

# YORK TOWNSHIP

190 Oak Road, Dallastown, Pennsylvania 17313  
Phone (717)741-3861 Fax (717)741-5009

York Township Zoning Hearing Board  
February 28, 2017  
6:00 p.m.

The February meeting of the York Township Zoning Hearing Board was called to order by Glenn Myers, Chair.

Those in attendance were:

John Myers, Chair  
Glenn Myers, Vice Chair  
William Descar, Secretary  
James Barnes, Asst. Secretary  
Timothy Salvatore, Member  
Jeffrey Rehmeyer, Esquire, Solicitor  
Lisa Frye, Zoning Officer

*KATHY  
CROWLEY  
ADDED TO  
MINUTES  
APPROX,*

## ELECTION OF OFFICERS

A motion for John Myers to serve as Chair was approved unanimously.

A motion for Glenn Myers to serve as Vice Chair was approved unanimously.

A motion for William Descar to serve as Secretary was approved unanimously.

A motion for James Barnes to serve as Assistant Secretary was approved unanimously.

## ANNUAL REPORT FOR 2016

The annual report for 2016 was approved.

York Stenographic Services, Inc.  
34 North George St., York, PA 17401 - (717) 854-0077

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MINUTES OF NOVEMBER 22, 2016

The Zoning Hearing Board minutes of the November 22, 2016, meeting were approved.

DECISIONS OF AUGUST 23, 2016

The Zoning Hearing Board decisions of the November 22, 2016, meeting were approved.

SPECIAL EXCEPTIONS/VARIANCES/APPEALS

Application 2017-01: Dave Peterson requests a Variance of Section 265.676.F to establish a fence in a side yard of a Vehicle Sales, Repair, Service and/or Inspection Facility on property located at 895 West Broadway, Red Lion, PA, in a Commercial-Industrial (CI) District

Present: Christian Miller, Esquire  
Dave Peterson

MOTION: On Application 2017-01, Dave Peterson requests a Variance of Section 265.676.F to establish a fence in a side yard of a Vehicle Sales, Repair, Service and/or Inspection Facility on property located at 895 West Broadway, Red Lion, PA, in a Commercial-Industrial (CI) District, that the application be approved.

CONDITIONS: Adequate provision be made for making the fence opaque on the east side along Summit Lane.

MOTION MADE BY: Timothy Salvatore  
SECONDED BY: James Barnes  
MOTION PASSED UNANIMOUSLY

ATTEST:

  
\_\_\_\_\_  
William Descar, Secretary

# DECISION OF THE YORK TOWNSHIP ZONING HEARING BOARD

**Application Number:** 2017-01  
**Hearing Date:** February 28, 2017  
**Applicant:** Dave Peterson  
**Property Owner:** The Giambalvo Family Limited Partnership  
**Property:** 895 West Broadway  
UPI: #54-000-09-0051-0000000  
**Existing Zoning District:** Commercial-Industrial (CI)

**Relief Requested-** Variance under the York Township Zoning Ordinance of 2012 (the "Ordinance") and pursuant to Section 265-676 thereof.

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## FINDINGS OF FACT

Based upon the evidence presented, and its evaluation of the credibility of the witnesses, the Board finds as follows:

1. The foregoing information and the Application, including its attachments, are incorporated by reference.
2. Christian Miller, Esquire represented the Applicant, who was also present.
3. The Applicant is seeking a Variance of Section 265-676(F), namely to allow the area enclosed by a fence to be set to the side of the principal building on the Property (the "Variance").
4. Attorney Miller called Mr. Peterson who testified as follows:
  - a. He is leasing the Property.
  - b. He has a sub-tenant, to whom he is leasing the office/sales building and the adjacent parking lot beside that fronts along West Broadway.
  - c. The office/sales building and the adjacent parking lot are an upper portion of the lot, and behind them, the lot slopes down to a warehouse building, which the Applicant utilizes for a repair garage and the area enclosed by the fence for which the Variance is sought.
  - d. There is an embankment between the upper and lower buildings and parking areas.
  - e. The fence was installed in the area to the side of the principal building on the Property in October, 2016 (the "Fence").
  - f. The Fence is rectangular in shape, with dimensions of 140 x 65 feet.
  - g. The Fence is not opaque.
  - h. The Applicant did not seek a permit for the Fence, thinking the contractor was doing so. When a permit was finally sought, it was determined that the Variance was needed.
  - i. The Fence can barely be seen from the front of the Property, when standing at the edge of West Broadway.

- j. For cars traveling South on West Broadway, the Fence is not even visible.
  - k. The Fence was determined to be necessary because children would play in and around the vehicles stored in that area, as well as the woods behind. The Applicant even found an adult individual sleeping in a vehicle. Accordingly, it was determined that the Fence would help secure the vehicles for which repair service or inspections would be provided.
  - l. The Applicant's intention is not to store many wrecked or dismantled vehicles, if any at all.
  - m. There was a wrecked vehicle on site for a short period of time, while a title for it was being obtained.
  - n. The Applicant was informed by his broker that the space behind the warehouse building is subject to a right-of-way in favor of the adjoining property, upon which is located a McDonald's Restaurant.
  - o. The Property is surrounded by commercial and industrial users and zoning.
5. In response to questions, the Applicant replied as follows:
    - a. Placement of the fenced area to the rear of the warehouse building would not be feasible, because of the forested area and the right-of-way referred to above.
    - b. If the Fence were allowed to remain, the Applicant would be willing to install slats or other screening within the Fence, to make it opaque, particularly where it abuts Summit Lane.
    - c. Other than the portion of the Fence along Summit Lane, it is screened by the embankment towards the front of the Property, the buildings toward the side, and the forested area toward the rear.
    - d. The area within the Fence is either paved or consists of compacted stone that has been in place for a very long time.
  6. There were no questions from the audience.
  7. There was no testimony against or in favor of the Applicant from the audience.
  8. On behalf of the Township, the Zoning Officer indicated the following:
    - a. There are no Township concerns.
    - b. The Township is pleased that the Property is being used.
    - c. Such use will avoid the attraction of vandalism, which has been a problem in the past.
    - d. There are no problematic issues with the Fence.
  9. In response to the criteria for the Variance, the Applicant provided the following:
    - a. The unnecessary hardship that exists is due to unique physical circumstances or conditions, which include the prior development of the Property and its longstanding use for automotive sales and service, the topography of the Property, including the embankment between the front and rear portions thereof, the wooded area to the rear, and the right-of-way agreement that might benefit McDonald's. Such unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provision of this chapter in the neighborhood or district in which the Property is located. It was noted that the Township has recognized this Property as having been potentially deteriorated because of lack of use.
    - b. Because of such physical circumstances or conditions, there is no possibility that the Property can be developed in strict conformity with the provisions of this Chapter and the authorization of a Variance is therefore necessary to enable the reasonable use of the Property.
    - c. The unnecessary hardship is not being created by the Applicant.
    - d. The Variance, if authorized, will not alter the essential character of the neighborhood or district in which the Property is located nor substantially or

permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.

- e. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least modification possible to the regulation at issue.
10. The Applicant indicated a willingness to install screening or slats on the portion of the Fence abutting Summit Lane, such that the Fence would become opaque (the "Condition").


## CONCLUSIONS OF LAW

Based upon the Findings of Fact, and pursuant to applicable law, the Board concludes as follows:

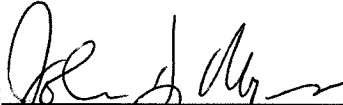
1. A vehicle sales, repair, service and/or inspection facility is a use by right in the Commercial-Industrial District.
2. The location of the Fence does require a Variance.
3. The Applicant has met the criteria for the Variance.
4. The grant of the Variance is proper, subject to the Condition.

Accordingly, Timothy Salvatore moved, and Jim Barnes seconded, to grant the Variance of Section 265-676(F) to establish a Fence in the side yard of a vehicle sales, repair, service and/or inspection facility on the Property located at 895 West Broadway, Red Lion, PA in a Commercial-Industrial (CI) Zone, subject to the Condition. The motion passed unanimously with John D. Myers, Glenn Myers, William Descar, Timothy Salvatore and Jim Barnes voting in favor of the motion.

## WITNESS/ATTEST

  
\_\_\_\_\_  
William Descar, Secretary

## YORK TOWNSHIP ZONING HEARING BOARD

By:   
\_\_\_\_\_  
John D. Myers, Chair

3/28/17  
Date

The Variance granted herein shall expire if the Applicant fails to, where required to do so, obtain a Permit, submit a Land Development Plan or commence work within six (6) months of the date of the authorization of the Variance, pursuant to Section 265-1009. E. of the Ordinance.