

**FALLS TOWNSHIP
ZONING HEARING BOARD
FEBRUARY 14, 2017**

Hearing commenced: 7:00 p.m.

Hearing adjourned: 10:45 p.m.

Members present: Brooks, Henderson, Kiernan, Miles

Members absent: D’Oria, Molle

Also present: Thomas Bennett, Zoning Officer / CCEO; Ed Neubauer, Code Enforcement Officer; Noah Marlier, Esquire (Rudolph Clarke) representing the Township; Keith Bidlingmaier, Esquire, ZHB Solicitor; Karen Browndorf, Court Stenographer

Petition #1: Morrisville DG, LLC, 1279 Old Bristol Pike, Morrisville, PA 19067; TMP #13-047-042; Zoned: NC. Requesting a dimensional variance to allow parking to encroach on the required 20 ft. landscaped area adjacent to any street line. Section 209-22.(F)(2).

Atty. Bidlingmaier marks ZHB Exhibits 1 – 6 and Applicant Exhibit A-1 (proof of neighbor notification).

Kimberly Freimuth, Esquire, presents the application. In October, we were before this Board seeking a number of items of relief, one of which was a use variance and some dimensional variances. In reviewing the plans for the land development, it has come to our attention that there is one item of relief which went unnoticed. The relief we are seeking tonight requires parking to be located not closer than 20 ft. from the street line. The street line in your ordinance is the ultimate right of way. We’ve provided a 20 ft. setback from the legal right of way, not the ultimate right of way. We did respect the 20 ft. planting strip, but we do not have the appropriate setback from the ultimate right of way.

Michael Young, a registered landscape architect gets sworn in. He is recognized as an expert in the field of planning and landscape architecture. He testifies that the site is currently an overgrown, vegetative lot. It’s an odd shaped lot which was why we requested relief in October 2016. We are proposing a 7,500 sq. ft. retail facility, specifically a Dollar General use. We have an access drive off Bristol Pike that takes you into offstreet loading, a dumpster enclosure and parking for the use. Stormwater facilities and on lot sanitary sewer and public water services are also provided. PennDOT required us to move the access drive over to be in alignment with the WAWA across the street, which we have done.

Mr. Young continues and states that the reason we are here tonight is that in working with revising the plans, we realized that there was a section in the Subdivision and Land Development ordinance where the landscaping buffer has to be from the street line which is defined as the ultimate right of way. That kicked us back to zoning because we used the legal right of way, not the ultimate right of way.

No Board questions.

No public comment.

Member Brooks makes a motion that the application of Morrisville DG, LLC requesting a dimensional variance from Section 209-22.(F)(2) of the Falls Township Zoning Ordinance, be GRANTED to allow parking to encroach onto the required 20 ft. landscaped area adjacent to any street line at the property located at 1279 Old Bristol Pike, Morrisville, PA 19067, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

Member Henderson seconds the motion.

All in favor 4-0. Motion carries.

Petition #2: Family Dining, Inc., 8575 New Falls Road, Levittown, PA 19054; TMP #13-018-001-001; Zoned: NC. Requesting dimensional variances to replace existing freestanding pylon sign at New Falls Road. Sections 209.45.I(2)(c)[2][a] and 209-45.I(2)(c)[2][d][i][B].

Atty. Bidlingmaier makes ZHB Exhibits 1 – 7 and Applicant Exhibit A-1 (proof of neighbor notification)

Amee Farrell, Esquire, (Kaplin Stewart) presents the application. We were previously before you in March of 2016 for dimensional relief that was required to redevelop the property by removing the existing Burger King, constructing a new Burger King, and adding a second tenant space on that site. All of that relief was granted. We have been through the land development approval process. We are back before the Board of Supervisors within the next few weeks for an amendment for approval to phase the project.

Burger King submitted its sign permits for sign replacement for the entire site and all signs but one were approved by right (no zoning relief needed). However, there is one sign which is the replacement of the existing pylon sign along New Falls Road. The proposal is to replace that sign in kind in its existing location, but because of the height and the location of that sign, both are currently non-conforming under the ordinance.

Leeann Miller gets sworn in and testifies that she has worked as architectural and interior designer for almost 30 years for her own company and specializes in fast food work. In response to questions by Atty. Farrell, Ms. Miller testifies that she is responsible for the design of the sign package, that there currently are two driveway entrances on New Falls Road with the new design having only one driveway on New Falls Road, and that the new sign will keep the existing foundation and pole as well as the existing electrical. The new sign will have the Burger King and the yet to be named tenant on it. The existing sign is 22 ft. 9 inches tall and the zoning allows for a 12 ft. high sign so we need relief from zoning for the height. We would also need relief for the setback of the sign.

No Board questions.

No public comment.

Member Henderson makes a motion that the application of Family Dining, Inc. requesting dimensional variances for Sections 209.45.I(2)(c)[2][a] and 209-45.I(2)(c)[2][d][i][B] of the Falls Township Zoning Ordinance be GRANTED to replace the existing freestyle pylon sign at New Falls Road at the property located at 8575 New Falls Road, Levittown, PA 19054, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

Member Brooks seconds the motion.

All in favor 4-0. Motion carries.

Petition #3: Falls Township Fire Company #1, 310 Yardley Avenue, Fallsington, PA 19054; TMP #13-032-081; Zoned: IN. Requesting a use variance to allow outdoor storage of empty dumpsters. Section 209-20.1.

Atty. Bidlingmaier marks ZHB Exhibits 1 – 8 and Applicant Exhibit A-1 (proof of neighbor notification)

Atty. Bidlingmaier explains the difference party status and public comment.

Amelia Ransley, 290 Yardley Avenue, Fallsington, PA 19054, requests party status and is granted party status.

Noah Marlier, Esquire, on behalf of the Township, states that he will not be taking a position tonight, but are here to simply monitor what is being presented on the application requesting the ability to move empty dumpsters on and off the property, and not using the property as a transfer station for trash and recycling.

Timothy Duffy, Esquire, presents the application. We did originally apply as a use to bring construction debris and other materials onto site for sorting and disposing of it from that location. There were concerns raised by the Township and neighbors so that plan was scrapped. The only use the Fire Company is looking for now is to store empty dumpsters.

Chris Carlin, President of the Fire Company, gets sworn in. In response to questioning by Atty. Duffy, Mr. Carlin states that the Fire Company has been at this location since 1964; he is at the location every day and is an active firefighter. The firehouse is located where E. Trenton Avenue and Yardley Avenue converge. Above the fire house in the aerial map are numerous rail lines that are owned by Conrail. It is one of their transfer yards for their railcars. They use that rail yard as a coupling of rail cars, and they also use that as storage of some of their rail cars. Further down the line is a section of the rail yard where they do the unloading of shipping containers and put them on the back of tractor trailers. There are usually numerous trains in that area.

Mr. Carlin states it is not a rail yard for passenger service – it’s all commercial traffic. In response to Atty. Duffy’s question regarding noise from the rail yard, Mr. Carlin states that when they couple a car, it sounds like a small explosion.

Mr. Carlin testifies that in looking at the aerial photo, behind the area where we are talking about, there is a storage lot for the Public Works Department of Falls Township. He states that they use that yard as a storage area for storm clean up and grass cutting. Beyond the lot for Public Works, there is the back end of the Fallsington Industrial Park.

Mr. Carlin states that the Fire Company is strictly a non-profit, volunteer organization. We receive our financial support from three incomes. We have a tax mil which is split equally between three fire companies in Falls Township. We do a direct mail and fund drive where we ask for donations. We have rental income – directly behind the fire house is a dance studio that we receive rental income from and the rear yard behind that as well. The area behind the firehouse was rented out roughly 12-15 years ago to a gentleman to store his landscape materials which was permitted and approved by the Township. So for the last 12-15 years this portion of our property has been relied upon by the Fire Company for rental income that is necessary to support its operations.

Mr. Carlin explains that approximately 2 years ago, Kyle McCauley, who is a member of our Fire Company, approached us and expressed interest in using the back lot for their business (Hugh Marshall Landscape Contractors “Hugh Marshall”). Hugh Marshall provides rental income. Part of their lease agreement with the Fire Company is that they are responsible for the grass cutting, clean up and snow removal of the firehouse.

Mr. Carlin states that he and Mr. McCauley went door to door to the neighbors within the quarter mile radius to talk to them about the zoning application. If the neighbor wasn’t home, they left a letter giving phone numbers and email addresses so the neighbors could contact them.

Ms. Ransley asks if they could rent to someone for the use the property was intended for.

Mr. Carlin states that we believe there is nothing in the Institutional zoning that would be a permitted use for the back lot. The dance studio in the back is zoned for Institutional, but the back lot, we do not believe anything would fall under the current zoning standards.

Board Comments to Mr. Carlin

Member Brooks asks who used to plow their lot – Hugh Marshall does it now, but who did it before them?

Mr. Carlin states he can't remember.

Member Brooks asks how much it cost before Hugh Marshall took over.

Mr. Carlin states Hugh Marshall saved us approximately \$7,000 last year and our landscaping bills for grass cutting was approximately \$250 per month.

Member Miles asks to give a percentage of the three revenue streams.

Mr. Carlin states that 65% is the Township tax, the remaining 35% is split equally between our fund drive and our rentals.

Kyle McCauley gets sworn in. In response to questions by Atty. Duffy, he testifies he's been a fire fighter with the Fire Company for the last four years and is an employee of Hugh Marshall Landscaping Contractors. Hugh Marshall specializes in general outside maintenance of properties; we do a lot of hardscaping, tree removal, brush clearing, etc. We also have two other divisions – one is our container business and the other is our demolition team doing interior, non-load bearing demolition.

Mr. McCauley continues that when we first received Township approval in 2015, we were using it for storage of landscape equipment and materials, such as dirt, mulch, concrete and other machinery that we were using on those job sites, which was consistent with the previous rental use. The use was approved as an existing non-conforming use as a landscape yard. About three to four months after Township approval, we completed the jobs we were doing and we decided to begin using the property for our dumpster business because our dumpster business was growing. The dumpsters that we rent to our demolition team were all construction debris (wood, cardboard, sheetrock). We would dump it on an existing concrete pad and sort it for recycling. The Township came out and did an investigation and we were told that it was considered a transfer station. As soon as we were told that, we stopped doing the dumping and sorting, and just use it for storage. This was in the summer of 2016 when the Township notified us.

Mr. McCauley explains the use we are now proposing is to be able to store empty dumpsters and two trucks (one tri-axle roll off dumpster truck and the other one is a smaller version, an F750). We would like to operate between 7:00 a.m. to 5:00 p.m. The business would consist of picking up dumpsters and delivering them to our contractors that rent them from us. They would be emptied at the appropriate landfills and transfer stations and brought back to the Fire Company lot until they are re-rented. There is fencing 8 ft. high with a privacy screening on the front and side and the back side is a 6 ft. chain link fence. There are two gates, one behind the fire house located next to the shed and the other is located toward the end of the property in the parking lot. The trucks and dumpster are not visible from the street due to the privacy fencing.

Mr. McCauley states when leaving the site he uses E. Trenton Rd. instead of going through Historic Fallsington. The only time Yardley Avenue is used is when there is a delivery on that roadway. When we pick up a dumpster at a construction site, it goes to the Falls Township landfill (GROWS) or a transfer station in Southampton, where it is emptied and brought back to the storage yard. Our drivers have to do a visual inspection of the load; they must make sure there is nothing leaking out of the dumpster. Our company does not accept anything in liquid form that could spill out of the dumpster onto the roadway and we also do not accept any asbestos or hazardous waste. If the landfill was closed and we couldn't get rid of the material, we would bring it back to the storage yard, leave the container on the truck so animals wouldn't get into it, tarp it, and that would be the first container off the property the next morning.

Mr. McCauley explains the way the dumpsters are loaded onto the trucks. It's called a hook lift system which is different than your normal cable system. Our dumpsters are slid off the back of the truck by hydraulic; it is then placed down on the ground with the rear rollers of the dumpster, and then the whole hook canalibers down to lower the front end of the dumpster down on the ground. This use would not cause any adverse noise or dust in the neighborhood.

Discussion occurs regarding other large vehicles in the neighborhood (school busses for the School District; oil truck business next to American Legion) in comparison to Mr. McCauley's vehicles. Mr. McCauley stresses that there will be storage of empty dumpsters only, no chemicals in these dumpsters, the noise level will be minimal, and there will be no heavy machinery stored at the site.

Ms. Ransley asks if the dumpsters are cleaned out before being brought to the site.

Mr. McCauley states that the dumpsters are swept out and washed out at the Waste Management facility when they are dumped.

Ms. Ransley asks if you will be working on holidays – like Labor Day.

Mr. McCauley states whatever a holiday is for the Township, we would not be working.

Ms. Ransley asks if there ever was mulch stored there.

Mr. McCauley states yes, for the first four months, there were rocks, boulders, mulch, dirt that were hauled out in the container trucks.

Ms. Ransley asks if any chemicals like gasoline are stored there.

Mr. McCauley states that yes, there is diesel and gasoline – necessary for grass cutting, and two machines that will be removed.

In response to more questions from *Ms. Ransley*, Mr. McCauley states that once they received the Cease and Desist Order from the Township, they stopped operations within 24 hours. He states that at that time, we were bringing materials and such back to the site; we will not be doing that going forward.

Ms. Ransley asks if Mr. McCauley knows the gross vehicle weight of his trucks.

Mr. McCauley states that the small truck is 26,000 pounds and my large truck is 56,870 pounds.

Board Comments to Mr. McCauley

Member Kiernan questions Mr. McCauley on the noise, construction material, the apparent discrepancy in his testimony about whether or not he is storing materials overnight and whether the fire company is zoned for temporarily storing waste materials overnight.

Member Henderson questions Mr. McCauley on his hours of operation, trucks having backup beepers, weight of the dumpsters (35,000 pounds for empty truck), who rents the dumpsters (general contractors – nothing hazardous).

Member Brooks questions Mr. McCauley on where they dump it (new site inside of steel mill), cleaning out of the dumpsters (water truck at landfill and dry dust they sweep), their other business location (in New Hope), their plans for this facility (to expand their business down into this area, first for landscaping jobs, and then for the dumpster business), and the use of their other facility to store dumpsters with materials longer than overnight.

Member Miles questions Mr. McCauley on washing of the dumpsters at the Southampton facility (they allow him to do that there as well).

Atty. Marlier questions Mr. McCauley if there is still stone and mulch on the property (stone and dirt, no mulch), and if he would be willing to move the stone and dirt off the property so that we are only dealing with the two trucks and dumpsters (yes).

Chief Steven Lowden, Chief of Falls Township Fire Company, gets sworn in. He testifies he's been involved with the fire company 30 years. In response to questions by Atty. Duffy, he states there are approximately 15 extremely hazardous sites within Falls Township. If emergencies arise at these locations, the Fire Company is responsible for mitigating them. The Fire Company would not allow any kind of hazardous materials or hazardous conditions to arise on its property.

Ms. Ransley asks if the Fire Company took care of the hazardous spill on its property back in October.

Chief Lowden states he was not aware of any spill on the property.

Board Questions to Chief Lowden

Member Kiernan asks if Chief Lowden is an expert in hazardous material.

Chief Lowden states no, but if he saw something like a spill or white dust in a dumpster, he would treat it like a hazardous material and call someone to investigate.

Atty. Duffy has no more witnesses.

Ms. Ransley calls *Daniel Kearney, 290 Yardley Avenue*, who gets sworn in.

Ms. Ransley asks if Mr. Kearney is aware of what's been going on at the site.

Mr. Kearney states that what started this was on Labor Day, when I was trying to have a picnic in my backyard, they were running a front end loader, crushing trash for like hours and that's when I started to complain. It was relentless. We have videos of them scooping out one dumpster with a big front end loader and the noise it was making for hours. That's when I began to complain. It's not just me, it's my neighbor who is 85 years old and has been living there since 1959 or so.

Ms. Ransley asks if Mr. Kearney saw the fuel spill from the backyard.

Mr. Kearney states yes, all along the American Legion property, the whole perimeter. We have a video of it.

Ms. Ransley asks if the trucks go up and down E. Trenton Avenue and Yardley Avenue late at night.

Mr. Kearney states yes, 9:30 at night. They cannot compare my trucks – I'm doing fuel deliveries right next store. Probably 50 people in the neighborhood right on the street for a customer, so it's not comparable. I'm doing a fuel service to homeowners and we are not out late at night.

Atty. Duffy asks a series of questions regarding Mr. Kearney's use variance request to allow him to store 3 oil trucks on his property, his use of Yardley Avenue, and the fact that in his zoning application he says his business will not be detrimental to the welfare of the neighborhood.

Tom Gerace 104 Main Street, gets sworn in, and testifies that he's been down at Waste Management landfill for the past 25 years. I've built all their landfill expansions; I've been around since the beginning of it.

Ms. Ransley asks if there is a wash facility.

Mr. Gerace states that there is absolutely no wash facility for trucks coming in or out of Waste Management facility whatsoever. There may be a water truck driving around to water the streets down.

Ms. Ransley asks about the tri-axle roll off.

Mr. Gerace states it was stated that his trucks carry 56,000 pounds. Tri-axle roll off trucks carry 73,280 pounds legally in the State of Pennsylvania.

Ms. Ransley recalls Chief Lowden to ask about the oil spill (he was not aware until last week of the spill), doesn't know if other members of the Fire Company were aware of the oil spill, and doesn't know if there was a clean up.

Atty. Duffy recalls Chris Carlin who testifies about liquid out of the back of Mr. Kearney's oil trucks. He explains that the oil spill was caused by rainwater running across the gulleys that caused the oil spill in question.

Discussion occurs between Mr. Carlin and Ms. Ransley around the oil spill, the oil truck going on Fire Company property (cell video was reviewed), the cease and desist order and why the front loader was not removed from the site.

Gerard Mullin, 16 Main Street, gets sworn in and states that this use should not be allowed, it would be disruptive to the neighborhood, and questions how enforcement of any stipulations by this Board would work.

Mr. Kearney testifies that none of these guys have a hazmat license. They know nothing about it. The "leak" from the oil truck was merely a roof drain on top which is ice build up, rain water so when you pull out it goes out down a drain tube. You don't call the Fire Dept. when you have a hazmat spill; you call Chem Tech.

Ms. Ransley asks Mr. McCauley if he knows what the is allowable weight over the Trenton Avenue bridge.

Mr. McCauley says there is no posted gross vehicle weight sign on that bridge. It is not restricted in any way possible. The only sign is "local delivery only" and so that is fine for me to drive over the bridge to get to this property.

Ed Brown, 10 Yardley Avenue, gets sworn in and says years ago a 5 ton limit was put on that bridge. That limit was removed because the trucks coming into Fallsington were tri-axle, delivering wood, mulch. They would come up Yardley Avenue and they were too big for the road. Mr. Harvie had the bridge checked out and the weight limit removed and those trucks were to use E. Trenton Rd. They were not to use Yardley Avenue so that's why there is not an official weight limit posted.

Public Comment

Beth Santangelo, 31 Main Street, opposes the application and states she was never notified of the hearing. She expresses concern about the weight of the trucks and the bridge, the traffic and using Tyburn Road where the trash trucks are precluded from going.

Janine Rushing, 94 Main Street, opposes the application and states she did not receive any notifications and found out from a flyer that was taped to her door. She expresses her displeasure with the dumpsters coming through the neighborhood and the possible danger to children. She also states the inability to know what's in a dumpster being stored overnight and the danger of groundwater contamination if the dumpster leaks. Fallsington does not need this type of business in this little hamlet.

Tom Gerace, 104 Main Street, opposes the application because the business will more than likely expand so many more than two trucks will be at the site and that he's ashamed that the Fire Company would even entertain a tenant like this.

Ed Brown, 10 Yardley Avenue, opposes the application because Yardley Avenue and Fallsington cannot support these trucks going up and down the streets.

Don Santangelo, 31 Main Street, opposes the application because even though he lives on Main Street, why the residents on E. Trenton Road should be burdened with the trucks going up and down their street. He has no problem with renting out the lot for a different use.

Kim Scarpiello, 121 Yardley Avenue, is an elected official in Falls Township and opposes the application. The school district is trying to get their busses out of Fallsington, so why would we want huge trucks with trash come into our community. The trucks tear up our streets.

Andrew Dell, 101 Main Street, opposes the application and states he never received notification of the hearing, but found out from a resident. The dumpster business is not the right fit and that there are other areas within Falls Township for this type of use.

Gerard Mullen, 16 Main Street, opposes the application and states he never received notification of the hearing. He says that one of the witnesses made mention of the rail yard as being there and noisy, as if to say that we should allow another business that makes noise. We can't do anything about the rail yard, but we can stop this use of the property.

Rick Johnson, 98 Main Street, opposes the application. It is directly across the street from the park and who wants to watch dumpsters going in and out all day when you are at the park. The bridge should be checked out before any decision is made, because if the bridge can't handle it, there's no question – they can't come down Yardley Avenue.

Joshua Reed, 11 Yardley Avenue, opposes the application and agrees with the neighbors' points of view. Trucks affect the stone foundations and the noise would be unacceptable.

Joe Tomlinson, 255 Yardley Avenue, a lifetime resident of Fallsington, opposes the application and expresses his concern with the bridge on Trenton Rd. He also expresses concern about the diesel fumes, and that this should not be allowed in Fallsington.

Fredericka Moffit, 3 E. Trenton Avenue, opposes the application and states we are a small town with small streets, with no sidewalks. We don't need dumpsters.

Amy Ransley states her opposition to the application based on the Falls Township zoning ordinances prohibiting storage of dumpsters. It is detrimental to our health, safety and welfare and they are noisy. She has a petition signed by the people who couldn't come tonight (marked as R-1) and a video (marked as R-2).

Kathy Mannon, 46 Main Street, lifetime resident, states her opposition to the application due to the increase in traffic (there's enough traffic with the busses), and the fact that Fallsington doesn't need dumpsters.

No further public comment.

Atty. Duffy makes his closing argument.

Member Henderson makes the motion that the application of Falls Township Fire Company #1 be DENIED.

Member Brooks seconds the motion.

All in favor 4-0. Motion carries. The application is DENIED.

Hearing adjourned 10:45 p.m.