

# TOWNSHIP OF MIDDLETOWN

DELAWARE COUNTY, PENNSYLVANIA

(610) 565-2700 FAX

(610) 566-3640

27 N. PENNELL ROAD  
P.O. BOX 157, LIMA, PA 19037-0157

## AGENDA FOR THE REGULAR MEETING OF THE PLANNING COMMISSION

Tuesday, July 14, 2020 AT 7:30 PM VIA ZOOM\*

\*For the meeting of the Planning Commission to be held at 7:30 PM on Tuesday, July 14, 2020, online as a virtual meeting during the COVID-19 Restrictions.

### Public Access Information:

Zoom Meeting Link: <https://us02web.zoom.us/j/81239883793>

Zoom Meeting ID: 812 3988 3793

Dial by Your Location: +1 646 876 9923 US (New York)

**Planning Commission Members:** Mark Bradson, Dave Decker, Alison Hassenplug, Jeff Koenig, William Moran, Greg Reitze, Wayne Wilson

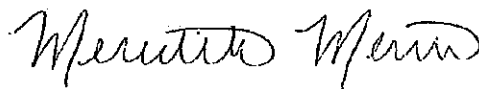
**Township Solicitor:** Donald Petrosa, Esq.  
**Township Engineer:** Eric Janetka, Kelly & Close  
**Planning Director:** Meredith Merino  
**Planner:** Jaime Jilozian

### A. CALL TO ORDER

B. APPROVAL OF MINUTES June Minutes

### C. NEW BUSINESS

Conditional Use Application  
Eric Cochran  
133-135 S. Pennell Road  
Applicant is seeking a conditional use approval pursuant to Section 275-206.B.(3)(a) to permit the expansion of the existing nonconformity of two principal residential uses on the property in a R-2 Residential District. Applicant desires to expand the existing nonconforming residential use of 133 S. Pennell Road into the former commercial space of the building.



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Meredith Merino  
Director of Planning & Development

**TOWNSHIP OF MIDDLETOWN  
PLANNING COMMISSION MEETING**

June 9, 2020

\*Held virtually via Zoom

Present: Dave Decker, Alison Hassenplug, William Moran, Greg Reitze

Patrick McKenna, Conflict Solicitor; Meredith Merino, Director of Planning & Development; Jaime Jilozian, Planner

A. Call to Order

Chairman Mr. Moran called the meeting to order at 7:30 PM.

B. Approval of Minutes-May 12, 2020

Mr. Moran brought forth the draft May meeting minutes, after which Mr. Reitze made a motion to approve the minutes. Ms. Hassenplug seconded the motion and the Commission approved the minutes unanimously with a vote of 4-0.

C. New Business

1. *Ordinance amending Chapter 275, "Zoning" Article II Terminology, by deleting the existing definition of interior lot and adding new definitions for flag front line, flag lot, interior lot and parent tract; and amending Chapter 275, "Zoning" Section 275-199.D by amending provisions related to the common driveways for interior lots and replacing it with regulations relating to flag lots and interior lots.*

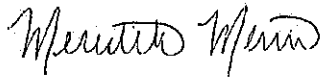
Ms. Jilozian explained that this ordinance had been reviewed in its initial form and recommended approval by the Planning Commission at the March 10 Planning Commission meeting. In the meantime, some additional proposed amendments were made to the draft, and it was re-introduced by Township Council in its amended form on May 11. The basis of the revisions was to create a distinction between existing interior lots that were approved and recorded as of the date of the subject ordinance adoption, and those lots that might be proposed subsequent to the adoption date. There are several existing undeveloped interior lots within the township that under the proposed code amendments, would lose the ability to be developed by-right. The amendments essentially preserve or "grandfather" the ability to develop those existing lots under the code requirements in effect prior to the adoption of this ordinance. Ms. Jilozian explained that all other sections of the ordinance that were reviewed by the Planning Commission in March remain the same. The need for these changes was based on Council's request to improve on the desired density of interior lot subdivision as well as access and safety requirements for roadways of interior lot subdivisions.

Planning Commission Minutes  
June 9, 2020

After no further discussion, Ms. Hassenplug made a motion to recommend approval of the Zoning Ordinance Amendment. Mr. Decker seconded the motion, and the Planning Commission voted 4-0 in favor.

Mr. Moran adjourned the meeting at 8:10 PM.

Respectfully submitted,

A handwritten signature in cursive script that reads "Meredith Merino".

Meredith Merino



# Middletown Township APPLICATION FOR CONDITIONAL USE

P.O. Box 157 | 27 N. Pennell Road | Lima PA 19037  
610-565-2700 | Fax 610-566-3640 [www.middletowndelcopa.gov](http://www.middletowndelcopa.gov)

Date ~~May~~, 2020 June 8, 2020  
Application No. \_\_\_\_\_

Applicant Erin Cochran Address 133-135 S. Pennell Road  
(When there are a number of applicants the additional names shall be entered on the back of this application)

Phone: 484-840-3542 Applicant Email Address: revealingredesign@gmail.com

Attorney (if any) Alyson M. Zarro, Esquire Address 717 Constitution Drive, P.O. Box 1265, Exton, PA 19341

Phone 610-458-4400 Attorney Email Address: Alyson@rrhc.com

LOCATION OF PROPERTY 133-135 S. Pennell Road Zoning District R-2 Residence

Application is made for a Conditional Use approval pursuant to the Middletown Township Zoning Ordinance Section(s):

Section 275-206.B.(3)(a) of the Zoning Ordinance

State facts and/or basis of support of application (attach additional pages if necessary):

See attached Addendum.

E.E. Coe  
Applicant Signature

### TOWNSHIP USE ONLY

Date Application Received: 6/8/20  
By: Meredith Merino Title: Dir. Planning - Development  
Application Fee: \$ 750 Date Paid: 6/8/20

Review of this application will be scheduled by the Township Planning Commission at its meeting on:

Tuesday, July 14, 2020 @ 7:30 PM

Review of this application will be scheduled by the Township Council at its meeting on:

Monday, July 27, 2020 @ 7:00 PM

ALYSON M. ZARRO  
Alyson@rrhc.com  
Extension 202



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**RILEY RIPER HOLLIN & COLAGRECO**  
ATTORNEYS AT LAW

June 8, 2020

via Email (mmerino@middletowndelcopa.gov) and Hand Delivery

Meredith F. Merino, MPA  
Director of Planning and Development  
Middletown Township  
27 N. Pennell Road  
P.O. Box 157  
Lima, PA 19037-0157

**Re: Erin Cochran – 133-135 S. Pennell Road  
Middletown Township Conditional Use Application**

Dear Ms. Merino:

As you are aware, this firm represents Erin Cochran (“Applicant”), the owner of 133 and 135 S. Pennell Road located in the R-2 Residence District of Middletown Township, further identified as Delaware County Parcel ID No. 27000206100 (“Property”). The Property is improved with two (2) separate buildings, each with their own address, known as 133 South Pennell Road and 135 South Pennell Road. 133 South Pennell Road has been partially used for commercial use and partially used for residential use, while 135 South Pennell Road has been used for a single-family detached dwelling residential use.

Section 275-198.C of the Zoning Ordinance permits only one principal use on a lot. Applicant seeks to expand the existing nonconformity by expanding the residential use of 133 Pennell Road to the portion of the building that was previously utilized for commercial purposes. Applicant is seeking conditional use approval pursuant to Section 275-206.B.(3)(a) of the Zoning Ordinance to permit the expansion of the existing nonconformity of two principal residential uses on the Property.

Accordingly, enclosed for filing in connection with the Conditional Use Application (“Application”) are the following materials:

1. One (1) original of the Middletown Township Conditional Use Application signed by the Applicant;
2. One (1) copy of an Addendum to Middletown Township Conditional Use Application;
3. One (1) copy of the existing Design Layout Plan of 133 S. Pennell Road;

Meredith F. Merino, MPA  
Director of Planning and Development  
Page 2 of 2

4. One (1) copy of the proposed Design Layout Plan of 133 S. Pennell Road;
5. One (1) copy of an Aerial of 133-135 S. Pennell Road; and
6. A check made payable to Middletown Township in the amount of \$750.00 for the Application filing fee.

Kindly confirm the dates of the Planning Commission meeting and conditional use hearing when available. We understand that it is Applicant's responsibility to send notices to abutting property owners.

Please feel free to contact me with questions or if you need additional information. Thank you.

Very truly yours,

Alyson M. Zarro

ALYSON M. ZARRO

AMZ/GMG  
Enclosures

cc: Erin Cochran (w/encl. via email)

Middletown Township Conditional Use Application  
133-135 Pennell Road – Erin Cochran  
Addendum to Conditional Use Application

Applicant, Erin Cochran, is the owner of 133 and 135 S. Pennell Road, further identified as Parcel ID No. 27000206100 ("Property"). The Property is zoned R-2 Residence District. The R-2 Residence District permits single-family detached dwellings by right pursuant to Section 275-24.A(1) of the Zoning Ordinance.

The Property is improved with two (2) separately maintained buildings, each with their own address, known as 133 South Pennell Road and 135 South Pennell Road. 133 South Pennell Road has been partially used for commercial use and partially used for residential use. It is our understanding that under prior determinations, the use of a portion of 133 South Pennell Road for a nonconforming commercial use was abandoned. 135 South Pennell Road has been used for a single-family detached residential use.

Section 275-198.C of the Zoning Ordinance permits only one principal use on a lot. Accordingly, the use of the two separate buildings on the Property for two separate principal residential uses is a continuation of an existing nonconformity. Ms. Cochran seeks to expand the existing nonconformity by expanding the residential use of 133 Pennell Road to the portion of the building that was previously utilized for commercial purposes. Accordingly, Applicant requests conditional use approval pursuant to Section 275-206.B.(3)(a) of the Zoning Ordinance to permit the expansion of the existing nonconformity of two principal residential uses on the Property.

Section 275-206.B.(3)(c) of the Zoning Ordinance limits any increase in the volume or area of the nonconforming use to an aggregate of not more than 10% of the volume of the floor area during the life of the nonconformity. The floor area of 133 South Pennell Road is approximately 808 square feet. The area of 133 Pennell Road used for residential use is approximately 557 square feet. The area previously used for commercial use proposed for conversion to residential is approximately 251 square feet. 135 South Pennell Road is approximately 2,384 square feet, which includes basement floor area where laundry facilities and other areas utilized as part of the house are located. Accordingly, the area currently utilized for the existing nonconformity is approximately 2,941 square feet. The proposed expansion is approximately 8.5% of the volume of the floor area during the life of the nonconformity.

## **MEMORANDUM**

TO: MEREDITH MERINO, ZONING OFFICER

FROM: CHARLES G. MILLER, ESQUIRE

CC: JOSEPH A. DAMICO, JR., ESQUIRE

RE: ZONING ISSUES: 133-135 S. PENNELL ROAD ("PROPERTY")

DATE: FEBRUARY 4, 2020

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You have asked for an analysis of the existing zoning at the above-referenced Property in response to the inquiry of Joseph Oakes, who, along with his mother Marie Oakes, is the co-owner of the Property.

Although the Township is very familiar with the history of this Property, which has been the subject of several zoning and other court cases over the past 40+ years, a brief summary is as follows. The Property is located in the Township's R-2 Residential Zoning District and consists of a two separately maintained buildings on a single lot, a pre-existing nonconformity.<sup>1</sup> A portion of the lot maintains a small dwelling known as 133 S. Pennell Road ("133 Pennell"), which prior to 1974 was used as a store for the sale of gasoline with pumps in the front of the Property, together with the sale of related products and other retail items in the front room, and for residential purposes in the rear of the dwelling. Around 1974, the gasoline pumps on the Property were removed from the front of the premises and the gasoline sales were abandoned, leaving only the front room being used intermittently for retail sales. The other portion of the property maintains a larger 2 bedroom, 1 ½ bathroom dwelling known as 135 S. Pennell Road ("135 S. Pennell"), which has consistently and strictly been used residential purposes, serving as the residence of the Property's owner.

The Property was the subject of 1977 and 1978 actions in the Delaware County Court of Common Pleas ("CP Appeals") upon the owner's Appeals from decisions of the Township's Zoning Hearing Board ("ZHB"). As a result of the CP Appeals, it was determined by the Court that the gasoline sale use at 133 Pennell had been abandoned and the lawful nonconforming use at best consisted of a one room candy (small retail) store. In 1978 and 1979, the Property's owner made applications to the ZHB for use of the front room of 133 Pennell in connection with a real estate office, a wholly different use than the allowable nonconforming use. These Applications were denied by the ZHB and the denial was later affirmed by the Court in the CP Appeals.

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<sup>1</sup> See Township Zoning Ordinance § 275-198.C., "[n]o more than one permitted principal use shall be permitted on a lot."

By letter dated December 14, 1984, the Township's Zoning Officer informed the Property's owner that it had become aware of the owner's change of use of 133 Pennell from "candy store/arcade to an Office for your Real Estate business."<sup>2</sup> Citing the prior CP Appeals, the Zoning Officer notified the owner that the real estate office use at the dwelling, previously found by the ZHB and court to be in violation of the zoning for the Property, constituted a violation of the Township's Zoning Ordinance. A 1986 letter from the Zoning Officer indicates that the owner had proposed to use 133 Pennell for the sale of "Satellite TV Antennas and Water Softening Equipment". Thereafter, in 1993, the Property's owner again applied for zoning relief to permit a change in use of 133 Pennell to an office use, which application was denied by the ZHB. The Court sustained an appeal of the ZHB's denial finding that even if the legally nonconforming retail/commercial use still existed at 133 Pennell, the request to use the building for office use would require conditional use approval from the Township as an alteration or enlargement of the existing nonconforming use. Letters from the Township Zoning Officer in 2004 and 2005 reflect an exchange of correspondence between the Township and the Property's owner with regard to the use of 133 Pennell for either office use, or in the event that was denied, an unidentified and undescribed retail/commercial use. By letter dated November 21, 2005, the Township's Solicitor opined that the previously recognized nonconforming use for retail sales/candy store had likely been abandoned and that any proposed commercial use of 133 Pennell would require relief from the ZHB.

The most recent inquiry by the co-owner of the Property requests direction from the Township as to the permitted use of 133 Pennell. In his email to the Township, the co-owner admits that 133 Pennell "maintained Oakes Real Estate Office in the front portion of the home through 2019." Based upon the prior appeals to the ZHB, the decisions of the Court, various correspondence with the Property owner and memorandums prepared by the Township maintained in its zoning file and the information supplied by the Property's current co-owner, it is apparent that the previously existing nonconforming use of 133 Pennell for the sale of small retail and grocery items from the front room of the dwelling has long since been abandoned. Under Pennsylvania law, abandonment of a legally nonconforming use requires: 1) intent to abandon the use and 2) actual abandonment. See e.g. Smith v. The Board of Zoning Appeals of the City of Scranton, 459 A.2d 1350 (Pa. Cmwlth. 1983). For nearly 40 years, the owner of the Property has not only repeatedly attempted to use the front room of 133 Pennell for a use outside the scope of the original nonconformity, but has in fact used the room for such purposes as reflected in the Township's zoning violation notice letter issued in 1986 and later confirmed by the current co-owner of the Property, who is the son of the owner of the Property during the time periods relevant hereto. Accordingly, both the intent and actual abandonment requirements have been satisfied necessary to confirm that the nonconforming retail/commercial use of 133 Pennell has been abandoned. As a result, the front room can only be used in accordance with the underlying zoning for the Property. However, use of the front room is also subject to

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<sup>2</sup> A copy of the December 14, 1984 letter is attached hereto.

limitations under the Township Zoning Ordinance with regard to the expansion of the other legally nonconforming uses.

Under §275-198.C of the Township' Zoning Ordinance, "[n]o more than one permitted principal use shall be permitted on a lot." For a long period of time, this Property has maintained more than one principal use consisting of: 1) a residential use for the dwelling located on 135 Pennell; 2) a residential use in the rear of the dwelling at 133 Pennell; and 3) a retail/commercial use of the front room of 133 Pennell. Even with the 3<sup>rd</sup> principal use having been abandoned, the Property still maintains more than one principal use and therefore is legally nonconforming under the Township's Zoning Ordinance. In order to expand a nonconforming use or condition on a property, a property owner must seek conditional use approval from Township Council. Here, in order for the Property Owners to expand their nonconforming second principal use at the Property to the entire dwelling at 133 Pennell Road (as opposed to only the back room), the owner would need to demonstrate that the residential use at 133 Pennell Road has not been abandoned and apply for and obtain conditional use approval under § 275-206.B.(3)(a) to permit an enlargement of the nonconforming second principal use at the Property.<sup>3</sup> Moreover, as the existing nonconforming second residential use would be seeking an expansion of the floor area of a nonconforming use, a variance from the ZHB may also be required under § 275-206B.(3)(c), which requires that "[a]ny increase in volume or area of the nonconforming use shall not exceed an aggregate of more than 10% of said volume of floor area during the life of the nonconformity."

In summary, while the nonconforming retail/commercial use of the 133 Pennell has been abandoned, the rear portion of the dwelling may still be used for residential purposes as an existing, legal nonconforming use. However, in order to expand that nonconforming use to a larger part of the Property (that is, the additional floor space in 133 Pennell previously used in connection with non-residential use), the Property owner will need to obtain conditional use approval from Township Council under § 275-206.B.(3)(a) and may also need to obtain a variance from the ZHB from the requirements of § 275-206B.(3)(c) of the Zoning Ordinance in the event the proposed expansion to the front room of the dwelling exceeds more than 10% of the floor area of the existing nonconforming use at the Property.

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<sup>3</sup> § 275-206.B.(3)(a) provides, in relevant part, that "[n]onconforming uses shall not be altered or enlarged, except in accordance with the following provisions:

(a) Such alteration or enlargement shall be permitted only by conditional use under the provisions of Article XXXVI."

COUNCIL MEMBERS

AT LARGE

ALFRED A. GOLLATZ  
KENNETH C. FERRO  
EVA V. BEEHLER

FIRST DISTRICT  
LAWRENCE E. HARTLEY, JR.

SECOND DISTRICT  
WILLIAM F. HOLSTEN, II

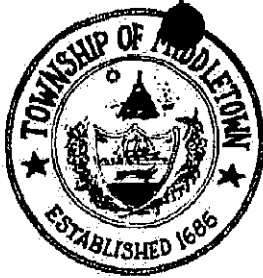
THIRD DISTRICT  
JOSEPH H. BOWEN

FOURTH DISTRICT  
JOHN J. LASKAS, JR.

MANAGER  
W. BRUCE CLARK

ENGINEER  
ARTHUR W. ROTHE, P.E.

SOLICITOR  
ROBERT B. SURREICK, ESQ.



# TOWNSHIP OF MIDDLETOWN

DELAWARE COUNTY, PENNSYLVANIA

27-31 N. PENNELL ROAD, P. O. BOX 157, LIMA, PA 19037 — (215) 565-2700

December 14, 1984

Mr. Jack Oakes  
133-135 So. Pennell Road  
Glen Riddle, Pa. 19037

Dear Mr. Oakes,

It has come to my attention that the nature of use of the building at 133 So. Pennell Road has gradually changed over the past year or so from a Candy Store/Arcade to an Office for your Real Estate business. Even as subtle as the change has been, I am of the opinion that you would be hard pressed to produce suitable evidence, sustainable in a Court of Law, to prove the existence of the nonconforming retail use that was allowed by an Order of the Court of Common Pleas in March 1979.

Citing from Page 8 of Judge Jerome's Order, I call your attention to the following summary:

"The proposed Real Estate Office, wholly dependent upon vehicular traffic would not be a reasonable extension of the use that Mr. Oakes contends is presently in existence, namely a parttime, unmanned and occasionally opened small Retail Store. The fact that the Applicant intends to use the same floor area and not make physical changes to the building is not the point. The nature of the change is such that it will be a totally new use and therefore not within the intent of the Zoning Ordinance".

As it would appear you have gradually instituted a new use at this location - i.e. a Real Estate Office, which use was specifically found by the Township Zoning Hearing Board and the Delaware County Court of Common Pleas to not be permitted in an R-2 Zoning District, you are hereby notified to be in Violation of the Township Zoning Ordinance, Art. 3, Sec. 321,K,2. Further, you are hereby directed to cease and desist the use of 133 So. Pennell Road as and for a Real Estate Office within thirty (30) days of receipt of this letter. By copy of this letter to the

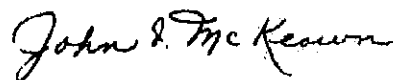
Mr. Jack Oakes  
133-135 So. Pennell Rd.  
Glen Riddle, Pa. 19037

Page 2

12/14/84

Township Solicitor, I am advising him of these circumstances and requesting him to be prepared to institute immediate legal action to enforce the Zoning Ordinance in this matter, should you fail to comply.

Very truly yours,



John T. McKeown  
Zoning Officer

JTM:mdr

cc: W. Bruce Clark, Twp. Manager  
R. B. Surrick, Esq., Solicitor

# TOWNSHIP OF MIDDLETOWN

(DELAWARE COUNTY)

P.O. BOX 157, LIMA, PA 19037-0157

565-2700

July 11, 1986

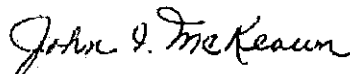
Mr. John Oakes  
133 S. Pennell Road  
Lima, PA 19037

Dear Mr. Oakes:

Relative to our brief conversation last week, wherein you advised me that you proposed to use the property at 133 S. Pennell Road for the sale of Satellite TV Antennas and Water Softening Equipment, be advised that it is the Township's position that the proposed uses could only be implemented as a result of a Special Exception authorized by the Zoning Hearing Board.

I believe we agree that the current use at 133 S. Pennell Road is nonconforming. Section 321, K of the Township Zoning Ordinance provides that a nonconforming use may not be extended or enlarged, nor may a nonconforming use be changed to another nonconforming use of the same or more restricted classification without benefit of a Special Exception authorized by the Zoning Hearing Board. In reviewing the record of previous zoning applications involving this property, I believe it is possible to ascertain specifically the nature and intensity of the existing nonconforming use. Your proposed use, even if we could agree that it was of the same general classification as the approved nonconforming use, at a minimum represents an enlargement that would require a Special Exception.

Very truly yours,



John T. McKeown  
Zoning Officer

JTM:slb

# 33-135 S. Pennell Rd., Media

file a description for your map.

133 S Pennell Rd

## Legend

133 S Pennell Rd



Google Earth

100 ft

