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 June 4, 2024 Meeting Minutes (Approval)

PLANS: P-1 PSU Beaver Stadium Upgrades Concept/Sketch Plan (Discussion)

OLD BUSINESS: OB-1 Dale Summit Area Form Based Code (Discussion)

NEW BUSINESS: None

REPORTS: R-1 Council Report

STAFF INFORMATIVES: SI-1 Council Approved Minutes
SI-2 Zoning Bulletins
SI-3 EZP June Update
OTHER MATTERS:

ANNOUNCEMENTS: Next regular meeting will be Wednesday, July 17, 2024 at 7:00pm

ADJOURNMENT:
COLLEGE TOWNSHIP PLANNING COMMISSION
REGULAR MEETING MINUTES
Tuesday, June 4, 2024
1481 E. College Avenue State College PA 16801
Hybrid Meeting (In-Person or via Zoom)

PRESENT: Ray Forziat, Chair
Matthew Fenton, Vice Chair
Ed Darrah
Robert Hoffman
Ash Toumayants

EXCUSED: Peggy Ekdahl

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: Michael Tylka, Planning Director, Centre Regional Planning Agency
Jenna Wargo, Principal Land Use Planner, CRPA
Ron Borger, Senior Project Manager, Penn Terra Engineering, Inc.
Doug Hill, Senior Traffic Engineer, Wooster
Matt Flickinger, VP of Land Acquisition and Development, Burkentine Real Estate Group
Missy Schoonover, Executive Director, Center County Housing and Land Trust
Chris Dochat, CFO, S & A Homes Inc.
Ara Kervandjian, HFL Corp

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 confirmed Ms. Ekdahl was excused from the meeting.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:

CA-1 May 21, 2024 PC Meeting Minutes
Mr. Darrah moved to approve the May 21, 2024 meeting minutes as written.
Mr. Fenton seconded.
Motion carried unanimously.

SPECIAL PRESENTATION:

SP-1 Centre Regional Planning Agency (CRPA) Comprehensive Plan Update
Mr. Tylka introduced himself and Ms. Wargo and announced that Centre Regional Planning Agency (CRPA) is now fully staffed. He continued with a PowerPoint Presentation of CRPA and the Comprehensive Plan. Mr. Tylka spoke on the history of CRPA, Sustainability, Act 537 a Multi-Municipal Plan which defines the Sewer Service Area and Regional Growth Boundary that now align. He also
discussed the Centre Region Planning Commission (CRPC), who makes up the CRPC and their roles. Mr. Tylka talked about the Centre Region Comprehensive Plan in more detail, including what a comprehensive plan is, why municipalities should participate in a multi-municipal plan, the status of the current plan, requirements set by the Municipalities Planning Code (MPC). He added that community involvement throughout the process of updating the Comprehensive Plan is very important and gave a general timeline of completeness. Ms. Wargo added that she will be compiling events throughout the region from now until October to help get the community involved.

On behalf of the College Township Planning Commission, Mr. Forziat thanked Mr. Tylka and Ms. Wargo for their time and presentation.

SP-2 What Is a Planned Residential Development (PRD)
Ms. Schoch gave a brief presentation on what is a Planned Residential Development (PRD) in preparation of the Sketch plan to be presented. She explained the definition of a PRD set by the MPC. Ms. Schoch also discussed the general requirements of a PRD, areas which are open to negotiations with the developer, scheduling and phasing, and the process.

Mr. Darrah asked for clarification of whether the Dale Summit Area Form Based Code will be implemented in the development of the sketch plan to be presented. Ms. Schoch explained that elements of the Form-Based Code (esque) regulations have been incorporated during the zoning ordinance amendment, but anything above and beyond what is in the ordinance would have to be requested by the Township.

PLANS:

P-1 Burkentine PRD in the Planned Research and Business Park District Sketch Plan

Mr. Borger introduced himself, Mr. Flickinger from Burkentine Real Estate Group, and Mr. Hill from Wooster. Mr. Borger explained how Burkentine Real Estate Group creates communities and is proposing a community development along Shiloh Road. He added that the plan will be implemented in phases. The first phase will be primarily residential units with access from Pleasant Pointe Drive, and the second phase will complete a connection to Shiloh Road. Included in the presentation were images of how the multi-family dwellings could appear, as well as a few images of communities Burkentine has developed.

Mr. Hoffman appreciated the presentation and the townhomes without flat roofs. He asked that the project manager and developer consider creating a sense of entry to receive people into each area. This entry doesn’t need to be a structure necessarily, but should create the understanding that you are entering an area. He offered the College Township Municipal Building as an example.

Mr. Darrah appreciates the consideration of residential in this development as it lines up with the residential development on adjacent properties. He also likes the variety of residential units being proposed as well as the active recreational areas being proposed. Mr. Fenton asked if the proposed dog parks will be open to the public or residents of the development only. Mr. Flickinger stated they will most likely be open to the public and maintained by the on-site maintenance staff.

Mr. Toumayants asked for an approximate population of the community. It was discussed there is a potential for a population of approximately 1200 people. He also asked what the distance would be from the farthest point to the community clubhouse. It was determined the distance is about 900 feet. Mr. Toumayants asked how a home owners association would work in a community like the one being proposed, Mr. Flickinger introduced himself and explained.

Mr. Forziat asked if there will be any deterrents implemented to keep people from using the throughway by the clubhouse to get to Shiloh Road. Mr. Flickinger stated Burkentine is a fan of speed bumps in order to mitigate cut through traffic. Mr. Borger suggested possibly posting that section of road near the clubhouse at a lower speed limit. Mr. Forziat also stated that there may be a few gaps in the pedestrian ways and the project manager and developer should be aware and try to complete those
connections. With no further discussion, Mr. Forziat thanked Mr. Borger for his presentation and looks forward to the next steps.

OLD BUSINESS:

OB-1  Dale Summit Area Form-Based Code
Ms. Schoch stated that the questions from the Planning Commission to Council pertaining to the topic will be presented to Council at their upcoming meeting on June 6th and she anticipates answers later this month. Mr. Forziat stated he would entertain a motion to table the matter if the Planning Commission chooses.

Mr. Darrah moved to table the Dale Summit Area Form-Based Code discussion to a future meeting. Mr. Hoffman seconded. Motion carried unanimously.

NEW BUSINESS:

Workforce/Attainable Housing 2nd Remand
Mr. Forziat explained that the Planning Commission worked on the ordinance and made a recommendation to Council. Council has reviewed the ordinance as recommended and has taken developer input into consideration. Now a second remand is being presented to Planning Commission which includes Council direction on specific areas which Planning Commission asked for additional input.

Ms. Schoch reviewed the remand and the table provided which displays areas of the ordinance Council would like the Planning Commission to discuss and make a recommendation. Mr. Forziat added there does not need to be a final recommendation made this evening.

The Planning Commission discussed the definition of equity. Mr. Forziat stated Council needs to be clear with their expectations of PC and give clear direction. The Planning Commission also discussed waiver of fees, land donations, credits for existing units, phasing, and fee-in-lieu. There was some discussion about waiving internal fees as well as having the ability to waive external fees, like tap fees for water and sewer among others. Fee-In-Lieu was also discussed further. Mr. Darrah questioned how the fee is calculated currently. Ms. Schoonover explained how that fee is determined and added that the fee must be calculated by true, hard data. A fee-in-lieu needs to be based on the current value of the land, not the value at purchase in order to make it fair to all and not show partiality to a certain developer.

After much discussion Mr. Forziat invited the public to comment on the discussion. Mr. Dochat introduced himself and stated that equity can be defined as the ability for people to rent or own a home. Mr. Dochat commented on every topic discussed by Planning Commission and highlighted the fee-in-lieu should remain in the ordinance as a tool for developers and the Township as those funds could be put to use in other ways instead of sticks and bricks. He added that land donations should also remain an option with reciprocity as an added option across Township lines being allowed.

Mr. Kervandjian introduced himself and that he echoes much of what Mr. Dochat stated. He added that when the ordinance uses the word “may”, it opens the door for negotiations between the Township and developers. Mr. Kervandjian added that equity is having a roof over your head, and the developers would like to work with Township to accomplish this goal of equity throughout the Township.

REPORTS:  None presented.

STAFF INFORMATIVES:  None presented.

OTHER MATTERS:  None presented.

ANNOUNCEMENTS:
Mr. Forziat announced the next meeting will be held on Tuesday, June 18, 2024 at 7:00 p.m.
ADJOURNMENT:

Mr. Darrah moved to adjourn.
Mr. Fenton seconded.
Motion carried unanimously.

Meeting adjourned at 9:28 p.m.

** Draft **

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning
BEAVER STADIUM RENOVATION & WEST SIDE REPLACEMENT

NARRATIVE

The approach of the Beaver Stadium renovation is to focus primarily on the West Side of the stadium, replacing that portion in its entirety and providing improved access for greatly improved circulation, new restrooms, upgraded concession offerings, much-needed premium seating and an updated broadcast level. Also included in this project are much needed improvements to the balance of the stadium that will greatly enhance the fan experience, including field lighting improvements to meet NCAA standards, East side vertical circulation improvements to improve and address accessibility needs/requirements, North and East side restroom and concession additions to supplement existing conditions. Outside the stadium, a new fence will be constructed to create a secure perimeter that is further from the entrances, which will positively impact fan entry. New plaza areas will be constructed inside this fence perimeter to create fan zones.
MEMORANDUM

To:        College Township Planning Commission
From:      College Township Council
Re:        Council Response to PC Questions regarding the April 19, 2024 Remand
Date:      June 12, 2024

Introduction:

The Planning Commission (PC) was tasked with reviewing and adapting the proposed Draft Form-Based Code to fit the Township’s needs. Before delving into the code, the PC carefully reviewed the Remand Letter and its contents, including the Vision and Intent Statements. Questions arose regarding the Intent Statement, and the PC believes that having a clear direction from the outset will significantly aid their efforts in ensuring alignment with Council’s assumptions or wishes and the Dale Summit Area Plan Vision.

Staff presented the questions to Council on June 6, 2024. At that time, Council suggested consulting DPZ, CoDesign, the Township’s Planning Consultant for their input on the questions from the PC. On June 11, 2024, staff met with DPZ and has the following to report:

Planning Commission Questions with DPZ/Council Responses:

1. How is a Town Center to be developed?

The short answer is – The Regulating Plan. Another answer is – DPZ will revise the terminology in the draft code to ensure it aligns with our local vernacular.

A Town Center, now to be known as a “Neighborhood Center”, should be the most intense and most mixed-use area in Dale Summit. Neighborhood Centers are walkable, dense; the streets align to the adjacent land uses, creating a vibrant Place with a mix of uses and typically, the tallest buildings.

The Regulating Plan becomes the new zoning map for the Dale Summit Area. (Attached OB-1.a.) It identifies three (3) specific districts; Neighborhood Mixed-Use; Mixed-Use Center; and Special District – Business. The areas identified as Mixed-Use Centers identify where neighborhood centers can be developed. The intent is to develop a neighborhood center, but the terminology is inconsistent and DPZ will update the code and ensure consistency with terms. To avoid confusion, DPZ will use the same terminology in the Intent and the Regulating Plan.
2. How will Civic Buildings be controlled and monitored?

DPZ indicated the language here should be made more clear and will be clarified. Currently, the draft code refers to Civic Spaces, not Civic Buildings. Because of a meeting between staff and DPZ, and as a result of that discussion, DPZ updated the language in the Intent Statement. It is attached (OB-1.d.) for Planning Commission’s review.

3. How is the review process to be expedited?

The draft code section that refers to Process Options (attached OB-1.b.) sets forth two (2) options when submitting a Plan.

**Option 1** is the current process, and not preferred.

**Option 2** is the new and preferred method, similar to the current process, but with Final Plans submitted to staff for approval. For this process to work, a Preliminary Plan must be submitted with all required contents as specified in the code, which has been enhanced to ensure completeness.

The Preliminary Plan must be reviewed by staff and other agencies, recommended by the PC, and approved by Council. The PC will make a recommendation and Council will advertise and hold a Public Hearing to approve or deny the Plan.

Major changes to the Preliminary Plan are not allowed without restarting the process. The design and all elements of the proposed development are established and approved at the Preliminary Plan stage. When Final Plans are submitted, they have already been reviewed by the necessary parties (staff, PC, Parks and Recreation, Centre Regional Planning, Centre Region Code, CATA, Council, etc.). Staff then performs a final check to ensure the Final Plan conforms to the Preliminary Plan, with additional reviews by the Engineering, Zoning, Planning, and Public Works departments. If there are changes to the Final Plan that stray from the Preliminary Plan, it will not be accepted.

Compliance with the code is confirmed at both stages, but final approval requires sign-off from all responsible parties. If Council wishes to see the Final Plans, they could be included on the Consent Agenda, allowing Council additional opportunity to review them.

4. Who is responsible for Administrative Waivers?

Administrative Waivers allow minor, non-substantial adjustments to certain dimensional, numerical, and development standards of the code based on specific review criteria (attached OB-1.c.), where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by the standards of the Dale Summit Code and the Dale Summit Area Plan and is compatible with the surrounding development.

The Zoning Officer or his/her designee, have the ability to waive certain aspects of the code based on minor deviations from code standards that do not affect the submission in any substantive way. The waivers are tied to objective standards to avoid any subjective interpretations. This allows for an expedited process because the requirements for Council and PC to opine is not necessary. DPZ indicated, in exchange for this expedited process, the Township gets buy-in from developer who need minor adjustments to their plans that are in keeping with the intent of the Code. Facilitating and explaining the process to applicants should entice them to support the new code.

5. Define Good Urbanism.

A Place which would be an example of having good urbanism would be an economically productive Place that appeals to a wider market, where people want to linger, it should be walkable with open spaces where kids can
play. A pleasant environment. A Place where people want to be, a Place that prioritizes cyclists and pedestrians over cars. It should be environmentally sustainable and socially equitable.

**Other Considerations:**

The PC should work to ensure the Vision remains at the forefront of the discussion, keeping in mind the Place Dale Summit could be with well-tailored regulations. Regarding the Intent (new draft attached OB-1.d.), DPZ is proposing changes, which will be reviewed by both Council and the PC. If the PC feels the Intent could be stronger to represent the contents of the code, Council recognizes this could change as time moves on and you should feel free to update it as the review of the draft code moves forward.

Council appreciates the PC questions and hopes the foregoing will be useful as you move forward with the studying of the draft code.

**Attachments:**

Attachment OB-1.a. – Draft Regulating Plan/Map
Attachment OB-1.b. – Options for Plan Review Process
Attachment OB-1.c. – Administrative Waivers
Attachment OB-1.d. – Draft Intent as updated by DPZ, CoDesign.

**Next Steps:**

The Planning Commission should continue to move forward with the studying of the code as per the April 19, 2024 Remand. If further questions arise, direct staff to prepare a memo, outlining the request and present it to Council at a meeting.
FIGURE 16. REGULATING MAP
I. Option 1 (current process, not preferred)

(1) Final official submission of the plan to the Township Council shall be as listed in §180-10-A or §145-10-B.

(2) Upon receipt of the documents, the Township Secretary shall immediately forward the final plan documents to the authorities as listed in §180-10-B or §145-10-C.

(3) The final review by Township Council shall follow the same process as specified in §145-10-D.

(4) For plans containing variations from the development plan given tentative approval, refer to §145-10-E.

(5) As a condition of approval, the applicant shall agree to comply with the following sections:
   (a) Permit the Township Engineer to make periodic site inspections as specified in §145-10-F.
   (b) In order to guarantee the completion of any improvements required as a condition for final approval of the plan, the applicant shall submit a corporate bond as specified in §145-10-G.
   (c) In the event that a development plan or section thereof is given final approval and thereafter the landowner abandons a portion or the entirety of the plan, no further development shall be permitted as specified in §145-10-H.

J. Option 2 (new process, preferred)

(1) Final official submission of the plan to the Township staff shall consist of eight black- or blue-on-white prints of the plan, which shall comply with §145-13 and the conditions for which the plan received tentative approval, plus all offers of dedication and deeds of easements to the Township and all other required documents.

(2) Upon receipt of all required materials, the Township Secretary shall forward one copy of the plan to the Centre Regional and Centre County Planning Commissions, the Fire Chief, the Township Engineer and, if the proposed development is to have direct access to a state or federal highway, the district office of the Pennsylvania Department of Transportation in Clearfield, Pennsylvania. All entities may review the final plan to determine its conformance to the provisions contained in these regulations. The Township staff shall take no official action on such application until reports from the above are received or expiration of 30 days from the date the application is filed, whichever comes first.

(3) The final review of the plan shall be conducted by the Township staff and shall be limited to determining if the plan conforms to the plan which received tentative approval, including all conditions and modifications required by the Township Council, and if the requirements for final plan approval as listed under §145-13 have been met.

(4) If the plan submitted for final approval only varies with minor plan changes from the plan granted tentative approval, it shall be the responsibility of the applicant or his representative to bring such changes to the attention of Township Staff. Failure of the applicant to bring said changes to the attention of the Township Staff shall constitute an abandonment of the tentatively approved plan.

(5) For plans containing variations from the development plan given tentative approval, refer to §145-10-E.

(6) As a condition of approval, the applicant shall agree to comply with the following sections:
   (a) Permit the Township Engineer to make periodic site inspections as specified in §145-10-F.
   (b) In order to guarantee the completion of any improvements required as a condition for final approval of the plan, the applicant shall submit a corporate bond as specified in §145-10-G.
   (c) In the event that a development plan or section thereof is given final approval and thereafter the landowner abandons a portion or the entirety of the plan, no further development shall be permitted as specified in §145-10-H.
D. Administrative Waivers

(1) Purpose: An Administrative Waiver is intended to allow minor, non-substantial adjustments to certain dimensional, numerical, and development standards of the Dale Summit FBC based on specific review criteria, where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by the standards of the Dale Summit FBC and the Dale Summit Area Plan, and is compatible with surrounding development. An Administrative Waiver is also intended to provide limited flexibility to allow alternative design that is equal to or better than that afforded by strict application of certain dimensional or numerical standards. Administrative Waivers are not intended to relieve specific cases of financial hardship, nor to allow circumventing of the intent of the Dale Summit FBC. Inability to achieve the maximum development permitted in a given zoning district will not be considered grounds for the granting of an Administrative Waiver.

(2) Applicability: Administrative waivers are only permitted to modify the specific standards described in "Table 35 Administrative Waiver Criteria", that are deemed to have no effect on adjacent properties, and that demonstrate the request is consistent with the intent of the zoning district in which it is located and meets at least one of the following criteria:

(a) Improved Design: The Administrative Waiver results in better design that is consistent with the desired character for Dale Summit and achieves the intent of the Dale Summit FBC in an alternative but equally effective manner.

(b) Innovative Solutions: The Administrative Waiver enables innovation in architecture, sustainability, or technological application that is consistent with the intent of the Dale Summit FBC and the vision statement for the Dale Summit Area Plan.

(c) Environmental Protection: The Administrative Waiver conserves or enhances environmental assets of the site or adjacent sites.

(d) Site Limitations: The Administrative Waiver responds to limitations related to the size, shape, or natural features of the site.

(3) Administrative Waivers Review Process.

(a) The application shall be reviewed by the Zoning Officer or designee.

(b) An applicant denied an administrative waiver may apply for a variance and shall follow the Township's process for a variance.
## Article XII
Dale Summit FBC

### TABLE 35  ADMINISTRATIVE WAIVER CRITERIA

<table>
<thead>
<tr>
<th>TYPE</th>
<th>CRITERIA</th>
<th>MAXIMUM WAIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Topographic Constraints</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Block Perimeter</td>
<td>Topographic constraints or adjacent ownership limit the ability to create an interconnected network of streets and blocks.</td>
<td>20% max.</td>
</tr>
<tr>
<td><strong>Lot Dimensions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lot width greater than the maximum permitted width</td>
<td>An existing parcel can be developed following the intent of the zoning district and meet all other applicable standards of the district.</td>
<td>10% max.</td>
</tr>
<tr>
<td>A decrease in the minimum required parcel width.</td>
<td>An existing parcel can be developed following the intent of the zoning district and meet all other applicable standards of the zoning district; and the modulation will allow the proposed development to be consistent with adjacent development.</td>
<td>10% max.</td>
</tr>
<tr>
<td><strong>Parking Location</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parking - Location setback from building facades</td>
<td>The lot is wider than 35 feet; The lot is sloped more than 10% uphill away from the sidewalk; The ground floor of the main building is no more than 6 feet above sidewalk grade; Parking is proposed to be entirely enclosed under the main building; The proposed garage door is 9 feet wide or less.</td>
<td>Reduction in the parking location setback from building facades to equal the main building front setback.</td>
</tr>
<tr>
<td>Parking - Number of Spaces</td>
<td>One of the following: - Modification is necessary to save an existing significant tree or provide a civic open space. - A change of use of less than 10,000 SF in which no additional square footage will be constructed, and site conditions make compliance with the required parking spaces impossible or impractical.</td>
<td>The greater of 10% of total spaces required or 10 parking spaces.</td>
</tr>
<tr>
<td><strong>Setbacks</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### TABLE 35 ADMINISTRATIVE WAIVER CRITERIA

<table>
<thead>
<tr>
<th>TYPE</th>
<th>CRITERIA</th>
<th>MAXIMUM WAIVER</th>
</tr>
</thead>
<tbody>
<tr>
<td>A decrease of the minimum setback or increase to the maximum setback.</td>
<td>Existing development on adjacent parcels on the same block face is more similar to the proposed setback than the required setback; The modulation will allow the proposed building to blend in with the adjacent buildings. For an increase to the maximum setback, the building will be fronted by a civic space and the extra space between the building and ROW will not be used for parking.</td>
<td>5’ or 40% max., whichever is greater for minimum setback waiver. Up to 10 feet for the maximum setback waiver.</td>
</tr>
<tr>
<td>A relaxation of the specified build-to-line.</td>
<td>Existing development on adjacent parcels on the same block face is more similar to the proposed setback than the required setback; The modulation will allow the proposed building to blend in with the adjacent buildings.</td>
<td>8’ max or 10% max. of the lot width, whichever is greater.</td>
</tr>
<tr>
<td>Allow buildings to be placed closer or further from a parcel line due to existing site features, such as trees, watercourses or topographical changes.</td>
<td>Existing site features would be negatively impacted if buildings follow the required setback, or The constraint of existing site features would not allow for construction of habitable spaces within buildings.</td>
<td>20% max.</td>
</tr>
<tr>
<td>Civic Spaces</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A relaxation in the meeting the civic space type standards</td>
<td>Site or development conditions make compliance with the standards impossible or impractical.</td>
<td>10% max.</td>
</tr>
</tbody>
</table>

### E. Council Waivers

1. Permit Council to waiver requirements for innovative designs or unique solutions that comply with code requirements.
B. Intent
The intent and purpose of this Article is to enable, encourage and qualify the implementation of the following policies:

(a) The community:
1. That neighborhoods, corridors, town centers, and urban neighborhood centers should be compact, pedestrian-oriented and mixed use.
2. That neighborhoods, town centers, and urban neighborhood centers should be the preferred pattern of development and that districts specializing in a single use should be the exception.
3. 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.
4. That interconnected networks of thoroughfares should be designed to disperse traffic and reduce the length of automobile trips.
5. That within neighborhoods, a range of housing types and price levels should be provided to accommodate diverse ages and incomes.
6. That civic, institutional, and commercial activity should be embedded in the town neighborhood centers and neighborhoods, not isolated in remote single-use complexes.
7. That schools should be sized and located to enable children to walk or bicycle to them.
8. That a range of useable open spaces should be distributed within neighborhoods and the town neighborhood centers.
9. That new streets connect to existing streets to form as robust an interconnected network of streets as feasible.
10. That street context and design guide how new and repurposed buildings address the street.
11. That new streets require street trees, and improved existing streets preserve trees wherever possible.

(b) The block and the building:
1. That buildings and landscaping should contribute to the physical definition of thoroughfares as civic places.
2. That development should adequately accommodate automobiles while prioritizing the pedestrian, the bicyclist, and the spatial form of public areas.
3. That architecture and landscape design should grow from local climate, topography, history, and building practice.
4. That buildings should provide their inhabitants with a clear sense of geography and climate through energy efficient methods.
5. That civic buildings and civic open spaces public gathering places should be provided as locations that reinforce community identity.
6. That civic buildings should be distinctive and appropriate to a role more important than the other buildings that constitute the fabric of the city.
7. That the preservation and renewal of historic buildings should be facilitated, to affirm the continuity and evolution of society.
8. That incremental infill development, aligned to the Dale Summit Area Plan, be encouraged.
9. That the zoning district descriptions in Section “C. Zoning Districts Established”
(c) The District

1. That communities should provide meaningful choices in living arrangements as manifested by distinct physical environments.
2. That the zoning district descriptions in Section “C. Zoning Districts Established”
ATTENDED BY –
COUNCIL: L. Eric Bernier, Vice Chair
D. Richard Francke
Tracey Mariner

STAFF:
Adam T. Brumbaugh, Township Manager/Secretary
Mike Bloom, Assistant Township Manager
Don Franson, P.E., P.L.S., Township Engineer
Amy Kerner, P.E., Public Works Director
Mark Gabrovsek, Zoning Officer
Jennifer Snyder, CGA, Assistant Township Secretary

ABSENT:
Dustin Best, Chair
Susan Trainor

CALL TO ORDER: Vice Chair, Mr. L. Eric Bernier, called to order the May 16, 2024, regular meeting of the College Township (CT) Council at 7:00 PM and led in the Pledge of Allegiance.

PUBLIC OPEN DISCUSSION: No Public Open Discussion items brought forward.

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

SPECIAL REPORTS: SP-1 College Township Annual Audit Report

Mr. Joseph Fedeli, Fiore Fedeli Snyder Carothers, LLP, presented Council with an overview of the College Township DRAFT audit report of basic financial statements and supplementary information for year ended December 31, 2023. Mr. Fedeli offered there was no findings in the report. Once the audit is finalized, the audit will be advertised as required.

Mr. Fedeli offered, as stated in the audit, the overall financial position of the Township is sound and will continue to improve. The Township’s overall financial position as of December 31, 2023, is demonstrated by the following condensed government-wide statement of net position which shows that total assets exceeded total liabilities by $18.6 million; an increase of $502,000 from 2022.

Mr. Fedeli reviewed the Statement of Net Position, the Balance Sheet, Statement of Revenues, Expenditures and Changes in Fund Balances, and the Required Supplementary Statement of Revenues, Expenditures and Changes.

Council thanked Mr. Fedeli for his presentation and made the following motion.

Mr. Francke moved to accept the College Township Audit year ended 2023, 2022, and authorize Staff to make final edits, corrections as noted and published to required sites.
Ms. Mariner seconded the motion.
Motion carried unanimously.

PLANS: P-1 Shiloh Commercial Park Preliminary Subdivision Plan

Mr. Mark Toretti, Project Manager, Penn Terra Engineering, offered that Mr. Ed Maxwell, property owner, is proposing to combine Tax Parcel 19-002B-065A (14.497 acres) and Tax Parcel 19-002B-65B (3.654 acres) into one lot under a separate plan and subdivide this new lot into seven commercial lots of varying sizes from 1.32 acres to 5.26 acres. The development will be separated into two development phases. Lots 1-3 will be developed in Phase 1 and Phase 2 will include lots 4-7.

A proposed public road, East Trout Road, opposite the existing Trout Road will extend through the site to provide access for the proposed lots and end with a cul-de-sac. The road will be built to local public road standards and offered for dedication to the Township. All parcels are zoned C1, General Commercial within the Wellhead Protection Overlay District.

The property owner also owns Tax Parcel 19-2B-64 (1.04 acres), which will not be a part of the new subdivided lot, however, new access, water and sanitary sewer connections will be made to this property.

An off-site stormwater management basin is proposed to be built for the subdivision in Phase 1. The basin will be located on the property north of the site in Benner Township and beyond the CT 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 property owner.

Mr. Toretti explained the traffic study requirements and the PennDOT improvement projects for the entire Dale Summit/Shiloh Road corridor. The property owner is asking to revise a note on the plan to defer the installation of the traffic signal until the PennDOT traffic study for the area is completed or 18 months.

After a short discussion, Council made the following motions with a revised note on the plan regarding a traffic signal.

Mr. Francke made a motion to 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-days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained. Failure to meet the ninety-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 University Area Joint Authority.
5. Provide an Intent to Serve letter from College Township Water Authority.
6. Provide proof of PennDOT Highway Occupancy Permit prior to occupancy.
7. Provide proof of National Pollutant Discharge Elimination System (NPDES) approval.
8. Provide a draft Declaration of Stormwater Access and Maintenance Easement (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. Modify Note #26 on the plan to read “A traffic signal and associated lane improvements are proposed at the intersection of Shiloh Road and Trout Road as part of the Shiloh Commercial Park development based upon the approved Traffic Impact Study for the subdivision. These proposed improvements must be installed prior to any certificates of occupancy being granted for any proposed land development on proposed Shiloh Commercial Park Lots 1-7. Pedestrian crossings required by College Township and PennDOT at this intersection will be shown on the Highway Occupancy Permit and Traffic Signal design Plans. These above requirements are subject to any full or partial deferral of improvements that PennDOT may accept due to: 1) improvements not being warranted by the initial development of lot(s) in the subdivision and/or 2) the improvements are to be installed later as part of a larger PennDOT coordinated Shiloh Road Corridor Upgrade project. This exception for deferral shall be for no longer than 18 months from the initial occupancy of any proposed lot within the subdivision.”

11. 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.

Chair Bernier clarified with Mr. Toretti that they understood the 18 month deadline. They responded in the affirmative.

Motion carried unanimously.

Chair Bernier moved NB-2 to this point on the agenda.

NB-2 CATA Local Match; Resolution R-24-22

Mr. David Rishel, Centre Area Transit Authority (CATA), Executive Director/Chief Executive Officer, addressed Council with a presentation regarding the Local Match for 2024-2025 and an annual update on CATA services.

Mr. Rishel offered a CATA Year in Review which included celebrating CATA’s 50th Anniversary. He reviewed the 2024-2025 service change highlights which will includes the CATA GO program being available to College Township residents. One service change that may affect College Township residents is the CATA bus service will no longer travel through Lemont. Residents may use the CATA CO service.

Mr. Rishel reviewed the new approach to Local Match. He explained that CATA worked with municipal Managers on an updated approach. The apportionments will follow other subsidy programs and be based on population of each municipality. Campus residents are counted through Penn State’s contribution. He opined that CATA’s benefits are not just for riders. CATA ridership reduces regional traffic, regional environmental impact and reduces the need for parking regionally.
Mr. Rishel shared every dollar of Local Match brings in approximately $30.50 of other funding from State, and Federal Subsidy to Fare Revenue.

Resolution R-24-22 certifies the provision of Local Match for State Operating Financial Assistance. College Township will provide CATA local funds in the amount of $72,952.00 to match state funds provided pursuant to 74 Pa. C.S. Section 1513 in Fiscal Year 2024-25. CT will pay quarterly payments in the amount of $18,238.00. In addition to the local operating funds, the Township resolves to provide capital funding for the fiscal year in the amount of $8,316.00 to be paid in quarterly payments.

Council discussed the change in service and the CATA GO service. They cautioned that interrupting service through Lemont may cause some issues. Council would like to see some outreach efforts to educate riders who might be impacted by this service change. The CATA GO service hours were provide.

Ms. Lori Miller, CATA Director of Business Development and Community Engagement, offered that they will be provided outreach about the service changes and education on the CATA GO service.

Mr. Brumbaugh shared that with the Pike Street Phase 3 project in progress, at some point, traffic will be one-way as it has in past years.

Council thanked Mr. Rishel and Ms. Miller for their presentation and the following motion was made.

**Mr. Francke made a motion to approve Resolution R-24-22. Ms. Mariner seconded the motion. Motion carried unanimously.**

**REPORTS:**

a. **Manager’s Update**

Mr. Adam Brumbaugh, Township Manager, reported that 1) the Transportation Alternatives Set-Aside Grant coordination meeting is scheduled for May 31; and, 2) Council received recommendations from PC, regarding Attainable/Workforce Housing Ordinance rewrite. Council reviewed, discussed, and suggested modifications. Council to preview work at this Council meeting and remand to PC for review.

b. **COG Regional, County, Liaisons Reports**

**COG Facilities Committee:** Mr. Bernier offered the COG Facilities Committee met on May 7, 2024, and approved a consultant to facilitate the Long Range Facilities Plan and received a presentation on the Custodial Services and Building Maintenance Draft report. The approved consultant for the Facilities Plan is Kimmel Bogrette Architecture + Site, Inc. for the planning fee of $47,500.

**COG Finance Committee:** Mr. Francke reported the COG Finance Committee met on May 9, 2024, and discussed the Capital Improvement Plan 2025-29, formulas for annual budgeted municipal shares, 2025 Budget Guidelines, and the Cost of Living Adjustment (COLA) Methodology review.

**COG Public Safety Committee:** In her written report, Ms. Trainor offered the COG Public Safety Committee met on May 14, 2024, and discussed Engine 5-1 disposal plan, Penn State Funding Agreement, and PA’s Move Over, Slow down Law.

c. **Staff/Planning Commission/Other Committees**
**CT Planning Commission:** Mr. Fenton, Planning Commission Liaison to Council offered that the PC met on May 7, 2024, and reviewed the Shiloh Commercial Park Subdivision Plan and recommended Council approval. They also discussed the Attainable/Workforce Housing ordinance and opined that community input would have been welcome during their initial review.

The PC began their review of Form Based Code and had five questions for Council to discuss and offer feedback. Council asked that these questions be added to a simple memo and discuss as an Old Business item at the next meeting.

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

Mr. Bloom, Assistant Township Manager, reported that two resolutions are on the Consent Agenda, one to recognize May as Asian Pacific American Heritage Month and June as LGBTQ+ Pride Month.

**CONSENT AGENDA:**

**CA-1 Minutes, Approval of**
- 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
- d. Email from Laura Dinini, dated May 9, 2024, regarding dangerous road conditions – Left Turn Lane from SR 26 to US322

**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

Ms. Mariner made a motion to approve the May 16, 2024, Consent Agenda as presented minus CA-2.d.
Mr. Francke seconded the motion.
Motion carried unanimously.

**CA-2.d.:** Chair Bernier requested the Staff engage with PennDOT about the traffic issues at the intersection mentioned, SR26 and US322. Staff offered this bridge is on the schedule to be rehabilitated in a few years so this is a good time to start a dialog with PennDOT. Staff will gather crash data for the discussion.

Mr. Francke made a motion to accept CA-2.d. on the May 16, 2024, Consent Agenda.
Ms. Mariner seconded the motion.
Motion carried unanimously.
OLD BUSINESS:

**OB-1  Attainable/Workforce Housing Ordinance**

Mr. Mike Bloom, Assistant Township Manager, offered that at the May 2, 2024, CT Council meeting, Council and members of the development community provided valuable feedback on the fifteen items Council was asked to review relative to the Attainable/Workforce Housing Draft ordinance. With this discussion in mind and the Planning Commission’s original recommendations, Staff has prepared a matrix that outlines discussions to date.

Mr. Bloom asked that Council reviews the matrix and confirm their direction on the included items and provide any additional consideration to be included in a remand letter to the Planning Commission. Additionally, Staff asked Council to weigh in on the composition of the Fee-in-Lieu formula and serving the missing middle gap by changing the calculation of attainable rentals based on 70% Area Median Income (AMI) from 65% or less AMI.

Council Member, Ms. Trainor, provided written feedback to the matrix as she was unable to attend the meeting.

Council agreed that the matrix correctly represented their feedback from the May 2, 2024, CT Council meeting. They offered that the additional questions from Staff, regarding Fee-In-Lieu and the serving the missing middle, as well as Ms. Trainor’s comments where they do not agree with the matrix, be presented to the PC in the remand letter for their discussion and consideration.

Ms. Mariner made a motion to authorize Staff to draft a remand letter for Council to consider prior to forwarding to the Planning Commission.
Mr. Francke seconded the motion.
Motion carried unanimously.

NEW BUSINESS:

**NB-1  Employee Retirement Bonus**

Mr. Adam Brumbaugh, Township Manager, offered that Mr. Robert Long formally retired from College Township service as the Finance Director, on April 30, 2024. He was employed since July 20, 1999. Throughout his tenure, Mr. Long exemplified professionalism and was instrumental in influencing all facets of Township business. Mr. Brumbaugh proposes the Township acknowledge Mr. Long’s service by providing a one-time bonus payment in recognition of his outstanding and dedication service to College Township.

Mr. Brumbaugh explained the Township’s retirement bonus program is structured so that the Manager may recommend an award based on 1) only years of service, at $100 per year, or 2) 5% of accrued hours x final hourly base rate of pay provided the employee has accrued an average of 40 or more sick hours per years of service.

Using this criteria, Mr. Brumbaugh shared that Mr. Long is eligible for a $2,400 retirement bonus on years of service and it his recommendation to Council to consider authorizing this bonus payment to Mr. Long.

Council discussed the Township’s Retirement Bonus policy and asked Staff to discuss and review.
Mr. Francke wholeheartedly moved to authorize a bonus payment to Mr. Robert Long Jr. in an amount of $2400 in recognition of his outstanding service to College Township over the course of his 24+ year career as a College Township employee and Finance Director and, further direct the Township Finance Director or Finance Staff to arrange payment from the Township’s un-reserved fund balance. Ms. Mariner seconded the motion. Motion carried unanimously.

NB-3 2025-2029 DRAFT Capital Improvement Plan (CIP)

Mr. Mike Bloom, Assistant Township Manager, offered that on an annual basis College Township develops a 5-year Capital Improvement Program (CIP), which is an important planning document that ultimately informs a major portion of the annual budget.

Mr. Bloom provided a brief overview of proposed expenditures by the major capital improvement categories. Council offered the Bikeway and other category is misleading.

A doodle poll will be sent to Council to determine the best date to hold the work session to review the CIP before approving the document at the June 20, 2024, CT Council meeting.

STAFF INFORMATIVES: No Staff Informatives were pulled for discussion.

OTHER MATTERS: Mr. Bloom offered that Council should have received a survey regarding Thompson Woods Preserve. He asked Council to look for the survey in an email.

ADJOURNMENT:

Chair Bernier called for a motion to adjourn the meeting.

Ms. Mariner moved to adjourn the May 16, 2024, Regular College Township Council Meeting. Chair seconded the motion.

The May 16, 2024, Regular College Township Council Meeting was adjourned at 9:34 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Adamt. Brumbaugh Township Secretary
Rezoning

Developers claim city council violated equal protection rights in denying rezoning application

Citation: SAS Associates 1, LLC v. City Council for City of Chesapeake, Virginia, 91 F.4th 715 (4th Cir. 2024)

The Fourth U.S. Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

SAS Associates 1 LLC and Military 1121 LLC (collectively, the developers) appealed a court’s decision to dismiss their claims against the City of Chesapeake, Virginia City Council (CC) for allegedly violating their equal-protection rights by denying their rezoning applications.

DECISION: Affirmed.
The CC had valid grounds for denying the developers’ rezoning applications.

A CLOSER LOOK

The developers owned several parcels of land in Chesapeake, Virginia where they wanted to build single- and multi-family housing units, commercial space, and a 60-acre conservation district on 90 acres of land.

The area slated for development was located within several zones:

- agricultural (A-1);
- general business (B-4); and
- single-family residential (R-15S).

Each zone placed restrictions on land use, and those restrictions didn’t allow for the types of uses the developers envisioned, so they sought to have the parcels rezoned.

In 2016, the developers filed an application asking for the land to be rezoned for multifamily residential (R-MF1), neighborhood business (B-1), and conservation (C-1) uses. The application articulated a development plan that included 293 townhouse-style condominiums and 10,000 square feet of commercial space.

In Chesapeake, such rezoning applications were first reviewed by the city’s planning commission, which assessed the application, held an initial public hearing, and recommended a course of action to the city council.

Following a hearing, the planning commission recommended that the CC approve the developers’ application. It found that the proposal satisfied Chesapeake’s Planning and Land Use Policy, which set level-of-service standards meant to ensure that a development, would not overwhelm local infrastructure.

The planning commission also found that the proposal was consistent with
Chesapeake’s comprehensive plan for the area and compatible with the development of the surrounding community.

Meanwhile, residents spoke out in opposition to the developers’ plans. And after the CC denied the developers’ application citing community opposition and the fact that existing zoning classifications didn’t preclude useful development.

In 2018, the developers revised their proposal by reducing the project’s residential density by nearly 50% and outlining plans for 153 single-family and townhouse units. The revised plan also included 11,300 square feet of commercial space and a 60-acre conservation district.

At a public hearing to discuss the matter, neighbors again spoke out against the proposed development. They expressed concern about recent flooding and worried that the development would compound the area’s drainage problems. They also complained that the inhabitants of the new dwellings would exacerbate existing traffic congestion.

Following the hearing, the CC voted 7-2 to deny the application. This vote came after the city’s floodplain administrator was asked to address the drainage concerns. While he acknowledged that the surrounding area suffered from regular flooding due to the elevation of previously developed land, he also averred that the developers’ project could be designed so that it would not have a detrimental effect.

BACK TO THE COURT’S RULING

“Land use decisions like these lie at the core of local governments’ historic responsibilities in much the same way that state governments regulate domestic relations and the federal government oversees matters of national security,” the court wrote. When a federal court “upended” a zoning decision, there could be constitutional implications. That is, “upending zoning decisions” would:

- constitute a request for the federal government to intervene in local affairs—and zoning decisions “primarily impact the communities to which they apply” and that’s why “[l]ocal officials [w]ere well equipped to make such decisions; and

- leave “judicial authority . . . displac[ing] discretionary legislative judgments”—and where “[z]oning decisions generally turn[ed] on questions of public policy about how to organize a community,” including the types of properties that should be included in a given area and optimal population density for the area, “[s]uch judgments [w]ere best left to elected bodies, which [w]ere both representative and accountable.”

The bottom line: The court didn’t see a reason to override the city’s judgment here. “To make out an equal protection claim, the [d]evelopers must ‘plead sufficient facts to demonstrate plausibly that [they] were treated differently from others who were similarly situated and that the unequal treatment was the result of discriminatory animus.’ ” But they failed to meet this burden.

"Land use decisions like these lie at the core of local governments' historic responsibilities in much the same way that state governments regulate domestic relations and the federal government oversees matters of national security,"

For instance:

- The developers didn’t supply any facts from which the court could infer that the city council members had a discriminatory motive; and

- there wasn’t evidence they treated the developers
Injunctions

Denial of special permit leads sober-living property owner to file for a TRO and preliminary injunction

Citation: Jeffrey D. Summers, Plaintiff, v. City of Fitchburg, Defendant., 2024 WL 555815 (D. Mass. 2024)

Jeffrey Summers, president and director of Jeffrey’s House Inc. (Jeffrey’s House) alleged that the City of Fitchburg, Massachusetts violated his rights and the law by placing limitations on Jeffrey’s House’s sober living homes. The city requested dismissal of the lawsuit, and Summers’ request for a temporary restraining order (TRO) and preliminary injunction.

DECISION: Request for dismissal granted.

Summers wasn’t entitled to a TRO or preliminary injunction as there wasn’t any “available federal remedy based on the claims as currently presented.”

WHAT LED TO THE CONTROVERSY

Jeffrey’s House owned and operated three sober living homes in Fitchburg, including one at 69 High Street, and another at 33 Garnet Street. For 10 of the past 11 years, Summers and Jeffrey’s House had continuously been embroiled in legal battles with the city over zoning and code violations.

This particular controversy at issue stemmed from how the city treated Summers and Jeffrey’s House with respect to the properties at 69 High Street, a three-story residential group home with 11 bedrooms, five bathrooms, two living rooms, and one dining room and kitchen that was used as a licensed nursing and convalescent home and veterans’ hospice, and 33 Garnet Street.

Since 1973, the city issued certificates of inspection and occupancy allowances from 12 to 18 occupants—always for the first two floors only. Thus, the third floor could only be used for office space and not residential quarters because building codes applicable to hospitals, nursing homes, and convalescent facilities with incapacitated residents prohibited occupancy on the third floor for safety reasons.

In April 2020, the city’s building commissioner issued Veterans Homestead, the former owner and operator of 69 High Street with a certificate of inspection for 14 occupants, finding the house had been inspected and was in good working condition.

Summer bought the property several months later, and within a year, the building commissioner had issued him a violation notice for having sleeping units on the third floor. He ordered Summers to “immediately vacate [at] floor, and to start eviction proceedings on the . . . residents that had occupied [it] for over a year.”

According to Summers, Jeffrey’s House wasn’t a nursing home, convalescent home, or medical facility, and since none of its residents were incapacitated or incapable
of exiting the property on their own in the case of an emergency, he believed the third floor was occupiable since it had sprinklers and fire alarms.

Then, Summers wrote the commissioner a letter on behalf of Jeffrey’s House residents asking for reasonable accommodation so all eight of them could live on the third floor. Despite knowing the residents were disabled, the commissioner denied the request, stating “the reasonable accommodations previously granted to you were granted by then [b]uilding [c]ommissioner [i]n 2014. Since that time the United States Justice Department [DOJ] and the United States Department of Housing and Urban Development [HUD] . . . issued new guidance regarding who should grant reasonable accommodations and on what criteria should be used when approving or denying them.”

The commissioner’s letter focused on a joint statement by the DOJ and HUD, which advised as to granting reasonable accommodations and stating “[w]here a local land use or zoning code contains specific procedures for seeking a departure from the general rule, courts have decided that these procedures should ordinarily be followed.”

Fitchburg’s zoning code contained specific procedures for departing from the zoning rules—specifically applications for special permits and variances from the local zoning board of appeals (ZBA).

Thus, the commissioner stated, “I cannot Grant your request because I am not the Special permit granting authority or the variance granting authority. I therefore recommend that you apply for relief in the form of a variance and or a special permit from the Fitchburg [ZBA].”

Jeffrey’s House then filed a discrimination claim with HUD. HUD told Jeffrey’s House that the denial of its reasonable accommodation request could be investigated. After a six-month investigation during which HUD “never received any response from . . . Fitchburg regarding the inquiry,” it “found probable cause to refer the investigation over to the DOJ.” But the DOJ decided not to take the case and recommended that Jeffrey’s House and Summers litigate their case.

Summers, as a result of “being threatened, intimidated, taken to court, and fined,” then served eviction papers on the eight third-floor tenants, with that floor remaining vacant through a year. As a result, Summers lost $56,000 in rental income and spent $6,000 for a “complete architectural analysis of 69 High Street.” That analysis concluded that “69 High Street could safely house 40 residents, including full use of the third floor.”

In early 2022, Summers and Jeffrey’s House were slated for the ZBA’s agenda regarding their reasonable accommodation request to increase the occupancy of 69 High Street to 22 residents, as well as to be allowed to use the 3rd floor.

The ZBA violated to decrease the occupancy, not allow the third floor to be used for sleeping, and requiring every resident to have their own room and a commercial kitchen. Summers alleged that the ZBA’s denial was arbitrary, capricious, illegal, and racist. He contended that 69 High Street “had double and sometimes triple room occupancy since 1955” and that the ZBA’s decision was unlawful because “the State Sanitary Code [wa]s the law that determine[d] the number occupants in a room, not the ZBA.”

In July 2022, Summers was granted a special permit to operate a sober living home at 69 High Street. He didn’t, however, agree with the permit terms so he appealed the ZBA’s decision to state court.

Despite that appeal, the ZBA voted to fine Summers $300 per week until he recorded the ZBA’s decision at the registry of deeds, but Summers hadn’t done so because he did not “see the logic in recording a decision that he is appealing and that he vehemently disagrees with.”

In 2023, the ZBA said Summers owed the city about $50,000, which he claimed was the result of its discrimination against him.

Summers also owned 33 Garnet Street, which also operated a Jeffrey’s House sober-living home. In 2021, a housing court judge ordered it to shut down because Summers had failed to install sprinklers. While Summers had sprinklers installed, he claimed the city had “willfully, intentionally, maliciously, and illegally fought to keep 33 Garnet Street closed for an additional 11 months after the sprinklers were installed.” That house ultimately reopened in May 2023 after the nearly yearlong shutdown resulted in a loss of revenue for Summers of $99,000.

**THE LAWSUITS**

Summers filed suit against the city alleging civil rights violations and discrimination under the Americans with Disabilities Act (ADA) and Fair Housing Act (FHA). He also alleged the ZBA’s actions intentionally caused him emotional distress.

Conspiracy to violate civil rights—Summers claimed he was “intimidated, threatened, harassed, and coerced to accept the city’s discriminatory practices or be fined, jailed, and evicted,” so he “suffered lasting emotional, physical, and financial harm, and a continuing deprivation and devaluation of his property and dignity interest as a result.” But his complaint didn’t “identify any particular right or a law through which the [c]ourt should analyze” this count.

The bottom line: Summers didn’t show he had a valid claim under section 1983 of the U.S. Code.

**ADA and FHA discrimination**—These claims also failed. Summers asserted that Fitchburg had violated the ADA and FHA when it “denied Jeffrey’s House’s written request for disability-related [r]easonable [a]ccommodation.” “These claims, even liberally construed, are brought on behalf of Jeffrey’s House and/or Jeffrey’s House on behalf of its residents, not Summers. Accordingly, because Jeffrey’s House is not a plaintiff in this case and, even if it were, Summers cannot represent Jeffrey’s House,” so these counts were dismissed.

**Intentional infliction of emotional distress**—Summers claimed being forced to kick out Jeffrey’s House residents from 33 Garnet Street and the city’s decision to delay the re-opening of 33 Garnet Street constituted...
intentional infliction of emotional distress. Again, though, “the aggrieved party in these claims appears to be Jeffrey’s House, not Summers. In any event, even assuming Summers were the aggrieved party, the claims fail because Fitchburg, a municipality, cannot be liable for intentional torts,” the court wrote.

CASE NOTE

Summers also claimed the city had “damaged present and potential business relationships between [him] and his residents” by telling another organization that if it conducted business with Jeffrey’s House the city would not conduct business with them. This, he contended caused “many residents to move out in fear that the house [would] be shut down” and leave them homeless. Therefore, he claimed this impacted “ability to earn a living has been damaged and he has endured financial losses.”

The city argued these claims were ripe for dismissal because as a town/public employer it couldn’t be held liable for intentional torts. Summer never responded to this argument, the court noted while citing the Massachusetts Tort Claims Act, which stated that municipalities “enjoy[ed] governmental immunity for intentional torts” under state law, such as “assault, battery, false imprisonment, . . . misrepresentation, deceit, . . . [and] interference with advantageous relations or interference with contractual relations.”

Standing

Church asks court to apply ‘automatic standing rule’ to recreational cannabis use after ZC grants special permit


Saint Nicholas Russian Orthodox Greek Catholic Church (GCC) filed suit alleging the Town of Stratford, Connecticut’s zoning commission (ZC) erred in granting a request for special permit that C3 EJVI LLC (C3) filed. The special permit application requested permission to operate a retail cannabis business at 130 Honeyspot Road, an area zoning CA/MA—per the town’s zoning map (at 1064.zoninghub.com/zoningmap.aspx), this meant retail, commercial and light industrial.

After the ZC granted the special permit, GCC appealed. The defendants argued GCC wasn’t “statutorily aggrieved” by its decision. However, it acknowledged that GCC might have been “classifiedly aggrieved” by its action.

Before the court, GCC asserted that it had standing to bring its claim. It contended that, as a town taxpayer, it had standing to maintain an appeal of the ZC’s decision to grant a special case allowing a retail cannabis business pursuant to the “automatic standing rule,” which, in Connecticut, was applicable to an appeal from a zoning authority involving the sale of alcoholic beverages. GCC asked the court to apply this rule to the sale of cannabis for recreational use.

The court had to decide if GCC could pursue its claim or whether it lacked standing to continue with the lawsuit.

DECISION: Request for dismissal denied.
GCC overcame its burden of establishing standing.

The court found that GCC pleaded sufficient facts to support a finding of classical aggrievement, if proven at trial; and depending on the proof at trial, GCC might also show “aggrievement and standing, as a taxpayer of the Town of Stratford, consistent with the automatic standing rule, which applie[d] with equal force to both the sale of alcohol, and the sale of recreational cannabis.”

Aggrievement—Aggrievement was an issue properly raised when a defendant requested dismissal of a lawsuit since “proof of aggrievement [was] a [prerequisite] to a trial court’s jurisdiction over the subject matter of an appeal.”

To have standing to pursue an administrative appeal, a plaintiff had to be “aggrieved” either by showing statutory or classical aggrievement.

“Statutory aggrievement exist[ed] by virtue of legislative fiat, and a recognition of a right to institute an action without regard to an analysis of the facts of a particular case.” “Classical aggrievement, on the other hand, require[d] a party to satisfy a well-established two-fold test: 1) the party claiming aggrievement must demonstrate a personal and a legal interest in the decision appealed from, as distinct from a general interest such as concern of all members of the community as a whole, and 2) the party must prove that the specific personal and legal interest has been specifically and injuriously affected by the decision which generated the appeal.”

Here, GCC didn’t claim that it owned property within 100 feet of 130 Honeyspot Road, Stratford. GCC claimed to have pleaded sufficient facts to claim classical aggrievement, the court explained. “Furthermore, the Church argues that it has standing to appeal consistent with the ‘automatic standing’ rule. That rule, which the Church claims is applicable to the retail sale of cannabis products for recreational use, is a judicially created finding that any municipal taxpayer appealing from a decision of a municipal zoning authority which involves the sale of alcoholic beverages, is a priori an aggrieved person for purposes of an appeal.”

GCC claimed to have pleaded sufficient facts to claim classical aggrievement.

Finally, “[t]he adoption by the Connecticut General Assembly of the Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA), effective July 1, 2023, makes consideration of whether the automatic
taxpayer standing rule, applicable to the sale of liquor, should also apply to the recreational use of cannabis and cannabis products,” the court explained. “Because the possession, sale and use of cannabis violated criminal statutes until recently, this represents a case of first impression,” it added.

Sale of cannabis—The court rejected the defendant’s argument that by applying the automatic standing rule to cannabis sales, courts would render pharmacies and drug stores subject to the rule. “This claim is not well taken,” the court wrote.

“Application of the automatic standing rule to the sale of cannabis for recreational purposes, is in no way analogous to the dispensing of prescription drugs based upon medical necessity, under the supervision of a physician or other health care provider. The recreational use of cannabis cannot be compared to the use of prescription drugs, provided by a licensed pharmacist,” it added.

The bottom line: Both adult recreational cannabis and alcohol usage had been legalized. Therefore, it would be “disingenuous . . . to endorse a rule which regard[ed] the sale of alcohol and the sale of cannabis differently, for purposes of standing to challenge the decision of a municipal zoning agency.”

Zoning News Around The Nation

California

Paso Robles seeks public’s input on zoning ordinance

The City of Paso Robles, California’s planning commission has invited the public to comment on its zoning ordinance. The city announced a “Public Study Session” that took place on February 13, 2024, to review sections of a proposed zoning ordinance.

Topics of discussion at the public study session included signs, parking, fences, landscaping, accessory structures, setback encroachments, mechanical screening, swimming pools, objective design standards, and general rules of measurement.

Prior to this meeting, in 2021, Paso Robles’ community development department launched “a comprehensive overhaul of the City’s Zoning Ordinance (Title 21 of the Paso Robles Municipal Code).”

The city added that it has several objectives:

- to provide clear, user-friendly development regulations;
- to bring the ordinance into compliance with recent legislation and case law; and
- to streamline the housing permitting process, while providing for flexibility and innovation.

Additional information on the city’s proposed zoning updates can be found at prcity.com/1100/Comprehensive-Zoning-Code-Update.

Source: prcity.com

Connecticut

Court reviews PZC’s decision to deny recovery center’s special permit request to have a hoop-house greenhouse

In a case alleging that a recovery center’s administrative appeal against a town planning and zoning commission (PZC) shouldn’t have been dismissed, a Connecticut appeals court recently ruled that the recovery center was entitled to have the PZC revisit its special permit application with reasonable conditions.

The recovery center sought to add a 30-by-70-foot greenhouse on its property in the Town of Kent, Connecticut. The PZC denied the application, finding that the proposed greenhouse was an illegal expansion, rather than a permissible intensification, of its valid nonconforming use of the property.

On appeal, the recovery center claimed the court had erroneously found that:

- it couldn’t, as a matter of law, intensify its valid nonconforming use of the property because the “intensification doctrine” the Connecticut Supreme Court didn’t apply to a nonconforming use that arose out of a previously issued special permit; and
- the substantial evidence in the record supported the PZC’s determination that the proposed greenhouse was an illegal expansion of its valid nonconforming use.

In agreeing with the recovery center, the appeals court noted that the lower court had misapplied caselaw precedent found in Zachs v. Zoning Board of Appeals. The recovery center contended that it had a vested and constitutionally protected right to intensify the use of its property notwithstanding the fact that its valid nonconforming use was initially approved by special permit. “We agree,” the appeals court ruled.

“Connecticut law recognize[d] and protect[ed] the right to continue valid nonconforming uses.” Under Connecticut’s General Statutes (section 8-2(d)(4)), “municipal zoning regulations [could] not ‘[p]rohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations.’ This meant “that a property owner ha[d] the right to continue ‘the same use of the property as it existed before the date of the adoption of the zoning regulations’ that made the use nonconforming.”

Therefore, the law “‘preclude[d] a municipality from amortizing or altogether eliminating such nonconformities through the enactment or amendment of its zoning regulations.’”

The court added that “[a] valid nonconforming use could arise in a number of different ways” and that “[i]nrespective of how a valid nonconforming use came into being, a property owner [could] continue the same use of the property as it existed prior to the enactment of zoning regulations making the use nonconforming.”

The bottom line: The recovery center argued the lower court’s decision was erroneous as a matter of law because
it deprived it of the right to intensify its valid nonconforming use of the property. And, it asserted that there wasn’t any precedent or valid rationale for excluding its property from the class of nonconforming uses that may permissibly be intensified solely because the nonconforming use was initially approved by a special permit. While the PZC argued that the nature of special permits supported the court’s finding that the recovery center couldn’t intensify its valid nonconforming use of the property (which the PZC approved in 2018), the court found that “a valid nonconforming use arising out of a previously issued special permit may be intensified in accordance” with the Connecticut Supreme Court’s decision in 

Zacks.

Having addressed the issue of whether the nonconforming use initially approved by way of a special permit could be intensified in accordance with 

Zacks, the court turned to whether there was sufficient evidence in the record to support the PZC’s stated reasons for denying the recovery center’s proposed greenhouse.

According to the PZC, it had denied the special permit on the basis that the use of the proposed greenhouse would be an illegal expansion of the plaintiff’s valid nonconforming use of the property. But the recovery center argued that the court had erred in finding there was substantial evidence in the record to support the PZC’s finding that the addition of its proposed greenhouse would constitute an illegal expansion of a nonconforming use. “We agree,” the court wrote.

“Following the approval of the . . . 2018 special permit application, the uncontested evidence reveal[ed] that the [recovery center] began using the property in conformity with its approved special permit application by operating an equine therapy program, which included the use of a barn on the property to house the program’s horses; a ropes course and climbing wall; and agricultural activities, including the farming of vegetables and a horticulture therapy program for some of the residents of the treatment program.” “Much of the farming of vegetables on the property and the care of the horses for the equine program was done by the . . . staff. Some residents living on the residential property also assisted with the agricultural activities as part of their therapy program. The vegetables produced on the property were used to feed the residents and staff on the residential property,” the court noted.

The parties didn’t dispute that the use approved by special permit in 2018 became a valid nonconforming use in 2020 after the amendment to the regulations eliminating language permitting a privately operated hospital, clinic, nursing home, or convalescent home in the RU-1 district.

Therefore, the 2020 special permit application and site plan “essentially amounted to a prophylactic request for an order from the commission confirming that its use of its proposed greenhouse would be considered a permissible intensification of its valid nonconforming use.” And the evidence in the record that the PZC relied on showed that the recovery center proposed adding a “hoop house” type greenhouse, which would consist of a series of hoops covered with plastic that creates a tunnel in which plants could be grown. “Because the ground on which the plaintiff proposed to construct the greenhouse is already flat, there would be no need for concrete work or any excessive ground disturbance.”

Practically speaking: The court found that “the use of the proposed hoop house reflect[ed] the nature and purpose of the existing, original use of the property.” It would be located within close proximity to the existing house and barn on the property and close to the previously approved equine activities, ropes course, and wall climbing areas. And it would allow the recovery center “to grow fruits and vegetables . . . to feed and support the . . . residents and staff residing on the residential property—activities that it already d[id].”

Also, the single hoop house located in an area already devoted to growing plants wouldn’t change “the character, nature and kind of use involved.”


Kentucky

State AG rules local zoning board violated Open Meetings Act

The state’s attorney general’s (AG) office recently concluded that the Williamsburg, Kentucky Board of Zoning Adjustment “violated the Open Meetings Act [OMA] . . . when it failed to issue a written response to a complaint within three business days and when it conducted a meeting under the Act without adequate acoustics.”

The controversy arose after a member of the public claimed they couldn’t hear what was being discussed at a zoning meeting and that members of the ZBA had conducted hidden conversations while in subgroups. “However, the Office cannot resolve the factual dispute concerning whether the Board divided into subgroups to discuss public business in private,” Assistant AG Matthew Ray wrote.

To read more of Ray’s comments, which discuss the OMA and more, visit ag.ky.gov/Resources/orom/2024-ORM/2024-ORM-030.pdf.

Source: ag.ky.gov

Massachusetts

State’s highest court refuses to hear case challenging zoning board’s decision

A plaintiff filed suit against the Zoning Board of Appeals of Billerica, Massachusetts (ZBA) challenging its decision to grant a real estate developer a dimensional variance.

A lower court granted the ZBA—and the real estate developer—judgment without a trial on the basis that the plaintiff lacked standing to bring the lawsuit. The plaintiff claimed she had standing because the proposed project would harm her in three ways:

• by increasing water runoff to her property;
by increasing population density; and
by lowering the value of her property.

A Massachusetts appeals court affirmed the lower court’s ruling finding that the plaintiff failed to substantiate the claimed injuries “with credible evidence.” Recently, the Massachusetts Supreme Judicial Court refused to take the case on for further review, so the ZBA’s decision will stand.


Texas

Parties weigh in on stalled redevelopment plans in Haltom City

Between Dallas and Fort Worth, Texas sits Haltom City. Just 10 minutes from the Dallas Fort Worth Airport and downtown Fort Worth, many believe the area is ripe for redevelopment given its direct access to major roadways.

So what’s the hold up? A recently released press release discusses potential reasons for the stall. For instance, Ron Sturgeon, founder of Haltom United Business Alliance and Make Haltom City Thrive Again (makehaltomcitythriveagain.com), stated “that a redevelopment plan can’t succeed without the support of city leadership.”

Haltom United Business Alliance Communications Director Joe Palmer (facebook.com/HaltomUnitedBusinessAllianceHUBA) added that “[a] key component for success in such a plan is to get the business community invested in it.”

“We’ve given proposal after proposal to the city, and they don’t even acknowledge that we exist. They even go as far as to say that if the city’s business owners don’t actually reside in the city, they have no voice in these discussions. I believe that this kind of disconnect makes any revitalization of the southern and central parts a non-starter,” Palmer added.

Sturgeon added that if the city addresses residents’ concerns over redevelopment, it could “modify or elimi-
nate unnecessarily prohibitive code restrictions.” “Stringent land-use laws, especially parking regulations, serve as a major deterrent to redevelopment of older buildings in Haltom City,” he stated.

The bottom line, according to Sturgeon: “Haltom City could remove these unwieldy parking mandates, which are often ineffective and inefficient.” Sturgeon said, noting that his recommendation for city leaders would be to look closer at existing land-use regulations, which prevent[ing] startups from filing vacant buildings in the area.


Source: 24-7pressrelease.com

Virginia

Data center development may stall under newly introduced legislation

There are several pieces of legislation that were recently introduced into the Virginia Legislature that could stall the development of new data centers in the state’s northern region, reported Data Center Dynamics recently.

For instance, the news outlet cited a Washington Business Journal article indicating that one piece of legislation would require data center developers to obtain county approval. The practical impact of this legislation would mean that data centers wouldn’t be allowed by right. “In the previous ordinance, data centers were permitted (by-right) in the Office Park (OP) and Planned Development-Research and Development Park (PD-RDP) zoning districts. In the new ordinance, data centers may be allowed upon Board approval of a SPEX application in the OP and PD-RDP zoning districts. The new Zoning Ordinance also adds data center as a permitted use in the Mineral Resources-Heavy Industry (MR-HI) zoning district,” Loudon County states on its website. For more information, visit loudoun.gov/59555/Zoning-Ordinance-Rewrite-Change-Highlight.

Source: datacenterdynamics.com
Variances

Homeowners claim sunroom should be treated as a pre-existing nonconforming structure

Citation: Frontiero v. City of Gloucester, 2024 WL 511164 (Mass. Land Ct. 2024)

The City of Gloucester, Massachusetts’ zoning board of appeals (ZBA) upheld the building inspector’s denial of Joseph and Maria Frontiero’s building permit. They had sought permission from the city to build a deck on top of an addition previously allowed by variance at their property.

The Frontieros filed suit against the city and sought judgment without a trial in their favor. The ZBA cross-filed for judgment.

DECISION: ZBA’s request for judgment without a trial granted.

The Frontieros needed to comply with the variance that had been issued.

MORE ON THE FACTS

The Frontieros applied for and received a variance in 2004 to construct a sunroom. The ZBA’s subsequent revocation of that variance was reversed by a court, leaving the variance in place.

Then, the parties executed an agreement the purpose of which was to “clarify and confirm the shape and size of the proposed structure pursuant to said variance.” That agreement did so by, among other things, expressly incorporating a set of plans, the 2007 plans, that reflected what had been approved by the ZBA in 2004.

It wasn’t an agreement “related solely to the issuance of a building permit and wholly unrelated to the 2004 variance decision. The 2007 plans show a structure with a sloped roof and no roof deck,” the court explained. And “[t]he Frontieros were required to strictly comply with those plans. . . . If the Frontieros intended to deviate from the 2007 plans, their recourse was by way of a modification of the 2004 variance decision or an application for a new variance.”

PRACTICALLY SPEAKING

“The Gloucester Zoning Ordinance’s (GZO) provisions regarding pre-existing nonconforming structures are not applicable to any addition to the sunroom,” according to case law precedent.

Here, the Frontieros claimed the sunroom should be treated as a pre-existing nonconforming structure under the GZO, and that no zoning relief was required to construct their proposed roof deck. But their argument was “contrary to well-established case law” and “rejected by this court,” the court explained.
The Frontieros claimed the sunroom should be treated as a pre-existing nonconforming structure under the GZO. But their argument was “contrary to well-established case law.”

The court noted that “[v]ariances [were] different from pre-existing nonconforming uses or structures.” “[U]nlike prior nonconforming uses, which originated as legal uses of property, uses within a variance only become legal with the permission of the permit granting authority.”

The court also explained that a Massachusetts Supreme Judicial Court (SJC) decision—in Palitz v. Zoning Board of Appeals of Tisbury—had been dispositive. “There, a prior owner of the property, on which three dwellings sat, obtained the planning board’s endorsement on a plan dividing the land into three lots on each of which a single dwelling sat. The new lot at issue in Palitz did not conform to the local zoning bylaw as to lot size and frontage. The owner sought and obtained a variance from the [ZBA] to make the lot and dwelling lawful, and therefore salable.”

Years later, the current owner sought a building permit to tear down the existing dwelling and construct a new dwelling that, while maintaining the same footprint, would have been approximately 10 feet taller and added a bedroom, third floor and basement. “There, as here, the local zoning enforcement officer refused to issue a building permit unless the owner obtained a modification of the earlier granted variance. A request to modify the variance was denied. On appeal to this court, the owner argued unsuccessfully that the lot was entitled to the protection of [Massachusetts General Law chapter 40A section 6] as a pre-existing nonconforming structure because the dwelling predated the local zoning bylaw, and the lot was created pursuant to an existing structures exemption in the subdivision control law.”

In Palitz, the SJC first determined that the division of the land into three lots created new nonconformities as to lot size, frontage, and front yard setback, among others. And according to the Palitz ruling “[b]ecause the Zoning Act only permitted changes to grandfathered structures if the ‘changes themselves compl[ied] with the ordinance or by-law,’ the Zoning Act did not render those new nonconformities lawful.” Thus, “firmly entrenched principles of zoning law compel the conclusion that [a variance] was necessary to render the new nonconformities lawful.”

In reaching its decision, the court also cited other Massachusetts cases, namely Mendoza v. Licensing Board of Fall River and Mendes v. Board of Appeals of Barnstable. In Mendoza, the court ruled if there was “ambiguity on the face of a variance decision, it should be resolved against the holder of the variance.” In Mendes, the court noted that variances weren’t allowed by right and should be granted “sparingly.”


Case Snapshot:
A variance had been granted for the property owners to construct a prefabricated four-season 11-foot-by-18-foot sunroom over an existing deck at the back of their residence. But the building inspector issued a cease-and-desist letter after learning the building plans they submitted during the permitting phase were substantially different from those presented to the ZBA for approval of the variance.
Ripeness

Developer says request for variance would have been futile since village had discriminatory motives for denying permits

Citation: BMG Monroe I, LLC v. Village of Monroe, 93 F.4th 595 (2d Cir. 2024)

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

BMG Monroe I LLC (BMG) claimed the Village of Monroe, New York (the village) denied its applications for building permits on five lots that it wanted to use for a 181-unit subdivision known as the “Smith Farm Project” for discriminatory reasons. Specifically, BMG challenged the village’s denial of its applications for building permits on five lots it sought to use for project, alleging that the village was motivated by discriminatory animus toward the Hasidic Jewish community—a community of people to whom BMG intended to market the residential development. Thus, BMG claimed the village’s actions violated the Constitution’s Equal Protection Clause and the Fair Housing Act ( FHA).

The lower court dismissed the claims as unripe and alternatively for lack of standing. BMG appealed.

DECISION: Affirmed.

BMG didn’t satisfy the finality requirement for demonstrating ripeness; it wasn’t excused from that requirement because the village had indicated that it was unlikely to be receptive to a variance request that had not yet been made.

A CLOSER LOOK

In 2001, BMG sought the village’s permission to construct 12 single-family detached units, 32 duplex units, a community center, outdoor recreation areas, roads, and management facilities through the Smith Farm Project.

BMG’s proposed design features didn’t conform to the village’s zoning codes because parts of the Smith Farm Project would be located in its “multi-family zoning district,” which only “allow[ed] for . . . either row-house or multi[-]family residential [housing], by conditional use permit[s].”

Also, most portions of the project would be located in the Town of Monroe’s “multiple[-]dwelling areas, in which developers would need “special exception use permit[s]” to build “semi-attached single family units,” “townhouses,” “row houses,” and “duplex buildings.”

BMG’s project also sought to construct a more traditional layout of detached and semi-detached units “instead of designing the units in row houses or town houses,” as required by the village and the town. In effect, BMG sought to build “[c]hapter developments” as an “alternative permitted method for designing and configuring lots, buildings[,] and structures to preserve the natural qualities of open lands.”

The village and the town reviewed the application pursuant to mandatory procedures established by the New York State Environmental Quality Review Act (SEQRA). They ultimately allowed BMG to depart from their multifamily regulations so long as BMG satisfied certain conditions.

In 2006, the village and town planning boards issued a joint Findings Statement (the SEQRA findings), concluding that “all [statutory] requirements . . . had been met” and that the project had “minimize[d] or avoid[ed] adverse environmental effects to the maximum extent practicable . . . by incorporating as conditions [specific] mitigation measures.”

The SEQRA findings expressly stated that approvals depended “on the incorporation of the housing styles, finishes, and the streetscape . . . attached to the . . . [SEQRA] Findings.” They stressed “the importance of that design integrity to the acceptability of the cluster [could not] be over-emphasized” and included drawings depicting requirements for “architectural styling,” and emphasized that construction had to abide by “a strict architectural code” and “critical architectural criteria” concerning rear elevation, roof pitch, and siding materials.

Later that year, the village planning board granted “preliminary conditional use approval” for the Smith Farm Project, while stressing again that its “approval[ ] . . . rel[ied] on and therefore [was] conditioned on BMG’s incorporation of the housing styles, finishes, and the streetscape” presented in BMG’s environmental-impact statements and attached to the SEQRA Findings. The town’s planning board also granted preliminary conditional use approval of BMG’s proposal around this time.

The SEQRA findings expressly stated that approvals depended “on the incorporation of the housing styles, finishes, and the streetscape . . . attached to the . . . [SEQRA] Findings.”

In 2014, BMG prepared a revised site plan and applied for final project approvals from the planning boards. Both boards issued an “Amended Lead Agency Findings Statement (capitalization standardized), which ‘clarif[ied]’ and ‘modif[ied]’ certain conditions set forth in the SEQRA Findings, but otherwise left them ‘in full force and effect.’ ”

That same day, the village and town granted conditional final approvals for the Smith Farm Project, while reiterating that the “conditions” of the final approval, included BMG’s “[f]ull compliance” with the “critical architectural criteria” from the village’s and town’s preliminary conditional approvals.

In 2017 and 2018, BMR submitted applications to the village’s building inspector for permits to construct homes on the five Smith Farm Project lots at issue in this case: Lots 1, 2, 3, 45, and 46. Citing the failure of BMG’s
proposed construction plans to comply with the architectural criteria upon which the village planning board had conditioned its approvals in 2006 and 2015, the building inspector denied each of the five applications.

BMG appealed the building inspector’s denials of the applications for Lots 45 and 46 to the village’s zoning board of appeals (ZBA), but it never appealed with respect to Lots 1, 2, and 3.

The ZBA denied BMG’s appeal on November 13, 2018, upholding the building inspector’s determination that BMG’s proposed construction plans for Lots 45 and 46 were “not in accordance with” the “strict architectural code” approved by the village planning board. Then, in late 2018, the ZBA issued a written decision that denied BMG’s application based on BMG’s nonconformance with the rear-elevation, siding-materials, and roof-pitch conditions outlined in the SEQRA Findings.

THE LAWSUIT

BMG filed suit in 2020, challenging the building inspector’s denials of building permits for Lots 1, 2, and 3 and the ZBA’s denial of its appeal as to Lots 45 and 46. In April 2022, the lower court dismissed the action without prejudice, finding that BMG’s claims were unripe for judicial determination under Supreme Court precedent, and that in any event, BMG hadn’t established standing to bring “claims seeking to assert the rights of the Hasidic Jewish community.” BMG then appealed.

BACK TO THE COURT’S RULING

The court found that the denials with respect to particular lots weren’t “final” decisions; thus they weren’t ripe for court review. Also, it wouldn’t have been futile for BMG to make an additional application for a variance.

FUTILITY EXCEPTION

In the Second U.S. Circuit, an appeal to the ZBA and requesting variance relief were “necessary prerequisites to ripeness.” If a party didn’t pursue a variance, they would be prevented from challenging a local land use decision in federal court on ripeness grounds.

However, a “futility exception” could apply where a property owner was excused from obtaining a final decision if pursuing a ZBA appeal or seeking a variance would be futile. “A property owner is not required to pursue applications, for example, ‘when a zoning agency lacks discretion to grant variances or has dug in its heels and made clear that all such applications will be denied.’” Additionally, ‘a property owner [is] not . . . required to litigate a dispute before a [ZBA] if it sits purely as a remedial body.’”

Here, the ripeness of BMG’s action turned on whether:

- The village’s denial of its applications for building permits on each of the five lots constituted “final decision[s]” under the Supreme Court precedent; and

- BMG’s failure to seek a second variance after it sought to depart from the terms of the SEQRA findings, i.e., the initial variance, was excused under our futility doctrine.

“We answer both questions in the negative,” the court wrote. The bottom line:

- After the ZBA affirmed the village planning board’s finding that BMG’s construction plans did not comply with previously agreed-upon conditions, BMG had to submit at least one “meaningful application for a variance” to the village planning board or ZBA to see whether it could apply clustering techniques in the multi-family district while using the new rear elevation, roof pitch, and siding materials.

- The SEQRA findings provided the terms BMG had to abide by “to depart from the normally applicable land-use restrictions in the [t]own and [v]illage,” so if it wanted “to alter those conditions, it first had to seek another variance before proceeding to federal court.”

Practically speaking: The court rejected BMG’s reliance on the futility exception. It argued the village planning board had made clear it would refuse to consider any amendment to its conditions regarding the Smith Farm Project’s approvals. “But BMG’s assertions that [it] ‘refused to entertain the application [for a variance] or ‘to consider any amendment to [the conditions it had originally imposed on] the Smith Farm Project’s approvals,’ . . . [we]re belied by the record.”

The village planning board’s meeting minutes showed “its members were actively considering BMG’s request for a variance, albeit with some initial skepticism.” While one member stated he didn’t feel the planning board should depart from conditions of the original approvals and others stated they didn’t want to change what had been approved, such statements weren’t read as supporting an argument that the planning board was “[d]ig[ging] in its heels and ma[k]ing] clear that all [variance] applications w[ou]ld be denied.”

“While the [v]illage [p]lanning [b]oard might have expressed doubts about BMG’s prospects for receiving a variance, ‘mere doubt that a variance application would be [g]ranted’ was insufficient to establish futility.”


Practically Speaking:

If a building permit was denied, the party seeking that permit had to appeal an adverse planning board decision to the zoning board of appeals and submit at least one “meaningful application for a variance” before filing a federal lawsuit.
DID ALDERWOMAN’S CONDUCT MAKE DEVELOPER’S CLAIM IT HAD BEEN DENIED FULL FAIR-MARKET VALUE OF ITS PROPERTY RIPE FOR REVIEW

Citation: King Sykes LLC v. City of Chicago, 2024 WL 7303785 (N.D. Ill. 2024)

King Sykes LLC (KS) owned land in Chicago’s Bronzeville neighborhood. The City of Chicago and former Alderman Sophia King (collectively, the defendants), in conjunction with another real estate developer and two defendant development companies—GRIT Chicago LLC (GRIT) and Farpoint Development LLC—collectively, the developer defendants, planned to redevelop the broader area in which KS’ plot was situated.

KS accused the defendants of scheming to deny it the full fair-market value of its property so that they could acquire it for a lesser amount for their own redevelopment purposes at some future point. As a result, KS claimed the defendants were liable for violating and/or conspiring to violate its constitutional rights. It asked to hold each of the developer defendants liable for tortiously interfering with an agreement that KS had to sell the plot of land to Equinix LLC, a third party.

The city, the developer defendants, and GRIT asked to dismiss the complaint, including failure to state a claim and ripeness.

DECISION: City’s request for dismissal granted; developers’ and GRIT’s requests granted and denied in part.

The defendants asserted that KS hadn’t followed proper procedures so its claims should be dismissed for being unripe. KS conceded that neither it nor Equinix had filed a formal application concerning a proposed data-center proposal or other development for KS’ site—nonetheless received any rejections of such applications.

KS countered that the alderwoman had exercised unchecked veto power over land-use decisions “after making her unequivocal rejection to Equinix, as well as her forecast about future development proposals to KS, rendered any follow-up application processes obviously futile.”

The court rejected KS’ argument. “Courts tend to hold plaintiffs to this one-application minimum no matter how strongly they assert futility at the outset,” the court explained, citing another case where the court found that “[a] minimum, the developer must show that he made at least one meaningful application for a development permit.”

The bottom line: The alderwoman’s rejection of the proposed data center on the KS site on behalf of the city was the only issue ripe for review. That official’s insistence that the city would not grant KS any future development permits for the KS site was not as it was “simply too speculative and [f]ell[] too far outside the contours of acceptably ripe land-use challenges as circumscribed by the case law.”

A CLOSER LOOK

The complaint “adequately allege[d] that [the alderwoman’s] rejection of Equinix’s proposed data center, made upon consideration of its pre-application submissions, and the [city council’s] subsequent approval of a development [plan], which facilitated the relocation of Equinix’s data center to the . . . site, was sufficiently final.”

The alderwoman’s rejection of the proposed data center on the KS site on behalf of the city was the only issue ripe for review.

This wasn’t “just a matter of the firmness of the decisionmaker’s tone when communicating the rejection. Perhaps the most significant allegation in this case is that the [city’s] broader redevelopment plans for the area reflect[ed] a commitment to having a data center located on a site other than the KS site.” And the complaint “raise[d] a strong inference that the [city] would not permit Equinix to build a data center just to have it taken down once GRIT and the [city need[ed]] the KS site as a replacement location for [a] staging operations that would otherwise take place at” a place called Marshalling Yard. Thus, there were “strong indicators that [the alderwoman’s] rejection reflected not just her own but the [city’s] firm stance on the issue.”

Abstention

Landowners challenge designation of certain land as “rural reserves”

Citation: Blumenkron v. Multnomah County, 91 F.4th 1303 (9th Cir. 2024)


Katherine Blumenkron, David Blumenkron, and Springville Investors LLC (the plaintiffs) filed suit alleging that the designation of certain land in Multnomah County, Oregon, as “rural reserves” was not permitted under the Oregon Land Reserves Statute. They asserted claims alleging federal and state constitutional claims and seeking a variety of injunctive and declaratory relief and damages.

The defendants, Multnomah County, councilors of the Metro Regional Government, and members of the Oregon Land Conservation and Development Commission, challenged the lawsuit.

The lower court dismissed the plaintiffs’ constitutional claims and refused to exercise jurisdiction over their “as-applied” claims under Burford v. Sun Oil Co. The plaintiffs’ appealed.
DECISION: Affirmed.

The lower court didn't err in refusing to exercise jurisdiction over the as-applied claims.

HOW THE CASE AROSE

The plaintiffs owned about 76 acres of land in Multnomah County within a section of land known as “Area 7.” The county’s board of commissioners unanimously adopted a resolution recommending that all land within Area 7 remain undesignated—that is, not designated as either urban reserve or rural reserve.

Thereafter, an intergovernmental steering committee established a regional numbering system that divided Area 7 into three areas, 9A, 9B, and 9C—with the plaintiffs’ property located within Area 9B.

In the ensuing months, Metro and Multnomah County prepared a proposed intergovernmental agreement that would leave Areas 9A and 9B undesignated. Metro and the county then received letters advocating for a different outcome—some favoring an urban reserve designation; others favoring a rural reserve designation.

Public hearings ensued and the county commissioners by a 3-2 vote adopted an intergovernmental agreement with Metro that designated Areas 9A and 9B as rural reserves. Then Metro also voted to amend the proposed intergovernmental agreement to make it consistent with the amended agreement adopted by the county, by a 5-2 vote.

The county then adopted ordinance 1161 designating Areas 9A and 9B as rural reserves and setting forth the county’s reasons for adopting the designations.

Metro conducted another public hearing on the designations and then adopted Ordinance No. 10-1238A, approving and adopting the same designations.

Metro and the three Portland-area counties provided the Land Conservation and Development Commission with a “consolidated submittal” of proposed designations, which included the designations of Areas 9A and 9B as rural reserves.

In October 2010, the commission held a hearing on the consolidated submittal. At the hearing, the commission heard extensively from Metro and the three counties. Other individuals, including the plaintiffs, were also given brief opportunities to explain their objections and offer evidence.

The commission generally approved the proposed designations, except it remanded two areas (not at issue here) to Metro and Washington County for further consideration.

In May 2011,Metro and the counties resubmitted their proposed designations to the commission, and the commission held another hearing to consider objections to those designations. The commission eventually issued a 156-page order of compliance acknowledgment (OCA).

The plaintiffs filed a request for review of the OCA in an Oregon appeals court. The court rejected most of their contentions, including their “overarching contention” that the commission had “erroneously understood the designation of urban and rural reserves to be a ‘political’ decision materially unconstrained by legal requirements.”

The court reversed and remanded the OCA, so Multnomah County held more public hearings regarding the reserve designations.

The plaintiffs then submitted testimony and new evidence of changed circumstances affecting Area 9B. Both Multnomah County and Metro eventually adopted ordinances that reaffirmed and adopted all of Multnomah County’s previous reserves designations.

The appeals court affirmed a second OCA, it noted that the assignments of errors raised “general contentions that much of the decision-making involved in the reserves-designation process was impermissibly political,” but rejected them without discussion.

BACK TO THE COURT’S RULING

The Burford abstention requirements had been met for each as-applied claim. Further, the lower court had properly dismissed the damages claims under Burford. “Although the comity principles that underlie abstention doctrines generally permit dismissal only of claims for equitable relief, when the requirements for abstention are met, a federal court may dismiss damages claims that are only incidental to equitable claims,” the court wrote.

To prevail on as-applied procedural due process claims, the plaintiffs had to show they had a constitutionally protected liberty or property interest and were deprived of that interest without process.

“Plaintiffs concede that the heart of their as-applied claims is the contention that... two local governments and a state agency... misapplied their lawful authority or failed to take into consideration or properly weigh the relevant state-law factors under the Land Reserves Statute,” the court explained. Thus, they were asking the federal court to reverse the rural reserve designation of Area 9B—a designation authorized by state law, made by intergovernmental agreement, approved by a state agency, and subject to judicial review by the Oregon Court of Appeals.

To prevail, the plaintiffs had to show they had a constitutionally protected liberty or property interest and were deprived of that interest without process.

With the plaintiffs’ property constituting one portion of Area 9B, which included 2,500 acres of property belonging to multiple Oregonians, “a change to the rural reserve designation for Area 9B would likely require reconsideration of urban and rural reserve designations in Multnomah County or the Metro region ‘as a whole.’”

Thus, their claims would “disrupt the [s]tate’s attempt to ensure uniformity in the treatment of an essentially local problem.”
Having found the abstention requirements had been met, the court looked to see if the lower court had abused its discretion. The court also ruled that the plaintiffs lost on this point, too. They alleged “that the ‘designation of their property as rural reserve, rather than urban reserve, reduce[d] the present value of [their] property,’ and they s[ought] alleged ‘damages arising from that wrongful designation.’ ” But the court couldn’t award damages “without first declaring unconstitutional the administrative proceedings and orders of the Commission affirming the local governments’ designation of Area 9B as rural reserve. There is no dispute that land use is a matter committed to the states.”

The plaintiffs also sought injunctive relief, including permanent injunctions enjoining the defendants from acting on their reserve designations and requiring them “to designate Area 9B or their property as Urban Reserve.” “Indeed, the [p]laintiffs’ complaint alleges that their ‘injuries will be redressed only if this Court declares Multnomah County, Metro, and [the Commission]’s actions and the rural reserve designation of [their] property unconstitutional, and enjoins Multnomah County, Metro, and [the Commission] from its application and enforcement,” the court explained. So, the lower court didn’t abuse its discretion in abstaining from exercising its jurisdiction over plaintiffs’ as-applied claims in their entirety.


Zoning News Around The Nation

Illinois

Local community development director recognized in Marquis’ Who’s Who

Marquis’ Who’s Who® has recognized Bolingbrook, Illinois-based Community Development Director Matthew Eastman for his contributions to community development and planning.

“[I]ndividuals profiled are selected on the basis of current reference value. Factors such as position, noteworthy accomplishments, visibility, and prominence in a field are all taken into account during the selection process,” a press release stated.

Eastman, who joined as Bolingbrook’s community development director in 2023, is responsible for planning and zoning, engineering, and building divisions and oversees project lifecycles from inception to final inspection.

Eastman also promotes and enhances the village through collaborations, grant facilitations, and strategic partnerships with various organizations and the Village Board of Trustees.

Source: 24-7pressrelease.com

Proposed single-family zoning act to rules committee

In February, Illinois House Bill 4795—the proposed Single-Family Zoning Ban Act—was referred to the rules committee. This proposed legislation would define a “zoning unit” as a “county, municipality, or township that has adopted zoning regulations, and defines other terms.” “It would also provide that on or after June 1, 2025, a zoning unit with a population equal to or less than 500,000, and on and after June 1, 2026, for a zoning unit with a population equal to or greater than 500,000, the zoning unit may not zone area exclusively for single-family residential use.”

It also would require “middle housing to be allowed on property that is zoned residential” and the “adoption of zoning ordinances and zoning maps consistent with the Act by June 1, 2025 for zoning units with a population equal to or greater than 100,000 but less than 500,000 or by June 1, 2026 for a zoning unit with a population equal to or greater than 500,000.”

Further, it would give the Illinois Housing Development Authority the authority to develop a model middle housing ordinance to be used if a zoning unit failed to adopt the required ordinance or zoning map.

To read additional details, visit ilga.gov/legislation/Bill Status.asp?DocNum=4795&GAID=17&DocTypeID=HB&LegId=152563&SessionID=112&GA=103.

Source: ilga.gov

Massachusetts

Town of Milton loses grant funding after failing to comply with state’s MBTA housing law

The Town of Milton, Massachusetts has lost a state grant after voters opted not to comply with a proposed zoning change that would have required the addition of 2,500 housing units.

The Massachusetts’ MBTA Communities Law (mass.gov/info-details/multi-family-zoning-requirement-for-mbta-communities) requires municipalities designated as “MBTA communities” to have “at least one zoning district of reasonable size in which multi-family housing is permitted as of right” with “[m]inimum gross density of 15 units per acre,” “[l]ocated not more than 0.5 miles from a commuter rail station, subway station, ferry terminal or bus station, if applicable,” and without age restriction—that is, suitable for children and families.

In a letter to the town administrator, Massachusetts Housing and Livable Communities Secretary Ed Augustus said Milton won’t be eligible for $140,800 in funding for seawall and access improvements, which was contingent upon compliance with the law. It also won’t be eligible to receive MassWorks and HousingWorks grants, putting it at a “competitive disadvantage for many other state grant programs,” a press release stated.

“The law is clear—compliance with the MBTA Communities Law is mandatory,” wrote Secretary Augustus. “At this time, Milton is the only rapid transit community in Massachusetts that is not in compliance,” he added.

Source: mass.gov
New York
Draft zoning framework for Jamaica Neighborhood unveiled

New York Department of City Planning (DCP) Director Dan Garodnick recently shared the Jamaica Neighborhood Plan draft zoning framework, a step toward creating a formal rezoning proposal. “The draft zoning framework builds on feedback from thousands of New Yorkers over six months, and responds to critical neighborhood challenges by laying out a roadmap for housing and economic growth, as well as enhanced transit access, public space and infrastructure,” a press release stated.

“The release of the draft zoning framework, which organizes the study area into the Downtown Core, Downtown Extension, Transit Corridors, and Industrial Core, Transition, and Growth areas, offers the community an opportunity to provide further input before DCP introduces a formal rezoning proposal in the coming months,” the release added.

“We are developing a vision for a thriving Jamaica that delivers not only housing for current and future residents but also greater economic opportunities,” said Garodnick. “The Jamaica community surrounds one of this country’s most important transportation hubs, and deserves a neighborhood plan that meets resident needs, unlocks key City investments, and promotes an affordable, prosperous and inclusive future,” Garodnick added.

“There are few neighborhoods in New York City that can offer the same level of vibrancy, economic activity, transportation, culture, and diversity and potential as Jamaica. Everyone who either lives here, works here or plays here knows the limitless potential of this community—potential the Jamaica Neighborhood Plan is in the early stages of unlocking,” said Queens Borough President Donovan Richards Jr.

The framework reflects input gleaned through a DCP online survey, in-person workshops, and a steering committee focused on providing direction and feedback on the proposed framework.

“The framework covers more than 300 blocks and offers a vision of housing opportunity, economic growth, enhanced infrastructure and public space, and increased access to transit,” the press release stated. “In the Downtown Core, it would establish MIH to create permanently affordable income-restricted housing and position the heart of the Central Business District as a mixed-use neighborhood. Further north, south, and east of the Jamaica Rail Hub, the ‘Moderate’ Downtown Core areas would establish MIH and encourage mixed uses on key north-south corridors while supporting connections to transit. On transit corridors along Hillside Avenue, eastern Jamaica Ave-

nue, and southern corridors, the framework would support affordable housing at contextual scales, support faith-based organization partners, encourage pedestrian safety and transit access, and encourage locally serving retail.” And in industrial areas, the framework would “affirm the position of the Jamaica Industrial Business Zone (IBZ) for job growth and critical services, while supporting new employment opportunities and harmonious growth with the nearby downtown areas.”

To view the draft zoning framework, visit nyc.gov/asset s/planning/download/pdf/about/press-releases/pr-20240212.pdf.

Source: nyc.gov

Minnesota
“Missing Middle Housing Bill” being considered

As of print time, the Minnesota House Housing Finance and Policy Committee was slated to consider HF 4009/SF3964—known as the “Missing Middle Housing” bill, along with HF 4010/SF 3980.

According to the League of Minnesota Cities (LMC), the bills, which focus on residential and commercial lot density, city zoning preemption, land use authority, are likely to be combined.

Visit the following links to read the text legislation: rbg vy/9yye9, rbg/ysdak7, rbg/4lk8y7, and rbg/zy153w8h. And for a summary from the LMC, visit lmc.org/news-pu blications/news/missing-middle-housing-bill-includes zoning-and-lend-use-preemptions/

Source: lmc.org

North Carolina
Check out Raleigh’s zoning resources

Raleigh, North Carolina makes it easy to research property zoning at raleighnc.gov/planning/services/unified-develop ment-ordinance-udo/find-my-zoning. Through a five step iMAPS process a user can get a zoning verification output.

The zoning website (raleighnc.gov/planning/services/z oning-map) also provides infographics explaining zoning types, such as mixed use, residential, special, and overlay—including important information about conditional uses, base zoning, overlays, maximum heights, and more. And raleighnc.gov/planning/services/zoning-map explains how the legally defined process applies to rezoning applications.

Finally, at raleighnc.gov/planning/services/adopted-rez oning-cases you can search adopted zoning cases from 1984 to the present.

Source: raleighnc.gov
# JUNE 2024

## LAND DEVELOPMENT PLAN COUNCIL ACTION DEADLINES

<table>
<thead>
<tr>
<th>Title</th>
<th>Submitted</th>
<th>Action Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>PSU Soccer Operations Center</td>
<td>4/22/2024</td>
<td>7/21/2024</td>
</tr>
<tr>
<td>Mt. Nittany Elementary</td>
<td>4/22/2024</td>
<td>7/21/2024</td>
</tr>
<tr>
<td>State College VA</td>
<td>5/8/2024</td>
<td>8/6/2024</td>
</tr>
<tr>
<td>Shiloh Comm. Park Phase 1</td>
<td>5/20/2024</td>
<td>8/18/2024</td>
</tr>
</tbody>
</table>

## 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; 5/17 Plan received for CT signatures (CTC to sign 6/6)</td>
</tr>
<tr>
<td>Summit Park Subdivision (Preliminary)</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; On Hold</td>
</tr>
<tr>
<td>Maxwell Storage</td>
<td>June 18, 2024</td>
<td>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; 5/20 received permit app for retaining wall; revision received 5/30, staff to review 6/4</td>
</tr>
<tr>
<td>Location</td>
<td>Date</td>
<td>Timeline and Details</td>
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<tr>
<td>PSU IPASS</td>
<td>July 3, 2024</td>
<td>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)</td>
</tr>
<tr>
<td>Centre Hills Country Club</td>
<td>July 31, 2024</td>
<td>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; 5/3 sent conditional approval; 5/3 conditions accepted</td>
</tr>
<tr>
<td>Shiloh Comm. Park Prelim.</td>
<td>August 15, 2024</td>
<td>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; to CTC 5/16; 5/17 sent conditional approve; 5/20 conditions accepted</td>
</tr>
<tr>
<td>PSU Soccer Ops Center</td>
<td>July 21, 2024</td>
<td>4/22 submitted; 4/23 completeness review and comments request sent; 5/3 comments due; revision due 5/13; comments due 5/20; to PC 5/21</td>
</tr>
<tr>
<td>Mt. Nittany Elementary</td>
<td>July 21, 2024</td>
<td>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</td>
</tr>
<tr>
<td>State College VA</td>
<td>August 6, 2024</td>
<td>5/8 submitted; 5/8 completeness review and comments request sent; 5/17 comments due (revised to 5/24); revision due 6/3; comments due 6/7; to PC 6/18</td>
</tr>
<tr>
<td>Shiloh Comm. Park Phase 1</td>
<td>August 18, 2024</td>
<td>5/20 submitted; 5/21 completeness review and comments request sent; <strong>5/31 comments due</strong>; revision due 6/10; comments due 6/14; to PC 6/18</td>
</tr>
</tbody>
</table>
MINOR PLANS

Shiloh Commercial Park
Submitted 4/16/2024
Expires 7/15/2024
sent to Schnure & Tylka; comments due 4/26; revision due 5/6; 5/20 revision received; 30-day ext. requested and approved; comments due 5/31

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; 5/16 awarded to HRI, Inc.; 6/6 Agreement to CTC; 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 and every other week after; to be 100% complete by 7/5

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
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