

Upper Makefield *Township*

Planning Commission Meeting; Wednesday, May 28, 2014

The May 28, 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 Greg Pitonak, member Ken Rubin and Member Walt Wydro. Also in attendance were Solicitor Mary Eberle, Director of Planning and Zoning Dave Kuhns and Engineer Larry Young of Gilmore & Associates.

I. Call to Order – 7:00 p.m.

II. Public Comment: Mr. Rubin thanked the packet organizer for including the previous Board of Supervisor minutes in the Planning Commission packet. He found them very useful.

III. Approval of Meeting Minutes:

A. March 26, 2014-Moved to May 28, 2014.

IV. Land Development:

A. Worthington Sketch Plan, Eagle Road & Deerpath Lane.

Chance Worthington, Worthington Custom Builder. Mr. Worthington explains the proposed plan to the Planning Commission. He explains this parcel of land is originally part of the O'Brien Subdivision, which created five (5) lots. This proposal is for Lot 2 of the O'Brien subdivision only. Lot 2 consists of 21 plus acres. Currently on the site is an abandoned home and two barn structures. The new plan creates a fifteen (15) acre lot with a new building envelope and the remaining four (4) acres will be subject to a Lot Line change to an Lot 3. The intension is to build a home on the fifteen acre parcel keeping with the homes in the area. The new home will be roughly in the location of the existing pole barns. The current home will be demolished. Part of the original subdivision from 1972 shows an area to be restricted from all dwellings. Mr. Rubin clarifies from the 1972 subdivision restricted any building in the specific area, and now that area is where the future home is being proposed. Mr. Worthington confirmed Mr. Rubin was correct. Mr. Young further clarifies that the proposed home is going where the current pole barns are located. Mr. Rubin asked what was the reason for the restriction. Mr. Worthington has met with all the surrounding homeowners of the original O'Brien subdivision to forensically find the reason for the restriction. Homeowners at 1310 Eagle Road also own Lot 2 of the O'Brien subdivision will be acquiring the remaining four point two (4.2) acres from the fifteen (15) acres after this proposal is accepted. . The 1310 Eagle Road Homeowner is in favor of this proposal. The Homeowner who live on Dearpath Lane, which would be located behind the proposal are in favor, additional neighbors are in effect. Ms. Eberle explains to the Planning Commission in this situation a plan could not move forward unless the neighbors were unanimously favorable to what was being proposed. Ms. Pisaro asked Mr. Kuhns if the record has any record or reason for the restriction. Mr. Kuhns stated the Township does not. Mr. Worthington goes on that he has met with Jeff Marshall from the Heritage Conservancy to ask about the restriction. Mr. Marshall feels that the original homeowner did not want to see another residence as a feeble attempt at a conservation easement. Mr. Marshall offered that a proper Conservation Easement could be placed on this parcel. The parcel will contain all levels of easement including a Maximum Protection Area, that would the most restrictive. Even if a tree falls, the tree would have to remain untouched. Mr. Worthington will be working with Heritage Conservancy to properly conserve this property. To

summarize, Mr. Worthington states that no new homes will be created from this proposal, three unattractive structures will be eliminated, a proper Conservation Easement will be placed on this property, and the home will be in keeping with the area residence.

Mr. Leiberman asks Ms. Eberle if moving forward with this proposal would it alleviate the current restriction. Ms. Eberle answers that a note on the plan would release the restriction with confirmation of neighbors in favor of the plan. The neighbors would sign the final plan, eliminating the restricted area amongst other ways.

Mr. Rubin asks how much land was covered under the restriction. Mr. Worthington did not have the exact number, he feels that it would be twelve (12) to fifteen (15) acres. Mr. Young clarified there are no meets and bounds to the restriction. Mr. Rubin then goes on to ask how much conservation is created with the new plan? Mr. Worthington confirmed with the varying degrees of easements, more area is covered under the new plan. Mr. Rubin confirms the Maximum Protection area can contain no buildings. Mr. Worthington states nothing can be done to the Maximum Protection area. Mr. Rubin goes on say that there will be more areas of Conservation Easement with the plan than what is currently on the property. Mr. Worthington confirms that to be true.

Mr. Rubin notes that the property is owned by the Estate of Alfred Ferrari and asks Mr. Worthington if he is a Contract Purchaser? Mr. Worthington confirms. Mr. Rubin asks the current owner owns land that they currently cannot build and they own no surrounding land? Mr. Worthington replies that the current owner does not own any land around this parcel and that the current house could be torn down and replaced. Mr. Rubin asked if there was contract to build a house. Mr. Worthington answered that he has a contract to buy the land, no one is contracted to buy the proposed house, he does not build on spec. Mr. Rubin asks for assurance that the house would be in keeping with the area? Mr. Worthington passes around examples of his work Mr. Young added that Mr. Worthington is the builder of the Merrick Farm subdivision.

Ms. Pisauro asked the audience if there is any comments. No reply.

Ms. Pisauro presents a letter to the Planning Commission, from Gilmore & Associates.

Mr. Worthington said he has reviewed the letter and with work, every item will be a "*will comply*." He states that when the plan moves forward as a Preliminary/Final for the Lot Line Change, every item will be "*will comply*." Mr. Pisauro added that all the items addressed in the letter are standard items that will need to be noted on the plan. Mr. Young states that not for a Sketch Plan, when they proceed to the next step of a Lot Line change these items will need to be addressed.

Ms. asks for any comment from the Planning Commission?

Mr. Wydro asks for clarification for the existing restriction. He would like to see a comparison of the old plan and the new. Mr. Wydro offers that a long time ago, a singles bar was proposed for that location, and was not deemed favorable to the Township. After that the O'Brien's purchased the property and placed restrictions on the parcel. That is why Mr. Wydro would like to see a comparison. He feels that this proposal may be better that what is existing. Until he sees a comparison he cannot make a recommendation of approval. Mr. Worthington asks Mr. Wydro if that request could be included in the Preliminary/Final of the Lot Line Change? Mr. Young reminds the Planning Commission that this is a Sketch Plan and all of these issues and more will be included if this plan moves forward. Mr. Wydro presses for a comparison.

Mr. Pisauro recounts the acreage separation, and asks if there will be only one driveway? Mr. Worthington confirms there will be only one driveway. He adds that there will be one less house on getting access from Deerpath Lane.

Mr. Rubin asks if the fifteen (15) acre parcel will be deed restricted? Provided that approval from the neighbors has been acquired and this restriction is older than forty (40) years, and there is confirmation that the easement to be placed on this parcel is larger than what currently exists, he is in favor of the revised plan.

Mr. Lieberman feels a good comparison has been made with what is existing and what is being proposed and is in agreement.

Mr. Curtin adds this is a good plan as it increases the amount preserved land and he is also in agreement.

Mr. Wydro confirms the Lot Line Change with Mr. Young.

Mr. Worthington confirms four (4) acres of the Line Line Change is being acquired by the property owner at 1310 Eagle Road.

Mr. Pisauro agrees with the plan and tells Mr. Worthington "We will see you back shortly."

B. Spiro Conditional Use Advisory Opinion Request, Use H-18, 1151 Eagle Road.

Ms. Debbie Spiro and Mr. Michael Spiro, 1151 Eagle Road, speak of behalf of the request. The property located on Pineville and Eagle Road. They propose to run their business Jaydan Contractors, LLC from their residence on Eagle Road. Jaydan Contractors, LLC is a heating and plumbing service company. The intention is to run the company from a home office for administrative needs. There will be no more than two (2) lettered truck at the residence during non-working times. There will be two employees, who also live at 1151 Eagle Road. There will be storage of equipment that will not disturb the neighbors. There will be no fluctuation in the line voltage. Deliveries will be made between 8am-5pm. There will be no signs posted on the property.

Ms. Eberle reminds the Planning Commission of the procedure to acquire a Conditional Use. Mr. Eberle asks if the lot acre is five (5) acres or more. Mr. Spiro answers no, it's 4.4 acres. Mr. Lieberman asks what prompted this application. Mr. Kuhns explains that for the two (2) years there has been construction going on this property and there has been some complaints from neighbors. He continues, because they have less than five (5) acres a Conditional Use is necessary. Ms. Eberle states that all the conditions must be met for a Conditional Use to be granted. Without five (5) acres a variance will be required. A Conditional Use is required for parcels with less acreage. The special requirements; a sight plan must be supplied showing all structures and improvements to the property. Location of all the residences within five hundred (500) feet of the site location. A description of the services. Type and quantity of materials being proposed to be stored on the property. The number of employees and other residents that will engage in the use. Any structures to be construction in connection of the use. Elevations of the proposed building to depict the nature of the neighborhood. The location of equipment and vehicles will be stored. Information regarding deliveries. The Board of Supervisors will consider the proximity of the area where the proposed use will be conducted along with adjoining residential structures. The intensity of the activity being proposed in the conduct of the use impact on neighboring property owners with respect of dust, noise or adverse effects. Any proposed buildings to be constructed will impact the neighboring properties. The extent to which the use can be buffered from neighboring properties. Ms. Eberle reminds the Planning Commission the criteria to be met by the Applicant. Mr. Lieberman compliments the improvement to the site, and offers this is a horrible idea. He is vehemently opposed to this application. Ms. Spiro offers the lettered trucks belong to her husband and son. To park the trucks in a parking lot would require the purchase of two vehicles. Ms. Pisauro states that she believed the use required the vehicles to be garaged. Ms. Spiro clarified that the only portion of the business being run from 1151 Eagle Road is the office. The only traffic the neighbors would

notice would be her husband and son leaving to and coming home from work. She goes on to say that there is still construction going on at the property. A carriage house is being constructed by her husband. That is not a Jaydan project. Mr. Spiro clarified the only work being done from the house is office work. Ms. Pisauro asks if there is any other location Jaydan is running business. Mr. Spiro answers no. Mr. Rubin asks if they are currently in violation of the current ordinance. Mr. Kuhns offers that it is currently in violation because they do not have a zoning permit to run the office. Mr. Rubin feels that it really comes down to the neighbor. It is a rural area. This would be changing the character of the neighborhood. The proposal would not be in harmony of the neighborhood. Mr. Rubin is not in favor of this proposal. Ms. Spiro states the debris on the property is from current improvements to the property. It has nothing to do with the running of the company. The only activity on the property related to Jaydan is the office work and two trucks being stored. Ms. Pisauro asks how many other employees. Ms. Spiro states there are two (2) other employees, however they never come to the property. They only work on site of Jaydan projects. Ms. Eberle asks the Spiros' to describe the types of trucks being used in correlation with the business. Mr. Spiro describes a box truck and a pick-up truck. Both are one (1) ton vehicles. They are service trucks. Ms. Eberle goes on to describe where the trucks are required to be parked, not in the front or side of property and are to remain out of the public street right-of-way and when parked on the property shall not be visible from the street or neighboring properties. Ms. Spiro quotes a portion of the Special Use conditions that states no more than two (2) commercial vehicle may be permanently parked on the property. Ms. Spiro states that they live at the home. Trucks are their own trucks, no employees are on the property. Ms. Eberle reminds the Applicant to show the Planning Commission how you are going to comply with the special conditions. Asks if they use more than 1600 square feet of building for vehicle storage and office work. She goes on to ask about deliveries to the property. Ms. Spiro assures the Planning Commission the deliveries are by Fed Ex or UPS only. They are small boxes or envelopes. There is no storage required for the deliveries. Ms. Pisauro presses if one day the deliveries could get large. Mr. Spiro states there is nothing stored at the house for the business. Ms. Spiro reminds the Planning Commission that the property is still under construction and there is confusion between the business and construction. Ms. Pisauro asks Mr. Kuhns about the complaints regarding this property. Mr. Kuhns states the complaints are construction debris, a dumpster and a portable toilet. Mr. Curtain states that is due to the building activity at the home, not in relationship to the business. Ms. Pisauro asks how long construction has been going on. Mr. Spiro states that construction has been going on at least two years. Ms. Pisauro asks why there is a portable toilet. Mr. Spiro answers that is State Code to have toilet for the construction workers. Mr. Curtain asks how many vehicles are currently parked on the property. The Spiro's answer one. Mr. Curtain asks if there has been a complaint. The Spiro's answer one. Mr. Kuhns offers the nature of the complaint is the unsightliness of the vehicle. The people who pass by the residence and see a lettered vehicle assume a business is being run from the property. Mr. Curtain states that separation is required from construction of the property and running the business from the home. You have to come into compliance with the ordinance. Mr. Rubin refers to section H-18 and Article XIII that would need to come into compliance and does not feel the Applicant could comply with the specifications, therefore this should not be recommended to the Board of Supervisors. Mr. Curtin feels that if the Applicant can comply with the conditions of the ordinance this application should be recommended, as there are many business being run this way that no one probably knows about. Ms. Pisauro asks why the cars aren't in the garage. Mr. Spiro states the box truck won't fit into the garage. The carriage house is being constructed for personal cars. Mr. Lieberman states this is not keeping with area. Ms. Eberle reminds the Planning Condition that Home Occupancy based businesses are a use in the Township. Ms. Pisauro asks about the dumpster. Mr. Spiro states he would be happy to sign and agreement stating when the construction is done the dumpster is gone. Ms. Pisauro was happy with that statement. Ms. Eberle summarizes that this application seems to be in compliance with H-18. Where the problem lies is the 4.45 acres and the trucks being visible from the neighboring properties and the street. The Applicant will install vegetative buffering for the trucks. The business being run from the office is in harmony with the existing neighborhood. The Planning

Commission has to decide if this application is in harmony with the existing zoning district. Mr. Curtain is concerned that the business could snow ball. Mr. Spiro again assures the Planning Commission that the business is limited to office work only. The driveway entry columns greatly limit the size of the vehicles that can enter the property. The only deliveries are limited to the home office.

Mr. Ron Smolow, Three Ponds Lane, comes to the microphone. He states the character of the neighborhood is residential. He feels the ordinance is in place to protect the neighborhood. The home is keeping with the neighborhood. The activity on the property that is of concern. He recognized the construction is convoluted with the business. He does not feel the vehicles could be screened by the nature of the property. He notes the types of trucks that have been on the property from time to time. He feels there are four trucks, a storage pod and a backhoe on the property not just two trucks. He feels the storage pod is being used for business purposes. There is also outdoor storage of ladders. There is a dumpster and toilet on the property. Mr. Smolow feels that not all of these items are used for construction. He asked the Planning Commission if this application moves forward to be certain the trucks are limited to two and they are screened. He does not feel the Applicant can comply with the square footage limited by ordinance.

Mr. Spiro assures the Planning Commission the activity and debris on the property will be gone once the construction is finished.

Mr. Larry Breeden, Bakers Drive. He feels the Applicant has come before the Planning Commission in a very transparent way.

Ms. Eberle excuses herself from the meeting to give legal advice to Mr. Breeden.

Mr. Pisauo asks the applicants if they were aware of the ordinance when they purchased the property. Mr. Spiro answered no. He goes on to add that they knew if they moved to a development they couldn't run a business, not a free standing property. She asked if they investigated the ordinance. Mr. Spiro answers no.

Mr. Breeden returns withdrawing his comment on advise of Council.

Ms. Eberle coaches the Planning Commission to come to objective standard whether or not the Applicant will come into compliance with the ordinance and if they are entitled to a Conditional Use.

Ms. Pisauo polls the Planning Commission.

Mr. Lieberman votes no. Mr. Curtain votes yes with conditions. Mr. Wydro votes yes with conditions. Mr. Pitonak votes yes with conditions. Mr. Rubin votes no. Ms. Pisauo votes no.

Mr. Rubin notes to the Applicants that the Planning Commission is advisory to the Board of Supervisors with this Conditional Use request. The Board of Supervisors are the governing body to this application.

V. Current and New Business.

A. McAllister, 1082 Taylorsville Road, Sign Application.

The Planning Commission approved the sign application with no issue.

VI. Liaison Report: No report.

VII. Public Comment. No public comment.

VIII. Adjournment-Motion to adjourn at 9:00pm. Motion second. All in favor.

Approved at the August 27, 2014 meeting.