

**AMITY TOWNSHIP
CONDITIONAL USE HEARING**

**IN RE: CONDITIONAL USE APPLICATION TO
THE BOARD OF SUPERVISORS OF AMITY TOWNSHIP
BY JC INVESTMENT GROUP LLC**

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND DECISION

FINDINGS OF FACT

1. Applicant is JC Investment Group, LLC, a Pennsylvania limited liability company, with its principal address of 335 Monocacy Hill Road, Birdsboro, Pennsylvania 19508 (the "Applicant").

2. Applicant is the legal owner of the property known as 335 Monocacy Hill Road, Amity Township, Berks County, Pennsylvania, Parcel ID. No. 24535517011755, by virtue of a deed recorded in Berks County Records Instrument No. 2017035433 (the "Property").

3. The Property is located in the Planned Business / Office / Industrial - PBOI Zoning District ("PBOI Zoning District") of Amity Township, Berks County, Pennsylvania (the "Township"), as set forth in Part 4, Section 32-408 of the Amity Township Zoning Ordinance of 1991, as amended (the "Zoning Ordinance").

4. On April 14, 2023, Applicant filed with the Township an Application for Conditional Use to permit the storage and operation of Daniel Boone Area School District student buses, vans and other transportation vehicles (the "Daniel Boone Area School

District Transportation Vehicles”) on the Property in accordance with Sections 408(c)(3) and 32-1109 of the Zoning Ordinance.

5. In accordance with the Zoning Ordinance and the Municipalities Planning Code, 53 P.S. § 10101 *et seq.* (“MPC”), a public hearing notice was advertised in the *Reading Eagle* on Tuesday, May 2, 2023 and Tuesday, May 9, 2023. Additionally, the Township Building was posted on April 25, 2023. The Property was posted on May 9, 2023. Both postings were in accordance with Section 32-1106 of the Zoning Ordinance. See Township Exhibits # 2, 3, 4 and 5.

6. Adjoining property owners were notified by regular mail of the proposed hearing. See Township Exhibit #8.

7. A hearing was convened for purposes of taking testimony on the Conditional Use Application on Wednesday, May 17, 2023 at 6:00 p.m. at the Amity Township Municipal Building, 2004 Weavertown Road, Douglassville, Amity Township, Pennsylvania (the “Hearing”). The Hearing was not completed on May 17, 2023 and was reconvened, with the approval of the Applicant and the recognized parties in interest, on Wednesday, June 7, 2023 at 7:00 p.m. After the conclusion of the Hearing on June 7, 2023, Applicant’s counsel agreed to an extension of time for the Township to render its written Findings of Fact, Conclusions of Law and Decision until August 30, 2023.

8. Applicant was represented at the Hearings by Allen R. Shollenberger, Esquire and Paul F. Troisi, Esquire of Barley Snyder, 2755 Century Boulevard, Wyomissing, Pennsylvania 19610.

9. Present at the Hearing were the following:
 - a. Jeff Povilaitis, principal of the Applicant and owner of the Property (“Povilaitis”);
 - b. Allen R. Shollenberger, Esquire and Paul Troisi, Esquire, Attorneys for Applicant;
 - c. Tim Krise, owner of Krise Transportation, Inc. (“Krise”) (on June 7, 2023 only);
 - d. Neighbors, Dennis and Rebecca Bauman (individually, “Dennis Bauman” and “Rebecca Bauman” and collectively the “Baumans”); and
 - e. Neighbors, George and Barbara Thompson (individually, “George Thompson” and “Barbara Thompson” and collectively, the “Thompsons”).

10. The Baumans and Thompsons were recognized as parties in interest and determined to have standing to participate in the Hearing.

11. At the Hearing, the Conditional Use Application, the two (2) Affidavits of Posting, the Public Hearing Notice, the Proof of Publication, and the notices to the Applicant and adjoining landowners were introduced as Township Exhibits # 1, 2, 3, 4, 5, 6 and 8. Also, a written notice to the Zoning Officer, Steve Loomis, was introduced as Township Exhibit #7.

12. Povilaitis testified that in accordance with Conditional Use standards set forth in the Zoning Ordinance at Section 1109(d)(1-8) (See N.T. pgs. 11-58):

a. Krise desires to lease space on the Property to operate and store Daniel Boone Area School District Transportation Vehicles only and no other vehicles, buses, vans or equipment of any nature.

b. The storage, maintenance and operation of Daniel Boone Area School District Transportation Vehicles on the Property is specifically authorized as a conditional use in the PBOI Zoning District under Section 408(c)(3) as a complete truck fleet management operation.

c. The storage and operation of Daniel Boone Area School District Transportation Vehicles on the Property conforms with the goals, objectives and policies of the Township Comprehensive Plan.

d. The storage and operation of Daniel Boone Area School District Transportation Vehicles on the Property conforms with the spirit, purposes and intent of all other applicable provisions of all other Township ordinances.

e. The storage and operation of Daniel Boone Area School District Transportation Vehicles on the Property is a use that conforms with all pertinent state and federal laws, regulations and requirements.

f. Services and utilities will be made available to adequately service the proposed use.

g. The storage and operation of Daniel Boone Area School District Transportation Vehicles on the Property will not generate traffic such that hazardous or unduly congested conditions will result. Specifically, the Daniel Boone Area School District Transportation Vehicles will leave the site in the early morning hours for pickups, return and leave again mid-day to return students home.

h. The storage of Daniel Boone Area School District Transportation Vehicles on the Property is appropriate for the site given its location in the PBOI Zoning District. Furthermore, Povilaitis testified that a majority of the Daniel Boone Area School District Transportation Vehicles would be out of plain view from the road and neighbors; that there is adequate space to store the Daniel Boone Area School District Transportation Vehicles; that the site can adequately store the Daniel Boone Area School District Transportation Vehicles; that there is security on the Property; and that the Property will be appropriately landscaped to avoid others from seeing the Daniel Boone Area School District Transportation Vehicles.

i. The storage and operation of the Daniel Boone Area School District Transportation Vehicles on the Property will not adversely affect the character of the general neighborhood, nor the health and safety of residents or workers on adjacent properties and in the general neighborhood.

13. Applicant is the owner of the Property.

14. If the Application were approved, Povilaitis testified that he will permit Krise to park only Daniel Boone Area School District Transportation Vehicles on the

Property and to use the garage on the Property for minor repairs such as general maintenance, oil changes and similar minor work for those vehicles only. Povilaitis testified that no other school district buses, vans or other vehicles or equipment would be stored on the Property, other than Applicant's owned landscaping equipment and vehicles.

15. Povilaitis testified that he currently operates a landscaping business on approximately two (2) acres of the Property.

16. The landscaping business has approximately 53-55 employees during the summer months, 18-21 of whom are full-time employees.

17. The hours of operation for the landscaping business are 5:30 a.m. to 5:30 p.m., seven days per week in the late Spring, Summer and early Fall months.

18. There are five (5) buildings on the plan submitted by Applicant, one (1) of which is used as Applicant's office. There is only one (1) employee working in the office.

19. Applicant proposes two (2) combined uses on the Property for the 2023-2024 school year only. The first use is Applicant's landscaping business and the second use is the storage, maintenance and operation of Daniel Boone School District Transportation Vehicles by Krise.

20. Povilaitis testified that the Property is gated and fenced and provides adequate security for both uses.

21. Povilaitis testified that all existing utilities on the Property are sufficient for the intended Conditional Use and the permitted use as a landscaping business.

22. Povilaitis testified that there would not be a need for any construction on the Property.

23. To alleviate any issues with parking, some of Applicant's employees park at alternate sites owned by Applicant, such as Wyomissing (off Broadcasting Road); Villages of Spring Ridge; and Alvernia University.

24. Applicant is proposing 94 parking spaces on the Property for the use by Krise.

25. Krise's bussing operation will park 70 vehicles on the Property, consisting of 40 full size buses, 20 vans and 10 small buses (See N.T. p. 12, Volume II)

26. Krise testified that the following preventative maintenance of the Daniel Boone Area School District Transportation Vehicles would be performed on the Property:

- a. Changing of light bulbs/brakes;
- b. Patching of seats;
- c. Repairs to bumpers/heating units;
- d. Oil changes; and
- e. Pressure washing. (See N.T. pgs. 10-12, Volume II)

27. Krise testified that the hours of operation for the bus company would be from 5:45 a.m. until approximately 5:20 p.m. with exceptions of later bus runs in the evening for sports teams that travel to away games. (See N.T. p. 9, Volume II)

28. Krise testified that no other vehicles except Daniel Boone Area School District Transportation Vehicles will be parked or serviced on the Property.

29. Krise testified that the Daniel Boone Area School District Transportation Vehicles would be secured in a fenced-in area on the Property and would be monitored by security cameras.

30. Krise testified that a mechanic would be on the Property from 5:45 a.m. until approximately 5:45 p.m. to effectuate minor repairs or maintenance. Maintenance and repairs will be performed within the garage building and not outside. (See N.T. p. 9, Volume II)

31. Krise testified that the mechanic on site would be responsible for starting the Daniel Boone Area School District Transportation Vehicles in the cold weather.

32. Dennis Bauman testified about his concerns regarding water issues and hazardous waste. (See N.T. p. 37)

33. Rebecca Bauman testified regarding her concerns with traffic issues because of the location of the entrance and exit. (See N.T. p. 39)

34. Barbara Thompson testified about her concerns regarding traffic and snow melt runoff issues. (See N.T. p. 41)

35. Michael Thompson testified regarding the hours of operation of the school bus company. (See N.T. p. 43)

36. All testimony was received and all Township Exhibits, Numbers 1 through 8, were introduced and admitted into evidence. Also admitted into evidence were Applicant's Exhibits # 1 and 2.

CONCLUSIONS OF LAW

A conditional use is a use which is otherwise permitted in the underlying zoning district subject to conditions which may be reasonably attached by the governing body, *See Borough of Perkasio v. Moulton Builders*, 850 A.2d 778 (Pa. Commw. 2004). When a zoning ordinance allows a governing body to grant or deny conditional uses pursuant to express standards and criteria, the governing body, pursuant to Section 913.2 of the Municipalities Planning Code and the Amity Township Zoning Ordinance, is required to hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria, *Hovnavian v. Newtown Township Board of Supervisors*, 954 A.2d 718 at 723 (Pa. Commw. 2008). The Applicant has the burden of showing that the proposed use is otherwise permitted under the Zoning Ordinance and that the Applicant can otherwise meet the criteria of the Zoning Ordinance and any additional conditions imposed by the governing body.

In the instant case, a business storing and operating school buses and vans is permitted in the Planned Business / Office / Industrial ("PBOI") Zoning District under Section 408(c)(3) of the Amity Township Zoning Ordinance as a conditional use. Additionally, the primary use of the Property as a landscaping business is permitted as a "Use Permitted by Right" in combination with another use provided; however, "the use, type, dimensional and all other applicable requirements of this Chapter have been satisfied", (Zoning Ordinance 408(b)). As such, the Board of Supervisors concludes as a matter of law that the use of the landscaping business and the operation of the school

bussing business may operate in combination on the Property, provided; however, that all terms of the Zoning Ordinance and Subdivision and Land Development Ordinance of the Township are strictly adhered to. Those Ordinance provisions include, but are not limited to, meeting parking, landscaping, set-backs, impervious surface calculations, traffic studies and all other requirements of the Zoning and Subdivision and Land Development Ordinances.

DECISION

The Amity Township Board of Supervisors finds that the Applicant meets the requirements of the Amity Township Zoning Ordinance for the conditional use to be used in combination with the landscaping business already operating on the Property in the PBOI Zoning District, subject to the following terms and conditions:

1. Applicant's use of the Property is subject to all terms and conditions of the Conditional Use Resolution No. 23-10 adopted by the Amity Township Board of Supervisors on July 19, 2023, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

a. The Applicant shall submit Land Development Plans to the Township for a single use of storage, maintenance and operation of buses by Krise and a second plan for the single use of the landscaping business by Edwards Landscaping for the Property. The Land Development Plans shall be in strict conformity with the Zoning Ordinance and Township Subdivision and Land Development Ordinance, and both must be approved in final form no later than June 30, 2024;

b. The Applicant shall have a traffic study performed at the driveway of the Property serving the current landscape business as part of the Land Development Plan to ensure safe ingress and egress by both the landscaping business and Krise;

c. Only Daniel Boone School District Transportation Vehicles shall be permitted to be kept or maintained on the Property.

d. Parking on the Property for both uses and each single use shall conform with all regulations and requirements of the Zoning Ordinance;

e. The hours of operation of the garage located on the Property shall be 5:30 a.m. to 7:00 p.m.;

f. Repairs and maintenance of vehicles outside the garage building on the Property shall be prohibited at all times. All repairs, maintenance and work on the vehicles shall be performed inside the garage;

g. The Applicant shall construct and / or maintain Department of Environmental Protection approved fueling station and tanks;

h. All snow removal from the buses, vehicles and all Daniel Boone Transportation Vehicles shall be disposed of on the Property;

i. Township approved screening and buffer shall be planted on the Property as part of the Land Development Plan process; and


j. To the extent the Land Development Plans are not submitted, approved, or any of the above conditions are not met or maintained, this Conditional Use Approval and the approval for the two (2) uses in combination shall automatically

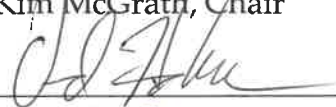
expire June 30, 2024, and the approval for this Conditional Use and the two (2) uses in combination shall be automatically revoked.


ORDER


AND NOW, this 16 day of August, 2023, the above Findings of Fact, Conclusions of Law and Decision are hereby entered as a Final Order and Decision of the Amity Township Board of Supervisors, as well as the testimony of the Applicants is hereby incorporated by reference as if fully set forth.


Any person or entity aggrieved by the instant Decision may take an appeal from the same to the Berks County Court of Common Pleas within thirty (30) days from its issuance in accordance with the terms and provisions of the Municipalities Planning Code.

AMITY TOWNSHIP
BOARD OF SUPERVISORS


Kim McGrath, Chair


David Hackett


Paul Weller


Terry Jones


Kevin Keifrider

EXHIBIT A

AMITY TOWNSHIP
BERKS COUNTY, PENNSYLVANIA

RESOLUTION NO. 23-10

A RESOLUTION OF THE BOARD OF SUPERVISORS OF AMITY TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, CONDITIONALLY APPROVING THE CONDITIONAL USE APPLICATION OF JC INVESTMENT GROUP, LLC

BE IT RESOLVED by the Board of Supervisors (the "Board of Supervisors") of Amity Township, Berks County, Pennsylvania (the "Township"), as follows:

RESOLVED, that the Conditional Use Application (the "Application") of JC Investment Group, LLC (the "Applicant") to permit the storage of Daniel Boone Area School District Transportation buses, vehicles, and other student transportation fleet vehicles on the property located at 335 Monocacy Hill Road, Amity Township, Berks County, Pennsylvania, Property ID No. 24535517011755 (the "Property"), pursuant to Section 408(c)(3) of the Amity Township Zoning Ordinance (the "Zoning Ordinance") is hereby conditionally granted, subject to the following conditions:

1. The Applicant shall submit Land Development plans to the Township for the single use of buses and a second plan for the single use of the landscaping business for the Property. The Land Development plans shall be in strict conformity with the Zoning Ordinance and Township Subdivision and Land Development Ordinance, and both must be approved in final form no later than June 30, 2024.
2. The Applicant shall have a traffic study performed at the driveway of the driveway of the property serving the current landscape business as part of the Land Development Plan;
3. Only Daniel Boone School District buses, vehicles, and other student transportation fleet vehicles shall be permitted to be kept on the Property;
4. Parking on the Property shall conform with all regulations and requirements of the Zoning Ordinance;
5. The hours of operation of the garage located on the Property shall be 5:30 a.m. to 7:00 p.m.
6. Repairs and maintenance of vehicles outside the garage building on the Property shall be prohibited at all times;
7. The Applicant shall construct and/or maintain a Department of Environmental Protection approved fueling station and tanks;

8. All snow removal from the buses, vehicles and other student transportation fleet vehicles shall be disposed of on the Property; and
9. Township approved screening and buffer shall be planted on the Property as part of the Land Development Plan process.
10. To the extent the Land Development Plans are not submitted, approved, or any of the above conditions are not met or maintained, this Conditional Use Approval shall automatically expire June 30, 2024, and the approval for this Conditional Use shall be automatically revoked.

RESOLVED, that the Board of Supervisors shall issue a written Decision with Finding of Fact and Conclusion of Law and publish said Decision by August 30, 2023.

DULY ORDAINED AND ENACTED by the Board of Supervisors of Amity Township, Berks County, Pennsylvania this 19th day of July 2023.

**AMITY TOWNSHIP
BOARD OF SUPERVISORS:**



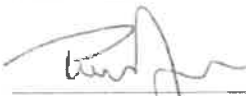
Dave Hackett, Vice Chair




Kevin Keifrider



Paul Weller



Terry Jones

ATTEST:


Pam Kisch, Township Secretary