

**FALLS TOWNSHIP
ZONING HEARING BOARD MEETING
FEBRUARY 11, 2014**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 9:35 p.m.

Members present: Henderson, D. Miles, Molle, Powers

Members absent: Brooks

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

Petition # : (CONT'D FROM 12-10-13 & 1-14-14) Greenscape Landscape Contractors, Inc., 1777 South Pennsylvania Avenue, Morrisville, PA 19067, Bucks County Tax Map Parcel No. 13-47-80-3 (the "Property"), owned by Bobhulu, LLC. The applicant seeks the following relief: (a) a variance from Section 209-32.4 of the Falls Township Zoning Ordinance to permit the grinding of mulch in the RD – Riverfront District; (b) a variance from Section 209-28.1 of the Falls Township Zoning Ordinance concerning a buffer for trees;(c) an interpretation that the grinding of mulch is permitted on the Property; (d) in the alternative, a determination that the grinding of mulch is an accessory use to the principal use of the Property as a landscape business; (e) in the alternative, a determination that the grinding of mulch is a pre-existing nonconforming use of the property; and (f) in the alternative, a challenge to the substantive validity of the Falls Township Zoning Ordinance in accordance with Sections 909.1(a)(1) and 916.1(a)(1) of the Pennsylvania Municipalities Planning Code for prohibiting the grinding of mulch and failing to make adequate provision for a legitimate business use.

Atty. Sander opens the hearing and marks additional exhibits ZHB 11 – 13 and Exhibit A-14 (proof of neighbor notification).

Atty. Sander asks if anyone has an interest in the hearing and explains that the hearing started last month, but was continued to February due to lack of neighbor notification. He asks Atty. Wild (who represents Greenscape) to summarize the applicant's petition.

Atty. Wild states that originally Greenscape wanted to grind mulch on the property and store salt – the two things the Township was concerned about. Greenscape wants to grind mulch for Greenscape's customers **only** – they would not bring in mulch from third parties. We also are seeking clarification on the things that are stored there (hardscaping and softscaping materials, stone, salt, sand and mulch).

Atty. Wild states that we believe that Greenscape identified its operation when it sought occupancy of the property and that the identification of their use includes the grinding of mulch. This is part of what landscapers of this size traditionally do.

Secondly, if it isn't part of what they were originally authorized to do, we believe it is a permitted accessory use.

Thirdly, this property has been used for a non-conforming use since 2006. It had been zoned HI-A, and has always had heavy industrial uses on it. Those uses continued when the zoning changed in 2006 to become RD. When Greenscape took occupancy and disclosed what their uses would be and were approved, it was a non-conforming use.

Alternatively, we are seeking a variance to grind mulch or to store salt.

Finally, if it isn't one of the above, we cannot find the grinding of mulch anywhere in the ordinances as a permitted use and so, we are contending that if the ordinances doesn't permit it anywhere, it should permit it here.

Atty. Wild continues that Greenscape has provided their lease (Ex. A-2) to show that they have a corporate standing and that they are a tenant on the property. The lease commenced August 1, 2010.

Ex. A-3 – site plan which shows the building surrounding the property, the parking. Nothing has been altered or changed with the exception of the carport that is being constructed. Greenscape is seeking the appropriate permits through the Township.

Ex. A-4 – letter of intent dated June 10, 2010 wherein Greenscape identifies its use as a landscape business to mow lawns, excavate soil, to engage in snow removal, and to do landscaping and hardscaping and identified as part of its use that it would have approximately 25 vehicles, approximately 25 employees and that its use would include the storage of landscape materials such as mulch, stone, soil, sand, etc. It was approved by the Township and then Greenscape took occupancy of the property. The building they occupy is 13,125 sq. ft, and they have been operating there since August 1, 2010.

Ex. A-5 – zoning map showing that the property is zoned RD. The surrounding properties are not residential and across the street the property is FM.

Ex. A-6 – series of aerial photos from Google

Ex. A-7 – tax map

Ex. A-8 – attachment to the ordinance showing change in zoning from HI-A to RD in 2006

Ex. A-9 – Board of Assessment printouts confirming that it's been an industrial use that includes a trucking terminal

Ex. A-10 – deed

Ex. A-11 – full set of the ordinance

Ex. A-12 – Commercial Certificate of Occupancy the Township issued in 2010 to Greenscape for the commercial operation that is there

Ex. A-13 – Annual business license application from Township

Atty. Wild continues that in looking through grading issues, the Township engineer identified a potential concern for buffer requirements opposite the small carport. By letter of January 24, 2014, we amended the application in conjunction with our discussions with the Township to seek a variance from the trees to be put in along the front of S. Penna. Avenue in front of the carport. Sec. 209-38.1 says that the buffer is required only if the adjacent properties are residential, and as I indicated, the adjacent properties are not residential.

Ex. A-15 – Atty. Wild's letter asking for an amendment to the application which was incorporated into the advertisement for this hearing.

Ex. A-16 – Sept. 30, 2013 review letter from James Sullivan to Mr. Bennett regarding the grading permit plan by the Township engineer.

Ex. A-17 – updated and revised version of the plan that was attached as A-3. This exhibit has addressed all of the items on A-16 with the exception of the buffer requirement.

Atty. Wild asks Mr. Robert Damerjian (who is sworn in) to confirm the summary by Atty. Wild as accurate. Mr. Damerjian confirms that the testimony is accurate.

Mr. Damerjian states that in the commercial landscape business, we do a lot of trimming of trees and bushes and cutting of grass. As a result, we have a lot of the by-product – which is vegetation, for which we have no use. We have a grinder and would like to put the vegetation into that and grind it into a smaller particle size and eventually use it to re-mulch. Essentially, we are taking the by-product of our jobs and making mulch out of it so that we can then re-use the mulch.

Atty. Wild asks what Greenscape does with the by-product now if you can't mulch on the property.

Mr. Damerjian states they would probably take it to a Waste Management facility and dump it as trash, which isn't very good for the environment. You could also dump it at other facilities and they would grind it. At this point, being the size company that we are, we would like to bring it back and grind it onsite. When you grind it, the by-product becomes small and condensed.

Atty. Wild asks Mr. Damerjian to summarize his reasons why the carport should be left open and visible.

Mr. Damerjian states that he would prefer to have his equipment visible for police surveillance. There's a lot of buffer already located at the property. Also, the grinding of mulch is not a big operation and the area where we would grind already has a large buffer area to screen it from the road.

Member Molle asks if Greenscape plans on adding a chemical to change the color of the mulch.

Mr. Damerjian states that no, he does not.

Member Miles asks if he plans on selling mulch to the general public.

Mr. Damerjian states that no, it is only for his own use.

Member Powers asks if the grinding of mulch will take place in the area where the concrete block storage bins are located.

Mr. Damerjian states yes.

Member Powers asks if each one of the bins will store mulch and/or salt.

Mr. Damerjian states that there are approximately 7 bins. One stores river rock for decorative purposes, one stores crushed stone to put below base walls for retaining walls, one stores fertile top soil for planting, one stores salt, and the other one stores the mulch, and the larger one at the end will store material that we bring in to be recycled.

Member Powers asks for the hours when they would grind mulch.

Mr. Damerjian states that we do grinding once a month, during normal business hours (8:00 a.m to 5:00 p.m.).

Member Henderson asks if the mulch will be stored in the bins, so there won't be a 30 foot pile.

Mr. Damerjian states that the tallest he has seen mulch piles is 20 feet tall. Height depends on how high you push it with the front loader.

Public Comment

Peter Berkin, 10 W. Post Rd, Morrisville, PA gets sworn in.

Mr. Berkin states that his concern with the grinding of mulch this close to his neighborhood is the noise pollution and the smell that is created from grinding mulch. He is especially concerned because his wife is highly allergic to many things as well as the bacteria that can be created by standing mulch.

Mr. Berkin wants to know the exact location of the concrete containers that would store the mulch – are they towards Tyburn Road or away from Tyburn Road?

Mr. Berkin looks at the plans submitted – it's away from Tyburn Road, a little bit closer to our homes than the entrance of the business. All the mulch grinding and storage occurs to the right, which is closer to my property. This is in a neighborhood of tax paying, outdoors type people. We all have children around the same age (early teens) who are all outside during the summertime. I don't want the same situation as the mulch pile on Rte. 1 across from Snipes with the smells to permeate our picnics.

Atty. Wild asks Mr. Berkin how he would get to his house by driving from 1777 S. Penna.

Mr. Berkin states away from Tyburn Road.

Atty. Wild states that you would come out of Greenscape's driveway and would turn left or right.

Mr. Berkin states left.

Atty. Wild states that I would go a ¼ mile before I would hit Mr. Berkin's house.

Mr. Berkin states yes.

Atty. Wild asks where does W. Post Road come in from Greenscape.

Mr. Berkin states that it's the first residential street on the left, going up Tyburn Road. Directly across the street is the border line with Morrisville Borough.

Mr. Berkin asks if the grinding of mulch is louder than a chipper.

Mr. Damerjian states it's quieter than a chipper.

Carlos Garcia, 12 W. Post Rd., Morrisville, PA gets sworn in.

Mr. Garcia states that his concern is having a mulch mound of 40 feet high. Are you going to regulate the amount of mulch that you are going to create. Today you say the pile will be 20 feet high. Will that increase?

Atty. Sander states that the Zoning Hearing Board, if they approved the petition, could put restrictions on the relief which Mr. Damerjian would have to adhere to or be cited by the Zoning Officer for a violation.

Dawn Mullin,, 1312 Ohio Ave, Morrisville, PA (Morrisville Borough resident) gets sworn in.

Ms. Mullin states that she too is concerned about the odor in the neighborhood. There is a property directly across the street from my house where landscapers did have their mulching and it did create an odor and I contacted Morrisville Borough who informed them it wasn't allowed. I'm also concerned about the fire hazard and what precautions will be taken to ensure safety as well as if there will be liability insurance for any of the properties or homeowners if there is smoke damage from a fire.

Atty. Wild responds that the occupancy permit that was issued in June of 2010 permits the storage of mulch. The keeping and storage of mulch has already been approved. What we are discussing tonight is whether debris can be chipped and kept there as additional mulch. Beyond that, I am not aware of any fire hazard being presented at the property. Greenscape has been storing mulch there since 2010.

Mr. Damerjian states that usually mulch fires occur when the pile might be 100 feet high and there is heat that's generated by continually grinding the mulch. We do have hoses there, we can certainly hose it down.

Dave Miller, 32 Third Street, Morrisville, PA gets sworn in.

I am also a business owner at 1520 S. Pennsylvania Avenue. I am not opposed to anyone trying to expand their business, but do have concerns about a large mulch pile. I am concerned about bleaching into the ground. I wanted to know if that was going to be regulated and controlled as well.

The odor is another concern. At the moment, there is the smell of butane, ammonia odors. This is supposed to be a riverfront community. I understand it used to be heavy industrial. I just want to say that if we do concede to this, we might as well all do it and follow the rules.

Member Miles asks what the nature of Mr. Miller's business is.

Mr. Miller states that it is auto body and mechanical repair.

Mr. Damerjian states that the area where the grinding will be done is on existing asphalt and there is a lot of grass and soil probably 30 to 40 feet to the roadway. There is very minimal, if any, bleaching. As to the smell, we won't have the same size pile as the property on Rte. 1, it will be much smaller. Based on the size of the mulch pile and the distance from the residential community, I would say that there won't be an odor. Also, the smell occurs when you are grinding all the time, which we will not be.

Mr. Damerjian states that the mulch in the bin is finished mulch for use in planting beds and stays in the bin. The debris that is taken off his trucks and that he is seeking permission to grind at the property -- he would grind the debris and leave in a pile on the asphalt for a few weeks. Then it would be re-grounded again to obtain a smaller particle size and at that point it would be put into the bin. So there will be an area on the asphalt where the mulch is grinded and is left there -- and there is an area for the finished mulch inside of the bins.

Atty. Sander asks what is the area of space that will be utilized for the mulch that you grind before it becomes finished.

Mr. Damerjian states that it may take up an area of 30' by 30' by approximately 20' tall.

Todd Sanford, 28 Deter Avenue, Morrisville, PA (Morrisville Borough) gets sworn in.

I am one street over from Post Road. I am concerned about who is monitoring the mulch pile in the middle of the night in case of a fire. Will the temperature be monitored to prevent the mulch pile from catching on fire?

Mr. Damerjian states that it has never built up any kind of temperature that would be conducive to the mulch pile self-igniting. Based on the size of the pile, there has not been an issue.

Public comments closes.

Atty. Wild summarizes and requests that the ZHB consider the application favorably, permit the grinding of mulch, confirm that the storage in the bins may include salt (particularly in the winter), and authorize the waiver of the three to four trees as a buffer along Pennsylvania Avenue.

Atty. Sander frames a motion to GRANT the application of Greenscape Landscape Contractors for a use variance from Section 209-32.4.(C) to allow the grinding of mulch on the property in the RD district all in accordance with the testimony and exhibits submitted to the Zoning Hearing Board. In addition, the Zoning Hearing Board hereby confirms that salt may be stored on the property within a bin located on the property on a seasonal basis. In addition, a variance is granted from Section 209-28.1 requiring buffers to allow no buffers to be planted. That relief is conditioned on the following conditions: (1) there shall be no dyeing or coloring of mulch; (2) there shall be no retail sales of mulch; (3) only materials produced by the applicant's landscaping business shall be used to grind into mulch; (4) mulch shall be ground only during regular business hours from 8:00 a.m. to 5:00 p.m Monday through Friday only; (5) the mulch stockpile produced from the grinding of this much shall not exceed 20 feet in height, and 30 feet in length and 30 feet in width; and (6) there shall be hoses and a water supply stored in proximity to any stockpile in case of fire.

Member Miles makes the motion to grant the application as noted above.

Member Molle seconds the motion.

All in favor 4-0.

Petition #2: Maureen Murphy, 304 N. Oxford Valley Road, Fairless Hills, PA 19030; TMP #13-004-145, Zoned HC. Requesting a dimensional variance to construct a garage which encroaches into the side yard setback, rear yard setback and minimum distance between buildings. Section 209-23 and Table 4.

Atty. Sander marks ZHB Exhibits 1 – 4.

Public Comment

Charles & Sharon DeNaro, 201 Center Street, Fairless Hills, PA gets sworn in.

Our concern is runoff water. Our property is located behind the applicants. Our basement is 10 feet away from where the blacktop stops and we get a lot of water in our basement. We have no problem with the garage at all. I just want to make sure that there is no additional runoff onto the grass area.

After discussion, the DeNaros requested that the garage be installed 10 feet from the rear property line.

Atty. Sander frames a motion that the application of Maureen Murphy for variances from Section. 209-23 and Table 4 of the Falls Township Zoning Ordinance be GRANTED to allow a 240 square foot (22' x 12') detached garage be erected as depicted on the attached plan permitting the garage to violate the side yard setback by being located on the side yard property line rather than being setback 20 feet, to violate the rear yard setback by allowing the garage to be located no less than 10 feet from the rear property line rather than being setback 35 feet, and to violate the minimum distances between buildings to allow the garage to be located no less than 10 feet from the existing house on the property, rather than the required 20 feet, all in accordance with the testimony and evidence presented at the Zoning Hearing Board.

Member Powers makes the motion to approve.

Member Miles seconds the motion.

All in favor 4-0.

Petition #3: Thomas and Beth Leavesley, 55 Teaberry Lane, Levittown, PA 19054; TMP 13-023-044, Zoned NCR. Requesting a dimensional variance to construct a rear addition which encroaches into the minimum rear yard setback of 20'. Section 209-20 and Table 1.

Atty. Sander marks ZHB Exhibits 1 – 5.

No public comment.

Member Powers makes a motion that the application of Thomas and Beth Leavesley for a variance from Section. 209-20.E and Table 1 of the Falls Township Zoning Ordinance be GRANTED to allow the construction of a 440 square foot addition to the existing house on the property such that it encroaches no more than 3 feet into the required 20 foot rear yard setback, as depicted on the plan submitted with the application and the testimony presented to the Zoning Hearing Board.

Member Miles seconds.

All in favor 4-0.

Petition #4: Jonathan Snipes, 878 West Bridge Street, Morrisville, PA 19067; TMP #13-028-030; Zoned CR. Requesting a use variance to allow a duplex. Section 209-25.

Atty. Sander marks ZHB Exhibits 1 – 7.

No public comment.

Member Miles moves that the application of Jonathan Snipes for a use variance from Section 209-25.B of the Falls Township Zoning Ordinance be GRANTED to allow a duplex to be constructed at 878 W. Bridge Street, Morrisville, PA 19067, as depicted on the plans and supporting information submitted with the application and in accordance with testimony presented to the Zoning Hearing Board.

Member Powers seconds.

All in favor 4-0.

Petition #5: Silvi, 355 Newbold Road, Fairless Hills, PA 19030; TMP #13-028-060-001; Zoned FM. Requesting a use variance to allow a compressed natural gas fueling facility. Section 209-26.B(2).

Atty. Stern (representing Silvi) states that Silvi would like to convert its present existing diesel truck fueling to a compressed natural gas facility. Silvi is attempting to take advantage of the grants (federal and/or state) that are available for this type of conversion. One of the requirements for that application was to indicate that the local municipality had approved that conversion. From Silvi's perspective, this is merely a change from one source of fueling to another source of fueling. The gas will be delivered to the site by means of underground piping system – it will not be delivered by large tanker trucks.

No public comment.

Member Powers moves that the application of Silvi Group of Companies for the use variance from Section 209-26.B of the Falls Township Zoning Ordinance be GRANTED to allow compressed natural gas fueling facility to operate at 355 Newbold Road, Fairless Hills, PA 19030 as depicted on the plan and supporting information submitted with the application and in accordance with the testimony submitted to the Zoning Hearing Board.

Member Molle seconds.

All in favor 4-0.

Petition #6: Municipal Authority of the Borough of Morrisville, 791 W. Bridge Street, Morrisville, PA 19067; TMP #13-028-082 and TMP #13-028-083-001; Zoned HC. Requesting numerous variances for the construction of a water storage facility. Sections 209-23; 209-23.B; 209-23.F; 209-23.H(2); 209-37.A; 209-37.C; 209-37.C(3) and Table 4.

Atty. Sander marks ZHB Exhibits 1 – 5.

Atty. Downey (representing applicant) marks A 1 – 10. The present use of the property is an auto junkyard. The Authority provides potable water and fire protection to 4200 metered customers in Falls, Lower Makefield and Morrisville municipalities. Its present water storage is inadequate. It has a 580,000 gallon standpipe, and a half-million gallon elevated tank that sits on Authority property. It provides, at best, eight hours of treated water if there is a failure.

There had been no problems providing potable water/fire protection until August of 2009, when a small part in the water treatment plan malfunctioned and the water system was shut down. There was a “boil water” advisory for days required by the DEP. As a result of that incident, it gave rise to the Consent Order requiring the Authority to provide a minimum of 2 million gallons of additional water supply available in storage.

It is important to note that if the Zoning Hearing Board approves the variances requested, we still need to get approvals from the Township of Falls land development processes and permits, the Department of Environmental Protection of the Commonwealth, the Bucks County Conservation District, PENNDOT, and the U.S. Army Corps of Engineers. This is just the first step of many towards completion of the project.

Mr. Warena (Executive Director of the Municipal Authority of Morrisville Borough) gets sworn in. He states that the proposal before you is to subdivide the existing South End site so that the current property owner can maintain a reduced size salvage operation in the front of the property and the Authority would develop the back of the property by putting a 2.5 million gallon potable water storage tank onsite with the necessary support functions – basically a pump station and backup generation.

Mr. Walker (Pennoni Associates) gets sworn in, is accepted as an expert witness, and gives testimony as to the technical nature of the project and the reasons for the variance requests.

No public comment.

Member Powers makes a motion that the application of the Municipal Authority of Morrisville Borough for variances from the Falls Township Zoning Ordinance be GRANTED to allow the erection of a water storage facility on the property located at 791 W. Bridge Street, Morrisville, PA 19067, in accordance with the plans and the testimony submitted to the Zoning Hearing Board.

Member Miles seconds.

All in favor 4-0.

Hearing adjourned at 9:35 p.m.