

IN RE: : BEFORE THE ZONING HEARING BOARD  
: OF EAST HANOVER TOWNSHIP  
APPLICATION FOR VARIANCES OF :  
FLEET REPAIR SOLUTIONS, LLC : HEARING: September 18, 2017  
: :  
No. 2017.08 : DECISION: September 18, 2017  
: :  
: WRITTEN DECISION MAILED: November 1,  
: 2017  
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**DECISION OF THE ZONING HEARING BOARD**

The Zoning Hearing Board of East Hanover Township, Dauphin County, Pennsylvania, conducted a properly advertised and properly posted public hearing on September 18, 2017, commencing at approximately 7:00 p.m., upon the Application for a Variance of Fleet Repair Solutions, LLC, with respect to the property located at 550 Firehouse Road, Grantville, Pennsylvania, 17028, and being Tax Parcel No. 25-008-027.

Notice of the hearing was published in *The Sun* on August 31, 2017, and September 7, 2017, 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 September 8, 2017, on and about the property which is the subject of the hearing. Jackie Wilbern, the East Hanover Township Assistant Manager and Zoning Officer, was present at the hearing and confirmed that the notice was posted. Furthermore, Ms. Wilbern confirmed that she had provided written notice and mailed notices on September 8, 2017, of the hearing to those property owners adjacent to the subject property as identified in the Application for a Variance as well as to the Applicant.

Members of the Zoning Hearing Board, Shirley Allison and Mark Stremmel, constituted a quorum and were present throughout the hearing. Also present were: Robert E. Shaffer, P.E., of Act One & Associates, Consulting Engineers and Surveyors, on behalf of Applicant; Scott Merlot, Senior Vice President on behalf of Applicant; Norm Ulrich, East Hanover Township Engineer; and Kurt E. Williams, Esquire, of Salzmann Hughes, P.C., representing East Hanover Township. All witnesses who offered testimony during the course of the hearing were duly sworn.

### **FINDINGS OF FACT**

The subject property is a single tract of land having an area of approximately 10.001 acres along Firehouse Road, situated generally to the north of Interstate Route 81 and to the south of Fox Run Road. Applicant's property is located in an Industrial Zone (I), pursuant to Section 220 of the East Hanover Township Zoning Ordinance.

At the hearing of the matter, in addition to the Application for a Variance, Applicant submitted a site plan titled "Proposed Conditions Final Land Development Plan", marked Applicant's Exhibit No. 1, which was admitted as part of the record. The site plan identifies various physical features of the property, including the location of all existing buildings.

The primary use of the property is for the operation of a trailer and heavy equipment repair and service facility. Three (3) existing buildings are located on the property as noted on Applicant's Exhibit No. 1, being 6,415 square feet, 3,982 square feet and 9,600 square feet in area respectively, within which said business operations are conducted.

The pole building located in the south central portion of the property is used only for trailer repair. In 2015, a land development application for the pole building was granted by East Hanover Township. The repair and service operations include federal inspections, tires,

brakes, dismantling and rebuilding activities. Storage of parts and equipment for the operation is located outdoors in nine (9) trailers owned by Applicant. Conditional use approval was granted in 2017 by East Hanover Township for the present use.

The property has been used continuously in excess of ten (10) years for various types of vehicle service, salvage and repairs. Applicant provides vehicle trailer services and repair on-site. Operation of the business requires a large open area to turn, position and park tractor and trailer vehicles which may be as much as seventy (70) feet in length. Such vehicles require a turning radius of up to fifty (50) feet of open space. Applicant maintains on-site approximately 70 to 100 such trailers at any time, which include those waiting for repair, in the process of being serviced or repaired, or otherwise ready for return to the customer. An aerial photo being Applicant's Exhibit No. 2 show the limited open areas which are available for operation of vehicles.

The subject property is irregular but generally triangular in shape, with its narrowest areas being located at the westernmost and easternmost ends of the property. Agricultural uses abut the subject property to the west and east. A residential lot which is located to the north is used for commercial storage. To the south of the subject property is a commercial towing business with agricultural lands further to the south.

A substantial portion of the center of the property to the east and north of the pole building is believed to be essentially comprised of clean fill and various construction debris which had been brought to the site presumably by prior owners of the subject property. This fill was used to provide a level area in the central and widest portion of the property which is used for parking, turning and maneuvering trailers to and from the service buildings. All gravel parking areas are open space except some parking is located closer to the entrance of

the property. An additional area at the property entrance from Firehouse Road is proposed to provide a separate employee parking lot with approximately 28 spaces as set forth on Applicant's Exhibit No. 1.

Two (2) stockpiles of clean fill are maintained on Applicant's property as noted on Applicant's Exhibit No. 1. One stockpile approximates sixteen (16) feet in height and has dimensions of approximately 100 feet by 200 feet. The second stockpile is approximately six (6) feet in height and has an area of approximately 40 feet by 80 feet.

The Steep Slopes and Riparian Buffer Zones border the on-site parking open area used for large trailer traffic. Fill material in this open parking area of the lot was purportedly obtained from a highway bridge demolition project. The material is believed to have included concrete slabs with rebar and other structural debris. Use of such materials has inhibited adequate and proper soil compaction of the parking areas, created voids, collapses and washout of soil and fine materials which comprise the gravel parking area surface. Stabilization of these areas is continually needed.

Due to the substantial inconsistent history of fill being placed upon this property and inability to compact adequately, the collection of water and ponding within the center of the tract occurs. This area is in need of proper drainage. Over the years subsurface settling of the fill has occurred, and continues to occur, resulting in various depressions and the exposure of concrete and rebar which had previously been deposited on the property. The stockpiles of clean fill are maintained on the property and used for grading purposes to remedy ponding of water and attempt to maintain level areas for on-site traffic and parking.

Applicant's property is subject to changes in elevation and a variety of physical features which are further regulated by Section 240 "Steep Slopes" and Section 250

“Riparian Buffer Overlay” Zoning Ordinance requirements. The property presently has both Precautionary Slopes with grades of 15% to 25% and Prohibitive Slopes where grades exceed 25% as defined by the Zoning Ordinance. The slopes on this property have an average height differential of approximately 20 feet.

In addition to the slopes and grade of the property, an unnamed tributary to Raccoon Creek traverses the tract for a distance of 988 linear feet along the northern and entire eastern property lines. This tributary or stream has been designated as “Non-Attaining” due to the effects of crop-related agriculture pursuant to Pennsylvania Department of Environmental Protection requirements and the Clean Water Act.

The property also has identified wetlands being approximately 20 to 30 feet in width along the entire tributary length and located between the unnamed tributary and the lowest points of the abutting defined steep slopes. Additional wetland areas also have been identified to the north of the unnamed tributary along its entire length. Due to the close proximity of those wetlands, being a natural watershed area, the steep slopes are even more prone to erosion unless corrective action is taken.

Areas of the property which are subject to steep slopes, wetlands and the Raccoon Creek tributary are detailed on the Exhibit B site plan accompanying the zoning variance application. Exhibit B of the Application for Variance also identifies in detail the location and extent of each area of Precautionary and Prohibitive steep slopes as well as two Riparian Buffer Zones. The cumulative effect of these physical property features renders unusable approximately 35% of the total available lot area.

As a result of maintaining and regrading the parking area with additional fill, some encroachment into the Riparian Buffer areas has occurred and will be needed in order to

install appropriate storm water management facilities in accordance with best practices and stabilize the steep slopes. Applicant proposes to design and create an appropriate swale, with perhaps check dams or other features to intercept, divert and otherwise manage water runoff properly from the parking areas and remainder of the property. The final functional design of such facilities is yet to be determined but shall be incorporated into the Land Development Plan approval process of East Hanover Township with respect to which Applicant's Land Development Plan is now pending. Doing so is necessary to prevent further erosion of the existing parking areas and deleterious effects upon the existing wetlands and Raccoon Creek tributary.

### **DISCUSSION AND CONCLUSIONS**

Applicant has requested several variances to obtain relief from the Zoning Ordinance steep slope and riparian buffer overlay zone requirements in order to install storm water management facilities, provide adequate parking and necessary grading with respect to its vehicle and heavy equipment service and repair operations. Relief is specifically requested from Section 240.5, which requires that no grading be undertaken except when approved in conjunction with a permitted use. With respect to identified Prohibited and Precautionary Slopes, Sections 240.5.2 and 240.5.3.A of the Zoning Ordinance do not include Applicant's trailer service and repair use as permitted. Lastly, Applicant's activities and use of its structures, the clearing of vegetation, grading and regrading of land, vehicle traffic, parking and storm water management and detention facilities are also not specifically recognized as a permitted use pursuant to Sections 250.4 and 250.6 of the Zoning Ordinance. Therefore, variances will be required.

As a general matter, a variance may be granted only where there is an unnecessary hardship. Even when there is a finding of an unnecessary hardship, a variance may be granted only if the Board finds, where relevant, that the standards as set forth in Section 604.4 of the Zoning Ordinance have been met. It is Applicant's burden of proof to establish that an unnecessary hardship exists. Valley View Civic Association v. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1987).

The Board is persuaded that an unnecessary hardship exists and the property is subject to a combination of unique physical circumstances, conditions, topography and location. The property although being large, i.e. 10 acres, is substantially irregular in shape which irregularity contributes to the lack of usable space. It is generally a long and narrow, triangular type of lot. The narrowest sections of the lot are located at the westernmost end along Firehouse Road and at the juncture of its eastern and southernmost property lines. The more central and slightly wider portion of the lot is impacted and effectively further narrowed by the location of existing wetlands, an unnamed Raccoon Creek tributary and steep slopes. The cumulative result of all of these conditions is a loss of nearly one-third (1/3) of usable area of the property.

Physical circumstances contributing to the hardship are exacerbated by the history of backfill brought onto the property beginning before the current steep slope and riparian buffer ordinance requirements were in effect. Due to the extent of the backfill over a large portion of the property and its questionable composition, stabilization of the land has been a challenge and will remain an ongoing process with no certain end. As a consequence, the property is subject to possible substantial and continual future erosion, particularly in the designated steep slope areas, unless further measures are taken to manage storm water. Such

erosion will impact and be a detriment to the natural wetlands and tributary, increasing the hazards and likelihood of a destabilized parking and vehicle traffic area becoming unusable, unless proper and adequate storm water management controls are put into effect. The Board is persuaded that accomplishing such controls effectively will necessitate encroachment into the identified Steep Slopes and Riparian Buffer areas.

The Board is also persuaded that the unnecessary hardship is due to the combination of all the physical conditions which are peculiar to this property and is not due to circumstances and conditions generally created by the Steep Slope and Riparian Buffer Overlay Zone requirements in this neighborhood or zone. The natural features of the subject property limit use of a significant portion of it such that Applicant is not able to continue conducting a reasonable use of the property in strict conformity with the Zoning Ordinance requirements. For service and repair operations, the safe maneuvering of vehicles, an adequate turning radius being available and a stable parking area are necessary for the safety of employees, patrons and the public.

The naturally occurring physical conditions unique to this property and topography all drain toward and impact the unnamed tributary to Raccoon Creek and wetlands. These conditions pose a significant burden upon Applicant's property and the Board is persuaded that the resulting hardships therefore have not been created by the Applicant.

A number and variety of commercial and industrial uses are located within the area of the subject property and even abut this tract. Applicant's service and repair operations have also been approved as a conditional use in this Industrial Zone and are therefore compatible with the activities allowed within it. The variances requested are proposed to allow a continuation of the prior and now permitted uses of this property. Therefore, the Board



further finds that the variances, which will accommodate continued reasonable and safe use of the property and protect the naturally occurring conditions such as the tributary and wetlands, will not substantially or permanently impair the appropriate use or development of adjacent properties, or be detrimental to the public welfare.

By reason of all the foregoing, the Board finds that encroachments proposed into the Steep Slope and Riparian Buffer Zones are the minimum variances which will afford relief and allow protection of existing steep slopes which are naturally prone to erosion. Doing so will further serve the purposes, intent and objectives of the overlay zones as described in Sections 240.1 and 240.2, as well as 250.1 of the Zoning Ordinance.

When granting a variance, however, the Board is authorized, pursuant to Section 604.4.9 of the Zoning Ordinance, to attach conditions to protect the public welfare and the purposes of the Zoning Ordinance, even if such conditions are more restrictive than those established for other uses in this zone. The Board finds that such conditions are necessary under the circumstances as presented to assure proper oversight and further development of this property. Such conditions are also necessary to assure that the requirements set forth in Section 604.4 continue to be met as well as the purposes, intent and objectives of the Steep Slope and Riparian Buffer Overlay Zones and the Township Comprehensive Plan.

### **DECISION**

For all of the reasons previously set forth, evidence and testimony presented, the East Hanover Township Zoning Hearing Board does hereby GRANT Application for Variances of Fleet Repair Solutions, LLC from Sections 240.5, 240.5.2, 240.5.3.A, 250.4 and 250.6 of the Zoning Ordinance, subject to the following:


1) The variance approval hereby is granted upon the condition of being incorporated into a revision of Applicant's land development plan pending before East Hanover Township;

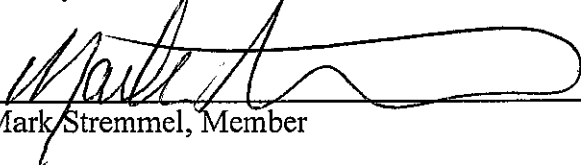
2) Applicant shall enter into a storm water Operations and Maintenance Agreement with East Hanover Township with respect to the subject property;

3) Applicant shall obtain approval from the Dauphin County Conservation District for all disturbances, erosion and sedimentation control conditions and shall submit its plans to the Dauphin County Conservation District to obtain NPDES permits;

4) All details of Applicant's storm water management plan with respect to the property shall meet all of the requirements for a 100-year storm and approval of the East Hanover Township engineer.

**ZONING HEARING BOARD, EAST HANOVER TOWNSHIP**

  
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Shirley Allison, Member

  
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Mark Stremmel, Member

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