

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT
MEMORIALIZING RESOLUTION
TEAM EQUIPMENT, LLC
28 East Garden Place, Pompton Plains, NJ 07444
Block 902, Lot 25

WHEREAS, the applicant is the owner of property located at 28 East Garden Place, Pompton Plains, New Jersey 07444, Block 902, Lot 25, located in the C-3 zone district; and

WHEREAS, the applicant has filed an appeal from the determination of the Township Zoning Officer, denying a zoning permit to the applicant on the grounds that the proposed use of the property is not permitted in the C-3 zone district; and

WHEREAS, testimony was taken at a public hearing on April 1, 2010, at which time the Board took sworn testimony and the applicant and the public were afforded the opportunity to be heard and participate in the application and to make comments; and

WHEREAS, the Board has reviewed and considered all of the evidence and the testimony at the public hearing from which the Board makes the following factual findings:

1. Public notice is not required by the municipal land use law for this application, but is required by the municipal ordinance and, therefore, the applicant has given public notice in accordance with the requirements of the ordinance.

2. In addition to the standard application form, the Board has reviewed and considered the following documentary evidence:

1. Two page letter on the letterhead of Team Equipment, LLC, dated July 12, 2009 together with a copy the Certificate of Formation for Team Equipment, LLC, which is attached to that letter;
2. Three page letter on the letterhead of Team Equipment, LLC, dated July 24, 2009;
3. One page Pequannock Township Zoning Permit Application form;
4. One page letter on the letterhead of Township of Pequannock, dated August 5, 2009 addressed to the applicant and signed by Jill A. Hartmann, PP, AICP;
5. Resolution dated January 24, 1994, adopted by the Pequannock Township Planning Board, consisting of six pages;
6. Two page written report prepared by Jill A. Hartmann, PP, AICP, dated February 24, 2010;

7. Exhibit B-1 introduced at the public hearing on 4/1/10 consisting of three pages with two photographs on each page;
8. Exhibit A-1 introduced by the applicant at the public hearing on 4/1/10 consisting of four pages of photographs.

3. The Board has also taken consideration of the language of Pequannock Township Ordinance, Section 189.05.010, C-1 "Community Business District Use Regulations" which read as follows:

"In the C-1 Community Business District, the following regulations shall apply:

- A. Use regulations. A building may be erected or used and a lot may be used or occupied for the following purposes and no other:
 - (1) Permitted uses.
 - (a) Retail sales of goods and services, in fully enclosed stores, serving primarily the residents of the surrounding neighborhoods. The following specific retail sales are permitted: bakeries; banks; barber shops and beauty parlors; book and stationery stores; clothing and clothing accessory shops; dug [sic.] stores; dry cleaning establishments; dry goods and variety stores; florists; food stores; hardware stores; household appliance stores; locksmiths; newsstand; business professional and governmental offices; packaged liquor stores; pet shops; photographic studios; sporting and athletic goods stores; music and dancing studios; and other similar retail and service uses.
 - (b) Business, professional and governmental offices and banks, including banks with drive-in facilities accessory to an office-bank type of facility.
 - (c) Funeral or mortuary establishments.
 - (d) Medical and dental clinics and medical diagnostic centers, provided that there are no facilities for keeping persons overnight.
 - (e) Churches and houses of worship, parish houses and convents.
 - (f) Community centers operated as an accessory use to churches and houses of worship.
 - (g) Laundry and dry - cleaning establishments.
 - (h) Public parks and playgrounds.
 - (i) Public and parochial schools, nursery schools and schools which teach special skills which are related to permitted uses in the C-1 Zone, such as dance schools, secretarial schools, etc.
 - (j) Shopping centers for uses permitted in the C-1 Zone."

4. The Board has also taken consideration the use regulations contained in Subsection 189.05.030 C-3 "Regional Commercial District" which read as follows:

"In the C-3 Regional Commercial District, the following regulations shall apply:

- A. Use regulations. A building may be erected or used and a lot may be used or occupied for the following purposes and no other:
 - (1) Permitted uses. Uses permitted in the C-1 Zone are permitted in the C-3 Zone. In addition, the following uses are permitted:
 - (a) Restaurants, excluding restaurants of the drive-in type.
 - (b) Establishments serving alcoholic beverages, including establishments which offer live entertainment.
 - (c) Telephone exchanges and utility buildings.
 - (d) Passenger rail stations and facilities customarily incidental thereto.
 - (e) Catering and banquet establishments.
 - (f) Hotels and motels of fifty (50) or more rooms.
 - (g) Clubs, lodges and similar establishments.

- (h) Any combination of the uses permitted in the C-3 Zone, including shopping centers and malls, hotel complexes, etc.
- (i) Movie theaters (excluding drive-ins), public auditoriums and theaters for live performances.
- (j) Tattoo and body piercing parlors."

5. The Board has also taken into consideration the restrictions contained in Subsection 189.05.030(4) "Prohibited Uses", which reads, in pertinent part, as follows:

- "(4) Prohibited uses. Those uses not specifically permitted in the C-3 Zone are hereby prohibited. Specifically, those uses prohibited in the I-1 Zone are prohibited, unless otherwise permitted. Also prohibited are:
- (a) Carting, express hauling, or truck storage yards.
 - (b) Truck terminals or depots.
 - (c) Contractor's storage yards."
 - (d) Any kind of manufacture or treatment other than the manufacture or treatment of products clearly incidental to the conduct of a retail business conducted on the premises.
 - (e) Amusement parlors and arcades.
 - (f) 'big box' retail.
 - (g) Outdoor concerts."

6. The Board has also taken into consideration the restrictions contained in the supplementary regulations section of the Township Ordinances including, in pertinent part, subparagraph (I) "Parking and Commercial Vehicles", which reads as follows:

- "(1) Commercial vehicles, recreational vehicles, buses, ambulances, vans, limousines, trucks and construction equipment and similar vehicles shall not be permitted to be stored in any nonresidential district unless owned by the occupant of a permitted use in the zoning district and used as an integral part of the business. No vehicle shall be used for the permanent or temporary storage of materials in connection with a permitted use.
- (2) The only exception to the above shall be that a license may be granted by the Zoning Officer for the parking of commercial vehicles in a gasoline service station in the C-2, and C-3 Zones, provided that a fee of twenty-five dollars (\$25.) shall be paid annually, on July 1 of each year, for each vehicle to be so parked or stored, and provided that the following conditions are met:
- (a) No more than five (5) vehicles shall be parked or stored on any one (1) lot.
 - (b) Parking and storage area shall not be permitted to encroach or replace areas required for side yard, rear yard or buffer areas.
 - (c) Parking shall not be permitted within twenty-five (25) feet of a residential district or parkland.
 - (d) Parking and storage areas shall not detract from required parking and loading areas.
 - (e) Paving or other surfacing of the parking area shall be required so as to render the area dust-free and free of potholes."

7. At the public hearing the applicant produced two (2) witnesses, William Morrissey, one of the principals of the applicant, and Janet Talley, a professional planner retained by the applicant. Mr. Morrissey testified that the applicant is in the business of leasing equipment. The equipment is owned by the applicant and leased primarily business to business and to contractors. The applicant also leases certain types of equipment which could potentially be used by homeowners such as electric generators and the like. However, it was clear from Mr. Morrissey's testimony that the applicant's primary business is leasing large pieces of heavy equipment to contractors.

8. Ms. Talley testified that the general nature of the applicant's business should be considered as a retail operation and, as such, permitted in the C-3 Zone.

9. The Board has reviewed the report of its planner and zoning officer, Jill Hartmann, and considered the testimony of Ms. Hartmann at the public hearing. Ms. Hartmann testified that this is not a retail use. It is a contractor's storage yard regardless of whether the business is leasing contractor's equipment or using it for the applicant's own contracting business. In that regard, the Board accepted Ms. Hartmann's interpretation of the language in Subsection 189.070.030(i)(1), which reads: "...unless owned by the occupant of a permitted use in the Zone district and used as an integral part of the business" as referring to such items as a delivery van or pickup truck used to deliver retail products for the owner, such as a florist shop van or one of the other permitted uses in the C-3 Zone. It was not intended to permit the use of a contractors' storage yard of the extremely large contractors' equipment,

10. After extensive discussion with the applicant and the Zoning Officer and careful review and consideration and analysis by the Board of the documentary evidence submitted and the language of the relevant subsections of the zoning ordinance, the Board concludes that the zoning officer was correct in her opinion that the applicant's business is not a permitted use in the C-3 Zone district.

NOW, THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this 6th day of May, 2010, that it now ratifies, memorializes and adopts the action taken at this meeting on April 1, 2010, affirming the determination of the Township Zoning Officer that the applicant's business is not a permitted use in the C-3 Zone district.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its meeting on May 6, 2010, by a vote 3 to 2.



Linda Zacharenko, Secretary