

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS  
ZONING WORKSHOP MEETING  
October 9, 2014

The Board of Supervisors of Upper Merion Township met for a Zoning Workshop Meeting on Thursday, October 9, 2014 in the Township Building. The meeting was called to order at 5:00 p.m., followed by a pledge of allegiance.

ROLL CALL:

Supervisors present were: Greg Philips, Erika Spott, Bill Jenaway and Carole Kenney. Also present were: David G. Kraynik, Township Manager; Joseph McGrory, Township Solicitor; Andrew Olen, Solicitor's Office; Rob Loeper, Township Planner; Scott Greenly, Associate Planner. Chairman Waks was absent

DISCUSSIONS:

ZONING TEXT AMENDMENT – RT. 202 CO DRAFT ORDINANCE

Mr. Loeper indicated this discussion will center on the CO District, but not necessarily the entire CO District. The focus will be on the south side of US 202 opposite the King of Prussia Mall (from Chili's down to Forge Road) which is an area currently undergoing a lot of redevelopment pressure. Originally single family residential these properties are now used for commercial activity. The current CO zoning is broken, and it is difficult to do anything without going to the Zoning Hearing Board for relief. The developer interested in assembling the properties for development in the area previously noted was successful at the Zoning Hearing Board on only one of the parcels.

In looking at the CO District, staff has been looking at portions of the existing code, including some provisions recently adopted for the King of Prussia Business Park. Also studied were model zoning ordinances prepared by Montgomery County Planning Commission, some examples of other communities updated zoning codes, codes from the American Planning Association and the Smart Code which does not look at uses in terms of an industrial district or commercial district, but more at the form of what can be built.

Mr. Loeper discussed the target area which consists of approximately 30 parcels which range in size from about 7,000 square feet to one and a half acres with an average of about 12,000 square feet. Some of the challenges of the site include the multi-lane surface arterial road opposite the King of Prussia Mall and the large commercial area backing up to a residential community consisting of

single family homes on modest lots primarily built in the 1940's and 1950's.

Staff is working to develop a new zoning code which would permit small scale retail service, office and possibly residential uses with standards to promote walkability, pedestrian safety, a variety of uses and an architecturally cohesive development with pleasant building streetscapes and provisions to protect the abutting residential area from what might be viewed as negative impacts of commercial activity.

Mr. Philips asked for clarification about next couple of parcels up from Gino's with commercial business. Mr. Loeper responded they are not part of the CO District and are all zoned R-2 and would have gone through the Zoning Hearing Board. Mr. Philips asked if these should be incorporated [into the CO District]. Mr. Loeper responded one of the items for discussion would be if these lines need to be adjusted.

Mr. Loeper said this is a first round draft that will be subject to change with additions and deletions. With regard to uses, he pointed out some uses are not permitted in this area relate specifically to the geography of the area, the small lots, and the proximity of the residential among some other things. Some uses that are up for discussion are policy considerations, for example, convenience stores, pharmacies or drug stores would not be appropriate. Small retail uses would be allowed.

Mr. Philips asked about the definition of post office. Mr. Loeper responded when the Mixed Use District was considered the distinction was made for post office meaning primarily United States post office and there was another category for package delivery and those types of activities. He said staff can certainly go back and address this.

Mr. Loeper discussed other uses in the area having to do with banking and financial institutions. One use that needs attention has to do with the food service areas. Originally the development called for a drive-through as well as a restaurant. While the drive-through is no longer in the developer's vision, drive-through's are excluded for this stretch of US 202 because of space limitations. There are opportunities for some smaller scale restaurants.

Other uses include personal services, administrative, some minor repair shops, and possibly multi-family dwellings. Many of the uses follow what is currently in the CO District with some additions and expansion of some uses.

Mr. Loeper stated there are codes that have minimum lot size and some that do not. He said that would be a good topic for discussion and noted staff did not include a minimum lot size requirement although they did change yard setbacks. Front yard setbacks are from the right of way, not from the curb. While 90% of the time the setback is from the curb line, this ordinance would call

for a minimum 6 foot right of way. When staff looked at the Smart Code for this type of area, they found standards ranging from zero to 12 feet from a building line. While some have suggested a maximum six foot right of way, Mr. Loeper indicated he would rather have a minimum of six foot which would make more sense in going forward.

Mr. McGrory suggested having a minimum and a maximum. He noted the Business Improvement District (BID) is going to promote some kind of maximum. Mr. Loeper commented when he started looking at the parcel right-of-ways he found that some have a significant 12-15 foot right-of-way that comes onto what looks like the property. Around Chili's it might only be 3 feet which is barely behind the curb and it would be something to review.

Mr. Loeper discussed side yard setbacks and indicated 10 feet is fairly consistent with some of the other standards. The larger setback at 25 feet is from a rear yard; however, the number will probably be much higher because the buildings are pushed up. Other considerations are that parking is in the back along with a 15 foot landscape buffer which would be back along a property line abutting a residential which would not allow for parking, trash enclosures or those types of facilities within the 15 foot buffer. It would strictly be a landscaped area to provide that distance.

Mr. McGrory asked if the residential buffer is defined somewhere. Mr. Loeper responded currently staff is just calling it a buffer and will have to define this more as a buffer from a residentially zoned property or residential use. He said there are other provisions for buffers in the Code that basically say what can and cannot go into a buffer; for example, parking cannot be part of a buffer.

Mr. McGrory asked if it is residential zone or residential use. Mr. Loeper responded that is something that has to be spelled out whether it is zone, use or both.

Mr. McGrory pointed out the reference to residential regulations and asked if it is desired to have residential in this district. Mr. Loeper responded generally most of these codes are going to permit some mixed use, but it would be easy to take out.

Mr. McGrory questioned having residential in construction. Mr. Loeper said he doubts anyone would do it.

Mr. Philips also questioned having a hotel/motel slot. Mr. Loeper said he doubts anyone would do that either.

Mrs. Spott asked if someone came along and wanted some store fronts with apartments above. Mr. Loeper responded that was one of the scenarios contemplated that could happen. In talking to developers, he was told those are

“hard sells.” Mr. McGrory commented it depends on the particular town and location. He also indicated he does not think resident construction should be promoted.

Mr. Loeper commented he does not know of anyone who would want to live right on US 202. He said staff tried to combine lot coverage, building and impervious together rather than separate building coverage and separate impervious. For a starting discussion point staff placed that at 70% which is fairly consistent with what we currently have; however, the green area was pushed up to a minimum of 30%. In providing additional densities that might be something to look at.

Mr. McGrory asked Mr. Loeper if they are doing a building coverage throughout the whole Code because this is just impervious. In saying building impervious, it is still impervious. Mr. Loeper responded it should be maximum impervious and currently our codes do not have an impervious cover.

Mr. McGrory asked if staff is doing away with building coverage. Mr. Loeper responded, “not necessarily.”

Mr. Philips commented this township only does building coverage and there is a certain amount of impervious to that, but he has been in townships working as an architect where they have a building coverage and impervious coverage and one of the things they include is swimming pools as impervious. It becomes problematic when you are cutting it down that way. Mr. Loeper said maybe what needs to be done is figure out what part is building and what is impervious. The current CO District indicates if you have parking underneath the building it may increase building coverage. Mr. Loeper said the CO District has some provisions that are very difficult for most people to figure out so this was the starting point.

Mr. McGrory emphasized whatever you do there must be carried out through the whole code.

With regard to building height, Mr. Loeper indicated currently someone would be allowed to go about 50 feet in the CO District; however, while working with the BID in talking about the south side property along Us 202, everyone agreed that a 5-story building would be pretty impressive especially when looking at the residential properties behind. Thirty-five (35) feet allows for a fair amount of building. The Porcelanosa Shore has a 35 foot building height; however, it has a parapet so it looks higher. If you have a roof and then a parapet hiding the roof it is actually a 35 foot height. The Smart Code is taking a different look at these and states the number of stories you can have, the number of floors and then it goes on to say that upper floors can have a maximum of 11 foot clearance and a commercial floor has to have a minimum of 12 feet and a maximum of 25 foot clearance and they are actually regulated by the number of floors. That would be

something that could be done; however, if you have a three story building and somebody had a 25 foot clearance on the ground that would be one thing to consider.

McGrory said if someone does sub surface what does it matter. Mr. Loeper commented he does not know we would care about sub surface. He indicated the way the Smart Code addresses the sub surface is they deal with building heights measured in number of stories, excluding attics and raised basements. That is basically how they define it and this would need to be clarified. Mr. McGrory indicated he could see having something underneath.

Mr. Loeper stated maybe some of these other provisions should be in the SALDO. The first one is general saying everything is going to be public sewer and water, providing off street parking in accordance with the parking code, signs with the sign code and landscaping and buffers according to the plantscape code, building design standards.

Mr. McGrory questioned where it says signs located on building should be consistent with size, location and material. Mr. Loeper responded that was taken out of the county code and he will take another look at that.

Mr. McGrory said he would rethink that. He prefers the building design standard section should not be zoned and should be in SALDO. Mr. Loeper said we could move that to SALDO, but the idea was to have provisions similar to the Mixed Use District to provide for building breaks for consistency in building materials, hiding roof top HVAC type units, which most of the newer codes are doing and also providing for more building articulation rather than just shoe boxes along the road.

With regard to pedestrian requirements, Mr. Loeper indicated many of these were taken from Smart Code. Staff did review some other local codes. Our sidewalks are a minimum of 4 feet, and Mr. Loeper believes 4 feet on a commercial street is a very small sidewalk and should be a minimum of 6 feet and even much more. The Smart Code calls for sidewalks as wide as 20 to 30 feet depending on the nature of the street and road. The other thing this does is pull the sidewalk back off the curb line. Staff looked at some of the standards which call for pulling the sidewalk four feet back from the curb line and then have a minimum of a six foot sidewalk for a starting point. That number could change and it could be ten (10).

Mr. Philips asked if Mr. Loeper was referring to 10 feet from the curb line. Mr. Loeper responded in the affirmative and said the setback would be 16 feet. He said 6 was misleading since it is 6 feet from the right-of-way, not from the curb.

Mr. McGrory asked if other streetscape amenities were considered because that is a very prominent part of US 202. Mr. Loeper responded there was not enough time to look at that, but it is something that could be considered.

Mr. McGrory commented he does not think anyone would put outside dining right on US 202. He said they might if it is pulled back far enough and done right, but the problem with most outside dining is making sure it is not going to interfere with pedestrian circulation.

Mr. Philips said from his standpoint he believes outdoor dining would be possible along US 202 and gave some examples of other areas with four lane highways where this is done. Mr. Loeper responded staff can take a look at this.

Mr. Loeper noted on the side streets a 5 foot sidewalk is probably sufficient. He said there should be an internal pedestrian walk not less than 5 feet to link the sidewalk to the building. For buildings with entrances set in the back where the parking is, rather than have the parking come right up to the building, have another sidewalk along the building to facilitate access. There should also be a different paving for anything crossing driveways or parking lots. This was done in the King of Prussia Mixed Use District.

With regard to refuse collection facilities, Mr. Loeper pointed out this is often forgotten on commercial properties and is probably one of the things that is most annoying to residential neighbors. So that these facilities are not visually offensive, they have to be set back from the properties, adequately landscaped or fenced, and cannot be in the buffer zone.

Mr. Loeper indicated he does not think there is much need to discuss residential uses, although staff did look at one and two bedroom units in this first draft.

Mr. McGrory asked if any thought has been given to a uniform streetscape for the bulk of US 202 similar to what the BID is doing on First Avenue since it is such a main thoroughfare and projects an image. Mr. Loeper responded staff could look at that. Mr. Kraynik noted ornamental lighting could be used to help with the streetscape. Mr. McGrory said some other things that would help are certain kinds of planting, sidewalk layout, benches, bus stops, and refuse containers. He pointed out this would place the township in a position to possibly get some grant money.

Mrs. Spott asked about the zoning for properties that are closer to the shoulder. Mr. Loeper responded most of those are zoned General Commercial and most of those are larger lots with more intense uses and bigger buildings which is part of the difficulty.

Mr. Philips asked how this would affect the Wilner property. Mr. Loeper responded it would not affect this building which is zoned General Commercial, except for the "triangle." Mr. Loeper suggested as part of cleaning up the zoning the triangle should be removed to provide consistent zoning with the rest of this property.

Mr. Loeper indicated another topic of discussion regarding mapping is how the lines are drawn in terms of what the developer is discussing. The property he has under agreement is zoned R-2. There are some of these properties currently zoned CO that are not part of his development.

Mr. Philips asked about the residential. Mr. Loeper responded there are existing residential and their use is residential. To the best of his knowledge, he does not think anything along the site under discussion is used for residential. The last one went away when Porcelanosa came in.

A discussion followed about boundary lines that should be drawn logically and not what currently exists.

Mr. Jenaway asked for a discussion of some of the permitted uses. With regard to radio and television broadcasting, he said he has never encountered any that does not have an antenna attached. Mr. Loeper agreed to take that out.

With regard to wired and wireless telecommunications, Mr. Jenaway asked if Verizon is going to be a sales office or an outlet doing other things which would require an antenna on top of that building. Mr. Loeper responded it is his understanding a retail store is proposed. He said staff could take a look at removing or defining wired and wireless telecommunications better.

Mr. McGrory stated he would go one step further and just indicate no telecommunications, including DAS (Distributed Antenna System). Mr. McGrory explained DAS involves a 10-12 foot pole for wireless communication which would be installed in the township right-of-way. Mr. McGrory indicated the master ordinance should have a specific mention of no DAS on residential streets and no DAS on the US 202 corridor.

Mr. Jenaway expressed concern about the parking demands associated with some of the types of occupancies such as technical and trade schools. Mrs. Kenney asked if that is a permitted use in the Business Park. Mr. Loeper responded in the Business Park it would be a permitted use.

Mr. Jenaway stated he does not know the definition of services for the elderly and disabled, but he envisions a substantial pathway would be needed to move vehicles through to enable someone to get in and out of a car. A carport or structure of that nature would also be needed and he had doubts about how that would work.

Mr. Jenaway also had questions about parking demands for performing arts facilities and health and fitness center. Mr. Loeper said staff looked at health and fitness center and there are a lot of small health and fitness centers that are basically a personal trainer and this would need to be defined.

Mr. McGrory stated there could be a medical or dental office there.

Mr. Loeper commented he would not particularly want child care in that location.

Mr. Jenaway asked about performing arts facilities, hotels/motels and banquet facilities. Mr. Loeper said they would be taken out.

Mr. McGrory asked what is a snack and beverage bar versus a beverage shop. Mr. Loeper responded beverage shop is a new definition.

A discussion followed about beer, wine and liquor stores.

With regard to repair and maintenance services, Mr. Jenaway commented other than watch, clock and jewelry repair, he does not believe this should be included. He said he was referring to appliance repair, electronics repair, furniture and upholstery which are mini-manufacturing.

Mrs. Spott commented there are some of these establishments that are lovely decorator stores that sell some pieces of furniture and upholstery. She said it is a definitional issue.

Mr. Jenaway stated he does not have an issue with the sale of the product, but with the storing and processing of a variety of different types of products and materials which tend to be untidy. He said a retail store with this function as an adjunct is okay as long as it does not occupy more space than the retail space.

With regard to making US 202 more attractive, aesthetically pleasing, Mrs. Spott said she is trying to find a balance making that goal possible by adding some quality of life for the residential. In looking at the size of the properties, the setbacks, etc., unless some are combined it will not be possible to have anything other than some smaller businesses.

Mr. Philips commented in view of the location across from the Mall with the heavy commercial retail, he envisions encouraging the Mall to be more pedestrian-friendly across US 202 and make the connections necessary to make this a transitional zone with upscale restaurants, shoe repair, bakery, etc.

Mrs. Spott asked the residents in attendance to share their views.



Resident: "It would be difficult to get in and out."

Resident: "Walking is not my lifestyle."

Resident: "Depends on the quality of the bakery and other retail."

Mr. Philips commented more "boxes" on US 202 is not what is envisioned, but rather little piazzas going down the street with aesthetically pleasing establishments. The question is how to put that into the SALDO.

Mr. McGrory stated zoning regulates use and SALDO regulates development and there is only so much you can do. He said he is a firm believer in maintaining those two concepts. Through SALDO certain kinds of construction can be encouraged and certain kinds of features and they can be waived if they do not make sense on any given property. Zoning is not waivable, and that is why he likes it in SALDO.

Mr. Philips asked about having retail on the first floor with apartments above. Mr. McGrory responded he does not think on a busy thoroughfare like US 202 that it would work. In a quaint town it would work, but even on the main street of a smaller town it can be very busy. Mr. Jenaway commented because there are five major buildings there already that will not work. If the whole strip was available, it would be a different scenario.

Mrs. Kenney asked why not allow that use and let the developer decide if they think it would be something that would work.

Mrs. Spott stated she is trying to get a sense of what the residents in attendance would like to see.

Resident: "Right now you are only talking about a little area. If you took the whole area and made it into a Skippack it would be different."

Resident: "Your vision makes sense which is nice, clean small shops."

Resident: "I personally as a resident don't want to look at four stories."

Resident: "I don't want to see a whole bunch of stores."

Mrs. Spott asked the resident what she wants to see there. Resident: "To me you can't put all that density on these small lots and think it is going to work. I see what you are saying about sidewalks being nice and having it aesthetically pleasing, but you can't with the type of lots."

Mr. Philips pointed out the lots will not be the same as they are now.

With regard to height, Mrs. Spott indicated three stories is probably the maximum she would want to see along there.

Mr. McGrory pointed out in staying with a height of 35 feet that is the same height as a house. Mr. Philips said that is why he questioned 6-in-12 pitches on a roof. Mr. Loeper indicated it depends on how it is measured because right now peaks are measured. Most codes do not measure peaks when there is a peaked roof.

Mr. Philips commented most codes do measure peaks. Mr. Loeper said when there is a peaked roof there are quite a few codes that measure it to the mean grade between the peak and the eave.

An unidentified resident asked for clarification about buffers. Mr. Loeper responded clarification is needed on buffers and said it gets complicated because of other commercial properties. Even though it is commercial, if it is used as residential and has a residential use then the buffer would have to go in.

Mr. Jenaway said he has two more types of uses that need to be discussed: funeral home/crematory and places of worship. A discussion followed.

With regard to outdoor dining, Mr. Loeper indicated there are some communities with specific regulations on outdoor dining. For example, limiting hours different than the indoor. Also, the type of fencing or screening.

Mr. Philips commented he would not want the outdoor eating on the residents' side. Mr. Loeper responded it would be out front and that could be regulated as well.

Mrs. Spott pointed out the increase in housing values in communities that follow the trends in development. Some examples of areas were provided in the discussion.

An unidentified resident asked about the process and what the next steps are. Mr. Philips responded there are two separate issues – the issue of what will be done with the CO District and what will be done with the zoning. The developer has approval for the Verizon store so he will come in for land development. The option would be for him to wait until the work is done with the zoning.

Mr. Jenaway stated if the developer has something he could build there by right he could do that. .

Mrs. Kenney asked what happens if the developer goes ahead and builds something according to current code and it is too close to the street or not with the envisioned setbacks and wide sidewalks. Mr. McGrory responded the developer has the right to build under the current code. It is next to impossible to comply with the CO District and end up with something feasible. Because he went to the Zoning Hearing Board and was refused he is almost committed to working with the Board and what needs to be done to rezone the properties.

Mr. Loeper stated his understanding is he could build what he has approval for (the Cummins property) or if the zoning is changed he could comply with the new zoning, but he is still allowed to do what he was approved for -- the Verizon Store. The developer was under time constraints because of the lease with Verizon.

An unidentified resident asked what happens next. Mr. McGrory responded the Board of Supervisors will continue to work on the rezoning ordinance. The developer and residents will be involved in that process, meetings and discussion. When the Board is satisfied with the final draft it will be sent to the Planning Commission for review, advertised for hearing, and then for a formal hearing.

#### ADJOURNMENT:

Without further comment from the Board and public, it was moved by Mr. Jenaway, seconded by Mr. Philips to adjourn the zoning workshop adjourned at 6:46 p.m. None opposed. Motion approved 4-0.

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DAVID G. KRAYNIK  
SECRETARY-TREASURER/  
TOWNSHIP MANAGER

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Minutes Approved:  
Minutes Entered: