

ZONING HEARING BOARD MEETING

August 27, 2014

The Zoning Hearing Board Meeting, duly advertised and posted in accordance with the law, was called to order by the Chairman at 8:00 P.M., Wednesday, August 27, 2014, in the Upper St. Clair Township Municipal Building Board of Commissioners' Meeting Room, located at 1820 McLaughlin Run Road.

PRESENT:

BOARD MEMBERS

David Tungate, Chairman
Dwight Ferguson, Vice Chairman
Gregg Zegarelli, Member
Robin Weissert, Alternate

TOWNSHIP STAFF

Randy Hindman, Chief Building Inspector
Amy Martin, Recording Secretary

TOWNSHIP ATTORNEY

Chris Cahillane, Esquire for the Township Attorney

COURT REPORTER

Candace Gabeletto - Pittsburgh Reporting Service

ABSENT:

BOARD ATTORNEY

E.J. Strassburger, Esquire

PUBLIC:

None

CONSIDERATION OF THE APRIL 23, 2014 MEETING MINUTES

On motion by Mr. Zegarelli, seconded by Mr. Ferguson, the above minutes were approved and accepted for filing as written.

ADMINISTRATION OF OATH OF TRUTH

The Chairman administered the Oath of Truth to all wishing to testify and then explained the procedure for the hearing.

NEW BUSINESS

ZHB14-0003 – USC RE LLC – 145 MCMURRAY ROAD:

Application by USC RE, LLC for variances from the terms of the Zoning Code, Section 130.15.3.1.6.1 front yard. All principal and accessory structures: fifty (50) feet and Section 130.15.3.1.6.4.2, side yard for other structures, all others: ten (10) feet. The property is located at 145 McMurray Road, zoned C-2, Highway Commercial District.

Upon request by the Chairman, Mr. Hindman entered Applicant Exhibits #1 through 5 and Township Exhibits #1 through 5 into the record. He also read into the record his August 27, 2014, memo to the Zoning Hearing Board with procedural and substantive facts, as well as the Township's position on the request for variance, as Township Exhibit #5.

ZONING HEARING BOARD MEETING MINUTES

August 27, 2014

2.

Mr. Tungate then stated that the Board would then hear the presentation by the Applicant for their request for variance. He requested that the Applicant first speak to the hardship issue that would create a need for the variance from the Township Code with the proposed plan, due to the fact that there is an existing commercial development currently there that is able to operate without a variance.

Kevin Pruemer was present on behalf of the Applicant, as their engineer, to present their request for variance. Also in attendance, with Mr. Pruemer, were representatives of the Applicant, Michael Orié and Edward Jaten, as along with the property owners, Allen and Lynne Holzhauser.

Mr. Ferguson stated that the Applicant is presenting a legal case to the Board and meeting a legal standard. He suggested that they be represented by legal counsel.

Mr. Ferguson's suggestion was acknowledged by the Applicant.

Mr. Pruemer then gave a brief history of building uses on the site and lot location. He stated that the property is located on a corner lot at Bethel Church Road, McMurray Road, and Drake Road. Mr. Pruemer also stated that a point of hardship is based on the property having three (3) fifty (50) foot front yard setbacks, which would be rare for a commercial property in the Township. He went on to give an overview of the proposed development use and site layout plan. Mr. Pruemer explained that the proposed location of the dumpster was a primary reason for the variance request.

Mr. Ferguson asked Mr. Pruemer to explain why the location indicated in the proposed site plan is the only viable location for the dumpster.

Mr. Pruemer replied that because the intended use of the structure is for food service, the placement of the dumpster closer to the building would not be conducive to a successful food service business. He went on the present the remainder of his site plan layout to the Board (App. Ex. #6).

Mr. Tungate stated that there is already an existing commercial building on the property therefore, there is no hardship.

Mr. Pruemer replied that it is his client's position that the dumpster enclosure is not viable in another location on the lot due to the traffic circulation, setbacks and flood plains.

Mr. Tungate commented that the key issue in this matter is whether or not the property can be developed commercially without a variance and, in his opinion, it can.

There was then some discussion between Mr. Pruemer and the Applicants.

Mr. Pruemer then stated that he and the Applicant have had meetings with the Planning Staff to discuss the development. He stated that the other location proposed for the dumpster was in the front of the building, next to the drive-thru, of the proposed Dunkin' Donuts.

Mr. Tungate asked Mr. Pruemer if the alternate placement he indicated would require a variance.

Mr. Pruemer replied that it would not require a variance.

ZONING HEARING BOARD MEETING MINUTES

August 27, 2014

3.

Mr. Tungate stated that if they did not need a variance then they did not need to be before this Board.

Mr. Pruemmer replied that it was the recommendation of the Planning Staff that the placement of the dumpster, by the drive-thru, was not the most desirable location.

Mr. Tungate again stated that the hardship is based on the Applicants plan, not the Township Code.

Mr. Zegarelli asked if there was anyone in attendance who wanted to contest the development.

Mr. Tungate stated to Mr. Zegarelli that the meeting was not yet at the designated time to hear comments from the public.

Mr. Zegarelli then asked Mr. Pruemmer where the encroachment would be.

Mr. Pruemmer replied that the building would encroach back toward the existing drainage ditch off of McLaughlin Run Road towards Drake Road.

Mr. Zegarelli commented that he agreed with Mr. Tungate's opinions however, he wondered who would be hurt by the encroachment if the variance were granted outside the rule.

Mr. Tungate replied that the Township has a Zoning Ordinance that is clear and the Zoning Hearing Board does not have the power to ignore the Ordinance.

Mr. Zegarelli replied that, Mr. Tungate's assessment was fair however, he would still like Mr. Pruemmer to answer his question.

Mr. Pruemmer replied to Mr. Zegarelli that he did not feel there would be any hardship imposed by abutters of the property. He further went on to indicate the location, on his exhibit, of the proposed development in relation to the neighboring properties.

Mr. Zegarelli then asked Mr. Hindman if the Township had an opinion on the encroachment issue in relation to the effect on the neighboring property owners.

Mr. Ferguson replied to Mr. Zegarelli that there is no encroachment of any kind. He further stated that the issue is in relation to the trash enclosure being proposed outside of the required set back.

Mr. Tungate added that it is irrelevant, under the Township of Upper St. Clair's Zoning Ordinance, the feelings of the neighboring property owners in relation to the development. He further added that the proposed development does not meet the criteria for a variance.

Mr. Zegarelli asked Mr. Tungate to clarify if the Board had the power to grant the variance.

Mr. Tungate replied that the Applicant would have to meet all five (5) criteria set forth by the Township to receive the variance.

ZONING HEARING BOARD MEETING MINUTES

August 27, 2014

4.

Mr. Ferguson stated that the Board is sworn to uphold the law. The Board of Commissioners has decided what the standard is and the Zoning Hearing Board's responsibility is to determine if a request meets the standard.

Mr. Zegarelli commented that, if the variance request is based on a self-created hardship, the Zoning Hearing Board is not permitted to grant the variance.

Mr. Ferguson clarified that the Township put their opinion in writing and that opinion states that they are not opposed to the variance, provided that all five (5) criteria are met.

Mr. Tungate added that proof of those criteria being met would come in the form of facts presented to the Zoning Hearing Board.

Mr. Cahillane stated that the Township believes in the integrity of the Code and that is what their opinion is based on.

There was then some discussion among the Board regarding the interpretation of the responsibilities of the Board, in relation to enforcing the Code in granting variances, specific to this request.

Edward Jaten stated that they [the Applicant] have engaged counsel and felt that they could comply with placing the dumpster in another location that would not require a variance. He also stated that they were given some direction by the Planning Staff to seek a variance for the proposed layout. Mr. Jaten then asked the Board for a continuance to review their request with their attorneys to articulate their satisfaction of the five (5) criteria for variance, set forth by the Township, or revise their plan so as not to need to seek the relief of a variance for construction.

Mr. Tungate stated that the Board could postpone their decision on the request until the next scheduled meeting on Wednesday, September 24, 2014.

Mr. Cahillane asked that the Applicants Site Plan Layout, presented by Mr. Pruemmer, be put into the record as Applicants Exhibit #6. Exhibit #6 was then officially admitted into the record.

On motion by Mr. Tungate, seconded by Mr. Ferguson, the date to continue the hearing for Zoning Hearing Board Application ZHB14-0003 by USC RE, LLC was set for Wednesday, September 24, 2014 beginning at approximately 8:00 PM, in the Township of Upper St. Clair Municipal Building Board of Commissioners' Meeting Room.

The Chairman then asked if there were any other comments before the Board moved to adjourn. There being none, the meeting was adjourned at approximately 8:30 PM

ADJOURNMENT

Respectfully submitted,
Amy Martin
Recording Secretary