

**APPROVED**

**SPRINGETTSBURY TOWNSHIP  
ZONING HEARING BOARD  
JULY 10, 2014**

The Springettsbury Township Zoning Hearing Board held a regularly scheduled meeting on the above date at the Township offices located at 1501 Mt. Zion Road, York, Pennsylvania 17402.

**MEMBERS IN**

**ATTENDANCE:** Dale Achenbach, Chair  
John Schmitt  
Michael Papa  
Kevin Hevner  
David Seiler

**ALSO IN**

**ATTENDANCE:** Gavin Markey, ZHB Solicitor  
Trisha Lang, Director of Community Development  
Sue Sipe, Stenographer

**NOT PRESENT:** James Deitch  
Sande Cunningham

**1. CALL TO ORDER**

Chairman Achenbach called the meeting to order at 6:00 p.m. He introduced the members of the Board. It was noted that Mr. Hevner and Mr. Seiler will be filling in as a voting members for this meeting.

Chairman Achenbach led the Pledge of Allegiance.

**2. ACTION ON THE MINUTES**

**A. May 1, 2014**

**MOTION MADE BY MR. PAPA, SECONDED BY MR. SEILER TO APPROVE THE MINUTES OF MAY 1, 2014 AS PRESENTED. MOTION UNANIMOUSLY CARRIED.**

Chairman Achenbach asked Ms. Lang if all cases were properly advertised. She responded that notifications had been made.

**3. OLD BUSINESS - NONE**

**4. NEW BUSINESS**

**A. Case Z-14-03 Dollar General**

Michael Swank, Steckbeck Engineering  
Bob Gage, Representative of the Developer

All witnesses were sworn in.

General Case Summary:

- A. 325-43 Area and Bulk Regulations
  - D. Yards
  - (4) Minimum Rear and Side Yard Setbacks for development adjacent to a residential district or use: 50' for structures up to 15' tall, plus 5' for each additional 10' or story in height
- B. 325-44 Off-Street Parking
  - Off-street parking and loading spaces, pedestrian walkways and motor vehicle access shall be provided in accordance with Article XXV of this chapter. No storage, loading or unloading space shall project into any required yard space, nor shall merchandise be displayed in any yard area with the exception of cars and vehicles for sales or display, which shall not be located within 15' of the road right-of-way
- C. 325-114. Parking Facilities required by land use
  - D. Minimum parking requirements shall be as stated in this chart:  
Retail/commercial use, including shopping centers 4.5/1,000 gross square feet
- D. 325-116. Design Standards
  - O. All parking rows shall have curbed terminal landscaped islands no less than 10'X18'  
Landscaping requirements same as Subsection N.
  - P. All parking lots shall be curbed. For infiltration and water quality purposes, curbing may be eliminated if the developer can show approved and accepted methods of water quality and infiltration techniques being in place. In cases where curbing is eliminated, another method of vehicle control shall be employed. The Township Engineer should determine the applicability of the infiltration and water quality techniques proposed.  
Bituminous curbing is not acceptable.
- E. 325-41 Procedural Requirements
  - Development in the C-H District shall be subject to the provisions and requirements for land developments as delineated in the Springettsbury Township Subdivision and Land Development Ordinance.
- F. 325-43 Area and Bulk Regulations
  - C. Coverage The principal and accessory buildings on any lot shall not cover more than 50% of the area of such lot. Not less than 15% of the lot shall be landscaped with a vegetative material. This landscaping shall include shrubs, ornamental trees and shade trees to be placed to enhance the appearance of the building and parking area. The 15% landscaping shall be a minimum requirement and shall be included as any required buffer area.

Comments:

- A. The existing lot is only slightly more than an acre in size. To accommodate the footprint for the 9,000+ square foot retail development within this small area, relief from a number of the applicable regulations is needed. The first of these involves the rear setback for the lot which is required to be a minimum of 55' given the adjacent residential use. The applicant is proposing to provide just 25'; leaving 43% of the proposed structure within the required setback. The applicant has suggested that the required buffer yard (#4) will be sufficient to provide the desired separation between the two incompatible land uses. However, no landscaping plan has been provided to identify what plant material will be incorporated or how it might buffer noise or other impacts of the proposed development, nor has there been any indication of how the planting will be located in relation to the existing encroachments in the rear yard area.
- B. The loading/unloading area also encroaches within the required setback. The applicant again suggests that the implementation of the required buffer planting will mitigate any adverse impact of the encroachment. Staff again notes that there is no landscaping plan included to allow an evaluation of the adequacy of this buffer which, in accordance with the ordinance, is required to include a minimum of 80% evergreen plantings. Additionally, the loading area is shown in a

location that prevents the use of at least five of the reduced number of parking spaces such that, at certain times of the day, the available number of spaces is only 25 compared to the more than 40 that are required by the ordinance. Depending on how well marked this space is and how well the driver parks the delivery vehicle, the location of the loading/unloading space could also negatively impact ingress and egress to at least half of the spaces located along the southern property boundary. These spaces could also be blocked by the vehicle required to access the dumpster site.

- C. The requested reduction in parking may be appropriate given the data associated with spaces used at other similar and nearby store locations. However, if the impervious area dedicated to parking can be reduced, we would hope to see the site meet the minimum vegetative cover regulations (15%). The applicant has also requested relief of this standard. The ordinance stipulates that landscaping and buffer yards be provided around all off-street parking areas – the north side of the parking lot does not include the required landscaping.
- D. The applicant is requesting that no curbing be required within or around the parking area so that runoff can flow directly to the grass areas and be infiltrated. Staff suggests that the ordinance already permits the applicant to eliminate such curbing if the developer can show approved and accepted methods of water quality and infiltration techniques being in place. The applicant needs to provide detailed information supporting the adequacy of the infiltration for review by the Township's Engineer. This information will be reviewed as part of the subdivision and land development review/approval process. As noted, if adequate, no action by the ZHB is required.
- E. The applicant's request to obtain approval for any unforeseen zoning issues that may arise during the review of the subdivision and land development plans is not consistent with the powers granted to the Planning Commission and/or Board of Supervisors by the Municipalities Planning Code. No one but the ZHB is authorized to grant relief from the elements of the adopted zoning ordinance. Likewise, the ZHB cannot grant relief to any provisions of the SALDO.
- F. Finally, the applicant is requesting to include the area of the required buffer in the calculation of the required 15% landscape area. It is noted that the plan suggests 40% of the site is "vegetative" but there is no breakdown of what portion of this is accounted for by the buffer and what qualifies to be counted toward the 15%. Without this distinction, it is not possible to properly evaluate the proposal or the alternative offered.

Mr. Swank stated the property proposed for a Dollar General retail store is located at the intersection of Cinema Drive and East Market Street. This is Lot #1 of the Market Street Commons subdivision and is 1.2 acres. As part of the project they filed a subdivision and land development plan to acquire .11 acres from Lot #2, resulting in total lot area of 1.32 acres which is in the C-H zoning district. The store will be 9100 sq. ft gross floor area. It was noted the Dollar General store currently existing at 3629 E. Market Street will be relocated to this location.

The applicant is seeking 6 variances as listed above.

Variance A – Minimum Rear and Side Yard Setbacks - Mr. Swank noted the proposed retail store is 18½ ft in height requiring a 55 ft. setback. The zoning line follows the southern property line. The adjacent zoning is high density residential. The 55 ft. yard setback applies to both the eastern and the southern property lines. Due to the size of the existing tract, the applicant is requesting a variance to provide a 25 ft. rear yard setback to the building. From the eastern property line to the rear of the building it is 25 ft. which includes a buffer yard #4 as required by the ordinance. It also requires 10 canopy trees and 20 shrubs for each 100 lineal feet of buffer yard. The trees are shown on the current plan. The total number of trees is 45, with approximately 90 shrubs. They will have dense vegetative screen adjacent to all the existing residential uses. On the southern side of the property there are also existing trees which will provide additional buffer.

Mr. Swank stated in addition to the vegetative buffer they will also have a retaining wall. This will necessitate excavation of dirt due to a ridge that runs through the property. The retaining wall will allow the site to be leveled for construction and will run along portions of the rear property line of the eastern property and the southern property line. It will also serve as an additional buffer. The building will sit lower than the surrounding grade.

Variance B - Off Street Parking and Loading Space – Mr. Swank stated on the southern side of the building they will have an access door for delivery of goods and merchandise. There will be an at grade loading dock. The delivery trucks will have a gate to bring it down to grade. The loading area is located south of the building so it does fall within the 55 ft. rear yard setback. The zoning ordinance states that the loading area can not be within any set back area, so it would encroach into that 55 ft. They will have 43 ft. from the eastern property line to the loading space which results encroaching into that 55 ft. The requested variance is to provide a 43 ft. setback from the property line to the loading space.

Variance C – Minimum Parking Requirements - Mr. Swank noted the ordinance states for the retail use they need to provide 4½ spaces per 1000 sq. foot of gross floor area for the building. With a gross floor area of 9100 sq. ft. that results in 41 parking spaces. The standard for Dollar General stores of this size requires 30 parking spaces. Therefore, they are requesting a variance to provide 30 spaces in lieu of the 41 spaces. Mr. Swank indicated this is in line with DEP regulations to reduce imperviousness of the site.

Variance D - Curbing the parking lots – Mr. Swank explained they designed the site in such a way that the parking lots will drain to vegetated areas and then to their storm water management facility without the need for inlets and piping. This allows the water to flow through vegetated areas, swales and grass areas on its way to the storm water facility where the water will be infiltrated and treated before reaching their facility. Mr. Swank indicated they are proposing to not curb the parking lots as was delineated on their land development plan. He noted the township engineer will be reviewing that plan and offering his input to make sure it is done within regulations.

Variance E – Mr. Swank stated this variance request was added if needed to assure the land development requirements are met as delineated by the subdivision and land development ordinance.

Variance F – Landscaped Areas – Mr. Swank stated they are providing a dense vegetative buffer along the eastern and southern property lines. Per the ordinance that buffer area cannot be included in the 15% calculation. Based upon the site plan, approximately 40% of this site will be green space not impervious surface. That 40% does include the buffer yard area so the variance they are requesting is to either include that vegetative buffer as part of the 15%, or allow the grass space to be counted towards the 15%. Mr. Swank noted although they are providing more than 15% green space exclusive of the buffer yard area, they are not proposing dense trees within that area. However, they are proposing trees on the west side of the site along Cinema Drive. There are existing street trees of which 3 will need to be replaced. Additional trees will be planted around the parking lot.

It was noted that as a result of the description of the proposed 40% landscaping plan, Ms. Lang stated she was satisfied the applicant has proceeded in good faith to meet the concerns as was noted in the comments (F) above.

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

Mr. Gary Blouse stated his property borders the applicant's property. He asked if they could sell their property as commercial. It was noted their zoning district is R-1. Attorney Markey indicated they would need to obtain legal consultation as well as consult with an engineer to explore viable options.

Ms. Jane Heller stated as a member of the Preservation Committee she congratulated Dollar General on their decision to not tear down the 1860's Ettlne property but to relocate to the present site.

Attorney Markey stated if the Planning Commission is inclined to grant the variances, he would recommend the applicant withdraw the 5<sup>th</sup> variance request. It was noted the Zoning Officer has an analysis in her summary which states if some provision of the zoning ordinance would be found that the applicant has not met, a blanket variance could not be granted.

Mr. Swank affirmed that the applicant will withdraw the request.

Attorney Markey also recommended in regard to the 4<sup>th</sup> variance, placing a condition on the approval to state that the applicant needs to provide detailed information regarding the adequacy of infiltration which shall be reviewed and approved by the Township Engineer.

**MR. PAPA MOVED IN THE CASE OF Z-14-03 TO GRANT VARIANCE A. §325-43 FOR THE 25 FT. REAR YARD SETBACK. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.**

**MR. PAPA MOVED IN THE CASE OF Z-14-03 TO GRANT VARIANCE B. §325-44 FOR THE 43 FT. SETBACK FROM THE PROPERTY LINE TO THE LOADING SPACE SECONDED BY MR. SCHMITT. MOTION UNANIMOUSLY PASSED.**

**MR. PAPA MOVED IN THE CASE OF Z-14-03 TO GRANT VARIANCE C. §325-114 TO PROVIDE 30 PARKING SPACES IN LIEU OF THE 41 PARKING SPACES REQUIRED. SECONDED BY MR. SEILER. MOTION UNANIMOUSLY PASSED.**

**MR. PAPA MOVED IN THE CASE OF Z-14-03 TO GRANT VARIANCE D. §325-116 TO NOT CURB THE PARKING LOTS AS WAS DELINEATED ON THEIR LAND DEVELOPMENT PLAN, WITH THE CONDITION THAT THE TOWNSHIP ENGINEER WILL APPROVE THE PROCESS. SECOND BY MR. HEVNER. MOTION UNANIMOUSLY PASSED.**

**VARIANCE E. §325-41 WAS WITHDRAWN.**

**MR. PAPA MOVED IN THE CASE OF Z-14-03 TO GRANT VARIANCE F. §325-43 TO INCLUDE THE VEGETATIVE MATERIAL, I.E., SHRUBS AND TREES TO BE INCLUDED IN THE PERVIOUS PERCENTAGE OF 40% INSTEAD OF THE 15% AS PRESENTED BY THE APPLICANT. SECONDED BY MR. HEVNER. MOTION UNANIMOUSLY PASSED.**

**B. Case Z-14-04 Wendy's (Valenti Mid-Atlantic Realty II, LLC)**

Attorney David Tshudy, Pepper, Hamilton  
Troy Valenti, Valenti Mid-Atlantic Realty

All witnesses were sworn in.

General Case Summary:

§325-107. Business Identification Signs

A. Sign Area Standards: The maximum total sign area of any business sign shall be based on the requirements listed in Chart 325-107.

§325-107.B Placement Standards

(1) Wall signs: No attached wall sign shall extend beyond the roofline or the end of the wall to which it is attached or project away from the building more than 12 inches.

Comments: The applicant is proposing to remodel the interior and exterior of the existing Wendy's restaurant at 2802 East Market Street as part of a larger rebranding effort by Wendy's International. This effort involves the incorporation of new signage that will exceed the maximum signage permitted on the property under the provisions of the adopted zoning ordinance. The permitted amount of signage is 20% of the building front area or 5% of street frontage, whichever is greater; in this particular case, a total of 150.8 square feet. The total square footage of signage desired by the applicant is 247.885 square feet.

Recommendations: The manner in which the amount of permitted signage is calculated may unduly penalize this site which is narrow and deep. This configuration also results in a significant amount of the

proposed signage being viewable mainly from the parking lot/drive-thru lane within the site. The proposed changes to the site are generally consistent with the design standards associated with the TCO zoning district in which the property is located and, as a result, staff is supportive of the requested relief if the findings of Fact and Conclusions of Law meet with the approval of the Board.

Attorney Tshudy stated the property is located at 2802 East Market Street, which currently is the location of the Wendy's Restaurant operated by Valenti Mid-Atlantic Management LLC. The property owner is Mr. Valenti. The Valenti Mid-Atlantic Management is the largest Wendy's franchise in PA with 61 restaurants.

Attorney Tshudy provided an Exhibit Booklet, identifying the following Exhibits:

Exhibit 1 and 2 show the vested deeds to the property and the York County Tax Card. He stated that Wendy's International as part of a rebranding initiative, is requiring its franchisees to remodel the interior and exterior of their restaurants. The rebranding also includes new signage.

Exhibit 3 shows 3D renderings prepared by the architect on the project.

Exhibit 4 is a site plan of the property. The building will be placed on the same building footprint as the existing building.

Exhibit 5 contains architectural elevations of the property, showing the proposed locations of the signs. The property is located in the M-U district and the Town Center Overlay district. The applicant is requesting a variance from the total sign area requirements under §325-107 of the zoning ordinance. That section limits signs in the M-U district to either 20% of the building front or 5% of the street frontage, whichever is greater. The street frontage is approximately 130 ft. as determined by the deed and using a scale on the site plan. Based on that calculation the property would be 6.4 sq. ft. of signage. The architect has determined the building front measures 754 sq. ft. therefore the property would be permitted to have 105.8 sq. ft. total signage. The total signage requested is 247.8 sq. ft. The first sign is the existing pole sign on the property. The applicant intends to replace the existing face of the pole sign. He noted they are aware pole signs are not permitted in the M-U district or in the Town Center Overlay district, however, the pole sign preexists the current zoning ordinance; therefore, it is a non-conforming structure and they are not altering the sign.

Attorney Tshudy identified the three Wendy's logo signs. One is located in the front of the building on the wall. Another is located on the right hand side of the building near the entrance area, and one would be located on the drive through side of the building. This sign will be moved closer to the front of the building and the side entrance. Each of the Wendy's signs measure 32.12 sq. ft. as detailed on Exhibit 6.

The 'Quality is our Recipe' sign on the entrance side is 10.3 sq. ft. as detailed on Exhibit 7. On the drive through side there are two additional signs within the definition of signs in the ordinance. These are intending to communicate to drive through customers, as identified on Exhibit 10.

Exhibit 11 identifies the Wendy's drive through menu board, which is a preexisting sign that will remain at that location. Because it measures more than 2 sq. ft. it must be included within the total sign area. As shown on the site plan, the menu board is directly behind the building and can only be seen by customers using the drive through facility.

Exhibit 12 shows a total sign area matrix which adds up all the different signs which comes to the 247.8 sq. ft. inclusive of the drive through menu board.

Attorney Tshudy noted along this corridor the property is extraordinarily narrow which means that the building front will be much smaller than other building fronts resulting in less sign area than the surrounding properties. He noted the Wendy's rebranding which includes this sign package is necessary for Wendy's to stay competitive with other fast food restaurants. Attorney Tshudy stated considering the surrounding land uses, the requested variances, if granted, will not harm the values or development of any

neighboring properties and will not harm the health, safety and welfare of the community at large. The variances sought are the least variances required for the applicant to be compliant with this franchise agreement with Wendy's International.

Attorney Tshudy stated the requested variances for the additional total sign area are justified under the criteria set forth in the zoning ordinance as well as the PA Municipalities Planning Code. He further noted the variances being requested are dimensional variances, subject to the relaxed standards as set forth in the Hertzberg vs. Zoning Hearing Board case and its progeny.

Attorney Markey confirmed that is an accurate statement for moving forward.

Attorney Tshudy indicated through discussions with Township Staff, the applicant has incorporated many of the design standards in §325-200H of the zoning ordinance regarding the improvement of existing buildings within the Town Center Overlay district. This includes creating pedestrian walkways, bicycle racks, and new landscaping.

Ms. Lang was in agreement that the applicant's presentation was sound. She stated signage area permitted is based on the property frontage. She acknowledged the shallowness of this property noting it creates a disadvantage as opposed to the surrounding properties. She acknowledged appreciation for the applicant's efforts to comply with the Town Center Overlay.

It was noted the second variance request for §325-107B placement standards is due to the Wendy's sign above the roof line. It was noted the building will be relocated closer to the street.

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

Attorney Markey concurred with Attorney Tshudy's statement on the Hertzberg case and the reduced standards for a variance.

**MR. SEILER MOVED IN THE CASE OF Z-14-04 TO GRANT THE VARIANCE FOR §325-107, THE MAXIMUM TOTAL SIGN AREA SHALL BE 247.885 SQ. FT. SUBJECT TO THE REVISED DRAWINGS. SECONDED BY MR. SCHMITT. MOTION UNANIMOUSLY PASSED.**

**MR. SEILER MOVED IN THE CASE OF Z-14-04 TO GRANT THE VARIANCE FOR §325-107B PLACEMENT STANDARDS. SECONDED BY MR. PAPA. MOTION UNANIMOUSLY PASSED.**

## **5. ADJOURNMENT**

Chairman Achenbach adjourned the meeting at 7:00 p.m.

Respectfully submitted,

Secretary  
/ses