

APPROVED

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
JANUARY 5, 2023**

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chairman
David Seiler, Vice Chairman
Sande Cunningham, Secretary
Mark Bair (via Zoom)
Chris Shuttlesworth (via Zoom)

ALSO IN

ATTENDANCE: Randall Heilman, Director of Community Development
Timothy Holmes, Zoning Officer
Gavin Markey, Solicitor
John Luciani, Township Engineer, First Capital Engineering
Abby Gibb, Communications Manager
Jill Trostle, Stenographer

1. CALL TO ORDER

A. Pledge of Allegiance

Chairman Achenbach called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance. He introduced the members of the Board and Springettsbury Township staff.

B. Reorganization

Mr. Achenbach opened the floor to nominations for the slate of officers. **MS. CUNNINGHAM MOVED TO RECOMMEND APPOINTMENT OF THE FOLLOWING SLATE OF OFFICERS FOR 2023:**

Dale Achenbach, Chairman
David Seiler, Vice Chairman
Sande Cunningham, Secretary

MR. SEILER SECONDED THE MOTION. MOTION UNANIMOUSLY PASSED.

2. ACTION ON THE MINUTES

A. NOVEMBER 3, 2022

MR. SEILER MOVED TO ACCEPT THE MINUTES OF NOVEMBER 3, 2022, AS PRESENTED, SECONDED BY MR. SHUTTLESWORTH. MOTION UNANIMOUSLY PASSED.

3. OLD BUSINESS - There was no old business.

4. NEW BUSINESS

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Chairman Achenbach asked if the cases were properly advertised. Mr. Holmes confirmed that notifications were made.

ZHB-2022-0031 - John and Samantha Bennawit, 711 Mountain Laurel Lane

Mr. Holmes stated Case ZHB-2022-0031 for 711 Mountain Laurel Lane is a variance request for Township Ordinance §325-134, as a result of a failed permit inspection, where the building inspector determined that the detached garage was constructed in an illegal location. The installer for EG Stoltzfus Homes measured off the house instead of the property line and set the detached garage several inches in front of the rear house line and approximately a foot too close to the side property line. The required setback is 15 feet to the side lot line in the R-20 zoning district, and the garage is around 14 feet measured to the property line. Mr. Holmes stated the encroachments are minimal, but it will be up to the Zoning Board to make a final determination.

All witnesses were sworn in.

Andy Lebo, EG Stoltzfus Homes

Mr. Lebo stated he lives in Lancaster County and has been employed by EG Stoltzfus Homes for 19 years in the custom homes remodeling division. He was the point person for the homeowners on the project at 711 Mountain Laurel Lane. He confirmed that through an error in measurement the detached garage was constructed too close to the property line approximately 12-14 inches, depending on where measurements are taken, which resulted in an encroachment of 2-4 inches in front of the rear house wall line. Mr. Lebo referred to a photo which was submitted with the application showing red lines to indicate where the structure should be placed if it were in compliance with the regulations. The homeowners were contacted and notified of the error. The homeowners then reached out to their neighbors and the neighbor closest to the property submitted a letter, which was provided with the application, stating they are fine with the current location. Other photos showing the tree line and views from the neighbors' surrounding the property were provided to show de minimis impact to the neighbors.

Ms. Cunningham asked if surveying was done before or after the construction. Mr. Lebo responded the property was surveyed after the error was brought to their attention. Ms. Cunningham asked if the deed was used in the beginning to confirm the property lines. Mr. Lebo responded the house was originally constructed by EG Stoltzfus Homes and the plot plan was on file. The plot plan on file was assumed to be accurate; however, it was not correct. Mr. Lebo noted that the property should have been surveyed prior to construction to confirm the measurements. Mr. Achenbach asked if this error has carried over into any of the other properties in the development. To Mr. Lebo's knowledge, there is no impact on the other properties.

Mr. Achenbach asked the Solicitor if there is any precedent for error in plot plan layouts of this nature. Mr. Markey responded there is not a precedent, but EG Stoltzfus Homes is a reputable organization and has admitted the error in good faith on behalf of the applicants. It was Mr. Markey's opinion that the variance requested is de minimis in nature and could be approved by the Zoning Board without the itemized criteria normally required to grant a variance.

Mr. Achenbach provided an opportunity for visitors attending to testify for or against the applicants. Hearing none, Mr. Achenbach asked for a motion to approve the variance.

MS. CUNNINGHAM MOVED TO APPROVE CASE ZHB-2022-0031 GRANTING THE VARIANCE FROM TOWNSHIP ORDINANCE §325-134 FOR THE LOCATION OF THE ACCESSORY STRUCTURE DUE TO THE DE MINIMIS NATURE OF THE VARIANCE, SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

ZHB-2022-0032 - Jeff Graham, 3760 E. Market Street

All witnesses were sworn in.

Mr. Holmes provided background information concerning Case ZHB-2022-0032, 3760 E. Market Street, site of a former Turkey Hill that has been vacant for a number of years. Applicant is proposing a towing business at this location, which requires a special exception in the Commercial Highway zoning district. A vehicle storage compound is also proposed, which requires two variances. The damaged vehicle compound is required to be located in the rear and meet required setbacks. The vehicle storage compound is proposed to be located partially on the side of the building, which would not meet the required 50 foot rear setback from a residential home that is located at the rear of this property. A second variance would be required because the vehicle storage area proposed would be located in a flood zone and the floodplain overlay section of the ordinance applies. Mr. John Luciani, Township Engineer and Floodplain Administrator, was present to represent the Township.

Steve McDonald, CGA Law Firm

Mr. McDonald provided testimony on behalf of the applicant, Jeff Graham, for 3760 E. Market Street. Mr. Graham resides at 499 Kirkham Drive, and leases the property located at 3760 E. Market Street. Mr. McDonald stated the applicant is seeking one exception and two variances in order to establish a towing service immediately, with future plans to add an auto service station if feasible. The property is zoned commercial, with property to the east zoned industrial and property to the rear zoned residential. An alternate option which was considered was to submit an application requesting the property to be rezoned which would make this a permitted use under 3270, eliminating the necessity of the exception/variances.

Mr. McDonald noted the site was previously a Turkey Hill gas station. In addition to the proposed changes to the towing business, if granted, the owner plans to make improvements and upgrades to the property, such as making the property ADA compliant. Mr. McDonald stated granting of the exception would not change the character of the neighborhood as it is already commercial and industrial in nature, nor would it impair the integrity of the Township's comprehensive plan as there are other tow yards and automotive businesses within a short distance of the property. In terms of the variance for the setback, the proposal is to enclose the area to be used for vehicle storage with a fence, as required by the zoning ordinance. The property already is non-conforming with respect to the setback requirement, and the addition of the fence is not going to change or enlarge the non-conforming use. Attorney McDonald stated the property owner is not creating the need for the variance; the hardship already exists. Applicant would be enclosing an area that is already blacktopped and set off as it is. Mr. McDonald shared that he was contacted by Mr. Holmes and Mr. Luciani to discuss the floodplain and potential for flammable or injurious materials by stored vehicles in times of flooding. Mr. McDonald stated this poses a minimal danger because there is a substantial slope of ten feet or more at the rear of the property making it unlikely for water to pool in the vehicle storage area. Mr. McDonald reviewed the FEMA map which includes an additional safeguard of 18 inches. He stated exact measurements of the slope are unknown, but assumed to be within the required safeguard measurement; therefore the applicant is requesting a variance. It is Mr. McDonald's opinion that the proposed towing business would create no more hazardous use, contamination or danger than the former Turkey Hill gas station. The applicant has other

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properties to which to relocate vehicles in the event of danger of flooding. Mr. McDonald added that any business with vehicles on its property would be subject to the same potential danger during a flood event.

Mr. McDonald referenced the following exhibits:

- Lease Agreement
- Photos of the property and blacktopped area
- Aerial photos of the property and surrounding neighborhoods
- Photos of nearby businesses and industrial areas
- Rough drawn plot plan showing the storage area and existing building locations where variances would be needed in terms of setback and fencing requirements
- Supplemental photos related to the floodplain variance

Mr. McDonald noted that the slope to the rear of the property is higher than his applicant's height and reiterated it would be unlikely that water would pool or create a flammable or dangerous environment.

Mr. Seiler asked for a definition of the potential service station considered by the applicant. Mr. Graham responded the service station would not include gas service, but vehicle repair. Mr. Seiler asked about the kinds of vehicles that would be stored in the compound. Mr. Graham responded he has been towing for Springettsbury Township Police since 2010 and the vehicles towed would be the result of impounds, DUI, no insurance, accidents, breakdowns and the maximum time in storage would be 1.5 weeks. Mr. McDonald added it would not be a salvage yard or long-term storage area. Mr. Graham stated vehicles that could potentially leak hazardous materials would be covered by some form of protective covering to prevent hazardous materials from leaking from the vehicle. When such vehicles are picked up by insurance companies, the protective covering and all debris are taken away by the insurance company. Mr. Achenbach clarified that the applicant is not seeking approval of the potential auto repair service at this time, to which Mr. McDonald confirmed.

John Luciani, Township Engineer and Floodplain Administrator

Mr. Luciani shared an exhibit identical to the map submitted in the application packet. He shared there are two types of defined floodplains: detailed and approximate. When the Army Corp modeled the amount of water that runs down Kreutz Creek, they calculated how wide it would spread and how deep and fast it would flow. The study provided to Springettsbury Township was an approximate study. Having worked on a number of developments in close proximity to the applicant's property, the Township had applications for three or four different developments, so Mr. Luciani was able to review topography showing the elevations. In Springettsbury Township ordinances, the regulatory floodplain is the floodplain height plus 18 inches added as a safety factor to prevent flooding from occurring to an area, and to account for irregularities or bigger storms. Although the applicant's representative indicates vehicles could be relocated in a short time if needed; it would be difficult to quickly move crashed or inoperable vehicles. In summary, Mr. Luciani stated he does not believe the towing service should be allowed as a permitted use for the following reasons:

- Without additional evidence that indicates the property is not in the floodplain, the regulatory floodplain indicates a bulk of the parcel in question is in the floodplain.
- Relocation of vehicles within a short time would be a challenge.
- A review and evaluation of the threat of the stream indicates the water does not spread evenly, but spreads 250 feet in one direction and only 100 feet toward the church and residential area with the water flowing toward and around the Turkey Hill site.

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- The ordinance does allow the developer to create hydraulic models to determine whether the property is in or out of the floodplain, but that information has not been presented in this case.
- The paved area is only 60 x 65 feet, and the lawn area would need to be improved.
- Chemicals, petroleum products, and antifreeze are elements that could endanger human life if they seep into the water system.

In response to Mr. Luciani's concern about the ability to move vehicles in a timely manner, the applicant noted the lot holds a maximum of nine vehicles. Mr. Graham stated he has two other lots—one in East York and one in West York—to which they could be moved, and he has five tow trucks to move the vehicles. Mr. McDonald acknowledged the property is in a floodplain; however, he stated vehicles are caught in floods all the time. With the slope of the property and taking into account the additional 18 inches, it is not likely water would pool in the area and would likely drain off quickly. Since the property was used as a gas station previously, it can be used for similar uses such as a towing service, auto dealership and repair service where some of the same fluids are present. Mr. McDonald stated the towing service is not a big step from other permitted uses.

Mr. Holmes shared the application did not provide a proposal or plan for landscaping/screening the sides of the fence or yard, which is required to meet the intent of the ordinance that the lot be located in the rear of the property and out of sight. Mr. McDonald responded there would be landscaping on the front fence. Mr. Achenbach noted the application could be amended to provide a proposal for landscaping.

Mr. Achenbach provided an opportunity for members of the audience to speak in favor or against the applicant. One individual raised his hand and stated he was against it.

Mr. Markey was asked to provide his legal opinion of the case. He stated the special exception requires the applicant to proceed to satisfy specific criteria for granting of the special exception for §325-162. Although testimony addressed some criteria, lack of a specific plan for landscaping is a consideration for possibly denying a special exception. Section §325-162 (g) in particular states "*for towing services provided for wrecked vehicles and partially dismantled vehicles temporarily stored on-site, a six foot opaque fence completely enclosing these vehicles shall be erected. The compound shall be to the rear of the property (which is a mandate) and the compound shall be landscaped with shrubbery and trees to enhance the protection of the public interest.*" Mr. Markey noted the tree and shrubbery enhancement should have been provided as an exhibit with the application for the Board to review and weigh against any adverse impact. The ordinance for towing services prohibits compounds to be on the side or front of a property, but rather to the rear where they could be visually screened from the public. A setback for the protection of surrounding residential zones and property is also required, which cannot be met in this case. Another concern relates to the sensitive nature of construction and alterations of properties in the floodplain.

At the suggestion of Mr. Markey, Mr. Holmes and Mr. Luciani reached out to the applicant and his attorney to resolve some of the concerns in advance and to suggest a continuance to allow the applicant to clearly focus on the criteria, but Mr. Graham and his attorney chose to proceed with the case this evening as submitted. Mr. Markey stated Mr. Luciani's testimony was credible and provided more detail about the location of the property and the effects of a potential flood. For the reasons provided, Mr. Markey recommended the request for a special exception and variances be denied in separate motions.

Mr. Achenbach shared it is not the Zoning Board's desire to place a burden on the Township to police the applicant's relocation efforts every time there is a severe rainstorm; therefore, he entertained a motion on the special exception.

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Mr. Bair acknowledged Mr. Graham's good intentions to do his best to develop the site; however, given the concerns and recommendations shared by Mr. Markey and Mr. Luciani, and the potential for problems and damages that may occur to vehicles in a flood, Mr. Bair expressed his hesitancy to grant approval.

IN THE CASE ZHB-2022-0032 MR. BAIR MADE A MOTION TO DENY THE SPECIAL EXCEPTION FOR A TOWING BUSINESS IN THE COMMERCIAL HIGHWAY DISTRICT, SECONDED BY SANDE CUNNINGHAM. MOTION UNANIMOUSLY PASSED.

IN THE CASE ZHB-2022-0032 MR. SEILER MOVED THAT THE TWO VARIANCE REQUESTS TO TOWNSHIP ORDINANCES §325-162 AND §325-79 BE DENIED, SECONDED BY SANDE CUNNINGHAM. MOTION UNANIMOUSLY PASSED.

8. ADJOURNMENT

Mr. Achenbach entertained a motion to adjourn.

MS. CUNNINGHAM MOVED TO ADJOURN THE MEETING, SECONDED BY MR. SEILER. THE MEETING ADJOURNED AT 7:00 PM.

Respectfully submitted,

Secretary
/jht