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: 892 9216 0610  ● Passcode: 528596

*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.

CALL TO ORDER:

ZOOM MEETING PROTOCOL:

OPEN DISCUSSION (items NOT on the agenda):

CONSENT AGENDA:  CA-1  June 27, 2023 Meeting Minutes (Approval)

PLANS:

OLD BUSINESS:  OB-1  Shiloh Road Rezoning (Discuss/Recommend)

NEW BUSINESS:

REPORTS:  R-1  DPZ CoDesign Update

STAFF INFORMATIVES:  SI-1  Zoning Bulletins

OTHER MATTERS:

ANNOUNCEMENTS:  Next regular meeting will be Tuesday, August 1, 2023 at 7:00pm

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

ZOOM MEETING PROTOCOL: Mr. Forziat verified there were not people present via Zoom.

ROLL CALL: Mr. Forziat confirmed three Planning Commission members were excused.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:
Mr. Hoffman moved to approve the June 6, 2023 meeting minutes as written. Ms. Khoury seconded. Motion carried unanimously.

PLANS:
P-1 University Area Joint Authority Biosolids Upgrade Project LDP
Ms. Schoch introduced the plan and discussed their proposal to replace and expand the existing composting facility with an anaerobic digestion and sludge drying process, with the intention to have the capacity of receiving and processing imported sludge from other regional wastewater treatment facilities as well as organic wastes to be diverted from landfills. She also explained the wellhead protection area
and why the Township requested that the area be added to the plan. Ms. Schoch then introduced Ms. Aukerman from Rettew.

Mr. Forziat asked if there were any questions from the Planning Commission. With no other questions, Mr. Forziat questioned the risk of toxins with the wellhead area being so close to the facility. Ms. Aukerman explained the process of receiving materials and the containment practices in case of spillage.

Mr. Toumayaunts asked about truck traffic and trucking wastes past residential areas. Ms. Aukerman explained there are PennDOT regulations that must be followed for the trucks hauling the waste materials and products, and odor is contained as the trucks are not open to the elements.

Mr. Cramer questioned the traffic impact. Mr. Franson compared the traffic on Spring Valley Road to that of Trout Road and stated that a traffic impact study can be triggered. However, the proposed plan seems to be reducing certain traffic and minimally increasing other traffic which will most likely not trigger a need for a traffic impact study.

The Planning Commission continued to discuss odor control, noise levels, and the increased hours of operations.

Mr. Hoffman moved to recommend that Council approve the University Area Joint Authority Biosolids Upgrade Project Preliminary/Final Land Development Plan dated May 19, 2023 and last revised June 16, 2023 subject to the following conditions:

1. Within ninety (90) days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety (90) day recordation time requirement will render the plan null and void.
2. Pay all outstanding review fees.
3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments from staff.
4. Fully comply with College Township Code Section 180-12.
5. Provide proof of NPDES/E&S permit approval.
6. Provide proof of all necessary permits and approval thereof.
7. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.

Ms. Ekdahl seconded. Motion carried unanimously.

OLD BUSINESS:

OB-1 Residential Rental Ordinance
Ms. Schoch introduced the topic and reminded the Planning Commission of the prior remand from Council. She stated that staff has made the changes to the Residential Rental Ordinance recommended by the Planning Commission and is presenting a copy as it will be carried forward to Council. There was no motion needed as Planning Commission had previously made a motion of recommendation and this draft ordinance was for informative purposes only. After the Planning Commission discussed the changes requested at the last meeting Ms. Schoch added that the draft before them will be presented to Council at their July 20th meeting at which time they will most likely set a public hearing.

OB-2 Shiloh Road Rezoning
Ms. Schoch introduced the topic of discussion and stated that Council has stated that the Township is still open for business in the interim while the Dale Summit Area Plan is being developed. Council’s expectation is that Planning Commission will undertake the following tasks:

1. Determine that the proposed revisions will properly enable R3 uses to develop in the Planned Research and Business Park District (PRBD) through the Conditional Use process, consistent with
the Municipalities Planning Code (MPC), Township Code, and the vision for the Dale Summit Redevelopment Plan.

2. Ensure that one of the conditions imposed on any proposed R3 use within the PRBD is that the development must proceed as a Planned Residential Development (PRD), which will enable mixed use development.

3. Confirm that the proposed revisions to PRD, as provided by DPZ CoDesign and embedded within the proposed revisions to the PRBD, are consistent with the MPC, the vision for the Dale Summit Redevelopment Plan and the progression toward some type of Form-Based Code.

Ms. Schoch also read the vision statement for the Dale Summit Area Plan and mentioned that a recommendation does not need to be made at this meeting. The Planning Commission determined since there were three members not in attendance they would like to hold off on any important discussion as their opinions and possible concerns are valued. It was also determined that the commissioners would like a hard copy of the closing presentation of the Charrette in order to help guide and determine their discussion. Ms. Ekdahl stated that she believes the Township is moving in the right direction. However, a composite of all opinions and all member’s presence is very important for the discussion in order to make an informed recommendation.

NEW BUSINESS: None presented

REPORTS:

R-1 DPZ CoDesign Updates
Ms. Schoch gave an update of the very productive Charrette week and informed the Planning Commission of the steps to come.

R-2 Council Updates
Mr. Hoffman gave a brief update of the prior Council meeting. He stated that the recommendations from the Planning Commission were well received and overall it was a fairly quiet Council meeting.

STAFF INFORMATIVES:

SI-1 Council Meeting Minutes
No further discussion.

SI-2 EZP Report
Mr. Hoffman stated he appreciates the report and it’s nice to have an update of the projects that the Planning Commission has previously discussed.

OTHER MATTERS: None presented

ANNOUNCEMENTS:
Mr. Forziat announced the next meeting will be Tuesday, July 18, 2023 at 7:00 p.m.

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

Meeting adjourned at 7:47 p.m.

**Draft**

Sharon E. Meyers  
Senior Support Specialist – Engineering/Planning
MEMORANDUM

To: College Township Planning Commission

Thru: Mike Bloom, Assistant Township Manager

From: Lindsay K. Schoch, Principal Planner

Re: OB-2: Shiloh Road Zoning Amendment

Date: June 23, 2023

Background:

At their meeting on June 15th, College Township Council discussed options for how best to allow multifamily residential (R3) in the Planned Research & Business Park District (PRBD). Council ultimately concluded that allowing R3 in the PRBD as a Conditional Use provides the level of community control needed in this interim, transition period between the existing traditional Euclidean zoning to some type of Form-Based Code or hybrid thereof.

Council underscored that the deliberative conditional use process shall ensure that any R3 use proposed in the PRBD will occur as a Planned Residential Development (PRD), which includes the opportunity for mixed-use development.

To ensure the consistency with the ongoing development of Dale Summit Area Redevelopment Plan, Council chose to refrain from issuing a remand letter on this topic to the Planning Commission until after the Charrette process for the plan, which was held June 19th through the 22nd.

With the decision to allow R3 in the PRBD as a Conditional Use rendered by Council and the completed Charrette process confirming the recommendation to allow residential uses throughout the Dale Summit, Council has issued its remand letter. The attached letter outlines the requested technical work tasks for the Planning Commission to undertake related to the proposed revisions to the PRBD as developed by DPZ and staff.

Attachments:

- OB-2.a. - Council Remand Letter
- OB-2.b. - Proposed revisions to the PRBD section of the ordinance

Schedule:

Council is requesting that Planning Commission utilize its June 27th and, if needed, July 18th meetings to review and develop recommendations pertaining to the work tasks outlined in the remand letter. Council plans to review Planning Commission’s recommendations at its next meeting on July 20th.

End memo
MEMORANDUM

To: College Township Planning Commission

From: Adam Brumbaugh, Township Manager

Re: Council Remand: Zoning amendment to permit R3 in PRBD as a Conditional Use

Date: June 23, 2023

At their June 15, 2023 meeting, College Township Council remanded to Planning Commission the review of the proposed ordinance revisions to permit Multifamily Residential (R3) in the Planned Research and Business District (PRBD) as a Conditional Use, as further informed by the Dale Summit Area Redevelopment Plan Charrette process held June 19-22.

Council's expectation is that Planning Commission will undertake the following tasks:

1. Determine that the proposed revisions will properly enable R3 uses to develop in the PRBD through the Conditional Use process, consistent with the Municipalities Planning Code (MPC), Township Code and the vision for the Dale Summit Redevelopment Plan.

2. Ensure that one of the conditions imposed on any proposed R3 use within the PRBD is that the development must proceed as a Planned Residential Development (PRD), which will enable mixed use development.

3. Confirm that the proposed revisions to PRD, as provided by DPZ CoDesign and embedded within the proposed revisions to the PRBD, are consistent with the Municipalities Planning Code (MPC), the vision for the Dale Summit Redevelopment Plan and the progression toward some type of Form-Based Code.

Council previously identified that a key element in this zoning amendment would be the revisions to the PRD regulations, which are now proposed to be included in the PRBD, and enabled as a component of the Conditional Use. The proposed zoning amendment, along with its integral PRD revisions as proposed by DPZ, are collectively viewed as an important interim step toward the eventual transition from traditional Euclidean zoning to some type of Form-Based Code or hybrid thereof in Dale Summit. You’ll recall this was initially recommended in the DRAFT Dale Summit Area Plan and was, once again, confirmed during the Charrette process.

As outlined during the course of this ongoing dialogue between Council and Planning Commission, these tasks are remanded to Planning Commission with the expectation that you’ll consider these proposed revisions to the PRBD within the unique context of the broader vision for the future of the Dale Summit. Council further encourages Planning Commission to fully leverage the added capacity and expertise of the DPZ team, where appropriate, during your deliberations on a recommendation.

In order to move toward a timely conclusion of this effort, Council requests that Planning Commission provide their recommendations on the proposed zoning amendment in advance of Council's meeting on Thursday, July 20th. This provides Planning Commission with two meetings to review the proposed revisions and offer recommendations.

Council appreciates Planning Commission lending its experience and expertise to this matter and looks forward to reviewing your recommendations in the near future.

End memo
COLLEGE TOWNSHIP
CENTRE COUNTY, PENNSYLVANIA

ORDINANCE O-23-__________

PROPOSED ORDINANCE TO AMEND THE COLLEGE TOWNSHIP CODE BY (1)
AMEND CHAPTER 87 BY INCLUDING DUPLEXES, TOWNHOUSES, AND MULTI-
FAMILY RESIDENCES IN THE PLANNED RESEARCH AND BUSINESS PARK
DISTRICT BY CONDITIONAL USE; (2) AMEND CHAPTER 200 TO PERMIT
DUPLEXES, TOWNHOUSES, AND MULTI-FAMILY RESIDENCES IN THE PLANNED
RESEARCH AND BUSINESS PARK DISTRICT.

GENERAL REFERENCES

Chapter 87 – Conditional Uses
Chapter 200 – Zoning

Bold Italics = addition

BE IT RESOLVED AND ORDAINED, by the College Township Council, Centre County,
Pennsylvania, and the authority of the same, does hereby adopt, made this ________ day of
__________, 2023, by amending the Code of the Township of College, Pennsylvania, with the
amendment of Chapter 87 as follows.

WHEREAS, pursuant to the Pennsylvania Municipalities Planning Code, a purpose of zoning is to
provide for the use of land within the municipality for residential housing of various dwelling
types encompassing all basic forms of housing, including single-family and two-family
dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile
homes and mobile home parks, provided however, that no zoning ordinance shall be deemed
invalid for the failure to provide for any other specific dwelling types;

WHEREAS, pursuant to the Pennsylvania Municipalities Planning Code, zoning shall
accommodate reasonable overall community growth, including population and employment
growth, and opportunities for development of a variety of residential dwelling types and
nonresidential uses.

WHEREAS, provisions for conditional uses to be allowed or denied by the governing body pursuant
to public notice and hearing and recommendations by the planning agency and pursuant to
express standards and criteria set forth in the zoning ordinance. In allowing a conditional use,
the governing body may attach such reasonable conditions and safeguards, other than those
related to off-site transportation improvement, in addition to those expressed in the ordinance,
as it may deem necessary to implement the purposes of the PA MPC and the zoning ordinance.

WHEREAS, the Council of the Township of College has given due public notice of hearings of the
proposed ordinance;

SECTION 1. 87-46 – Multi-Family Residential Uses in the Planned Research and Business Park District

87-46.1 – Intent

To increase the availability of a greater variety and mixture of housing types.

To be in compliance with any and all vision plans in the area in which the property is located

To provide the flexibility to adapt to changes in markets.

87-46.2 – Definitions pursuant to Chapter 145-6.

87-46.3 – Plan Review Procedures pursuant to Chapter 145-7, 8, 9, 10, and 11.

87-46.4 – Plan Requirements pursuant to Chapter 145-12, 13, and 14.

87-46.5 – Design and Improvement Standards pursuant to Chapter 145-15

87-46.6 – Permitted Uses. Along with permitting duplexes, townhomes, and multi-family uses in the Planned Research and Business Park District, the following uses are permitted:

Offices

Medical and dental offices and clinics

Retail establishments for the sale and service of goods

Eating and drinking establishments, excluding fast-food establishments

Health clubs and athletic and recreational facilities

87-46.7 – Prohibited Uses. The following uses shall be prohibited:

Motor-vehicle oriented businesses

Drive-through restaurants

87-46.8 – Density and Intensity

A. In a planned residential development, there shall be no minimum area requirements for individual lots or building sites. However, the following are the maximum number of dwelling units allowed per gross acre of the PRD.

Two-Family 16 dwelling units per acre
Townhomes  22 dwelling units per acre

Multi-family  36 dwelling units per acre

B. Land devoted to nonresidential uses shall not be included in the gross planned residential development acreage used to calculate gross residential density. A maximum of 30% of the land in the development may be designated by a plan for nonresidential uses. Land devoted to nonresidential uses shall be deemed to include driveways, parking areas and yards which primarily service nonresidential uses but shall not, for purposes of calculation, include common open space. The total floor area of all nonresidential uses shall not exceed 30% of the total floor area of all buildings in a planned residential development.

C. Council may refuse to allow the maximum density permitted within each zoning district or may refuse to allow certain permitted nonresidential uses if the development would:

(1) Create unsafe vehicle access to the PRD
(2) Create traffic which exceeds the level of service of public streets which adjoin the PRD
(3) Plan an excessive burden on utilities, parks, schools or other public facilities which serve or are proposed to serve the PRD
(4) Adversely affect existing uses on adjacent lands which are different from the nearby uses in the PRD

D. Spacing: Council may allow the reduction in lot size, lot width, spacing and side and rear yard setback requirements previously required in the zoning district to promote innovative design, provided that:

(1) Front yard setback distances shall be required as followed:

<table>
<thead>
<tr>
<th>Type of Building</th>
<th>Local and Collector Streets</th>
<th>Arterial Streets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two-family and multifamily dwellings</td>
<td>30 feet</td>
<td>50 feet</td>
</tr>
<tr>
<td>Nonresidential</td>
<td>5 feet</td>
<td>50 feet</td>
</tr>
</tbody>
</table>

(2) Nonresidential buildings shall not be located closer than 50 feet to residential buildings.
(3) Spacing shall be provided between buildings to ensure privacy and sufficient light and air. Each development shall provide reasonable visual and acoustical privacy for dwelling units. Fences, insulations, walks, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property, the privacy of its occupants, the screening of objectionable views or uses and the reduction of noise.

E. Height: development shall not exceed the maximum height permitted in the adjoining residential district. When the building is located within 120 feet of more than one adjoining zoning district, the height shall not exceed the lowest maximum height allowed in either district. The Council may allow higher buildings beyond 120 feet from the perimeter in such a manner so as not to create any adverse impact on adjoining lands.
F. Perimeter Requirements. The PRD shall be designed to avoid adverse influences and impacts on surrounding properties.

1. Residential structures located adjacent to the perimeter boundary of the planned residential development may be required to conform to the setback and yard regulations of the adjoining district as described in Chapter 200, Zoning, when necessary to ensure compatibility of land uses.

2. Nonresidential structures adjacent to the perimeter boundary of the planned residential development shall conform to the buffer setback and buffer yard requirements contained in Chapter 200, Zoning.

3. Additional buffer yards, which conform to the specifications contained in Chapter 200, Zoning, may be required where the planned residential development is adjacent to existing dwellings or neighborhoods.

G. Block Standards.

1. All proposed development shall be designed within a block structure that is bound by public right-of-ways on all sides.

2. Each block shall have a maximum perimeter of 1,400 feet measured along the street right-of-way perimeter. Blocks that include civic spaces and environmental or topographic challenges, may be exempt from the maximum perimeter requirements.

3. No block face should exceed 500 feet in length. Block faces that do, should provide a pedestrian path of no less than 10 feet wide.

4. One block face may be bound by a non-vehicular pedestrian street. If provided, the pedestrian streets shall have a dedicated right-of-way of no less than 25 feet.

H. Frontage Standards.

1. Buildings shall be oriented so that the principal façade is parallel to the principal street it faces.

2. Surface parking lots are prohibited along street facing frontages between the right-of-way/property line and principal building face. Where possible, parking lots shall be provided in the rear of the lot.

3. Surface parking lots shall be screened to minimize their visual impact with landscaping or walls.

4. Where lots are less than 45 feet wide on average, garage access shall be provided from an alley. Townhouses shall be rear loaded, with garages accessed off an alley. Front loaded townhouses are prohibited.

5. Outdoor storage, service areas and building utility equipment shall be wholly screened from public view.

6. Prominent sites should be reserved for civic buildings.

87-46.9 – Open Space Requirements:

A. A minimum of 30% of the gross area of the planned residential development shall be devoted to public or common open space.

B. At least 50% of the required public or common open space shall include open space fronted by public streets on at least 2 sides.
C. The Township Council may accept all or part of the common open space in dedication, provided that:

1. The land so dedicated is contiguous; and
2. The Council may require that no less than 50% of the land so dedicated shall be located outside of a floodplain, shall not be subject to seasonal flooding and shall have a finished grade not exceeding 5%.

D. For purposes of calculating required acreages specified herein, common open space shall not include land occupied by streets, driveways, parking spaces and buildings or structures, other than recreational structures for the use by all residents of the development or by the public.

E. All common open space shall be improved for its intended use. Up to half of the common open space may be left in its natural state to preserve unique natural features and amenities or to avoid excessive grading or removal of trees. At least 50% of the common open space shall be devoted to recreational or leisure-time activities, freely accessible to residents, property owners and tenants of the planned residential development.

F. All residents, property owners and tenants of the planned residential development shall have access to the common open space. The common open space shall be on land owned by a property owners’ association or on privately owned land when an open space easement and access easement has been granted to the property owners’ association.

87-46.10. Environmental Design Pursuant to Chapter 145-19

87 – 46.11. Traffic and Pedestrian Access pursuant to Chapter 145-20

87 – 46.12. Utilities, Easements, and Markers pursuant to Chapter 145-21

87 – 46.13. Workforce housing pursuant to Chapter 200.38.

87 – 46.14. Permits and Fees pursuant to Chapter 145-23

87 – 46.15. Violations and penalties pursuant to Chapter 145-24

87 – 46.16. Property Owners Association pursuant to Chapter 145-25

SECTION 2 ZONING

200.27.1.A(2)(g) – to provide for duplexes, townhouses, and multifamily residences by Conditional Use.

200.27.1.C(1)(k) – duplexes, townhouses, and multi-family residences pursuant to Chapter 87-46.

SECTION 3 SEVERABILITY

If any sentence or clause, section, or part of this ordinance is found to be unconstitutional, illegal or invalid, such findings shall not affect or impair any of the remaining parts of this ordinance. It is hereby declared to be the intent that this ordinance would have been adopted had such part not been included.
SECTION 4 EFFECTIVE DATE

This ordinance shall take effect five (5) days after enactment.

ENACTED AND ORDAINED, this ________ day of ______________ 2023, by the College Township Council, Centre County, Pennsylvania.

COLLEGE TOWNSHIP COUNCIL:

ATTEST:

____________________________________________________________________
Adam T. Brumbaugh, Manager / Secretary  Dustin Best, Council Chair
Dale Summit Zoning & Redevelopment

College Township Planning Commission
July 18, 2023
Presented by:
Lindsay K. Schoch, AICP | Principal Planner
Hired DPZ to complete Dale Summit Area Plan and Implement Form Based Code.

- Rezoning request
- Council Review
- Remanded to PC
- PC’s recommendation was to deny the request.
- Staff’s recommendation was to approve the request by adding R3 uses in the PRBD.
- Council requested a reevaluation of how to include R3 in the PRBD with additional control.

- Council Remanded R3 uses in the PRBD by Conditional Use with the PRD changes from DPZ.
Items to Note

- DPZ under contract with College Township to prepare “Interim Zoning Changes” prior to the full adoption and implementation of the Dale Summit Area Plan and Form Based Code hybrid.
- DPZ prepared recommended changes to the PRD Ordinance to shift development of PRDs to a hybrid / form-based.
- June 19 – 23: Dale Summit Area Redevelopment Plan Charrette ✓
The Remand

1. Determine the proposed revisions will properly enable R3 uses to develop in the PRBD through the Conditional Use process, consistent with the MPC, Township Code and the vision for the Dale Summit Redevelopment Plan.

2. Ensure that one of the conditions imposed on any proposed R3 use within the PRBD is that the development must proceed as a Planned Residential Development, which will enable mixed use development.

3. Confirm that the proposed revisions to PRD, as provided by DPZ CoDesign and embedded within the proposed revisions to the PRBD, are consistent with the MPC, the vision for the Dale Summit Redevelopment Plan and the progression toward some type of Form-Based Code.
In allowing conditional uses, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of the PA MPC and the zoning ordinance.
What Changes Look Like

- Increased density
- Permits nonresidential uses
- Adjusts setbacks
- Decreased height regulations from setbacks
- Updated Intent to ensure PRDs are consistent with the vision of any draft or adopted plans.
- Prohibits front-loaded townhomes
- Perimeter Requirements to ensure no adverse impacts on surrounding properties.
- Block Standards for a more human-scale feel.
- Frontage Standards
2. Ensure that one of the conditions imposed on any proposed R3 use in the PRBD is a PRD.

R3 Uses in the Planned Research and Business Park District will be included in Chapter 87 – Conditional Uses, with standards set forth including the PRD language (existing) and proposed recommended language from DPZ, allowing for interim, hybrid changes.
3. Ensure MPC & DSAP Vision Consistency

In order to carefully move forward toward implementation of Form Based Code, this interim step allows for a hybrid version of what was outlined in the Contract.

3. Confirm that the proposed revisions to PRD, as provided by DPZ are consistent with the MPC and the DSAP Vision.

“The overarching Vision of this Area Plan is to transform Dale Summit into The Gateway to College Township. Establishing Dale Summit as an attractive and instantly recognizable PLACE within the context of the larger Township, Region and County. The community envisions an activity hub that is vibrant, economically prosperous, socially equitable and environmentally sustainable. A place, which through proactive planning and well-tailer regulations, sticker a sound balance between encouraging business and industry expansion, while remaining respectful to important community livability factors such as improving housing affordability, providing sufficient public services, and lessening traffic congestion through improved connectivity for all transpiration modes.”
The Ordinance:

PROPOSED ORDINANCE TO (1) AMEND CHAPTER 87 OF THE COLLEGE TOWNSHIP CODE BY INCLUDING DUPLEXES, TOWNHOUSES, AND MULTI-FAMILY RESIDENCES IN THE PLANNED RESEARCH AND BUSINESS PARK DISTRICT BY CONDITIONAL USE; (2) AMEND CHAPTER 200 TO PERMIT DUPLEXES, TOWNHOUSES, AND MULTI-FAMILY RESIDENCE USES IN THE PLANNED RESEARCH AND BUSINESS PARK DISTRICT
Section 1. 87-46 – Multi-family Residential Uses in the Planned Research and Business Park District.

- **Intent:**
  - To increase the availability of a greater variety and mixture of housing types
  - To be in compliance with any and all visions plans in the area in which the property is located.
  - To provide for the flexibility to adapt to changes in markets.

- **Definitions, Plan Review Procedures, Plan Requirements, Design and Improvement Standards** are all remaining the same as they stand in the existing PRD Ordinance. (Chapter 145).

- **Permitted Uses:**
  - Adding duplexes, townhouses, multi-family residences in the PRBD.
  - Also adding: Offices; medical and dental offices and clinics; retail establishments for the sale and service of goods; eating and drinking establishments (excluding fast food establishments); health clubs and athletic and recreational facilities.
Section 1. 87-46 – Multi-family Residential Uses in the Planned Research and Business Park District.

- **Prohibited Uses:**
  - Motor-vehicle oriented businesses & Drive-thru restaurants

- **Density and Intensity:**
  - No minimum area requirements for individual lots or building sites
  - Maximum number of dwelling units allowed per gross acre of the PRD
    - Two-Family (Duplex) – 16 dwelling units per acre (existing is 15)
    - Townhomes - 22 dwelling units per acre (new designation)
    - Multi-family – 36 dwelling units per acre (existing is 22)

- Land devoted to nonresidential. A maximum of 30% (existing is 20%) may be designated by a plan for nonresidential uses.

- Council may refuse the maximum density if it has ill impacts on traffic, vehicle access, places an excessive burden on utilities and adversely affects existing uses on adjacent land.
Section 1. 87-46 – Multi-family Residential Uses in the Planned Research and Business Park District.

- Council may allow the reduction in lot size, width, spacing and side and rear yard setbacks required in the zoning district to promote innovative design.

- **Adjusted Setbacks:**

<table>
<thead>
<tr>
<th>Type of Building</th>
<th>“Existing” Setback Local/Collector</th>
<th>“Proposed” Setback Local/Collector</th>
<th>“Existing” Arterial Streets</th>
<th>“Proposed” Arterial Streets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duplex and Multi-family</td>
<td>30’</td>
<td>30’</td>
<td>100’</td>
<td>50’</td>
</tr>
<tr>
<td>Nonresidential</td>
<td>50’</td>
<td>5’</td>
<td>100’</td>
<td>50’</td>
</tr>
</tbody>
</table>

- Removed maximum lot coverage regulations, which as they exist, shall not exceed 30% of the total area of the PRD.
Height Standards: Height standards as they relate to adjacent properties are changing to permit buildings closer to adjacent properties.

- 200' from the boundary to 120' from the boundary
- Perimeter Requirements: to ensure the compatibility of land uses...
- perimeter boundary of the PRD may be required to conform to the setbacks of adjoining district.
- Nonresidential structures shall conform to the requirements contained in Zoning.
- Additional buffer yards may be required.

Block Standards:

- All new development shall be designed with a block structure bound by a public ROW on all sides.
- Maximum perimeter of 1,400 feet (can be modified if block contains a civic use)
- No block face should be more than 500 feet in length, unless a 10' wide pedestrian path is included.
- One block face may be bound by a non-vehicular pedestrian street.
Section 1. 87-46 – Multi-family Residential Uses in the Planned Research and Business Park District.

- Frontage Standards:
  - Principal Façade is parallel to the principal street.
  - No surface parking along street facing frontages. Where possible, parking should be located in the rear of the lot.
  - Surface parking shall be screened.
  - Lots less than 45 feet wide (on average) garage access from an ally is required. Townhouses shall be rear loaded. Front loaded townhouses are prohibited.
  - Outdoor storage shall be screened.
  - Prominent sites shall be reserved for civic buildings.
Section 1. 87-46 – Multi-family Residential Uses in the Planned Research and Business Park District.

- Open Space Requirements:
  - Minimum 30% devoted to Open Space
  - 50% fronted by public streets on two sides.
  - Land shall be contiguous.
  - No less than 50% shall be outside floodplain. Council may require that no more than 50% of the land so dedicated shall be located within of the floodplain.
  - Does not include land occupied by streets, rows, etc.
  - 50% dedicated to recreational uses
  - All property owners and tenants shall have access.

- Environmental Design; Traffic and Pedestrian Access; Utilities, easements, and markers; Workforce housing; permits and fees; violations and penalties; and property owner association regulations will remain unchanged at this time.
Section 2. Zoning

- 200.27.1.A(2)(g) – To provide for duplexes, townhouse and multi-family residences by conditional use. (adding to Intent of the PRD)
- 200.27.1.C(1)(k) – duplexes, townhomes, and multifamily residences pursuant to Chapter 87-46. (adding to list of permitted uses)
The Remand

- Determine the proposed revisions will properly enable R3 uses to develop in the PRBD through the Conditional Use process, consistent with the MPC, Township Code and the vision for the Dale Summit Redevelopment Plan.

- Ensure that one of the conditions imposed on any proposed R3 use within the PRBD is that the development must proceed as a Planned Residential Development, which will enable mixed use development.

- Confirm that the proposed revisions to PRD, as provided by DPZ CoDesign and embedded within the proposed revisions to the PRBD, are consistent with the MPC, the vision for the Dale Summit Redevelopment Plan and the progression toward some type of Form-Based Code.
<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Status</th>
<th>Next Steps</th>
<th>Staff/Others</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Interim Zoning Changes in Dale Summit</td>
<td>Presented PRBD changes to PC. PC held discussion since three of the 8 members were absent.</td>
<td>First Review by the PC 6/27/2023 Back to PC 7/18/2023 for full PC member discussion</td>
<td>Adam - Mike - Lindsay - Mark - Don</td>
<td>Township Offices</td>
</tr>
<tr>
<td></td>
<td>Market Analysis</td>
<td>DPZ submitted the Market Analysis for Staff Review</td>
<td>Provide Market Study to interested parties.</td>
<td>Lindsay</td>
<td>Township Offices</td>
</tr>
<tr>
<td></td>
<td>Mapping – Gridics</td>
<td>On-Going</td>
<td>Staff continues to work with Gridics, utilizing the program to prepare reports for PC.</td>
<td>Mike – Max – Lindsay – Shane – Frank – Susan – Mike</td>
<td>Zoom/Virtual Meeting</td>
</tr>
<tr>
<td></td>
<td>Next Steps</td>
<td>Early September submission of DSAP &amp; Code DPZ to visit again to review all code changes.</td>
<td>Tentative presentation to Council and PC October 3/5.</td>
<td>EZP Staff – DPZ – regional planning</td>
<td>Township Offices</td>
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Week Ending June 30, 2023
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<tr>
<th>Date</th>
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<th>Status</th>
<th>Next Steps</th>
<th>Staff/Others</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week Ending July 7, 2023</td>
<td>Interim Zoning Changes in Dale Summit</td>
<td>Staff reviewing the proposed changes to zoning ordinance. (Residential uses in the PRBD via Conditional Use, applying updated PRD regulations. DPZ updating Zoning definitions. Discussed Processes with DPZ via Zoom.</td>
<td>First Review by the PC 6/27/2023. Back to PC 7/18/2023 for full PC member discussion. Preparing a PPT Presentation to guide the PC through the proposed ordinance changes.</td>
<td>Adam - Mike - Lindsay - Mark - Don</td>
<td>Township Offices</td>
</tr>
<tr>
<td></td>
<td>Market Analysis</td>
<td>DPZ submitted the Market Analysis for Staff Review</td>
<td>Staff reviewing and analyzing Market Analysis. Preparing questions for Weitzman.</td>
<td>Lindsay</td>
<td>Township Offices</td>
</tr>
<tr>
<td></td>
<td>Mapping – Gridics</td>
<td>On-Going</td>
<td>Staff utilizing the program to prepare reports for PC.</td>
<td>Mike – Max – Lindsay – Shane – Frank – Susan – Mike</td>
<td>Zoom/Virtual Meeting</td>
</tr>
<tr>
<td></td>
<td>Next Steps</td>
<td>Early September submission of DSAP &amp; Code</td>
<td>Tentative presentation to Council and PC October 3/5.</td>
<td>EZP Staff – DPZ – Regional Planners – adjacent municipalities.</td>
<td>Township Offices</td>
</tr>
<tr>
<td></td>
<td>Charrette Follow-up</td>
<td>Preparing a Post-Charrette Survey</td>
<td>Send to stakeholders and others in attendance during week-long Charrette</td>
<td>Lindsay – Mike</td>
<td>Township Offices and Online Survey</td>
</tr>
</tbody>
</table>
Short-term Rentals

Question of whether short-term rentals allowed as nonconforming use under old version of zoning regulations arises

Citation: Wibbey v. Zoning Board of Appeals of Pine Orchard Association, 218 Conn. App. 356, 2023 WL 2637101 (2023)

The Branford, Connecticut-based Pine Orchard Association Zoning Board of Appeals (ZBA) appealed a ruling reversing its decision to uphold the issuance of a zoning enforcement officer’s order. That order directed Frances Wibbey to cease and desist from using his property in the Pine Orchard Association (POA) section of Branford for short-term rentals (STRs).

The ZBA asserted that the court had improperly determined, as a matter of law, that Wibbey’s use of the property was lawful under the POA’s 1994 zoning regulations because it was consistent with the definition of a “single-family dwelling” and, therefore, was a protected nonconforming use.

Alternatively, it claimed the court should have sent the case back to the board to consider whether the rental of the property met the other requirements of those regulations, even if STRs were permitted under the 1994 regulations.

DECISION: Reversed in part.

The court rejected the ZBA’s claim that the use of any property in the POA for STRs was impermissible under the 1994 regulations but agreed that the lower court improperly determined that Wibbey had established a lawful nonconforming use of the property when there wasn’t any indication in the record that the board had decided that question in the first place.

MORE ON THE FACTS

Pine Orchard, a borough and municipal subdivision of the town of Branford, Connecticut, jurisdiction over planning and zoning and zoning enforcement, and through its executive board, the zoning board enforced regulations. It also employed a zoning enforcement officer to assist in that function.

In 2005, Wibbey, a real estate investor, bought but did not live at the subject property, which consisted of a single-family home. The property sat in a residential zone, and since acquiring the property Wibbey rented it out to families through VRBO, an online rental platform.

The property was rented about 50 days annually generally for periods of three days to one week usually around major holidays, during the summer, and the Yale University graduation. It had not been rented out for periods of longer than 30 days in the previous 10 years.
The POA zoning ordinance was amended in 1994 to state several permitted uses pertaining to single-family dwellings. The regulations defined a “single family dwelling” as “[a] building designed for and occupied exclusively as a home or residence for not more than one family.” And the regulations defined a “family” as “[o]ne or more persons related by blood, marriage or adoption, and in addition, any domestic servants or gratuitous guests.” “A roomer, boarder or lodger, shall not be considered a member of a family,” the regulations added, but the terms “dwelling,” “roomer,” “boarder,” and “lodger” are not defined in the 1994 regulations.

In 2018, several residents complained about disruptions that STRs in the area were causing. Pine Orchard then created a STR committee to investigate how community members used short-term rentals.

Then Pine Orchard adopted several amendments to its zoning regulations, which took effect in October 2018. These regulations addressed permitted uses of a single-family dwelling as follows: “may not be used or offered for use as a Short-Term Rental Property.” As a result, the zoning enforcement officer sent Wibby a letter advising him that he couldn’t rent his property on a short-term basis to overnight guests, as that was a violation of the 2018 regulations.

After receiving a cease-and-desist letter, Wibby appealed to the board. He claimed the use of the property for STRs was a protected nonconforming use under the 1994 regulations, which were the governing regulations when he bought the property and began using it for short-term rentals.

Following a hearing, the ZBA members agreed that STRs were not permitted under the 1994 regulations, so Wibby’s use of the property was not a preexisting nonconforming use. At that point, it voted to uphold the cease-and-desist order.

Then, the lower court ruled the ZBA had incorrectly upheld that order and had improperly denied Wibby’s appeal.

BACK TO THE COURT’S RULING

“[W]e conclude that short-term rentals of a single-family dwelling were a permissible use of property under the 1994 regulations,” the appeals court found. “The 1994 regulations expressly contemplated the rental of property in Pine Orchard, as the ZBA concede[d]. Moreover, the classifying of property as a single-family dwelling d[id] not impose a minimum temporal occupancy requirement. Thus, so long as the tenants of a single-family dwelling [were] a single ‘family,’ occupying the structure for living purposes to the exclusion of other families, the structure [was] being used as permitted.” As a result, the lower court properly found the short-term rentals were a lawful, permitted use consistent with the definitions of “single-family dwelling” and “family” in the 1994 regulations.

But, in reviewing the record, the court concluded that “although the board was presented with evidence regarding [Wibby’s] rental practices and the tenants to whom he rented, the board did not make a factual determination as to whether [he] had established a lawful nonconforming use.” For instance, there weren’t any factual findings as to whether:

- Wibby rented his property to “families” as defined by the 1994 regulations; or
- his current use was a permissible intensification or unlawful expansion of such alleged use.

Since the board hadn’t made factual findings concerning Wibby’s nonconforming use claim, and it hadn’t rendered a decision on that claim, the court improperly acted.

The bottom line: The court agreed with the ZBA that the court should have sent the case back to the board to consider whether Wibby had, in fact, established a lawful nonconforming use.
Case Note:

In recent years many courts nationwide had to address “the extent to which local zoning regulations and restrictive covenants that have been in place for decades restrict the relatively recent practice of residential property owners renting their homes on a short-term basis through websites like VRBO and Airbnb,” this court explained.

RLUIPA

Church told it needs special permit for religious assemblies, claims its rights have been unlawfully suppressed

Citation: Alive Church of the Nazarene, Inc. v. Prince William County, Virginia, 59 F.4th 92 (4th Cir. 2023)

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

In November 2018, Alive Church of the Nazarene Inc. (ACN) purchased 17 acres of land—zoned primarily for agricultural use—to conduct religious assemblies. Prince William County, Virginia denied ACN’s request to worship on its property before it had complied with the zoning requirements, and ACN filed suit alleging the county violated the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The lower court dismissed the case, and ACN appealed.

DECISION: Affirmed.

The county didn’t violate RLUIPA by requiring ACN to obtain a special use permit (SUP) to conduct religious services in an agriculturally zoned district.

MORE ON THE FACTS

The state of Virginia allowed localities to “regulate, restrict, permit, prohibit, and determine . . . [t]he use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses[,]” Through that authority, and to “create an environment favorable for the continuation [of] farming and other agricultural pursuits,” the county had zoned certain areas within its bounds as “A-1, Agricultural” land.

Land within the Agricultural District—including ACN’s 17-acre property—was bound by the requirements of the Prince William County Code (the Agricultural Zoning Ordinance (AZO)) and the county’s general zoning requirements.

THE AZO’S PURPOSE

The AZO was designed to “encourage conservation and proper use of large tracts of real property in order to assure available sources of agricultural products, to assure open spaces within reach of concentrations of population, to conserve natural resources, prevent erosion, and protect the environment; and to assure adequate water supplies.” Pursuant to the AZO, the county allowed 14 uses to operate by right in the Agricultural District, subject to strict development standards.

Also, the county allowed 35 nonagricultural “special uses”—including religious institutions—to operate within the Agricultural District after a site-specific review and subject to conditions outlined in a SUP.

Concerning the 14 by-right uses, which included farm wineries, limited-license breweries, and agricultural operations, the state code indicated that all agricultural operations would carry out agritourism activities, which were defined as “any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, horseback riding, historical, cultural, harvest-your-own activities, or natural activities and attractions.” And within the Agricultural District certain nonagricultural activities, like outdoor meetings, tent revivals, or business events, required a property owner to apply for a Temporary Activity Permit (a TAP), which would be granted only if “the proposal would not impair the purpose and intent of the zoning ordinance, and when the use is not so recurring in nature as to constitute a permanent use not otherwise approved on a site plan.”

To qualify for a farm winery or limited-license brewery, an organization had to be:

- located on a producing farm, vineyard, or orchard;
- produce its respective beverages on-site; and
- be licensed by the Virginia Alcohol Beverage Control Board (the ABC Board).

And to preserve the economic vitality of the Virginia wine and beer industries, state law prohibited localities from regulating the “[u]sual and customary activities and events” at farm wineries and limited-license breweries “unless there is a substantial impact on the health, safety, or welfare of the public.” Also, in accordance with state law, the county authorized farm wineries and limited-license breweries to host special events (such as weddings, banquets, and conferences, of up to 150 people) without obtaining a TAP or a SUP to do so.

Here, ACN complained about the county’s requirement for it to obtain a SUP to operate within the Agricultural District and took issue with the requirement for it to obtain a farm winery or limited brewery license from the ABC Board to congregate on its land before complying with its SUP.

THE BOTTOM LINE

The county didn’t violate RLUIPA’s nondiscrimination provision through its actions. Also, enforcing the agricultural zoning ordinance didn’t violate the federal law’s “substantial burden provision.” The court also noted the
zoning ordinance hadn’t created an “absolute impediment to religious land use.”

To assert a valid equal terms claim under RLUIPA, ACN had to show that the AZO had treated religious assemblies and institutions worse than nonreligious assemblies and institutions. Specifically, it had to allege that it was a religious assembly or institution subject to a land use ordinance and the land use ordinance treated it on less than equal terms than a nonreligious assembly or institution. “Here, it is undisputed that the Church is a religious assembly subject to a land use ordinance. Our analysis, therefore, focuses on whether the Church has sufficiently alleged that it has been treated on less than equal terms with a nonreligious assembly or institution,” the court explained.

Ultimately, the court ruled allowing religious institutions to conduct worship services did “not further the purpose of the [AZO],” which promoted farming. “Specific to the Church, allowing services would not increase its ability to continue farming its land. Accordingly, we cannot agree with the Church that it is similarly situated to farm wineries and limited-license breweries with regard to the Ordinance. The Church has failed to meet its initial burden of proof by providing a similarly situated comparator with which it has been treated unequally and has thereby failed to state a RLUIPA equal terms claim,” the court ruled.

The court also rejected ACN’s claim that the county discriminated against it in violation of RLUIPA. Under that federal law, it was unlawful for a government to “impose or implement a land use ordinance that discriminate[d] against any assembly or institution on the basis of religion or religious denomination.”

ACN didn’t meet its burden of showing “evidence of discriminatory intent to establish a claim.” Nothing in the facts suggested the county had enacted the AZO for religious motives, so the nondiscrimination claim was not sufficient and could not proceed.

The court also rejected ACN’s substantial-burden claim. RLUIPA stated that no land use ordinance could be imposed in a way that resulted in “a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution . . . [w]as in furtherance of a compelling governmental interest; and [w]as the least restrictive means of furthering that compelling governmental interest.”

“To determine whether an impermissible burden has been imposed, we ask (1) whether the impediment to the organization’s religious practice is ‘substantial,’ and (2) whether the government is responsible for the impediment,” the court explained.

Here, the impediment was not absolute. Such an impediment would only exist generally if the “land use restrictions wholly prevent[ed] a religious organization from building any house of worship on its property, rather than simply imposing limitations on the building.”

And, even if ACN could have established that it faced an absolute impediment to religious practice, its claim failed because it was a “self-imposed” hardship. “[I]f a religious institution acquire[d] land knowing that it [w]as subject to certain restrictions, any burden resulting from those restrictions ha[d] not been imposed by the government; but rather, the burden [w]as self-imposed,” the court explained.

The bottom line: ACN recognized it could and would use its property for religious purposes without any license from the ABC Board when it complied with the SUP. “The Agricultural Zoning Ordinance thus does not require the Church to seek out new property, or even to adjust its plans to erect its buildings. Rather, the Church must simply comply with the terms of its SUP. In all of these circumstances, the Church’s substantial burden claim fails,” the court ruled.

CASE NOTE

ACN also alleged the county’s actions amounted to constitutional violations. The court disagreed. The special permit requirement didn’t violate Free Exercise Clause, and requiring a liquor license when conducting special events in the agricultural district didn’t violate a church’s free exercise rights. Further, that liquor-license requirement didn’t violate ACN’s First Amendment right to peaceably assemble or its equal protection rights.

Special Exception

Little League organization seeks special exception so it can install ball field lights in manufacturing zoning district

Citation: Abington Little League, Inc. v. Glenburn Township Zoning Hearing Board, 2023 WL 2376181 (Pa. Commw. Ct. 2023)

Abington Little League Inc. (ALL), a nonprofit corporation, owned Ackerly Fields Complex (Ackerly Fields) in Glenburn Township, Pennsylvania. Ackerly Fields consisted of five baseball fields, dugouts, batting cages, a concession stand, a playground, an equipment shed, bleachers, parking facilities, a walking trail, and upgraded sewage disposal facilities.

Ackerly Fields was located in the “M-1” (light manufacturing) district. The Glenburn Township Zoning Ordinance (ZO) described the M-1 District as “Based on location, existing uses and facilities, and the relationship to other land uses, to reserve those areas in the Township best suited for manufacturing and industry, uses with potential for greater community impact, and other offensive uses.” The ZO also described Ackerly Fields as “a grandfathered use in an M-1 zoning district.”

In 2017, ALL sought a special exception from the Glenburn Township Zoning Board (ZB) to install lights on two of its five fields. It explained that the lights would
be used for night games during the regular spring season, which ran from April through June. The lights would also be used for All-Star games one or two nights per week in June and July, with three games per week possible but unlikely.

In its application to the ZB, ALL requested:

- a special exception because an outdoor lighting installation at a baseball field was not a use specifically allowed or denied in any zoning district;
- an interpretation of the outdoor lighting provisions in the ZO; and
- in the alternative, a dimensional variance from the height limitation on the lighting poles should the ZO be construed to impose such a limitation.

The ZB denied ALL’s request for a special exception for the installation of lights on two of its fields along with a sound system. Objectors appealed, and the court reversed the ZB, imposing conditions on the special exception that limited the hours that the lighting and sound system could be used.

ALL appealed the conditions.

**DECISION: Affirmed in part; reversed in part.**

The lower court properly reversed the ZB’s denial of the ALL’s application for special exception, but the reviewing court reversed the imposition of the conditions on ALL’s use of lights and a sound system.

The lower court properly rejected the ZB’s adjudication as not being supported by the record and based upon erroneous conclusions of law. “The trial court issued its holding without addressing [ALL’s] contention that [the objects] bore the burden of proving, with a high degree of probability, that approval of [its] application for a special exception was not in harmony with the intent and purposes of the [ZO].” “Because we discern no error in the trial court’s conclusion that the [ZB’s] findings of fact were not supported by substantial evidence and its legal conclusions erroneous, there was no need for us to decide [ALL’s] contention that”—before the ZB—the burden of proof should have been placed on the objectors before the ZB.

Thus, the court affirmed the lower court’s ruling that the ZB had erred and abused its discretion in denying the application for a special exception.

The lower court erred in imposing conditions concerning landscaping and limitations on hours of use. There wasn’t any factual evidence in the record to support those conditions on the special exceptions the lower court had imposed. Thus, the lower court’s imposition of such conditions was reversed.

**A CLOSER LOOK**

ALL sought to install six lighting poles on one of its larger fields and four lighting poles on one of its smaller fields. The poles on the larger field would be between 60 and 80 feet high, and the poles on the smaller field would be between 60 and 70 feet high. The light poles would use LED lights that will be directed downward to focus on the fields, and the chosen lighting technology eliminates any glare and prevent almost all light from spilling beyond Little League property borders.

Here, the objectors contended that ALL hadn’t met the burden of showing its proposed outdoor sports lighting was similar to, and compatible with, the primary and conditional uses authorized in the M-1 District. They asserted that the ZB correctly concluded that the vehicles and light produced by the night use of the baseball fields would not be compatible with the primary use, i.e., forestry, or any of the conditional uses contemplated for the M-1 District.

The court explained that conditional uses authorized in the M-1 District varied and included agricultural and food products processing, bulk fuel storage facilities, bus terminals, construction contractors, including storage of heavy equipment, crematoriums, detention facilities, junk yards, light manufacturing and industry, natural resources processing, recyclable processing facilities and recycling collection facilities, large slaughter houses, truck terminals, warehouses, and solid waste commercial and public facilities and staging areas.

The ZB had reasoned none of the uses on this list “involve[d] outdoor recreational activity at night, the use of 60-, 70- and 80-foot lights, nighttime gatherings of children, parents and coaches, vehicular and pedestrian traffic, nighttime activity and noise.” Thus, it concluded that lighted baseball fields were incompatible with the conditional uses authorized in the M-1 District.

Practically Speaking:

The court reversed the decision to the extent that it imposed conditions on ALL’s proposed use.

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**Conditional Use Permits**

Court addresses what constitutes zoning board’s final action for purposes of evaluating whether objection to CUP was timely

Citation: *Anaks Ocean View Hill Homeowners Association, Ltd. v. Inos*, 2023 MP 1, 2023 WL 2397063 (N. Mar. Isl. 2023)

ANAKS Ocean View Hill Homeowners Association Limited (ANAKS) leased a lot in Puerto Rico, Saipan, located in the U.S. territory of the Northern Mariana Islands. Atkins Kroll leased an adjacent lot and wanted to develop a Toyota/Lexus car dealership and vehicle repair facility.

The lots that ANAKS and Atkins Kroll occupied were in the “Mixed Commercial” zoning district under the Saipan Zoning Law of 2013 (SZL). While a car dealership was a permitted use in the mixed commercial zoning
district, the vehicle repair shop required a conditional use permit (CUP) to operate. And vehicle repair was only a permitted use in the industrial zoning district.

In January 2022, Atkins Kroll applied for a CUP through the zoning board (ZB) to allow the vehicle repair part of its project, which included plans to build 27 vehicle service bays to operate in the mixed commercial zone. The zoning office received the plans and drawings for the project, and the zoning permitting supervisor prepared a memorandum assessing whether the project complied with the applicable zoning laws.

The ZB then held a public hearing to discuss and review Atkins Kroll’s application. ANAKS’ president and several residents appeared at the meeting to state their concerns about Atkins Kroll’s application. The day before the meeting, ANAKS requested that the Zoning Board allow ANAKS 60 days to review and respond to Atkins Kroll’s application, which it granted.

A second public meeting took place in March 2022 to discuss Atkins Kroll’s application for a CUP. ANAKS, with its attorney present, again challenged the development and asked for the denial of the permit or the grant of 60 more days for ANAKS to review and respond to the application.

The ZB did not grant another 60 days but gave ANAKS one week to review the supplemental memorandums submitted by Atkins Kroll to the ZB. Then, on March 18, 2022, the ZB held a special meeting to discuss Atkins Kroll’s CUP application and voted unanimously to approve the project with 19 conditions.

Prior to the vote, ANAKS’ president, its attorney, and several of its residents were present at the special meeting to raise their concerns about the project. They again asked for more time to review the project, and if the request for more time was denied, requested the ZB to deny Atkins Kroll’s application, but the ZB denied those requests.

After the ZB issued the CUP, ANAKS asked the court to review the ZB’s decision to grant it. That request was filed 22 days after the issuance of the ZB’s order, 30 days after the permit was issued, and 56 days after the March 18 vote. In its request, ANAKS asked the court to issue a preliminary injunction prohibiting the construction of the dealership and vehicle repair shop until the disposition of the action and the CUP’s revocation. Alternatively, it asked to have the matter sent back to the ZB.

Atkins Kroll and the ZB asked the court to dismiss ANAKS’ request. They claimed that the March 18 vote was the final agency action triggering the 30-day period for ANAKS to file its appeal. They added that since ANAKS had filed its petition on May 13—56 days after the March 18 vote—the court didn’t have jurisdiction.

ANAKS contended it had timely filed the petition because the March 18 vote was merely interlocutory, and the final agency action was the ZB’s written order published on April 21.

The court agreed with Atkins Kroll and the ZB, finding that it didn’t have jurisdiction because the March 18 vote was the final agency action. As a result, the court dismissed the petition with prejudice.

ANAKS asked for reconsideration, but the court denied the request. On appeal, ANAKS asked the court to reverse the lower court’s finding and asked to stay the effective date of the CUP.

**DECISION:** Request for stay denied; order dismissing ANAKS request for lack of jurisdiction vacated; case sent back for further proceedings.

The 30-day period began when the ZB issued the CUP to Atkins Kroll on April 13, 2022.

“The issuance of the [CUP] consummated the [ZB’s] decision-making process and determined the rights and obligations of the parties,” the court found. Therefore, for purposes of the ZB, the “issuance of a permit serve[d] as a final agency action” under the applicable law.

Section 9112 of the Commonwealth’s Administrative Procedure Act (CAPA) allowed for judicial review of final agency actions if an aggrieved party sought court review within 30 days of a final agency action. “For an agency action to be considered final, it must satisfy two requirements,” the court wrote.

First, the action had to “mark the consummation of the agency’s decision-making process.” In other words, it couldn’t “merely be of a ‘tentative or interlocutory nature.’” And second, the action had to “be one by which rights or obligations have[d] been determined, or from which legal consequences flow.”

**THE BOTTOM LINE**

The court found that based on the facts, the March 18 vote constituted a ZB action that was not final. “While the vote authorized the Zoning Board to issue a [CUP] to Atkins Kroll, it was only when the permit was issued on April 13, 2022 that the decision-making process of the [ZB] was consummated and became final.”

**PRACTICALLY SPEAKING**

Concerning the March 18 vote, the court wrote, “The reduction of the oral vote into writing in the form of a [CUP], delineating and specifying the rights, duties, and obligations of Atkins Kroll, [w]as not an insignificant step that could be viewed as merely an extension of a final action.” In the end, the issuance of the CUP in April was “the very consummation of the . . . decision-making process” because the ZB “required the added step of the [CUP] being prepared and given to Atkins Kroll.”

**Zoning News Around The Nation**

**California**

Lightbox expands national zoning data offerings

Irvine-based Lightbox, an information and technology company, recently announced a new national zoning data
product that provides “a single, centralized, and standard-
ized source for parcel-level zoning data across the
country.” “Detailed information on zoning requirements,
setbacks, density, building height, and more, are available
and standardized across jurisdictions, enabling customers
to streamline acquisition searches across geographies and
ultimately make better informed investments and deci-
sions around land use,” a press release added.

“This transformational solution addresses a significant
pain point for our customers, which has been an inability
to easily search, filter, and analyze properties across
geographies with respect to zoning information. Previ-
ously, the data was difficult to access and non-
standardized across jurisdictions, creating hurdles for
customers who need reliable zoning information,” said
A.J. Dunklau, General Manager of Location Intelligence
at LightBox.

Lightbox said its zoning data may be useful for helping
customers understand land use for investment, planning
and development since the curated datasets “are built on
strong data management and open digital identifiers, mak-
ing it easier to connect third-party and in-house content for
an informational advantage,” added Lightbox Chief
Product Officer Adam Cardarelli.

To learn more, visit tinyurl.com/veytkkz.

Source: globenewswire.com

Anonymous gift will help expand Santa Barbara
County preserve

The Santa Barbara County Land Trust has received an
anonymous donation of $500,000 as part of a community
fundraising campaign to raise $750,000 to add close to 50
acres to the Arroyo Hondo Preserve, Noozhawk.com
reported recently.

The “Gaviota Overlook” area is along the Gaviota
Coast, which currently serves as a public space for hiking
and exploration. And more about the Land Trust can be
found at sblandtrust.org.

According to Santa Barbara County’s website, all gen-
eral comprehensive plans must contain several “ele-
ments,” including conservation. Visit countyofsb.org/954/
Comprehensive-Plan for more information. For a map of
land use, zoning, and overlays in Santa Barbara, visit arcg
is.com/home/item.html?id=fa3545a29dac49aeacc81669b
956c3e5.

Source: noozhawk.com

Colorado

Governor, others roll out plan to increase housing
statewide

Gov. Jared Polis, along with members of the Colorado
Legislature, environmental leaders, and local government
officials, recently announced a comprehensive plan to
help create more housing in the state. “The More Housing
Now plan takes action to cut red tape and incentivize
building more affordable and efficient housing options
that meet the needs of local communities,” the governor’s
office stated in a press release.

The governor, along with the Colorado Energy Office,
also released interim results from a new study analyzing
key components of SB 23-213 to allow accessory dwell-
ing units (ADUs) and “middle housing” (duplexes, tri-
plexes, and fourplexes) in more residential areas, and
multi-family housing near transit, commercial, and
institutional zones.

“Coloradans are demanding real solutions to our hous-
ing crisis, and it is clear that these common sense policies
will mean more housing now for every Colorado budget.
This transformative legislative package supported by the
business community, unions, and environmental adva-
cates was created following years of research on what
works, hundreds of meetings, and with input from hun-
dreds of local leaders and key Colorado community
leaders. The consequences of inaction are too great,” said
Gov. Polis.

Visit drive.google.com/file/d/1z4BewxaNPcidTD6Lr
iis0vLJg_KxmiJhi/view for more on the study. And for the
text of SB 23-213, which pertains to land use, visit leg.co
lorado.gov/bills/sb23-213.

Source: colorado.gov

Massachusetts

State AG issues advisory on MBTA Communities
zoning law requirements

The state attorney general, Andrea Joy Campbell, has
released an advisory to clarify requirements of the 2021
MBTA Communities Zoning Law, which was imple-
mented to address Massachusetts’ housing crisis and
requires towns and cities to allow reasonable levels of
multifamily housing development near MBTA stations.
The AG’s advisory stated that complying with the law is
mandatory.

In addition to compliance being required, Campbell
said the law “is an essential tool for the Commonwealth
to address its housing crisis along with our climate and
transportation goals.” “While the housing crisis dispropor-
tionately affects communities of color and poor, working
families, it threatens all of us along with our economy and
thus requires all of us do our part including ensuring ade-
quate development of affordable, transit-oriented housing
for our residents and families,” Campbell added.

This zoning law’s prime goals are to:

- Remove barriers to the development of higher-
density, transit-oriented housing along the
MBTA transportation network to address the
Commonwealth’s housing crisis; and

- advance transportation- and climate-related
initiatives.

“Because some local zoning laws sought to limit or
prevent the construction of multifamily housing near
MBTA stations, the statute explicitly responds by requir-
MBTA Communities to have at least one zoning
district of reasonable size in which multifamily housing is
allowed ‘as of right,’” the AG’s office explained. “This
district must generally be located within half a mile of a
transit station and allow for development at a minimum gross density of fifteen units per acre. The law also prevents restrictions within the designated district that would interfere with the construction of housing suitable for families with children,” it added.

The AG’s office also noted that there are many resources available to aid affected communities in reaching compliance. These include:

- A Department of Housing and Economic Development Technical Assistance Inquiry form, which can be found at mass.gov/forms/municipal-technical-assistance-form;
- Massachusetts Housing Partnership technical assistance, which can be found at mhp.net/community/comprehensive-neighbourhoods-initiative;
- Citizens’ Housing and Planning Association (CHAPA) technical assistance concerning community engagement, which can be found at chapao.org/housing-news/community-engagement-technical-assistance-for-mbta-communities.

To read the advisory, visit mass.gov/doc/advisory-concerning-enforcement-of-the-mbta-communities-zoning-law.

Source: mass.gov

Ohio

Beachwood’s city planner recommends zoning code changes to address ‘places of worship’

A March 2023 Beachwood, Ohio Planning and Zoning Commission agenda included reference to a letter recommending modifications to the local Zoning Code. “The primary changes are to the U-5 Public and Institutional District and are intended to address the issues associated with the establishment of new institutional uses, particularly places of worship, within the City,” City Planner George Smerigan wrote. “I am recommending modifications to the minimum area and frontage requirements to reasonably accommodate smaller institutional uses. I am recommending corresponding adjustments to the required minimum setbacks and have added language giving the Planning and Zoning Commission greater control over screening of parking areas. I have removed the prohibition regarding rezoning of U-1 land to U-5,” Smerigan added.

In addition, Smerigan recommended companion amendments, “including an update to the definitions for Places of Worship, Family, and Single Housekeeping Unit based upon recent case law.”

To download the agenda with the attachment, visit beachwoodohio.com/AgendaCenter/ViewFile/Agenda/03222023-1365.

Source: beachwoodohio.com

Virginia

Arlington County Board votes to expand housing options

As reported in the last Zoning Bulletin, the Arlington County Board recently acted on several zoning-related matters. And now, the County Board has voted to expand housing options in portions of the County that currently only allow single-detached homes.

On March 22, 2023, “[t]he Board adopted a series of Zoning Ordinance and General Land Use Plan amendments related to the Missing Middle Housing Study,” which can be found at arlingtonva.us/Government/Programs/Housing/Housing-Arlington/Tools/Missing-Middle.

“These amendments will allow for Expanded Housing Options (EHO) development for up to 6 units per residential lot—if certain conditions are met, including the same building height, setbacks, and size as allowed for single-detached homes. The adoption also caps annual permits at 58, distributed around the County. The changes will take effect July 1, 2023,” a press release stated.

“By allowing natural increases in the housing supply, we will lower the barriers of entry into all neighborhoods and, in doing so, address the housing crisis and our history of exclusionary zoning head-on,” said Board Chair Christian Dorsey.

To learn more about the policy areas that are impacted, which concern uses, applicability, annual development cap, maximum lot coverage, parking, trees, minimum site area, gross floor area, and accessory dwellings, and design and site layout guidelines, visit arlingtonva.us/About-Arlington/Newsroom/Articles/2023/County-Board-Adopts-Expanded-Housing-Options.

Source: arlingtonva.us
Variance

Objectors challenge approval for warehouse/distribution facilities on lots zoned for light industrial use

Citation: Grim v. Maxatawny Township Board of Supervisors, 2023 WL 27994477 (Pa. Commw. Ct. 2023)

Objectors appealed a court order affirming the Maxatawny Township, Pennsylvania’s Board of Supervisors development approval for warehouse/distribution facilities totaling 1.6 million square feet on lots zoned for light industrial use.

Duke Realty Limited Partnership (Duke) owned 11 parcels that comprised the site, which was bounded by state routes to the south and east, and Hilltop Road to the west. Hottenstein Road went through the site and would be realigned, and the plan anticipated operations 24 hours a day, 7 days a week, with 1,600 employees, 1,800 parking spaces for tractor-trailers, and 985 car parking spaces. A transportation impact study estimated 7,000 trips per day to and from the site, including about 5,000 car trips and about 2,000 tractor-trailer trips.

An environmental study projected the site would provide its own water through wells Duke would construct, but the study did not address impact on the aquifer and watershed that serve the township and neighboring localities. Also, the township’s engineer initially found the plan noncompliant, and the plan would also cause the township’s sewage facilities to reach capacity within five years, requiring an expansion that Duke promised to construct and dedicate to the township.

The township engineer ultimately recommended approval of the plan conditioned on that expansion as well as ongoing monitoring and compliance with all issues prior to final approval.

The township’s zoning board voted to preliminarily approve the plan. Conditions included payment of a $1.3 million traffic impact fee and $600,000 for road improvements, considerate placement of a traffic roundabout (including accessibility and safety of horses & buggies), water treatment and sewage upgrades, and consent to monitoring of groundwater levels.

The objectors appealed that decision to the lower court, and Duke intervened. The court upheld the board’s approval, finding that it had substantial evidence for reaching its conclusion. The court also noted that warehouses were permitted by right in the LI district and had been operating in it for years.

The objectors appealed alleging the board had misinterpreted the zoning ordinance’s restriction that “a warehouse shall be no closer than 500 feet from any adjacent property containing a residential dwelling.” They also contended...
the board should have required Duke to secure a special exception for warehousing activity from the zoning hearing board before approving the plan.

The court concluded that no special exception was necessary because warehouses were permitted by right in the LI district. It also rejected their argument that the proposed warehouses would be contrary to the area’s health, safety, and welfare.

The objectors appealed.

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

It was necessary to send the case back to the board based on its errors concerning the variance and special exception requirements.

**Variance requirement**—The court agreed with the objectors that the applicable zoning code provision was not ambiguous. That section “expressly state[d] that the distance [wa]s to be between properties, not between buildings” and the zoning ordinance’s “use of the word ‘containing’ further support[ed] that meaning, in that properties contain buildings, but buildings do not contain properties.”

The bottom line: The applicable section wasn’t “ambiguous in meaning that the issue [wa]s distance between properties rather than buildings on those properties.” As approved, the plan violated that section’s buffer-distance requirement. “Although the residence on Haas’s property purportedly either [wa]s to be demolished so as to eliminate the 500-foot proximity issue relating to that residence, the record [wa]s not indicate that the alleged proximity of other residences or the church playground was resolved, so Duke should have [wa]s required to obtain variances before approval of the plan.”

**Special exception requirement**—Under the applicable zoning ordinance “[i]t is a discrepancy exist[ed] between any regulations contained in the ordinance, that regulation which impose[d] the stricter limitation on the proposed use or structure shall apply.” In this case, “any proposed warehousing in the LI district require[d] a special exception from the Zoning Hearing Board,” so the zoning officer erred and the board violated the zoning ordinance by not requiring Duke to secure a special exception before granting preliminary approval.

**Practically Speaking:**

The board erred in approving the preliminary plan without requiring Duke to first obtain a special exception. The court directed the board to ensure that Duke had obtained any requisite variances before a new vote would be conducted on the plan.

**Site Plan Approval**

Developer claims site plan application to build townhomes wrongfully denied, but did he exhaust administrative remedies?

Citation: *Stafa v. City of Troy*, 2023 WL 2938542 (*Mich. Ct. App. 2023*)

Safet Stafa appealed a lower court’s decision to grant the City of Troy, Michigan judgment without a trial on a claim that it should have approved a site plan pertaining to the development of townhomes.

The case arose after Stafa entered into a purchase agreement for land near Crooks Road in Troy zoned as a Neighborhood Node (NN) District—next to which there were single-family houses. The purchase agreement was conditioned on Stafa securing approval from the city to construct the townhomes.

Stafa submitted his site plan to the city’s planning com-
mission for approval. According to Stafa his site plans conformed with the NN District requirements, but a consulting firm the planning commission hired to review the plans identified several issues with the site plan.

And while the site plans were under review, the city received many complaints from the neighboring homeowners opposing the construction of the townhomes. The planning commission gave Stafa some time to amend his plan in light of citizens’ complaints and the consulting firm’s findings.

Stafa made some changes to his site plan, but the planning commission nevertheless denied his the application, so he appealed to Troy’s zoning board of appeals (ZBA), which denied the appeal. Stafa did not appeal that decision.

In May 2021, the city council approved changes to “Section 5.06—the NN District zoning ordinance,” changing the building height requirements and transition standards for construction in those districts.

Shortly thereafter, Stafa filed suit challenging the denial of his site-plan application and the changes to Section 5.06. He then amended his complaint seeking declaratory relief and an order requiring the planning commission to approve his site plan or for an order for the city to show cause as to why the plan should not be approved.

The lower court agreed with the city that Stafa hadn’t exhausted his administrative remedies, so it granted it judgment without a trial on jurisdictional grounds.

DECISION: Affirmed.

Stafa hadn’t gone through the proper administrative channels to challenge the site plan application denial.

Concerning zoning matters, site-plan review was “essentially administrative in nature.” “Stafa alleged in his amended complaint that his project was a permitted use under the city’s zoning ordinance and did not require any variances, waivers, or exceptions from the ordinance,” the court explained.

But “Stafa did not present any legal or factual support for his contention that the planning commission’s denial of his site plan was legislative in nature.” “In fact, Stafa’s amended complaint asked the circuit court to issue a declaratory judgment that his site plan was in total compliance with the zoning ordinance, and “as an administrative, ministerial action, must be approved.”” As a result the ZBA had properly found the planning commission’s administrative decision to deny Stafa’s site-plan application. Furthermore, because the decision of the planning commission was an administrative decision, which Stafa appealed to the ZBA, Stafa was required to file a claim of appeal in the circuit court from the ZBA’s final decision.

Appeals court reviews whether PZC should have granted site plan approval and special excavation, fill permits

Citation: Taylor v. Planning and Zoning Commission of Town of Westport, 218 Conn. App. 616, 2023 WL 2847183 (2023)

William Taylor claimed a lower court erred in denying his appeal from the Town of Westport, Connecticut’s Planning and Zoning Commission (PZC) denial of a site plan and special excavation and fill permit applications.

The question on appeal was whether the lower court had improperly found the PZC hadn’t deprived Taylor of fundamental fairness by preventing him from being heard on whether his application was sufficiently complete.

DECISION: Reversed.

The PZC was required to give Taylor the opportunity to be heard on whether his application was complete at the public hearing on his application, prior to denying it for incompleteness.

A CLOSER LOOK

Taylor owned an unimproved lot of land at 715 Post Road East in Westport. In 2014 and 2018, he submitted site plan and special excavation and fill permit applications to the PZC seeking its approval to build an office building on the property.

In an effort to obtain the commission’s approval of the 2014 and 2018 applications, Taylor had sought and received the approval of the building design from Westport’s architectural review board and also obtained the necessary zoning variances from its zoning board of appeals. He ultimately withdrew his 2014 and 2018 applications to the commission, though.

In 2019, Taylor submitted a site plan and special permit for excavation and fill application to the PZC. This 2019 application sought approval to build a 4,220 square foot office building with 22 parking spaces on the property, but he didn’t seek any additional or new approvals from the architectural review board or obtain new zoning variances for his 2019 application.

The application was scheduled to be heard before PZC on June 20, 2019, and Taylor retained an attorney to represent his interests in the application process.

Following the submission of the application but prior to the hearing, the deputy planning and zoning director (DPZD) emailed the attorney and told her that the application was “not ready to appear” before PZC because it was incomplete.

The DPZD stated that the application was incomplete because it required:

- new variances from the zoning board of appeals;
- an updated traffic report to supplement the original
report that was completed approximately five years earlier;

- a drainage report;
- a new approval from the architectural review board so that the board could review the modifications in the site plan in relation to the building's design; and
- revisions to the intended tree plantings to conform with Westport tree board requirements.

The DPZD requested that Taylor consent to an extension for the application's hearing date so that the application could be completed. But rather than consent, the attorney emailed the planning and zoning director (PZD) to inform them about what the DPZD had requested. The attorney stated that the application was complete and that Taylor had previously obtained the required zoning variances and architectural review board approval. They also indicated that the site plan had not changed since the variances and approval were obtained, the drainage report had been submitted with his application on April 11, 2019, the intended tree plantings on the site plan had been revised, and a traffic study had been updated in 2017. The attorney concluded by stating Taylor wanted to proceed with having his application heard, as originally scheduled, on June 20, 2019.

On June 13, 2019, the DPZD distributed a memorandum to the PZC regarding Taylor’s application. The memorandum stated that “[t]he public hearing should not be closed until all the outstanding issues are addressed. The commission may also consider a denial as the application is incomplete.” In concluding that the application was incomplete, the DPZD cited the “outstanding issues” in the application that she had brought to the attorney’s attention previously in her June 4, 2019 email.

After receiving a copy of the memorandum, the attorney responded by filing their own memorandum that set forth the earlier stated reasons as to why the application was complete and attached supplemental and revised documents to it. That memorandum was received one day before the scheduled hearing on the application. And in that memo, the attorney argued Taylor didn’t have to obtain new zoning variances for his application because the site plan application had not been modified since the original variances were obtained in 2014 and 2018.

On the day of the hearing, the DPZD sent an updated memorandum to the PZC and informed it that “additional information and revised plans” had been submitted by the attorney the day before and that these new materials pertaining to the application had not been reviewed by planning and zoning staff members. The DPZD again stated she had concluded the “the public hearing should not be closed until all the outstanding issues in the staff report AND supplemental report are addressed. The applicant may consider withdrawing and resubmitting after the variance and [architectural review board] approvals are received. The commission may also consider a denial as the application is incomplete.”

The hearing on the application was opened on June 20, 2019 as scheduled. The commission chairman told the attorney he didn’t want to hear the matter “right now” because he didn’t approve of how the attorney had handled the application—he took issue with submitting a revising site plan the day before the hearing.

Ultimately, most members of the PZC opined the application should be denied prior to a unanimous vote to deny it. Taylor appealed to the court arguing he had been deprived a full and fair hearing on the application and that the PZC was biased against his application and had arbitrarily denied it.

The court denied Taylor’s appeal. It reasoned the PZC’s denial of the application without prejudice was well within its authority and that substantial evidence supported its decision, particularly in light of the fact that Taylor had submitted a “revised proposal” on June 19, 2019, which the planning and zoning staff was unable to review before the hearing.

Taylor then appealed the court’s ruling.

BACK TO THE COURT’S RULING

The PZC deprived Taylor of his right to fundamental fairness. This finding was “supported by [its] discussion of the . . . application at the deliberation hearings that followed.” One of the PZC members had “recognized the inherent unfairness in closing the hearing without providing [Taylor] with a full opportunity to be heard and initially stated that, because [he] was deprived of this opportunity, he did not think there was a basis on which the commission properly could deny the application.” Another member “acknowledged that it was unfair to close the hearing” and advised the PZC to refrain from depriving an individual “who sat for hours for the opportunity to be heard” from receiving their “token five minutes.”

“Despite these concerns, other members disagreed with the notion that the application had been handled unfairly,” the court explained. But “[r]ather than focusing solely on the purported incompleteness of the current application to support their position, the commission members justified the closing of the hearing by stating that [Taylor had] ‘stomped on the staff,’ ‘gave the staff holy hell,’ ‘was egregious,’ ‘was confrontational,’ and that ‘on the day of the application [his attorney] threw a bunch of crap at them] that was crap.’

The bottom line: Taylor hadn’t “receive[d] a dispassionate consideration of his application.” There wasn’t evidence the PZC’s decision “was made reasonably and fairly after a full hearing at which [Taylor] was allowed to address the dispute over whether his application was complete.”
Ripeness

Property owners who eventually were granted permission to construct a dock claim Section 1983 rights had been violated

Citation: Kleinkecht v. Ritter, 2023 WL 380536 (2d Cir. 2023)

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

Richard and Suzanne Kleinkecht appealed a lower court’s decision to dismiss a complaint against the Incorporated Village of Lloyd Harbor, New York and others as unripe. The Kleinkechts argued their Section 1983 claim alleging a taking under the Fifth and Fourteenth Amendments was ripe because at the time this lawsuit was filed the village had issued a final decision preventing them from constructing a dock on their waterfront property.

DECISION: Reversed; case sent back for further proceedings.

The 2011, 2014, and 2016 applications were ripe claims for review.

MORE ON THE FACTS

The property was originally part of a large tract of land that was subdivided into several smaller residential lots. During the process of subdividing the land, the village was granted an indenture conveying certain development rights over the waterfront residential lots, including the subject property.

The indenture specified no new docks could be built on these newly subdivided lots but that the affected homeowners of these lots could use an existing community boathouse and pier instead. The village’s planning board then voted to restate this provision in the deed to each encumbered lot.

As a result, when the Kleinkechts purchased the property in 1999, their deed included a provision prohibiting them from building a dock and instead providing them access to the boathouse and pier.

After the village sold the land on which the boathouse and pier stood, the Kleinkechts sought approval to build a dock on the property. Following a public hearing, the planning commission voted to deny their request.

The Kleinkechts then challenged that denial by commencing an “Article 78” proceeding in state court. That court found the village’s sale of the community boathouse and pier constituted a “change of circumstances,” entitling the Kleinkechts “to the issuance of a permit to erect a dock upon the filing of an appropriate application.”

In May 2014, the Kleinkechts filed their second dock application with the village’s building department. It denied the application, citing the proposed dock’s non-compliance with the village zoning code.

The Kleinkechts then applied for a variance, which the village’s zoning board of appeals (ZBA) denied. They filed another Article 78 proceeding, and that case went up to a New York appeals court, which ruled the ZBA’s decision had not been “arbitrary and capricious.”

Then, in 2016, the Kleinkechts submitted a third dock application to the building department. The village attorney responded to this application with a letter stating that “the Building Inspector is not authorized to issue any building permits for the encumbered portion of the Kleinkecht property.” The Kleinkechts then challenged that determination with a third Article 78 proceeding. The court ultimately ordered the building department to grant that application.

On appeal, though, an appeals panel modified the order so that the building department was required only to “forward the . . . permit application to the Village’s Site and Building Permit Review Board in accordance with Village of Lloyd Harbor Code.”

In 2019, the Kleinkechts submitted yet another dock application, this time to the New York Department of State’s Coastal Management Program. The state denied the application, so they filed suit under Section 1983, claiming the village’s conduct had amounted to an unconstitutional taking in violation of the Fifth and Fourteenth Amendments. They claimed a taking dating back to 2011 (when the first application was rejected) and continuing and sought monetary damages along with an injunction to force the village to take action to enable them to construct a dock.

While the litigation was pending, the Kleinkechts submitted another application to build a dock to the village. The building department approved this application, and since the Kleinkechts had gone ahead and constructed their dock, the court dismissed the complaint as unripe, reasoning that they hadn’t had a final decision when this lawsuit was filed.

The Kleinkechts appealed that finding.

BACK TO THE COURT’S RULING

“A plaintiff seeking to bring a takings claim need only show a final decision for the claim to be ripe,” the court explained. “A decision [wa]s final when ‘there [wa]s no question about how the regulations at issue appl[ied] to the particular land in question.’ ”

But “[s]o long as ‘avenues still remain[ed] for the government to clarify or change its decision,’ the decision [wa]s not final and a takings claim [wa]s not ripe,” it added.

While the complaint referenced a taking began in 2011 and continued to date, it also alleged a separate taking for the denials of the 2011, 2014, and 2016 applications. “With respect to the 2011 Application, there can be no doubt that the Planning Board definitively decided that the Kleinkechts were not entitled to relief from the restriction in their deed that prohibited them from building a dock,” the court found.
With the 2014 application, the building department denied the application in light of its noncompliance with the zoning code. “And when the Kleinknehcts sought a variance, the ZBA promptly rejected that request, leaving the Kleinknehcts with no other avenues by which to seek a clarification or change of the Village’s decision. Clearly, this constituted a final decision by the Village,” the court added.

And, the Kleinknehcts also received a final decision on the 2016 application. “We see no daylight between the Village Attorney’s letter, which stated that the Building Department lacked authority to grant the application, and a letter expressly denying the application. There are no magic words necessary for a decision to satisfy the final-decision requirement, and to the extent that the Kleinknehcts could have sought a variance from this decision, doing so surely would have been futile given the Village Attorney’s blanket assertion that the ‘Building Inspector is not authorized to issue any building permits for the encumbered portion of the Kleinknehct property,’ ” the court reasoned.

Case Note:
The village argued the planning board couldn’t have issued a final decision because the Kleinknehcts had yet to petition the village board of trustees for relief from the indenture restriction. But “there was no need for the Kleinknehcts to seek such relief given that their deed—which contained language that was identical to that in the indenture—was alone sufficient to prevent them from building a dock, and so a petition to the [trustees board] would have been futile.”

Easements

Objector claims Zoning Board erroneously measured from where setback started for purposes of approving garage construction

Citation: Waldman v. Borough of Fox Chapel Zoning Hearing Board, 2023 WL 1979549 (Pa. Commw. Ct. 2023)

Harold Waldman appealed a court order authorizing James and Christine Luketich to build a three-car garage on their property. In appealing the court’s affirmation of the Borough of Fox Chapel Zoning Hearing Board’s (ZB) decision that the proposed garage satisfied the setback requirements of the Fox Chapel (Pennsylvania) Zoning Ordinance, Waldman argued the court erred in applying the ZO.

DECISION: Affirmed.

The ZB’s factual findings as to the easement were supported by substantial evidence; it had properly construed and applied the ZO; and the ZB didn’t adjudicate title matters by reaching its conclusion, so the lower court properly upheld its decision.

MORE ON THE FACTS

The Luketichs owned property located at 30 Sweet Water Lane in Fox Chapel. Waldman owned the adjacent lot—10 Sweet Water Lane. The two properties were divided by a north-south property line, and a third parcel abutted the two properties with all three properties being located in the borough’s A-Residence zoning district, which required a minimum lot size of three acres.

In 2017, the Luketichs house and garage were damaged in a fire. On December 3, 2019, they submitted a building permit application to the borough.

The zoning officer issued a building permit for the project, but a few weeks later, Waldman appealed the issuance of that permit, arguing the proposed garage violated the applicable setback provisions in the ZO. He contended that the lines of an easement on the Luketichs’ property should have been used to measure the setbacks but they used the boundary with his property to measure the side setback for the garage.

A hearing ensued, and the zoning officer testified that the easement provided Waldman’s abutters to access Sweet Water Lane; otherwise, their lots would be landlocked. He added that the proposed garage was farther from Waldman’s property line than it was before the fire. He surmised that the borough would treat the access and utility easement as a street, and then the Luketichs’ lot size would fall below the required three-acre minimum.

Ultimately the ZB found the garage setback must be measured from the property boundary line, not from the easement boundary. It cited the ZO, which stated “[n]o structure of any character shall be closer to any street line or property line of any street, road or lane than 75 feet; not closer to any side lot line than 40 feet with a combined distance from both side lot lines [of] not less than 100 feet; not closer to any rear lot line or any parkland than 50 feet.”

THE CRUX OF WALDMAN’S ARGUMENT

Waldman claimed:

- The lower court erred in finding the required setback for the garage was properly measured from the common boundary line—he contended that the boundary of the easement constitutes a “street line” under the ZO;
- The ZB had improperly adjudicated title questions, which were beyond the scope of its jurisdiction; and
- the court erred in affirming the ZB’s decision permitting reconstruction of a nonconforming structure in violation of the ZO.

WHY THE COURT AFFIRMED

Setback—The court rejected Waldman’s argument that the garage should have been measured from the easement
line not the property line. In his opinion, the easement was, in actuality, a right-of-way, and the ZB and lower court erred in finding otherwise.

The ZO's provisions concerning setback stated "No structure of any character shall be closer to any street line or property line of any street, road or lane than 75 feet; not closer to any side lot line than 40 feet with a combined distance from both side lot lines of not less than 100 feet; not closer to any rear lot line or any parkland than 50 feet."

In Waldman's opinion, the garage had to be located 75 feet from the easement's boundary line because it was a street, road, or lane under the ZO.

The easement, however, "was irrelevant to the location of [the] lot lines, which [had to] enclose a minimum of three acres. Likewise, the easement was irrelevant to the measurement of setbacks, which [we]re determined solely on the basis of lot boundaries," the court found.

**Title matters**—The ZB hadn't adjudicated title matters in a land-use appeal here, and in any event, the issue had been waived because Waldman didn't raise it before the board.

**Nonconforming structure**—Waldman argued the building permit would allow them to rebuild a nonconforming garage in violation of the 50-foot setback from a street line in effect when it was built. "The [ZO] prohibits the reconstruction of a nonconforming structure that has been more than 50% destroyed," the court explained, noting that Waldman contended the prior garage was a nonconforming structure and had been 100% destroyed.

But Waldman didn't prove the previous garage had been nonconforming or that it had been completely destroyed in the fire, so the claim was properly rejected.

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**Zoning News Around The Nation**

**Hawaii**

Maui’s planning commission approves SMA, shoreline rules

The Maui, Hawaii Planning Commission has unanimously approved Special Management Area (SMA) and Shoreline Rules updates, Maui Now reported.

The SMA and Shoreline Rules had initially been established in the mid-1970s to address building setbacks along the shorelines of sensitive coastal areas before most recently being updated in 2003, the news outlet noted.

The city’s planning director, Kathleen Ross Aoki, called the updates more flexible and balanced for homeowners while factoring in sea level rise-based considerations as they relate to the resiliency of the coastline, the news outlet reported.


Source: mauinow.com

**Illinois**

Northbrook seeks help in updating its zoning code

The Village of Northbrook, Illinois hasn't had a major overhaul to its zoning code since 1988. "It is a traditional use-based 'Euclidean' ordinance that segregates land use and bulk, space, height and yard requirements by zoning districts," the village explained in a press release.

Over the years the zoning code has been updated to adopt some community plans—namely a Comprehensive Plan (2010), Master Bicycle & Pedestrian Plan (2018), Affordable Housing Plan (2020) and Climate Action Plan (2021)—but while the village has "adopted new community goals, objectives, and strategies based on organic land development, market trends, new technologies, and an emphasis on environmental sustainability," it is now seeking to develop and adopt a new zoning code that will "comprehensively incorporate community priorities." Thus, it seeks to:

- introduce new standards;
- streamline current entitlement procedures; and
- incorporate a plan that’s user-friendly to best serve the residents, businesses, and all community stakeholders.

The public is invited to stay active in the process, and the village has set up a project site where it will post updates (available at hla.fyil/northbrookzoningcoderewrite) and QR link.

Source: northbrook.il.us

**New York**

NYC's planning director announces zoning relief proposal for homeowners on Staten Island

The New York City Department of City Planning (DCP) Director Dan Garodnick recently announced that the DCP will refer out its South Richmond Zoning Relief proposal (available at nyc.gov/site/planning/plans/si-distriict-text-amendment/si-district-text-amendment-overvie w.page), which it says will "simplify zoning and planning procedures for homeowners, enhance the preservation of natural features, and give the community greater oversight of sensitive sites in the Special South Richmond Development District (SSRDD)."

“For years, South Richmond homeowners have been hamstrung by needlessly complicated rules and a tangled web of red tape. Now, our administration has come to the table with Borough President Fossella, Councilmember Borelli, and our partners in the community to ‘Get Stuff Done,’” said New York City Mayor Eric Adams. “This proposal will make families’ lives easier, empower this community, and bring out the natural beauty of Staten Island.”

“Under the current rules, a homeowner in the SSRDD
has to navigate a labyrinth of time-consuming regulations and approvals just to make a simple improvement on a property. This new proposal removes many of those unnecessary barriers, while striking the proper balance between protecting property rights and preserving the natural environment and unique character of these communities,” said City Council Minority Leader Joseph Borelli.

“With smart zoning and regulations, we can ensure government is working for New Yorkers. For too long, residents in the unique Special South Richmond Development District have faced onerous requirements to make even the smallest improvements to their homes, and in a way that does not further broader policy goals. We’re pleased to be moving forward with the Zoning Relief proposal that simplifies these regulations while also strengthening the protection of important natural areas,” said Garodnick.

Source: nyc.gov

Washington

Zillow's Home Price Expectations Survey concludes zoning to play a role in fixing housing affordability

A new Zillow Home Price Expectations Survey concludes that zoning reform would allow more housing within existing neighborhoods, allowing communities to grow. In fact, zoning reform was ranked as one of the most effective ways to address housing affordability.

“It seems straightforward: We need to build more homes,” said Dr. Skylar Olsen, Zillow’s chief economist. “Changes through policies like modest densification will give us more ‘at bats’ to create density and help communities stay livable for everyone. Without a huge injection of new homes in the near future, affordability will continue to be a challenge for many—especially for first-time home buyers,” Olsen added.

Zillow, which worked with the research firm Pulsonomics LLC, to poll an independent panel of economists and housing experts, noted that “[H]ousing affordability remains a defining feature of the U.S. housing market.” Its latest data reveals that “while monthly mortgage costs are now just under $1,600 for a typically valued home after a 20% down payment, payments are still 46% higher than last January and $754 higher than before the pandemic (January 2020).”

And, it says, “[O]ne key driver of the affordability crisis is the chronic shortage of new housing construction, which has not recovered from the Great Recession, resulting in a 3.79 million—unit gap in home production in 230 metro areas.” That’s according to a study by Up for Growth, a nationwide think tank that addresses housing shortages through research and evidence-based policies.

“Restrictive and exclusionary zoning, artificial barri-ers, and NIMBY opposition have combined to create an unprecedented and persistent housing shortage,” said Mike Kingsella, CEO of Up for Growth. “Failure to address these issues will create lower economic output and fewer opportunities for everyone. Families and individuals will be forced to pay higher rents, the equity gap will widen, and transportation costs will rise as people are forced to travel greater distances for work and education,” Kingsella added.

“There are no quick fixes for the housing affordability problem in the U.S., especially at a time when demand for entry-level homes far exceeds available inventory,” said Terry Loeb, founder of Pulsonomics. “Supply-side initiatives such as those recommended by this panel may not be easy to implement, but they will be the most effective means to durably improve homeownership affordability and market balance,” Loeb added.

For additional details on the study’s findings, visit zillow.com/research/zhpe-zoning-affordability-32235/

Source: zillow.mediaroom.com

Washington, D.C.

HUD releases new publication on restrictive land-use policy effects

In a newly released publication, the Department of Housing and Urban Development (HUD) examines the impact restrictive land-use policies have on housing supply, location and affordability. The report also discusses reforms that state and local governments could adopt to increase the supply of housing.

“This land use and zoning-focused brief is the inaugural issue of the Office of Policy Development and Research’s (PD&R) new Policy & Practice publication, which aims to share innovative solutions to help local policymakers and practitioners to address housing and community development challenges,” HUD stated.

In addition, HUD announced a $350,000 award to Cornell University’s National Zoning Atlas (zoningatlas.org) through PD&R’s Research Partnership program (hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingsopp/unsolicitedproposals). “The goal of this grant is to close data gaps that limit our understanding of the relationship between zoning and segregation, affordability, and other outcomes of interest. Specifically, these research funds will enable researchers to study the impacts of zoning in the largest cities in the United States by contributing to the first-ever comprehensive geospatial repository of zoning conditions,” HUD explained.

To access the publication, visit huduser.gov/portal/Poli cy-and-Practice.html.

Source: hud.gov