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Christian R. Miller, Direct E-mail:
cmiller@mpl-law.com

May 23, 2023

Brian Kobularcik
544 Hain Road
Sinking Spring, PA 19608

VIA REGULAR MAIL

RE: Fairview Twp. Zoning Hearing Board – No. 2023-03

To Whom It May Concern:

Enclosed please find the fully executed decision of the Fairview Twp. Zoning Hearing Board for Docket No. 2023-03 related to Brian Kobularcik's zoning hearing board application, heard and decided by the Zoning Hearing Board on April 20, 2023.

Thank you.

Very truly yours,

MPL LAW FIRM

A handwritten signature in blue ink that reads 'Christian R. Miller'.

Christian R. Miller, Esquire

Enclosure

Cc: Fairview Township Zoning Hearing Board (c/o Stephen Waller, Zoning Officer)
Atty. Charlie Courtney

BEFORE THE FAIRVIEW TOWNSHIP
ZONING HEARING BOARD

DECISION

IN RE: APPLICATION OF BRIAN KOBULARCIK
 APPLICATION NO. 2023-03

APPLICANT(S): Brian Kobularcik
HEARING DATE: April 20, 2023
DECISION DATE: April 20, 2023
APPEARANCES: Brian Kobularcik
 Atty. Charlie Courtney, McNeese Wallace & Nurick, LLC (for
 Applicant)
 Rick Walter
 Stephen Waller, Township Zoning Officer
EXHIBITS: Exhibit 1 – Application (including all submittals)
 Exhibit 2 – Site Plan
 Exhibit 3 – Zoning Map
SUBJECT PROPERTY: 730 Limekiln Road, New Cumberland, Pennsylvania, 17070

BACKGROUND

This decision of the Fairview Township Zoning Hearing Board (the "*Board*") is from an application "*Application*") filed with Fairview Township (the "*Township*") seeking zoning relief under the Township's Zoning Ordinance (the "*Ordinance*"), for a variance from Section 300-21, Table 5-2 to permit multiple buildings located at the subject property with two different principal uses: (i) a multifamily dwelling use in one (1) building and (ii) a commercial use in the other building, whereas Section 300-21, Table 5-2 only permits multifamily dwelling uses in the CB Zoning District on "upper floor". The subject property is located at 730 Limekiln Road, New Cumberland, Pennsylvania, 17070, located in the Township's Commercial Business (CB) Zoning District.

A hearing was held on the Application on Thursday, April 20, 2023, with the meeting starting at 6:30 p.m. The Zoning Hearing Board was represented by Timothy Mader (Chairman), Mark Perry (Vice Chairman), Keith Bashore, and Daniel Alderman (alternate member). All published and posted notices were duly given, with no objection thereto being made in writing or orally at the time of the hearing. Rick Walter provided testimony in opposition, or in question of, to the Application. After hearing the testimony and viewing the evidence in this matter, the Board makes the following determinations:

FINDINGS OF FACT

1. Brian Kobularcik ("*Applicant*"), is the current equitable owner of property located at 730 Limekiln Road, New Cumberland, Pennsylvania, 17070 (the "*Property*") pursuant to a pending agreement of sale of with the current legal owner, the Estate of Majorie D'Agostino,

2. The Property is located in the Township's Commercial Business (CB) Zoning District (the "CB Zone"), is currently vacant with an area of roughly 8.64 acres and an irregular shape.
3. The Property is mixed with open field and wooded area, having a stream and steep slope on the west side of the Property, with roughly 35% of the Property undevelopable.
4. Applicant is an engineer by trade, having roughly 12 of years of experience with developing multi-family structures and projects.
5. Applicant seeks to acquire the Property and obtain entitlements, and then either move forward with the development or sell the Property to another developer.
6. As provided on the Site Plan (Exhibit 2), the development would consist of three (3) separate buildings (the "Proposed Use"), with a 10,000 sq. ft. commercial building at the north of the Property, a 3-4 story multi-family apartment building (with 42 dwelling units) to the southwest of the Property, and a 3 story multi-family apartment building (with 36 dwelling units) to the southeast of the Property (all as depicted on Exhibit 2).
7. A single access would be provided to Limekiln Road, and all other zoning requirements (such as parking, setbacks, height and area requirements) would be in compliance with the Ordinance to be demonstrated at the land development phase of the project.
8. The proposed development would be served by all public utilities.
9. The proposed development would be what is known as horizontal mixed use development ("HMU"), as opposed to vertical mixed use development (commercial on the first floor and residential above) ("VMU") which is required by Section 300-21, Table 5-2 of the Ordinance.
10. Applicant testified to the nature of HMU against VMU, stating that VMU is supported with greater density in residential site created by greater area of development, which is more often seen in urban/downtown settings.
11. Applicant testified that VMU was not practical for the Property because the residential dwellings would not support a commercial use on the bottom floors, and that would also detract from consumers that did not otherwise live in the proposed buildings.
12. Applicant admitted that the buildings could be built with commercial on the first floor and residential dwelling units on the above floors, however it was Applicant's believe that any commercial uses in such layout would not survive.
13. Stephen Waller, as the Township Zoning Officer, testified that all public notices of the application and hearing were legally conducted, with the hearing being advertised in the newspaper on April 6th and 13th, the Property being posted on April 5th, and the adjoining property owners having letters mailed to them on April 3rd.

CONCLUSIONS OF LAW

1. The Applicant has failed to establish the elements required for a variance from § 300-21, Table 5-2 of the Ordinance (related to multi-family dwellings only permitted in the "upper floor" in the CB Zone) to permit the Proposed Use. Such elements not met specifically include:

a. Applicant has not established that due to unique physical conditions present on the Property, the Property cannot be used or developed in strict conformity with the Ordinance (specifically within the CB Zone, since Applicant testified the commercial use could be established on the first floor of each building, just such layout would not be ideal).

b. Applicant has not established that the alleged unnecessary hardship is not self-created (to the contrary, the variance request is solely due to Applicant's desire to develop the Proposed Use).

DECISION

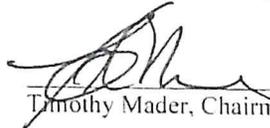
Mr. Perry moved to deny the zoning relief requested by the Applicants in the Application, being a variance from Section 300-21, Table 5-2 to permit multiple buildings located at the Property with two different principal uses: (i) a multifamily dwelling use in one (1) building and (ii) a commercial use in the other building (when Section 300-21, Table 5-2 only permits multifamily dwelling uses in the CB Zoning District on "upper floor").

Mr. Mader seconded the motion. Upon a vote, the Fairview Township Zoning Hearing Board approved the motion 2-1, with Mr. Bashore voting against the motion.

APPLICANT SHALL ABIDE BY ALL FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES PERTAINING TO PERMISSIONS GRANTED BY THIS DECISION.

APPLICANT SHALL PROCEED PURSUANT TO THIS DECISION IN ACCORDANCE WITH THE TESTIMONY AND EXHIBITS PRESENTED AT THE HEARING.

Date: 5/23/23



Timothy Mader, Chairmen

ANY PERSON AGGRIEVED BY THIS DECISION OF THE FAIRVIEW TOWNSHIP ZONING HEARING BOARD MAY APPEAL TO THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA. THE APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS FROM THE MAILING OF THESE FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE ABOVE DECISION.

MAIL DATE: _____



ZONING HEARING BOARD APPLICATION
YORK COUNTY, PENNSYLVANIA

❖ Part 1:

APPLICANT(S)/EQUITABLE OWNER

Name: Mark + Suzann Cheseck
Address: 805 Stonybrook Ln
Lewisberry PA 17339
Phone: 717 512 8654

EXISTING OWNER OF PROPERTY:

Name: Mark + Suzann Cheseck
Address: 805 Stonybrook Lane
Lewisberry PA 17339

PROPERTY LOCATION:

Address: 805 Stonybrook Ln
Lewisberry PA 17339
Lot Size: 3.17 acres / 138,885 Sq Ft
Date Purchased: 8/17/2010
Location: Stonybrook Ln off of
Siddensburg Rd, Fairview Township

PRESENT USE OF PROPERTY:

Main residence single
family dwelling

EXISTING ZONE: RL

❖ Part 2:

ZONING REQUEST (Identification of the applicable request(s)):

- SUBSTANTIVE CHALLENGE
- SPECIAL EXCEPTION
- VARIANCE
- APPEAL OF THE ZONING OFFICERS DECISION



SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):

300.116 table 4-3 RL accessory use of structures
wardesign req. 20 ft SED/50 FT all other manufactured recreational uses

❖ Part 3:

DESCRIPTION OF REQUEST:

See attached

❖ Part 4

LIST ALL INDIVIDUAL PROPERTY OWNERS WITHIN 200 FEET OF THE PERIMETER OF THE ENTIRE PROPERTY.

NAME	ADDRESS	USE TYPE
Diane Brown	807 Stonybrook Ln Lewisberry	residence
Yvonne Erridge	803 Stonybrook Lane Lewisberry	residence
Deborah Bombenger	886 Siddonsburg Rd Lewisberry	residence
Frank Bowersox	804 Stonybrook Ln Lewisberry	residence
Joseph Gingrich	866 Siddonsburg Rd Lewisberry	residence
Katie Sauder	868 Siddonsburg Rd Lewisberry	residence
John Freet	870 Siddonsburg Rd Lewisberry	residence
Robert Watson	802 Stonybrook Ln Lewisberry	residence

❖ *Part 5 For office use only:*

ZONING HEARING BOARD CHECKLIST

Application Received: _____

Property Zoned: _____

Asking for Special Exception, Variance or Appeal: _____

Case No.: _____

Fees Paid: _____

Hearing Date: _____

Draft Public Notice sent to Attorney for review: _____

Notice sent to Newspaper: _____

Notice Published in Newspaper: _____

Notice Mailed to Property Owners in 225ft. Buffer: _____

Public Notice Posted on Property: _____

ZHB Packets Mailed and Emailed: _____

part 3 attachment

We are applying for a variance to allow for the construction of a free-standing garage with a setback of 5 feet from the side property line, see plot plan. We are asking for the variance as when we purchased the property, garages were allowed within 10 feet of the property line, as demonstrated by the residence with a free-standing garage at 804 Stonybrook Lane.

Due to the layout of the yard and existing home, it would be awkward to build the garage with a 20 foot setback in a manner that is pleasing to the eye and aligns with the design and aesthetics of the neighborhood as doing so would place the garage directly in front of the home. We are not able to build the garage behind the home due to an underground propane tank we cannot have a driveway passing along the south side of the house. The north side of the house is blocked by a swimming pool and is also unpassable.

The rear yard is sloped and would not be conducive to the construction of a garage even if we could establish a driveway past the side of the house. There is a well behind the home that would also prohibit placing the garage behind the house.

Lots sizes in the neighborhood are large, ranging 1-10 acres. Houses are located far enough apart that building the garage within 5 feet of the property line will still ensure plenty of space between the garage and the neighboring home.

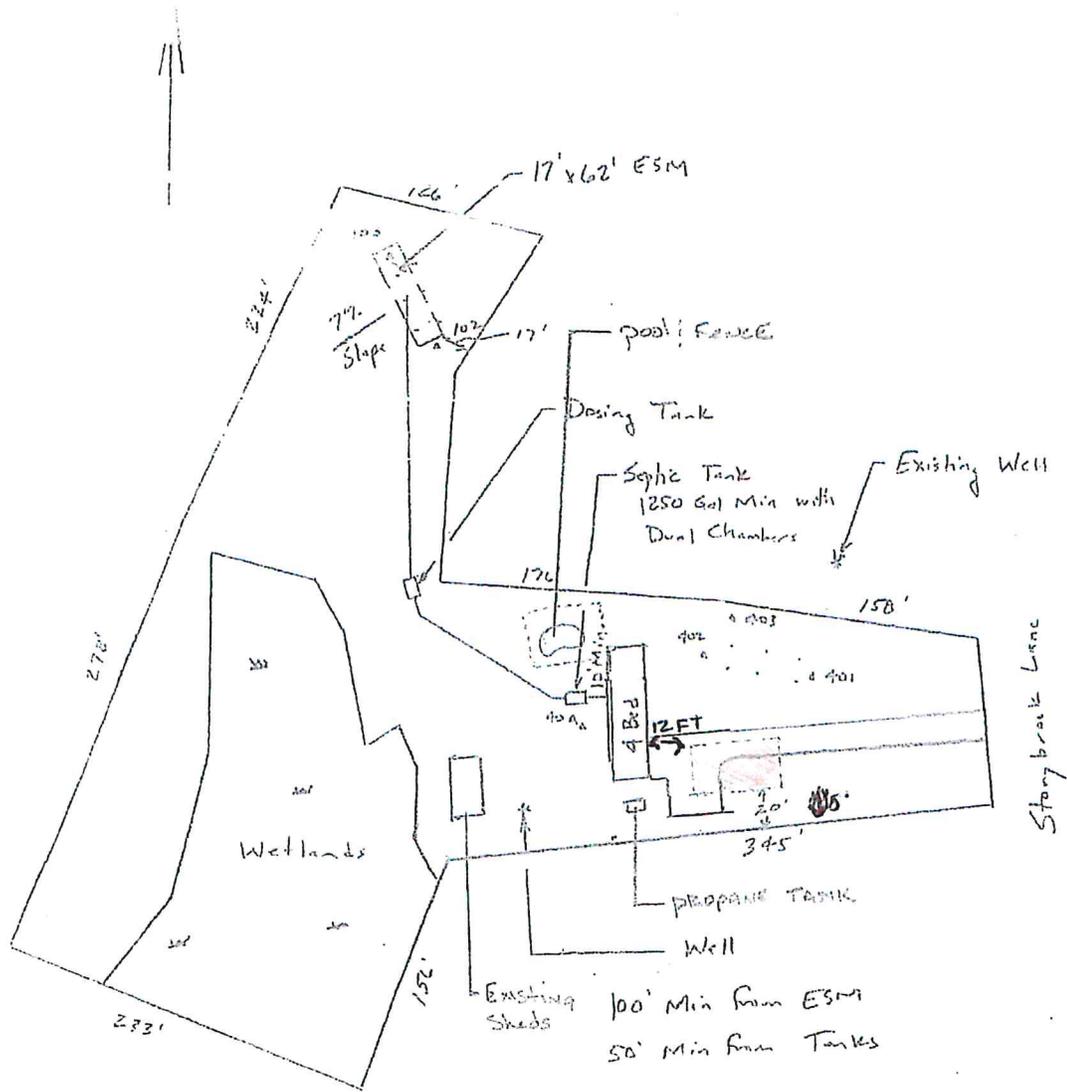
Thank you for considering our request,

Mark and Suzann Chesek

w/ 20' setback

DESIGNED BY: GRANT MARSHALL
149 KERRS ROAD
CARLISLE, PA 17013
(717)776-3008
FAX (717)776-4503

10B Lot 42 Stonybrook, Fairview Twp.
SHEET 2 OF 5 York Co.
DATE 1/21/09



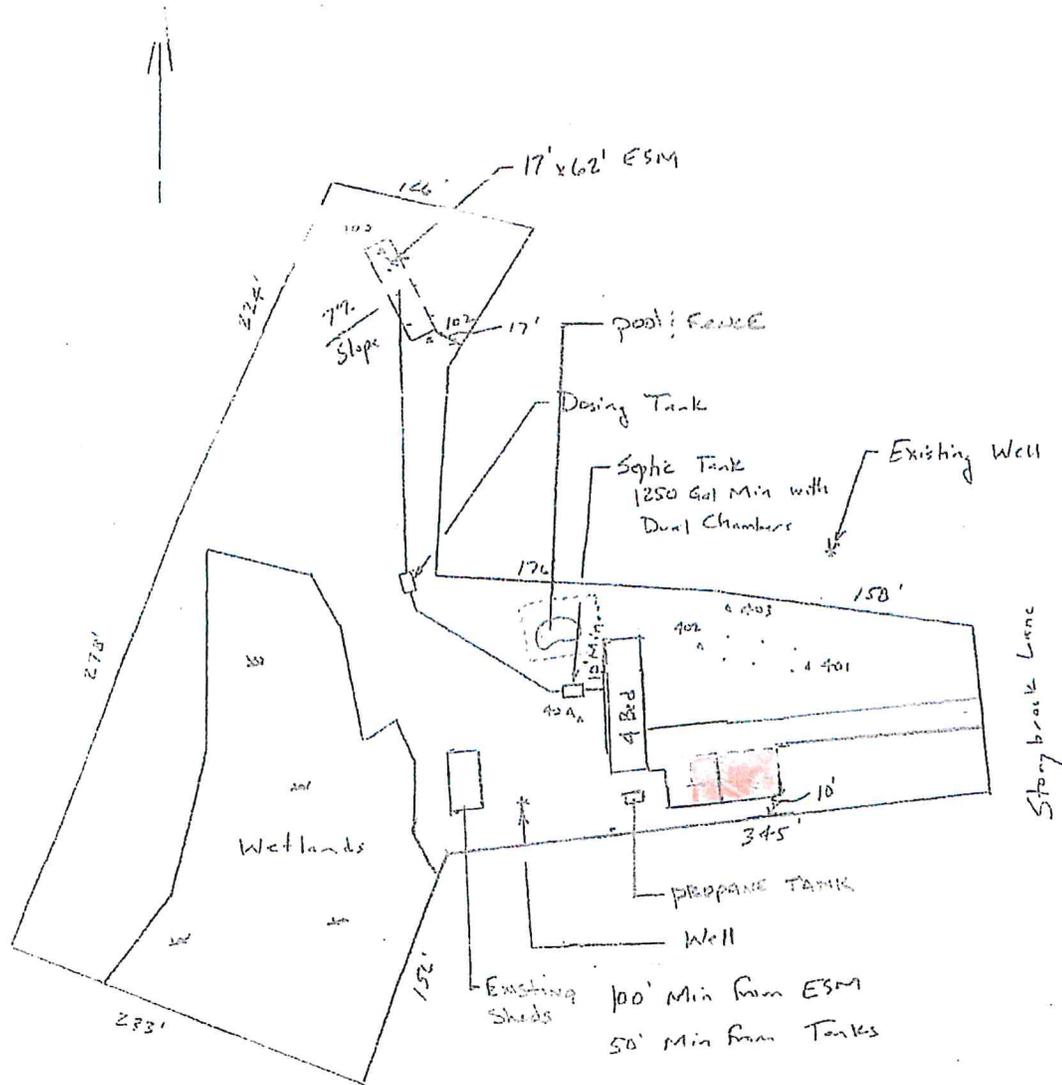
garage will be 10'
from the corner of the
home,

Plot Plan
" = 100'

w/5-10' setback

DESIGNED BY: GRANT L. MARSHALL
49 KERRS ROAD
CARLISLE, PA 17013
(717)776-3008
FAX (717)776-4503

JOB Lot 42 Stonybrook, Fairview Twp.
SHEET 2 OF 8 York Co.
DATE 1/21/04



Plot Plan
1" = 100'