

November 2, 2011
Curtis Hall

A regular meeting of the **BUILDING AND ZONING COMMITTEE** was held tonight, Michael J. Swavola, Chairman, presiding. Members present were Commissioners Hampton, Haywood, Simon and Sharkey. Also present was Ex-Officio Member Portner. Staff present were Joseph Bagley, Wisler Pearlstine LLC; Bryan T. Havir, Assistant Township Manager; David M. Lynch, Director of Engineering, Zoning and Inspections; and David G. Kraynik, Township Manager. A Public Attendance List is attached.

Mr. Swavola called the meeting to order.

1. The Zoning Hearing Board ("ZHB") Agenda for October 17, 2011 was reviewed as follows:

APPEAL NO. 3413 (Continued): Appeal of Montgomery Court Realty Co., L.P., owner of premises known as 7803 Montgomery Avenue, Elkins Park, PA 19027, from the Decision of the Zoning Officer in order to operate a Private Ambulance Service from the premises.

- a. A Determination that the storage of Private Ambulances on the premises overnight is not a function of the operation of a Private Ambulance Service and thus permitted as a legal nonconforming use of the premises per the grant of relief under ZHB Appeal No. 1563.
- b. In the alternative to a, above, a Determination, pursuant to "Nonconforming Uses" as outlined in CCS 295-227.F., that the operation of a Private Ambulance Service is of the same class of use as the previously approved nonconforming use(s) and thus permissible.
- c. In the alternative to a. and b., above, a Variance from the Rules and Regulations of the Class R-5 Residence District as outlined in CCS 295-43. for the operation of a private Ambulance Service instead of one of the enumerated permitted uses.

Mr. Lynch reviewed the appeal and explained the reason for the continuance. The applicant is not accepting the Committee's previous conditions. The Planning Commission recommended an additional requirement that ambulances back into the holding facility in the evening to avoid the noise of the beeper alarms in early morning hours. Mr. Kraynik suggested

that the Committee may want to direct the Township Solicitor to attend the Zoning Hearing Board (“ZHB”) meeting since the applicant is uncooperative.

Discussion ensued regarding the applicant’s refusal to accept all of the Committee’s previously recommended conditions. Mr. Bagley advised that the applicant is appealing a Notice of Violation from the Zoning Department and believes that they have done nothing wrong. It is only in the alternative that they have asked for a variance. The applicant believes they are right, and do not need the conditions or a variance. Since they object to the Notice of Violation, Mr. Bagley advised that Mr. Lynch would have to testify at the ZHB meeting.

Mr. Bagley reviewed a compromise that he presented to the applicant whereby they would retain some of what they were asking for, i.e. retain a non-conformity as auto storage and the Township would clarify it does not intend to do anything with the other part of the property (#8350) and all the claims they have regarding invested rights and non-conformities on that part of the property would remain. The applicant was concerned that, in the future, the property could only be used for ambulances and would not agree to the conditions.

Upon motion of Mr. Simon, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that it takes the same action with all the conditions as previously stated with the addition of the Planning Commission’s recommendations that the ambulances be required to ‘back into’ the facility in the evening only and not during early morning hours to alleviate the use of the beeper alarms for the neighbors, and the Committee directed the Township Solicitor to attend the Zoning Hearing Board meeting.

2. The Committee reviewed the Proposed Age-Restricted Overlay District Ordinance (‘AR’). Ken Amey, consultant, was present. Mr. Amey and the Committee reviewed the three (3) recommendations from the Montgomery County Planning Commission (“MCPC”) to be incorporated into the ordinance, i.e. subdivision of historic properties, a Development

Review Process that would include environmental, fiscal or traffic studies, and Green Buildings that would include a level of sustainable design standards.

Regarding allowing the subdivision of a lot that contains an historic structure to be an alternative, Mr. Amey felt this was a worthwhile consideration since historic sites are difficult to preserve and make a viable use. With deed restrictions to encourage the preservation, and the inclusion of maintenance of the site, minimum size and setbacks, it would be an incentive to preservation.

Mr. Haywood asked about the source of the deed restrictions. Mr. Amey stated that the Township and its solicitor would approve them.

It was Mr. Bagley's opinion that a condition could be included that a developer not be penalized for subdividing the estate lot so as not to discourage development. Mr. Amey suggested that a developer be offered an alternative rather than penalize them so that they can sell an attractive home that will be maintained and preserved rather than forcing a developer to incorporate it into the overall development plan. Preservation of open space and coverage requirements were discussed.

Mr. Haywood was concerned that an historic property is less likely to be developed because the obligation for the developer has been severed. Mr. Simon felt that historic requirements would still remain as well as appropriate provisions to make the Township satisfied that the historic property would be preserved and valuable for the future. The developer would still have the burden. Mr. Amey stated that the preservation obligation would run with the land.

Mr. Haywood asked how the boundaries of an historic property would be determined for the subdivision. Mr. Amey stated that the historic site will be identified and include not only the structure but everything pertinent to the structure, and any subdivision would have to include all of the pertinent areas to the structure. Mr. Bagley stated that the ordinance deliberately leaves

that area flexible because every development will be different. Pertinences to one property may not be the same to another property. Mr. Lynch discussed including view sheds in some cases and a certain amount of area around the building. In response to a question from Mr. Haywood, Mr. Lynch stated that there are no standards for view sheds.

Mr. Amey stated that in the ordinance there is a 50' separation between accessory uses and any new development so those guidelines could be used for any subdivision. Discussion ensued regarding buffers, setback requirements and the subdivision lines between the historic property and the development.

Regarding the MCPC's recommendation for environmental, fiscal and traffic studies, Mr. Amey believed that these should be Township-wide policies that should be worked into the new Township-wide zoning ordinance that the Ad Hoc Zoning Committee is reviewing, and not just for AR developments. It is the Township's decision if it wants to include these as part of an AR development ordinance now. Mr. Sharkey foresaw future problems if these provisions were incorporated into the entire code but supported them for inclusion in the AR ordinance.

Mr. Simon favored including them into the AR ordinance since its basic concept is to give increased density to the developer. There was discussion as to what studies should be included. Mr. Amey suggesting fiscal and traffic studies as priorities, and if it was decided to include them, said studies should be described in detail.

Extensive discussion ensued as to who would be responsible for off-site improvements and if they can be required by special exception or conditional use. It was Mr. Bagley's opinion that if it was determined that traffic enhancements were necessary, the question could arise as to who would pay for them. According to the Municipalities Planning Code ("MPC"), the only way the Township could get a developer to pay for off-site traffic enhancements is to do a very comprehensive Traffic Impact Study prior to the development of the property and adopt a Traffic

Impact Fee ordinance. This would result in high out-of-pocket expenses for a Township that is not getting a lot of development. On-site improvements could be required but not off-site improvements, such as a traffic light at an intersection. Mr. Bagley stated that some off-site items could be made a conditional use.

Mr. Sharkey supported including requirements for Environmental, Fiscal and Traffic Impact Studies as part of the AR ordinance. The Committee agreed.

Regarding green design standards, Mr. Amey stated requiring LEED Certification is an extensive process and could discourage developers. An Energy Star Certification requirement is advantageous and is being done by most developers today.

Discussion ensued about regulating the occupancy number in each unit. Mr. Simon asked whether the AR ordinance should include a limit on the number of residents in each home and age requirements. Mr. Bagley advised this was not a necessary inclusion in the AR ordinance because it is already addressed in the Department of Housing and Urban Development (“HUD”) regulations with regard to 55+ communities. The Federation Housing development had to submit Homeowner Association regulations for approval of the Township Solicitor and all of the HUD requirements were included. Thus, a precedent has been set. Mr. Bagley felt that such regulations would require the Township to police them, and a Homeowners’ Association (“HOA”) is in a better position to regulate enforcement. Mr. Simon was concerned with the occupancy number. Mr. Bagley will review HUD and the Federal Fair Housing Act regulations in this respect.

Mr. Haywood was reluctant to have regulations in the ordinance that might be contrary to those of the Federal Fair Housing Act Regulations. If said regulations do not address the occupancy number, he would be reluctant to have a standard. Mr. Bagley would research this point. The Township’s Building Code and the State Building Code regulate the number of

occupants per dwelling. Mr. Amey stated that in his experience, most HOA's in AR developments incorporate the Federal Fair Housing Act requirements.

Discussion having concluded, Mr. Simon recommended that Mr. Amey amend the current draft ordinance to include language regarding historic preservation subdivision, environmental, fiscal and traffic studies, and Energy Star compliance as discussed this evening and that Mr. Bagley research the Federal Fair Housing Act regulations as they relate to the occupancy number. The Committee agreed. The Committee also agreed that review of the amended draft ordinance be placed on the Public Works Committee agenda for December 14, 2011.

3. Upon motion of Mr. Sharkey and unanimously approved by the Committee, the Planning Commission Regular Meeting Minutes dated October 24, 2011 were received.

4. Upon motion of Mr. Sharkey and unanimously approved by the Committee, the Ad-Hoc Committee Regular Meeting Minutes dated October 24, 2011 were received.

5. Upon motion of Mr. Portner and unanimously approved by the Committee, the Report of the Building Inspector for the month of October, 2011 was received.

There being no further business, upon motion of Mr. Sharkey, and unanimously approved by the Committee, the meeting was adjourned.



David G. Kraynik
Township Manager

as per Anna Marie Felix



PUBLIC ATTENDANCE LIST
SPECIAL BOARD MEETING (President's Budget Message), 7:30 p.m.
Public Affairs Committee, 7:45 p.m.
Public Safety Committee, 8:00 p.m.
Building and Zoning Committee, 8:15 p.m.
Wednesday, November 2, 2011
Curtis Hall

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