

February 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 Sharkey and Simon. Also present was Ex-Officio Member Portner. Staff present were Joseph Bagley, Wisler Pearlstine LLC; Bryan T. Havir, Assistant Township Manager and David G. Kraynik, Township Manager. A Public Attendance List is attached.

Mr. Swavola called the meeting to order.

1. The Zoning Hearing Board Agenda for February 14, 2011 was reviewed as follows:

APPEAL NO. 3336 (Continued And Amended) – Appeal of Matrix Ashbourne Associates, L.P., owner of premises known at 1100 Ashbourne Road, Cheltenham, PA (a/k/a “Ashbourne Country Club”), from the Decision of the Zoning Officer for Zoning Relief in order to develop the Premises into a 226 Unit Development consisting of a minimum of seventy (70) Single-Family Residences and a maximum of one hundred and fifty six (156) Carriage Homes. In addition, an area containing approximately 1.25 acres has been set aside for a future clubhouse and swimming pool. The premises is within the Class R-1 Residence District.

The following Zoning Relief is required:

- a. A Variance from the rules and regulations of the “Floodplain District” as outlined in CCS 295-156. so as to allow construction of portions of Stormwater Management Basins # 2C, # 2D and # 2E and replacement of the existing 8” T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area.
- b. Zoning Relief from the rules and regulations of the “Steep Slope Conservation District” as outlined in Article XXII of the Cheltenham Code, as follows:
 - i. An Appeal from the determination of the Zoning Officer and/or Township Engineer pursuant to CCS 295-164.B.2. regarding man-made steep slopes.
 - ii. From CCS 295-167. for the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities, other underground utilities and landscaping.
 - iii. A Determination that the Lines and Grades Plans submitted with the Application substantially conforms with the Lines and Grade Plan(s) requirements set forth in CCS 295-168.

- iv. In the alternative to, b.ii, above, a Variance from CCS 295-168. for not submitting plans conforming to the stated Lines and Grades Plan(s) requirements.
- c. A Determination that the number of parking spaces shown on the Applicant's plans are not in excess of the maximum permitted under CCS 295-221.F.
- d. In the alternative to c., above, a Variance from the rules and regulations of "Parking and Loading" as outlined in CCS 295-221.F., for a greater amount of parking of 631 parking spaces instead of the maximum permitted 120% of the required parking spaces which equals 491 parking spaces.
- e. Zoning Relief from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII of Chapter 295 of the Cheltenham Code, as follows:
 - i. A Special Exception in accordance with CCS 295-242.B.1 for the Age Restricted Development.
 - ii. A Special Exception in accordance with CCS 295-242.B.3 for a Clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities.
 - iii. A Special Exception in accordance with CCS 295-242.B.3 for a swimming pool for the residents of the Age Restricted Community only.
 - iv. A Variance from CCS 243.B.8.a. to permit sanitary sewer facilities (if required) and Stormwater Management Basins #2C, #2D and #2E within the floodplain.
 - v. A Variance from CCS 295-243.B.8.d. to permit development within areas having a slope of 15% or greater.
 - vi. A Variance from CCS 295-243.B.8.e. to permit sanitary sewer facilities (if required) and Stormwater Management Basing #1A, #2C and #2E within the Riparian Buffer Areas.
- f. A Variance from the entirety of the rules and regulations of the "Preservation Overlay District" as outlined in Article XXIV of Chapter 295 of the Cheltenham Code.
- g. In the alternative to f., above, an interpretation that the rules and regulations of the "Preservation Overlay District, as outlined in Article XXIV of Chapter 295 of the Cheltenham Code are not applicable due to the provisions of the last sentence of CCS 295-241.

Mr. Lynch reviewed the status of the appeal with the Zoning Hearing Board. No action was needed by the Committee. Mr. Swavola was concerned about the availability of public access and the merits of walking trails and recreation space dedicated to the public on the property, and felt that the Township still needed a commitment from the applicant on this matter.

He suggested a follow-up discussion at the Public Works Committee meeting on February 9, 2011.

APPEAL NO. 3388: Appeal of Young H. Kang, Tenant of Premises known as 1627 W. Cheltenham Avenue, La Mott, PA 19027 from the Decision of the Zoning Officer for the following Zoning Relief in order to operate a Truck Rental Service from the Premises:

- a. A Variance from the Rules and Regulations of the Class R-6 Residence District as outlined in CCS 295-50. required for the expansion of the Commercial use of the Premises by Operating a Truck Rental Service and Vehicle Storage instead of any of the permitted enumerated uses on Tract 1.
- b. In the alternative to a., above, a Special Exception in accordance with the Rules and Regulations of "Nonconforming Uses" as outlined in CCS 295-227.C. for the expansion of the commercial use of the premises by Operating a Truck Rental Service and Vehicle Storage on Tract 1.
- c. A Variance from the Rules and Regulations of the Class R-6 Residence District as outlined in CCS 295-50. for the operation of a Truck Rental Service and for Vehicle Storage instead of any of the permitted enumerated uses on Tract 2.

Mr. Lynch reported that the applicant has asked for a continuance.

Upon motion of Mr. Portner, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that it recommends the grant of a Continuance. If a Continuance is not granted, the Committee takes no action on said appeal.

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 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.

Ms. Dargen was present. Mr. Lynch reviewed the appeal and the Planning Commission's recommendations and concerns about a childcare facility being at said intersection.

Extensive discussion ensued. Ingress, egress, drop-off, pick-up, parking and safety of the intersection were concerns of the Committee. Mr. Lynch reported the Planning Commission's suggestion that ingress be at Bosler Road and egress be at Stahr Road where there is a traffic signal. It was recommended that the front of the building not be used for drop-off and pick-up. The Committee was concerned about the availability of access to and parking at the rear of the property. In response to a question from Mr. Portner, Ms. Dargen stated that there would be a sprinkler system. In response to a question from Mr. Swavola, Ms. Dargen stated that she was told she would have access to the rear parking lot. Mr. Swavola felt that this was too vague, and that Ms. Dargen should insist on a certain number of dedicated parking spaces in her lease. Mr. Portner felt that currently, the planned drop-off and pick-up site for children was dangerous. Turning out of Bosler Road onto Church Road was construed by the Committee as problematic and a possible liability issue for the applicant. Mr. Bagley recommended that Ms. Dargen ask that her lease include specific access to the rear of the premises, a dedicated number of parking spaces, signage and consider trading the front parking spaces for parking spaces in the rear. The Committee suggested that the applicant request a continuance. She agreed.

Upon motion of Mr. Portner, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that it recommends the grant of a Continuance. If a Continuance is not granted, the Committee recommends denial of said appeal based on unresolved parking issues.

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 ± 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 ± AGL.
- c. A Variance from CCS 295-60.B. (4) for a lesser side yard setback of 8.4 ± 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 the 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 sitting 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. Lynch reported that the applicant has withdrawn said appeal. No action was needed by the Committee.

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. Lynch reviewed the appeal. The Committee discussed the Planning Commission's recommendations, elevations, changes to the rear deck, location of the deck, the old and the new footprint, setbacks, access off of 4th Avenue and Asbury Avenue. There was considerable discussion regarding the location of the rear deck and its proximity to Asbury Avenue.

Upon motion of Mr. Swavola, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that it takes no action on said appeal but if relief is granted, it be granted contingent upon the 2nd storey rear deck not encroaching any closer to Asbury Avenue than 25-feet.

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

3. Upon motion of Mr. Sharkey, and unanimously approved by the Committee, the Ad-Hoc Zoning Revision Commission Regular Meeting Minutes dated January 24, 2011, were received.

4. Mr. Bagley reviewed a proposed Ordinance establishing legal fees for the collection of delinquent sewer accounts and charges. He stated that if a property is already in Chapter 11, it is too late to make the Ordinance applicable. The Committee discussed the fees.

5. Upon motion of Mr. Portner, and unanimously approved by the Committee, it is recommended to the Board of Commissioners the adoption of an Ordinance establishing legal fees for the collection of delinquent sewer accounts and charges (see attached).

6. The Committee discussed the possibility of an Ordinance permitting roof signs. Extensive discussion ensued. Mr. Lynch reported that the owners of Elkins Park Square have proposed an Ordinance to add a roof sign to that shopping center. He stated that the Ad Hoc Zoning Revision Committee is not receptive to roof-mounted signs. Mr. Kraynik asked the Committee for direction as to whether or not it wants Staff to review a proposed Ordinance for roof signage. Mr. Portner asked Mr. Lynch to provide photos of the proposed sign for Elkins Park Square.

There was discussion regarding the appropriateness of such signage. Mr. Kraynik indicated that said signs may not be appropriate for all commercial districts. Mr. Swavola asked about alternatives. Mr. Kraynik indicated that said signs could enhance the commercialism of a neighborhood when a business is in close proximity to a residential area. He compared the location of Elkins Park Square to Cheltenham Avenue. Mr. Simon did not feel that a roof top sign at Elkins Park Square was upscale enough for that area and could be a traffic distraction going south on York Road. It was Mr. Swavola's opinion that any specification for such signage needs to be tasteful.

There was discussion about roof-top signs versus pylon signs. Mr. Simon felt that Elkins Park Square was well-occupied and other than Cheltenham Avenue is the largest shopping center

in the Township. He felt a pylon sign was sufficient and opposed a roof-top sign. It was Mr. Portner's opinion that Staff should consider a draft Ordinance. The Committee agreed.

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

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



David G. Kraynik
Township Manager

as per Anna Marie Felix

**BOARD OF COMMISSIONERS
CHELTENHAM TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. - _____

**AN ORDINANCE ADOPTING A SCHEDULE OF ATTORNEY'S AND
OTHER LEGAL FEES FOR THE COLLECTION OF
DELINQUENT SEWER ACCOUNTS AND CHARGES
AND AMENDING SECTION 238-24 OF THE CODE OF THE
TOWNSHIP OF CHELTENHAM TO ADD SUCH SCHEDULE**

WHEREAS, it is necessary under state law for a municipality to officially adopt a schedule of attorney's and other legal fees by ordinance in order to be entitled to collect such fees from delinquent sewer customers of the municipality.

SECTION I.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Commissioners of the Township of Cheltenham that Section 238-24 of the Code of the Township of Cheltenham is hereby amended to add the following adopted schedule of attorney's fees and paralegal fees for the collection of delinquent sewer accounts and charges:

Attorney's fees..... \$150.00 per hour

Paralegal fees \$ 75.00 per hour

SECTION II. - DISCLAIMER

Nothing in this Ordinance shall limit, in any fashion whatsoever, the Township's right to enforce any ordinance or law of the Township of Cheltenham, County of Montgomery or Commonwealth of Pennsylvania. Nothing in this Ordinance shall be a defense of any citation issued by any municipal corporation or the Commonwealth pursuant to any other law or ordinance.

SECTION III. - SEVERABILITY

The provisions of this Ordinance are severable, and if any Section, sentence, clause or phrase shall be held by a court of competent jurisdiction to be illegal, invalid, or unconstitutional, the remaining portions of this Ordinance shall not be affected or impaired thereby.

SECTION IV. - REPEALER

Any ordinance or part of any Ordinance conflicting with the provisions of this Ordinance shall be deemed and the same are hereby repealed to the extent of such conflict.

SECTION V. – FAILURE TO ENFORCE NOT A WAIVER

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION VI. – EFFECTIVE DATE

This Ordinance shall take effect and be in force as soon after adoption as is permitted by law.

ORDAINED AND ENACTED by the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania, this _____ day of _____, 2011.

CHELTENHAM TOWNSHIP

By: _____
Harvey Portner, President,
Board of Commissioners

Attest: _____
David G. Kraynik, Township Secretary

PUBLIC ATTENDANCE LIST
Public Affairs Committee @ 7:30 PM
Public Safety Committee @ 7:45 PM
Building and Zoning Committee @ 8:00 AM
Wednesday, February 2, 2011
Curtis Hall
Wyncote, PA 19095

NAME (Please Print)	AFFILIATION/COMPANY AND/OR ADDRESS	EMAIL ADDRESS AND/OR TELEPHONE NUMBER
Dan Norris	236 Barclay Lin dr	
Phil Wesley	OGONTZ FIRE	
David Washington	Ogontz Fire Co	
MARCO DARGAN	8110 Old York Rd	

