

January 24, 2011
Curtis Hall

The Planning Commission ("PC") meeting was held tonight at Curtis Hall in Curtis Arboretum. The following Planning Commission members were present: Messrs. Leighton, Brockington, Winneberger and Cross. Also present were ex-officio members Laughlin and Harrower. Also present was Hannah Mazzaccaro, Montgomery Country Planning Commission and Carmen G. Reitano, Assistant Director of Engineering, Zoning & Inspections.

1. Reorganization

Mr. Winneberger nominated Mr. Cross as the Chair of the Planning Commission; Mr. Brockington seconded the nomination; Mr. Cross was elected Chair by acclamation. Mr. Cross nominated Mr. Winneberger as Vice-Chair of the committee; Mr. Brockington seconded the nomination; Mr. Winneberger was elected Vice-Chair by acclamation.

2. Acceptance of the minutes of the November 24, 2010 Meeting.

Mr. Harrower wished to amend the minutes to reflect the invitation of Ancillae Assumpta Academy to the neighbors to come onto the property to look at the design of the current buildings. Mr. Winneberger made the Motion to approve the minutes as amended; Mr. Leighton seconded the Motion; the Motion passed.

3. Review of Zoning Hearing Board Agenda for February 14, 2011.

Appeal No. 3394: Appeal of Marrae Dargen, prospective tenant at 8110 Old York Road, Elkins Park, PA 19027, from the Decision of the Zoning Officer for a Variance from the Rules and Regulations of the Class C-3 Commercial and Business District as outlined in CCS 295-117. in order to operate a Childcare Facility for thirty (30) children, ages 1 to 5 years old, Monday thru Friday, 6 AM to 6:30 PM with six (6) staff members on the Premises instead of one of the enumerated permitted uses.

Mr. Reitano stated that the property is a small triangular shaped retail space in a strip mall. Mr. Reitano stated that Mr. Lynch reviewed the application for parking and has determined that the six (6) parking spaces in front of the retail space meet the Zoning code parking requirements for the childcare facility; Mr. Reitano stated there is additional driveway access to the rear of the store. Mr. Reitano noted that interior renovations would have to be made in order for the area to be in compliance with code. Mr. Reitano stated that the Applicant did not plan on having outdoor play space because of the close proximity to Wall Park.

Mr. Cross reminded the Committee about the proposed Adult Day Care across the street. Mr. Reitano stated that the issue in that Appeal (#3342) was queuing of the cars and it was decided to have the primary entrance thru the underground garage.

Mr. Reitano explained that, because of the change of use, 8110 Old York Road would have to be outfitted with sprinklers. Mr. Cross stated that the application doesn't have enough detail or information for the Committee to make an accurate recommendation. Mr. Cross is concerned about the lack of details presented to the Planning Commission. Mr. Harrower would like to see documentation of the traffic flow to and from the center and play area.

Mr. Winneberger made a Motion for Denial; Mr. Brockington seconded the Motion; the Motion passed.

APPEAL NO. 3395 - Appeal of Clearwire, prospective tenant at 7309 Butcher Street, Elkins Park, PA (a/k/a "Butcher Street Water Tank Site") from the Decision of the Zoning Officer for the following Zoning Relief in order to attach three (3) Clearwire Panel Antennas and one(1) Microwave Dish to the existing Water Tank, to place a Clearwire Equipment Cabinet on a 3' x 6' Lunar Platform at the base of the Water Tank and for associated appurtances:

- a. Grant of a Use Variance from the use provisions of CCS 295-57. of the Township Code (Use regulations for the R-7 District) to allow the installation of the Clearwire Telecom Facility on the Property as depicted on the site plans.
- b. If determined to be necessary by the Zoning Hearing Board, grant of a Height Variance from CCS 295-61. to allow installation of the antennas as part of the Clearwire Telecom Facility to be placed at an overall height of $103.25 \pm$ AGL feet on the side of the water tank. AT&T Mobility and T-Mobile both have antenna panels attached to the Water Tank with a top panel elevation of $116.8 \pm$ AGL.
- c. A Variance from CCS 295-60.B. (4) for a lesser side yard setback of $8.4 \pm$ instead of the minimum required 16' for the Equipment Cabinet.
- d. In the alternative, a determination that the Telecom Facility has been established as a valid, non-conforming use of the Property, established by court order on February 17, 1999. Regulations for such use are not presently provided in governing ordinances of the township by virtue of the repeal of the Telecom Ordinance in 2009. Pursuant to CCS 295-227.C. of the Township Code, a valid non-conforming use may be extended throughout the premises by grant of Special Exception.
- e. In the alternative, a determination that the Clearwire Telecom Facility is permitted by a Validity Variance as to the use as recognized by the laws of the Commonwealth of Pennsylvania. In that regard, the Telecommunications Act of 1996 (the "TCA"), 42 U.S.C. § 332 (c)(7)(B)(i)(I), prevents unreasonable discrimination among providers of functionally equivalent services. Clearwire is a telecommunications provider afforded protections under the TCA and provides wireless services which are functionally equivalent to wireless services now being provided by T-Mobile and AT&T Mobility from this Property. To deny Clearwire the establishment of the Clearwire Telecom Facility on the Property would result in unreasonable discrimination.

- f. In the alternative, a determination that the Clearwire Telecom Facility is permitted by a Validity Variance as to use as recognized by the laws of the Commonwealth of Pennsylvania. In that regard, the Telecommunications Act of 1996, 42 U.S.C. § 332 (c)(7)(B)(i)(II), prevents decisions of local agencies which may prohibit or have the effect of prohibiting the ability of a wireless provider to provide service in an area. On November 18, 2009, the Federal Communications Commission issued a Declaratory Ruling which determined that a local agency may not deny a wireless facility siting application because service is available from another provider. Clearwire is a telecommunications provider afforded protections under the TCA and provides wireless services which are functionally equivalent to wireless services now being provided by T-Mobile and AT&T Mobility from this property. To deny Clearwire the establishment of the Clearwire Telecom Facility on the Property would result in effective prohibition of its wireless service to a significant portion of Cheltenham Township.
- g. If the decision of the Zoning Hearing Board is on the basis of grant of a Validity Variance or, alternatively, grant of a Special Exception as an extension of a non-conforming use, then Clearwire further requests grant of a Validity Variance as to any applicable area and bulk requirements which pertain to the proposed Clearwire Telecom Facility.
- h. Clearwire also applies for such other interpretations, waivers and/or variances as may ultimately be required.

Mr. Reitano stated that Clearwire is modifying the site plan to add another equipment cabinet and to mount additional equipment on top of the tower. Mr. Reitano also stated that the cabinet is not visible from the street due to the arbor vitae being planted around the area. Mr. Brockington inquired about the noise complaints the Residents previously had. Mr. Reitano explained that because the Township is not certified to conduct noise tests that the telecommunication companies had to hire a third party noise engineer to test the area; the results showed that there was more noise coming from Cheltenham Avenue than from the Water Tower compound. Mr. Brockington asked if the neighbors were notified. Mr. Reitano stated that the only neighbor notified was Ms. Joyce Bridgeforth because her residence is directly across the street from the tower.

Mr. Reitano confirmed that the current arborvitae has been approved by STAC.

Mr. Winneberger made a Motion of No Action; the Motion was seconded by Mr. Leighton; the Motion passed.

Appeal No. 3396: Appeal of Roody Saint Marc, Owner of premises known as 7400 4th Avenue, Elkins Park, PA 19027, from the Decision of the Zoning Officer for the following Zoning Relief in order to construct a 2 ½ storey, 27.14' x 36.25 (984 ± SF) Single Family Residence on the Premises:

- a. Zoning Relief from the Rules and Regulations of R-5 Residence District as outlined in Article VIII of Chapter 295 of the Cheltenham Code, as follows:

- i. A Variance from CCS 295-44. for the lot not having a width of 50' extending from the street line to the depth of the rear yard.
- ii. A Variance from CCS 295-46.A.(1) for a lesser front yard setback along the 4th Avenue frontage of the premises of 30' instead of the minimum required 40'.
- iii. A Special Exception in accordance with CCS- 295-46.A.(2) for a lesser front yard setback of 11.3± ' along the Asbury Avenue frontage of the premises instead of the minimum required 40'.
- iv. In the alternative to a.i,a.ii. and a.iii., above Special Exceptions for the proposed single family dwelling in accordance with CCS 295-48.

Mr. Roody Saint Marc was present to discuss the application.

Mr. Saint Marc stated he owned the property for 12 years and that a fire had completely destroyed the building 2 years ago. Mr. Reitano stated that Mr. Saint Marc needed zoning because over one (1) year has elapsed since the fire damaged residence was demolished; Mr. Reitano further noted that the proposed residence is not on the original footprint and is slightly larger than the demolished residence.

Mr. Cross asked whether an EDU was allocated for the new residence. Mr. Reitano stated that, as the property had been vacant for over one (1) year, it had lost its original one (1) EDU; PADEP has issued a letter stating that Sewer Planning is not required for the new residence and that the Township may allocate an EDU to the new residence if it chooses to do so; the Township will allocate one (1) EDU for the new residence pending the Grant of Zoning Relief for the new residence and the submission of a complete building permit application.

Mr. Cross suggested that prior to the applications review by the Zoning Hearing Board that Mr. Saint Marc find out the exact dimensions of the previous footprint and dimensions of the proposed foot print. Mr. Cross explained that the more details the Zoning Hearing Board has the better. Mr. Leighton noticed there were back patio doors on the second level and questioned whether there would be decks added at a later time. Mr. Saint Marc stated that the contractor said it was unnecessary to show that now since that work wouldn't be done until later. Mr. Cross explained that it would be easier for the Applicant to address the decks now and get approval at the same time instead of waiting but stated this decision was up to Mr. Saint Marc.

Mr. Harrower recommends larger site plans so that details and measurements may be easily read.

Mr. Winneberger made a Motion of No Action with the recommendation of Applicant getting original v. proposed footprint information; Mr. Brockington seconded the Motion; the Motion passed.

4. Review of Cheltenham Township Land Development Application No. 10-0630: Ancillae Assumpta Academy Stepping Stones Entrance Lobby-2025 Church Road.

No one was present to represent the Applicant.

Mr. Paul Greenwald was present to discuss his concerns. Mr. Greenwald stated that the Zoning Hearing Board approved a totally different plan than what was presented to the Planning Commission. Mr. Greenwald asked why the plan was approved and asked whether the Applicant should have to resubmit. Mr. Cross asked why this was in front of the Planning Commission again if already approved by the Zoning Hearing Board. Mr. Reitano stated that the Applicant was submitting a landscape plan attempting to shield the tiles. Mr. Greenwald expressed his concern about the visual impact of the checkerboard pattern on the neighbors.

Mr. Cross stated that there are insufficient details to review the Land Development Plan and noted that there are still serious issues to be addressed. Mr. Cross stated that the concerns are centered around the scale, materials being used and contextual relationship to neighboring properties.

Mr. Cross made a Motion for Denial; Mr. Leighton seconded the Motion; the Motion passed.

**5. Review of Cheltenham Township Land Development Application No. 10-0660:
Record Plan- Arcadia Pedestrian Bridge.**

Mr. Harold Lichtman was present to discuss the application.

Mr. Lichtman explained that the plan was for a small pedestrian bridge over a small section of Tookany Creek on Arcadia's property. Mr. Lichtman stated that Soil Erosion control agencies were involved. Mr. Lichtman also stated that Arcadia is the co-applicant with the Township for funding from the state for the pathway to the bridge itself and that the path will be made of pervious asphalt. Mr. Lichtman confirmed that the Township Engineer reviewed with design engineers and found no outstanding issues. Mr. Laughlin asked whether the bridge was already constructed. Mr. Lichtman stated that there are concrete abutments and the bridge is a pre-constructed unit. Mr. Reitano stated that weather was a big factor for the project to move quickly and that the footers were already inspected. Mr. Lichtman noted that escrows were funded at Arcadia's risk.

Mr. Winneberger made a Motion of Approval; Mr. Brockington seconded the Motion; the Motion passed.

6. Old Business - None

7. New Business

Mr. Cross requested that the Planning Commission be given the ZHB Appeal information more than 3 days in advance. He said the Commission could not properly review the ZHB Agenda without receiving the ZHB Applications and supporting documents (the Application packets that are prepared for the ZHB prior to the ZHB Meeting); he requests that the B&Z Department furnish the individual ZHB Applications along with their supporting documents to the Planning Commission at least a week prior to the Planning Commission Meeting so that the Committee has the appropriate

amount of time to review the plans. The Planning Commission feels that the applications should be more administratively complete prior to review by the Committee.

8. Adjournment

Mr. Cross made a motion for adjournment; Mr. Brockington seconded the Motion, the Motion passed. The meeting adjourned at 9:50 P.M.

A handwritten signature in black ink, appearing to read 'D. Kravink', with a long horizontal line extending to the right.

David G. Kravink
Township Manager

Per: Holly Nagy