA ONE-CALL (800) 242-1778

- |   |  |
|---|--|
| MUNICIPALITY: FERGUSON TOWNSHIP<br>3147 RESEARCH DRIVE<br>STATE COLLEGE, PA 16801<br>CONTACT: CHRIS LEIDY<br>EMAIL: CLEIDY@TWP.FERGUSON.PA.US             | GAS: COLUMBIA GAS OF PENNSYLVANIA<br>1600 DUBLIN ROAD<br>COLUMBUS, OH 43215<br>CONTACT: LISA COLLINS<br>EMAIL: LUCO@CNGASOURCE.COM |
| SEWER: UNIVERSITY AREA JOINT AUTHORITY<br>1576 SPRING VALLEY ROAD<br>STATE COLLEGE, PA 16801<br>CONTACT: MARK HARTER<br>EMAIL: MHARTER@UJAJA.ORG          | ELECTRIC: WEST PENN POWER<br>2800 EAST COLLEGE AVENUE<br>STATE COLLEGE, PA 16801<br>PHONE: 814-237-5355                            |
| PENNSYLVANIA ELECTRIC COMPANY<br>311 INDUSTRIAL PARK ROAD<br>JOHNSTOWN, PA 15804<br>CONTACT: KEITH GARDNER<br>EMAIL: KGARDNER@FIRSTENERGYCORP.COM         | TELECOM: VERIZON<br>FACILITY MANAGEMENT CENTER<br>250 S ALLEN STREET<br>STATE COLLEGE, PENNSYLVANIA 16801<br>PHONE: 800-479-1919   |
| WATER: STATE COLLEGE BOROUGH<br>WATER AUTHORITY<br>1201 WEST BRANCH ROAD<br>STATE COLLEGE, PA 16801<br>CONTACT: STEVEN ALBRICHT<br>EMAIL: STEVE@SCBWA.ORG | CABLE: COMCAST<br>60 DECIBEL ROAD<br>STATE COLLEGE, PA 16801<br>PHONE: 800-992-3515  |
| PENNSYLVANIA ELECTRIC COMPANY<br>110 UNIVERSITY SUPPORT BLDG 2<br>UNIVERSITY PARK, PA 16802<br>CONTACT: RANDY WISE<br>EMAIL: RSK17@PSUEDU                 |  |

**ABBREVIATIONS:**

- CI CAST IRON
- CP CONTROL POINT
- EL ELEVATION
- FF FINISHED FLOOR
- HSG HYDROLOGIC SOIL GROUP
- IG INLET GRATE
- INV INVERT
- HC HANDICAP
- HDPE HIGH DENSITY POLYETHYLENE PIPE
- L.F. LINEAR FEET
- LP LIGHT POLE
- MPH MILES PER HOUR
- MW MONITORING WELL
- PC POINT OF CURVATURE
- PVC POLYVINYL CHLORIDE PIPE
- PT POINT OF TANGENT
- R/W RIGHT-OF-WAY
- S.F. SQUARE FEET
- SSCO SANITARY SEWER CLEANOUT
- SSMH SANITARY SEWER MANHOLE
- UP UTILITY POLE
- WCB WATER CURB BOX
- WV WATER VALVE



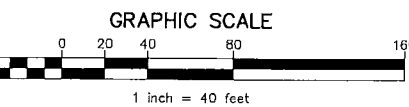
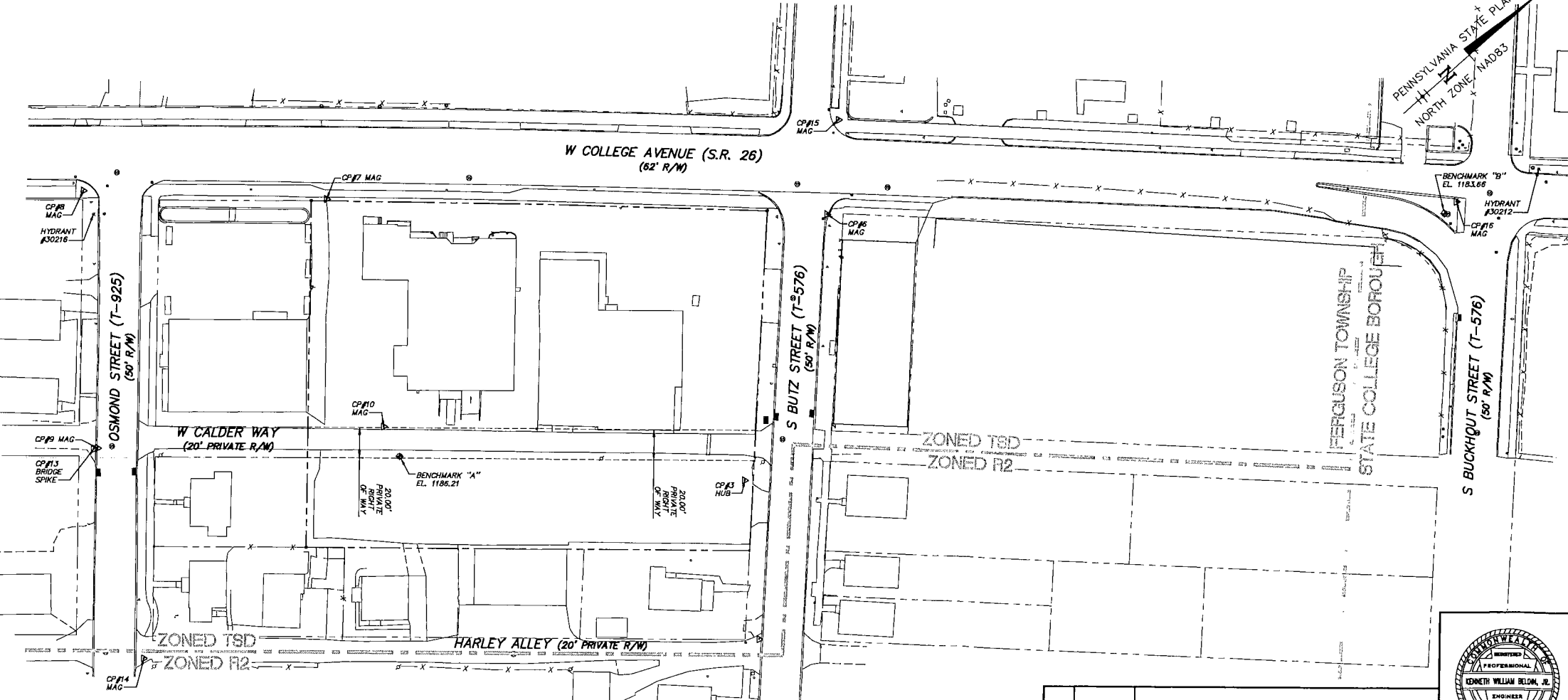
**SURVEY CONTROL POINTS**

**SURVEY NOTES:**

1. COORDINATES ARE BASED ON THE PENNSYLVANIA STATE PLANES, NORTH ZONE (PA NAD83), U.S. SURVEY FOOT.
2. ELEVATIONS ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).
3. PROJECT BENCHMARKS:

BENCHMARK "A" IS A BENCH TIE LOCATED ON UTILITY POLE 22500 X103 ON THE SOUTHEAST SIDE OF W CALDER WAY. ELEVATION = 1186.21

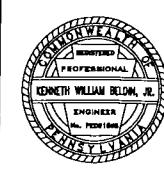
BENCHMARK "B" IS AN X SET IN THE RIM OF A SANITARY SEWER MANHOLE LOCATED IN A CONCRETE MEDIAN AT THE INTERSECTION OF W COLLEGE AVENUE AND BUCKHOUT STREET. ELEVATION = 1183.66



**GENERAL NOTES:**

1. THE CONTRACTOR IS ADVISED OF THE EXISTENCE OF UNDERGROUND WATERLINES, SANITARY SEWERS, GAS LINES, SERVICE LINES, ELECTRIC AND TELEPHONE, AND OTHER UTILITIES. THE HORIZONTAL AND VERTICAL ALIGNMENTS ARE SHOWN ON THE DRAWINGS FOR INFORMATION PURPOSES ONLY. THE CONTRACTOR IS ADVISED THAT PRIOR TO ANY EXCAVATION HE SHALL PERFORM EXPLORATORY EXCAVATIONS TO DETERMINE SAID LOCATIONS. IF CONFLICTS OCCUR WITH EXISTING UTILITIES, THE CONTRACTOR SHALL NOTIFY THE OWNER OF SAID CONFLICTS. THE CONTRACTOR SHALL ADJUST THE LOCATION OF THE PROPOSED PIPING AND STRUCTURES AS COORDINATED AND APPROVED BY THE ENGINEER AND OWNER. THE CONTRACTOR SHALL UNDERSTAND THAT NO SEPARATE PAYMENT SHALL BE MADE FOR THE REQUIRED EXPLORATORY EXCAVATIONS OR SUBSEQUENT ADJUSTMENTS REQUIRED. THE CONTRACTOR SHALL DETERMINE THE EXTENT OF EXPLORATORY EXCAVATIONS AND INCLUDE THE COSTS TO PERFORM SAID EXCAVATIONS AND ADJUSTMENTS IN THOSE ITEMS FOR WHICH PAYMENT SHALL BE MADE IN THEIR BID. IN ADDITION, THE CONTRACTOR SHALL REPAIR ALL UTILITIES DAMAGED DURING THE COURSE OF CONSTRUCTION TO THE SATISFACTION OF THE OWNER AND THE UTILITY OWNER. THE CONTRACTOR SHALL ENSURE THE MAINTENANCE OF ALL UTILITY SERVICES AND LIMIT SHUTDOWNS, IF REQUIRED, TO A MINIMUM. NO SEPARATE PAYMENTS SHALL BE MADE FOR SAID UTILITY REPAIRS AND SERVICE MAINTENANCE. THE CONTRACTOR SHALL INCLUDE THESE COSTS IN THOSE ITEMS FOR WHICH PAYMENT SHALL BE MADE IN THE BID FORM.
2. CONTRACTOR SHALL IMPLEMENT ALL EROSION AND SEDIMENT CONTROL FACILITIES IN ACCORDANCE WITH THE APPROVED EROSION AND SEDIMENT CONTROL (ESC) PLAN.
3. PROVIDE AT LEAST TEN (10) WORKING DAYS NOTIFICATION TO PENNDOT DISTRICT 2 AND THE CENTRE COUNTY CONSERVATION DISTRICT BEFORE BEGINNING CONSTRUCTION.
4. CONTRACTOR SHALL MONITOR THE CONSTRUCTION SITE DAILY DURING NORMAL CONDITIONS OR AS REQUIRED DURING TIMES OF SIGNIFICANT RAINFALL.
5. CONTRACTOR TO COMPLY WITH ALL PENNSYLVANIA STATE AND LOCAL AGENCY REGULATION AND PERMIT CONDITIONS. CONTRACTOR SHALL PLAN WORK ACTIVITIES IN CONSIDERATION OF LONG-TERM WEATHER FORECASTS AND MODIFY CONSTRUCTION SCHEDULES ACCORDINGLY FOR WEATHER AND CLIMATIC CONDITIONS. CONTRACTOR SHALL UNDERTAKE MITIGATION AND OTHER PROTECTION MEASURES TO ENSURE THE INTEGRITY OF THE WORK SITE AND COMPLETED WORK. CONTRACTOR ASSUMES ALL FLOOD AND WASH OUT RISK FOR THE DURATION OF THE PROJECT.
6. THE CONTRACTOR WILL, AT ALL TIMES THROUGHOUT THE WORK, COOPERATE FULLY WITH THE OWNER IN PERMITTING ALL NECESSARY OPERATIONS OF ADJOINING PROPERTY OWNERS TO PROCEED UNIMPEDED BY THE CONTRACTOR'S OPERATIONS.
7. SERVICE OUTAGES WILL BE KEPT TO THE MINIMUM EXTENT PRACTICABLE. THE CONTRACTOR WILL MAINTAIN A RECORD OF THE DATE, TIME, AND DURATION OF ALL OUTAGES THROUGHOUT THE PERFORMANCE OF THE WORK. IN NO EVENT WILL ANY SERVICE BE PERMITTED TO BE CURTAILED DURING NONWORKING HOURS, OVERNIGHT OR OVER WEEKENDS OR HOLIDAYS, UNLESS SPECIFICALLY APPROVED AND PLANNED IN ADVANCE. ALL MATERIALS NECESSARY TO INSTALL THE WORK NECESSITATING THE OUTAGE MUST BE ON SITE AND READY FOR INSTALLATION BEFORE ANY ANTICIPATED SHUTDOWN.
8. THE CONTRACTOR WILL PLAN, COORDINATE AND SEQUENCE ITS WORK IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH HEREIN.
9. THE CONTRACTOR WILL NOTE THAT THE WORK MAY INVOLVE MODIFICATION TO AND THE DEMOLITION OF EXISTING FACILITIES AND STRUCTURES WHICH DUE TO THE NATURE OF THE VARIOUS ITEMS OF THE WORK, MUST BE COMPLETED, IN SOME INSTANCES, IN SEQUENCE WITH ONE ANOTHER DUE TO THE PHYSICAL REQUIREMENTS OF THE WORK.
10. THE NATURE, LOCATION, CAPACITY, AND TYPE OF FACILITIES INTENDED FOR MAINTAINING CONTINUITY OF OPERATIONS WILL AT ALL TIMES BE SUBJECT TO THE APPROVAL OF THE ENGINEER.
11. IN THE ADMINISTRATION OF THIS CONTRACT, THE OWNER INTENDS TO EXERCISE DISCRETION IN A REASONABLE AND EQUITABLE MANNER TO PROTECT ITS INTERESTS AND TO PROMOTE TIMELY AND PROPER COMPLETION OF THIS CONTRACT. SHOULD ANY DISPUTES ARISE WITH RESPECT TO THE COORDINATION OF THE WORK OF THIS CONTRACT AND THAT OF THE OWNER'S OPERATIONS, WHICH REQUIRE SETTLEMENT, THE DECISION OF THE OWNER WILL BE FINAL.
12. INFORMATION CONCERNING EXISTING FACILITIES SHOWN ON THESE DRAWINGS WAS OBTAINED FROM DESIGN/RECORD DRAWINGS PREPARED AT THE TIME OF CONSTRUCTION AND MAY NOT REPRESENT CONDITIONS EXACTLY AS THEY EXIST AT THE PRESENT. THE FACILITIES ARE DEPICTED BASED UPON THE BEST AVAILABLE KNOWLEDGE OF THEIR CONSTRUCTION WHEN THE INFORMATION PRESENTED HERE IS USED BY THE CONTRACTOR IN THE DEMOLITION, MODIFICATION OR ADDITIONS TO THE FACILITIES, ACCURACY AND/OR COMPLETENESS OF THE INFORMATION IS NOT GUARANTEED OR WARRANTED BY THE OWNER AND/OR ENGINEER OR ANY AGENT THEREOF. THE CONTRACTOR SHALL REVIEW THE DRAWINGS PERTAINING TO EXISTING FACILITIES AND PERFORM THE NECESSARY ON-SITE INSPECTIONS, BEFORE SUBMITTING HIS BID TO DEVELOP A FULL UNDERSTANDING OF THE SCOPE OF THE WORK. ANY DEVIATIONS FROM THE INFORMATION DEPICTED ON THE DRAWINGS, FOUND DURING CONSTRUCTION, WILL NOT BE THE BASIS OF A CLAIM FOR ADDITIONAL COMPENSATION.
13. THIS PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT, WHICH MAY OR MAY NOT REVEAL ADDITIONAL COVENANTS, RESTRICTIONS, EASEMENTS, SERVITUDES, LIENS, ETC., THAT MAY ENCUMBER THE SUBJECT PROPERTY, BUT ARE NOT EXPLICITLY INDICATED ON THIS PLAN.
14. ALL PROPOSED COMMERCIAL USES MUST COMPLY WITH THE LAND USES LISTED IN §27-405.7. (SOURCE WATER PROTECTION OVERLAY DISTRICT-ZONE 2) OF THE FERGUSON TOWNSHIP ZONING ORDINANCE.
15. FERGUSON TOWNSHIP PROJECT REFERENCE NO. ES-433

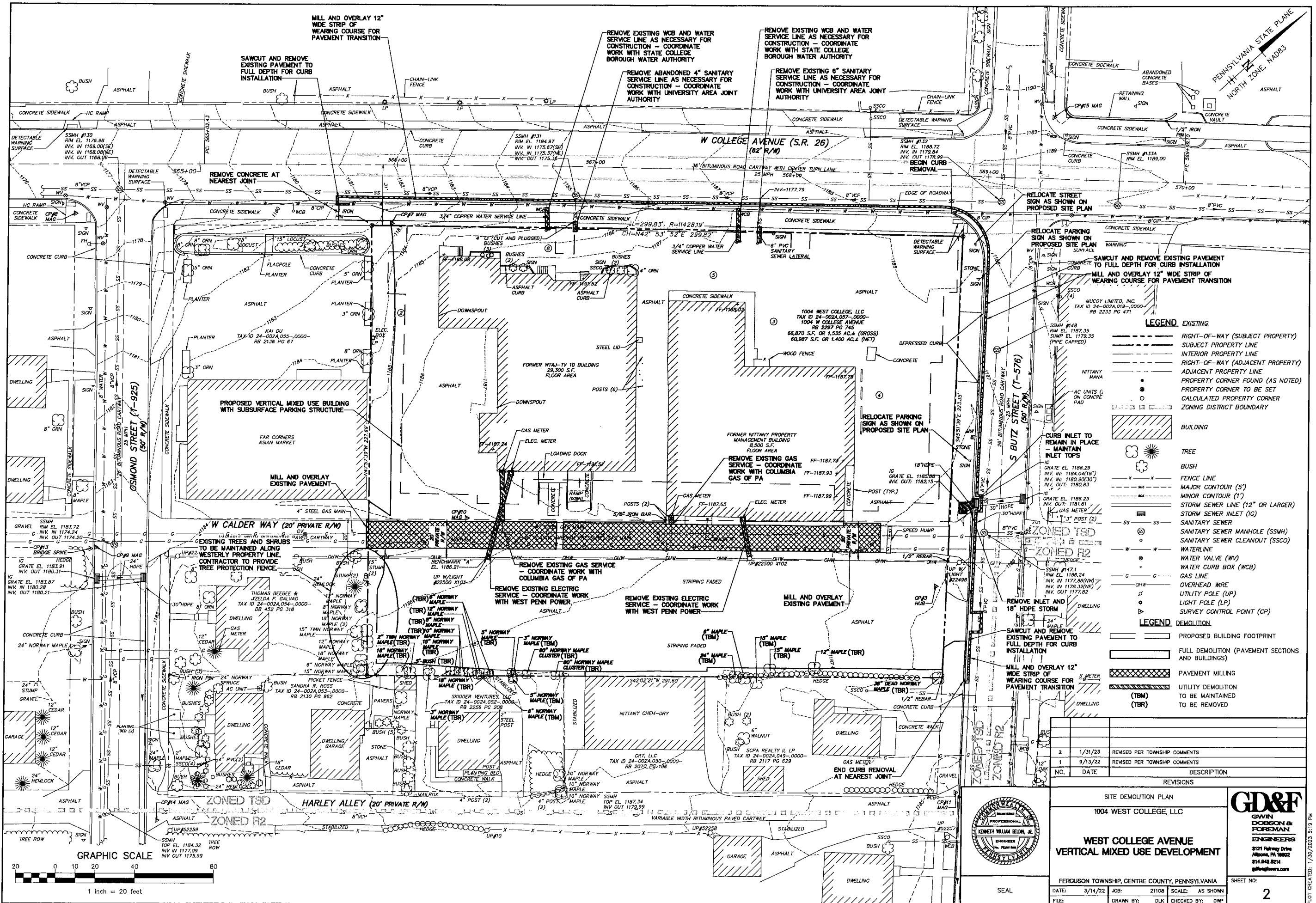
NO.	DATE	DESCRIPTION
2	1/31/23	REVISED PER TOWNSHIP COMMENTS
1	9/13/22	REVISED PER TOWNSHIP COMMENTS



REFERENCE SHEET		<b>GD&amp;F</b> GWIN DOBSON & FOREMAN ENGINEERS 3121 Railway Drive Allentown, PA 18102 610.848.8214 gdf@gwin.com
1004 WEST COLLEGE, LLC		
<b>WEST COLLEGE AVENUE VERTICAL MIXED USE DEVELOPMENT</b>		
FERGUSON TOWNSHIP, CENTRE COUNTY, PENNSYLVANIA		SHEET NO:
DATE: 3/14/22	JOB: 21108	SCALE: AS SHOWN
FILE:	DRAWN BY: DLK	CHECKED BY: DWP
		<b>CS-2</b>







- LEGEND EXISTING**
- RIGHT-OF-WAY (SUBJECT PROPERTY)
  - SUBJECT PROPERTY LINE
  - INTERIOR PROPERTY LINE
  - RIGHT-OF-WAY (ADJACENT PROPERTY)
  - ADJACENT PROPERTY LINE
  - PROPERTY CORNER FOUND (AS NOTED)
  - PROPERTY CORNER TO BE SET
  - CALCULATED PROPERTY CORNER
  - ZONING DISTRICT BOUNDARY
  - ▨ BUILDING
  - ☀ TREE
  - ☁ BUSH
  - - - FENCE LINE
  - - - MAJOR CONTOUR (5')
  - - - MINOR CONTOUR (1')
  - - - STORM SEWER LINE (12" OR LARGER)
  - ⊖ STORM SEWER INLET (10)
  - ⊖ SANITARY SEWER
  - ⊖ SANITARY SEWER MANHOLE (SSMH)
  - ⊖ SANITARY SEWER CLEANOUT (SSCO)
  - WATERLINE
  - ⊖ WATER VALVE (WV)
  - ⊖ WATER CURB BOX (WCB)
  - GAS LINE
  - OVERHEAD WIRE
  - ⊖ UTILITY POLE (UP)
  - ⊖ LIGHT POLE (LP)
  - ⊖ SURVEY CONTROL POINT (CP)

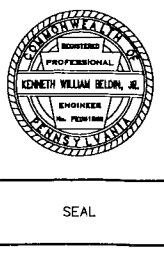
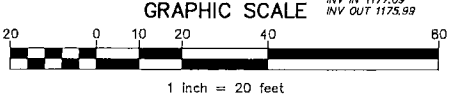
- LEGEND DEMOLITION**
- ▭ PROPOSED BUILDING FOOTPRINT
  - ▭ FULL DEMOLITION (PAVEMENT SECTIONS AND BUILDINGS)
  - ▨ PAVEMENT MILLING
  - ⊖ UTILITY DEMOLITION TO BE MAINTAINED
  - ⊖ (TBR) TO BE REMOVED

NO.	DATE	DESCRIPTION
2	1/31/23	REVISED PER TOWNSHIP COMMENTS
1	9/13/22	REVISED PER TOWNSHIP COMMENTS

SITE DEMOLITION PLAN  
 1004 WEST COLLEGE, LLC  
**WEST COLLEGE AVENUE  
 VERTICAL MIXED USE DEVELOPMENT**  
 FERGUSON TOWNSHIP, CENTRE COUNTY, PENNSYLVANIA  
 DATE: 3/14/22 JOB: 21108 SCALE: AS SHOWN  
 FILE: DRAWN BY: DLK CHECKED BY: DWP

**GD&F**  
 GWIN DOBSON & FOREMAN ENGINEERS  
 8121 Fairway Drive  
 Allentown, PA 18022  
 610.443.8214  
 gdandf.com

SHEET NO: **2**



PLOT CREATED: 1/30/2023 5:19 PM





Receipt 373049  
Printed 08-25-2022 10:33:17

Joseph L. Davidson  
Recorder of Deeds - Centre County  
414 Holmes Street Suite 1  
Bellefonte, PA 16823

1004 WEST COLLEGE LLC  
250 EAST BEAVER AVENUE  
SUITE 700  
STATE COLLEGE PA 16801

DEED - NONTAXABLE  
R 02297-0745A 1167 4 pages

1 1004 WEST COLLEGE LLC  
2 1004 WEST COLLEGE LLC  
\*\*\*\*\* RETURN TO \*\*\*\*\*  
1004 WEST COLLEGE LLC  
250 EAST BEAVER AVENUE  
SUITE 700  
STATE COLLEGE PA 16801  
\*\*\*\*\*

County Fee	18.00
State Writ	.50
ATJ Fee	40.25
Affordable Housing	11.50
	-----

DEED - NONTAXABLE 70.25

Commonwealth of Pennsylvania )  
County of Centre )

Recorded on Aug 25, 2022

By: JOSEPH L. DAVIDSON  
RECORDER OF DEEDS  
CENTRE COUNTY

This sheet includes required recording and tax information and is part of the official record. DO NOT DETACH

4/2  
\$ 70.75

Prepared by and Return to:  
Charles M. Suhr, Esq.  
STEVENS & LEE  
17 N. Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101

Tax Parcel No.  
#24-002A,056-,0000 (1006 W. College Ave)  
#24-002A,051-,000 (116 S. Butz Street)  
#24-002A,057-,0000 (1004 W. College Ave)



R 02297-0745 Aug 25, 2022  
1004 WEST COLLEGE LLC  
1004 WEST COLLEGE LLC  
08-25-2022  
10:30:10  
DN 5 DRS  
RECORDED OF DEEDS

*Joseph L. Dineen*  
RECORDED OF DEEDS

# CONSOLIDATION DEED

MADE the 25<sup>th</sup> day of August, 2022.

## BETWEEN

**1004 WEST COLLEGE, LLC**, a Pennsylvania limited liability company, hereinafter referred to as "Grantor",

## AND

**1004 WEST COLLEGE, LLC**, a Pennsylvania limited liability company, hereinafter referred to as "Grantee",

WITNESSETH, that said Grantor, for and in consideration of the sum of **ONE DOLLAR AND 00/100 (\$1.00) DOLLARS**, lawful money of the United States of America, well and truly paid by the said Grantee to the said Grantor, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said Grantees, their heirs and assigns, the following described premises to-wit:

**ALL THOSE CERTAIN** tracts or parcels of land situate in **Ferguson Township, Centre County, Pennsylvania**, bounded and described as follows:

**Beginning** at a magnetic nail to be set in concrete at the intersection of the southeasterly line of West College Avenue (S.R. 0026) and the southwesterly line of South Butz Street (T-576), thence from the place of beginning, along the southwesterly line of South Butz Street (T-576), through a 1/2" rebar, S45°51'39"E a distance of 223.35 feet to a 1/2" rebar on the line of lands of SCPA Realty II, LP; thence along the line of lands of SCPA Realty II, LP, GRT, LLC, Skidder Ventures, LLC and Sandra Ross, S42°02'21"W a distance of 291.60 feet to a 5/8" iron pin with cap

to be set on the line of lands of Thomas Beebee and Jizelda Galvao; thence along the line of lands of Thomas Beebee and Jizelda Galvao and the lands of Kai Du, N47°57'39"W a distance of 227.69 feet to a 5/8" iron pin with cap to be set in the southeasterly line of West College Avenue (S.R. 0026) thence along the southeasterly line of West College Avenue (S.R. 0026) along a curve to the right having a radius of 11,428.19 feet, an arc length of 299.83 feet, a chord bearing of N42°53'52"E and a chord length of 299.84 feet to the point and the place of beginning, containing 66,870 square feet (1.535 acres).

Said property being subject to a permanent public utility and access easement, bounded and described as follows:

Beginning at a 1/2" rebar at the intersection of the southwesterly line of South Butz Street (T-576) and the southeasterly line of said public utility and access easement, said easement also being known as West Calder Way, thence from the point of beginning, through the above described lot consolidation, S42°02'21"W a distance of 293.77 feet to a point; thence following the southwesterly boundary of the above described lot consolidation, N47°57'39"W a distance of 20.00 feet to a point; thence through the above described lot consolidation, N42°02'21"E a distance of 294.50 feet to a point on the southwesterly line of South Butz Street (T-576); thence along the southwesterly line of South Butz Street (T-576), S45°51'39"E a distance of 20.01 feet to a 1/2" rebar marking the point and place of beginning, containing 5,883 square feet (0.135 acre).

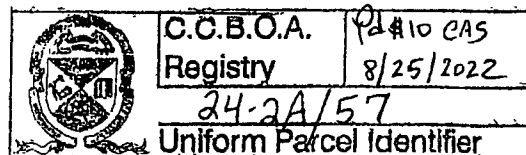
The above-described lot consolidation is shown on a Final Lot Consolidation Plan as prepared by Gwin, Dobson and Foreman, Inc. and dated March 14, 2022.

**UNDER AND SUBJECT**, nevertheless, to easements, restrictions, reservations, conditions and rights of way of record or visible upon inspection of premises.

**BEING THE SAME PREMISES** which Scott L. Yocum and Glenda C. Yocum, by deed dated and recorded January 18, 2018 with the Centre County Recorder of Deeds Office in Record Book 2210, page 0622, granted and conveyed unto 1004 West College, LLC **AND BEING THE SAME PREMISES** which Highland Holding Group, Inc., by deed dated August 15, 2022 and recorded August 16, 2022 with the Centre County Recorder of Deeds Office in Record Book 2297, page 0316, granted and conveyed unto 1004 West College, LLC, Grantor herein.

THIS IS A CONSOLIDATION DEED TO CONSOLIDATE TWO OR MORE LOTS REFERENCED IN THE RECORDED PLAN AT INSTRUMENT NO. P 98/6, AND IS, THEREFORE, NOT SUBJECT TO REALTY TRANSFER TAX PURSUANT TO 72 P.S. § 8102-C.3(4).

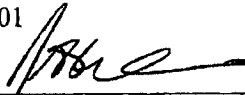
**TOGETHER** with all and singular the buildings and improvements, tenements, hereditaments and appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; **AND ALSO** all the estate, right, title, interest, property, claim and demand whatsoever, both in law and equity, of the said Grantor, of, in, to or out of the said premises, and every part and parcel thereof.





**I HEREBY CERTIFY**, that the precise residence of the Grantee is:

250 East Beaver Avenue  
Suite 700  
State College, PA 16801

  
\_\_\_\_\_  
Attorney or Agent for Grantee

**3. Height, Area and Bulk Regulations.** The following regulations shall be observed for all permitted principal uses:

**A. Maximum Height.**

- (1) Lots up to and including .39 acres and any lot that does not have lot frontage on West College Avenue (an arterial): 35 feet; incentives may not be applied to increase this height.
- (2) Lots of .40 acres and up with frontage on an arterial street:
  - (a) By right maximum of 55 feet; 55 feet required on corner lots of this size.
  - (b) Additional height up to 75 feet for lots of at least one acre may be obtained through the use of incentives set forth in § 27-304, Subsection 3B below; use of any incentive(s) other than Subsection 3B retains the requirement to obtain conditional use approval.
  - (c) Maximum height of parking structures is 60 feet, not including any underground parking levels. Additional height of up to 15 feet may be added specifically to this use if a minimum of 50% of the roof is planted as a green roof or roof garden, or if a wind energy conversion system and/or solar panels are placed on the roof and provide energy for the parking structure and/or adjacent structures.
  - (d) Minimum height of all structures on lots of this size other than corner lots which are subject to Subsection 2C(1) above: A street wall at least two stories or 30 feet in height (whichever is greater) shall be maintained for a minimum of 65% of the length of the lot frontage through placement of the principal structure or extension of its facade with an appropriate architectural element.

**B. Building Height Incentives.**

- (1) If a shared parking facility is provided or used to accommodate the use(s) on the lot, an additional 10 feet may be added to the permitted maximum.
- (2) ~~If structured parking is provided to accommodate the use(s) on the lot and provides space for use by others, an additional 20 feet may be added to the permitted maximum without the need to obtain conditional use approval.~~
- (3) (2) If a building is complying with § 27-716, Workforce Housing, the by right maximum height of 55 feet may be increased to accommodate bonus market rate units, not to exceed 65 feet.  
[Amended by Ord. No. 1065, 1/4/2021]
- (4) (3) If 15% of the total residential units in a vertical mixed-use building are established and maintained as age-restricted units, an additional 20 feet may be added to the permitted maximum.

*\*§27-304.3.B.(2). Repealed by Ordinance No. 1070 | May 3, 2021*

**§ 27-716. Workforce Housing. [Ord. No. 1049, 11/18/2019; as amended by Ord. No. 1065, 1/4/2021]**

1. Purpose. The purpose of this section is:
  - A. Provide a wide range of quality, workforce housing for households with an income of 80% to 120% of area median income (AMI) in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation;
  - B. To support the Centre Region Comprehensive Plan's goal of providing a wide range of sound, affordable and accessible housing consistent with the fair share needs of each municipality in the Centre Region;
  - C. Provide criteria for workforce housing including, but not limited to, design, construction, phasing, and location within a development;
  - D. To facilitate and encourage development and redevelopment that includes a range of housing opportunities through a variety of residential types, forms of ownership, home sale prices and rental rates;
  - E. To work in partnership and support local, state, and federal programs to create additional housing opportunities;
  - F. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
  - G. Ensure the opportunity of workforce housing for employees of businesses that are located in or will be located in the Township;
  - H. To ensure affordable homeownership, is defined as a mortgage payment and housing expenses (principal, interest, taxes, insurance, and condominium or association fees, if any) costing no more than 30% of a family's gross month income, per the Department of Housing and Urban Development (HUD) definition; and
  - I. Effectively enforce and administer the provisions of the Workforce Housing Program.
2. Authority. Provisions for the workforce housing section are intended to comply with the following articles of the Pennsylvania Municipal Planning Code.
  - A. Article VI, Zoning.
    - (1) Section 603, Ordinance Provisions, where:
      - (a) Zoning ordinances should reflect the policy goals of the statement of the community development objectives and give consideration to the character of the municipality, the needs of the citizens and the suitabilities and special nature of particular parts of the municipality.
      - (b) Zoning ordinances may contain:
        - 1) Provisions to encourage innovations and to promote flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act;
        - 2) Provisions authorizing increases in the permissible density of population or

intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.

(c) Zoning ordinances adopted by municipalities shall be generally consistent with the municipal or multimunicipal comprehensive plan or, where none exists, with the municipal statement of community development objectives and the county comprehensive plan.

(2) Section 604, Zoning Purposes. The provisions of zoning ordinances shall be designed:

(a) To promote coordinated and practical community development and proper density of population.

(3) Section 605, Classifications.

(a) For the purpose of encouraging innovation and the promotion of flexibility, economy and ingenuity in development, including subdivisions and land developments as defined in this act, and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance.

B. These regulations are enacted under the authority of the Pennsylvania Human Relations Act (Act of October 27, 1995, P.L. 744, as amended),<sup>1</sup> which guarantees fair housing.

C. Posting of the fair housing practices notice is required pursuant to the Pennsylvania Human Relations Act.

3. Definitions. As used in this section, the following words and terms shall have the meanings specified herein:

**AREA MEDIAN INCOME** — The midpoint of combined salaries, wages, or other sources of income based upon household size in the State College Metropolitan Statistical Area.

**CONVERSION** — A change in a residential rental development or a mixed-use development that includes rental dwelling units to a development that contains only owner-occupied individual dwelling units or a change in a development that contains owner-occupied individual units to a residential rental development or mixed-use development.

**DENSITY BONUS** — An increase in the number of market-rate units on the site in order to provide an incentive for the construction of affordable housing pursuant to this chapter, also known as a bonus unit.

**DEVELOPMENT** — The entire proposal to construct or place one or more dwelling units on a particular lot or contiguous lots, including, without limitation, a traditional town development (TTD) master plan, a planned residential development (PRD), land development or subdivision.

**FEE-IN-LIEU** — A payment of money to Ferguson Township's Affordable Housing Fund in-lieu of providing workforce housing units. This fee is updated annually within the Ferguson Township Schedule of Fees.

**LOT** — A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

**MEDIAN GROSS HOUSEHOLD INCOME** — The median income level for the State College, PA

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1. Editor's Note: See 43 P.S. § 951 et seq.



Metropolitan Statistical Area (MSA), as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, adjusted for household size.

**MULTIFAMILY DWELLING** — Three or more dwelling units, with the units stacked one above the other.

**PHASE** — The portions of an approved development, or, in the case of a master plan approval, a specific implementation plan, which are set out for development according to a Township-approved schedule.

**RECEIVING DEVELOPMENT** — A new development with transferred workforce housing obligations from a sending site.

**RENOVATION** — The physical improvement that adds to the value of real property, but that excludes painting, ordinary repairs, and normal maintenance.

**SENDING DEVELOPMENT** — A development which utilizes the off-site option to send its own workforce housing unit obligations to another development on a different site.

**WORKFORCE HOUSING** — Housing with a sales price or rental amount within the means of a household that may occupy moderate income housing. In the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes insurance, and condominium or association fees, if any, constitute no more than 30% of such gross annual household income for a household of the size that may occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and basic utilities constitutes no more than 30% of such gross annual household income for a household of the size that may occupy the unit in question. Utilities for rental units include: electric/gas, trash, water and condominium or association fees.

**WORKFORCE HOUSING DEVELOPMENT AGREEMENT** — A written agreement duly executed between the applicant for a development, the Township, and, if applicable, the designated third-party administrator of the Workforce Housing Program. Said agreement shall include, at minimum, all of the provisions established in § 27-716, Subsection 7.

**WORKFORCE HOUSING DWELLING UNIT** — A housing unit documented in an applicant's workforce housing development agreement as required in order to comply with the Workforce Housing Program requirements, subsidized by the federal or state government or subject to covenants and deed restrictions that ensure its continued affordability. When calculating the required percentage of workforce units in a development, any fractional result between 0.01 and 0.49 will be rounded down to the number immediately preceding it numerically, and any fractional result between 0.50 and 0.99 will be rounded up to the next consecutive whole number. However, the total workforce unit percentage shall not exceed 10% of the required total workforce housing units in the development.

**WORKFORCE HOUSING FUND** — The fund created by Ferguson Township to receive funds generated from the administration of fee-in-lieu payments to support workforce housing within Ferguson Township.

4. Applicability. Workforce Housing must be provided in the following Developments and minor alterations within the Terraced Streetscape (TS) Zoning District and the Traditional Town Development (TTD) Zoning District that results in:
  - A. Ten or more residential dwelling units;
  - B. Renovation of a residential structure that results in 10 or more additional residential dwelling

units within five years; and

- C. Conversion of a nonresidential property to a residential property that results in 10 or more residential dwelling units within five years.
5. General Requirements for Workforce Units. For all applicable developments listed in § 27-716, Subsection 4, Applicability, within the Terraced Streetscape (TS) Zoning District and the Traditional Town Development (TTD) Zoning District, projects must comply with the following requirements.
- A. The permit application must include a Workforce Housing Program option selection.
  - B. Calculation of Workforce Units. To calculate the minimum number of workforce units required in any land development listed in Subsection 4, Applicability, the total number of proposed units shall be multiplied by 10%.
    - (1) When calculating the required percentage of workforce units in a development, any fractional result between 0.01 and 0.49 will be rounded down to the number immediately preceding it numerically, and any fractional result between 0.50 and 0.99 will be rounded up to the next consecutive whole number. However, the total workforce unit percentage shall not be required to exceed 10% of the total units in the development.
6. Standards. Workforce housing must be provided, or a fee-in-lieu of providing workforce housing must be paid, according to the following standards:
- A. Workforce units may be built on-site, paid fee-in-lieu, or built off-site.
    - (1) Diversity Standards as outlined in § 27-303, Subsection 3B(1) (related to TTD developments) may be modified to the extent needed to accommodate all required workforce units and allowable bonus units.
    - (2) In the case of workforce housing dwelling units provided as a single-family dwelling, duplex, multiplex or townhouse:
      - (a) The units shall not be segregated or clustered within a development.
      - (b) Except in the case of lots containing more than one unit, no more than two adjacent lots or units shall contain workforce housing dwelling units.
    - (3) Workforce housing dwelling units may be clustered within a multifamily dwelling (for sale or rent) and no more than 25% of the total units per floor can be designated as workforce units, excluding the top floor.
    - (4) Workforce housing dwelling units shall be like market rate units, exclusive of upgrades, with regard to number of bedrooms, amenities, and access to amenities, but may differ from market-rate units regarding interior amenities, provided that:
      - (a) These differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the market-rate units;
      - (b) These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency and standard components of the unit;
      - (c) Amenities for workforce units are determined to be reasonably equivalent if the appliances have the same ENERGY STAR<sup>®</sup> rating as those in the market-rate units;

- (d) Workforce units may be up to 10% smaller than the market-rate units.
- (5) In order to ensure an adequate distribution of workforce units by household size, the bedroom mix of workforce units in any project shall be in the same ratio as the bedroom mix of the market-rate units of the project.
- (6) Workforce units required under this chapter shall be offered for sale or lease to a qualified household to be used for its own primary residence, except for units purchased by the Township or its designee;
- (7) The sale or lease of workforce housing dwelling units shall be limited to qualified households earning between 80% and 120% area median income (AMI), adjusted for household size.
- (8) If the development contains phases, workforce housing shall be provided in all residential phases, according to the options set forth in Subsection 8.
- (9) Owners of workforce housing dwelling units are required to sign an agreement of deed restriction, suitable for recording, providing that such unit is subject to the terms and conditions of this section.

B. Accommodations.

- (1) Developments that provide built workforce housing dwelling units, either built on-site or built off-site, will be entitled to the following:
  - (a) One additional equivalent unit (bonus unit) may be added to the development (sending development if built off-site) for each for-sale workforce housing unit provided;
  - (b) Multifamily dwellings may exceed the maximum height set forth in the underlying zoning district by one additional story to accommodate bonus units added to the development for building for-sale workforce dwelling units; and
  - (c) Off-street parking may be provided but is not required for any workforce unit built or designated within multifamily dwellings.

C. Ferguson Township's Option to Purchase.

- (1) The following provisions apply to the initial offering of workforce units for sale by the developer:
  - (a) As a condition of land development approval, the applicant shall notify the Township or its designee of the prospective availability of any workforce units at the time the design and pricing are being established for such units.
  - (b) From the time of building permit issuance, the Township or its designee shall have an exclusive option for 60 days to enter into a purchase and sales agreement at the workforce unit pricing for each workforce unit offered for sale by the applicant. The Township may waive or assign this option.
  - (c) If the Township fails to exercise its option for the workforce units, or if the Township or its designee declares its intent not to exercise its option, the applicant shall offer the units for purchase to households per § 27-716, Subsection 6A(5). If requested, by

the applicant, the Township or its designee shall execute documents that may be recorded with the Centre County Office of Recorder of Deeds to evidence said waiver of option.

- (d) Closing on workforce units purchased by the Township or its designee occurs within 30 days after issuance of the certificate of occupancy. If the Township or its designee fails to close on these workforce units within such 30 days, the applicant shall offer the unit for purchase or rent to households per § 27-716, Subsection 6A(5).
- (e) The Township may assign its options under this section, in which event it shall notify the applicant of the agency to which it has assigned the option, which agency shall work directly with the applicant, and shall have all of the authority of the Township as provided under this section.
- (f) At any point after the initial option period, Subsection 6C(1)(b) above, the applicant may offer the workforce housing dwelling units to the Township or its designee for purchase at the workforce unit pricing. The Township or its designee then shall have 30 days to enter into a purchase and sales agreement and close within 30 days thereafter.

D. Limitations.

- (1) To the extent permitted by federal law, priority will be given to residents of Centre County, or individuals employed by a business located in Centre County.
- (2) The workforce housing dwelling units must be occupied by the income qualified individual and/or family and must be used as the principal place of residence;

E. Except for household income, asset limitations and the primary residency requirement as set forth herein, occupancy of any workforce unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project;

F. Execution of a workforce housing development agreement shall be a condition of approval of a land development plan, or general master plan.

7. Workforce Housing Development Agreement. For developments required to contain workforce housing, no land development plan, subdivision plan, or specific implementation plan for a phase within a development, shall be recorded without having first duly executed a workforce housing development agreement for such development or phase. Ferguson Township, Township designee, and the applicant for the development, shall each be parties to the workforce housing development agreement, which shall, as minimum, contain the following provisions:

- A. Concurrence by the designated administrator of the Workforce Housing Program that the workforce housing is being provided within the development or phase;
- B. The location(s), zoning designation(s) and ownership of the development or phase;
- C. The number and type of workforce housing dwelling units that will be provided and the calculations used to determine the number of units provided;
- D. If a fee-in-lieu is proposed for the development or phase, in whole or part, the fee-in-lieu calculation methodology that will be applied to workforce housing dwelling units, within the development or phase;

- E. Any accommodations provided in § 27-716, Subsection 6B, that are being utilized for the project;
  - F. A description of the development or phase proposed, including the name of the development project and marketing name;
  - G. A graphical depiction of the location of workforce housing units within the development or phase, and if available, the lot numbers for the workforce housing dwelling units;
  - H. A schedule for the construction of the workforce housing dwelling units, consistent with that shown on the approved plans for the development or phase;
  - I. The proposed sale prices and affordability restrictions for each workforce housing dwelling unit and a copy of the applicable affordability deed restrictions and covenants;
  - J. The proposed marketing plan for the workforce housing;
  - K. Acknowledgement that § 27-716, Subsection 11, Continued Affordability, Compliance and Reporting Requirements will be followed;
  - L. Indication of which, if any, of the workforce housing dwelling units will be special needs housing for seniors, disabled, or other special needs populations and a description of the unique features or services for that population;
  - M. Indication as to whether the applicant or, for off-site construction, a third party will be constructing the workforce housing dwelling units. If a third party is to construct the workforce housing dwelling units, the third party shall join in and be bound by the terms and conditions of the workforce housing development agreement;
  - N. Within any given development or phase, certificate of occupancy permits for the last 10% of market-rate units that are offered for sale or rent within that development or phase shall be withheld by the Township until all of the workforce housing dwelling units within that development or phase have been issued certificates of occupancy or release by payment of a fee-in-lieu;
  - O. Acknowledgement that the designated workforce housing administrator of the Township's Workforce Housing Program shall have full authority to administer the provisions of the workforce housing development agreement;
  - P. The draft workforce housing development agreement shall be reviewed and approved by the Township Solicitor with approval as a condition of approval of the plans for the development or phase;
  - Q. The fully executed workforce housing development agreement shall be recorded concurrently with the plans for the development or phase.
8. Workforce Housing Options. Workforce housing may be provided within a development or phase using one or more of the following options selected by the applicant:
- A. On-Site Construction.
    - (1) Accommodations that will be provided to the developer as set forth in § 27-716, Subsection 6B, for the project will be included in the land development plan and the workforce housing development agreement.

B. Fee-In-Lieu.

- (1) A fee-in-lieu may be paid to the Workforce Housing Fund to offset the construction of one or more workforce housing dwelling units as follows:
  - (a) Up to 40% of the workforce housing dwelling units attributable to for-sale units within the development can be offset by a fee-in-lieu; and
  - (b) Up to 100% of the workforce housing dwelling units attributable to rental units within the development or phase can be offset by a fee-in-lieu.
- (2) Board of Supervisors shall establish by resolution the amount of the workforce housing fee-in-lieu as part of the Township's Schedule of Fees.
- (3) For single-phased development projects, the fee-in-lieu shall be paid prior to issuance of the zoning permit.
- (4) For development projects with phases (specific implementation plans), the fee-in-lieu shall be paid on a phase by phase basis based upon the number of workforce housing units being released in that phase with payment made prior to the issuance of the zoning permit for each phase.
  - (a) The current fee-in-lieu amount in place at the time of submission will be applied to the workforce housing units being released in that phase.
- (5) The Township shall create and administer a Workforce Housing Fund into which all fee-in-lieu payments shall be deposited. All funds received pursuant to this chapter shall be used to further the Township's mission to maintain and further workforce housing within Ferguson Township.
- (6) Upon payment of the fee-in-lieu amount for one or more workforce housing dwelling units, the applicant has no additional workforce housing requirements relative to such units. Upon payment, the Township and applicant shall execute a recordable instrument indicating that the workforce housing requirements have been met for those units and that the units are no longer workforce housing dwelling units subject to the terms and conditions of this section.

C. Build Off-Site.

- (1) Workforce housing dwelling units may be constructed off-site, in a development (the "receiving development") within Ferguson Township that is separate from the development or phase (the "sending development") that is required to provide workforce housing.
- (2) The receiving development must be an approved development, and the applicant must obtain land development plan approval from the Township for the receiving development concurrently with the land development plan approval for the sending development.
- (3) The workforce units built in the receiving development must be reasonably equivalent in size and bedroom count to the units in the sending development.
- (4) The receiving development shall be an integrated development and not contain 100% workforce housing dwelling units.

- (5) The owner of the sending development must provide the following information to Township Staff and/or designee at the time the land development plan for the sending development has been submitted:
    - (a) Location of the receiving development;
    - (b) Concurrence of the owner of the receiving development to construct the workforce housing dwelling units; and
    - (c) The number of units and workforce housing dwelling units proposed within the receiving development.
  - (6) The sending development will receive all bonus units and accommodations attributable to the workforce housing dwelling units.
  - (7) The receiving development must be located within the regional growth boundary (RGB) as illustrated in the Centre Region Comprehensive Plan.
  - (8) The owner or developer of the receiving development must enter into the sending development's workforce housing development agreement for the workforce housing dwelling units that are going to be provided on the receiving development.
  - (9) The receiving development is subject to the Workforce Housing Program requirements outlined in § 27-716.
  - (10) The receiving development must develop the workforce housing dwelling units according to the schedule set forth in the workforce housing development agreement.
  - (11) A violation to the sending development will be due to Ferguson Township if the workforce units in the receiving development are not made available as set forth in the workforce housing development agreement. Notice of violation procedures can be found in Chapter 27, Part 906, Violations and Penalties.
9. Policy and Procedures Manuals for Administration of Workforce Housing Dwelling Units for Sale and Rent. Ferguson Township Planning Department and/or designee shall provide an administrative manual to offer guidance to applicants regarding compliance with the terms and conditions of this section. Applicants are encouraged to follow the terms set forth therein.
    - A. Owners or their property managers are encouraged to use the same systems for attracting potential tenants for leasing up workforce housing dwelling units as are used for market rate units. Applicants and their agents are expected to work closely and in cooperation with Township Staff and/or designee to make the workforce marketing and sales process as efficient and equitable as possible.
    - B. The Workforce Housing Program has no rules or guidelines about the method owners, or their property managers, use to determine the order in which tenants are offered workforce housing dwelling units.
    - C. These documents will include clarifying information and procedures when requested by the Township. These procedures may be updated from time to time to increase the effectiveness of the Workforce Housing Program.
  10. Inability to Rent or Sell Workforce Housing Units to Qualified Households.

- A. By Developer. If the developer meets or exceeds the marketing guidelines set forth in its workforce housing development agreement for a period of one year from final certificates of occupancy issuance and is still unable to sell or rent such a unit to a qualified household, the developer shall notify the Township. The Township or its designee shall have 30 days from the date notice was given to enter into a contract to purchase the unit at its workforce marketed price, with closing to take place within 30 days thereafter. After which, the Township, or its designee shall market and sell the unit as a workforce housing dwelling unit. If the Township or its designee does not purchase the workforce dwelling unit, it shall be conclusively demonstrated that there is no market for such unit being a workforce dwelling unit.
  - (1) For-Sale Dwelling Units: The developer shall pay the Township 60% of the original per unit fee-in-lieu and may remove the unit as a workforce housing dwelling unit and the unit shall become a market-rate unit, no longer subject to the terms and conditions of this section.
  - (2) Rental Dwelling Units: The developer shall pay the Township 60% of the original per unit fee-in-lieu and may remove the unit as a workforce housing dwelling unit and the unit shall become a market-rate unit, no longer subject to the terms and conditions of this section.
- B. By Unit Owner. The owner of a workforce housing dwelling unit may remove the unit by subsequent sale to a non-qualifying owner by paying a fee-in-lieu to the Workforce Housing Fund as follows: Unit owner shall pay the Township 60% of the current per unit fee-in-lieu and may remove the unit as a workforce housing dwelling unit and the unit shall become a market-rate unit, no longer subject to the terms and conditions of this section.

11. Continued Affordability, Compliance and Reporting Requirements.

A. For Sale Workforce Units.

- (1) The continuity of a workforce housing dwelling unit that is sold shall be ensured for a period of 99 years commencing on the date the certificate of occupancy is issued for the unit. To provide for this, a restriction shall be place on the deed of the workforce housing dwelling unit, which shall read as follows: "This property is to remain affordable for a period of 99 years from its initial date of sale for persons earning between 80% and 120% of the area median income (AMI) for State College, PA Metropolitan Statistical Area (MSA) as established by the most recently published income guidelines defined in the annual schedule published by the Secretary of the United States Department of Housing and Urban Development."
- (2) Prospective buyers shall enter into a legally binding agreement with the designated administrator of the Workforce Housing Program that will stipulate the process for certifying subsequent buyers of workforce housing dwelling units for the applicable ninety-nine-year period, and the amount of equity able to be recouped by the homeowner upon sale of the workforce housing dwelling unit. The designated administrator of the Workforce Housing Program shall have the authority to require additional stipulations in the agreement, including, but not limited to, the requirement of prospective buyers to participate in financial counseling in accordance with the procedures and requirements of the designated administrator.
- (3) The Township shall require resale conditions in order to maintain the availability of workforce units in perpetuity be specified in the affordability instrument, including resale



calculations.

- (a) At the time of purchase, the owners of any workforce unit shall execute a resale restriction agreement and option to purchase provided by the Township, stating the restrictions imposed pursuant to this resale restrictions section, including but not limited to all applicable resale controls and occupancy restrictions. This resale restriction agreement and option to purchase shall be recorded in the Centre County Office of Recorder of Deeds and shall afford the Township or its assignee the right to enforce the declaration of restrictions.
  - (b) The Township or its designee shall be responsible for monitoring and facilitating the resale of workforce units.
- (4) Provisions for continued affordability of workforce units shall provide that the Township have an exclusive option to purchase any workforce unit when it is offered for resale.
- (a) The owner shall notify the Township or its designee of the prospective availability of any workforce unit for sale.
  - (b) Upon being notified by the owner of the workforce unit, the Township or its designee shall have an exclusive option for 30 days to enter into a purchase and sales agreement at the workforce unit pricing the unit being offered for sale by the owner. The Township may waive or assign this option.
- (5) If the Township fails to exercise its option for the workforce unit, or if the Township or its designee declares its intent not to exercise its option, the owner shall notify the Director of Planning and Zoning by certified mail that the deed restriction will be removed from the property and consequently, the unit will be removed from the Workforce Housing Program. Upon notification, the owner may sell the workforce unit to a nonqualifying owner by paying a fee-in-lieu to the Workforce Housing Fund as outlined in § 27-716, Subsection 10B. If requested, by the owner, the Township or its designee shall execute documents that may be recorded with the Centre County Office of Recorder of Deeds to evidence said waiver of option.
- (6) Closing on workforce units purchased by the Township or its designee occurs within 30 days of notifying the owner of the Township or its designee's intent to exercise its option. If the Township or its designee fails to close on this workforce unit within such 30 days, the owner shall notify the Director of Planning and Zoning by certified mail that the deed restriction will be removed from the property and consequently, the unit will be removed from the Workforce Housing Program. Upon notification, the owner may sell the workforce unit to a nonqualifying owner by paying a fee-in-lieu to the Workforce Housing Fund as outlined in § 27-716, Subsection 10B. If requested, by the owner, the Township or its designee shall execute documents that may be recorded with the Centre County Office of Recorder of Deeds to evidence said waiver of option.

B. Leasing/Rental Developments.

- (1) Static Data, Unit Composition and Rent Schedule.
  - (a) This information is required both prior to lease up and annually that includes: total units, bedroom size, tenant incomes and rents, unit locations within the development, and square footage.

- (2) Tenant Incomes and Rent Determination.
  - (a) Measurement of household income is determined using the Housing and Urban Development's (HUD) annually published area median income and rent chart based upon household size in the State College Metropolitan Statistical Area (MSA).
- (3) Incomes Rising in Place.
  - (a) Households that have initially qualified for a workforce housing unit are permitted to remain in that unit and not be subject to market rate rents until their incomes reach or exceed the income limits contained in this chapter. After qualifying at lease-up, a tenant's income may increase above the affordability restrictions of a development and still have the unit fulfill the development's workforce housing requirements, based on the following schedule:
    - 1) Tenants in units restricted at 80% of AMI levels, may have income increase up to 120% of AMI.
  - (b) The owner or property manager may revise the expiring leases with tenants who, upon recertification, no longer meet the income requirements. Tenants may continue living in a workforce housing dwelling unit at market rate rent. The market rate rent level must be comparable to reasonably equivalent units within the development, or a comparable development. Tenants must not be required to submit additional deposits or fees.
    - 1) Un-Constructed Units. If units within the phase or development (for single phase developments) are not yet constructed, another unit must be designated from such un-constructed units in the phase or development as a workforce housing dwelling unit in order to maintain the affordability requirements as described in the vacancy section below.
    - 2) Constructed Units. For developments that are completely constructed, another unit must be designated in the development as a workforce housing unit in order to maintain the affordability requirements as described in the vacancy section below.
- (4) Vacancies.
  - (a) The following shall apply when, through the annual tenant income certification reporting cycle, a tenant's income is above what's allowable for the workforce housing dwelling unit:
    - 1) Owner or their property manager will check the reported income against that allowed by the incomes rising in place policy.
    - 2) When a tenant's income is at or below the incomes rising in place policy, there is no action required by the owner or their property manager. The owner or their property manager at their discretion may raise tenant rent up to the maximum allowed for the tenant's household according to the current Housing and Urban Development's (HUD) annually published AMI and rent chart based upon household size in the State College (MSA), taking into account any applicable laws, rules, or policies regarding rent increases.

- 3) In the case that a tenant no longer qualifies for a workforce housing unit, the owner or their property manager must give at least 240-day written notice to the tenant and Ferguson Township and/or designee prior to an increase in the unit's rent. This information must be included in the lease or lease addendum for each workforce housing unit and an executed copy provided to Ferguson Township and/or designee as the development is leased up and at unit takeover.

C. Annual Reporting and Review.

- (1) Developments with rental units will be subject to Ferguson Township and/or designee annual reporting requirements as set forth in the workforce housing development agreement. Owners or their property managers on an annual basis will submit information on workforce housing dwelling units and the tenants living in such units.
  - (2) The Township and/or designee reserves the right to physically inspect developments containing workforce housing dwelling units at least once every three years. Inspections will also include an audit of workforce housing related files such as the tenant income compliance. Developments that are determined to be out of compliance may be inspected more frequently or until they are brought back into compliance.
12. Administration. The Ferguson Township Planning and Zoning Department and/or designee shall administer and monitor activity under this chapter and shall report periodically to the Board of Supervisors, setting forth its findings, conclusions and recommendations for changes that will render the program more effective.
  13. Implementation. The Ferguson Township Planning and Zoning Department and/or designee may establish procedures, and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this chapter.
  14. Fees. Fees to administer the program such as a monitoring fee, refinance fee, or resale fee, may be established by resolution by the Board of Supervisors, following written recommendation by the Township Manager and adopted as part of the Township's schedule of fees.

**FERGUSON TOWNSHIP ZONING HEARING BOARD  
ORGANIZATIONAL MEETING MINUTES  
Tuesday, April 25, 2023  
7:00 p.m.**

**ATTENDANCE**

The Ferguson Township Zoning Hearing Board held an organizational meeting on Tuesday, April 25, 2023, at the Ferguson Township Municipal Building. In attendance were:

**Board**

Susan Buda, Vice Chair  
Swamy Anantheswaran, Secretary  
Stefanie Rocco  
Jeff Stover, ZHB Solicitor

**Staff**

Jeff Ressler, Zoning Administrator  
Liza Ruhf, Recording Secretary

Others in attendance were:

**I. CALL TO ORDER**

The Ferguson Township Zoning Hearing Board Organizational Meeting was called to order on Tuesday, April 25, 2023, at 7:02 p.m.

**II. ELECTION OF OFFICERS FOR 2023**

**A. ELECTION OF CHAIR**

Mr. Ressler opened the nominations for Chair.

Mr. Anantheswaran nominated Ms. Susan Buda for Chair. Ms. Rocco seconded the motion. The motion passed unanimously.

**B. ELECTION OF VICE CHAIR**

Ms. Buda opened the nominations for Vice Chair.

Mr. Anantheswaran nominated Ms. Stefanie Rocco for Vice Chair, pending her appointment by the Board of Supervisors on May 2, 2023. Ms. Buda seconded the motion. The motion passed unanimously.

**C. ELECTION OF SECRETARY**

Ms. Buda opened the nominations for Secretary.

Ms. Rocco nominated Mr. Swamy Anantheswaran for Secretary. Ms. Buda seconded the motion. The motion passed unanimously.

**III. SELECTION AND APPROVAL OF MEETING DATES AND TIMES FOR 2023**

Ms. Buda reviewed the meeting dates for 2023 with the Board. The Zoning Hearing Board would be meeting on the fourth Tuesday of every month at 7:00 p.m., except for the following dates: June 13, October 10, and November 14, which would be the second Tuesday of the month at 7:00 p.m., and December 19, which would be the third Tuesday of the month at 7:00 p.m.

Ms. Rocco moved that the Ferguson Township Zoning Hearing Board approve the fourth Tuesday of the month at 7:00 p.m., with the exception of June 13, October 10, November 14, and December 19, as the meeting dates and times for 2023. Mr. Anantheswaran seconded the motion. The motion passed unanimously.

**IV. ADJOURNMENT**

The Ferguson Township Zoning Hearing Board Organizational Meeting was adjourned on Tuesday, April 25, 2023, at 7:10 p.m.

RESPECTFULLY SUBMITTED,

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Swamy Anantheswaran, Secretary  
Ferguson Township Zoning Hearing Board

**FERGUSON TOWNSHIP ZONING HEARING BOARD**  
**REGULAR MEETING MINUTES**  
**Tuesday, April 25, 2023**  
**7:00 p.m.**

**ATTENDANCE**

The Ferguson Township Zoning Hearing Board held a regular meeting on Tuesday, April 25, 2023, at the Ferguson Township Municipal Building. In attendance were:

**Board**

Susan Buda, Chair  
Stefanie Rocco, Vice Chair  
Swamy Anantheswaran, Secretary  
Jeff Stover, ZHB Solicitor

**Staff**

Jeff Ressler, Zoning Administrator  
Liza Ruhf, Recording Secretary

Others in attendance were: Derek Lucas, property owner and representing the applicant; Jason Kunkle, neighboring property owner

**I. CALL TO ORDER**

The Ferguson Township Zoning Hearing Board Regular Meeting was called to order on Tuesday, April 25, 2023, at 7:10 p.m.

**II. PLEDGE OF ALLEGIANCE**

**III. CITIZEN INPUT**

No citizen input was heard.

**IV. INTRODUCTION OF BOARD MEMBERS**

**V. SWEARING IN OF THOSE WHO WISH TO TESTIFY**

Derek Lucas and Jeff Ressler were sworn in to testify.

**VI. ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VARIANCE**

Mr. Jeff Stover, Esquire, presented the standards for granting a variance.

**VII. ZONING ADMINISTRATOR EXPLAINS THE BASIS OF THE VARIANCE**

Mr. Ressler stated that there were two properties involved in the hearing; the first was tax parcel 24-008-008A, along W. Whitehall Road, and owned by the David G. Burket Living Trust, and the second was tax parcel 24-008-005 at 3189 W. Pine Grove Road, owned by Derek Lucas. The properties were 22.58 acres, a nonconforming farm tract (minimum was 50 acres), and 1.2 acres, used for residential purposes, respectively. The properties were zoned RA – Rural Agricultural. The applicant for the David G. Burket Living Trust property was represented by Derek Lucas; the authorization letter was included in the file. The applicant was requesting a variance to Chapter 27-803.1.B to subdivide 0.17 acre from the 22.58 acre nonconforming property, tax parcel 24-008-

008A, which would make it more nonconforming, and to complete a lot consolidation to the 1.2 acre property, tax parcel 24-008-005, which was owned by Mr. Lucas. Mr. Ressler explained that the Subdivision Ordinance, Chapter 22-504.3, read that lot dimensions and areas shall be not less than specified by the provisions of Chapter 27, Zoning, unless a variance is first granted under provisions of said chapter and that no parcel may be subdivided which will create a nonconforming lot or building setback; the applicant was not requesting a variance to the Subdivision Ordinance, it just specified that it could not be accomplished under the subdivision rules. Mr. Ressler further stated that Chapter 27-803.1.B read that no such nonconforming use or structure shall be altered or extended except if such complies with the following criteria and standards, which he explained, as it would not permit making a non-conforming lot smaller, nor could any parcel be subdivided. Mr. Ressler then stated that Chapter 27-208.1.A read that all lots created after the effective date of this chapter shall be no less than the minimum lot size and width requirements stipulated for each use in the district regulations, except for uses otherwise regulated under the cluster option for rural districts or a planned residential development district and that Chapter 27-205.1 indicated that the minimum lot size was 50 acres in the RA District. Mr. Ressler explained that if the first variance were to be granted to subdivide the 22.58 acre farm tract, then a variance to Chapter 27-205.1 to the rear fifty (50) foot, and the side thirty (30) foot, setback requirements would be requested for the existing sheds on what would be the expanded lot at 3189 W. Pine Grove Road, tax parcel 24-008-005, to encroach into the setbacks. Mr. Ressler stated that Chapter 27-209.1 read that no structure shall be placed in the front, side or rear yard setback areas specified for each use, except where specifically permitted below or in other sections of this chapter. Mr. Ressler provided some history to the property in that the 2 sheds had been permitted years prior, but that the information had not been correct that they had given to the Zoning Administrator at the time; the smaller shed would be approximately ten (10) feet away from the proposed property boundary and the larger one would be approximately thirty (30) feet away from the proposed boundary.

**VIII. VARIANCE REQUEST OF DAVID G. BURKET ,TRUSTEE, THE DAVID G. BURKET LIVING TRUST, W. WHITEHALL ROAD**

Mr. Lucas stated that he had bought the property at 3189 W. Pine Grove Road eight (8) years ago and he had assumed that the sheds were on his property; Mr. Burket had later surveyed his property and then had informed Mr. Lucas that the sheds were on the Burket land. They had come to an agreement that if Mr. Lucas would pay for the necessary zoning applications that the property where the sheds sat would be given to Mr. Lucas. Mr. Lucas reported that he had bought the property in 2015 and that he had found a plan dated circa 1996 with the proposed sheds on it. Mr. Ressler stated that at least one of the sheds had been permitted. Mr. Lucas reported that the

large shed had a cement floor with electricity and that the smaller one was a chicken coop with electric.

Ms. Buda stated that both parties were amenable and that Mr. Burket was willing to part with the 0.17 acre of his property. Ms. Buda further commented that the Burket property was under a conservation easement agreement and that Centre County had been supportive of the subdivision.

Ms. Rocco moved that the Ferguson Township Zoning Hearing Board grant a variance to Chapter 27-803.1.B, in addition to Chapter 27-208.1.A and Chapter 27-205.1 for lot size, to subdivide 0.17 acre from the nonconforming farm tract, tax parcel 24-008-008A, and add that 0.17 acre to tax parcel 24-008-005, 3189 W. Pine Grove Road, Pennsylvania Furnace, on the basis that the 0.17 acre subdivision satisfied the elements necessary for a de minimis variance. Mr. Anantheswaran seconded the motion. The motion passed unanimously.

Ms. Rocco moved that the Ferguson Township Zoning Hearing Board grant a variance to Chapter 27-205.1 setback regulations and Chapter 27-209.1 yard requirements, for existing sheds on tax parcel 24-008-005, 3189 W. Pine Grove Road, Pennsylvania Furnace, to encroach into the side and rear yard setbacks of the newly expanded lot, with the condition that if/when either or both sheds would be replaced that they would be replaced within the appropriate setbacks. Mr. Anantheswaran seconded the motion. The motion passed unanimously.

**IX. APPROVAL OF THE MEETING MINUTES FROM NOVEMBER 16, 2022**

Mr. Anantheswaran moved that the Ferguson Township Zoning Hearing Board approve the November 16, 2022, Regular Meeting Minutes. Ms. Rocco seconded the motion. The motion passed unanimously.

**X. ADJOURNMENT**

The Ferguson Township Zoning Hearing Board Regular Meeting was adjourned on Tuesday, April 25, 2023, at 7:40 p.m.

RESPECTFULLY SUBMITTED,

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Swamy Anantheswaran, Secretary  
Ferguson Township Zoning Hearing Board