

TOWNSHIP OF MIDDLETOWN
PLANNING COMMISSION MEETING

March 8, 2016

Present: Mark Bradson, Anthony Mirenda, William Moran, Greg Reitze, Peter Schettler, and David Sharbaugh

A. Call to Order

Chairman Mr. Sharbaugh called the meeting to order at 7:30 PM.

B. Approval of Minutes

Mr. Reitze motioned to approve the February 9, 2016 meeting minutes contingent upon a minor change noted to the recording secretary. Mr. Schettler seconded this motion and the Commission approved unanimously with a vote of 6-0.

C. New Business

Preliminary/Minor Subdivision/Land Development Plan: Gary Scheivert—518 Painter Road: Applicant is proposing a minor subdivision to create two lots from one parcel(2.2 acres) within an R1 Zoning District.

Vince Mancini, legal representation for the applicant, explained Mr. Scheivert wished to subdivide his property into two lots and the definition in the Ordinance for the net lot size was the issue at present. He felt there was ambiguity in the Ordinance for the purpose of determining whether or not the Sunoco pipeline easement should be counted in the overall lot size. The ordinance exempts permanent utility easements and Mr. Mancini argued that the Sunoco pipeline fell into this category since the pipeline carries gas to the Marcus Hook plant. He felt since the ordinance was vague, the Planning Commission should recommend in the favor of the applicant. He noted that a utility easement serves the locality, county, etc. and stated that Ms. Merino agreed with him that this seemed to be a pipeline right of way.

Mr. Moran questioned if the utility was governed by the Utility Commission. Mr. Petrosa reported that if an ordinance is ambiguous it has to be interpreted in favor of the applicant; however, because the ordinance does not stipulate *public* utility easement, he did not think there was a question of ambiguity. He also noted that Ms. Merino felt that the pipeline easement should be netted out.

Mr. Petrosa asked if the pipeline was the only reason the subdivision was not compliant with the acreage requirement. Mr. Janetka answered in the negative, stating that he came up with

less than an acre if the driveway easement and legal right of way is excluded. He was not sure if the applicant would be able to get past those issues. Mike Cioco, engineer for the applicant, stated the driveway easement was netted out. Mr. Janetka respectfully disagreed, stating he reviewed the calculations twice and would do so a third time if necessary. Mr. Cioco stated the driveway easement was netted out and reviewed where he got his calculations. He emphasized they were also calculated in AutoCAD too. Mr. Janetka stated he would review the calculations a third time.

Mr. Mancini stated that the utility easement services the community and is a private pipeline. In addition, he did not find anything in research as a legal precedent and reiterated that his sole responsibility at this point is to prove the ordinance is vague.

Mr. Bradson asked how deep the pipeline was in this location. Mr. Janetka stated he did not know what Sunoco's requirements were but that it was known to be shallow in places around this area. Mr. Cioco stated he has been in communication with Sunoco and they usually would have to do testing in the form of a soft dig first.

Mr. Petrosa asked Mr. Janetka if he felt the Sunoco easement was considered a utility easement and he answered in the affirmative. Mr. Petrosa asked Mr. Flandreau if he had any thoughts on this situation. Mr. Flandreau stated that he agreed there are issues with the plans for the proposed Mariner 2 but the pipeline in question for this purpose has been around for a while. He noted that he shares a border with the pipeline and reads it as a utility easement. Mr. Petrosa stated he thought it had been treated as a utility easement in the past.

Mr. Reitze questioned where this easement was on the property. Mr. Cioco reported that it appeared to drift about 9 feet onto the property line towards the back. In some areas, it was about 16 feet. Mr. Reitze asked if there was enough property on Lot 2 to move the property line and Mr. Cioco stated no. Mr. Bradson asked what the easement figures were for each side and Mr. Cioco stated 25 feet. Mr. Petrosa explained that the side yard is measured from the side property line; not the easement. It needs to be 75 feet from the pipeline. Mr. Janetka agreed. Mr. Reitze asked if the side yard comes out if the easement is netted. Mr. Janetka reported that was correct if it is assured the pipeline is exactly at 50 feet. If that happens then an area of lot 2 also needs to be netted out of the easement. Mr. Mancini stated that would be a moot issue if the pipeline is not viewed as a utility easement.

Mr. Petrosa reported the Zoning Officer felt it should be netted out and that he agreed. He suggested the applicant appeal to the Zoning Hearing Board.

Mr. Mancini requested the matter be tabled by Planning Commission until issues with the Zoning Officer could be addressed accordingly. Mr. Petrosa stated the Planning Commission could do this as long as the applicant granted them a 90-day extension. Mr. Mancini agreed.

Mr. Sharbaugh stated that there were too many unanswered questions to make a decision but that he personally felt that the pipeline was a utility easement. He felt it was important to determine where exactly the pipeline is in the easement at this property too. Mr. Cioco stated there were physical markers on the property that say Sunoco Pipeline on them. If this plan is approved, he stated a soft dig would be completed as per Sunoco.

When Mr. Sharbaugh asked for audience questions or comments, Mr. Flandreau stated that he reviewed the plan, Mr. Janetka's letter and email that went into the Township file prior to Mr. Mancini being involved. He noted he understood the issues and relied on the lot area being calculated on the right of way and that while he understood Mr. Mancini's point, he disagreed with him. Mr. Flandreau stated that he also disagreed with Mr. Cioco's calculation as the deeds say center of the road but the Township Ordinance does not allow for that calculation. There were no other comments.

Mr. Petrosa felt it was best for applicant to offer an indefinite extension. Mr. Mancini agreed contingent upon the applicant being allowed to restart the time if necessary.

The Planning Commission all agreed to table this matter.

Conditional Use Application: James McCullough and/or JT Venture, LLC—312 Lenni Road: Applicant seeks a change in nonconforming use as to utilize the existing buildings and paved accessory parking for and as an HVAC subcontractor headquarters and office facility

Mr. Mancini also represented this applicant and provided the notices to Mr. Petrosa. He reported that the building on this property has two levels with entrances on different streets. The Upper Level is accessed on Elm Avenue and the Lower Level on Lenni Road. He provided a set of diagrams and photos for the Planning Commission and audience to review and gave a brief description of the business and the customers it serviced. Mr. Sharbaugh requested that he submit this information prior to the meeting to allow the Planning Commission with more time to review the application and Mr. Mancini agreed, noting there were no technical plans for this application.

Mr. Mancini reported that the property is currently owned by Rocky Run Fire Company and the building was constructed in 1923. His client has reached a sale agreement with the Fire Company for this property, which is zoned R-4 and is 1.8 gross acres/1.65 net acres. The Upper level is 3,883 square feet. He noted the photographs labeled 1-7 show the current condition and stated the Upper Level only has entry from Elm Avenue and that it included offices, banquet facility, commercial kitchen, and overnight accommodations for fire fighters. There is paved parking for 10 cars.

Mr. Mancini reported that photographs 8-15 show the Lower Level, which is 5,020 square feet and was primarily used for storage and parking the fire trucks. The parking lot on this level has 26 paved spaces. He noted the uses that took place on this property, like jaws of life practice, occasional fundraising sales, occasional alarms when a fire occurred, etc.

Mr. Mancini reported that the applicant proposed to improve the site and relocate his business, which is a commercial HVAC company, to this location. The HVAC business is well established with a substantial client list, currently located at 127A Briton Lane Road in Concord, PA. The applicant plans to move his offices to the Upper Level and use 5-7 of the 10 paved spaces, as there are only 4 employees and the owner. There would be no leasing to others. The Upper Level would be renovated to include 5 offices, conference room and storage closets. There would also be exterior renovations to make it look more aesthetically pleasing for the neighborhood. Mr. Mancini stated that customers do not typically come to the office, as it is more efficient for the HVAC representative to go directly to the customer's site. Since this is the case, there would be relatively little traffic activity.

Mr. Mancini reported that the Lower Level would be used to store equipment, tools, and inventory. Occasionally, vehicles would also be stored there. There are plans to repave and restripe the Lower Level. He only has need of 20 of the 26 current spaces so there is the possibility of reducing black top area. He noted that nothing would be stored outside and that deliveries of HVAC systems go directly to job site; not to this location.

Mr. Mancini explained that there are 18 vans driven home by the technicians, so they would not be staying at the property overnight. These vans would come once a week on Mondays to pick up what is needed for the week and drop off paperwork. The hours of operation for the business are 7AM-4:30 PM, week days only. He stated the applicant felt his use of the property would be less traffic, less noise, produce no odors or fumes, and be less impactful compared to when it functioned as a Fire House. In addition, no sales would be conducted outside. It would also be better for the community for this property to be renovated and maintained. He reported that Mr. McCullough spoke with a number of residents who seem

to be pleased with the proposed plan. He then provided a list of who the applicant spoke with to Mr. Petrosa. The applicant felt he would be a good neighbor. Mr. Mancini also noted that a Fire Company in Oxford, PA was recently converted to a similar business and was more busy than what the applicant was proposing.

In addition to decreasing the non-conformity of the property, Mr. Mancini noted that the applicant was agreeable to return a portion of the property (.25 acres) back to R-4 usage in order to restrict commercial expansion. Lastly, he noted that Joe Kozloski, Operations Manager for the business, was present to answer questions.

Mr. Sharbaugh commented that the applicant made a good argument for why the conditional use should be recommended.

Mr. Petrosa asked if trucks would be parked there and for more information on the types of deliveries received. Mr. Mancini stated no trucks would be parked overnight. Mr. Kozloski stated deliveries would predominantly be from UPS for small parts. Bigger equipment goes right to the crane yard. There would be no fabrication of equipment on the premises. UPS deliveries would occur once or twice a week. Mr. Bradson asked if refrigerants, pressurized gasses, etc. was stored on property. Mr. Kozloski reported these items were all on the trucks and refilled at supply houses.

Mr. Moran asked when the lot system was rezoned and Mr. Mancini answered around 1944; however, the use itself started in 1923. Mr. Petrosa commented that the Fire Company most likely predated the zoning rules.

Mr. Petrosa stated that he thought this seemed like a clean use and that Mr. Mancini filed this application two ways: as a conditional use application and zoning application. He thought this was smart. He reported that the fire company was there lawfully and that governmental use is allowed on the conditional uses. The question is whether or not a Fire Company is considered governmental use. If it is a permitted use, then it is not non-conforming and you cannot transfer to other non-conforming if that is the case. The question becomes if the Fire Company was permitted in R-1 zoning, then this proposed use being partially office/partially business appears to be less restrictive. He felt Mr. Mancini provide good information in regards to traffic, noise, etc.

Mr. Mancini noted that if the neighbors or the Township do not want this use, then the applicant will go elsewhere. He felt that this was a good readapted use though since it would have less impact on the community compared to a Fire Company. He also noted that the law does not require the applicant to demolish and rebuild.

Mr. Sharbaugh asked what type of reaction the neighborhood had. Mr. Mancini stated that Mr. McCullough reported it was positive. He also noted that Land Planning seemed to like the concept too.

Mr. Bradson noted that because the structure was built in 1923, it may not be to code. He asked if a feasibility study would be done to this respect. Mr. Mancini was unsure and thought that would be determined after Zoning responds. Mr. Mancini stated that contractors have looked at it and while it needs work, the building is structurally sound. There is no plan to affect bearing walls and the Lower Level is staying the same (besides being cleaned up). Mr. Petrosa noted they would have to go through building code process. Mr. Mancini reiterated that the structure would not be altered.

Mr. Retize asked if any residents were present with question or comments. Tim Sullivan, legal representative for owners of the adjacent property 206 Elm Avenue, stated his client's property is tenant-occupied. While his client did not object to the use, he did want more information. Mr. Sullivan went on to state that his client would want reasonable conditions agreed upon to limit this becoming a larger operation. Mr. Mancini stated he would have to talk with his client about this, but that it was possible to get him to agree to restricting the land next to 206 Elm Avenue. Mr. Sullivan went on to say that while vans would only be parked in the back and there are currently only 18, if more vans were needed in a growing business, this could then present a problem for the neighbors. He also stated his client did not want tractor trailer deliveries unless the applicant gets modification from Township. Mr. Kozloski did not see a problem with that request.

Mr. Mancini stated that his client understood it was a residential area but he thinks this would have much less impact on the residents than the fire Company. The business's hours of operation were much less too.

Mr. Reitze commented that he was involved with a similar situation at another Fire Company. While this use sounds appealing today, things can change. He stated he would like to see very specific restrictions placed on the application if recommended, so that the Township would have some recourse. He also noted that if the subdivision is recommended, he would like to see the property line extended so the small niche at the bottom is avoided. Mr. Mancini stated the lot lines could be straightened out. Mr. Reitze suggested site marker monuments also be included.

Mr. Mancini stated that he understood the concerns of Mr. Sullivan's clients and that he would meet with Mr. Sullivan to work them out.

Mr. Petrosa noted that the conditional use hearing would be prior to the zoning hearing, and if conditional use was approved, then the Zoning Hearing could be cancelled. He also commented that his only concern was precedence.

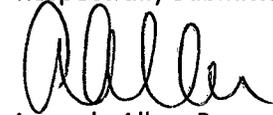
Mr. Bradson asked if Mr. Janetka had anything to add and Mr. Janetka answered in the negative.

Mr. Schettler asked about the plans for exterior lighting and signage. Mr. Kozloski said he was not sure at this time and that it would depend on what was allowed. Mr. Mancini stated there would be no lighting on the Lower Level.

Mr. Schettler motioned to recommend approval of the conditional use application contingent upon Council assuring it is a permitted use and satisfactory restricted conditions developed. Mr. Bradson seconded this motion and the Planning Commission approved with a vote of 5-0 (Mr. Reitze abstained).

Mr. Sharbaugh adjourned the meeting at 9:02 PM.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Allen', written in a cursive style.

Amanda Allen, Recorder