

**FALLS TOWNSHIP  
ZONING HEARING BOARD  
JANUARY 10, 2017**

**Hearing commenced:** 7:00 p.m.

**Hearing adjourned:** 8:50 p.m.

**Members present:** Brooks, D’Oria, Henderson, Miles, Molle

**Members absent:** None

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

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**REORGANIZATION OF THE BOARD**

Chairman:	Daniel Miles
Vice Chairman:	Colin Henderson
Secretary:	Scott D’Oria
Solicitor:	Keith J. Bidlingmaier, Esquire
Court Reporter:	Karen Browndorf
Date/ Time of Meetings:	2 <sup>nd</sup> Tuesdays at 7:00 p.m.

**Petition #1: Extension letter request – Falls Township Fire Company #1, 310 Yardley Avenue, Fallsington, PA 19054**

Chairman Miles states that this petitioner has sent a letter to Keith Bidlingmaier, Esquire, dated January 10, 2017, requesting a continuance until next month due to the lack of proper notice to the neighbors.

Atty. Bidlingmaier also states that part of the letter grants the Zoning Hearing Board an extension for hearing this matter under the Municipal Planning Code. Atty. Bidlingmaier marks the letter as ZHB Exhibit 1.

Member Molle makes a motion to accept the continuance request.

Member Henderson seconds the motion.

**All in favor 4-0. Motion carries. Petition continued until February 14, 2017 at 7:00 p.m.**

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**Petition #2: Peruzzi Family Limited Partnership, 140 Lincoln Highway, Fairless Hills, PA 19030; TMP #13-004-092 and #13-004-092-001; Zoned: HC. Requesting dimensional variances to allow a temporary sales/office trailer and ADA compliant ramp. Section 209-23.G and Table 4.**

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

Joseph Blackburn, Esquire presents the application. In early 2016 the property, which is currently approved with an existing Mazda dealership, required an application before this Board in order to seek certain dimensional variance relief to permit the building expansion of an approximately 7,400 sq. ft. pursuant to a national rebranding campaign from the Mazda corporate headquarters. Zoning relief was granted on August 16, 2016 and that application proceeded to land development, where it received final land development approval under Resolution 2016-29.

At that time, it was believed that the existing Mazda dealership could retain use of its existing facilities while building the expansion. Mazda corporate has since indicated that the existing structure would not be safe for employees or customers to occupy or use during the renovation process.

As a result, we are here requesting relief in the form of a variance from Section 209-23.G dealing with front yard setbacks in order to permit a temporary sales trailer which would be serviced with an ADA compliant ramp to be located in the front yard. The front of the property is the only part of the property with any remaining useful space. The existing structure is in the middle of the property, and the expansion that was approved in 2016 encompasses both side and rear yards. Therefore, the front yard is the only useable space to place the trailer. The trailer is temporary and is only proposed for the term that is necessary to not use the existing structure.

Rick Borie is sworn in and testifies he is project manager for Peruzzi, is familiar with the project, and agrees that Atty. Blackburn's testimony is true and correct.

### **Board Comment**

Member D'Oria asks when the project will be completed.

Atty. Blackburn states that the expansion will take approximately 6 months – the end of June would be our estimate.

Chairman Miles asks if you are tying into the existing sanitary sewer system.

Atty. Blackburn says yes.

### **Public Comment**

*John Bossman* states he lives on Austin Drive and expresses his displeasure with the existing facility and the way that the lights shine into not only his yard, but his house as well. The light is blinding and dangerous.

No further public comment.

Member Henderson makes a motion that the application of Peruzzi Family Ltd. Partnership for dimensional variances from Section 209-23.G and Table 4 of the Falls Township Zoning Ordinance be GRANTED to allow a temporary sales office trailer and ADA compliant ramp at the property located at 140 Lincoln Highway, Fairless Hills, PA 19030, 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 4-0. Motion carries. Temporary trailer is approved.**

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**Petition #3: CalAtlantic Group, Inc., 166-68 Lincoln Highway, Fairless Hills, PA 19030; TMP # 13-005-002-35 (164 Mercer Court); #13-005-002-36 (162 Mercer Court); #13-005-002-37 (160 Mercer Court) ; #13-005-002-38 (158 Mercer Court); #13-005-002-39 (156 Mercer Court); #13-005-002-40 (154 Mercer Court); #13-005-002-45 (110 Mercer Court); #13-005-002-46 (108 Mercer Court); #13-005-002-47 (106 Mercer Court) ; #13-005-002-48, (104 Mercer Court); #13-005-002-49 (102 Mercer Court); and #13-005-002-50 (100 Mercer Court). Zoned: HC. Requesting dimensional variances to permit the building containing units 45 through 50 to be located closer than twenty feet from the building containing units 35 through 40. Section 209-23 and Table 4.**

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

Joseph Blackburn, Esquire presents the application. In 2011, the then owner of Mercer Court submitted to this Board an application for certain zoning relief, the extent of which is somewhat in question. It is our belief that the extent of the zoning relief encompassed the relief for which we are here tonight, particularly relief from Table 4 to permit a minimum building separation of less than 20 feet. The plans submitted with the application show Units 35 through 40– they do not currently have decks. Units 50 through 45 are currently in place and some of them have decks in the rear. It is the separation of these units (45-50 and 35-40) that is the subject of our request.

As noted in 2011, it is our belief relief from the applicable provisions of the zoning ordinance was requested and granted to permit the distance between those units to be less than twenty feet. In 2014 when building permits were submitted, the Township determined that the relief granted in 2011 did not encompass the separation between those buildings. As a result in 2014, relief was requested and granted from this Board which was intended to address the separation between the building Units 35-40 and 45-50.

In early 2015, the project came under the ownership of the current ownership, CalAtlantic, who subsequently proceeded to build out the project. All units have been constructed with the exception of Units 35-40 and all units have been sold. We are only dealing with Units 35-40.

The applicant, believing the necessary relief was in place to construct those units, submitted building permit applications which were denied based on the lack of relief from Table 4 to permit the building to be located less than twenty feet from an adjacent building.

We are requesting relief from Table 4 to permit the decks on the rear of Units 35-40 to be less than twenty feet from the decks on Units 45-50.

Mr. Kearney testifies that he is vice president of operations, is familiar with the Mercer Court project, and agrees with Atty. Blackburn's presentation.

### **Board Comments**

Member D'Oria asks if there is an option for the decks not being installed.

Atty. Blackburn states there is – it is the ultimate choice of the purchaser. The plan marks Units 35-40 and 45-50 with decks. We show all decks -- that is not to say that all of these decks will be installed. It will be the choice of the ultimate purchaser.

Member D'Oria asks if those units are sold. Do you have potential buyers for Units 35-40? Do they want decks?

Atty. Blackburn states that Units 35-40 are sold; some of the buyers want decks, some do not.

Mr. Kearney states there are six units, three have decks and three don't. In Units 45-50, four of them have decks and two do not. Some are occupied and some are not.

Member D'Oria states that the variance request is for Units 35-40. If it is denied, would the whole building be scratched or would the building be built without the decks?

Atty. Blackburn states pursuant to the 2013 land development approval, the decks are 8 ft. wide. If you dimension it out, there is one unit where the decks could be on one side and not on the other and you would have that 20 ft. However, the top units are 21.3 ft. apart with one deck (on Unit 50) which would be 19.3 without the deck on Unit 35 so there would be less than the 20 ft. between buildings. Unit 36 and Unit 49 -- there currently is 6 ft. between decks if both units have decks, so if you remove one deck, there would only be 14 ft. between

buildings so there would be less than 20 ft. between buildings. Units 37 and 47 – there is 10.7 ft. between decks, so if you remove one deck, there would only be 18 ft. between buildings so there would be less than 20 ft. between buildings, etc. There is only one unit where if you remove the deck from one side, there would be the required minimum of 20 ft. between buildings.

Atty. Blackburn continues stating that he believes this was previously addressed by the 2011 and 2014 zoning decisions that this is why that relief was requested and addressed in those prior applications.

Member Henderson states that he believes this is a hardship created by the applicant. You tried to cram as many houses in as small of a space as possible. You're asking for more again – not you specifically, but the previous owner.

Atty. Blackburn states that the relief is the same. That's a good point. We are not asking for any more density, any more impervious as a part of this zoning application. The land development approval in 2013 was to clarify that 2011 relief. We are not asking for anything additional than what we believe was granted in 2011 and clarified in 2014.

Mr. Kearney states that he respects your comments. We truly believe that the variances listed on the plan covers exactly what we are here for tonight. We truly believe that.

Member Molle states it appears to him that this could be a safety issue. A fire issue – 5.4 ft. between decks is awfully close.

Chairman Miles asks Tom Bennett the requirement for distances between decks of different units and if the decks are being treated with something to keep fire from spreading between decks.

Mr. Bennett states the decks should be in 2 ft. on each side which would be 4 ft. between decks of different units. If they are on the property line, they have to be painted with intumescent paint that is fire retardant.

Chairman Miles says he thought the distance was within 5 ft.

Mr. Bennett states that it is 2 ft. That's why the decks were set back 2 ft. on each side so that they are 4 ft. apart between units.

Chairman Miles states that a couple of them are drawn at 1 ft.

Mr. Bennett states that would be something that would be addressed with the building inspector when he comes through to do his inspections. It is a little different on this property because it is all one parcel. There are no lot lines in between the buildings. You do not have a building line in between like other townhome communities would have. There is one giant lot.

Chairman Miles states that we are still going to look at this as common sense and safety. Is there any measures being taken into consideration for fire safety purposes?

Mr. Kearney states that he is not an expert on fire retardant coverage. We can investigate it. It will be difficult to go back to homes that are already built and occupied.

Atty. Blackburn states that they would take any guidance from the Township that would be satisfactory to the Township with regard to fire retardant materials.

Chairman Miles asks if he would be amenable if we would attach something to this variance that had fire protection measures or best practices?

Atty. Blackburn states yes. Obviously, the close proximity between these units is a concern of any builder.

Chairman Miles asks Mr. Bennett if because this is one parcel this would be subject to a review from the Fire Marshal in terms of getting access?

Mr. Bennett states that is not a roadway -- it is a yard. That would be entirely up to the Zoning Hearing Board whether they felt there was a concern.

Member D'Oria asks if these units could be moved closer to the road and put more space between the units in the back.

Atty. Blackburn states that we are dealing with a 2013 land development plan and all other units other than Units 35-40 are built.

Mr. Kearney states it would be a very complex process. There would be another land development submission for approval, delays for customers' homes, buildings dates, their move-in dates. In addition, we are not the land developer – we only purchased the lots.

Member D'Oria states that if we are going to do anything here, it should be the most minimum variance that would be allowed.

No public comment.

Member Molle makes a motion that the application of CalAtlantic Group, Inc. for a dimensional variance from Section 209-23 and Table 4 of Falls Township Zoning Ordinance be GRANTED to permit the building containing Units 35-40 to be located closer than 20 feet from the building containing Units 45-50 and their corresponding street addresses, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

Member Miles seconds the motion.

**All in favor 2-2 (D'Oria and Henderson dissenting) – Motion is denied due to a split vote.**

Atty. Blackburn asks if the Zoning Hearing Board would attach a stipulation to the motion that states all decks in Units 35-40 would have sprinklers to address any fire concerns.

After discussion among Board members, Chairman Miles states that we will not be accepting any addendum of that nature to the application. As per the Board vote, the application is denied.

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**Petition #4: Progressive Living Units and Systems, Inc. (PLUS), 72 Hillside Lane, Fallsington, PA 19054; TMP #13-020-165; Zoned: LR. Requesting a use variance to permit a sober living environment located in an LR District. In the alternative, Applicant challenges the substantive validity of Ordinance 2016-1 and Chapter 209-12 as it relates to such use.**

Atty. Bidlingmaier marks ZHB Exhibits 1 – 9.

Chairman Miles introduces Lauren Gallagher, Esquire, as solicitor for the Township.

Atty. Gallagher states that she is here on behalf of the Township and Board of Supervisors. The Township will be requesting party status but is not taking any position on the variance application. Prior to the applicant presenting its evidence, I would like to make a brief statement regarding the intentions of the Board in passing Ordinance 2016-1.

As the Board may recall, in early 2016, the Board of Supervisors did consider the adoption of this Ordinance. Prior to that consideration, Mr. Harvie, the Chairman of the Board of Supervisors, read a statement into the

record regarding the Board's intent and was specific in his statement that the Board considered both group homes and sober living environments to serve legitimate and important purposes in the Falls Township community as well as all communities. In the Ordinance, the Board distinguished between single family uses group homes and sober living environments. This was after extensive research the Board directed my office to conduct. We determined that reasonable regulations are allowed to be placed on these uses.

Group homes are permitted in the LR (Low Density Residential) District, and sober living environments (which this applicant is considered) are permitted by right in the HC (Highway Commercial) District. The property that is at issue here was not the type of property the Board was concerned with in making these distinctions. This is a unique property in the Township which is ideal for this type of use, but this is not the type of property the Board was necessarily concerned with in enacting this Ordinance.

The Board of Supervisors is not taking a position but is here to monitor the application.

Pamela Tobin, Esquire (Kaplin Stewart) presents the application. I am here tonight with Will Stewart, named partner of Kaplin Stewart, Claire and James Armstrong, owners of 72 Hillside Lane, and Stacy Hill, director with the treatment facility.

We would like to operate the property as a recovery home for persons disabled with alcohol and drug addiction disorders. On December 20, 2016, Progressive Living Units & Systems ("PLUS") filed two applications with the Township. The first is for the use variance and the second is the challenge to the Ordinance. We are going to proceed today solely with the request for a variance.

We met today with Bob Harvie, Chairman of the Board of Supervisors, Peter Gray, Township Manager, Michael Clarke, Township Solicitor, Lauren Gallagher, Township Solicitor, myself and Ms. Hill. The meeting was productive and the Township was very receptive to using this unique property as a sober living environment.

Atty. Tobin goes through the binder of exhibits and calls the following witnesses:

*Mrs. Claire Armstrong* gets sworn in and testifies she is the owner, the adjacent houses have been unoccupied for years, there is an apartment building with 8 units, describes the house that will be used (2 kitchens, 4 main bathrooms, 1 powder room, indoor pool, 6 bedrooms with a loft space in the master bedroom, 15 parking spots) on 2.5 acres of ground. She also gives past history of businesses there and the rarity of neighbor complaints. They've been trying to sell the property since 2008 through brokers. They leased the property to John Goodman with the option to buy contingent upon the Township allowing the property to be operated as a recovery home. No written offers were ever received to purchase the property. She does not believe it will negatively impact the neighborhood.

Member D'Oria asks regarding the homes at 60 and 66 Hillside – are those included in the purchase of the property with Mr. Goodman.

Mrs. Armstrong states no they are separately owned – they are not owned by us.

Member D'Oria asks if the apartment building next door – is that included as well.

Mrs. Armstrong says it is a separate apartment building.

Member D'Oria asks if the applicant plans on changing or altering the property.

Atty. Tobin states not at this time.

*Stacy Hill*, 1288 Veterans Highway, Levittown, PA gets sworn in and testifies that she is vice president of operations for Daybreak Treatment Solutions ("Daybreak"), provides her qualifications and provides testimony on what Daybreak does. They provide substance abuse treatment for adults 18 and older with substance abuse

disorders, in both individual and group counseling at their treatment center on Veterans Highway. They are licensed by the Pa. Dept. of Drug and Alcohol programs. PLUS has provided group homes for approximately 30 years.

In response to Atty. Tobin's questioning, the types of residents living at the property would be individuals 18 years or older who are enrolled in a partial hospitalization program at Daybreak. This means the individual attends programming at the treatment facility six out of seven days per week for six hours a day. The patients come from various places, such as detox facilities or family homes. The patients are searched before leaving Daybreak and before coming to the group home. The person is searched, their belongings are searched, and urine drug tests are conducted on them to ensure they are not currently under the influence of drugs. We take their wallet and driver's license and any funds they have and secure it. Lights are out at 11:00 p.m.

In response to Atty. Tobin's questioning, Ms. Hill testifies that the patients are under staff surveillance 24/7 at both the home and the treatment facilities, they are searched before getting to the home, they are driven in a van by a staff member, their belongings are locked up at the treatment center, they work as a family to clean and maintain the property.

In response to Atty. Tobin's questioning, Ms. Hill testifies that the location is ideal for the use because of its privacy and the spaciousness of the home and does not believe it would have any negative impact on the neighbors.

### **Board Comment**

Member Molle asks how long a patient is in your program.

Ms. Hill states 30 to 45 days.

Member Molle asks if there are a certain criteria for getting out of the program.

Ms. Hill states they step to a different level after they leave our program. Everyone has an individualized treatment plan and after care plan, so depending on that, they would either go home with family or another support system.

Member Molle asks if any of the patients come with a criminal background – like a halfway house.

Ms. Hill states that nobody is court committed – they come voluntarily. Individuals may have a misdemeanor criminal background.

Member Molle asks if they have jobs.

Ms. Hill states not in a partial hospitalization program. They cannot maintain a job, they have to be at our treatment facility six hrs a day, six days a week and they are not allowed to drive. When they attend our program as an outpatient, they could have a job and drive. But that is not our use at Hillside Lane. All the treatment is done at Daybreak.

Member Henderson asks if there is a supervisor there 24/7.

Ms. Hill states yes, they do shift work.

### **Public Comment**

*Harry Colbert*, 18 Vermont Turn, asks how many residents at one time.

Ms. Hill states up to 15.

Mr. Colbert states my property provides a shortcut for a few of the apartment people to cut through to Trenton Rd – easier than going down Tyburn to Trenton. They’ve asked permission to do this, which I have given, so long as they don’t leave trash or ride motor bikes through. It now would be a problem if we have 15 people doing this.

Ms. Hill states this would not happen as residents do not leave on foot – they are driven.

Mr. Colbert asks if you know what their criminal backgrounds are, if any.

Ms. Hill states if an individual has a felony, we ask what it is. We do not perform background checks.

Mr. Colbert asks about the noise.

Ms. Hill says the staff is trained to be good neighbors and they will enforce it to the residents.

*Ann Clements*, 108 Vermont Lane, questions what will happen on Sundays.

Ms. Hill says on their off day, they attend an activity from the community on that day. We provide transportation to religious services of their choosing, movies, roller skating, ice skating – different types of things to do on that day.

No further public comment.

Member Molle makes a motion that the application of Progressive Living Units and Systems, Inc. (“PLUS”) for a use variance be GRANTED to permit a sober living environment located at 72 Hillside Lane, Fallsington, in the LR District, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

Member D’Oria seconds the motion.

**All in favor 4-0. Motion carries. Use for sober living environment approved.**

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**Hearing adjourned p.m.**