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

May 23, 2023

Tom Segonas
Robert & Martha Gentzler
1 Laurel Road
New Cumberland, PA 17070

VIA REGULAR MAIL

RE: Fairview Twp. Zoning Hearing Board – No. 2023-04

To Whom It May Concern:

Enclosed please find the fully executed decision of the Fairview Twp. Zoning Hearing Board for Docket No. 2023-04 related to Tom Segonas and Robert & Martha Gentzler'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, appearing to read 'Christian R. Miller'.

Christian R. Miller, Esquire

Enclosure

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

BEFORE THE FAIRVIEW TOWNSHIP
ZONING HEARING BOARD

DECISION

IN RE: APPLICATION OF CHRISTOPHER & CATHERINE SHELLY
APPLICATION NO. 2023-04

APPLICANT(S)	Tom Segonas and Robert and Martha Gentzler, husband and wife
HEARING DATE	April 20, 2023
DECISION DATE	April 20, 2023
APPEARANCES	Tom Segonas Chris Hoover (Engineer with Hoover Engineering) Thomas Long (neighbor) Stephen Waller, Township Zoning Officer
EXHIBITS	Exhibit 1 – Application (including all submittals)
SUBJECT PROPERTY	11 Laurel 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*"), including: (i) a special exception under § 300-80.B of the Ordinance to erect a concrete pad for a walk-in freezer on the side of an existing restaurant which will encroach on the current side yard setback, which is a dimensional nonconformity. The current side yard setback is 15 feet, and the existing restaurant structure is 13 feet from the side boundary, while the walk-in freezer will be 13.5 feet from the side boundary. The subject property is located at 11 Laurel Road, New Cumberland, Pennsylvania 17070, located in the Township's Single Family Residential (RS) and Commercial Business (CB) Zoning Districts.

A hearing was held on the Application on Thursday, April 20, 2023, with the meeting starting at 6:30 p.m. and the hearing on the Application starting at 7:30. The Zoning Hearing Board was represented by Timothy Mader (Chairman), Mark Perry (Vice Chairman), Keith Bashore, and Daniel Alderman (as the acting 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. No testimony in opposition to the Application was offered or taken, and no parties attended the hearing in opposition. After hearing the testimony and viewing the evidence in this matter, the Board makes the following determinations:

FINDINGS OF FACT

1. Tom Segonas and Robert and Martha Gentzler, husband and wife ("*Applicants*"), are the current owners of property located at 11 Laurel Road, New Cumberland, Pennsylvania 17070 (the "*Property*"), which is used as a restaurant.

2. The Property is located in the Township's Single Family Residential (RS) and Commercial Business (CB) Zoning Districts, with the main structure being in the Commercial Business (CB) Zoning District (the "CB Zone") and is improved with a commercial structure used as the aforementioned restaurant (the "Building").

3. The Building was constructed in 1957 prior to the Ordinance enactment.

4. The Building currently has a right side yard setback of 13 ft. from the property line.

5. Due to the CB Zone's side yard setback and the existing side yard setback for the Building and the Property, the side yard constitute existing dimensional nonconformities related to the side yard setback.

6. Applicants seek to construct an additional walk-in freezer to the right side of the Building (as facing the Building from the street) that would encroach on the current side yard setback to 13.5 feet (from the required 15 feet setback).

7. The freezer would be 10 ft. by 30 ft. and would be attached to the Building by flashing.

8. Applicants' neighbor, Thomas Lang, located beside the proposed freezer and being the neighbor which would be most heavily impacted by the within improvement, testified he would have no concern with the request.

9. Applicants seek a special exception under §300.80.B (related to the Expansion, Extension or Enlargement to existing nonconforming uses and structures) to erect the freezer which encroaches on the current side yard setback, which is an existing dimensional nonconformity.

10. Stephen Waller, as the Township Zoning Officer, testified s follows:

A. 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.

B. The Building is an existing non-conformity based on the Township's records.

C. The Applicant, if the zoning relief is granted, would still need to submit a land development plan and abide by all Township regulations in conducting the improvement.

CONCLUSIONS OF LAW

1. The Applicants have established that the Property and the location of the Building constitute existing dimensional nonconformity due to the existing side yard setback.

2. The Applicants have established the elements required by Section 300-80.B of the Ordinance in order to expand, extend, or enlarge an existing dimensional nonconformity.

3. The Applicants have established the elements required by Section 300-99C.03(b) of the Ordinance regarding the general criteria for a special exception.

DECISION

Mr. Bashore moved to grant the zoning relief requested by the Applicants in the Application, being a special exception under § 300-80.B of the Ordinance to erect the walk-in freezer despite encroaching on the current Side yard setback, which is a dimensional nonconformity.

Mr. Mader seconded the motion. Upon a vote, the Fairview Township Zoning Hearing Board unanimously approved 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, Chairman

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: Tom Segonas, Robert and Martha Gentzler
Address: 1 Laurel Road
New Cumberland, PA 17070
Phone: 717-515-2626

PROPERTY LOCATION:

Address: Culhane's Steakhouse
1 Laurel Road, New Cumberland
Lot Size: 1.49 acres
Date Purchased: 2012
Location: 1 Laurel Road, New Cumberland

EXISTING OWNER OF PROPERTY:

Name: Same as Owner
Address:

PRESENT USE OF PROPERTY:

Restaurant

EXISTING ZONE: RS - Residential Zone and
CB - Commercial Business

Part 2:

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

- () SUBSTANTIVE CHALLENGE
(X) 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:
300-80.B(1) - Expansion of a nonconforming structure

Part 3:

DESCRIPTION OF REQUEST:

See Attached Narrative

❖ Part 4

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

NAME	ADDRESS	USE TYPE
Katelyn Rehm	454 Locust Road, New Cumberland, PA 17070	Residential
James and Teresa Page	452 Locust Road, New Cumberland, PA 17070	Residential
Thomas and Mary Long	450 Locust Road, New Cumberland, PA 17070	Residential
Andrew Wolf	456 Locust Road, New Cumberland, PA 17070	Residential
Anthony and Janet Yannella	458 Spruce Road, New Cumberland, PA 17070	Residential
Martin Gross Family LP	2 Laurel Road, New Cumberland, PA 17070	Commercial

❖ *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: _____

**CULHANE'S RESTAURANT ZONING REQUEST
PROJECT NARRATIVE
AND
SUPPORTING DOCUMENTATION**

Project Narrative

Culhane's Steakhouse is an existing steak and seafood restaurant located at 1 Laurel Road, New Cumberland, Pennsylvania. The restaurant was established in 1956 and is currently owned by Tom Segonas and Richard and Martha Gentzler. The existing building is situated on a lot consisting of 1.49 acres, and is serviced by onsite water and public sewage. Access to the site is via Laurel Road, which is located along the southern end of the lot, and terminates at the right of way of Interstate 83. The zoning of the property is RS, Residential Single, and CB, Commercial Business

Due to increased customer demand, the Applicants are requesting approval to construct a 10 foot by 30-foot concrete slab to the northeastern corner of the existing building (See included site plan). The intent of the slab construction is to provide support for 10 foot by 30-foot free-standing freezer. Access to the freezer will be through a new door which will be built into the existing adjacent wall of the restaurant. The only attachment to the existing restaurant will be a rubber flashing which will keep weather and deleterious material from depositing into the space between the structures.

The existing building is located XXX feet from the side property line. The required minimum side yard setback in the Commercial Business Zone is 15 feet, which makes the structure nonconforming. Therefore, in order to construct the freezer, the Applicant is requesting Special Exception relief from Section 300-80.B – Expansion of a nonconforming structure.

Section 300-80.B(1) Compliance

In order to gain a special exception, as per the process detailed in Section 300-80.B.(1), the applicant must show that the following criteria have been met:

Section 300-80.B(1)(a) - Any extension, expansion, or enlargement of a nonconforming structure or use shall not exceed 25% of the total gross floor area of the nonconforming structure or total gross lot area of the use (as applicable) at the time it became nonconforming.

The existing square footage of the building is 5477 square feet, which per this section would allow for up to a 1,369 square foot expansion. The proposed expansion will be 300 square feet.

Section 300-80.B(1)(b) - Any extension, expansion, or enlargement shall conform to the building height, area/footprint, setback, and impervious lot coverage regulations of the zoning district in which it is located. The existing impervious lot coverage is 22,215 square feet, or 34.23% of the lot area. The allowable lot coverage is 75% of the lot area, or 48,678 square foot allowed. The proposed lot coverage will be 22,515 square feet or 34.56%.

Section 300-80.B(1)(b)[1] - If an existing structure or use has a lawfully nonconforming setback, additions, and expansions may occur to increase the height above such setback or to extend other portions of the structure or use out to the nonconforming front, side, and/or rear setback line, provided that:

[a] - The use or structure shall not be extended beyond the existing nonconforming setback line.

The proposed freezer will be 13.5 feet from the side property line, which is greater than the side plane of the existing structure (13.0 feet)

[b] - No additional nonconformity shall be created.

No new dimensional nonconformity will be created.

[c] - The new nonconforming extension shall not be greater than 25% of the existing floor area or lot area (as applicable).

This condition will be met. See above response.

[d] - All other requirements of this Article XI of this chapter are met.

Article XI requirements relate to nonconformities, and this document illustrates how the Applicants are complying with that section.

[e] Such addition shall not be permitted for a structure proposed for use by a nonresidential use on a lot that abuts a lot with an existing permitted residential use in the RL, FRS, RMU, VR, and/or VMU zoning Districts.

This section is not applicable. The adjacent zoning district is RS, Residential Single.

Section 300-80.B(c) All loading and parking spaces for any extension, expansion, or enlargement shall comply with the requirements of Article VIII of this chapter.

This section is not applicable since no new loading spaces are being proposed.

Section 300-80.B(d) Any extension, expansion, or enlargement of a nonconforming structure or use shall not be permitted to extend into vacant parcels of land adjacent to the parcel containing the nonconforming structure or use, where such vacant parcels have been separately recorded or acquired prior to the effective date of this chapter.

This section is not applicable. The proposed expansion will occur on the existing lot as the nonconforming structure.

Section 300-80.B(e) Extensions, expansions, or extensions of nonconforming signs shall be prohibited, except as provided in Subsection C below and this Article XI, relating to nonconforming signs.

This section is not applicable. No new signage is being proposed.

Section 300-80.B(f) The intensity of a nonconforming use (resulting nuisances such as air pollution, noise, glare, vibrations, delivery traffic, hazards, etc.) shall not be increased

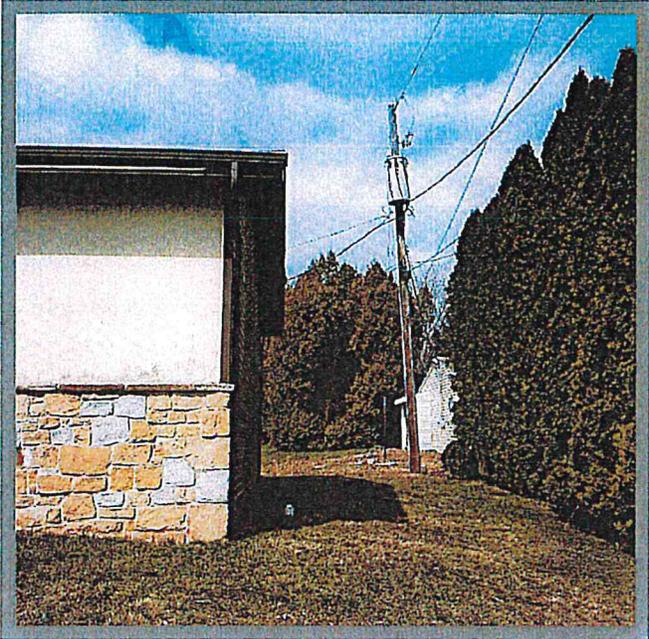
This section is not applicable. There will be no proposed impact relative to this expansion. In order to minimize any impact to any adjacent property owners, the Applicants will install vegetative screening along the proposed expansion to shield the existing residential uses.

Section 300-80.B(g) The extension, expansion, or enlargement would meet the standards that apply under Article XII of this chapter relating to special exceptions.

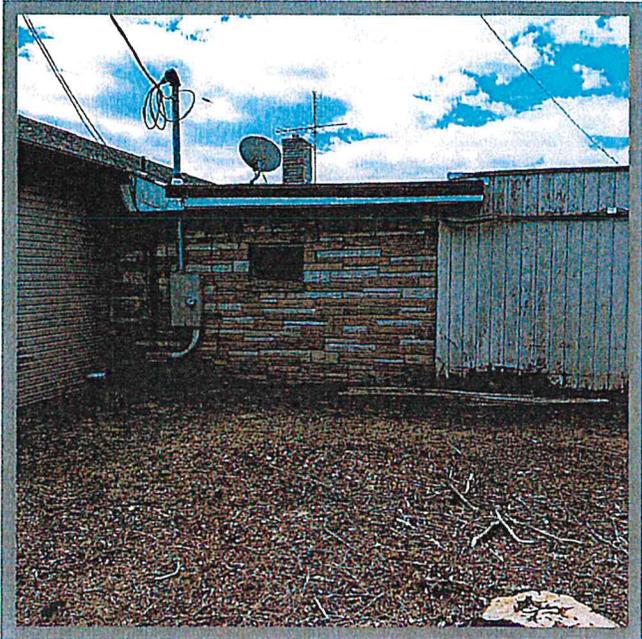
These requirements will be met as indicated in this submission.

Following are site photographs which illustrate the area of the proposed building addition:

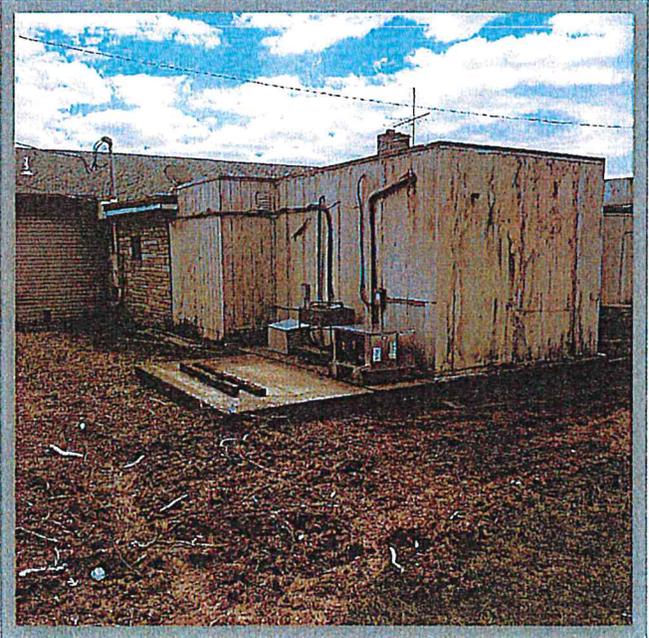
View of existing restaurant building in relationship to the existing side yard and vegetative screening.



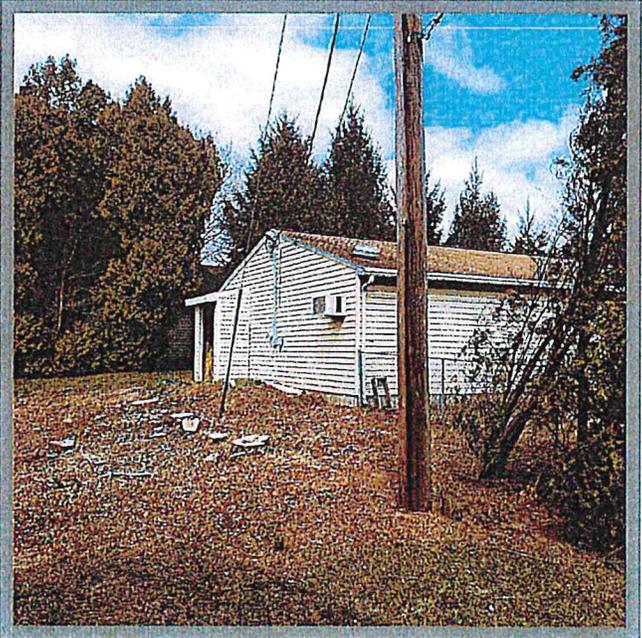
Area of proposed placement of concrete slab and outdoor freezer. Existing window will be replaced with a mandoor for access.



View of area or proposed freezer placement. Existing concrete slab will be removed to accomadate placement.



Area of proposed placement of vegetative screening to shield adjacent residential uses





LEGEND

	PROPERTY LINE
	ADJACENT PROPERTY LINE
	BUILDING SETBACK LINE
	EDGE OF MACADAM
	EXISTING CONTOUR
	EXISTING TREE LINE
	EX. FENCE LINE
	PROPERTY CORNER
	LIGHT POLE
	UTILITY POLE
	ZONE LINE
	AREA OF PROPOSED ADDITION

SITE DATA:

ZONING OF TRACT: CB - COMMERCIAL BUSINESS
 RS - SINGLE FAMILY RESIDENTIAL
 EXISTING LOT SIZE = 1.4922 AC.
 PIN : 27-000-22-0001F0-00000
 DEED BOOK : 2188 PG. 100
 EXISTING METHOD OF SEWAGE DISPOSAL : PUBLIC
 EXISTING METHOD OF WATER SUPPLY : ON LOT WELL

ZONING INFORMATION: RS - SINGLE FAMILY RESIDENTIAL

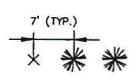
MINIMUM LOT AREA = 20,000 S.F. (NO PUBLIC WATER, BUT PUBLIC SEWER)
 MINIMUM LOT WIDTH = 60'
 MAXIMUM LOT COVERAGE = 40%
 MAXIMUM BUILDING HEIGHT = 35'
 MINIMUM BUILDING SETBACKS:
 FRONT = 40'
 SIDE = 10'
 REAR = 35'

ZONING INFORMATION: CB - COMMERCIAL BUSINESS

MINIMUM LOT WIDTH = 100'
 MAXIMUM LOT COVERAGE = 75%
 MAXIMUM BUILDING HEIGHT = 35'
 MINIMUM BUILDING SETBACKS:
 FRONT = 30'
 SIDE = 15'
 REAR = 15'

LOT COVERAGE INFORMATION:

TOTAL LOT AREA = 1.49 AC.
 EXISTING IMPERVIOUS AREA = 0.51 AC. / 34.23%
 EXISTING NON-IMPERVIOUS AREA = 0.98 AC. / 65.77%
 PROPOSED IMPERVIOUS AREA = 0.515 AC. / 34.56%
 PROPOSED NON-IMPERVIOUS AREA = 0.975 AC. / 65.44%

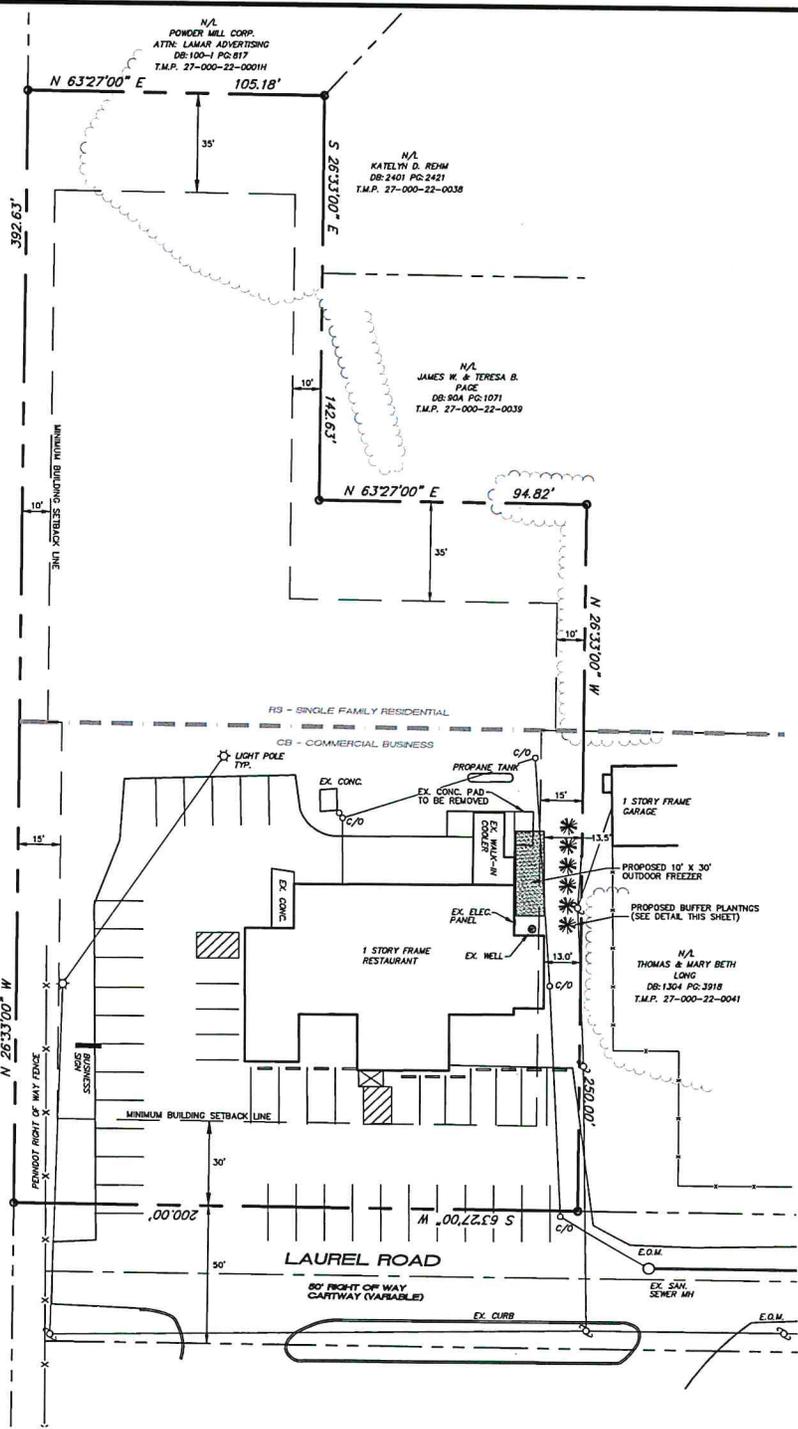


NOTE:
 BUFFER PLANTINGS TO BE UMBRELLA EASTERN ARBORVITAE, 4 FT. HIGH AT TIME OF PLANTING, 7' O.C.

BUFFER PLANTING DETAIL
 NOT TO SCALE

PROPERTY OWNER:
 THOMAS J. SAGONAS,
 ROBERT AND MATHIA GENTZLER
 1 LAUREL ROAD
 NEW CUMBERLAND, PA 17070
 PH. (717) 515-2626

INTERSTATE 83 (S.R. 00683)



GENERAL NOTES:

- THE PURPOSE OF THIS PLAN IS AS FOLLOWS:
 - ILLUSTRATE THE EXISTING FEATURES CURRENTLY LOCATED ON THE SUBJECT SITE, AND REFLECT THE PROPOSED BUILDING ADDITION.
- PERIMETER INFORMATION AS SHOWN IS BASED UPON THE FOLLOWING:
 - A FIELD SURVEY PERFORMED BY HOOVER ENGINEERING SERVICES, INC. SURVEY PERFORMED MARCH, 2023.
 - SITE DEED RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS FOR YORK COUNTY: INSTRUMENT DEED BOOK 2188P, PAGE 100
 - RECORDED SUBDIVISION PLAN ENTITLED "FINAL SUBDIVISION PLAN FOR RICHARD CULHANE" RECORDED IN PLAN BOOK II, PAGE 451.
- TOPOGRAPHIC INFORMATION AS SHOWN IS BASED UPON A FIELD SURVEY PERFORMED BY HOOVER ENGINEERING SERVICES, INC. AND PASDA LIDAR MAPPING. SURVEY COMPLETED IN MARCH 2023. ADJACENT TOPOGRAPHIC INFORMATION TAKEN FROM P.A.S.D.A. LIDAR MAPPING INFORMATION.
- THE FOLLOWING EXISTING NON-CONFORMING STRUCTURES/USES ARE LOCATED ON THE SUBJECT PROPERTIES:
 - THE EXISTING RESTAURANT BUILDING IS LOCATED WITHIN THE REQUIRED SIDE YARD SETBACK.
- THERE ARE NO WETLANDS LOCATED WITHIN THE AREA OF PROPOSED CONSTRUCTION BASED UPON A WETLAND INVESTIGATION PERFORMED BY HOOVER ENGINEERING SERVICES, INC. WETLAND INVESTIGATION PERFORMED ON MAY, 2023.
- UTILITIES AS SHOWN ARE BASED UPON FIELD SURVEYED INFORMATION, RECORDED SUBDIVISION AND LAND DEVELOPMENT PLANS, AND INFORMATION PROVIDED BY OTHERS. HOOVER ENGINEERING SERVICES, INC. DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF SAID LOCATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL UTILITY LOCATIONS PRIOR TO START OF CONSTRUCTION. THE CONTRACTOR SHALL SAFEGUARD ALL UTILITIES DURING CONSTRUCTION.
- NO 100 YEAR FLOOD PLAIN OR FLOOD HAZARD AREAS ARE LOCATED ON THIS TRACT BASED UPON A REVIEW OF F.E.M.A. MAPPING FOR FAIRVIEW TOWNSHIP, YORK COUNTY, PANEL 42133C0065F, EFFECTIVE 01/12/18/2015.
- THERE ARE NO SIGNIFICANT STEEP SLOPE AREAS (15% OR GREATER) IN THE PROPOSED AREA OF DEVELOPMENT.
- THE APPLICANT IS REQUESTING A SPECIAL EXEMPTION FROM SECTION 300-80.8(1) - EXPANSION OF A NONCONFORMING STRUCTURE.



DATE: 3-12-2023
 SCALE: 1"=30'
 FILE: 230309
 DWG: 230309Base

ZONING HEARING BOARD EXHIBIT
 FOR
 1 LAUREL ROAD
 FAIRVIEW TOWNSHIP, YORK COUNTY, PA.

REVISIONS	DESCRIPTION	DATE	BY

HOOVER
 ENGINEERING SERVICES, INC.
 ENGINEERS: M. J. HANSEN, P.E. & M. J. HANSEN
 NEW CUMBERLAND PA, 17070-2183
 688 GUMBERLAND RD. SUITE 100
 TELEPHONE (717) 776-1006 FAX (717) 776-1667