

FINAL

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
JULY 7, 2022**

MEMBERS IN

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

NOT PRESENT: Stacey Ankrum, Alternate

ALSO IN

ATTENDANCE: Randall Heilman, Director of Community Development
Tim Holmes, Zoning Officer
John Elliott, Solicitor
Abby Gibb
Sue Sipe, 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.

2. ACTION ON THE MINUTES

A. JUNE 2, 2022

MR. SEILER MOVED FOR APPROVAL OF THE JUNE 2, 2022 ZONING HEARING BOARD MINUTES AS AMENDED. MR. SHUTTLESWORTH SECONDED. MOTION UNANIMOUSLY CARRIED.

Chairman Achenbach asked if the cases were properly advertised. Mr. Holmes responded that notifications had been made.

3. OLD BUSINESS - None

4. NEW BUSINESS

A. ZHB-2022-0014 – 995 Melrose Lane

Terry Rohrbaugh

All witnesses were sworn in.

Mr. Holmes stated this is a variance request for a six-foot fence in a portion of the front yard which extends in front of the house. The property is located at the intersection of Melrose Lane and Carol Road. The resident has a large arborvitae hedge to be removed, but does not want to lose the privacy. The ordinance only allows a four-foot fence.

Mr. Rohrbaugh stated he has lived at this property for 45 years. He provided a colored schematic which provided details of the property, noted as Applicant's Exhibit #1. He noted the arborvitae bushes extend around the right side of his property toward Carol Road which are 9 ft. high. He also had arborvitae bushes on the north side of their property. However, due to difficulties in maintaining bushes which were dying, they were removed. In their place they are proposing the 6-foot vinyl chain link fence, which would extend towards Melrose Lane.

Mr. Rohrbaugh indicated when driving around their neighborhood, they saw eight other corner lots with six-foot fences within 4-5 blocks of their property. He also noted in speaking with their neighbors, there was no opposition to the fence.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant. Hearing none, he called for a motion.

Solicitor Elliott stated this is a dimensional variance subject to a less strict standard. He noted if the Board is agreeable, it is at their discretion for approval.

MR. BAIR MOVED IN THE CASE OF ZHB-2022-0014 – 995 MELROSE LANE TO GRANT THE VARIANCE TO ALLOW THE SIX-FOOT FENCE. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

B. ZHB-2022-0015 – 1550 Whiteford Road

John Nix, Real Estate Portfolio Manager for Crown Enterprises – an Entity for GLS Leasco, Inc.
(via Zoom)

Attorney Sheila O'Rourke, Gibble, Krabel & Hass

All witnesses were sworn in.

Mr. Holmes stated the property is located at the corner of North Hills Road and Rt. 30 with frontage off North Hills Road and Whiteford Road. He noted it has been used as a truck terminal up until a few years ago and is a non-conforming, pre-existing use. The ordinance states a non-conforming use which has been vacant for more than a year is considered abandoned. He noted this section of the ordinance is being appealed, based on case law and the fact that the property owner has been trying to market the property to find a new tenant for a truck terminal use.

Attorney O'Rourke stated the issue is limited because the Township agrees the truck terminal use on the property is established as a pre-existing non-conforming use. The only issue before the Board is to determine the abandonment of the use. Abandonment is proven – two elements both an intent to abandon and actual abandonment. The testimony will be focused on that issue.

Att. O'Rourke provided pre-marked Exhibits 1-5. Exhibit 5 is a stipulation the Township and the Applicant have established that the Township does not contest the truck terminal use is a non-conforming use. Paragraph 10 states "parties do not dispute the truck terminal use as a non-conforming use".

Through testimony conducted by Att. O'Rourke, Mr. Nix confirmed he works for Crown Enterprises which is a related entity to GLS Leasco, Inc., the property owner at 1550 Whiteford Road. He stated the property was purchased in 1986.

Applicant's Exhibit #1 – Mr. Nix confirmed this is an aerial image of the property, which is 5.96 acres. The majority of the property is located in the Flexible-Development district. The western side of the property is located in the Commercial-Highway district. There is ingress and egress from North Hills Road and Whiteford Road.

Mr. Nix pointed out the improvements on the property. He noted there are two structures – a truck terminal containing an office and a dock with 64 loading positions. The smaller structure is a garage/repair shop with fuel station. The remainder of the site is a large parking area.

Applicant's Exhibit 2 – Mr. Nix confirmed photos A & B show the truck terminal on the site. The truck terminal contains 22,600 sq. ft. Photos C & D show the repair garage on the property which is 9,910 sq. ft.

Mr. Nix stated Applicant's Exhibit 3 shows the tax parcel information for the property. The first page of the document shows in the parcel information LUC which refers to Land Use Code. Mr. Nix confirmed the LUC for the property is truck terminals.

Att. O'Rourke referred to Page 2 of the document containing information about the buildings on the property. He asserted Building #1 was built in 1961 and was designated as a truck terminal. Page 3 shows Building #2 was built in 1960 also designated as a truck terminal. Mr. Nix confirmed the property owner has paid taxes on the property as a truck terminal. He affirmed the property has been used as a truck terminal since at least 1960.

Att. O'Rourke referred to the definition from the Township zoning ordinance for truck terminal, defined as "a use that is involves the shipping and receiving of materials by truck, as well as incidental administrative operations, service, repair, fueling, cleaning and parking of trucks." Mr. Nix confirmed that definition accurately describes how this property was used.

Mr. Nix stated he was aware truck terminals are not permitted in the zoning district where this property is located. He confirmed it was his understanding the Township has agreed the truck terminal use is established as a protected non-conforming use.

Applicant's Exhibit A-4 – Email from Zoning Officer Mr. Holmes – Att. O'Rourke stated the email is a determination related to the use of the property. Mr. Nix affirmed it was his understanding the zoning officer determined the truck terminal use was established as a non-conforming use, but had been abandoned only because it was vacant for a year or more.

Mr. Nix confirmed the property is currently vacant. He noted the property was last occupied in April 2020. The tenant moved out due to Covid and the pandemic at that time.

Mr. Nix indicated after the tenant moved out, Crown Enterprises planned to market the property for lease or for sale in the trucking states, using internal tools provided by in-house listing with other brokers. He confirmed Crown Enterprises has been actively marketing the property for a tenant or buyer since it was vacated in 2020. Mr. Nix indicated there is time sensitivity to resolving the issue in order to proceed with marketing efforts and prospective buyers.

Ms. Cunningham noted there was a previous application for the property and the main concern was traffic and access in and out of the property.

Att. O'Rourke explained the issue being presented is specifically related to the abandonment of the use. She noted traffic would be addressed as part of an occupancy permit or land development.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Doug Myers, MPL Law Firm

Witness was sworn in.

Att. Myers stated he is assisting Solicitor Rausch on behalf of the Township. He stated the Township has no intention of presenting evidence or witnesses to contradict what has been presented. The only item the Township felt was important in terms of the legal situation before the Board, was that Mr. Holmes made the determination based upon the abandonment more than a year which creates a presumption that can be rebutted with sufficient testimony. The Township

merely asks the Board to seek to be satisfied efforts that have taken place by the applicant rise to the level of efforts to not abandon the use over the course of the year the property was vacated. If the Board is satisfied with the determination, the Township has no problem with that determination and would make no evidence to the contrary.

Solicitor Elliott stated when there is an issue such as this the court has this burden-shifting analysis. The fact there is a provision in the ordinance which says if it has not been used for a year as Attorney Myers indicated, that creates a presumption, and the court says there must be an attempt to abandon, then it is actually then abandoned. He noted cases are evaluated by factors which include some of the things discussed – is it specifically assessed as a particular use and have the owners continued to pay taxes as that use. That is a factor the courts have looked as being in favor of rebutting the presumption. Solicitor Elliott stated the testimony here is that during the period when it was vacant, there was not another use which changed it. The buildings remain and all of the pertinences of a truck terminal have remained so that is evidence the Board could find in their favor. Case law also addresses efforts to market property for that use in the meantime. The testimony is even if it was vacated by a previous tenant, there were efforts to market it for that use which is sufficient to show there was no intent to abandon it and the intent was to keep using it in that manner. Those three items are things that have been addressed by courts in the past and have been cited as evidence to rebut that presumption.

Exhibit A-5 submitted by Att. O'Rourke was signed and is a stipulation of facts presented to the Board. It establishes there is no dispute this is a non-conforming use, as confirmed by Mr. Holmes.

Att. O'Rourke concurred with Solicitor Elliott's summation and added that non-conforming uses are protected not only by the ordinance but by the constitution. A use that has been established for a long time receives a constitutionally vested right and the only way to lose that right is to abandon that use. There is case law that says it is the Township's burden to show the abandonment of that vested right. She noted there has been no evidence to the contrary, with only credible evidence of Mr. Nix about all of the ways the property owner has intended to continue using the property as a truck terminal by marketing it actively for the past two years.

Chairman Achenbach called for a motion.

MR. SEILER MOVED IN THE CASE OF ZHB-2022-0015 – 1550 WHITEFORD ROAD TO GRANT THE APPLICATION TO OVERTURN THE ZONING OFFICER'S DETERMINATION. SECONDED BY MR. BAIR. MOTION UNANIMOUSLY PASSED.

C. ZHB-2022-0016 – 2510 E Market Street - Henry Klover obo. CFT NV Dev., LLC

Michael Twitchel, Project Leader, Klover Architects
Vu Le, Project Leader Klover Architects

All witnesses were sworn in.

Mr. Holmes stated the site was a former nightclub. The proposed use is for a Panda Express restaurant with a drive-through. It is in the Town Center Overlay with the underlying district of mixed-use. It went through a conditional use process with the Board of Supervisors, at which time it was discovered a drive-through was not a permitted use. The applicant is requesting a variance for the drive-through facility.

Mr. Twitchel indicated they are requesting zoning relief to allow a restaurant with a drive-through within the mixed-use zoning. He noted their justification is along East Market Street where the property is located, there are numerous drive-through restaurants in the area. He indicated an additional drive-through restaurant would not change the characteristics of the area. In addition, he noted the drive-through as shown on the plan is along the east side of their property bordered by large trees, with the intended plan to add more landscaping along East Market Street as required by the ordinance.

Mr. Bair commented he reviewed the site plans which are extensive. He indicated his concern is given the location of the drive-through with traffic flows on East Market, specifically during peak traffic flows of significant volume, with consideration of the entrance and exit that would be used for this drive-through, which will generate additional traffic on East Market Street. He also noted concern the location will impede sight distances. In addition, he referred to the second phase of their plan which entails adding an office type facility which will add even more traffic. He was concerned about the implications for potential accidents when exiting the site. He noted exiting out of the rear entrance will add additional traffic to Eastern Blvd. Mr. Bair stated consideration should be given in this regard when determining a decision.

Ms. Cunningham agreed with Mr. Bair regarding the traffic concerns.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Mr. Twitchel referred to the C-2 drawing which was submitted, pointing out along East Market Street they have indicated the 100 ft. site triangle from the right turn only exit from the site which stops short of the next property's egress out. He noted this will provide enough time to meet the minimal requirements for the adjacent property, by not only moving the exit further from the light but to allow more time for vehicles to proceed.

Chairman Achenbach pointed out the traffic concerns and noted these would be further examined in traffic studies with the land development plan.

Mr. Heilman stated this issue was discussed during the conditional use hearing with the Board of Supervisors and there is an awareness by the applicant that the traffic concerns would need to be addressed satisfactorily during the land development phase of the project.

Mr. Le stated they attended two Planning Commission meetings. At the first one they received comments about the exit through the drive-through and the concern about the exit and its proximity to East Market Street. Their case was continued to allow them time to address that concern. At the second Planning Commission meeting they were granted approval since they were able to address those comments. They proceeded to the Board of Supervisors for the conditional hearing and received approval for their requested variances and waivers with the exception of the drive-through. The Board of Supervisors referred the case to the Zoning Hearing Board for approval on the drive-through. Mr. Lee further noted they will be going through their land use application to further evaluate and provide additional studies for the traffic.

Mr. Heilman confirmed Mr. Vu's comments are correct.

In regards to a question regarding the patio, Mr. Twitchel noted there will be a patio area on the north side of the building. He noted it will serve the purpose as an outdoor gathering area and use of the restaurant. It is connected to the public sidewalk along East Market Street.

Solicitor Elliott stated as was presented, the issues with sight distance and traffic flow are issues to be dealt with during the land development process. The conditions for granting a variance are set forth in the ordinance, Section 325-190, in considering the use itself, as opposed to the technical aspects of how it is constructed for purposes of determining whether it is an appropriate use.

Chairman Achenbach called for a motion.

MR. BAIR MOVED IN THE CASE OF ZHB-2022-0016 – 2510 EAST MARKET STREET, PANDA EXPRESS, TO GRANT THE VARIANCE AS STATED IN ARTICLE XIII, 325-37(D) DRIVE-THROUGH FACILITIES. SECONDED BY MS. CUNNINGHAM. MOTION UNANIMOUSLY PASSED.

D. ZHB-2022-0017 – 1376 Ridgewood Road

Aaron Farman

All witnesses were sworn in.

Mr. Holmes stated the property is in the R-10 Medium Lot, Single Family Residential District. The variance request is for an accessory building to be placed partially in the side yard and the rear yard. The ordinance requires an accessory structure to be solely in the rear yard.

Mr. Farman stated his property presents unique issues in the area where he is proposing to build the structure which he noted is the only practical option. He referred to the photos submitted which shows the property map. He pointed out the proposed location in relation to the house. The rear line of the house is positioned to the rear of the property. He noted the structure would be approximately 150 ft. off the road. He pointed out the topographical lines on the property, which indicate a drop off behind the house. Mr. Farman indicated he has approximately 10½ acres – half is wooded and most of it is sloped. The only other suitable area on the property is approximately 150 yards away from the house. He noted because they will add utilities to the pole building, it would be cost prohibitive to place it at that location.

Mr. Farman pointed out on one of the photos a tennis court and at the end of the tennis court there is an existing structure. He indicated the pole building would be constructed partially on the tennis court, removing the asphalt. One of the bays in the new structure will be concrete floor and the other will be stone. The building will match the existing structure.

Ms. Cunningham asked about the purpose of the building. Mr. Farman stated it would be a three-bay building, used for storage of tractors and a truck. He noted the third bay would be used for his hobby of making maple syrup.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Cathy Bateman – 1450 Ridgewood Road

Witness was sworn in.

Mrs. Bateman stated she and her husband own the property adjacent to the Farman's, and have lived there for 52 years. She indicated they received notice from the Township in regards to the variance request by Mr. Farman, because their property is adjacent to the Farman property. Mrs. Bateman stated it was her understanding after doing research on the legal requirements regarding the request, the property owner making the request for the variance needs to prove, (1) abiding by the existing zoning requirements will cause them unnecessary hardship; (2) the particular hardship is due to limitation on their property; (3) if granted the variance will not harm public interest. She noted all three criteria must be satisfied for the variance to be approved. If a variance request is accepted, the owner receives a permit for the proposed usage.

Mrs. Bateman stated she and her husband had several concerns, one of which is the devaluing of their property. Her second concern is because of the history of their property many people are aware of it and tried to entice them to sell. She was concerned about drainage since they live on a slope with water running down from Ridgewood Road onto their driveway down into the field. She was also concerned if the accessory structure would be used for home use, business purposes, or animal housing. Mrs. Bateman showed views of their property to Farman's house.

William Bateman - 1450 Ridgewood Road

Witness was sworn in.

Mr. Bateman also stated he was concerned about Mr. Farman's property reducing the value of his property.

The Batemans stated they are asking the Board to deny Mr. Farman's request.

Jeff Puglese

Witness was sworn in.

Mr. Puglese indicated he lives next door to the Bateman's. He asked if there were photos of the proposed structure and details as to the height of the building. He asked when granting a variance which is an exception, why it would be granted when there is substantial space available on Mr. Farman's property.

Solicitor Elliott asked Mr. Farman due to the orientation of his house which affects the rear yard and if the house was in fact oriented parallel to the road, was it his testimony that otherwise he would be able to fit the accessory building and not need the variance. Mr. Farman indicated affirmatively. Solicitor Elliott asked Mr. Farman if when he purchased the property was the house already built. Mr. Farman confirmed the house was already built.

Mr. Farman stated he felt there were some mis-representations, noting on the east border where the Batemans live, he is not planning to be within 15 feet of the setback. He noted it is approximately 30 ft. His original plan for the building was to place it in the field, however, the way his property is oriented, it would be behind the neighboring two houses on the west side. Locating the building into the lower part of his field, which would be approximately 300-500 yards away, would be difficult specially to add utilities. In addition, the area is not flat and would incur additional excavation costs.

Mr. Farman pointed out all other requirements of the ordinance have been met with the exception of the proposed structure in the rear of the house. He noted he also brought the height of the structure down from the original in order to meet the height requirement. He noted the existing building has an 8-12 pitch and has a second floor. He noted there is a significant dip down at the proposed location because the tennis court was cut away from the hill. Therefore, the proposed building will be lower.

Discussion was held regarding the various slopes on Mr. Farman's property and potential other options for placement of the structure.

Robert McElwain – 2095 Herman Court

Witness was sworn in.

Mr. McElwain stated his father is the original owner of the house he lives in built in 1953. He felt it would be helpful if they could see an architectural drawing to have a better idea of what the structure would look like from Ridgewood Road.

Robert Tressler – 2042 Herman Court

Witness was sworn in.

Mr. Tressler stated his property borders Ridgewood Road and Herman Court, directly across from Mr. Farman. He indicated from surrounding bushes and trees, he will not see the new structure. He felt the issue was between the Batemans and Mr. Farman. He noted a house across Herman Court caused more of an issue for the area than the issues on this case.

Solicitor Elliott stated this is a dimensional variance so the standard proof is not as restrictive as a use variance. He noted the testimony indicated there are unique physical conditions of the property which make this necessary, and other areas with slopes prohibit placing the structure elsewhere. The only reason for a variance is due to the orientation of the building being not parallel to the road. He noted it was the Board's prerogative to determine if the 24 ft. variance is minor enough that it can be granted. He suggested the inquiry is essentially limited to the location and if the applicant has proven the unique physical circumstances under the lessened standards for dimensional variance. The accessory use is permitted, the only issue is a variance appropriate for the location of the structure.

Solicitor Elliott asserted from a legal standpoint the Board does not have the ability to indicate they think it would be better placed somewhere else. The legal question is did the applicant prove he is entitled to a variance at the particular location he chose.

Chairman Achenbach called for a motion.

MR. BAIR MOVED IN THE CASE OF ZHB-2022-0017 – 1376 RIDGEWOOD ROAD, BASED ON THE UNDERSTANDING OF ALL LEGAL AND AESTHETIC ARGUMENTS GIVEN AND ACKNOWLEDGING THE RESIDENTS' CONCERNS, TO GRANT THE VARIANCE AS REQUESTED BY MR. FARMAN. SECONDED BY MS. CUNNINGHAM. MOTION UNANIMOUSLY PASSED.

E. ZHB-2022-0018 – 3641 Trout Run Road

Christopher Garzon

Witness was sworn in.

Mr. Holmes stated the property is in the Rural Residential district. The request is to put a horse run shelter in the middle of a field which is in front of the property. The accessory structure is required to be in the rear of the property according to the ordinance.

Mr. Garzon stated the request is for a horse run in shed, 16 x 24 ft. located in the front pasture. He pointed out on the sketch plan the main house on the backside of the property. There are approximately six acres of pasture on the front side of the property. The pasture is fenced in and the horses are in that location. He would like to put the run in shed in that area to provide shelter for the horses during inclement weather.

Mr. Garzon indicated the building will be a framed structure of wood with three sides and a corrugated steel roof. He noted he has a plan for the water mitigation which was approved by Mr. Holmes.

Discussion was held as to how to define an accessory structure when dealing with a home and open field. It was noted the ordinance does not make any exceptions as to area in front of the house which is considered front yard. The total property is approximately 12 acres. The land behind the house is wooded and the only possible pasture is in the front. The shelter would be located next to a barn in that area.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Tia Long (lives across the street from Mr. Garzon)

Witness was sworn in.

Ms. Long confirmed the barn is located in the front of their house. She provided photos of the barn and the fence. She agreed it would not be possible for the accessory structures to be located behind the house.

Solicitor Elliott indicated this is a dimensional variance subject to a lesser standard. He noted the existing building in the front yard. He noted with a parcel this big, calling it a front yard is a technical identification with the house farther back on the property. Given the location of the house with no existing rear yard he had no issue with the request.

Cathy Hendricks – Trout Run Road

Witness was sworn in.

Ms. Hendricks stated she has lived on Trout Run Road 34 years. She noted this is a beautiful property and the shelter would enhance the meadow where the horses live.

Chairman Achenbach called for a motion.

MS. CUNNINGHAM MOVED IN THE CASE OF ZHB-2022-0018 – 3641 TROUT RUN ROAD, TO APPROVE THE VARIANCE TO ALLOW THE LOCATION OF THE ACCESSORY STRUCTURE IN THE FRONT YARD. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.

5. ADJOURNMENT

CHAIRMAN ACHENBACH ADJOURNED THE MEETING AT 8:32 P.M.

Respectfully submitted,

Secretary

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