

Upper Makefield *Township*

Planning Commission Meeting; Wednesday, March 26, 2014

The March 26, 2014 public meeting of the Upper Makefield Township Planning Commission was called to order by Vice Chair Kathleen Pisauro at 7:00 p.m. In attendance were the following members of the Planning Commission: Vice Chair Kathleen Pisauro, Member Bob Curtain, Member Hank Lieberman, Member Ken Rubin and Member Walt Wydro. Also in attendance were Solicitor Mary Eberle, Director of Planning and Zoning Dave Kuhns and Engineer Doug Rossino of Gilmore & Associates

I. Call to Order – 7:00 p.m.

II. Public Comment: No public comment.

III. Approval of Meeting Minutes:

A. February 26, 2014-Motion moved to approve, motion made.

IV. Liaison Report: Presented by Mary Ryan.

No comment.

V. Land Development:

A. Washington Crossing Inn Sketch Plan.

Don Marshall, Esq. spoke for the Washington Crossing Inn, also present were: John Vogel, Project Manager, Scott Mill, Van Cleef Engineering, Debra Folka, Esq., representative for the owner of the Inn, Mike Rafael, Architect, and Alex Bielanski, Manager of the Washington Crossing Inn. The Inn is located at Washington Crossing Memorial Boulevard and River Road. The property is zoning VR-1, Village Residential. It is outside the Historic District, but is located in the Overlay District, therefore is it required to go through the HARB approval process. The site is 2.5 gross acres. It is a non-conforming use. In June 2010 the Zoning Hearing Board (ZHB) set a baseline for the non-conformity, 18,519 sq. ft. of use. It has been a restaurant/ banquet hall facility for over a hundred years. In 2010 the ZHB allowed a 375sq. ft. kitchen addition to be added. Which was a 2% increase over the established baseline of the non-conformity by special exception. In February 2012 an additional 265.47 sq. ft. was granted by ZHB for handicapped accessibility to the Tavern Room. It added another 1.44% expansion of the allowable 25% by special exception. To date the Inn has been expanded 3.44% of the allowable 25% by special exception. At that time a waiver was granted by the Board of Supervisors for a 262 sq. ft. addition with concerns to the baseline, provided engineered as-built plans was created. That plan was submitted and approved. Before the Planning Commission is a plan for a 1,732 sq. ft. addition. Another 9.35 % will be added to the baseline with this project. The expansion with this proposed addition would be 12.79%.

Mr. Vogel and Mr. Rafael take over the discussion:

The west side of the facility is being concentrated to improve flow and access to the building. The owners of the Inn have discovered most patrons use the entrance to the bar area. When the bar is busy, this make the entrance very difficult to enter. What's being proposed, for access is a one story, entrance at grade, lobby with an elevator to the first

floor and extend to the second floor. This is located at the edge of the patio, the handicapped ramp will be removed. The front entrance will remain unchanged.

The bar is being moved to where the rear dining area is currently located. This move will consolidate the dining area into one. No seats will be added.

What was known as The Green Room will be converted into more bathrooms, extending the cooking area in the kitchen and adding back stairs for access from the second story back dining room. A corridor is also being created for staff to come and go through the facility.

Mr. Rubin requests that when approvals are granted the Inn acquires the approval from the PA Liquor Control Board for the additional building square footage.

Mr. Vogel noted that HARB has reviewed this improvement favorably, but because there was lack of a quorum, they are going to meet again on this proposal.

Architecturally, to the front of the building a 24' addition will be added to allow for a porch to shield the patrons from the weather when they enter. The additions will be very similar to what is currently existing.

A new basement and crawl space will be created to consolidate the infrastructure, electrical, plumbing, wiring, etc.. that is scattered about the property. The elevator will also service the basement where the liquor storage will be transferred from a locked closet on the second floor.

Mr. Lieberman asks about the impact to the outside seating area. Mr. Rafael states that the 6-8 tables will be relocated into the garden area.

Mr. Curtin asks about the look of the roof of the porch. Mr. Rafael confirms the roof is made of a synthetic slate material and have wood columns.

Someone asks, prior to this expansion, what is the largest amount of people main banquet hall can hold? It is confirmed with the Inn's Manager, the amount is 180 guests. After renovations, it will not change. Parking will not be impacted nor made Rossino worse.

Ms. Pisauro asks about residential rooms. Mr. Vogel confirms there are not rooms for rent and there is currently nothing in the plan for such. Septic issues make it impossible.

Mr. Scott comes to the mike to review engineer letters. This property is in the 500 year floodplain. This is in association to the river. The property itself is 2.5' out of the FEMA designated floodplain. Where applicable, all items to the letters the Inn are willing to comply. Parking will not be affected. The parking arrangement with the Historical Park no longer exists. There is currently no plans to change the parking lot. Bar seats number will remain the same.

Ms. Ryan asks about the proposed seepage bed. It is confirmed the seepage bed is for storm water management. Ms. Ryan asks about the stone ice house currently on the property. The ice house will try to be relocated on the property. It is not an historic property.

Ms. Eberle confirms that this application is a Sketch Plan and no recommendation is required to the Board of Supervisors. This is an opportunity for the Planning Commission to provide feedback to the Applicant.

VI. Joint Municipal Zoning Ordinance.

A. Winery Ordinance Amendments.

Ms. Eberle reminded the Planning Commission the last time this ordinance was before them it was to define an outdoor event. At that time, the Board of Supervisors accepted the Planning Commission's recommendations and passed them along to the Jointure. The Jointure was adamant the ordinance was too complicated. As Newtown Township too has a winery, the Jointure felt a better definition of an outdoor event as "*any gathering of people which includes the use of any amplified sounds.*" The amount of people or non-amplification has no affect on whether or not something is considered and outdoor event. As all three Townships will have to agree, the ordinance proposal is coming back to the Planning Commission with limited options: do nothing or accept the Jointure revisions. Ms. Eberle goes on to explain that when this was before the Court, it was asked of the Planning Commission to come up with a definition of an outdoor event because the (Crossing) Winery and the neighbors will never come to resolution without a definition. Mr. Rubin asked if regulating the winery ordinance as a stand alone would be an option. Ms. Eberle informed the Planning Commission this would not be an option because it would not survive challenge in the Courts. Mr. Lieberman questions Ms. Eberle the consequence of doing nothing. Ms. Eberle paints the scenario of a never ending battle between neighbors and the (Crossing) Winery involving the Township. Mr. Lieberman states he prefers the Jointure definition of an outdoor event. Ms. Eberle asked Mr. Carroll Jr. if he has any input prior to public comment, which he state he did not. Ms. Melton, 23 Longmeadow. Ms. Melton states she shares a long common property line and is affected by the parking from the Winery. She finds the Jointure definition is unacceptable, making it worse for the neighbors. She goes on to say noise that originally was thought to have been regulated by the noise ordinance is not, and events held at the Vineyard are supposed to be quiet events, not with large string quartets and morning yoga events. Many of these events are big interruptions to the neighbors. The 50' parking set back and the parking planting buffer are not being enforced. Ms. Eberle asked Ms. Melton if that was brought up in Court. Ms. Melton stated what was brought up in Court was the enforcement action that was brought up several years ago that was very specific to a couple of issues; the ending time, the type and the number of events. Ms. Melton goes on to state, at that time it was used to see how well the original ordinance would hold up in Court, which it held very well going all the way to the Commonwealth Court. She noted that none of the Judges had a problem with the definition with an outdoor event. It is only when the Vineyard challenges an item that it becomes and issue. She feels that is why we as still here discussing this same matter. Ms. Eberle reminds Ms. Melton that the noise ordinance is still in full effect. The Township has hired Audiologists, and then reminds Ms. Melton the findings of the Audiologist would not stand enforceable for the Township in Court.

Ms. Melton would be fine having the Zoning Director defining what is an outdoor event. Ms. Eberle challenged that there needs to be a defined standard a Judge can base a ruling.

Carol Evinski, 6 Longmeadow Drive: Ms. Evinski states the back of her property is along the Vineyard back property line. She reminds the Planning Commission of the typography of the site lends to "natural amplification." Her issue is not solely with the music, but also with the human noise coming from the events. She believes that the Vineyard will become

a full-blown catering hall. She feels because the Vineyard does not pay taxes and the neighbors should have greater protection from the Township at what occurs at the Vineyard. She believes this proposed ordinance helps only the Vineyard and not the neighbors. Ms. Evinski goes on to explain her daughter's bedroom is on the side of the house that is the same of the Vineyard. With that, her daughter has lost in excess of 500 hours of sleep from noise emanating from the Vineyard. Her daughter cannot study in her bedroom because of the disturbance. Ms. Evinski is concerned with the enforcement of the ordinance. She is disappointed in the lack of preparation the Vineyard had to perform in comparison with the Washington Crossing Inn (Sketch Plan) submission earlier this evening, when they opened for business ten years ago.

Mr. Lieberman asked what Ms. Evinski would like the Vineyard to do to for the neighbors.

Ms. Evinski replied she would like to see some planting buffers. She again reminded the Planning Commission of the event limit of 24 events because the Winery is surrounded by a residential neighborhood.

Mr. Lieberman questions again if the buffering would help Ms. Evinski specifically.

Ms. Evinski said she didn't know because her house is higher than the Winery. When all the attendees are leaving the events, the headlights shine, stragglers stay behind drinking wine, the music may stop at 10 (pm), but the noise sometimes doesn't until after 11 (pm). She comments "It's a catering hall." She states some of the events are so large they bus people in from the church on Rt. 532.

Mr. Lieberman asks Mr. Carroll Jr. if that was true. Mr. Carroll Jr. states it is not. Ms. Evinski asks why then is the same bus dropping people off then idling in the church parking lot? Mr. Carroll Jr. respectfully states he has consistently been taking notes all along tonight and there are many inconsistencies to the claims during public comment. It's truly difficult to listen to.

Mr. Lieberman asks to hear the inconsistencies.

Mr. Carroll Jr. starts;

The PLCB noise law where noise cannot pass property line, limited wineries are exempt from that law. All the wineries in the state are currently running events and such, that is only way they can make money.

Mr. Carroll Jr. invites everyone to come to the Winery to inspect the plantings and buffering already installed to the property.

The Carroll's and tenants live on the property so noise is kept at an acceptable level.

"We are a Vineyard/Winery with catered events. We are not a catering hall!" Mr. Carroll Jr. exclaimed. He went on to state that there was one catered event since January 1, 2014. The majority of the revenue is from producing wine.

Mr. Lieberman asked how many outside events has the Vineyard held since the beginning of the year. Mr. Carroll Jr. stated none; they will not start until May 1st.

Mr. Lieberman asked how many they had last year. Mr. Carroll Jr. asked since May 1st? Mr. Lieberman clarified, "No, the entire year." Mr. Carroll Jr. stated twenty-four (24). We presented that list to a Judge and we presented that list to Dave (Kuhns). We have never violated that number as has been stated here tonight. Another point he wanted to bring up was that it is being depicted that the whole neighborhood is against us, which is not true. If you come to the Vineyard, you can walk the perimeter, I will show you customers who about the perimeter, with the same buffer, that have the same distance, if not closer. They are Wine Club Members. They are regular attendees to our functions, they have children, they are neighbors to Ms. Evinski, and they don't talk about these things. Once more, the property that abuts to the Winery stated they bought the property because it backs to the Vineyard. They were and continue to be customers, and are thrilled to be living there in walking distance; they built a balcony on their house to overlook the Vineyard. We are talking about a few people who bought a house next to a horse farm that is now a vineyard. I understand change is hard. I think all the way along, we have rights too. My parent's have lived on the property for thirty (30) years when we saw this was becoming an issue, we hired a security staff for outdoor functions, so that means, twenty-four (24) times, we hire a security staff, roaming around the property with noise detection devices looking for anyone that is drifting or leaving the event. If anyone leaves the event they are directed back to the event. The purpose to that is to contain the noise. 9:45 (pm) the last song is played, and then the security staff escort people out to their vehicles. It is our directive to have people off the property by 10:05 (pm) at the latest. All contract states music is done by 9:45 (pm) all persons are off the property by 10:00 (pm). There is no lingering allowed, no paying for extra song. I can provide every single police report. With the exception of maybe one out of one hundred and fifty reports did they note they could not hear any violating noise coming from the property. I feel so frustrated. It comes down to a dispute with a few neighbors.

Mr. Lieberman asks if draft revision is acceptable. Mr. Carroll, Jr. said no, as it's unenforceable. Mr. Lieberman noted that was for the Township to decide what was enforceable. Mr. Carroll, Jr. then stated the ordinance is unacceptable because what is happening is the Winery is dragged into court by "bystanders" with high-powered cameras and equipment standing on the property line waiting for something to happen. Mr. Lieberman reminded Mr. Carroll, Jr. that if the Planning Commission does nothing he is in the same position. Mr. Carroll brought up what Newtown Township police does is they take a picture of the amplifier with their smart phone and they right it in their police report.

Mr. Lieberman asks if the Winery had an event with 250 without amplification that would not be an outdoor event, correct? Mr. Carroll, Jr. confirmed that would be correct. He goes on to say that the noise ordinance still stands to regulate noise generated from any events or the Winery. Ms. Eberle confirms the same. Mr. Carroll, Jr. is in favor of the definition by the Jointure. Mr. Rubin states the change being proposed make it worse than it was before. In the future he asks that staff would contact the Jointure for feedback so the Planning Commission would not have to spend so much time on endeavors that will not be approved. He does not feel the Jointure definition is acceptable. Ms. Pisauro asks Mr. Rubin of the two options, do nothing or accept the Jointure definition, which would he choose. Mr. Rubin says if those are the only options he would leave it as it stands.

Ms. Eberle clarifies the Planning Commission's goal is come up with a clear definition of an outside event, to come up with an ordinance that would allow the neighbors to enjoy their property. Is it better to leave the ordinance as it is or if the event is not amplified, it is not an event.

Mr. Wydo asked Ms. Evinski what is wrong with the ordinance if it is passed. Ms. Melton states that the ordinance is flawed because she cannot enjoy her property. Ms. Eberle clarified that the ordinance before them does not cap the number of people at an event, only if there is amplified sound, it is an event. The converse to that being if there is no amplified sound, there is no event. Ms. Eberle continues by discussing that the neighbors were concerned that outside yoga should be considered an outdoor event. This ordinance would not consider yoga and outdoor event, and would not could towards the twenty four (24). This is the issue the Planning Commission is debating. Is it better to leave the definition the way it is, or is it better to have a definition that says if it is not amplified then it is not an event.

Vice-Chair Pisauro asks Ms. Eberle in light of the Judge finding yoga an outdoor event, doesn't this (ordinance) contradict the finding?

Ms. Eberle clarifies by stating the Judge did not find yoga as an outdoor event. There was no definition of an outdoor event, so at the time the Judge turned to the then Township Solicitor who recommended a definition of his own of an outdoor event. An order was not issued. It was a direction from a Judge. The Winery and their Solicitor agreed to abide by the direction and wrote a letter to the Township and Solicitor asking for a definition of an outdoor event is authored so the feud between the Winery and the neighbors will stop.

Mr. Rubin recognizes both parties' needs and also feels the residents are protected two ways; there is a standing ordinance limiting the events to twenty four (24), and they are protected by the noise ordinance.

Ms. Evinski adds she feels that there is no protection because the noise ordinance is not enforced.

Mr. Rubin stated that is a different topic.

Vice-Chair Pisaro reminds Ms. Evinski that at this time, the conversation is between the Commission Members and asks the Commission for any other discussion. She goes on to ask why the Winery is not following 50' set back for the back yard. Ms. Eberle answers by explaining they are a pre-existing non-conforming.

Vice-Chair asks for single votes from each Member, either do nothing or accept the Jointure ordinance as in paragraph D3 as it's stated.

Mr. Lieberman recommends accepting D3.

Mr. Curtain recommends accepting D3.

Mr. Wydro recommends accepting D3.

Mr. Rubin states he enjoys having the Winery in the Township, but he feels the ordinance as drafted "swings the pendulum too far in the other way." As much as he has tried to come up with a middle ground, it would allow, in effect, events greater than twenty-four. A two-hundred and fifty person party without amplification would not be considered an outdoor event.

Mr. Carroll, Jr. offered that the Winery does not have the space to fit two hundred and fifty people, not even outside. That would never happen.

Mr. Rubin revised, a hundred and fifty person event could happen?

Mr. Carroll, Jr. confirmed that could happen.

Vice-Chair Pisauro continued the vote asking Mr. Rubin his recommendation, Mr. Rubin voted to do nothing.

Vice-Chair votes to accept D3. She continues thanks the Planning Commission for the tremendous amount of effort put into this discussion, and recognizes the Planning Commission accepts paragraph D3, 4:1.

- B. Base Site Area, Impervious Calculation Revision Discussions.
Planning Commission discuss base site calculations vs. gross site calculations with Mr. Rossino. The Planning Commission has directed Mr. Rossino to speak to the other Township Engineers and report back to the Planning Commission.
- C. Revisions to JMZO to allow pool water area to be considered pervious.
See above

VII. Current and New Business.

- A. 2013 Annual Report
Mr. Kuhns reviews the 2013 Annual Report with the Planning Commission. The Planning Commission accepts the Annual Report.
- B. Items for Planning Commission in 2014, Dave Kuhns.
No comment.
- C. Bucks County Planning Commission Annual Report of Review Activity-Information for the UMT Planning Commission. No comment.

VIII. Public Comment.

IX. Adjournment

Motion made to adjourn 9:30 p.m., all in favor, motion passed.

Next meeting April 23, 2014, 7:00 p.m.

Approved at August 27, 2014 meeting.