

**EDGMONT TOWNSHIP ZONING HEARING BOARD
REGULAR MEETING MINUTES
MARCH 24, 2009**

1. **Open Meeting**: Thomas Lawrie called the meeting of the Zoning Hearing Board to order at 7:10 p.m. In attendance were Thomas Lawrie, chairperson; Kevin Coyne, member; J. Adam Matlawski, Esquire, solicitor; Stephen J. Polaha, Esquire, alternate solicitor; Samantha Reiner, Township Manager/Zoning Officer; Susan Sharp, Recording Secretary; and approximately 21 guests. The court reporter, Maria Lairdieson O'Neill, was present to transcribe the hearings.
2. **Public Comment**: There was no public comment
3. **Meeting Minutes**: The minutes from February 24, 2009 could not be approved as a quorum is not present at tonight's meeting from the attendees at the February meeting.
4. **Old Business**
 - a. **Mindy Chernoff - 2056 Pony Trail Drive** – The applicant requests variances from Zoning Ordinance Sections 1912.A.8.d & e, which require structures for shelter of livestock to be located no closer than 100 feet to property line and which prohibits livestock within 10 feet of a property line) and Section 1506.B.1(a) , which prohibits structures in flood hazard area, to allow placement of a 10 ft. by 20 ft. run-in shed for horse(s) to be located approximately 10-20 feet from property line in the R-1 zoning district. This hearing was opened in January. The applicant, Ms. Chernoff was present.

The following exhibits were entered into the record:

Township's Exhibits:

- B-4: Request for extension of time to hold hearing, dated February 24, 2009, signed by Mindy Chernoff

Applicant's Exhibits:

- A-1: Site Plan for Chernoff Tract, prepared by Commonwealth Engineers Inc, dated March 11, 2009
A-2 through A-6: Photographs of the applicant's pasture and barn

Neighbor's Exhibits:

- N-1 through N-3: Photographs of the property line shared by the applicant and the neighbor
N-4: A letter dated February 4, 2009 from Sean & Eileen O'Neill; a letter from Michael A. Schwartz of Pepper Hamilton LLP dated February 2, 2009 to Samantha Reiner, Township Manager; a letter from Michael G. Cullen, Attorney at Law, to Kenneth D. Kynett,

Esquire, dated December 30, 2004; a letter from Kenneth D. Kynett to Michael G. Cullen, Esquire, dated December 16, 2004; seven pages of Notes of Testimony – number 17 (pages 65-68), and pages 48 through 49.

Ms. Chernoff stated that she had her property surveyed and was able to place the proposed shed in an area of the pasture that was not within the flood hazard area, as delineated on the FEMA maps. Testimony was taken from a neighbor, Eileen O'Neill, 2115 Pony Trail Drive, who stated that Ms. Chernoff's survey did not match the property lines as she believed them to be. Ms. O'Neill entered three photographs as evidence. Sean O'Neill, 2115 Pony Trail Drive, stated that the shed would increase the amount of stormwater run off. Furthermore, he stated that Ms. Chernoff has not shown a hardship and that the shed could be placed elsewhere in the property. Anthony Marano, 2105 Pony Trail Drive, spoke in favor of the application. THE COMPLETE NOTES OF TESTIMONY CAN BE FOUND IN THE TRANSCRIPT IN THE ZONING HEARING FILE FOR THIS PROPERTY. Mr. Coyne made a motion to close the hearing and accept all exhibits. Mr. Lawrie seconded the motion, which carried unanimously without further discussion. After a short recess, Mr. Lawrie stated that the decision would be announced at the next meeting.

- b. National Realty Corporation / Paul deBotton - Edgmont Square Shopping Center, 4801-4859 West Chester Pike - The applicant requests variances from the following Zoning Ordinance Sections to allow new signage at the shopping center: (1) 1802.C.10.a to allow directional signs of 25 square feet (ordinance limits to 2 square feet); (2) 1802.C.10.b to allow directional signs to contain advertising; (3) 1801.B.3 to allow sign to be located within the street right of way; and (4) 1801.B.6 to allow more than one free standing or ground sign per street frontage. This hearing was opened at January's meeting, although there was no testimony presented. The applicant, Mr. deBotton, was present, along with one of his tenants, Sutida Somboonsong. David Malman, Esquire, alternate Township solicitor appeared at the request of the Board of Supervisors.

The following exhibits were entered into the record:

Board's Exhibits:

- B-1: The application form, originally submitted January 6, 2009 and amended March 2, 2009; a deed, dated February 12, 1985, between Joyfor Inc, grantor, and Claude deBotton and Claude deBotton, trustee for Paul M. deBotton, Yvette F deBotton and Nicole E deBotton; a photographic rendition of the restaurant to be known as Parker's Prime Steakhouse, depicting the proposed wall signs; a plot plan for Marville at Edgmont Township showing the location of the

proposed directional signs; three pages showing the proposed directional signs. The drawings were done by Aerial Signs & Awnings, with a date of 2/18/09. One shows face a & b of sign #1. Sign #1 is to be a double sided sign. The second drawing shows face d of sign#3; sign #3 is to be a four sided sign. The third drawing shows face e & f of sign #3.

- B-2: Proof of publication. The original hearing was advertised in the Delaware County Daily Times on January 12 and January 19, 2009. The hearing for the amended application was advertised in the Delaware County Daily Times on March 9 and March 16, 2009.
- B-3: Look-up list and certified mail receipts for the January 27 and March 24, 2009 hearing. Certified notices were sent to the applicant and nine adjoining neighbors. All green cards were returned to the Township for the January meeting; all but one was returned for the March meeting.

Township's Exhibits:

- T-1: Zoning Officer Report

Applicant's Exhibits:

- A-1: A plot plan of Marville at Edgmont Township showing the proposed location of the directional signs; four drawings of the proposed directional signs done by Aerial Signs and Awnings, showing face a & b of sign one, a two sided sign; face c & g of sign two, a two sided sign; face d of sign three, a four sided sign; and face e & f of sign three.

Ms. Somboonsong stated that the bell tower is an outstanding feature of the building, and that she would like to put the "p" logo on the tower to catch people's attention as they drive on West Chester Pike. This "p" would be used by the restaurant in all of their advertising. Mr. deBotton testified about the need for directional signage throughout the shopping center. He stated that he would like the prospective tenant to have a larger wall sign, as the space is difficult to see. Mr. Malman asked if the directional signs had replaceable panels if tenants change in the future. Mr. deBotton stated that they did. Mr. Malman stated that the Board of Supervisors felt that the request for a larger wall sign was reasonable, but they objected to the placement of the "p" logo in the bell tower. Ms. Somboonsong stated that the restaurant was low and hidden from view, and that the "p" logo would provide some visibility for the restaurant. Testimony was taken from a neighbor, Barbara Raczowski, who asked whether the directional signs were going to be illuminated and where they would be placed. THE COMPLETE NOTES OF TESTIMONY CAN BE FOUND IN THE TRANSCRIPT IN THE ZONING HEARING FILE FOR THIS PROPERTY.

Mr. Coyne made a motion to close the hearing. Mr. Lawrie seconded the motion, which passed without further discussion. Mr. Lawrie stated that the decision would be announced at the April Zoning Hearing Board meeting.

5. New Business

- a. Edgemont Beer & Cigars - 5042B West Chester Pike – The applicant requests a special exception pursuant to Section 1913.B.3 to allow the expansion of an existing non-conforming use for storage, increased capacity of existing humidor and seating area for patrons sampling cigars purchased on the premises, a variance from Section 1913.B.3.b. if the expansion is not on the same lot as the existing non-conforming use, and a variance from Section 1913.B.3.c. since the expansion exceeds an aggregate of more than 50% of the area of the non-conforming area or, in the alternative, a variance to accommodate the requirements of the natural growth of the business conducted on the premises. The applicant was represented by their attorneys, James Byrne, Esquire and Lauren Rogan, Esquire. Ken Kynett, Esquire, was present at the request of the Board of Supervisors.

Board's Exhibits:

- B-1: The application form; a deed, dated October 17, 2008, between William J. Curley, as Trustee under declaration of trust, dated 9/26/96 as to an undivided ½ interest as tenant in common; and Margaret Bernadette Curley, as trustee under declaration of trust dated 9/26/96 as to an undivided ½ interest as tenant in common, grantors and 5050 Real Estate LP, a PA limited partnership, grantee.
- B-2: Proof of publication – the notice was published in the Delaware County Daily Times on March 9, 2009 and March 16, 2009.
- B-3: Look-up list and certified mail receipts for the March 24, 2009 meeting. Certified notices were sent to the applicant, the property owner and six adjoining neighbors. All green cards were returned to the Township.

Township's Exhibits:

- T-1: Zoning Officer Report

Applicant's Exhibits:

- A-1: Special exception narrative
- A-2: Proposed renovation for Edgemont Beer & Cigars, prepared by RHJ Associates, dated 3/13/09; revised 3/18/09

- A-3: Photographs, labeled (a) through (l) of the existing beer store, the proposed space, the front & back parking lots, and the interior store space.
- A-4: Article 17 of the Edgmont Township Zoning Ordinance
- A-5: A printout from the United States Postal Service's website listing post office locations
- A-6: Information on the Trion Smoke Eliminator system

The Zoning Officer confirmed that the property was posted.

Mr. Byrne called George Spaeder, managing partner of 5050 Real Estate LP, the owners of the property, as his first witness. Mr. Spaeder explained about the nature of the property and the improvements that have been made since he took over the property. Each space is 20' x 100', and every two spaces constitute one building, with no bearing wall dividing the two spaces. Mr. Spaeder stated that the complex shares two – 20,000 gallon sewage holding tanks that are pumped two times a week. Mr. Spaeder has replaced all the toilets with low flow models and is in the process of replacing all the faucets with motion sensor models to conserve water and reduce septic flows. He has also cleaned up and restriped the rear parking area for employee use. Mr. Spaeder stated that there are six spots in the front parking lot for each tenant. Mr. Spaeder went on to explain that the existing beer and cigar store has a humidor for cigars, but the owner would like to expand the humidor and allow people to smoke their purchases in a lounge area. There could be no liquor brought into the store and no beer bought on the premises could be consumed in the store as they only have a distribution license. Furthermore, it is stipulated in the lease for Edgmont Beer and Cigar that they can not obtain a liquor license, which would be needed in order for alcoholic beverages to be consumed on the premises. Mr. Kynett asked if food and entertainment, in the form of pinball machines or televisions, would be available to the patrons of the lounge. Mr. Spaeder stated that they would not be. Mr. Hari Reddy, owner of the store, testified that the capacity of the smoking lounge is eight persons. Testimony was taken from one resident, Barbara Raczowski, who stated her support for Mr. Reddy and the application. THE COMPLETE NOTES OF TESTIMONY CAN BE FOUND IN THE TRANSCRIPT IN THE ZONING HEARING FILE FOR THIS PROPERTY. After a short recess, Ms. Rogan asked that the applicant's exhibits be moved into the record. There was no objection. Mr. Polaha asked Mr. Reddy if relief was granted, whether he would be willing to put fire retardant furniture and carpeting in the lounge area. Mr. Reddy agreed. Mr. Polaha also asked if there was to be a drop ceiling in the lounge. Mr. Spaeder said there was, as it was needed to contain the smoke and for the exhaust system to function. Mr. Coyne made a motion to close the hearing. Mr. Lawrie seconded the motion, which passed without

further discussion. Mr. Lawrie stated that the decision would be rendered at the next meeting.

2. **Adjournment**: At 10:25 p.m., Mr. Coyne made a motion to adjourn and Mr. Lawrie seconded the motion. There was no further discussion and the motion was carried unanimously.

Susan Sharp
Zoning Hearing Board Secretary