

**FALLS TOWNSHIP
ZONING HEARING BOARD
DECEMBER 9, 2014**

Hearing commenced: 7:00 p.m.

Hearing adjourned: 11:30 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; Noah Marlier, representing Falls Township; Karen Browndorf, Court Stenographer

Petition #3: Commonwealth Rubber Supply Incorporated, 1711 S. Pennsylvania Avenue, Morrisville, PA 19067; TMP 13-047-080-005; Zoned: RD-1, seeks (1) a use variance from Sec. 209-32.4(c)(1) to permit the use of assembly of rubber hose products in the RD-1 District; (2) a determination under Sec. 209-41 that a nonconforming manufacturing/assembly use may continue on the property; (3) an appeal from the determination of the zoning officer under Sec. 209-75 that the use is not permitted in the RD-1 District; and, (4) in the alternative, that the use is permitted as a variance by estoppel.

Atty. Sander states that the ZHB received an email notification that the applicant is asking for a continuance on this matter until January 13, 2015, in order to allow the applicant to complete the required notification of surrounding property owners.

Member Powers makes the motion to continue.

Member Molle seconds the motion.

All in favor 5-0. Application continued until January 13, 2015 hearing.

Petition #1: John Heffelfinger, 249 Share Drive, Morrisville, PA 19067; TMP #13-054-247; Zoned NCR. Use variance to raise chickens. Sec. 209-20.I.(1).

Atty. Sanders marks ZHB Exhibits 1 – 4.

Mr. Heffelfinger presents the application. My daughter has a graduation project for Pennsbury High School and has been researching for over a year. She is working with a Pennsbury H.S. Honors biology teacher, and a director from Penn State College of Agriculture and Science. She raised the chickens through incubation and in this process we've discovered that the chickens make excellent pets, are a stress reliever and make organic eggs.

Member Molle asks if there are any roosters on the property.

Mr. Heffelfinger responds that there were three roosters, but they are no longer there. We don't want roosters, just the four chickens to raise for eggs.

Member Molle asks what the plans are after the project is completed.

Mr. Heffelfinger states that the chickens produce eggs for three years. After three years, the chickens will be done and that will be the end of the project.

Member Molle says that after three years, you are done with the chickens.

Mr. Heffelfinger states yes.

Member Miles asks with regard to the noise, do you feel it is less than a small dog barking.

Mr. Heffelfinger states yes, much less.

Member Miles asks if they are penned in the yard.

Mr. Heffelfinger states that he does have a pen in the yard. We let them out to stretch, but they are always supervised when they are out. Overnight and during the day they are in the pen. They roost at night – as soon as it is dark, they go to bed.

Member Brooks states that you have four chickens and you are not adding any and you are not going to replenish if one dies.

Mr. Heffelfinger states yes.

Member Powers asks if he considers these domestic pets.

Mr. Heffelfinger states that yes, we have names for them.

Member Powers states they are farm animals and if they had considered renting space from a local farmer to raise these chickens rather than in a residential zone.

Mr. Heffelfinger states no he hasn't.

Member Powers asks what would stop other residential properties from having different farm animals, like goats, pigs.

Mr. Heffelfinger states that he would think that the ZHB would be able to control that.

Member Powers asks what is his hardship for needing the chickens as opposed to somebody else's need for goat milk?

Mr. Heffelfinger states he cannot answer that.

Atty. Sander asks how long do chickens live?

Mr. Heffelfinger states approximately 8 years.

Discussion occurs about what will happen to the chickens when they are done laying eggs, the size of the coop, the diseases chickens bring, and the fact that the chickens will be in a residential zone.

Public Comment

Bruce Kearney, next door neighbor, opposes the chickens. Chickens are domestic animals and belong on a farm.

Matthew Flowers, next door neighbor on the other side, has no problems with the chickens; they are always supervised in his yard.

Stephanie Bates, neighbor directly behind the Heffelfingers, has no problems with the chickens. She grew up in Feasterville with a rooster and chicken in the neighbor's backyard.

Irving Dost, neighbor at 260 Walton Drive, has no problems with the chickens. Because of the privacy fence, only sees the roof of the chicken coop. The property is well maintained.

Mike Gentile, a neighbor at 252 Share Drive, directly across the street, has no problems with the chickens. The chickens are quiet, there's no smell, no chickens running around and everything is maintained.

Summer Heffelfinger, daughter to applicant, states there's a lot of support for the chicken, her sister chose to incubate and raise chickens after researching and that instead of going out on Saturday nights, she is cleaning out her chicken coop.

Rose Rosenburg states she has no objections to the chickens.

Atty. Sander frames a motion that the application of John Heffelfinger for a use variance from Sec. 209-21.I(1) of the Falls Township Zoning Ordinance be GRANTED to allow the raising of chickens at 249 Share Drive, Morrisville, PA 19067, in compliance with the testimony presented to the Zoning Hearing Board. The approval is granted subject to the following conditions, with which the applicant agrees: (1) the use is limited to a specific school graduation project; (2) the use is limited to the current four hens with no roosters or any other additional farm animals brought onto the property; (3) the use shall end on August 31, 2016 and the hens and the coop shall be permanently removed from the property at which time the variance shall cease.

Mr. Heffelfinger accepts the conditions.

Member Miles makes the motion.

Member Molle seconds the motion.

All in favor 4-1, Powers dissenting. APPROVED

Petition #2: (CONT'D FROM 9/9/14, 10/14/14 AND 11/13/14) Buckingham Retail Properties, LLC, West Trenton Avenue and Pine Grove Road (Rte. 13), Morrisville, PA 19067; TMP #13-028-028

Atty. Sander marks ZHB Exhibits 10-11.

Atty. Sander marks Exhibit A-10 at Atty. Hecker's request.

Tom Verrichia, Buckingham Retail Properties, testifies as to the authenticity of the Joint Venture Development Agreement between TBC and Zimmer Group forming the joint venture. He also verifies the Purchase and Sale Agreement between the Zimmer Group and the Acme for the sale of the property. The applicant, Buckingham Retail Properties (of which he is the sole owner), is the retail development company of the joint venture partnership.

Discussion occurs on the validity of the applicant being the equitable owner and the authenticity of Buckingham Retail Properties to bring this application before the ZHB.

Mr. D'Amico presents his case.

Anthony Pinto is sworn in. He is a resident of 554 Stevens Road, directly across from Mr. D'Amico. He testifies to police reports (Exhibit D-1) drug activities, disorderly conduct, etc. He also testifies how traffic will be impacted if PennDOT doesn't allow two entrances.

Atty. Hecker cross-examines witness on the police reports.

Public Comment

Mr. D'Amico questions whether there is a zoning restriction on 24 hour commercial property in close proximity to a residential neighborhood. His concerns are crime in the area and safety of residents, 24 hour service and neighborhood deterioration.

Mason Hobbi expresses concern about the safety of residents, property values, and increase of crime.

Anuar Quesada, 602 W. Trenton Avenue, expresses concern about the noise and lighting of WAWA, increase in crime, shrub buffering will not work, and the hours of operation 24/7.

Joel Rosenberg, Esquire, as a long time resident of Falls Township, expresses concerns about the traffic increase, the integrity of the neighborhood, the volume of traffic on West Trenton and the adverse effects to the taxpayers when big corporations come into a township.

Randall Reber spoke last month about his family business Reber Transportation and how he is opposed to the WAWA at this location. Just recently he received a mailer from WAWA inviting his company to obtain a card for commercial fueling (marked as Exhibit Z-1). Discussion occurs as to when it was received (Mr. Reber says within the last two weeks). His concern is that the WAWA is a destination location, not a pass-by location.

Atty. Hecker recalls Michael Redel (real estate engineer with WAWA). Testimony centers on Exhibit Z-1 and the fact that the mailer does not deal with tractor trailers, but rather fleet card for all types of vehicles.

Cross-examination occurs from Atty. Zaslow, Mr. D'Amico, Atty. Caracappa, and Atty. Rosenberg all dealing with questions about what constitutes a fleet of trucks. Mr. Redel states that they are targeting fleet vehicles that are not tractor trailers. Upon re-direct by Atty. Hecker, Mr. Redel states that there are no locations operated by WAWA that accommodate tractor trailers for fuel.

Atty. Zaslow cross-examines Mr. Redel who testifies that tractor trailers can fuel at WAWA locations by detaching the trailer and fueling the truck at the pumps. He himself has done so. Also, he testifies that trucks smaller than a tractor trailer but bigger than a mini van can fuel at a WAWA location.

Atty. Hecker re-directs. Mr. D'Amico cross-exams.

Shaun Stillweller, 129 Makefield Road, shows a 2012 article about a Cherry Hill WAWA where Mike Redel testified at their ZHB hearing that no trucks would deliver between the hours of 10:00 p.m and 7:00 a.m. The WAWA was built. In June 2014 there was another article complaining about trucks delivering at 2:00 a.m. and no real action on WAWA's part to limit the truck deliveries. Also makes note of the trash and debris on that site.

Public Comment closes.

Mr. Rosenberg introduces R-1 (Falls Twp. Incident listing for WAWA on Bristol-Oxford Valley Rd. in Langhorne) time period from 8/30/2011 through 8/4/2014 – total of 527 incidents. Exhibit R-2 is copy of ZHB minutes June 15, 2000 where Sunoco station tried to do the same thing. Exhibit R-3 is a portion of the transcript from the May 9, 2000 hearing. At the end of this, the ZHB approved Sunoco to open a convenience store only – no fuel sales. The Sunoco was never built. This goes to precedent with regard to the 1500 feet between service stations and the definition of service stations. Exhibit R-4 is a Phila. Inquirer article dated August 15, 2013 where a WAWA executive states that an average of 17,000 people visit each WAWA store every week and states that WAWA's profit is based on high volume, not individual sales.

Atty. Caracappa introduces three exhibits, one is the public notice for the May 9, 2000 hearing, the second is the transcript from the hearing, and the third is a synopsis of the decision which was written on June 13, 2000, all regarding the Sunoco gas/convenience store application. Also introduces a document from Senator McIlhinney stating that the portion of Pine Grove Rd is a limited access site.

Decision by Board and attorneys that court reporter will not record the legal argument portion of the hearing.

Legal argument is not presented here – however, the recording is available (*SEE RECORDING AT 2:58:29*)

Member Powers makes a motion that the application of Buckingham Retail Properties, LLC for a variance is DENIED.

Member Molle seconds the motion.

All in favor 5-0 – APPLICATION IS DENIED.

Hearing adjourned 11:30 p.m.