

**FALLS TOWNSHIP
ZONING HEARING BOARD MEETING
NOVEMBER 12, 2013**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 10:35 p.m.

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

Members absent: Powers

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

Petition #7: Robert Damerjian, 1801 S. Pennsylvania Avenue, Morrisville, PA 19067; TMP #13-047-080-003; Zoned RD. Requesting a use variance to allow grinding of mulch on property. Section 209-32.4 and 209-77.

Atty. Sander states that the applicant has submitted a letter dated November 6, 2013, from Steven L Rovner, Esquire, requesting a continuance of this matter until December 10, 2013.

Member Henderson makes a motion to continue this matter until December 10, 2013.

Second by Member T. Miles.

All in favor 4-0. Matter is continued until December 10, 2013.

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 makes note that this petition is a continuation of the hearing of October 8, 2013 and ascertains that all members are present: Attorney Robert Gundlach, representing East Coast Propane; Attorney Lauren Gallagher representing the Township; Janet Morris, Doran Johnson, Dolores Taylor, and Falls Township Fire Company, residents who have party status.

Atty. Sander advises that there will be a special ZHB hearing on December 12, 2013, to hear the remainder of the East Coast Propane petition and verifies that all parties mentioned above will be in attendance.

Atty. Gundlach calls Ken Amey as his next witness.

Mr. Amey states that he is a self-employed land planning consultant, in the field since 1983. He specializes in municipal work, in studies of land use, zoning requirements, subdivision/land development requirements, and feasibility and fiscal studies. My offices are in Springhouse, Montgomery County.

Atty. Gundlach asks the types of clients he services.

Mr. Amey states that he represents public and private clients, and is currently the appointed planner in Montgomery, Hatfield, Plymouth and Cheltenham Township in Montgomery County. He is also the

zoning officer in Hatfield, Montgomery County. In the private sector, I represent individual property owners from national chains to developers.

Mr. Amey states he reviews and writes subdivision/land development ordinances for municipalities, including preparing amendments to those ordinances and rendering interpretations on the provisions within those ordinances. The curriculum vitae marked as an exhibit is correct.

Atty. Gundlach offers Mr. Amey as an expert witness. No objections.

Atty. Gundlach asks if Mr. Amey agrees with Ms. Kristin Holmes' testimony from the previous month regarding the description and interpretation of zoning for this property.

Mr. Amey states that he agrees with Ms. Holmes.

Atty. Gundlach asks for Mr. Amey's description of the applicant's proposed use.

Mr. Amey states that it is essentially proposing a propane warehousing and distribution center where there would be propane stored on the property, where it would be loaded onto smaller trucks for delivery to individual customers.

Atty. Gundlach asks if Mr. Amey has performed an investigation into the proposed use of the property for a propane storage facility in the HI-A zoning district.

Mr. Amey states that in his opinion it would be a permitted use. The purpose clause within the HI-A zoning ordinance (209-32.3.a) mentions fuel sales within the heavy industrial district. The principal permitted use in the HI-A zoning ordinance (209-32.3.b) and #3 is titled warehousing which is exactly what is being proposed by the applicant. And #7 lists uses, including fuel sales.

Mr. Gundlach asks if in his opinion the use of this property for propane and warehouse facility make good planning sense.

Mr. Amey says yes it does in the context of the ordinance. The ordinance was prepared with specific uses in mind, it is a heavy industrial district, and propane storage should be permitted in heavy industrial districts. The applicant can comply with all of the dimensional requirements of the ordinance. The area along Old Tyburn Road has a primarily industrial character (a few non-conforming residential properties). There are number of truck repair centers and other storage centers, there is natural gas fueling center to the east of this property. The area across Tyburn Road is a planned industrial center. The use is compatible with the surrounding area.

There is a small border of this property that abuts a manufactured home community district, but when that district was zoned for manufactured homes, the heavy industrial zoning was already in place. I would have to think that the Board took that into account when they put the manufactured home zoning in place.

Atty. Gundlach asks Mr. Amey to explain why he disagrees with the Zoning Officer's denial letter.

Mr. Amey states the controlling language of that section [in Zoning Officer's denial letter], would be basic or semi-finished chemicals. You need to get passed that test first before any of the other prohibitions would apply. So, if you are looking at what is prohibited, you have to determine if it is a basic or semi-finished chemical.

Propane is neither a basic nor semi-finished chemical. It is not a chemical that is used to be combined, finished, and processed with other chemicals to produce a product. Basic chemical is a chemical which is generally used in bulk and manufacturing to produce a finished product. Propane is already a finished product. Based on my research, propane doesn't pass the test of being a basic chemical.

Atty. Gundlach asks if that is a normal process in his job, to research terms and definitions.

Mr. Amey says yes, he has to understand the terms, in order to write ordinances.

Atty. Gundlach asks if he has any other reasons to support his opinion that propane warehousing and distribution is permitted in this zoning district.

Mr. Amey states that in sec. 209-32.3.(D)(1)(b) it refers to combustible gases (the basis for the denial letter). However, propane is not a combustible gas. Propane is transported, stored and delivered in a liquid form. It only becomes a combustible gas when it is exposed to oxygen and burnt within an appliance meant to burn propane.

Atty. Gundlach asks if he looked up a definition of combustible gas and fuel. What did you as a land planner determine the terms to mean?

Mr. Amey states that “fuel is a material such as coal, oil or gas that is burned to produce heat or power”. Propane is clearly a fuel. “Combustible gas is a gas that burns which includes the fuel gases, hydrogen, hydrocarbon, carbon monoxide or a mixture of these. A combustible gas is one that will mix when mixed with air or oxygen and ignited.” Those are the definitions. Because the propane, in the state that it is stored, delivered and transferred on this particular site is in a liquid form, it is not a combustible gas.

Atty. Gundlach states that you referenced in your letter marked as A-15, the Penna. Municipalities Code sec. 603.1. What does that section provide?

Mr. Amey states that section says that if an ordinance is ambiguous, the ambiguity has to be decided in favor of the landowner. If the Board feels that I haven’t made a convincing case, I have at least shown that the ordinance is at best ambiguous, and if it’s ambiguous, then the Board under the MPC needs to find in favor of the landowner.

Atty. Gundlach states that, in the alternative to its interpretation appeal, the applicant has requested a variance. Are there conditions peculiar to this property which creates an unnecessary hardship to the applicant that would necessitate the variance to allow the applicant to operate his proposed propane business?

Mr. Amey states there are unique conditions associated with the property in that the property is currently in disrepair and needs to be redeveloped. This is a particularly well-suited property for the proposed use. It is level property, it has good access, and the dimensional requirements can all be satisfied under the terms of the ordinance.

Atty. Gundlach states because of the circumstances and conditions, particularly the interpretation of the zoning ordinance, is possible to develop the property for this proposed propane facility?

Mr. Amey states that if the Board finds that they agree with Mr. Bennett’s interpretation, then the property could not be developed for this use. The hardship has not been created by the applicant.

Atty. Gundlach states that if the requested variance was granted to allow the use of the property for this propane facility, would this alter the essential character of the neighborhood or permanently impair the appropriate use or development of adjacent properties or be detrimental to the public welfare.

Mr. Amey states that this is an industrial area, purposely zoned heavy industrial by the Township. Most of the surrounding properties are developed in an industrial fashion and the industrial use on this site would be an appropriate use. All the other dimensional requirements required under the ordinance can be met by this applicant.

Atty. Gundlach asks if the residential development to the rear of the property was previously zoned as HI-A, before it was re-zoned?

Atty. Gallagher objects stating that the current zoning is relevant.

Atty. Sander rules to answer the question.

Mr. Amey states that yes, that property was zoned HI-A.

Atty. Gundlach asks if the granting of the requested variance represents the minimum variance that will afford relief and represent the least modification possible of the regulation at issue.

Mr. Amey states yes.

Atty. Gundlach asks if the granting of the requested variance is contrary to the public health, safety, welfare and general welfare.

Mr. Amey states no.

Atty. Gundlach states that the third item is the challenge of the substantive validity of sec. 209-32.3.D.(1)(b) of the zoning ordinance. If the zoning officer's interpretation is applied to the subject property, would that section be a valid restriction?

Mr. Amey states no, it would not be valid restriction. If the zoning officer's opinion is upheld, we have one section of the ordinance allowing a permitted use and another section of the ordinance taking it away. The ordinance itself would be fighting itself, and there would be an invalidity.

Atty. Gallagher cross-examination begins.

Atty. Gallagher asks if Mr. Amey is offering any opinion as a legal expert.

Mr. Amey says that is true, not a legal expert.

Atty. Gallagher asks if he has worked in the past with the Falls Township Zoning Ordinances and if so, in what capacity.

Mr. Amey states that yes he has, probably about a half dozen times in the past 6 or 7 years. I was working with developers on feasibility studies, so I was looking at raw ground and looking at feasibility for development or re-development.

Atty. Gallagher asks what the applicant proposes primarily is the storage of propane on this site.

Mr. Amey states storage and distribution. It is not storage statically, it is stored and then distributed to other locations.

Atty. Gallagher states that are four 30,000 gallon tanks that the applicant proposes. And from those tanks he would be filling large propane trucks with propane.

Mr. Amey states they would fill smaller trucks and taking those smaller trucks out for delivery.

Atty. Gallagher states that it is not the type of facility where I, as a customer, can go and fill up – correct?

Mr. Amey states yes, it is not a retail operation.

Atty. Gallagher states that in sec. A of the ordinance, the purpose of this district, and it includes “fuel sales at locations both advantageous to the industrial user and safely and aesthetically buffered from residential and other incompatible uses.” Of concern is the proximity to the residential uses with this particular zoning district. Would you agree with me that there is other industrial districts in the Township, that are just Heavy Industrial and not Heavy Industrial – A?

Mr. Amey states yes.

Atty. Gallagher asks that if you are incorrect as to whether or not propane is considered a basic or semi-basic finished chemical, would that change your opinion?

Mr. Amey states that it could change one aspect, but the opinion that I gave was based on two factors: (1) propane is neither a simple or semi-finished chemical, and (2) that it is not a combustible gas. They are both qualifiers under that section of the ordinance.

Atty. Gallagher asks that if you are incorrect about your opinion on both of those, then you are ultimate opinion as to whether or not this is a permitted use could change?

Mr. Amey states that it could.

Mr. Amey confirms that he is not an expert on propane or chemical engineering.

Atty. Gallagher states Mr. Amey testified there are unique conditions of this property so that the applicant cannot use it in conformity with the zoning ordinances.

Mr. Amey states that this property is unique in that it is well-suited for this particular use, and the interpretation that was offered by Mr. Bennett denies the applicant this use on a well-suited property.

Atty. Gallagher asks if the Board is to find that Mr. Bennett’s interpretation is correct and the applicant is therefore seeking a variance from this section, what is it about this property that makes it so that it cannot be used in conformity with the zoning ordinance?

Mr. Amey states that this property could be used for another permitted use in conformity with the zoning ordinance. That is not what this hearing is about. This hearing is about the propane storage and distribution at this property.

Atty. Gallagher asks if there are residential uses close to the property.

Mr. Amey states that there is a manufactured home community to the rear, as well as a few non-conforming residential properties next to the property.

Atty. Gallagher asks that any zoning code has to take into consideration neighboring uses.

Mr. Amey states yes.

Ms. Morris questions the witness.

Ms. Morris asks Mr. Amey to explain how this proposed use could not have a negative impact on the surrounding community.

Mr. Amey states that any distribution and warehousing use is going to have no negative effect on the surrounding community or the character of the area. We heard about very low volume of traffic onto Old Tyburn Road from this particular use. We heard that the tanks are situated as far away from the residential properties as possible, we’ve heard that the tanks and the entire facility will need to be

permitted by the State of Penna. and that's going to insure the safety. Once all of those things are in place, there is nothing that's going to alter the essential character of the area. The character of the area is Heavy Industrial, with a small amount of residential, relatively close by.

Ms. Morris asks about the affect on her property value.

Mr. Amey says he can't answer that.

Ms. Morris states that with regard to the traffic, only Old Tyburn Road was looked at and that if you walk 10 feet over there is a major highway.

Mr. Amey states that is your opinion, and I can't answer for the traffic engineer.

Mr. Johnson questions the witness.

Mr. Johnson asks how far "safely buffered" is.

Mr. Amey states that there is no specific distance spelled out in the ordinance. The ordinance, however, is designed with setback requirements, and if one follows the logical formation of the ordinance, then those setback requirements are established to provide that safe buffer. So, if you have a permitted use and your setback is as required by the ordinance, then you do provide that safe buffer that is required.

Mr. Johnson asks if the ordinance states how many feet the house would be safe.

Mr. Amey states that the ordinance says what the setback has to be. The drafters of the ordinance included the word "safety", but they didn't increase any setbacks for any particular uses. I have to just assume, therefore, that they felt that if the setbacks were met, that the safety would be provided.

Mr. Johnson asks when they were drafting the setbacks, would they be taking into account 120,000 gallons of liquid propane.

Mr. Amey states that he doesn't know what they thought, but they did provide for the use.

Mr. Johnson says he did a little research on liquid propane. Do you realize that liquid propane is a gas first as a by-product of drilling for oil and other similar things? It is then put under pressure and it becomes liquid propane. It is then released from pressure and becomes a combustible gas again. Were you aware of that?

Mr. Amey state yes he was.

Mr. Johnson states that basically it's a combustible gas because if it leaked at all, it becomes a combustible gas – correct?

Mr. Amey states yes, that if it leaked it would return to a gaseous state when mixed with oxygen.

Mr. Johnson states so it's combustible gas.

Mr. Amey states that occurs only when there is a leak. If the facility runs the way it's designed to run and the way it will be permitted to run, it will be stored in the liquid form and transported in the liquid form.

Mr. Johnson asks if he is aware that accidents happen.

Mr. Amey states absolutely.

Mr. Johnson states that capsen (sp???) is added to this so that's another chemical that is mixed with it.

Mr. Amey states that nothing is mixed with it from the time it arrives on this property until the time it leaves this property. There is no finishing taking place on this property.

Mr. Johnson asks if he was aware that within one mile of the property there are 1,000 homes with approximately 2,200 residents?

Mr. Amey states that he hasn't done that research, but it wouldn't alter my opinion.

Mrs. Taylor questions the witness.

Mrs. Taylor asks if you stated that the property was a level property.

Mr. Amey states that the bulk of the property is level. There is a rise on the east side of the property.

Mrs. Taylor asks what your definition of level is and how did you determine it was level?

Mr. Amey states that the bulk of the property is gently sloping, it's relatively level. In planning, when talking about properties that are level, it means that the property doesn't contain steep slopes. There is a rise that goes up to the area where the office trailer and garage are.

Mrs. Taylor asks if he is aware that the National Association of Fire Protection Agency states that propane should never be stored in an area that is lower than the surrounding area?

Mr. Amey states that he is not aware of that.

Mr. Heddon questions the witness.

Mr. Heddon asks if he defined the product as a combustible gas.

Mr. Amey states that I said it was NOT a combustible gas in the state that exists on this property.

Mr. Heddon asks what state is it on this property.

Mr. Amey replies it is in a liquid state.

Mr. Heddon asks if he knows the definition of a flammable liquid.

Mr. Amey states that he'll agree that this is a flammable liquid.

Mr. Heddon asks if a flammable liquid is prohibited in this zoning district or is it mentioned that it is accepted in this zoning classification.

Mr. Amey states that flammable liquid is not prohibited in this zoning district, so we would have to assume that it is permitted.

Mr. Heddon asks if he is familiar with the term BLEVE?

Mr. Amey says no.

Atty. Gundlach re-directs and asks if the buffering currently on the site will remain.

Mr. Amey explains that should the ZHB approve this petition, the next step is land development. Land development is the appropriate time to talk about buffering and additional landscaping. That is beyond the process we are in at the moment.

Atty. Gundlach questions Mr. Amey on his testimony under cross-examination by Atty. Gallagher regarding the semi-finished chemicals or combustible gases and that if it wasn't accurate, your opinion may change. Those terms that she references falls under "prohibited uses". Correct?

Mr. Amey that is correct.

Atty. Gundlach states you also rendered an opinion for "permitted uses" – correct?

Mr. Amey says yes.

Atty. Gundlach asks that if she somehow convinced you that your interpretations of those terms were not accurate, would it change your opinion as to the reasons why you think it is a permitted use.

Mr. Amey states that it doesn't change that it falls under the categories allowed as permitted uses, but it may change my opinion as to how the prohibited uses would be read.

Atty. Gundlach states that then would cause a conflict?

Mr. Amey states it would perhaps cause a conflict.

Atty. Gallagher re-crosses and asks what current use of the property is.

Mr. Amey states that currently it is vacant, but the last use was a central location for tractor trucks, repairs of tractor trucks and storage of dumpsters.

Mr. Heddon asks if the terms combustible and flammable are interchangeable.

Mr. Amey states that he knows there are distinctions, but I'm not an expert on fire or chemicals.

George Lamb is sworn in and testifies.

Atty. Gundlach verifies that George Lamb is the owner of East Coast Propane and has executed an agreement of sale to purchase the property. He asks him to describe his business.

Mr. Lamb states that he is in the propane warehouse distribution business. He services the community for propane use. He states that he's been in the business 3 years on his own and has his current business in Bensalem, PA. He continues that he has had no issues operating that business in Bensalem. He wants to grow his business, doesn't have enough space in his current location, and that's why he's trying to purchase this location.

Atty. Gundlach asks if he agrees with the testimony as given by Mr. Amey.

Mr. Lamb states yes he does.

Atty. Gundlach asks if the propane will stay in a liquid form at the location.

Mr. Lamb says yes it will.

Atty. Gundlach asks why he chose this location.

Mr. Lamb states that he did so because it's in an industrial location, there is a natural gas station put in the same zoning district right down the street from the property. I currently looked all over Falls Twp. because I know they do have a lot of industrial areas and it led me to this piece of property. I checked the zoning, it said heavy industrial, fuel sales.

Atty. Gundlach asks if the property is in central location for his customers.

Mr. Lamb states yes.

Atty. Gundlach asks Mr. Lamb to explain the daily operations that will occur on this property regarding his propane business.

Mr. Lamb states that my delivery trucks (bobtails) would load off the larger tanks and go out daily to service the customers in the area. At this time, I have 2 trucks, but I can't see more than 8 trucks in total.

Mr. Gundlach asks how the propane comes onto the property.

Mr. Lamb states that it comes in a liquid, in a tractor trailer.

Mr. Gundlach asks how often tractor trailers would come onto the property to fill your tanks.

Mr. Lamb states that two a week would be a lot, once the tanks are filled to their capacity.

Mr. Gundlach asks about the number of employees on the property.

Mr. Lamb states he would like to be a strong employer in the area to offer other jobs to people. Currently, we have four employees, but I would like to see it grow and offer something back to the community. We have an office girl, a garage mechanic, myself. I am the only driver in the bobtail at this time – the transfer truck.

Atty. Gundlach asks what time would the large tractor trailer trucks deliver the propane.

Mr. Lamb states normal business hours 8:00 a.m. to 5:00 p.m. Mondays through Saturdays, twice a week.

Atty. Gundlach asks what about the smaller trucks – when would they load?

Mr. Lamb states that it depends on how early they get back from deliveries. It's possible they could load and leave it for the next day or they could load that day. Winter hours could be a little longer, but usually from dawn to dusk.

Atty. Gundlach asks if he believes his use of the property for the propane business will disturb your adjacent neighbors.

Mr. Lamb states no, he doesn't believe it will. I wouldn't be here if I thought that. It's a heavy industrial area, it is surrounded by natural growth, there's a natural gas station a few blocks away. It's not heavy impact. The other businesses that were in there previously, the trash business, the equipment sales – they had a lot more traffic than I will.

Atty. Gundlach states that you think your business will be less of an impact than those two prior users.

Mr. Lamb states that yes, I believe that it will be less.

Atty. Gundlach asks if he is familiar with the CNG natural gas facility.

Mr. Lamb states that yes, it is an open to the public filling station for compressed natural gas, automobile and heavy trucks. Any vehicle that runs on the road could come in there at any hour of the day and fill up, unattended by anybody, just the person driving the vehicle.

Atty. Gundlach asks if that facility is located at 451 Tyburn Road, same road as this property?

Mr. Lamb states it's not the same road. This property is E. Tyburn or Old Tyburn which jogs off of Tyburn Road. It's in the same zoning district, however.

Atty. Gundlach marks photos as A-16, consisting of 15 photographs of the CNG facility. He asks Mr. Lamb (who took these photos) to explain the pictures.

Mr. Lamb states that the first photo is outside the fence on side street view of Tyburn Road, a close-up showing the storage tanks of the compressed natural gas. All the pipe work, the main gas valve and the huge supply lines are all outside the fence. The third photo is the island with one of the pumps (looks like a gasoline pump).

Atty. Gundlach states that the six photos show three tanks – is that where the natural gas is stored?

Mr. Lamb states yes.

Atty. Gundlach states that the 7th and 8th photos show what?

Mr. Lamb states that it is the supply lines coming into the property.

Atty. Gundlach asks if he is generally familiar with the CNG natural gas facility.

Mr. Lamb states he is familiar with it now, because of my interest in this property. It prompted me to believe that this is in the same zoning. I wanted to do the same thing, except with propane, because they are similar in their uses as a fuel. Looking at other properties within Falls and finding out that they weren't zoned for it, I thought that this heavy industrial with fuel sales was where I should make the application.

Atty. Gundlach asks if he is familiar with any other larger propane tank facilities within Falls Township.

Mr. Lamb states yes, at the intersection of Wilson and Johnson, of which I took photos.

Atty. Gundlach marks four photos as A-17. Please describe.

Mr. Lamb states that it shows a large propane storage tank similar to what I am proposing in more of a residential area than I would be coming close to doing along with children playing around it. What I want to point out is that this isn't the selling of fuel, but the way that this operation works, a smaller truck comes and fills this. So it is the exact opposite but the same danger, if not worse. There is a basketball court and kids playing, despite a "no playing" sign. It's been there for quite some time. It shows how close the mobile homes actually are to this propane tank.

Atty. Gundlach asks if he would be a good neighbor to the surrounding community if there were issues.

Mr. Lamb states yes, I would listen to the people. I know they are not happy with what I'm proposing to do, but I try to run a clean operation, I'm not a bad neighbor.

Atty. Gundlach asks about the landscaping at the edge of the property and would that landscaping remain intact.

Mr. Lamb states yes, including any such requirements through land development.

Atty. Gallagher cross-examination begins.

Atty. Gallagher asks if he would be purchasing the residential portion of the property as well.

Mr. Lamb states yes, and it is my intent to allow the residences to remain.

Atty. Gallagher asks about the previous use of property.

Mr. Lamb states equipment storage.

Atty. Gallagher asks the business address of his current location.

Mr. Lamb states 12 Beaver Street.

Atty. Gallagher asks what it is zoned.

Mr. Lamb states commercial.

Atty. Gallagher asks if he obtained any kind of variance or relief regarding that property.

Mr. Lamb states no.

Atty. Gallagher asks if his intent is to move his entire operation to the property in Falls Township.

Mr. Lamb says no, he will maintain both properties.

Atty. Gallagher asks how big the vehicles currently part of his business are.

Mr. Lamb states that a normal bobtail can hold 2,600 gallons of propane. The truck has a GVW (gross vehicle weight) of 33,000 pounds. The length of the truck is 26 foot from front to back. When the trucks are filled, they are less than 33,000 pounds.

Atty. Gallagher refers to A-17, the photos of the propane tank. Is that the size of the tanks you will be putting on your property?

Mr. Lamb states that it's similar in size, it's a large tank.

Atty. Gallagher states you want to put in four of these tanks – correct?

Mr. Lamb states yes.

Atty. Gallagher clarifies that is not the type of business where a consumer can go and fill up my propane tank.

Mr. Lamb states no retail.

Atty. Gallagher states that you are not offering fuel for vehicles?

Mr. Lamb states that originally we went in asking for that, and I pulled that back out of the application.

Atty. Gallagher states that you are putting in four propane storage tanks.

Mr. Lamb states that it's my normal, every-day operation of the propane business. My product comes in, my product goes out. It is transported by truck in, and I transport with my trucks back out to the end user.

Atty. Gallagher asks that with regard to the photos in A-17, if he is familiar as to the circumstances as to how the propane tanks got there and what the property is zoned.

Mr. Lamb states no.

Atty. Gallagher asks if he is aware of recent histories of explosions at facilities such as his proposed facility.

Mr. Lamb states he doesn't know, because I don't know if what you are referring to is the same type of facility as mine.

Atty. Gallagher asks if he is familiar with the explosion at the Teveaus, Florida, propane storage facility?

Mr. Lamb states yes.

Atty. Gallagher asks if he would consider that a very large explosion.

Mr. Lamb states that he would agree that it's a fairly large explosion.

Atty. Gallagher asks if an explosion of that magnitude would occur at the facility that you are proposing, that would put the residents that live near that facility in substantial danger – correct?

Mr. Lamb states that the explosion did not affect the large capacity tanks that were there. They did not explode. There was no damage to those tanks. It is a Blue Rhino overly large gas grill bottle filling facility. All they do is fill 20 lb. cylinders that we all use from Lowe's and Home Depot. There were hundreds of thousands gas grill bottles – that's what the explosion was. It was massive, it was all over the place, but all the safety devices that were installed on the large tanks (which I would be required to have) worked. The explosion did not affect the large storage capacity tanks. It was the 20 lb. cylinders that exploded.

Atty. Gallagher, but that doesn't answer the question ... if there were residents that were as close to that facility as the one here, they would have been in substantial danger – correct?

Mr. Lamb states that my facility is not the same as that facility.

Atty. Sander suggests that the parties move on in testimony. He states that if Atty. Gallagher has an incident concerning large tanks exploding, she can continue with her line of questioning regarding impact to neighbors that are close by.

Atty. Gallagher asks that if there were to be an incident and something were to happen to rupture one of the tanks, the residents that are going to be in a close proximity to this property would be in substantial danger – correct?

Mr. Lamb states he doesn't know how to answer that. My feeling is that the safety provisions that are put on the tanks, the distances and setbacks, are good.

Atty. Gallagher states that there's not 100% guarantee.

Mr. Lamb states that there's not a 100% guarantee on anything.

Atty. Gundlach objects to the questioning as all speculative. There is no evidence to show that what we are proposing isn't being designed in accordance with the applicable codes.

Atty. Sander agrees and states that he's going to sustain the objection because it's been asked and answered. Mr. Lamb doesn't want to say that it's absolutely a danger because he doesn't see it happening, and he doesn't want to speculate – and that's his answer.

Atty. Gallagher asks at your current location, how close to residents are you?

Mr. Lamb states that it's closer than this. The closest house would be 100 yards.

Atty. Gallagher asks how many houses are in close proximity to your current business location.

Mr. Lamb states that on the total street there are only five houses, and other crossroad would be four houses.

Atty. Gallagher asks how much propane you are storing at your current location.

Mr. Lamb states that he just has his trucks there, no large propane tanks. I don't have the room. At the present time, I have to go to another location to load my truck. Where I am at now, I don't have the storage to load my own trucks.

Ms. Morris questions the witness.

Ms. Morris asks that you currently have two trucks, but want to have eight.

Mr. Lamb states he indicated between two trucks and up to eight trucks. Currently, we have two delivery trucks, one service vehicle and the employees' cars. One delivery truck sits. I am the only driver which operates it.

Ms. Morris asks about loading up the eight trucks with propane for the next morning, thereby leaving them unmanned overnight and throughout Sunday – is that correct?

Mr. Lamb states yes.

Ms. Morris asks that it will be four large storage tanks and eight trucks sitting there – correct?

Mr. Lamb states that he doesn't have eight trucks.

Ms. Morris asks that based on your testimony your current location doesn't have any storage tanks and that you've been in business three years. So you don't have any experience running and operating these large tanks – this is new to you? You'll have to learn the safety and hire employees – correct?

Mr. Lamb states no that's not correct. I'm CPET certified. I load my own trucks right now from the same tanks that I want to have here with no supervision of the owner of those tanks. I'm trained and do this for a living.

Mr. Johnson questions the witness.

Mr. Johnson asks how large the tanks are in the pictures in A-16.

Mr. Lamb states he doesn't know.

Mr. Johnson asks if they are pipeline fed or truck fed.

Mr. Lamb states pipeline fed.

Mr. Johnson questions the picture in A-17 – does that liquid propane services that community?

Mr. Lamb states that provides vapor – not liquid.

Ms. Taylor questions the witness.

Ms. Taylor asks about the CNG facility – how many major roads lead into that?

Mr. Lamb states one – Tyburn Road.

Ms. Taylor says that Ms. Holmes in her testimony stated that there are three driveways at the property. Two of those driveways go to the houses, and only one driveway goes to the facility – correct?

Mr. Lamb states no that's not correct.

Ms. Taylor asks how large are the tankers that are going to come in and load the tanks? Can they make that turn, do you believe?

Mr. Lamb states yes they can.

Ms. Taylor asks how much do they weight?

Mr. Lamb states he doesn't know that answer. They are legal to be on state roads. Tractor trailers have come in and out of there. The last tenant had tractor trailers in there all day long.

Ms. Taylor says that in your original application you mention cylinders.

Mr. Lamb states new cylinders, no propane in those cylinders.

Ms. Taylor asks what he intends to do with those cylinders.

Mr. Lamb states that when he has a customer that calls for my service, I provide the cylinder to that customer.

Ms. Taylor asks where they will be stored.

Mr. Lamb states that they are new, it's warehousing. It's a new cylinder; it's not a cylinder that contains gas or anything like that. They'll be stored anywhere on the property.

Ms. Taylor asks if he is aware that OSHA and the National Fire Protection Agency states that they are not to be stored on low ground that has a liquid drainage on it.

Mr. Lamb states he doesn't know where she is getting that information from.

Mr. Heddon questions the witness.

Mr. Heddon states he is referring to A17 pictures (Breezy Acres). Do you see this as a static tank, where it services the community and occasionally they come in and refill it?

Mr. Lamb states that is correct.

Mr. Heddon asks if it feeds the trailers in that area.

Mr. Lamb states some not all.

Mr. Heddon asks when they refill, it's less of a traffic than a facility like yours.

Mr. Lamb states in his opinion no, because the action that is taken to fill that is just the flip action of what I would be doing. A smaller truck fills that tank multiple times, multiple hookups, multiple chances of an accident.

Mr. Heddon asks if he knows what the red label is on the side.

Mr. Lamb states it's a label for hazmat, 10-7-5, meaning #2 flammable gas.

Mr. Heddon states that this represents the designation that this is a flammable gas.

Mr. Lamb states yes.

Mr. Heddon asks with the 120,000 gallons that you have now, if you had the tanker come in, how many gallons would the tanker be up?

Mr. Lamb states 9,000 to 12,000 gallons.

Mr. Heddon asks what the total amount of gallons of material is at one time.

Mr. Lamb states it would be 80% off 120,000 gallons. The four tanks proposed would be total storage capacity.

Mr. Heddon asks if there is a definition in the industry of bulk storage. At what point does your industry consider it bulk storage?

Mr. Lamb states that one large tank could be considered bulk storage.

Mr. Heddon asks so you would consider 80% of 120,000 gallons storage would be considered bulk storage by industry standards?

Mr. Lamb states I guess you could have somebody argue that both ways.

Mr. Heddon asks if you are familiar with the term BLEVE?

Mr. Lamb states that in layman's terms if the heat was to get around that tank, the liquid inside could start to boil, cause an extreme pressure, and that tank could let loose. It has safeties in it to allow a certain amount out, but if let go long enough, it could happen.

Mr. Heddon asks if it would be his opinion, is there a lot of local fire departments that could handle something like that.

Mr. Lamb states yes, I went to the local fire company and they provided the information necessary for the state application. It meets the requirements. The local fire company actually filled out paperwork on responding time, amount of men available, etc.

Member Henderson questions the witness.

Member Henderson asks about whether the trained employees are going to be OSHA 40 HAZWOPER certified or are they just going to be DOT certified.

Mr. Lamb indicates they would have some DOT certification, but it would be CTEP that is recognized in our industry. With regard to OSHA, I am not required to have those certifications.

Member Henderson states that an OSHA 40 HAZWOPER has more to do with chemical spills.

Mr. Lamb states that he doesn't believe that the OSHA requirements apply to this application.

Member Henderson asks if the tanks will be all connected.

Mr. Lamb states correct.

Member Henderson states you will have valves in between. Will you have blind or a spectacle or anything?

Mr. Lamb states that he didn't design the proposed four tanks. It is designed by somebody that will be a witness at the following hearing to go over all the safety devices that are put in place. Everything about this will be approved by the State of Pennsylvania. They have all the different valves that have to be in place, all the re-certification yearly. I'm obligated to keep my employees trained and re-certified.

Member Dan Miles questions the witness.

Member D. Miles asked if, before you attempted to acquire this property, you reached out to the Township, Mr. Bennett or anybody else to see if this property was in the zoning district.

Mr. Lamb states that he reached out to Mr. Bennett about another property on Pennsylvania Avenue as an inquiry and he told me that it wouldn't be good there. Mr. Bennett gave me some insight on some areas that would work and suggested reading the zoning ordinances. I know that there are some areas that might apply better, like the steel mill area. That is big business down that end of town.

So, I read up on the zoning, saw the natural gas station up the street and thought that this property would fit perfectly, submitted the application and here's where we stand right now.

Member D. Miles asks that for your trucks you have to be haz-mat certified for gas – so any driver you brought on would need that certification – correct?

Mr. Lamb states yes.

Member Molle questions the witness.

Member Molle questions about A-17, where Mr. Lamb states that its vapor. How does that differ from your operation?

Mr. Lamb states that he said he services vapor. It's liquid, just like mine, until they start to use it. It is distributed as a vapor after it leaves the tank. It is exactly the same product that I have in my tanks; it's just that they elected to tie this to a whole community system up there that half the community doesn't use any more. It's just sitting there.

Member Molle asks if this is the size of the tanks you will have?

Mr. Lamb states that it's a little smaller, but it's a large capacity tank. The tank in the picture is considered a large capacity tank.

Member Tom Miles questions the witness.

Member Tom Miles asks as far as fire suppression, it will be able to meet Penna. standards. Will you go above and beyond the standards?

Mr. Lamb states that whatever it would take to make this fly to gain the confidence of the community. I would try to do whatever I could do. I know that not one corner would be cut as far as the initial install and the setup of the entire operation. If there's anything else that could be addressed that I could economically afford to do, I would be willing to do it.

Member Tom Miles asks if he could explain the red diamond on the propane tanks, in terms of its classification meaning.

Mr. Lamb states that he knows that he needs to carry that symbol on any of his trucks and on the property, but as to the exact meaning, he is unsure.

Atty. Sander frames a motion to continue this matter of East Coast Propane to Thursday, December 12, 2013, at 7:00 p.m. in this room.

Member Henderson makes the motion.

Member D. Miles seconds.

All in favor 4-0. Matter is continued until December 12, 2013.

Petition #6: Rio J. DeMaio, 35 Teaberry Lane, Levittown, PA 19054; TMP #13-023-049; Zoned NCR. Requesting a dimensional variance to construct an addition which does not meet the 10' side yard setback. Section 209-20 and Table 1.

Atty. Sander states that the applicant has requested that his petition be continued until December 10, 2013.

Member Henderson makes motion to continue this petition until December 10, 2013.

Member T. Miles seconds.

All in favor 4-0. Matter is continued until December 10, 2013.

Petition #2: John Grose (B and B Automotive, Inc.) 390 Lincoln Highway, Fairless Hills, PA 19030; TMP #13-008-051; Zoned HC. Requesting a special exception for the sale of used vehicles. Section 209-23.C.(6).

Allen Toadvine, Esquire, represents the applicant.

Lauren Gallagher, Esquire, states that the Township will be taking part in this matter. In response to Atty. Sander's question, she indicates that the Township is not taking any position with respect to the application at this time.

John Fenningham, Esquires states that he is an attorney representing Fred Peruzzi and Peruzzi Family Ltd. Partnership, a neighbor that was noticed by letter dated October 29, 2013. I am here to monitor the proceeding, but at the conclusion am requesting party status on behalf of the Peruzzi Family Ltd.

Partnership. I am also asking for a continuance to the next scheduled meeting so that I have an opportunity to hear what is happening tonight. I have just received a plan that relates to this application. I have made two written right-to-know requests to the Township and am awaiting a response and access to the files related to this proceeding.

Atty. Fenningham states that his client is not taking a position at this time, either in favor or opposed, to this application because he doesn't have enough information. He is also not available tonight in any event.

Atty. Sander asks if Mr. Peruzzi would possibly testify in this matter.

Atty. Fenningham states that he does.

Atty. Gallagher states that the Township is opposed to any continuances to tonight's hearing. The applicant is ready to move forward, notice has been given and the Township does oppose any continuation of this petition.

Atty. Fenningham states that he has no objection to the applicant going forward tonight, but did request this opportunity to continue to next month.

Atty. Toadvine states that on behalf of the applicant, I would object to party status on behalf of Mr. Peruzzi. However, I do understand the request for a continuance and will not oppose a request for a continuance because, quite frankly, there may be a problem with the neighbor notification. Notice was served on October 29, 2013 by first class mail to the neighbors within ¼ mile. The problem is that the notification letter does not contain the location where the applicant wants to put a used car lot. I will re-notify the neighbors within that ¼ mile area by the time of the next hearing.

Atty. Fenningham states that he believes the application does not seek the full scope of relief that is necessary. It has to do with Faulkner's owners of the site and being informed that there is a pending application for waiver of site plan review. I intend to propose to Mr. Toadvine that in the interim the notice be re-advertised to facilitate a second theory without further delay, because if I'm correct there may be a need for this Board to consider variance relief in addition to special exceptions.

Atty. Toadvine states that he is not aware of any variances necessary for this application. It is strictly special exception for the sale of used cars with related repair facility. The reason you need a special exception is because it's not new cars sales nor is it car sales by a factory authorized representative.

Atty. Sander asks Atty. Toadvine if he is aware that in late 2012, that the existing auto repair shop on this property was granted a variance to be the principal use on this property. So this property already has a principal use on it.

Atty. Toadvine states that is correct. My position on this is that you can have more than one principal use on a lot as is evidenced by our zoning ordinance. It speaks in terms of having more than one principal use in a building, let alone on a lot. Strip shopping centers that have mixed uses. One lot can have more than one principal use.

Atty. Gallagher states that if the applicant is joining in the request for a continuance, then the Township will withdraw its objection to the continuance.

Atty. Sander asks if any in the audience was looking to speak. Two people come up and get sworn in.

Toni Battiste, 218 Gloucester Road, Fairless Hills and Peter Stillitano, 386 Lincoln Highway, Fairless Hills are made aware that the matter will be continued until December 10, 2013.

Atty. Sander suggests to Atty. Fenningham that he request party status for Peruzzi at the December hearing.

Atty. Sander frames a motion to continue the matter of B&M Automotive/John Grose until Tuesday, December 10, 2013 at 7:00 p.m. in this room.

Member Henderson makes the motion to continue.

Member T. Miles seconds.

All in favor 4-0. Matter is continued until December 10, 2013.

Petition #3: Hilary Cloonan, 2 Tree Lane, Levittown, PA 19054; TMP #13-023-480; Zoned NCR. Requesting dimensional variance to install a 6' fence in the secondary front yard. Section 209-37.C.

Atty. Sander marks Exhibits ZBH 1 – 5.

Atty. Sander frames a motion to approve the application of Hilary Cloonan for a variance from Section 209-37.C(3) of the Falls Township Zoning Ordinance to allow a 6' vinyl privacy fence that is a visual barrier to be erected in the secondary front yard as depicted on the plans submitted with the application conditioned on the following: (1) the fence be located a minimum of 3 feet off the sidewalk; and (2) that prior to the erection of the fence, the applicant supply to the Township written permission from the Lower Bucks County Joint Municipal Authority for the placement of the fence.

Member Henderson makes motion to approve.

Member T. Miles seconds.

All in favor 4-0.

Petition #4: Shawn Keyte, 2 Village Pass, Levittown, PA 19054; TMP #13-019-111; Zoned NCR. Requesting a dimensional variance to install a 6' fence in the secondary front yard. Section 209-37.C

Atty. Sander marks ZHB Exhibits 1 – 5.

Atty. Sander frames a motion to approve the application of Shawn Keyte for a variance from Section 209-37.C(3) of the Falls Township Zoning Ordinance to allow a 6' vinyl privacy fence that is a visual barrier to be erected in the secondary front yard as depicted on the plan submitted with the application subject to the following conditions: (1) all terms and conditions of the sanitary sewer easement construction permit shall be met; (2) the fence should be located a minimum of 3' in from the sidewalk along the Village Lane; and (3) that there be no encroachment by the fence into the sight triangle.

Member Henderson makes motion to approve.

Member T. Miles seconds.

All in favor 4-0.

Petition #5: Dennis Costello, 100 Thornridge Drive, Levittown, PA 19054; TMP #13-023-494; Zoned NCR. Requesting a dimensional variance to construct an addition which exceeds the allowable impervious surface. Sec. 209-20 and Table 1.

Atty. Sander marks ZHB Exhibits 1 – 5.

The applicant is not the property owner; however, he is the father of the property owner and currently resides with them. The property owner is not present. After an off-record discussion, the ZHB decides to allow the petition to go forward based on the fact that the Zoning Hearing Board application was signed by the property owner.

Atty. Sander frames a motion to approve the application of Dennis Costello for a variance from Section 209-20.E and Table 1 of the Falls Township Zoning Ordinance to allow the construction of a 16' x 16' handicap wheelchair accessible bedroom addition to be built such that the maximum allowable impervious surface of 40% or 2,800 square feet may be exceeded a maximum of 104 square feet as depicted on the plans submitted with the application.

Member D. Miles makes the motion to approve.

Member Henderson seconds.

All in favor 4-0.

Petition #8: Mike and Stephanie Meszaros (Central Park Doggy Day Care), 8 Lincoln Circle, Fairless Hills, PA 19030; TMP #13-007-001-006; Zoned HC. Requesting a use variance to operate a doggy day care business. Section 209-23

Atty. Sander marks ZHB Exhibits 1 – 13.

Mr. Meszaros begins his power point presentation. He introduces Jackie Jordon, co-founder of Central Bark. Doggy day care is not a kennel where dogs are dropped off once or twice a year and have a hard time adjusting to their surroundings causing the dogs to be stressed. Doggy day care is an alternative to being locked up in a kennel all day, being left alone in a house to become bored and destructive, or having a dog walker take your dog out for 20 to 30 minutes. It is a place to bring your dog to play freely, learn to socialize and interact with other dogs and people.

Central Bark (a franchise) is an interactive day care for dogs where dogs are grouped into continually supervised play groups by temperament after they have passed an initial assessment, allowing the dogs to have contact with other dogs and people both indoors and outdoors. Our Central Bark will offer overnight stays for those dogs that have passed the initial assessment and are regular visitors to the day care program.

Grooming services will be provided and possibly canine cab pickup and drop offs services and obedience training. Regular hours are Monday through Fridays, 6:30 a.m. to 6:30 p.m. with extended hours during the week for training and varied hours on Saturdays and Sundays (depending on the number of sleep overs).

Outdoor play areas will be surrounded by six foot chain link fencing with vinyl privacy screenings and divided into play areas where dogs are separated by temperament. The dogs are never outside unsupervised.

Studies have been conducted for noise and odor indicating no adverse effects to surrounding neighbors.

Solid waste removal will be contracted out to a local waste removal company with containers on site for prompt removal from yard and building.

We will use the structures currently on the property and just modify the interior.

Member Tom Miles asks how many dogs are you intending to house?

Mr. Meszaros answers the maximum amount of dogs would be 60 dogs.

Member Dan Miles asks Mr. Bennett if there is an occupancy limit for dogs.

Mr. Bennett states no.

Ms. Jordon states that Central Bark regulates their occupancy of dogs by square foot. We determine based on the facility's size how many dogs can be housed safely.

Member Dan Miles asks if it will be used as a kennel; for instance someone goes on vacation and they want overnight services from a Saturday to a Saturday.

Mr. Meszaros indicates that they will provide that service (which they call a sleepover, not a kennel) if they are regular customers of Central Bark.

Ms. Jordon states the reasoning is that the dog is familiar with the program, handlers, and surroundings. The dog needs to attend day care at least once a week. Any dogs for a sleepover should have attended day care at least three times before they can do a sleepover.

Ms. Jordon states that with regard to dogs fighting, the dogs are never left alone, and should an incident occur, the handlers are trained to handle such situations. Also, if they feel a dog is not suited to their facility, the dog owners will be told and the dog will not return.

Member Tom Miles asks about training for the employees.

Ms. Jordan states that they have an extensive training program through their HR department.

Member Dan Miles states it's not going to smell, it's not going to be loud, and there's not going to be too much traffic – correct?

Mr. Meszaros states yes.

Tom Dunkerely, 343 Austin Drive, Fairless Hills gets sworn in (neighbor directly behind the site)

Mr. Dunkerely asks how big the outside area is and how many dogs would be out there at any one time.

Ms. Jordon states that the capacity is 60 dogs and so there could potentially be 60 dogs at one time.

Mr. Dunkerely asks if the dogs that do attend, do they have the proper shots.

Ms. Jordon states yes, and they have to be spaded or neutered.

Mr. Dunkerely states that he is impressed with their presentation. He states that he has a small dog that was quite a barker when he acquired the dog. He has trained the dog to bark less, so he understands what Central Bark is trying to do.

Atty. Sander frames a motion that the application of Mike & Stephanie Meszaros for a use variance from Section. 209-23.B of the Falls Township Zoning Ordinance be granted to allow a Central Bark Doggy Day Care use to operate at 8 Lincoln Circle, Fairless Hills, as depicted on the plans and all supporting information and testimony submitted with the application and at the hearing. The approval is granted subject to the following condition: that there be a maximum occupancy of 60 dogs.

Member Henderson makes motion to approve.

Member T. Miles seconds.

All in favor 4-0.

Adjourned 10:35 p.m