

# Adams County Legal Journal


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### HUNTERSTOWN RURITAN CLUB VS. STRABAN TOWNSHIP ZONING HEARING BOARD



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**FICTITIOUS NAME REGISTRATION**

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on June 29, 2015 for blaq cloth located at 405 North Beaver St, York, PA 17401. The name and address of each individual interested in the business is Waleed Speights, 405 North Beaver St, York, PA 17401. This was filed in accordance with 54 Pa.C.S. 311.

8/7

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**NOTICE BY THE ADAMS COUNTY  
CLERK OF COURTS**

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, August 14, 2015 8:30 am Orphans' Court Action Number OC-68-2015

**HENDRICKSON**—The First and Final Account of Norman W. Cameron III, Executor of the Last Will and Testament of Caroline C. Hendrickson, Deceased, late of Cumberland Township, Adams County, Pennsylvania

**DAY**—Orphans' Court Action Number OC-69-2015. The First and Final Account of George Raymond Helfrick, Administrator of the Estate of D. Irene Day, Deceased, late of Cumberland Township, Adams County, Gettysburg, Pennsylvania

Kelly A. Lawver

7/31 & 8/7

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## HUNTERSTOWN RURITAN CLUB VS. STRABAN TOWNSHIP ZONING HEARING BOARD

1. It has been long held that where, as here, no additional evidence is presented to the trial court, its scope of review is limited to determining whether the local zoning agency committed an error of law and whether its necessary findings are supported by substantial evidence.
2. Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion.
3. Thus, it does not appear that the Board was denying the Ruritan Club's right to the natural expansion of its non-conforming use.
4. Our review of the record leads to the conclusion that the Board had an adequate basis for arriving at its decision. First, we note that the Board is the trier of fact and its members determine the credibility of witnesses and the weight to be given to the evidence. Second, we note that the burden is upon the applicant to establish that it will satisfy the ordinance criteria for the extension of the non-conforming use.
5. There are numerous cases which support the right of a non-conforming business to expand in order to remain competitive in the market place, but our research has disclosed no case which precluded the municipality from imposing reasonable conditions upon that expansion.

## IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA, CIVIL 2012-S-1059, HUNTERSTOWN RURITAN CLUB VS. STRABAN TOWNSHIP ZONING HEARING BOARD

Susan J. Smith, Esq., Attorney for Appellant  
Clayton R. Wilcox, Esq., Attorney for Respondent  
Walton V. Davis, Esq., Solicitor for Straban Township  
Bernard A. Yannetti, Esq., Counsel for George O. & Shirley A.  
Brown & Franklin W. Thomas

Kuhn, J., June 12, 2015

## OPINION

Before the Court for disposition is an appeal filed by Hunterstown Ruritan Club to a decision of the Zoning Hearing Board of Straban Township. For reasons set forth herein, the appeal is denied.

The subject property is located along Red Bridge Road in Straban Township, Adams County, and is owned by the Hunterstown Ruritan Club (hereinafter “the Ruritan Club”). The Ruritan Club was chartered in 1955 for the purpose of enriching the community. On October 14, 1957, the Ruritan Club purchased the 14-acre subject property for community recreational purposes. The amenities included baseball fields, picnic areas, and swing sets. [N.T. 16, Applicant’s Ex. 1].

In the early 1960s, the Ruritan Club created a track on the property for the youth in the area to operate their go-carts. [N.T. 17]. In 1962, the Hunterstown Kart Club (hereinafter “the Kart Club”) was formed to operate the track [N.T. 23, 54]. At least since 1982, the Ruritan Club and the Kart Club have entered into a series of written leases for the purpose of go-cart racing. [N.T. 22; Applicant’s Ex. 4].<sup>1</sup> Early on, races generally took place on Saturdays but occasionally there were also races on Sunday at the track. [N.T. 50].

In 1992, Straban Township adopted a Zoning Ordinance which placed the subject property in a Mixed Use Neighborhood Zoning District. Although parks and playgrounds are uses permitted by right in this district, go-cart racing is not permitted by right or by special exception.

By 1993, the number of Sunday races began increasing with participants arriving from outside the area. [N.T. 61, 75]. The number of Sunday races increased from a small number per year in 2001 to as many as 8 by 2011. [N.T. 56, 87]. By that time, Sunday was the most popular day for participants and spectators and also was when the greater cash prizes were awarded. [N.T. 40, 62]. Approximately 250 racers participated in the competition on a Sunday in early April 2012. [N.T. 70].

In December 2011, the Ruritan Club applied for a Certificate of Non-conformance as authorized under §140-27 of the Zoning Ordinance. [N.T. 20]. On February 17, 2012, the Zoning Officer issued the requested Certificate and specifically provided that

[t]he non-conforming use consists of Go Kart Racing events

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<sup>1</sup> The Order included a briefing schedule.

located on the existing track at the above site on Saturdays only with all racing ending at or before 11 pm. Any expansion of this Non-conformity must be approved by the municipality prior to its establishment.<sup>2</sup>

On March 5, 2012, the Ruritan Club filed an Application for a zoning hearing before the Zoning Hearing Board of Straban Township (hereinafter “the Board”) to expand the prior existing non-conforming use to allow racing on Saturday after 11:00 p.m. and on Sunday.<sup>3</sup> A hearing was held on April 18, 2012, at which time the Ruritan Club withdrew the request to allow racing after 11:00 p.m. on Saturdays. On May 10, 2012, the Board held its Decisional Meeting and subsequently, on June 11, 2012, issued its written Decision denying the application.

On July 10, 2012, the Ruritan Club filed its Appeal alleging that the Board erred by misapplying the Ordinance criteria and by attempting to regulate days of usage. Straban Township filed a Notice of Intervention on July 30, 2012. A Status Conference was scheduled by the undersigned for October 5, 2012. At that time, there was agreement to continue the conference to the call of any party in order to engage in settlement negotiations.

Nothing further occurred for nearly two years.<sup>4</sup> In the interim, and unknown to the Court, on March 18, 2013, Susan J. Smith, Esquire, entered her appearance on behalf of the Ruritan Club. By August 2014, the undersigned rescheduled the conference for September 19, 2014, to determine the status of the case. At that time, the parties agreed to move the matter to disposition of the appeal. A briefing schedule was directed with which the parties have complied.

## **DISCUSSION**

In this matter, the Court has taken no additional testimony and, therefore, the decision is based upon the record produced before the Board. It

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<sup>2</sup>Applicant’s Ex. 3. The Zoning Officer reported that he was not provided with any history of Sunday racing prior to 1992, information of only one Sunday race in 2005 and, a number of Sunday races in 2008. [N.T. 87].

<sup>3</sup>The Application form allows the applicant to identify what is being pursued. The options are a) variance; b) special exception; c) interpretation; d) non-conforming use change; e) appeal from decision of zoning officer; and f) challenge to validity of zoning ordinance. The Club checked “non-conforming use change” only.

<sup>4</sup>In the interim, counsel for the club was suspected of improperly diverting client funds. She was eventually disbarred from the practice of law and criminally sentenced to a substantial period of incarceration by the United States Middle District Court of Pennsylvania.

has been long held that where, as here, no additional evidence is presented to the trial court its scope of review is limited to determining whether the local zoning agency committed an error of law and whether its necessary findings are supported by substantial evidence. The court may not substitute its judgment for that of the local agency unless the zoning hearing board manifestly abused its discretion. *Pham v. Upper Merion Township Zoning Hearing Board*, \_\_\_ A.3d \_\_\_, \_\_\_, 2015 WL 1588025 (Pa. Comwlth. Ct. April 10, 2015) n. 5.<sup>5</sup> Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion. *Oxford Corporation v. Zoning Hearing Board of the Borough of Oxford*, 34 A.3d 286 (Pa. Comwlth. Ct. 2011), n 9.<sup>6</sup>

The Ruritan Club first argues before this Court that it is not proposing to change racing use or to physically expand the area historically used for racing but, rather, to conduct the same racing schedule on Saturday and Sunday it claims has occurred for years. The Township counters that the issue before the Board was not whether there was a non-conforming use for Sunday racing but whether the Ruritan Club was able to meet the ordinance requirements to expand to include Sunday racing. This procedural status of the case needs to be clarified.

As noted, on February 17, 2012, the Zoning Officer issued the Certificate of Nonconformance, verifying the non-conforming use to consist of Go Kart Racing on Saturdays up to 11:00 P.M. only. When the Ruritan Club filed its Application, it indicated that it was seeking a “nonconforming use change”, specifically the “expansion of a prior-existing non-conforming use to allow racing for Saturday after 11:00 P.M. and on Sunday.” (emphasis added). It did not check the box indicating this was an “Appeal from decision of Zoning Officer”. At the hearing held April 18, 2012, Larry Blount, President of the Ruritan Club, verified that the organization had not filed an appeal from the Certificate of Nonconformance, as issued. [N.T. 37]. Thus, it appears that the Ruritan Club was not challenging the finding that its non-conforming use was limited to Saturdays but was instead only seeking to expand the use to include Sundays. This clarification is critical to the analysis of the Board’s decision.

The Zoning Ordinance for Straban Township at §140-26.B.

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<sup>5</sup>Citing *Nascone v. Ross Township Zoning Hearing Board*, 473 A.2d 1141, 1142 (Pa. Comwlth. Ct. 1984).

<sup>6</sup>Citing *Rittenhouse Row v. Aspite*, 917 A.2d 880 (Pa. Comwlth. Ct. 2006).

expressly permits the extension of a nonconforming use by the Board as a special exception, subject to certain standards.<sup>7</sup> It was upon these standards that the Board focused its attention in arriving at its decision. The Board never decided that Sunday racing was or was not the practice prior to adoption of the Zoning Ordinance in 1992. The Board did state in its Decision that even though the Ruritan Club had not appealed the Certificate of Non-Conformance, that failure did not control its decision. The Board noted that the “certificate as well as the testimony at hearing establishes the use existed [sic] on the date of the Ordinance adoption” and that certificate does “not freeze the use as it existed at the time of the Ordinance adoption.” The Board recognized that the use had grown in both time and intensity of use after 1992. However, as of 1992, the Certificate identified the use as limited primarily to Saturday and if the use was to expand to Sunday use the applicant had to meet certain standards.

Thus, it does not appear that the Board was denying the Ruritan Club’s right to the natural expansion of its non-conforming use. ***Harrisburg Gardens v. Susquehanna Township Zoning Hearing Board***, 981 A.2d 405, 411 (Pa. Comwlth. Ct. 2009). Instead, the Board solely based its decision denying the Application upon the Ruritan Club’s failure to establish conformity with the standards for extension of a nonconforming use. In other words, the Board appears to have accepted the Certificate of Nonconformance as establishing the prior use (racing on Saturdays only) and then denied the request to extend racing to Sundays, not because it was or was not conducted prior to, or subsequent to, 1992, but because the other standards had not been established.

We must, therefore, focus the balance of our attention to those standards to determine whether the Board abused its discretion. The standards are set forth in §140.26.B and §140-61.E of the Zoning Ordinance. The Board determined that the applicant satisfied all of the criteria except for the following:

- a. The use will not substantially injure or detract from the use of the neighboring property;
- b. The proposed use is consistent with the logical extension of public services and utilities, such as public water and sewer;

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<sup>7</sup>A municipality may impose reasonable conditions or restrictions on the extension of a nonconforming use. ***Silver v. Zoning Board of Adjustment***, 255 A.2d 506 (Pa. 1969). ***Bernotas v. Zoning Hearing Board of the City of Bethlehem***, 68 A.3d 1042, 1051 (Pa. Comwlth. Ct. 2013).

- c. The proposed use reflects an environmental approach to land planning and design;
- d. The proposed use will provide safe and adequate access to streets;
- e. The proposed use will provide for pedestrian access to the site;
- f. The proposed use includes proposals for landscaping along property boundaries in areas that are highly visible and where the use of trees, scrubs, and ground covers would be functional and appropriate; and
- g. The proposed use will provide off-street parking in accordance with Article VII of the Ordinance.

Our review of the record leads to the conclusion that the Board had an adequate basis for arriving at its decision. First, we note that the Board is the trier of fact and its members determine the credibility of witnesses and the weight to be given to the evidence. *Oxford Corporation, supra*. 34 A.3d n. 9; *Pietropaolo v. Zoning Hearing Board of Lower Merion Township*, 979 A.2d 969, 976 (Pa. Comwlth. Ct. 2009). Second, we note that the burden is upon the applicant to establish that it will satisfy the ordinance criteria for the extension of the non-confirming use.

The Board determined that Sunday racing would devalue neighboring property. Neighbors residing across Red Bridge Road from the area of the track testified to their inability to engage in outdoor conversation and to have picnics on their property during races because of the deafening noise caused by the go-carts. [N.T.91, 96, 102-03; 113-14]. They are somewhat tolerant of Saturday racing because of its historical precedence but the idea of forfeiting the quiet enjoyment of their property for an entire weekend during racing season was clearly aggravating to them and something the Board took seriously.

The Board also determined that the applicant did not offer any evidence as to the need for water and sewer services. At most, Mr. Blount testified that the property was not served with public water, sewer, or other utilities and that attendees utilize rented Porta Potties. [N.T. 31, 48]. However, neither the applicant nor the Kart Club keep attendance records and offered no testimony as to the adequacy of the water and sewer services for the property.

The Board concluded that Sunday racing would increase noise, traffic, parking, and pedestrian needs and noted that no testimony was

offered regarding soil and site condition or water run-off. The Board recognized that there are two access points to the track from Red Bridge Road at a location where there is a significant curve. This finding was supported in the record. [N.T. 31, 93]. However, the applicant was not able to report the number of vehicles that access the property on race days although it was acknowledged that several hundred people are in attendance. The applicant did report that several people are posted on the roadway to direct traffic. [N.T. 58]. It was also agreed that there is no pedestrian access to the site. [N.T. 77].

The Board noted that early in the existence of the track some screening was provided next to the roadway but that over time it disappeared and was not replaced. The Board felt that the lack of screening was a significant factor in the impact upon the neighboring properties. One neighbor testified that when he moved into his home in 1980, there was a buffer of pine trees but that most of them had died and not been replaced over the years. [N.T. 102, 104]. The President of the Kart Club, Keith Blumstein, acknowledged that some brush had been removed and that the club would be willing to plant screening. [N.T. 67, 113].

Parking was also a significant factor for the Board. The Zoning Ordinance provides standards for off-street parking. §140-44, et seq. For athletic or outdoor recreational facilities there is to be one parking space for every four spectators or participants. [Table 140-46-1]. In addition there is a requirement for handicap accessible parking spaces in a specified ratio to the number of total parking spaces. §140-49.A.(6). Regular parking spaces are to be no less than 10 feet wide by 20 feet deep and handicap spaces are to be no less than 13 feet wide by 20 feet deep and located in an area with less than 5% slope. The Ordinance also describes design standards for the parking areas including that they be clearly defined and include marked traffic patterns. If more than 30 spaces are required, raised curbs and landscaped areas are to be used to direct traffic within the parking lot. Furthermore, the parking area requires adequate lighting that is arranged and shielded so that there are no direct rays on to adjacent property. §140-51. Here, the applicant was not able to verify the number of spectators and participants in order to ascertain the number of parking spaces required. Although Mr. Blount testified that off-street parking exists, he was not able to state the number of spaces. [N.T.32, 37]. Mr. Blumstein reported that there are 180 parking spaces [N.T. 73] and 3 handicap parking spaces [N.T. 57] but without

other statistical information it cannot be determined whether that number is adequate. Furthermore, the parking spaces are only marked by orange nails and the size of each space is not precisely known. [N.T. 77-8]. Essentially the applicant did not provide the Board with adequate information to determine whether these standards were, or would be, met.

The Ruritan Club argues that these standards should not be applied by the Board because the proposed expanded use to include Sunday races will be using all of the same facilities, such as toilet, parking, access, being lawfully used on Saturdays. In other words, the applicant would limit the requirement to meet the Ordinance expansion criteria to circumstances where there is a proposed new use or where there is the physical expansion (rather than the temporal expansion) of the non-conforming use. However, the Ruritan Club has cited no authority supporting that limitation. There are numerous cases which support the right of a non-conforming business to expand in order to remain competitive in the market place, *Lench v. Zoning Board of Adjustment*, 947 A.2d 551, 556 (Pa. Comwlth. Ct. 2009); *Pietropaolo v. Zoning Hearing Board of Lower Merion Township, supra.*, 979 A.2d 977, but our research has disclosed no case which precluded the municipality from imposing reasonable conditions upon that expansion. Here, this Court finds that the Board did not abuse its discretion in concluding that the applicant was required to, but failed to, establish its ability to comply with conditions designed for public safety and the protection of adjacent property.

Accordingly, the attached Order is entered.

BY THE COURT:

DATE: June 12, 2015

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**JOHN D. KUHN**

**Judge**

**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

**FIRST PUBLICATION****ESTATE OF BRIAN JOSEPH BAMBERGER, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executor: Matthew David McCabe, 1015 Oak Drive, Westminster, MD 21158

**ESTATE OF STANLEY ALBERT BUPP A/K/A STANLEY A. BUPP, DEC'D**

Late of Huntington Township, Adams County, Pennsylvania

Executor/Administrator: Roger A. Bupp and Tracy Wolf

Attorney: Vicky Ann Trimmer, Daley Zucker Meilton & Miner, LLC, 635 N. 12th Street, Suite 101, Lemoyne, PA 17043

**ESTATE OF ELIZABETH R. LUCAS, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: John T Lucas Jr., 3702 Garand Road, Ellicott City, Maryland 21042

**ESTATE OF CARL J. STEFFEN, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Personal Representatives: Joanne L. Cochran, c/o Donald L. Kornfield, Kornfield and Benchoff, LLP, 100 Walnut Street, Waynesboro, PA 17268

Attorney: Donald L. Kornfield, Kornfield and Benchoff, LLP, 100 Walnut Street, Waynesboro, PA 17268

**SECOND PUBLICATION****ESTATE OF PRISCILLA A. DARROW, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: David Darrow, 51 Lynx Dr., Hanover, PA 17331

Attorney: Matthew L. Guthrie, Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331, (717) 632-5315

**ESTATE OF RHODA G. HARTZELL, A/K/A RHODA THOMPSON HARTZELL, DEC'D**

Late of Borough of Gettysburg, Adams County, Pennsylvania

Administrator: Crosby L. Hartzell, 135 Redding Lane, Gettysburg, PA 17325

Attorney: David K. James, III, 234 Baltimore St., Gettysburg, PA 17325

**ESTATE OF DANIEL C. MILLER, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Administratrix: Mary Ann Miller, 117 Lake Meade Drive, East Berlin, PA 17316

Attorney: David J. Lenox, Esquire, 8 Tristan Drive, Suite 3, Dillsburg, PA 17019

**ESTATE OF DORIS ELIZABETH ROHRBAUGH, DEC'D**

Late of Marion, McDowell County, North Carolina

Administrator: Paul M. Rohrbaugh

Attorney: Barbara Jo Entwistle, Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

**ESTATE OF STEPHEN J. SCHILLINBERG, A/K/A STEPHEN JOSEPH SCHILLINBERG, SR., DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Deborah L. Schillinger, 702 Moul Avenue, Hanover, PA 17331

Attorney: Peter R. Henninger, Jr., Esq., Jones & Henninger, P.C., 339 W. Governor Rd., Ste. 201, Hershey, PA 17033

**ESTATE OF E. JANE WEHLER, A/K/A EVELYN JANE WEHLER, DEC'D**

Late of New Oxford, Adams County, Pennsylvania

Co-Executors: Joan W. Yatsko, 42 Pebble Beach Drive, Linfield, PA 19468; Scott A. Wehler, 98 Meade Drive, Gettysburg, PA 17325

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

**THIRD PUBLICATION****ESTATE OF EDITH R. BENDER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executors: John L. Bender, Winfield, PA

Executrix: Edith M. Kramer, 36 McClellan Dr, East Berlin, PA 17316

**ESTATE OF MILDRED B. GRAZIANO, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Sheryl Lee Jackson, 90 Red Oak Lane, Gettysburg, PA 17325; Sally Jackson Schultz, 958 Mummasburg Rd., Gettysburg, PA 17325

Attorney: Chester G. Schultz, 145 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF DEBORAH A. KLUNK, DEC'D**

Late of McSherrystown Borough, Adams County, Pennsylvania

Executor: Henry Stephen Edwards, 422 North Franklin Street, Hanover, Pennsylvania 17331

Attorney: Elinor Albright Rebert, 515 Carlisle Street, Hanover, Pennsylvania 17331

**ESTATE OF CATHERINE F. MURRELLS, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Noah Bruce Shelton, 501 27th Street, San Leon, TX 77539

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

**ESTATE OF GLORIA MARIE SMITH, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: Ann Marie Smith, 25 Dickinson Drive, Hanover, PA 17331

