

**FALLS TOWNSHIP
ZONING HEARING BOARD MEETING
OCTOBER 10, 2013**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 10:45 p.m.

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

Members absent: None

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

Petition #1: Benjamin & Rose Gatmaitan, 701 S. Olds Boulevard, Fairless Hills, PA 19030; TMP #13-015-170; Zoned NCR. Requesting a dimensional variance to construct a side addition which does not meet the 10' side yard setback. Section 209-20 and Table 1.

Atty. Sander marks Exhibits ZHB 1 – 5.

No public comment.

Atty. Sander frames a motion that the application of Benjamin and Rose Gatmaitan for a variance from Section 209-20 and Table 1 of the Falls Township Zoning Ordinance be GRANTED to allow the existing 285 square foot garage on the property to be expanded by an additional 342 square feet (12' x. 28.5') such that it encroaches no greater than 6' into the required 10' side yard setback as depicted on the plans submitted with the application.

Member Powers makes motion to approve.

Member D. Miles seconds.

Approved 4-1, T. Miles dissenting.

Petition #2: Linda Osbourne, 93 Blue Spruce Lane, Levittown, PA 19054; TMP #13-022-175; Zoned NCR. Requesting a dimensional variance to construct a side addition which does not meet the 10' side yard setback. Section 209-20 and Table 1.

Atty. Sander marks Exhibits ZHB 1 – 5.

No public comment.

Atty. Sander frames a motion that the application of Linda Osbourne for a variance from Section 209-20 and Table 1 of the Falls Township Zoning Ordinance be GRANTED to allow a 290.78 square foot (21'.7" x 13'.4") addition to be erected such that it encroaches no greater than 4' into the required 10' side yard setback as depicted on the plan submitted with the application.

Members Powers makes motion to approve.

Member Henderson seconds.

All in favor 5-0.

Petition #3: Drew Szumigala, 39 Poplar Lane, Levittown, PA 19054; TMP #13-041-099; Zoned NCR. Requesting a dimensional variance to construct a side addition which does not meet the 10' side yard setback. Section 209-20 and Table 1.

Atty. Sander marks Exhibits ZHB 1 – 6.

No public comment.

Atty. Sander frames a motion that the application of Drew Szumigala for a variance from Section 209-20 and Table 1 of the Falls Township Zoning Ordinance be GRANTED to allow an approximately 435 square foot addition to be erected such that it encroaches no greater than 4' into the required 10' side yard setback as depicted on the plan submitted with the application.

Member Powers makes motion to approve.

Member D. Miles seconds.

All in favor 5-0.

Petition #4: Carl Colucci, Jr., 19 Thornyapple Lane, Levittown, PA 19054; TMP 13-023-304; Zoned NCR. Requesting a dimensional variance to construct a detached garage which does not meet the 10' side yard setback and 20' rear yard setback. Section 209-20 and Table 1

Atty. Sander marks Exhibits ZHB 1 – 4 (pictures depict detached garage already constructed)

Member Powers asks that due to the size of the garage if he intends to use it for any business purpose.

Mr. Colucci states no, it will be used for personal items only.

Atty. Sander frames a motion that the application of Carl Colucci, Jr. for variances from Section 209-20 and Table 1 of the Falls Township Zoning Ordinances be GRANTED to allow a 770 square foot (22' x 35') detached garage to be erected such that it encroaches no greater than 3' into the required 10' side yard setback and no greater than 5' into the required 20' rear yard setback as depicted on the plans submitted with the application for non-business use only.

Member Henderson makes motion to approve.

Member T. Miles seconds.

All in favor 5-0.

Petition #5: Cellco Partnership d/b/a Verizon Wireless, 8900 Bristol Pike, Morrisville, PA 19067; TMP #13-040-045-001; Zoned LI. Requesting a dimensional variance to extend the existing monopole tower 12' and collocate 12 panel-style antennas. Section 209-50.2.D(10).

Atty. Sander asks if there is any member of the audience who wishes to speak for or against the application. No one responds.

Atty. Sander then asks applicant's attorney, Christopher Schubert, to summarize the testimony on behalf of the applicant.

Atty. Sander marks Exhibits ZHB 1 – 4.

Atty. Schubert provides affidavit of notice to neighbors as well as a set of exhibits for each Board member, which is labeled Applicant's Exhibits A-1 through A-21.

Atty. Schubert introduces three witnesses: James Rodgers (site acquisition consultant), Andrew Petersohn (writer of frequency design consultant & licensed PA engineer), Petros Tsoukalas (licensed PA engineer) and then proceeds to give testimony on their behalf. All witnesses are sworn in and agree to the testimony given by Atty. Schubert on their behalf.

Brian Binney gets sworn in and states that the applicant was before the Falls Township Planning Commission with their application and that they are in compliance with our telecommunications ordinance and suggests granting their application so there is not a multitude of towers in the Township.

Atty. Sander frames a motion that the application of Cellco Partnership d/b/a Verizon Wireless for a variance from Section 209-50.2.D(10) of the Falls Township Zoning Ordinance be GRANTED to allow an existing 148 foot high monopole communications tower to be increased in height by 12', plus a lightening rod that extends an additional 4' in height, for a total height of 164', and to allow the collocation of 12 panel-style antennas on the extension as depicted on the plans submitted with the application. This approval is granted subject to the following condition: if the applicant or the applicant's successor-in-interest no longer requires the antennas that it proposes to attach to the tower, it shall remove all of its structures within six months of the date that the facilities become unnecessary.

Member Powers makes motion to approve.

Member Henderson seconds.

All in favor 5-0.

CONT'D ON NEXT PAGE

Petition #6: East Coast Propane, 9240 E. Tyburn Road, Morrisville, PA 19067; TMP #13-047-013 and TMP #13-047-014, Zoned HI-A. Requesting a use variance to operate a propane storage business. Section 209-32.3.D.(b).

Member Powers states that this petition was continued from Sept. 10, 2013 and August 13, 2013.

Atty. Sander states Exhibits A-1 & A-2 are letters asking for a continuance from the previous two hearings.

Atty. Sander marks ZHB Exhibits 1 – 7(C).

Atty. Sander states that there are many people in attendance who wish to speak either in favor or against this application. Mr. Gundlach represents the applicant (East Coast Propane) and both he and his client are here tonight to present this case.

Atty. Sander asks if the Township is present and does the Township wish to take a position this evening.

Atty. Lauren Gallagher introduces herself as representing the **Township and requests Party status on behalf of the Township.**

Atty. Sander grants Party status to the Township.

Atty. Sander explains that members of the audience have a choice – you can become a “Party” to this application. This means that like the applicant and like the Township, you can call your own witnesses, you can cross-examine the applicant’s witnesses and the Township’s witnesses and you will have the right to appeal providing that you can prove to us this evening that you have the proper legal standing to become a Party. That means you are somehow aggrieved by this application because of the proximity that you live to this site or for any other reason you feel is appropriate.

Atty. Sander continues ... if you don’t become a Party, that doesn’t mean that you cannot speak. Everybody in this room will be given the opportunity to speak at the end of all the testimony. No one will be denied due process to be able to speak. However, if you have your own witnesses to call and you wish to participate in these proceedings actively, then it would be appropriate for you to become a Party.

Atty. Sander states that in order to avoid those similarly situated (i.e., neighbors who live in the same neighborhood) from each becoming a Party, it would be better if you would choose one person as your spokesperson as the named Party, and then that person could call witnesses and cross-examine other witnesses and appeal if standing is granted.

Atty. Sander then asks if anyone in the audience is requesting Party status in this matter.

Mrs. Morris asks if you do not become a Party, does that take away your appeal rights?

Atty. Sander states that is a good question.

Mrs. Morris further states that she doesn’t have witnesses, other than her own testimony, but she doesn’t want to give up my right to appeal.

Atty. Sander recommends that she become a Party to this matter.

Janet Morris gets sworn in.

Janet Morris, 62 Corbin Lane, Morrisville, PA requests Party status.

Atty. Sander asks how far Mrs. Morris is located from the applicant's site.

Mrs. Morris states between 500 and 1,000 feet.

Atty. Sander asks if she received notice.

Mrs. Morris states yes.

Mr. Gundlach states an objection to Mrs. Morris' request for party status, due to the fact that Benjamin Morris is listed on the deed, not Janet Morris.

Atty. Sander states that Mr. Gundlach's objection is noted for the record but will be overruled so that **Mrs. Janet Morris will be given Party status in this matter.**

Atty. Sander asks if anyone else is requesting Party status.

Doran Johnson gets sworn in.

Doran Johnson, 7400 Hewson Drive, Morrisville, PA. requests Party status.

Atty. Sander asks how far he is located from the applicant's address?

Mr. Johnson states 1,500 feet.

Atty. Sander asks if he received notice of the hearing.

Mr. Johnson states no.

Atty. Gundlach states that Mr. Johnson is outside the ¼ mile radius for notice and, therefore, he doesn't qualify for Party status.

Atty. Sander asks Mr. Johnson how he is aggrieved by this application.

Mr. Johnson feels that if something disastrous happens, the neighborhood will be wiped off the map.

After a brief recess off the record, Atty. Sander states that Mr. Gundlach's objection is noted but is overruled. **Mr. Johnson is hereby granted Party status.**

Atty. Sander asks if anyone else is requesting Party status.

Dolores Taylor gets sworn in.

Dolores Taylor, 9272 Old Tyburn Road, Morrisville, requests Party status.

Atty. Gundlach has no objection to Mrs. Taylor's request.

Atty. Sander hereby grants Party status to Mrs. Taylor.

Atty. Sander asks if anyone else is requesting Party status.

Steve Lowden gets sworn in.

Steve Lowden states he is the Deputy Chief in the **Falls Township Fire Company** and is authorized to appear tonight on its behalf **to request Party status.**

Atty. Sander asks if the fire company owns property within the proximity of the proposed site.

Mr. Lowden responds no.

Atty. Sander asks if the fire company received notification.

Mr. Lowden responds no.

Atty. Sander questions how the fire company is aggrieved by the application.

Mr. Lowden states that they are worried about the response and protection of the citizens if an incident occurs at the site.

Atty. Gundlach asks if the Falls Township Fire Dept. is within Falls Township.

Mr. Lowden states yes.

Atty. Gundlach objects on two grounds: (1) Falls Township is already here and has obtained Party status; (2) the reason he gave for being aggrieved isn't adequate under the law. This applicant has an obligation separate and apart from the issue that is before this court to obtain state approvals and to design this facility in accordance with the laws. His general concern about the facility is colored under other regulations and is not something that would make the Fire Company an aggrieved party and obtain Party status.

Atty. Sander asks Mr. Lowden if the Fire Dept. falls under the authority of the Falls Township Board of Supervisors.

Mr. Lowden states no.

Atty. Sander asks if they are an independent, corporate entity from the Township.

Mr. Lowden states yes.

Atty. Gundlach asks if they receive funding from the Township.

Mr. Lowden states that there is some minor tax funding.

Atty. Gundlach asks if it comes from the Township.

Mr. Lowden states some comes from the Township, not all of it.

Atty. Gallagher states that the Township's position on this is that there may be some overlapping interests but that there might not be identical interests with the Township. We have not been asked to represent the Falls Fire Company in this matter.

Atty. Sander states that Mr. Gundlach's objection is noted for the record and is overruled. **The Falls Township Fire Company will be granted Party status in this matter.**

Atty. Sander asks if anyone else is requesting Party status.

No one responds.

Atty. Sander states that the parties who have been granted Party status are the applicant, the Township of Falls, Janet Morris, Doran Johnson, Dolores L. Taylor, and the Falls Township Fire Company and each of those parties will have the opportunity to participate actively in this hearing. Again, everyone here also has the opportunity to be heard.

Atty. Sander states that we are going to open the hearing, Mr. Gundlach will begin his case, and we will go to 10:30 p.m. At 10:30 p.m., we will continue the matter to the meeting of November 12, 2013.

Atty. Gundlach provides proof of the ¼ mile neighbor notification to Atty. Sander (marked as Exhibit A-3) as well as other Exhibits.

Atty. Gundlach states that this application concerns the right of East Coast Propane to use the subject property for its propane storage and distribution business. The applicant is appealing the determination of the Township's Zoning Officer that the proposed use of the subject property is not permitted due to a prohibition against combustible gases found in Section 209-32.3.D.1(b). In the alternative, the applicant is requesting the variance from that section to allow the proposed use despite the restriction contained therein, as noted in the application filed to date.

Atty. Gundlach states that the applicant would like to supplement the application in light of the Township's entry of appearance as Party status to also bring a claim as to the validity of that same section 209-32.3.D.1(b) as inconsistent with the permitted uses and unreasonable (Exhibit A-5).

Atty. Sander asks if the applicant is challenging the substantive validity of the zoning ordinance.

Atty. Gundlach states no, only that specific section.

Atty. Sander asks if the applicant is challenging the substantive validity of that section.

Atty. Gundlach states that is correct, as an alternate argument to the interpretation of the variance, as a second alternative argument. The testimony we are going to be putting on addresses that point as well.

Atty. Sander states that the problem is that issue has not been appropriately advertised.

Atty. Gundlach states that we believe that the advertisement sufficiently covers that. However, since we are not going to get through everything this evening, we can present testimony on the one issue this evening.

Atty. Gallagher states that she agrees with Atty. Sander in that the application speaks to the use only, not the validity of the ordinance itself. She objects to the amendment of the application at this hearing for that reason. Atty. Gallagher suggests that the hearing should be continued until next month, re-advertised with the appropriate notifications so that all evidence can be taken together rather than having witnesses called, re-called, etc.

Atty. Gundlach states there is no reason to continue, we are not going to delay the matter. We have witnesses here tonight. You can take that under advisement and we can make a determination before the next hearing whether we need to advertise. I'm just trying to be the most efficient as possible. If you can hold a decision on that point and let's get started on the two points that have been previously raised.

Atty. Sander asks what witnesses he plans to call that would not discuss the issue of challenging the substantive validity of the zoning ordinance?

Atty. Gundlach states that my witnesses are a civil engineer, a traffic engineer, a land planner, and the principal of the company. The testimony as to the validity of that section is extremely short and I would recall one witness for 10-15 minutes.

Atty. Sander rules that for the reason of judicial economy, the Zoning Hearing Board is going to put the issue of whether the amendment of the application is proper on hold. The proposed amendment to the application will be advertised in full pursuant to the Municipalities Planning Code prior to the November 12, 2013 hearing.

FIRST WITNESS (Kristen Holmes)

Atty. Gundlach calls Kristin Holmes, a professional engineer, who is sworn in, lists her credentials and is questioned by Atty. Gallagher about her credentials. No other Parties submit questions regarding her qualifications. Atty. Sander accepts her as an expert witness in civil engineering.

Ms. Holmes testifies on what is currently on the site (there are two tax parcels involved), how it is zoned, and the previous uses of the property. She testifies that there are two existing residences on the property and those will continue to be used as a residential use. The proposed uses will be using the central driveway which exists today. There will be four proposed liquid propane storage tanks, each 30,000 gallons in size. The existing trailer office and vacant garage will be used for business purposes as an office and a garage to service the company's vehicles.

Atty. Gundlach asks if the proposed improvements consist of the propane tanks only.

Ms. Holmes states that is correct, no proposed improvements to the grounds or the facilities itself other than the installation of those storage tanks in compliance with zoning setback requirements.

Atty. Gundlach asks if she is familiar with Section 209.32.3 of the zoning ordinance.

Ms. Holmes states yes. She also states that applicant's proposed use is a product distribution and warehouse, which is not defined by the Township, other than a by right use in that district.

Atty. Gallagher states that they are intending to use this property in a combination of residential and commercial uses and it was not noted in their letter of intent.

After further discussion, it was determined that the residential use of the property has been ongoing and is not the subject of the variance request.

Ms. Holmes' states that in her opinion the intent of this section pertains more to having combustible materials being made or undergoing a process at the site, rather than just storage. The denial seems to contradict the permitted use allowed at the site, such as the fuels sales and storage of gases or fuels. Second, the proposed use of this facility is liquid propane so it will be in liquid form as it arrives on the site, as it is stored on the site, and as it leaves the site. Third, there was a recently approved compressed natural gas fueling station just up Tyburn Road which also involves combustible gases. That facility involves placing the natural gas under pressure onsite in order to liquefy, store and transfer it. If that prohibition doesn't apply to that facility, it shouldn't apply to this facility.

Further testimony occurs where Ms. Holmes indicates that the unique condition under Sec. 209-77 arises from the fact that the use, which is product distribution and warehousing, is a permitted use in the district on this property. The zoning officer's determination that the applicant cannot operate on this property because of this type of product being prohibited (classify the liquid propane as a gas) limits this permitted use from being conducted on the property. This use is allowed under this section but is prohibited under another section of the ordinance.

Section 209.32 lists permitted principal uses as fuel sales. If the ZHB agrees with the zoning officer's interpretation that liquid propane is a combustible gas prohibited to be on the property, then the use cannot be developed on the property even though it is technically a by right use.

Atty. Gundlach asks how the hardship has been created if not by the applicant.

Ms. Holmes states that conflicting terms of the ordinance and the impact of the strict application of that prohibition found in that section referenced to liquid propane storage and usage has created the hardship. She further testifies that the business will not adversely affect the neighborhood and that the variance requested is the minimum requested.

Atty. Gallagher cross-examines Ms. Holmes

Ms. Holmes testifies that she was the one who prepared the plans.

Atty. Gallagher questions if Ms. Holmes thinks that Section 209-32.3.D.1(b) applies mostly to materials that are made or processed on site?

Ms. Holmes states yes, that section specifically states the handling, storage or transferring of basic or semi-finished chemicals with examples. She doesn't believe that the liquid propane form is a basic or semi-finished chemical, as there are no processes on site that require it to be a finished chemical. It is coming in and going out in the same state.

Atty. Gallagher asks if Ms. Holmes has a degree in chemical engineering, or any expertise in fire or fire safety.

Ms. Holmes states no.

Atty. Gallagher asks what the unique circumstances of the property are that require this variance.

Ms. Holmes states it's only the conflict of the ordinance and the interpretation to that prohibition that requires this variance, but nothing unique to the property.

Atty. Gallagher asks if it would be possible to use this property for another type of business that is in conformance with the zoning code.

Ms. Holmes states yes.

Atty. Gallagher states that Ms. Holmes felt it would improve the character of the neighborhood.

Ms. Holmes states yes.

Atty. Gallagher asks if Ms. Holmes would agree with her that propane is a combustible, flammable gas?

Ms. Holmes states that the use that is on this site is in the liquid state, so for the operations that are being held on site and the storage, it is not in gas form, it is in the liquid form. When it becomes a vapor and a gas is when it is being transferred into people's homes and the other end users. For this operation, it is compressed and maintained in its liquid state.

Atty. Gallagher states that it is your testimony that it is not flammable or combustible whatsoever in that state?

Ms. Holmes states that I wouldn't say that, because anything could be flammable. It has all of the fire safety regulations that the state requires, they would come out and inspect annually, and there are safety measure that go into place for a facility like this. It is a low flammable gas and in its compressed state it does not have the hydrogen to cause that.

Atty. Gallagher wants to draw Ms. Holmes' attention to Section E subsection 2 of the ordinance, where it indicates that storage of small quantities of chemical liquids, chemical solids, or fuels is permitted as an accessory use. Four 30,000 gallon tanks is not a small quantity – correct?

Ms. Holmes states that the ordinance does not define small quantities. In addition, the tanks themselves are 30,000 gallons but they will be filled only approximately 80%.

Atty. Gallagher states that the use that we are talking about is not accessory – correct?

Ms. Holmes states yes.

Atty. Gallagher has no further questions of Ms. Holmes.

Atty. Sander makes a statement that the order of the Party status is Ms. Morris, Mr. Johnson, Ms. Taylor and the Fire Dept. for them to ask questions of each witness. It is not the time to present your statement for or against the application. They must ask specific questions of each witness based on that witness' testimony.

Atty. Sander asks Ms. Morris if she has any questions.

Ms. Morris asks how they plan on getting the gas to the site and moving it out or distributing it?

Ms. Holmes states that the site will be serviced by a delivery vehicle that comes in to fill these storage tanks on the site. Each of the fleet for the business will fill up their trucks at their trucks at that same location and leave the site.

Ms. Morris asks if they are going to transfer this gas to the trucks and then transfer the gas from the trucks to the tanks?

Ms. Holmes states yes, but in this form it is in a liquid state, not a gas state. Everything that is being operated here and stored here is in the liquid form of propane. It becomes a gas once the trucks deliver it to the residences and commercial operations – the end users.

Atty. Sander asks if Mr. Johnson has any questions.

Mr. Johnson asks what the thickness of the walls of the propane tanks are as well as PSI on the tanks.

Ms. Holmes states that she doesn't know – that was done by the mechanical designer of the tanks.

Mr. Johnson asks if she knows what it would take to puncture one of these tanks?

Ms. Holmes states no.

Mr. Johnson asks that if a tank was punctured, does the leaking liquid then turn into gas since it's exposed to the oxygen in the air?

Ms. Holmes states if it leaks out of the tank in liquid form, it "erodes" quickly on the ground.

Mr. Johnson asks if it becomes gas once it hits the ground when it mixes with the oxygen?

Ms. Holmes states that once the product leaks from the tank and is mixed with the oxygen in the air, there will be vapors from that.

Mr. Johnson asks so then it becomes a gas and is flammable?

Ms. Holmes states yes.

Mr. Johnson has no more questions.

Atty. Sander asks if Ms. Taylor has any questions for the witness.

Ms. Taylor states that Ms. Holmes stated that they would be transporting propane. How do you account for the increased traffic coming onto Tyburn Road and these delivery trucks?

Mr. Gundlach offers an objection to the question.

Atty. Sander sustains the objection based on the fact that Ms. Taylor is asking her traffic questions, and she didn't testify as to anything to do with traffic.

Ms. Taylor asks if Ms. Holmes is aware that the EPA and the National Fire & Safety Authority does not recommend that propane be stored in a low spot, and are you aware that this lot is 15' below the surface?

Ms. Holmes states that yes, she is aware that this site is in a contained area below ground. This site has to undergo state permitting and fire safety plans to ensure that it will operate in a safe manner. It also will have a locked, barbed wire fence around the perimeter to ensure safety from others accessing the site. It is not for consumer use so it will only be used for the operation of the business itself.

Ms. Taylor states in addition to storage tanks he was also going to store cylinders and fill cylinders. There is no mention of that on his plans.

Ms. Holmes states that to her knowledge the cylinders are empty containers that will be used for those customers.

Atty. Gundlach states that Mr. Lamb will be better able to answers these types of questions.

Atty. Sander asks if the Fire Dept. has any questions for the witness.

Robert Heddon gets sworn in.

Atty. Sander asks what his position is with the Falls Twp. Fire Company.

Mr. Heddon answers past Fire Chief and life member.

Atty. Gundlach asks if he is on the Executive Board of the Falls Twp. Fire Company.

Mr. Heddon states no.

Atty. Gundlach asks if he is an officer.

Mr. Heddon states he is a past officer.

Atty. Gundlach submits that under the law if that is a separate entity and he is not an officer authorized by the Executive Board to be here, he is not legal counsel and he can't represent an entity.

Mr. Heddon states that last night they had a monthly meeting, and it was determined by the Board that myself and Chief Lowden come up and speak.

Atty. Sander states that he will allow Mr. Heddon to ask the questions on behalf of the fire company as the past chief and current member of the fire company because we have given Party status to the fire company and I'm not sure that it matters who asks the questions as long as they are associated with and are authorized by the fire company executive board to appear.

Mr. Heddon asks if she is familiar with the NFPA 704 standard.

Ms. Holmes states no.

Mr. Heddon asks if she knows the hazard classifications that go with the NFPA 704 standard.

Ms. Holmes states no.

Mr. Heddon asks if she is aware that the propane in the NFPA 704 standard is ranked the highest hazard.

Ms. Holmes states no.

Mr. Heddon asks if she knows the specific gravity of the propane.

Ms. Holmes states that off the top of her head, no, but she does have that information.

Mr. Heddon asks if she has it for the gas form or the liquid form.

Ms. Holmes states she would have to check, but does have full documentation on the product.

Atty. Gundlach states that there is a witness that will be able to testify as to these types of specific questions.

Atty. Sander states the only reason these questions are being allowed of this witness is because this witness testified extensively regarding the properties of the liquid form of propane, the gas form of propane, what happens when it leaks, is it flammable in one state but not the other, is it combustible in one state but not the other. By her testimony, she has opened the door to these questions.

Ms. Holmes states that the specific gravity of liquid propane is 0.1.

Mr. Heddon asks if she knows what the specific gravity means.

Ms. Holmes states she is not a chemical major.

Mr. Heddon asks you stated that the chemical in the tank will be in liquid form and that when gas is released it becomes vapor – correct?

Ms. Holmes states yes.

Mr. Heddon states that the majority of the problems with a facility like this would be transfer – correct?

Ms. Holmes states yes.

Mr. Heddon asks if she could think of any issue arising that would be capable of having a liquid release turn into a vapor?

Ms. Holmes states that to her knowledge everything is under a compressed nature for the delivery at the location where the supply lines go into the tank. They will be supplying and delivering to the fleet at the same location.

Mr. Heddon asks that with regard to your comments that this facility would not change the integrity or nature of the neighborhood, if there was to be a leak -- would that harm the neighborhood?

Ms. Holmes states that there is fire safety plan and permitting through the state that the applicant must comply with should there be a leak or a disaster does occur.

Mr. Heddon asks if that would change the nature and character of the neighborhood at that moment?

Ms. Holmes states that it depends on the severity of the situation.

Mr. Heddon asks that the more severe the incident, the more harm to the neighborhood – correct?

Ms. Holmes states if something severe happens there, it would be very similar to what would occur in any gas fueling station, similar to the natural gas station right down the street from this.

Mr. Heddon asks if she is aware of any propane facilities that have been placed around residential neighborhoods like this?

Ms. Holmes states no, not specifically.

Mr. Heddon has no further questions.

Atty. Sander asks if Mr. Johnson has another question.

Mr. Johnson asks with regard to security, if there will be a guard at the facility.

Ms. Holmes states that currently it is secured by a fence and locked gate.

Mr. Johnson asks if there will not be a physical person on the facility.

Ms. Holmes states not to my knowledge, but it would best be answered by the applicant.

Atty. Gundlach has no re-direct questions.

Atty. Gundlach asks if there are any Board questions for the applicant.

Member Henderson asks that after the storage tanks are placed, it would open it up to clean up and expand businesses on the property – did I misunderstand what you said?

Ms. Holmes states that currently that site is vacant and there are no businesses operating on that site. By bringing in this applicant, it would bring their business to the community.

Member Henderson asks that no other businesses would be located on the property?

Ms. Holmes states that is correct, there would be no other business there.

Member Molle states that the liquid propane doesn't become a gas until they put in the hydrogen – correct?

Ms. Holmes states that it has already been compressed to become the liquid.

Member Molle asks where does it become compressed gas?

Ms. Holmes states that when it's compressed, it's a liquid. Compressed natural gas is the other facility.

Member Molle asks that didn't you say that the hydrogen gets added to it at some point to make it a gas?

Ms. Holmes states that she doesn't recall saying that.

Member Tom Miles asks about the dimensions and how high are the precast tanks.

Ms. Holmes states that she does not do the design for the specific structures themselves. She just prepares the site plan that shows the layout for the facility on the property. She doesn't have the specifics for the structural or mechanical components.

Atty. Gundlach states they will have a witness to address those issues.

Member Powers asks if any consideration was taken to installing these tanks underground.

Ms. Holmes states she does not have the answer to that.

Atty. Gundlach redirects to Ms. Holmes about the site being vacant and that she was referring to the commercial or industrial portion of the site – correct?

Ms. Holmes states correct.

Atty. Gundlach states that those two residential homes have been there and continue to be occupied – correct?

Ms. Holmes states correct.

NEXT WITNESS (David Horner)

David Horner is sworn in.

Atty. Gundlach asks what is his occupation.

Mr. Horner states he is a traffic engineer.

Atty. Gundlach asks for his credentials, which he lists, and then asks for specifics of the type of work he performs on a daily basis.

Mr. Horner states he performs traffic impact studies, parking studies, traffic roadway design, provide testimony for both developer applications and also represent municipalities as a traffic consultant.

Atty. Gundlach asks if he has experience working on industrial and commercial projects similar to the one proposed here?

Mr. Horner states yes.

Atty. Gundlach asks if he has done work previously in Falls Township, as well as Bucks and Montgomery counties.

Mr. Horner states yes.

Atty. Gallagher has no objection to the witness as an expert in traffic engineering, but she doesn't understand what that has to do with the use of the property.

Atty. Sander allows the expert witness in the field of traffic engineering.

Atty. Gundlach offers proof for the witness by stating that in the alternative to the use interpretation for a variance, there are various factors that are considered which would impact the health, and welfare of the surrounding community and the impact that this facility would have on the surrounding roadways and the adequate sight distance would be some of those factors. This witness is prepared to address questions about the traffic getting in and out.

Atty. Gundlach asks if he has reviewed the proposed internal circulation of the trucks going in and out of this facility.

Mr. Horner states yes.

Atty. Gundlach asks if there are any anticipated issues with regard to the truck circulation and access within the proposed site.

Mr. Horner agrees with Ms. Holmes' testimony that the site is appropriately laid out to accommodate internal truck circulation with no issue.

Atty. Gundlach asks what the results of his investigation are regarding the impact that this proposed project would have on the surrounding roadways.

Mr. Horner states that looking at the traffic generation of this site combined with the traffic volumes of Tyburn Road, there will be absolutely no issue with the capacity of the roadway to handle this traffic or the efficiency of the driveway operation for trucks/cars entering or exiting the driveway. There is a very minimal impact on the surrounding roadway network.

Atty. Gundlach asks how that conclusion was reached.

Mr. Horner states that based on discussions with the applicant about the total amount of business he does, an estimate of 205 trucks, 410 trips over the course of a year which equates to a single peak day of two truck trips a day. Perhaps on a peak day it might be four times that amount making it eight truck trips a day on its busiest. Taking into consideration the office space, the bottom line is my total numbers indicate that during peak hours it may be about ten trips, perhaps two trucks and the rest office workers, and that total amount would not create any problem at all with the access on the adjacent roadway.

Atty. Gundlach asks how do these projected trips compare to trips that could be generated from the property if it was used for some other type of use.

Atty. Gallagher objects ... calls for speculation.

Atty. Sander asks if Atty. Gundlach could be more specific regarding other types of uses.

Atty. Gundlach states that one of the permitted uses is office use. He asks Mr. Horner if the property was fully developed for office space, approximately 100,000 square feet, how would that compare for a trip generation to what is being proposed for this project.

Mr. Horner states that based on the above, it would be about twelve times the traffic generation of what it will be for the applicant's proposed use.

Atty. Gundlach asks if he reviewed the sight distance in access to the site and the appropriateness of that sight distance for this proposed use.

Mr. Horner states yes. He concluded that the driveway out to E. Tyburn Road provides the appropriate sight distance for the posted speed of 25 m.p.h. There would be no issues with the sight lines coming into or out of that site.

Atty. Gundlach marks as Exhibit A-11 a letter from Mr. Horner detailing his observations at the site and adjacent roadways that led to his conclusions as noted above.

Atty. Gundlach has no questions.

Atty. Gallagher asks Mr. Horner if he is the traffic engineer for any municipalities in the area.

Mr. Horner states Plumstead Township in Bucks County as their "official" traffic consultant, but has done work on as needed basis with other municipalities in Bucks County.

Atty. Gallagher asks if most of the services you provide are for developers and land owners.

Mr. Horner says yes, probably about 80%.

Atty. Gallagher asks the property is not in use as far as the commercial part of it – correct?

Mr. Horner states yes.

Atty. Gallagher asks if we are talking about an increase in traffic going in should this be developed.

Mr. Horner states an increase from what is there at the present time.

Atty. Gallagher asks how much would the trucks weigh?

Mr. Horner states he does not know.

Atty. Gallagher asks that the truck weight and how many trips those trucks make would have an impact on the roads – correct?

Mr. Horner states it could.

Atty. Gallagher asks if these trucks would weigh more than a passenger vehicle.

Mr. Horner states certainly.

Atty. Gallagher asks that if you are talking about office use generating 12 times more traffic, the use there is generally passenger vehicles – correct?

Mr. Horner states yes.

Atty. Gallagher states that if the assumptions and facts that were given to you underly your opinions here, if that would change your opinions.

Mr. Horner states that it would change the numbers. I can tell you that the volume on E. Tyburn Road is so low that there would still be no issues in terms of capacity.

Atty. Gallagher asks if any traffic studies were done.

Mr. Horner says yes, we did traffic counts.

Atty. Gallagher states that it's 670 vehicles – is that a 12 hour time frame.

Mr. Horner states yes, it is a 24 hour time frame but most of that number would be the main 12 hours.

Atty. Gallagher states that you did traffic counts from Sept. 18th through Sept. 24, 2013.

Mr. Horner states that's correct.

Atty. Gallagher has no more questions.

Atty. Sander asks if Ms. Morris has any questions.

Ms. Morris asks if this study included all the trash vehicles that go up and down Tyburn Rd?

Mr. Horner states we did the study on E. Tyburn Rd.

Ms. Morris says so it wasn't Tyburn Rd directly behind it

Mr. Horner states that he looked at the number vehicle and type of vehicle at the access where it comes out of the property onto the public road.

Atty. Sander asks if Mr. Johnson has any questions.

Mr. Johnson asks how wide is the driveway coming out of the property.

Mr. Horner states it's 30'.

Mr. Johnson asks what the turning radius is for the large trucks doing the refueling.

Mr. Horner states he doesn't know the turning radius.

Mr. Johnson asks if he has looked at the traffic on Old Tyburn where it meets Bristol Pike and splits and cuts across Newbold Road.

Mr. Horner states no, he has not studied that issue.

Mr. Johnson asks how he did his calculations.

Mr. Horner states it's a two counter.

Atty. Sander asks if Ms. Taylor has any questions.

Ms. Taylor asks if the speed limit is 25 m.p.h.

Mr. Horner states yes.

Ms. Taylor asks what the legal weight of the trucks are.

Mr. Horner states he doesn't know.

Ms. Taylor asks where is the gas line in relation to Tyburn Road.

Mr. Horner states he doesn't know.

Ms. Taylor asks what the capacity of the gas line to hold the weight of the truck going over it.

Mr. Horner states he doesn't know.

Ms. Taylor asks if there is a possibility that the gas line would go right across the driveway. Does he think that a heavy vehicle over time could potentially be a problem for a gas line by the trucks running over it?

Mr. Horner states it would depend on the depth of the gas line and the design of the pavement above it.

Ms. Taylor asks if there is a way to test.

Mr. Horner states yes.

Atty. Sander asks if Mr. Heddon has any questions.

Mr. Heddon asks what roadways did you use to get to the facility?

Mr. Horner answers that he looked at getting the trucks and passenger vehicles onto and off the property. Taking into account that all traffic would leave going to the right, my assumptions were 50/50 going in, and 100% going out.

Mr. Heddon asks if his assumption was that traffic would go east on Tyburn and get off at Old Tyburn rather than going to Bristol Pike and go up Old Tyburn westbound.

Mr. Horner states that in terms of entering, my assumption was that 50/50 split entering so some would come from the east and some would be coming from the west. Exiting my assumption was that all traffic would go right because it becomes a one-way stretch.

Mr. Heddon asks if he knows the speed limit on Tyburn Road?

Mr. Horner states he can't recall.

Mr. Heddon states going down Tyburn Road and getting off at the smaller Old Tyburn Road -- at that point there, did you consider any rollover capacity or potential for vehicles?

Mr. Horner states that in a case of a zoning application we do a comparison of by right uses to the proposed use. My comparison indicates that some of those by right uses will have more traffic and, therefore, any issues at the offsite intersections are less for this application than they are for by right uses.

Mr. Heddon asks if he has ever done a deceleration study to take into account potential rollover?

Mr. Horner states he did not.

Mr. Heddon asks if he's ever heard of such a study?

Mr. Horner states no.

Mr. Heddon asks if he ever thought that on any road where you are going 55 m.p.h. and you are going onto a roadway that is 25 m.p.h. with a cargo of flammable liquids, that there is potential for rollover, when you are dropping your speed 30 m.p.h. at that point?

Mr. Horner states that you would be turning so there's not a drop in deceleration on the road to make a turn.

Mr. Heddon asks if he thinks that road is well-marked so it would be recognizable to the drivers?

Mr. Horner states I can't answer that question.

Mr. Heddon asks if he thinks it should be considered.

Mr. Horner states that it might be addressed in a land development project, but because this was a zoning issue, he used the by right uses vs. the proposed use.

Mr. Heddon asks if the change of grade at the top of Old Tyburn to the driveway itself, do you know what the grade elevation is?

Mr. Horner states that he doesn't know what the grade of the driveway is – it would have to be 8% or less, and it would certainly have to be confirmed if this application would move forward with land development.

Atty. Sander asks if the Board members have any questions.

Member Henderson asks if he's ever done traffic studies in Falls Township before?

Mr. Horner states yes.

Member Powers asks if he knows the size of the trucks.

Mr. Horner says WB 50, which means it's a 50' wheel base dimension.

Member Powers asks are they tanker trucks?

Mr. Horner states yes, various sizes of tanker trucks. The fleet would be smaller tanker trucks. In terms of capacity, it's about a 2,500 gallon truck vs. the larger ones that delivery the propane for the storage tanks is about 9,000 to 12,000 gallon storage capacity.

Member Henderson stated that you mentioned earlier that you didn't know the turning radius of the trucks. Should that be taken into account on a traffic study?

Mr. Horner states that it certainly should. My conclusion is that the capacity of the driveway, there is no issue. The sight distance to driveway – no issue. My assumption is that in land development, the dimensions of the driveway – it is an existing driveway but that doesn't mean that it is fully designed to handle this particular use – to the extent the radius needs to be widened, you have this property on both sides of the driveway. There is no issue with providing whatever radius increases are needed. We generally recommend a 50 foot radius on the driveway. That is not currently present. It would be my recommendation that if this be addressed during land development, if the application is approved.

Member Tom Miles asks if a larger scope traffic study be done to take into account some of the major roadways adjacent to the roadway to the property.

Mr. Horner states that typically for a zoning application, the subject for my review is the comparison of trip generation between the proposed use and a variety of by right uses. And if the comparison is favorable to the use, meaning it's generating less traffic than the by right use, that is where the conclusion stops for the purpose of zoning. Falls Township has land development ordinances which require a certain scope of study, and really gives the Board a lot of latitude in what they can ask for depending on particular concerns. That would be the time and place to do that.

No further questions for Mr. Horner.

Atty. Sander announces on the record that this hearing will be continued until Tuesday, November 12, 2013, at 7:00 p.m. in this room.

Meeting is adjourned at 10:45 p.m.