

IN RE: : BEFORE THE ZONING HEARING BOARD
: OF EAST HANOVER TOWNSHIP
APPLICATION FOR VARIANCE OF :
TALLEY PETROLEUM : HEARING: August 15, 2016
ENTERPRISES, INC. :
: DECISION: August 15, 2016
No. 2016.01 :
: WRITTEN DECISION MAILED:
: September 29, 2016
:

DECISION OF THE ZONING HEARING BOARD

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted an initial properly advertised and properly posted public hearing on August 15, 2016, commencing at approximately 7:00 p.m., upon the Application for Variance of Talley Petroleum Enterprises, Inc. with respect to the property which was the subject of the hearing, to wit: 10046 Allentown Boulevard, East Hanover Township, Grantville, PA, 17028. The owner of the property is the Judith A. Talley Trust (hereinafter "Owners").

Notice of the hearing was published in *The Sun* on July 28, 2016, and August 4, 2016, in accordance with the requirements of the Pennsylvania Municipalities Planning Code and the East Hanover Township Zoning Ordinance. Additionally, in compliance with Section 603.1.1 of the Zoning Ordinance, written notice of the hearing was conspicuously posted on August 1, 2016, on and about the tract of land which is the subject of the hearing. Jackie Wilbern, the East Hanover Township Zoning Officer, was present at the hearing and confirmed that the property had been posted with the hearing notice. Furthermore, Ms. Wilbern confirmed that she had provided written and mailed notices on July 22, 2016 to the Applicants and to property owners adjacent to the subject property.

All of the members of the Zoning Hearing Board being JoLynn Stoy, Chairman, Shirley Allison and Mark Stremmel, including alternate Kenneth Wolensky, were present throughout the hearing. Applicant, Talley Petroleum Enterprises, Inc., by its Vice President, Allen Talley, Jr. participated in the hearing together with its architect, Douglas C. Phillips, and engineer James S. Snyder, P.F. Principal of Snyder, Secary & Associates, LLC. Jackie Wilbern, the Zoning Officer, provided background at the hearing pertaining to the property. All witnesses offering testimony in the course of the hearing were duly sworn.

FINDINGS AND DISCUSSION

The request for a variance submitted by the Applicant includes a copy of a site plan identifying all of the existing features of the subject property. Applicant's site plan also includes detail with respect to the proposed improvements to be made and for which the request for a variance has been made. Applicant has also provided a brief narrative to support their request and a list of the adjoining property owners. Concept drawings as marked as Applicant's Exhibit No. 1 prepared by Douglas Charles Phillips, Architect, have been admitted and made part of the record before the Board. A photo of the posted hearing notice on the property marked as Township Exhibit No. 1 has been admitted as part of the record. A copy of the proof of publication in *The Sun* marked as Board Exhibit No. 1 has also been admitted and made part of the record.

The subject property is located in a Highway Commercial (HC) Zone and is approximately 2.939 acres in total area. Located on the property is a single story metal building having an area of approximately 3,600 square feet which is presently used for storage. The paved and impervious portions of the property are noted on Applicant's site plan and result in a present total impervious lot coverage of forty-three percent (43%).

Applicant has been an occupant of the property for at least 40 years. It desires to expand its business operations, build a new office structure, reconfigure the traffic and parking areas on the property which includes a truck court in the rear of the lot for larger vehicles. The existing building which is located on the northeast portion of the property shall be retained and used for Applicant's employee drivers and mechanical services for its equipment.

Applicant proposes to construct a two story office building on the central portion of the lot along Allentown Boulevard which building shall have a total area of 5,457 square feet. The first floor of this bi-level building shall have an area of 3,917 square feet. The second floor shall have an area of 1,540 square feet. The office building shall have approximately twenty-four (24) work spaces for employees, six offices, storage rooms, kitchen, two conference rooms, restrooms and other related facilities. Included with Applicant's construction proposal is a future building addition of 4,000 square feet in area. Upon completion of all construction, including parking areas, travel lanes and related facilities on the property, Applicant shall have a total lot coverage of sixty percent (60%).

As part of the completion of the improvements, the property shall be connected to the public sewer system. A collection, pumping and forced main system connection shall be designed and installed subject to all federal, state and local requirements. The property is presently served by private water and a well as shown on Applicant's site plan. Public water is not available in East Hanover Township and to the subject property. The nearest available public water system is located in West Hanover Township. The cost and practicality of connecting the subject property to public water is prohibitive.

The subject property was originally purchased in the late 1970's by the Talley family. Applicant's business primarily engages at the wholesale level in the sale and shipping to market

of petroleum products. Presently their volume business approximates 18 million gallons per year. Applicant's operations are expanding with additional employees and the need for adequate office space. Increases in wholesale sales long term are expected to reach or exceed as much as 20 million gallons of fuel per month. Applicant services markets on the east coast from Georgia to New England.

Nine-five percent (95%) of Applicant's sales and deliveries are to commercial markets. Approximately five percent (5%) of Applicant's business involves delivery to residential markets. Within Pennsylvania Applicant's territory encompasses from Chambersburg to Allentown and to the southern end of Lancaster County. Applicant does maintain some sales both in Scranton and State College areas. Delivery of the products to these areas, however, is made through separate and direct supply arrangements.

The subject property is located on Route 22 also known as Allentown Boulevard. There is a median dividing this section of the roadway and therefore no left turns can be made from Route 22 heading east onto the property. Current entrances to the facility are located at the eastern and western end of the property. Applicant proposes to replace and relocate the existing driveways to allow for greater ease of traffic flow entering and exiting the premises. The proposed location of Applicant's driveways are noted on the site plans submitted as part of the record.

As a general matter Applicant's property is sloped with the lowest elevation located adjacent to and along Allentown Boulevard. The property increases in elevation northerly towards the center of the lot. As a result Applicant's proposed building shall be constructed into this slope providing for a bi-level structure with a second story to be situated at grade level with direct access to the central and rear portions of the lot.

In the vicinity of Applicant's property are located a variety of operating commercial and other uses. For example to the east is located an RV repair facility; to the south of Allentown Boulevard is Wert Book Binding; Kline's Automotive is situated to the west; and the subject property is bordered on the north by a cemetery and church.

A substantial area of Applicant's property is hard packed gravel and therefore impervious pursuant to the requirements of East Hanover Township Ordinances. There is an existing diesel fuel tank on a concrete pad which is used only onsite for Applicant's own vehicles. Ultimately this fueling apparatus shall be relocated to the east side of the property and a fueling island installed as set forth on Applicant's site drawing.

Applicant's business presently utilizes 12 tank wagons, 4 trailers and 2 tractors for delivery operations. Although the volume of business is to be increased, Applicant anticipates only a minimal increase in the number of vehicles that may be needed. An expansion of Applicant's commercial diesel and tank wagon business is not anticipated due to such services in the surrounding area being saturated. Applicant presently has 17 employees and anticipates expanding possibly to as many as 50 employees depending upon the future growth of the business. Applicant's volume and growth therefore shall primarily be accomplished offsite, through a variety of direct supply, delivery and other contractual arrangements. Therefore, there shall be no material increase in traffic or business to Applicant's site other than its own employees directly related to its office operations.

Applicant's lot presently consists of an area of 2.939 acres or 128,030 square feet. Forty-three percent (43%) or approximately 50,053 square feet of the lot presently as impervious coverage due to structures, parking and other infrastructure related to Applicant's operations. Applicant proposes construction of an additional 5,457 square foot bi-level building of which

3,917 square feet shall be the first floor together with a future addition not to exceed 4,000 square feet. The Zoning Ordinance provides a maximum lot coverage with respect to the following uses in this Highway Commercial (HC) Zone: 30% if neither public water nor public sewer exists; 35% if public water only exists; 45% if public sewer only exists; and 60% if both public water and sewer exist.

The Board recognizes that no public water is available in the Township nor are any plans known to extend or make public water available to this property and zone. As a result development of a property such as Applicant's is limited. Applicant's property is located in a zone specifically designated for commercial development along a major highway within the Township. This is a location where higher traffic volume is expected and higher lot coverage is often the norm which is required to accommodate higher volume of commercial and retail traffic as well as related structures and parking.

Section 210 of the Zoning Ordinance recognizes a wide variety of permitted uses within this Highway Commercial Zone. Offices for operation of Applicant's business is one of these uses. Pennsylvania Courts have recognized that a dimensional variance involves a request to adjust zoning regulations to use a property in a manner consistent with overall zoning regulations, rather than a change of use from that allowed by the Zoning Ordinance. Applicant is not changing the use of the property, however, a reasonable dimensional adjustment of the Zoning Ordinance regulation for lot is being sought by the Applicant. Therefore, a lesser amount of proof is required to establish hardship under the circumstances. Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998). Multiple factors are considered in this analysis, including economic detriment of the Applicant, financial hardship created by the work necessary to bring the structure and property into compliance with design requirements,

and characteristics of the surrounding neighborhood. The Board recognizes further that for dimensional variances an Applicant is not required to show that the property at issue is valueless without the variance or that it cannot be used for any permitted purpose. Marshall v. City of Philadelphia, 97 A.3rd 323 (Pa. 2014).

The Board is persuaded that a hardship exists with respect to Applicant's property. This is due to its physical size, shape, location along Route 22, permitted office and commercial use and lack of public water together with the obviously prohibitive cost of bringing public water to this site. The Board finds that Applicant did not create these conditions, but rather they are due to the imposition of the Zoning Ordinance requirements upon a property that has been used for more than 40 years for what is now allowed as a permitted use since adoption of the Zoning Ordinance. If the variance is granted the Board is further persuaded that it will not alter the essential character of the neighborhood and zone where this property is located. A variety of large lot commercial and retail uses are located in the vicinity of Applicant's property along this commercial corridor of the Township.

Route 22 is a divided highway, therefore access is already prohibited to the property for eastbound traffic. This is a condition which exists for other properties in this area similarly. Applicant proposes to connect to public sewer thus eliminating a strain of an on-lot sewage disposal system on developable areas of the property and onsite resources. The Board finds that Applicant's increase in lot coverage can be readily accommodated and not impair the appropriate use of adjoining properties or be detrimental to the public welfare.

The maximum coverage requested by Applicant is that amount which would be allowed in a Commercial Zone under ideal circumstances. The Board is persuaded therefore that Applicant's request to increase this lot coverage to sixty percent (60%) is the minimum variance

which would allow relief from the Ordinance and continue reasonable use of the property in accordance with the purposes of the Ordinance and thus not impair the integrity of the Township Comprehensive Plan.

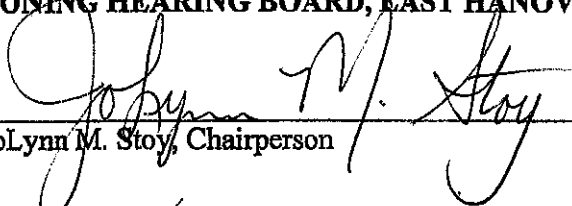
DECISION

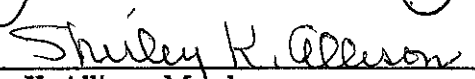
By reason of all of the foregoing, the East Hanover Township Zoning Hearing Board finds that Applicant, Talley Petroleum Enterprises, Inc. has met the requirements for granting a variance from the lot coverage design requirements of Section 210.5 of the Zoning Ordinance. Therefore, Applicant's request to allow a maximum lot coverage of sixty percent (60%) with respect to the construction of a 5,457 square foot bi-level office building and a 4,000 square foot structure for future expansion together with associated parking facilities and related infrastructure all to be located on the property at 10046 Allentown Boulevard, Grantville, Pennsylvania, being Parcel No. 25-011-013 is hereby GRANTED subject to the conditions that the total lot coverage not exceed sixty percent (60%) and Applicant connects to and provides public sewer to the premises.


[Signature Page to Follow)

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ZONING HEARING BOARD, EAST HANOVER TOWNSHIP


JoLynn M. Stoy, Chairperson


Shirley K. Allison, Member


Mark Stremmel, Member