

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
JOHN HENSON, Jr. : **YORK COUNTY, PENNSYLVANIA**
: **DOCKET NO. 2014-08**

**DECISION GRANTING A CHANGE OF NON-CONFORMING USE
PURSUANT TO SECTION 1105 OF THE ZONING ORDINANCE IN THE
INDUSTRIAL BUSINESS (IB) DISTRICT**

The Applicant applied for a variance pursuant to the Fairview Township Zoning Ordinance, Section 502, Permitted Uses, and/or for a special exception pursuant to Fairview Township Zoning Ordinance, Section 1105, for the purpose of expanding two existing businesses owned by J. L. Henson, Inc. onto 3+/- acres of an adjacent property currently used as a salvage yard. The businesses are a self-storage unit business, One-Stop Storage; and a landscape business, Gran-U-Lawn. Both the tract on which the businesses are now located, and the adjacent tract on which the businesses are to be expanded, are in the Industrial Business (IB) Zoning District of the Township. Neither the businesses to be expanded nor the salvage yard are permitted uses. The hearing on the application was held on November 20, 2014, at 7:00 p.m. at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The Applicant is John Henson, Jr., principal of J. L. Henson, Inc. His businesses are located on a property with an address of 183 Old York Road, New Cumberland, PA.
2. The adjoining property with an address of 173 Old York Road, New Cumberland, PA, is owned by John A. Young. At that location, Mr. Young operates an auto salvage, recycling center, and automobile storage business known as New Cumberland Auto Parts. All said businesses are non-conforming uses in the Industrial Business (IB) District under the zoning

ordinance.

3. The Applicant intends to purchase a total of 3+/- acres of the adjoining property of Mr. Young in order to expand his businesses. The Applicant's expansion would permit an additional two (2) storage unit buildings, raising the total number of storage unit buildings to six (6); and expand the lawn service business, which presently occupies approximately 7,000 sq. ft. of a building, to a building of approximately 20,000-22,000 sq. ft.

4. The location of the properties in question is in the Industrial Business (IB) Zoning District of Fairview Township.

5. The Fairview Township Zoning Ordinance, Section 1105, entitled "Change of Non-Conforming Use," Subsection (c) permits the change of a non-conforming use on a property to another non-conforming use by the grant of a special exception, if the Zoning Hearing Board determines that the applicant has provided sufficient proof to show conformity with the seven (7) enumerated criteria as set forth in Subsection (c).

6. The individuals who testified at the hearing were the applicant, John Henson, Jr., and John A. Young, the owner of the adjacent lot.

7. Mr. Henson testified that an Agreement to purchase the adjacent lot was in place with Mr. Young, subject to the zoning approval. The expanded businesses would operate consistent with their current hours of operation and use. The existing access from Old York Road to the businesses would be utilized and there would be no additional access points; the present fence around the business site would be expanded to include the acquired acreage; and the proposed use for the acreage to be acquired would be less intrusive than its current use.

8. Mr. Young testified that he is down-sizing his salvage operation (making clear that it is a recycling and salvage operation and not a junk yard) which is subject to extensive state regulation.

9. The application included photographs which show that the land where vehicles were formerly stored has already been cleared, and it is ready for construction by the prospective buyer. In response to questions by the Zoning Hearing Officer, additional testimony reflected that there has been no testing of the ground for contamination, but there is no regulatory requirement that any such testing be done in connection with the transaction. However, the nature of the salvage business has changed and Mr. Young now only keeps the saleable parts of vehicles and scraps the rest, thus reducing the opportunity for fluid leaks. The liquids used by the Gran-U-Lawn service are kept in drums so there is no opportunity for contamination from those liquids; and the business complies with all applicable state regulations including those of the Pennsylvania Department of Agriculture regarding the chemical fertilizers and crop nutrients.

10. Section 602 of the Fairview Township Zoning Ordinance provides for Airport Overlay Zoning District height limitations for the Capitol City Airport which extend over a portion of the property. All of the subject businesses are and will remain in compliance with these height and related requirements.

11. There was no testimony from anyone in opposition to the request.

12. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.

CONCLUSIONS

1. The Applicant has met the burden of demonstrating that the expansion of the non-conforming use meets all the criteria of Section 1105(c) of the Fairview Township Zoning Ordinance. The expansion of the Applicant's non-conforming use onto the adjoining property will result in a use with less intensive external impacts on the 3+/- acres to be purchased, than the present non-conforming use.

2. On the basis of the testimony and documentary evidence presented, the Board concludes that the requested special exception should be granted.

3. Because the application for special exception was granted, the accompanying application for a variance was not considered.

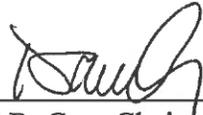
DECISION

On the basis of the foregoing findings and conclusions, and on the basis of all testimony and evidence presented at the hearing, the application for a special exception is granted.

The application was approved upon the motion made by Mr. Guy, seconded by Mr. Shaffer and adopted 3-0 by the Board members present and voting.

FAIRVIEW TOWNSHIP
ZONING HEARING BOARD

Dated: December 19, 2014

By: 

David R. Guy, Chairman

Distribution:
Applicant