

APPROVED

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
SEPTEMBER 1, 2011**

The Springettsbury Township Zoning Hearing Board held a regularly scheduled meeting on the above date at the Township offices located at 1501 Mt. Zion Road, York, Pennsylvania 17402.

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chair
John Schmitt
James Deitch
Sande Cunningham

NOT PRESENT: Michael Papa

ALSO IN

ATTENDANCE: Gavin Markey, ZHB Solicitor
Angela Liddick, Community Development Coordinator
Sue Sipe, Stenographer

1. CALL TO ORDER

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

2. ACTION ON THE MINUTES

A. July 7, 2011

MOTION MADE BY MR. DEITCH, SECONDED BY MR. SCHMITT TO APPROVE THE MINUTES OF JULY 7, 2011 AS PRESENTED. MOTION UNANIMOUSLY CARRIED.

It was noted there was no August meeting.

Chairman Achenbach asked Ms. Liddick whether or not all cases had been properly advertised. She responded that all notifications had been made.

3. OLD BUSINESS - NONE

4. NEW BUSINESS

A. Case Z-11-10 Hong Bao LLC

Attorney Stacey MacNeal

All witnesses were sworn in.

General Case Summary: The ordinances are provided:

325-193.F. Nonconforming uses and structures.

F. Abandonment

(1) If a nonconforming use of a building or land ceases for a period of one (1) year or more, subsequent use of such building or land shall be in conformity with the provisions of this Chapter.

(2) Abandonment regulations shall not apply to agricultural or farming uses.

325-37(A)(22). Permitted uses.

(22) Restaurants, cafe and other places serving food, without drive-through facilities.

Comments: The applicant is requesting an appeal of the zoning officer's decision that the building located at 2701 Eastern Boulevard be considered abandoned due to no business activity at that location in more than one (1) year. This building used to house People's Bank prior to its move to Haines Road. There has been no activity on this site since People's Bank moved out of the location.

The applicant is also requesting a variance to allow a proposed restaurant at that location to continue the use of the existing drive-thru lanes.

Recommendations: If the findings of Fact and Conclusions of Law meet with the approval of the Board, staff would not oppose the applicant's request.

Attorney MacNeal stated there are two portions to the application. One is an appeal of the zoning officer's determination that the drive through portion of this facility, which is now non-conforming, was abandoned. The second and the alternative would be a variance for requested use of this drive through facility. Attorney MacNeal indicated she would present the non-conforming appeal issue first for a Board decision and then if necessary continue with the variance testimony.

Through testimony, Mr. Bradley Rohrbaugh, indicated he is a commercial real estate agent employed with Coldwell Banker, Commercial Bennett Williams. He noted he was involved in the transaction of moving the former People's Bank at 2701 Eastern Boulevard to the shopping center on Eastern Boulevard. He was then hired when the property was sold to an investor out of Baltimore to list the property for lease as a drive through facility. He noted the bank vacated the property in April 2010. Since that time the property has been actively marketed by his firm as a drive through facility, and that structure is still in place on the property.

Attorney MacNeal presented Applicant's Exhibit #1, a portion of which was attached to the application. The exhibit is a copy of the marketing materials used for the site, and includes a photo of the property as it currently exists on the front page and shows the drive through facilities.

Attorney MacNeal cited a PA Supreme court case of Latrobe Speedway vs. Zoning Hearing Board of Unity Township, Westmoreland County, which points out the proposition that when a municipality has a time limitation in their ordinance it offers a presumption that the intent to use that facility in that non conforming manner was abandoned. However, the applicant has the right to rebut that presumption with additional evidence, which can include evidence of marketing efforts.

Attorney MacNeal confirmed that the intended new use of the property will be for a Little Caesar's restaurant which is a permitted use.

Attorney Markey indicated that upon review of the PA Supreme Court decision presented by Attorney MacNeal, he would recommend that, based on the evidence that has been presented and the clarity of this decision researched, a motion be made to sustain the appellant's appeal and find that there has been no abandonment of the drive through facility. It was his legal opinion that Attorney MacNeal has provided evidence that they have advertised it as a special feature to the property itself. He further noted, in defense of the Township, their responsibility was to facially apply the provision of one year.

It was clarified that the drive through on the property preceded the ordinance, and was constructed at a time when it was permitted, which makes it grandfathered as a permitted structure.

It was indicated that the date of this property offering is March 26, 2010. Mr. Rohrbaugh verified that it has been continuously marketed since that date showing the property about a dozen times to different uses

such as real estate companies. He also noted the taxes are up to date and in good standing. There were no changes to the property and it was maintained exteriorly.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant. Hearing none he called for a motion.

MR. DEITCH MOVED IN THE CASE OF Z-11-10 TO SUSTAIN THE APPELLANT'S APPEAL OF THE ZONING OFFICERS DECISION, SINCE THE APPELLANT HAS PROVIDED CREDIBLE EVIDENCE FROM THE REAL ESTATE AGENT AND PHYSICAL EVIDENCE OF THE INTENT TO CONTINUE THE MARKETING. SECONDED BY MR. SCHMITT. MOTION CARRIED. 1 NAY.

B. Case Z-11-11 Spirit Halloween

William Stiefel, District Manager

Witness was sworn in.

General Case Summary: 325-108. Temporary Signs.

B. Temporary signs in the C-H, G-I and F-D districts and F-O overlay.

- (1) A single cloth, vinyl, or fabric temporary banner shall be permitted up to four (4) times per year, with each use consisting of consecutive days and no more than an aggregate of twenty-eight (28) days in a calendar year. A banner must be firmly attached to the front façade of the building. No other support structure is permitted. When any banner becomes torn, damaged or disfigured, it must be removed immediately.
- (2) Total area of temporary signage, not including a banner as permitted in subsection "1" above, shall not exceed five percent (5%) of the area of the building front up to a maximum of forty-eight square feet. In the case of vacant land, no signage in addition to that provided under "Permanent Signs" shall be permitted.
- (3) With the exception of a banner as permitted in subsection "1" above, no one sign may be greater than twenty-four (24) square feet.
- (4) With the exception of a banner as permitted in subsection "1" above, no more than four (4) temporary signs are permitted.

Comments: The applicant is requesting to extend the amount of time that a temporary banner can be installed on the building located at 2980 Whiteford Road (previously Ultimate Electronics). The Township ordinances only allow a temporary sign to be installed for an aggregate of 28 days in a calendar year. The Spirit Halloween store is seasonal and will only remain at said location for 62 days. They are requesting to extend length of time that the temporary sign is installed by 34 additional days.

In addition to the above, the applicant is requesting an additional variance to allow the installation of two (2) banners, each of which will be 160 square feet (8ft x 20ft). The ordinance allows for the installation of only one (1) temporary banner which must be firmly attached to the front façade of the building. The size that the applicant is asking for is needed in order to cover the current building signage that exists for the previous tenant, Ultimate Electronics.

Recommendations: Staff would find it difficult to support the requested variances.

Mr. Stiefel indicated they have been in the York area for approximately the last eight years, however, this is the first time they have come to Springettsbury Twp. They are looking for an extension on the temporary sign permit of 28 days to extend it for 62 days, which is the length of time their store would be open. They are proposing to cover the two existing Ultimate Electronics signs –one in front of the building facing Whiteford Road, which is 27x15 ft. and the one in the back of the building facing Route 30, which 22x10 ft. Mr. Stiefel stated the signs are professionally made by their sign company. He

explained how the signs will be mounted by attachment to the brickwork of the building in the four corners and then anchored to the metal support pole that is built around Ultimate Electronics sign.

Attorney Markey stated the Board has to decide as a policy perspective does it make sense to allow the additional days. He noted the variance criteria does provide concession to the effect that “the following shall be applied where relevant in a given case” to allow the Board to review the situation and decide how to handle it. He stated the Staff is charged with applying the literal language of the ordinance, which resulted in their recommendation.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant. Hearing none he called for a motion.

MS. CUNNINGHAM MOVED IN THE CASE OF Z-11-11 TO APPROVE BOTH VARIANCES, THE FIRST ALLOWING THE TWO BANNERS, AND THE SECOND ALLOWING THE BANNERS TO BE DISPLAYED FOR A PERIOD OF 62 DAYS. SECONDED BY MR. SCHMITT. MOTION CARRIED. 1 NAY.

5. ADJOURNMENT

Chairman Achenbach adjourned the meeting at 6:45 p.m.

Respectfully submitted,

Secretary

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