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: 869 0772 1878  ● Passcode: 970948

*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 May 7, 2024 Meeting Minutes (Approval)

PLANS:
- P-1 PSU-Soccer Operations Center Preliminary/Final Land Development Plan (Discussion/Recommendation)
- P-2 Mount Nittany Elementary School Preliminary/Final Land Development Plan (Discussion/Recommendation)

OLD BUSINESS: None

NEW BUSINESS: None

REPORTS:  R-1 Council Report

STAFF INFORMATIVES:  SI-1 Council Approved Minutes
- SI-2 Zoning Bulletins
- SI-3 Resignation of Ms. Khoury from the Planning Commission
OTHER MATTERS:

ANNOUNCEMENTS: Next regular meeting will be Tuesday, June 4, 2024 at 7:00pm

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

ZOOM MEETING PROTOCOL: Mr. Forziat verified there were no people present via Zoom.

ROLL CALL: Mr. Forziat verified members of the commission presence and absence.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:

CA-1 April 2, 2024 PC Meeting Minutes

Mr. Fenton moved to approve the April 2, 2024 meeting minutes as written/amended.

Mr. Hoffman seconded.

Motion carried unanimously.

PLANS:

P-1 Shiloh Commercial Park Preliminary Subdivision Plan

Ms. Schoch introduced the Preliminary Subdivision Plan and the Project Manager, Mr. Torretti from Penn Terra Engineering. Mr. Torretti gave a brief presentation highlighting the phasing of the plan, a cul-de-sac at the end of East Trout Road with a right-of-way to the abutting property, and stormwater management. He added that buffer yards required between zoning districts will be proposed with the individual lot land development plans. Ms. Schoch added that East Trout Road is on the Township Official Map.

Mr. Fenton asked what the process of attaining a signal at the Shiloh Road and Trout Road intersection. Mr. Torretti explained there is a scoping meeting and traffic analyses. Ultimately the decision is made by PennDOT and the Township. Ms. Khoury asked about the proposed street light on the plan. Mr. Torretti stated the Township ordinance requires an entrance light at the access to commercial facilities.
There was further discussion of stormwater management, emergency vehicle access, a potential timeline for development, and naming of the private access to lots one thru three.

Mr. Fenton moved to recommend Council approve the Shiloh Commercial Park Preliminary Subdivision Plan dated March 18, 2024 and last revised April 15, 2024 subject to the following conditions:

1. Within ninety (90) days from the date of approval by Council, all conditions must be satisfied and final signatures must be obtained. Failure to meet the ninety (90) day 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 from staff.
4. Provide an Intent to Serve letter from UAJA.
5. Provide an Intent to Serve letter from College Township Water Authority.
6. Provide proof of PennDOT HOP prior to occupancy.
7. Provide proof of NPDES approval.
8. Provide a draft DSAME for approval to be recorded with development of individual lots.
9. Provide a draft Shared Access and Maintenance Agreement for Lots 1, 2, and 3.
10. The proposed traffic signal at the intersection of Shiloh Road and Trout Road must be installed prior to certificates of occupancy being granted for any proposed land development on the proposed Shiloh Commercial Park Lots 1-7. Pedestrian crossings required by College Township and PennDOT at this intersection will be shown at the intersection of Shiloh Road and Trout Road on the Highway Occupancy Permit.
11. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

Mr. Hoffman seconded.

Motion carried unanimously.

OLD BUSINESS: None presented.

NEW BUSINESS:

NB-1  Dale Summit Area Form-Based Code Remand

Ms. Schoch introduced the topic and reviewed the path taken leading to this point. The Planning Commission and staff reviewed the remand from Council line-by-line. The following are questions the Planning Commission developed while reviewing the remand:

- How is a “town center” to be determined?
- How will civic buildings be controlled and monitored?
- How is the review process to be expedited?
- Explain who is responsible for “administrative approval”.
- Define “good urbanism”.

Mr. Forziat suggested clarity in the beginning of the process will help the Planning Commission to be efficient. He also asked that staff and the Council liaison share the Planning Commission’s appreciation of the structure of the remand which will help keep on task.

REPORTS:

R-1  Council Report

Mr. Fenton gave a brief report of the Council meetings and added that there were developers present to discuss the Workforce Housing Ordinance.
R-2  Centre Region Planning Commission Report
Mr. Forziat gave a summary of the CRPC meeting which included proposed ordinance amendments in Harris Township. He added CRPA has filled all vacant positions at this point.

STAFF INFORMATIVES:

SI-1  Council Approved Minutes
No further discussion.

SI-2  May EZP Update
No further discussion.

SI-3  Zoning Bulletins
No further discussion.

OTHER MATTERS: None presented.

ANNOUNCEMENTS:
Mr. Forziat announced the next regular meeting will be held on Tuesday, May 21, 2024 at 7:00 p.m.

ADJOURNMENT: Mr. Hoffman moved to adjourn. Ms. Ekdahl seconded. Motion carried.

Meeting adjourned at 8:36 p.m.

**Draft**

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning
TO: College Township  
1481 E College Avenue  
State College, PA 16801  

FROM: Michael Vaow  
Stahl Sheaffer Engineering  
800 Leonard Street  
Clearfield, PA 16830  

DATE: April 22, 2024  

RE: Soccer Operations Complex Narrative  

This project adds a permanent 2-story building near the southeast end of Jeffrey Field soccer field. The building will be used as a support facility for the soccer program at Penn State. Internal spaces to note include coaches’ offices, locker rooms, and bathroom facilities.  

Ancillary improvements to the project include additional parking and concrete sidewalk. Stormwater management facilities to manage the increased runoff from the increased impervious area will also be constructed as part of this project.  

Please contact me at (814) 857-6324 or by email at mvaw@stahlsheaffer.com should you have any questions or require additional information.  

Sincerely,  

[Signature]  

Michael R. Vaow  
Project Manager  
Stahl Sheaffer Engineering
TO: Sharon Meyers, Sr. Support Specialist – Engineering/Planning  
College Township  
1481 E College Avenue  
State College, PA 16801

FROM: Michael Vaow  
Stahl Sheaffer Engineering  
800 Leonard Street  
Clearfield, PA 16830

DATE: May 13, 2024

RE: Response to Comment Letter dated May 3, 2024  
PSU: Soccer Operations Center Preliminary/Final Land Development Plan

Ms. Meyers,

This memo is in response to the Township’s review of the Preliminary/Final Land Development Plan submission completed by Stahl Sheaffer Engineering (SSE). The comments and responses are listed below.

**Soccer Operations Center**

**COMMENT 1**: Cover Sheet: Stormwater Facilities Acknowledgement: Please provide written confirmation of concurrence with these plans form the Penn State Stormwater Engineer to ensure long-term maintenance and inspection.  
Written acceptance from Tracey Olexa, Campus Stormwater Engineer, is required. Letter format is acceptable. The digital signature applied on behalf of Andrew Gutberlet may ultimately pre-date a future revision date. The stormwater title block acknowledgement must be signed and dated to accept all revisions prior to recording. College Township notes that the NPDES for this project is not yet approved.

**SSE RESPONSE**: Penn State to provide letter.

**COMMENT 2**: Verify with Centre County Recorder of Deeds whether an electronic signature would be accepted.

**SSE RESPONSE**: An ink signature will be provided on the cover prior to recording.

**COMMENT 3**: Clarify the proposed building height.

**SSE RESPONSE**: The building height is 35’.

**COMMENT 4**: Sheet C102, two (2) existing utility trailers are identified that do not appear on the IPASS set as existing nor do they appear on recent aerial imagery. Verify these facilities have been properly permitted and received zoning approval.
SSE RESPONSE: These trailers are temporary.

COMMENT 5: Sheet C103: The plan infers but does not clearly state ADA Parking spaces, nor does the plan clearly identify ADA curbing in the vicinity of these spaces. Identify any ADA-compliant curbing.

SSE RESPONSE: Revised sheet shows ADA symbols, a curb ramp near IPASS and flush curb near SOC.

COMMENT 6: Sheet C103: as the parking lot drains southwesterly into ADA stalls, consider storm run-on impacts of flat curbing.

SSE RESPONSE: Parking along SOC is flush curb and slopes away from the building as noted in the spot elevations.

COMMENT 7: Sheet C104: Grading slopes are significant east to west across the lot, exceeding 6% in some locations.

SSE RESPONSE: Acknowledged. Due to site constraints and development needs, parking lot grades are steeper than ideal. These steep slopes have been designed in the drive aisles to keep parking spaces particularly ADA parking at gentler slopes.

COMMENT 8: Sheet C104: Identify the triangular features along the western edge of the parking area.

SSE RESPONSE: These have been eliminated in the revised plans.

COMMENT 9: Sheet C107: MH6 receives a 6” lateral at elevation 1147.19 (top of pipe approximately 1147.69). Storm Line is approximately 1146.40 + 15” diameter = 1147.64. Review all utility crossings to eliminate vertical conflicts.

SSE RESPONSE: All utility conflicts have been reviewed and revised as necessary.

COMMENT 10: Sheet C103: “Backstop Netting” may require posts driven deeply into an area congested with underground utilities. Consider specific post locations to ensure compliant construction.

SSE RESPONSE: The underground utilities under the netting has approximately 8’ of cover. The posts do not need 8’ of depth. These posts are placed approximately every 50’.

COMMENT 11: Sheet C112: Based on recent experience, College Township recommends all ADA stalls be installed with concrete and not asphalt to ensure compliant construction.

SSE RESPONSE: Revised plans show ADA spaces in concrete.

COMMENT 12: Sheet C112: ADA Parking signs are not shown on the plan; identify locations whereby pedestrian traffic will not be inhibited.

SSE RESPONSE: ADA Parking signs and bollards are shown on the revised plan.

COMMENT 13: Sheet C115: The manifold protects the stone #57 with a geotextile fabric; sheet LS100 proposes the planting of trees immediately above this fabric which will likely puncture the fabric and initiate a maintenance action. Consider relocation of landscaping away from the underground utility conflicts.

SSE RESPONSE: The trees proposed for planting above the fabric have been removed to illuminate the concern over maintenance actions due to tree roots puncturing the geotextile fabric.
COMMENT 14: Sheet LS-100: Seven (7) trees appear to be in direct conflict with subgrade utilities.

SSE RESPONSE: The design team has reviewed all utility conflicts and removed/relocated trees where appropriate.

COMMENT 15: An NPDES must be obtained prior to recording.

SSE RESPONSE: Acknowledged. Conservation District Review is ongoing.

COMMENT 16: A Zoning Permit is required prior to groundbreaking.

SSE RESPONSE: Acknowledged. Will be obtained after bid and prior to groundbreaking.

COMMENT 17: The schedule of coordination of IPASS and Soccer Complex projects, permits, and recording provided April 25, 2024.

SSE RESPONSE: Acknowledged.

COMMENT 18: Cover Sheet, 4.15 new impervious acres (for Jeffrey Field as a stand alone project) is inconsistent with the narrative page 5 of 4.13 new impervious acres for the IPASS and Jeffrey Field.

SSE RESPONSE: The number in the narrative is correct. The cover sheet has been revised.

COMMENT 19: 175-18.A(12) requires “B” soils to be used for a conservative existing condition. Narrative, page 4 and pre-development calculations utilize less-conservative C values for the existing condition. IPASS calculations previously provided and accepted by College Township utilized the B condition.

SSE RESPONSE: This comment was coordinated with Jere Northridge on May 8, 2024.

COMMENT 20: Weir Wall Detail, Sheet C116, has a 48” invert of 1145.40. Match narrative and Section A-A’ with 1145.30. If the 6” diameter outfall is to be in a sumped condition, adjust invert.

SSE RESPONSE: The Detail has been updated to be consistent with the narrative and throughout the submission.

COMMENT 21: PCSM Narrative, page 13, item 6: Incorporate the language of 175-37.8(15) and 175-38 that failure to make appropriate repairs may result in the municipality making repairs at the Property Owner expense.

SSE RESPONSE: Narrative has been revised to include the requested language.

COMMENT 22: PCSM Narrative, page 13, item 7: Expand this comment to note that College Township must also approve any changes to the approved Storm Water Management plan (175-37.8(9), second part).

SSE RESPONSE: Narrative has been revised to include the requested language.

COMMENT 23: No impervious area flash (175-18.A(28)) calculations were noted.

SSE RESPONSE: These are included in the revised submission.

COMMENT 24: Appendix H and PCSM Plans have a notation, “Stormwater Point of Analysis” that appears limited to the proposed facilities. Calculations expand the analysis area to 15+ acres. Exercise caution not to distort a watershed characteristic (175-18.A(2)(g)).
SSE RESPONSE: Since the area outside of the direct project site area is being considered disturbed for utility installation, it needed to be included in the analysis area for the NPDES Permit application. All surfaces in the additional area will be restored to original condition and won’t have and adverse impact to the downstream watershed.

COMMENT 25: Please complete the attached lighting checklist.

SSE RESPONSE: The completed lighting checklist is included in this submission.

COMMENT 26: 188-14.E(3)(a) All driveway entrances or other openings onto streets shall be designed so that [1] Vehicles entering and exiting the site pose no substantial danger to themselves, pedestrians, or other vehicles; and [2] Interference with the free flow of traffic on abutting or surrounding streets is minimized.

SSE RESPONSE: Acknowledged. The drive aisle layout has been designed to minimize potential danger to pedestrians and other vehicles.

COMMENT 27: Consider interior sidewalk connections. E.g. a sidewalk should connect Stadium West to University Drive through the site.

SSE RESPONSE: Interior sidewalk connections have been considered in this design and Penn State planners are accepting of the design related to pedestrian traffic into and around the site.

COMMENT 28: 188-17.C. Service access. Service access or a loading area shall be provided for all proposed buildings greater than 10,000 square feet in size, unless otherwise exempted by the Township. Design of service access should be well integrated within the overall building design.

SSE RESPONSE: The building will not receive deliveries during peak hours. The parking spaces and drive aisle adjacent to the building will be used for deliveries.

COMMENT 29: Dumpster screening. Dumpsters shall be completely screened from view from any public right-of-way or residential district by sight obscuring six-foot fence, wall, or evergreen planting that shall reach six feet in height within three years of planting. Landscape plant material installed to satisfy the requirements of this section shall be guaranteed to survive for a period of at least one year. Any landscape plant material which does not survive the guarantee period shall be replaced with a new one-year guarantee.

SSE RESPONSE: Dumpster enclosure will be 8’ high brick veneer walls with a capstone finish.

COMMENT 30: Lighting of parking areas. Lighting of parking areas shall be designed to minimize glare on non-university streets, neighborhoods and adjoining non-university properties. When lighting of parking areas is proposed as part if a land development plan, sufficient information such as type of fixtures, height of light standards, intensity of illumination, and area to be illuminated shall be provided to allow a determination of impact on adjoining non-university properties consistent with municipal lighting ordinances, as applicable.

SSE RESPONSE: Photometric plan has been included in the revised submission.

COMMENT 31: Add the full Plan Narrative to Notes Sheet C-100.

SSE RESPONSE: Sheet C-100 has been revised to include the narrative as requested.

COMMENT 32: LS-100 — Identify the darker black lines in the legend.

SSE RESPONSE: Black lines have been cleaned up to address this comment.
COMMENT 33: LS-100 – Please clarify the size of plants on the plant schedule. LS-102 planting notes state caliper is measured for deciduous trees and height for conifers. Please correct the plant schedule to have one type of measurement.

SSE RESPONSE: Planting schedule updated to require a caliper measurement for both deciduous and conifer trees.

COMMENT 34: LS-100 – Please ensure the number of trees and plants on the plan are accurately reflected on the plant schedule.

SSE RESPONSE: The Plant Schedule has been update to reflect accurate plant counts.

COMMENT 35: LS-100 – Consider a different label for either the Bur Oak or Chestnut Oak, “Qm” for both trees may be confusing for installers.

SSE RESPONSE: Planting Plans have been updated from Qm to QmA to address this comment.

COMMENT 36: LS-101 - Please ensure the number of plants shown on the plan are accurately reflected on the plant schedule.

SSE RESPONSE: Updated.

COMMENT 37: LS-102 – Please specify from what time of the one year warranty will begin. For example, one year from acceptance, one year from installation.

SSE RESPONSE: Note added to the plans “The one-year warranty will begin upon the date of final acceptance by the owner.”

Please contact me at (814) 857-6324 or by email at mvaw@stahlsheaffer.com should you have any questions or require additional information.

Sincerely,

[Signature]

Michael R. Vaow
Project Manager
Stahl Sheaffer Engineering

Enclosed:
6- full size copies of the Plan Set
9- 11x17 copies of the Plan Set
1- copy of the PCSV Stormwater Report
MOUNT NITTANY ELEMENTARY SCHOOL ADDITION AND RENOVATIONS LAND DEVELOPMENT PLAN PROJECT NARRATIVE APRIL 22, 2024 700 BRANDYWINE DRIVE COLLEGE TOWNSHIP & HARRIS TOWNSHIP CENTRE COUNTY

This plan proposes a 35,865 square foot building addition to the existing Mount Nittany Elementary School which will allow the school district to internally redistribute classes from a three class per grade environment to a four class per grade environment and bring the school into a more consistent size and operations as other elementary schools in the District. Based on current projections, enrollment is not anticipated to increase. The addition is planned on the southern side of the existing building. A one-way passenger vehicle access/drop-off will be provided by constructing a new access drive connected to the existing elementary/middle school parking lot and running in a southerly direction parallel to the existing building and the new addition for entry access with exiting vehicles traveling in a northerly direction connecting to the existing access drive and parking area of the elementary/middle school. This access drive is intended to be used by parents for drop off and pick up. In addition to the access drive, 51 parking spaces will be added to provide visitor, faculty, and staff parking. Pedestrian connections will be maintained to the existing streets and new connections within the campus will be developed to ensure pedestrian safety and mobility. The existing open grass playing fields and the softball field located on the east side of the existing school will be shifted for the addition and access drive/parking construction. The existing grass field within the elementary school bus loop will be rehabilitated for continued physical education and extracurricular recreational/athletic activities. Stormwater management will be directed into inlets and piping will convey the stormwater to detention facilities.
May 13, 2024

College Township Municipal Offices
C/O: Sharon E. Meyers, Sr. Support Specialist
Engineering/Planning Department
1481 East College Avenue
State College, PA 16801

Re: Mount Nittany Elementary School
Additions and Renovations
Preliminary/Final Land Development Plan
1st Plan Review Response

Dear Ms. Meyers,

ELA Group has received and reviewed the comments from your letter dated May 3rd, 2024 as well as those from CATA (April 30th, 2024), CCPA (April 24th, 2024), CRCA (May 2nd, 2024), CRPA (April 25th, 2024) and Centre Region Fire Protection Program (April 29th, 2024). We have reiterated each comment below in italic font followed by our response in bold text.

A. COLLEGE TOWNSHIP COMMENTS

1. Please verify all plan sheets are included in the list of drawings on the cover sheet.

Response: The List of Drawings has been updated to include all sheets in the plan set.

2. The Lighting Plan is missing important elements that will assist us in ensuring the lighting meets the requirements of the ordinance

Response: The lighting plan has been updated to include the required elements.

3. Please correct the spelling of “Roupd” in the Parking Notes.

Response: Corrected.

4. 200-36 Submit a plan showing all landscaping elements.

Response: A Landscaping Plan has been added to the plan set.
5. 180-16.3.B. Include entrance lights at access drives.

Response: The lighting plan illustrates the photometrics/footcandles illuminating the new loop access drives, the service area, and the existing school front entrance. In addition, there are existing lights throughout the campus and also within the existing parking lot between the Elementary School and the Middle School with one in the parking lot island across from the new loop that is centered between the new loop access drives that will supplement the lighting in the area. We cannot show the lighting level of the existing fixtures as we do not have the information on make/model/output of the existing fixtures but feel confident that the light being discussed will assist in the illumination of the new loop driveways.


Response: Evidence of NPDES coverage will be provided once obtained.

7. 175-15, 175-19: The Township is aware that the SCASD would like to renovate the “field loop” in advance of this project. Renovations limited to earth disturbance of the “field loop” may be accomplished by providing the NPDES permit and obtaining a grading/earthmoving permit from the Zoning Officer. The NPDES permit would satisfy any SWM site plan requirement (Article IV) for this limited piece of the project.

Response: The NPDES permit application for the loop field is currently under technical review. The NPDES permit will be provided once it is issued.

8. Provide a draft DSAME for review. Where the DSAME replaces an existing DSAME, include appropriate references and language within the draft. (175-22, 175-37).

Response: Based on research of County records and discussion with Township staff, there appears that there is no DSAME on record for the Elementary School. A draft DSAME is provided for review.

9. Provide a draft surety for review.

Response: A draft surety estimate, and Agreement will be provided prior to final plan approval.

10. LD 1.0, Stormwater Management Certification, provide language consistent with 175-25.B(26), eliminating the “best of knowledge” clause.

Response: The Stormwater Management Certification has been revised as requested.

11. LD 1.0 – Please provide a place for Engineer seal.

Response: A place for an Engineer seal is now provided.

12. LD 4.0, 5.0 – The ADA stalls near the dumpster are flagged as a maintenance vehicle accessway, presumably because the stalls may often be open. Consider maintenance access vehicle needs versus ADA signage requirements for maneuverability.
Response: The access aisle for the ADA space is 7.14 feet in width with the depressed curb continuing into the parking space an additional 2.86 feet making the total length of the depressed curb at the front of the aisle and parking space ten feet wide. We believe that in most instances maintenance vehicle access will be limited to riding mowers and/or a standard size pickup truck. The 7.14-foot width will accommodate both the riding mowers and a pickup truck if a vehicle is parked in the parking space. If a vehicle is not parked in the parking space, access will simply be easier. In addition, the signage denoting the parking space as a van accessible ADA reserved space has been shifted to be in line with the top of the 2’ curb taper which is only 4” off center of the parking space. This location removes the sign from the possibility of being a conflict with maintenance vehicle access.

13. LD 4.0, 10.0 – Signage details include Do Not Enter but do not include One Way. Consider signage to prevent left turns of persons leaving the new loop.

Response: Additional signs have been added to the plan and the detail and include one-way signs.

14. LD 5.0 – Type C curb ramps near ADA ramps (l-9, l-8, l-6, l-5) should be positioned to allow curb transition and limit tripping hazards. Consider detail clarification (Depressed Curb Detail, LD 10.0).

Response: Inlets l-5 and l-8 are located beyond the 2’ curb transition at the ADA ramps and will pose no tripping hazard. Inlets l-6 and l-9 are to be Type M inlets so as not to create a tripping hazard along the ramps.

15. LD 9.0, 9.1 – All inlets are noted within profile views as Pedestrian Safe grates; detail sheet LD 10.0 notes Bicycle Safe grates. The four inlets above may need a more specific ADA grate for use in the ADA stall. Consider consistency of language.

Response: The detail has been revised to indicate that grates are to be either bicycle safe or ADA compliant and refer the reader to the profiles for identification of which grates are ADA compliant.

16. LD 10.3 – Notes for BMP-1, Note 4: Please also include a Municipal witness to this test.

Response: Note 4 has been revised as requested.

17. LD 10.3 – Construction notes, Note 4: Include Infiltration Test Results with the as-builts. Eliminate “Upon Request.”

Response: Both Note 4’s have been revised as requested.

18. LD 10.3 – BMP-1 Outlet Structure – Verify with precast supplier that sufficient concrete exists between the top of the 6” precast hole (1147.40) and bottom of 16” precast opening (1147.85). Township has no objection to offsetting either penetration laterally to obtain greater structural strength.

Response: We have verified with the precast supplier that sufficient concrete exists between the top of the 6” precast hole and the bottom of the 16” precast opening. Included with this submission is an email from Monarch Products Co, Inc.
19. Provide a basis of design for the wall, incorporating the pipe penetration EW-2.

Response: A detail was added on LD-11.2 titled Concrete Collar at Segmental Retaining Wall to illustrate the pipe penetration.

20. The plans do not note a gate location for pond access. Consider safety risks of the pond as students could more easily climb into the pond from the upper grade than less easily escape the pond from the sloped embankment.

Response: A 10' double leaf swing gate has been added for access. We are reviewing with the School District considerations they feel appropriate to implement and will institute their plan.

B. CATA COMMENTS

1. CATA will have no formal comment. The elementary school property lies outside of CATA’s core fixed route service area (though it is accessible through CATAGO! Microtransit service), and the plans provided appear to do an adequate job of maintaining existing pedestrian and bicycle connections, while also creating new intra-campus connections.

Response: No response required

C. CRCA COMMENTS

1. LD4.0

   1. The large parking lot does not indicate having any accessible parking, and only one is indicated in the small parking lot with (5) spaces (IBC 1106, 1106.5).

Response: The ADA spaces in the existing parking lot were on a layer that did not properly print, and they therefore did not show on the drawing. The technical snafu has been corrected and the ADA spaces are now readily visible.

   2. The addition alone requires (3) for the 51 added parking spaces (IBC 1106, 1106.5).

Response: The new parking lot parallel to the new addition (42 Spaces) includes four (4) ADA parking spaces with two (2) identified as van accessible. The parking area located in the service area of the project has nine (9) parking spaces with one designated as ADA van accessible.

   3. The 537 total spaces when the proposed scope of work is finished requires 2% of the total spaces to include (11) spaces [537 X 2% = 10.74 = 11] (IBC 1106, 1106.5).

Response: The Cover Sheet has been updated to include an inventory of regular and ADA parking spaces campus wide.
4. For every (6) or fraction of six accessible parking spaces, at least one shall be Van Accessible for a total of (2) Van spaces required (IBC 1106, 1106.5).

Response: The Cover Sheet has been updated to include an inventory of ADA parking spaces campus wide.

2. Without the Construction Type and more building information, unable to determine if the proposed 35,865 SF addition is permitted per IBC. (*Existing: 206,793 SF + Addition: 35,865 SF = Proposed: 242,658 SF) (IBC 506).

   1. An Unlimited Area building in accordance with IBC 507, or
   2. 1A or 1B Construction Type

Response: This is noted and has been brought to the attention of the architect.

3. An accessible route is required to the (2) new soccer fields, and to the Mulch Play Area (IBC1110.3).

Response: An accessible route will be added to the plan.

4. The route to the Public Way (Brandywine Drive) could be affected, if not in compliance already, based on IEBC 305.5, 305.7, and the cost of the renovations (IEBC 305.5, 305.7).

Response: The accessible route is currently in compliance and will remain in compliance after construction.

5. All accessible routes shall be labeled and indicate the slopes and cross-slopes. Slopes and cross-slopes shall be indicated at all accessible parking spaces & aisles (IBC 1104, UCC 403.42a).

Response: An Accessible Route Plan has been added to the plan set.

D. CRPA COMMENTS

1. Based on our review, the CRPA finds that the proposed land development plan is consistent with the 2013 Centre Region Comprehensive Plan Update. The CRPA has no regional planning comments on the proposal.

Response: No response required.

E. CCPA COMMENTS

1. For your official records, please be advised that this Letter of Acknowledgement is intended to satisfy the County Planning and Community Development Office’s review and comment responsibilities.
Response: No response required.

**CENTRE REGION FIRE PROTECTION PROGRAM COMMENTS**


Response: Comment noted. We will await comment from Boalsburg Fire Company.

I am hopeful that the review responses provided address the review comments and the plan will be on the May 21, 2024 Planning Commission Agenda.

Please let me know if you have any questions or need to receive any additional information.

Sincerely,
ELA Group, Inc.

Todd Smith
Project Manager

THS/mgw
CALL TO ORDER: Chair Dustin Best called to order the May 2, 2024, regular meeting of the College Township (CT) Council at 7:00 PM and led in the Pledge of Allegiance.

PUBLIC OPEN DISCUSSION: Ms. Melissa Palacios, College Township resident, offered comments regarding the new Refuse and Recycling contract with Burgmeier’s Hauling.

Ms. Sue Smith, College Township resident, offered additional comments about the new Refuse and Recycling contract as it relates to bulk waste pickup.

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

SPECIAL REPORTS: C-NET Annual Update

Ms. Stephanie Yager, Acting Executive Director C-NET and Mr. Bill Caplan, CT Liaison on the C-NET Board offered an annual update to Council.

Highlights in 2023 include:
- 469 Programs were produced by C-NET staff.
- New Cable Franchises were finalized between Shentel and the State College and Bellefonte Borough, Ferguson, College, Patton, and Harris Townships.
- CATA voted to join C-NET in 2024.

College Township Programming in 2023:
- 47.45 Total Programs (Programs + Bulletin Board Messages)

College Township sponsored 9.2% of all programming by C-NET members in 2023.
Over a five-year period, 2019-2023, College Township sponsored 9.52% of all programming by all C-NET members. This is a decrease from the previous five year period, 2018-2022, which was 9.6%. The Funding Formula is determined by a 5-year rolling average.

Residents can view programs at C-NET Channel 7. Council meetings are televised LIVE on C-NET Channel 7. Meetings can also be streamed LIVE on the C-NET YouTube Channel. The CT Planning Commission meetings are not aired live but alternate a rebroadcast schedule with Council meetings on Sundays at 6 AM, Monday at 1AM and Tuesday at 2 PM. C-NET Channels 7 and 98 are Live Streamed on the CNET1.org. Programs remain available to view “on-demand” with chaptered and clickable agenda items for a minimum of 12 months.

Ms. Yager offered information about the new Franchise Agreement with Shentel. Franchise fees to College Township are equal to 5% of gross revenue within the Township. No customers are anticipated until sometime this year.

**PLANS:**  P-1  **Centre Hills Country Club Land Development Plan**

Mr. Francke made a motion to un-table the Centre Hills Country Club Land Development Plan for discussion by Council.  
Ms. Mariner seconded the motion.  
Motion carried unanimously.

Ms. Lindsay Schoch, AICP, Principal Planner, offered that at the April 4, 2024, CT Council meeting, Council reviewed the Centre Hills Country Club Land Development Plan. This review by College Township was limited to the private access, stormwater management, street lighting, and the proposed sidewalk leading to the property.

After discussion of the plan, CT Council requested that a letter be sent to the State College Borough with comments related to mitigating the impacts of Pickleball courts to the surrounding neighborhood. This letter, dated April 23, 2024, was sent to the State College Borough Manager, the Council Chair and the State College Borough Planning Director.

Ms. Melissa Palacios, College Township Resident, offered comments on the proposed plan regarding: sidewalks, golf cart usage on roads, speed bumps, heavy construction traffic using private access, traffic study, environmental study, landscaping, and street lights.

Mr. Mark Torretti, Project Manager, Penn Terra Engineering, and Mr. Don Franson, P.E., P.L.S., Township Engineer, provided responses to Ms. Palacios’ questions.

After this discussion, Chair Best called for a motion on the proposed LDP plan.

Ms. Trainer made a motion to approve the Centre Hills Country Club Final Land Development Plan dated February 20, 2024, and last revised March 11, 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. Establish a road name for the Private Drive in order to have a proper addressing in place prior to occupancy.
8. 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. Adam Brumbaugh, Township Manger, reported a modified remand letter regarding the Dale Summit Small Area plan was forwarded to the PC for the May 7, 2024, PC meeting. He reported that the Township received the full amount owed by Aspen Heights Partners.

Mr. Brumbaugh was happy to report that the Township received a grant in the amount of $1.5 million from PennDOT’s Transportation Alternatives Set-Aside program (received in late April) to be combined with $500,000 from Commonwealth Financing Authority Multimodal Transportation Fund grant (received in March) to offset costs on an anticipated $3.3 million shared use path project. Mr. Brumbaugh shared his thanks for the partnership with State College Borough, by which College Township was able to utilize grant support from the Delta Development Group.

As part of the anticipated land development for new student housing at Graduate Circle, College Township will be investigating opportunities to work with Penn State on their request to install lighting and other infrastructure along portions of the path. This may further help offset costs to the Township.

b. COG Regional, County, Liaisons Reports

COG Human Resource Committee: Ms. Mariner reported the COG Human Resource Committee met on May 1, 2024, and reconsidered the COLA Analysis. They voted to adopt the COLA methodology that utilizes the CPI-U as of June 30th as the basis for calculating COG’s annual COLA and adopted the revised Compensation Policy that captures the new methodology as well as language consistent with the recent Classification and Compensation Study.

Centre County Metropolitan Planning Organization (CCMPO): Mr. Bernier reported the CCMPO Coordinating Committee met on April 25, 2024. He shared the summary report of the meeting for Council’s review.

COG Land Use and Infrastructure Committee (LUCI): Mr. Bernier reported the COG LUCI Committee met on May 2, 2024 and discussed the Initial Comprehensive Plan Update Survey review.

c. Staff/Planning Commission/Other Committees

CT Planning Commission: Mr. Fenton, Planning Commission Liaison to Council offered that the PC did have a meeting since the last CT Council meeting.
d. **Diversity, Equity, Inclusion & Belonging (DEIB) Reports (Public Invited to Report)**

Mr. Bloom, Assistant Township Manager, reported the following DEIB celebrations:
- Indian Heritage Month;
- Jewish-American Heritage Month;
- National Asian American and South Pacific Islander Heritage Month; and,
- Bike Month – Council passed a resolution last meeting.

Mr. Bloom reported an upcoming Anti-Human Trafficking Training Conference is being held on May 14, 2024, at the Calvary Church. Additionally, on the Consent Agenda, the Community Diversity Group’s request for sponsorship of the Community Diversity Conference to be held on June 25th at the Penn Stater.

**Upcoming Event:**

**CONSEIT AGENDA:**

**CA-1 Minutes, Approval of**
- April 18, 2024, Regular Meeting

**CA-2 Correspondence, Receipt/Approval of**
- Email from Patricia Coates, dated April 16, 2024, regarding moratorium on construction of pickleball courts
- Email from John and Sibyl Gorman, dated April 16, 2024, regarding moratorium on construction of pickleball courts
- Email from James Coates, dated April 16, 2024, regarding moratorium on construction of pickleball courts
- Letter from Movin’ On, dated April 23, 2024, regarding Movin’ On Annual Penn State University student sponsored spring music festival

**CA-3 Action Item, Approval**
- Proclamation P-24-02 – EMS Week May 19 – 25, 2024
- Proclamation P-24-03 – CATA’s 50th Anniversary May 17, 2024
- Appointment of Mr. Stephen Spoonamore to the Mount Nittany Conservancy Board with a term expiration of December 31, 2024
- Letter from Community Diversity Group, dated March 3, 2024, regarding Community Diversity Conference Sponsorship request

  *Mr. Bernier made a motion to approve the May 2, 2024, Consent Agenda minus CA-3.e. and CA-3.d.*
  *Ms. Mariner seconded the motion.*
  *Motion carried unanimously.*

**CA-3.e.: Council discussed the Community Diversity Conference Sponsorship.**

  *Ms. Trainor made a motion to sponsor the Community Diversity Conference Sponsorship in the amount of $1000.*
  *Ms. Mariner seconded the motion.*
  *Motion carried unanimously.*

**CA-3.d.: Mr. Gabrovsek offered that this request occurs annually. The CT ordinance does not allow amplified sound from vehicles. The ice cream truck, Classic Cones, asks Council for a waiver from the ordinance to run their business.**
Mr. Bernier made a motion to accept CA-3.e. and CA-3.d. as part of the Consent Agenda. 
Ms. Mariner seconded the motion. 
Motion carried unanimously.

OLD BUSINESS:

OB-1  Attainable/Workforce Housing Ordinance

OB-1.a.: In an effort to ensure that all of Council has a basis for understanding the intent of the DRAFT Attainable/Workforce Housing ordinance, Mr. Brumbaugh, Township Manager, provided a presentation of the concepts involved. A similar presentation was given to the College Township PC and was well received.

Mr. Brumbaugh offered the definition of Affordable Housing is generally defined as housing on which the occupant is paying no more than 30 percent of gross income for housing costs, including utilities. Housing costs for homeowners include monthly mortgage principal and interest payments, plus property taxes, property insurance, utilities, and any HOA/condo/mobile home fees.

Mr. Brumbaugh shared an Income and Housing Spectrum, which includes: Supportive Services – Extremely Low Income <30% Area Median Income (AMI); Affordable Housing – Very Low Income 30% - 50% AMI; Affordable Housing – Low Income 50% - 80% AMI; Workforce Housing - Middle-Income 80% - 120% AMI; and finally, Market-Rate Housing – Upper Income >120% AMI. Workforce housing focuses on housing built to serve families that have income levels between the true affordable housing options and market-rate housing, between 60% and 120% AMI or the left side of the spectrum. Those that qualify for Workforce Housing are middle-income households that have gotten left behind in the housing market.

Mr. Brumbaugh discussed the Centre County’s Area Median Income and the median and average sale price of homes in our region for the past five (5) years. He shared a map of Centre County’s labor shed, which is very broad. An objective of Attainable/Workforce Housing is to assist middle-income households so that they can afford to live in the area that they work.

OB-1.b.: Ms. Schoch, AICP, Principal Planner, offered that Council discussed the proposed changes by the PC to the Attainable/Workforce Housing Ordinance at the April 18, 2024, CT Council meeting. Building on the discussion from that meeting, Staff needs clarification and Council’s input on a few additional items before Staff can incorporate changes into a revised DRAFT Ordinance.

Mr. Ara Kervandjian, College Township resident, Developer, offered comments throughout the discussion.

Ms. Schoch identified areas where clarifications/comments were needed. Council offered the following:

- Keep Fee-in-Lieu, land donations, and credits for existing units in the ordinance as tools/incentives. There is some ambiguity regarding the timeline and language for credits for existing units in the ordinance.
- Calculating Density for Attainable Units – use gross site area for calculations.
- Council concerned with making parkland optional. Parkland, Open Space, Sidewalks remain in ordinance as “may” statements as long as provisions for equity is included.
- Council agreed to change the additional bonus to a 1:1 scenario.
- Waiver of Review Fees: Council discussed the use of Fee-In-Lieu to offset costs of waivers and grant funding to cover certain fees.
- Height: Council agrees with the PC recommendation to increase the height restrictions.
- Off-Site Developments: Keep this in the ordinance until other neighboring Township are ready to reciprocate.
- Phasing: Staff will work with developers for accountability procedures when developing in phases.
- Amenities: Attainable unit should be permitted to differ with regards to interior amenities.

A revised DRAFT Ordinance will be provided to Council for discussion at an upcoming meeting before remanding to PC for their review.

Chair Best recessed the meeting at 9:45 PM for a ten minute break. The meeting was called to order at 9:55 PM.

NEW BUSINESS:

NB-1 R-24-21 – Amendment to Thompson Woods Preserve Intermunicipal Agreement

Mr. Mike Bloom, Assistant Township Manager, offered that on September 15, 2022, College Township executed an Intermunicipal Cooperation Agreement with the State College Borough establishing a new governance structure for the jointly-owned Thompson Woods Preserve property. The agreement calls for the following appointments to the Governance Committee: Two (2) College Township appointees, two (2) State College Borough appointees, and one (1) Centre Region Parks and Recreation Authority (CRPRA) appointee. The CRPRA appointee shall be a member of the CRPRA Board who is not a representative from the Township or Borough. Given the small size of the CRPRA Board and the limiting factor that removes CT or SC Borough representatives from consideration, the CRPRA appointment has proven to be challenging to fill from the Board.

As such, Staff is requesting an amendment to the Intermunicipal Cooperation Agreement that would provide greater flexibility to CRPRA for their future appointment(s). The proposed amended language reads as follows:

- One (1) CRPRA appointee, this appointee should be a member of the CRPRA Board or a designee approved by the CRPRA Board, who does not represent or reside in either the Township or Borough.

Mr. Bloom offered Resolution R-24-21 amends Article II: Committee Structure of the Intermunicipal Cooperation agreement between the joint property owners, College Township and the State College Borough.

Council discussed and suggested a de minimis change to line 38 of the Resolution R-24-21 so that it reads “this appointee should be EITHER a member of the CRPRA”.

Mr. Francke made a motion to approve Resolution R-24-21 with de minimis change to line 38 of the resolution.
Mr. Bernier seconded the motion.
Motion carried unanimously.

NB-2 2025 Centre Region COG Capital Improvement Plan Review

Mr. Brumbaugh, Township Manager, offered that the Centre Region Council of Government (COG) 2025-2029 Capital Improvement Plan comments are due back to COG by May 16, 2024, at 12 PM.
From the proposed comments provided by Mr. Brumbaugh and Council’s discussion, the following will be provided to the COG.

COG BUILDING – Generally agree with CIP expenditures shown in 2025-2029.
- Concerned with Parking Lot pavement in 2025 and EV Charging Stations to be added in 2027 – coordinate the under-pavement infrastructure in 2025.
- Review of all subsurface facilities before paving parking lot. Look to phase the project.

FIRE – Generally agree with CIP expenditures shown in 2025-2029.
- Assume vehicle replacement noted are taken from Fire Vehicle Replacement Schedule.
- Marketing and supply change issues for equipment reflected in the CIP.

LIBRARY CAPITAL – Generally agree with CIP expenditures shown in 2025-2029.
- Concerned with HVAC replacement work to be done in 2024. Impacts if pushed to 2025.

PLANNING – Generally agree with CIP expenditures shown in 2025-2029.
- Replacement vehicles listed as “potentially hybrid/electric vehicles – Is there a commitment to this? If so, this has implications on the COG Building CIP Initiatives parking lot and need for charging stations.

PARKS CAPITAL – Generally agree with CIP expenditures shown in 2025-2029.
- Entire Parks Capital CIP is vehicle/machinery based. Zero dollars allocated to any capital project in park.
- Numbers in CIP could change based on Parks Governance Committees resolution of what is a maintenance cost and what is a capital cost of regional parks.

MILLBROOK MARSH – Generally agree with CIP expenditures shown in 2025-2029.
- The projected expenditure of $6.1 million in 2027 for the Boardwalk Replacement is highly unlikely to be funded in full but COG member municipalities. Work should begin immediately to secure federal funding earmarked for the project.

POOLS – Generally agree with CIP expenditures shown in 2025-2029.

REGIONAL PARKS – Generally agree with CIP expenditures shown in 2025-2029.
- Correction needed for Hess Field Lighting expenditure.
- Insufficient narrative for understanding $600,000 NEW restroom facility at Hess Field.
- Whitehall Road Regional Park – All Season Pavilion - $850,000 total project cost – likely non-starter with COG elected officials.

GENERAL COMMENTS
- Modifications to the 2025-2029 CIP are a positive.
- Asset management crucial to capture in the CIP.
- COG Borrowing Capacity – All debt across all COG Programs – All COG projects would be subject.
- New Facilities Coordinator should be hired as soon as possible.
- Fleet management program needed.

COG Finance Director, Ms. Kimberlee MacMullan, offered the proposed 2025 budget in the 2025 – 2029 CIP reflects a 4.96% increase for College Township.

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.
Mr. Bernier moved to adjourn the May 2, 2024, Regular College Township Council Meeting. Chair seconded the motion.

The May 2, 2024, Regular College Township Council Meeting was adjourned at 10:33 PM.

Respectfully Submitted By,

Adam T. Brumbaugh

Adam T. Brumbaugh
Township Secretary
Special Permits

Neighbors challenge ZBA’s decision to grant permit for addition off back of house

Citation: Morton v. Lipkind, 2024 WL 244494 (Mass. Land Ct. 2024)

The Marblehead, Massachusetts Zoning Board of Appeals (ZBA) granted a special permit to a landowner to build an addition off the back of his house.

The owner’s next-door neighbors opposed the project during a public hearing. They claimed the addition would be too tall and would create shadows on their properties while blocking views they currently enjoyed. And they also contended that the zoning relief sought couldn’t be granted by special permit and instead required a variance. Therefore, they argued that the ZBA erred in granting the special permit.

DECISION: Affirmed.

The ZBA didn’t err in granting the special permit.

The court had to determine if the board made its decision based on a legally untenable ground. Here, the neighbors contended that the ZBA had applied the wrong special permit criteria and should have denied the project because the addition would result in a new nonconformity; namely, it will create a side yard nonconformity because the addition would be 23 feet from the sideline instead of the 25 feet required by the dimensional table of the Marblehead bylaw.

“Whether the [ZBA] applied the proper special permit provision to the . . . addition [wa]s a legal question,” the court wrote. The applicable zoning bylaw allowed the ZBA to approve the expansion of a nonconforming building by special permit so long as proposed modification fell within the parameters of that subsection. It also allowed the expansion of a residential building by right consistent with the “second except clause.” But under another section, “any such expansion must comply with the ‘current parking, setback, open area, and dimensional requirements’ of the bylaw.”

And other sections allowed the ZBA to approve by special permit a change to a preexisting nonconforming structure that exceeded the dimensional requirements of the bylaw. Under those subsections, the ZBA could approve such a change if it found that “the ‘adverse effects of the proposed use w[ould] not outweigh its beneficial impacts to the [t]own or the neighborhood.”

The neighbors asserted that one specific section of the ordinance controlled the owner’s special use application. As a result, they contended, the side yard setback reduction to 22 feet would be a new nonconformity that could only be approved by variance.

The bottom line: The ZBA had authorization per the bylaw “to alter the dimensional requirements . . . for projects that include[d] an addition to a
The addition didn’t create a new (prohibited) nonconformity under the bylaw, so the decision to grant the permit stood.
rock, hammering of rock/ledge, sand excavation, loading of trucks, sale of mined and excavated material, outside storage of equipment, and stockpiling of processed materials. But the building official took issue with two of the activities, namely: “[p]rocessing of broken asphalt & concrete into usable material” and “washing of sand.”

The building official also explained that the farm hadn’t received approval or permits for portable pumps and generators to be used for a wash plant. And the building official explained that lot 4’s current use as an “extractive industry” constituted a legal non-conforming use, so extraction activities could continue there. But “[t]he additional use of the property for the washing of sand, . . . processing of broken asphalt and concrete, the new permanent power service equipment, and installation of new structures, all would have a substantially different and adverse impact on the neighborhood.”

The bottom line: The building official concluded some uses constituted “an expansion/intensification of a non-conforming use” and required a special use permit from the ZBR. The building official stated that for the farm to get building permits for proposed expansion, it would need development plan review approval and a SUP.

Thus, the determination letter issued with the NOV stated that the farm was to cease and desist immediately the processing of broken asphalt and concrete, sand washing, lot clearing, and construction work for the installation of new equipment. It also ordered all extraction on lots other than 4 to cease and desist immediately with all extraction equipment on those lots to be removed within 30 days of the notice.

BOARD HEARINGS

Following hearings, the ZBR found that sand washing wasn’t a customary use at the time the 1974 ordinance was enacted because that ordinance did not define the term “extractive industry.”

The farm asserted that washing should be allowed on lot 4 because that activity was listed under the zoning ordinance’s definition of extractive industry. The ZBR determined that it pertinent to the customary uses of an extractive industry at the time that lot 4 was granted its nonconforming use status.

The farm appealed, arguing that the ZBR’s decision should be reversed and voided because it lacked authority to determine the existence or extent of its legal preexisting nonconforming use.

DECISION: Reversed.

The ZBR exceeded its authority and prejudiced the farm’s substantial rights in making a scope-and-extent determination of lot 4’s nonconforming use and finding on the legality of a preexisting use on the other lots.

A CLOSER LOOK

“[T]he zoning board may confirm[] that a[n] [existing] use, structure, building or lot either complies with or is legally nonconforming to the provisions of [the applicable ordinance,] but it may not ‘provide information concerning . . . proposed uses, structures, buildings or other development.’

Thus, “trial justices not zoning boards ha[d] the authority to determine the extent and scope of a nonconforming use when a property owner [sought] to conduct a substantially different use on the property than previously done.”

The court found: The ZBR lacked authority to determine the scope and extent of lot 4’s nonconforming use. It had reviewed evidence as to whether the building official’s conclusion had been correct when he found that the sand washing was an intensification or expansion of the existing nonconforming use.

The ZBR lacked authority to determine the scope and extent of lot 4’s nonconforming use.

“In making its determination, the Z[BR] conducted a factual inquiry in which they thoroughly reviewed the evidence and determined that [the farm] did not meet the[] burden of showing that [l]ot 4 was used for sand washing prior to 1974.” Its “inquiry involved more than a confirmation as to whether [l]ot 4 had a nonconforming use. In fact, [it] had] reviewed proposed activities of washing, an activity which was not listed on the [o]rdinance’s definition of extractive industry.”

Further, the building official found that the other lots didn’t have a legal preexisting use for extractive industry. And the ZBR’s “inquiry interpreted more than the applicable ordinance and involved inquiry into intent of the landowner for proposed uses of the [p]roperty. As such, [it] exceeded its authority when it confirmed the legality of [the other lots’] pre-existing uses.”

Practically Speaking:
A court could reverse or modify the ZBR’s decision if substantial rights were prejudiced due to “findings, inferences, conclusions, or decisions [that were] . . . [i]n excess of the authority granted to the zoning board of review by statute or ordinance.”

Area Variances

ZBA’s denial of request for area variances under scrutiny

Citation: Kami Holding Corp. v. Zoning Board of Appeals of Village of Westbury, 223 A.D.3d 811, 2024 WL 253204 (2d Dep’t 2024)

Kami Holding Corp. (Kami) owned an unimproved 5,051 square-foot lot located in the Village of Westbury, which was situated in a “Residence B” zoning district.

The subject parcel was approximately 40 feet wide, with 40 feet of frontage on one street and 45.65 feet of frontage on another street.
Pursuant to the Code of the Village of Westbury, New York, there was a required minimum lot size of 6,000 square feet for lots located in a Residence B zoning district. And the minimum lot width and frontage required for a lot containing a building in a Residence B zoning district was 60 feet.

In August 2019, Kami applied for a building permit to construct a two-story residence on the subject parcel. Westbury’s building department denied the application.

Kami then applied to the Westbury Zoning Board of Appeals of the Village of Westbury (ZBA) for area variances from the size, width, frontage, and front yard paved area requirements of the Residence B zoning district to improve the subject parcel with a single-family dwelling.

The ZBA denied the application, and Kami filed a petition with the court to review the ZBA’s determination.

The court denied the petition and dismissed the proceeding. Kami appealed.

**DECISION: Affirmed.**

The ZBA acted within its discretion in denying the request for area variances.

A local zoning board had “broad discretion in considering applications for variances, and judicial review [was] limited to determining whether the action taken by the board was illegal, arbitrary, or an abuse of discretion.”

Thus, its decision was “entitled to great deference, and [would only] be set aside only if it [was] illegal, arbitrary and capricious, or irrational.”

Here, Zami contended that the ZBA erred in treating its application as seeking area variances rather than as an application seeking a special use permit or special exception permit. The applicable section of Westbury’s code stated that the ZBA was “empowered, in appropriate cases, after public notice and hearing [to]: A. Vary the application of the regulations herein established and establish appropriate requirements for irregular lots or lots less than the required area in any district existing at the effective date of the zoning code.”

But, contrary to Zami’s assertion, that provision didn’t “authorize the ZBA to issue a special use permit or special exception permit. Rather, the provision expressly authorize[d] the ZBA to ‘[v]ary the zoning regulations with respect to lots that did not conform to the zoning code at the time of its enactment.’” Therefore, the plain language of the applicable section “only authorize[d] the ZBA to determine certain variance applications.” Also, an additional section of the code “expressly authorized” the village board “to hear and determine applications for special use permits. Therefore, contrary to [Kami’s] contention, the ZBA did not err in treating [its] application as seeking area variances, rather than as an application seeking a special use permit or special exception permit.”

Also, the ZBA’s determination wasn’t “arbitrary and capricious.” When deciding whether to grant an area variance, the zoning board had to “engage in a balancing test, weighing the benefit of the grant to the applicant against the detriment to the health, safety, and welfare of the neighborhood or community if the variance [was] granted.”

Pursuant to village law, “a zoning board must consider whether (1) an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will result by the granting of the area variance, (2) the benefit sought by the applicant can be achieved by some feasible method other than an area variance, (3) the requested area variance is substantial, (4) the proposed variance will adversely impact the physical or environmental conditions in the neighborhood if it is granted, and (5) the alleged difficulty was self-created.”

Here, the ZBA had “engaged in the required balancing test and considered the relevant statutory factors.” For instance,

- it was undisputed that the several area variances sought were substantial in nature;
- the evidence before the ZBA also supported the conclusions that “granting the requested area variances would produce an undesirable change in the character of the neighborhood or a detriment to nearby properties”;
- any hardship had been self-created.

Therefore, “the ZBA’s determination to deny the petitioner’s application for area variances was rational and not arbitrary and capricious.”

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**A Closer Look:**

To review the applicable sections of Westbury’s zoning code (section 248-326(A) and section 248-260), which the court discussed, visit ecode360.com/80927660.

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**Variances**

County appeals award of more than $746,000 in compensation to homeowners whose variance request related to duplex denied

**Citation:** Bordelon v. Baldwin County, AL, 2024 WL 302382 (11th Cir. 2024)

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

The Baldwin County (Alabama) Zoning Department barred Mike Bordelon, a property owner within the county, from constructing a three-story duplex as originally permitted. After the local Board of Adjustment denied his request for a variance, he filed a notice of appeal.

Bordelon challenged the zoning decision pursuant to Alabama case law and the Fifth Amendment of the U.S. Constitution.

The court granted Bordelon’s request for a variance and concluded that:
• Baldwin County temporarily took his property without just compensation;
• Bordelon had a vested right to construct a duplex as originally permitted; and
• as a result, Baldwin County was enjoined from prohibiting the duplex’s originally-permitted construction.

After the court also ordered Baldwin County to pay more than $746,000 in just compensation, it appealed.

DEcision: Affirmed.

The lower court’s decision stood, the Eleventh U.S. Circuit Court of Appeals ruled.

Baldwin County contended that Bordelon didn’t have vested rights under state law because the lower court’s interpretations of the zoning ordinance contravened its plain language and deference was due to the county’s interpretations.

Baldwin County also asserted that its acts didn’t amount to a temporary regulatory taking under Supreme Court precedent.

And, it argued that the lower court erred in its just compensation calculation, leaving Bordelon with an unjust windfall.

In a short opinion, the Eleventh Circuit wrote “we find no reversible error in the district court’s judgment,” so its decision in Bordelon’s favor was affirmed.


Disability Discrimination

Healthcare provider claims discrimination after being denied approval to operate methadone clinic

Citation: Affinity Healthcare Group Voorhees, LLC v. Township of Voorhees, 2024 WL 195471 (3d Cir. 2024)

The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.

Affinity Healthcare Group Voorhees LLC and its member, Dr. Kenneth Brown (collectively, Affinity) claimed that The Township of Voorhees, New Jersey unlawfully denied its applications to operate a methadone clinic, in violation of the Americans with Disabilities Act (ADA), Rehabilitation Act (RA), and Equal Protection Clause, and deprived it of substantive due process.

The lower court granted the township judgment without a trial, and Affinity appealed.

DEcision: Affirmed.

Affinity didn’t present evidence from which a reason-
it had only provided “generic information” about the facility;

- the township “ver[i]ied that [a] site . . . contain[ed] sufficient parking for the proposed use,” and “[A]finity was informed that” facilities like the one [it] apparently proposed . . . “typically did not operate like a standard medical practice with scheduled appointments,” but instead “function[ed] more similarly to a retail[er]” whose “peak parking demands [were] accommodated by larger [ lots];” and

- because “the proposed change of use appear[ed] to be significantly different than the previously permitted uses on [the] site,” Affinity needed to obtain a change of use from the planning board in accordance with the town code.

Affinity then applied to the board for a change of use. There were several public hearings with witnesses testifying that:

- the facility anticipated treating between 200 and 275 patients per day;

- 80% to 90% of the daily patients would arrive between 5:00 a.m. and 9:30 a.m. (peak hours),

- during peak hours, between 50% and 75% of patients would be triaged by one of three nurses, receive oral medication, and then leave;

- approximately 25% of patients during peak hours would undergo that same process and a drug screen;

- treatments during peak hours would “take more than a minute,” with a typical treatment lasting no more than five to 10 minutes, although some could last up to 25 minutes; and

- after peak hours, approximately six patients per day would receive counseling.

Affinity’s traffic expert also testified that neither the facility’s anticipated peak hours, nor its patients’ pattern of arrivals and departures, were typical of a traditional medical office. That expert explained that “‘[b]ecause of the uniqueness of’ Affinity’s facility he did not use data from the Institute of Transportation Engineers (ITE) in his traffic analysis for Affinity, even though ITE ‘had a category of use for medical offices[,]’” He instead used traffic metrics from an addiction treatment facility located in a neighboring town to predict the traffic flow to Affinity’s location.

The board then denied Affinity’s application based on the facility’s high traffic, lack of sufficient parking, and commercial nature. In its final resolution, the board stated that “the intensity of the proposed use [and] unique hours of operation” made the facility “the equivalent of a medical clinic,” a use “not permitted in the ‘transitional and less intensive’ O-1 Zoning District, but rather in only the more commercial [Major Business] and [Township Center] Zoning Districts.”

BACK TO THE COURT’S RULING

The ADA and RA barred disability-based discrimination. To assert a valid claim, Affinity had to show that it had been subjected to disparate treatment, disparate impact, or denied a reasonable accommodation.

Disparate treatment—Under a burden-shifting framework, Affinity asserted that its patients suffered from OUD and were thus qualified persons under the ADA and RA. It also asserted that the township’s zoning ordinance could result in an exclusion from such services.

For purposes of this lawsuit, the parties only disputed “whether ‘some discriminatory purpose’ to exclude OUD patients from receiving MAT ‘was a motivating factor behind’” the [t]ownship’s procedures and denial of Affinity’s applications.”

Here, the court concluded that the record didn’t have a basis from which a reasonable jury could find it was because:

- the township’s code was “facially neutral” as it didn’t “single out methadone clinics or OUD patients”;

- the township didn’t “subject Affinity’s application to atypical procedures.”

Further, during the zoning application process, the township initially approved the first application when Affinity represented that “it intended only to operate a ‘medical office.’”

The second application came about after Affinity failed to comply with NJDOH’s certificate of occupancy and notice requirements. That application “contained a revised description of the proposed use, namely ‘Medical Office/ Opioid Treatment Center’ without any other details about the facility’s operations.”

That second application was for technical reasons related to the facility’s exit signs. When Affinity submitted a third application that mirrored the land use information in the second application, the “[t]ownship denied this application after Affinity failed to send [the zoning administrator] the information that she had twice requested.”

Then, the board considered a change of use and reviewed written materials and testimony showing that “unlike traditional medical offices, the facility was the equivalent of a ‘medical clinic,’ a use not permitted in the O-1 Zoning District, as reflected by its unique hours of operation and high volume of activity, which could result in increased traffic and parking problems.”

The bottom line: Based on the facts presented, the board had “concluded that the volume of activity and traffic impact was inconsistent with the O-1 Zoning District. Neither the [b]oard’s questions, nor objections from residents, which may have been based on a misunderstanding..." And there wasn’t any evidence that discriminatory intent motivated the township’s decision, so Affinity didn’t establish a valid case of disparate treatment.

Disparate impact—The court also rejected Affinity’s disparate impact claim. To assert a valid claim, it had to
show the township’s action had a greater adverse impact on its patients with OUD than others. “Proof of discriminatory intent is not required,” the court explained. But a plaintiff did have to present “evidence of a measurable disproportionate impact” at which point the burden shifted to the township to show that it had a legitimate, non-discriminatory reason for the action and “that no less discriminatory alternatives were available.”

The issue for Affinity was that even if the township’s denial of its application had a disproportionate effect on OUD patients who would benefit from having access to a methadone clinic in the zone, the township had “set forth legitimate reasons for its conduct and had] not otherwise erected hurdles that bar[red] Affinity from seeking a permit to operate in another zone in Voorhees.”

Further, “when asked whether ‘there [were] other conditions’ besides limiting its patient count to 275 per day to which Affinity would agree, and that might allow the [t]ownship to accommodate Affinity’s request, Affinity’s counsel stated: ‘[n]one that I can—none that I’m [allowed] to discuss at this point[.]’ No other alternatives were ever offered. Because Affinity did not carry its burden to show that ‘a feasible, yet less onerous alternative exist[ed],’ . . . its disparate impact claim fail[ed].”

CASE NOTE

The township’s zoning code accounted for separate zones, “for among other things, medical clinics and hospitals,” the court explained. Affinity argued that the township violated its substantive due process rights.

To do so, Affinity had to show that the township’s actions “‘shock[ed] the conscience’ by depriving [it] of a protected property interest.” But none of the township’s conduct, “including its application processes and the [b]oard members’ written and oral communications before, during, or after the hearings, shock[ed] the conscience,” the court ruled.

Case Snapshot:

Affinity filed suit against the township alleging its actions intended to exclude OUD patients and that it could have reasonably accommodated the facility in its selected location.

Zoning News Around The Nation

Arizona

Proposals to overrule municipal zoning in cities with 50,000 or more residents introduced

Senate Bill 1112, commonly referred to as the “Arizona Starter Homes Act,” would require changes to municipal planning regulations in the state and would bar cities with 50,000 or more residents from interfering with one’s right to choose the design, floor plan, and other attributes of their home. It would also limit the circumstances for requiring a homeowners or condominium association.

To read the text of the legislation, which would apply to cities with 50,000 or more residents and designated as urban areas, visit azleg.gov/legtext/56leg/2B/bills/SB1112.Pdf and azleg.gov/legtext/56leg/2B/bills/HB2570P.htm.

Source: azleg.gov

California

Judge blocks issuance of building permits that don’t add new housing

A Los Angeles County Superior Court Judge has issued an order preventing the City of Beverly Hills, California from issuing building permits for new projects that don’t add housing. So, for now, that means residents of the affluent enclave cannot expand businesses or construct pools on their property for the time being.

According to the initial petition filed with the court, “Beverly Hills has adopted a housing element that does not identify adequate sites for housing development, among other deficiencies. . . . On behalf of the important public interest in the creation of new housing, Californians seeks a writ compelling the City to adopt a revised housing element.”

Jennifer Branchini, president of the California Association of Realtors®, which supports the group that filed suit, stated, “This is a milestone decision in state housing law.” “For far too long, cities and counties have used unrealistic and underdeveloped housing plans to skirt around state planning rules. This case proves that the Legislature’s recent improvements to housing element law go a long way toward solving this problem, so long as these new laws are vigorously enforced.”

To download the petition in Californians for Home Ownership Inc. v. City of Beverly Hills, visit calforhomes.org/files/rg/6934fb6b7099789c464c1ca32d5db86d339.pdf.

Source: prnewswire.com

California Forever releases proposed language for ballot initiative to create new city in Solano County

In January 2024, California Forever released proposed language for a ballot initiative that would create a new city in Solano County. “On January 17th, we filed with the Solano County Registrar of Voters the East Solano Homes, Jobs, and Clean Energy initiative,” California Forever wrote.

“We drafted the initiative after an extensive community engagement process with the people of Solano County. The initiative proposes a change to the general plan and zoning to allow the creation of a new community in southeastern Solano County, together with a list of 10 significant voter guarantees and community benefits. Located on approximately 18,600 acres, the community is designed to eventually accommodate up to 400,000 residents many decades from now,” California Forever added.

A final redline version of the proposal was released on January 29, 2024. For more information, visit downloads.cifassets.net/ivyv00dn6hw/1E9soUPa7v13RVRNd3u/0819001de11ee97f0ae87f545d556e55/Final Redline_East Solano Homes Jobs and Clean Energy Initiative_01.29.2024.pdf.
And for more general information about the proposal, visit californiaforever.com.

Source: californiaforever.com

Massachusetts

Plainville residents' claim their properties flooded out after construction of hillside solar farm

The town administrator of Plainville, Massachusetts recently announced that Madison Energy and Next Grid would have until February 2024 to come up with a solution to a newfound problem impacting abutting neighbors to their hillside solar farm.

WBZ-TV reported that the town administrator called what's happening to neighbors "unconscionable" and said it's the companies' responsibility to make things right after clearing about 30 acres of trees for the solar project.

Source: cbsnews.com/boston/

Ohio

Cincinnati unveils new proposed land use and zoning policy changes

Lawmakers in City of Cincinnati, Ohio want to overhaul the city's zoning and land use policies through a newly announced "Connected Communities" initiative. "Cincinnati is a great place to call home, but a difficult place to find housing," the city's website stated.

The city explained that a key Connected Communities goal is to "help Cincinnati grow into a more accessible, people-focused, diverse, healthy, and connected community for all" through:

- changes to land use regulations;
- modifications to the zoning code to address development, density, pedestrian and human-centered design, affordable housing, and neighborhood business districts.

To learn more, visit cincinnati-oh.gov/planning/connected-communities/

Source: cincinnati-oh.gov

Virginia

Nonprofit sues City of Alexandria over single-family zoning

Coalition for a Livable Alexandria, Inc. (CLA) a volunteer advocacy group, along with several residents, have filed suit against the City of Alexandria, Virginia seeking declaratory relief to end single-family zoning protections. The plaintiffs allege the city’s current zoning procedures under its charter violate state law.

“Today is the first step in protecting the due process and property rights of all Alexandria residents against unlawful, discriminatory actions taken by the City of Alexandria in a misguided attempt to rewrite zoning regulations for housing,” said CLA Chair Roy Byrd, a resident of Alexandria’s Clover College Park neighborhood. “Zoning law is complex and esoteric. People often don’t understand their rights, and even if they do, they don’t have the financial means to exercise them against the city government. We are here to be their voice,” Byrd added.

The law firm representing CLA released a statement reading in part that CLA and the individual plaintiffs are fighting “to preserve open space, right historical wrongs, and prevent developers from benefitting at the expense of low- and moderate-income residents.”


Source: livablealexandria.org
CA-1 Minutes, Approval of
   a. May 2, 2024, Regular Meeting

CA-2 Correspondence, Receipt/Approval of
   a. Letter from Central PA Festival of the Arts, dated April 24, 2024, regarding donation
   b. Email from Noreen Khoury, dated May 10, 2024, regarding resignation from Planning Commission
   c. Email from Kris Danford, dated May 13, 2024, regarding Harris Acres Bike/Pedestrian Path

CA-3 Action Item, Approval
   a. Project #24-08 Traffic Signal Replacement Project Bid Award to Kuharchik Construction, Inc., in the amount of $229,000.00
   b. Contract #24-15 Pike Street Rehabilitation Dale Street to College Avenue Project to HRI, Inc., in the amount of $473,656.00
   c. Project #24-02 Trout Road Path Extension Project to Bowman Excavating/Paving/Concrete, in the amount of $45,450.75
   d. Proclamation P-24-04 May as Asian Pacific American Heritage Month
   e. Proclamation P-24-05 June as LGBTQ+ Pride Month

Photo by Frank Scott, IV
Dear Ray,

I am resigning from the College Township Planning Commission effective immediately.

I have grave misgivings about the Form Based Code the Planning Commission is tasked with formulating. I do not wish to be associated with this code and the process associated with the code. I sincerely hope my misgivings are unfounded.

I enjoyed meeting and getting to know all the members. The members’ thoughts and insights have been a growing experience.

Sincerely,

Noreen Khoury

Noreen Khoury

May 10, 2024