

WEST HANOVER TOWNSHIP PLANNING COMMISSION

7171 Allentown Blvd., Harrisburg, PA 17112

(717) 652-4841

THURSDAY, JUNE 22, 2023

MINUTES

Richard Mula
Elizabeth Bezsylo
Jeff Shade
Kyle Miller – Absent
Alan Williamson

Staff Present

Janet Hardman, Zoning & Planning Administrator
Sharmaine Harman – Admin Assistant.
Dana Mitro – Assist. Zoning & Planning Admin.

Others in Attendance

Lee Stinnett
Troy Truax
Mike Gossert – Twp Manager

I. CALL TO ORDER: Mr. Mula

II. ROLL CALL: Mr. Miller - Absent.

III. APPROVAL OF MINUTES: Mr. Williams made the motion to approve. Ms. Bezsylo 2nd the motion.
. **Motion passed unanimously.**

IV. PUBLIC COMMENT –

Robert Fowler – 8048 Ryder Lane – Request to change the following in the zoning ordinance.

1. Permit single family, proposed ordinance only permits multifamily.
2. Permit model homes, that are a permitted temporary use, to be converted to single family at conclusion of sales and remain in place rather than be removed.
3. Permit assisted living facilities not mentioned.
4. Make the following change to R-3 Zone.
 - a. For multiple principal buildings located on a single lot, change the minimum side separation to 15 feet – its currently proposed at 20 feet.

Patty Shade – 672 N. Fairville Ave – Are you doing away with the steep slope ordinance if so why?

Mr. Truax – The way the current ordinance is written steep slope provision are applicable to certain surface waters near steep slopes and riparian buffers. We removed from the current ordinance was because of the legal issue the Township had enforcing the current ordinance. We still have steep slope provision in there. Those provisions were for water sheds and stormwater protection. The riparian buffer overlay includes steep slopes protection that is focused on the surface waters adjacent to steep slopes.

Mr. Stinnett – The steep slope ordinance was declared unreadable by the Dauphin County and Commonwealth Courts. The committee evaluated the purpose of steep slope provision. In general, the desired purpose of steep slopes is for protection of water sheds. The best protection against that risk is by providing for steep slope provision within the riparian buffers which will protect erosion and runoff.

Resident – Just because of one court case. You can't rewrite it.

Mr. Stinnett – Again we are asking the question why are we trying to protect steep slopes? Is it erosion from developing on steep slopes. What is the best way to protect against that risk? By not allowing the removal of steep slopes in the watershed that we are trying to protect. If you want to protect the streams from steep slopes you don't remove steep slopes from the stream and you don't allow removal of the steep slopes within the buffer area of the streams

Resident – Did the judges come up with this?

Mr. Stinnett - I don't think the judges have come up with a technical answer. They have said the prior ordinance as written is invalid. In the year 2016 two courts have said the prior ordinance was unenforceable because you couldn't understand what it way trying to say.

Resident – What was taken away that is not enforceable?

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Mr. Stinnett – The calculations. We had to ask what the best technical way to an engineering and environmental perspective steep slope provisions were designed to protect against. That was determined by not allowing the development of steep slopes areas within the environmental sensitive areas. The runoff you want to make sure we are not creating runoff at the source of the environmental sensitive area.

Mr. Truax – There are provisions that are already there. There are stormwater management regulations in the Land Development that migrates runoff, there is erosion and sedimentation.

Ms. Shade – We have been hearing that there were no steep slopes.

Mr. Truax – That is false. There are steep slopes in riparian buffer.

Mr. Stinnett – The stormwater ordinance and other regulations may require something larger it could be 100 feet depending on the stormwater or other regulations required. In the stormwater ordinance regulations, which is separate from the zoning it states they require 35 ft buffer. We need to make it consist to the stormwater ordinance regulations which states 35 ft.

Mr. Bair – 7629 Moyer Rd – Water sheds are not at the top of the hill.

Mr. Stinnett – As it relates to regulations of surface waters it starts where there is water according to Supreme Court case law. We are limited in our ability to regulate streams, riparian areas, and wetlands after a Supreme Court decision. The U.S. Supreme Court limits what a waterway of the U.S. Commonwealth is. So, we cannot regulate outside of that area.

Mr. Bair - In the original ordinance steep slope overlay district the terminology in there was deemed vague. This is the same terminology in the new ordinance. The word area was vague that no one could understand what area they were talking about.

Mr. Stinnett - It was how the area was defined within the ordinance and the calculation in the prior ordinance. Under the prior definition of area, there is no way to determine whether you were talking about the disturbed area, portion of the property, or a teepee in the middle of a fifty-acre property or average slopes over the entire parcel or was it the average slope of the disturbed area. That was the issue the courts had.

Mr. Bair – I find it difficult to believe that a definition can't be made stronger to defend against the courts. When you talk about wetland area, and you delineate wetlands you are creating an area that has boundaries. Why can't you do the same thing for a slope area on the side of a hill in areas where the slope is greater than a twenty-five percent.

Mr. Stinnett – Again the question you should ask is why are we regulating steep slopes? It is to protect environmental sensitive water areas, like streams, wetlands. You don't want to cut down a steep slope causing an increase of run off. The best way to protect those areas is by regulating steep slopes within those areas. We are trying to find a better balance. Yes there will be variances that's why the MPC provides this. I have never seen this many variances for one provision within an ordinance.

Mr. Truax – The 25 foot was the benchmark but looking into the stormwater management there's a 35 foot already there. Regardless of what was done you already have a stormwater regulation that said 35 feet unless otherwise required by Chapter 102.

Ms. Berman – The Comprehensive Plan states we are to promote development and construction that retains and enhances existing natural features. The reason wasn't to protect waterways. Its not just the wetlands we are trying to protect but we are trying to protect the nature of our community.

Mr. Truax – Do you want to continue to be challenged on steep slope ordinance? That decision must be made by the Board of Supervisors. We are trying to make a balance and trying not to put you the taxpayer in that situation having to pay out a lot of money if they go to court.

Mr. Mula – Any other comments? The next item is New Business. The applicant asked to have item tabled. until July 27,2023

V. NEW BUSINESS

Applicant asked to have this item tabled for this month.

23.003 JoJo's The Applicant, Francesco Randazzo, is the owner of real property located at 7800 Allentown Boulevard. The applicant proposes to demolish 3 existing office buildings (a 2 story, 2,800 square foot) office building in the front, a 2-story office building (3,100 square foot) in the rear, a one storage detached garage (975 square feet) in the rear and construct a 940 square foot addition to the restaurant, construct a 2 story,

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10,024 square foot office, storage and restaurant building and add 16 parking spaces in the rear. The engineer for the land development plan is RJ Fisher & Associates Inc.

A. Deferral of SALDO 173-26 & 27 – Installation of Curb and Sidewalk

Deferral of this section as the opposite side of Holstein Road does not have any curb or sidewalk. Since there is a net decrease in impervious coverage, no stormwater will be completed at this time. Adding sidewalks and curb would affect the drainage of the overall site and would therefore require additional stormwater plan. **Tabled until July 27, 2023**

VI. OLD BUSINESS

A. Discussion on Zoning Ordinance Modernization

Mr. Truax – the public comment period ended on June 11, 2023, That's the 45 days regulated by municipality policy code. It requires the Township to send the ordinance to Dauphin County Planning Commission. This is a requirement. The staff recommends increasing the riparian buffer to be consistent with 168-18 (stormwater management) of the township code, which specifies "Except as required by Chapter 102", the riparian buffer easement shall be measured to be the greater of the limit of the 100-year floodplain or a minimum of 35 feet from the top of the streambank. Section 4.36 Woodland Preservation applies to the conservation district only. The staff recommends removing 4.36 Woodland Preservation since 173-38 "Existing tree and vegetation preservation of the Township Code as the prevailing requirement. Group Housing, this is a Fair Housing issue you must treat group homes as a single-family dwelling wherever single-family housing is allowed.

Mr. Stinnett – At this time I recommend we are likely going to remove from the ordinance the sign provision and reserve that section later due to the recent middle district court case.

Mr. Truax - We are going to make changes to the ordinances in red lettering and strike out what we are deleting. The next version will be for public review. It will still have to go to the Planning Commission until they deem it the version they recommend moving forward to the Board of Supervisors for Public Hearing.

Mr. Shade – Section 4.36 about the woodland preservation did you find an ordinance that mirrored this one?

Mr. Truax The draft ordinance has a section 4.36 we found Section 173.38 that the provision titled additional tree and vegetation preservation.

Mr. Shade – Steep slopes is a concern with erosion and possible landslides and inadequate regulations. Is there something we can do.

Mr. Stinnett – We have other protection set in SALDO, Stormwater Zoning, DEP, and Conservation District. They may need a NPDES permit. So, there are agencies that will step in when needed.

Patti Estheimier – I am concerned about our proposed reduction protection of our subsidiaries. We need to protect sensitive areas. The EPOD's were based on scientific studies and data from DEP, and Army Corp of Engineers. The EPODS should remain protected as they currently stand.

Patty Shade – There are a lot of questions about steep slopes. Can we meet and talk about these?

Mr. Gossert – Our door is open we will sit down with you and answer any questions you may have. Facebook isn't that place to go for information please come to the township better yet come to the meetings. There is plenty of talent sitting here that can answer your question and they are at every meeting.

Mr. Williams – Your open space ordinance provides flexibility. In return for that the potential is the ability to give developers an increase destiny in those cluster areas. The environmental areas cost more money to develop.

Mr. Bair – Development in rural residential you need a septic if you're not accessible to sewer. Then you can't cluster in rural residential. You made a comment about putting in a treatment plant. The township becomes responsible for a package plan. If that package fails then what?

Mr. Truax We are submitting that we don't need that because you already been on lot sizes if there is a desire to have more cluster developments which we don't agree with you have to have some provision.

Mr. Bair – A few years ago the sewer department put in a sewer line through a field that I farm and now there is an erosion issue. An engineer slope is not the same as a natural slope as for as erosion.

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Resident – Couldn't get name or address but she lives on Piketown Road couldn't hear over people talking out of turn.

Her question - Will there be a copy available to the public of the new ordinance and all comments that were made.

Mr. Stinnett – The comments are on the website. Eventually a document with responses will be posted. This version has not yet posted cause the Planning Commission may have responses and questions. When it completed it will be posted on the website. This is not required to be, but the Township is going above and beyond the requirements for transparency.

Mr. Mula – Right now the part of this process is venting through these comments. We are not under a strict timeline to vote to approve. We are just going through the process.

Mr. Williamson – Are we going to be required to do another public comment period?

Mr. Stinnett – Yes and no. We are going to do it though. Requirement is that we must provide the ordinance to the County and Planning Commission in 45 days before a public hearing. We are going to provide it back to the Planning Commission once changes have been made. The Planning Commission will have another chance to review and hopefully recommend to the Board of Supervisors. Then there will be a public hearing which may or may not be on a normal supervisors meeting night. After the public hearing the Supervisors will have 90 days to act.

Resident – I am all about protecting and keeping that natural beauty of our township. In the Industrial Enterprise you said about recommending 4 story for commercial only use and 5 story for industrial.

Mr. Truax – The industrial there is a fire code provision we must follow.

Mr. Stinnett – For fire protection purposes to distribute the water from the sprinklers you must have the height.. You must put up a building that size in order to cover the area you need to be able to disperse the water to you have to have that height.

Resident – What about the Air B&B's ?

Mr. Stinnett – The Slice of Life case did not say to exclude air B&B's. That is not what I said at the prior meeting. Slice of Life looked a particular term within a particular zoning ordinance said the Air B&B is purely a transient nature doesn't comport with a single-family residential neighborhood. Based on the zoning district that was involved the Zoning Hearing Board in my opinion was that single family residential did not provide for an Air B&B use in that district. So, we can't say no to Air B&B or short-term rentals, but we can place them in an appropriate places. The areas for short term rentals or Air B&B shall be R-3, NMU and CMU. They are not permitted in C, RA,RR,R-1, and R-2 Districts.

Mr. Mula That concludes the public comments.

There are some questions and comments omitted since there were residents speaking without coming to the microphone and others conversing among themselves that made it hard for me to get all the information. If you have something to say please come to the microphone state your name and address clearly. Thank you!

IX. ANY OTHER BUSINESS THAT MAY COME BEFORE THE COMMISSION - None

X. ADJOURNMENT : Mr. Williamson made the motion. Mr. Shade 2nd the motion. Motion unanimously.

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