

**FERGUSON TOWNSHIP ZONING HEARING BOARD
REGULAR MEETINGS
TUESDAY, December 14, 2021
7:00 p.m.**

I. ATTENDANCE

The Zoning Hearing Board held a hearing on Tuesday, December 14, 2021. In attendance were:

Board:

Michael Twomley—Chair
Susan Buda—Vice Chair
Mike MacNeeley
Jeff Stover, ZHB Solicitor

Staff

Jeff Ressler, Zoning Administrator
Jenna Wargo, Director of Planning & Zoning
Shelly Tamang, Recording Secretary

Others in attendance were: Scott Brown, NTM Engineering; Betsy Dupuis, Township Solicitor; Terry Williams, representing Team Rahal; Mr. Ronald Ferris, Team Rahal CEO; Tony Fruchtl, Penn Terra Engineering; Jeremy Tyson; John Sepp, Penn Terra Engineering.

II. CALL TO ORDER

The Ferguson Township Zoning Hearing Board meeting was called to order on Tuesday, December 14, 2021 at 7:00 pm.

III. CITIZEN'S INPUT

IV. PLEDGE OF ALLEGIANCE

V. INTRODUCTION OF BOARD MEMBERS

VI. APPROVAL OF MINUTES

1. October 26, 2021, Meeting Minutes.

Mr. Michael Twomley called for a motion to approve the October 26, 2021, meeting minutes. Mrs. Buda made a motion to approve the meeting minutes, Mr. MacNeeley seconded the motion, and the motion passed unanimously.

VII. SWEARING IN OF THOSE WHO WISH TO TESTIFY

Mr. Jeff Ressler, Mr. Scott Brown, Ms. Betsy Dupuis, Ms. Jenna Wargo, Mr. Terry Williams, Esquire, Mr. Ronald Ferris, Mr. Tony Fruchtl, P.E., Jeremy Tyson, John Sepp, P.E. were sworn in to testify.

VIII. THE ZONING HEARING BOARD SOLICITOR EXPLAINS THE BASIS FOR GRANTING A VARIANCE/APPEAL

Mr. Jeff Stover solicitor went over the standards for granting a variance.

IX. ZONING OFFICER EXPLAINS THE BASIS OF VARIANCE/APPEAL REQUEST

X. NEW BUSINESS

1. TEAM RAHAL OF STATE COLLEGE, INC.

Mr. Ressler stated that the subject of this hearing is Team Rahal. The property is located at 3610-3670 West College Avenue, State College PA. Tax Parcels 24-004-079A-0000, 24-004-080-0000, 24-004-081-0000 and 24-004-082-0000, respectively. The parcels are zoned general commercial and rural agricultural. The two northern most parcels (24-0004-079A-0000 and 24-004-080-0000) are owned by the Applicant. The southern two properties are owned by Lawrence C. Pharo and Myron S. Pharo, Trustees of the Lawrence C. Pharo and Myron S. Pharo Revocable Trust. The applicant is proposing to develop an automobile dealership and related infrastructure on the two commercial lots at 310 and 3651 West College Avenue and establish stormwater basins on the 2.5-acre portion of the two properties to be acquired from the Pharo Trust. A significant area of the four lots is characterized by Nolin Soils and the applicant is proposing to locate two detention basins, an infiltration basin, and a paved parking area to be located on portions of the Nolin Soils.

The applicant is requesting three variances from the following sections of the zoning ordinance to be able to construct the stormwater basins and a portion of the parking area on Nolin Soils:

- §27-701.3.A(2),
- §27-701.3.B, and
- §27-701.3.C.1.

Mr. Fruchtl provided testimony that the area in question did not contain any indication of a floodplain, stream, or a body of water and characterized this area by farm fields, scrub brush and small trees. The applicant would not be able to proceed with its development plans without being able to build the stormwater basins within the Nolin soils areas. Mr. Fruchtl admitted on cross-examination that a visible drainage way does exist in the area of the Nolin soils, and that during the periods of heavy rain he did not observe water flowing there and doesn't know what would occur there during a 100-year storm.

Mr. Jeremy Tyson conducted a soil analysis of the site on behalf of the Applicant and its engineer and testified that the analysis did reveal the existence of Nolin soils in the area planned for the stormwater management facilities. To determine the area of the Nolin soils, Mr. Tyson dug eighteen test pits as indicated in the drilling report. Mr. Tyson testified that

the groundwater table in the area was not high and didn't observe gray mottling or evidence of anerobic/oxymorphic materials in the soil. On cross examination Mr. Tyson admitted that he observed the areas containing the Nolin soils were in "a low area".

Ms. Buda asked if a test pit was done at the lowest point of the four lots in question. Mr. Tyson testified that they were focused on the upper lots where the proposed improvements would be located. Ms. Buda confirmed that the soil tests were done in July and would it be possible that testing during another time of the year would show pooling water, given vegetation pulling up groundwater. Mr. Tyson testified that it was unlikely that testing during another time of the year would provide a different conclusion with what he observed at the site.

Mr. Ronald Ferris, CEO of Team Rahal, testified on behalf of the Applicant and chose the subject property as the site to develop a new Lexus automobile dealership. The site is highly desirable because of its proximity to the brand's competitors. Mr. Ferris testified that the size of the site and improvements to be built on the site are dictated by the manufacturer. According to Mr. Ferris, his company bought the northern most property in 2016 (zoned General Commercial) and thereafter bought the next three acres to the south (zoned Rural Agricultural). Mr. Ferris' company went through the necessary process to have it rezoned to General Commercial and were successful in doing so. During the rezoning process, the Township never indicated that there was a problem with developing the 3-acre lot because of the presence of Nolin soils.

Mr. Joe Dionisio owns the property south of the properties in question. His property doesn't abut the subject properties, his land does lie directly on the other side of a parcel owned by the Pharo Trust that is not part of, but does abut, the development site. Mr. Dionisio presented a number of photographs depicting runoff of water across his land and attributed the source of that water to the subject properties. Mr. Dionisio testified that in heavy rains he experiences damage to his property in the form of the deposit of rip rap and the wash out of his stone lane. Mr. Dionisio expressed concern that the proposed development will increase the runoff and damage to his land and is opposed to the granting of the variances.

Mr. Joe Homan owns the farm directly behind the subject properties and testified that the problem of the runoff starts at Whitehall Road. His farm stretches to Whitehall Road, and he has battled erosion of his fields since at least 1991. Mr. Homan stated that he sympathizes with Mr. Joe Dioniso.

Mr. Lawrence Pharo, Trustee of the Pharo Trust, testified that the trust had agreed to make the 2.5 acres available to the Applicant for its project. The Trust is in favor of the application being granted. Mr. Pharo testified that he grew up on the land owned by the Pharo Trust and never experienced standing water, marshes, or bogs on the land.

Mr. Scott Brown, Ferguson Township Stormwater Management Engineer, testified on behalf of the Township and was accepted as an expert in stormwater design, management, and engineering. Mr. Brown testified that the subject area is part of a drainage area that extends up to Whitehall Road and presented a map showing the drainageway running from Whitehall Road down through the subject properties and continuing to the area owned by Mr. Dionisio. According to Mr. Brown, the drainage area contains 98 acres that drains through the subject property and siting the stormwater basins in the middle of the drainage area would impede the flow of stormwater. Mr. Brown testified that Nolin soils are very absorbent and soak up dispersed runoff and that is why Ferguson Township's Zoning Ordinance restricts development on areas containing such soils. According to Mr. Brown, while it is feasible from an engineering standpoint to build on such soils, it is not desirable from an ecological standpoint. On cross-examination, Mr. Brown acknowledged he hasn't done any testing of the area and has only walked the fringes of the site and has not inspected the area where the culvert and rip rap exist as referenced by Mr. Dionisio. Mr. Brown testified that there is a drainage area on the other side of State Route 26 (West College Avenue) that also would contribute runoff down into the lower areas near the Dionisio property. Mr. Brown agreed that there is no evidence of wetlands at the subject property and noted the issue was not whether there were wetlands, but whether the subject property was within a drainage way. He acknowledged that the FEMA map doesn't show this area as a floodplain and added that the ordinance protects Nolin soils because they are evidence of drainage way, and the ordinance seeks to prevent obstruction of the drainage. Nolin soils are absorbent and help control stormwater runoff.

Executive session at 9:11 pm – until 9:30 pm

The Board returned from executive session and Mr. Twomley called for a motion. Mrs. Buda moved that the properties located along the eastern side of West College Avenue (State Route 26). Tax parcels located at 3610-3670 West College Avenue, assigned Centre County Tax Parcel Numbers of 24-004-079A-0000, 24-004-080-0000, 24-004-081-0000 and 24-004-082-0000, respectively be granted a variance to §27-701.3.A(2), §27-701.3.B, and §27-701.3.C.1. to allow construction and development on Nolin soils, Mr. MacNeely seconded the motion, the motion was denied 3 to 0.

2. HFL CORPORATION

Mr. Ressler stated that the property at the subject of this hearing is located at 1215 North Atherton State College, PA, tax parcel 24-015-038. The property is zoned general commercial. The property is located within the riparian and floodplain buffer overlay and is owned by HFL Corporation. The applicant is proposing a 2,000 square foot addition on the North Atherton side of the building. Mr. Ressler noted that the building is already located within the 50-foot buffer overlay. The applicant is requesting the following variances: Chapter 27-701.I and Chapter 27-403.2.F.

Mr. John Sepp is provided a brief overview of the plan. Mr. Sepp explained that the building was built prior to the buffer over was established. Mr. Sepp noted that all landscaping/green area will stay the same. The already existing paved area will be renovated to become part of the building. The Board discussed the stormwater issue in that area.

Mr. Twomley called for a motion. Ms. Buda moved that the property located at 1215 North Atherton Street, State College PA, tax parcel 24-015-038 be granted variances to Chapter 27-701.I and Chapter 27-403.2.F to have new construction in the floodplain and riparian buffer overlay district with the usual conditions granted for flood plain construction. Mr. MacNeeley seconded the motion, and the motion passed 2 to 1.

XI. CALENDAR ITEMS

XII. ADJOURNMENT

The Zoning Hearing Board meeting was adjourned at 10:00 pm.

A handwritten signature in blue ink, appearing to read "Swamy Anantheswaren", with a horizontal line extending to the right.

Swamy Anantheswaren, Secretary
For the Zoning Hearing Board