

# YORK TOWNSHIP

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York Township Zoning Hearing Board  
Tuesday, August 26, 2008  
6:00 p.m.

The August meeting of the York Township Zoning Hearing Board was called to order by Teri Hollway, Chair.

Those in attendance were:

Teri Hollway, Chair  
William Yanavitch, Vice-Chair  
Albert Granholm, Secretary  
John Wimbley, Member  
Carl Dallmeyer, Member  
Shirley Sterner, Alternate Member  
Lisa Frye, Zoning Officer  
Jeffrey Rehmeyer, II, Esq., Solicitor

## MINUTES AND DECISIONS OF JULY 22, 2008

The Zoning Hearing Board minutes and decisions made at the July 22, 2008, meeting were approved.

## HEARINGS

Appl.2008-31: Shipley Stores, Inc. requests a Variance for reduction of front yard setback on property located at 168 Leader Heights Road in a Commercial-Shopping (C-S) zone.

Present: D. Mark Craley, Esq.  
Steven Wolf  
Tim Debes

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Information on the application was presented  
and after discussion the application was  
approved, pending a written decision.

MOTION MADE BY: William Yanavitch  
SECONDED BY: John Wimbley  
MOTION PASSED UNANIMOUSLY

ADJOURNMENT

This meeting adjourned at 6:35 p.m.

ATTEST:

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~~Albert Granholm, Secretary~~  
*Carl Dallmeyer, acting Secretary*

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2008-31  
**Hearing Date(s):** August 26, 2008  
**Applicant(s):** Shipley Stores, Inc. c/o Stephen Wolf  
**Property Owner(s):** BL & B Associates, LP c/o Shipley Stores, Inc.  
**Property:** 168 Leader Heights Road, York, PA 17402  
**Existing Zoning District:** (C-S)

**Relief Requested-** Variance under the York Township Zoning Ordinance of 1996, as amended (the "Ordinance") and pursuant to Section 265-72 thereof, to reduce the front yard setback from 50 feet to 46 feet (4 foot reduction) and, on a small portion of the Property to, 43 feet (7 foot reduction) on property.

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## FINDINGS OF FACT

- 1) The foregoing information and the Application, including its attachments and enclosures, are incorporated by reference.
- 2) The Applicant was represented by D. Michael Craley, Esquire, Stephen Wolf, and Tim Debis.
- 3) Stephen Wolf is a manager of Shipley Stores, Inc.
- 4) Tim Debis is the vice president of New Tech Design Associates, professional engineer with a Bachelors and Masters degree in engineering and is licensed in Pennsylvania, Maryland, and Delaware.
- 5) The Applicant is seeking to build on the Property an Arby's Restaurant (the "Restaurant").
- 6) Attorney Craley explained that this Application follows prior decisions involving this Applicant, Property Owner, Restaurant, and Property, known as Decision numbers 2008-15 and 2008-16.
- 7) Attorney Craley asked if the two letters that were received by the Township could be entered into the record as evidence, and they included the following:
  - a. A letter from Real Places, LP authorizing Shipley Stores, Inc. to present the Zoning Applications.
  - b. A letter from Glatfelter Insurance Group, by its counsel Michael Conway, approving the pending Application.The Board agreed that the letters would be accepted into the record.
- 8) Attorney Craley called Tim Debis, who testified as follows:
  - a. He has been involved with this project, including the presentations for the prior Decisions referenced above.

- b. Mr. Debis highlighted the Plan entitled Zoning Exhibit Number 1, Pre-Existing Conditions (Ex-1).
  - c. On Ex-1, he highlighted the location of the curbs, after having been moved by the Pennsylvania Department of Transportation (“PennDOT”).
  - d. Further, he highlighted the additional right-of-way that was taken by PennDOT for future expansion of Leader Heights Road.
  - e. Mr. Debis explained that the current building on the Property does intrude in the front setback.
  - f. He reminded the Board that the prior Applications sought a Variance for Relief from the front setbacks in the approximate amount of 50% of the setback distance.
  - g. Mr. Debis explained Zoning Exhibit Number 2, Site Layout Plan (Ex-2), which was submitted with the Application.
  - h. He highlighted that the exit driveway on to Leader Heights Road from the Property, which was in the prior Application, had been removed.
  - i. He explained that the Restaurant was redesigned by Arby’s, such that it would be a custom design to allow it to better work on the Property.
  - j. Further, Mr. Debis explained that the customer drive-thru lane and windows were relocated from the southern side of the Restaurant to the northern side of the Restaurant.
  - k. With the revised Restaurant design, the Restaurant intrudes less into the front setbacks.
  - l. Specifically, a large portion of the northern side of the Restaurant intrudes into the setback only 4 feet, for which a variance is requested.
  - m. A small portion of the Restaurant, at its rear on the eastern side, intrudes into the setback 7 feet, because of the adjustment in Leader Heights Road that was made by PennDOT to accommodate the turn lane.
  - n. As a result of the deletion of the exit from the Property directly to Leader Heights Road, 3 additional parking spaces were added.
- 9) In response to questions, the Applicant answered as follows:
- a. There will be a maximum of 5 employees working at the store at a given time.
  - b. The employees will park in the south east corner of the Property, furthest from the building.
  - c. Ex-2, which has been presented to the Zoning Hearing Board, is the exact same plan that was presented to Glatfelter Insurance Group and upon which Attorney Conway’s letter was based (the only difference between the two plans is the date that they were printed).
  - d. The traffic arrows shown on the southwestern portion of the Property are representative of easement in favor of the MAACO Property.
  - e. The easement area will not be used by customers of Arby’s.
  - f. There will be no changes to the easement area currently in place with MAACO.
- 10) Charles Grayson, Jr. of MAACO, spoke in support of the Application and indicated his belief that it would be a benefit to the area.
- 11) Lisa Frye, on behalf of York Township, inquired if there would be placed a curb between the drive-thru lane and the access lane for cars on the northern portion of the Property, and Mr. Debis answered that there would be room for a curb.
- 12) Attorney Craley indicated that the installation of the curb would be an acceptable condition to approval of the variance.

**CONCLUSIONS OF LAW**

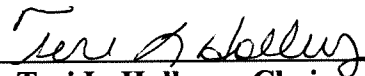
- 1) The Applicant is seeking a *de minimis* variance for a reduction in the front setbacks.
  - a. Regarding the 50 foot front setback, the Applicant is seeking to intrude into it 4 feet for a large portion of the proposed Restaurant and 7 feet for a very small portion thereof.
  - b. On a percentage basis, the intrusions would be 8% and 14% respectively.
- 2) The Board finds that the deviations are small, in terms of actual distance as well as percentages of the existing setbacks.
- 3) Additionally, the Board finds that the grant of the variance will not violate the public policy concerns of the Ordinance, nor is rigid compliance with the setbacks necessary for the protection of the public for this matter.
- 4) The Board finds of particular importance that the existing building on the Property currently intrudes on the front setback and is therefore nonconforming.
- 5) The Board also finds it of importance that the setbacks are governed by the location of Leader Heights Road, which has been adjusted and will be further adjusted as a result of PennDOT's activities thereon.

**Accordingly, William T. Yanavitch II moved, and John Wimbley seconded, to grant the variance pursuant to Application 2008-31 to reduce the setbacks, with a condition that the Applicant install the curb to the north of the drive-thru lane for the Restaurant to separate it from the access drive, and that no other portions of the Ordinance be waived or other relief granted. The motion passed with a vote of 5 – 0, with all voting in favor.**

**WITNESS/ATTEST**

  
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**YORK TOWNSHIP  
ZONING HEARING BOARD**

By:   
\_\_\_\_\_ **Teri L. Hollway, Chair**

9-23-08  
**Date**

The zoning relief granted herein is valid for a period of six (6) months from the date of its authorization (which authorization is deemed to be granted on the date that the Zoning Hearing Board rendered a decision at a hearing on in writing, whichever comes first) pursuant to Sections 265-145 (3) and 265-146 of the Ordinance, unless the Applicant has proceeded to obtain a building permit or submit a land development plan.