

ZONING HEARING BOARD MEETING

August 26, 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, August 26, 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
Dwight Ferguson, Vice 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 Voltz, Esquire for the Township Attorney

COURT REPORTER
Nicole Rohm - Pittsburgh Reporting Service

NOT PRESENT: **BOARD ATTORNEY**
E.J. Strassburger, Esquire

PUBLIC: Approximately 30

CONSIDERATION OF THE AUGUST 27, 2014 MEETING MINUTES

On motion by Mr. Tungate, 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 procedures for the hearing.

ELECTION OF CHAIRMAN, VICE CHAIRMAN, HEARING OFFICER AND SECRETARY

On motion by Mr. Ferguson, seconded by Mr. Zegarelli, Mr. Tungate was elected Chairman. On motion by Mr. Tungate, seconded by Mr. Zegarelli, Mr. Ferguson was elected Vice Chairman. On motion by Mr. Ferguson, seconded by Mr. Tungate, all members of the Zoning Hearing Board, including the two Alternates present, would be Hearing Officers for taking testimony in the event of a lack of quorum. On motion by Mr. Tungate, seconded by Mr. Ferguson, Ms. Martin was elected Recording Secretary. All elections for the 2015 Zoning Hearing Board were made unanimously.

NEW BUSINESS

ZHB15-0002 – 1359 MORROW ROAD – NATHAN T. SNYDER

Application by Nathan T. Snyder 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. The property is located at 1359 Morrow Road, Zoned R-1, Single Family Residential District.

Upon request by the Chairman, Mr. Hindman entered Applicant Exhibits #1 through 3 and Township Exhibits #1 through 4 into the record. He then read into the record his August 26, 2015, memo to the Zoning Hearing Board with procedural and substantive facts, as well as the Township's position on the request for Special Exception, as Township Exhibit #4.

Mr. Tungate stated that the Board would now hear the presentation by the Applicant for their request for Special Exception.

Nathan Snyder, the Applicant, briefly explained that he was seeking a Special Exception for the placement of a recreational sports court, as an Accessory Use to a single family dwelling, under the provisions of Section 130.8.2.3.2. of the Township Code. The Applicant is requesting approval to construct a 1,500 square foot (30' x 50') private recreational sports court.

Mr. Tungate asked Mr. Snyder if he would agree to no lighting on or surrounding the sports court and to certain hours of operation, to be determined, as a condition for approval.

Mr. Snyder replied that he would be agreeable to those conditions.

Mr. Tungate discussed screening of the sports court with Mr. Snyder.

Mr. Tungate asked Mr. Hindman if the Township approved of the proposed landscaping shield.

Mr. Hindman stated that the Township does approve the proposed landscaping shield, as show on the plans that had been submitted. (App Ex. 3).

Mr. Tungate raised the question of hours of use for the sports court. He suggested use not be permitted before 9:00 AM or after 7:00 PM.

Mr. Snyder requested that the time be extended from 9:00 AM to 9:00 PM.

There was then some discussion between the Board and Mr. Snyder regarding an agreeable time of use.

It was agreed, by the Board and Mr. Snyder, that 9:00 AM to 8:00 PM were reasonable hours for use.

Mr. Tungate asked Mr. Snyder if he understood that the Township would inspect the project based on the conditions of approval during and after construction, if approved.

Mr. Snyder stated that he understood.

Mr. Hindman added that the Township would like to require the stormwater management system installation be certified, by the Applicant's Engineer, that it is constructed in accordance with the approved plan.

Mr. Tungate then asked if there were any questions or comments from the public regarding this application. There were none.

MOTION: THAT the recreational sports court, as an Accessory Use to a single family dwelling, be approved with the following conditions:

- that the structure be used only from 9:00 AM. to 8:00 PM;
- that the structure never have lighting;
- that the structure be constructed in accordance with Applicant's Exhibit No. 3, dated June 2015;
- that mature landscaping will be used as screening of the sports court in accordance with Applicant's Exhibit No. 3, as indicated on the second page of that Exhibit;
- that the stormwater management system installation will be certified, by the Applicant's Engineer, that it is constructed in accordance with the approved plan.

On motion by Mr. Tungate, seconded by Mr. Ferguson, the Use by Special Exception to construct a 1,500 square foot recreational sports court as an Accessory Structure to a single family dwelling was granted.

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. The property is located at 235 Salem Drive, Zoned R-1, Single Family Residential District.

Upon request by the Chairman, Mr. Hindman entered Applicant Exhibits #1 through 3 and Township Exhibits #1 through 4 into the record. He also read into the record his August 26, 2015, memo to the Zoning Hearing Board with procedural and substantive facts, as well as the Township's position on the request for Special Exception, as Township Exhibit #4.

Mr. Tungate clarified with Mr. Hindman the Section of the Code under which the Special Exception was being requested (Section 130.8.2.3.2.1).

Mr. Zegarelli stated that he would be recusing himself from opinion on this application due to a conflict of interest.

Mr. Ferguson stated that he wanted to disclose that he had been contacted by neighbors of the Applicant, Lee and Kimberly Tilghman of 241 Salem Drive, to discuss procedural matters regarding Zoning Hearing Board applications. He also stated that he visited the Tilghman's home and viewed the Applicant's property. Mr. Ferguson further commented that because of his

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position on the Zoning Hearing Board, he was not asked to be retained by the Tilghmans to represent them in this case and referred them to other counsel. Mr. Ferguson also stated that he did not intend to recuse himself, unless the Applicant felt that he has created such a bias that he should recuse himself.

Mr. Tungate stated that the more senior Alternate to the Board, Robin Weissert, would fill the third position of the Board, in place of Mr. Zegarelli, in this matter. Mr. Tungate then stated that the Board would hear the presentation by the Applicant for their request for Special Exception.

Vincent A. Tucceri, Attorney for the Applicant was present on their behalf, along with Mrs. Rohrich, the Applicant. Mr. Tucceri addressed Mr. Ferguson's statement regarding prior interaction with the Applicant's neighbor, the Tilghmans. Mr. Tucceri stated that he did not wish to ask for Mr. Ferguson's recusal from this matter at that time. He then briefly explained that the Applicant is seeking a Special Exception for the placement of a recreational sports court, as an Accessory Use to a single family dwelling, under the provisions of Section 130.8.2.3.2. of the Township Code. The Applicant is requesting approval to construct a 4,136 square foot (94' x 44') private recreational sports court.

Mr. Tungate asked Mr. Tucceri for clarification as to the use of the sports court.

Mr. Tucceri replied that it would be a multiuse sports court for various activities. Mr. Tucceri then continued his presentation regarding the sports court construction.

Mr. Tungate asked Mr. Tucceri if he would agree to never have ice on the court.

Mr. Tucceri stated that he would not agree to that condition.

Mr. Tucceri then continued his presentation regarding the sports court construction. He asked Chris Richardson, Engineer for the Applicant, to comment on and explain the site plan for the sports court.

Mr. Tungate asked if the proposed boards around the court would be above 10 feet in height. Mr. Richardson replied that they would not be above 10 feet. Mr. Tucceri also affirmed that the Plexiglass around the court would not exceed 10 feet.

Mr. Richardson then commented on the location, landscaping, drainage, fencing and explained other various aspects of the sports court construction.

Mr. Tungate asked if the sports court had already been built.

Mr. Tucceri replied that it has not been built yet and they are prepping the site in anticipation of approval.

Mrs. Rohrich stated that they have installed evergreens around their property not just for the sports court construction, but to surround their entire property. She stated that they have planted over 90 trees on the property, with 29 planned for surrounding the sports court.

Mr. Tungate asked Mrs. Rohrich is they intended to have an ice rink installed.

Mrs. Rohrich replied that they did plan to eventually have non-permanent ice on the court in the winter.

Mr. Tuccheri stated that he had nothing further to present at that time.

Mr. Tungate asked if there were questions or comment from the audience.

Jonathan Bonime, of 240 Trotwood Drive, stated his objection to the proposed sports court. He made comments against the construction of the sports court highlighting previous construction projects on the property.

Mr. Tuccheri objected to Mr. Bonime's comments stating that if a record is being made on the matter, he did not want any irrelevant information, in regard to previous constructions projects, that are unrelated to this application to be part of the record.

Mr. Tungate noted Mr. Tuccheri's objection and stated that Mr. Tuccheri would be given the opportunity to rebut Mr. Bonime's statements.

Mr. Bonime continued his comments against the Applicant's request commenting on stormwater issues, noise and prolonged construction projects among his complaints.

Mr. Tungate stated that the Board has a limited function and role, specific to the approval or denial of the Accessory Use request, according to the Township Code. He also stated that the issues that have to do with previous construction projects and noise are for another body, such as the Planning Commission or Board of Commissioners, to hear and address.

Paul Kruper, of 233 Orr Road, stated his objection to the construction of the proposed sports court. Among his concerns were construction noise, lighting on the property, and compatibility of the proposed sports court in the neighborhood. Mr. Kruper then asked to read into the record an email from Kenneth Leonardi, of 231 Orr Road, asking him (Mr. Kruper) to oppose the application for Special Exception on Mr. Leonardi's behalf, as he would be out of town at the time of the August 26, 2015 Zoning Hearing Board Meeting. Mr. Kruper then continued his own comments against the Applicant's request mentioning his disapproval of the size of the court.

Paul Briggs, of 231 Salem Drive, made comments in opposition to the construction of the sports court as it had been proposed. Mr. Briggs mentioned lighting, excessive activity, and previous complaints made to the Police Department regarding noncompliance with the Township Code among his concerns.

Elisa N. Carr, Attorney for Lee and Kimberly Tilghman, of 241 Salem Drive, stated that her clients were an objector to the Applicant's request for Special Exception. Ms. Carr presented information to the Board, on behalf of the Tilghmans, to support their objection. Ms. Carr submitted pictures as exhibits indicating the location of the Rohrich's Property in relation to the Tilghman's property. (Intervenor Ex 1-3).

Mr. Tuccheri objected to the photos being submitted into the record.

Mr. Tungate stated that the pictures would be admitted and Mr. Tucceri would have the opportunity to comment later if he had an objection.

Mr. Tucceri stated that he would like the Board to note his continuing objection that none of the public comments which have been made so far are germane to the application for the sports court.

Mr. Tungate stated that Mr. Tucceri's objections were noted. Mr. Tungate added that the public has the right to openly state their opinions to the Board and that the Applicant would be afforded time to respond to the comments being made.

Ms. Carr continued to present her client's objections. She asked Mrs. Tilghman to answer various questions regarding work on the Applicant's property in view from her property. Mrs. Tilghman commented on the Applicant's projects that have been in progress since she moved into her home. Mrs. Tilghman voiced her concerns regarding noise from the sports court disturbing her family. She also highlighted reports she had made to the Police Department regarding construction vehicles operating before and after permissible work hours and other vehicles illegally parking on the street in front of the home. Mrs. Tilghman additionally made statements regarding her property assessment from Allegheny County.

Mr. Tucceri objected to the relevance of Mrs. Tilghman's property assessment statements in relation to his client's application. He stated that the assessment issues go far beyond the scope of the Applicant's request.

Mr. Tungate stated to Ms. Carr that they are not in the position to deal with the effect on property values and asked if Ms. Carr could tie these comments back to the Township Code.

Ms. Carr replied that Section 130.1.3 of the Township Zoning Code states that the purpose of the Zoning Code is to preserve the value of property in the Township. Ms. Carr further commented that Chris Voltz (present for the Township Solicitor) was at the Board of Reviewers for the Tilghman's appeal and consented to the reduced property value.

Mr. Tungate and Mr. Ferguson both made comments regarding the basis of the consent order for reduction of property value. They asserted that this is not something they could interpret for the purpose of approving or denying the request by the Applicant.

Mr. Tucceri objected to the testimony of Ms. Carr as to the opinion for the reduction of property value for the Tilghman's property in relation to the Applicant's request. His objection was noted by the Board.

Ms. Carr continued with the testimony of Mrs. Tilghman who stated that Mr. Voltz was present for her assessment appeal.

Mr. Voltz clarified that the firm he works for, Tucker Arensberg, represents the Upper St. Clair School District as well as the Township. He confirmed that he was present on behalf of the School District when the School District appealed the value of the Tilghman's home based on purchase price. Mr. Voltz also stated that he was not involved in the Board of Reviewers settlement.

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Mrs. Tilghman continued her testimony and commented on the percent of accessory use structures on the Applicant's property. Ms. Carr asserted that the construction of the proposed sports court would be detrimental to the welfare of the Tilghman family. The Tilghmans asked the Board to deny the Applicant's request for Special Exception.

Buffy Hasco, of 248 Orr Road, stated her objections to the proposed sports court. She commented on the size of the court and the value for her home and homes in the neighborhood. Mrs. Hasco asked the Board to reject the Applicant's request.

Chris Meyer, of 230 Salem Drive, stated his objections to the proposed sports court. He commented on the size of the sports court, noise and traffic on Salem Drive.

Connie Papko, of 223 Salem Drive, asked the Board to consider common sense and kindness when making their decision.

Ray VanStone, of 230 Orr Road, stated his objections to the proposed sports court. He commented on the size of the proposed sports court and that the construction would adversely affect property value.

Joby Cantalamessa, 234 Salem Drive, stated his objections to the proposed sports court. He commented on the noise, influx of traffic and other safety concerns.

Michael Hasko, of 248 Orr Road, stated his objections to the proposed sports court. He commented on traffic concerns and that the proposed sports court was not appropriate for the neighborhood. He asked the Board not to approve the Applicant's request.

Kristen LaBeau, of 221 Salem Drive, stated her objections to the proposed sports court. She commented on traffic issues and other safety concerns.

Mr. Bonime again stated his objections to Applicant's proposed sports court.

Mark Carolla, of 239 Warwick Drive, stated his objections to the proposed sports court. Among his concerns were noise issues in the neighborhood.

Cindy Shoepner, of 217 Salem Drive, stated her objections to the proposed sports court. Among her concerns were parking issues.

David Ball, of 288 Orr Road, stated his objections to the proposed sports court. He voiced his concerns about protecting the community.

Ian Thomas, of 277 Orr Road, stated his objections to the proposed sports court. He commented on noise and traffic concerns in the neighborhood.

Mr. Tucceri asked Mr. Ferguson to recuse himself because he felt Mr. Ferguson had established a conflict of interest with the Tilghmans.

Mr. Ferguson stated that he would consult with the Boards Solicitor about Mr. Tucceri's request for his recusal.

Mr. Tungate stated that the Board would not be executing a decision at this meeting and would be seeking advisement from the Board's Solicitor in this matter.

Mr. Tucceri rebutted several comments made by the public including clarification of the size and use of the proposed sports court. He also stated that the ice rink would not be used for team or organized sports, but for family and friends only. He stated that the comments regarding parking, noise and previous construction projects are not related to this request for Special Exception. He also commented that lighting and fencing would not be an issue. Mr. Tucceri then briefly cross-examined Mrs. Tilghman regarding her testimony. Mr. Tucceri also deposed Mrs. Rohrich regarding her intent for construction and use of the proposed sports court.

Mrs. Rohrich stated that they will use the court for many family activities and that the construction projects on the home have all been completed. She also mentioned that they would comply with the Township Ordinances regarding parking.

Mr. Ferguson the asked for some clarification on the site plan and use of the proposed sports court.

Mr. Tucceri stated that his client is not required to specify use in their application.

Mr. Tungate commented that the Board has the right to specify use in their conditions of approval.

Mr. Kruper again stated his objections to the Applicant's proposed sports court.

Mr. Tungate stated that the record for this hearing would now be closed. He affirmed that the next scheduled Zoning Hearing Board Meeting would be on Wednesday, September 23, 2015. Mr. Tungate asked all parties of interest to submit legal briefs to the Board, by way of the Recording Secretary at the Township Municipal Building, before the close of business on Wednesday, September 9, 2015. He then gave directives to the Township's Counsel, Applicant's Counsel and Intervenor's Counsel as to facts and definitions their briefs should argue in support or opposition of the Applicant's request for Special Exception.

MOTION: THAT the hearing be continued to Wednesday, September 23, 2015. At which time, the Board would review Application ZHB15-0003 and hear testimony for the request, with Briefs due from the Applicant's Counsel, Township's Counsel and the Intervenor's Counsel, on or before September 9, 2015.

On motion by Mr. Tungate, seconded by Mr. Ferguson, the date to continue the hearing for Zoning Hearing Board Application ZHB15-0003, by David and Kelley Rohrich, was set for Wednesday, September 23, 2015, beginning at approximately 8:00 PM, in the Township of Upper St. Clair Municipal Building Board of Commissioners' Meeting Room.

OTHER BUSINESS

Consideration of memo to change the submission deadline for Zoning Hearing Board applications – Article 6.1 of the Zoning Hearing Board Rules of Procedure & Bylaws (memo previously distributed)

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The bylaws can be adopted by simple motion and voice vote at the next scheduled meeting on September 23, 2015.

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 10:30 PM

ADJOURNMENT

Respectfully submitted,
Amy Martin
Recording Secretary

A full transcript of this meeting is located in file ZHB15-0003
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