

APPROVED

**SPRINGETTSBURY TOWNSHIP  
ZONING HEARING BOARD  
MARCH 3, 2016**

**MEMBERS IN**

**ATTENDANCE:** Dale Achenbach, Chairman  
John Schmitt  
Sande Cunningham

**ALSO IN**

**ATTENDANCE:** John Luciani, Acting Zoning Officer  
Gavin Markey, Solicitor  
Charles Rausch, Solicitor  
Sue Sipe, Stenographer

**NOT PRESENT:** David Seiler  
James Deitch

**1. CALL TO ORDER:**

**A. Pledge of Allegiance**

Chairman Achenbach called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance. He introduced the members of the Board.

**2. ACTION ON THE MINUTES**

**A. FEBRUARY 4, 2016**

**MOTION MADE BY MR. SEILER TO APPROVE THE MINUTES OF FEBRUARY 4, 2016 AS PRESENTED, MS. CUNNINGHAM SECONDED. MOTION UNANIMOUSLY PASSED.**

Chairman Achenbach asked Mr. Luciani if the cases were properly advertised. He responded that notifications had been made.

**3. OLD BUSINESS**

**A. Case Z-15-10 Continuance of Darrah Motorsports, LLC**

Attorney Markey indicated all evidence and testimony has been concluded. Briefs have been submitted by the Township solicitor as well as Attorney Ogden, representing the appellant. Attorney Ogden would be going forward first with his closing statements and arguments and is free to address his brief that was submitted. That will be followed by the township solicitor. Attorney Markey confirmed with Attorney Ogden that he provided a waiver of the 45 day limit from the February 4, 2016 testimony, and that it was his intention by virtue of that letter the Township would have a minimum of 45 days from the conclusion of this evening's meeting to produce a written decision.

Attorney Ogden affirmed noting if the Board cannot produce a decision in the 45 days they should contact him to determine if an additional extension was necessary.

Attorney Markey stated even if the Board makes a decision, it is his intention to have the decision

rendered 45 days from this meeting. Attorney Rausch concurred.

Attorney Ogden indicated he submitted a memorandum of law last week citing his arguments. He verbally highlighted the following items from his memo:

- The issue at hand began when Darrah Motorsports filed an application for a change of use from a non- conforming use.
- The current use is a race car business operating since 2008.
- Mr. Darrah applied for this change of use using the criteria found in §325-103.e of the zoning ordinance, which states a non-conforming use of a building or land may be changed to a use of equal or more restrictive classification.
- Attorney Ogden’s memo references whether or not this provision is ambiguous, indicating a provision is ambiguous if it is capable of more of than one definition. Attorney Ogden cited 19 instances where the word “classification” is used in the ordinance. After analyzing other treatises, as well as the York County Planning Commission he determined the language was created by Springettsberry Township. His argument was because the provision is ambiguous it has to be resolved in favor of the applicant. Attorney Ogden also referenced 10603.1 of the MPC as cited in the memo which is Title 53.
- In responding to the Board’s request to define the standard, he referenced the case of David & Diane Blanchett Maddock vs. City of Pittsburgh Zoning Board, 163 PA Commonwealth 193. This was a 1994 Commonwealth Court Case. Attorney Ogden indicated this case references under PA law an ordinance which states permitted change from one non-conforming use to another and is no more detrimental to neighborhood than the prior use is in effect a special exception.
- Attorney Ogden referred to discussion from the Township and the Planning Commission as to whether or not the provision criteria found in §325-103.e means it is not more intense or not more detrimental. He determined if that is the case then his client would meet the special exceptions standard. He cited in his memo case law that indicates a special exception standard means the applicant has to meet the criteria required for a special exception which he noted in this case there does not appear to be any. He further noted the objector which is the Township has to prove there is some detrimental effect which he did not believe the Township has done.
- Attorney Ogden referred to the Township’s argument that this property is in a flood zone. He indicated his client was aware of that fact when he bought the property. Attorney Ogden stated the request for the change of use for a towing operation will be limited to no more than 5 cars which will not be outside where the flood zone area is a danger. Attorney Ogden referred to his client’s testimony that has never been any flooding inside the building since Darrah Motorsports has owned it.
- In analyzing the ambiguous provision, Attorney Ogden referenced the case of Itama Development Associates vs. Zoning Hearing Board of Township of Rostraber Twp. 2016 West Law, 72822, a 2015 case from the Commonwealth Court. Attorney Ogden indicated this case indicates to qualify as a continuation of a non- conforming use, the current use must be sufficiently similar to the non- conforming use as not to constitute a new or different use. The proposed use need not however be identical to the existing use. Similarity in use is all that is required in determining what is proper continuation of a non-conforming use whether a proposed use bears adequate similarity to an existing non-conforming use. The doctrine of natural expansion must be given effect and permits a land owner to develop or expand a business as a matter of right notwithstanding its status as a non- conforming use. Attorney Ogden stated a mere increase in the intensity of a use cannot justify the finding of a new or different use. In this case if the Township believes that there may be some additional intensity, they cannot use it according to the Commonwealth Court. Attorney Ogden indicated in determining the difference between a use and a classification the zoning ordinance has specific definitions. He further noted if something is not in the ordinance then the common sense definition is applied. He contended that classification is much broader than the use, i.e., an office building classified as an office building, but inside the office building could be multiple uses.

Attorney Rausch stated it is the Township’s position that this is not a difficult standard to measure, noting the issue is a non-commercial classification vs. a commercial classification. He noted the evidence is

clear that in 2007 the applicant on his own desired to change the non-conforming use. It was a commercial granite cutting operation and it was changed to a non-commercial private race car hobby. That is bolstered by the 2011 certificate of use and occupancy which indicated it was a private garage used for a private race car hobby. Attorney Rausch stated the law is clear that once a non-conforming use is changed it cannot revert to the previous use, which is what the applicant wants to do to go back to commercial. Attorney Rausch explained under the conforming use law he cannot do that because non-conforming uses are meant to be highly restricted and not allowed to jump around.

Attorney Rausch further noted in terms of classification there is law set by the Supreme Court, which is cited in his brief. In determining classification the ordinance indicates a private garage is classified under the OS district and allowed as an accessory use. He explained because the applicant's use is a principal use and because it was a non-conformity it was allowed to continue as a private garage. The classification for a towing company is under the general industrial district. It is classified under manufacturing, assembly and warehousing as storage of automobiles. One is a commercial classification - the other is a non-commercial classification.

Attorney Rausch asked the Board to review the applicant's Exhibit #1, specifically the application submitted and the appeal submitted, citing when this all began the applicant did not have any ambiguity at that time. They knew what they needed to prove under the change of use classification to the zoning officer that the towing company was a use of equal or more restrictive classification than a race car hobby as stated in their application. They relied on §312 in the Code of Ordinances which has no applicability. They based their entire application and appeal on that section. Attorney Rausch cited from their application, "the owner wishes to go from non-regulated, non-conforming use as a race car shop to a very highly regulated and less intense use of a towing company. This use is an equal or more restrictive classification under the Springettsbury Township Zoning Ordinance.

Attorney Rausch stated the zoning ordinance §325-73 outlines the permitted uses and permitted accessory uses in the open space district, which allows RV parking and storage as a permitted accessory use. Attorney Rausch determined the applicant knew he needed to get the towing company under the open space district, and tried to fit it in under RV parking and storage. That was dropped because it has no applicability. The applicant's issue is that he now has under his own volition, a non-commercial non-conforming use for nine years. The nature of his business was private and it was only his vehicles.

Attorney Rausch stated if there was a change in use in 2007 from commercial to non-commercial, then the applicant needed to prove that a towing company is equal to or more restrictive than a private non-commercial racing car operation. Attorney Rausch was of the opinion the evidence the applicant presented did not prove that, since there would be other vehicles there, the public would be coming to pick up their cars, there would be more traffic and there would be tow trucks coming and going. He noted whether or not the applicant keeps the cars out in the open, the Board has to determine credibility.

Attorney Rausch referred to submitted evidence that even with court orders the applicant was not following outside storage regulations. He also pointed out the floodway issue, noting the public would be at risk with their personal property at that site and that would become a concern of the Township. He noted the Township does not have any objection to Mr. Darrah operating a towing company in Springettsbury Township, but that it belongs in the General Industrial district.

Attorney Rausch pointed out when the zoning officer issued his opinion in 2007, it was not appealed by the applicant. The only decision appealed was the condition there was no outside storage. Attorney Rausch stated in 2011 when the use and occupancy certificate was issued for a private garage which is allowed in the open space district for a race car hobby, that was not appealed. Attorney Rausch maintained the special exception standard indicated by Attorney Ogden does not apply because in reviewing that case law those sections in their ordinances say a change of use will be by special exception. Additionally, if the language in the ordinance says it cannot have a more detrimental effect

that is when the special exception use standards are applied. He noted the Township's ordinance does not provide that provision. The Planning Committee's responsibility is to interpret whether or not the commercial use as a towing company is equal to or more restrictive than a private race car hobby, and the courts have said it is on a case-by-case basis.

Chairman Achenbach called for postponement of the decision to allow the applicants for Case Z-16-03 to present their case.

#### **4. NEW BUSINESS**

##### **A. Case Z-16-03 U-Gro Learning Centers**

All witnesses were sworn in.

Phil Hollinger, Director of Operations

Jerry Freiwald, VP Bartush Signs

General Case Summary:

Article XXIV, Signs

325-107. Business Identification Signs

M-U, B-I

Maximum permanent sign area: 20% of building front area or 5% of street frontage, whichever is greater; for corner lots, the smaller of the two frontages shall be used to calculate the maximum sign area

No freestanding signs except for monument signs are permitted

The premises shall have no more than two freestanding signs

The total monument signage on the premises shall not exceed 120 square feet

Monument signs shall be no more than 10 feet wide and no more than 12 feet high. The minimum width of a monument sign shall be no less than 35% of the height

Comments: The Applicant is requesting a special exception to allow for the relocation of an existing non-conforming sign. The sign was permitted and installed in 1997 under that version of the zoning ordinance and exceeds the maximum dimensions for a monument sign described in the current zoning ordinance. The applicant asserts the sign will not be changed simply moved 50 ft. to the west.

Recommendations: The zoning officer's determination is the sign is an existing non-conformance. The existing and proposed sign locations meet the setback requirements for the current zoning ordinance.

Mr. Hollinger indicated they are requesting to move the sign 50 ft. to the west. He provided an overview of U-Gro, indicating they have been in business for 42 years. They have 11 child care centers in Central PA, and care for approximately 1,400 children a day. Their York facility is the oldest facility built in 1997. They are doing a complete renovation of the York facility. They are increasing the capacity of serving 120 children to approximately 150 children. Currently they serve about 16 children at local schools, including North Brook, North Hills and Stony Brook. This project is already underway to include the expansion as well as an indoor play area. He provided a photo of what the end project will look like, marked as Applicant's Exhibit #1. The photo is of the Hershey facility but shows the indoor play space. He also provided a rendering of the York facility and the play space as it will look when completed.

Mr. Freiwald indicated the sign location currently will be moving as shown in the site plan (Applicant's Exhibit #2). The plot plan shows the proposed sign location which is 50 feet off the property line that runs parallel with Route 30. They plan on moving it to the west 50 ft. allowing additional 100 ft. from sign to the side property line. He provided two additional photos, marked as Applicant's Exhibit #3 and

#4. Photo A3 is looking from the building out towards Rt. 30 showing how close the sign is to the building. A4 is an overview showing the sign and the building moving towards the yellow job trailer. The sign will be the same size and the height will not change. It will be set back further from Route 30 approximately 75 ft. They will obtain engineer drawings which will show steel supports and excavation. The existing electric will be transferred from that site to the new site. They will obtain the necessary inspections from Springettsbury Township.

Discussion was held regarding the size of the sign which is 5 ft. by 14 ft. 7 inches. Mr. Freiwald clarified the sign is 12 ft. from grade to the bottom and will be 72.9 sq. ft. including the entire cabinet. He noted the sign size is conforming.

Ms. Cunning referred to §325-113 which states all signs which are non-conforming will be required to be brought into conformance with this article at such time as any alterations are made to the dimension, height, structure or location of the sign.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Attorney Markey stated he had no issues with this request.

**MS CUNNINGHAM MOVED IN THE CASE Z-16-03 TO APPROVE THE VARIANCE FOR §325-113, WITH THE CONDITION THE APPLICANT OBTAIN THE APPROPRIATE PERMITS. SECONDED BY MR. SCHMITT. MOTION UNANIMOUSLY PASSED.**

Chairman Achenbach called for an Executive Session for quasi-judicial deliberation of Case Z-15-10 at 6:58 P.M.

The meeting reconvened from the Executive Session at 7:18 P.M.

**MS. CUNNINGHAM MOVED IN THE CASE OF Z-15-10 TO SUSTAIN THE ZONING OFFICER'S INTERPRETATION AND DETERMINE THAT THE PROPOSED USE TYPE IS NOT A USE OF EQUAL OR MORE RESTRICTIVE CLASSIFICATION AND TO DENY THE APPLICANT'S APPEAL. SECONDED BY MR. SCHMITT. MOTION UNANIMOUSLY PASSED.**

## **5. ADJOURNMENT**

**CHAIRMAN ACHENBACH ADJOURNED THE MEETING AT 7:20 P.M.**

Respectfully submitted,

Secretary  
/ses