

**TOWNSHIP OF FALLS  
PLANNING COMMISSION MINUTES  
NOVEMBER 27, 2013**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 8:10 p.m.

Members present: Binney, Goulet, Perry, Rittler, Boraski (not voting)

Members absent: Dell, Shero

Also present: Joseph Jones, P.E. from T & M Associates; Jim McCann (Engineer for Borough of Morrisville) Chris Harris (Superintendent of the Water Plant) and Chris Walker (Pennoni Associates), representing South End Water Storage Facility; Gavin Laboski, Esquire, representing Penske Truck Leasing; William Benner, Esquire, representing Faulkner Saturn; Tom Bennett, Chief Code Enforcement and Zoning Officer; and Diane Beri, Recording Secretary

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**Item #1: South End Water Storage Facility (Municipal Authority of Morrisville Borough), 791 W. Bridge Street, Morrisville, PA 19067 TMP #13-028-082 and TMP #13-028-083-001; Zoned HC Minor subdivision/preliminary & final land development for lot line change and construction of water storage facilities**

Jim McCann presents the application. Morrisville Authority has a six million gallon a day water filtration plant that serves Morrisville Borough and portions of Lower Makefield and Falls Township. About a year and a half ago, Morrisville Borough received a consent order from the DEP that requires us to provide a minimum of 24 hours storage of finished water in order to continue to supply water to our customers in the event of an emergency shutdown of the water filtration plant. Therefore, we need to construct a 2-1/2 million gallon water storage tank to meet this requirement. We need about an acre and a half of ground for a storage tank and a pump station. We are proposing a ground storage tank (instead of an elevated tank) so we would pump out of the tank into the water distribution system in the event of an emergency.

There is no open ground in Morrisville Borough and various other locations in surrounding municipalities. We then found the South End Auto site located at M-Y Lane and W. Bridge Street. It's been an auto salvage yard since the early 1950's.

We are proposing to subdivide the property and use the back half of the property as the site for a new storage tank and pumping station. We are proposing a round storage tank that would be 102' in diameter and 56' high, accompanied by a pump station, which would be a split block building which would have pumps that would pump the water out to a 16 inch water main down Bridge Street into Morrisville Borough where it would connect to our other distribution mains.

Mr. McCann distributes photos of a 3 million gallon a day storage tank owned by Lower Bucks County Joint Municipal Authority. This tank would be a smaller one with a capacity of 2-1/2 million gallons.

Member Binney asks if their tank would look like the tank in the photo. LBCJMA has tanks that are just plain blue metal.

Mr. McCann states that the Authority hasn't made a final decision yet, but architecturally it would look similar to what is shown on that photograph.

Mr. McCann continues that according to the agreement with the DEP, we need to have our tank and pumping station on line by the fall of 2015. We anticipate a 15-16 month construction period. Chris Walker is now going to give details.

Mr. Walker states that the project involves moving an existing lot line to create a proposed lot 2, up to the 1.2 acres for the Authority water tank site. The existing site plan shows two lots now; we are proposing to create a larger lot in the back for the Authority. Existing lot 1 would remain for the auto salvage business.

On the proposed feature plan, the Authority will have access from M-Y Lane. The site will be visited by the Authority approximately once or twice a week to do their maintenance and inspections. The driveway from M-Y Lane will have an area for the Authority vehicle to park during the visit. The site will have a ground level water storage tank, 102.5 foot diameter, and a height of 56.75 feet. The site pump station will be constructed with a split face block, and a gable style roof. There will be an emergency generator on site.

The site improvements include the landscape buffers for the adjoining parcels. The landscaping between the property lines and the pavement areas will include maintained lawn, rows of shrubbery and a row of trees. The stormwater improvements include a driveway culvert underneath the driveway along M-Y Lane. The stormwater collection system is along the rear of the site and there are two bio-retention basins to serve as retention and treatment facilities. The entire site will be enclosed by 8' high chain link fence with barbed wire on top.

There are a number of variances required and we will be seeking relief for those variances.

Member Binney states that he is not in agreement with providing a variance for 99% impervious surface for Lot 1. We could take this opportunity to turn some of that back into grass. The buffer along your proposed new lot line could be turned back into grass and have some plantings there. I also question the inlet that's in the stone recovery yard of the proposed lot one. If there is some grass area around that, it could act as a filter to prevent some of the things that leak out of the cars from getting into the stormwater system since that goes directly to the wetlands. I don't think we need to go back to the 60%, but I am suggesting that the relief you are requesting is not the minimum required and we can do something about that.

Mr. Walker states he does understand Mr. Binney's comments. Existing Lot 1 does have a lot of area, 98%, that is impervious. The majority of that area is crushed stone that was used for vehicle storage. This lot would remain the property of Mr. Lubow and he proposes to continue to use the auto salvage business there. I do believe there is an opportunity to create a grass area around the inlet. On the utility plan, there is a proposed inlet and we could perhaps put some grass around it.

Member Binney states that my recommendation to the Zoning Hearing Board is that we can look at this and perhaps get some grass back in there, and not grant a variance for 100% impervious.

Mr. Jones states that there would be a required setback along the new property line, where he couldn't store cars up against the property line at a zero distance, so maybe in that setback he could convert to a green cover type.

### **T&M Associates Review Letter dated November 19, 2013**

#### **Subdivision and Land Development Ordinance**

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| 191-31(A) | Requesting a waiver – sidewalks along proposed lots 1 and 2                                  |
| 191-36(D) | Requesting a waiver – install curbs at the driveway for lot 2                                |
| 191-37(B) | Requesting a waiver – paving within 15 feet of building                                      |
| 191-39(G) | Requesting a waiver – sidewalks along property frontage                                      |
| 191-44(D) | Requesting a waiver for grading of the driveway as well as the culvert under M-Y Lane        |
| 191-48    | Requesting a waiver – planting of street trees – agrees to plant trees elsewhere on property |

191-52.1            Requesting a waiver – wetlands are not to be altered. Will obtain the required DEP  
(B)(2)(b)            permits [requested, but not required – see below]

Member Binney asks about the historical wetlands line. Did you have a soil scientist investigate where the wetlands really are?

Mr. McCann states that when they prepared the plan and submitted it to the Township, it was our concern that there was a historical wetland line across the property. We did submit a request to the Corps of Engineers for a jurisdictional determination and we did meet with them last week. They have determined that the area previously filled was legally filled, and therefore, they are not considered wetlands at this point in time.

Member Binney asks that the swale they are proposing to go for the drainage is not in the wetlands?

Mr. McCann states yes, that is correct.

Mr. Walker states that the waiver for altering the wetlands would still be required, however, because our driveway does cross the wetland area along the edge of M-Y Lane.

191-52.1            Requesting a waiver – wetland margin area altered 20%  
(B)(8)(a)

191-52.1            Requesting a waiver to eliminate a portion of the wetlands for the construction of  
(C)(2)(a)            the driveway and culvert

190-61(A)          Requesting a waiver – curbs along frontage  
191-62              Requesting a waiver – curbs  
191-71              Requesting a waiver – street trees

### **Stormwater Management Ordinance**

187-12(C)          Requesting a waiver – minimum slope of 1% for the bottom of the basin – we want to  
build a flat bottom basin so we can promote infiltration and treatment of the runoff

Mr. Jones states that he has no objection to this waiver request. He believes it is correct to ask for the waiver because it is an ordinance requirement, but we agree in this case that a flat bottom basis is appropriate for what they are trying to accomplish.

187-13(B)(1)      Requesting a waiver – 15” in diameter stormwater pipes. Our underdrain only needs to  
be 6”.

Mr. Jones states he has no objection. This underdrain section will be the only place where there is a 6” pipe.

187-14(C)          Requesting a waiver – pre-development flows – we have 20% meadow. We took all the  
impervious on the site, and 20% of that impervious area was treated as meadows when  
we did the calculation for the pre-development flow. It is a requirement for the NPDES  
permit as well.

Mr. Jones states that typically we would not support this, but in this case they didn’t take advantage of the section of the ordinance that allows them to consider the project as a redevelopment, and if it was a redevelopment (which is essentially what they are doing), then they would be allowed to proceed in accordance with what Mr. Walker describes. Therefore, in this case, we do not have an objection to the waiver considering the fact they are complying with the NPDES requirements.

Mr. Jones continues. There is one other point. You don't need one of the waivers that you mentioned, 191.52.1(B)(2)(b). It simply states that if you are going to alter wetlands, it has to be done in accordance with the DEP permit requirements. So, if you are in compliance with those permits, it wouldn't be a waiver, it would be a will comply.

Member Binney asks someone to explain the disapproval letter dated November 4, 2013 from the DEP.

Mr. McCann states that one thing we haven't discussed yet is that the site is contaminated with motor oils and some heavy metals, because this was an auto salvage yard for about 50 years. We dug 12 test holes, and had meetings and discussions with the DEP to relieve any liability to the Authority under Act 2. We have made a request to the DEP to leave the soil in place without any remediation. The DEP informed us that because of the levels of some of the heavy metals that were just above the limit that we could not leave the materials in place. The option that we are now pursuing is that there will be an environmental covenant on the deed of the property stating that the soil on site is contaminated with heavy metals. If we do that, we will be permitted to leave the soil in place.

Member Binney asks if clean material would be brought in to cover it. To a certain extent, to get grass to grow, you're going to have to clear the stone.

Mr. McCann states that we haven't dived into those details, but a minimal amount of clean soil will be brought in to cover some of the contaminated soil. Also, we will be removing a fair amount of the contaminated soil because all the soil underneath the foundation of the tank and probably 15 feet outside the diameter of the tank will have to be removed to a DEP approved site for disposal.

Mr. Jones asks that the soil that you are referring to is in the area of the infiltration basins – correct?

Mr. McCann states they are not infiltration basins. They are lined basins with imported clean soil over the liner to prevent infiltration yet provide water quality. So the water will percolate through the soil into the 6" underdrain. There will be a liner underneath the drains. One thing we don't want to do is infiltrate storm water and carry pollutants into the groundwater table.

Member Binney asks if those basins would be clean material – correct?

Mr. McCann states yes, that is correct.

Member Binney asks about the Traffic Engineer's letter dated October 28, 2013 agreeing with your waiver requests and placing a stop sign along the driveway of M-Y Lane and providing a sight triangle on the plans for the entrance of the pump station.

Mr. McCann states that yes, they will comply with those two requirements.

Member Binney asks if they will install a fire hydrant in close proximity to M-Y Lane.

Mr. McCann states yes.

Member Rittler makes a motion to approve the minor subdivision land development application for South End Water Storage Facility (Municipal Authority of Morrisville Borough), 791 W. Bridge Street, Morrisville, Pa., 19067, TMP #13-028-082 and TMP #13-028-083-001 based on the T&M letter of November 19, 2013, with waivers granted for 191-31(A), 191-36(D), 191-37(B), 191-39(G), 191-44(D), 191-48, 191-52.1(B)(8)(a), 191-52.1(C)(2)(a), 191-61(A), 191-62, 191-71 as well as 187-12(C), 187-13(B)(1), 187-14(C), along with a will comply for Remington, Vernick's letter dated October 28, 2013 and the Fire Marshal's letter of October 18, 2013.

Member Goulet seconds motion.

All in favor 4-0.

**APPROVED FOR MINOR SUBDIVISION & FINAL LAND DEVELOPMENT OF WATER STORAGE FACILITIES.**

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**Item #2: Penske Truck Leasing Co., L.P., 225 Newbold Rd., Fallsington, PA 19054; TMP #13-028-062-005; Zoned PIP; Conditional Use and final land development to enclose existing fuel station and incorporate into the existing building**

Gavin Laboski, Esquire, presents the application. Historically, this was a leasing facility. Penske is proposing to install a collision repair facility at this location. The site is completely developed. The only change that Penske is proposing is to enclose what was previously a fueling station that has a cover and some piers which is incorporated as a part of the building. It measures about 42 feet wide and about 80 feet deep. The applicant is required to obtain a conditional use which is one of the reasons we are appearing before the Board.

The other reason is the question of whether or not this triggers land development. The applicant contends that it does not trigger land development and we are asking for a waiver. In order to ask for a waiver, there is a question of interpretation as to whether or not this is a building addition. If you accept that it is a building addition, we would further request a waiver for Section. 191-18.(1)(L)(1), which is the prohibition that any addition greater than 20% of the existing building cannot receive a waiver of land development.

Member Binney asks if this is the canopy section of the building that is being enclosed.

Atty. Laboski states yes, that is correct.

Member Binney states that it is already attached to the building. So isn't the definition that if it is attached to the building, it is a part of the building.

Mr. Bennett states that it is not used as part of the building now.

Member Rittler asks if it is a pre-engineered building. The frames are just extended out for the roof canopy.

Atty. Laboski states that it's a continuous roof line with just two piers that hold up the roof. That is Penske's position, that it is not an addition as defined in your ordinance, and therefore, land development is not required.

Member Binney asks Mr. Jones if the canopy is considered building coverage.

Mr. Jones states that it would be considered building coverage. The position of the Township's engineer's office is that they are enclosing an open area, therefore it's a building addition.

Member Binney states that he would suggest that you cannot ask them to count it as building coverage on one end and tell them it's not a building on the other end.

Mr. Jones states that we were not presented with the building coverage question at the time.

Member Binney asks if anyone has any questions.

Member Rittler states that he does not see this as a building addition.

Member Binney states that in his opinion, it is not a building addition, but rather enclosing an existing part of the building. I don't have any problem supporting any of the waivers.

Member Binney asks Mr. Jones if there is anything else he'd like to point out.

Mr. Jones states no.

Member Rittler makes a motion for approval for the conditional use and waiver of land development application of Penske Truck Leasing, 225 Newbold Road, TMP #13-028-062-005, based on the November 19, 2013, letter of T&M Associates, and Remington, Vernick's letter of November 18, 2013 and the Fire Marshal's letter of November 8, 2013, as well as compliance with the requirements for fumes and vapor gases.

Member Perry seconds the motion.

**All in favor 4-0.**

### **APPROVED FOR CONDITIONAL USE AND WAIVER OF LAND DEVELOPMENT.**

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**Item #3: JJLH Associates, Ltd., (Faulkner Saturn) 390 Lincoln Highway, Fairless Hills, PA 19030 TMP #13-008-051; Zoned HC. Waiver of land development – change the form of ownership from fee simple to condominium.**

William Benner, Esquire, presents the application. This is a somewhat unusual application. The family owns the land and leases it to an operating corporation owned by the Faulkner family. In 1999, when the partnership took ownership of the property, the Faulkner organization appeared before this body and presented a land development plan to convert the former movie theater to a new brand for General Motors, Saturn. That application was successful and the conversion of the property proceeded without incident.

Four years later, the Faulkner organization re-appeared before this body to add the repair facility or body shop which was permitted as an accessory use. Without controversy, Falls Township approved that land development plan as well and the Saturn dealership thrived.

In 2009, General Motors, in response to the economic downturn, filed bankruptcy. It emerged from bankruptcy as a re-organized company, which did not include the Saturn brand as one of its divisions. That left this property without an automobile franchise.

After years of attempting to market the property and to find another automobile dealership to take occupancy, a decision was made to market the property for whatever other user could be identified.

At the same time, recognizing that the body shop had existed as an accessory use, in January of 2013, I represented Faulkner before the Falls Township Zoning Hearing Board to change the designation of the body shop from an accessory use to a primary use. The application was granted, thereby giving the body shop independent status.

Recently, a user has been identified for the Sherwin building and that user is B&B Automotive. B&B's initial interest was to acquire the entire property and lease back the body shop to the Faulkner partnership. Instead, its interest now is to acquire the Sherwin building only and to allow the body shop to exist independently as it has for several years now.

That created a dilemma – because the property, although fully developed, does not have separate lots, the sale could be accomplished in one of two ways. The owner could prosecute a subdivision plan or it could convert the form of ownership from fee simple to a condominium form of ownership. Because of the

property's unusual shape, and because of the building's layout, any subdivision of this property would necessarily require zoning hearing board relief. And while that's not an impossibility, whenever there is an application for any type of variance, one is always concerned about the possibility of a third party appeal. Therefore, the parties decided rather than prosecuting a subdivision to create two separate lots, they decided to submit the property to the Uniform Condominium Act in Penna. and create two condominium units.

This has occurred time and time again in Falls Township with no adverse consequences with respect to properties that are fully developed.

Pennsylvania recognizes that zoning has nothing to do with the form of ownership and zoning makes no attempt to regulate the form of ownership. Had this plan been put into effect prior to 2011 or 2012, I wouldn't be standing here because at that time the law was seemingly clear that the simple fact of changing the form of ownership of a fully developed property from fee simple to condominium does not invoke the municipality's zoning ordinance or subdivision/land development ordinance. This was a matter that came within a bundle of rights that any property owner enjoys.

In 2011, the Commonwealth Court of Penna. held that the submission of property to the Planned Community Act and the subsequent transfer of fee simple lots required the property owner to formally submit to the municipality's subdivision/land development ordinance. That case involved a piece of raw land where the property owner thought that they could create a planned community without submitting to the subdivision and land development ordinance for raw land. Not surprisingly, the Commonwealth Court rebuffed this attempt, but in doing so, included very broad language in its opinion that implied that its holding in the case arising under the Planned Community Act would apply with equal vigor if the property owner sought to create condominium units rather than a planned community.

The Commonwealth Court was right in the sense that one cannot use the Uniform Condominium Act to override a municipality's land development ordinance. If somebody were to press a condominium on unimproved real estate, the following of that declaration would not give rise to a right to improve the real estate. However, because of the broad language in that case, the question was raised by the Township solicitor whether the act of converting the form of ownership necessitated the property owner to submit to the subdivision and land development ordinance. We came to an agreement that the best way to approach this issue would be to make an application and seek a waiver. That's what this application is about.

In this instance, the facts show that there is a land development plan recorded in the land records in 1999 (for the conversion of the theater to the Saturn dealership) and in 2003 (authorizing the building of the body shop). So this is not a case where this application seeks to bypass the subdivision of land development ordinance. Rather, this is a case where the property owner is seeking nothing more than to create two condominium units so they can convey one of those condominium units to its intended user, but without improving the real estate.

The matter before you is a request to waive the subdivision and land development ordinance as well as all of the particular sections that T&M has noted.

Member Binney asks if he agrees that this is in the HC district?

Atty. Benner states sure.

Member Binney asks would you agree that the ordinance requires that two separate uses are permitted on one property, but those two separate uses must demonstrate in the event the property is subdivided, that both parcels must be able to stand independently?

Atty. Benner states that the facts show that both uses do and can exist independently. That was one of the exercises that had to be undertaken with the building of the accessory use.

Member Binney states that he is not objecting to the condominium use. I'm just objecting to you stating that you did not have to come in front of the Board for this process. I think that you did because you have to prove that both of these units can be subdivided and exist by themselves.

Atty. Benner states that this is not a subdivision.

Member Binney states that you have to show. You have to demonstrate that it can. That's in the ordinance and that's why I believe you are here. With that being said, we can continue.

Atty. Benner states that's the application.

Member Binney asks if you are going to comply with any of the requirements in the Township's engineer's letter. You want a waiver from every comment?

Atty. Benner states that is correct.

Member Binney questions whether anyone has done any work out there. Nobody has put up new lights? Nobody has done anything out there?

Atty. Benner states that is correct. The Planning Commission should be advised that there is an application pending before the Zoning Hearing Board by one of the two condominium units.

Member Binney asks for a use variance – correct?

Atty. Benner states it is for a special exception.

Member Binney asks if you object to even showing parking spaces on the plan.

Atty. Benner states that the dimensions of the parking spaces have already been shown on the previously recorded land development plan.

Member Binney states that doesn't mean they currently exist as they did at that date.

Member Binney states I'd like to see notes on the plan that say that units A1, A2 and A3 cannot be "condominiumized" and separated from Unit A. They must remain part of unit A at all times. I don't want to see multiple little pockets of potential users or condominium owners storing and parking vehicles or other things in those areas. I'd like to eliminate that possibility.

Atty. Benner states that they will be eliminated with the condominium declaration. Units A1, A2 and A3 will be declared as a common element.

Member Binney states that he would like to see that on the recorded plan.

Atty. Benner states that there won't be a recorded plan. There will be a recorded declaration, a condominium plan and plat.

Mr. Jones states that we have been advised by the Township solicitor's office that this project meets the definition of a land development as per the definition contained in the subdivision and land development ordinance, and in fact this is an allocation of space for the purpose of a leasehold, condominium, etc. The attorney (Benner) says that there won't be a plan, but he presumes that waivers will be granted by this Board and the Board of Supervisors from providing the record plan and complying with the other requirements from the review letter. The issues that are in our letter could very easily be satisfied. I



want to make it clear that there is an allocation of space element to this project so it does meet the definition of a land development in our ordinance.

Member Binney states that he believes there should be a recorded plan that identifies where all the units are.

Atty. Benner states that there will be.

Member Binney states that he thought Mr. Benner said that there would not be a recorded plan.

Atty. Benner states that what he said was that there was not going to be a recorded land development plan. There will be a recorded declaration, there will be a recorded condominium plan, and there will be a recorded condominium plat to comply with the requirements of the Uniform Condominium Act.

Member Binney asks if those documents will spell out all the easements. This plan has easements on it, utilities running everywhere and I cannot tell who has rights to what. I don't know where the existing body shop service utilities goes to because it's not shown. I don't know if they have to go through Unit A to get to their utilities.

Atty. Benner states that all will be addressed in the condominium documents. The issue of the construction of the building and the creation of the utility easements – all of those issues were properly and fully addressed when Falls Township authorized the development of this property in 1999 and 2003. All of these issues that you are raising are issues that deal with ownership. I agree with your engineer and I agree with you that this is not the time to have a legal debate. Suffice it to say that there is a decision from the Bucks County court which I submit respectfully is binding on this municipality that is controlling.

Member Binney makes a motion to deny the waiver of land development for the change of ownership since the applicant seems unwilling to meet us in any direction. I'm not in favor of the waivers that are requested. I believe there should be a recorded subdivision plan and I make a motion to deny.

Member Rittler seconds the motion.

**All in favor 4-0.**

**DENIED FOR WAIVER OF LAND DEVELOPMENT FOR CHANGE OF OWNERSHIP.**

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**Item #3: Reschedule December Planning Commission Meeting**

Discussion occurs.

Member Binney states that the December 24, 2013 Planning Commission meeting to Thursday, December 19, 2013. The meeting must be advertised in the paper.

**All in favor 4-0.**

**THE NEXT PLANNING COMMISSION MEETING IS SCHEDULED FOR THURSDAY, DECEMBER 19, 2013.**

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**Item #4: Approval of minutes**

Motion to approve November minutes made by Member Rittler, seconded by Member Goulet.

**All in favor 3-1, member Perry abstaining.**

## **Other Items**

Member Binney states that Jeff Boraski and I have been attending Community Economic Development committee meetings. They are finishing up a study of the Oxford Valley Corridor which is from Route 1 from Bristol Oxford Valley down to 225 Lincoln Partnership.

We also had a discussion with Brian Galloway that the Bucks County Redevelopment Authority is floating an idea of redeveloping M-Y Lane to acquire the properties back where Haddonfield Lumber are, the junkyard and where the water tank was going to go.

Mr. Bennett states that there was a letter of intent from a company to use all that property and a DEP letter but I haven't heard anything in a couple of months.

Mr. Binney states that our comprehensive plan shows that as being a transportation plan. The CDC envisions that as being some kind of village-type community with possible shops. The Redevelopment Authority wants to turn it into light industrial, which Falls Township already has its fair share of. This is very preliminary.

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**Meeting adjourned 8:10 p.m.**