

**FALLS TOWNSHIP  
ZONING HEARING BOARD  
OCTOBER 14, 2014**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 11:00 p.m.

Members present: Brooks, Henderson, Miles, Molle and Powers

Members absent: None

Also present: Tom Bennett, CCEO & Zoning Officer, Ed Neubauer, Code Enforcement Officer, Dave Sander, ZHB Solicitor; Karen Browndorf, Court Stenographer

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**Petition #1: Thomas and Michelle Martin, 245 Waltham Road, Fairless Hills, PA 19030; TMP #13-002-178; Zoned NCR. Requesting a dimensional variance to install a fence in the secondary front yard. Section 209-37.C(3).**

Atty. Sander marks ZHB Exhibits 1 – 4.

Mr. Martin presents the application. There is an existing chain link fence around the back yard and the secondary front yard. The fence is over 20 years old and parts are falling down. We wanted to replace the chain link with a 5' picket fence in the secondary front yard (50% visibility) graduating back into a 6' privacy fence in the backyard.

Member Powers asks if the fence would be in the sight triangle.

Mr. Neubauer replies it is not in the sight triangle.

Member Powers makes a motion that the application of Thomas and Michelle Martin for a variance from Section 209-37.C(3) of the Falls Township zoning ordinance be GRANTED to allow a 6' high privacy fence and a 5' high picket fence that are visible barriers to be erected in the secondary front yard as depicted on the plan submitted with the application and the testimony presented to the Zoning Hearing Board.

Member Brooks seconds the motion.

**All in favor 5-0 -- APPROVED**

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**Petition#2: Samuel Stewart, 2 Emerald Lane, Levittown, PA 19054; TMP #13-026-322; Zoned NCR. Requesting a dimensional variance to install a fence in the secondary front yard. Section 209-37.C(3).**

Atty. Sander marks ZHB Exhibits 1 – 4.

Mr. Stewart presents the application. He states that they already applied for the permit a year ago, got it finished, and that Falls Township signed off on it.

Atty. Sander asks Mr. Bennett to explain how the permit was issued.

Mr. Bennett stated that a permit came in for a shed and somehow the fence got added at a later date. Mr. Bennett explained to Mr. Stewart that the fence is in the secondary front yard. The permit could have been revoked, but the proper thing to do would be to apply to the Zoning Hearing Board and ask for a variance. Mr. Stewart has been very cooperative in trying to work through this process. The manager and I are looking into the error now.

Atty. Sander asks if the permit was issued for the fence.

Mr. Bennett replies that the original permit was issued for a shed. Somehow a fence got added to the permit. It is not Mr. Stewart's fault – it is our fault. We are looking into that now.

Mr. Stewart hands to the solicitor the permit he was issued (marked as Exhibit A-1).

Mr. Bennett states that he explained to Mr. Stewart that he also needs a letter from PECO because the fence is on a PECO easement.

Member Henderson asks if the fence is in the sight triangle.

Mr. Neubauer states that it is not in the sight triangle.

### **Public Comment**

Carol VanSchiack, 223 Elderberry Drive, Levittown, PA 19054.

Ms. VanSchiack states that this fence is a 6' stockade fence that may not be in the sight triangle but it does block your vision when you are coming up Elderberry Drive and the cars are coming out of Emerald Drive. It's a 6' stockade on a secondary front yard – it should have never been granted a permit. We used to have a street light between the two properties. PECO removed the light. I asked Falls Township to put it back; they said no they couldn't. The only street light is on the other side of that stockade fence. That area is totally dark at night. My home has previously been robbed three times. We've had problems with drug dealings because we have 37-1/2 foot PECO easement there. So it's a long, dark space. There is 34" between the fence and the sidewalk. And what about the snow – where will they put the snow?

I also have a petition signed by 12 neighbors in opposition to this fence.

Atty. Sander asks if these neighbors are here. When Ms. VanSchiack answers no, Atty. Sander explains that it is the policy of the Board to not accept petitions if the people who signed the petition are not there to give testimony. Therefore, we will not accept the petition into evidence.

Atty. Sander asks Mr. Stewart how do we know this fence was built in accordance with the plans and drawings submitted with your zoning permit that was issued.

Mr. Bennett confirmed that the fence is where it is supposed to be as depicted on the plans. Two inspectors have gone out to verify.

Mr. Neubauer, at Member Henderson's request, explains the process for determining a sight triangle.

Ms. VanSchiack states that there is still a visibility problem. It is very dark there. My problem is not with the fence but the fact that the fence goes all the way out to Elderberry Drive. I used to be able to see down Elderberry Drive, now all I see is fence.

Atty. Sander marks as Exhibit V-1 (5 color photographs taken from Ms. VanSchiack's property looking at 2 Emerald Lane)

No more public comment – public comment closes.

Member Miles makes a motion that the application of Samuel Stewart for a variance from Section 209-37.C(3) of the Falls Township zoning ordinance be GRANTED to allow a 6' high wood privacy fence that is a visual barrier to be erected in the secondary front yard as depicted on the plan submitted with the application and the testimony presented to the Zoning Hearing Board. The approval is granted subject to the following condition:

prior to the issuance of the permit for the fence, you shall comply in all respects with the requirements of the letter from the Lower Bucks County Joint Municipal Authority dated June 10, 2013 and attached hereto and incorporated herein by reference.

Member Molle seconds the motion.

**All in favor 5-0 – APPROVED**

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**Petition #3: David Tskipurishvili, 43 Peaceful Drive, Morrisville, PA 19067; TMP #13-011-029; Zoned NCR. Requesting a dimensional variance to construct a garage which encroaches into the side yard setback. Section 209-20 and Table 1.**

Atty. Sander marks Exhibits ZHB 1 – 4.

Mr. Tskipurishvili states that five years ago he converted his garage into an office with the required permits. Now, he wants to build a one-car garage for his vehicle.

Member Brooks mentions that 37 Peaceful Drive dropped off a handwritten letter in favor of the applicant. Mr. Bennett confirms that the property owner did come into the Township to drop off the letter because she was unable to attend. Atty. Sander states the letter will not be part of the record since the property owner is not at the hearing.

Discussion occurs about the square footage of the proposed garage.

Member Powers asks if it was necessary to have the four foot breezeway between the house and the garage. If you eliminated the breezeway, there would not be such an encroachment into the side yard setback.

Mr. Tskipurishvili states that eliminating the breezeway would change everything on how to access the backyard. If that's the case, I will not build the garage.

Member Powers stated that you did create your own hardship. You removed the first garage and now you want to put another garage there.

No public comment.

Member Brooks makes a motion that the application of David Tskipurishvili for a variance from Section 209-20.E and Table 1 of the Falls Township zoning ordinance be GRANTED to allow the construction of the 400 square foot, one-car garage on the property, such as that it encroaches into a maximum of 6'9" into the required 10' setback as depicted on the plan submitted with the application and in compliance with the testimony before the Zoning Hearing Board.

Member Miles seconds the motion.

**All in favor 3-2 (Henderson and Powers dissenting) – APPROVED**

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**Petition #2: (CONT'D FROM 9/9/14) Extra Space Morrisville, LP, 915 Lincoln Highway, Fairless Hills, PA 19030; TMP #13-028-022-004; Zoned HC. Dimensional variances for maximum impervious coverage, maximum building coverage and side yard setbacks. Section 209-23 (Attachment 7 – Table 4); Variance to amend prior Zoning Hearing Board decision to use a portion of the site as a self-storage facility. Section 209-23(b); Variance from required 10-foot setback between the edge of a parking area and a side property line. Section 209-23(H)(2); Variance from required landscape buffer between a parking area and a side lot line. Section 209-42(b)(1).**

Atty. Sander marks ZHB Exhibits 1 – 6.

Thomas Hecker, Esquire presents the application. Variance relief is needed for a proposed minor subdivision for the property located at West Trenton and Old Rte. 1. The property was formerly an Acme Supermarket and a Clover department store. Clover vacated and sold the property to Devon Self-Storage who appeared before this Board in connection with building the indoor storage facility and the outside storage buildings. The portion of the building which was the former Acme has been vacant for at least 18 years.

Rick McLaughlin has been a businessman in this township for a long time and operates a company called Truck Smart, which is involved in the sale of new and used trucks. Mr. McLaughlin recently obtained a new truck franchise with Isuzu and will be locating that franchise at this facility.

We have submitted a minor subdivision plan which puts a line through the middle of the current building and that line will extend to the rear of the property line to Rte. 1. That is what this application is about from the Township's perspective.

The first item before the Board is when zoning relief was previously granted to Devon Self Storage, there was a restriction that there would not be any outdoor storage of RVs, boats, etc. We are asking for a modification of that prior decision to allow it. That has become a very important part of Extra Space's operation (the subsequent purchaser of the Devon facility).

The second item concerns the variance from a maximum impervious coverage on lot 1 and proposed lot 2. The maximum impervious coverage that is allowed in the highway commercial district is 70%. We are proposing 87.55% on lot 1, and 92.99% on lot 2.

The third item concerns the request for the maximum building coverage on proposed lot 1. The maximum amount allowed in the highway commercial district is 30%. As a result of the existing building on lot 1, and adding that subdivision line, we are creating a coverage in excess of what is permitted for lot 1. Lot 2 will comply.

The fourth item is a side yard setback requirement on proposed lots 1 and 2. The required side yard setback is 20 feet. We are proposing zero because the new subdivision line is coming in on lot 1 and proposed lot 2 where the buildings adjoin. So you basically have a "party wall" in those setbacks.

The fifth item for relief is to not require 10 foot setback between the edge of a parking area and the side property line on lot 2.

The last item deals with the landscape buffer between a parking area and a side lot line. We are making that request with regard to lot 2. There is some landscaping being placed along the property line on lot 1. We are asking to be able to retain the paving up to the new lot line on this lot because of the need for the maneuverability for truck access.

Discussion occurs regarding the storage of the RVs. There currently are RVs and trailers that are parked outside which violates the zoning relief requested by the former owner, Devon Storage. It was determined that a total of 25 vehicles would be allowed which includes RVs, boats, trailers, etc. which would be restricted from parking at the rear of the property closest to the residences.

Member Henderson asks if the Truck Smart Isuzu trucks being sold are box trucks, not trucks that you would buy at a dealership.

Rick McLaughlin gets sworn in. We will be selling anything from a light duty truck up to a Class 7 truck, which would be like an international, could have a box on it, could have a stake body, could have a dump body. We upfit trucks with various bodies, so it's everything in the commercial line. We do not sell pick-up trucks or even cargo vans. It would be entirely commercial trucks.

Member Powers asks if this is a mixed use.

Atty. Hecker replies that it's two uses. This all starts with the subdivision plan, so you will have two separate lots -- Mr. McLaughlin's Truck Smart's operation and the continued self-storage facility.

No public comment.

Atty. Sander frames a motion to GRANT the application of Extra Space Morrisville LP for the following variances from the stated sections of the Falls Township zoning ordinance as a result of the subdivision of 915 Lincoln Highway, Fallsington, PA, all in accordance with the plans, supporting evidence, and testimony submitted to the Zoning Hearing Board:

- 1) A variance from Section 209-23 and Table 4 to allow no greater than 90.75% impervious coverage on lot 1 and no greater than 92.94% impervious coverage on lot 2 where 70% impervious coverage is permitted;
- 2) A variance from Section 209-23 and Table 4 to allow 43.64% building coverage on lot 1 where 30% maximum building coverage is permitted;
- 3) A variance from Section 209-23 and Table 4 to allow a zero foot side yard on both lot 1 and lot 2 where the buildings adjoin where a 20' side yard is required;
- 4) A variance from Section 209-23(b) to amend the prior Zoning Hearing Board's decision which allow the use of a portion of the site as a self-service storage facility with no outdoor storage in order to allow the outdoor storage of vehicles to be specified in the conditions;
- 5) A variance from Section 209-23(H)(2) to allow parking within 10 feet of a side property line for lot 2; and
- 6) A variance from Section 209-42B(1) to allow no landscape buffer between a parking area and a side lot line for lot 2.

This approval is granted subject to the following conditions:

- 1) Prior to the relief granted herein being affected, the applicant shall obtain final, unappealable subdivision approval from the Board of Supervisors of Falls Township and shall record the plan with the Recorder of Deeds of Bucks County.
- 2) There shall be no outdoor storage of any vehicles or equipment except a maximum of 25 vehicles which shall be limited to RVs, trailers and associated equipment, each of which shall count as one vehicle, with no outdoor storage whatsoever in the rear yard or the side yard of lot 1.

Member Brooks makes motion to approve.

Member Miles seconds the motion.

**All in favor 5-0 – APPROVED**

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**Petition #5: (CONT'D FROM 9/9/14) Buckingham Retail Properties, LLC, West Trenton Avenue and Pine Grove Road (Rte. 13), Morrisville, PA 19067; TMP #13-028-028; Zoned: HC. Seeking variances for front yard setbacks, parking setbacks, minimum distances between service stations, full service pump requirements, and signs, and a special exception for maximum freestanding sign area, for a proposed commercial use to include a Wawa convenience store with gasoline pumps, a Rite Aid Pharmacy, and a convenience restaurant. Relief is requested from the following sections of the Falls Township Zoning Ordinance: 209-23.G, 209-23.H.(1), 209-23.H.(2), 209-34.E., 209-50.F.(1)(a), 209-50.F.(1)(g)[9], 209-45.E.(7)(b)[3], 209-45.I.(2)(d)[2][a], 209-45.I.(2)(d)[2][d][i][A], 209-45.I.(2)(d)[2][d][v], 209-45.I.(2)(d)[2][d][vi], and Table 4.**

**Adam Benosky** (engineer from Bohler Engineering) continues his testimony. See transcript for verbatim testimony.

**Joseph Caracappa, Esquire**, representing the Plaza Shell station, begins his cross-examination.

Testimony centered on the reasons why applicant is proposing three uses as opposed to one, the health, safety and welfare of the community, the 1,500 feet distance between service stations, the definition of service stations (applicant thinks WAWA gas pump does not meet that definition).

**Joel Rosenberg, Esquire**, representing Leon Rosenberg, begins his cross-examination.

Testimony centered on the reasons for the three uses, the definition of service stations and the conditional use requirements for service stations, the amount of gasoline tanks (3 proposed tanks, 29,000 gallons total), and the health, safety and welfare of the community.

**Atty. Zaslow** redirects and asks Mr. Benosky to read into the record the definition of service stations as taken from the Falls Township zoning ordinance. Mr. Benosky's interpretation centers on the phrase "and minor repairs" stating that WAWA does not meet the definition of service stations because it does not do minor repairs. Atty. Zaslow states that is a legal conclusion that the Board will have to reach as to its meaning.

**Mr. D'Amico** (a resident) begins his cross-examination.

Testimony centered on the buffering of trees in relation to the canopy, how much buffering, the process of land development, and the 24 hour nature of WAWA increasing the amount of crime in the area, noise and signage.

**Mason Hobbi, 501 Berwyn Rd, Morrisville, PA 19067**, is requesting party status. He is a neighbor within the quarter mile vicinity of the property, was at the first hearing, but did not request party status because he had his children with him.

Atty. Hecker objects to the ZHB granting party status since he was at the last hearing and didn't request it then. If you allow this now, then someone else could request party status at the next hearing.

Atty. Sander sustains the objections and denies Mr. Hobbi party status based on Mr. Hecker's objection. However, he instructs Mr. Hobbi that he has the right to make a public statement or coordinate with Mr. D'Amico.

Atty. Hecker redirects to Mr. Benosky. He submits a modification to the original plan (marked at Exhibit A-6) in an attempt to address issues from neighbors.

Mr. Benosky states that this is a modification of Exhibit A-3, along W. Trenton Ave., we've added a buffer area along the frontage and we modified the dumpster location for the WAWA which was part of the zoning relief we were seeking (100' setback). Ex. A-6 is a slightly smaller version of Ex. A-3, but we've shown enhanced landscaping along W. Trenton Ave. We've added a significant amount of evergreen trees (approx. 100) and evergreen shrubs (over 50) along W. Trenton Ave between the proposed WAWA building and the proposed parking. The idea was to buffer the residents across W. Trenton Ave from the proposed use. Again, there is no requirement for a buffer planting of this magnitude, but based on the feedback from neighbors, we decided it would be appropriate to enhance that existing buffer with additional evergreen trees and deciduous street trees.

Another area on Ex. A-6 is the area of the dumpster location. We have relocated the dumpster up along the side of the building with a 3-sided enclosure, tucked behind the building, so you cannot really see the dumpster location from any of the residents along W. Trenton Avenue. We are no longer seeking a variance for that dumpster location.

Atty. Sander clarifies that applicant is withdrawing the accessory structure variance request (#4 on the original application).

Mr. Benosky explains Ex. A-7 shows the setbacks for other properties along West Trenton Avenue. When questioned about relevance, Atty. Hecker states that it shows that by granting the setback variance request it will not adversely affect the neighborhood.

Ex. A-7 also shows the distances between service stations on West Trenton Avenue.

Ex. A-8 shows the other side of West Trenton Avenue (southwesterly) with setbacks of properties.

Member Henderson asks if Mr. Benosky has the distance between the proposed WAWA and the Shell.

Mr. Benosky states it is approximately 600 feet.

**Atty. Zaslow** begins his cross-examination by asking for more information on the trash enclosure. Atty. Sander marks Ex. A-9 (a poster board size of the trash enclosure)

Testimony centered on the trash enclosure change of location – it is now part of the loading area. Testimony also centered on trucks backing out and maneuvering because of the trash enclosure change.

**Mr. D'Amico** redirects. Testimony centered on asking for more buffering on the corner of W. Trenton Avenue and Stevens.

**Atty. Caracappa** redirects. Testimony centered on the distance between John's Service Center and the proposed WAWA site.

Mr. Benosky answers that it is approximately 1160 to 1200 feet.

**Atty. Rosenberg** redirects. Testimony centered on the exhibits dealing with the different locations and the setbacks of those locations and how it applies to the health, safety and welfare of the public.

### **Board Questions**

Member Henderson asks about the Sunoco station to the southwest of the proposed location – is that more than 1500 feet away from the proposed WAWA site?

Mr. Benosky states that yes it is.

Mr. Benosky's testimony is complete.

Atty. Hecker states that due to the time, it would be better if no new witnesses began testimony tonight.

Discussion occurs on a date because the next ZHB meeting is on Veterans Day which is a holiday. A new date is set for November 13, 2014.

Member Powers makes the motion to continue this hearing until Thursday, November 13, 2014 at 7:00 p.m.

Member Miles seconds the motion.

**All in favor 5-0 – THIS MATTER IS CONTINUED UNTIL NOVEMBER 13, 2014.**

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**Adjourned 11:00 p.m.**