

March 3, 2010
Curtis Hall

A regular meeting of the **BUILDING AND ZONING COMMITTEE** was held tonight, Chairman Michael J. Swavola presiding. Members present were Commissioners Hampton, Haywood, McKeown, Portner, and Sharkey. Also present was Ex-Officio Member Simon. Staff present were Joseph Bagley, Esq., Wisler, Pearlstine, LLP; Bryan T. Havir, Assistant Township Manager; David M. Lynch, Director, Engineering, Zoning and 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 agendas for March 8 and March 16, 2010 as follows:

Appeal No. 3361: Appeal of Clear Wireless, LLC, Prospective Tenant at 2960 W. Church Road, Glenside, PA (a/k/a Westminster Theological Seminary), from the Decision of the Zoning Officer for the following Zoning Relief in order for a Telecommunications installation consisting of one (1) Panel Antenna, and one (1) Panel Antenna with Dish Antenna mounted on top of the Panel Antenna (both antennas mounted on top of the Library Building Penthouse) and Telecommunication equipment on the roof of the Library Building:

- a. Variances from the Rules and Regulations of Class R-3 Residence District as outlined in Article V of Chapter 295 of the Cheltenham Code, as follows:
 - i. A variance from CCS 295-21. for the Proposed Telecommunication Installation instead of one of the permitted enumerated uses.
 - ii. A variance from CCS 295.25. A. for a maximum building height of 49.5 ± AGL for the top of the antennas (including dish antenna) instead of the maximum permitted 40'.

Melissa Rigney, Esq. represented the applicant. Mr. Lynch reviewed the appeal and stated that there would be three (3) panels and not two (2) panels and these would be the second set of antennas on the roof. There were no records indicating that the existing antennas had received zoning relief.

Ms. Rigney reviewed the site plan, elevation and height of the antennas, the location of the existing T-Mobile antennas, types of antennas (2 panel antennas and 1 dish antenna); and the platform that will be installed on the roof.

Mr. Haywood asked if Clear Wireless was receptive to painting the antennas in City Lights Grey, and she responded that this is acceptable. Mr. Swavola asked why the antennas were needed. Ms. Rigney responded that Clear Wireless is a different carrier with different technology, and these antennas will service Clear Wireless's networking and data transfer services. She stated that her client will present photo simulations to the Zoning Hearing Board.

Mr. Sharkey was concerned about the antennas being in close proximity and visible to Church Road and could be a potential issue for the neighbors. He requested that the applicant ask for a continuance until the Building and Zoning Committee reviewed the photo simulations. Ms. Rigney responded that her client would not be receptive to a continuance. Mr. Sharkey responded that, as the District Commissioner, he is not content that the Committee was being asked tonight to make a recommendation but was not privy to seeing the photo simulations. It was Ms. Rigney's opinion that the antennas would not be visible from Church Road.

Mr. Swavola stated that it was unusual that photo simulations were not available to the Building and Committee, and the Committee prefers to see what will be shown at the Zoning Hearing Board meeting. Mr. Sharkey stated that the seminary is considering future expansion, and it is unknown how the current landscaping along Church Road will be affected.

Mr. Portner asked if there were any technical issues. Mr. Lynch stated that if antennas are painted City Lights Grey, that color usually makes them less noticeable.

Upon motion of Mr. Haywood, and approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that the Committee takes no action on this appeal, and recommends that if relief is granted, it be granted upon the antennas being painted

City Lights Grey (Ayes: Hampton, Haywood, McKeown, Portner, Simon, Swavola; Nays: Sharkey).

Appeal No. 3362: Appeal of Jeremy R. Jaffe and Nancy L. Wolf, Owners of premises known as 643 Mulford Road, Wyncote, PA 19095, from the Decision of the Zoning Officer for the following Zoning Relief for a variance from the Rules and Regulations of the Class R-3 Residence District as outlined in CCS 295-24.B. for a lesser side yard setback along the northeast property line of 8' instead of the minimum required 15' for a 7.21'W x 6.58'L x 2.75'H Hot Tub.

Mr. Lynch reviewed the appeal, including previous relief granted for an addition, setback, and side yard setback. The applicants have informed him that there are no neighbor issues. In response to a question from Mr. Haywood, Mr. Lynch stated that there should be a requirement for a suitable landscaped buffer.

Upon motion of Mr. Haywood, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that the Committee takes no action on this appeal, and recommends that if relief is granted, it be granted contingent upon the installation of a suitable buffer and suitable landscaping.

Appeal No. 3336 (Continued and Amended) – Appeal of Matrix Ashbourne Associates, L.P., owner of premises known as 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 240 Unit Age Restricted Community consisting of forty-five (45) Single-Family Residences and one-hundred and ninety five (195) Carriage Homes. In addition, an area containing approximately 2.0 Acres has been set aside for a future Clubhouse, Restaurant and/or Retail Shops. 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 Conservation District” as outlined in CCS 295-156. so as to allow construction or development within the floodplain area.
- b. Variances from the rules and regulations of the “Steep Slope Conservation District” as outlined in Article XXII of the Cheltenham Code, as follows:
 - i. 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.

- ii. From CCS 295-168. for not submitting plans conforming to the stated Lines and Grades Plan(s) requirements.
- c. 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.
- d. 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 Variance from CCS 295-242.B.2. so as to permit restaurants, small-scale retail, personal service shops, professional service shops in a separate building or buildings situated in the approximately 2.0 acre area designated on the Concept Plan as “Clubhouse and Potential Commercial Area”. Such building(s) shall not have residential units therein.
 - iii. 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.
 - iv. A Variance from CCS 295-243.B.8.a. to permit sanitary sewer facilities and stormwater management facilities within the floodplain.
 - v. A Variance from CCS 295-243.B.8.c. to permit sanitary sewer facilities crossing the Tookany Creek.
 - vi. A Variance from CCS 295-243.B.8.d. to permit development within areas having a slope of 15% or greater.
 - vii. A Variance from CCS 295-243.B.8.e. to permit sanitary sewer facilities and stormwater management facilities within Riparian Buffer areas.
 - viii. A Variance from CCS 295-244. for a minimum distance between buildings of 20’ instead of the minimum required 30’.
- e. 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.
- f. In the alternative to 1.e., 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.

Peter Friedman, Esq. was present to represent the applicant. He informed the Committee that his client will be requesting a continuance to the April 20 and May 25 meetings of the Zoning Hearing Board to allow the land planners hired by his client, the Township and the neighbors additional time to analyze the plan.

Mr. Simon asked if the development was to be “age-restricted” because there is a community concern as to the viability of age-restricted communities. Mr. Friedman advised that his client believes that age-restriction is viable for this site.

Mitch Zygmund-Felt, 35 Carter Lane, Co-President of Concerned Citizens for Ashbourne (“CC4A”), addressed the Committee and stated that CC4A supports the Matrix request for another continuance but this support in no way eliminates or diminishes the concerns the CC4A has regarding the latest Matrix submission. Mr. Friedman stated that if there were any technical questions, he would not be qualified to answer them.

Mr. Zygmund-Felt stated the following residents’ concerns:

Global concerns:

Density/Number of Units/Viability of the Age Restricted Marketplace/Matrix history in the Township (Wyngate).

Perceived Shortfalls in the Current Submission:

- Provision for a subdivision (a point corrected by Mr. Lynch that was altered in the latest submission)
- Reversion to an age-restricted development resulting from the prospect of 68 school children being added to the census
- Zoning Relief Requests on the newest submission
 - Construction within the floodplain
 - Variances from the Steep Slope Conservation District
 - Parking and loading for 631 versus the allowable 491 spaces
 - Exceptions from the Age Restricted Overlay requesting permission to:
 - Allow sanitary sewer and storm water management facilities within the floodplain
 - Allow sanitary sewer facilities across Tookany Creek
 - Allow development within areas with greater than 15% steep slopes
 - Allow sanitary sewer and storm water management facilities within riparian buffers
 - Variance from the entirety of the Preservation Overlay District

Mr. Zygmund-Felt stated that CC4A will continue to cooperate and provide its experts in the working sessions with Township and Matrix land planners as long as efforts are being made to address the significant concerns and issues associated with the plans, most of which were covered in the talking points indicated above.

Mr. Lynch advised that the published legal notice was based on two (2) lots but the applicant subsequently decided to go forward with their January 29, 2010 plan and modified its application, which is for the entire property to be developed with no subdivision and for 240 age-restricted units.

Upon motion of Mr. McKeown, and unanimously approved by the Committee, the Township Engineer was directed to advise the Zoning Hearing Board that the Committee recommends that a continuance be granted but if a continuance is not granted, the Committee recommends denial of said appeal based on the lack of sufficient information.

2. Upon motion of Mr. Sharkey, and unanimously approved by the Committee, the Planning Commission Meeting Minutes of February 22, 2010, were accepted.

3. Upon motion of Mr. Sharkey, and unanimously approved by the Committee, the Ad Hoc Zoning Revision Committee Meeting Minutes of February 22, 2010, were accepted.

4. A possible Stipulated Settlement (“Stipulation”) regarding ZHB Appeal No. 3350 was discussed. John Young, Esq. and Bertram Korn, Jr. were present.

Mr. Bagley reviewed the Zoning Hearing Board’s decision on said appeal and the Stipulation, which would allow a Bed and Breakfast at the property only so long as Mr. Korn is the owner and the operator of the property (see attached). A notice was sent to neighbors. Said Stipulation will require the approval of the Zoning Hearing Board, which has indicated its approval.

Mr. Young stated that all parties are in agreement with the terms and conditions of the Stipulation.

Mr. and Mrs. Hayes, 517 Spring Avenue, were present. Mr. Hayes stated that this was the first time he was seeing the Stipulation. He had the following concerns and asked that they be addressed in the Stipulation: that the exterior staircase not be located near their property; that the tennis courts not be used by the guests; and that lighting be shielded from the neighbors. Mrs. Hayes presented schematics and stated that there is a difference when the tennis courts are used by one owner/neighbor and be used by several guests and will be lighted at night, and the property is going from a residential home used by one neighbor to a home used by 12 people.

Discussion ensued regarding neighbors' concerns. Mr. Lynch indicated that the exterior stairs would not be located on the side of the Korn property facing the Hayes's house, and the tennis courts are not bounded by residential property. Mr. Bagley stated that the Stipulation could include that lighting be consistent with a residential neighborhood. The tennis courts already exist and are being used, and they are currently lighted. Mr. Korn stated that he did not expect any additional noise from the tennis courts. In response to a question from Ms. Hampton, the Hayes's stated that it would be acceptable to them for the Korn's to continue using their tennis courts but not the guests. Mr. Korn stated that the tennis courts can be used at night but they will need to be upgraded, and that part of the property is not bounded by residential properties on two (2) sides and is 25-feet from the Hayes property on the third side.

5. Upon motion of Mr. Simon, and unanimously approved by the Committee, it is recommended to the Board of Commissioners to approve a Stipulation and Order with Bertram W. Korn, Jr., the owner of 521 Spring Avenue, to permit the property to be used as a Bed and Breakfast in accordance with the attached document and with the following additional conditions: restriction of lighting so as not to shed lighting on the neighbors' properties and that the exterior staircase not be erected on the side of 521 Spring Avenue that faces the Hayes's property.

6. The Committee reviewed a draft Ordinance to repeal Subsection 295-80.C of the Zoning Code governing religious use permitted as a special exception in the Class M-2 Multiple Dwelling Zoning District. A Public Hearing for the repeal of said Ordinance will be held on April 21, 2010 (see attached). No action was required by the Committee.

7. Upon motion of Mr. Portner, and unanimously approved by the Committee, the Report of the Building Inspector for the month of February 2010 was accepted.

8. Under New Business: Mr. Sharkey reported that some residential properties in the Glenside area are being rented to Arcadia students who are placing indoor furniture outside on porches and lawns. As a result, some properties appear disheveled. There are some businesses that are placing furniture and items for sale on the sidewalk. This is unsightly and becoming an issue for residents who feel that it hurts the image of the community and does not make it aesthetically appealing. He asked Mr. Bagley's opinion about amending the Township Code to address this issue. Mr. Bagley advised that Collegeville Borough has an ordinance to address this, and it includes a fine for indoor furniture and appliances stored outside, and has been successful.

Discussion ensued. Mr. Simon felt there needs to be a clear definition of outdoor furniture and indoor furniture. Mr. Sharkey stated that such items as bookcases, lamps, recliners, sofas, and other types of living room furniture are being placed outside of homes. Some of the thrift shops leave their items outside overnight. Ms. Hampton questioned an Ordinance that would fine students. It was Mr. Sharkey's opinion that the Ordinance could be used as leverage and as a last resort when all warnings and other means were ineffective. He noted Township Staff's visits to certain property in Glenside have been to no avail. Mr. McKeown felt that speaking with Arcadia about the students' actions might be helpful and that such an Ordinance would be difficult to enforce. Mr. Swavola felt it could be enforceable on a complaint basis but

felt that other means should be tried first, and such an Ordinance could infringe on people's homes. It was Mr. Sharkey's opinion that college students living in residential areas can be a cause for concern by residents. He suggested that Staff review two (2) aspects of an Ordinance, i.e. for businesses in commercial districts and for properties in residential areas. Mr. Simon agreed with the commercial aspect but had concerns about defining the kind of furniture that would be regulated.

There were comments from the public:

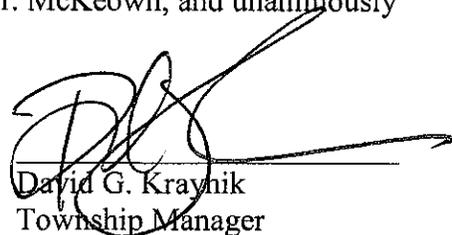
Diane Williams, 1812 Beech Avenue, stated that she understood the issue but it is a delicate one. There were students renting a property on Beech Avenue with unsightly furniture outside but some home design magazines feature articles that show furnished porches.

Tom McHugh, 127 Hewett Road, agreed with Mr. Sharkey. In his neighborhood of expensive homes, there is a house with an outdoor chair on the roof.

It was Mr. Simon's opinion that nuisance accumulation could fall under the Property Maintenance Code.

Mr. Sharkey recommended that the Township Solicitor review an Ordinance regulating the placement of furniture and other items outdoors for commercial properties only at this time. The Committee unanimously agreed.

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



David G. Kraynik
Township Manager

as 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, March 3, 2010
Curtis Hall

NAME (Please Print)	ADDRESS	E-MAIL/TELEPHONE
ROBERT GRABNER	8264 Thomson Rd Elkton PA	215-635-5810
Tom McHugh	127 Hewett	tom.mchugh@monitordata.com
BARRY & PAUL KNIAZER	613 DAVIS ROAD CHELTENHAM, PA	
JAMES A SATKO	901 ASHBOURNE RD CHELT PA 19012	M SATKO RN @ VERIZON.NET
JAMES B SATKO	7918 Rolling Green	jim.satko@gmail.com
Lorna Roserley	130 Wetherell 19012	LsRosenberg28@gmail.com
Sara Koval	7961 oak Hill Dr.	hsKoval@hotmail.com
Bob + Kathy Shaw	913 Ashbourne Rd	Robertshaw@comcast.net

Aline Roy 3 Beryl Rd

Joe Vescevic 107 Trasky Pkwy



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NAME (Please Print)	ADDRESS	E-MAIL/TELEPHONE
SARAH LOUGHAN	47 TOOKAN, CREEK	215-379-1681
EMMA RAYMONT	814 W CHURCH RD	emmaraymont@ magrann.com

FOR DISCUSSION PURPOSES ONLY

IN RE: APPEAL OF BERTRAM W. : IN THE COURT OF COMMON PLEAS
KORN, JR. FROM THE DECISION OF : MONTGOMERY COUNTY, PENNSYLVANIA
THE CHELTENHAM TOWNSHIP :
ZONING HEARING BOARD DATED : LAND USE APPEAL
NOVEMBER 9, 2009 : NO. 2009-41812

STIPULATION AND ORDER

THIS STIPULATION is entered into this _____ day of _____, 2010, by and among Bertram W. Korn, Jr. (the "Applicant"), Cheltenham Township (the "Township" and the Cheltenham Township Zoning Hearing Board (the "Board"). All of the terms, conditions and promises set forth in this Stipulation and Order (hereinafter "Stipulation") are conditioned upon approval by the Court.

1. Applicant is the owner of a property located at 521 Spring Avenue, Elkins Park, Cheltenham Township, Montgomery County, Pennsylvania (the "Property").
2. Applicant filed an appeal to the Board from the determination of the Zoning Officer of Cheltenham Township, finding that the operation of a commercial bed and breakfast facility at the premises would violate the Cheltenham Zoning Ordinance of 1929, as amended, and specifically, Article VII, Section 295-36, regulating uses in an R-4 Residence District.
3. Applicant sought a variance from the rules and regulations of the R-4 Residence District to allow the operation of a four-room bed and breakfast facility instead of one of the permitted uses and a determination that the required number of parking spaces for the bed and breakfast facility would be four and that the provided six parking spaces met the requirements of the Zoning Code for the residence use as well as the bed and breakfast facility use; and
4. On November 9, 2009, the Board denied the Applicant's zoning relief as set forth above and specifically, such relief as necessary to allow the operation of the bed and breakfast facility at the Property.

5. Applicant filed a timely appeal to the Court of Common Pleas of Montgomery County from said denial, indexed at No. 2009-41812.

6. The parties hereto desire to enter into a stipulation to permit the use of the Property as a bed and breakfast as well as a residence in conformance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The Property may be used as what is commonly known as a customary "bed and breakfast" as well as a owned occupied residence subject to the following conditions:

A. The bed and breakfast use is limited to the four (4) bedrooms on the third floor of the building;

B. The building is owner-occupied at least nine (9) months per year;

C. There are no exterior signs;

D. The only meal prepared and served shall be breakfast;

E. The maximum occupancy of the building is the lesser of twelve (12) people or the maximum occupancy under the State Uniform Building Code;

F. The length of stay in the bed and breakfast of all guests shall be limited to two (2) weeks, with the exception that up to five (5) of the guests may stay up to six (6) weeks, if they are enrolled students or faculty at an accredited school, college or university;

G. No events such as a Bar Mitzvah or a wedding or a reception for same are to be held on the Property.

H. The authorization to use the Property as a bed and breakfast shall terminate at the earlier of the following:

(a) Mr. Korn sells or leases the Property; or

(b) Mr. Korn is no longer living.

2. The six (6) parking spaces proposed by the Applicant as designated in his Zoning Hearing Board application and as entered into evidence at the Zoning Hearing, shall be sufficient for the use as described within.

3. Applicant's and his clientele's use of the property shall be in accordance with the testimony and evidence presented before the Board.

4. Upon approval of this Stipulation, the Applicant's Zoning Appeal shall be marked withdrawn with prejudice.

5. Each counsel certifies that he has the authorization from his respective counsel to enter into this Stipulation.

6. The Stipulation is submitted to the Court for consideration and approval.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first upon written.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Stipulation to be duly executed by their respective legal counsel the day and year first above written.

By: _____
Michael Yanoff, Esquire

Date:

By: _____
Joseph M. Bagley, Esquire
Solicitor for Cheltenham Township

Date:

By: _____
Neil Sklaroff Esquire
Solicitor for Cheltenham Township
Zoning Hearing Board

Date:

APPROVED BY THE COURT:

_____ J.

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

ORDINANCE NO. - _____

"Repeal of Subsection 80.C. of the Zoning Code"

**AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF
CHELTENHAM, CHAPTER 295 THEREOF, ENTITLED "ZONING", BY
REPEALING SUBSECTION 295-80.C. GOVERNING RELIGIOUS USE
PERMITTED AS A SPECIAL EXCEPTION IN THE CLASS M-2
MULTIPLE DWELLING ZONING DISTRICTS**

The Board of Commissioners of Cheltenham Township does hereby enact and ordain:

**SECTION I. - Repeal of Subsection 295-80.C. of the Codified Ordinances of
Cheltenham Township**

Subsection 295-80.C. of the Codified Ordinances of Cheltenham Township is hereby repealed in its entirety and shall be considered null and void.

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. - Effective Date

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

SECTION IV. - 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 Cheltenham Township, Montgomery County, Pennsylvania, this 21st day of April, 2010.

CHELTENHAM TOWNSHIP

By: _____

Morton J. Simon, Jr., President,
Board of Commissioners

Attest: _____

David G. Kraynik, Township Manager/Secretary