

PENN TOWNSHIP ZONING HEARING BOARD

MINUTES OF SEPTEMBER 10, 2009

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The Penn Township Zoning Hearing Board (ZHB) met on Thursday, September 10, 2009, at 7:00 p.m. in the Penn Township Municipal Building to conduct hearings for Brent Fox, Mutzabaughs Family Inc. and Susquenita School District.

Mr. Bigley opened the meeting at 7:00

Secretary conducted the roll call of the ZHB.

Present: Jonathan Bigley, Chairman
Vince Bernhard, Vice Chairman
JoAnn Glossner, Member
Barbara Van Horn, Alternate
Dennis Shatto – Zoning Solicitor
Lenard Sizer – Zoning Officer
Helen Klinepeter- Secretary

BRENT FOX, DOCKET 2009-08-01

The ZHB opened the continuation at 7:05 p.m.

Visitors Sworn In: Helen Klinepeter, Lenard Sizer and Lori Fox

Mrs. Lori Fox requested a continuance to amend the application. Upon a Bernhard/Glossner motion, the ZHB voted unanimously to grant the continuance until October 8, 2009 and to close the hearing at 7:06 p.m.

MUTZABAUGHS MARKET INC, DOCKET 2990-09

The ZHB opened the continuation at 7:07 p.m.

Visitors Sworn In: Helen Klinepeter, Lenard Sizer, Ken Kilgore, Charlie Cook and Stanley Mutzabaugh

Evidence Submitted: None

See Transcript for testimony.

Synopsis:

Mr. Rick Martsoff, Solicitor for Mutzabaughs Market Inc, offered that Mr. Mutzabaugh would like to place a fueling depot in at the market. He offered that there was two items before the ZHB. The first is to challenge the Zoning Officer's interpretation of Section 1624. The second item is if the ZHB upholds the Zoning Officer's decision, then a variance will be requested.

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Mr. Martsoff offered that according to the ordinance a service station may not be within 300 feet of a place of assembly for 100. He offered that Mutzabaughs Market is not proposing a vehicle repair and servicing and such facilities are not planned. This is for a fuel pump depot with kiosk only. The definition of service station is a bit vague and the ordinances states that the definition is misleading, and the MPC requires the ZHB to interpret in the applicants favor.

The second item is that there is no definition of assembly and if there is no definition you go to Webster's dictionary, which defines assembly as a group of persons gathered for deliberation, legislation, worship, entertainment, and recreational purposes. Mutzabaughs Market does not apply to those definitions. The ordinance defines public as a governmental assembly.

The third item is that the Zoning Officer stated that at a given point there could be 100 persons in the market. By ordinance grocery stores are defined as retail. Therefore the amount of persons assembling does not apply.

Mr. Martzolf asks if the ZHB supports the Zoning Officer determination. Mr. Bigley offered that questions could be asked before a determination is made. Mr. Bernhard asked if the fuel depot is for fueling only? Mr. Ken Kilgore of Duncan Oil offered that the depot will also have a kiosk for candy, pop and cigarettes. Mr. Bernhard asked if the fuel depot will apply to the drive-thru portion of the ordinance. A discussion commenced with what is a drive thru facilities.

Mr. Sizer offered that the ordinance is a very gray area, so he referred the matter to the ZHB. Mr. Shatto asked the Secretary questions about the advertising and posting of the property and the notification of the property owners.

Mr. Bigley called a recess from 7:26 p.m. though 7:41 p.m. Mr. Bigley called the hearing back into order and asked for a motion on the appeal of the Zoning Officer interpretation. Upon a Bernhard/Glossner motion the ZHB voted unanimously to grant the appeal of the Zoning Officer's interpretation as there is ambiguity in the Ordinance and that Mr. Sizer properly ruled on this given the ambiguity.

The ZHB directed the Secretary to send a letter to the Board of Supervisors asking for a clarification of the issues for Section 1624 and asking what intention for protection.

Upon a Bernhard/Glossner motion, the ZHB closed this hearing at 7:45 p.m.

SUSQUENITA SCHOOL DISTRICT (District), Docket 2009-10

The ZHB opened the continuation at 7:47 p.m.

Visitors Sworn In: Helen Klinepeter, Lenard Sizer, Dr. Dan Sheets, Robert Finnen, and Henry Holman, Jr.

Evidence Submitted:

Applicant 1 – Book of photos and sight distances

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See Transcript for testimony.

Synopsis:

Mr. Bigley recused himself from the voting on the hearing due to a conflict as he is a member of the Board of Directors of the Susquenita School District.

Mr. P. Daniel Altland, Solicitor for the District. Mr. Altland offered that the District would like to place a sign on the grass area of the ground by the Elementary/Middle School Entrance. The request is for a computerized changing sign. He continued that during talks with the Zoning Officer and it was suggested that a variance be requested. He submitted a notebook with comparable signs along SR 11/15 and the sight distances allocation for different sign heights. He offered that the District is asking for a sign that is 13.5 feet tall with a sign area of 52.41 square feet.

Dr. Sheats offered that the goal of the sign would be to identify the School District, as there is no daily paper to extend information to the public, the sign would be used to notify the public of events and in an emergency or traffic accident, the sign could be used for public safety. Dr. Sheats continued that the frontage of the elementary school is 1090 feet and the frontage of the middle school is 615 feet which is why the location for the placement of the sign along with the sign not being a hindrance to the neighboring homes. A discussion commenced on the information that would be permitted on the sign.

Mr. Henry Holman, Jr. represented the Board of Supervisors (Supervisors) and offered that when he was approached about a sign on the District property he offered that he would not be opposed to the sign. Mr. Holman offered that in reference to the pictures submitted to the ZHB, most of those signs were in place before the zoning ordinance went into effect and therefore are grandfathered. It is not a case of you let these sign go up so we should get to put our sign up. He continued that the one problem that the Supervisors have is the electrical sign. The recommendation of the Planning Commission points out that marquee or scrolling signs are prohibited in the ordinance. We have young drivers, school buses and a changing speed limit all in competition for this area. To input a flashing or scrolling sign would be a safety hazard that is not needed. Mr. Holman requested the ZHB to take all this into consideration when deliberating on this matter. Mr. Holman offered that the size of the sign may be cut or trimmed but that the Supervisors could live with the size of the sign.

Mr Bernhard asked if Mr. Holman's comments were as a Chairman of the Board and if the Supervisors agreed to the statements. Mr. Holman responded that yes he spoke as Chairman of the Board and comments were the result of the majority of the board.

Mr Bernhard asked if the digital portion of the sign was scrolling or a marquee. Mr. Altland offered that the digital part of the sign would be a stationary sign and that the ordinance states that a stationary digital sign could be changed 8 times within a 24 hour period. The sign would not be a marquee or a rolling sign. A discussion commenced on the safety of the sign

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being changed. Mr. Altland offered that the District could have two signs on SR 11/15 that would equal 80 square feet. The District is asking for only one sign of 52.41 square feet.

Mr. Shatto asked the Secretary questions about the advertising and posting of the property and the notification of the property owners.

Mr. Bigley called a recess from 8:42 p.m. though 9:05 p.m. Mr. Bigley called the hearing back into order and asked for a motion on the appeal of the Zoning Officer interpretation. Upon a Bernhard/Glossner motion, the ZHB voted unanimously to grant the variance conditional that the message shall not be changed during the period that the school speed limit sign is in operation.

After discussion, and upon a Van Horn/Glossner motion, the ZHB voted unanimously to close the hearing at 9:07 p.m.

MINUTES – Secretary presented the minutes of July 9, 2009 and August 13, 2009 for review. After discussion, and upon a Bernhard/Glossner motion, the ZHB voted unanimously to approve the minutes of July 9 and August 12, 2009.

OLD BUSINESS

Radocha/Berrier Appeal – Solicitor informed the ZHB of the decision of Judge Rehkamp in favor of the ZHB.

NEW BUSINESS

Next Hearing – Secretary offered that there will be a Zoning Hearing on October 8, 2009. Ms. Van Horn offered that she would not be able to attend.

Upon the completion of all business, and upon a Glossner/Bernhard motion, the ZHB voted by majority to adjourn the ZHB meeting at 9:20 p.m.

Respectfully Submitted;

Helen Klinepeter
ZHB Secretary