

**TOWNSHIP OF DERRY
BOARD OF SUPERVISORS**

**PUBLIC HEARING
Tuesday, October 14, 2014**

600 Clearwater Road, Hershey, Pennsylvania 17033

CALL TO ORDER

The October 14, 2014 Public Hearing of the Township of Derry Board of Supervisors was called to order at 6:50 p.m. by John W. Foley, Chairman.

ROLL CALL

Supervisors Present:

Sandy A. Ballard
Justin C. Engle, Secretary
John W. Foley, Chairman
Marc A. Moyer, Vice-Chairman
Matthew A. Weir

Also Present:

Charles Emerick, Director of Community Development
Jill Henry, Assistant Township Manager
James N. Negley, Township Manager/Township Treasurer
Jon Yost, Solicitor
Brenda Van Deursen, Recorder

Public Present: Catherine E.R. Wagner, A.J. Troncelliti, Anne Newman, Wayne T., John R., Rich Gamble

NEW BUSINESS:

The purpose of this hearing is to receive public comment regarding Zoning Petition No. 2014-04, as filed by Catherine E. R. Wagner, Esq. on behalf of A. J. Troncelliti amended by adding definitions for the terms 'Automotive Car Wash Facility', 'Automotive Lubrication Facility', 'Motor Vehicular Repair Garages', and 'Motor Vehicular Sales and Services'; and regarding the requirement that all work at an Automotive Lubrication Facility must be performed in an enclosed building.

Charles Emerick, Director of Community Development – Although this ordinance is submitted by the operator of Jiffy Lube, it will affect all of the uses under Automotive Car Wash Facility and Automotive Lubrication Facility contained within any Neighborhood Commercial zoning district in the Township. The proposed text amendment simply adds four definitions: Automotive Car Wash Facility, Automotive Lubrication Facility, Motor Vehicular Repair Garages, and Motor Vehicular Sales and Services. It was found that none

of these uses that we permit in the Township are defined. Other than the definitions, the only other amendment proposed by this is a text amendment allowing work to be performed outside of the building. All work must be performed in an enclosed building as it reads today. With the addition of allowing Automotive Lubrication Facilities to do state inspections without repair work, it was necessary to change a portion of the ordinance to read – all work must be performed within an enclosed building with the exception of road test necessary for Pennsylvania State Inspection service.

The provisions of this conditional use was added to the Township's ordinance in 2006 to enable the Zimmerman Rapid Lube and Care Wash facilities to be established. The only other time that this conditional use was utilized was for the Sheetz that is proposed at Middletown Road to enable their car wash facility. The Jiffy Lube facility took over the Zimmerman's Auto Care and begin offering state inspection services. Mr. Emerick cited them for exceeding what he considered to be the ordinary operation of an Automotive Lubrication Facility. They appealed Mr. Emerick's determination to the Zoning Hearing Board. The Zoning Hearing Board upheld the determination. The applicant thru their legal counsel met with Community Development to find out how they could possibly be able to do auto inspection service without repair. Mr. Emerick said that it would take a text amendment to the ordinance. Because there were no definitions in the original ordinance, Mr. Emerick supports adding definitions that help define what is being proposed. The limit of what is permitted inside an Automotive Lubrication Facility is within the definition which Mr. Emerick shared.

Catherine E. R. Wagner, attorney for the applicant – Mr. Troncelliti would like to amend the sections of the zoning ordinance pertaining to the definitions and the specific criteria for conditional uses. He seeks to define four otherwise undefined terms underneath the zoning ordinances: Automotive Car Wash Facility, Automotive Lubrication Facility, Motor Vehicular Repair Garages, and Motor Vehicular Sales and Services. The reason behind this petition is to allow for Automotive Lubrication Facilities permitted by conditional use in the Neighborhood Commercial District to conduct Pennsylvania state inspections and to allow road tests that are necessary for state inspections to be performed outside of an enclosed building. The Commonwealth and the municipalities planning code is unequivocally clear. If an ordinance is unclear, it will be interpreted in a sensible manner in favor of the property owner and against any implied restriction. It is a lack of knowledge of what was permitted and what was restricted.

Attorney Wagner: Where is the Jiffy Lube located?

AJ Troncelliti: Kaylor Road behind Turkey Hill.

Attorney Wagner: How long have you owned it?

AJ Troncelliti: Just over a year.

Attorney Wagner: What kind of services are provided at the Jiffy Lube?

AJ Troncelliti: Focus is on oil changes, but we provide other preventative maintenance, fluid changes, filter changes, and state inspections.

Attorney Wagner: Did you ever do state inspections?

AJ Troncelliti: Yes.

Attorney Wagner: How long ago was that?

AJ Troncelliti: At the end of last year.

Attorney Wagner: What brings you here today?

AJ Troncelliti: He did not know they were in violation of the zoning ordinance and therefore would like to get it amended to do state inspections.

Attorney Wagner: Were you told you couldn't do state inspections?

AJ Troncelliti: We were.

Attorney Wagner: Were you unaware that you couldn't do state inspections?

AJ Troncelliti: Unaware prior to.

Attorney Wagner: Are there any other Automotive Lubrication facilities to the best of your knowledge that do state inspections?

AJ Troncelliti: Absolutely.

Attorney Wagner: Are there any in the area?

AJ Troncelliti: Yes. In the state, yes.

Attorney Wagner handed each supervisor the actual state inspection requirements.

Mr. Troncelliti explained that there are two parts, one is computer based – emission testing and the other part is the road test.

Supervisor Engle asked if a car usually stays overnight when it comes in for an inspection. Mr. Troncelliti said they only do services while people wait. Supervisor Engle asked what if it needs a repair. Mr. Troncelliti said they tell the customer what they need to pass the inspection. Supervisor Engle asked if Jiffy Lube starts the process does the customer have to come back to them. Mr. Troncelliti said most cars pass the emissions test and the emission sticker is applied. They check the rest of the car and if it needs a repair, the customer gets it repaired, they come back and it is checked and the sticker is put on it. His company policy is not to leave any vehicles on the property overnight.

Supervisor Weir said he noticed the phrase “may include minor vehicle services” is included on both the definition for an Automotive Lubrication Facility and Motor Vehicular Repair Garage. Don't you think the statement allows for some misunderstanding? Replacing a horn is a minor vehicle service. It also is in conflict with what you say about not making a repair on a state inspection. As cars become more component based, even brakes are becoming minor repairs. Mr. Troncelliti said when they talk about services, they

talk about preventative maintenance services. Supervisor Weir asked if we should have that spelled out in this definition.

Attorney Wagner said the way the definitions are structured is least restrictive and more restrictive definitions. You have certain districts that allow very restrictive uses. Neighborhood Commercial for example can only be here for a conditional use. The idea behind having that term used in both a more restrictive definition and a less restrictive definition is that it would be understood that the less restrictive definition encompasses that work performed at a more restrictive use.

Vice-Chairman Moyer said he is curious about the use of term "Automotive Lubrication Facility shall not require the overnight storage of vehicle." It could certainly permit overnight vehicles. Attorney Wagner said they could change "require" to "permit."

Supervisor Engle pointed out that this ordinance is for all Neighborhood Commercial. Not that Mr. Troncelliti would push the limits, but if we have state inspections allowed all throughout Neighborhood Commercial and certain repairs, how do we know that they are not turned into full garages. Mr. Emerick said they would not know unless they receive complaints or see cars parked outside.

Supervisor Engle asked if the original text amendment for Neighborhood Commercial was for a car wash originally and expanded lubrication or was it car wash and lubrication all done at one time. Mr. Emerick explained that they were both brought forward at the same time in 2006. Zimmerman Automotive wanted to establish an automotive lubrication facility and a car wash which was their core business. The history is the applicant brought forward an ordinance that was denied by the Board of Supervisors who asked then Director Jeff Keiser to write an ordinance to enable conditional use of car wash and automotive lubrication facilities. In his writing he continued to recommend that it not be adopted, but it was adopted nonetheless.

Supervisor Weir asked the applicant what he would consider a minor glass repair. Mr. Troncelliti said to repair a chip in a windshield, not replace a windshield. Vice-Chairman Moyer said his concern is if this ordinance is passed, everybody can do what they want. Attorney Wagner added that you can almost make a definition to restrict it. You can allow conditions for uses so when someone requests you can place restrictions.

PUBLIC COMMENT

Bob Smith, Owner of Hershey Auto Center, 503 West Chocolate – Mr. Smith stated that he is a little baffled why we are changing neighborhood commercial to allow auto servicing and repair. Back in 1995, 1999, and 2003 he checked and spoke to both Mr. Keiser and Mr. Small about putting a satellite facility where the Goddard School is now. They said that in neighborhood commercial you will not be able to do any type of auto servicing or auto repair. Mr. Smith said he was satisfied with their decision. About 8 years ago, Zimmerman received approval for a car wash and a lube only facility, not repairs. About a year ago, another owner bought Zimmerman's and started doing state inspections. In March, they were told by the

Township to stop performing inspections. Then they applied to the Zoning Board for either a special exception or a variance and they were both denied in June. They are back again to rewrite the ordinance because they can't get it through zoning. The problems you will have are increased traffic, test drives, and trucks making deliveries. If this is allowed, he will have a facility out there and he knows of another person that will go out there.

Mr. Troncelliti said he owns seven other inspection stations that are quick lubes and they don't do any repairs. It works fine. We don't have anyone towing vehicles to our property.

ADJOURNMENT

Vice-Chairman Moyer moved to adjourn the meeting at 7: 20p.m. Supervisor Ballard seconded. ***The motion carried, 5-yes 0-no.***

SUBMITTED BY:

Justin C. Engle
Township Secretary

Brenda Van Deursen
Recording Secretary