

**FALLS TOWNSHIP
ZONING HEARING BOARD MEETING
MARCH 11, 2014**

Meeting commenced: 7:00 p.m.

Meeting adjourned: 8:50 p.m.

Members present: Brooks, Henderson, Lawson, D. Miles, Powers

Members absent: Molle

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

Petition #1: Sharon Riddle, 17 Nearwood Road, Levittown, PA 19054; TMP #13-042-147; Zoned NCR. Requesting a dimensional variance to construct a rear addition which encroaches into the minimum 10' side yard setback and the minimum 20' rear yard setback. Section 209-20 and Table 1.

Atty. Sander marks ZHB Exhibits 1 – 4.

Shed is being removed.

No public comment.

Member Miles makes a motion that the application of Sharon Riddle for variances from Section 209-20(E) and Table 1 of the Falls Township Zoning Ordinance be **GRANTED** to allow the construction of a 750 sq. foot (27' by 28') addition to the rear of the existing house on the property such that it encroaches no more than 5' into the required 20' rear yard setback and such that it encroaches no more than 2' into the required 10' side yard setback, as depicted on the plans submitted with the application and the testimony presented to the Zoning Hearing Board.

Member Powers seconds the motion.

All in favor 5-0.

Petition #2: Bucks Land Development Co. LLC (Kenneth Lee), 8545 New Falls Road, Levittown, PA 19054; TMP #13-018-002; Zoned NCR. Requesting a use variance to allow a retail pharmacy. Section 209-20(B).

Atty. Sander marks ZHB Exhibits 1 – 3 and A-1 (proof of neighbor notification).

No public comment.

Member Powers makes a motion that the application of Kenneth Lee for a use variance from Section 209-20(B) of the Falls Township Zoning Ordinance be **GRANTED** to allow a retail pharmacy use on the property, all as depicted on the plan and testimony presented to the Zoning Hearing Board. This approval is granted subject to no conditions.

Member Miles seconds the motion.

All in favor 5-0.

Petition #3: Superior Motor Service, Inc., 218 Lincoln Highway, Fairless Hills, PA 19030; TMP #13-007-006; Zoned HC. Requesting a special exception for the sales of used automobiles and a variance for encroaching into the minimum 200' front yard setback. Sections 209.23.(C)(6), Section 209-23.(D)(5), Section 209-23 and Table 4.

Atty. Sander marks ZHB Exhibits 1 – 3 and A-1 (proof of neighbor notification)

Michael Bradley, Esquire, represents the applicant.

Atty. Sander states that as part of the relief, which the ZHB does not have jurisdiction to hear, is a conditional use and Atty. Sander assumes that the applicant has filed a conditional use application with Falls Township for approval by the Board of Supervisors.

Atty. Bradley indicates that would be the next step after receiving zoning relief.

Atty. Sander clarifies that the applicant is seeking a special exception from Section 209-23(C)(6) to permit the sale of used vehicles, other than those by an authorized factory dealer, and a variance from Section 209-23(G) to allow a front yard setback from U.S. Rte 1.

Atty. Bradley states that is correct. He then gives a brief history of the site. He states that the site plan indicates that the applicant wishes to put in 17 spaces for the sole purpose of the sale of used cars. The applicant will go through Harrisburg to get the proper authority in order to sell the used cars and will market the cars pursuant to state law and comply with all the laws PENNDOT requires with regard to used car sales. The applicant seeks permission to allow the movement of the fence and to put in the 17 spaces for the used cars. Parking for customers will not be an issue since it is approximately a 5 acre site.

Atty. Gallagher states that the Township is requesting party status with regard to this application and would ask that if the Zoning Hearing Board is inclined to grant any relief that it be subject to one condition. That one condition is that any grant of the special exception would be limited to just the 17 vehicles offered for sale on the front of the property at any given time, with no expansion of that number. The other item that the Board of Supervisors would like to confirm is the previous conditions that were placed on the property by the Zoning Hearing Board on April 16, 2012 remain intact.

Atty. Bradley states that he has discussed this with the Township and has no objections.

Mr. McCoy gets sworn in and states, in response to Atty. Sander's question about trucks being sold, that small cars, compact SUVs and an occasional pickup truck would be sold. Nothing larger than a class C type vehicle would be sold (no tractor trailers, buses, campers or RVs).

Member Lawson asks if the 17 cars would be in the proposed area only, and not spread across the front of the property.

Atty. Gallagher states that is correct.

Atty. Bradley states that the State requires that the lot be clearly set off on the property.

Public Comment

Brian Binney, Chairman of the Falls Township Planning Commission, gets sworn in.

On January 24, 2012, the applicant appeared before the Falls Township Planning Commission for a conditional use to conduct his towing business. At that hearing, the applicant was asked directly whether he intended to sell cars and the answer was no. There were certain recommendations given as to the storage of the vehicles, and Atty. Gallagher has mentioned the limitations regarding parking in the back. If they had

come before the Planning Commission with their intent of selling used cars, there would have been other conditions requested by the Planning Commission. Everybody knows that Rte. 1 is like a big paved parking lot. As applicants appear before the Planning Commission, we are mindful of this fact. We would have requested that they put curbing in, an island and sidewalks.

Also Section 209-23(H)(1) of the Zoning Code allows, in highway commercial districts, for multiple uses to be on the same property. However, multiple uses have to demonstrate that they can be subdivided and operate independently of each other. I would suggest that before you grant a variance, you require the applicant to show you that they can do that and, as Atty. Gallagher noted, keep the conditions that were placed on the applicant previously. I personally see this as an attempt to circumvent the previous conditions that were placed on the applicant.

Atty. Sander states that Section 209-23(H)(1) says that a lot may contain more than one permitted **structure** provided that each principal structure is located in a manner which will allow the possibility of subdividing the lot. Atty. Sander asks if there is more than one principal structure proposed.

Atty. Bradley states no, there is only one principal structure.

No other public comment.

Atty. Sander frames a motion that the application of James McCoy and Superior Motor Service, Inc. for a special exception from Section 209-23(C)(6) and a variance from Section 209-23(G) be **GRANTED** to allow the sale of used vehicles other than by an authorized factory dealer and to allow a front yard setback of no less than 5' from U.S. Rte. 1 as depicted on the plans and the testimony presented to the Zoning Hearing Board subject to the following conditions: (1) there will be no more than 17 cars for sale at any one time on the property, all of which will be parked at the proposed fenced-in area in front of the property; (2) the approval is subject to all provisions of the April 16, 2012 Zoning Hearing Board decision which will be attached to the ultimate written decision and incorporated therein by reference; (3) the hours of operation for the auto sales use will be Monday through Saturday, 8:00 a.m. to 9:00 p.m. and closed Sunday; and (4) the applicant must obtain conditional use approval from the Board of Supervisors.

Member Miles makes motion to approve.

Member Brooks seconds the motion.

Member Henderson asks the applicant if they understand and agree to all the conditions. They do.

All in favor 5-0.

Petition #4: GPNJ Associates, L.P., (Mercer Court) 166-168 Lincoln Highway, Fairless Hills, PA 19030; TMP #13-005-001 and TMP #13-005-002; Zoned HC. Requesting a variance to allow homes to be located within 20 feet of the guest parking area and to allow decks on the homes on the property. Section 209-42(H)(2), Section 209-34 and 209 Attachment 7 (a/k/a/ Table 4).

Atty. Sander marks ZHB Exhibits 1 – 3.

Atty. Sander states that the relief being requested are variances to allow proposed units #40 and #45 to be located no less than 11' from a guest parking area where 20' is required and to allow decks to be attached to the rear of each proposed home and encroach into the required 35' rear yard setback.

Kim Freimuth from Fox, Rothschild represents the applicant and introduces Pam Northrop from GPNJ Associates (the developer) and Christy Flynn from Ryland Homes (the builder).

Both are sworn in.

Atty. Freimuth gives a brief history of the site. She states that the proposed units #40 and #45 will be within 13' from the guest parking area and that would require a variance from Section 209-42(H)(2). The second request is to seek a variance from Section 209-34 and Table 4 to allow decks on the rear of all the townhomes.

With respect to units #40 and #45, the initial marketing completed by Ryland Homes shows that most buyers would prefer the larger 22 foot wide townhouses as opposed to the 20 foot wide townhouses. As a result, we are proposing that 8 of the units (units #36 to #39 and #46 to #49) be modified from a 20' wide townhouse to a 22' wide townhouse. This would allow a 2 car garage on these units, which buyers would prefer. This would result in units #40 and #45 being pushed back 13' from the guest parking lot as opposed to the 21' currently shown on the plan.

With respect to the decks, the marketing by Ryland Homes indicates that most of the buyers would like to have a deck in these townhomes. The kitchens are on the second floor and people prefer to have their grill and their outdoor seating area off the kitchen. In addition, the applicant wants to have conformity so that all the decks are of the same material. They don't want the individual homeowner coming one at a time seeking relief for the deck. The decks would intrude into the required yard and building setbacks up to 8'. None of the decks are to intrude into the 20' rear yard buffer.

Member Lawson asks if the homeowner's association would control the type and material for the decks.

Atty. Freimuth states yes.

Member Henderson asks what the dimensions are for the decks.

Atty. Freimuth states 8' x 20' or 8' x 22'.

Member Henderson asks what the height is for the rear yard fence.

Ms. Northrop states that the boundary fence is 6'.

Member Henderson states that on units 13-20, how high is that deck going to be above the ground.

Atty. Freimuth responds approximately 8 to 9 feet.

Ms. Northrop states that there have been no neighbor conflicts. We did limit the lighting at the back of those houses.

Atty. Gallagher is requesting party status on behalf of the Township and is not taking a position on the application. However, it is the Township's request that if the relief is granted, the applicant will be submitting an amended final plan for the Board of Supervisor's consideration. The Township also wants to ensure that the construction of the decks, if approved, is consistent with all applicable building and fire codes. The Township does not have an objection to the application itself.

Public Comment

Brian Binney states that the applicant has been through the planning process and the applicant and Planning Commission went to great lengths to make sure these units conform. In fact, there was a lengthy discussion about the setback from the buildings. This seems like an attempt to circumvent the previous approval. The applicant says that they have unique circumstances which will require them to get these variances. They have an approved plan. They should build the property according to those plans. They have zero hardship. When I look at the list of reasons for the variances, marketability and greed aren't on there. The bottom line is they want to make the houses bigger so they can make more money. The argument about the houses having to be set back so far because of the sidewalks, that's a requirement of an ordinance. It is required

from everybody who builds. If they remove a couple of buildings, they could easily conform, but they don't want to do that. This hardship, in my opinion, is entirely of the applicant's doing.

Ms. Northrop states that it's not marketability or greed. We started this process 3-1/2 years ago. We thought that the patio on the plan would be sufficient. Then when we bought Ryland Homes on board, they shared with us that the 2 car garages are more desirable.

Mr. Binney comments that they can build it the way the plan states – they are choosing not to build it that way.

No more public comment.

Atty. Sander frames a motion that the application of GPNJ Associates, LLC for variances from Section 209-42(H)(2), 209-34 and Table 4 of the Falls Township Zoning Ordinance be **GRANTED** to allow proposed units #40 and #45 to be located no less than 13' from a guest parking area where 20' is required, and to allow decks to be attached to the rear of each proposed home and encroach no more than 8' into any required setback, as depicted on the plans and supporting documentation submitted with the application and the applicant's testimony before the Zoning Hearing Board. The approval is granted subject to the following conditions: (1) there shall be no decks encroaching into the 25' buffer yard; (2) the applicant shall obtain approval of an amended final plan by the Board of Supervisors; and (3) all decks will be constructed consistent with all requirements of the applicable building code.

Member Miles makes the motion to approve.

Member Brooks seconds the motion.

All in favor 3-1, Henderson dissenting; Powers absent

Adjourned 8:50 p.m.