

**FALLS TOWNSHIP
ZONING HEARING BOARD
APRIL 10, 2018**

Hearing commenced: 7:00 p.m.

Hearing adjourned: 9:00 p.m.

Members present: D’Oria, Henderson, Kiernan (alternate), Miles, and Molle

Members absent: Brooks

Also present: Ed Neubauer, Code Enforcement Officer; Keith Bidlingmaier, Solicitor; Karen Browndorf, Court Stenographer

Extension Request – 1294 Bristol Pike, Morrisville, PA – Chris Balis

Chairman Miles states that he has a letter from Chris Balis requesting a one-year extension of his July 10, 2007 approval for a zoning variance due to the problem with the sewage line at the property.

Member Henderson makes a motion to approve the extension until July 20, 2019.

Member Kiernan seconds the motion.

All in favor 5-0. Motion for extension granted until July 20, 2019.

Petition #5: Arsen Drobakha, CONT’D FROM 3/13/18, 2/13/18, 1/9/18 and 12/12/17 HEARINGS, 1497 Old Bristol Pike, Morrisville, PA 19067; TMP #13-040-056; Zoned: MHC. Requesting a use variance to permit used car sales. Section 209-18.

David Shafkowitz, Esquire, states that he represents the applicant. Through some discussions with the Township, we will be amending the application to request an expansion of a non-conforming use on the property. In order to do that, the application will have to be re-advertised and are, therefore, requesting a continuance based on the above.

Member Henderson makes a motion to grant a continuance until the May 8, 2018 hearing.

Member Kiernan seconds the motion.

All in favor 5-0. Motion for a continuance until the May 8, 2018 hearing granted.

Petition #1: Beverly A. Mikuriya, M.D., 22 Fallsington-Tullytown Road, Levittown, PA 19054; TMP # 13-024-002; Zoned: NCR. Requesting a use variance to permit a physician office practice. Sections 209-41, 209-20 and 209-77.

Atty. Bidlingmaier marks ZHB Exhibits 1 – 7.

Beverly Mikuriya presents the application. There are two possibilities here. One is that the property be “grandfathered in” due to the fact that it has always been a commercial property. My father built the property more than 40 years ago. Since the last tenants left, I have tried to market the property as a commercial property through Craig’s List, ads in the Courier Times, and a realtor. The alternative would be a physician practice which would be a contribution to the area.

Board Questions

Discussion occurs on the type of practice (medical marijuana consultative), that the property is zoned residential (which is the reason for the denial), that it was an existing non-conforming use previously, that the applicant is seeing the types of patients that can receive prescriptions for medical marijuana.

Public Comment

John Fehr gets sworn in and states that he is not in support of the application as he doesn't feel this would be a good use for the area, there is no adequate parking, and there are other places within the Township better suited for this use.

Mr. Figerella, a friend of Dr. Mikuriya, (an educator and real estate broker), gets sworn in and lists the various ways he has tried to market the property. He gives Dr. Mikuriya's credentials (emergency room charge doctor), speaks to the fact that there are many patients that need medical marijuana (like Parkinson's, MS, HIV, glaucoma, cancer, etc.) and that she is a very respectable physician whose intent is not to create any kind of unnecessary trouble in this community.

Patty Crocker, a nurse for 34 years currently at Einstein Hospital, states that medical marijuana does have a place in society, names a few local physicians through St. Mary's that do prescribe medical marijuana.

Dr. Mikuriya makes a closing statement stating that she retired is an emergency room charge doctor when she was diagnosed with lymphoma. She has been doing this type of practice for 10 years in California.

Member Molle makes a motion that the application of Beverly Mikuriya be DENIED.

Member Kiernan seconds the motion.

All in favor 3-2, Henderson and D'Orio dissenting. The motion was granted to deny the use variance.

Petition #2: Arnie Lutt, 55 Virburnum Lane, Levittown, PA 19054; TMP #13-019-513; Zoned: NCR. Requesting dimensional variances to install an above ground pool in the secondary front yard and to allow an accessory structure encroaching into the 25 ft. setback from the property line in the secondary front yard and encroaching into the minimum distance of 15 ft. between buildings. Section 209-46.A, 209-20 and Table 1.

Atty. Bidlingmaier marks ZHB Exhibits 1 – 7.

Arnie Lutt presents the application. In order for me to place the pool away from the power lines and off the sewer easement, the only good location for the pool is in the secondary front yard. I would also like to place the shed on the existing concrete pad from the bomb shelter, but it is only 15 inches away from the house.

Discussion occurs about the benefits of attaching the garage to the house (footers would be required) but if he uses it as an accessory structure our residential code requires ½ inch gypsum on inside of the wall in the garage that faces the house. The bomb shelter currently there on top of the bomb shelter would suffice for the footers required if the garage became part of the house.

Member Henderson makes a motion that the application of Arnie Lutt for the use variance for Section 209-46. A, 209-20 and Table 1 of the Falls Township Zoning Ordinance be GRANTED to permit a dimensional variance to install an above ground pool in the secondary front yard and to allow an accessory structure encroaching into the 25 ft. setback from the property line in the secondary front yard and encroaching into the minimum distance of 15 ft. between buildings on the premises located at 55 Virburnum Lane, Levittown, PA 19054, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board, with the stipulation that ½ inch gypsum board be used on the accessory structure on the side closest to the house.

Member Kiernan seconds the motion.

All in favor 5-0. Motion carries.

Petition #3: Chad Moore and Elizabeth Nesbitt, 19 Tree Lane, Levittown, PA 19054; TMP #13-023-462; Zoned: NCR. Requesting dimensional variances to erect a fence in the secondary front yard and to erect an above ground pool in the secondary front yard which encroaches into the minimum distance of 15 ft. between buildings. Sections 209-37.C, 209-46.A and 209-46.E.

Atty. Bidlingmaier marks ZHB Exhibits 1 – 6.

Elizabeth Nesbitt presents the application. We cannot put the pool behind the house because of the electric lines and there is a 10 ft. sewer easement as well, so the best place to place the pool is in the secondary front yard. We'd also like to extend the fence into the secondary front yard to secure the pool.

Member Molle questions whether the fence is in the sight triangle (it is not).

No further Board questions.

No public comment.

Member Henderson makes a motion that the application of Chad Moore and Elizabeth Nesbitt for dimensional variances from Sections 209-37.C, 209-46.A and 209-46.E of the Falls Township Zoning Ordinance be GRANTED to permit dimensional variances to erect a fence in the secondary front yard and to erect an above ground pool in the secondary front yard, which encroaches into the minimum distance of 15 ft. between buildings on the premises located at 19 Tree Lane, Levittown, PA 19054, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

Member Molle seconds the motion.

All in favor 5-0. Motion carries.

Petition #4: James Chiarello, 32 Howley Drive, Morrisville, PA 19067; TMP #13-054-224; Zoned: NCR. Requesting a dimensional variance to erect a wall in the secondary front yard. Sections 209-20.C(1) and 209-37.B.

Atty. Bidlingmaier marks ZHB Exhibits 1 – 8.

James Chiarello presents the application. He stated that he did not believe he needed a permit and was approached by Code Enforcement when the wall was nearly complete. He's been working with the Township since the fall of 2017 in trying to get this matter resolved. [The wall was constructed on the Township's right of way.] He is hopeful he can obtain a variance to move the wall back onto his property so it is not on the Township easement. Also a portion of the wall was built on my neighbor's property which has been corrected.

Member Molle asks how far does the wall need to be moved back (14 inches).

Discussion occurs on what would happen if the wall was left on the right of way (an agreement between the property and the Township would need to be negotiated).

Public comment

Mrs. Bossman, next door neighbor of Mr. Chiarello, the neighbor on whose property the wall was improperly placed, expresses her concern with the grading on her property now that the wall has been removed and wants that portion of her property to be restored.

John Bossman, son to Mrs. Bossman, gives the history of the property and expresses his concern about the flow and drainage of the water and “tremendous” amount of soil brought in to support the wall.

Mike Bossman, son to Mrs. Bossman, expresses similar concerns as his brother about the drainage and flooding of his mother’s property (Bossman Exhibits 1 & 2).

Discussion with Board members occurs about the adjoining property owner to Mr. Chiarello putting in an apron on his property with the previous owner’s permission. Concern also is expressed by Mr. John Bossman that the foundation of the wall remains even though the top portion of the wall was removed.

Mr. Chiarello makes a closing statement.

Member Henderson makes a motion that the application of James Chiarello for a dimensional variance of Section 209-20.C(1) and 209-37.B of the Falls Township Zoning Ordinance be GRANTED to permit dimensional variances to erect a wall in the secondary front yard at the premises at 32 Howley Drive, Morrisville, PA 19067, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board, contingent upon having the stone base removed from the Bossman property and soil /grass seed applied to the corner as necessary.

Member Molle seconds the motion.

All in favor 5-0. Motion carries.

Petition #6: Milex Prop., LLC, 300 W. Trenton Avenue, Morrisville, PA 19067; TMP #13-035-027; Zoned: NC. Requesting a dimensional variance to permit fewer parking spaces than required. Section 209-42.H(9).

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

Kristin Holmes, civil engineer on the project, presents the application. The property today contains an existing two story office building with associated parking and driveway. The proposal is to construct a new 4,800 sq. ft. office building and parking lot expansion so that there would be two office buildings with a total of 37 parking spaces with the existing driveway to remain with access to West Trenton Avenue.

The request before the Board is a variance from Section 209-42.H(9) to permit less than the required number of parking spaces for an office use. The requirement for an office use is 6 spaces per 1,000 sq. ft. of gross floor area. Our plan indicates 4 spaces per 1,000 sq. ft. The new building will have auxiliary garage spaces within it for the tenants of that office space which is 10 additional parking spaces that are not identified within the 37 parking spaces. The total would be 47 total parking spaces.

The unique shape of the lot is a hardship not created by the applicant and the granting of this variance would not alter the essential character of the neighborhood.

Member D’Oria asks about stormwater issues (if approved, the project would need land development).

No public comment.

Member Henderson makes a motion that the application of Milex Prop. LLC for a dimensional variance from Section 209-42.H(9) of the Falls Township Zoning Ordinance be GRANTED to permit fewer parking spaces than required at the premises located at 300 W. Trenton Avenue, Morrisville, PA 19067, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

All in favor 5-0. Motion carries.

Petition #7: Old Lincoln Hwy Partners, LLC, Old Lincoln Highway, Morrisville, PA 19067; TMP #13-028-021; Zoned: LI. Requesting dimensional variances to erect a fence in the front yard (Section 209-34.E) and construct a stone storage yard, contractor office and outside storage which is over the allowable impervious coverage (Section 209-27.F).

Atty. Bidlingmaier marks ZHB Exhibits 1 – 5 and Applicant Exhibit A-1 (proof of neighbor notification)

James Prokopiak, Esquire, presents the application. He introduces Austin Meehan, III as a partner of Old Lincoln Hwy Partners and President of General Asphalt. General Asphalt will be operating at this site and has been doing work in the Township for many years. They have been using this property for a number of years and have just purchased the property. We want to increase the impervious surface up to 80 percent (where 60 percent is allowable) and to place a chain link fence with screening in the front yard to secure the property and their vehicles.

Board questions center on types of materials being stored there (short term storage for jobs that they do), relocating of the PECO gas main (not necessary) and PECO pole (yes would be relocated), and stormwater management issues due to impervious coverage (will be stone storage yard).

No public comment.

Member Kiernan makes a motion that the application of Old Lincoln Highway Partners LLC for dimensional variances from Sections 209-34.E and 209-27.F of the Falls Township Zoning Ordinances be GRANTED to permit dimensional variances to erect a fence in the front yard, construct a stone storage yard, contractor office and outside storage on the premises located at Old Lincoln Highway, Morrisville, PA 19067, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

Member Molle seconds the motion.

All in favor 4-1, Henderson dissenting. Motion carries.

Petition #8: Paul Burns, 218 Lincoln Highway, Fairless Hills, PA 19030; TMP #13-007-006; Zoned: HC. Requesting a dimensional variance to install bollards in the front yard. Section 209-23.G and Table 4.

Atty. Bidlingmaier marks ZHB Exhibits 1 – 5 and Applicant Exhibit A-1 (proof of neighbor notification)

Bernie Callaghan, Esquire, presents the application. We are requesting that bollards be installed on the outside of the parking lot in the front yard.

In response to questions by Mr. Callaghan, Mr. Paul Burns testifies that he acquired the property last year, the business is motor vehicles sales and service and that they want to install bollards to prevent theft and damage to his vehicles.

Board Questions

Member Kiernan asks if placement of the bollards would prohibit emergency vehicles from accessing the property (no – there is an opening at the north end of the lot)

Discussion occurs regarding the distance of the bollards to the road (bollards currently there are 5 ft.).

Member Henderson makes a motion that the application of Paul Burns for a dimensional variance from Section 209-23.G and Table 4 of the Falls Township Zoning Ordinance be GRANTED to permit a dimensional variance to install bollards in the front yard on the premises located 218 Lincoln Highway, Fairless Hills, PA 19030, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board with the condition that the bollards not be any closer than 4 ft. from the right of way on Lincoln Highway.

Member Molle seconds the motion.

All in favor 5-0. Motion carries.

Hearing adjourned 9:00 p.m.