

July 7, 2010
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, Portner and Sharkey. Also present was Ex-Officio Member Simon. Staff present were Joseph Bagley, Wisler Pearlstine LLC; Bryan T. Havir, Assistant Township Manager; David M. Lynch, Director of Engineering, Zoning & Inspections; Ruth Littner Shaw, Main Street Manager; and David G. Kraynik, Township Manager. A Public Attendance List is attached.

Mr. Swavola called the meeting to order.

1. The Committee reviewed the Zoning Hearing Board (ZHB) Agendas for July 12 and July 27, as follows:

Appeal No. 3373: Appeal of Westminster Theological Seminary, owners of premises known as 2960 W. Church Road, Glenside, PA 19038 from the Decision of the Zoning Officer for the following Zoning Relief in order to construct a 20' diameter, 17' 2" high octagon shaped gazebo in the middle of campus:

- a. A Variance from the Rules and Regulations of the Class R-3 Residence District as outlined in CCS 295-21. for an expansion of the existing nonconforming religious use of the Premises.
- b. In the alternative to a., above, a Special Exception in accordance with "Nonconforming Uses" as outlined in CCS 295-227.B. and C. for the proposed Gazebo.

Mr. Lynch reviewed the appeal. Mr. Haywood stated that he reviewed this appeal.

Upon motion of Mr. Haywood, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that it takes no action on this appeal.

Appeal No. 3374: Appeal of Emily Barnhart, owner of premises known as 12 Greenwood Place, Wyncote, PA 19095 from the Decision of the Zoning Officer for Zoning Relief for the following:

- a. A Variance from the Rules and Regulations of the Class R-4 Residence District as outlined in CCS 295-39.B.(2). for the noted setbacks from the Northwest Property Line instead of the minimum required 20', as follows:
 - i. For a 4.5' setback for a 12' x 12' Wooden Pergola.
 - ii. For a 2' setback for a 6' L x 4' H x 6' W firewood crib.
- b. A Variance from the Rules and Regulations for "Fences and Walls" as outlined in CCS 295-223. for a 9' high, arched gateway in the existing front yard fence instead of the maximum permitted 4' high fence.

Mr. Lynch reviewed the appeal, including fence, sizes of the arch and pergola and the location of the structures with respect to property lines was discussed. Mr. Lynch noted that certain neighbors did express concern but they are not present at tonight's meeting.

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

Appeal No. 3375: Appeal of Gospel of Grace Ministries, equitable owner of 315 Central Avenue, Cheltenham, PA 19012 (formerly "Cheltenham United Methodist Church) from the Decision of the Zoning Officer for the following Zoning Relief in order to use the Fellowship Annex as a Christian Day School, Pre-K thru 12th Grade:

- a. A Variance from the Rules and Regulations of the Class C-3 Commercial and Business District as outlined in CCS 295-117. for the proposed Christian Day School instead of one of the enumerated permitted uses.
- b. In the alternative to a., above, a Determination in accordance with CCS 295-227.F. that the proposed Christian Day School is of the same class of use as the previous Pre-School use of the Fellowship Annex and thus permissible.

Pastor Charles Kelly was present to represent the applicant. Mr. Lynch reviewed the appeal, including the history of the property, its former use as the Cheltenham Methodist Church that had a pre-school for 90 children, and the applicant wants to use the same space for a day school, pre-K through 12th grade.

Discussion ensued regarding parking, traffic, current and future student enrollment, a possible cap on student enrollment, floor plans and location of the classrooms. Mr. Lynch reviewed the concerns of the Planning Commission with parking and traffic flow.

Mr. Swavola was concerned about school bus traffic. Mr. Lynch noted that over the years the Methodist Church allowed its parking lot to be used by local residents to park off-street. This would now put more cars on the street. Pastor Kelly reviewed the number of students and the number of school buses from Abington and Philadelphia School Districts that would be transporting them as well as arrival and departure times and school hours.

Mr. Haywood asked about student enrollment, what floor plan would be used, and how five (5) year olds and eighteen (18) year old students are integrated in the school. Pastor Kelly stated that 102 students were enrolled for the fall, the high school has very small classes, the same floor plan as the previous church would be used, and the pre-schoolers and high school students are in separate classes. It is a family environment, and the older students act as mentors for the young children.

Mr. Simon asked about student drivers. Pastor Kelly stated that during his tenure, there has only been one (1) student driver.

Extensive discussion ensued regarding a cap on the number of students. Mr. Swavola was concerned about future enrollment and supported capping the number of students. He wanted to see the school be successful but also controlled as to student enrollment, especially in such a dense neighborhood. Pastor Kelly reviewed the enrollment of the grade levels. Pastor Kelly stated that there was no desire to be over-crowded. Current enrollments are: Kindergarten=12; pre-school=14; middle school=9 in each class; high school=2 or 3 in each class.

In response to a question from Mr. Simon, Pastor Kelly stated that a Christian school is not subject to state and county guidelines and is not under the same jurisdiction as the public schools. For several years, the school has ranked in the top 10 out of 300 schools.

Mr. Simon asked about water-related facilities. Pastor Kelly stated that the water records of three (3) area schools were reviewed, and the school will have waterless urinals. Mr. Lynch analyzed the water records and stated that the pre-K through 12th grade sewage is less than one-half of the daycare. He does not anticipate any need for EDU's.

Mr. Sharkey stated that the Committee wants a student cap and recommended a cap of 130 students. If the school wanted to build and expand in the future, it would then have to apply for zoning relief. Pastor Kelly was agreeable but stated that he would need his Board's approval.

There were comments from the public:

A resident asked about the Fire Code. Mr. Lynch stated that the building was subject to the provisions of the Fire Code.

Loretta Leader, 542 W. Glenside Avenue, stated that a cap was imposed on Ancillae-Assumpta Academy's enrollment even with all of its expansion, the school could not exceed its cap. Also, Ancillae-Assumpta was made to notify neighbors whenever it held an event.

Mr. Simon noted that if the school wants to exceed a cap, it would have to go through the zoning process. Mr. Lynch reviewed the requirements placed on Ancillae-Assumpta Academy that included providing him with a list of events at the beginning of each year, posting certain streets in the neighborhood with 'no parking' signs and notifying neighbors of major events.

Upon motion of Mr. Sharkey, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing that it recommends no action on said appeal contingent upon the applicant setting a cap on the student body of 130 students. Said cap to be agreed to in writing by the applicant.

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 appeal, which was amended by the applicant on Friday, July 2, 2010. The revised appeal includes a unit count of 226 units to request a variance (“e(i)”) from CCS 295-242.B.1 regarding man-made steep slopes. All other aspects of the appeal remain the same. Mr. Lynch reviewed the variance request for the steep slopes. Said request would require the Township Engineer to make the determination as to the impact of the steep slopes. Mr. Lynch asked the Committee to clarify its intent regarding his analysis about the impact of steep slopes, and he asked if the Committee wanted his analysis done from a zoning or from an engineering perspective. Mr. Swavola stated that it has been unclear exactly how many homes were being constructed on steep slopes and how much construction was actually on the steep slopes. It was Mr. Bagley’s opinion that in keeping with Township Ordinance, the Committee was asking for an engineering determination.

It was Mr. Simon’s opinion that the Township Engineer create some analysis of the impact of the steep slopes on the development since the number of units has decreased, the

issue of steep slopes has become important, and the steep slope variances are an exceedingly important part of the variance requests. It was Mr. Simon's opinion that the Committee was not asking for Mr. Lynch to make a determination of b(i). He felt the Committee intended for Mr. Lynch's review to indicate that the steep slope issue is something that the ZHB should seriously consider, and for Mr. Lynch to verify whether or not the steep slopes were impacted at all and what the degree of impact is on the steep slopes to help the ZHB make its determination. Mr. Lynch reviewed how he would approach his analysis and stated that from a zoning point of view, he would have to clarify which homes were on a steep slope, and from an engineering point of view, what the impact would be.

Mr. Sharkey asked Mr. Lynch, if from an engineering perspective, the impact from the steep slopes would be severe. Mr. Lynch replied that most of the steep slopes that were disturbed under the old appeal were in areas of the old fairways and those are minimal. Steep slope protection needs to be protected where there is a steep bank going down into the Tookany Creek. Some single family homes are encroaching in the area and some stormwater management facilities are in that area, and some of these lots could have major impact from both zoning and engineering perspectives.

Mr. Swavola stated that the Commissioners want to give the ZHB a clear picture of the extent of the disturbance, control of it and any impact. In response to a question from Mr. Haywood, Mr. Lynch explained the difference between a zoning and an engineering analysis. Mr. Haywood asked if Mr. Lynch was in a position to give an engineering analysis prior to the submission of a land development plan. Mr. Lynch responded that at this time, Matrix would not be able to change much of the current footprint. If the location of the homes change, the applicant would have to go back to zoning. He clarified that the applicant wrote the amended appeal. Mr. Lynch clarified how he determined impacts on steep slopes.

Mr. Swavola felt the applicant was trying to get the Township Engineer to make a determination about the impact on steep slopes to remove the burden from the applicant.

Mr. Swavola instructed Mr. Lynch to remind the applicant that the burden is on the applicant, not the Township Engineer.

There were comments from the public:

David Onorato, Esq., representing CC4A, felt that Matrix's request is beyond the realm of the Ordinance. He did not understand if Matrix is differentiating between man-made and natural steep slopes. He felt this aspect was confusing. Mr. Simon felt that Matrix could argue for a differentiation and ask the ZHB to recognize it in some fashion. It is not yet clear if Matrix made a determination on its plan. Mr. Lynch stated that he did not think he would judge what is man-made and what is an original steep slope. Matrix's revised lines and grades plan was discussed. Mr. Simon stated that Mr. Lynch has asked for a revised plan to enable Mr. Lynch to make the analysis that the Commissioners want. Mr. Onorato wanted to make sure there is a maximum of 226 houses.

Mitch Zigmund Felt, 35 Carter Lane, co-president of CC4A, urged the Board to urge the Township Engineer to error on the side of caution and be more conservative. Township Ordinance does not differentiate between man-made and original steep slopes. If there is an impact that contributes to some of the problems that reflect impact on the community, determination should not be based on impact to the developer but on the protection of the community. This should be a considered focal point of Mr. Lynch's analysis. He reviewed the variance to permit development in areas with steep slopes of 15% or more. Matrix has an Age-Restricted Ordinance application in totality, and this Ordinance restricts development in steep slopes and riparian buffers to 100%. The developer is selectively choosing which Ordinance can be twisted and tweaked to their maximum financial benefit. He asked the Board to recommend the enforcement of the Ordinance to the ZHB, and the developer should be forced to keep to the guidelines and purview of said Ordinance. He felt it is critical that the steep slopes be looked at in a conservative fashion. Keeping to Township Ordinance is the right way to control development in the Township and not allow a developer to tweak an Ordinance to its advantage.

Mr. Lynch stated that he would make an analysis, not a determination and that he has not yet had time to review the materials that Matrix has given him but it appears that Matrix is requesting that he make a determination. There are two sections of the Code regarding steep slopes, i.e. the Preservation Overlay District Ordinance, there is some flexibility but under the Age-Restricted Ordinance, steep slope regulations are very clear

Discussion ensued regarding the number of single family homes and how many such homes the development could hold.

Stormwater management was discussed. Mr. Lynch stated that Matrix would be doing a map revision and configuration of bank flows to reduce the extent of the 100-year flood plain. Right now, they are working with the 100-year flood plain as it exists. Mr. Swavola felt that stormwater run-off was an important issue to be discussed with the ZHB.

There were comments from the public:

Mr. Onorato felt that the issue of the floodplain was a big hole in what Matrix is doing. Matrix has not shown the size of it, where it is going to be, modification of the floodplain, location of the stormwater management, depth, width, length, etc. They have not engineered stormwater management and are asking the ZHB for a blanket variance to do what they want. They are asking to have a blanket variance on the steep slopes also. Matrix is making the Township guess about what they are doing.

David Cohen, 220 Gerard Avenue, had two issues. He felt that the Preservation Overlay District Ordinance should be enforced, and open space should be maintained in perpetuity. The Matrix plan is invalid due to the set back requirements from the right-of-ways and primary structures. The right-of-ways are not in accordance with Township Ordinance. All roads have public right-of-way whether they are public roads or not. According to the current plan, all the buildings are irrelevant based on their location to the right-of-way.

Paul Appenzueller, 8210 Jenkintown Road, asked that the basics and fundamentals of this plan be considered. This proposal calls for age-restricted 3-level homes. He lives in a 3-story home and is 70-years old and his wife is 65-years old. People his age are not looking for large homes. They are looking to down-size. He felt these large age-restricted homes are inappropriate in a Township with a punishing and inappropriate tax structure for people who do not have children in the schools.

Upon motion of Mr. Sharkey, the Committee unanimously agreed to table discussion of this appeal to the Public Works Committee on July 14, 2010 to give Mr. Lynch time to analyze the revised plan.

2. Upon motion of Mr. Sharkey, and unanimously approved by the Committee, the Planning Commission Meeting Minutes dated June 28, 2010 were received.

3. Upon motion of Mr. Haywood, and unanimously approved by the Committee, the Ad Hoc Zoning Committee Meeting Minutes dated June 8, 2010 were received

4. The Committee considered recommending the scheduling of a Public Hearing pertaining to the adoption of an Ordinance regulating the outdoor storage and display of items in commercial districts. Mr. Bagley reviewed the amendments that were made in accordance with the Committee's recommendations. Said amendments include: Item B – merchandise must be removed by 6 p.m.; Item F – the Ordinance will not apply to motor vehicles of a registered motor vehicle retailer; Item G – the Ordinance is not applicable for a fuel service station that is selling oil, lubricants and liquids for retail use; and Section III – there is a \$600 penalty for violations.

5. Upon motion of Mr. Haywood, and unanimously approved by the Committee, it is recommended to the Board of Commissioners the scheduling of a Public Hearing on September 15, 2010, to hear any comments from the public regarding the adoption of a proposed Ordinance amending the Zoning Code, Chapter 295, thereof, entitled Zoning, Article XXIX, relating to a prohibition against certain outdoor storage and/or display of appliances, equipment, household furnishings and stock in commercial zoning districts (see attached).

6. The Committee reviewed and approved a recommendation of the Economic Development Task Force for issuance of a Certificate of Appropriateness as follows:

Upon motion of Mr. Simon, and unanimously approved by the Committee, a Certificate of Appropriateness was issued to Salon Tiffany, 560 E. Church Road, Elkins Park, for signage.

7. The Committee considered a Proposed Stipulated Settlement Agreement for Monfia Thelwell Adult Daycare Center. Mr. Bagley explained the reason for said settlement agreement. Two zoning applications were denied relief by the Zoning Hearing Board, the applicant went to Common Pleas Court and a Settlement Agreement was reached. The applicant will be providing the Zoning Hearing Board with a parking survey. Mr. Bagley was confident

that the Zoning Hearing Board would approve this settlement. This is an agreement between the applicant, the Township and the Zoning Hearing Board.

Mr. Haywood question 1 (a) – entering and exiting through the garage level and how this would be monitored and enforced. According to Mr. Haywood, this would permit them to walk out the front entrance to go shopping. Mr. Simon thought 1 (c) might be difficult to enforce and questioned how the Township would know if said door was being used for the designated purposes. Mr. Bagley explained that the clients can use the front doors to visit the shops and the employees can use the front doors to enter and exit. Clients must be dropped off at the garage level and not at the front entrance. Mr. Bagley stated that 1 (c) allow the clients to go shopping only.

8. Upon motion of Mr. Portner, and unanimously approved by the Committee, it is recommended to the Board of Commissioners the approval of a Stipulated Settlement Agreement with Monifa Thelwell for Zoning Hearing Board Appeal Nos. 3372 and 3342 for an Adult Daycare Center at 8120 Old York Road, Elkins Park (Docket No. 2010-02557) (see attached).

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

APPEAL NO. 3361- Appeal of Clear Wireless, LLC, c/o Lemanowicz, LLP, and Westminster Theological Seminary, owner of the premises known as 2960 W. Church Road Glenside, Pennsylvania, from the determination of the Zoning Officer finding that installation of a telecommunications facility consisting of two panel antennas and one panel antenna with dish antenna mounted on top of the panel antenna (both antennas mounted on top of the Library Building Penthouse) and telecommunications equipment on the roof of the Library building on the Property would violate the Cheltenham Zoning Ordinance of 1929, as amended, and, specifically, Article V, Section 295-21, regulating uses, and Article V, Section 295-25, regulating building height.

The Zoning Hearing Board granted applicants' request for relief, subject to conditions.

Upon motion of Mr. Haywood, and unanimously approved by the Committee, no action was taken.

10. Upon motion of Mr. Sharkey, and unanimously approved by the Committee, the Report of the Building Inspector for June, 2010, was received.

11. Under Old Business:

Mr. Lynch reviewed the status of the Brookview Apartment Complex landscaping issue. The apartment is proposing an evergreen buffer to replace the trees and shrubs that were removed from its property line along Church Road. Mr. Lynch stated that the Township has two (2) options - attempt to enforce a Restricted Covenant or get the complex to agree to an Infill Landscaping Plan. He reported that they are not required to replace what has been removed. Some of the trees were removed by PECO. The only way the Township can force a Restricted Covenant would be to take action in Common Pleas Court. Mr. Lynch stated that he had indications that the apartment complex may be receptive to a Record Plan if the Township insists on one but the Township cannot force them into one. A Record Plan would allow for future enforcement. Their current plan calls for 30-40 mature evergreens with supplemental plantings in front of them.

There was a comment from the public:

Mitch Zigmund Felt, 35 Carter Lane, stated that there was significant denuding of the property by the apartment management. Twenty-five (25) years of barrier was removed and has resulted in complete exposure of the apartment complex to neighbors. He felt the Township should ask them to live up to some of the covenants and issues with this property. The original covenant, determined by Common Pleas Court, calls for preservation of a couple of hundred trees, and they should be obligated to this. According to Mr. Zigmund Felt, a public safety issue has been created because children are not protected by the removal of the trees. They are going in and out of the complex onto New Second Street with nothing to stop them. He felt the apartment complex should be given an ultimatum, i.e., negotiate or go to court.

Upon motion of Mr. Simon, the Committee agreed to table this matter to the Public Works Committee meeting on July 14, 2010 to enable the Township Solicitor time to review the matter (AYES: Hampton, Portner, Sharkey, Simon, Swavola; NAYES: Haywood).

12. Under New Business:

a. Mr. Simon noted that the Township has been inundated by PECO's cutting down of trees in the public right-of-way. He especially noted the cutting of mature trees at the Elkins Park Train Station. He questioned the legal right of SEPTA to do so. Mr. Simon asked the Township Solicitor to review the law as it relates to the right of public entities to do what they please in this respect. The Committee unanimously agreed.

b. Mr. Sharkey asked that a status report on Phase II of the Glenside Flood Protection Project in the vicinity of Brookdale Avenue be placed on the July 14, 2010 Public Works Committee agenda.

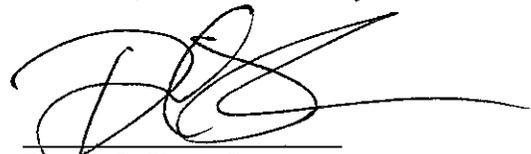
13. Under Citizens Forum:

- o David Cohen, 220 Gerard Avenue, stated that the plot of land at the intersection of Ogontz Avenue and Limekiln Pike is not being maintained. The billboard changes images every seven (7) seconds, which is too short and creates a traffic distraction.

Mr. Cohen reported a house in disrepair in the vicinity of Ashbourne Road and Park Avenue. The house appears to be abandoned.

- o Loretta Leader, 542 W. Glenside Avenue, asked about the status of the parking garage planned to be built at Oak Summit Apartments. She was told that construction has been delayed due to a lack of state funding. A two (2) phase land development plan has been approved.

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



David G. Kraynik,
Township Manager

per Anna Marie Felix



PUBLIC ATTENDANCE LIST
Public Affairs Committee, 7:30 p.m.
Public Safety Committee, 7:45 p.m.
Building and Zoning Committee, 8:00 p.m.
Wednesday, July 7, 2010
Curtis Hall

NAME (Please Print)	ADDRESS	E-MAIL and/or TELEPHONE
James J. McGinn ^{III}	417 Boyer Rd Cheltenham PA 19012	215 663 0988
Charles M. Kelley	315 Central Ave Cheltenham, PA 19012	215 663 1603
DAVID COHEN	321 GERARD AVE E.P. 19027	dcohen1@ix.netcom.com
ROB BERNHART	123 TOOKANY CREEK PKWY	rbernhard@hotmail.com
Emily Barnhart	12 Greenwood Pl wynote PA 19095	emilybarnhart@gmail.com
PAUL APPENZELLA	8216 JENKINTOWN RD. KLEIN PK	PAULAPPENZELLA@Smp.NET
M. ZYGmund - DES	35 CASTLE LN.	215 635 1083
MARGE CAUVIN	135 Tookany	CAUV @COMCAST.NET



PUBLIC ATTENDANCE LIST
Public Affairs Committee, 7:30 p.m.
Public Safety Committee, 7:45 p.m.
Building and Zoning Committee, 8:00 p.m.
Wednesday, July 7, 2010
Curtis Hall

NAME (Please Print)	ADDRESS	E-MAIL and/or TELEPHONE
Debra Marberger	131 Tookany Cheltenham 19012	
JOHN LUTZ	330 COYNE CREET PA 1902	
Joe Vescevic	107 Tookany Creet	
Aline Roy	3 BERYL RD	

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWNSHIP OF CHELTENHAM,
MONTGOMERY COUNTY, PENNSYLVANIA AMENDING THE
CODIFIED ORDINANCES OF THE TOWNSHIP OF CHELTENHAM BY ADDING
PROVISIONS TO CHAPTER 295, ARTICLE XXIX RELATING TO A PROHIBITION
AGAINST CERTAIN OUTDOOR STORAGE AND/OR DISPLAY OF APPLIANCES,
EQUIPMENT, HOUSEHOLD FURNISHINGS AND STOCK IN COMMERCIAL
ZONING DISTRICTS.**

**BE IT ORDAINED AND ENACTED BY THE BOARD OF COMMISSIONERS
OF THE TOWNSHIP OF CHELTENHAM, MONTGOMERY COUNTY,
PENNSYLVANIA, AND IT IS HEREBY ORDAINED AND ENACTED BY THE
AUTHORITY OF THE SAME, AS FOLLOWS:**

SECTION I. AMENDMENT TO THE CODIFIED ORDINANCES

Chapter 295, Article XXIX of the Codified Ordinances of the Township of Cheltenham is hereby amended to add the following Sections:

Section 295-233.4. Outdoor Storage in Commercial Districts.

A. Legislative Intent. The outdoor storage of appliances, equipment, household furnishings or office furnishings and any and all stock for sale or resale or business-related use, in any Commercial Zoning District of the Township, at a time the business, office or other seller is closed for business, is detrimental to the health and safety and welfare of the citizens of the Township by obscuring vision and line-of-sight, obstructing passage of sidewalks and/or roadways, and/or by creating an unsightly and disorderly appearance.

B. It shall be unlawful for any property owner or occupant in any Commercial Zoning District of the Township to place, store, leave or maintain any appliance,

equipment, household furnishings or office furnishings, or stock for sale or resale or business related use, outdoors between the curb or the edge of the cartway and the street face of the principal building on the lot or on an open porch where the primary use of such building is for non-residential use, at a time when the business or office, whichever is applicable, is closed for business, or in the case of a seller without hours of operation, between 6 p.m. and 7 a.m. If a lot in a Commercial Zoning District is unimproved, then no appliance, equipment, household furnishings or office furnishings or stock for sale or resale or business related use may be placed, stored, left or maintained outside on the lot unless removed by 6 p.m. each day.

C. For the purposes of this Ordinance, the term “appliance” shall mean a stove, refrigerator, television set, furnace, water heater, water softener, washer, dryer or any household article used to perform any of the necessary work in a household.

D. For the purposes of this Ordinance, the term “household furnishings” shall mean any and all items ordinarily found and used as furniture or as a furnishing inside a residential dwelling.

E. For the purposes of this Ordinance, the term “office furnishings” shall mean any and all items ordinarily found and used as furniture or as furnishings or for storage purposes inside a business organization or home office setting.

F. The prohibition in this Section shall not apply to store inventory moved outdoors daily in order to display inventory only during the hours of operation of the business or other seller, provided that the business or other seller is open, operating and attended by the owner or an employee while such inventory is displayed. The prohibition in this Section shall also not apply to motor vehicles of a registered motor vehicle retailer.

G. The prohibition in this Section shall not apply to a fuel service station as to oil or other lubricants or liquids which are displayed for retail sale between the curb or the edge of the cartway and the street face of the principal building on the lot at a time when the business or seller is closed for business.

SECTION II. SEVERABILITY

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION III. PENALTIES

Any person, partnership, corporation, unincorporated association or other entity who or which shall violate the provisions of this chapter shall upon conviction thereof in a civil enforcement proceeding commenced by the Township be subject to a fine not to exceed \$600 per violation, plus costs of prosecution. Each day such violation shall occur shall constitute a separate violation.

SECTION IV. EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after its approval as required by law.

SECTION V. REPEALER

All other ordinances and resolutions or parts thereof, insofar as they are inconsistent with this Ordinance are hereby repealed.

ORDAINED and ENACTED by the Board of Commissioners of the Township of Cheltenham, Montgomery County, Pennsylvania held this ____ day of _____, 2010.

TOWNSHIP OF CHELTENHAM

By: _____
Morton J. Simon, Jr., President,
Board of Commissioners

Attest: _____
David G. Kraynik, Township Manager/Secretary

PETER S. FRIEDMAN, ESQUIRE
Attorney I.D. #23740
FRIEDMAN, SCHUMAN, APPLEBAUM
NEMEROFF & McCAFFERY, P.C.
101 Greenwood Avenue, Fifth Floor
Jenkintown, PA 19046-2636
(215) 635-7200

Attorney for Appellant

IN RE APPEAL OF MONIFA
THELWELL
FROM THE DECISION OF
CHELTENHAM TOWNSHIP ZONING
HEARING BOARD

IN THE COURT OF COMMON PLEAS
OF MONTGOMERY COUNTY

LAND USE APPEAL

NO. 2010-02557

STIPULATION OF SETTLEMENT

This STIPULATION OF SETTLEMENT (hereinafter "Stipulation") is made and entered into this ___ day of _____, 2010, by and between the MONIFA THELWELL (hereinafter "Appellant"), CHELTENHAM TOWNSHIP ZONING HEARING BOARD (hereinafter "Zoning Board") and CHELTENHAM TOWNSHIP (hereinafter "Township").

BACKGROUND

- A. Appellant is the prospective tenant of approximately 1600 square feet of space (hereinafter the "Leased Premises") in the commercial building known as-110 Yorktown Plaza, which is a part of the mixed complex located at 8120 Old York Road, Elkins Park, Cheltenham Township, Montgomery County, Pennsylvania (hereinafter the "Center").
- B. Zoning Board is the Cheltenham Township Zoning Hearing Board.
- C. Township acts through the Board of Commissioners, a governing body of a township of the First Class duly organized under the laws of the Commonwealth of Pennsylvania, with an administrative office located at 8230 Old York Road, Elkins Park, Pennsylvania 19027.

D. Appellant submitted an application (Appeal No. 3272) to the Zoning Board requesting the grant of special exception under Article XVII, Section 295-117 T of the Cheltenham Code, in order to operate an adult daycare center (hereinafter the "Adult Daycare Center" at the Leased Premises.

E. The Adult Daycare Center at the Leased Premises shall provide clients with recreation, social opportunities and exercise programs. Games, puzzles, crafts and music are some of the activities that will be offered. The Adult Daycare Center shall have an on-site registered nurse.

F. On January 6, 2010, the Zoning Board issued its Findings of Fact, Conclusions of Law and Decision in Appeal No. 3342, denying Applicant's request for the grant of special exception (hereinafter "the Decision"). A copy of the Decision is attached hereto as Exhibit "A".

G. On February 1, 2010, Appellant filed a Notice of Land Use Appeal with this Court requesting that the Decision be reversed.

H. On or about February 19, 2010, the Township filed a Notice of Intervention with the Court.

I. After discussions, Appellant, the Zoning Board and the Township have agreed to resolve the Land Use Appeal on the terms and subject to the conditions set forth hereinafter.

NOW, THEREFORE, Appellant, the Zoning Board and the Township, intending to be legally bound hereby, agree as follows:

1. Notwithstanding anything to the contrary contained in the Decision, Appellant shall be permitted to operate an Adult Daycare Center at the Leased Premises, subject to the following conditions:

a. All clients visiting the Adult Daycare Center shall enter and exit through the garage level (as opposed to the Plaza level);

b. Directional signage and striping shall be installed in the areas marked on the attached Exhibit "A", directing that clients of the Adult Daycare Center be dropped off and picked up from the garage level;

c. The existing entrance door to the Leased Premises at the Plaza level may be used by employees of the Adult Daycare Center and for emergencies. It may also be used by clients for pedestrian visits to shops, restaurants and businesses at or in the Center.

2. Attached as Exhibit "B" is a parking survey which sets forth the current number of parking spaces in the Center, the uses in the Center and the amount of square footage devoted to each such use.

3. This Stipulation shall not be deemed effective unless and until approved by the Court and, if so approved, shall serve to resolve all of the issues set forth in the Land Use Appeal.

4. Appellant's and its clientele's use of the subject property shall be in accordance with the testimony and evidence presented to the Zoning Hearing Board in the most recent hearing.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto, through their legal representatives, have approved the within stated terms and conditions of this Stipulation of Settlement and have executed this Stipulation of Settlement on the date above mentioned, intending to be legally bound hereby.



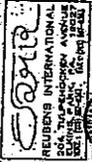
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Cheltenham Township Zoning
Hearing Board

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Attorney for Intervenor, Board of
Commissioners of
Cheltenham Township

EXHIBIT "A"

{Client Files\008123\00001\00223762.DOC;2}



EMBERS INTERNATIONAL
DESIGNING THE FUTURE
1000 N. W. 10th St., Suite 100
Fort Lauderdale, FL 33304
Tel: (305) 555-1234

NO.	DATE	REVISION
1	10/15/99	ISSUED FOR PERMIT
2	11/05/99	REVISED PER ARCHITECT COMMENTS
3	11/15/99	REVISED PER ARCHITECT COMMENTS
4	12/01/99	REVISED PER ARCHITECT COMMENTS
5	12/15/99	REVISED PER ARCHITECT COMMENTS
6	01/05/00	REVISED PER ARCHITECT COMMENTS
7	01/15/00	REVISED PER ARCHITECT COMMENTS
8	02/01/00	REVISED PER ARCHITECT COMMENTS
9	02/15/00	REVISED PER ARCHITECT COMMENTS
10	03/01/00	REVISED PER ARCHITECT COMMENTS
11	03/15/00	REVISED PER ARCHITECT COMMENTS
12	04/01/00	REVISED PER ARCHITECT COMMENTS
13	04/15/00	REVISED PER ARCHITECT COMMENTS
14	05/01/00	REVISED PER ARCHITECT COMMENTS
15	05/15/00	REVISED PER ARCHITECT COMMENTS
16	06/01/00	REVISED PER ARCHITECT COMMENTS
17	06/15/00	REVISED PER ARCHITECT COMMENTS
18	07/01/00	REVISED PER ARCHITECT COMMENTS
19	07/15/00	REVISED PER ARCHITECT COMMENTS
20	08/01/00	REVISED PER ARCHITECT COMMENTS
21	08/15/00	REVISED PER ARCHITECT COMMENTS
22	09/01/00	REVISED PER ARCHITECT COMMENTS
23	09/15/00	REVISED PER ARCHITECT COMMENTS
24	10/01/00	REVISED PER ARCHITECT COMMENTS
25	10/15/00	REVISED PER ARCHITECT COMMENTS
26	11/01/00	REVISED PER ARCHITECT COMMENTS
27	11/15/00	REVISED PER ARCHITECT COMMENTS
28	12/01/00	REVISED PER ARCHITECT COMMENTS
29	12/15/00	REVISED PER ARCHITECT COMMENTS
30	01/01/01	REVISED PER ARCHITECT COMMENTS

A GRANDMAIDERS LOVE
ADULT DAYCARE CENTER
EUNICE PARK, FL

TITLE: PROY PLAN - LOWER LEVEL

DATE	10/15/99
SCALE	AS SHOWN
PROJECT NO.	99-001
CLIENT	GRANDMAIDERS LOVE
DESIGNED BY	J. SMITH
CHECKED BY	M. JONES
DATE	10/15/99

SP-2

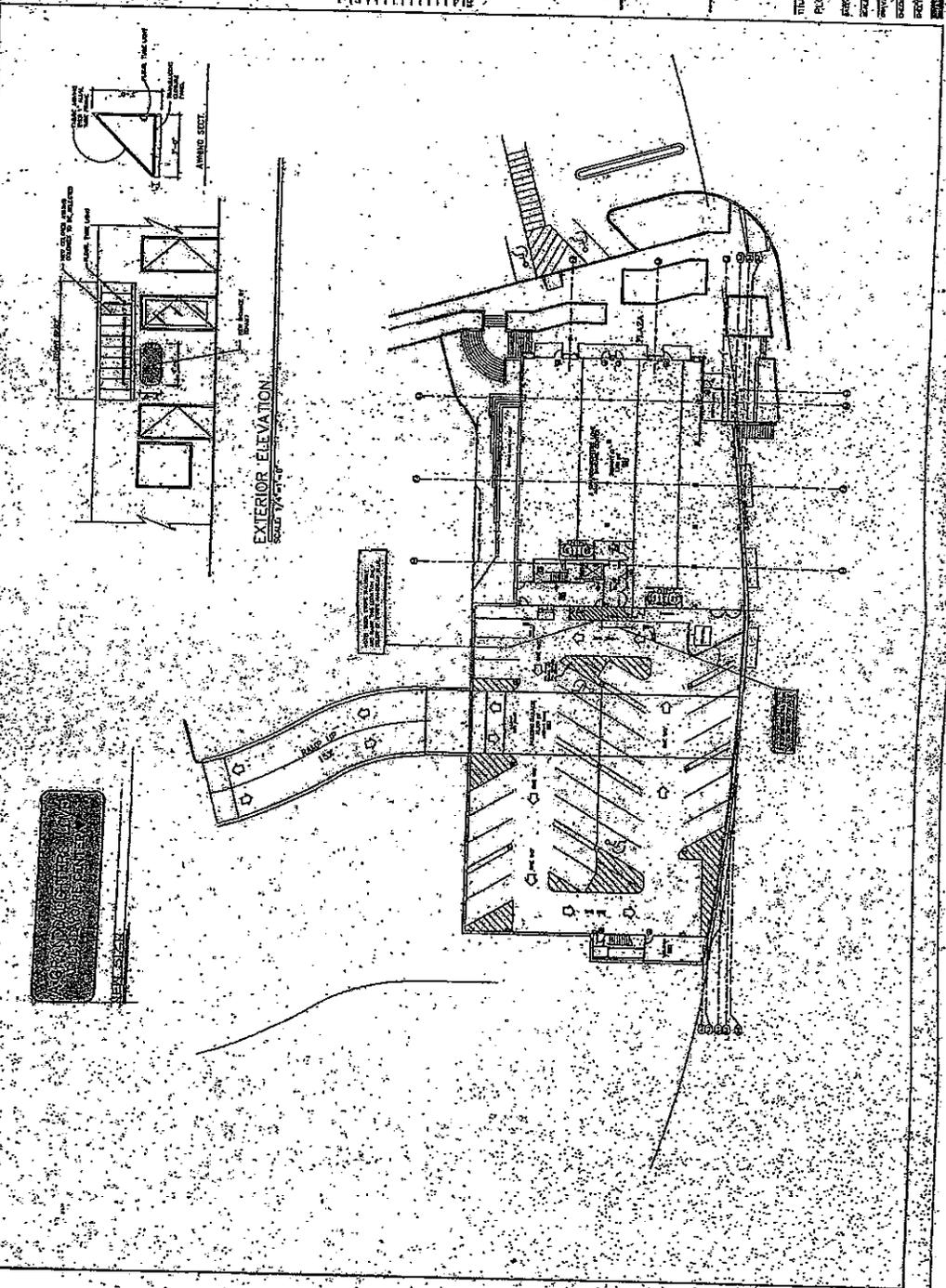


EXHIBIT "B"

{Client Files\008123\00001\00223762.DOC;3}

Use	Use under Ordinance	Gross Square Footage	Gross square footings devolved to adjacent areas	Less Ordinance Allowance	Square Footage for parking purposes	Parking Requirement	Spaces Required
Pads							
Pharmacy	Retail	13680	8,878	480	8,428	1 per 300 sf	28.09
GOSU	Restaurant	3000	1875	400	1475	1 per 100 sf	14.75
T-Mobile	Retail	2675	2008	450	1556	1 per 300 sf	5.19
Main Building							
Plaza level (see Note 1)							
3 retail vacancies	Retail	6672	6671.2	1350	4321.2	1 per 300 sf	14.40
Proposed Senior Daycare (See Note 2)		1600	1600	400	1200	1 per 300 sf	4.00
1st Floor							
Max & Davids	Restaurant	1793	1165	400	785	1 per 100 sf	7.85
Max & Davids catering	Restaurant	1792	1164	400	784	1 per 100 sf	7.84
1st floor less Max & Davids (See Note 3)	Retail	15855	14586	4050	10538	1 per 300 sf	35.13
2nd Floor							
Non-medical (See Note 4)	office	2080	na	400	1680	1 per 300 sf	5.60
Medical (See Note 4)	medical	1226	na	0	1226	1 per 300 sf	37.42
3rd Floor							
Medical (Yorktown Psychological)	medical	965	na	1600	965	1 per 300 sf	3.22
Non-medical (See Note 5)	office	1427	na	1600	927	1 per 300 sf	32.76
Total Required Spaces (See Note 6)							195.89
Total Spaces provided							241

Note 1: Plaza level used to be Hollywood Tans, Cold Stone Creamery, Cartridge World and Color Me Mine. Currently vacant.

Note 2: This treats Daycare as office. (If treated as Medical the difference would be 1 more required parking space, and if treated as Institutional Daycare, the maximum will be 20 people at 1 space for every 5 people or 4 required spaces (same requirement as office))

Note 3: Users are Shiley & Company, Paper Boutique, Edible Arrangements, Sunrise Optical, Alstara, Quick Drop, Salon Paradiso, Irma Segal and Scorpion Fitness

Note 4: Currently 4 medical users and one retail office (currently vacant)

Note 5: Accounting Firm, Highland Offices and Architect Office (currently vacant)

Note 6: I have not performed the shared parking analysis at this time and reserve the same should it be needed

Parking Analysis April 20, 2010
 Note - this analysis is what parking is under the new ordinance. It does not consider parking that already existed.