

NEW SALEM BOROUGH

YORK NEW SALEM, PA. 17371



**BOROUGH OF NEW SALEM
80 NORTH WATER STREET
YORK NEW SALEM, PENNSYLVANIA**

NOTICE OF ZONING HEARING

Notice is hereby given that a public meeting will be held by the New Salem Borough Zoning Hearing Board on **November 15, 2018 at 7:00 PM** at the New Salem Municipal Office, 80 North Water Street, York New Salem, Pennsylvania when and where all interested persons may appear and be heard regarding the following:

ZHB Case No. 01-18: Application by JLM Real Estate Investments, LLC, 950 East Main Street, Schuylkill Haven, PA. The applicant is requesting a variance of Section 240-20(B)(1) relating to the required minimum parking for a retail store. The property is located at the corner of Robin Hood Drive and Trinity Road, York, PA in the Mixed-Use Zoning District.

Examination of the above application may be made at the Spring Grove Municipal Building, 1 Campus Avenue, Spring Grove, PA 17362 during regular business hours (Monday – Friday; 8:00 AM – 4:30 PM).

Any person with a disability requiring a special accommodation to attend this meeting should notify Andrew N. Shaffer at (717) 739-6053 as early as possible. The Borough of New Salem will make every effort to provide a reasonable accommodation.

New Salem Borough
Andrew N. Shaffer
Secretary

cc:

New Salem Zoning Hearing Board:

Tracy Goodyear
Sue Becker
Keith Martin
Attorney Peter Solymos
Stenographer – GLFM, LLC

Borough Council:

C.R. Lloyd, Mayor
Vicki M. Rohrbaugh, Council President
Peter E. Partridge
Edward R. Mundorf
Susan P. Barley
Kim E. Martin
Joseph A. Shubert
Harvey E. Thumma, Jr

(over)

NEW SALEM BOROUGH

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Application for VARIANCE

1. Applicant

Name: JLM Real Estate Investments, LLC c/o Edward Davis
Address: 950 E. Main Street, P.O. Box 472
Schuylkill Haven, PA 17972
Phone: 570-385-1662

2. Property Owner (if different from applicant)

Name: JAK Associates, LLP
Address: 8290 Park Street
Seven Valleys, PA 17360
Phone: 717-668-3038
Relationship to Applicant: Seller

3. Property at Issue:

Address: Northwest corner of Trinity Road and Robin Hood Drive
Date purchased or obtained interest in property (attach copy of present deed, sales agreement, or lease): 5/24/2018 (Agreement of Sale)
Lot Size: Width: ± 200' Depth: ± 300' Area (sq. ft.): ± 1.5 acres
Zoning District of property: MU - Mixed Use
Dates of any previous applications: N/A
Present use: Vacant
Proposed use: Dollar General Retail Store

Attach a site plan to this application, showing the proposed use, existing and proposed buildings.

4. Code Section at Issue:

Nature of Variance(s) sought (refer to each Zoning Ordinance section and state how you wish to vary from each):

Zoning Ordinance § 240-20(B)(1) (required minimum parking)

An unnecessary hardship exists as follows: See attached narrative

The standards for a variance can be met as follows:

a. There are unique physical circumstances or conditions peculiar to the property, which are not due to or created by the Zoning Ordinance as follows:

See attached narrative

The standards for a variance can be met as follows *(continued)*:

b. Because of those physical circumstances or conditions, the property cannot reasonably be used in strict conformity with the provisions of the Zoning Ordinance as follows:

See attached narrative

c. The unnecessary hardship has not been created by the applicant as follows:

See attached narrative

d. The variance will not alter the essential character of the neighborhood, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare as follows:

See attached narrative

e. The variance will represent the minimum variance which will afford relief and will represent the least modification possible of the regulation at issue as follows:

See attached narrative

I certify that I have provided the Borough with the names and addresses of all neighbors as required by the Zoning Ordinance, and that the information set forth herein is true and accurate. I understand that I must be able to provide any other information and data that may be required to advise the Board of the variance.

Date:

10/5/2018

Signature



NARRATIVE ATTACHMENT

JLM REAL ESTATE INVESTMENTS LLC

The Applicant, JLM Real Estate Investments LLC, is a Pennsylvania limited liability company with business address of PO Box 472, 950 E. Main Street, Schuylkill Haven, Pennsylvania 17972 (“JLM”). JLM is the equitable owner of a ± 1.5 acre, vacant tract of land at the north west corner of Trinity Road (SR 611) and Robin Hood Drive owned by JAK Associates, LLP (Tax parcel No.790-000-3-11) (the “Property”). A copy of the deed for the Property is included with this application. JAK intends to develop the Property with a 7,532 square foot (gross) Dollar General retail store, with a 5,750 square foot retail area (the “Project”).

The Property is currently zoned Mixed-Use (MU) as set forth in the New Salem Borough Zoning Ordinance (the “Ordinance”). Retail stores are a permitted use in the MU District Ordinance §240-11(B)(12). Land development plans for the Project will be submitted to the Borough for approval upon receipt of the requested zoning relief herein. A plan sheet showing the proposed conditions as well as details of the Project, are included with this Application.

This Application requests the following relief:

I. ORDINANCE §240-20(B)(1) – REQUIRED ON-SITE PARKING

The Ordinance requires parking for the Project at a rate of 1 space per 200 sf gross floor area. Under the definition of “Floor Area of a Building”, the Ordinance provides:

“The sum of the gross horizontal areas of the several floors of a building ... All dimensions shall be measured between exterior faces of walls.” Ordinance §240-6(definitions).

Therefore, for parking purposes, the Project proposes 7,532 sf floor gross area which in turn requires 38 parking spaces. The Project proposes 30 parking spaces.

Due to steep sloped areas of the lot (towards the rear), parking cannot be effectively placed at the rear of the building. There is over 30 feet of grade change from the front to the rear of the Property. Even with site retaining walls, there will be a steep fill slope from the rear of the building to the rear of the property line. Parking cannot be placed in this area. The proposed parking is in the front of the building, which can safely accommodate the 30 proposed spaces. Parking spaces in the front of the building are the desirable spaces from a customer standpoint. In addition, based on numerous Dollar General stores developed by the Applicant, 30 spaces is more than adequate for the proposed retail use and will not result in any actual parking shortfall.

The Applicant therefore requests a variance from Ordinance §240-20(B)(1) to allow 30 required parking spaces on the Property for the Project.

II. GENERAL RATIONALE AND STANDARDS FOR DIMENSIONAL VARIANCES.

While the Property is generally rectangular shaped, the steep slopes of the property towards the rear necessitate the development layout as provided. The variances JLM seeks are dimensional in nature. The Pennsylvania Supreme Court has clearly set forth the different standards which must be met when seeking a dimensional variance as opposed to a use variance in Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998). In Hertzberg, the Supreme Court reversed the Commonwealth Court and noted that the Commonwealth Court ignored the distinction that a dimensional variance was sought rather than a use variance and stated, 721 A.2d at 47:

When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation.

The Supreme Court went on to state that the quantum of proof required to establish unnecessary hardship is indeed lesser when a dimensional variance, as opposed to a use variance, is sought. The Supreme Court held that in determining whether unnecessary hardship has been established, courts should examine whether the variance sought is use or dimensional.

To justify the grant of a dimensional variance, courts may consider multiple factors, including the economic detriment of the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance with design requirements and the characteristics of the surrounding neighborhood. 721 A.2d at 50.

In Talkish v. Zoning Hearing Board of Harborcreek Township, 738 A.2d 50 (Pa. Cmwlth. 1999), alloc. granted, 526 Pa. 631, 757 A.2d 366 (2000), appeal dismissed as improvidently granted, 567 Pa. 513, 788 A.2d 955 (2001) the Commonwealth Court ruled that in following Hertzberg, relaxed standards require that numerous factors be considered when evaluating the unnecessary hardship and that a property owner was not required to prove that it was impossible to develop the property in conformity with the setback requirements. In holding that Hertzberg applied to all dimensional variances, not only those seeking to use an already existing building, the Commonwealth Court invited the allowance of appeal by the Supreme Court as to the issue of whether Hertzberg overruled the requirement that an applicant for a variance present substantial evidence for all five requirements set forth in the Pennsylvania Municipalities Planning Code ("MPC"). As a result of the Supreme Court's refusal to review Talkish, the relaxed standards of Hertzberg apply to all dimensional variances and an applicant does not need to meet the required standards of § 910.2 of the MPC.

AGREEMENT OF SALE--REAL ESTATE

Pennsylvania

8290 PARK ST.
SEVEN VALLEYS PA.

J. - 17840
M.D.W.

AGREEMENT made to be effective as of the Effective Date (as defined in Section 1 below) between JAK Associates, LLP with mailing address of ~~Box 654, R.D. 1, New Freedom,~~ York County, PA ("Seller") and JLM Real Estate Investments LLC, a Pennsylvania limited liability company, with place of business at 950 East Main Street, P.O. Box 472, Schuylkill Haven PA 17972, or its assignee (hereinafter referred to as the "Buyer").

WHEREAS, Seller is the owner of certain real property located at street address of Main St., New Salem Borough, York County, Pennsylvania consisting of approximately 1.48 acres, more fully described in York County, Pennsylvania Deed Book 1263 Page 2208, a copy of which Deed is attached hereto and incorporated herein by reference as Exhibit "A" (the "Property").

WHEREAS, Seller desires to sell and Buyer desires to purchase the Property, under and subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties, intending to be legally bound hereby, agree as follows:

1.1 Purchase Price. Buyer agrees to purchase and Seller agrees to sell the Property to the Buyer for the price of _____ (the "Purchase Price"), under and subject to contingencies set forth in this Agreement. The purchase price shall be paid as follows:

- a. _____ payment (the "Earnest Money") shall be payable upon the execution of this Agreement to Williamson, Friedberg & Jones, LLC, the Escrow Agent designated by the Buyer to hold in escrow and retained by Seller as liquidated damages in the event of default by Buyer;

The balance of the Purchase Price shall be payable at Closing.

The Effective Date of this Agreement shall be the latest date of the execution by the Seller and Buyer and shall be the date on which both the Seller and the Buyer have fully executed this Agreement. Closing shall occur by the date described in Section 3.

1.2 Seller's Reports and Property Documentation. Seller shall deliver or make available to Buyer within ten (10) days of the date of this Agreement, without charge, copies of all declarations of covenants and restrictions (recorded, unrecorded or proposed in declarations, easements, leases or otherwise ("ECR's") environmental site assessments, reports or any correspondence or agreements with Pennsylvania Department of Environmental Protection and any other state, federal or local environmental or land use departments or agencies, surveys, subdivision plans, metes and bounds or other descriptions, all prior Title Insurance Commitments or Policies, engineering studies, soils and core boring, geotechnical studies, flood plain and wetland studies

(j) This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that the Agreement may have been prepared primarily by counsel for one of the parties, it being recognized that both Buyer and Seller have contributed substantially and materially to the preparation of this Agreement.

22. Escrow Agent.

If the Buyer exercises its right to terminate this Agreement as provided herein, the Seller and Buyer agree that the Escrow Agent shall return the Earnest Money to the Buyer. If the Escrow Agent is in doubt as to its duties or liabilities under this Agreement, for any reason, it may, in its sole discretion, continue to hold the said Earnest Money, or so much thereof as it deems appropriate until: (a) Seller and Buyer mutually agree to the terms of disbursement thereof; (b) an order or judgment of a court of competent jurisdiction determines the rights of the parties hereto; or (c) as an alternative, the Escrow Agent shall have the right to interplead such Earnest Money with the County Court where the Property is situated, and upon notifying both the Buyer and Seller of such action, all duties of the Escrow Agent under the terms of the Agreement shall terminate, except to the extent of accounting for such escrow funds. The Escrow Agent shall have no duties except as stated herein and the parties agree that it shall not constitute a conflict of interest for the Escrow Agent to represent one of the parties in connection with this Agreement. The Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith provided that it acts in good faith, and without gross negligence, willful neglect or intentional breach of this Agreement. Buyer shall be responsible for one-half (1/2) of the Escrow Agent's fees and Seller shall be responsible for one-half (1/2) of the Escrow Agent's fees. In the event that the Escrow Agent becomes involved in litigation relating to the Escrow, the non-prevailing party shall be responsible for the payment of the Escrow Agent's reasonable fees and expenses and for the reasonable attorney fees and costs of the prevailing party. The Earnest Money shall remain in the control of the Escrow Agent until consummation or termination of the sale transaction as contemplated in this Agreement, at which time the escrow funds will be disbursed in accordance with this Agreement subject to the terms of this paragraph. The Buyer and Seller will indemnify and hold the Escrow Agent harmless from any claims by them relating to the actions taken by the Escrow Agent in good faith while acting as Escrow Agent under the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed on the dates set forth below as to each party and to be effective as of the Effective Date.

5-16-2018
Date Signed

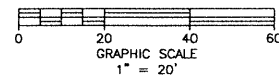
SELLER: J.A.N. ASSOCIATES L.L.P.
Michael D. Wright
BY: Gen. Perthen

5-24-18
Date Signed

BUYER:
JLM Real Estate Investments LLC
BY: James R. Miller
James L. Miller, Manager

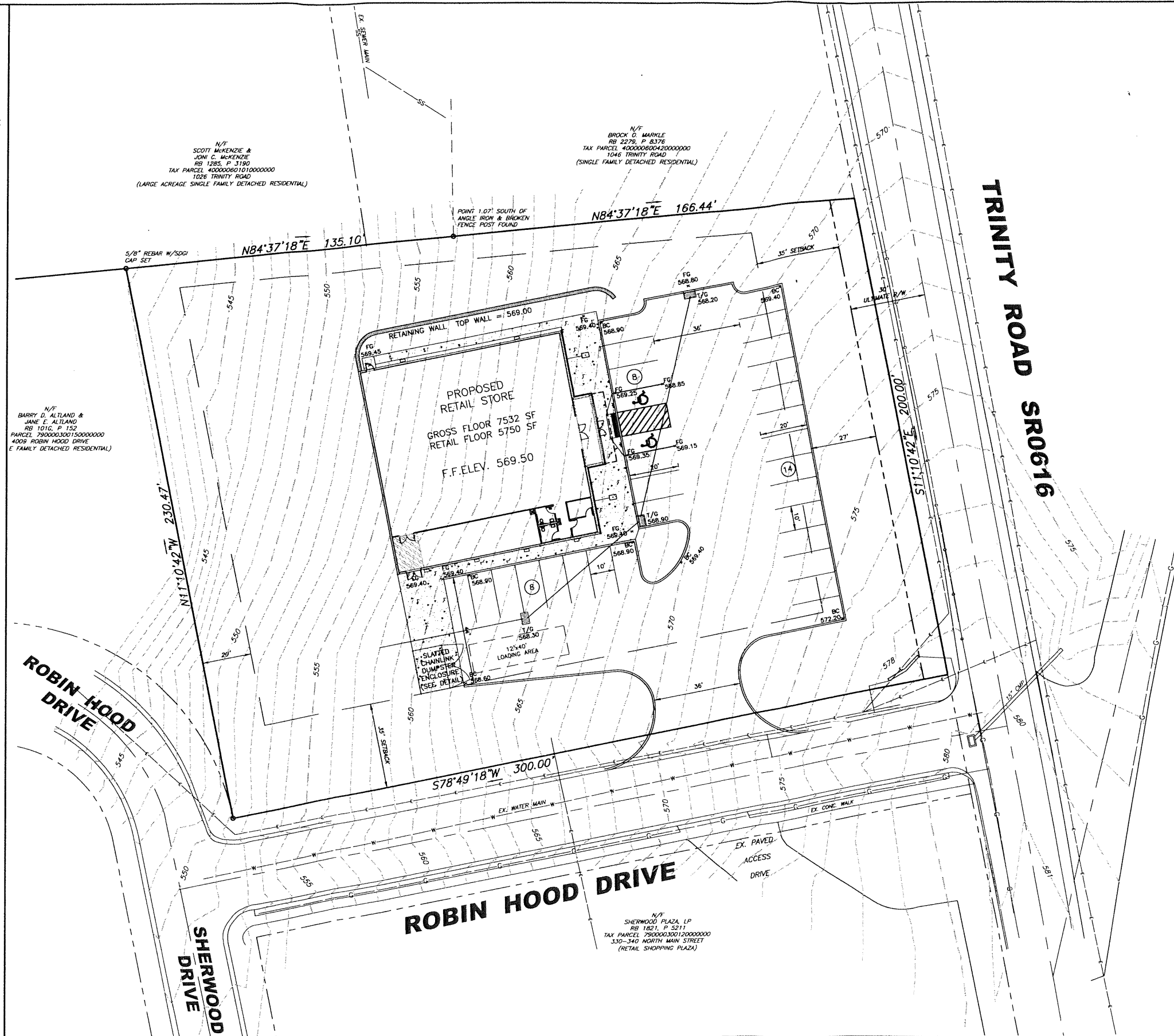
LEGEND

- PROPERTY LINE
- - - EXISTING MINOR CONTOUR
- - - EXISTING MAJOR CONTOUR
- PAVEMENT
- CENTERLINE ROAD
- ROAD RIGHT-OF-WAY
- SOIL BOUNDARY W/DESIGNATIONS
- EXISTING OVERHEAD WIRES
- - - EASEMENT
- - - BUILDING SETBACK LINE
- TREELINE
- ZONING LINE
- ⊕ (SWM) INFILTRATION TEST
- ⊕ TRAFFIC SIGN
- ⊕ UTILITY POLE
- ⊕ SANITARY SEWER CLEAN OUT
- ⊕ SANITARY SEWER MANHOLE
- SS SANITARY SEWER MAIN
- WWC WATER HOUSE CONNECTION
- ⊕ WV WATER VALVE
- ⊕ FH FIRE HYDRANT
- W WATER MAIN
- SD STORM DRAIN INLET
- SS STORM SEWER PIPE
- CL CURB LINE
- FG FINISH GRADE
- EX EXISTING GRADE
- BC BOTTOM CURB GRADE
- T/G TOP OF GRATE
- INV. INVERT
- HDPE HIGH-DENSITY POLYETHYLENE PIPE



ZONING/SITE DATA

- 1) CURRENT ZONING: MIXED-USE
- 2) TOTAL PROJECT GROSS AREA: 1.482± AC.
NET AREA: 1.436± AC.
- 3) PROPOSED LAND USE: RETAIL
- 4) MINIMUM LOT AREA: 6000 SF
- 5) MINIMUM LOT WIDTH: 60'
- 6) MAXIMUM PERMITTED IMPERVIOUS COVERAGE: 85%
PROPOSED IMPERVIOUS COVERAGE: 0.63 AC. 44% OF NET AREA
- 7) REQUIRED BUILDING SETBACKS: FRONT = 35'
SIDE = 10'
REAR = 20'
- 8) MAXIMUM PERMITTED BUILDING HEIGHT: 35'
PROPOSED BUILDING HEIGHT: 18'
- 9) PARKING REQUIREMENTS: RETAIL - ONE SPACE/200 SF GROSS FLOOR AREA
REQUIRED PARKING CALCULATION: 7532 SF GROSS FLOOR AREA = 38 SPACES
VARIANCE PARKING CALCULATION: RETAIL - ONE SPACE/200 SF RETAIL FLOOR AREA
5750 SF RETAIL FLOOR AREA = 29 SPACES
TOTAL PARKING PROVIDED = 30 SPACES
(INCLUDES 2 HC SPACES)
- 10) SEWAGE DISPOSAL: PUBLIC
- 11) POTABLE WATER: PUBLIC



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Land Surveying & Design
20 Chambersburg Street
Gettysburg, PA 17325
Phone: (717) 334-5400
Fax: (717) 334-0922
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REVISIONS		XREFS
NO.	DATE DESCRIPTION	

811 Know what's below.
Call before you dig.
PENNSYLVANIA ACT 307 (1976) AS AMENDED BY PENNSYLVANIA ACT 151 (2002) REQUIRES YOU CALL BEFORE YOU DIG. CALL 811 AT LEAST 48 HOURS BEFORE YOU EXCAVATE, DRILL, OR DIG.

PLAN PREPARATION

DRAWN BY: WLM	DATE: 04 OCTOBER 2018
DESIGNED BY: RAS	FILE NO.: 1886
CHECKED BY: RAS	DWG NO.: CNPT

CONCEPTUAL DEVELOPMENT PLAN
NEW SALEM DOLLAR GENERAL
A COMMERCIAL LAND DEVELOPMENT
NEW SALEM BOROUGH ~ YORK COUNTY ~ PENNSYLVANIA

SCALE
1"=20'
SHEET NO.
1 of 1