

UPPER MERION TOWNSHIP BOARD OF SUPERVISORS
ZONING WORKSHOP MEETING
September 6, 2018

The Board of Supervisors of Upper Merion Township met for a Zoning Workshop meeting on Thursday, September 6, 2018 in the Township Building. The meeting was called to order at 6:00 p.m., followed by a pledge of allegiance.

ROLL CALL:

Supervisors present were: Greg Philips, Greg Waks, Bill Jenaway, Carole Kenney and Tina Garzillo. Also present were: Sally Slook, Acting Township Manager; Joe McGrory, Township Solicitor; Rob Loeper, Township Planner.

DISCUSSIONS:

KRAVCO: 304 W. DEKALB PIKE. DISCUSSION OF 1991 SETTLEMENT AGREEMENT AND POTENTIAL CHANGES – ACME

Amee Farrell, Esquire representing Kaplan Stewart attended the zoning workshop to present Kravco's plan for the former Acme located at 304 W. DeKalb Pike. She stated that the Acme has vacated from DeKalb Plaza and that site is available for sale. Kravco has it under agreement and in the process of due diligence has been looking at a 1991 settlement agreement that created some specific development restrictions related to the property. Kravco has some concerns with respect to uses that are prohibited and prior to that agreement and the changing market place for commercial retail and whether those provisions still made sense. Ms. Farrell stated that they reached out to Rob Loeper, Township Planner, and requested to come to a chairman's meeting to have an initial conversation about the property and some of those provisions and whether it made sense to modify the settlement agreement. During the course of that meeting the discussion turned towards whether or not it made sense to talk about rezoning this parcel. We were asked to go back and look at the various options that made the most sense and then come back to the Board. That is where we are right now.

Ms. Farrell presented a plan of DeKalb Plaza on the projector which showed the existing conditions of the property. The property has been developed as a single unified shopping center, it is not a particularly large shopping center – it is only three buildings. It is actually two separate parcels which makes it different from a usual shopping district. Both sides are subject to the settlement agreement; there is also an REA which operates among the parcels. Carole Kenney asked what REA stands for. Ms. Farrell answered that it is a Reciprocal Easement Agreement, an agreement between both of the property owners to unify the two parcels.

Next Ms. Farrell showed an image of the existing development on the site, taken right from the settlement agreement. A few things to point out are the property line which shows access to both properties. On the left side of the line, known as existing Parcel "A" which contains retail buildings B & C. Retail Building B is the Bob's Discount Furniture Store and Retail Building C is a retail strip center. Parcel "B" contains retail building A, the former Acme Building. That is the portion of the property that Kravco currently has under agreement. In addition to the Acme building a large portion of the parking field as well as a fair amount of the ingress and egress driveway is located on Parcel "B". Ms. Farrell stated that Kravco has under agreement the entire unit Parcel "B". Parcel "B" is currently owned by an entity of Albertsons. Parcel "A" is owned by Washington Prime. They are two separate parcel numbers and two separate entities own them. They are both fee simple titles. It was noted that Kravco would buy Parcel "B" only which is owned by Albertsons. Washington Prime will continue to own Parcel "A". Parcel "B" will be subject to the same REA as Albertsons is currently subject to. Solicitor McGrory asked if the REA has any terms of usage restrictions. Ms. Farrell responded that it does have some similar language to the settlement agreement so there would have to be an amendment to the REA with Washington Prime that's consistent to whatever is to be done at the township level, through rezoning or the settlement agreement. Mr. Philips stated that what would happen if the Board gives Kravco relief and then the owners of parcel A disagree. Ms. Farrell stated that they would be stuck. She noted that the township can do whatever it's going to do independent of that private agreement but Kravco would still have to negotiate with Washington Prime to make whatever modifications that would have to be made. If for some reason an agreement cannot be reached with Washington Prime, Ms. Farrell stated that Kravco would most likely walk away because they cannot do what they want with the site. Solicitor McGrory asked if a rezoning was granted is there anything in the court stipulation that would still restrict the property. Ms. Farrell noted that this was talked about briefly at the chair meeting – initial thought with George Broseman and Ms. Farrell was that there is a couple ways to do that. The cleanest way is that if the township was to elect to rezone, we would file a stipulation jointly with the court stating that the township has now rezoned this property and those prior agreements and restrictions with respect to that stipulation no longer apply – they have essentially been muted by the new zoning. Ms. Farrell stated that this is the cleanest way of doing it if a court would agree to do so. Discussion ensued about amending the agreement by modifying the provisions. Ms. Farrell stated that the best solution for them and the township would be to rezone the property to shopping center to be consistent with everything else.

Looking at the map Mr. Loeper pointed out that there is still a little sliver of property that is not a part of DeKalb Plaza and a small R-2 section which is the cemetery. Solicitor McGrory stated that he would need to make sure zoning is contiguous line.

Ms. Farrell discussed the settlement agreement. She noted that the difficulty with the settlement agreement is with the use restrictions. The settlement prohibits liquor licenses, amusement centers and bowling alleys, indoor theaters and recreation, hotels, nuclear service and gasoline, warehouse, shoe and leather stores. She stated that when you look at the former acme site which is 57,000 square feet there are not a lot of big retailers left who are looking to go brick and mortar so you have to start getting creative about who might go there. Obvious choices are more of the entertainment and amusement type uses that are looking for larger areas. Currently this type of use is prohibited under the stipulation.

The Board discussed the reasoning behind the stipulation. Supervisor Jenaway seemed to recall that back in the day that this was more of an accommodation to get Acme a space because they were being forced out of the mall and this was an available parcel. Ms. Kenney questioned why the restrictions were put into place – she feels that this was done perhaps to pacify the residents who live behind the property. Supervisor Jenaway stated that indeed that was his recollection – the residents were ok with development when they found out that Acme was going to occupy that space.

Solicitor McGrory stated that you have to look at the shopping center district and determine if there are any uses in that you don't think are appropriate and then prepare a covenant. Supervisor Waks stated there are a few uses that are not appropriate including auto repairs, hotels, and gas sales. Supervisor Waks expressed his wish to see this site as a performing arts center, theater or museum. Supervisor Kenney wished to see a 24 hour diner, small movie theater like the Ritz in Bryn Mawr, or a bowling alley.

Supervisor Kenney asked if we were to change the zoning to SC would this include both parcels. Ms. Farrell answered in the affirmative.

Supervisor Kenney asked if Kravco was having discussions with Washington Prime. The answer was yes, they are on on-board in concept but they have some questions about long term plans.

Solicitor McGrory noted that the Board needs to come to a consensus of what usage you don't want and when you are in agreement we can prepare a covenant stating that these certain uses are not allowed, however, it has to pertain to the whole parcel.

Supervisor Kenney asked if there were any potential tenants in mind. Ms. Farrell deferred to Stephen Powell. He did state that they had some tenants in mind for the property.

Supervisor Jenaway commented that at the end of the day King of Prussia is over retail. Why are we not looking at doing something here that is medically oriented? This could become a mini-medical complex or something in that nature. He stated he is very concerned about having more shopping centers that don't seem to be viable anymore.

Looking at one rendering, Supervisor Kenney asked about the building shown close to Rt. 202. It was noted that the expectation of this out parcel pad would be a bank.

Solicitor McGrory asked the applicants that without giving the names of the potential tenants could their uses be stated. Stephen Powell stated one of the tenants is a national commercial retailer which sells various merchandise. He noted that ideally it would be a single user to occupy the Acme. If this does not work they would look at dividing the space into two tenants. Mr. Powell noted that the one tenant he referred to would be permitted under the stipulation; however, there are other potential tenants like a fitness use for example that would fall into the indoor recreation and amusement category based on the terminology in the stipulation.

Ms. Farrell went on to explain a few other things about the property. She noted that there is a maximum of three buildings. There is a 155 ft. minimum building set back from Rt. 202 which is substantial. These are other provisions of the stipulation that may be problematic for long term flexibility, particularly in respect to the pad site out front. Obviously that would violate the three buildings and the setback provision of the stipulation. Modifying the zoning to be able to eliminate the stipulation would provide site flexibility.

Mr. Loeper explained that the township currently has only one shopping center district and the uses are the same throughout. There are two properties zoned shopping center and they are the Valley Forge Shopping Center and the Mall. There are specific provisions in the shopping center district that only apply to the mall property based on the mall being a regional shopping center which is by definition a center over a certain amount of acreage and GLA.

The Board discussed the difference between General Commercial and Shopping Center Districts. Mr. Loeper noted that SC has fewer restrictions and therefore allows more flexibility.

More discussion took place from the Board regarding making this site a medical/surgical site. It was noted that Washington Prime wishes to keep this site retail. Ms. Farrell expressed her concerns regarding parking if this site was some type of a medical facility.

Ms. Farrell also mentioned that a liquor license is one of the use restrictions in the stipulation. When they looked at filling this site with another grocery store it was obvious that all grocery stores want the ability to sell liquor so this derailed any other grocery store for considering this site.

Supervisor Kenney suggested they look into who was sitting on the board at the time of this stipulation. She noted it would be interesting to know what they're thinking was behind putting this stipulation into effect.

Supervisor Philips stated that from his standpoint he feels the Township should extend the shopping center district down to the boundary of the Brandywine Development. Then come up with a list of prohibitions that Solicitor McGrory can put into a covenant.

At this time it was noted in the Shopping Center District auto service centers are allowed as long as there is no outdoor storage, something like Pep Boys. Theaters are not permitted in the Shopping Center District. Supervisor Jenaway stated that coming up with a list makes sense.

Ms. Farrell stated that they reviewed the use tables and there is a distinction between general commercial and shopping center in our use tables. For example, a convenient store with gas sales is permitted in general commercial but not a shopping center.

Ms. Farrell brought up the Board's thinking on free standing gas sales – like at many BJ's or Costco's. Supervisor Kenney was concerned for the nearby residents.

Solicitor McGrory stated that he feels that the Board needs to come up with a list of uses that they do not want to see on this site. Let's get a list together and see what that list is and what impact it has on the potential plans of this property.

Supervisor Jenaway stated that presently we have a height restriction on this property and he noted that he would not be in favor of modifying the height restriction because that could lead to other occupancies that we most likely do not want to have in that location.

Ms. Farrell explained to the Board that her other concern is timing. They are in the middle of due diligence period and they want to move forward. At this point the potential buyer would not buy with the stipulation that is in place.

Chairman Philips stated that the Township really needs to take a lead on what we want our township to look like so we need to take our time to make sure it is done the right way.

Ms. Farrell came back with the idea of amending the stipulation now to address the use restrictions which would fit into the applicant's time line and then continue to work with the township on the rezoning.

Solicitor McGrory ended the discussion by stating that he feels the applicant heard very good feedback tonight and enough to invest in a monthly stipend to extend the due diligence. He felt the best course of action would be not to amend the stipulation, get the property rezoned in due time and extinguish the stipulation. They discussed whether or not there would even be a need to deal with the stipulation if the property was rezoned. It was noted that the stipulation was signed by a judge and it is subject to a court order.

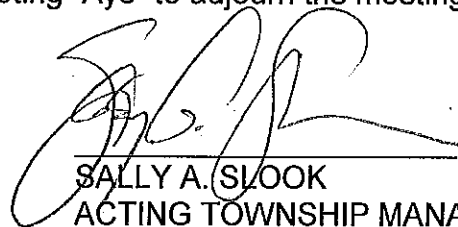
Supervisor Waks stated that he feels the applicant needs to reach out to the homeowners association. Ms. Farrell stated that they did try to reach out but the number they had was not a good one. Supervisor Waks asked that the township administration department provide a working phone number for the association to Ms. Farrell.

In conclusion, Solicitor McGrory stated that the Board will provide a list of uses they would like to see at this site. Rob will look at the impact of all the parcels that we discussed about being rezoned. He advised the applicant to start to put together a map change. At that time discussion can begin about the terms of the ordinance. The aim is to have a motion to advertise by the end of October.

When drafts are complete, the applicant will come back in to a chairman's meeting.

ADJOURNMENT:

Without further comment from the Board and public, it was moved by Mr. Jenaway, seconded by Mrs. Kenney, all voting "Aye" to adjourn the meeting. None opposed. Motion approved 5-0.


SALLY A. SLOOK
ACTING TOWNSHIP MANAGER

cad

Minutes Approved: 11-15-18

Minutes Entered: