

**Red Lion Planning Commission
Meeting Minutes
Monday, May 21, 2018**

Members

Joyce Seabolt
Melanie Thompson
Nevin Horne
Wade Elfner

Others

Dan Shaw, Codes/Zoning
Mike Craley, Solicitor
Stacy Myers, Recording Sec'y

Visitors

Dianne Price
Tina Frutiger
Stephanie Weaver
Neal Metzger

John Fishel
Donald Dellinger
Peter Ruth
Dave Martineau

1. The meeting was called to order @ 7:00p.m. All present participated in the pledge to the flag.
2. Ms. Seabolt made a motion to approve the April 16th, 2018 Meeting Minutes; Mr. Horne seconded. All were in favor; motion carried.
3. **Variance application was submitted by Kaltreider-Benfer Library** to allow a reduction in the front, rear & accessory setbacks, an increase in the allowed paved area and a reduction in the distance allowed between a commercial communication tower base and a property line in the Residential Town Zone at 147 South Charles Street, Red Lion, PA. Peter Ruth, Solicitor representing the library as well as the Red Lion Municipal Authority was present, along with John Fishel, President of the Kaltreider-Benfer Library and Don Dellinger, Library Director to discuss the Variance application. Mr. Ruth stated the library is currently owned entirely by the Red Lion Municipal Authority. The property has two uses on it; 1) the water tank (rear of the property) owned & used by the RLMA for public water and 2) the library (front of the property). Kaltreider-Benfer Library entered into a ground lease agreement with the Municipal Authority in 1998 when the library was constructed. As owners of the property, RLMA is not in the business of operating a library; the library is not in the business of providing public water, so they're in the process of subdividing the property, but Variances are required. They are not Use Variances as the library or RLMA are not going to use the property for something not permitted in the RT Zone. They are simply dimensional Variances, only changes in the lot description. Mr. Ruth presented a color-coded site map. All shaded areas on the map (pink, yellow & green areas) are owned by the Authority; everything else on the other three sides, not including Charles Street is owned by Borough as part of Fairmount Park. As per this map, it's proposed that RLMA will retain everything in pink; the yellow & green sections will become Kaltreider-Benfer Library's property, which includes frontage on South Charles Street, the area that is currently the basketball court and the southwest portion for the parking lot. Variance requests for the Municipal Authority are as follows:
 - Section 27:304 (5A) of the Ordinance requires a 25' front setback. *On the RLMA property, the setback will only be 11'.*
 - Section 27:304 (5C) requires a 40' rear setback. *There will only be an 18' setback on the RLMA property.*
 - Accessory structures—southeast corner of RLMA property requires a 3' setback. *There will only be a 20-inch setback.*
 - Height & size of antenna tower—the height of the communication tower plus 15' is the required distance between any property lines; *however, this will be well above that, given the size of the water tower.*

Variance requests for the library are as follows:

- Rear setback is required to be 40'. *There will only be an 11' rear setback.*
- Impervious surface cover issue. *The impervious surface cover is not being increased at all; it is only how the property is delineated on the plan (what portion is allocated to each property). Currently, the plan is showing 40% of the library lot area will be covered; only 20% is permitted.*

Mr. Ruth stated the parties involved believe the Municipal Authority is unable to continue to operate the property, as is. The Authority is not in the business of owning a library. The lease to Kaltreider-Benfer is a 99-year lease. Mr. Craley asked what has changed that RLMA no longer wants to own this property? Mr. Ruth stated he believes it's due to the realization of the liability that is involved and the uniqueness of having the two separate uses on the same property. He believes the intent at the time was to lease the land & construct the library; however, he's unsure what the Municipal Authority's long-term goal may be. Being that the RLMA has no further interest in owning/operating the library, it makes more sense for the library to have the ownership of the property. This doesn't rise to the level of the Use Variance, but this is an alteration of the law for this specific purpose. Two separate uses on one parcel create a unique hardship. Because of the physical restrictions, it leaves the library (and the Authority) with the only other option to continue as is (which can't be done) or tear down & reconstruct elsewhere.

Mr. Craley asked if, when the library was built and the parking and everything was improved to the point it is now, were all appropriate permits & necessary Variances obtained at that time? Mr. Ruth stated they were, per Dan Shaw's records.

Mr. Ruth continued that this request represents the minimum Variance needed to afford relief to the library and the Authority and to come into compliance. There are no further proposed expansions at this time in need of approval.

Questions from the Board & Solicitor Craley:

- Mr. Craley asked if this request is preceding an expansion of Kaltreider-Benfer Library? Mr. Ruth stated there is expansion planned; however, it is very uncertain as to what that will be, and no approvals of that kind are being requested right now. They simply want to separate the parcel & establish ownership of it.
 - Per the site map, the small green strip beside the Fairmount Park parking area is the basketball court & the strip of land to provide RLMA access to the tank. Is that going to be proposed as a stand-alone lot owned by the library when a formal Subdivision Plan is submitted? Mr. Ruth stated it will be joined. It will be an owned strip that goes from Charles Street back to the tank. It will be lightning-struck on the plan to make that piece a part of that property & unable to be subdivided without further Borough approval.
 - Basketball court—the Authority currently maintains this & when/if the library expands, they may need that portion for stormwater purposes.
 - Mr. Craley stated one of the fundamental principles of zoning law is that zoning regulates use of a property, not ownership. There is no change in use of this property. Many properties in Red Lion have duplexes on one lot, with one legal description. If one person wants to split the duplex/subdivide, even though it doesn't meet current dimensional requirements, you are justified in granting a Variance to do so. This is basically the same situation; we're regulating use, not a change in ownership. Mr. Horne made a motion to recommend approval of the Variance; Ms. Seabolt seconded. All were in favor; motion carried.
 - Zoning Hearing on this issue is scheduled for Tuesday, June 12th, @ 6p.m.
4. **Special Exception application has been submitted by CHR Corporation, dba Rutter's** to allow a convenience store dispensing fuel in the Commercial Zone at 730 South Main Street, Red Lion, PA. Mr. Craley stated that since Chairman Elfner is an adjoining property owner of the Rutter's property, being that there are only 4 Committee members present tonight, if he were to

recuse himself from voting, there would be no quorum. But he stated “The Rule of Necessity” doctrine allows someone who has a conflict of interest to announce the conflict for the record, maintain themselves as a deliberative member of the Committee, but abstain from voting on the issue. Mr. Craley recommended Mr. Elfner do this; Mr. Elfner agreed to do so. Mr. Martineau (Rutter’s Solicitor) stated he would also like to state for the record that, not only is Mr. Elfner an adjoining property owner, but has been the most vocal objector against the Rutter’s plan for expansion.

The property at 730 South Main Street was recently rezoned from Residential to Commercial, allowing Rutter’s to move forward with an expansion of their store next door (5 Winterstown Rd). Mr. Martineau explained most of the expanded building will be on the existing property, taking the approx. 3,200-sq.ft. building to 5,500 sq. ft. The newly acquired property will be used for additional parking and gas pumps.

A Special Exception from Section 305:3 is required for the dispensing of fuel. It is a use that is permitted when the applicant proves they will comply with criteria in the Zoning Ordinance. Mr. Martineau submitted a written supplement with the application which was distributed to Committee members. Mr. Craley asked Mr. Martineau to state for the record that the criteria and responses to the written supplement do truly & accurately depict his intentions and proposal for this project and that they are specific representations of what he plans to do. Mr. Martineau stated they are and they would be what he testifies to do orally at tonight’s meeting.

Proposed plans are as follows:

- Access point to the store, currently closer to South Main/Winterstown Rd intersection, will be moved further North (away from the intersection).
- Close off access to the alley (rear of current store) With Winterstown & South Main both being State roads, Mr. Martineau is anticipating PennDOT to restrict that alley as a full-access road. Mr. Neal Metzger (Rutter’s Engineer) reported that traffic studies have been submitted to the Borough Engineer, York County Planning Commission and PennDOT and the recommendation of the analysis is to restrict the entrance coming off Winterstown as a “no left turns out but allow left turns in”. In addition, no changes are proposed to Railroad Lane other than eliminating the access drive from the store onto Railroad Lane.
- Gas pump configuration will be modified to 5 pumps (10 fueling stations)
- Lighting under the fueling canopies will be changed to the LED lights, much dimmer than current halogen bulbs. Mr. Metzger confirmed that all lighting will be diverted toward the facility or down toward the parking lots, as specified on the plan and according to the Zoning Ordinance. He stated there is no need to have elevated lighting like at some of their stores and the proposed LED lighting will be shielded so it doesn’t adversely affect neighboring properties.
- Landscaping around property to block neighboring residential properties.
- Fencing/screening—a 6’ privacy fence & evergreens are proposed, but they will discuss with Dan Shaw to discuss what will work best.
- Trash dumpster to be enclosed with closed doors
- Stormwater plan and the lighting will be subject to the Land Development Plan process.
- Loading area for delivery trucks (currently rear of store, Railroad Lane) will continue to remain as it is currently. When asked, Mr. Metzger/Mr. Martineau were uncertain of the current delivery times, but Mr. Craley said they may be asked at the Zoning Hearing. Dan Shaw suggested more daytime deliveries rather than late night/early morning. Mr. Metzger/Mr. Martineau didn’t know the logistics of the deliveries; however, Mr. Metzger stated with larger stores, the delivery frequency tends to get reduced. More product can be taken in one delivery. They said they will have to adhere to delivery restrictions if they’re listed in the Zoning Ordinance. Section 411:3 states “loading areas are to be

arranged so there is no need to back over a public right-of-way or be located in a front yard”. Mr. Craley stated if the trucks can swing in, unload and not have to back out, that’s fine, but if they have to back out at all, they will be in violation of Section 411:3. Once the building is enlarged, it may become more difficult. Currently, the delivery trucks totally block Railroad Lane when making deliveries to the store. Ms. Thompson asked why the delivery system can’t be reconfigured to **not** block Railroad Lane while other areas of the property are being reconfigured. Or could the delivery trucks follow the same route as the trash trucks?

In paraphrasing the Ordinance, Mr. Craley stated “render unto Zoning that which is Zoning; render under Land Development that which is Land Development”. A certain plan for the lighting could be required for the Zoning Hearing, but Rutter’s representatives confirmed they will do this during the Land Development process. He also feels they’ve made a clear representation of what the plan will be regarding setbacks, lighting, screening, parking, etc. Mr. Craley’s biggest issue is that the loading/delivery area complies with Section 411:3, but it’s Rutter’s responsibility to ensure they’re in compliance with the Ordinance. Other options for truck deliveries were discussed. Perhaps smaller Rutter’s trucks can be allocated for deliveries to this location. Mr. Craley stated he has seen many Rutter’s stores come to many municipalities; each time the plans have been well done and prepared. The lighting and noise issues will need to be addressed and Rutter’s reps confirmed they will be. Mr. Martineau will confirm that everything complies with Section 411:3 prior to the Zoning Hearing.

- Mr. Horne still does not agree with the expanded Rutter’s store. He does not believe the noise & safety (traffic) issues will be resolved and he believes they will, in fact, increase due to the larger store. The current store is out of compliance with parking; they’re two spaces short. On the revised plan, however, the parking complies with current Zoning regulations.
- Ms. Thompson stated if Rutter’s complies with all the Zoning requirements, how can we deny it? To vote against it, there should be a legal reason to do so. The traffic study results will determine the turning patterns in & out of the Rutter’s property and hopefully will address some of the Committee’s concerns.

Ms. Thompson made a motion to recommend approval to grant the Special Exception for a convenience store to dispense fuel provided they show full compliance with requirements of Section 411 of the Zoning Ordinance; Ms. Seabolt seconded. A vote was taken; motion carried with two in favor, Mr. Horne opposing & Mr. Elfner abstaining.

5. **Other business--**

- Mr. Craley reported on the two zoning map amendments that YCPC reviewed:
 - Rezoning of the lot at South Main & Grand Street (request to rezone from Residential to Commercial). York County Planning Commission recommended against it; however, Borough Council authorized the advertising of the Public Hearing to consider it at their June meeting. Ms. Seabolt made a motion recommending Borough Council approve the Ordinance Map Amendment of this lot from Residential to Commercial; Ms. Thompson seconded. A vote was taken; tie vote, 2-2 (Mr. Horne & Mr. Elfner opposed).
 - Text amendment allowing a contractor’s office in a Commercial Zone based on request received for the property at the corner of Walnut & South Main Streets. York County Planning Commission recommended approving this. This would be permitted as a Special Exception in the Commercial Zone. Mr. Horne made a motion to recommend approval to add a contractor’s office/shop in the Commercial Zone by Special Exception; Ms. Seabolt seconded. All were in favor; motion carried.

- The Zoning Hearing Board denied approval of the boardinghouse at 104 South Main Street.
 - Concerning the proposed Rutter's expansion, the Zoning Hearing Board has legal authority to impose reasonable conditions on loading times, deliveries, etc., especially since it is beside residences.
6. **Adjournment**—With no further business, Ms. Thompson made a motion to adjourn the meeting @ 8:15p.m. Motion carried; meeting adjourned.

Respectfully submitted by:

Stacy Myers, Recording Secretary