

## ZONING HEARING BOARD MEETING

September 23, 2015

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, September 23, 2015, 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  
Gregg Zegarelli, Member  
Robin Weissert, Alternate 1  
Anderson T. Bailey, Alternate 2

**TOWNSHIP STAFF**

Randy Hindman, Chief Building Inspector  
Amy Martin, Recording Secretary

**TOWNSHIP ATTORNEY**

Chris Cahillane, Esquire for the Township Attorney

**COURT REPORTER**

Leah M. Attanucci - Pittsburgh Reporting Service

**BOARD ATTORNEY**

E.J. Strassburger, Esquire

**NOT PRESENT:** Dwight Ferguson, Vice Chairman

**PUBLIC:** Approximately 25

COMMENTS FROM THE CHAIRMAN

Mr. Tungate stated for the record that, since the August 26, 2015 hearing, Mr. Ferguson had recused himself from this matter due to a conflict of interest stated at that hearing. (T 8/26/15)<sup>1</sup>

CONSIDERATION OF THE AUGUST 26, 2015 MEETING MINUTES

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

APPOINTMENT OF THE ZONING HEARING BOARD SOLICITOR

The Chairman presented a letter of consent, dated September 3, 2015, regarding potential conflict of interest for Mr. Strassburger to be representation for the Township of Upper. St. Clair Zoning Hearing Board, signed by Vincent A. Tucceri and David Tungate, as Board's Exhibit No. 1.

On motion by Mr. Tungate, seconded by Ms. Weissert, the Board voted to authorize E.J. Strassburger as the Zoning Hearing Board's Solicitor. Mr. Zegarelli stated for the record that he abstained from the vote due to recusal. (T 8/26/15)<sup>1</sup>

<sup>1</sup> References to the record will be abbreviated as follows: Transcript (T) followed by date; Exhibits (Ex.); Township (Twp.); Applicant (App.); Intervenor (Int); Code of the Township (Code).

OLD BUSINESS

**ZHB15-0003 – 235 SALEM DRIVE – DAVID AND KELLY ROHRICH**

Application by David and Kelly Rohrich under the provisions of Section 130.8.2.3.2. of the Township Code for a Special Exception for the placement of a recreational sports court as an Accessory Use to a single family dwelling located at 235 Salem Drive, Zoned R-1, Single Family Residential District.

Mr. Tungate stated that Briefs and Memoranda had been submitted by the Applicant, the Township and the Intervenor on September 9, 2015. Those Briefs and Memoranda were added to the record as Applicant's Exhibit No. 4, Township's Exhibit No. 5 and Intervenor's Exhibit No. 4.

The Chairman did not administer the Oath of Truth as the record, for the Application under Old Business, had been closed at the previous hearing on August 26, 2015. (T 8/26/15)<sub>1</sub> He then asked Vincent Tucceri, Attorney for the Applicant, to clarify the submission of a new exhibit he had presented to the Board.

Mr. Tucceri commented that he first wanted to clarify for the record his request for Mr. Ferguson's recusal at the previous hearing. He cited Section 908 Subsection 8 of the MPC (Pennsylvania Municipal Planning Code) and pages 10 and 78, lines 1-11 of the Hearing Transcript from August 26, 2015. (T 8/26/15)<sub>1</sub>

There was then some discussion between Mr. Tungate and Mr. Tucceri regarding comments made at the August 26, 2015 Hearing (T 8/26/15)<sub>1</sub> and the Board of Commissioners Meeting on September 8, 2015. Mr. Tungate commented that the objectors' attendance and comments at the Board of Commissioners Meeting were irrelevant to this case.

Mr. Tucceri then presented a revised site plan for the proposed sports court as Applicant's Exhibit No. 5. He commented that the revised plans showed the two front yards, cross section of the proposed multi-purpose sports court and distance from the abutting property. Mr. Tucceri also presented, in reference to questions raised at the previous hearing (T 8/26/15)<sub>1</sub>, the last five (5) Decisions of the Zoning Hearing Board for multi-purpose sports courts that had been approved in excess of 600 square feet, as Applicant's Exhibit No 6.

Mr. Tungate stated for the record that on September 16, 2015, Ms. Weissert, Mr. Bailey and he met for an Executive Session to receive legal advice from the Board's Counsel on the briefs that had been submitted in this matter. (App Ex #4, Twp Ex #5 & Int Ex #4)<sub>1</sub> He stated that a decision was not discussed.

MOTION: THAT the Application be denied based on the following independent grounds:

1. Under 130.8.2.3, the Township Code allows multi-purpose sports courts. Therefore, an ice hockey rink does not fit within the definition of court.
2. The proposed solid structure fence around the sports court is not allowed under the Upper St. Clair Zoning Code. Therefore, the Application does not meet the fencing requirement in 130.3.3.1.1.
3. An Accessory Use has to be both subordinate and incidental to the Primary Use of the principal structure. Therefore, a hockey rink is not an Accessory Use.

4. Even if the proposed rink was permitted under the Code, the Objectors met their burden of demonstrating that it would be detrimental to the health, welfare, and safety of the public.

On motion by Mr. Tungate, seconded by Ms. Weissert, the Board voted unanimously to deny Zoning Hearing Board Application ZHB15-0003, by David and Kelley Rohrich for a Special Exception for the placement of a recreational sports court as an Accessory Use to a single family dwelling located at 235 Salem Drive. Mr. Zegarelli abstained from the vote due to recusal. Mr. Ferguson was not present.

Each Board Member voting stated their comments and reasons for the denial. (T 9/23/15)<sup>1</sup>

It was determined that the Zoning Hearing Board's Solicitor would write the Opinion of the Board and submit it to the Applicant within forty five (45) days of the close of the hearing.

#### OTHER BUSINESS

#### **Vote to change the submission deadline for Zoning Hearing Board applications – Article 6.1 of the Zoning Hearing Board Rules of Procedure & Bylaws.**

The proposed amendment of the Zoning Hearing Board Rules of Procedure & Bylaws was presented to the Board for review on August 26, 2015.

On motion by Mr. Tungate, seconded by Mr. Zegarelli, the Board Members present voted unanimously to approve the amendment to the Zoning Hearing Board Rules of Procedure & Bylaws to change the submission deadline for Zoning Hearing Board Applications from the fourth Friday of the month to the fourth Thursday of the month to allow for appropriate notice for a public hearing. Mr. Ferguson was not present for the vote.

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 8:20 PM

#### ADJOURNMENT

Respectfully submitted,  
Amy Martin  
Recording Secretary