

**FALLS TOWNSHIP
ZONING HEARING BOARD MEETING
JANUARY 14, 2014**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 10:00 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

REORGANIZATION OF THE BOARD

Chairman:	Colin Henderson
Vice Chairman:	Dan Miles
Secretary:	Douglas Molle
Alternate:	Alfred Brooks
Solicitor:	David Sander, Esquire
Court Stenographer:	Karen Browndorf
Day and Time of Meetings:	2 nd Tuesday at 7:00 p.m.

Petition #1: Thomas McNamara, 229 Stanwood Road, Fairless Hills, PA 19030; TMP #13-019-054; Zoned NCR. Requesting a dimensional variance to install a 12' x 12' gazebo which encroaches into the minimum distance of 15' between buildings on the same lot. Sec. 209-20 and Table 1.

Atty. Sander marks Exhibits ZHB 1 – 11. Also marks Exhibit A-1 (aerial photo)

No public comment.

Member Powers makes a motion to APPROVE the petition of Thomas McNamara for a variance from Sec. 209-20 and Table 1 of the Falls Township Zoning Ordinance to allow for the construction of the 12' x 12' (144 sq. ft) gazebo that is located 9' feet away from the applicant's home rather than the required 15' distance between buildings on the same lot, as depicted on the plans submitted with the application.

Member D. Miles seconds.

All in favor 4-0.

Petition #2: 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)); and a challenge to the substantive validity of Section 209-32.3.D.(1)(b) 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.

Atty. Sander begins by stating that the Township, at the last hearing, has concluded its case. The next step is for the other parties to present their testimony. He marks ZHB Exhibit 10 Township (letter dated Jan. 2, 2014 advising applicant of hearing).

Atty. Sanders calls Janet Morris and asks that she comes forward to be sworn in.

Ms. Morris states that she has no witnesses, has some exhibits and request that she is allowed to leave after she presents her case because she is not feeling well.

Ms Morris states that she has lived in Falls Township 35 years at 62 Corbin Lane, one block away from the proposed site for East Coast Propane. She believes it is not safe to put a huge propane distribution center in a residential area. Over the past several weeks, she has learned that liquid propane can become explosive once it mixes with oxygen. This propane plant belongs in an industrial setting. The current propane company is a small business that only operates two trucks. The propane company wants to expand into a large distribution center with 8 trucks and four 30,000 gallons tanks. This is a big step and a big responsibility and it's going to be placed in her neighborhood. She is very concerned.

The large propane distribution center was not there when she purchased this property. If this were a landscaping company, or a concrete company, she would welcome it to her neighborhood. In testimony, the owner of the propane company said that he didn't want to upset the neighborhood. If that's true, then East Coast Propane should find an industrial area to set up shop.

She has made upgrades to her home, but is reluctant to do any more because of this proposed business. Property values in the community will surely diminish. There is a mobile home community directly behind the proposed site. There is a charter school that is less than a one-half mile down the road, where there are children. If her house was put on the market, she would have to disclose this proposal for the propane distribution center, and it could be viable reason for a buyer to back out of the sale, resulting in a below-market price for the property. A recent appraisal that was done in October 5, 2013 by MBM Appraisal Services assessed her home value at \$210,000.

The propane company's position is that liquid propane is safe and that they should be able to set up shop in a residential area. But liquid propane is combustible once it mixes with the air given the right conditions. The propane company's witness, Mr. Moller, testified it is not prohibited by this Act 61 to run a propane distribution center in a residential area – She is wondering if this Act was passed by some developer who wanted to build in an area where there was a pre-existing propane distribution center – they wanted to put residential houses there. If people buy homes in a newly developed community and there is a propane distribution center in close proximity, then that's the buyer's choice. But that isn't the case here. This residential area came first, before the propane company. They want to move in on us.

Mr. Moller also testified that the propane industry is heavily regulated. He went on to say that a propane distribution operation center must include the State of Penna. as a named insured on their insurance policy because of the extreme risk involved in the propane operation. Does that sound like a business that should be in a residential area?

Perhaps that's why the East Coast Propane representative changed their argument. Originally, they attempted to present that the liquid propane is safe, when in reality it has no place in a residential area, regardless of the zoning. They are now presenting that the Township misinterpreted their own code. The area was zoned for commercial use, but intended to pose little or no threat to the surrounding community.

The propane company attempted to present their argument through another witness, Ms. Holmes, the civil engineer – not a chemical engineer. She did attempt to testify to the properties of liquid propane. She admitted to designing the layout of the proposed center, but she had nothing to do with the engineering of the four 30,000 gallons propane tanks. She said that the propane facility would “improve” the neighborhood.

Next, there was testimony from the propane company's traffic engineer, Mr. Horner. He merely evaluated the traffic on East Tyburn Road. He mentioned an increase of traffic by 410 trips per year, but he failed to take into consideration the busy Tyburn Road that runs parallel to this road, or the major

traffic that is prevalent due to the garbage trucks traveling back and forth to the nearby landfill. He didn't mention the turn on Old Rte. 13 has an obstructed view by a curve, and that is the only way for the propane trucks to exit Old Tyburn Road. He didn't mention that the risk of the propane truck carrying explosive cargo would be exiting on a roadway that has an obstructed view. The increase in traffic does not concern her, but the content of the trucks does.

The propane company's attorney has shifted their argument to say that our Township code inspector doesn't know how to interpret our code. Didn't the Township write the code? They had Mr. Amey, a code inspector from Hatfield Township, tell us that he can better interpret the Falls Township Code better than we can.

Mr. Lamb, owner of the propane company, showed us pictures of Breezy Acres Mobile Home community in an attempt to compare one propane tank that the community uses for fuel, to the huge distribution facility that he is proposing. They are not comparable. The Breezy Acres' tank is that community's source of fuel and it is filled for their benefit.

Mr. Lamb also showed us pictures of the small gas filling station that is located at Tyburn and Cedar Lane, again comparing them to a large propane distribution facility. Again, it is not comparable.

Ms. Morris presents an Exhibit and Atty. Sander marks as Exhibit Morris 1 (Blue Rhino explosion in Florida)

Ms. Morris states that the exhibit demonstrates the devastation that this propane explosion at a Blue Rhino facility caused in this community in Florida, which experienced the explosion in July 2013, where small propane tanks exploded like bombs and that the community had to be evacuated. Mr. Lamb testified that he told the Township's attorney, Ms. Gallagher, that his facility would be different than the Florida facility because his tanks were the large tanks, not the small "grill" tanks. The facility in Florida was actually smaller than this proposed facility.

When Mr. Lamb was cross-examined by Dolores Taylor, he indicated that he would have small "grill" tanks on his property, and he told her that the tanks would be empty. She assumes that these tanks will be filled there from the four 30,000 gallons large tanks. Ms. Taylor also pointed out that propane shouldn't be stored at a lower elevation than the surrounding area, which is exactly how this property is set up. One must descend down a steep incline to the proposed site with a narrow turning radius that large trucks would be forced to clear upon entering and exiting. One of these trucks could tip over.

Mr. Lamb also testified that the distribution center would be closed on Sundays, but the application says it would be open 8:00 to 8:00 on Sundays.

Mr. Hilt testified that he would have no problem installing propane tanks in a residential area. He stated that the safety mechanisms make explosions highly unlikely. This Blue Rhino propane explosion happened after this company applied to build this site.

Ms. Morris presents Exhibits and Atty. Sander marks as Exhibit Morris 2 (3/28/2013 article Newton, NJ explosion) and Exhibit Morris 3 (3/15/2013 article in NY Times)

These articles show the catastrophic results of propane trucks and tanks exploding in residential areas.

This proposal isn't fair to the property owners. Falls Township Fire Company is here and they are concerned about the distribution center. If the propane company did have an accident, their members would be in danger. This increases the risk of being a fireman in our township. This could deter people from wanting to volunteer as a fireman.

If the propane distribution center was here before she purchased her house, it would be her problem. But that's not what is happening here..

Ms. Morris is requesting the Township to please stand up for her community. Please don't let the propane company tell you how to interpret your code. Please insure her the same community that she's always had in the past. The property in question has been effectively used in the past with the current HI-A zoning and should and can be again. Se requests the Board to refuse the propane company's proposal to build at this location.

She is aksing the propane company to build in an area where there are no homes.

Ms. Morris rests.

Atty. Sander asks if there are any questions for Ms. Morris.

Atty. Carrie Nase-Poust (filling in for Rob Gundlach, Esquire) states that since she has just received Ms. Morris' exhibits, she wants to reserve the right to review the exhibits and provide a response to the Zoning Hearing Board within a seven day period.

Atty. Gallagher objects to any additional delay to this matter.

Atty. Sander asks if there are any questions. There are none.

Atty. Sander calls Doran Johnson and asks that he comes forward to be sworn in.

Mr. Johnson states he has no witnesses, but he does have some exhibits.

Atty. Sander marks Exhibit Johnson 1 (list of Pennwood Crossing residents and proximity to site)

Mr. Johnson states that within 7/10ths of a mile, there are over 976 homes. Industry standards are 2.2 personnel for a manufactured home. You are looking at 2,000 people that live there and are that close to the site.

In response to a question from Atty. Sander, Mr. Johnson clarifies that the distance was measured from the proposed location of the tanks (as depicted on the plan submitted with the application) to the mobile home.

Mr. Johnson states there are 33 homes within 500 feet of those tanks.

Atty. Sander marks Exhibit Johnson 2 (Propane Bomb from Wikipedia).

Mr. Johnson states that this exhibit indicates there are several instances where propane tanks have been used as IED's and other bombs to blow us up.

Atty. Sander marks Exhibit Johnson 3 (Motor fuel information [pg 7] from Wikipedia)

Mr. Johnson states this exhibit discusses improvised explosive devices and how such a device was used at Columbine. However, it didn't detonate because they were able to diffuse it before it detonated. The reason it was able to be detonated was because the school was in close proximity to military personnel who diffused it – local authorities would not have been able to handle it.

Mr. Johnson asks Mr. Bennett if warehousing is a permitted use for this property.

Mr. Bennett states that yes, it is permitted.

Atty. Sander marks Exhibit Johnson 4 (from Wikipedia marked Warehouse).

Mr. Johnson states that a definition of a warehouse is a commercial building for the storage of goods.

Atty. Sander marks Exhibit Johnson 5 (from Wikipedia marked Building)

Mr. Johnson states that a building is a man-made structure with a roof and wall standing more or less permanent in one place.

Atty. Sander marks Exhibit Johnson 6 (from Wikipedia marked Non-building structure)

Mr. Johnson states that a non-building structure is a structure designed to support, contain or convey liquid or gaseous matter. Based on these exhibits, I believe liquid propane cannot be warehoused so it is not able to fall under the use of warehousing at that property.

Mr. Johnson rests.

Atty. Sander asks if there are any questions. There are none.

Atty. Sanders calls Dolores Taylor and asks that she comes forward to be sworn in.

Ms. Taylor states that she has no exhibits but she does have a petition that was taken several months ago from neighbors along Tyburn Road and along Pennwood Crossing that cannot attend due to illness, age, etc.

Atty. Sander states that the Zoning Hearing Board is reluctant to accept petitions because it is difficult to verify the names. Secondly, sometimes people sign petitions and are uninformed because they haven't heard the testimony and they haven't been privy to all the facts and issues that have been brought out at the hearing.

Ms. Taylor states that she is opposed to the petition to have East Coast Propane occupy the site. She has been a taxpayer for over 60 years and has lived on Tyburn Road all in her life. She agrees with prior testimony of Ms. Morris and Mr. Johnson. My opposition comes under two major categories.

One is the nature of the property itself; the other is the nature of the neighborhood. The nature of the property is a dug-out place that is anywhere from 15 to 30 feet below ground level. As pointed out in previous testimony, propane as a gas is heavier than air and will sink to the bottom. The National Fire Protection Association, OSHA and several other agencies have stated that propane should never be stored at a low level. Our own fire department has said the same thing.

There were some issues at the last hearing about combustibility. There is a possibility that ignition could occur from someone going down the road, throwing out a cigarette, or throwing fire crackers. Kids do this now.

Because the site is below ground level, you cannot see the site going either east or west on Tyburn Road, even if the vegetation was removed.

Another concern is that when you come out that driveway, you are going to be running over the natural gas line. Trucks have run over that natural gas line for 30 to 40 years and nothing has happened. But that's the point – because of all this usage, isn't it possible that the natural gas line has been weakened and even more prone to breaking?

Overhead are electric wires and the possibility of those electric wires coming down, a spark ignites which could cause an ignition. These are all issues that have not been addressed. The site is near the water table (due to it being below ground level). Can the ground support four 30,000 gallon tanks and all of the structures?

There is a great deal of construction on Tyburn Road and Rte. 13 – if there is a catastrophe, will we be able to quickly evacuate or be able to bring additional help in from surrounding areas if necessary? It is a very congested area.

OSHA and the Department of Labor and the National Fire Protection Association states there should be at least two entrances and two exits onto the property. It has been stated before that there are three driveways; however, only one driveway goes to the site where the tanks are located. The other two driveways go to the houses with no access to the site where the tanks are located.

Mr. Lamb in his original proposal stated he intends to also store cylinders. Cylinders should not be stored in a sunny place. There is no shade on that property except what is along the road.

Ms. Taylor states that her 90 year old neighbor, Evelyn Guilford, has lived there all her life. She wanted you to know that during WW II she worked in torpedo storage facility with the constant threat of being blown up. Now, she has to worry about being blown up by a propane tank living next door.

Ms. Taylor requests the Zoning Hearing Board to consider the neighbors who have lived on Tyburn Road for three or four generations. Do not allow this to happen.

Ms. Taylor rests.

Atty. Sanders asks if there are any questions. There are none.

Atty. Sanders calls Robert Heddon (Falls Township Fire Company).

Mr. Heddon states that he has no more testimony.

Public Comment

Thomas Anders, the trustee of the property on Tyburn Road. His father, Reuban Anders, is the owner. According to satellite pictures, there are six mobile homes adjacent to this property in the rear. Every other side is commercial around the property. Breezy Acres, which has a storage tank, has the same zoning regulations as the trailer park behind this property, which means that Pennwood Crossing is allowed to put their own storage tank on this property. Many trailer homes in the area have 120 gallon tanks outside of their homes. There have been numerous buildings in the HI-A area that have propane storage tanks.

If you go down to Philadelphia Ave, about one-half mile from this site, there are freight trains that have tankers on them, which hold 41,809 gallons per car. It is not uncommon to see 10, 20, 30 tanker cars, some with placards, some not.

The Fire Company in four years time had 2,372 calls. If you go back about 10 years, they had about 5,000 calls. I understand that there is a possibility but it is not as large as they make it out to be.

Mr. Anders rests.

Mr. Johnson rebuts and states that Pennwood Crossing has 1,079 manufactured home sites that do not use propane for heat.

Ms. Taylor states there is reference to the gasoline storage facility down the road. You cannot compare that to this site. It is entirely different. You can see that site very well from the road, it is not on Old Tyburn Road, it is on Tyburn Road, there is a cross road (Cedar Lane) so there is easy access to and from it.

Atty. Sander asks if there are any questions from the Board.

Member Powers asks Mr. Johnson for clarification on distance between the mobile homes and the tanks.

Mr. Johnson states between 2 and 500 feet there are 33 homes, between 500 and 1,000 feet there are more homes.

At Member Powers' suggestion, Atty. Sander reiterates again what relief the applicant is seeking.

Atty. Sander states that East Coast Propane is seeking the following relief: 1) the appeal from the determination of the zoning officer dated June 21, 2013, that the proposed use of TMP 13-047-013 and 13-047-014, also identified as 9240 E. Tyburn Road, Morrisville, PA for a propane distribution and warehousing business is not a permitted use in the HI-A district – it's an appeal from Tom Bennett's determination that the use is not permitted

2) in the alternative, a variance from Sec. 209-32.3.D(1)(b) of the Falls Township Zoning Ordinance to allow a propane distribution and warehousing business to be operated on the property – if the Zoning Hearing Board agrees that the use is not permitted, that would be a use variance if the Board were so inclined;

3) a challenge to the substantive validity of Sec. 209-32.3.D(1)(b) of the Falls Township Zoning Ordinance in accordance with several sections of the Municipalities Planning Code that provides for substantive validity challenges

So, it's an appeal from Tom Bennett's denial letter, or in the alternative a use variance, or in the alternative a substantive validity challenge to the ordinance.

Member T. Miles makes a motion to close the hearing; Member Powers seconds the motion.

All in favor of closing the hearing 5-0. Hearing is closed.

Member Henderson states that the ZHB will continue with the rest of the agenda and will deliberate the East Coast Propane decision at the end of the agenda

After hearing the remaining agenda items, the Board deliberated on the East Coast Propane petition.

Member Powers makes motion to DENY all relief sought in the application of East Coast Propane.

Member Miles seconds the motion.

All in favor 5-0. All relief sought in the application of East Coast Propane is denied.

Petition #3: (CONT'D FROM 12-10-13) Peter Stillitano, 386 Lincoln Highway, Fairless Hills, PA 19030; TMP #13-008-052; Zoned HC. Requesting a use variance to permit truck rentals. Section 209-23.

Atty. Sander marks ZHB Exhibits 2 – 9 (ZHB Ex. 1 was marked at 12-10-13 ZHB)

Jon Adelstein, Esquire, represents the applicant.

Jeffrey Dence appears during public comment to voice his support of the applicant and his petition.

Member D. Miles makes a motion that the application of Peter Stillitano for a use variance from Sec. 209-23.B of the Falls Township Zoning Ordinance by GRANTED to allow a truck rental use to operate on the property as depicted on the plans and supporting information submitted with the application, with the condition that the trucks remain on the north side of the property.

Member Powers seconds the motion.

All in favor 5-0.

Petition #4: (CONT'D FROM 12-10-13) 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) an interpretation that the grinding of mulch is permitted on the Property; (c) 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; (d) in the alternative, a determination that the grinding of mulch is a pre-existing nonconforming use of the property; and (e) 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 marks ZHB Exhibit 3 – 10 (ZHB Ex. 1 and 2 were marked at 12-10-13 ZHB)

Edward Wild, Esquire, represents the applicant. Robert Damerjian is the owner of Greenscape and the tenant at the property address.

After giving a history of the application, Atty. Wild indicates that the applicant is seeking approval for grinding the mulch of the material in the operation of its own business – not bringing in product from outside sources. This is not a processing plant for mulch by third parties, but rather it is the processing of mulch for material generated by customers and clients of Greenscape.

Atty. Sander requests proof of the quarter mile neighbor notification from applicant.

Atty. Wild states that because this matter had been opened previously, he believed proof of the neighbor notification was not necessary.

Atty. Sander states that no neighbor notification had ever been furnished in the two previous hearings when this petition was continued. Atty. Wild states that he did not notify the neighbors.

Discussion occurs on whether to continue with the application.

Atty. Sander frames a motion that based on the lack of the neighbor notification, the application is continued until February 11, 2014, to allow for the neighbor notification, re-advertising and re-posting of the property.

Member T. Miles makes motion to continue until February 11, 2014.

Member D. Miles seconds.

All in favor 5-0 to continue the application until February 11, 2014.

Petition #5: Auto Zone Development Corp., 482 W. Trenton Avenue, Morrisville, PA 19067; TMP#13-034-144; Zoned NC. Requesting an interpretation as to whether a retail use by a chain store is permitted in the NC zoning district, or in the alternative, a use variance. Sec. 209-22.J(1).

Atty. Sander marks ZHB Exhibits 1 – 5 and Exhibit A-1 (neighbor notification) and A-2 (lease for Auto Zone).

Nate Fox, Esquire, represents the applicant.

Erin McCloskey, engineer, is sworn in and testifies as to the project's scope. Auto Zone will be before the Falls Township Planning Commission on January 28, 2014.

Bill Hogan of Lower Makefield appears during public comment to voice his approval for the petition.

Motion made by D. Miles that the application of Auto Zone Development Corp. for a use variance for Sec. 209-22.J of the Falls Township Zoning Ordinance be GRANTED to allow an Auto Zone store operated at the property as depicted on the plans and supporting information submitted with the application.

Member Powers seconds the motion.

All in favor 4-1, Member Henderson dissenting.

Adjourned 10:00 p.m.