

TOWNSHIP OF LOWER MAKEFIELD
PLANNING COMMISSION
MINUTES – MARCH 11, 2019

The regular meeting of the Planning Commission of the Township of Lower Makefield was held in the Municipal Building on March 11, 2019. Mr. Wallace called the meeting to order at 7:30 p.m.

Those present:

Planning Commission: Chad Wallace, Chair
Charles Halboth, Secretary
Ross Bruch, Member
Dawn DiDonato-Burke, Member

Others: Jim Majewski, Director Planning & Zoning
Barbara Kirk, Township Solicitor

Absent: Craig Bryson, Planning Commission Vice Chair
John B. Lewis, Supervisor Liaison

APPROVAL OF MINUTES

Mr. Bruch moved, Ms. Burke seconded and it was unanimously carried to approve the Minutes of January 14, 2019 as written.

ZONING ORDINANCE AMENDMENTS DISCUSSION

Mr. Majewski stated there are a number of items in the Zoning Ordinance that are outdated and need to be looked at. He stated they previously went through some of the more difficult parts of the Subdivision and Land Development Ordinance, and the rest will be technical items; and he will provide the Planning Commission a draft for review of those sometime this month. He stated they will try to complete the rest of the items from the Subdivision and Land Development Ordinance this spring.

Mr. Wallace stated they did a lot last year, and he asked if that has been approved by the Board of Supervisors. Mr. Majewski stated about half of it was approved, and the other half remains to be approved. Mr. Wallace asked if there were any issues with what was presented to the Board; and Mr. Majewski stated while there were some questions, it went through smoothly. Mr. Majewski stated he did advise the Board that he wanted to do this because a lot of the Ordinances were outdated.

Mr. Majewski stated tonight he would like to discuss some Zoning Ordinance items. He stated some of these items came out of the Zoning Hearing Board and “hot topics” over the last few years. Mr. Majewski provided some information on spreadsheets to the Planning Commission this evening.

Mr. Majewski stated one item is for places of worship and the other is for school. Mr. Majewski reminded the Planning Commission of the Bible Fellowship property when they were trying to do a land swap partly to get around the impervious surface requirements. He stated places of worship and schools are held to a 17% impervious surface ratio; and as can be seen by the chart he provided, most of the religious facilities and schools already exceed that 17%. He stated they were either granted Variances or predated the requirements for impervious surface. He stated he feels that the Ordinance should be revised so that those that predate the Ordinance will actually become legitimate. Mr. Majewski stated if they demolished a school and developed the property for single-family houses, they could get up to a 25% and higher impervious surface; but because they have a larger property, they require 17%. Mr. Majewski stated he will look into this in the future, and would like the Planning Commission to consider this as well. Ms. Burke asked why they made it that way to begin with, and Mr. Majewski stated it was arbitrary. Mr. Wallace asked when the requirement for 17% was chosen, and Mr. Majewski stated he believes that it was in the 1980s.

Ms. Kirk stated if you look at the impervious surface requirements for Residential developments, they have different numbers for pre-1987 versus poste-1987. Mr. Majewski stated he believes that the Township facility is also probably over the limit.

Ms. Kirk asked Mr. Majewski if he is also going to look at the way they calculate parking spaces as some sections say one parking space per employee/customer and others are based on square feet. Mr. Majewski stated he is going to look into that as the entire Parking Ordinance is outdated. He stated they came up with numbers that sounded reasonable, but in practice some of them do not work. He stated a number of the office buildings have too much parking; and even when they put up to 25% of the parking in reserve and save an area where it could go but not build it which is allowed under the Zoning Ordinance, there are still a number of properties that have hundreds of extra parking spaces. He stated there are other uses such as Assisted Living where they talk about the number of doctors/staff members, but that parking ratio does not work.

Mr. Majewski particularly noted the Sunrise Assisted Living facility which by Ordinance works, but in practice it does not because there is not sufficient parking. Mr. Majewski stated at that facility it is not the staff members and visitors, it is the fact that they also have a lot of outside services that come in. It was noted that at times there is parking on the street at that facility. Mr. Majewski stated at that facility the numbers were too low because they used an outdated method to determine the parking.

Mr. Majewski stated there are standards by the Institute of Transportation Engineers for parking, and he would like to move toward those as a guideline with some adjustments that might work better.

Mr. Halboth asked how Woodside Church would work since they did not change their parking when they put on a large addition even though the uses are mutually exclusive, and they would not be using 100% of the square footage at any one time. Mr. Majewski stated there are a number of different methodologies for churches such as number of seats, square footage, etc. He stated at Bible Fellowship Church there are a number of activities taking place concurrently.

Mr. Wallace asked Mr. Majewski if he anticipates any objection to what he is considering. Mr. Majewski stated he does not, and he does not see a defense for standards that are thirty years old that do not work. Mr. Wallace stated he agrees they should update it to the current standards.

There was discussion about the parking difficulties at the Kohl's Shopping Center. Mr. Majewski stated that was a Court-ordered Settlement as a result of a Township Appeal that the Township lost.

Mr. Majewski stated another common issue that comes before the Zoning Hearing Board are accessory structures. He stated currently the requirement is that an accessory structure be located 10' off the property line and be in the fourth of the lot furthest removed from the road so it would be all the way in the back yard. Mr. Majewski stated in practice a lot of sheds are closer than 10' to the property line. He stated what they had in the 1930s was a 2' setback so you could mow around it, and other Townships have 3' or 5' setbacks. Mr. Majewski stated he feels they should come up with some relaxation for smaller accessory buildings. He stated they could have a two-tiered system; and if you have a smaller shed you could be a couple of feet off the property line, but if you are building a very large one, you would have to be 10' off the property line. there was discussion about the height of accessory structures. Mr. Majewski stated the height maximum is 15', and he feels they should keep it at 15'; and if you need to go higher than that, you should be going to the Zoning Hearing Board so that they can place

appropriate Conditions on that so it does not impact the neighborhood. He stated the bigger issue is the requirement that the accessory structure must be located in the rear fourth of the Lot. He stated a lot of people want to have detached garages; and if you have a detached garage, putting it all the way in the back of the Lot would result in an extra long driveway. Mr. Majewski stated he is still trying to consider how to work this out. He stated there are a number of detached garages that are just 10' to 15' behind the house. Ms. Burke stated they could have an exception for detached garages, and Mr. Majewski stated that could be an alternative.

Mr. Majewski stated he is bringing these issues up so that the Planning Commission members can begin to think about these issues and come up with some ideas.

Mr. Halboth asked if the definition for accessory structure includes what is considered a permanent structure versus what is not a permanent structure. Ms. Kirk stated she does not believe it is defined by way of permanent versus temporary accessory structure, rather it is something that is incidental to the primary building on the property. Mr. Halboth stated he felt there was a difference between a structure with a real foundation versus a typical shed seen in the area which is just sitting on the ground. Mr. Majewski stated that is something else that needs to be clarified since there are differences between what requires a Building Permit and what does not. He stated they do define accessory structures typically as permanent structures compared to a child's "play shed." He stated there are limits on temporary structures such as tents in the back yard, but they also need to clarify that as some people have used that as a loophole for the storage of a car. Mr. Majewski stated this is similar to PODS, and they need to strengthen the limitations on that as well. He stated it is one thing if you you going to use a POD for six-months for storage if you are doing a renovation; however, there are some people who have taken PODS and turned them into permanent structures, which he feels adversely impacts the aesthetics of the Township, and a number of Planning Commission members agreed.

Mr. Majewski asked that the Planning Commission consider how close they would like to allow accessory structures to the property line, and whether garages should have a different setback versus other accessory buildings that would be under a certain size. Ms. Burke stated she feels 10' is too much, and she would recommend 4'.

Mr. Majewski stated the problem is that when someone goes to the Zoning Hearing Board for a Variance they show their proposed shed and all the other sheds surrounding them are right up against the property line; yet we are telling them that they have to be 10' off the property line.

Mr. Majewski stated another issue to be considered is that currently there is a provision that you can expand an existing non-conformity; however, there is no limit on that. He stated there was a case where someone had an existing garage, and they wanted to make it bigger. He stated they took the garage that was 2' off the property line, and doubled the size of the garage so that instead of a 20' deep garage 2' off the property line, the neighbors now had to look at a 40' deep garage with an office, etc. above that looked like an apartment.

Ms. Kirk stated Bristol Borough has a section on modifying or expanding non-conforming uses and their structures. She stated they include a provision that you cannot expand it by more than 50% of the total size. Ms. Kirk stated they also require that you register non-conforming uses. Mr. Majewski stated he believes our Ordinance has that provision as well; however, we have never done it.

Mr. Majewski stated Mr. Tracey had previously noted that we had not done the Annual Report for the Planning Commission which is required by the Municipalities Planning Code so he has now done one for the prior four to five years. He stated he also had to do a few Annual Reports for HARB which were also required but had never been done. He stated we should also have something on the books regarding to uses and non-conforming uses so we know what was allowed and when and whether it was grandfathered, had a Variance, etc. so that there is a dedicated property file which would make enforcement of all our rules and regulations a little bit easier.

Mr. Majewski stated another issue for the Planning Commission to consider are the requirements for a Bed & Breakfast. He stated currently we only allow them in the Historic District, and he feels it should be opened up to be permitted in all historic homes. He stated they would have to consider who would designate the historic home, what restrictions are placed, and whether there should be a minimum lot size. He stated he feels allowing for a more targeted Bed & Breakfast there would be less of the potential of someone renting out their home in the middle of a neighborhood on a half acre lot.

Ms. Kirk suggested that this be opened up to any Residential home and charge a Hotel Tax.

Mr. Burch asked if there is knowledge of Airbnb activity taking place. Mr. Majewski stated there is one on Makefield Road which is a large house which at one time was a Residence with a doctor's office as a home occupation. He stated after they moved the next owners moved there for a period of time; but when they moved out, they started renting it out every weekend to groups of fifteen to twenty people. He stated every weekend the neighbors were seeing a whole new group of strangers coming in. Mr. Majewski stated an Ordinance was adopted to regulate that somewhat and makes a distinction between owner-occupied and non owner-occupied. Mr. Majewski stated if the owner is there you have a little bit more control and it is more comfortable for the neighbors; but when the owner does not live there and strangers are coming in and out of the house, it is not comfortable for the neighbors.

Ms. Kirk stated the Courts have been very liberal about this. She stated there was a case where someone was cited for a Bed & Breakfast; but because they did not serve breakfast, it was ruled that it could not be a Bed & Breakfast. She stated there was another case where they were cited for a Tourist Lodging Facility; but because it did not have to be a tourist that came in, they did not therefore violate the Ordinance. She stated the cases tend to lead toward the property owner being able to rent the residence out.

Mr. Bruch asked about Ms. Kirk's point about a Hotel Tax, and asked if there an Ordinance in the Township toward one. Mr. Majewski stated he does not believe that you are permitted to charge a Hotel Tax unless under certain circumstances. Ms. Kirk stated she just felt that this was something that could be considered.

Mr. Majewski stated if they could open up Bed & Breakfast to homes that are beyond houses on the National Register of Historic Places and permit it in older homes where people could earn some extra money that could allow them to keep the home up to date and historic looking, which might be a good idea.

Ms. Kirk asked where most of those older, historic homes are located; and Mr. Majewski stated they have the Historic District, Edgewood Village, which had twenty-three structures that had been listed, but five of them are gone since we got the Historic District designation. He added that one of them is supposed to be rebuilt. He stated there is also a historic home on Palmer Farm, one on Moyer Drive that is on the National Register, and he believes that there are one or two others that would be eligible. Ms. Kirk asked about homes that are not on the National Register, and whether there is a specific Zoning District where you tend to find more of the older homes than in other Districts; and Mr. Majewski stated there is not, and they are spread throughout all the Districts. He stated there are some along the River, some that are old farmsteads, and you often see them around Subdivisions where a half acre or an acre was lotted out; and the home was left with

the new homes surrounding it. Mr. Majewski stated he will look into this although he feels writing the regulation for that will be difficult. Mr. Wallace stated they also have to consider the Case Law that Ms. Kirk discussed. Mr. Majewski stated the more we can define these types of places in certain areas so that the Township has better control over it, the better it would be.

Mr. Majewski stated he provided the Planning Commission a copy of the Zoning map and the Uses by District. He stated they should start to look at all of the Uses, where they are permitted, and whether we want to make any changes to them. He stated this would be a policy issue, and he feels input from the Planning Commission may be helpful to the Board of Supervisors. Mr. Wallace asked if there have been any requests to do this, and Mr. Majewski stated there have been times when people have asked if a certain Use is permitted, and he has been surprised that some were permitted and other uses were not. He stated some of the Uses may not be appropriate. He stated he also feels that some of the Uses that are permitted by Special Exception maybe should be Conditional Uses and some that are Conditional Uses maybe should be Special Exceptions. Mr. Wallace asked Mr. Majewski if he has some in mind that he feels should be updated, and Mr. Majewski stated he does have a running tally. He asked that the Planning Commission members look at what he has provided and they can discuss it further.

Mr. Majewski stated he has had inquiries about self-storage facilities, which is not a Use listed in the Township. He stated the closest Use to that is warehousing. Mr. Majewski also stated that currently we only allow Service Stations as a Special Exception in the C-3 Zoning District.

Mr. Halboth stated he feels there are probably a number of locations where there are apartments over garages where it is not permitted. Mr. Majewski stated he has also had inquiries about putting a “tiny house” in the rear yard for a property owner’s mother to live in.

Mr. Majewski asked that the Planning Commission also consider if there is anything they feel should be looked at with regard to Zoning. Mr. Wallace stated he feels they should consider Bed & Breakfast/Airbnbs. Mr. Bruch stated when they discuss this, he would like to consider not just historic properties but also farmland. He stated he feels one of the biggest problems with that type of business activity is disturbance to the neighbors; but when you have farmland with a certain amount of acreage, it would not be as much of a disturbance. He stated he was on the Farmland Preservation Corporation, and there are farmers looking for additional income which seems as good of a motivation as a person who owns a historic home.

Mr. Halboth asked if there is any Township regulation with respect to an Airbnb type of establishment; and Mr. Majewski stated they did adopt an Ordinance, and there are limitations and restrictions. Ms. Kirk stated a lot of other Municipalities have them; however, they are “being chiseled away” by the Court cases. Mr. Bruch stated that was why he asked about taxing since that would be another mechanism to try to deter this if the Township had the power to do it. Mr. Wallace stated he feels there is a lot to discuss about this. Mr. Majewski stated it is not just the one property on Makefield Road that was an issue, and there is another one that neighbors are concerned about which is on the border with Morrisville. Mr. Majewski stated at that property, they did Register with the Township; but they now want to go for a Variance to legitimize some of the things they would like to do which is the proper way to go about that.

Mr. Majewski stated at the next Planning Commission meeting they will be dealing with two Special Exceptions. He stated a Special Exception is a Use that is permitted subject to certain criteria. He stated usually it revolves around whether there is adequate sewage, the capability for parking, whether it will create trouble with traffic or light, etc. Mr. Majewski stated one of the Applications is for a Learning Center where they will teach computer coding to small groups of children including a summer camp, and they want to do it in the Giant Shopping Center. Mr. Majewski stated they have submitted an Application to the Zoning Hearing Board, and the Planning Commission’s role is to give an advisory opinion on the Planning aspects. He stated the Planning Commission needs to consider if they feel there are any overriding issues with traffic, parking, etc. prior to the Zoning Hearing Board having their Hearing and making their decision. Mr. Majewski stated he will provide information on this shortly.

Mr. Majewski stated the other Special Exception is for the property which was called Capstone Terrace and they had received Preliminary Approval over ten years ago for an Office Use. He stated while they had submitted an Application for Final Approval, they have requested Extensions of time for the last twelve years. Mr. Majewski stated this property is across the street from Shady Brook Farm on Stony Hill Road, next to Prickett Antiques.

Mr. Halboth stated this is the property where they made a presentation indicating office space was deemed non-viable. Ms. Kirk agreed and stated they had proposed apartments. Mr. Majewski stated they are not proposing office space. He stated they have proposed numerous uses for this property. Mr. Majewski stated the proposal now is to have a warehouse, and a warehouse is permitted by Special Exception in that District. Mr. Majewski stated they are proposing a 125,775 square foot single-story warehouse building with 252 parking spaces. Ms. Kirk asked if this for public storage, and Mr. Majewski stated it is

a warehouse not public storage; and if it was public storage, that is not permitted, and that would require a Variance. Ms. Kirk asked what kind of warehouse are they proposing. Mr. Majewski stated with the advent of Amazon and other similar companies, they now want to have warehousing facilities spread out locally where they can cluster items, and when people want something, it can quickly be delivered. Mr. Halboth stated he feels this Use would involve a lot of trucks and traffic, and Mr. Majewski agreed. Mr. Majewski stated this will be coming before the Planning Commission for an advisory opinion, and the Township engineer will review the information that the Applicant has provided. He stated the Applicant will come before the Planning Commission and present the Plan and discuss why they feel the traffic, the arrangement of parking, and everything to do with the project will fit in with the character of the neighborhood.

Mr. Majewski stated he has received numerous calls about what could be put on this property other than Office, but he has received no calls about Office space. Mr. Halboth stated if you pull into the existing Office space near the Dunkin' Donuts, you cannot find a parking space so he does not understand why Office space is not viable. Mr. Majewski stated there are vacancies. He stated someone bought both the Lower Makefield Corporate Center North and South, and they may be coming in front of the Planning Commission with some ideas on rearranging the parking and green space to make it look more like an Office Campus so that they can rent it out for more money.

There being no further business, Mr. Halboth moved, Mr. Bruch seconded and it was unanimously carried to adjourn the meeting at 8:10 p.m.

Respectfully Submitted,

Charles Halboth, Secretary

