

**BEFORE THE FAIRVIEW TOWNSHIP  
ZONING HEARING BOARD**

**DECISION**

**IN RE:           APPLICATION OF SEAN REYNOLDS  
                  APPLICATION NO. 2022-01**

APPLICANT(S):           Sean Reynolds  
HEARING DATE:           January 20, 2022  
DECISION DATE:         January 20, 2022  
APPEARANCES:           Sean Reynolds  
                              Katelyn Rohrbaugh, Esq., attorney on behalf of Applicant  
                              Mervin Smith (current landowner)  
                              Stephen Waller, Township Zoning Officer  
EXHIBITS:                Exhibit 1 – Application (including all submittals)  
                              Exhibit 2 – Site Plan (referred to as Exhibit 3 in the transcript)  
                              Exhibit 3 – Floor Plan (referred to as Exhibit 4 in the transcript)  
SUBJECT PROPERTY:     438 Big Spring Road, Goldsboro, PA 17319

**BACKGROUND**

This decision of the Fairview Township Zoning Hearing Board (the “*Board*”) is from an application filed with Fairview Township (the “*Township*”) on December 27, 2021 (the “*Application*”), seeking zoning relief under the Township’s Zoning Ordinance (the “*Ordinance*”), including: (i) a special exception under § 300-81(C) of the Ordinance to change the use of a currently existing non-conforming use in the RS Single Family Residential Zoning District (the “*RS District*”) from an auto repair and refinishing business to an HVAC and plumbing repair business; or alternatively (ii) a variance from §300-20 to allow an HVAC and plumbing repair business, an otherwise not-permitted use, in the RS District.

A hearing was held on the Application on Thursday, January 20, 2022 at 6:30 p.m.. The Zoning Hearing Board was represented by Timothy Mader (Chairman), Mark Perry and Keith Bashore. 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. Mervin Smith is the current owner of property located at 438 Big Spring Road, Goldsboro, PA 17319 (the “*Property*”), at which he conducts an auto repair and refinishing business.
2. The Property is roughly 1.2 acres in size, does not have connection to public water or sewer, and due to being a corner lot has two (2) front yards and two (2) side yards.

3. Mervin Smith has owned the Property for roughly six (6) years, and he is the only individual that currently works at the Property in the auto repair and refinishing business.

4. The current auto repair and refinishing business operates on weekdays (Monday through Friday) from 8:00 am to 5:00 pm. and clients of said business drop off and pick up vehicles throughout said business hours.

5. Sean Reynolds (the "*Applicant*") is the proposed purchaser of the Property pursuant to an existing agreement of sale for such property.

6. The Property is located in the RS District.

7. Applicant is seeking to use the Property as an HVAC and Plumbing Repair business (the "*Use*").

8. Applicant has been in the HVAC and Plumbing Repair business since roughly 1986, and Applicant's company, SMR Mechanical, LLC, which will operate out of the Property, has been in existence since 2013. Applicant is the sole owner of said LLC.

9. The Applicant currently operates the business out of Lemoyne, Pennsylvania, but desires to move to the Property due to location and the specific aspects of the Property.

10. Applicant's current business currently serves residential and commercial clients with on-site HVAC and plumbing repairs and installations. The business does not perform industrial work.

11. Applicant currently has fourteen (14) employees in his business, of which eleven (11) are site technicians and the remaining three (3) would be office personnel.

12. The site technicians work from their work vehicles for the most part, conducting all work on-site in the field and going to supply businesses to acquire all equipment and materials needed for work, storing the same in their work vehicles. The site technicians take their vehicles home at night and drive directly to their daily on-site jobs, rarely going to the main office.

13. Applicant will hold staff meetings for all fourteen (14) of the business' employees twice a year at the Property, which would be the only time all employees of the business would be at the Property at any given time.

14. Other than administrative work, little HVAC work will be conducted at the Property, except for extraordinary repairs which will be inside the structure located on the Property. No work related to the Use will be performed or conducted outside of the structure on the Property.

15. Very few, if any, clients would come to the Property for the business.

16. Traffic to and from the Property will likely be less than the current use, as only the three (3) office employees will come to, and leave from, the Property each work-day, with no clients and no site technicians routinely visiting the Property. Such is likely less than clients dropping off and picking up vehicles for repairs at the current auto-related business.

17. Applicant will only operate the business at the Property on weekdays (Monday through Friday) from 7:00 am to 4:00 pm.

18. Applicant will not alter the characteristics of the Property, and he does not anticipate conducting any exterior changes to the Property except for some landscaping work and to replace a dilapidated fence on the Property.

19. Applicant will make interior alterations to change some current garage bays to office space, all pursuant to the floor plans entered into the record as Exhibit 3.

20. The Use will not create or generate any noise, dust or debris outside of the structure located on the Property.

21. All materials and waste generated by the business, as applicable, will be disposed of in accordance with all applicable local, state and federal laws and regulations.

22. The Use, as a contractor's office for the HVAC and plumbing business, will be a less intense use than the auto repair and refinishing use.

23. Applicant seeks (i) a special exception under § 300-81(C) of the Ordinance to change the use of an alleged existing non-conforming use in the RS District from an auto repair and refinishing business to an HVAC and plumbing repair business, or alternatively (ii) a variance from §300-20 to allow an HVAC and Plumbing Repair business, an otherwise not-permitted use, in the RS District.

### **CONCLUSIONS OF LAW**

1. The Applicant has established that the existing use as an auto repair and refinishing business constituted an existing non-confirming use.

2. The Applicant has established the elements required by Section 300-81(C) of the Ordinance in order to change a non-conforming use to another non-conforming use.

3. The Applicant has established the elements required by Section 300-99(E)(3)(b) of the Ordinance regarding the general criteria for a special exception.

4. Due to the approval and granting of the special exception, the Board has not undertaken any review or determination as to the variance request, as such request is moot.

### **DECISION**

Mr. Perry moved to grant the zoning relief requested by the Applicant in the Application, being a special exception under § 300-81(C) of the Ordinance to change the use of an alleged existing non-conforming use in the RS District from an auto repair and refinishing business to an HVAC and plumbing repaired business, based on the criteria under §300-81(C) and the general special exception criteria. Such approval was conditioned on the following:

1. The Applicant shall be restricted from operating the business at the Property to weekdays (Monday through Friday) from 7:00 am to 4:00 pm.

Mr. Bashore 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: 2/16/22

  
\_\_\_\_\_  
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: Sean Reynolds  
Address: 2141 Sir Lancelot Dr.  
Harrisburg PA 17110  
Phone: 717-585-4448

EXISTING OWNER OF PROPERTY:

Name: Mervin Smith  
Address: 438 Big Spring Rd  
Fairview Township

PROPERTY LOCATION:

Address: 438 Big Spring Rd  
21-000-RG-0074.D0-00000  
Lot Size: 1.201 acres  
Date Purchased: Under contract  
Location: Fairview Township

PRESENT USE OF PROPERTY:

Auto Repair Shop

EXISTING ZONE: Rural Living

❖ 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):

Special Exception: 300-81(c)  
Use Variance: 300-99(E)(4)

❖ Part 3:

DESCRIPTION OF REQUEST:

See attached.

PROPERTY OWNERS WITHIN 200'

UPI No. & Address	Owner	Mailing List	Use
27-000-RG-0074.00-00000 432 Big Spring Road	James R. & Brenda L. Rohrer	432 Big Spring Road New Cumberland, PA 17070	Residential
27-000-RG-0075.A0-00000 429 Big Spring Road	Joel B. Weaver	429 Big Spring Road New Cumberland, PA 17070	Residential
27-000-RG-0075.00-00000 435 Big Spring Road	Genean Zanetta Hart & Brian Keith Hart	435 Big Spring Road New Cumberland, PA 17070	Residential
27-000-RG-0075.00-P0001 Big Spring Road	Dauphin County Commissioners Attn: Chief Clerk		
27-000-RG-0075.B0-00000 439 Big Spring Road	Derek A. Frank	439 Big Spring Road New Cumberland, PA 17070	Residential
27-000-RG-0075.C0-00000 484 Granite Quarry Road	Judith B. Kleinfelter	484 Granite Quarry Road New Cumberland, PA 17070	Residential
27-000-RG-0055.00-00000 480 Granite Quarry Road	Terrance L. & Donna L. Welchans	480 Granite Quarry Road New Cumberland, PA 17070	Residential
27-000-RG-0058.A0-00000 483 Granite Quarry Road	Sylvia F. Clepper	116 Oriole Drive Carlisle, PA 17013	Residential
27-000-RG-0074.E0-00000 446 Big Spring Road	Matthew Murray Sr.	446 Big Spring Road New Cumberland, PA 17070	Residential
27-000-RG-0062.00-00000 464 Big Spring Road	Karl A. Dodson	464 Big Spring Road New Cumberland, PA 17070	Residential
27-000-24-0043.00-00000 391 Burgoyne Drive	David J. & Stephanie Rife	391 Burgoyne Drive New Cumberland, PA 17070	Residential
27-000-24-0042.00-00000 393 Burgoyne Drive	Sheldon & Stephanie Witmer	417 Chestnut Way New Cumberland, PA 17070	Residential
27-000-24-0041.00-00000 Burgoyne Drive	John W. & Brittany Besore	19 Columbia Drive Camp Hill, PA 17011	Residential
27-000-24-0040.00-00000 Burgoyne Drive	John W. & Brittany Besore	19 Columbia Drive Camp Hill, PA 17011	Residential

**SPECIAL EXCEPTION  
FAIRVIEW CODE § 300-81(C)**

Pursuant to § 300-81(C), “[a] nonconforming use may be changed to another nonconforming use only by the granting of a special exception by the Zoning Hearing Board of the Township of Fairview in compliance with Article XII of this chapter relating to the Zoning Hearing Board.” It requires proof of the following:

1. General conformity with the Comprehensive Plan;
2. External impacts are equal or less intensive than the existing nonconforming use;
3. Character is similar to the existing nonconforming use;
4. Proposed use would not endanger the public health and safety and will not deteriorate the environment or generate nuisance conditions;
5. Disposal of all materials will be accomplished in a manner that complies with the Ordinance;
6. Proposed use complies with all applicable licensing requirements;
7. Applicant shall provide
  - a. Hours of operation and management plan;
  - b. Detailed description of how it complies with the above 6 conditions
  - c. Site Plan
  - d. Schematic Architectural Drawing

The property is located in the Rural Living Zoning District. At this location, there is currently an Auto Repair Shop. This is a nonconforming use as the Rural Living Zoning District does not permit, as of right, by special exception, or by conditional use, an Auto Repair Shop or anything similar. The proposed new use is intended to be an HVAC and Plumbing Repair, with corresponding offices.

This proposed use is consistent with the Comprehensive and Growth Management Plan as the Plan encourages “reuse of existing structures,” and “[i]mprove and enhance current community facilities and services in a manner that is appropriate for the rural and urban areas of the Township.” Applicant is looking to reuse an existing structure, will not be placing any additions to the structure of the property, is planning on re-landscaping the outside to better suit the neighborhood and continue an existing repair shop that has been accepted in this community. The HVAC/Plumbing Repair use, although similar in nature, is likely less impact than an auto repair shop as work will be contained to the inside of the building and less customers will be coming and going from the property. The proposed use will not be a danger to the community. Disposal of any materials will be in compliance with the Ordinance. Applicant will comply with all licensing requirements. Because there already exists a nonconforming use on the property, and the applicant is looking to use the property as another similar nonconforming, but less impactful business, the unique circumstances warrant a special exception.

See attached is the proposed hours of operation, management plan, site plan, floor plan and list of property owners within 200 feet of the property. Applicant will have an schematic architectural drawing by the Zoning Hearing.

**USE VARIANCE  
FAIRVIEW CODE § 300-99(E)(4)**

Pursuant to § 300-99(E)(4) of the Ordinance, “[t]he Zoning Hearing Board of the Township of Fairview may grant a variance, provided that all of the following findings are made, where relevant”:

- (a) Unique physical circumstances or conditions peculiar to the property and the unnecessary hardship is due to such conditions;
- (b) Due to those conditions or circumstances, there is not a possibility that the property can be developed in strict conformity with the provisions of this chapter;
- (c) Unnecessary hardship has not been created by the applicant;
- (d) Variance will not alter the essential character of the zoning district or neighborhood nor impair the appropriate use or development of adjacent properties and will not be detrimental to public welfare;
- (e) Will represent the minimum variance; and
- (f) Proposed use is consistent with FPO

Applicant is proposing to use the property as an HVAC/Plumbing Repair. The property is currently being used as an Auto Repair Shop. The property is located within the Rural Living Zoning District, which does not expressly allow, by right, condition, or special exception, any type of repair shop. Therefore, applicant is looking to continue an existing similar nonconforming use. An HVAC/Plumbing Repair use will not alter the character of the neighborhood, as a similar use already exists in that location. The applicant is not looking to make additions to the building located on the property, so the building itself will not change and therefore will not impact the neighbors and surrounding properties. The applicant is looking to fix up the outside to make the landscaping more inviting to the neighborhood. Because there already exists a nonconforming use on the property, and the applicant is looking to use the property as another similar nonconforming, but less impactful, business, the unique circumstances of the property warrant a use variance.

See attached is the proposed hours of operation, management plan, site plan, floor plan and list of property owners within 200 feet of the property. Applicant will have an schematic architectural drawing by the Zoning Hearing.

**Hours of Operation:**

**Monday: 7:00 A.M. – 4:00 P.M.**

**Tuesday: 7:00 A.M. – 4:00 P.M.**

**Wednesday: 7:00 A.M. – 4:00 P.M.**

**Thursday: 7:00 A.M. – 4:00 P.M.**

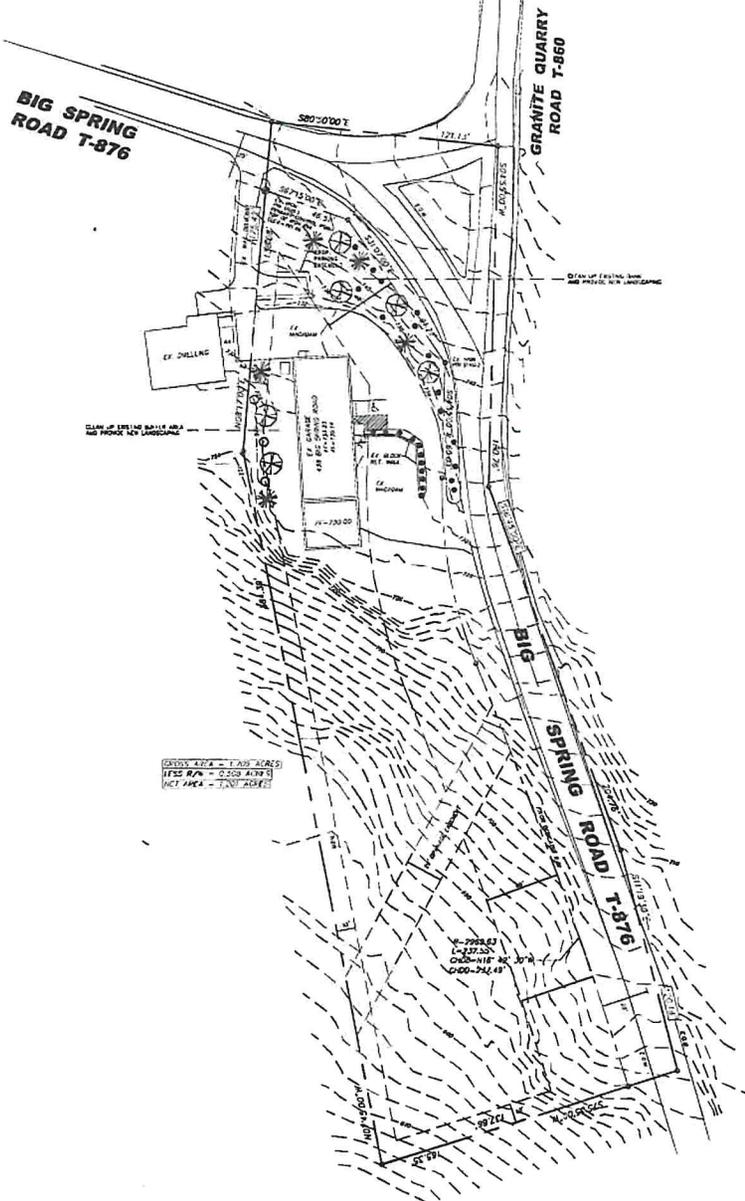
**Friday: 7:00 A.M. – 4:00 P.M.**

**Saturday: Closed.**

**Sunday: Closed.**

**Management Plan:**

There are three employees for this business. There are three full-time employees: an Office Manager, a Project Manager and the Owner. The Office Manager and Owner are at the location 5 days a week from open to close. The Project Manager comes and goes. There will be offices located in the building for the employees, as well as a workshop.



CROSS AREA - 1.05 ACRES  
 LESS R/W - 0.250 ACRES  
 NET AREA - 0.797 ACRES

1  
 SP-1.1

**SITE PLAN**  
 SCALE: 1" = 30'-0"



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Project	Page	Number	Date	Revision	Number	Date
SP	1.1	1	11-29-21			

Site Plan

RENOVATIONS TO  
 438 Big Spring Road  
 New Cumberland, PA  
 Fairview Township

**STEPHEN D. TUCKER**  
 ARCHITECT

1 Glass Ave. Cl.  
 Camp Hill, PA 17011  
 (717) 574-4364

Seal

Drawing Title

Project Title



❖ Part 5 For office use only:

## ZONING HEARING BOARD CHECKLIST

Application Received: 12/20/21

Property Zoned: RL Rural Living

Asking for Special Exception, Variance or Appeal: Special Exception and Variance

Case No.: 2021-13

Fees Paid: \$ 850.00

Hearing Date: 1/20/22

Draft Public Notice sent to Attorney for review: \_\_\_\_\_

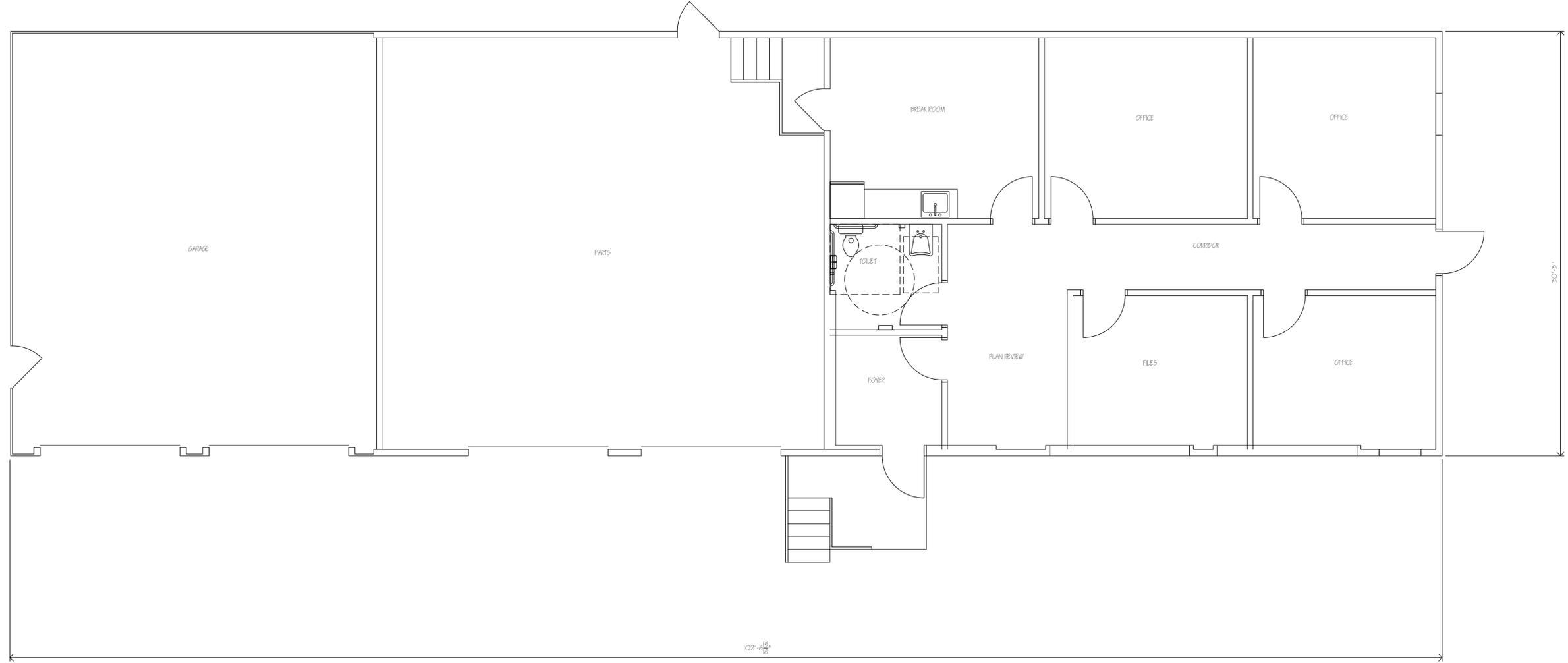
Notice sent to Newspaper: \_\_\_\_\_

Notice Published in Newspaper: \_\_\_\_\_

Notice Mailed to Property Owners in 225ft. Buffer: \_\_\_\_\_

Public Notice Posted on Property: \_\_\_\_\_

ZHB Packets Mailed and Emailed: \_\_\_\_\_



1  
A-1.1

**CONCEPTUAL FLOOR PLAN**  
SCALE: 1/4" = 1'-0"

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211101	11-29-21
Proj #	Date

A	1.1
Drawing	Number

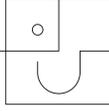
Revisions	
Number	Date

Conceptual Floor Plan

Drawing Title

RENOVATIONS TO  
438 Big Spring Road  
New Cumberland, PA  
Fairview Township

Project Title



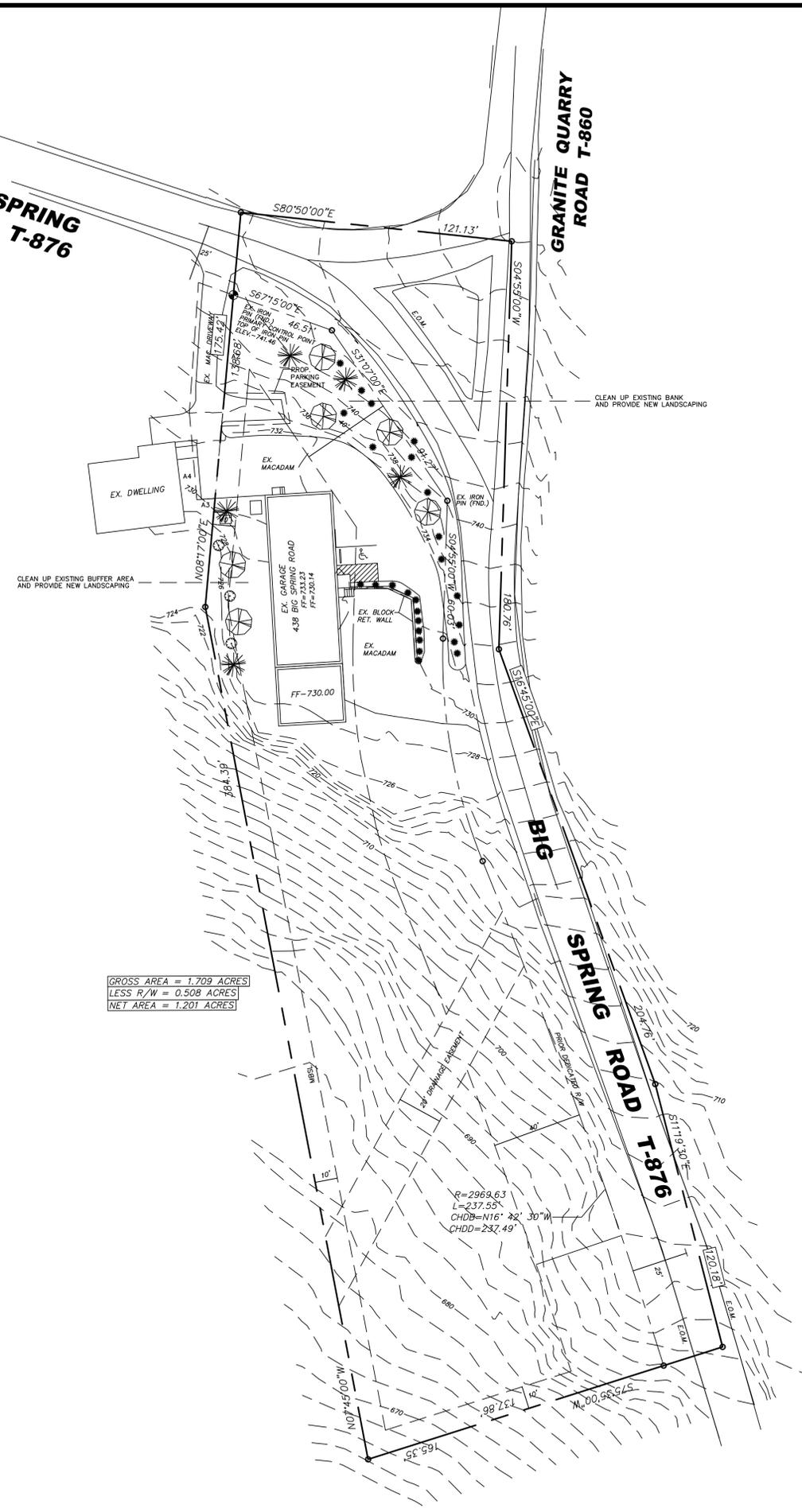
**STEPHEN D. TUCKER**  
**ARCHITECT**

Seal

1 Queen Anne Ct.  
Camp Hill, PA 17011  
(717) 574-4384

**BIG SPRING ROAD T-876**

**GRANITE QUARRY ROAD T-860**



GROSS AREA = 1.709 ACRES  
 LESS R/W = 0.508 ACRES  
 NET AREA = 1.201 ACRES

R=2969.63  
 L=237.55'  
 CHDB=N16°22'  
 CHDD=237.49'



1  
 SP-1.1

**SITE PLAN**  
 SCALE: 1" = 30'-0"

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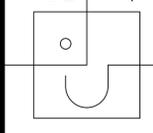
211101	11-29-21
Proj #	Date

**SP 1.1**  
 Drawing Number

Site Plan

RENOVATIONS TO  
 438 Big Spring Road  
 New Cumberland, PA  
 Fairview Township

Drawing Title



Seal

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