

April 3, 2013  
Curtis Hall

A regular meeting of the **BUILDING AND ZONING COMMITTEE** was held tonight, Chairman Morton J. Simon, Jr. presiding. Members present were Commissioners Hampton, Norris, Portner and Sharkey. Also present was Ex-Officio member Haywood.

Staff present were Carmen Reitano, Assistant to the Director of Engineering, Zoning and Inspections; and Bryan T. Havir, Township Manager. Also present was Joseph Bagley, Esq., Solicitor. A Public Attendance List is attached.

Mr. Simon called the meeting to order at 9:05 p.m.

1. The Zoning Hearing Board ("ZHB") Agenda for April 8, 2013, was reviewed as follows:

**APPEAL NO. 3462:** Appeal of Jared Z. Karr, owner of premises known as 8015 Cooke Rd, Elkins Park, PA, from the Decision of the Zoning Officer for a variance in accordance with the rules and regulations of the Class R-5 Residence District as outlined in CCS 295-46.B.(1) for a lesser side yard setback of 2' instead of the minimum required 8' in order to install a 8' x 8' shed.

Mr. Reitano advised that the shed is standard size garden shed, and there is no opposition from neighbors.

The Committee reviewed the Planning Commission comments on this appeal.

Upon motion of Mr. Portner, the Committee unanimously directed the Township Engineer to advise the Zoning Hearing Board that it takes no action on said appeal.

2. The Committee reviewed recent decisions of the Zoning Hearing Board as follows:

**Appeal No. 3437:** Appeal of 1050 Ashbourne Associates, LLC, c/o Reuven Niknam P.O. Box 1545, Jackson, New Jersey 08527, owner of the premises known as 1050 Ashbourne Road, Cheltenham, Pennsylvania, from the determination of the Zoning Officer finding that developing the 6.05 acre Property (exclusive of right-of-way) into three or four story buildings containing 79 age-restricted units, requiring a special exception to allow the Age Restricted Overlay use of the Property, using a less than required road frontage along each single state highway bordering the Property, increasing the maximum allowed building length, seeking a determination that the condemned remnants of the existing Kerlin Farmhouse do not qualify as a Historic Resource, and allowing a disturbance of 15% or more of the slopes located on the Property would violate the Cheltenham Zoning Ordinance of 1929, as amended, and, specifically, Article XXXIII, Section 295-242, regulating uses in an Age Restricted Overlay District; Article XXXIII, Section 295-240, regulating purpose in an Age Restricted Overlay District; Article XXXIII, Section 295-241, regulating the application of an Age Restricted Overlay District; Article XXXIII, Section 295-243, regulating performance standards in an Age Restricted Overlay District; Article XXXIII, Section 295-244, regulating development; and

Article XXII, Section 295-166, regulating uses and development in A Steep Slope Conservation District.

Applicant seeks a special exception, a determination, and variances from the rules and regulations of the R-4 Residence District as follows:

- (1) a special exception to Section 295-242(B)(1) permitting an Age Restricted Overlay use of the Property;
- (2) a determination that the required frontage along a state highway is not limited to a "single" state highway pursuant to Section 295-241(C), since the proposed site has approximately 850 feet of frontage (450 feet required) along Ashbourne and Oak Lane Roads, both state highways; or

in the alternative,

- (3) a variance from Section 295-241(C) to allow a road frontage along each single state highway to be less than 450 feet. Ashbourne Road has approximately 430 feet of frontage and Oak Lane Road, has approximately 420 feet of frontage;
- (4) a variance from Section 295-243(G)(2) to allow 3 foot stairwell projections in addition to the maximum building length of 160 feet;
- (5) a determination that the Township condemned remnants of the Kerlin Farmhouse do not qualify as a Historic Resource pursuant to Section 295-244(J); and
- (6) a variance from Section 295-166(B) to allow the disturbance of 0.67 acres of areas designated as having steep slopes of 15% or more slopes within a Steep Slope Conservation District.

Mr. Norris reported that he spoke with Mr. McKeown who was not present this evening, and both of them have agreed to recommend that the Township file an appeal of the Zoning Hearing Board's ("ZHB") decision on said application.

Mr. Simon asked for public comments.

\*\*\*

Public Comments:

Tom McHugh felt that the ZHB's decision was a bad interpretation of the term "structure"; and the ruling on "structure" was incorrect; the Township made a mistake by allowing the Age-Restricted Overlay District Ordinance ("ARO") to go down to a 5-acre minimum.

David Harrower supported an appeal; there was a bad interpretation of the status of the house on the property, and this type of decision should be made by the Historical Commission; the house was an historical building and designated as historically significant; it was deteriorated when it was deemed for listing on the National Register of Historic

Places; the Township's Open Space Plan recommended preservation of Kerlin Farm; the ARO preserves a range of buildings, and the developer evaded the Township's intent in its definition; this developments sets a precedent for other developers; the Township's Zoning Code needs to redefine the term "structure".

David Cohen felt that this was not a NIMBY decision and thanked the Board for considering appealing the ZHB decision.

Mitch Zigmund-Felt wanted more responsible land use by developers; this is an out-of-character development for the neighborhood.

Barbara Wood thought the project was detrimental to the community and supported an appeal of the ZHB decision.

Douglas Karan opposed the ZHB's decision; he felt the area is one of older, single, two-storey homes with a varied look; three (3) large apartment buildings are not a fit; the plan does not meet the requirements of Chapter 295 of the Code; the development may bring in more revenue but will decrease the value of surrounding homes, which will decrease revenue; he opposed the road frontage, use of steep slopes, lack of sidewalks, and any green setting.

Sara Koval stated that there is a school nearby and was concerned about traffic; the driveways in/out are dangerous.

Rebecca Mitchell stated that the ZHB did not thoroughly document neighbors' objections.

\*\*\*

Mr. Simon clarified that if the Township decides to take an appeal, it will be an appeal of the decision of the Zoning Hearing Board and therefore, will be an appeal of a specific legal decision.

3. **Recommendation to the Board of Commissioners for Ratification:**

Upon motion of Mr. Norris, the Committee directed the Township Solicitor to take the necessary action to appeal the decision of the Township's Zoning Hearing Board on Appeal No. 3437, Appeal of 1050 Ashbourne Associates, LLC, owner of the premises known as 1050 Ashbourne Road, Cheltenham, Pennsylvania (AYES: Hampton, Haywood, Norris, Sharkey, Simon; NAY: Portner).

It is recommended that the Board of Commissioners ratify said Committee decision.

4. Upon motion of Mr. Portner, and unanimously approved by the Committee, the Ad Hoc Zoning Code Revision Committee Meeting Minutes dated March 4, 2013, were received.

5. The Committee considered recommending a Resolution amending certain filing fees for zoning applications.

Mr. Havir reviewed the current fees and advised that the amendment would bring the Township up to date in its fee schedule for certain zoning and development applications.

Regarding the fee increase for wireless carriers, Mr. Bagley stated that under the law, the Township cannot prohibit wireless carrier companies from replacing, co-locating or modifying existing wireless support structures but can set fees for zoning applications or submission of plans, which is the intent of said Resolution.

Mr. Simon was concerned about Subsection A and did not want said fee structure to affect residential property owners who wanted to make improvements. He suggested, and the Committee agreed, that said fee increases would not apply to residential properties. Mr. Bagley reported that it applied to petitions for the amendment of the Zoning Ordinance that usually is not taken by residents.

**Recommendation to the Board of Commissioners:** Upon motion of Mr. Simon, the Committee unanimously recommended the adoption of a Resolution amending the Township Code relating to certain Zoning Filing Fees contingent upon said fees not being applicable to residential properties (see attached).

6. Upon motion of Mr. Portner, and unanimously approved by the Committee, the Report of the Building Inspector for the month of March, 2013, was received.

7. Under Old Business:

a. Mr. Haywood felt that Mr. Portner's "nay" vote to appealing the Zoning Hearing Board's decision on Appeal No. 3437 should not be a subject for debate and that the reasons of the Township and the residents to appeal the decision were not identical.

b. In response to a question from Mr. Sharkey, Mr. Havir indicated that the goal of the Ad Hoc Zoning Code Revision Committee was to have a draft revision come out of the Committee sometime in early summer with community meetings being scheduled sometime in the fall.

c. Mr. Simon suggested that the Township Solicitor review the Zoning Code to determine a more suitable definition for the term "structure" in said Code.

8. Under New Business: The Committee reviewed a recent decision of the Montgomery County Court of Common Pleas that overturned the denial of the grant of relief by the Township's Zoning Hearing Board on Appeal No. 3413, Appeal of Montgomery Court Realty Co., L.P.

Unlike the Zoning Hearing Board, the Court of Common Pleas did not find the use as an ambulance service to be an expansion of the property. Mr. Simon felt that the ZHB decision did not support the business since the business's main offices were not at said location.

The Committee agreed not to recommend appeal of the decision of the Montgomery County Court of Common Pleas (AYES: Hampton, Haywood, Norris, Sharkey, Simon; NAYES: Portner).

There being no further business, upon motion of Mr. Haywood, and unanimously approved by the Committee, the meeting was adjourned at 9:30 p.m.



---

Bryan T. Havir  
Township Manager

as per Anna Marie Felix

**CHELTENHAM TOWNSHIP**  
**MONTGOMERY COUNTY, PENNSYLVANIA**

**RESOLUTION No. \_\_\_\_-13**

**A RESOLUTION ESTABLISHING AND MODIFYING  
CERTAIN ZONING FILING FEES**

**WHEREAS**, the costs associated with scheduling, staffing, recording and conducting zoning hearings has increased while the fees associated with such activities are not keeping pace with such increased costs; and

**WHEREAS**, the Board of Commissioners of Cheltenham Township seeks to increase certain zoning fees to keep pace with the costs associated with scheduling, staffing, recording and conducting zoning hearings.

**NOW THEREFORE**, it is hereby resolved by the Board of Commissioners of Cheltenham Township to modify the fees to be paid to the Township for certain zoning filings as follows:

1. Chapter A300 of the Cheltenham Township Code, entitled "Fees", Section A300-24 entitled "Zoning", is hereby amended as follows:

In subsection A., for the filing of a petition or application, the sum of "\$1,000" is deleted and replaced with the sum of "\$2,000".

In subsection B.(4), for the filing of a notice of appeal or application for special exception or variance for nonresidential buildings/properties, the sum of "\$1,000" is deleted and replaced with the sum of "\$1,500".

A new Subsection B.(6) shall be added, which states as follows:

**(5) Application or submission of plans for the replacement, co-location or modification of each wireless telecommunications facility upon an existing wireless support structure: \$600 per submission.**

2. In addition, Chapter A300 of the Cheltenham Township Code, entitled "Fees", Section A300-24, entitled "Zoning", the following sentence shall be added as Section A 300-24B.(7):

**The filing fee for a validity or curative amendment challenge shall be \$2,500.**

**DULY ADOPTED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the Board of Commissioners of Cheltenham Township, Montgomery County, in lawful session duly assembled.

**CHELTENHAM TOWNSHIP**

By: \_\_\_\_\_  
**Art Haywood, President**

Attest: \_\_\_\_\_  
**Bryan T. Havir, Township Secretary**

**PUBLIC SAFETY COMMITTEE MEETING, 7:30 p.m.**  
**PUBLIC AFFAIRS COMMITTEE MEETING, 7:45 p.m.**  
**BUILDING AND ZONING COMMITTEE MEETING, 8:00 p.m.**

**Wednesday, April 3, 2013, Curtis Hall**

**PUBLIC ATTENDANCE LIST**

<u>NAME</u> <i>(Please print clearly)</i>	<u>ADDRESS</u>	<u>PHONE or E-MAIL</u>
DAVID L. COHEN	321 GERRARD AVE E.P.	dcohen1@ix.netcom.com
Tom Hunsch	1028 BIRCHWOOD RD Chelt	THunsch@comcast.net
ROBERT HYSLOP	211 HARRISON, 19038	215-886-0813
Michael T. Postich	BCM Engineers	610-313-3100
Bill England	EP	B.England@yahoo.com
M. ZIGMUND-FELT	35 CARROLL PL.	MIZIGM27@MSN.COM
Ted + Edie Cerebi	300 Maple	
S Stubs	CC	
Dorothy H. Barnes	7804 BIRCHWOOD RD	dottiedoe@msn.com
Lydia Phillip	7800 Brookfield Rd	lydiag1947@hotmail.com
Tom McHugh	127 Hewett Rd Wyncote, PA	tom.mchugh@monitordata.com
Barbara Woods	169 Pleasant Hill Rd Cheltenham Pa	woods_barbara@msn.com
Gwen Bowman	117 Pleasant Hill Rd Cheltenham, PA 19012	ggbowman21@msn.com
Doug Kavan	21 Pines Way Cheltenham PA 19012	dougkavan@yahoo.com

**PUBLIC SAFETY COMMITTEE MEETING, 7:30 p.m.**  
**PUBLIC AFFAIRS COMMITTEE MEETING, 7:45 p.m.**  
**BUILDING AND ZONING COMMITTEE MEETING, 8:00 p.m.**

**Wednesday, April 3, 2013, Curtis Hall**

**PUBLIC ATTENDANCE LIST**

<u>NAME</u> <i>(Please print clearly)</i>	<u>ADDRESS</u>	<u>PHONE or E-MAIL</u>
David Harrower	509 Fox Rd. E Glenside 19038	DaveHarrower@gmail
BRUCE LICHTENSTEIN	1114 ORLEANS RD CHELTENHAM, PA 19012	LEADMIN @ COMCAST.NET
Nanette Holben	431 Croyden Rd. Cheltenham 19012	nholben@amphilsoc.org
Alicia Greenburg	625 Croyden Rd Cheltenham PA 19012	penline@comcast.net
Jared KARR	8015 Cooke Rd ELKINS PARK, PA 19027	karrboys@gmail.com
BARRY & PHIL KNIAZER	613 DAVIS RD. CHELTENHAM 19012	
Bonnie Aaron	7901 Jenkinson Rd Chelt 19012	215 643-9397
Sara Koval	7961 Oak Hill Dr chelt. PA 19012	
Rev. & Dr. Rebecca Mitchell	2805 Berwyn Rd Cheltenham PA 19012	ukesensei @ Comcast.net
Ann Rappoport		
Margie Vlesovich	107 Tookany 19012	
Elissa Jeezel	515 Arbor Rd Cheltenham	
Paula Wren	7967 Oak Hill Dr Cheltenham	