

**FERGUSON TOWNSHIP ZONING HEARING BOARD
REGULAR MEETING AGENDA
Tuesday February 25, 2020 7:00pm**

AGENDA:

- ❖ CALL TO ORDER:
- ❖ PLEDGE OF ALLEGIANCE:
- ❖ CITIZENS INPUT: LIMITED UP TO FOUR (4) MINUTES PER INDIVIDUAL
- ❖ INTRODUCTION OF BOARD MEMBERS:
- ❖ SWEARING IN OF THOSE THAT WISH TO TESTIFY:
- ❖ THE ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VARIANCE:
- ❖ ZONING OFFICER EXPLAINS BASIS OF VARIANCE/APPEAL REQUEST
- ❖ YORK ACQUISITIONS, LLC – APPEAL AND IN THE ALTERNATIVE REQUESTING A VARIANCE
- ❖ APPROVAL OF THE MEETING MINUTES FROM JANUARY 28, 2020 REGULAR MEETING AND THE ORGANIZATIONAL MEETING

BEFORE THE FERGUSON TOWNSHIP ZONING HEARING BOARD

In the matter of:	:
York Acquisitions, LLC.,	: Appeal from the Determination of the Zoning
Applicant	: Officer
	: Retail Use
	: Variance Request
	: Structured Parking
	: Sections 27-304.B.1.3.b and 27-304.B.1.u
Property Location:	:
900-916 West College Avenue	:
Tax Parcel Number: 36-010/006, 24-	:
002A/015, 24-002A/016, 24-002A/017, and	:
24-002A/018	:

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION**

PROCEDURAL BACKGROUND

By application received January 16, 2020, Applicant requested a hearing before the Zoning Hearing Board. A hearing was scheduled, advertised and held on February 25, 2020.

Members of the Ferguson Township Zoning Hearing Board present: Michael Twomley, Chairman; Swamy Anantheswaran; Irene Miller; Susan Buda; and Stefanie Rocco (alternate), members.

Appearing on behalf of the Applicant: Scott Yocum; John Sepp, P.E., and Terry J. Williams, Esquire.

Appearing on behalf of the Municipality: Jeffrey S. Ressler, Zoning Administrator.

Appearing on behalf of others in favor of the application: None.

Appearing on behalf of others opposed to the application: Susan Venegoni; Wes Glebe; Bill Heckinger; and Janice Gainer.

At the hearing, there were no objections to notice, advertising or procedure on behalf of any party. At the close of the testimony the Board discussed the case in open hearing. Upon

the conclusion of the discussion the Board voted 4 to 1 to deny the Applicant's appeal, member Miller dissenting, and the Board voted 5 to 0 to grant the requested variances. The Board instructed the solicitor to prepare a set of findings of fact and conclusions of law embodying the decision of the Board.

FINDINGS OF FACT

1. The subject property includes six contiguous lots that are each owned by Scott L. Youm and Glenda C. Yocum. The property is bordered on the north by West College Avenue, on the east by North Buckout Street, on the south by West Calder Way, and on the west by a lot owned by Mucoy Limited, Inc., a corporation owned by Mr. and Mrs. Yocum.

2. At the east end of the property a double lot at the corner of North Buckout Street and West College Avenue straddles the municipal boundary line separating Ferguson Township from State College Borough. It is assigned a tax parcel number of 36-010/006. The majority of that lot is in Ferguson Township, although the eastern portion of the lot facing Buckout Street is in the Borough.

3. The remaining four lots, moving east to west, are assigned tax parcel numbers 24-002A/015, 24-002A/016, 24-002A/017, and 24-002A/018.

4. Proceeding in an east to west direction the properties are known as 900 West College Avenue, 904 West College Avenue, 906 West College Avenue, 912 West College Avenue, and 916 West College Avenue.

5. The properties are located in the Terraced Streetscape TS zoning district.

6. Applicant York Acquisitions, LLC. has entered into an agreement with Mr. and Mrs. Yocum to purchase the property upon the satisfaction of certain conditions.

7. The two lots at 912 West College Avenue and 916 West College Avenue are each improved with a single family residence. The property at 906 West College Avenue is improved

with a single family residence that has been converted into commercial space, and includes a large addition behind the original dwelling house. The property at 904 West College Avenue is a paved parking lot serving the business at 906 West College. The property at 900 West College Avenue is now a vacant. There is a paved parking lot across the back portion of that property.

8. Applicant now proposes to raze the remaining structures on the lots, consolidate the lots, and construct a mixed use commercial and residential building on the property.

9. The property is contaminated by Benzene as a result of a leak of petroleum products from underground storage tanks located at a convenience store directly across West College Avenue from the site. The Benzene reached the water table and migrated under College Avenue.

10. Core samples have determined that the Benzene is in the water table beginning at a depth of 34 feet below ground.

11. Monitoring wells are located on the property. Test results from samples taken in January 2019 indicate that the groundwater contains 5,720 micrograms per liter of Benzene.

12. The Pennsylvania Department of Environmental Protection “statewide medium specific concentration” of Benzene for residential and non-residential properties is a maximum of 5 micrograms per liter.

13. Under Applicant’s proposal, a five story structure would be erected on the site. Under the proposal an 8,710 square feet L-shaped portion of the ground level would contain commercial retail space as well as a lobby and elevator. That portion would include areas along the front of the building facing West College Avenue and along the eastern end of the building facing North Buckout Street. The remainder of the ground floor would be devoted to onsite parking.

14. Above the ground floor would be five levels of residential dwelling units. The residences would be a mix of two bedroom and three bedroom units. It is expected that the units will be largely leased by Pennsylvania State University students. A total of 95 residential units are planned for the building.

15. Applicant proposes two and one-half levels of parking underneath the residential living space, including the parking on areas of the ground level behind the retail space, and a level and one-half of parking below the ground level.

16. Applicant is prevented from excavation any lower than the level and one-half below grade for additional parking because to do so would require going below 34 feet, and would bring the project into contact with the Benzene contamination below that depth and bring the project into conflict with the DEP “statewide medium specific concentration” regulation.

17. The Ferguson Township Zoning Ordinance requires multi-use structures within the TS zoning district along West College Avenue to devote their entire first floor to retail or commercial uses. Ferguson Township Zoning Ordinance, Section 27-304.B.3.b.

18. The zoning ordinance permits a variety of different uses within the TS district, including without limitation, “vertical mixed use buildings involving a combination of authorized uses” (Id., Section 27-304.B.1.i), and “structured parking when provided as part of or accessory to a proposed vertical mixed use structure” (Id., Section 27-304.B.1.u).

19. The ordinance defines a “vertical mixed use building” as, “A building with more than one use where the separate uses occupy separate floors of the structure.” Id., Section 27-1102.

20. The zoning ordinance requires 1.5 on-site parking stalls for each residential unit containing two or more bedrooms. *Id.*, Section 27-714; State College Subdivision and Land Development Ordinance, Section 22-501C.B.2.

21. General Commercial space requires one on-site parking stall for every 200 square feet of net floor area devoted to such use. *Id.*

22. The Zoning Administrator denied the Applicant's request for a zoning permit for the proposed project because of the fact that the proposal does not devote the building's entire ground floor to commercial space. Rather, it devotes those portions of the building along College Avenue and Buckout Street to commercial space, but reserves the rest of the ground floor for on-site parking.

23. Applicant appeals from the determination of the Zoning Administrator that the entire ground floor must be devoted to commercial space as opposed to a mixture of commercial space and structured parking.

24. Alternatively, Applicant seeks a variance from the requirement that the entire ground floor must be devoted to commercial space.

25. A number of residents of the neighborhood voiced objection to the requested relief. Susan Venegoni raised concerns about increased parking on Calder Alley and Buckout Street and the other streets of the low density residential areas beyond Calder Alley.

26. Mr. Wes Glebe raised concerns about impervious coverage and the lack of a vegetative buffer. He also raised a question as to whether the project was economically feasible without the requested relief.

27. Mr. Bill Heckinger raised concerns about access and traffic on Calder Way. Ms. Janice Gainer was also voiced traffic concerns as well as concerns about the impact of the project on property values of the single family dwellings in the neighborhood.

DISCUSSION

Applicant appeals from the determination of the Zoning Administrator that its proposal to erect a vertical mixed use building on the subject property, with the ground level devoted to a mixture of commercial/retail space and on-site parking, violates the requirements of the ordinance. The Zoning Administrator determined that the entire ground level of the structure must be devoted solely to commercial retail space. Alternatively, the Applicant seeks a variance in order to use the ground level for a combination of 8,710 square feet of commercial retail space, limited to an L-shaped portion of the building facing College Avenue and Buckout Street, with the remainder of the ground level devoted to on-site parking. The Board will consider each of those issues in turn.

A. Appeal from the determination of the Zoning Administrator.

The Applicant proposes a vertical mixed use structure on the subject property. As proposed, the structure will contain a ground level devoted to a mixture of retail commercial space and on-site parking. There will be five levels above the ground level that will contain 95 two and three bedroom residential apartments. There will be one and one-half levels of underground parking below the ground level.

The Zoning Administrator, relying on the provisions of Section 27-304.B.3.b of the Ferguson Township Zoning Ordinance, determined that the entire ground level of the structure

must be devoted to commercial retail space, and that area could not contain on-site parking. That section of the zoning ordinance applies to lots in the TS zoning district along West College Avenue that contain between .40 acres and .99 acres of area. It provides that, “The entire first floor of all structures located on lots that have frontage on West College Avenue must be devoted to retail or commercial uses permitted in the district.” It is uncontroverted that retail commercial space is a permitted use in the district. See 27-304.B.1.g.

The Applicant argues that the zoning ordinance is inherently inconsistent with respect to how the first floor space is to be used for a vertical multi-use building in the TS district. Applicant points to the fact that “structured parking” is a permitted use in the district for vertical mixed use structures. Id, Section 27-304.B.1.u. Applicant suggests that because both general commercial space and structured parking are permitted uses, and because the ordinance mandates a required amount of on-site parking, it is inconsistent to require on-site parking, but prohibit it from the ground level of the property. Applicant further suggests that the ordinance, as designed, imposes such stringent requirements on a vertical multi-use building as to render such a project economically unfeasible.

In support of its arguments the Applicant presented the opinion of John R. Abisch, a registered architect. Mr. Abisch opined that requiring retail space over the depth of the entire ground level of the proposed building is not desirable, making it more conducive to a big box retailer than a neighborhood shopping area. Mr. Abich argued that such very deep retail space is challenging for neighborhood retailers as envisioned by the ordinance. Furthermore, Mr. Abisch opined that the height restriction of the building, limiting it to five stories of residential above the ground level, made such a project economically challenging. Forbidding parking on the ground level requires moving parking to the second level, and that would eliminate residential space and

the income such space would generate to support the building. Without that income the numbers for such a development do not work.

The Board has carefully considered the Applicant's arguments in support of its appeal. The Board believes that the Zoning Administrator was constrained by the clear language of the ordinance to prohibit parking on the ground level. The ordinance very clearly states that, "The entire first floor of all structures located on lots that have frontage on West College Avenue must be devoted to retail or commercial uses." Id. Given that very clear and mandatory language, the Zoning Administrator correctly denied the requested application for a zoning permit.

The Board does not view the fact that the ordinance provides structured parking as a permitted use in a vertical mixed use structure to be inherently inconsistent with the requirement that the ground floor be devoted to commercial uses. Furthermore, the Applicant's suggestion that the requirement the entire ground level be devoted to commercial space is inconsistent with the purpose of the ordinance is more properly posed to the Board of Supervisors. That argument essentially asks this Board to substitute its judgment for that of the legislative body.

The Board believes that the Applicant did not demonstrate on the record that it had considered other solutions to the parking constraints, including an arrangement that would provide dedicated off-street parking on another location. Nor is the Board convinced from the record that providing parking on the second level is economically unfeasible.

B. Variance Request

The Board next turns to the Applicant's request for a variance from the requirement that the ground level of the property be devoted solely to commercial retail space. Specifically, the Applicant requests that the commercial retail space on that level be restricted to 8,710 square feet, including the entire front of the building facing West College Avenue and the entire eastern

side of the building facing Buckout Street. Behind those areas the Applicant seeks to install 51 on-site parking spaces, including 45 within the footprint of the building and six spaces at the rear of the property toward Calder Way.

In order to qualify for a variance, an applicant must meet five criteria imposed by the Pennsylvania Municipalities Planning Code. 55 Pa.C.S. Section 10910.2. The Pennsylvania Supreme Court has summarized those five criteria as follows:

- (1) An unnecessary hardship will result if a variance is denied, due to unique physical circumstances or conditions of the property;
- (2) Because of such physical circumstances or conditions the property cannot be developed in strict conformity with the provisions of the Zoning Ordinance and a variance is necessary to enable the reasonable use of the property;
- (3) The hardship is not self-inflicted;
- (4) Granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and
- (5) The variance sought is the minimum variance that will afford relief.

Wilson v. Plumstead Township Zoning Hearing Board, 936 A.2d 1061, 1064 (Pa. 2007); accord Tidd v. Lower Saucon Township Zoning Hearing Board, 118 A.3d 1 (Pa.Cmwlth. 2015).

“The reasons for a variance must be serious and compelling. Variances should be granted sparingly and only under exceptional circumstances.” Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983). The burden of proof is on the landowner to show the serious and compelling reasons for the grant of a variance. Hill District Project Area Committee, Inc. v. Zoning Board of Adjustment, Pa.Cmwlth. 323, 638, A.2d 278 (1994).

The applicant must show that an unnecessary hardship will result if the requested variance is denied. Allegheny West Civic Council, Inc. v. Zoning Board of Adjustment, 547 Pa. 163, 689 A.2d 225 (1997). A variance is the proper relief when an unnecessary hardship attends

the property; a variance cannot provide relief where a hardship afflicts the property holder's desired use of the land and not the land itself. Yeager v. Zoning Hearing Board of Adjustment, 779 A.2d 595, 598 (Pa.Cmwlth. 2001). Once an applicant has demonstrated that the property is subject to an unnecessary hardship, the party must also demonstrate that the conditions are unique to the property; where the hardship is present in the district as a whole or in a portion of the district, the proper remedy is rezoning rather than a variance." Nowicki v. Zoning Hearing Board, 91 A.3d 287 (Pa.Cmwlth. 2014).

In the present case, the Applicant's property does contain a unique physical circumstance or condition. Specifically, the property is subject to contamination from Benzene that leaked from an underground storage tank into the ground water. As a result, the property is contaminated beginning at a level of approximately 34 feet below the surface. The level of contamination is exceedingly high, having been most recently measured in January 2019 through on-site monitoring wells at a level of 5,720 micrograms of Benzene per liter in the groundwater. DEP standards require a maximum of 5 micrograms per liter. Hence, the level of contamination is over a 1,000 times the allowable limit. Because of that level of contamination, the Applicant is limited on the depth of excavation for underground parking on the site.

The zoning ordinance mandates a level of on-site parking for Applicant's project. Applicant proposes five stories of residential units plus commercial space on the ground level. That proposal requires 150 on-site parking spaces in order to comply with the ordinance. However, Applicant is prevented from providing all of those spaces while at the same time meeting the requirement that it devote the entire first floor to commercial space. The contamination prevents Applicant from excavating to a sufficient depth to provide the required

parking below grade. Hence, Applicant cannot provide the necessary on-site parking and also the full commercial space on the first level.

The hardship was not self-created. The contamination that gives rise to the hardship was from an underground storage tank at a gas station/convenience store located across College Avenue from the property. The gasoline escaped from an underground storage tank into the groundwater and then flowed under College Avenue and onto or under the site.

The requested variance, if granted, will not alter the essential character of the neighborhood nor be detrimental to the public welfare. While a number of neighborhood residents raised concerns about property values in the residential neighborhood on the other side of Calder Way, and about traffic and parking concerns, the variance in question would limit commercial space, but would not increase allowed parking or the amount of allowed residential space. If anything, reducing the commercial space would reduce traffic flow from the property and not aggravate it. The property is in a transition area along a major thoroughfare, West College Avenue (State Route 26), and the Township Board of Supervisors has deemed it suitable for the type of development in question at that location. Furthermore, the requested variance to convert a portion of the first floor from a general commercial use to that of a structured parking use is the minimum variance that will afford relief. The Board notes that structured parking is a permitted use in the district.

CONCLUSIONS OF LAW

1. Applicant's property is located in the Terraced Streetscape TS zoning district.
2. Both vertical multi-use structures and structured parking are permitted uses in the TS district.

3. The zoning ordinance clearly mandates that the ground level of vertical multi-use structures on properties along West College Avenue must be devoted entirely to general commercial and retail uses.

4. The Zoning Administrator correctly determined that the proposal to devote a portion of the ground level to on-site parking, as opposed to general commercial and retail space, violated the language of the zoning ordinance.

5. The Applicant's property contains unique physical circumstances and conditions by the fact that it is contaminated at a depth of approximately 34 feet below ground level, preventing the full use of the property for excavation for underground structures and underground parking.

6. As a direct result of the contamination, the application of the zoning ordinance, including the provisions of required on-site parking, create an unnecessary hardship that prevents the full use of the property as opposed to other similarly situated properties along West College Avenue.

7. The requested variance to reduce the amount of general commercial and retail space on the first floor in lieu of structured parking will not adversely affect the neighborhood nor be detrimental to the public welfare.

8. The requested variance to limit the general retail space on the first floor to 8,710 square feet, thereby allowing 45 on-site spaces within the first level of the building, and allowing Applicant to meet its on-site parking requirements, is the minimum that will afford relief.

DECISION

Applicant's appeal from the determination of the Zoning Administrator that the entire ground level of the proposed vertical multi-use structure must be limited entirely to general commercial and retail space is **DENIED**, and that determination **AFFIRMED**. Applicant's request for a variance to limit the amount of general commercial and retail space on the ground level of the proposed building to 8,710 square feet, and to install 45 on-site parking stalls on the first level of the building, is **GRANTED**.

BEFORE THE FERGUSON TOWNSHIP ZONING HEARING BOARD

In the matter of:

York Acquisitions, LLC.,
Applicant

:
: Appeal from the Determination of the Zoning
: Officer
: Retail Use
: Structured Parking
: Sections 27-304.B.1.3.b and 27-304.B.1.u

Property Location:

900-916 West College Avenue
Tax Parcel Number: 36-010/006, 24-
002A/015, 24-002A/016, 24-002A/017, and
24-002A/018

AND NOW, the foregoing Opinion and Decision of the Board in the above-captioned matter is adopted by a vote of the Board as follows:

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>NOT PRESENT</u>
MICHAEL TWOMLEY, Chairman	<u>✓</u>	_____	_____	_____
SWAMY ANANTHESWARAN, Secretary	<u>✓</u>	_____	_____	_____
MICHAEL MACNEELY	_____	_____	_____	_____
SUSAN BUDA	<u>✓</u>	_____	_____	_____
IRENE MILLER	_____	_____	_____	_____
STEFANIE ROCCO, Alternate	_____	_____	_____	_____

ADOPTED, this 25th day of February, A.D. 2020.

BY THE BOARD

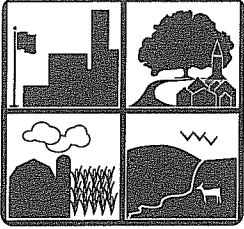
Michael Twomley
Michael Twomley

Swamy Anantheswaran
Swamy Anantheswaran

Michael MacNeely
Susan Buda
Susan Buda

Irene Miller

Stefanie Rocco, Alternate



TOWNSHIP OF FERGUSON

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

Property Information

For

York Acquisitions, LLC Appeal and Variance Request

For

900, 904, 906, 912 & 916 West College Avenue and Calder Way

February 24, 2020

7:00 PM

1. The properties that are the subject of this hearing are 900, 904, 906, 912 and 916 West College Avenue and Calder Way. Tax parcels 36-010-006; 24-002A-014; 24-002A-015; 24-002A-016; 24-002A-017; and 24-002A-018.
2. The properties are owned by Scott and Glenda Yocum, PO Box 57, Boalsburg, PA 16827.
3. The properties are Zoned Terraced Streetscape (TS).
4. The applicant for the Hearing is York Acquisitions LLC or 1301 Capital of Texas Highway, Building B, Suite 201, Austin TX 78746.
5. The applicants are proposing to consolidate the 5 lots into one lot and construct a mixed use commercial and residential building.
6. The applicants are appealing the decision of the Zoning Administrator regarding Chapter 27-304.B.3.b that requires that the entire first floor of all structures located on lots that have frontage on West College Avenue must be devoted to retail or commercial uses permitted for the district. The appeal is in relation to Chapter 27-304.B1.U. which permits "structured parking when provided as part of or accessory to a proposed vertical mixed use structure."
7. In the alternative the applicants are requesting a variance to Chapter 27-304.B.3.b. to be permitted to have parking on the first floor of the mixed use commercial and residential building.

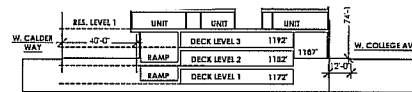


2-25-20
 Plan that ZHB Approved
 for Parking Variance

Exhibit

11

800-848-2040 • www.pennprime.com

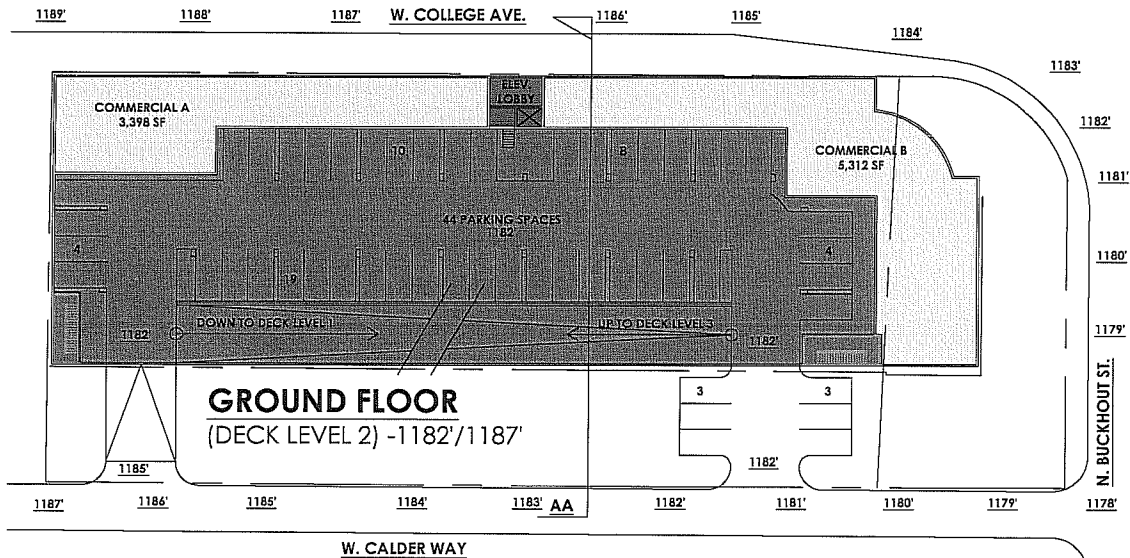


BUILDING/SITE SECTION-AA

SITE DATA - 1.14 ACRES	
5-STORY RESIDENTIAL OVER PARKING	
31,231 GSF ON GROUND FLOOR (LEVEL 2)	
3,398 GSF COMMERCIAL A SPACE	
5,312 GSF COMMERCIAL B SPACE	
21,706 GSF PARKING	
UNIT MIX	
(10) 2 BED UNITS	(20) BEDS / (20) TENANTS
(30) 2 BED + UNITS	(60) BEDS / (90) TENANTS
(56) 3 BED UNITS	(168) BEDS / (168) TENANTS
(96) TOTAL UNITS	(248) TOTAL BEDS / (278) TOTAL TENANTS
(150) TOTAL PARKING SPACES REQUIRED	
(150) TOTAL PARKING SPACES PROVIDED	



25' 50' 75' 100'



Aspen Heights Partners
 8008 Corporate Center Drive, Suite 201, Charlotte NC 28226

STUDENT HOUSING STUDY
 FERGUSON, PA

The drawings presented are illustrative of character and design intent only, and are subject to change based upon final design considerations (i.e. applicable codes, structural, and MEP design requirements, unit plan / floor plan changes, etc.) © 2020 BSB Design, Inc.

FEBRUARY 14, 2020 SH1900XX.00



EXHIBIT

RECEIVED JAN 31 2020

LAW OFFICES OF
MILLER KISTLER & CAMPBELL

RICHARD L. CAMPBELL
JOHN R. MILLER, III
TERRY J. WILLIAMS
TRACEY G. BENSON*
DAVID B. CONSIGLIO**
DAVID S. GAINES, JR.
MICHAEL S. LEVANDOSKI
JOHN W. LHOTA

OF COUNSEL
FRED B. MILLER

*ALSO ADMITTED IN WEST VIRGINIA
**ALSO ADMITTED IN MARYLAND

PLEASE REPLY TO:
STATE COLLEGE OFFICE

720 SOUTH ATHERTON STREET, STE. 201
STATE COLLEGE, PA. 16801-4669
(814) 234-1500
FAX (814) 234-1549
AND
124 NORTH ALLEGHENY STREET
BELLEFONTE, PA. 16823-1695
(814) 355-5474
FAX (814) 355-5340

JOHN R. MILLER, JR.
(1919-2007)

ROBERT K. KISTLER
(1925-2012)

January 31, 2020

Mr. Jeffrey S. Ressler
Zoning Administrator
Ferguson Township
3147 Research Drive
State College, PA 16801

Re: Zoning Appeal and Variance Request - York Acquisitions LLC

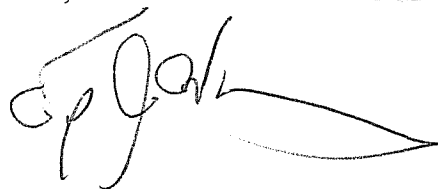
Dear Jeff:

Please find enclosed the Citation Correction requested for the Sections recited in the original Application. Thank you for pointing out the change in the Section numbers. Please add the correction sheet to each of the Applications.

Very truly yours,

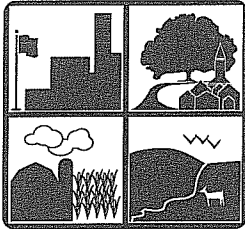
MILLER, KISTLER & CAMPBELL

By:



TJW/slc

Enclosures



TOWNSHIP OF FERGUSON

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

ABUTTING PROPERTY OWNER NOTIFICATION

Applicant: York Acquisitions, LLC
From: Faye A Drawl, Staff Assistant *FAD*
Date: February 18, 2020

**Property Location: 900, 904, 906, 912, 916 W College Ave and W Calder Way in
State College, PA 16801**

Dear Property Owner:

The above named applicant has listed you on his/her application for a variance request from Ferguson Township Zoning Ordinance. The applicant is requesting a variance for the following reason:

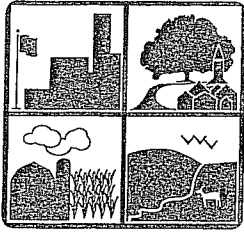
The applicants are appealing a decision of the Zoning Administrator and in the alternative are requesting a variance. The property is located in the TSD Zoning District.

The Ferguson Township Zoning Hearing Board has scheduled a public hearing for Tuesday evening, February 25, 2020, at 7:00 PM in the Main Meeting Room of the Ferguson Township Municipal Building located at 3147 Research Drive, State College, PA 16801.

You are welcome to attend and comment on this request. If you are unable to attend, but still wish to express your feelings, please feel free to write to the Ferguson Township Zoning Hearing Board at 3147 Research Drive, State College, PA 16801.

:fad

Copy: Related File
Office File



TOWNSHIP OF FERGUSON

3147 Research Drive • State College, Pennsylvania 16801

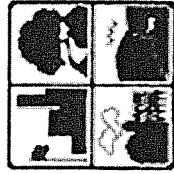
Telephone: 814-238-4651 • Fax: 814-238-3454

www.twp.ferguson.pa.us

I Derek Hoover on 2/18/20 posted the property at

116 W college as shown on the attached map for the Zoning Hearing Meeting on
2/25/20.

Derek Hoover



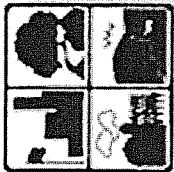
Ferguson Township

Centre County, PA

FERGUSON TOWNSHIP ZONING HEARING BOARD MEETING

**TUESDAY FEBRUARY 25, 2020
7:00 P.M.**

**FERGUSON TOWNSHIP BUILDING
MAIN MEETING ROOM**



Ferguson Township

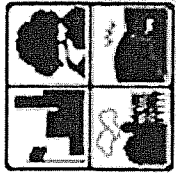
Centre County, PA

ZONING HEARING BOARD

MEETING AGENDA

FEBRUARY 25, 2020

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. CITIZENS INPUT: LIMITED UP TO FOUR (4) MINUTES PER INDIVIDUAL
4. INTRODUCTION OF BOARD MEMBERS
5. SWEARING IN OF THOSE THAT WISH TO TESTIFY
6. THE ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VARIANCE/APPEAL REQUEST
7. THE APPLICATION OF YORK ACQUISITIONS, LLC. APPEAL AND VARIANCE REQUEST.
8. APPROVAL OF THE MEETING MINUTES FROM THE JANUARY 28, 2019 MEETING.



Ferguson Township
Centre County, PA

YORK ACQUISITIONS LLC – APPEAL AND VARIANCE REQUEST

LOCATION:

900, 904,906, 912, 916 WEST COLLEGE AVENUE

ZONING DISTRICT:

ZONING TERRACED STREETSCAPE (TS)

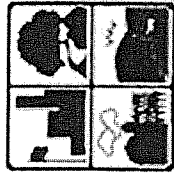
PARCELS, ACREAGE & OWNERSHIP:

TAX PARCEL #36-010-006;24-02A-014; 24-02A-015; 24-02A-016; 24-02A-017; 24-02A-018. ,WHICH ARE OWNED BY SCOTT AND GLENDA YOCUM

ISSUE:

THE APPLICANTS ARE PROPOSING TO CONSOLIDATE THE 5 LOTS INTO ONE LOT. ON THE NEW LOT THE APPLICANTS ARE PROPOSING TO CONSTRUCT A MIXED USE COMMERCIAL AND RESIDENTIAL BUILDING WITH PARKING ON THE FIRST FLOOR.

THE ZONING ORDINANCE IN CHAPTER 27-304.B.3.B READS AS FOLLOWS: THE ENTIRE FIRST FLOOR OF ALL STRUCTURES LOCATED ON LOTS THAT HAVE FRONTAGE ON WEST COLLEGE AVENUE MUST DEVOTED TO RETAIL OR COMMERCIAL USES PERMITTED IN THE DISTRICT.



Ferguson Township

Centre County, PA

YORK ACQUISITIONS LLC – APPEAL AND VARIANCE REQUEST

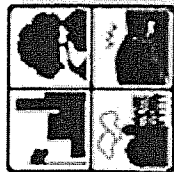
LOCATION:

900, 904, 906, 912, 916 W. COLLEGE AVENUE.

CHAPTER 27-304.B.1.U READS AS FOLLOWS: “STRUCTURED PARKING WHEN PROVIDED AS PART OF OR ACCESSORY TO A PROPOSED VERTICAL MIXED USE STRUCTURE.”

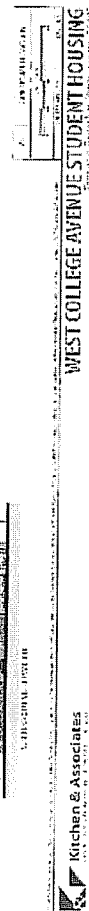
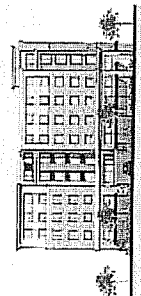
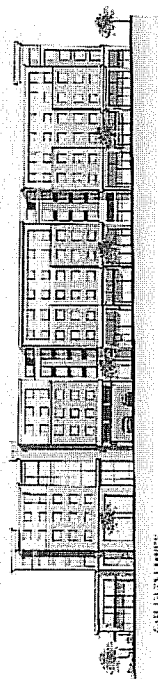
THE APPLICANTS ARE APPEALING THE DECISION OF THE ZONING ADMINISTRATOR THAT THE FIRST FLOOR OF THE PROPOSED MIXED USE COMMERCIAL AND RESIDENTIAL BUILDING CANNOT BE USED FOR PARKING.

IN THE ALTERNATIVE THE APPLICANTS ARE REQUESTING A VARIANCE TO CHAPTER 27-304.B.3.B TO PERMIT THE FIRST FLOOR OF THE MIXED USE COMMERCIAL AND RESIDENTIAL BUILDING TO BE USED FOR PARKING.



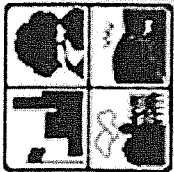
Ferguson Township
Centre County, PA

YORK ACQUISITIONS LLC – APPEAL AND VARIANCE REQUEST



Kitchen & Associates
ARCHITECTS & PLANNERS

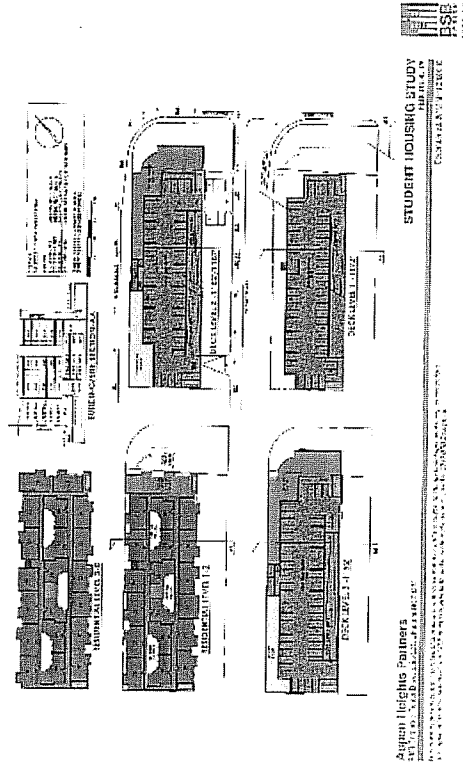
WEST COLLEGE AVENUE STUDENT HOUSING
CENTRE COUNTY, PA

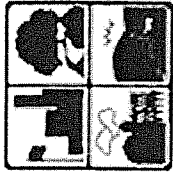


Ferguson Township

Centre County, PA

YORK ACQUISITIONS LLC – APPEAL AND VARIANCE REQUEST





Ferguson Township

Centre County, PA

FERGUSON TOWNSHIP ZONING HEARING BOARD

NEXT SCHEDULED MEETING:

MARCH 24, 2020

Part 7

Mixed Use Districts

§27-701. Traditional Town Development (TTD).

1. *Overall Intent.*

A. The intent of the adoption of these development regulations is to sanction, promote, and facilitate the development of fully integrated, mixed use, pedestrian-oriented neighborhoods in areas of the Township that are most appropriate for this type or style of development. The basis for such design influence is the desire to minimize traffic congestion, suburban sprawl, and environmental degradation. These regulations, administered jointly with the associated Design Manual found in Appendix 27-A, are designed to diversify and integrate land uses within close proximity to each other and to provide for the daily recreational and shopping needs of residents and those who work within the Township. The combined application of these standards is anticipated to produce sustainable, long-term development which enhances the quality of life, and to ensure the highest possible economic and social benefits for all residents.

B. Further, it is the intent of these standards, in conjunction with the Design Manual (Appendix 27-A), to encourage innovation and promote flexibility, economy, and ingenuity in development and to be consistent with the goals and objectives enumerated by the provisions of Article VII-A of the Municipalities Planning Code (MPC). All such development within the Township is intended to be designed as an outgrowth or extension of existing development or urban infill. As a result, the establishment of the TTD Zoning District is consistent with the provisions of §702-A(1)(ii) of the MPC. The application of flexible design standards and increases in the permissible density of development which are specified below, are dependent on the extent to which each proposal identifies the ability to successfully achieve the goals enumerated herein.

C. An applicant wishing to receive approval of a Traditional Town Development or associated Mixed Residential Area within the Township shall submit plans in accordance with procedures provided under §27-702.

2. *Relationship to Other Township Requirements.* The following criteria of the Township Code, as amended, remain applicable to development within the TTD District, whether the design is for a Traditional Town Development or a Mixed Residential Area:

A. *Chapter 19, Signs and Billboards.*

Section No.	Section Title
§19-105	Construction Specifications
§19-106	Prohibited Signs
§19-107	Exempt Signs

EXHIBIT

27-304.B.3.b.

The entire first floor of all structures located on lots that have frontage on West College Avenue must be devoted to retail or commercial uses permitted in the district.

EXHIBIT

2

HAMILTON v. ZONING HEARING BD. OF WHITEMARSH Pa. 1309

Cite as, Pa.Cmwlt., 426 A.2d 1309

Unemployment Compensation Board of Review, 46 Pa.Cmwlt. 357, 406 A.2d 1177 (1979). This Court has "stated on several occasions that an employee is only guilty of willful misconduct when he is, or should be, under the circumstances, *conscious* that his actions are inimical to the interests of his employer." *Curtis v. Unemployment Compensation Board of Review*, 32 Pa.Cmwlt. 462, 467, 379 A.2d 1069, 1071 (1977) (emphasis added) (citations omitted). Accordingly, this Court has held that an employee may be discharged for willful misconduct where (1) the employee has been warned to comply with his employer's rule and has failed to do so;¹ (2) the employer has notified the employee of his basic policy and the employee has not disputed the existence of the policy;² and (3) the employer's clear policy has been made known to all employees and the employee has not argued that he was unaware of the policy.³

[2] In the instant case Petitioner maintained before the referee that he did not know of the existence of a manual which described the store's cash policy and that he had never been asked to read said manual. Petitioner stated that at the time of his hiring he was not instructed with respect to the store's cash deposit procedure. Moreover, Petitioner testified that although he had occasionally accompanied other employees who were making bank deposits for the store, he had never discussed the store's deposit rule with any store personnel. Finally, Petitioner stated that the store manager knew that Petitioner often made bank deposits by himself but neither reprimanded Petitioner nor advised Petitioner that store policy required Petitioner to be joined by another employee when making small deposits or to request police protection when making cash deposits exceeding \$5,000.

1. *Chiango v. Unemployment Compensation Board of Review*, 33 Pa.Cmwlt. 610, 382 A.2d 789 (1978).
2. *Torelli v. Unemployment Compensation Board of Review*, 45 Pa.Cmwlt. 35, 404 A.2d 773 (1979).
3. *Braxton v. Unemployment Compensation Board of Review*, 42 Pa.Cmwlt. 266, 400 A.2d 694 (1979).

Since the only evidence presented on the issue of Petitioner's actually having been notified of the store's policy regarding cash deposits was Petitioner's testimony that he was unaware of a rule mandating either police protection or the presence of a second employee, the referee's finding (and the Board's affirmance of the finding) that Petitioner "was well aware of the employer's ... cash control procedure" is not supported by substantial evidence.⁴

Therefore, we will enter the following

ORDER

AND NOW, March 20, 1981, the order of the Unemployment Compensation Board of Review, Appeal No. B-78-6-A-582, Decision No. B-167741, dated January 10, 1979, is hereby reversed, and this case is remanded to the Board for a determination of benefits to be awarded to Petitioner in accordance with this opinion for the compensable weeks ending September 30, October 7, and October 14, 1978.



Florence M. HAMILTON et
al., Appellants,

v.

ZONING HEARING BOARD OF
WHITEMARSH TOWNSHIP,
Appellee.

Commonwealth Court of Pennsylvania.

Argued Oct. 8, 1980.

Decided March 20, 1981.

Zoning hearing board granted variance to lot owner whose property was zoned

4. Because Petitioner's employer had the burden of proof and prevailed before the Board, this Court "must determine on appeal whether an error of law has been committed and whether any necessary finding of fact is unsupported by substantial evidence in the record." *Lake v. Unemployment Compensation Board of Review*, 48 Pa.Cmwlt. 138, 140, 409 A.2d 126, 127 (1979) (citations omitted).

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partially commercial and partially residential. Objectors appealed. The Common Pleas Court, Montgomery County, Mason Avrigan, J., affirmed, and objectors appealed. The Commonwealth Court, No. 2079 C.D. 1979, Blatt, J., held that although evidence sustained finding that ordinance imposed unnecessary economic hardship upon lot owner, findings by board concerning other statutory requirements for granting of variance were necessary.

Reversed and remanded.

Zoning and Planning ⇐ 647, 726

Evidence sustained finding of zoning hearing board that zoning ordinance requiring rear portion of lot which had no road frontage and no road access be developed as residential imposed unnecessary economic hardship upon lot owner, who wished to develop entire lot for commercial retail purposes, but findings by board concerning other statutory requirements for granting of variance were required. 53 P.S. § 10912.

Roland J. Christy, Spring House and Gerald T. Hathaway, Cuniff, Bray & McAleese, Bala Cynwyd, for appellants.

S. Gerald Corso, Jenkins, Tarquini & Jenkins and Mabel Ditter Sellers, Ambler, for Lafayette Hill Prof. Bldg.

Before MENCER, ROGERS and BLATT, JJ.

OPINION

BLATT, Judge.

Seven adjoining landowners (appellants) appeal here from an order of the Court of Common Pleas of Montgomery County which affirmed a grant of a variance by the Whitemarsh Township Zoning Hearing Board to Lafayette Hill Professional Building, Inc. (Lafayette).

Lafayette's lot is an irregular tract, roughly a trapezium, consisting of 1.36 acres which fronts on Germantown Pike. It is presently entirely undeveloped and slopes downward from front to rear. The

road frontage is about 200 feet and the mean distance to the rear of the lot is about 375 feet. The lot is divided by a township zoning boundary which runs parallel to Germantown Pike so that for a distance of 200 feet from the front of the lot the property is zoned as "CR-H" for commercial-retail buildings while the remaining portion in the rear of the lot is zoned as "B" residential. The rear portion of the lot has no road frontage and no road access except from Germantown Pike across the "CR-H" portion of the lot.

In 1977, Lafayette applied for a variance from the zoning ordinance to develop its entire lot for commercial retail purposes, proposing to construct a medical office building on the "CR-H" portion of the lot and to use the remaining, residential portion of the lot for parking and flood control.

After a hearing in April of 1977, the Board denied the requested variance on the grounds that the lot did not suffer from any unique physical characteristics which precluded its development in strict conformity with the zoning ordinance. On appeal, the court remanded the case to the Board on the grounds that, although the Board correctly found that strict compliance with the zoning ordinance was possible, it had failed to consider the economic hardship associated with such compliance.

After a subsequent hearing, the Board concluded that the residential portion of the lot could not be reasonably developed for residential purposes because the cost of building a residence, including costs associated with a 400-foot driveway across the "CR-H" portion and of providing proper drainage of the sloping rear portion of the lot, would require that the residence be sold for more than twice the market price of other residences in the vicinity. The Board granted a validity variance on the grounds that the otherwise valid ordinance deprived Lafayette of any reasonable use of its property. See *A & D, Inc. v. Zoning Hearing Board of East Nottingham Township*, 32 Pa.Cmwlth. 367, 379 A.2d 654 (1977). The appellants here contend that the Board failed to make adequate findings for the

HAMILTON v. ZONING HEARING BD. OF WHITEMARSH Pa. 1311

Cite as, Pa.Cmwlth., 426 A.2d 1309

granting of the variance, that the court erred in affirming the Board's order and that the case must be remanded to the Board.

The statutory requirements for a variance, found in Section 912 of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, 53 P.S. § 10912, must be met for the granting of a validity variance and may be summarized as follows: (1) the ordinance must impose an unnecessary hardship on the property; (2) the hardship must result from the unique physical characteristics of the property; (3) the granting of a variance must not have an adverse impact on the health, safety and welfare of the general public; (4) the hardship must not be self-inflicted; and (5) the variance sought must be the minimum that will afford relief. *Appeal of Walter C. Czop, Inc.*, 43 Pa.Cmwlth. 499, 403 A.2d 1006 (1979); *A & D, Inc. v. Zoning Hearing Board of East Nottingham Township*, *supra*.

Lafayette produced six expert witnesses at the remand hearing who testified that the cost of constructing a residence on the residential, rear portion of the lot would cost at least twice as much as would neighboring residences. We believe, therefore, that the Board's finding (i. e., that the ordinance imposed an unnecessary economic hardship upon Lafayette) was based on substantial evidence.

Unfortunately, however, the Board failed to make findings concerning the other prerequisites for a variance, noting that it interpreted the lower court's remand order so as to direct findings only on the issue of whether or not the rear portion of the lot could reasonably be used for residential purposes, and the Board consequently limited itself to such findings. And, because it is beyond this Court's power to make findings as to these questions, we must reverse the order of the court below and remand the case to the court with the direction that it be returned to the Board for the making of requisite findings under Section 912 of the Municipalities Planning Code, 53 P.S. § 10912. We will so order and will also

direct that the Board may, but need not, take additional evidence for the purpose of making such findings.

ORDER

AND, NOW, this 12th day of March, 1981, the order of the Court of Common Pleas of Montgomery County dated April 25, 1978, is reversed and the record is remanded to the court below with the direction that it be returned to the Zoning Hearing Board of Whitemarsh Township for further proceedings in accordance with this opinion and with the direction that said Zoning Hearing Board may, but need not, take additional evidence for the purpose of making adequate findings of fact.

ROGERS, Judge, dissenting.

I dissent because in my opinion it was not necessary for the Board to make each and every one of the five findings enumerated in Section 912 of the MPC, 53 P.S. § 10912. It was the landowner's position that the residential zoning of the rear portion of its lot made that portion of the property useless; that the zoning restriction was therefore invalid; and that the variance allowing another use was required to provide the landowner with its constitutional right in its property. The findings required by Section 912 become irrelevant. This point is made in *R. Ryan, Pennsylvania Zoning Law and Practice*, Section 6.1.8 (1970):

"Where an owner's land . . . is denied any reasonable use by an unduly restrictive ordinance, the findings [of Section 912] are not 'relevant in [the] given case', and are not necessary."



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CITATION CORRECTION

The following Ordinance Citations contained herein have been modified as follows:

OLD

Chapter 27-703.2.C.(2)
Chapter 27-703-2.A.(20)

NEW

Chapter 27-304.B.3.b
Chapter 27-304.B.1.u

RECEIVED JAN 31 2020

January 31, 2020

TO: Ferguson Township Zoning Hearing Board
Attn: Mr. Jeff Ressler, Zoning Administrator
3147 Research Drive
State College, PA 16801

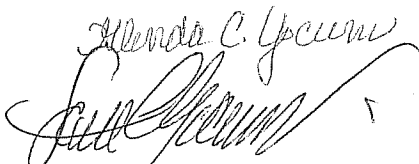
FR: Scott L. & Glenda C. Yocum
PO Box 57
Boalsburg, PA 16827

RE: Owner's permission to apply for variance

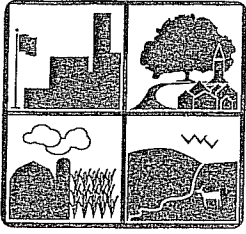
Dear Sir(s):

We, Scott L. & Glenda C. Yocum, owners of 900, 904, 906, 912, & 916 West College Avenue, in State College PA, Ferguson Township Parcel Numbers 24-002A,014-0000-, 24-002A,015-0000-, 24-002A,016-0000-, 24-002A,017-0000-, and 24-002A,018-,0000-, agree to give permission to York Acquisitions, LLC to apply for a variance on the above properties.

Regards,



Scott L. & Glenda C. Yocum

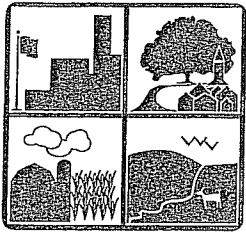


TOWNSHIP OF FERGUSON

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

I Derek Haver on 2/18/19 posted the property at
900 W college Ave as shown on the attached map for the Zoning Hearing Meeting on
2/25/20.

Derek Haver

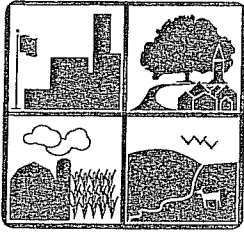


TOWNSHIP OF FERGUSON

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

I Derek Hoover on 2/28/20 posted the property at
904 W college Ave as shown on the attached map for the Zoning Hearing Meeting on
2/25/20.

Derek Hoover

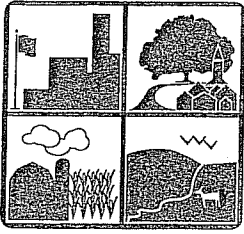


TOWNSHIP OF FERGUSON

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

I Derek Hoover on 2/18/2020 posted the property at
906 W College^{Ave} as shown on the attached map for the Zoning Hearing Meeting on
2/25/20.

Derek Hoover



TOWNSHIP OF FERGUSON

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

I Derek Hoover on 2/18/19 posted the property at
912 W college ^{ave} as shown on the attached map for the Zoning Hearing Meeting on
2/25/20.

Derek Hoover

Residential Planned Development and Mixed Use

- 12) Applicability of Chapter 4. Regulations regarding the placement, shielding, and intensity of lighting found in Chapter 4, Part 1, "Outdoor Lighting Regulations," remain applicable to the extent that they are not in conflict with the above provisions.
8. Storage and Loading Areas.
 - a. Standards.
 - 1) Visibility. Service areas for non-residential structures, including areas for storage and/or loading, shall not be visible from major pedestrian ways or neighboring residential areas.
 - 2) Storage Areas. Storage areas for live/work units, mixed-use buildings, civic uses and multi-family dwellings shall be integrated into overall building design.
 - 3) Screening. Adequate capacity for the storage of trash, recyclables, and compostables shall be provided. Service, loading, and trash disposal areas shall be effectively screened so as not to be visible from parking areas, roadways, or adjacent properties. Such screening shall consist of a combination of architectural masonry (or fencing) and landscaping with a height of at least 6 feet.
 - 4) Service Entrances. For commercial uses, service entrances shall be separate from those used by customers. When feasible, the location of service areas should be coordinated with adjacent properties so that the size and number of driveways and other paved surfaces can be minimized.
 - 5) Off-Street Loading Areas. Off-street loading shall be accommodated whenever possible. Such spaces shall be a minimum of 12 feet in width, 45 feet in length, and have a vertical clearance of at least 14 feet. Every non-residential use with a floor area of at least 5,000 square feet should provide at least one such off-street space. Curbside deliveries are permitted only so long as they do not occupy on-street parking spaces or block travel lanes.

§27-304. Terraced Streetscape (TS) District.

- A. Specific Intent. It is the intent of this district to encourage innovation and to promote flexibility, economy, and ingenuity in development within the TS District for the purpose of allowing for an increase in the permissible density, or intensity of a particular use, based upon the standards, criteria and incentives set forth herein and in Chapter 22. The application of design standards and any permissible increases in density or mix of uses shall be dependent on the extent to which a project is consistent with and achieves the following design objectives and goals:
 1. Establishes a pedestrian-oriented district that accommodates and encourages pedestrian and other multi-modal travel alternatives by including sidewalks, greenways, and/or bike path linkages and does not promote vehicular travel.
 2. Promotes development that creates shared parking facilities through the use of either surface parking lots or structured parking and decreases curb cuts by encouraging a "park once" approach to servicing retail and residential development.
 3. Promotes viable public transit by developing at an appropriate density with attention to transit routes and by providing transit stops or hubs within the proposed district.

Residential Planned Development and Mixed Use

4. Provides opportunities to integrate age and income groups through the provision of a wide range of housing alternatives that are suitably mixed throughout the zoning district.
 5. Promotes development that, through the use of distinctive architectural elements and siting criteria, creates community character.
 6. Utilizes increased building height and mixed uses to achieve a more compact development footprint and efficient pattern of development while utilizing existing infrastructure.
 7. Promotes development that creates and retains a human-scaled context.
 8. Encourages energy efficiency, sustainable development, and green construction.
 9. Allows for small scale retail and entertainment uses that contribute to and enhance evening and weekend activity in the corridor.
- B. Use Regulations. A building may be erected, altered, or used and a lot may be used, or occupied, for any of the following purposes and no other:
1. Permitted principal uses, subject to the lot sizes as set forth, below, as well as the maximum square footage criteria as specified.
 - a. Conversion of an existing single-family detached dwelling unit to include accommodation of a non-residential use such as art studio, gallery, handicraft or photography studio, or professional office(s).
 - b. Conversion of an existing dwelling from apartment units back to a single-family dwelling.
 - c. Reconstruction of a single-family dwelling unit that exists at the time of adoption of this Section and is subsequently destroyed or partially destroyed by any means to an extent of 75% or more of the market valuation of all structures and other improvements on the lot as per the provisions of §27-803.C, herein, only as long as such unit is designed to incorporate the nonresidential uses identified in § 304.B.1.a above. All such properties shall be designed to comply with all provisions of the district when reconstructed.
 - d. Playground, greenway, trail, square, commons, plaza, transit area, courtyard or public area, community gardens.
 - e. Bed and breakfast with no accessory services.
 - f. Farm market (seasonal).
 - g. Retail sale, service or rental of basic convenience commercial goods and services such as, but not limited to, books, flowers, antiques, gifts, jewelry, or music.
 - h. Business or professional office.
 - i. Vertical mixed use building involving a combination of uses authorized uses.
 - j. Hotel.
 - k. Eating establishment.
 - l. Brewery, Cideries and Craft Distilleries (beverage production facilities).
 - m. Community theater or play house.

- n. Non-profit or civic service agency.
 - o. Pharmacy with no drive-through.
 - p. Health club.
 - q. Bank or financial office with no drive-through.
 - r. Eating and licensed drinking establishments with no drive-through.
 - s. Salon or spa.
 - t. Medical/dental office.
 - u. Structured parking when provided as part of or accessory to a proposed vertical mixed use structure.
 - v. Multi-family dwelling units (other than University Housing) only if part of a vertical mixed use structure; no more than three unrelated individuals may reside in each dwelling unit.
 - w. Gallery, handicraft, art, or photography studio, professional office for accountant, architect, attorney or similar profession.
 - x. Uses associated with private or public institutes of higher education; in this zoning district, these shall be limited to the following principal uses: classrooms, research facilities and labs; administrative and faculty offices, and residence halls for graduate and undergraduate student housing only when staffed, owned and operated by the University which the students attend.
2. Lots up to and Including .39 Acres. The permitted principal uses as set forth in §27-304.B.1(a) through (f) only.
3. Lots from .40 Acres, up to and Including Lots of .99 Acres. The permitted principal uses as set forth in the Chapter subject to the following:
- a. Any structure that will be located on the corner of a lot that is at least 0.40 acres in size and that involves an intersection with West College Avenue must address both frontages (no blank walls) and be a minimum of 55 feet in height. The structure shall be designed in accordance with the applicable provisions of Chapter 22. The facade of buildings on corner lots may be accentuated by towers, corner building entrances or other distinctive elements; however, all structures on such lots shall be designed to architecturally enhance the corner location and all effort shall be made to ensure that such structure is a signature building within the district.
 - b. The entire first floor of all structures located on lots that have frontage on West College Avenue must be devoted to retail or commercial uses permitted in the district.
 - 1) To allow pedestrian access to office, hotel, or residential uses located above street level, lobbies may be allowed within the required retail storefront space; provided, that street frontage of the lobby is limited relative to the property's overall retail frontage and that the storefront design of the lobby provides continuity to the retail character of the site and the overall street.

Residential Planned Development and Mixed Use

- c. Any vertical mixed use building not fronting on West College Avenue must dedicate a minimum of 50% of the first floor square footage of the building to nonresidential uses as specified.
- 4. Lots or Combined Lots Totaling 1 Acre or Larger. All permitted principal uses as set forth above subject to the same criteria as identified in §27-304.B.3(a) through (c) above.
- 5. Conditional Uses. All of the following conditional uses shall be permitted only upon a lot, or combined lots, that total 1 acre or larger upon approval by the Board of Supervisors:
 - a. Any use not specifically permitted within the TS District that is deemed to be an acceptable use due to its consistency with the stated intent of the district, and the application of appropriate design criteria as determined by the Board of Supervisors through the conditional use approval process.
 - b. Any use not specifically excluded in §27-304.B.6 that would be deemed to be an acceptable use within the TS District and is consistent with the stated intent of the district and the application of appropriate design criteria as determined by the Board of Supervisors through the conditional use approval process.
 - c. Conference center subject to the following criteria:
 - 1) Maximum building footprint of 30,000 square feet.
 - 2) All parking must be provided in an on- or off-site parking structure.
 - 3) The building must adhere to the design requirements in Chapter 22 and must have lot frontage on West College Avenue.
 - 4) The “center” may include eating and sleeping accommodations if incorporated in a manner that is consistent with the intent of the district.
 - d. Uses accessory to permitted principal uses, subject to the following criteria:
 - 1) The proposed accessory use is associated with a use specifically permitted in the district.
 - (a) The proposed accessory use is complementary to the specific intent of the TS Zoning District and the West College Avenue streetscape.
 - (b) Sufficient parking exists or can be established to support the proposed accessory use under the parking standards specified in this district.
 - (c) Conformance with the criteria found in §27-204.
 - e. Structured parking as a stand alone structure subject to the following criteria:
 - 1) Conformance to the design requirements as stipulated in Chapter 22 as they pertain to architectural scaling elements; building materials and other design considerations that minimize the monotony of repetitive structural elements by varying the facade treatments from bay to bay, integrating planter walls, and/or incorporating landscaping along long undifferentiated expanses of wall.
 - 2) Must be wrapped at ground level with retail or other activity- generating use(s) permitted in the district. Any portion of the ground floor that does not incorporate retail

Residential Planned Development and Mixed Use

- c. Any vertical mixed use building not fronting on West College Avenue must dedicate a minimum of 50% of the first floor square footage of the building to nonresidential uses as specified.
- 4. Lots or Combined Lots Totaling 1 Acre or Larger. All permitted principal uses as set forth above subject to the same criteria as identified in §27-304.B.3(a) through (c) above.
- 5. Conditional Uses. All of the following conditional uses shall be permitted only upon a lot, or combined lots, that total 1 acre or larger upon approval by the Board of Supervisors:
 - a. Any use not specifically permitted within the TS District that is deemed to be an acceptable use due to its consistency with the stated intent of the district, and the application of appropriate design criteria as determined by the Board of Supervisors through the conditional use approval process.
 - b. Any use not specifically excluded in §27-304.B.6 that would be deemed to be an acceptable use within the TS District and is consistent with the stated intent of the district and the application of appropriate design criteria as determined by the Board of Supervisors through the conditional use approval process.
 - c. Conference center subject to the following criteria:
 - 1) Maximum building footprint of 30,000 square feet.
 - 2) All parking must be provided in an on- or off-site parking structure.
 - 3) The building must adhere to the design requirements in Chapter 22 and must have lot frontage on West College Avenue.
 - 4) The "center" may include eating and sleeping accommodations if incorporated in a manner that is consistent with the intent of the district.
 - d. Uses accessory to permitted principal uses, subject to the following criteria:
 - 1) The proposed accessory use is associated with a use specifically permitted in the district.
 - (a) The proposed accessory use is complementary to the specific intent of the TS Zoning District and the West College Avenue streetscape.
 - (b) Sufficient parking exists or can be established to support the proposed accessory use under the parking standards specified in this district.
 - (c) Conformance with the criteria found in §27-204.
 - e. Structured parking as a stand alone structure subject to the following criteria:
 - 1) Conformance to the design requirements as stipulated in Chapter 22 as they pertain to architectural scaling elements; building materials and other design considerations that minimize the monotony of repetitive structural elements by varying the facade treatments from bay to bay, integrating planter walls, and/or incorporating landscaping along long undifferentiated expanses of wall.
 - 2) Must be wrapped at ground level with retail or other activity- generating use(s) permitted in the district. Any portion of the ground floor that does not incorporate retail

Residential Planned Development and Mixed Use

4. Provides opportunities to integrate age and income groups through the provision of a wide range of housing alternatives that are suitably mixed throughout the zoning district.
 5. Promotes development that, through the use of distinctive architectural elements and siting criteria, creates community character.
 6. Utilizes increased building height and mixed uses to achieve a more compact development footprint and efficient pattern of development while utilizing existing infrastructure.
 7. Promotes development that creates and retains a human-scaled context.
 8. Encourages energy efficiency, sustainable development, and green construction.
 9. Allows for small scale retail and entertainment uses that contribute to and enhance evening and weekend activity in the corridor.
- B. Use Regulations. A building may be erected, altered, or used and a lot may be used, or occupied, for any of the following purposes and no other:
1. Permitted principal uses, subject to the lot sizes as set forth, below, as well as the maximum square footage criteria as specified.
 - a. Conversion of an existing single-family detached dwelling unit to include accommodation of a non-residential use such as art studio, gallery, handicraft or photography studio, or professional office(s).
 - b. Conversion of an existing dwelling from apartment units back to a single-family dwelling.
 - c. Reconstruction of a single-family dwelling unit that exists at the time of adoption of this Section and is subsequently destroyed or partially destroyed by any means to an extent of 75% or more of the market valuation of all structures and other improvements on the lot as per the provisions of §27-803.C, herein, only as long as such unit is designed to incorporate the nonresidential uses identified in § 304.B.1.a above. All such properties shall be designed to comply with all provisions of the district when reconstructed.
 - d. Playground, greenway, trail, square, commons, plaza, transit area, courtyard or public area, community gardens.
 - e. Bed and breakfast with no accessory services.
 - f. Farm market (seasonal).
 - g. Retail sale, service or rental of basic convenience commercial goods and services such as, but not limited to, books, flowers, antiques, gifts, jewelry, or music.
 - h. Business or professional office.
 - i. Vertical mixed use building involving a combination of uses authorized uses.
 - j. Hotel.
 - k. Eating establishment.
 - l. Brewery, Cideries and Craft Distilleries (beverage production facilities).
 - m. Community theater or play house.

**FERGUSON TOWNSHIP ZONING HEARING BOARD
ORGANIZATIONAL MEETING
TUESDAY, JANUARY 28, 2020
7:00 p.m.**

I. ATTENDANCE

The Zoning Hearing Board held its organizational meeting on Tuesday, January 28, 2020, at the Ferguson Township Municipal Building. In attendance were:

Board:

Michael Twomley
Michael MacNeely
Swamy Anantheswaran-Absent
Susan Buda
Irene Wetzel
Stefanie Rocco, Alternate
Jeff Stover, ZHB Solicitor

Staff

Jeff Ressler, Zoning Administrator
David Pribulka, Township Manager

Others in attendance were: Summer Krape, Recording Secretary; Jennifer & Robert McCauley, Ferguson Township Residents; Jeff Bowman, Uni-Tec Engineering.

II. CALL TO ORDER

The Ferguson Township Zoning Hearing Board meeting was called to order by on Tuesday January 28, 2020 at 7:00 pm.

III. Zoning Administrator will conduct the Organizational meeting until the election of the 2020 Chairman at which time the newly elected chairman will complete the election process and the regular scheduled meeting.

IV. Election of Officer for 1010.

a. Election of Chairman

Ms. Susan Buda nominated Mr. Mike Twomley for Chairman, Ms. Stefanie Rocco seconded the motion, and the motion passed unanimously.

b. Election of Vice-Chairman

Ms. Buda nominated Mr. Michael MacNeely for Vice-Chairman, Ms. Rocco seconded the motion, and the motion passed unanimously.

c. Election of Secretary

Mr. MacNeeley nominated Ms. Buda for Secretary, Ms. Rocco seconded the motion, and the motion passed unanimously.

**FERGUSON TOWNSHIP ZONING HEARING BOARD
REGULAR MEETINGS
TUESDAY, JANUARY 28, 2020
7:00 p.m.**

I. ATTENDANCE

The Zoning Hearing Board held a hearing on Tuesday, January 28, 2020, at the Ferguson Township Municipal Building. In attendance were:

Board:

Michael Twomley
Michael MacNeely
Swamy Anantheswaran-Absent
Susan Buda
Irene Wetzel
Stefanie Rocco, Alternate
Jeff Stover, ZHB Solicitor

Staff

Jeff Ressler, Zoning Administrator
David Pribulka, Township Manager

Others in attendance were: Summer Krape, Recording Secretary; Jennifer & Robert McCauley Ferguson Township Residents; Jeff Bowman, Uni-Tec Engineering.

II. CALL TO ORDER

The Ferguson Township Zoning Hearing Board meeting was called to order by on Tuesday January 28, 2020 at 7:00 pm.

III. PLEDGE OF ALLEGIANCE

IV. CITIZENS INPUT

Mr. Pribulka wanted to update the Board that the Young Scholars variance that the Board previously tabled indefinitely are moving forward with the traffic impact study.

V. INTRODUCTION OF BOARD MEMBERS

VI. SWEARING IN OF THOSE THAT WISH TO TESTIFY

Mr. Ressler, Mr. David Pribulka, and Mr. Jeff Bowman were sworn in to testify.

VII. THE ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VARIANCE/APPEAL

Mr. Jeff Stover the Zoning Hearing Board Solicitor explained the criteria for a variance to the audience.

VIII. ZONING OFFICER EXPLAINS THE BASIS OF VARIANCE/APPEAL REQUEST

IX. ISLAMIC SOCIETY OF CENTRAL PA – VARIANCE REQUEST

Mr. Ressler stated that the property that is subject to this hearing is located at 3765 West College Ave, State College, PA 16801, tax parcel 24-004-078C. The property is owned by the Islamic Society of Central PA and is located in the RA zoning district. There is an area of Zone A FEMA mapped floodplain along the street frontage of the property. The Zone A floodplain is only an

approximation of the floodplain boundary. The present use of the property is agricultural, the proposed use of the property is a place of assembly with an associated cemetery. The applicants would need to construct a driveway across the flood plain.

The applicants are requesting several variances to the floodplain conservation regulations of the zoning ordinance. The applicants are requesting a variance to Chapter 27-701 to not be required to complete a detailed hydraulic and hydrologic study to determine the boundary of the flood plain. Chapter 701.C which prohibits all new construction or development in the floodplain. Chapter 701.i to permit construction of a driveway in the fifty foot use buffer. Chapter 27.701.H to permit construction for the driveway in the through the floodway. Mr. Ressler stated that the applicants engineering firm have submitted a study and report to show compliance with Chapter 27-701J. The study and report has been reviewed by Scott Brown, PE of NTM Engineering and he found that the analysis was incomplete.

Mr. Twomley gave the stand to Mr. Pribulka, Township Manager who is present tonight representing the Board of Supervisors who are in opposition to the variance requests. Mr. Pribulka stated that Mr. Brown did a review of the analysis and found that it was insufficient which is why the BOS took action on January 20th to oppose the variance. If the applicant is in agreement to complete Mr. Brown's comments and the stormwater engineer reviews and is okay the BOS will then change their decision and remain neutral.

Mr. Jeff Bowman, from Uni-Tec Engineering explained to the Board the hardships the Islamic Society faces. Mr. Bowman stated that they plan on meeting all requirements and satisfying all of Mr. Brown's comments and they plan on asking for a continuance tonight. The big hardship for this site is the only access is off of route 26 and this is preventing any use of the property. The only way to have public access is to build a driveway across the floodplain and that is why they are here today. This is really preventing any use of the property. They feel this driveway will not impact any surrounding properties. Ms. Buda asked if the building they plan on building will be in the floodplain, Mr. Bowman stated that they will stay away from the floodplain area they only need the driveway access to the property.

Ms. Buda asked why the applicant is asking for a variance for the hydrologic testing. Mr. Bowman stated that the study they would like to do will only be focus on the driveway area and not the whole lot. They want to focus the study only on the area that will be effected. Mr. Stover asked Mr.

Bowman if his testimony is that the driveway will not increase the flood plain. Mr. Bowman stated that yes that is his testimony. Jennifer McCauley is an adjoining property owner. She stated that she is currently going through planning with PennDot so they are familiar with the study tests. She is concerned with this variance, she feels they will open a precedence for other properties. She feels this would significantly impact the community. Mr. Twomley stated the applicant requested a continuance so they will not make a decision. Mrs. Wetzel made a motion to approve the continuance, Ms. Buda seconded the motion, and the motion passed unanimously.

X. APPROVAL OF MEETING MINUTES FROM DECEMBER 17, 2019

Ms. Rocco made a motion to approve the December 17, 2019 minutes, Mr. MacNeeley seconded the motion, and the motion passed unanimously.

XI. ADJOURNMENT

The Zoning Hearing Board meeting was adjourned at 7:33 pm.

Susan Buda, Secretary
For the Zoning Hearing Board

Ferguson Township
3147 Research Drive
State College, PA 16801
814-238-4651
814-238-3454 (fax)
www.twp.ferguson.pa.us

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Receipt Total 500.00
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Thank you!

ferguson township
3147 Research Drive
State College, PA 16801
814-238-4651
814-238-3454 (fax)
www.twp.ferguson.pa.us

Receipt No. 00016149

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Miller Kistler & Campbell

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Receipt Total 300.00
Payment Total 300.00

Thank you!