COLLEGE TOWNSHIP PLANNING COMMISSION
REGULAR MEETING AGENDA
Tuesday, May 7, 2024
7:00 PM
Hybrid Meeting (In-Person or via Zoom)

General Meeting Information
College Township offers both in-person and virtual meeting attendance for all public meetings. To attend in-person, meetings will be held at 1481 E. College Avenue, State College PA, 16801, 2nd floor meeting room. To attend virtually, please see the information below.

To Attend the LIVE Meeting Via Zoom on Computer or Smart Phone:
- Click here to REGISTER for the meeting via Zoom. Once registered, you will receive a confirmation email containing information about joining the meeting.

To Attend the LIVE Meeting Via Phone:
- Dial: 1 (646) 558-8656  ● Meeting ID: 862 7222 5139  ● Passcode: 107370

*Click Here for detailed instructions on how to participate via zoom.

VIRTUAL PUBLIC COMMENTS: Please use the raised hand feature to participate. The moderator will recognize those with their hands raised (either by name or phone number).

WRITTEN PUBLIC COMMENTS: For specific Planning Commission agenda items and for items not on the agenda, written public comments may be submitted in advance by emailing smeyers@collegetownship.org by noon the day of the meeting.

College Township is committed to making meetings accessible to everyone. If you require an accommodation or service to fully participate, please contact Jennifer Snyder at jsnyder@collegetownship.org or 814-231-3021.

CALL TO ORDER:

ZOOM MEETING PROTOCOL:

OPEN DISCUSSION (items NOT on the agenda):

CONSENT AGENDA: CA-1 April 2, 2024 Meeting Minutes (Approval)

PLANS: P-1 Shiloh Commercial Park Preliminary Land Development Plan (Discussion/Recommendation)

OLD BUSINESS: None

NEW BUSINESS: NB-1 Dale Summit Area Form-Based Code Remand (Discussion)

REPORTS: R-1 Council Report

STAFF INFORMATIVES: SI-1 Council Minutes
SI-2 April EZP Update
SI-3 Zoning Bulletins

OTHER MATTERS:

ANNOUNCEMENTS: Next regular meeting will be Tuesday, May 21, 2024 at 7:00pm

ADJOURNMENT:
PRESENT: Ray Forziat, Chair  
Matthew Fenton, Vice Chair  
Ed Darrah  
Noreen Khoury

EXCUSED: Peggy Ekdahl  
Robert Hoffman

ABSENT: Ash Toumayants

STAFF PRESENT: Don Franson, P.E., P.L.S., Township Engineer  
Lindsay Schoch, AICP, Principal Planner  
Mark Gabrovsek, Zoning Officer  
Sharon Meyers, Senior Support Specialist – Engineering/Planning

GUESTS: Robert Watts, McCormick Taylor

CALL TO ORDER: Mr. Forziat called the meeting to order at 7:00 p.m.

ZOOM MEETING PROTOCOL: Mr. Forziat verified there were people present via Zoom, Ms. Schoch reviewed the Zoom meeting protocol.

ROLL CALL: Mr. Forziat verified there were two members of the committee excused and one absent.

OPEN DISCUSSION: Mr. Forziat introduced correspondence received at 4:09pm on April 1, 2024 from Ms. Angela Krug-Johnston asking the Planning Commission to reconsider their prior recommendation to approve the Centre Hills Country Club Land Development Plan until all facts are clarified. Mr. Forziat gave the Planning Commission a few minutes to read the email presented and asked if there were any questions. He then asked Ms. Schoch to speak to this correspondence. Ms. Schoch stated the plan meets the ordinance and there have been no substantive changes which would require the plan to be seen by the Planning Commission again before being presented to College Township Council. Ms. Schoch added the Centre Hills Country Club Land Development Plan will be presented to College Township Council at their regular scheduled meeting on Thursday, April 4, 2024. Mr. Forziat asked for any public comment, Ms. Schoch verified there were not hands raised on Zoom and there appears to be no further comments.

CONSENT AGENDA:  
CA-1 March 19, 2024 PC Meeting Minutes  
Mr. Fenton moved to approve the March 19, 2024 meeting minutes as written.  
Mr. Darrah seconded.  
Motion carried unanimously.
SPECIAL PRESENTATION:

SP-1 University Planned District Transportation Study Update
Ms. Schoch introduced the presenter Mr. Robert Watts from McCormick Taylor. Mr. Watts began his presentation and asked that questions be held until the end. Mr. Watts defined the University Planned District, its boundaries, and stated that the transportation study is updated every ten years, however, the parking matrix is updated annually. Mr. Watts also discussed traffic counts from 2011-2023, transit service studies, future development assumptions and impact, and a bicycle masterplan, among other things. Mr. Watts noted that the update was also sent to State College Borough and an extension for review and comments was granted until the end of April.

Mr. Darrah stated the study was very thorough and he had no comments. Mr. Fenton asked for further explanation on the pedestrian access to Innovation Park. Mr. Watts explained there is a free shuttle for staff and students to get to Innovation Park from Main Campus. While there are a lot of pedestrian amenities in each area, there is not much pedestrian connectivity between the two.

Mr. Forziat questioned pseudo-vehicles that are not regulated. Mr. Watts explained these pseudo-vehicles are not allowed on roadways or sidewalks and may only be operated on private property. He added that it’s difficult to manage motorized scooters and pseudo-vehicles. Staff and the Planning Commission thanked Mr. Watts for the presentation.

OLD BUSINESS:

OB-1 Workforce Housing
Ms. Schoch introduced and reviewed the Workforce Housing Ordinance Final Draft. While discussing the changes made from the conversation at the last meeting Mr. Darrah pointed out there could be some hesitancy from Council on the height allowances. He opined the Planning Commission is open to other maximum heights to be allowed as Council may think the heights added to the ordinance are higher than College Township may like.

Ms. Khoury mentioned a few spelling corrections and asked for clarification on the definition of nonresidential use. Staff and the Planning Commission discussed and clarified the definition.

Mr. Darrah moved to recommend the April 2, 2024 version of the Workforce Housing Ordinance, with corrections as may be noted, to College Township Council for consideration and enactment.
Mr. Fenton seconded.
Motion carried unanimously.

NEW BUSINESS: None presented.

REPORTS:

R-1 Council Report
Mr. Darrah gave a brief report of the April 4th Council meeting which included the approval with conditions of the Maxwell Struble Road Storage Site Land Development Plan and a presentation of a potential grant for Clearwater Conservancy. Mr. Forziat added that there was also a presentation of the Planning Commission 2023 Annual Report.

R-2 DPZ Update
No further discussion.

STAFF INFORMATIVES:

SI-1 Council Approved Minutes
No further discussion.

OTHER MATTERS: None presented.
ANNOUNCEMENTS:

Mr. Forziat announced the next regular meeting will be held on Tuesday, April 16, 2024 at 7:00 p.m. and the Statement of Financial Interests are to be completed and returned to Sharon Meyers as soon as possible.

ADJOURNMENT: Mr. Darrah moved to adjourn. Mr. Fenton seconded. Motion carried.

Meeting adjourned at 8:15 p.m.

**Draft**

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning
PRELIMINARY SUBDIVISION PLAN NARRATIVE
Shiloh Commercial Park
APRIL 15, 2024

Ed Maxwell currently owns three properties east of Shiloh Road at the Trout Road intersection. There are:
- Tax Parcel 19-2B-64, 1.04 Acres
- Tax Parcel 19-2B-65B, 3.654 Acres

The Owner is proposing to consolidate Tax Parcel 19-2B-65A and Tax Parcel 19-2B-65B into one lot under a separate plan. This preliminary subdivision plan will then create seven commercial lots with a proposed public road opposite of the existing Trout Road that will extend through the site to provide access for the lots. The development will be separated into two development phases.

Tax Parcel 19-2B-64, the site of the current Maxwell Trucking and Excavation offices will remain and not be included as a new subdivided lot for this development. However, new access, water and sanitary sewer connections will be made to the property.

EXISTING CONDITIONS:
Site Information:
The Maxwell Trucking and Excavation offices will remain on Tax Parcel 19-2B-64. An existing farm house rental and barn are currently located on the area of proposed Lot 4 and will remain until the completion of East Trout Road. The existing shared driveway for this property, Tax Parcel 12-2B-65 and Tax Parcel 19-2B-65A will be replaced with new public road access, East Trout Road.

All the Owner’s properties are zoned C1, General Commercial within the Wellhead Protection Overlay District. Adjacent to the north, the Gerald F. & Susan W. Clair and the Clair Family Limited Partnership,(Clair Property) Tax Parcel 12-05-48 is zoned Planned Research and Business Park District.

Tax Parcel 19-2B-65, owned by George Cavell, Jr. is immediately south of the proposed 50-foot East Trout Road R-O-W and currently has shared access to Shiloh Road from the existing shared driveway. The University Area Joint Authority has a pump station and easement on the Cavell property with access also from the existing shared driveway where East Trout Road is proposed.
An existing 20' drainage easement containing two 36” pipes and inlet structures conveys existing stormwater run-off from the Premiere Theatre property through the southwest corner of the development and within a portion of the proposed 50-foot East Trout Road R-O-W area to Shiloh Road.

PROPOSED:
LOTS:
Seven commercial lots are proposed with the Shiloh Commercial Park subdivision. The lots will vary in size from 1.32 acres to 5.26 acres. Lots 1 – 3 will be developed in the Phase 1 and Phase 2 will include Lots 4 – 7.

The building setbacks for the proposed lots are:
Front: 50 feet
Side: 15 feet
Rear: 50 feet

Parking Setbacks are:
Front: 30 feet
Side: 10 feet
Rear 10 feet

Impervious Coverage:
The standard impervious coverage limits for the lots in the General Commercial District is 70%. The maximum impervious coverage of Lots 1-6, located within the Wellhead Protection Overlay District shall not exceed 60%. For Lot 7, which is only located partially within the Wellhead Protection Overlay District, the reduction in maximum impervious coverage shall be proportionate to the amount of area of a given lot located within the Wellhead Protection Overlay District.

SITE ACCESS:
East Trout Road, an extension of the current Trout Road is proposed into the development within a 50-foot right-of-way and will extend to serve all the lots and end with a cul-de-sac. The road will be 26 feet wide, built to local public road standards and offered for dedication to College Township. R-O-W for a future extension of East Trout Road to the Clair property is being offered for dedication and associated temporary construction easements are being proposed if that connection would ever occur in the future.

A 26-foot shared driveway is proposed for access to Lots 1, 2 and 3. Depending up the future development of Lot 4 and Tax Parcel 19-2B-64, access to the shared driveway, if needed, will require a waiver for College Township Council. A property owners’ association declaration will define the maintenance obligations for the shared driveway.
East Trout Road will be built to just beyond the shard driveway for Phase 1 and terminate with a temporary paved cul-de-sac. Phase 2 will extend the road to the end of the proposed cul-de-sac shown on the preliminary subdivision plan.

New driveway connections for access to the Cavell property and the UAJA pump station will be made from East Trout Road.

PEDESTRIAN ACCESS:
Sidewalks are being proposed along both sides of the proposed lots along East Trout Road, along the frontage of the Owner’s existing Tax Parcel 19-2B-64 and connecting the existing sidewalk at Tax Parcel 19-2B-64 along Shiloh Road and extending northward along Shiloh Road to the end of the development. A sidewalk is also proposed along the west side of the shared driveway for pedestrian access for Lots 1, 2 and 3 to East Trout Road.

A temporary 6-foot-wide gravel path is proposed from East Trout Road through Lot 5 to connect to the adjacent Premier Theatre property. A permanent connection and easement will be created with the site development of Lot 5.

UTILITIES:
Water:
College Township Water Authority has an 8-inch public main that runs along the west side of Shiloh Road. An 8” tap is proposed off that main and will extend into the subdivision for public water service along East Trout Road and the shared driveway. Six-inch laterals are stubbed for service for each lot as well as service to the existing Cavell property and the owner’s Tax Parcel 19-2B-64.

Public fire hydrants are proposed at the intersection of East Trout Road and the shared driveway and at the ends of East Trout Road and the shared driveway.

Sanitary Sewer:
UAJA currently operates a pump station on the Cavell property with various existing public mains coming to it. New public sanitary sewer will connect to two existing manholes near the pump station to extend the sanitary sewer service in the proposed development. One location is at along the southeast corner of the Cavell property where new service will connect and extent through Lot 5 to East Trout Road to serve Lots 4-7 for Phase 2.

The other connection will be made at the existing manhole between the pump station and Shiloh Road and extend northward along Shiloh Road and into the Clair property to provide sanitary sewer service for Lots 1-3 for Phase 1 and a portion of the Clair property in College Township.

Gas, electric and telecom services will be extended from Shiloh Road along East Trout Road and the shared driveway.
Stormwater Management:
And off-site proposed stormwater management basin is proposed to be built for the subdivision in Phase 1. The basin will be located on the Clair property north of the site in Benner Township and beyond the College Township Wellhead Protection Zone. The basin will provide stormwater management for East Trout Road, the shared driveway and the development of Lots 1-7 as well as any future development for the Owners. A 48” storm pipe will convey the runoff from the development through the site to the basin. The existing storm piping from the Premiere Theatre development will be reconnected to the Shiloh Road drainage system through the East Trout Road entrance area. A property owners’ association for the subdivision will be established and an agreement between the Clair’s and the property owners’ association will be executed to outline the maintenance and repair obligations for the conveyance system and basin.

LANDSCAPING & LIGHTING
Landscaping:
Street tree plantings are proposed along East Trout Road with four species of trees being intermixed along the roadway within the R-O-W.

Lighting:
A street light will be proposed at the intersection of the shared driveway and East Trout Road

TRAFFIC:
A traffic impact study has been submitted and is currently under review by PennDOT and College Township. Findings of the study include the requirement of the installation of a new traffic signal at the intersection of Shiloh Road and Trout Road, A right turn deceleration lane on northbound Shiloh Road at East Trout Road and a left turn lane on southbound Shiloh Road at East Trout Road.
Lindsay Schoch, AICP, Principal Planner  
College Township  
1481 E. College Avenue  
State College, PA 16801  

RE: Shiloh Commercial Park Preliminary/Final Subdivision Plan  

Dear Lindsay,  
In regards to comments received on the above referenced plan; we offer the following responses:  

STAFF COMMENTS:  

1. Provide a surety estimate for all components of public interest that will be located on private property as shown on this plan submitted as Preliminary/Final. For clarification and tracking purposes, a second schedule of values for components within PennDOT property may be provided, though please note that components of a PennDOT HOP are not required to provide surety (i.e. storm, water, and sanitary improvements within PennDOT rights-of-way).  
   Acknowledged; upon approval surety will be provided.  

2. Make application to the water authority and initiate steps of the CTWA toolbox.  
   CTWA has been contacted and were provided with a set of plans.  

3. For this project, College Township shall hold surety for CTWA work on Maxwell property. A second surety posted to the CTWA will not be required where the Township holds surety.  
   Acknowledged.  

4. Soil Erosion and Sedimentation Control Plan Narrative booklet: No objections are taken to the submitted content of this narrative. Consider the addition of the Dr. Yoxtheimer memoranda of September 29, 2023 and December 18, 2023 as appendices to the narrative booklet.  
   Both memoranda’s have been added to the appendix of the E&S Narrative.  

5. Sheet ES7, Sinkhole Repair detail, add the following note: In the event a sinkhole develops within the Wellhead Protection Area, the Owner’s Geotechnical Engineer shall consult CTWA in developing corrective action.  
   This note has been added to the sinkhole detail on Sheets ES7 and PC4.
6. Sheet ES6, following the Recycling and Disposal Section, consider a new section to highlight Wellhead Protection and include a statement similar to “Due to proximity to public water supply wellhead, the disposal of materials and import of fill shall be sensitive to the geologic proximity of the public water supply aquifer.”
   This note has been added on Sheets ES6 and PC2.

7. Sheet PC2, Stormwater Facilities Maintenance Program, clarify the usage of the term Owner and Developer with respect to the long-term maintenance. Will a business association be formed for maintenance? Will the Clair heirs, as property owners of the basin, hold responsibility? Consider noting all maintenance as the responsibility of the Shiloh Commercial Park Property Owners Association if appropriate.
   Stormwater Facilities Maintenance Program has been revised.

8. Sheet 3, provide a draft of each easement and agreement noted in Project Notes 11 for review. These will be submitted once received from the Client’s attorney.

9. Sheet 3 and PCSM Narrative Booklet: At the conclusion of Project Notes 2B, provide an additional note, “Basin has been designed for 60% maximum impervious lot coverage on Lots 1 through 7.” Provided on Sheet 3, and page 1 of the PCSM Report.

10. PCSM Narrative, Page 12: Clarify Time of Concentration calculation; calculations utilize CN 61.1 and 33.64 minutes.
    Values on page 12 have been revised to match the Hydraflow model.

11. PCSM Narrative, A43, identifies infiltration rates of 20+ and 57+ inches per hour. Coordinate with the CTWA hydrogeologist Dr. Yoxtheimer as encouraged by CMT (Conclusions section 8.1, paragraph 2, page A44).
    A minimum infiltration rate (0.50 in/hr.) and a maximum infiltration rate (10 in/hr.) of the topsoil mixture proposed over the rock over excavation detail has been proposed as per the recommendations in the PA DEP BMP Manual. (See Plan Sheet PC4)

12. As noted in CTWA hydrogeologist Dave Yoxtheimer’s memorandum of September 29, 2023, fracture traces are prevalent in the area. The fracture trace moving NNE to SSW through the Clair Well location towards Rogers Well appears to have been located by Test Pit #4.
    Acknowledged.

13. Note that (200-38.5.B(2)) extends the Wellhead Protection areas to include areas of Nolin soils, which would include the current basin location. Consider relocation of the basin beyond the Nolin infiltration area along the fracture trace.
    The basin has not been relocated, but measures listed in comment 14 and 15 below have been proposed.

14. The PCSM Plan does not clearly identify the limits of implementation for the Infiltration Basin Bottom OverExcavation Detail. Clarify the limits of this detail. If the basin cannot be relocated as noted above, a level grading of the basin bottom and use of fabric to evenly distribute infiltration is recommended.
    The limits of the basin bottom rock over excavation detail are now shown on the E&S and PCSM Plan sheets per the test pit logs in the CMT Infiltration Analysis. The use of fabric is proposed and shown on the Basin and Rock Over Excavation Details. A flat basin bottom is proposed at elevation 1009.00.
15. For the Infiltration Basin Bottom Over-Excavation Detail, include a 2B aggregate layer below the geotextile to prevent puncture or tearing by the bedrock.  

A 2B aggregate layer is now proposed and shown on the Basin and Rock Over Excavation Details. 

16. On Sheet 3, consider a note requiring Stormwater Pretreatment on all future lots to be developed (175-18.E.(1)(h)).  

Stormwater pretreatment was considered, but since all stormwater management for the proposed development has been moved outside of the well head protection area by means of an infiltration basin with amended soils for water quality filtration it is assumed the township water quality requirements have been met. Water quality standards per the General NPDES guidelines have also been met. 

17. Sheets 3 & 5, consider the addition of notes regarding blasting within the Wellhead Protection area (200-38.5) similar to Note 15 of the Pleasant Pointe plan (Note 11 on Evergreen):  

15. All blasting (not allowed in the Stormwater Basin) must be performed by a firm with experience in Karst geology. A Pre-Blast meeting must be set up by the Developer so that the blasting issues can be discussed with the Blasting Firm, College Township, the College Township Water Authority (CTWA) and Centre Region Code. All blasting must be done in accordance with State and local Code regulations.  

a. Conduct survey and document conditions of buildings near locations of rock removal and photograph existing conditions, identifying existing irregularities.  
b. Advise owners of adjacent buildings or structures in writing, prior to executing seismographic survey. Explain planned seismic operations. The Pennsylvania Department of Environmental Protection and the College Township local government officials MUST approve, in writing, the use of blasting equipment and planning and; if applicable, provide a permit for said work BEFORE beginning.  
c. Obtain seismic survey prior to rock excavation to determine maximum charges that can be used at different locations in area of excavation without damaging adjacent properties or other work. 

This note, with an additional caveat, (No blasting is proposed.) has been added. 

18. Sheets 3 & 5, consider the addition of notes regarding trench plugs. Provide a trench plug detail within the plan set and identify approximate locations on the Profile sheets (Note 17 on Pleasant Pointe; Note 13 Evergreen).  

17. Contractor shall install clay dikes each thirty (30) feet intervals for storm, sanitary and water mains and service laterals. The use of suitable native material may be used for backfill provided it has been approved by the College Township Engineer. Compacted clay dikes shall extend vertically from the bottom of the trench to within one (1) feet of final grade and on trench sides for the full width of the trench. Each clay dike shall consist of clay containing no more than 15% (by volume) stone no larger than two (2) inches in diameter. Clay shall be placed in six (6) inch lifts and compacted by 

The clay dikes, the detail and the notes have been added to the profiles on Sheets 7 – 7.3, Sheet 11 and Sheet PC3. The detail has been modified to the size and spacing of the dikes shown on the plans. 

19. Sheets 3 & 5, consider the addition of notes regarding Geotechnical Professionals; revise note to include fractures: “.... sinkhole, depression, fracture, or void....” (Note 18 Pleasant Pointe; Note 14 Evergreen).  

18. The Developer will/has engaged the services of a geotechnical consultant throughout the construction and will notify the Township and CTWA immediately upon discovery of a sinkhole, depression, or void and will provide a repair plan recommended by the geotechnical professional to the Township and CTWA for review and comment. Refer to the Stormwater Management Details Sheet for SINKHOLE REPAIR details. 

Added to Sheets 3 and 5.
20. Sheets 3 & 5, provide a note paralleling Note 5 of the CTWA December memoranda: Water quality monitoring: The project sponsor shall coordinate with CTWA personnel to monitor the Rogers Well turbidity during excavation activities. Any increases in turbidity may require pumping to waste and render the well as under the influence of surface water, thus requiring significant treatment costs, which shall be borne by the Developer.

   *Added to Sheets 3 and 5.*

21. Sheet 2: Clarify the intent of the boundary determinations to be removed. Note the singular deed references two tracts. This sheet infers an attempt to consolidate tracts of a common deed as well demonstrating demolition directives to the contractor. If a lot consolidation is required, consider separating this to two sheets to avoid numerous callouts being obscured by competing layers. If a lot consolidation is not required, consider removing unnecessary callouts. Centre County Planner Chris Schnure is likely your best point-of-contact to resolve this comment.

   *Per discussions with the College Township staff, a separate Lot Consolidation Plan is being submitted to address this.*

22. Sheet 2, General Site Demolition Note 9: The burning of material will likely be prohibited by the NPDES. Consider rewording this comment similar to the Struble Road plan.

   *Added.*

23. Sheet 3, Storm Water Facilities Acknowledgment signature block: Revise the reference from Supervisors to Council or simply “Township” (175-25.8B(24)).

   *Revised.*

24. Sheet 4, random leaders appear from the left edge of the viewport above Lot 2. Verify legibility of all notes and callouts and provide enlargements as may be needed.

   *Revised.*

25. Sheet 4.1, driveway exit from existing Maxwell office: Clarify whether the lane constriction at this location will impact the site distances and driver entering traffic to look left/east.

   *Sight distance triangles have been added to make sure no obstructions are proposed within those areas.*

26. Sheet 4.1, address ADA and crosswalks at Shiloh and Shared Driveway with respect to the pedestrian crossings of East Trout Road.

   *See Sheet 11 for the intersection enlargement details that show adjusted crosswalk layout at East Trout Road and the sure shared driveway. Note 26 on Sheet 3 has been expanded to note the proposed crosswalks at the Shiloh Road intersection will be shown on the PennDOT Highway Occupancy Plans.*

27. Sheet 6.2: Clarify the design intent of JN-2 sizing.

   *A 48” inside diameter pipe will not fit inside the 4’ side of a 2’ x 4’ inlet box, and 48” pipes are on opposite sides of the proposed box (not adjacent sides) and therefore a 2’ x 6’ box is best value engineered structure for the proposed situation.*

28. Sheet 7.1, confirm elevation of high pressure gas main. Ground cover in this area is shown as 1048; an invert of a 12” gas line at 1046 provides minimal cover to the top of pipe.

   *The storm sewer has been revised to provide required separation.*
29. Intersection of Shared Driveway and East Trout Road: ADA Ramps: On August 9, 2023, the United States Access Board has issued the long-awaited final rule on Public Right-of-Way Accessibility Guidelines (PROWAG) effective September 7, 2023. Replace the angular curb ramps with Type 4 Ramps or equal to satisfy the “each” provision of R203.6.1.1. Provide ADA ramps and crosswalks across East Trout Road.

*See Sheet 11 for the intersection enlargement details that show adjusted crosswalk layout at East Trout Road and the storm sewer shared driveway.*

30. Intersection of Shared Driveway and East Trout Road: ADA Ramps: Relocate water valves such thatvalving does not pose a trip hazard in any ADA ramp or crosswalk.

*Valve has been moved out of crosswalk.*

31. The Project References include several agreements and easements to be developed and recorded. Provide draft copies of all documents for Township review, including, but not limited to, Shared Driveway Agreements and DSAMES, including all exhibits to be recorded.

*These will be submitted once received from the Client’s attorney.*

32. Provide a fire hydrant detail to scale to accommodate the narrow installation space between curb and sidewalk. The spool pieces shown in the detail may cause conflicts with the sidewalks.

*See the updated detail on Sheet 11. The center-to-center distance from the main to the FH is 50” so there should be no conflict with the sidewalks based up in proposed water main being 2’ behind the face of curb.*

33. Clarify whether each water service is to be a 6” lateral with valve at the main (profile sheet 7).

*Legend on Sheet 6.1. confirms laterals will be 6”.*

34. Review Landscape Plan Sheet 8 to eliminate conflicts between trees and required hydrant clearance (11+00L), obstructed signs (1+10R), (6+50R), etc.

*Revised.*

35. An additional No Parking sign (S3) should be added to the cul-de-sac.

*Added.*

36. Speed limit signs on the opposite sides of the street at 7+00 should be relocated per MUTCD.

*Speed Limit signs have been adjusted and added per the MUTCD standards.*

37. Provide evidence of HOP approval. HOP approval shall include, but not be limited to, stormwater review/acceptance, utility installations, signal installation and other improvements as may be required.

*Acknowledged that this will be a condition of final subdivision plan approval. See Notes 25 and 26 on Sheet 3.*

38. Provide evidence of NPDES coverage for all project components. Clarify whether components on the Clair property will be covered under an amended Clair permit or under a Maxwell permit.

*Will be provided once received. The Components proposed for this subdivision plan, (SWM basin & conveyance system to the basin etc.) on the Lyn Lee Farms property are on the Shiloh Commercial Park NPDES Permit application. Earthwork for the Lynn Lee Farms site not proposed on this subdivision plan will be on the Lyn Lee Farms NPDES permit.*
39. Please revise existing site uses for tax parcel 19-002B-065B and 19-002B-065A.
   Revised.

40. Please correct spelling of Pennsylvania throughout the plan.
   Revised.

41. Label the side yard setback for Lot 5.
   Label added.

42. Please clarify hatched area in the middle of East Trout Road, nearing the intersection with Shiloh Road.
   This has been clarified. See note & legend on Sheet 4.1.

43. Is phasing being proposed?
   Yes. As discussed with the College Township staff, the plan has been revised to a Preliminary Subdivision Plan. Phasing lines have been added in RED on Sheets 4, 4.1, 5, 6 and on the profile on Sheet 7.

44. Please show first portion of East Trout Road construction within the subdivision plans, not just within the E&S plan.
   Since the plan has been revised to a Preliminary Subdivision Plan, this will now be shown on the Phase 1 Final Subdivision Plan.

45. Please indicate potential roads from the College Township Official Map.
   These have been added in RED on Sheet 4.

FIRE COMMITTEES:

1. The Boulevard entrance as designed does not benefit the fire department, as this is a single cul-de-sac. Acknowledged. Awaiting direction from the traffic consultant on final lane widths.

2. Dead-end cul-de-sac length greater than 750', when measuring from Shiloh Road.
   Right of way is provided for future expansion. All developments on the proposed lots directly accessing the cul-de sac road, (Lots 3 – 7), will have fire sprinkler systems.

3. Provide calculated available water flow for proposed hydrants. Are the water lines dead end mains?
   Calculations will be submitted once provided. The water mains are dead end mains with the fire hydrants being used as the blow-offs. The main at East Trout Road can be extended to serve the adjacent property in the future as the right-of-way for the future road is being offered for dedication to College Township.
Enclosed please find the following:
Six (6) Full Plan Sets
Nine (9) 11x17 Plan Sets
Two (2) Stormwater Reports
Two (2) E&S Reports

If you have any questions, please contact me at 814-231-8285.

Sincerely,

[Signature]

Mark Torretti
Project Manager

Enclosures
Cc: 22303
MEMORANDUM

To: College Township Planning Commission

From: Lindsay K. Schoch, AICP | Principal Planner

Re: Council Remand – Dale Summit Form Based Code

Date: May 2, 2024

______________________________________________________________

Introduction:

The time has come for the Planning Commission to begin work on the studying and reviewing of the Draft Form Based Code prepared by DPZ CoDesign, the Township’s Planning Consultant. Two (2) joint meetings between Council and the Planning Commission held over the early part of 2024, one to review the Dale Summit Area Plan and endorse the Vision Statement, and the second was to hear a presentation by DPZ CoDesign regarding the Draft Form Based Code. The result of those meetings is the Remand Letter, which is included with this memo. Staff and Council worked closely on the remand to ensure it is easy to follow and acts as a guide for the Planning Commission (and staff) to stay on task as we undertake this great effort.

The Remand:

During the meeting, staff will introduce the Remand, and as the PC did recently with the Workforce Housing Remand, review it carefully and note any questions or clarifications needed from Council. The review will include a discussion of the Intent Statement, the Objectives, and the Recommended Process. Any questions or comments resulting from the Planning Commission’s discussions will be relayed to Council via the Council Liaison (with staff support).

Attachments:

- Council Remand: Dale Summit Form Based Code

Next Steps:

Once the Intent Statement, Objectives, and Recommended Process are clear and the PC feels confident moving forward, the Planning Commission will begin the review of the Code.
INTRODUCTION:
As outlined during the recent Joint Meeting of Council and Planning Commission, College Township is beginning the review of the *Draft Dale Summit Form Based Code*. This will be a monumental effort, which is expected to consume much of Planning Commission’s time over a number of months. Significant public participation is expected during these review meetings.

As Planning Commission is aware, the development of the Draft Dale Summit Form Based Code is rooted in the Vision Statement from the Dale Summit Area Plan, which is pictured to the right.

DPZ CoDesign utilized this Vision as a resource during the development of the Intent Statement for the Draft Code.

At their April 18th meeting, Council reviewed and endorsed the following Intent Statement and associated policies for inclusion in the Code:

**Intent Statement:**
The intent and purpose of this Article is to enable, encourage, and qualify the implementation of the following policies:

**The Community:**

- A. That neighborhoods, corridors, town centers and urban centers should be compact, pedestrian-oriented and mixed use.

- B. That neighborhoods, corridors, town centers and urban centers should be the preferred pattern of development and that districts specializing in a single use should be the exception;

- C. That ordinary activities of daily living should occur within walking distance of most dwellings, as much as is feasible, allowing independence to those who do not drive;

- D. That civic, institutional, and commercial activity should be embedded in the town center and neighborhoods, not isolated in remote single-use complexes;

"The overarching Vision of this Area Plan is to transform Dale Summit into The Gateway to College Township. Establishing Dale Summit as an attractive and instantly recognizable Place within the context of the larger Township, Region, and County. The community envisions an activity hub that is vibrant, economically prosperous, socially equitable, and environmentally sustainable.

A Place, which through proactive planning and well-tailored regulations, strikes a sound balance between encouraging business and industry expansion, while remaining respectful to important community livability factors such as improving housing affordability, sufficient public services, and traffic improvements through improved connectivity for all transportation modes."
E. That interconnected networks of thoroughfares should be designed to disperse traffic and reduce the length of automobile trips;

F. That within neighborhoods, a range of housing types and price levels should be provided to accommodate diverse ages and incomes;

G. That schools should be sized and located to enable children to walk or bicycle to them;

H. That a range of open space should be distributed within neighborhoods and the town center;

**The Block and Building:**

I. That buildings and landscaping should contribute to the physical definition of thoroughfares as civic places;

J. That buildings should provide their inhabitants with a clear sense of geography and climate through energy efficient methods;

K. That civic buildings and public gathering places should be provided as locations that reinforce community identity;

L. That civic buildings should be distinctive and appropriate to a role more important that the other buildings that constitute the fabric of the town;

M. That the preservation and renewal of historic buildings should be facilitated, to affirm the continuity and evolution of society;

**The District:**

N. That communities should provide meaningful choices in living arrangements as manifested by distinct physical environments;

O. That the zoning district descriptions in Section C. Zoning Districts Established constitute the intent of this article with regard to the general character of each of these environments.

**REMAND OBJECTIVES:**

Council appreciates Planning Commission’s continued efforts to understand Form Based Code over the past few years. As such, we are remanding the Dale Summit Form Based Code with the intent that the Planning Commission will take their time and offer careful consideration of the ordinance’s eventual application. In an effort to ensure a smooth review process, the Objectives outlined in the table below are to be addressed during the development of a final recommendation to Council.

**OBJECTIVES:**

1. Ensure the Intent Statement and policies are consistent with the Vision of the Dale Summit Area Plan.

2. Give consideration to what would constitute “Good Urbanism” in the Dale Summit and how a more efficient use of the land could contribute to development that is more equitable and cost effective, yet attractive and profitable for developers.

3. The Draft Code contains regulations for both Zoning and Subdivision and Land Development. Planning Commission should work to minimize any conflicts between these ordinances as part of this update.

4. Ensure that the Draft Code is in keeping with the primary goals of Form Based Code: *Placing buildings to create a desirable public realm | Design great streets | Regulate building form.*

5. Confirm that the Draft Code places “form” as the first consideration for proposed developments, as opposed to prioritizing “use”. Emphasis should be placed on “Planning for People,” as such development should adequately accommodate automobiles, but prioritize the pedestrian, the bicyclist, and the spatial form of public areas.

6. Ensure that the code language will require development of usable and meaningful open space.
OBJECTIVES CONTINUED:

7. Assess the draft street standards language to ensure they prioritize community context and aid in creating a pleasant, safe, and attractive environment that supports the design and feel of the area. PennDOT should be engaged in any discussions pertaining to proposed changes impacting state routes, to confirm their “buy-in”.

8. Evaluate the Block Structure requirements and consider the potential for block scalability.
   *Note: DPZ has encouraged College Township to “hold the line” on block structure.*

9. Confirm that the code allows for a broader range of uses and unit types, including small lot development and Accessory Dwelling Units (ADU).

10. Evaluate the pros and cons of Floor Area Ratio (FAR) as a mechanism to control density within the code. As part of this effort thought should be given to the possible utilization of height and lot coverage as a density control as opposed to FAR.

11. Give consideration to reductions in setback requirements and allowing increased lot coverage area.

12. Consider language in the code that allows for pilot projects to have an expedited review process.

13. Consider language in the code that presents opportunities for “administrative approvals” as determined to be appropriate.

14. Utilize the Structure Plan (road connections and open space) in crafting recommendations for additions to the Official Map Ordinance.

RECOMMENDED PROCESS:
The review and eventual implementation of a new code in Dale Summit is an effort of significant magnitude and importance. Recognizing this, DPZ CoDesign and Township Staff have developed the following review schedule that is broken down into reasonable sections.

As discussed at our Joint Meeting, this undertaking is a collaborative effort that will require periodic “check-ins” and may also necessitate future joint meetings. While the schedule shows this review spread across nine (9) future Planning Commission meetings, Council wishes to underscore that Planning Commission should take the time it needs to develop well-reasoned recommendations on the code.

Council encourages Planning Commission and staff to lean on DPZ CoDesign as an invaluable resource throughout the review process. As a final piece of advice, Council offers the following as it pertains to this review: “Don’t let perfection be the enemy of the good.”

<table>
<thead>
<tr>
<th>Code Review Schedule</th>
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<tbody>
<tr>
<td><strong>Code Review Schedule</strong></td>
</tr>
<tr>
<td><strong>Review of the Remand Letter from Council:</strong></td>
</tr>
<tr>
<td>A. Any questions or clarifications should be brought back to Council by the PC Liaison.</td>
</tr>
<tr>
<td>B. Council also requests that the PC provide a completed Code Review Schedule, by including potential task completion dates and possible joint meeting dates. Council recognizes the schedule will remain subject to change.</td>
</tr>
<tr>
<td><strong>200-60 General Provisions</strong></td>
</tr>
<tr>
<td>A. Applicability</td>
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<tr>
<td>B. Intent</td>
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<tr>
<td>C. Zoning Districts Established</td>
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<tr>
<td>D. Non-conformities &amp; Existing Buildings</td>
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<tr>
<td><strong>200-61 Subdivision Standards</strong></td>
</tr>
<tr>
<td>A. General</td>
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<tr>
<td>B. Transportation Standards</td>
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<tr>
<td>C. Block Standards</td>
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<tr>
<td>Section Description</td>
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<tr>
<td>------------------------------------------------------------------------------------</td>
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<tr>
<td>D. Zoning Standards</td>
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<tr>
<td>E. Platting Standards</td>
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<tr>
<td>F. Civic Space Standards</td>
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**Checkpoint – Progress Report to Council regarding the Planning Commission’s work to this point.**

**200-62 Zoning Regulations**

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<thead>
<tr>
<th>Subsection</th>
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<tbody>
<tr>
<td>A. Building Placement</td>
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<tr>
<td>B. Setback Requirements</td>
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<tr>
<td>C. Encroachments</td>
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<tr>
<td>D. Projections into the Right-of-way</td>
<td>4</td>
<td></td>
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<td>E. Building Height</td>
<td>5</td>
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**200-62 Zoning Regulations continued**

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<th>Subsection</th>
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<tr>
<td>F. Building Elevations</td>
<td>5</td>
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<tr>
<td>G. Uses</td>
<td>6</td>
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<td>H. Parking</td>
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**200-62 Zoning Regulations continued**

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<tr>
<th>Subsection</th>
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<tbody>
<tr>
<td>I. Landscaping Standards</td>
<td>7</td>
<td></td>
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<tr>
<td>J. Fencing</td>
<td>7</td>
<td></td>
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<tr>
<td>K. Sign Standards</td>
<td>7</td>
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</tbody>
</table>

**Checkpoint - Progress Report to Council regarding the Planning Commission’s work up to this point.**

**200-63 Thoroughfare Requirements**

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<thead>
<tr>
<th>Subsection</th>
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<tbody>
<tr>
<td>A. General</td>
<td>7</td>
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<tr>
<td>B. Right-of-way Assemblies</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>C. Thoroughfare Requirements</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>D. Public Frontage Requirements</td>
<td>7</td>
<td></td>
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<tr>
<td>E. Alleys</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>F. Thoroughfare Assemblies</td>
<td>7</td>
<td></td>
</tr>
</tbody>
</table>

**200-64 Administration of Planned Subdivisions for Dale Summit**

<table>
<thead>
<tr>
<th>Subsection</th>
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</thead>
<tbody>
<tr>
<td>A. General Provisions</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>B. Types of Subdivisions</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>C. General Requirements</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>D. Minor Plans</td>
<td>8</td>
<td></td>
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<tr>
<td>E. Pre-Application Conference</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>F. Sketch Plan Review</td>
<td>8</td>
<td></td>
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<tr>
<td>G. Preliminary Plan Review</td>
<td>8</td>
<td></td>
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<tr>
<td>H. Final Plan Review</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>I. Option 1 (current process, not preferred)</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>J. Option 2 (new process, preferred)</td>
<td>8</td>
<td></td>
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<tr>
<td>K. Record Plan</td>
<td>8</td>
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</table>

**200.65 Plan Requirements**

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<thead>
<tr>
<th>Subsection</th>
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<tbody>
<tr>
<td>A. Sketch Plan Requirements</td>
<td>9</td>
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<tr>
<td>B. Preliminary Plan Requirements</td>
<td>9</td>
<td></td>
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<tr>
<td>C. Final Plan Requirements</td>
<td>9</td>
<td></td>
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<tr>
<td>D. Administrative Waivers</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>E. Council Waivers</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>F. Incentives for Community Benefit</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

**Checkpoint - Progress Report to Council regarding the Planning Commission’s work up to this point.**

**CONCLUSION:**

Council is providing this Remand Letter as a comprehensive guide to aid in Planning Commission’s review of the Draft Form Based Code for Dale Summit. As noted, it is anticipated that this review will ultimately be a collaborative effort that is expected to run over the course of a number of months. Planning Commission is advised to check-in with Council as frequently as required and may request a Joint Meeting(s), as needed.
MEMORANDUM

To: College Township Council
From: Lindsay K. Schoch, AICP | Principal Planner
RE: Attainable Housing Ordinance Changes and Development Community Input
Date: April 28, 2024

Introduction:

When Council met on April 18, 2024, Staff presented the Planning Commission’s recommended changes to the Attainable Housing Ordinance. (Formerly known as the Workforce Housing Ordinance). These recommendations prompted a lot of discussion among Council, Staff, and representatives from the development community. The meeting involved a review of each recommendation and a discussion upon those recommendations. As a result of the Council meeting, staff met with representatives from the development community to review their suggested changes made at the Council meeting.

After the Council and development community discussions, staff has come up with fifteen (15) items which need Council’s input before staff can start incorporating suggested changes into the Ordinance.

The following is a table of Council and Development Community Comments. Staff requests Council review the following information including the input heard from the development community. Looking through an equitable lens, does Council feel the requested suggested changes from the development community meet the intent of the Ordinance?

<table>
<thead>
<tr>
<th>Discussion Topic</th>
<th>Council / Staff Comments</th>
<th>Development Community Comments/Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Ordinance</td>
<td>Council was okay with keeping Fee-in-lieu and land donations options.</td>
<td>Ordinance has been proven to be strong, so why break it? Recommend using as a model.</td>
</tr>
<tr>
<td>Definitions: Fee-in-Lieu</td>
<td>More discussion necessary on credits for existing units.</td>
<td>Allow developers the options for fee-in-lieu, land donation, and credits for existing dwellings as options other than providing the actual units.</td>
</tr>
<tr>
<td>Definitions: Non-Residential</td>
<td>Staff noted an incompatibility of uses.</td>
<td>Why are fast-food restaurants excluded from the non-residential uses definition? Consider allowing drive-thru restaurants.</td>
</tr>
<tr>
<td>Calculating Density for Attainable Units.</td>
<td>Need guidance here. What was the intent behind this? HOA or Condo Assoc. common areas?</td>
<td>Typo/unclear language “Density of a development containing residential dwelling units shall be equal to the number of the proposed dwelling units divided by the gross site area inclusive of proposed right-of-ways or any Township of Homeowners Association.”</td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
<td>Recommendation</td>
</tr>
<tr>
<td>-----------------------------------</td>
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<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Parkland and Open Space</td>
<td>Option should be removed. Consider future development with PRDs and waivers from Subdivision and Land Development Ordinance, rather than an incentive to build workforce units.</td>
<td>Parkland and Open Space – should remain an option / may statement.</td>
</tr>
<tr>
<td>Sidewalks</td>
<td>Option should be removed. Consider future development with PRDs and waivers from Subdivision and Land Development Ordinance, rather than an incentive to build workforce units.</td>
<td>Sidewalks – should remain as option / may statement.</td>
</tr>
<tr>
<td>Additional Bonus</td>
<td>This could remain as it or be changed to a 1:1 scenario.</td>
<td>Additional Bonus, For every two workforce housing units which are affordable to households with incomes between 80-120% of AMI, one market rate housing unit shall be permitted to have the same lot requirements noted above....Why wouldn’t this be one for one?</td>
</tr>
<tr>
<td>Waiver of Review Fees</td>
<td>Coordination with other local entities who would assist in the effort to cut back on fees for developers building attainable units.</td>
<td>Waiver of Review Fees should go beyond Township review fees.</td>
</tr>
<tr>
<td>Height</td>
<td>Recommending a percentage per the discussion at Council Meeting.</td>
<td>Height – consider increasing</td>
</tr>
<tr>
<td>Off-site developments</td>
<td>Reciprocity among regional municipalities.</td>
<td>Off-site developments should be permitted in other municipalities, not just College Township.</td>
</tr>
<tr>
<td>Phasing</td>
<td>Phasing in place to ensure workforce units are built and not pushed to a final, future phase.</td>
<td>Phasing – consider economic feasibility</td>
</tr>
<tr>
<td>Amenities</td>
<td>Interior Amenities Defined: Appliances, flooring, fixtures, heating and cooling systems, storage, technology, finishes, layout and design, safety features.</td>
<td>Amenities. Attainable unit should be permitted to differ with regard to interior amenities.</td>
</tr>
<tr>
<td>Certification of Buyers</td>
<td>Typically, after the unit is sold, the developer/seller is out. The responsibility to monitor future sales of units lies upon the Township/Designee.</td>
<td>Certification of buyers: the attainable housing agreement should be an entirely separate agreement between the municipality and the homeowner, signed by those parties and should be created by the Township at their cost.</td>
</tr>
<tr>
<td>Calculation of Sale Prices</td>
<td>Consider language.</td>
<td>Calculation of sales prices, should read: “other customary fees”</td>
</tr>
<tr>
<td>On-going Administration</td>
<td>Deed Restrictions</td>
<td>On-going administration should be a township responsibility.</td>
</tr>
</tbody>
</table>

**Next Steps:**

Staff anticipates a robust discussion regarding the foregoing fifteen (15) items. Once Council provides staff with direction, the ordinance will be updated with the information and will be presented to Council.
COLLEGE TOWNSHIP COUNCIL
REGULAR MEETING MINUTES
Thursday, March 21, 2024
1481 E. College Avenue, State College PA 16801
Hybrid Meeting (In-Person or via Zoom)

ATTENDED BY –
COUNCIL:
Dustin Best, Chair
D. Richard Francke
Susan Trainor
Tracey Mariner

STAFF:
Mike Bloom, Assistant Township Manager
Don Franson, P.E., P.L.S., Township Engineer
Lindsay Schoch, Principal Planner
Mark Gabrovsek, Zoning Officer
Keri Miller, Economic Development Coordinator
Jennifer Snyder, CGA, Assistant Township Secretary

ABSENT:
L. Eric Bernier, Vice Chair
Adam T. Brumbaugh, Township Manager/Secretary

CALL TO ORDER: Chair Dustin Best called to order the March 21, 2024, regular meeting of the College Township (CT) Council at 7:00 PM and led in the Pledge of Allegiance.

PUBLIC OPEN DISCUSSION: No Open Discussion Items brought forward.

NEW AGENDA ITEMS: No New Agenda Items were added to the agenda.

SPECIAL PRESENTATIONS:

SP-1 Planning Commission Annual Update

Mr. Ray Forziat, Chair, College Township Planning Commission (PC), offered that Council received the College Township Planning Commission 2023 Annual Report put together by CT Staff and approved by the PC. He thanked Staff, especially Ms. Sharon Meyers, for a job well-done. He encouraged Council to review the document.

Mr. Forziat highlighted some of the major projects for the year. Many of those projects were springboards into the work that will be done in 2024. He mentioned projects such as the Workforce Housing Ordinance review, the Planned Research and Business District (PRBD) changes, and participation in the Dale Summit Area Plan Charrette in preparation for the review of a Form-Based Code.

Mr. Forziat offered the joint meetings with Council and PC have helped to foster good relationships and encouraged those meetings to continue. He also added that the change to the remand letters in the 4th quarter was very helpful.
Council thanked Mr. Forziat and the PC for their work and they look forward to getting into the work on the Dale Summit Area Plan revitalization.

**PLANS: P-1 Maxwell Struble Road Storage Site Preliminary/Final Land Development Plan**

Ms. Lindsay Schoch, AICP, Principal Planner, offered an overview of the Maxwell Struble Road Storage Site Preliminary/Final Land Development Plan, located at 501 Struble Road, State College, PA. The plan proposes the replot of a 3.787 acre portion of Tax Parcel 19-004-78 (Lot 2RR) and Tax Parcel 19-004-078B (Lot 3) to construct an exterior storage area and a shop addition to an existing building.

Ms. Schoch offered that the proposed 3500 sq. ft. shop addition is within the Regional Growth Boundary and serviced by the UAJA and College Township Water Authority.

The developer is requesting to make a fee-in-lieu contribution to meet the sidewalk requirements. Mr. Franson, P.E., P.L.S., offered that the Township will be making significant improvements to the stormwater drainage system over the next three to five years, which would mean that any sidewalk installed would be ripped out and replaced. Mr. Franson offered the PC recommends a Fee-In-Lieu for future sidewalks in the Struble Road right-of-way adjacent to the site.

Mr. Mark Torretti, Penn Terra Engineering, Project Manager, addressed the issue of the sidewalk Fee-In-Lieu contribution with Council. After a brief discussion, the following motion was made.

Ms. Trainor made a motion to approve the Maxwell Struble Road Storage Site Preliminary/Final Land Development Plan dated January 16, 2024, and last revised February 29, 2024, subject to the following conditions:

1. Within ninety days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety day recordation time requirement will render the plan null and void.
2. Pay all outstanding review fees.
3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments.
4. Fully comply with College Township Code Section 180-12.
5. Post surety as approved by the Township Engineer prior to recordation.
6. Provide proof of NPDES approval.
7. Planning Commission recommends the consideration of adding a filtration system to the on-site stormwater system.
8. Planning Commission recommends approval of the sidewalk fee-in-lieu request in the amount of $28,545.00 for future construction of approximately 448 lineal feet of sidewalk in the Struble Road right-of-way adjacent to the site.
9. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

Ms. Mariner seconded the motion. Motion carried unanimously.
REPORTS:

a. Manager’s Update

Mr. Mike Bloom, Assistant Township Manager, offered no additional comments to the written Manager’s update. Highlights from the written report include: CT Water Authority to maintain commitment through the Solar Power Purchasing Agreement at 50% of its power and the Township Solicitor has filed municipal liens and notified surety bond companies regarding the Aspen Heights non-payment obligations.

b. COG Regional, County, Liaisons Reports

CT Industrial Development Authority (CTIDA): Ms. Trainor reported the CTIDA met on March 20, 2024, and heard a presentation by Mr. Todd Eardley, Ben Franklin Technology Partners, Central Regional Director. They received a presentation from Ms. Lindsay Schoch, AICP, CT Principal Planner, regarding the Workforce Housing ordinance review and the Dale Summit Area Revitalization kick off meeting. The Authority approved a resolution to be the applicant for a Business in Our Sites grant for the redevelopment of the Nittany Mall and committed $50,000 to this effort. They also approved a new Investment Policy.

COG Finance Committee: Mr. Francke reported the Finance Committee met on March 14, 2024, and heard an update on the Capital Improvement Plan and the Budget amendment – disposal of class B aqueous film forming foam, discussed the Code Agency vehicle purchase, and reviewed the 2025 Annual Budget Timeline.

COG Executive Committee/COG Climate Action and Sustainability Committee: Mr. Best offered that the Executive Committee met on March 19, 2024, the Climate Action and Sustainability Committee met on March 11, 2024, and both committee discussions revolved around the Refuse and Recycling contract that will be considered at the upcoming General Forum meeting on March 25, 2024.

Spring Creek Watershed Commission: Mr. Best offered that there was not a quorum at the March 20, 2024, meeting. He offered that the State of the Watershed meeting will be held on March 28, 2024 at 12:00 PM.

c. Staff/Planning Commission/Other Committees

CT Planning Commission: Mr. Fenton, Planning Commission Liaison to Council offered that the PC met on March 19, 2024, and reviewed the PSU-Indoor Practice Air Supported Structure Preliminary/Final Land Development Plan and also the Centre Hills Country Club Final Land Development Plan. The PC recommended the PSU plan unanimously and the Centre Hills Country Club was recommended by a vote of 5-0-1 with Ms. Khoury recusing herself from the vote. The PC continued the review of the Workforce Housing ordinance and will have one more meeting to discuss before a recommendation is provided to Council.

CT Parks & Recreation Committee: In a written report, Mr. Dave Schulte, Chair, reported the P&R Committee met on March 11, 2024, and heard a presentation on baseball/softball field best practices and received and reviewed park reports from committee members.

d. Diversity, Equity, Inclusion & Belonging (DEIB) Reports (Public Invited to Report

Mr. Bloom, Assistant Township Manager, offered that Ramadan has begun and will end Tuesday, April 9, 2024.
CONSENT AGENDA:

CA-1 Minutes, Approval of
   a. March 7, 2024, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
   a. Invitation from ClearWater Conservancy, Site Tour, April 25, 2024
   b. Letter from Hawbaker Engineering, dated March 11, 2024, regarding Time Extension, Winfield Heights – Phase 2 to June 30, 2024
   c. Email from Dan Materna, dated March 12, 2024, regarding Casino

CA-3 Action Item, Approval
   a. Letter of support – The District at Dale Summit - Business in Our Sites Application
   b. Proposed 2024 Pay Range Modifications

Ms. Mariner made a motion to approve the March 21, 2024, Consent Agenda.
Mr. Francke seconded the motion.
Motion carried unanimously.

OLD BUSINESS:

OB-1 No Old Business items on the agenda

NEW BUSINESS:

NB-1 Retention Bonus Policy – Policy #P-020

In a written memorandum, Mr. Brumbaugh, Township Manager, offered a number of challenges related to the attraction and retention of Township employees. Because of the challenges of recruitment and employee retention, Mr. Brumbaugh is seeking policy authorization from Council to utilize a retention bonus program as an aid in retaining key and/or highly skilled Township employees.

Mr. Bloom, Assistant Township Manager, reviewed with Council the description, purpose, eligibility and process of the proposed Retention Bonus Policy, Policy #P-020. The policy would provide the Manager with an important tool to aid in the management of Staff and continuity of operations within the Township.

Mr. Francke made a motion to approve College Township Retention Bonus Policy, #P-020, and authorize the Manager to utilize said policy as deemed appropriate.
Ms. Trainor seconded the motion.
Motion carried unanimously.

NB-2 2024 PSATS Resolutions & Nominations

Mr. Bloom, Assistant Township Manager, offered that in advance of the Pennsylvania State Association of Township Supervisors (PSATS) Annual Business meeting in April, PSATS has forwarded a listing of resolutions that will be considered. Council is asked to review and provide any comments to the College Township Voting Delegate, Ms. Trainor.

Council had no additional comments for Ms. Trainor.
NB-3  ClearWater Conservancy DCNR C2P2 Grant – Resolution R-24-18

Mr. Mike Bloom, Assistant Township Manager, offered that representatives from ClearWater Conservancy recently approached Staff with another opportunity to serve as a partner in ClearWater’s efforts to secure additional funding support for the development of a new Community Conservation Center in Houserville. College Township previously agreed to serve as the municipal applicant for a Redevelopment Assistant Capital Program (RACP) grant application, on behalf of ClearWater Conservancy, for this project.

ClearWater is requesting that College Township serve as an applicant, on their behalf, in pursuit of a Community Conservation Partnership Program (C2P2) grant from the Pennsylvania Department of Conservation and Natural Resources (DCNR). The proposed $300,000 grant application, due April 3, 2024, seeks funding to help offset the development costs associated with an ADA-compliant trail providing access from the proposed facility to the property adjacent to Spring Creek. Grant funds would also be used for the construction of a new parking lot for visitors to the center and employees.

As part of the obligations of the grant, DCNR requires the grant applicant, in this case College Township (on behalf of ClearWater), demonstrate long-term ownership or control of the property in question. ClearWater Conservancy is the owner of record on the property. In order for CT to serve as the applicant, the municipality would need to enter a twenty-five year lease agreement for the portion of the property that would be developed using the grant funding.

Mr. Ryan Hamilton, ClearWater Staff, introduced Mr. Ford Stryker and Mr. Marv Bevan, Volunteers and Project Managers to offer further clarification and answer questions regarding the grant and lease. Mr. Stryker offered that non-profits are not eligible for as much grant funding as municipalities, the reason behind the proposal in front of Council. He added that while the application is due April 3, 2024, DCNR would accept the grant without a fully executed lease, as long as it is in the works.

Mr. Bloom reminded Council of the Umberger/Rockenbeck/ClearWater Subdivision and Land Development Plan approved by December 6, 2023. In this plan, CT deferred the construction of sidewalks for no more than two-years or until the land development is proposed, whichever comes first, along Houserville Road for Lot. 2. Note that this grant submission includes the trail alignment that ClearWater is intending to include in the Final Land Development plan to address the aforementioned condition. Mr. Bloom added that if CT opts to serve as the applicant for the grant, it should not be viewed as a deemed approval of this alignment. The sidewalk matters would need to be addressed and resolved during the final land development approval process.

Mr. Bloom offered that as a the leaseholder, should Council move forward, CT would likely assume some level of liability associated with the property and, as such, may incur some additional general liability insurance costs. If the grant application is successful, there would be some Staff hours required for administration as well.

If Council is open to the consideration of this application, Council is asked to approve Resolution R-24-18, and review and approve a lease, prepared by ClearWater, to serve as proof to DCNR that that parties are working in good faith on a long-term lease. All is subject to solicitor’s review. The lease will come before Council for review and approval at some future date.

Mr. Stryker offered that the concept and idea of the lease was approved by ClearWater’s Board this morning.

Council offered that the lease provided in the packet is missing some important elements. A solicitor’s review is necessary to meet the intent and provide protections to the Township. Staff is not aware of any
other lease agreement entered into by College Township similar to this. Member of Council opined that
with the approval of the resolution, it does not obligate Council to the next steps in the process.

Ms. Trainor made a motion to approve Resolution R-24-18 whereby
College Township will serve as an applicant for a Department of
Community and Economic Development C2P2 grant application for
ClearWater Conservancy.
Mr. Francke seconded the motion.
Motion passed by a 3 -1 vote with Ms. Mariner voting nae.

STAFF INFORMATIVES: No Staff Informatives were pulled for discussion.

OTHER MATTERS:

Reminder: CT Joint Council/Planning Commission Meeting, March 26, 2024, to kick off the Dale
Summit Area Plan and revitalization. Also, the Centre County Association of Township Officials Annual
Spring Convention, Wednesday, March 27, 2024, at the Central Pennsylvania Institute of Technology at
5:00 PM.

ADJOURNMENT:

Chair Best called for a motion to adjourn the meeting.

Ms. Mariner moved to adjourn the March 21, 2024, Regular College
Township Council Meeting.
Chair seconded the motion.

The March 21, 2024, Regular College Township Council Meeting was adjourned at 8:04 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary
CALL TO ORDER: Chair Dustin Best called to order the April 4, 2024, regular meeting of the College Township (CT) Council at 7:03 PM and led in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Best announced that Council met in an Executive Session prior to the start of this meeting to discuss personnel matters.

PUBLIC OPEN DISCUSSION: No Open Discussion Items brought forward.

NEW AGENDA ITEMS: No New Agenda Items were added to the agenda.

SPECIAL PRESENTATIONS:

SP-1 Parks & Recreation Committee Annual Update

Mr. Earl Moore, 2023 Chair of the Parks and Recreation Committee, presented the 2023 Annual Report of the College Township Parks and Recreation Committee. Mr. Moore introduced the members serving on the Committee.

Mr. Moore offered the objective of the Parks and Recreation Committee is to encourage the Township to provide parks and recreational opportunities for the residents of College Township. To meet these objectives the Township shall: 1) continue to acquire park and recreation land; 2) develop new parks as acquired; 3) improve existing parks; and 4) provide access.

The Parks and Recreation Committee is charged to update the Five-Year Capital Improvement Plan; oversee the completion of capital improvements and maintenance; support the acquisition of future parklands and/or easements to lands which will improve recreational opportunities for residents; encourage neighborhood and community participation in the improvement and renovation of parks; assure
that future generation have the land on which to develop adequate parks and recreational spaces; and convince developers that a plan which includes parkland and public amenities is worth more to potential buyers than a plan with minimal to no parkland or designated open space.

Mr. Moore offered highlights from the Parks and Recreation Committee efforts in 2023 and the maintenance/projects completed by the Township’s Public Works Department in 2023.

Council thanked Mr. Moore for his presentation. Council asked that the Parks & Recreation Committee include in the annual report the budget and actuals of the year for which the report is given. Council encouraged the committee to include all projects and recommendations they determine are parks and recreational needs of the Township on their five-year plan so that Council may consider for inclusion in the Capital Improvement Plan.

Mr. Dave Schulte, current Chair of the Parks and Recreation Committee, offered additional information regarding park equipment selection, park master plans, and meeting the needs of residents.

**SP-2 University Planned District Transportation Update**

Ms. Lindsay Schoch, AICP, Principal Planner, offered that pursuant to Chapter 188 University Planned District, Section 9 District Plan Transportation Study, it requires that a district transportation study shall be submitted every 10th year following approval of the District Plan. The purpose of this transportation study is to generally identify the transportation impacts likely to result from projected development and activities within the district for a ten-year period.

In February of 2024, McCormick Taylor, on behalf of Penn State University, provided municipalities who are a part of the University Planned District (UPD) with the updated UPD Transportation Study for review. Ms. Schoch offered that Staff reviewed the materials and provided a letter with comments to Mr. Robert Watts, P.E., AICP, McCormick Taylor, Consulting Team Management. The comment period was recently extended so Staff asked that Mr. Watts present the findings in the study to both the Planning Commission and Council for the opportunity to provide additional comments.

Mr. Watts presented a high-level overview of the UPD Transportation Study update. He offered the UPD is a zoning classification in municipal ordinances. The District transportation study completed on 10-year intervals include:
- Campus parking area assessment;
- Campus traffic circulation and transportation facilities;
- Transportation system “level of use”; and
- Travel demand management programs.

The areas studied are mandated in the College Township Code, Part II, Section 188-9.

Some highlights of the study include:

- The Campus Parking Assessment determined the total parking supply exceeds demand beyond 2027. In 2022, the supply of parking spaces was 18,249. The trend from 2022 to 2027 is increasing 1% per year.
- The Transit Services Study indicates that a revision in the commuter parking price structure is needed.
- The University Park Bicycle Master Plan serves the highest demand areas of campus. It addresses the need to add bike facilities to existing campus streets and to create a cohesive off-street network of pathways.
- The number one concern of Micro mobility and Pseudo-Vehicles is safety. The challenge in adapting the University Park street environment includes the traditional network is long-
established, the pedestrian centric campus design principles, limited street right-of-ways, and opportunities are constrained/expensive. PA Vehicle Code applies on University Park streets.

- Of the fifty University projects identified for future developments, forty-two have none or nominal traffic impact, six (6) possible traffic impact and two (2) are likely to cause traffic impacts. The two (2) projects are the ARL Innovation Park and West Campus Connector. Ten municipal projects identified to cause traffic impacts and two (2) Metropolitan Planning Organization/PennDOT projects identified.
- There are fourteen distinct Travel Demand Management programs. 65% of Faculty and Staff travel to campus on single-occupant vehicles, where only 17% of students travel in single-occupant vehicles.

Council thanked Mr. Watts for his presentation. They appreciate the opportunity to receive this presentation and to offer comments. Council suggested that the Project Management Team review the overall projected increase in student enrollment over the next few years. Council appreciates that the Path to Campus was included in the study. Council questioned if the increased utilization of Beaver Stadium was a factor in the study.

PLANS:

P-1 Indoor Practice Air Supported Structure Preliminary/Final Land Development Plan

Ms. Lindsay Schoch, AICP, Principal Planner, offered that Stahl Sheaffer Engineering, on behalf of Penn State University, is proposing the addition of a non-permanent air supported structure to the future Jeffrey Field Soccer Operations Center. Ancillary improvements to the removable air supported air structure include a new permanent turf field and concrete sidewalk.

The Planning Commission reviewed the plan on March 19, 2024, and moved to recommend Council approve the plan.

Mr. Jeffery Baughman, Project Manager, Stahl Sheaffer Engineering, offered the air supported structure is to be used during the winter months for indoor practice. It is anticipated that the structure will be up for at least six (6) months a year. The sidewalks, concrete supports, and turf fields will be permanent structures. It is anticipated to be used only for Penn State use.

Council was not concerned about parking during football games as this area is typically a tent area for tailgating. There would be no restrictions if the structure is up longer than six (6) months.

Lee Murphy, College Township Resident, asked about stormwater management. The plan is designed to manage all new impervious surfaces.

After a short discussion, the following motion was made.

Mr. Francke made a motion to approve the Indoor Practice Air Supported Structure Preliminary/Final Land Development Plan dated February 15, 2024, and last revised March 8, 2024, subject to the following conditions:

1. Within ninety days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety day recordation time requirement will render the plan null and void.
2. Pay all outstanding review fees.
3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments.
4. Fully comply with College Township Code Section 180-12.
5. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

Ms. Trainor seconded the motion.
Motion carried unanimously.

P-2 Centre Hills Country Club Final Land Development Plan

Ms. Lindsay Schoch, AICP, Principal Planner, offered that Penn Terra Engineering, on behalf of the applicant, Centre Hills Country Club, is proposing the development of a new pool and court facility at Tax Parcel 36-029-001 in the State College Borough. The property has an existing private access drive off Scenery Drive in College Township. The review by College Township is limited to the private access, stormwater management, street lighting, and the proposed sidewalk leading to the property.

Ms. Schoch continued that the Planning Commission at the March 19, 2024, regular meeting moved to recommend Council approve the plan.

Mr. Mark Torretti, Project Manager, Penn Terra Engineering, answered questions and comments regarding the plan. He offered that the project is unique in that only a small portion is in College Township and the more impactful portion is in the State College Borough. The only access to the proposed development is through College Township.

Council offered that although the project is in the Borough it has caused angst for College Township residents who reside in close proximity to the proposed development. Council acknowledged that they are only tasked with reviewing a few items, according to the Municipal Planning Code (MPC), however, Council would like to ask the Borough to mitigate any impacts to College Township residents regarding noise and lighting from the proposed plan. Residents may contact the Borough Planning Commission and Council for issues related to this plan.

Mr. Gabrovsek, CT Zoning Officer, explained that the Borough is currently holding a variance hearing regarding the height of the light poles at the Pickle Ball Court. He offered, should the variance not be granted by the Borough’s Zoning Hearing Board, the plan can still be advanced.

In regards to Council concern for the impact to nearby residents, Mr. Torretti offered that the plan does include black wind screens, black fencing, noise buffers and court lighting with motion sensors. Hours will be set for court use.

Council discussed delaying a motion regarding this plan, until such time that comments can be directed to the State College Borough.

Mr. Francke made a motion to table the discussion of the Centre Hills Country Club Final Land Development Plan to know later than the May 16, 2024, CT Council Meeting.
Ms. Mariner seconded the motion.
Motion carried unanimously.
REPORTS:

a. Manager’s Update

In his written Manager’s Update, Mr. Adam Brumbaugh, Township Manager, reported the CT met on March 26, 2024, in a Joint Meeting and will be discussing the remand letter to the Planning Commission later in the meeting. The Solar Power Purchasing Agreement (SPPA) contract reviews are being conducted and several loose-ends have been identified, which will result in delays of participants receiving the contracts. College Township received a Commonwealth Financing Agency Multimodal Grant in the amount of $500,000 for the Path to Campus project. A Business in Our Sites (BIOS) grant application submitted by Developer to the Department of Community and Economic Development for the revitalization of the Nittany Mall.

b. COG Regional, County, Liaisons Reports

COG Climate Action Sustainability (CAS) Committee: Mr. Best reported the CAS Committee met on April 1, 2024, and discussed the Power Purchase Agreement, the Climate Action Adaptation Plan Implementation Strategy development update and the Refuse and Recycling 2025 Budget expenditures from Fund Balance.

Spring Creek Watershed Commission (SCWC): Mr. Best reported the State of the Watershed meeting was held on March 28, 2024. He introduced Mr. Lee Murphy, College Township’s First Alternate on the SCWC. He offered an overview of the State of the Watershed meeting.

COG Human Resources Committee: Ms. Mariner reported the Human Resources Committee met on April 3, 2024, and heard an update on the Fire & Life Safety Inspectors/Firefighter positions and had a discussion on the Cost of Living Allowance (COLA). The group voted to continue using the current methodology for calculating COLA.

COG Finance Committee: Mr. Francke offered that the Finance Committee meets on April 11, 2024, and he asked for general feedback from Council regarding the Regional Parks Loan Draw Extensions. Council reaffirmed previous guidance that funds should advance projects at Hess Field and/or Oak Hall Regional Park.

COG Facilities Committee: Mr. Bernier reported the COG Facilities Committee met on April 2, 2024, and discussed the Power Purchase Agreement, 2025-2029 Capital Improvement Plan, and the Long Range Facilities Plan Planning Scope Development.

COG Land Use Community Infrastructure (LUCI) Committee joint meeting with Centre Regional Planning Commission: Mr. Bernier reported that the LUCI committee met on April 4, 2024 in a Joint Meeting with the Centre Regional Planning Commission, and heard a presentation on the Center County Active Transportation Plan, Bicycle Friendly Community and Business, and Bike Month Resolution. They also discussed the Centre County Transportation Project updates, the Comprehensive Plan update, and the Regional Planning program offerings and future staffing.

c. Staff/Planning Commission/Other Committees

CT Planning Commission: Mr. Fenton, Planning Commission Liaison to Council offered that the PC met on April 2, 2024, and reviewed the Centre Hills Country Club Final Land Development Plan. The PC recommended approval of the plan. The PC also finished their work on the Workforce Housing Ordinance review.
d. Diversity, Equity, Inclusion & Belonging (DEIB) Reports (Public Invited to Report)

Mr. Bloom, Assistant Township Manager, offered that this month is Arab-American Heritage Month, Child Abuse Prevention Month, World Autism Month, Sexual Assault Awareness Month. He added that on April 6, 2024, WPSU will hold their annual 2024 Multicultural Children’s Festival at Penn State. A solar eclipse festival on April 8, 2024, will be held at Medlar Field. In relation to Earth Day, which is coming up on April 22, Mr. Bloom highlighted the following events, Spring Creek Watershed Clean-Up Day on April 20th, State College Earth Day Celebration on April 20th and Millbrook Marsh Earth Fest on April 21st. He also noted the list of events included under the Consent Agenda as item CA-2b.

CONSENT AGENDA:

CA-1 Minutes, Approval of
   a. March 21, 2024, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
   a. Email from Daniel Materna, dated March 21, 2024, regarding casino
   b. Email from Shih-In Ma, dated March 22, 2024, regarding Inclusion-Expansion Opportunities (IEO)
   c. Letter from UAJA, dated March 18, 2024, regarding adoption of new Local Limits by UAJA Resolution 24-1
   d. Email from Melanie Fink, dated March 22, 2024, regarding Trash Collection Contract

CA-3 Action Item, Approval
   a. Inter-Municipal contract with Ferguson Township to award Project 24-01 Pavement Markings Bid award to the low bidder Alpha Space for pavement markings

      Mr. Francke made a motion to approve the April 4, 2024, Consent Agenda.
      Mr. Bernier seconded the motion.
      Motion carried unanimously.

OLD BUSINESS:

   OB-1 No Old Business items on the agenda

NEW BUSINESS:

   NB-1 Form-Based Code Remand Letter

Ms. Lindsay Schoch, AICP, Principal Planner, offered that as a result of the recent joint meeting of the CT Council and CT Planning Commission (PC) and with DPZ CoDesign, the Township’s Planning Consultant, held on March 26, 2024, it is time to move forward with a review of the Form Based Code (FBC) and tailor it to the vision of a future Dale Summit.

In the past two years, the PC and Council have been learning about FBC and the role FBC could play in College Township, specifically the Dale Summit Area. The PC have become subject matter experts on the topic. Ms. Schoch opined the DRAFT FBC being provided to the PC for review is a lengthy document containing numerous sections with a lot of detail and with language that will be fairly new.
Ms. Schoch offered that Council is tasked with providing a remand letter to the PC as a guide for them to begin to work through the DRAFT FBC. As a starting point to the remand letter, Ms. Schoch provided Council with six (6) objectives and twelve Big Code Ideas for the Dale Summit. Council suggested that these two lists be combined into a comprehensive list of objectives.

Ms. Schoch provided a tentative timeline and offered Staff anticipates 5-10 months to complete the task of reviewing the FBC with the PC. Council offered that PC should take the time needed for the review but not to let perfection stand in the way.

Council suggested getting help from Ms. Marina Khoury, DPZ CoDesign, to finalize a remand letter. Council added she may have some insight as to the order to tackle the DRAFT FBC. Checkpoints for the PC to meet with Council and review their progress will be implemented into the review schedule.

Staff will craft a DRAFT remand letter for Council to review at the next CT Council meeting.

**STAFF INFORMATIVES:** No *Staff Informatives* were pulled for discussion.

**OTHER MATTERS:** No *Other Matters* brought forward for discussion.

**ADJOURNMENT:**

Chair Best called for a motion to adjourn the meeting.

> Ms. Trainor moved to adjourn the April 4, 2024, Regular College Township Council Meeting.

> Chair seconded the motion.

The April 4, 2024, Regular College Township Council Meeting was adjourned at 10:11 PM.

Respectfully Submitted By,

> Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary
COLLEGE TOWNSHIP COUNCIL
REGULAR MEETING MINUTES
Thursday, April 18, 2024
1481 E. College Avenue, State College PA 16801
Hybrid Meeting (In-Person or via Zoom)

ATTENDED BY –
COUNCIL:
Dustin Best, Chair
L. Eric Bernier, Vice Chair
D. Richard Francke
Susan Trainor
Tracey Mariner

STAFF:
Adam T. Brumbaugh, Township Manager/Secretary
Mike Bloom, Assistant Township Manager
Amy Kerner, P.E., Public Works Director
Lindsay Schoch, Principal Planner
Mark Gabrovsek, Zoning Officer
Jennifer Snyder, CGA, Assistant Township Secretary

CALL TO ORDER: Chair Dustin Best called to order the April 18, 2024, regular meeting of the College Township (CT) Council at 7:03 PM and led in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Best announced that Council met in an Executive Session prior to the start of this meeting to discuss a personnel matter.

PUBLIC OPEN DISCUSSION: No Open Discussion Items brought forward.

NEW AGENDA ITEMS: No New Agenda Items were added to the agenda.

REPORTS:

a. Manager’s Update

Mr. Adam Brumbaugh, Township Manager, reported the CT Council will discuss the remand letter to the Planning Commission (PC) regarding the Dale Summit Area Plan Form-Based code later in this meeting. Participants in the Solar Power Purchase Agreement continue to wait for a legal review of the contract. Mr. Brumbaugh offered that he met with the new Aspen Heights Property manager. Mr. Brumbaugh spoke with managing Director of Kayne Anderson regarding settlement of Township claims. He directed them to contact the Township Solicitor.

b. COG Regional, County, Liaisons Reports

CT Industrial Development Authority (CTIDA): Ms. Trainor offered the CTIDA met on April 17, 2024, and heard a report from the Executive Director. As a result of the Executive Director’s networking opportunities, the CTIDA is getting more direct contacts from potential clients. The CTIDA passed a
Loan Fund Qualification policy. The CTIDA approved $5,000 for grant funds to be provided to Happy Valley LaunchBox for sponsorship of a summer community season of the Idea Testlab.

**COG Finance Committee:** Mr. Francke reported the COG Finance Committee met on April 11, 2024, and reviewed the 2025 Capital Improvement Plan, discussed the Purchasing and Policy & Procedure draft, and discussed the Regional Parks loan draw extension.

**COG Executive Committee:** Mr. Best reported the COG Executive Committee met on April 16, 2024, and discussed the Solar Power Purchasing Agreement and held an Executive Session to discuss a personnel matter.

**COG Executive Director Search Committee:** Mr. Best reported the Executive Director Search Committee has been meeting regularly. GovHR will screen the initial applicants. The Search Committee and GovHR will screen the next round of applicants and determine who to interview.

c. **Staff/Planning Commission/Other Committees**

**CT Planning Commission:** Mr. Fenton, Planning Commission Liaison to Council offered that the PC did not meet on April 16, 2024

d. **Diversity, Equity, Inclusion & Belonging (DEI) Reports (Public Invited to Report)**

No additional items to report. Check the College Township website for a complete listing of DEIB events.

**CONSENT AGENDA:**

**CA-1 Minutes, Approval of**

a. March 26, 2024, Joint Council/Planning Commission Meeting

b. April 4, 2024, Regular Meeting

**CA-2 Correspondence, Receipt/Approval of**

a. Letter from A Soldier’s Hand, dated March 18, 2024, regarding request to sponsor 2nd Annual 5K walk to Remember Our Fallen

b. Email from Scott Stilson, dated April 4, 2024, regarding North Bank Flooding at Spring Creek Park

c. Letter from Constitution Day President, dated March 29, 2024, regarding Summary of outcomes from round-table deliberations at 2023 Constitution Day event

d. Email from Simba Zaffino, dated April 9, 2024, regarding Centre Hills Country Club Racquet and Aquatics Center

e. Email from Keith Bocchicchio, dated April 10, 2024, regarding moratorium on construction of pickleball courts

f. Email from Cheryl Davis, dated April 11, 2024, regarding moratorium on construction of pickleball courts

g. Email from David Zarling, dated April 11, 2024, regarding moratorium on construction of pickleball courts

h. Email from Thomas and Kristen Katancik, dated April 11, 2024, regarding moratorium on construction of pickleball courts

i. Email from Mary Reeder, dated April 11, 2024, regarding moratorium on construction of pickleball courts

j. Email from William Martin, dated April 11, 2024, regarding moratorium on construction of pickleball courts

k. Email from Glen Coates, dated April 11, 2024, regarding moratorium on construction
Email from Jean and Todd Brooks, dated April 12, 2024, regarding moratorium on construction of pickleball courts

Email from Danielle Mitchell, dated April 12, 2024, regarding moratorium on construction of pickleball courts

Email from Daniel Materna, dated April 14, 2024, regarding Casino

Email from Dona Oberheim, dated April 14, 2024, regarding moratorium on construction of pickleball courts

Email from John Johnson, dated April 14, 2024, regarding moratorium on construction of pickleball courts

CA-3 Action Item, Approval

a. Resolution R-24-17 – Recognizing May as Bike Month
b. Resolution R-24-20 – Recognizing May 13 – 17, 2024, as Mount Nittany Health Week
c. Resolution R-24-19 – Recognizing Mr. Robert T. Long for his service as College Township Finance Director

Ms. Trainor made a motion to approve the April 18, 2024, Consent Agenda minus CA-2.b.
Ms. Mariner seconded the motion.
Motion carried unanimously.

CA-2.b.: Council discussed the opportunity to build stormwater mitigation into the expansion and development of the Spring Creek Park Master Plan.

Mr. Bernier made a motion to accepted CA-2.b.
Mr. Francke seconded the motion.
Motion carried unanimously.

Mr. Kurt Kissinger, Chief Strategy and System Development Officer, Mount Nittany Health, thanked Council for passing Resolution R-24-20, recognizing May 3-17, 2024, as Mount Nittany Health Week. He discussed future plans for Mount Nittany which include a new outpatient center and the first Mount Nittany Express Care opening in College Township. Work on the new bed tower is moving forward. The crane on-site, only seven at which exist in the world, being the only one in the United States, will begin work on the new bed tower very soon.

On behalf of Council, Ms. Trainor, a twenty-two year employee of Mount Nittany, read the Resolution into the record and presented Mr. Kissinger with a copy.

OLD BUSINESS:

OB-1 Dale Summit Revitalization Form-Based Code Remand to the Planning Commission

Ms. Lindsay Schoch, AICP, Principal Planner, offered that before Council is the prepared DRAFT remand letter to the Planning Commission (PC) regarding the Dale Summit Form-Based Code for Council to discuss and review. The remand letter builds upon the themes that were discussed in the joint meeting with Council and the PC held on March 26, 2024.

Ms. Schoch asked Council to offer input on the: 1) Intent Statement; 2) Objectives; and 3) Recommended Process.

Council offered the following comments regarding the remand letter:
- Consider placing the Intent Statement before the objectives in the remand letter.
Utilizing DPZ CoDesign, Township Consultants, as the subject matter experts, to guide the PC, Staff and Council through the process.

- Intent Statement item J – incorporated into a broader objective.
- After review of the process timeline, the PC should build out a proposed schedule of completion and present to Council.

Staff will implement these comments and submit the remand letter to the PC for their May 7, 2024, meeting.

**OB-2 Workforce Housing Ordinance Revisions**

Ms. Lindsay Schoch, AICP, Principal Planner, reminded Council that the Planning Commission (PC) reviewed the existing Workforce Housing Ordinance over the past few months. They are recommending a number of amendments to the document, which is to be considered as the Attainable Housing Ordinance in the future.

Ms. Schoch offered that House Bill 1386 sets forth opportunities for municipalities who meet certain criteria become an Attainable Housing Community, a designation by the Department of Community and Economic Development (DCED). When a community adopts an Attainable Housing Ordinance and meets other requirements, that community becomes eligible for the designation of an Attainable Housing Community.

In their review, the PC worked closely with the Director of the Centre County Housing and Land Trust (CCHLT) Executive Director. Additionally, the Township’s solicitor and the Centre Regional Planning Agency reviewed the draft ordinance. Ms. Schoch also noted that the PC reviewed the objectives outlined in the remand letter from Council as they worked through the ordinance.

Ms. Schoch walked Council through the proposed amendments as suggested by the PC. She emphasized that density remains the trigger to the requirement in the ordinance with the only exemption of developments that propose 10 or less dwelling units. Definitions related to this ordinance will be incorporated into Chapter 200.7 Zoning Definitions.

Looking at the ordinance through an equitable lens, the PC removed the opportunity for waivers of parkland and open space from the draft and added, workforce housing units within residential developments will have safe access via sidewalks, shared-use paths, or bike paths to parkland or open space located within or near the subject residential development.

Mr. Ara Kervandjian, representing HFL Corporation, offered he is familiar with building affordable housing, with over 200 units built in the last 10 years with 120 in College Township. He offered his support of attainable/affordable housing. He has some concerns with the modification in the proposed draft ordinance.

Mr. Kervandjian offered concerns in three distinct areas: 1) alternative methods of satisfying the ordinance were removed (fee-in-lieu, land donations, credits); 2) development assistance as an incentive (reduced municipal fees, reduced open space area, and reduced sidewalks); and, 3) method to administer the program and certify eligibility should be included. He also added that the minimum parking spaces requirement is a burden and more than necessary.

Council discussed the socio economic diversity in the community and the difference between affordable vs. attainable housing based on the Area Median Income (AMI).

Council discussed offsets vs. incentives. Mr. Brumbaugh offered the original workforce housing ordinance, created in 2007-2009, was created specifically to incentivize workforce housing developments.
of any kind. After the adoption of the ordinance, no one was utilizing the incentives to build workforce housing. Therefore, a few years later, Council changed the ordinance to no longer be an incentive program but made it a requirement with density as the trigger.

Ms. Schoch continued with her presentation. PC recommendations for incentives for Single Family House and Duplex:
- Reduced side yard setbacks.
- Remove the option to waive parkland and open space requirements and build sidewalks only on one side of the street.
- Increase AMI range from 80%-100% to 80%-120% to capture the missing middle.
- Permitting market-rate units in the development to have same lot requirements as the attainable units.
- Remove the ability for households making less than 80% of AMI to have one market-rate unit with similar requirements (Flagged by Staff review)
- For owner-occupied units with an existing Accessory Dwelling Unit (ADU), the gross rental income for the ADU can count toward calculation a household’s total income. (Point of discussion)
- Added waiver of internal review fees.

Council added the following comments:
- Add a waiver of outside review fees to offset costs to the developer.

PC recommendations for incentives for Townhouse and multi-family units:
- Remove option to waive parkland and open space requirement.
- Permitted height: The same percentage ranges that set forth the requirements for the density of a development, also set forth the ability to increase the height of buildings when they contain attainable units.
  - Townhouse and Multi-Family units can go up to a maximum of 45’ if 5-7% of the units are required to be workforce.
  - 8%-10% of units are required to be workforce units – maximum height is 55’.
  - Non-residential do not get a height bonus and remains at 35’.

Council added the following comments:
- Using a percentage, set forth in the underlying zoning district, for the maximum height rather than a fixed/strict number. A percentage offers some flexibility.

PC recommendations for Incentives for Planned Residential Developments (PRD):
- Remove the option to waive parkland and open space requirements
- Allow for height increases up to 75’ and 95” depending upon the percentage of workforce units required.

Council added the following comments:
- Council asked if the height increase is really an incentive to a developer.
- PRD developers can negotiate a waiver for parkland and open space requirements.
- What is equitable?

PC recommendations for Provisions of Workforce Housing:
- Remove Fee-In-Lieu (Point of discussion)
- Remove land donations
- Remove credits for existing Workforce Housing

Ms. Schoonover, Executive Director, Centre County Housing and Land Trust, opined that developers need the incentive of land donations and fee-in-lieu and these provisions should remain the ordinance.
Council added the following comments:
- Leaving these options in the ordinance allows Council to use these tools to work with developers.
- Have a clear intent statements so future Council use these tools appropriately.
- A developer cannot double count credits.
- Language in the current ordinance is cumbersome regarding credits and will need to be rewritten for clarity.
- Credit ratio needs to be further vetted.

PC recommendations for Supplemental Workforce Housing Regulations:
- Workforce Housing units may not differ from the market-rate units with regard to interior amenities and gross floor area. (Staff recommends the interior amenities differences be allowed.)
- Cost-offsets were removed and replaced with the ability to have in-house review fees waived.
- When certifying buyers who also have an ADU, gross rental income with proof of receipts is required.
- Calculations of Rental Prices, the AMI did not change, therefore, household who earn 65% or less of AMI are eligible.
- Housing Urban Development (HUD) is now referenced in the ordinance.
- Rent to Own: the initial lease time changed from 18 months to 12 months to be consistent with typical lease.

Council added the following comments:
- Agrees with Staff and would like to leave in the options for developers to provide differing amenities as long and the gross floor area is the same.
- Council asked if owners of the workforce housing units with lesser amenities will spend more money in the future on upgrades.

Ms. Schoonover offered the CCHLT advocates for Home Buyer Education so that people understand the real cost of home ownership.

PC recommendations for Provisions of Workforce Housing:
- Added a phasing clause: when phasing is part of a plan, if the first phase contains 50% or more non-residential uses, no workforce units are required in that phase.
- Any construction of additional phases shall contain a number of units equal to the percentage of total units required in the entire development.
- When a plan is phased, occupancy shall not be granted for the final 15% of market-rate units until all required workforce housing units for active phases are complete.

Staff recommends adding:
- No occupancy shall be granted in a subsequent phase until all workforce housing units are completed on the prior phase.

Council added the following comments:
- Future developers may not be as committed to the community.
- Bonding or Fee-in-Lieu are tools to assure that all phases of a plan is built.

Mr. Matthew Fenton, PC Liaison to Council, offered that PC is a recommending body and they reviewed the ordinance for at least seven public meetings. The PC would have appreciated comments from developers, bankers, etc. during their discussions. They worked diligently to make housing equitable in College Township with their review of the ordinance.
Mr. Brumbaugh offered that the Township has an agreement with the CCHLT to provide the income verification program with the current Workforce Housing units at Aspen Heights. Aspen Heights and the Township split the cost of the service.

Staff will take the discussion points and incorporate them into a revised ordinance and bring it back to Council to review.

NEW BUSINESS:

NB-1 Comments regarding Centre Hills Country Club Final Land Development Plan

Ms. Lindsay Schoch, AICP, Principal Planner, offered the Centre Hills Country Club Land Development Plan (LDP) was before Council for review at the April 4, 2024, CT Council meeting. Council review of the LDP included stormwater, traffic impacts, ingress/egress, entrance lighting and sidewalk development. The majority of improvements in the LDP fall within the boundaries of the State College Borough.

Council tabled the LDP at the April 4, 2024, in order to offer comments to the State College Borough regarding mitigating the impacts to College Township residents relative to the proposed Pickleball Courts. Council offered the Consent Agenda contained several letters from concerned residents.

Mr. Tom Katancik, College Township resident, offered that he is concerned about the pickleball courts being placed so close to his home. He is particularly concerned about the noise. He was able to speak to the light variance hearing at the State College Borough variance hearing.

Ms. Simba Zaffino, College Township resident, offered that she lives closest to where the Pickleball Courts are being proposed. She has spoken with Mr. Mike Tylka, CRCOG Planning Director. She asked to get a copy of the draft memorandum being sent to the Borough.

Council offered the following comments:
- Review CT’s current ordinances so that Council is not faced with the same set of circumstances.
- Add to the draft memorandum about regular maintenance on all variables; buffers, surfaces, vegetation and trees.
- Ask that the Borough stay informed of the latest technology to mitigate noise from the Pickleball courts.
- Signage be placed to enforce the rules of operation.

Ms. Trainor made a motion to authorize the Council Chair to execute the draft memorandum and send to the State College Borough manager regarding Council comments on the Centre Hills Country Club Land Development Plan. Mr. Francke seconded the motion. Motion carried unanimously.

STAFF INFORMATIVES: No Staff Informatives were pulled for discussion.

OTHER MATTERS: No Other Matters brought forward for discussion.

ADJOURNMENT:
Chair Best called for a motion to adjourn the meeting.

Ms. Mariner moved to adjourn the April 18, 2024, Regular College Township Council Meeting.
Chair seconded the motion.

The April 18, 2024, Regular College Township Council Meeting was adjourned at 9:48 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary
# LAND DEVELOPMENT PLAN COUNCIL ACTION DEADLINES

<table>
<thead>
<tr>
<th>Title</th>
<th>Submitted</th>
<th>Action Deadline</th>
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<tbody>
<tr>
<td>Centre Hills Country Club</td>
<td>2/20/2024</td>
<td>5/20/2024</td>
</tr>
<tr>
<td>Shiloh Commercial Park Prelim</td>
<td>3/18/2024</td>
<td>6/16/2024</td>
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<tr>
<td>PSU Soccer Operations Center</td>
<td>4/22/2024</td>
<td>7/21/2024</td>
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<tr>
<td>Mt. Nittany Elementary</td>
<td>4/22/2024</td>
<td>7/21/2024</td>
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# LAND DEVELOPMENT PLAN ACTIVITY

<table>
<thead>
<tr>
<th>Title</th>
<th>Recording Deadline</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>UAJA Biosolids Upgrade</td>
<td>July 14, 2024</td>
<td>5/22 submitted, comment request sent 5/22; Comments due 6/2; revision due 6/12 (unable to make the revision deadline, extended to 6/19); revision received 6/16; to PC 6/27; to CTC 7/20; conditional approval letter sent 7/21, accepted 7/27; extension request to CTC 10/5; ext. approval sent 10/6; 12/18 sent email for extension request (due 12/26 w/ $375 fee); 1/2 ext. approved; 2/5 demo permit received; 3/25 sent email to submit 90-day ext. request; Ext. req. to CTC 4/4, granted; 4/29 NPDES permit received; 5/1 we suggest recording PCSM with LDP plan</td>
</tr>
<tr>
<td>Summit Park Subdivision</td>
<td>September 1, 2024</td>
<td>7/17 submitted, comment request sent 7/18; comments due 7/28; revision due 8/7; comments due 8/11; to PC 8/14; to CTC 9/7; Determined a preliminary does not get recorded; JRA note is good</td>
</tr>
<tr>
<td>Winfield Heights – Phase 2</td>
<td>June 30, 2024</td>
<td>11/17 submitted (accepted 11/20), comment request sent 11/20; comments due 12/1; revision due 12/15; to CTC 1/2; 1/2/24 received conditional approval; 1/4 conditions accepted; 2/27 received plan and DSAME for signatures, and surety estimate; CTWA comments must be satisfied; extension</td>
</tr>
</tbody>
</table>
Maxwell Storage  June 19, 2024  1/16 submitted; 1/17 comment request sent; 1/26 comments due; revision due 2/5; comments due 2/9; to PC 2/20, to CTC 3/21; conditional approval sent 3/22; accepted 3/22

to CTC 3/21; 3/22 ext. approval sent; 4/15 left for recording

PSU IPASS  July 3, 2024  2/20 submitted; 2/20 comment request sent; 3/1 comments due; revision due 3/11; comments due 3/15; to PC 3/19; to CTC 4/4; 4/5 sent conditional approval letter; 4/15 final revision submitted; comments due 4/26; sent email 5/2 reminding recording deadline and no fee for first extension (recording schedule is tied to soccer complex)

Centre Hills Country Club  May 20, 2024  2/20 submitted; 2/20 comment request sent; 3/1 comments due; revision due 3/11; comments due 3/15; to PC 3/19; to CTC 4/4, tabled; to CTC 5/2

Shiloh Commercial Park Prelim  June 16, 2024  3/18 submitted; 3/19 completeness review and comments request sent; 3/29 comments due; revision due 4/8; revision received 4/15; comments due 5/1; meeting with Torretti 5/6; to PC 5/7

PSU Soccer Ops Center  July 21, 2024  4/22 submitted; 4/23 completeness review and comments request sent; 5/3 comments due; revision due 5/13; comments due 5/17; to PC 5/21

Mt. Nittany Elementary  July 21, 2024  4/22 submitted; 4/23 completeness review and comments request sent; 5/3 comments due; revision due 5/13; comments due 5/17; to PC 5/21

MINOR PLANS

Shiloh Commercial Park  Submitted 4/16/2024  Expires 6/15/2024  sent to Schnure & Tylka; comments due 4/26; revision due 5/6
Gio’s Towing & Recovery  Submitted 4/18/2024  sent to Schnure, Kauffman, Tylka; comments due 4/26; revision received 4/29; road comment
Expires 6/17/2024

PSU – Beaver Stadium East  Submitted 4/29/2024  sent to Schnure, Kauffman & Wargo; comments due 5/10; revision due 5/20
Expires 6/28/2024

OTHER

Dale Summit Area Plan  PC made recommendation to Council January 18, 2022; Joint Council/PC meeting held March 28; RFQ is on the website; Pre-submission meeting to be 7/14 (5 firms have signed up for pre-submission meeting); Deadline to submit proposals 8/1; to be reviewed by committee (2 Council members, 2 PC members; 1 CRPA; staff); committee established 8/4; submissions sent to committee members 8/9; member meeting 8/29 1-3pm Library; 9/7 follow up with interview candidates to request sealed quotes; interviews October 25th; DPZ is chosen firm; Contract to be reviewed by CTC 12/15; 1/11/2023 DPZ okayed contract and scope; to CTC 1/19 for approval; DPZ will be present 2/27-3/1, with a tour on 2/27; 5/3 Stakeholders identified, pre-charrette May 24; Charrette to take place 6/19-6/23, supplies being collected, possible dry run 6/16; Charrette successfully took place 6/19-6/22; Market analysis under staff review, sent to PC 8/3; Draft Ordinance being reviewed by staff; 9/13 DPZ review with staff; 2nd draft ordinance to come; draft plan submitted 10/23 being reviewed by staff; 12/22 Draft sent to CTC and PC; Joint meeting CTC/PC 1/24/2024; 1/29 FBC distributed; 3/26 CTC/PC joint meeting; to be remanded to PC 5/7; ongoing

Pike Street Phase 3  Surveying to begin in January; letter sent to residents, surveying started 1/11/2023; 1/18 traffic calming maps removed from Council room; before pictures are complete (may take after pictures of traffic calming phase); dedication of traffic calming 4/21; PennDOT approved, waiting on conservation district; Bid opening 5/10; Pre-Bid 5/1; CTWA starts 5/6, Columbia starts 5/13; ongoing

Traffic Signal Technologies Grant (TST)  Frank is working with help of District 2 PennDOT; Application due September 30; resolution to be passed; Application submitted; 12/14 approved for $127,700; need RFP for traffic engineering services; 3/28 RFP submission deadline; 5/3
consultant chosen; PO for Adam to sign and return to Nick; meeting 8/9; Q4 status report done; to coincide with GLG; 3/22/2024 plans sent to PennDOT for review; ongoing

Green Light Go (GLG) to coincide with TSTG; $190,880 awarded, 20% match; exp. 6/30/25; Frank submitted application for Park Ave. signal; 3/22/2024 Benner Pike plans were sent to PennDOT for review; 2/23/2024 Park Ave. submitted to PennDOT, to be awarded mid-late summer; ongoing

ARLE Awarded $146,320; Rt. 322/College Ave signal improvements; 2/5 signed; waiting for grant agreement; ongoing

Columbia Gas Bathgate extension at Puddintown; coming

DCNR Grant Spring Creek Park For basketball court and tennis court resurfacing;

University Drive Ped. Crossing PA One Call to be placed on or after 5/6; TEAMS meeting 5/9;

Signal at Gerald & Struble Coming; to coordinate with Columbia Gas and PennDOT

ENGINEERING BOND/LOC SURETY EXPIRING SOON

State College Food Bank (5/11) – auto renew
Arize FCU (5/31) – reduced amount but did not extend (working with VFCCU & Arize)
Stocker Body Shop (6/14) – to reduce & renew
Halfmoon Towing (6/16)

LDP’s UNDER CONSTRUCTION

Canterbury Crossing Winfield Heights
Evergreen Heights Arize FCU
Mount Nittany Medical Center State College Area Food Bank
Steve Shannon Stocker Body Shop
Rearden Steel Halfmoon Towing
Jersey Mike’s
Zoning Bulletin

in this issue:

- Variances
- Dimensional Variances
- Stop-work Orders
- Billboards
- Standing
- RLUIPA
- Zoning News Around The Nation

Variances

ZBA’s decision to grant variance so holders of conservation easement could erect stockade fence challenged


Brian and Marissa Dreher bought a house on Brushy Neck Court in Brick Township, New Jersey in 2016. The property was a through lot with 95-feet of frontage on Brushy Neck Court and Davids Road.

The property was encumbered by a conservation easement, which provided that “the grantee, its successors and all subsequent owners [were] required to maintain in perpetuity the conservation easements on the ‘final subdivision plat in their natural state and shall be further prohibited from clearing . . . and/or from making any improvements on this space, including but not limited to, construction of buildings, sheds, swimming pools, tennis courts and/or other such uses.’”

In 1998, the Dreher’s predecessor in title had received a zoning permit to erect a four-foot-high chain link fence in the conservation easement. The authorization was based on a letter from the planning board’s attorney opining the fence was permissible so long as it didn’t require any living vegetation to be removed.

Three years after buying the property, the Dreher’s applied to the Zoning Board of Adjustment (ZBA) to replace the four-foot chain link fence with a six-foot stockade fence. Because the township’s land-use ordinance limited fences in the 35-foot front yard setback to a height of four feet in the Dreher’s R-15 residential zone and forbid stockade fences, the Dreher’s required a variance.

In support of their variance application, the Dreher’s testified that they wanted the six-foot stockade fence for privacy and security. Ultimately, the ZBA voted unanimously to approve the variance request. It concluded the proposed fence wouldn’t have a substantial detrimental effect on neighboring properties and that the improvement would benefit surrounding properties through improved aesthetics.

A court agreed with the decision that “the conservation easement did not prohibit fences” and that the Dreher’s had established their entitlement to a variance was neither arbitrary nor capricious. Then, the case went up for appeal.

DECISION: Reversed; case sent back for further proceedings.

The lower court erred in affirming the ZBA’s decision to grant the Dreher’s variance request.

There wasn’t any evidence before the ZBA that was sufficient “to find the requested variances advanced the purposes of the Municipal Land Use Law [MLUL].” “The only reasons the Dreher’s advanced were their own personal privacy and security,” the appeals court wrote.

The Dreher’s implied that the granting of the easement would benefit their neighbors on Brushy Neck Court, who would also be interested in erecting stockade
fences in their rear yard setbacks, but the ZBA was “prohibited from rewriting the zoning ordinance to amend the rear yard setback requirements for through lots in the R-15 zone. . . . Any relief in that regard must come from the Township Council’s amendment of the zoning ordinance,” the court wrote.

In addition, the ZBA hadn’t identified “specifically which purposes of the MLUL the variances advanced, finding only that the proposed ‘fencing results in a diversified housing stock and an aesthetic improvement which promotes the goals of planning’ ” under state law.

While promoting “a desirable visual environment” was among the purposes of zoning, the ZBA hadn’t “explain[ed] why a six-foot stockade fence, which d[id] not appear to be permitted within the front yard setback in any residential zone in the Township.”

Further, the ZBA hadn’t provided any evidence supporting its finding that a six-foot stockade fence located four feet from the street within a 35-foot setback “[w]as a commonly permitted improvement to a single-family residential use such as those in the surrounding neighborhood.” Rather, the record supported the opposite, the court found—that “none of the neighbors had stockade fencing and the only fences in the neighborhood were open chain link fences.” And the township’s ordinance barred “any fence of whatever type to be ‘located less than 10 feet from the pavement or cartway of any street, whether public or private,’ and the proposed fence will be only four feet from the street.”

The bottom line: The ZBA’s finding that the proposed fence on the lot wouldn’t create “a substantial detriment to the public good because the proposed fencing would be located in the exact location of the existing fencing . . . fail[ed] to take into account that the existing fence [w]as an open chain link fence four feet high and the fence proposed w[ould] be a six-foot-high closed stockade fence, which [w]as apparently not permitted in any residential zone in the [t]ownship.”

Case Snapshot:
This case arose out of a neighborhood dispute over a fence in a conservation easement.

**Dimensional Variances**

Did court err in reversing ZHB’s decision to grant dimensional variance to concrete plant?

Citation: Shultz v. Zoning Hearing Board of Mount Joy Township, 2023 WL 7205200 (Pa. Commw. Ct. 2023)

The Zoning Hearing Board of Mount Joy Township, Pennsylvania (ZHB) granted Gettysburg Concrete Company Inc.’s (GCC) application for a dimensional variance. Then, a court reversed the ZHB’s order, and GCC appealed.

**DECISION: Affirmed.**

GCC didn’t demonstrate an unnecessary hardship justifying the granting of its request for the dimensional variance.

**MORE ON THE FACTS**

New Enterprise Stone & Lime Company Inc. (NESLC) owned two parcels of property totaling 20.18 acres in the township, which were located in the Baltimore Pike Corridor-Intensive Uses Overlay (BPC-O) Zoning District.

The northeast portion of the property was primarily an open grassland with a few construction trailers and a storage building. A portion of the area was used as a construction staging area and for the storage of construction material such as crushed rock.

The rest of the property consisted of a wooded slope going down to Rock Creek, which ran from the northwest to the southeast along the southwest border of the property. The property also had been used intermittently for construction...
storage but was primarily open grassland with the wooded slope to the creek.

GCC leased another property from NESLC where it operated a concrete batch plant on quarry property on the northwest side of Rock Creek in Cumberland Township.

Due to ongoing quarry operations, GCC wanted to expand the quarrying operations and relocate the concrete batch plant to a site that wasn’t affected by the quarrying. It also wanted to 1) construct a hot-mix asphalt batch plant at the same location of the concrete batch plant, and 2) build both plants on the property in Mount Joy Township, which were permitted conditional uses in the BPC-O Zoning District.

The concrete batch plant required the use of silos and superstructures approximately 56 feet high to operate things appropriately. The hot-mix asphalt batch plant required the use of silos and superstructures approximately 85 feet high to operate appropriately. But under the ordinance, the maximum permissible height in the BPC-O Zoning District was 50 feet, so GCC submitted a variance application to the ZHB for a variance from the height restriction.

Despite objections by some adjacent and nearby property owners, the ZHB granted the variance request. The objectors appealed and the town intervened.

The court reversed the ZHB’s decision to grant GCC the variance. It found a hardship didn’t extend to the property. Rather any hardship was based on GCC’s decision to reconstruct the concrete batch plant and add a newly constructed hot mix asphalt batch plant in the township so it could expand its quarrying operation in Cumberland Township to increase its profits.

The bottom line: GCC didn’t “need a dimensional variance to ensure the continuation of a preexisting, permitted use.” “The property herein has been used intermittently for construction storage and remain[ed] primarily open grassland with the wooded slope to the creek . . . . Importantly, [it] did not demonstrate that it would suffer an economic loss due to its inability to continue the existing use . . . . Rather, [it] merely want[ed] the dimensional variance to move the processing facilities from its present site to maximize the quarrying operations on the adjoining property in Cumberland Township.”

In the end, GCC’s desire to “maximize economic benefit of its use of the property” didn’t cut it, and the court’s reversal of the ZHB’s decision to grant the requested variance stood.

Case Note:

GCC’s own witness testified that the dimensional variance wasn’t based on “any unique physical circumstances or conditions peculiar to the property nor that the unnecessary hardship [was] due to such conditions from the property,” the court explained. And, GCC sought to build both operations on a lot in the township that wasn’t otherwise improved for the requested.

Stop-work Orders

Town argues res judicata barred developer’s claims against it stemming from stop-work order and criminal prosecution

Citation: Home Team 668 LLC, Plaintiff, v. Town of East Hampton, Linda Scicolone, Ann Glennon, Thomas Talmage, and Michael Sendlenski, in their official and individual capacities, Defendants., 2023 WL 8237541 (E.D. N.Y. 2023)

Home Team 668 LLC was formed to purchase and develop a parcel of vacant land in the business district of Montauk in East Hampton, New York. It submitted a preliminary site plan (PSP) application to the town planning board to develop a freestanding, two-story building on the property.

The proposal stated that the building would be about 2,000 square feet. The first floor would be used as an art gallery, retail store, or office space, and the second floor would be used as a two-bedroom apartment. The PSP also indicated that the building would be built toward the back of the lot, with adjacent parking, all or the same grade.

East Hampton’s planning department required that the building be constructed toward the front of the lot and that the parking be located in front of the building along the municipal road right-of-way, so it was consistent with neighboring buildings. As a result, Home Team revised the PSP, and the planning department approved it.

After receiving a building permit from the town to construct the 2,000 square foot, two-story building on the property consistent with the amended site plan, Home Team made head way with the project. By June 2018, the building was essentially completed except for the water main connection and the installation of sidewalks, curbs, and parking pavement.

Around that time, Home Team found out that a ramp would need to be installed to get to the building’s entrance due to a grading issue to ensure compliance with the Americans with Disabilities Act (ADA). While the PSP had been ADA compliant, the amended site plan resulted in the need to build the access ramp, but the planning department hadn’t addressed this in approving it.

Home Team proceeded to construct the parking area and access ramp using concrete, although the amended site plan had called for the use of asphalt. According to it, though, the town code didn’t require asphalt over concrete.

In late June of 2018, the town’s chief building inspector told the code enforcement officer to issue a stop-work order (SWO) because the concrete use hadn’t been authorized pursuant to the state’s building code or the town’s zoning code. Further the SWO stated that Home Team hadn’t complied with the filed plans and specifications.

Home Team objected, stating that the town’s inspectors had watched the access ramp and parking area be installed with concrete and hadn’t objected at the time. It also submitted another amended site plan concerning the concrete, but the town continued to change conditions upon which the amended site plan would be approved and insisted that the access ramp must be placed at the front of the building.

Home Team was then criminally charged with violating
the town's code by using concrete instead of asphalt in the parking area as indicated in the original amended site plan. Then, the prosecutor indicated that if the town planning board approved the second amended site plan the criminal charges would be dropped.

In November 2018, the town planning board approved the second amended site plan, which specified that concrete could be used for the parking lot. Home Team's attorney then requested dismissal of the charges, but the town served Home Team with a superseding misdemeanor complaint asserting that it had failed to comply with the town code by pouring concrete two days after the SWO had been issued.

Home Team went to town's Zoning Board of Appeals (ZBA) challenging the validity of the SWO. It contended that the SWO had been improperly issued and served, facially defective, and in violation of its due process rights. It also argued the conclusion that its use of concrete violated the amended site plan had been made in error.

Home Team then filed an “Article 78” petition against the town to get the SWO terminated. It sought declaratory and injunctive relief regarding the constitutionality of town code and the SWO issuance.

The judge dismissed Home Team's request, finding that the Article 78 proceeding wasn't ripe for review and that declaratory judgment and injunctive relief claims were without merit.

Home Team appealed the state court decision but failed to perfect that appeal within the applicable 60-day time limit. It then filed suit in federal court alleging that it was entitled to declaratory relief because the town's custom and policy of issuing the SWO had been done without a hearing or opportunity to be heard and the town code authorizing the SWO's issuance was unconstitutional. It sought compensatory damages and attorneys' fees and costs.

The town sought dismissal.

DECISION: Request for dismissal granted.  
Res judicata barred Home Team's procedural due process, substantive due process, and equal protection claims.

Even if the Article 78 petition had been improperly dismissed, “the proper course was to appeal the state court's decision rather than seek to restart the case in federal court.” Therefore, the court found “the Article 78 Petition concluded with an adjudication on the merits.”

In addition, the present lawsuit involved “the same parties or those in privity with the parties to the Article 78 [petition].” Thus, both actions involved “the same parties for res judicata purposes.”

The bottom line: Home Team's original petition “sought both Article 78 and declaratory and injunctive relief, which were not available in a pure Article 78 proceeding.” Also, the state court had addressed those claims on the merits. “Given that Home Team's state court action was a hybrid Article 78 proceeding, [the Section 1983] due process and equal protection claims asserted here could have been brought in that forum, and [Home Team] in fact attempted to amend its petition to do just that.”

CASE NOTE

“At the time the Article 78 [petition] was filed, the criminal charges against Home Team were still pending. . . . Given that [its] speedy trial claim was not yet ripe for review, it could not have been brought in connection with the Article 78 Petition and [wa]s therefore not barred by res judicata,” the court wrote.

Billboards

Decision concerning permit to erect billboard leads to lawsuit

Citation: Sam's Commercial Properties, LLC v. Town of Mooresville, 893 S.E.2d 574 (N.C. Ct. App. 2023)

Sam's Commercial Properties LLC (SCP) sought a permit to erect a billboard within Mooresville, North Carolina's heavily commercialized road corridor near the intersections of Highway 150 and Highway 77. The planning and community development denied SCP's application, so it appealed to the Board of Adjustment (BOA), which also denied it.

The BOA cited three reasons for its denial:

- the local zoning authority could “establish effective control of outdoor advertising signs within zoned commercial areas through regulations or ordinances with respect to size, lighting, and spacing of outdoor advertising signs”
- an agreement between the state and the federal government barred signs that weren't “effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways” — and the proposed billboard was electronic; and
- there weren't any contested facts to be resolved since the case turned on interpreting the ordinance.

A court upheld the BOA's denial, and SCP appealed.

DECISION: Reversed; case sent back for further proceedings.

The BOA and lower court erred in denying the permit request.

The town argued that billboards were restricted to varied usage types, such as directional and official signs and notices; advertising for the sale or lease of the property where the sign was located; and advertising activities conducted on the property where the signs were located.

The bottom line: It wasn't clear if the BOA had determined that the billboard constituted a customary use. “The zoning of the subject property . . . [was] commercial, which would ordinarily suggest customary use inclusive of the erection of billboards.”

But the language of the town's ordinance as it pertained to an exception in the Highway Beautification Act (‘HBA’) for a customary use “trap[ped] the reader in an indeterminate interpretive feedback loop: despite the ordinance's phrasing initially indicating a general billboard ban, the very language of the HBA exception require[d] [the court] to refer back to the policy aims of the statute for a determination of customary use . . . ., which, in turn, couldn't be determined without knowing the scope of the exception.”

Under the circumstances, the court found that it couldn't
Standing

Applicants claim neighbors opposed to demolition and rebuilding project lack standing to challenge ZBA's approval

Citation: Tower as Trustees of Salisbury Beach Realty Trust v. Town of Salisbury Zoning Board of Appeals, 2023 WL 8080856 (Mass. Land Ct. 2023)

Patricia and Joseph Tower, the trustees of the Salisbury Beach Realty Trust (SBRT), owned and resided on North End Boulevard in the Town of Salisbury, Massachusetts. Their property was adjacent to one that Timothy and Jodi Beauregard owned. The Beauregards sought to demolish an existing two-family residential structure on their property so they could build a new two-family dwelling in its place.

After the town's Zoning Board of Appeals (ZBA) approved the Beauregards' project, the Towers appealed. The Beauregards claimed the Towers lacked standing to challenge the ZBA's decision and asked the Massachusetts Land Court to dismiss the case.

DECISION: Request for dismissal denied.

The Towers had a privacy interest in the use and enjoyment of their property, and the Beauregards hadn't rebutted a presumption of their standing as aggrieved persons.

A CLOSER LOOK AT THE FACTS

Both properties were located in the town's "High-Density Residential" (R-3) zoning district. The property in question was about 8,700 square feet in land area. The existing two-family on the improved lot was about 2,400 square feet in size and constituted a lawful nonconforming use for the lot size and side-yard setback under the town's zoning bylaw.

Concerning the side-yard setbacks, the existing structure encroached onto the Towers' property on the left side by 0.7 feet and had a side-yard setback on the right side of only 2.2 feet where the R-3 district required 10-foot yard setbacks on both the left and right sides. The property otherwise conformed to the bylaw's remaining dimensional requirements concerning front- and back-yard setbacks, lot coverage, frontage, and building height.

The Beauregards' proposed structure would be three stories (35 feet) high, which was the maximum building height allowed in the R-3 zone. It would increase the side-yard setbacks to 2.7 feet on each side, which would be an improvement as to nonconformity and would remove the existing encroachment onto the Towers' property. But the size of the proposed structure would increase in area to more than 4,000 square feet.

The Beauregards retained an architect who submitted an application under section 300-21 of the zoning bylaw, which pertained to extensions or alterations to preexisting nonconforming structures or uses and allowed an extension or alteration as follows: "Preexisting nonconforming structures or uses may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the ZBA that such change, extension, or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood."

At a public hearing, the Towers opposed the project. But, in June 2023, the ZBA approved the application following a 4-1 vote. In appealing that decision to court, the Towers alleged the project would cause them harm because the proposed structure would be taller than the existing residence and cause them to have less sunlight, air, and privacy that they currently enjoyed at their property.

BACK TO THE COURT'S RULING

Standing to appeal a municipal zoning board's decision was reserved for those who were "aggrieved" by its decision. "A 'person aggrieved' is one who suffers some infringement of a legal right, who has a 'plausible claim of a definite violation of a private right, a private property interest, or private legal interest' which right or interest is 'one the statute under which a plaintiff claims aggrievement intends to protect,' " the court explained.

Therefore, one who claimed to be aggrieved by a decision had to show:

- they would "suffer an individual, particularized harm to some interest that [wa]s more than 'minimal or slightly appreciable' " and
- "the harm [wa]s to an interest that the relevant zoning bylaw [wa]s intended to protect."

There was a rebuttable presumption that one whose land abutted property subject to a request for zoning relief enjoyed aggrieved status. But, "the party defending the zoning decision may challenge an abutter's presumption of standing by establishing that 'the plaintiff has no reasonable expectation of proving a cognizable harm.' "

There were two ways to do this:

1) challenge the abutter's standing as a matter of law by showing that the claimed harm wasn't among the interests that the state's zoning act (M.G. L. c. 40A) or the local zoning bylaw was intended to protect; or
2) show that "as a matter of fact"—by "presenting 'credible affirmative evidence' "—that the abutter wouldn't suffer the asserted harm.

If the defendant met the burden for rebutting the presumption, the abutter could try and prove standing by showing "by direct facts and not by speculative personal opinion—that [their] injury [wa]s special and different from the concerns of the rest of the community."

Here, the Beauregards challenged the Towers' standing on legal and factual bases. But they didn't submit "any affirmative evidence to rebut the presumption that the Towers w[ould] be harmed by an increase in shadows on their property or a reduction of air, light, or privacy that the Towers claim w[ould] be caused by the Beauregards' new house."

"Instead, the Beauregards argue[d] that the Towers' shadow study [wa]s either fatally flawed and, thus, unreliable, or sup-
port[ed] the conclusion that any increase in shadows on the Towers’ property caused by the project [would] be de minimis.”

This, however, wasn’t enough to rebut “the presumption of standing as a factual matter,” the court ruled. The bottom line: “The law requires the Beauregards to submit affirmative evidence that the Towers will not be harmed or point to admissions by the Towers that they lack a factual basis for their claims of harm . . . . They have not done so and, therefore, they have not rebutted the Towers’ presumption of standing as a factual matter.”

On the issue of whether the Towers had standing as a matter of law, the Beauregards contended that the alleged harms of an increase in shadows or a reduction in air, light, and privacy weren’t among the interests protected by the state’s Zoning Act or the Salisbury zoning bylaw. “The Beauregards’ argument in this regard is a closer call,” the court explained.

“Whether a harm claimed by an abutter is to an interest that the Zoning Act or a local zoning bylaw is intended to protect depends on the language of the bylaw, but includes interests that, by implication, necessarily flow from the bylaw’s limitations on the type or size of construction, such as the dimension of limitations,” the court added. “Local zoning bylaws often protect interests that go beyond the typical zoning concerns of density, traffic, parking, or noise and expand the universe of protected interests to address the needs or concerns of the municipality. This occurs where the zoning bylaw directs the [ZBA] to consider a particular issue when deciding whether to grant a variance or special permit, thereby defining it as a protected interest.”

The dispositive question was whether the state’s zoning act or the local zoning bylaw “either expressly or by implication, protect[ed] the Towers’ interests in maintaining the air, light, (including shadows) and privacy that they currently enjoy[ed] at their property.” “The Zoning Act, itself, does not expressly define the interests that it is meant to protect, but courts have generally held that the statute’s protected interests include ‘typical zoning concerns’ such as ‘density, traffic, parking availability, or noise’,” the court stated.

And, while Salisbury’s zoning bylaw was also “sparse” as to the interests it intended to protect, its purpose was “to promote the health, safety, convenience and welfare of the inhabitants of the Town of Salisbury.” While it didn’t “expressly identify the impact of shadows or the reduction of air, light, or privacy experienced by abutters as interests it [was] intended to protect. The question, then, [wa]s whether these [we]re harms that [we]re ‘derivative of or related to cognizable interests protected by the applicable zoning scheme.’”

At this early stage of the litigation, the court noted that “where the challenged project [wa]s proposed for a high-density setting, the cases suggest[ed] that . . . an abutter ha[d] a legal interest in privacy even where it [wa]s not expressly identified in the bylaw.” And “a reduction in one’s privacy caused by an increase in the density of construction on an abutting property may be enough to establish harm sufficient to withstand a challenge to one’s standing.”

**RLUIPA**

Meditation center challenges bench trial outcome, which meant it couldn’t convert property marked for residential use

Citation: *Thai Meditation Association of Alabama, Inc. v. City of Mobile, Alabama, 83 F.4th 922 (11th Cir. 2023)*

The Eleventh U.S. Circuit has jurisdiction over Alabama, Florida, and Georgia.

Thai Meditation Association of Alabama (TMAA), a religious organization, filed suit alleging the city of Mobile, Alabama’s denial of its application to construct a Buddhist meditation and retreat center in a residential area violated the Religious Land Use and Institutionalized Persons Act (RLUIPA).

A lower court granted the city’s request for judgment without a trial on the RLUIPA claim, and TMAA appealed.

**DECISION: Reversed.**

Judgment on the RLUIPA claim wasn’t proper.

**MORE ON THE FACTS**

TMAA belonged to the Dhammakaya school of Buddhism. Its “purpose [wa]s teaching and research into growth and development of mind and spirit through meditation and expanding the knowledge of Buddhism,” and it had been seeking a permanent home in Mobile, Alabama for several years.

In 2007, TMAA operated out of a converted house in a residential neighborhood located in the city’s R-1 district. After neighbors complained and TMAA was unable to obtain the proper zoning authorization, it moved to a shopping center in the city’s commercial zoning district. But it claimed that given the center’s commercial nature, it couldn’t conduct meditation practices because it was too loud and disruptive for practicing members’ religion.

In 2015, TMAA bought a house that was also located in the R-1 residential district and required planning approval to be put to a religious use. Before purchasing the property, TMAA had engaged in pre-approval meetings with city officials. It claimed the officials provided positive feedback on the preliminary plans but when TMAA submitted its formal application, many members of the public opposed it. For instance, objectors opposed the Buddhist character of the proposed usage, questioned whether the use was religious in nature, and claimed there were compatibility and traffic concerns.

The planning commission denied TMAA’s application citing the neighbors’ compatibility concerns. Then, the city council denied TMAA’s appeal, so it filed suit.

**THE COURT’S REASONING**

RLUIPA was designed to protect religious land uses against discriminatory processes that could exclude or otherwise limit where churches or synagogues could stand. The statute stated “[N]o government shall impose or implement a land use regulation in a manner that imposes a
substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest."

After RLUIPA was enacted, the Eleventh Circuit ruled that a substantial burden had to "place more than an inconvenience on religious exercise." Such a burden was "akin to significant pressure which directly coerce[d] the religious adherent to conform his or her behavior accordingly."

And in an initial review of the TMAA matter, the court had applied that standard and clarified that it wasn’t necessary for a party to prove that the government had required them "to completely surrender [their] religious beliefs; modified behavior, if the result of government coercion or pressure, [could] be enough." The court went on to set out factors for the lower court to consider before granting the city judgment.

The bottom line: There were material factual issues in dispute that precluded judgment. For instance, one of the factors related to whether there were alternative sites for TMAA to use.

While the city contended that TMAA owned a 100-acre parcel that would be suitable for its meditation center, TMAA’s land-use expert found the site wasn’t suitable for TMAA’s intended use. Thus, "[t]he availability of a large property similar to the [subject] property would weigh heavily on this factor. A factual dispute like this on a key factor precludes the issuance of summary judgment at this stage," the court found.

Also, another factor addressed whether the planning commission’s denial of the application had been arbitrary. For instance, TMAA cited several instances where the planning commission had deviated from its typical procedure, failed to work with TMAA, and allegedly edited meeting minutes to obscure the true reason for the denial of planning approval. "The City disputes that there were any irregularities in its processes, and denies the minutes were edited. Again, only one of these accounts can be right, and it bears on an important factor of the substantial-burden analysis," so such factual disputes precluded judgment at this stage of the litigation.

A CLOSER LOOK

The city had two zoning classifications relevant to the case at issue:

- an R-1 zoning designation, which allowed for residential usage as of right and allowed for other uses—like religious uses—subject to "planning approval" by the Planning Commission; and
- a commercial zoning designation, which allowed certain uses—including religious uses—by right. The converted house used as TMAA’s first location was in an R-1 district.

CASE NOTE

The court affirmed the lower court’s decision to grant the city judgment without a trial on an additional free exercise claim TMAA filed. "Mobile’s R-1 zoning designation process is both neutral and generally applicable, subjecting it to rational basis review. Because rational basis review [w]as ‘highly deferential to government action,’ we agree that the [c]ity’s asserted interests in traffic safety and zoning [w]ere ‘rationally related to a legitimate government interest.’"

The case cited is Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004).

Zoning News Around The Nation

Georgia

Descendants of enslaved individuals file suit alleging zoning amendment resulted in constitutional violations

In a recently filed lawsuit, residents of Sapelo Island, which is located in McIntosh County off the coast of Georgia, claim a zoning amendment violates state law and their constitutional rights to due process and equal protection.

The plaintiffs claim rezoning in their community constitutes racial discrimination because they will be subject to higher property taxes that will price them out of their homes, which sit on land where their ancestors were enslaved to work.

According to the September 12, 2023 Board of Commissioners agenda (available for download at mcintoshcountyga.com/AgendaCenter/ViewFile/Agenda/09122023-164), the McIntosh County Code of Ordinances amendment is found in “Appendix C Sec. 101,” and is referenced as the “HH Hog Hammock District of the McIntosh County Zoning Ordinance.”

As of print time, a hearing was scheduled for February 20, 2024 on the county’s request to dismiss the case. To read the complaint, visit documentcloud.org/documents/24032072-101223-sapelo-complaint-c-bpymj2sf-accepted.

Source: gpbox

Illinois

Evanston’s residents challenge city’s decision to grant Northwestern University’s request to commercialize its stadium

The Most Livable City Association and others have filed suit against the City of Evanston, Illinois, claiming the city and its mayor “cast aside basic principles of zoning and, instead, chose to confer special advantage” on Northwestern University, which had applied for the ability to commercialize its university athletics facilities district in the city’s only “U2-zoned property.”

The proposal sought to permit the university to use its football stadium as an open-air performance entertainment venue even though it is situated in a residential neighborhood.

To read the complaint, visit static1.squarespace.com/static/6394f8e5d5e38ac7bbbade46/t/6568dab6e0239d0f6915b84b/1701370552859/Complaint+-+FILED.pdf.

Source: mostlivablecity.org

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New Hampshire

North Hampton considers revisions to ADU section of zoning ordinance

The North Hampton, New Hampshire Planning Board recently held a public hearing to review the accessory dwelling unit (ADU) section of the town’s zoning ordinance and other proposed revisions. “The intent of the proposed revision is to clarify the criteria for allowing an accessory dwelling unit in an antique barn that is connected to a primary dwelling while retaining the traditional New England style architecture of the structures,” a press release stated.

Another proposed revision would “clarify the intent of the zoning ordinance that only one residential structure is allowed on a lot in the R-1 High Density District and the R-2 Medium Density District.” And the town considered a “proposed revision is to clarify the permitted uses within the Industrial-Business/Residential District and add definitions for permitted uses terms.”

For more information, visit northampton-nh.gov/sites/g/files/vyhlif996/d/files/news_pb_12192023zo_newspaper.pdf.

Virginia

Alexandria lawmakers vote to end single-family zoning

The Alexandria City Council recently issued a unanimous vote to end single-family-only zoning. The proposal, part of a larger “Zoning for Housing/Housing for All” initiative, seeks to increase the city’s housing supply.

From a practical standpoint, this measure means that four-unit dwellings will be allowed on lots currently zoned for single-family homes. The city planner’s office has published a report discussing how the current infrastructure will support “net new units.” For more on that, visit alexandriava.gov/sites/default/files/2023-09/Zoning-for-Housing-Units-Infrastructure-20230925.pdf.

And to learn more about the city’s initiative, visit alexandriava.gov/planning-and-zoning/zoning-for-housingforall#Proposed2023ZoningforHousingInitiatives, where you’ll find links to access proposals and draft recommendations.

Source: dcist.com
First Amendment Retaliation

Company claims town unconstitutionally denied or played a role in denying its application to develop property

Citation: The NF&W Cooke LLP v. Shapiro, 2023 WL 8527137 (D. Conn. 2023)

The NF&W Cooke Limited Partnership (NF&W) filed suit against Daniel Shapiro, individually and in official capacity as chairman and member of the Town of Branford, Connecticut Inland Wetlands and Watercourses Agency and Diana Ross, individually and in her official capacity as Branford’s Inland Environmental Director (collectively, the defendants).

NF&W claimed the defendants had unconstitutionally denied or played a role in denying its application to develop property located on East Main Street in Branford. The defendants requested judgment without a trial.

DECISION: Request for judgment granted in part.

An equal protection claim could not proceed, but a First Amendment retaliation claim could proceed along with claims for tortious interference with business expectancies and civil conspiracy.

MORE ON THE FACTS

The property at issue was allegedly owned for years by NF&W and a local family and was part of an Inlands and Wetlands Application central to the disputes in this case. Costco Wholesale Corp. (COSTCO) was the applicant for the Inlands and Wetlands Application at issue, and the Inlands and Wetlands Commission received that application at a November 2015 meeting.

Years before COSTCO submitted the application, NF&W principal allegedly began appearing before town boards and commissions “to advocate for updates to the town’s plan of Conservation and Development (POCD) that would facilitate the possibility of development of NF&W’s property, which was allegedly zoned as General Industrial (IG2) and barred retail, residential and business uses in the underlying zone” as it had historically been used for farming.

The principal alleged he didn’t have any success in convincing the town to consider legislative changes to the POCD as it related to the subject property and the IG-2 zone. Around this time, a selectman in town opposed changes to the town’s zoning map and the property’s IG2 designation and allegedly “publicly voiced his concern that converting industrially zoned property to residential and/or retail would open the flood gates to affordable housing developments throughout” Branford.

The principal allegedly became convinced that the selectman was trying to prevent the property development in the same way that he had tried to prevent
an affordable housing development and allegedly made “public comments that were extremely critical” of the selectman.

Around 2010, COSTCO allegedly approached the principal regarding a potential COSTCO store on NF&W’s property. The selectman allegedly tried to “steer the COSTCO project to other areas of the [town]” and due to those actions, COSTCO told the principal that it would no longer “fight the town” or negotiate over the placement of a COSTCO store on its property.

Equal protection—This claim failed. NF&W alleged the defendants’ conduct violated the law by denying the COSTCO application a fundamentally fair hearing, and that a reasonable person in the officials’ positions would have a clear understanding that such conduct was illegal. But the court disagreed, ruling that even if the court hadn’t “dismissed the equal protection claim as a matter of law, the law [wa]s not clearly established such that the comparison of the property at issue with one other property would be sufficient to satisfy the rather rigorous ‘class of one’ standard” to bring an equal protection claim.

First Amendment retaliation—The town argued any claims for First Amendment retaliation the principal might have against it and/or its officials was barred by a release the principal had signed to settle two cases he had against the selectman who had opposed the development of his property. They contended that since many of the allegations in NF&W’s current claims were identical or substantially similar to the allegations in the claims that had been discharged through settlement, they were barred here.

The court disagreed. It was too early in the judicial process for any ambiguity in the language of the release to be decided because it was an issue of fact for a jury to examine.

The bottom line: NF&W alleged that Shapiro had “‘harbored significant animus toward [the principal], but despite that animus, Shapiro did not recuse himself from consideration of the COSTCO Application.’” “And a jury could ‘infer that Shapiro predetermined the outcome of the COSTCO Application, and that he used Ross as a vehicle to manufacture purported grounds for denial of the Application through manipulation of the peer review process and improper alteration of what was supposed to be an independent peer review report.’”

Under state law, the court had to construe the written contract’s language in a way that took into account the intent of the parties in light of the transaction’s circumstances. “While the release did not name Ross or Shapiro and thus claim[ed] against them were not discharged, the release broadly applie[d] and [the principal] did ‘agree[ ] to release and forever discharge the Town of Branford including all departments, affiliated divisions, and its organizations of any kind, as now or hereafter to be constituted or acquired, and including all present, past or future appointed or elected officials, boards, board members, commissions, commission members.’”

In the end, the court noted that “the alleged retaliatory actions were Shapiro and Ross interfering with the COSTCO Application process—events that occurred after the release was signed in 2014. While [NF&W’s] allegedly protected speech did occur before the release was signed, the allegedly retaliatory action did not occur until 2015 and 2016, while the COSTCO Application was pending. Given that the retaliatory action had not yet occurred, the release could not cover claims based on those events.” Thus, the signing of the release didn’t cover any of the alleged facts after its signing, so the First Amendment retaliation claim wasn’t barred because a release had been put in place.

Finally, “[i]f, in fact as alleged, [Shapiro and Ross] interfered with the COSTCO Application because they harbored animosity against [NF&W’s principal], then allowing such animosity to guide a decision rather than evaluating the application based on unbiased procedure would be something a reasonable person would know [wa]s clearly retaliatory.”

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**Tortious interference**—To succeed at a tortious interference with business expectancies claim, NF&W had to show it had a business relationship with another party, the town intentionally interfered with the business relationship while knowing of the relationship, and as a result of its interference, NF&W suffered actual loss.

The town argued there wasn’t evidence the town official acted with malice to interfere with its business expectancy and had “conducted the Inland & Wetlands Application process in a fundamentally fair fashion.”

NF&W countered that intentional interference with its business relationship occurred because the town officials had interfered with a peer review report, which led to COSTCO withdrawing its application—this then nullified the Option Contract, leading NF&W to lose millions of dollars from the sale.

The court agreed with NF&W that “[a] jury may be able to find that the first element is satisfied because of the evidence that [it] had a business relationship with . . . COSTCO, given the [o]ption [c]ontract for the sale of [its] property.” A jury could also find that based on the evidence in the record the town officials knew of NF&W’s business relationship with COSTCO and intentionally interfered to sabotage the option contract.

Also, there was a factual issue in dispute as to whether the officials “knew of this relationship and interfered with the process so that the [o]ption [c]ontract would fail.” Therefore, the officials’ actions with respect to the peer review report was a factual issue for the jury to decide.

Finally, “[a] jury could find that the third element [wa]s met, because [NF&W] lost the potential proceeds from the execution of the [o]ption [c]ontract.” It didn’t have to show “an actual breach of contract to suffer actual loss,” so judgment in the town’s favor on the tortious interference with business expectancies claim was denied.

**Civil conspiracy**—NF&W contended that since it had a viable claim for tortious interference with a business expectancy, it also had one for civil conspiracy. The court agreed that NF&W had “sufficient evidence” to present to a jury on the town officials “act[ing] together to pursue their unlawful scheme of undermining” COSTCO’s application.

That’s because there was enough evidence for a jury to find that the two town officials were working together and there was a factual dispute as to whether they had done so for the purposes of committing an unlawful act—that is, to sabotage the Inland and Wetlands application because they were retaliating against the NF&W principal for his protected speech against the selectman. And a jury had to decide if they had conspired to sabotage the application, mainly by interfering with the peer review process.

**A CLOSER LOOK**

When a plaintiff alleged an equal protection violation without also alleging discrimination based upon membership in a protected class, they had to “plausibly allege that [they had] been intentionally treated differently from others similarly situated and no rational basis exist[ed] for that different treatment.” Such a claim was referred to as a “class of one” equal protection claim and stemmed “from the Equal Protection clause’s requirement that the government treat all similarly situated people alike.”

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**Practically Speaking:**

To assert a First Amendment retaliation claim, a plaintiff had to show they had a right protected by the First Amendment, the defendant’s actions were motivated or substantially caused by their exercise of that right, and the defendant’s actions caused them injury.

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**Housing Discrimination**

**Sober-living facility claims city discriminated against its residents concerning zoning issue**

Citation: Women’s Elevated Sober Living L.L.C. v. City of Plano, Texas, 86 F.4th 1108 (5th Cir. 2023)

The Fifth U.S. Circuit has jurisdiction over Louisiana, Mississippi, and Texas.

Women’s Elevated Sober Living LLC (WESL), which opened a sober living home in Plano, Texas, filed suit, provided numerous services, including weekly Alcoholics and Narcotics Anonymous meetings, daily and drug and alcohol testing, employment training, and access to drug- and alcohol-education groups.

WESL’s home was 5,980 square feet and had seven bedrooms, one for the owner/operator and six for WESL residents. WESL required each resident to have at least one roommate, and at one point it had 15 residents.

In early 2019, the city opened an investigation into the home after receiving complaints from neighborhood residents. The city’s zoning ordinance allowed two types of residences in SF-7 (single family) zones:

- “Household”; or
- “Household Care Facility.”

Additionally, the ordinance limited the occupancy of a Household Care Facility to eight unrelated disabled individuals and two caretakers.

After the city completed its investigation, it informed WESL that the home violated the SF-7 zoning ordinance because the occupancy exceeded eight unrelated disabled individuals.

In 2019, WESL filed a request for accommodation with the city’s Board of Adjustment (BOA) to allow 17 to 20 residents in the home. WESL’s request included a declaration that living in “a sober home with 12 residents create[d] the necessary family and community atmosphere for the personal accountability and support that ma[de] sober living effective.”

At a public meeting, a city official testified that the
home could safely house up to 34 people. But after hearing public comments urging the denial of the requested accommodation, the BOA voted 8-0 against WESL.

WESL then filed suit, alleging disparate treatment, disparate impact, and failure to accommodate on the basis of financial and therapeutic necessity. A bench trial ensued, with the court determining that WESL hadn’t proven its claims. But the court did find that the city had violated the Fair Housing Act (FHA) by not accommodating WESL after finding its proposed accommodation was therapeutically necessary as compared to the offered alternative, considering the disabilities of the home’s residents.

As a result, the lower court enjoined the city from restricting the home’s occupancy to fewer than 15 residents, enforcing any other property restriction violative of the FHA or Americans with Disabilities Act (ADA), and retaliating against WESL’s residents for pursuing housing discrimination complaints under the FHA and ADA. It awarded WESL nominal damages of $1, which it challenged on appeal by asserting it was entitled to lost-profit damages. The city also appealed the ruling.

DECISION: Vacated; case sent back for further proceedings.

As a matter of first impression, the existence of a therapeutic benefit from a requested accommodation didn’t make the accommodation “necessary” in support of a failure-to-accommodate claim under the FHA.

Under the FHA, it was “unlawful ‘[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of . . . a person residing in or intending to reside in that dwelling.’”

Discrimination included “a refusal to make reasonable accommodations in rules or policies . . . when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”

To assert a valid failure-to-accommodate claim, a plaintiff had to show that:

- the residents of the affected dwelling or home suffered from a disability;
- they requested an accommodation from the city;
- the requested accommodation was reasonable; and
- the requested accommodation was necessary to afford the residents equal opportunity to use and enjoy the home.

Thus, WESL had the burden of proving an FHA violation had occurred.

“[T]o prove that an accommodation request is necessary, courts require that a plaintiff prove that the requested accommodation makes the home either ‘financially viable’ or ‘therapeutically meaningful.’” Further “a requested accommodation that is preferable to an alternative is not sufficient; it must be essential,” the court stated.

THE BOTTOM LINE

The court ruled that the testimony supplied at trial wasn’t sufficient to show “that the requested capacity accommodation was indispensable or essential to the continued facilitation of the residents’ recovery” from substance use disorders. “A requested accommodation is necessary only if the plaintiff shows that without the requested accommodation, they will receive no ameliorative effect from their disability, thereby depriving them of the equal opportunity to enjoy the dwelling. To accept evidence that an accommodation would be better or provide a greater benefit to its residents with disabilities constitutes legal error,” it added.

Practically speaking, the appeals court found that the lower court had erred in determining that the evidence satisfied the applicable legal standard.

Case Note:

In bringing its case, WESL was joined by plaintiffs including an individual in recovery for substance use disorders and WESL’s owner and operator.

RLUIPA

Town sued for how it addressed variance and building issues, which plaintiff claims were designed to thwart the sale of church

Citation: Ateres Bais Yaakov Academy of Rockland v. Town of Clarkstown, 2023 WL 8494453 (2nd Cir. 2023)

The Second U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.

In 2018 and 2019, Ateres Bais Yaakov Academy of Rockland (ABY) contracted to purchase property in Clarkstown, New York, which Grace Baptist Church (GBC) owned, to establish an Orthodox Jewish school. ABY asserted that Town of Clarkstown, New York, its town supervisor, and some citizens who had formed a chapter of an organization known as Citizens United to Protect Our Neighborhood Inc. (CUPON) banded together to prevent the Orthodox school from coming into the community.

ABY alleged that the town and its supervisor then manipulated a neutral building permit application and zoning appeals process, which led GBC to refuse to go forward with the sale.

ABY filed suit alleging violating of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The defendants asked the court to dismiss the case.

The court dismissed the case for lack of subject matter jurisdiction. It found that ABY had failed to sufficiently establish its religious discrimination claim, based on the denial of a building permit application were ripe, because Clarkstown’s Zoning Board of Appeals (ZBA) never issued a final decision on the application. The court also
concluded that ABY had failed to adequately plead that the town’s and its supervisor’s conduct caused ABY’s “lost-contract injury,” as required for constitutional (Article III) standing.

ABY appealed.

**DECISION: Reversed; case sent back for further proceedings.**

The court agreed with ABY that the claim was ripe because “nothing more than de facto finality [was] required for [the court] to review . . . , and that such finality attached when the [ZBA] informed ABY that it would not entertain its appeal.”

**A CLOSER LOOK**

In dismissing ABY’s religious discrimination—along with some civil rights claims it filed as unripe, the lower court found that it hadn’t suffered an “‘actual, concrete injury’ because the ZBA never issued a final decision on ABY’s appeal and variance application” prior to [GBC] terminating its contract with ABY. It was on that basis that the court found the “ZBA’s non-final decision [did] not give rise to an injury that [was] sufficiently concrete and particularized to satisfy Article III” because [the] termination “ceased ABY’s contract . . . status, through which [it] was entitled to submit applications for building permits and variances.”

While the town retained power “‘to zone and control land use’” and federal courts had concluded that they were not to act as “‘super-zoning board[s],’” such “courts ha[d] an obligation to adjudicate cases that invoke[d] [their] jurisdiction.” Thus, the court noted that it wouldn’t “close our doors to litigants properly seeking federal review simply because their grievances touch[ed] on local zoning matters.”

Practically speaking: “So long as a plaintiff . . . submitted a meaningful application to municipal agencies to address its land-use controversy, and the municipal entity responsible for the relevant zoning laws ha[d] . . . an opportunity to commit to a position ‘that by all accounts, it intend[ed] to be final,’ the parties’ dispute [was] sufficiently final for ripeness purposes.”

Here, the ZBA declined to review ABY’s application, which it submitted for a variance after its building permit was denied, so it had “reached a decision that was sufficiently final for ripeness purposes.”

The court found that the ZBA’s decision “to dismiss ABY’s appeal without revisiting the Building Inspector’s decision, and it intended the decision to be final.” “At this point, there was nothing more ABY could have done. Once [GBC] terminated the contract and the [town] stepped in and purchased the property, ABY had no further avenues of review.” Therefore, the lower court erred in dismissing the action on the grounds that the ZBA hadn’t issued a final decision.

**LOST-CONTRACT INJURY**

ABY also contended that the town and CUPON had tortiously interfered with its contract to purchase GBC’s property. The lower court found that because the loss of the contract was not traceable to the town defendants, ABY lacked standing to bring its tortious interference claim against them.

The bottom line: There was a “causal-connection element of Article III standing,” which required a showing that a plaintiff’s injury could “be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court.” “If require[d] no more than de facto causality, a standard that [was], of course, lower than for proximate causation,” the court added.

“ABY passes this test. It plausibly alleges that the [town] defendants took steps to frustrate its planned acquisition of the [GBC] property—steps that predictably prevented ABY from securing the regulatory approvals necessary to acquire the property, cut off [its] access to public and private financing, and led to [GBC’s] termination of the contract.”

Thus, ABY’s allegations “plausibly allege[d] that the [town] defendants’ actions had a ‘predictable effect’ on the decisions of relevant . . . parties,” such as GBC and a private financier for the sale of the property. This meant that ABY had “plausibly alleged a causal connection between the [town] defendants’ actions and injuries that resulted from ABY’s lost contract,” so the lower court had subject matter jurisdiction to adjudicate ABY’s tortious interference claims.

**Takings**

Landowner claims demolition order unjust under the Constitution

Citation: **Bruce v. Ogden City Corporation**, 2023 WL 8300363 (10th Cir. 2023)

*The Tenth U.S. Circuit has jurisdiction over Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming.*

Douglas Bruce owned land in the city of Ogden, Utah, which contained two duplexes and one cottage. In early 2020, the city building official directed Bruce to rehabilitate or demolish one of the buildings on the property that had been damaged by a fire in 2018.

Bruce didn’t respond, so the building official asked the mayor to issue a demolition order. After a hearing, the mayor ordered the demolition at Bruce’s expense.

Bruce then filed suit against the city and the mayor, claiming their actions amounted to an unconstitutional Fifth Amendment taking, which violated his procedural and substantive due process rights.

The lower court granted the city and the mayor judgment on Bruce’s claims. He appealed.

**DECISION: Affirmed.**

The record didn’t support a claim that the city or the mayor had “acted egregiously or outrageously in seeking or issuing the demolition order.”
Municipals had “an important interest in controlling blight by demolishing buildings that are deemed a nuisance or threat to public health or safety,” the appeals court wrote.

Here:

The city’s code addressed the abatement of dangerous buildings and structures, i.e., “buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants.” The applicable chapter also stated “[a]ll buildings or portions thereof which are determined after inspection by the building official to be ‘dangerous,’ . . . are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified herein.’ ”

City officials acted pursuant to the city code by sending Bruce a letter notifying him that the structure had been deemed “dangerous.” In the letter, the building official “ordered Bruce to rehabilitate or demolish the building within [15] days. Bruce failed to do so, prompting [the official] on February 4, 2020, to petition the mayor of the city to hold a hearing and order Bruce to show cause why the city should not abate the building.”

Bruce received notice and appeared at the hearing where he was represented by counsel. After the hearing, the mayor found that the building was in fact dangerous, as defined by the city’s code, and was a public nuisance. Accordingly, the mayor ordered the building to be demolished and that a tax lien for the cost of the demolition be imposed on it.

Bruce didn’t dispute that the city code authorized such activities nor did he dispute any of the code provisions. Bruce also didn’t “seriously challenge the determinations of both the city’s building Official and the mayor that the structure . . . was dangerous, as defined under the city’s code.”

The bottom line: Bruce didn’t provide any evidence to “remotely establish . . . that the city’s actions could be deemed to shock the conscience,” so his substantive due process claim failed.

Also, Bruce didn’t have a valid procedural due process claim. There was “insufficient to allow a reasonable jury to find that the mayor was biased against Bruce or to otherwise find that there was a substantial risk of unfairness in the demolition proceedings due to the mayor’s role as adjudicator.”

A CLOSER LOOK

In 2018, there was a fire in one of the buildings on Bruce’s property. The building had previously been vacant for an extended period of time and didn’t have sanitation facilities. Also, the police had received 38 calls about the property.

As a result of the fire, the interior structure was damaged and the structural integrity of the building was also affected, with the interior ceiling partially collapsing from fire and water damage.

In 2020, the city’s building official deemed the structure to be a dangerous building and public nuisance under Ogden’s ordinances. Bruce received a letter detailing a description of the subject property and the reasons why the official had reached their conclusion.

As early as 2009, the city had increased ordinance violations and enforcement against Bruce’s property because of the presence of waste materials or junk and nonconforming use issues.

Case Note:

It was undisputed that the property was noncompliant with city ordinances because multiple dwelling units were located on the property, which was zoned for only one dwelling unit. The city had repeatedly urged Bruce to seek a certificate for a nonconforming use for the property, but he didn’t seek or receive a certificate for any nonconforming use.

Zoning News Around The Nation

Georgia

Savannah considers review standards for Downtown Historic District Overlay subdivisions.

According to a letter the director of historic preservation for the Metropolitan Planning Commission submitted to the city council, amendments would “allow the Historic District Board of Review (HDBR) to review the minor subdivision applications” related to planned city (Oglethorpe Plan) alterations.

“As a result, what the HDBR reviews and criteria on how that is reviewed would need to be taken under consideration. Allowing HDBR review would also provide the public with adequate notice and allow the public to provide input on the proposed applications.”

The director recommended that the following groups should also be included in discussions about text amendment wording: HDBR members, the Historic Savannah Foundation, and the Downtown Neighborhood Association.

For links to documents concerning zoning proposals in Savannah, visit agenda.savannahga.gov/publishing/december-7-2023-city-council-regular-meeting/agenda.html. And for background on the Oglethorpe Plan, which was originally developed in the 18th century, visit georgiahistory.com/resource/james-edward-oglethorpe/oglethorpe-and-savannahs-city-plan.

Source: agenda.savannahga.gov

Massachusetts

Efforts to ‘decarbonize affordable housing’ materialize through grant awards

Gov. Maura Healey’s administration has delivered the first round of funding under a $50 million program to address energy costs and air quality and comfort. Through
the state’s Affordable Housing Deep Energy Retrofit Grant Program, $27.35 million is going to seven organizations to support affordable housing projects.

“The grants will be used to fund deep energy retrofits and energy efficiency upgrades, building system electrification, and onsite renewable energy generation in 10 affordable housing developments in communities across Massachusetts,” a press release stated.

“This program builds on our successful energy efficiency and decarbonization programs to preserve long-term housing affordability and equitably support the electrification of our existing building stock,” said Massachusetts Department of Energy Resources Commissioner Elizabeth Mahony. “The selected projects will help spur the growth of the deep energy retrofit sector in Massachusetts and provide a model and best practices other developers can use for their own decarbonization projects.”

According to the state’s website “decarbonization is the elimination of greenhouse gas emissions from the operation of buildings and vehicles.” “This primarily occurs through the transition away from fossil fuel combustion (such as that of natural gas, oil, propane, gasoline, and diesel) to the use of low- or zero-carbon fuels or electricity that is sourced from renewable resources. This transition, alongside energy efficiency efforts and the greening of the grid, is expected to result in negligible or zero greenhouse gas emissions,” it added.

For resources on decarbonization-related studies in Massachusetts, visit mass.gov/info-details/decarbonization-of-massachusetts-state-facilities.

The issue of decarbonization is a reminder that at the local level, cities and towns may adopt climate resilience zoning ordinances. For example, in 2023, the Cambridge City Council adopted zoning requirements “to address the long-term impacts of increased flooding and heat from climate change,” which are based on the city’s climate projections for the next 50 years.

Under the ordinance, this Massachusetts-based city will require development of 25,000 square feet or more in floor area and new homes and enlargements of existing structures that increase the footprint by at least 50% to meet green building requirements, the creation of “occupiable or habitable space in basements that is exempt from Gross Floor Area (GFA) requirements (Flood Resilience only),” and increases in surface parking on a site.

Links to relevant Cambridge-related zoning documents, visit cambridgema.gov/CD/development/sustainable_development/climate_resilience/zoning.

Source: mass.gov

Martha’s Vineyard town to decide if it will limit number of social gatherings residents can host monthly

The town of Edgartown on the Massachusetts island of Martha’s Vineyard is considering a zoning bylaw that would limit the number of large parties that can be held in residential neighborhoods.

According to the draft bylaw, which is available at edgartown-ma.us/home/showpublisheddocument/22380, its purpose and intent is “to promote and protect the health, safety, welfare, and peaceful enjoyment and quality of life of the residents of the [town], by regulating the frequency and scale of large social events held at private residences that may disrupt the tranquility and well-being of abutters and the neighborhood.” Its definitions discuss the terms “[p]rivate [r]esidence,” “[s]ocial [e]vent,” and “[g]uest.”

The draft bylaw also states “[a]ny private residence within the [t]own shall host more than two (2) social events per calendar week or five (5) per calendar month, where the number of guests in attendance exceeds fifty (50) people at each event” with exceptions granted for public events or due to community interest by special permit.

As of print time, a public hearing was scheduled for January 8, 2024.

Source: edgartown-ma.us

New York

Consent decree entered in case seeking to compel village to halt discrimination against Orthodox Jewish residents

The U.S. Attorney’s Office for the Southern District of New York recently issued a press release announcing that it had obtained a consent decree that resolved a lawsuit alleging religious discrimination against the Village of Airmont, New York. The village’s zoning restrictions allegedly violated the rights of Orthodox Jewish residents under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Under the consent decree, the village must “significantly reform[] zoning code provisions enacted in 2018, which the United States alleged were enacted to discriminate against Orthodox Jewish residents.” It also requires the village to:

- increase the amount of space in private homes that can be used as Residential Places of Worship (RPWs);
- remove restrictions on who a resident may invite into their home to pray;
- streamline its application process to avoid having an “arbitrary, drawn-out application process designed to delay and effectively deny permits for even minor alterations to private houses.”

This isn’t the first time the village has been embroiled in controversy with the federal government. Its issues began in 1991 when it was accused of being “for the purpose of excluding Orthodox Jews from its boundaries by, among other things, adopting zoning policies that would preclude Orthodox Jews from using their homes for prayer services.”

In 1996, following a jury verdict in the government’s favor in the case against Airmont, a judgment was entered barring it from engaging in discrimination and requiring it to create a new zoning classification for RPWs.

However, in 2005, the government filed suit against
Airmont again when it “denied an application to build a yeshiva on the ground that its zoning code prohibited residential student housing, even while allowing other building projects with similar group residential components, such as sleep-away camps, hotels, and nursing homes.” That lawsuit also ended in a consent decree in 2011 requiring the village to amend its zoning code to permit educational institutions with accessory housing.

And in 2021, it consented to entry of a preliminary injunction barring enforcement of certain zoning code provisions. This latest decree “makes this prohibition permanent in the context of a multiyear agreement that makes extensive changes to [its] zoning code.”

“When religious intolerance poses a threat to the unity of this nation of many faiths and traditions, it is vital to stand up for the First Amendment right to freedom of worship,” U.S. Attorney Damian Williams.

The bottom line: The latest consent decree bars the village from “imposing any or implement any land use restriction in a manner that imposes a substantial burden on the religious exercise of any person, including a religious assembly or institution, unless the [village] can demonstrate that the imposition of that burden furthers a compelling government interest and is the least restrictive means of furthering that compelling government interest.”

In addition, Airmont must:

- not “impose nor implement any land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution; nor shall impose nor implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination”;

- “restore RPWs as a recognized land use category permitted as of right in all residential districts and may not enforce contrary provisions of local law enacted in 2018 that removed RPws as a recognized of-right use from its zoning code”;

- reinstate “in full zoning provisions protecting the right to residential worship imposed by the 1996 court-entered final judgment, including those provisions [the village] removed from its code in 2018”;

- “ensure that all applications for RPWs that are 49% or less of the total floor area of the residence are reviewed and approved on an expedited basis without public hearing”; and

- “not adjudicate applications for RPWs that are 49% or less of the total floor area of the residence under the terms of the burdensome site development regulations enacted in 2018.”

Source: justice.gov

**Rhode Island**

A closer look at comprehensive plan’s flexible zoning provisions

In a recent *Zoning Law Bulletin*, we reported on a case involving the Town of Scituate, Rhode Island’s comprehensive plan, which includes parameters for “flexible zoning.” To check out what the plan outlines in terms of flexible zoning, visit planning.ri.gov/sites/g/files/xkgbur826/files/documents/comp/2020/Scituate-comp-plan.pdf (Section D-3 1.3, which addresses residential land use).

**Washington, D.C.**

Georgetown scholar releases ‘snob zoning’ book

Education and housing policy consultant Richard Kahlenberg, a non resident scholar at Georgetown University’s McCourt School of Public Policy, recently published a book entitled *Excluded: How Snob Zoning, NIMBYism, and Class Bias Build the Walls We Don’t See*. The book explores how economic segregation and restrictive zoning has contributed to a growing housing crisis.

To read more about the book, visit hachettebookgroup.com/titles/richard-d-kahlenberg/excluded/9781541701465/7lens=publicaffairs.

Source: hachettebookgroup.com
Side-yard Variances

Denial of side-yard variance leads to lawsuit against local ZBA

Citation: Shazo v. Zoning Board of Adjustment of Borough of Tenafly, 2023 WL 8427012 (N.J. Super. Ct. App. Div. 2023)

Golan Shazo owned property in the Borough of Tenafly, New Jersey. He applied for a side-yard variance to decrease the minimum side-yard setback of 10 feet to five feet on the right side of his property so he could build a new two-family home to replace an existing single-family home.

Tenafly’s Zoning Board of Adjustment (ZBA) held a public hearing on Shazo’s application. Shazo’s only witness was an architect, who was not a licensed planner. The architect testified that any redevelopment of the property would require a side yard variance, noting “[a] 15-foot-wide structure, be it a one-family or two-family, would be very difficult to operate as a residence,” and “the residences [we]re . . . [the] minimal width that they c[ould] be.”

The ZBA denied Shazo’s request for the variance. It found the proposed two-family house would “loom over the adjacent dwelling” with “very little light and air between the properties,” and would “adversely impact the light and air of the neighboring property owners.” Further, its resolution found that Shazo’s proposed parking for six cars was “excessive” and “detriment[al]” to the zon[ing] plan and the streetscape. It also found the proposed garage was “too tight for . . . cars to pull in and out.”

Shazo challenged the denial of the variance. A judge sent the case back to the ZBA after finding its denial wasn’t supported by expert testimony. The judge noted the ZBA’s resolution hadn’t identified the basis on which its denial had been made.

The ZBA appealed, arguing the judge had erred in failing to defer to its findings of fact in the resolution denying Shazo’s variance. It also contended that the judge had improperly shifted the burden of proof to it in reviewing Shazo’s lawsuit. And it asserted that the judge had erred in requiring it to present expert testimony supporting the denial of Shazo’s variance.

DECISION: Reversed; case sent back for further proceedings.

The judge didn’t address whether the ZBA had acted in an arbitrary, capricious, or unreasonable manner in reaching its decision.

In a “prerogative writs action, the judge was tasked with determining whether the [ZBA’s] decision was ‘arbitrary, capricious or unreasonable.’ “ In a zoning dispute, the role of the judge was to determine if the ZBA’s decision was based on adequate evidence. Further, the record made before the ZBA was “the record upon which the correctness of [its] action must be determined.”

Mat #43115476
The bottom line: The judge had to "review the record before the [ZBA] . . . to determine whether [its] decision was adequately supported by the evidence." And because "deference accorded to [ZBA's] denial of a variance [was] greater than that given to its decision to grant a variance," the judge was required to determine whether "the evidence before the local board was 'overwhelmingly in favor of [Shazo].'"

A "single sentence in the judge's order," which sent the case back to the ZBA for the parties to supplement the record, didn't satisfy applicable rule requirements. Based on the evidence presented to the ZBA, the judge had to determine whether Shazo had presented affirmative evidence satisfying the positive and negative criteria for a variance under state law.

The judge didn't do that or address whether the ZBA's denial of the variance was arbitrary, capricious, or unreasonable. "We note 'the absence of evidence in support of a denial does not in itself mean that the [ZBA's] determination [was] arbitrary. Since the burden rest[ed] with the applicant to establish the criteria for the grant of the variance, [the applicant] must demonstrate that the affirmative evidence in the record dictates the conclusion that the denial was arbitrary.'"

Use and Density Variances

ZBA appeals finding its decision to deny use and density variance application was arbitrary, capricious, and unreasonable


The Township of East Brunswick (New Jersey) Zoning Board of Appeals (ZBA) appealed an order reversing its denial of Ferris Farms of East Brunswick LLC's (Ferris Farms) use and density variance application.

DECISION: Affirmed in part; reversed in part; case sent back to ZBA for new determination.

WHAT HAPPENED

Ferris Farms owned five acres at 690 Cranbury Road in East Brunswick. While the property was situated within the township's R-1 Single Family Rural Residential Zone (R-1 Zone), which permitted single-family detached homes on one-acre lots, Ferris Farms operated a commercial garden center consisting of buildings, greenhouses, and parking spaces (a nonconforming use).

Ferris Farms submitted an application to the ZBA to develop 50 townhouses—40 market-rate units and 10 affordable units at a density rate of 10 units per acre. The application sought bifurcated use and density variances. If granted, Ferris Farms would seek preliminary and final site plan approval for the development.

The ZBA held hearings, with Ferris Farms' proposed plan undergoing two iterations:

- a first amended application reduced the proposal to 36 townhouse units; and
- a second amended application reduced the site plan to 30 townhouse units and a density of six units per acre.

The proposed development consisted of five buildings, two buildings with six units, one building with eight units, one building with seven units, and one building with three units—with all of the units including three bedrooms.

The second amended plan depicted each townhouse driveway as 20 feet wide with a paver brick line down the center of driveways between neighbors. A stop sign, stop bar, curb ramps, and a crosswalk would be added at Cranbury Road. This plan also kept existing trees along the south border to be contained within a proposed conser-
vation easement, and trash can locations had been depicted along the street for weekly pickup.

Expert witnesses—including an architect, civil engineer, planner, traffic consultant, environment consultant, professional planner, and a real estate sales and marketing consultant—testified for Ferris Farms that the site could accommodate the proposed townhouse development.

The ZBA didn’t present any no independent testimony from its professionals to refute or raise issues with those experts. During the hearings, the public posed questions concerning the stormwater management and buffering, which the civil engineer addressed. Also at those hearing, the ZBA focused on several issues, including:

- snow removal;
- electric vehicle charging stations;
- the homeowners’ association;
- the sidewalk;
- the turning direction of residents leaving their driveways; and
- inadequate visitor parking for holiday and “potential overflow.”

The ZBA found the residential site improvement standards were likely “adequate,” but it noted the police department had found the proposed 135 physical parking spaces to be inadequate. Additionally, it declined to permit parallel parking on the proposed 30-foot roadway for guest parking.

While the hearing process was ongoing, Ferris Farms met with its lone objector, a neighboring homeowner. They reached an agreement to have a “24-foot-wide access and utility easement” dedicated to the homeowner, with a “single water” and “single sewer lateral” for one unit.

Ferris Farms also agreed to preserve the woodline along the shared property line in a conservation easement and to provide additional landscaping to screen the parking spaces and detention basin.

At the final hearing, the objector’s attorney advised the ZBA that the homeowner was satisfied with Ferris Farms’ second amended application.

But in July 2020, the ZBA denied Ferris Farms’ application by a vote of 6-1. The majority found the proposed project wasn’t appropriate or suitable for the proposed site. It noted that testimony showed the application hadn’t satisfied “the positive and negative requirements for the [use] [variance]” under state law and couldn’t be granted without substantial impairing the intent and purpose of the township’s master plan and zoning ordinances.

Ferris Farms filed a complaint in lieu of prerogative writs, challenging the ZBA’s action as arbitrary, capricious, and unreasonable. It sought to reverse its denial and requested approval of its second amended application.

Following a trial, the court found the denial of Ferris Farms’ application to be without foundation, making it “arbitrary, capricious . . . and unreasonable.” As a result, the court reversed and vacated the ZBA’s denial of the second amended application and directed the ZBA to adopt a resolution approving the application, granting the use and density variances, and giving Ferris Farms time to submit a follow-up development application for preliminary and final site plan approval for the proposed development.

The ZBA appealed, claiming the lower court erred in finding its decision had been arbitrary, capricious, and unreasonable.

**WHY PART OF THE RULING WAS AFFIRMED**

Generally, a court would give deference to a ZBA’s actions and factual findings unless its decision was found to be “arbitrary, capricious, and unreasonable,” meaning a “clear abuse of discretion.”

**Did the lower court err in finding that Ferris Farms had presented sufficient proofs at the hearing to satisfy the criteria to be granted a use variance?** No, the appeals court ruled.

The applicable municipal law use law (MLUL) governed “land use and development planning generally and specifically authorize[d] zoning boards to grant variances under circumstances defined in the statute.” The law also required “a finding of ‘special reasons’ or positive criteria, ‘a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance’ or negative criteria.”

To satisfy “special reasons” or positive criteria, Ferris Farms had to show that “the use ‘inherently serve[d] the public good’ . . . [and] ‘the use promote[d] the general welfare because the proposed site [wa]s particularly suitable for the proposed use’ . . . [or] [it] would experience ‘undue hardship,’ because ‘the property [coul]dn’t reasonably be developed with a conforming use.’”

The court explained that when an applicant sought “a d(5) variance from density restrictions with a d(1) use variance, [they didn’t have to] demonstrate that the property [wa]s ‘particularly suitable to more intense development’ to satisfy the ‘special reasons’ requirement under the MLUL. Rather, they only had to show that the particular site would ‘accommodate the problems associated with the proposed use with [a greater density] than permitted by the ordinance.’”

Here, the lower court found the ZBA wasn’t able to “refut[ing] the fact that the proposed residential use [wa]s permitted in the R-1 Zone (albeit for single-family, not the townhome type) and that, if the use variance were granted, it would eliminate the pre-existing, nonconforming use to which the [p]roperty was being utilized as a retail garden center.” The court also found eliminating the garden center could qualify as a “special reason” that satisfied the “positive criteria” under the MLUL to qualify it for a (d)(1) use variance.

The bottom line on this issue: The lower court had found “the d(1) and d(5) were ‘inextricably intertwined,’” so Ferris Farms had met the positive criteria by “demonstrating with overwhelming evidence’ and the exhaustive
and ‘uncontroversial’ testimony from the planning expert that the site was ‘particularly suited for a townhouse development’ and ‘furthered the purposes of zoning.’"

As for the negative criteria, the lower court found that Ferris Farms had proven that the ZBA could approve the use and density sought and that such an approval wouldn’t present a ‘substantial detriment to the public good.’ The court pointed out that properties along the subject road were used for both residential and commercial uses—this was known as the ‘Cranbury Road corridor.’

The lower court also found that the record had been “devoid of substantial credible evidence to support the [ZBA’s] findings and conclusions concerning a substantial impairment to the public good.”

In the end, the appeals court wasn’t persuaded that Ferris Farms hadn’t met its burden of satisfying the positive and negative criteria. It agreed with the lower court that the proposed residential use was permitted with the R-1 Zone and that the proposed development was consistent with a specified goal in the township’s master plan reexamination “to establish ‘appropriate development standards for lots which adjoin high density residential and commercial areas.’” Thus, the lower court didn’t err in finding that the ZBA hadn’t followed the statutory guidelines and hadn’t properly exercised its discretion.

Did the lower court err in finding the ZBA’s denial was arbitrary, unreasonable, and capricious? No, the court also ruled. The lower court concluded the ZBA’s findings clearly conflicted with “uncontroversial testimony” that Ferris Farms’ expert witnesses had provided. And the ZBA’s resolution denying Ferris Farms’ application “lacked substantial, credible evidence in the record to support” [its] action.”

Here, the ZBA’s resolution was deficient because it had “identified the applicant, described the proposed development, provided a cursory summary of the expert witness testimony, and reiterated select comments by board members as a basis for the denial of the application,” so it didn’t meet requirements set forth under the state law that governed municipal hearings (N.J.S.A. 40:55D-10(g)).

WHY PART OF THE RULING WAS REVERSED

The lower court had “mistakenly exercised its discretion in directing the [ZBA] to adopt a resolution approving [Ferris Farms’] application, granting the use and density variances, and granting [it] leave to submit a follow-up development application for preliminary and final site plan approval for the proposed development,” Instead, the appeals court found the ZBA should have the opportunity to reconsider the application based on the existing record.

**Case Snapshot:**

This case concerned the positive and negative criteria Ferris Farms had to satisfy to obtain use and density variance permits.

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Special Permits

Party seeks court review of order granting developer permission to construct restaurant at site of former gas station

Citation: Post Benson Corporation v. Plan and Zoning Commission, 2023 WL 8888642 (Conn. Super. Ct. 2023)

A controversy arose concerning property at the intersection of Boston Post Road and South Benson Road in Fairfield, Connecticut. The specific parcel, known as 801 Post Road, consisted of approximately 0.23 acres and was located in a Designated Commercial District (DCD) Zone. A 1,190 square foot building with two service bays, which had previously been used as a gas station, was located on the property.

Beacon Hill Realty Holdings LLC (BHRH) filed an application for a special permit to remodel the gas station into a sit-down restaurant. It also proposed to have outdoor dining on the property.

The lot was non-conforming, and the Fairfield Zoning Board of Appeals (ZBA) granted variances concerning parking and setback encroachments.

BHRH then filed an application for a special permit that was consistent with the variances the ZBA had granted. The parking variance reduced the required number of spaces from 14 to 10, with one being designated for handicapped parking consistent with the Americans with Disabilities Act (ADA) mandates.

The special permit requested approval of a 390 square-foot kitchen addition with another addition to accommodate a covered porch, which would be used for seasonal dining, and an outdoor patio area.

On October 12, 2021, the ZBA approved the special permit request with conditions. For instance, it didn’t approve the reduction of a 10-foot required setback for parking spaces from the Post Road street line. It limited the seasons during which outdoor dining could take place (only between April 1 and October 30) provided no outdoor music was played. And it required a bond to secure site improvements.

The ZBA’s decision was published in the local newspaper, and an appeal followed. The parties to the appeal were Post-Benson Corp. (PBC), which owned property located within 100 feet of 801 Post Road, Fairfield’s plan and zoning commission (PZC), and BHRH.

PBC asserted that the ZBA’s approval was conditioned on the submission of a revised site plan and that the applicable regulation required site plan approval.

In addition, the PBC claimed the technical requirements for parking spaces and traffic had not been satisfied and the proposal failed to comply with the requirements for a restaurant in the DCD zone. It also took issue with BHRH’s proposed takeout restaurant services.

Then, in 2022, BHRH filed revised plans along with a special permit application designed to address issues
raised in the 2021 appeal. The PZC treated this as a new special permit application.

**DECISION: PBC's appeal dismissed.**

The PZC didn’t err in it reaching its findings.

There was substantial evidence supporting the PZC’s decision to treat the special permit applications as requesting approval of a restaurant. The applicable zoning regulations provided that a restaurant was a permitted use in a DCD zone and that take-out uses incidental to the primary permitted use was acceptable. What was not acceptable would be an establishment where customers were served in motor vehicles.

While the regulations didn’t define “a use . . . incidental to the primary use as a restaurant,” the PZC “heard evidence concerning the take-out services during the public hearing process. It was also cognizant of the COVID reality that during the height of the pandemic, all restaurants experienced a spike in take-out customers.”

In the end, the PZC found the special permit concerned a “restaurant” within the meaning of the applicable code section governing permitted uses in the underlying DCD Zone. And it couldn’t “be said, as a matter of law, that the take-out component of the proposed restaurant was not ‘incidental to the primary permitted use.’”

The special permit application and site plan complied with parking and traffic requirements, the court found. PBC claimed “patron floor area” calculations BHRH used were not correct because they had excluded from the square footage the patron area near the take-out counter, the bar, and corridor and rest room area. PBC also claimed that the patent floor area should be measured from the outside surface of the exterior walls.

These claims fail to resonate,” the court wrote. BHRH’s calculations, which the town planner had verified, concluded that “the net floor area [was] 375 feet . . . [and the PZC’s] approval of the application, and its implicit acceptance of [BHRH’s] calculations, was supported by substantial evidence.”

Where the term “patron floor area” wasn’t defined in the town’s regulations, “the exclusion of areas where diners were seated, such as the kitchen and bar areas, was both reasonable and appropriate. Utilizing interior dimensions, thus excluding any exterior wall thickness, also met any test for reasonableness.”

The bottom line: PBC claimed the PZC hadn’t accounted for traffic congestion, which was an inevitable byproduct of its decision to grant the special use permit. But, while it could show its property was situated in a heavily traveled intersection, there was substantial evidence to support the PZC’s approval of the permit request.

“While sophisticated and complex issues may require expert testimony which may not be disregarded, lay commissioners may rely upon personal knowledge concerning matters readily within their competency, such as traffic congestion and street safety,” the court noted.

Practically speaking: The court refused to substitute its judgment in place of the PZC as to general health, safety and welfare standards, and PBC had “failed to demonstrate that any specific site plan or special permit criteria have been violated in revised plan, and its reliance on general standards is not availing.”

The hearing process wasn’t “fundamentally unfair,” the court also concluded. PBC claimed the 2022 application was heard on a single evening without a formal vote being taken to incorporate the 2021 proceedings into the 2022 public hearing record. It also contended that documents from the 2021 application should have been submitted in advance of the 2022 proceedings.

“These claims are not persuasive,” the court wrote. “Proceedings before municipal land use boards and commissions are informal and are conducted without regard to strict adherence to rules of evidence,” it added, noting there was “a strong presumption of regularity in the proceedings before a municipal zoning body.”

Here, “[b]oth applications submitted to the [PZC] involved the same property, 801 Post Road. The notice announcing the public hearing concerning the revised site plan made specific reference to the [PZC’s] October 12, 2021 action. Once the public hearing began, [BHRH] requested that the 2021 proceedings be incorporated into the record.”

The bottom line: The PZC was aware of its own 2021 approval and its basis for taking action. “The failure to provide a full copy of the 2021 proceedings prior to the 2022 public hearing did not impact the fundamental fairness of the hearing, or [its] deliberations.” Also, “[t]he fact that the 2022 public hearing was opened and closed on the same evening [w]as neither remarkable or surprising, given the extensive testimony and documentation in 2021, and [BHRH’s] decision to build upon the earlier record, and to address conditions imposed by the commission.”

**CASE NOTE**

BHRH had “attempted to address deficiencies in the 2021 application, which had been highlighted in the pending appeal,” the court explained. “It cannot reasonably be argued that information which was not before the [PZC] in 2021 and 2022, was necessary in order for these consolidated appeals to be decided on their merits.”

**A CLOSER LOOK**

In a DCD zone, a restaurant was a permitted use. Fairfield’s zoning regulations stated that when considering a special permit application, the board was to consider whether the development per the site and architectural plans was of character that would “harmonize with the neighborhood, to accomplish a transition in character between areas of unlike character, to protect property values in the neighborhood, to preserve and enhance the appearance and beauty of the community, and to avoid undue traffic congestion.”
Supplemental Jurisdiction

After city tells property owners they can’t add another mobile home to their park, they file federal and state claims

Citation: Newcomb v. City of Irvine, Kentucky, 2023 WL 8361731 (E.D. Ky. 2023)

Larry and Lauren Newcomb bought a mobile home park in Irvine, Kentucky in January 2022. They asserted that the park had been created in the 1950s and since then had included 12 lots for mobile homes, each with a water and electric hookup and meter.

The Newcombs, who bought the property when just six homes were inhabited, also claimed that over the years, mobile homes had been moved on and off the property without issue.

The Newcombs also asserted that the person who they bought the property from had maintained a permit with the Kentucky Cabinet for Health and Family Services and the Estill County Health Department, which also allowed 12 mobile homes within the park.

The Newcombs contended that when they arranged for a mobile home to be moved onto the property, Irvine contested the action, asserting that a city zoning ordinance barred them from moving additional mobile homes onto the vacant lots. In state court, they claimed that ordinance was inconsistent with Kentucky law and that by failing to empower a board of adjustments and a planning committee the city didn’t have the authority to restrict their use of the property.

The city had the case transferred to the U.S. District Court for the Eastern District of Kentucky. Then the parties came to an agreement concerning the Newcombs’ federal claims, and the Newcombs asked the court to send the case back to a Kentucky court to address their state-based claims against the city.

DECISION: Request to transfer case back to state court granted.

Since there weren’t any federal claims at issue, a Kentucky state court was the appropriate venue to hear the Newcombs’ claims against the city.

The federal court declined to exercise supplemental jurisdiction over the Newcombs’ state-based claims because “comity to state courts [was] a substantial interest that carried[d] a strong presumption in favor of state courts resolving matters of state law.”

Contract Rights

Developer to convert pharmacy into housing claims city council president liable for interfering with contract rights

Citation: 1201 West Girard Avenue, LLC v. Clarke, 2023 WL 8373165 (E.D. Pa. 2023)

Property developer 1201 West Girard Avenue LLC (1201 LLC) owned property at 1201 West Girard Avenue in Philadelphia, which had long been operated as a retail pharmacy.

1201 LLC obtained as-of-right permits authorizing the pharmacy’s demolition to make way for new multifamily housing at the property site. The plan was for new construction to consist of 166 dwellings that spanned 117,960 square feet.

The city council announced that anyone opposed to the development could challenge the permits until February 15, 2021.

Philadelphia City Council President Darrell Clarke sought to challenge the permits in a manner that 1201 LLC claimed was not allowed. For instance, 1201 LLC claimed Clarke had made off-the-record calls to the zoning board chair and board members to lodge concerns, file objections, and pursue policy arguments. As a result of Clarke’s conduct, 1201 LLC contended that it had to pay higher interest rates on its borrowing and lost opportunities.

1201 LLC claimed Clarke was liable for abuse of process and tortious interference with its contract rights. It also contended that Clarke was liable for abuse of process, wrongful use of civil proceedings, and tortious interference with its contract rights.

Clarke asked the court to dismiss the claims.

DECISION: Federal claims dismissed.

1201 LLC didn’t plead facts that would permit the court “to plausibly infer a basis for substantive due process, equal protection, or municipal liability claims,” so its federal claims were dismissed. The court sent the case back for the state-law claims to be addressed.

PRACTICALLY SPEAKING

1201 LLC didn’t plead any basis for inferring that Clarke had “acted for his own personal gain other than advocating for citizens and becoming more popular.” “Broadly alleging corruption and personal gain without a single fact does not suffice in a court of law,” the court noted.

Further, there was no basis for plausibly finding that Clarke had violated 1201 LLC’s substantive due process or equal protection rights, and it couldn’t sue him as a municipal entity.

Case Note:
The court declined to exercise supplemental jurisdiction over state law claims 1201 LLC asserted.
Zoning News Around The Nation

Illinois

Court permanently blocks Springfield from enforcing spacing ordinance

A federal court in Illinois recently issued a permanent injunction to block the City of Springfield, Illinois from enforcing a local spacing ordinance banning individuals with disabilities from living in homes with five or fewer residents within 600 feet of one another.

The order came after a jury awarded damages to the residents, their families, and Individual Advocacy Group (IAG), a state-licensed agency providing services to those residents, the Department of Justice (DOJ) explained in a press release.

“Discriminatory zoning laws that ban people with disabilities from living in the community violate the Fair Housing Act,” added Assistant Attorney General Kristen Clarke of the DOJ’s Civil Rights Division. “Restrictive zoning laws and policies that prevent people with disabilities from integrating into society at large have no place in our marketplace today. The court’s decision makes clear that there are real consequences to cities and other municipalities when they unlawfully and immorally exclude people with disabilities from residential neighborhoods,” she said.

The case arose after three residents with intellectual and physical disabilities moved into a single-family home in the city, with IAG providing community residential services to them through community integrated living arrangements (CILAs), which permitted residents with disabilities to live in an integrated community setting rather than an institution.

“Even though the home was operating in compliance with state requirements, the city attempted to shut it down in 2016 by relying on a local spacing ordinance that prohibited two homes for individuals with disabilities from operating within 600 feet of one another,” the DOJ asserted in its lawsuit alleging Fair Housing Act violations.

The court ruled the city violated federal law by enforcing the spacing ordinance against the home. And a jury found the city was liable to the residents and IAG for close to $300,000 in damages.

In addition to the injunction, the court awarded the federal government close to $62,000 in civil penalties against the city for its FHA violations. The bottom line: The court made it clear that “the city’s attempts to close the home and its restrictive zoning ordinance impeded the integration of people with disabilities from institutions into the community, a right guaranteed by the Supreme Court’s 1999 decision in Olmstead v. L.C.” In that case, the Court found that the Americans with Disabilities Act required states to place those with mental disabilities in community settings not institutions when certain factors were met—including when a state’s treatment professionals deemed community placement appropriate.

Montana

MAID files suit challenging laws designed to increase state’s housing supply

Montanans Against Irresponsible Densification (MAID) recently challenged housing laws the state passed during its last legislative session on constitutional grounds, Montana Public Radio recently reported.

And now a district court judge has issued injunctions to block the legislation in question (Senate Bill 323, and Senate Bill 528) from taking effect in January 2024, News from the States reported. SB 323 would have required cities with 5,000 residents or more to permit duplexes on any house lot. SB 528 would have required the adoption of regulations allowing at least one accessory dwelling unit by right on a lot or parcel containing a single-family dwelling.


Sources: montanafreepress.org; newsfromthestates.com

Bozeman, Gallatin County adopt sensitive lands protection plan

In other news out of Montana, the city of Bozeman and Gallatin County have adopted a sensitive lands protection plan, which will give the community “a regional and coordinated view of what resources are at risk as development occurs, and what steps can be taken to conserve and protect what residents value most.”

“The plan provides meaningful information that will assist the county with implementing our Growth Policy,” said Gallatin County Commissioner Jennifer Boyer. “The menu of strategies that are available to address the impacts on sensitive lands are both at a macro level and a site-specific level in this plan, and they also encompass a variety of approaches from regulations to financial incentives. I think we have a really good mix of levers to use,” Boyer added.

The plan seeks to “resolve strategic choices necessary to connect the landscape, heritage, and future on common ground.” This includes:

- conserving sensitive lands;
- balancing property rights;
- maintaining agricultural lands and industry;
- securing climate resiliency;
- managing tourist population and access;
- guiding development pressures;
- maintaining affordable housing; and
- funding stewardship and restoration across the [area] long-term.

To learn more, visit gallainvalleyplan.bozeman.net.
DOJ reaches agreement with Chattanooga concerning single-family restrictions being placed on disability individuals

The Department of Justice (DOJ) recently secured an agreement to resolve a lawsuit alleging that the city of Chattanooga, Tennessee violated the Fair Housing Act (FHA) by not allowing four people with mental health-related disabilities to live together in a single-family home under the same terms and conditions as non-disabled residents.

Following an investigation into a complaint to the Department of Housing and Urban Development, the DOJ asserted that the city had “unnecessarily required Quality Lifestyle Service Inc. (Quality Lifestyle), a nonprofit housing provider, to apply for a special use permit to manage a four-person transitional home in the city’s R-1 residential zoning district.” “Under the city’s own zoning ordinance and state law, the home was an allowed use in that neighborhood,” the DOJ explained. Further, the DOJ claimed the city didn’t have any legitimate reason for denying the permit.

“Federal civil rights laws protect the rights of people with disabilities to live in the housing of their choice,” said Assistant Attorney General Kristen Clarke of the DOJ’s Civil Rights Division. “This agreement sends a clear message that the Justice Department will vigorously protect the rights of people with disabilities. All Americans, regardless of disability, have a right to fair housing in their communities.”

As a result of the agreement, the city will amend its zoning ordinance to ensure that those with disabilities aren’t unlawfully denied housing or excluded from participating in Chattanooga’s services or programs. In addition, it will pay $5,000 to train its officials and employees on fair housing obligations under the FHA.

To read the consent decree, visit consent_decree_chattanooga_entered_2023-12-08.pdf.

Source: justice.gov

Texas

Judge finds Austin’s ordinances giving green light for more housing in certain areas doesn’t pass legal muster

A judge in Travis County, Texas recently ruled that the City of Austin’s city council violated state law in its 2022 approval of three zoning ordinances. The ruling overturns those ordinances, which sought to permit more housing in areas that hadn’t previously been deemed suitable for housing. This means the city will need to focus on alternatives ways to reach the goals contemplated through the enactment of its:

- vertical mixed-use ordinance;
- residential in commercial development program; and
- compatibility ordinance.

More on those ordinances can be found at shorturl.at/stDQS, shorturl.at/enMNX, and shorturl.at/qBD89. You can also learn about the city’s Affordability Unlocked Development Bonus Program, which “waives or modifies some development restrictions in exchange for providing low and moderate-income housing” and remains in effect, at austintexas.gov/department/affordability-unlocked-development-bonus-program.

To read the judge’s order, visit s3.documentcloud.org/documents/24214227/43-acuna-v-city-of-austin-order.pdf.

The case cited is Acuña v. City of Austin, Travis County, Texas District Court, No. D-1-GN-19-0086 (2023).

Source: austinmonitor.com
Disability Discrimination

Town commissioners sued over denial of request to operate 16-bed residential substance abuse treatment facility

Citation: Affinity Recovery Center, LLC v. Town Commissioners of Sudlersville, 2024 WL 149835 (D. Md. 2024)

Affinity Recovery Center LLC (Affinity) alleged that the Sudlersville, Maryland Town Commissioners discriminated against it on the basis of disability in violation of the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA) by denying a special exception request and use and occupancy permit to allow for the operation of a 16-bed residential substance abuse treatment facility.

The town commissioners asked for the court to dismiss the complaint or alternatively grant them judgment without a trial.

DECISION: Case dismissed.

Affinity didn’t plausibly alleged ADA and FHA discrimination claims.

What happened

Affinity alleged that the town commissioners acted in a discriminatory and unlawful manner when denying the request for a special exception to the town’s use and occupancy zoning permit to allow for the operation of a 16-bed residential substance abuse treatment facility by:

- **employing discriminatory administrative methods;**
- **imposing discriminatory eligibility criteria and requirements,** in violation of the ADA; and
- **unlawfully discriminating against it in violation of the FHA.**

The town’s zoning code imposed limits on the number of residents of a group home and required group-home operators to seek a special exception to its use and occupancy permit to perform any exterior alterations to a property and to facilitate the operation of a group home within the town. More specifically, it stated that group homes and home day cares were permitted “in the MU and TR districts and [were] subject to the requirements of that district.”

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College Township Zoning
Relevant to this dispute was a specific provision in the zoning code that defined a group domiciliary home as one that was "licensed by the Maryland Department of Health and Mental Hygiene shared by persons who are unable to live alone because of age-related impairments or physical, mental or visual disabilities and who live[d] together as a single housekeeping unit in a long-term, household-like environment in which staff persons provide care, education, and participation in community activities for the residents with a primary goal of enabling the resident to live as independently as possible." Further, group domiciliary care homes didn’t include "pre-release, work-release, probationary, or other programs that serve[d] as an alternative to incarceration."

The zoning code also defined a continuing care retirement community as "[e]stablishments primarily engaged in providing a range of residential and personal care services with on-site nursing care facilities for . . . the elderly and other persons who are unable to fully care for themselves and/or . . . the elderly and other persons who d[id] not desire to live independently."

And, the zoning code defined a group home as "[a]ny residential structure used to provide assisted community living for not more than eight (8) persons with physical, mental, emotional, familial, or social difficulties. This d[id] not include houses organized for this purpose by public or private schools, or churches or other religious or public institutions caring for such persons within the group home building while parents or other custodial persons are attending services, activities or meetings."

MORE ON THE COURT’S RULING

Affinity didn’t allege facts to show that increasing the number of residents authorized to reside at its group home was necessary to afford its disabled residents with an equal housing opportunity under the FHA. Therefore, it couldn’t proceed with an FHA claim based upon a failure to provide a reasonable accommodation.

Also, the allegations in the complaint, if taken as true, "simply d[id] not show that the [town commissioners] discriminated against Affinity, and its residents, upon the basis of disability by declining to approve Affinity’s petition to operate a 16-bed group home."

A CLOSER LOOK

The ADA barred discrimination against disabled individuals in three major areas of public life: employment, public services, and public accommodation. "Relevant to this dispute, under Title II of the ADA, ‘no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity,’" the court explained.

It was Affinity’s burden to show that the disability was "a motivating cause" of the alleged discrimination as the ADA barred public entities from implementing certain zoning schemes or specific zoning actions and "burdensome procedural requirements, that treat disabled individuals differently than non-disabled individuals."

Under the FHA, it was unlawful to "‘make unavailable or deny, a dwelling to any buyer or renter because of a handicap,’ or to ‘discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of a handicap of that person.’"

Further, FHA discrimination included the "‘refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be needed to afford such person equal opportunity to use and enjoy a dwelling.’"

But the FHA’s requirement that a defendant "‘afford handicapped persons equal opportunity to use and enjoy housing’ d[id] ‘not require accommodations that increase a benefit to a handicapped person above that provided to a
non-handicapped person with respect to matters unrelated to the handicap."

"Affinity has not plausibly alleged ADA and FHA disability discrimination claims based upon the Zoning Code at issue in this case," the court found. "The plain text of the Zoning Code . . . makes clear that this code does not single out persons seeking substance abuse treatment, or the facilities that provide such services, as Affinity suggests. Notably, the only reference to substance abuse treatment facilities is the Code . . . addresses halfway houses." The applicable provision stated that a halfway house was "a residence designed to assist persons, especially those leaving institutions, to reenter society and learn to adapt to independent living" that "aim[ed] to assist in community transition . . . and [could] provide vocational training, counseling, and other services."

The bottom line: Affinity's complaint "allege[d] that the [town commissioners] engaged in intentional discriminatory methods of administration in violation of the ADA, because they previously allowed . . . a 16-bed assisted living facility . . . to operate at the [p]roperty . . . but denied [its] petition to operate a 16-bed residential substance abuse treatment facility at the same location." But there weren't any factual allegations in the complaint "to show that the reason the . . . [denial of] Affinity's petition to operate a 16-bed substance abuse treatment facility was because of the disability status of its residents."

Also, "Affinity's disability discrimination allegations [were] further undercut by its own acknowledgement in the complaint that the [town commissioners] Defendants did, in fact, approve the operation of its group home for up to eight persons seeking residential substance abuse treatment."

The ZBA initially dismissed their appeal as untimely but then agreed to schedule a hearing on the matter. But prior to that hearing, Upper Delaware Hospitality Corp. (UDHC) filed an action to annul the ZBA's decision. It sought to annul the ZBA's determination to rehear the appeal and to have the issued certificate of occupancy to be in full force and effect.

The court then stayed the hearing of the ZBA appeal, and UDHC opposed that ruling. Ultimately, the court granted the request, which meant the ZBA's initial resolution to dismiss the Weidens' appeal to be in full force and effect. An appeal followed.

DECISION: Affirmed.

The court correctly annulled the resolution to rehear the Weidens' appeal of the issuance of the certificate of occupancy and declared the initial resolution dismissing the appeal to be in full force and effect.

"Because the vote to have a rehearing was not unanimous, [the town] did not comply with applicable provisions of the [local] Zoning Law."

"The record reflect[ed] that all members of the ZBA were present at the February 2022 meeting. After initially dismissing [the] appeal, one of the ZBA members moved to abandon that decision and, in essence, rehear the initial resolution," the appeals court explained. "The ZBA adopted a resolution passing that motion with four members voting in favor of it and one member voting against it. Because the vote to have a rehearing was not unanimous, [the town] did not comply with applicable provisions of the [local] Zoning Law," it added.

Special Use Permits

Town's compliance with zoning law requirement concerning rehearing called into question

Citation: Upper Delaware Hospitality Corp. v. Town of Tusten Zoning Board of Appeals, 2024 WL 117275 (N.Y. App. Div. 3d Dep't 2024)

In August 2020, the Town of Tusten, Delaware's planning board approved an application for a special use permit to convert part of certain real property into an eating and drinking establishment. James Crowley, the town's building inspector and code enforcement officer, issued a building permit in October 2020 allowing the property to be renovated in accordance with the special use permit.

Following the renovation, Crowley issued a certificate of occupancy to the individual who had bought the property after the building permit's issuance. Brendan Weiden and Kathleen Weiden (the Weidens), who leased the property across the street, appealed to the town's zoning board of appeals (ZBA). They challenged the issuance of the certificate of occupancy.

Certificate of Zoning Compliance

Town representative's issuance of certificate called into question

Citation: Sargent v. Town of Fairfield Zoning Board of Appeals, 2024 WL 94430 (Conn. Super. Ct. 2024)

The Town of Fairfield, Connecticut's planner, Joseph Bienkowski, acting as the zoning enforcement officer, granted a certificate of zoning compliance for Barbara Bertozzi-Castelli and Joseph Meller (the defendants) as trustees of a revocable trust to build a single-family residential dwelling with a maximum height of 34.5 feet at 1623 Beach Road in Fairfield. Gregory Sargent, whose property at 1609 Beach Road in Fairfield abutted the defendants' subject property, appealed a decision by the Town of Fairfield, Connecticut Zoning Board of Appeals (ZBA) denying the appeal of Bienkowski's decision.

DECISION: Appeal dismissed.
There was substantial evidence to support the ZBA’s decision.

MORE ON THE FACTS

In 2011, the ZBA granted the defendants a variance to construct a single-family dwelling on the subject property with a flat roof that would exceed by 1.33 feet the maximum height of 30 feet permitted in the zone. After two major storms delayed the defendants’ plans, they submitted to the zoning department modified plans, with a pitched roof rather than a flat roof and approximately 4.5 feet over the maximum height of 30 feet.

In 2020, Bienkowski granted a certificate of zoning compliance, and Sargent appealed that decision to the ZBA. Following a public hearing, the ZBA denied the appeal, so Sargent appealed to court. Sargent argued the ZBA’s decision was illegal, arbitrary and an abuse of discretion because the approved height of the new dwelling violated the Zoning Regulations of the Town of Fairfield and the 2011 variance could only be applied to original—not modified—plans.

BACK TO THE COURT’S RULING

Height—Sargent contended that the calculation regarding building height should have begun with a base flood elevation (BFE) height of 15 feet. But the ZBA explained the difference between his 15-foot starting point and the defendants’ starting point of 16.1 feet. Around the same time as Sargent’s administrative appeal in 2020, the Town Plan and Zoning Commission was considering amendments to the regulations, including a regulation to require dwellings in the coastal high hazard zones to have a starting elevation of BFE plus an additional 1.1 feet, referred to as ‘design flood elevation’ (DFE). This regulation was not approved, however, until July 28, 2021—after the board denied [his] appeal.

Sargent argued that even though the regulation hadn’t yet been approved that didn’t mean it didn’t apply and that 1.1 feet should not have been added to the BFE of 15 feet.

The ZBA had disagreed as did the court. As of 2018, the state building code requiring the starting height in a “VE zone” subject to coastal flooding to be BFE plus one foot. “Further, the Town of Fairfield had enacted as ordinance that adopts the State Building Code as the town building code. . . . Zoning enforcement officers, like Bienkowski in the present case, are ultimately obligated to ensure a plan’s compliance with the State Building Code and the regulations,” the court noted.

Practically speaking: The court ruled that the starting elevation in 2020 was the BFE of 15 feet plus one foot for a total of 16 feet “and the corrected equation to ascertain the allowed height of defendants’ dwellings should be 16 - 9.7 = 6.3 ÷ 2 = 3.15 + 30 = 33.15 + 1.33 = 34.48.”

Additional height of 2011 variance—Sargent also asserted that the calculation of the height of the defendants’ new dwelling should not include the 1.33 feet granted in the 2011 variance because it was “circumstantially” conditioned upon a flat roof design. He contended that the design change resulted in a total square footage of 128 square feet, which exceeded the height limit in the 2011 plans and 456 square feet exceeding that in the 2020 plans. But he didn’t meet his burden of showing that the ZBA had erred in the 1.33 feet of the 2011 variance to the starting height of the defendants’ new dwelling.

A CLOSER LOOK AT THE EVIDENCE

Ultimately the court found there was substantial evidence to support the ZBA’s finding. For instance, there was evidence that “the height relative to what the variance was granted had not changed. What . . . changed in the intervening nine years [was] the flood map,” which required a higher starting elevation for the first floor, “which raised the house in absolute terms by a couple of feet.” “But in terms of the calculation of the midpoint of the height, the difference between what the permitted height [was] and what the variance was granted had not changed. So the magnitude of the height variance that the [ZBA] had granted, which was the variance that was approved in—however many years ago . . . remained the same.”

Nonconforming Use

Owner who wanted clearance for use of property as two-family dwelling seeks court review of ZBA’s denial of request

Citation: Gasparini v. Zoning Board of Appeals of Town of Newburgh, 222 A.D.3d 644, 201 N.Y.S.3d 192 (2d Dep’t 2023)

The Zoning Board of Appeals of the Town of Newburgh, New York (ZBA) denied a property owner’s application for use of a property as a two-family dwelling constituting a legal and preexisting nonconforming use. The ZBA also denied a use variance application.

The owner then filed an “Article 78” proceeding to annul the ZBA’s determination. The court denied the request and dismissed the proceeding, so the owner appealed.

DECISION: Affirmed.

There was a rational basis for the ZBA’s determination that the use of the property as a two-family dwelling didn’t constitute a legal preexisting use; its decision wasn’t arbitrary and capricious; the owner didn’t establish an unnecessary hardship warranting use variance.

A CLOSER LOOK

The owner’s property, built in 1900, had been improved upon by a two-floor residential dwelling. It was located in an area previously zoned for one- and two-family dwellings. In 1991, the area was rezoned for one-family dwellings.

The owner, who had bought the property in 2017 and renovated it, began renting out each floor as a separate apartment.
In 2019, the owner applied to the ZBA concerning his request for legal preexisting nonconforming use. When the ZBA denied the application following a hearing, he sought a use variance, which was also denied.

**COURT’S REVIEW**

The court’s review of the ZBA’s decision—as an administrative agency—was “limited to whether the action . . . by the agency was illegal, arbitrary and capricious, or an abuse of discretion.” Generally, the zoning board’s determination concerning the continuation of a preexisting nonconforming use had to be sustained “if it was rational and supported by substantial evidence, even if the reviewing court would have reached a different result.”

Further, “[a] use of property that existed before the enactment of a zoning restriction that prohibit[ed] the use [was] a legal nonconforming use.”

Here, the record showed that the ZBA had a rational reason for its finding and that conclusion wasn’t arbitrary and capricious.

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The court’s review of the ZBA’s decision—as an administrative agency—was “limited to whether the action . . . by the agency was illegal, arbitrary and capricious, or an abuse of discretion.”

“The evidence presented . . . failed to establish that the use of the property as a two-family dwelling existed in 1991 when the zoning regulation prohibiting two-family dwellings was enacted,” the court explained. Thus, the reviewing court “properly denied that branch of the petition which was to annul so much of the determination as denied that branch of the application which was for a determination that the use of the property as a two-family dwelling constituted a legal preexisting nonconforming use.”

To qualify for a use variance, the owner had to show that the use of the property as zoned created an undue hardship. Such a hardship existed when:

- the property couldn’t “yield a reasonable return if used only for permitted purposes as currently zoned”;
- the hardship resulted from the property’s unique characteristics;
- the proposed use wouldn’t alter the neighborhood’s character; and
- the alleged hardship wasn’t “self-created.”

Here, the owner didn’t meet this burden because:

- he had failed to show “dollars and cents”-based evidence that the property couldn’t yield a reasonable return as a one-family dwelling; and
- the ZBA had a rational basis for finding that he hadn’t shown that the “hardship resulted from the unique characteristics of the property,” that the proposed use would not alter the character of the neighborhood, or that the alleged hardship was not self-created.

Because the ZBA’s decision to deny the use variance wasn’t illegal, arbitrary, or an abuse of discretion, the court properly denied that branch of the request to annul that portion of the determination.

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**Practically Speaking:**

A local zoning board had “broad discretion” when considering variance applications with subsequent court review limited to “whether the action taken by the board was illegal, arbitrary[,] or an abuse of discretion.”

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**RLUIPA**

Denial of request to build substance abuse facility leads residential ministry to file suit

Citation: Vision Warriors Church, Inc. v. Cherokee County Board of Commissioners, 2024 WL 125969 (11th Cir. 2024)

The Eleventh U.S. Circuit has jurisdiction over Alabama, Florida, and Georgia.

Vision Warriors Church Inc. (VWC), a residential ministry, purchased property in Cherokee County, Georgia, to operate its faith-based substance abuse rehabilitation center for men. Vision Warriors’ intended use was not entirely novel. Prior owners of the property, the Happy Acres Mission Transit Center (“Happy Acres”), operated a dormitory on the premises and received assurances from the then-zoning administrator that Vision Warriors could do the same.

The Cherokee County Board of Commissioners and its members (the County) initially granted but then revoked authorization to house individuals on the property and denied Vision Warriors’ requests for zoning approval.

VWC challenged the county’s actions and its members under the Fair Housing Act (FHA), the Americans with Disabilities Act (ADA), Equal Protection Clause of the Fourteenth Amendment, and the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The county asked to dismiss the RLUIPA claim, and the lower court granted the request. On the county’s subsequent requests for judgment on the remaining claims, the court also granted its request. VWC appealed.

**DECISION: Affirmed in part; reversed in part.**

The RLUIPA claim was sent back to the lower court for further proceedings because it erred in its “substantial burden assessment.”

VWC claimed the lower court erroneously applied a
standard in evaluating its claim. In its view, the substantial burden on its religious exercise didn’t have to be total or complete to establish a viable claim under RLUIPA.

RLUIPA stated “No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling interest; and (B) is the least restrictive means of furthering that compelling governmental interest.”

The Eleventh U.S. Circuit Court of Appeals, which heard this case, explained that it previously had imposed a two-part test to determine if a plaintiff met their burden for pursuing a RLUIPA claim:

- were they engaged in “religious exercise,” and
- did the land use regulation at issue impose a “substantial burden” on that religious exercise.

The government had the burden of showing that its land use satisfied strict scrutiny. This meant it had to prove its regulation was “narrowly tailored to . . . further a compelling government interest.”

Here, neither party disputed that VWC alleged that it had engaged in religious exercise. “Religious exercise includes ‘any exercise of religion, whether or not compelled by, or central to, a system of religious belief,’ ” the court explained.

“And, [t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose,” it added.

The court found that VWC had sufficiently alleged its status as a “non-profit ministry that [sought] to provide a faith-based community for men recovering from addiction” through a “residential program, weekly services, and faith-based meetings.”

Thus, the core issue in dispute was whether VWC had shown “a substantial burden of its religious exercise under RLUIPA.” “A ‘substantial burden’ requires ‘more than an incidental effect on religious exercise,’ ” the court wrote.

Ultimately, VWC argued that the lower court had failed to consider that, as a residential ministry without its core program, it could not fulfill its mission. Thus, the county didn’t need to effectively bar its religious exercise on the property to constitute a substantial burden.

The county asserted that under established precedent, a “run of the mill” zoning decision didn’t amount to a substantial burden especially because VWC wasn’t totally barred from housing its members since up to eight unrelated members could be at the property at a given time. Further, it noted, VWC hadn’t alleged that overnight residence was a “religious precept” of its mission or purpose.

In response, VWC contended that a zoning decision could impose a substantial burden under factors outlined in another case—That Meditation Association of Alabama Inc. v. City of Mobile, Alabama—including:

- whether a plaintiff showed a genuine need for more space;
- the extent to which the zoning policy deprived them of viable means of religious exercise;
- whether there was a nexus between the coerced conduct and the plaintiff’s religious exercise;
- whether the decision-making process exhibited arbitrariness;
- whether the denial was final; and
- whether the burden was attributable to the government or self-imposed.

In the end, the court here found that the lower court erred in its substantial burden assessment. “First, in dismissing [the] RLUIPA claim, it determined that the challenged activity would not ‘remove[ ] any possibility’ that it could continue ministry operations. Finding that [VWC] could continue non-residential operations, such as weekly services and faith-based meetings, the . . . court determined that ‘the restriction on [its] use of the [p]roperty . . . [did] not effectively bar the use of the [p]roperty for religious exercise.’ But case law precedent didn’t require ‘a regulation to ‘effectively bar’ or ‘remove[ ] any possibility’ of religious exercise to qualify as a substantial burden.” The bottom line, according to the Eleventh Circuit: “Whatever ‘substantial’ mean[t], it most assuredly [did] not mean complete, total, or insuperable.” Therefore, VWC could allege a substantial burden “without shutting its doors.”

Also, the lower court erred “in applying a more demanding substantial burden standard from the Fourth Circuit,” which has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia. That circuit had ruled “that a burden on religious exercise [w]as substantial where ‘the use of the property would serve an unmet religious need, the restriction on religious use [w]as absolute rather than conditional, and the organization [h]ad to] acquire a different property as a result.’”

Practically speaking: The appeals court reiterated that in the Eleventh Circuit a “substantial burden inquiry [d[id] not require a plaintiff to establish an ‘unmet’ religious need in the community and its religious exercise need not
be completely hamstrung to meet the substantial burden threshold.”

The case cited is Thai Meditation Association of Alabama, Inc. v. City of Mobile, Alabama, 980 F.3d 821 (11th Cir. 2020).

Zoning News Around the Nation

California
Legislative land-use updates

SB 684, which “streamlined[s] approval processes . . . [on] development projects of 10 or fewer residential units on urban lots under 5 acres” has been enacted. For more, visit leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB684.

Also, SB 423, which streamlines housing approvals for multifamily housing developments is now on the books. To learn more, visit leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB423.

AB 1308 (legiscan.com/CA/text/AB1308/id/2766201), also enacted recently, “authorizes the legislative body of any county or city to adopt ordinances that regulate the use of buildings, structures, and land as between industry, business, residences, open space, and other purposes.”

Source: gov.ca.gov

Check out Mountain View’s North Bayshore master plan

In 2023, the City Council of Mountain View, California approved the North Bayshore Master Plan, which tech giant Google LLC and LendLease prepared to create a new mixed-use neighborhood in North Bayshore. The project includes demolition and improvements to build up to 7,000 residential units, more than 26 acres of public and open space, 55,000 square feet of community facilities, 3.14 million square feet of office space, and new public and private streets and on- and off-site bicycle and pedestrian improvements as well as a private district utility system.

“Approvals also include a 30-year Development Agreement and a Tentative Map to create 37 new parcels including 7,000 condominium lots, 360 commercial condominium lots, and 526 vertical lots,” the city’s website noted. “The Council also certified a Subsequent Environmental Impact Report and adopted a statement of overriding considerations,” it added. And “[t]he 153-acre Master Plan area . . . includes portions of the Gateway Master Plan area located at the northwest corner of Shoreline Boulevard and the US 101 freeway northbound on-ramp; six parcels between San Antonio Road and Marine Way; and the Shoreline Amphitheatre parcel north of Amphitheater Parkway. The Master Plan is located in the P-39 (North Bayshore) Precise Plan and the PF (Public Facilities) zoning district.”

To learn more about the city’s implementation plan, master plan conditions of approval, integrated final subsequent environmental impact report, and multimodal transportation analysis, visit mountainview.gov/our-city/departments/community-development/planning/active-projects/google-projects/north-bayshore-master-plan.

Massachusetts
Boston’s mayor promise

During Boston Mayor Michelle Wu’s State of the City address, delivered in January 2024, she stressed that her administration is “delivering” on promised changes to the Boston Planning and Development Agency (BPDA). She stated that the city has “restructured the BPDA to elevate planning and design, began modernizing development review, and launched the first comprehensive rezoning in decades” and noted that the city’s “Squares & Streets” planning was about to kick off soon.

This initiative focuses on:
- housing;
- public space;
- arts and culture; and
- neighborhood transit areas, while taking into account unique local characteristics.

“We are looking to enhance small areas that are near transit and already provide essential goods and services for local residents, businesses, and visitors,” the BPDA’s website notes.

In particular, “Squares + Streets will develop Small Area Plans in 6-9 month timeframes. These plans are being launched with intentional, transparent goals and will stick to a predictable timeline.” BPDA noted that the project complements and supports zoning reforms and the city’s design vision.

More information can be found at bostonplans.org/planning/planning-initiatives/squares-streets and bostonplans.org/urban-design/boston-design-vision.

Source: boston.gov

Michigan
Ann Arbor seeks input on comprehensive plan

Ann Arbor, Michigan’s comprehensive plan hub provides project information and solicits input from residents through a survey on housing affordability. The site explains that right now the city is rolling out “Understanding Ann Arbor today” communications. By the spring/summer of 2024, it intends to craft its vision and action steps for the future. And by this coming fall/winter it will develop the plan.

For more information, including links to access data, documents, and maps, visit a2compplan-a2-mi.hub.arcgis.com.

Source: a2compplan-a2-mi.hub.arcgis.com

New Hampshire
Claremont’s ZBA denies retroactive variance request, leading to tenants’ eviction

The owners of a Central Street apartment building with 12 units in Claremont, New Hampshire sought a retroactive variance, which would have allowed one more dwelling.
In January 2024, the town’s Zoning Board of Adjustment (ZBA) denied the variance application, finding it didn’t meet criteria necessary for granting it. The ZBA reviewed the following factors in reaching its decision:

- would granting the variance be in the public’s interest;
- would it be in the spirit of the ordinance;
- would it do “substantial justice”;
- does the proposed use maintain the value of surrounding properties; and
- would the denial of the variance “by literal enforcement of the ordinance result in unnecessary hardship to the owner.”

Ultimately, the ZBA concluded “Three of the five criteria were not met. Criterion 1 was that it would be contrary to public interest, Criterion 2 would be contrary to spirit of the ordinance and Criterion 5 there was no unnecessary hardship.”

To read the agenda and meeting minutes within which the ZBA’s findings of fact are outlined, visit claremontnh.com/corecode/uploads/document6/6/uploaded_pdfs/corecode/11%202%2024%20ZB%20PACKET_3739.pdf.

Source: claremontnh.com

New Jersey

Newark 360 resources abound

Newark, New Jersey’s Newark 360 seeks to better connect neighborhoods, support local business, implement a city-wide tree canopy initiative, bring a Newark Arts and Education District to fruition, upzone along key corridors, and permit accessory dwelling units.

And there are many resources detailing its plans. For more, visit newark360.org and newark360.org/newark360-final-plan.

Source: newark360.org

Texas

San Antonio’s zoning board gives initial approval to tiny home development project

San Antonio, Texas’ Zoning Commission recently provided initial approval of an application to construct a 79-unit tiny-home development, which would each consist of one- or two-story properties in the south side of the city. Specifically, the zoning commission authorized a rezoning request to provide the subject tracts of land, which had a residential zoning classification, with an “IDZ-1” designation, San Antonio Business Journal reported recently.

The majority of the units would be 800-square foot homes, with the remaining units being 600 square feet or 1,000 square feet. Additionally, there would be a park, dog park, and pavilion situated on the land tracts.

As of print time, the city council had not yet approved the plan.

Source: bizjournals.com

Plaintiffs’ attorney speaks out about judge’s order concerning Austin’s rezoning ordinances

As reported in the last issue, in a lawsuit against the City of Austin, plaintiffs alleged its mayor and city council members violated state law and court orders by not providing proper notification to residents concerning their protest rights concerning three ordinances focused on rezoning. Recently, their attorney released a statement in response to a Travis County District Court order finding that their claims had merit.

The plaintiffs’ attorney, Douglas Becker of Gray Becker, released a statement indicating that the city had lost three times in court with respect to this matter, which concerned homeowners’ legal rights and interests.

A press release noted the plaintiffs were awarded attorneys’ fees and costs, which were set to be assessed at a future hearing. Estimates put those costs at $150,000 or more. “These costs are a direct result of the City’s repeated refusal to abide by state law on zoning,” the press release stated.

Further, the attorneys are in the process of examining an “anti-single-family zoning ordinance,” which was passed in December 2023. They allege a city council member calling for the ordinance’s passage had repeatedly stated it wouldn’t change anyone’s property zoning, “which appears contrary to the court’s ruling. Nor did [they] and the [City] Council consider the 16,000 filed protests against her ordinance, as if protest rights and their constituents’ views were irrelevant,” his office said.

Links to the three Austin ordinances, which as a result of the ruling are invalid, are available at:

- vertical mixed use ordinance (no. 20220609-080) library.municode.com/tx/austin/ordinances/land_development_code?nodeId=1165547;
- residential in commercial ordinance (no. 2021201-055) services.austintexas.gov/edims/document.cfm?id=400482; and
- compatibility on corridors (no. 20211201-056) library.municode.com/tx/austin /ordinances/land_development_code?nodeId=1201336.


Source: theaustinbulldog.org