

Pledge of Allegiance

Present:

Present at the meeting: Zack Kansler, Robert Mitall, John Bosetti, Ed Patrick, Jayne Hoy, Frank Muzika and Tony Spadaro, Council Liaison. Also in attendance was Chief Administrator Jim Morrison.

Absent: Bill Yant

PUBLIC HEARING

A public hearing on a rezoning request by MAGAM Investment Associates, LP, file number Z-1-19, Route 22, at the intersection of Kistler Road and Route 22, one parcel, 3.56 acres, tax map number 49-15-00-0-027, present zoning B (Commercial), proposed M-U (Mixed Use)

A public hearing was held at 7:00 p.m. Stenographer Nancy Frost recorded the proceedings. The public hearing closed at 7:11 p.m.

Minutes:

Public Comment: Sam Douglas approached and said he thought there was going to be discussion on a well. He was advised that matter was before Council and would be discussed at the Council meeting the following night at 7:00 p.m. When asked who would be presenting at the meeting, Mr. Morrison clarified that the attorneys representing the aggrieved party and the applicant (Huntley & Huntley), who will be presenting one-half hour closing arguments. Once the arguments are heard, the meeting will be opened for public comment.

New Business: None.

Old Business: Z-1-19, a rezoning request by MAGAM Investment Associates, LP, file number Z-1-19, Route 22, at the intersection of Kistler Road and Route 22, one parcel, 3.56 acres, tax map number 49-15-00-0-027, present zoning B (Commercial), proposed M-U (Mixed Use)

Mr. Mitall reminded the members that there were several documents provided in the drop box and, in discussions, there were some concerns about spot zoning. Mr. Patrick asked about the 5 acre requirement; Mr. Mitall said the minimum 5 acres is if the property is in the business overlay district. Ms. Hoy stated that Ch. 220-31 is in the overlay district; Mr. Morrison said that Ch. 220-31 is the Conditional Use section of the Zoning Ordinance, while Section Z provides for mixed-use development in the business district. Ms. Hoy asked if that was where it says that the minimum site area shall be 5 acres. Mr. Morrison said that is correct. Mr. Mitall said that in order to have a mixed-use project in the overlay district, there must be at least 5 acres. Ms. Hoy asked why Mr. Mitall kept referring to the overlay district. Mr. Morrison said it's only permitted in the business district; the overlay district incorporates both

residential and business uses. Mr. Mitall stated that, in order to have a mixed-use development in the B district, regardless of whether it's in the overlay or not, it has to have 5 acres. Mr. Morrison said that is correct. Ms. Hoy said she is thoroughly confused. Mr. Patrick noted that the point of the request is to get the zoning changed so that the applicant would not then be zoned business, thus alleviating the 5 acre requirement. Mr. Morrison said that is correct.

Ms. Hoy said this is the most confusing thing she has seen on paper. Referring to her computer, the application says "mixed-use development" and the applicant wants to change the zoning to mixed-use; the ordinance says it has to be a minimum of 5 acres. Mr. Morrison said it's two different concepts with the same handle—mixed-use being residential and commercial (uses being mixed together) versus a mixed-use which defines the zoning district. Mr. Muzika said he understands what Mr. Morrison is saying but it's not what it's reading. Mr. Kansler explained that "the way that it reads is if you want to use a mixed-use development as your use of the land, it's a conditional use that requires those criteria. He [the applicant] is asking for a mixed-use zoning designation." Ms. Hoy said it's mixed-use in B. Mr. Mitall said this is a request is to make this an M-U district; there's no M-U that it touches; Business and R-2 are around it. Ms. Hoy said that, right now, it's zoned B (just like Rick's Sports Bar is zoned B) and if he [the applicant] wanted to build another Rick's Sports Bar there, it's a permitted use. Mr. Mitall agreed. This will allow him to incorporate residential, which is a far less impactful use than the way it's zoned now. She said this because she wanted the audience to understand it correctly. Mr. Patrick said he, personally, has no quarrel with what the applicant is trying to do; it seems very logical and provides a buffer. Mr. Patrick moved that this be passed on to the Council with Planning Commission's approval. Ms. Hoy seconded the motion.

Prior to a vote, Mr. Mitall said he is somewhat troubled by the application. The request seems perfectly logical if you look at the [potential use] but it seems to him that M-U would be a lot better for neighbors than a business-type use. He could see where there would be more traffic if the property was developed into some sort of business. He continued by saying that the problem is that it could be construed as spot zoning, although after reading the memo provided by Mr. Morrison, and just experience in general, attorneys argue all the time whether something is spot zoning or not and the size of the parcel doesn't have anything to do with it. Mr. Morrison said that's the argument that was made in the article. Mr. Mitall said he doesn't have a problem with it other than the possibility that some aggrieved neighbor might try to sue the Municipality. He said he would hope the developer would follow through and have a good project and not turn it into something else once it's re-zoned. Mr. Morrison said the challenge is that the B district doesn't permit anything other than B use unless there is greater than 5 acres and historically in Murrysville mixed-use, by definition, had been essentially a transition. That's what the original intent was – transition from residential to commercial usage along Old William Penn Highway. He added that, in hindsight, a consideration might be a curative amendment for this parcel. Ms. Hoy said she didn't know what that meant. Mr. Morrison explained that it "cures" a zoning district when it doesn't provide for uses that the property owner intends to use it for.

Mr. Bosetti said he has concerns about a storage or dumpster business being next door to a residential development. Mr. Patrick said that is not what the applicant is going to do; it was one of the things that was considered but that is not what is proposed. There was no further discussion.

All present voted aye. Motion passed 6-0.

A discussion of a proposed Ordinance regulating small wireless antennas.

Mr. Mitall noted that Mr. Morrison had provided the members with draft model ordinances received from Crown Castle. Mr. Morrison clarified that one document is an ordinance and the other is guidelines. Mr. Mitall asked if any Municipal organizations have similar documents. Mr. Morrison said they may have something available but he thinks a lot of the state organizations have refrained from putting that kind of information together because, in a lot of instances, the state organizations are supporting the municipalities from the point of view of “money grab” for accessing right-of-ways, and the state hasn’t formally passed any regulations or updates to the regulations, but it is anticipated soon. Mr. Kansler agreed and said he thinks they have been holding back because there have been PUC status changes with common carriers so what was done three years ago isn’t valid any longer. Also, the FCC has issued some policy rulings over the past three months that have changed how municipalities can regulate and charge; he doesn’t think there’s a level playing field right now. He said that two of his municipalities will be re-doing ordinances because of the changes.

Mr. Patrick asked if Crown wants to move ahead with the project behind Dairy Queen. Mr. Morrison said it was addressed late last year and, for whatever reason, it didn’t move forward. With the application from Crown for the small cell antenna on Logan Ferry, staff decided to bring it back. Mr. Morrison said, personally, the impact of that small-cell antenna on Logan Ferry is negligible; however, if this is a sign of things to come, staff believes it is important to draft an ordinance to regulate the antennas. He said the issues are that Crown is going to take the position that it is a public utility and doesn’t want to be treated any differently than a public utility; municipalities might be looking at it as an opportunity to make a couple extra bucks because they want to occupy a right-of-way. The FCC has limited what municipalities can charge and limited the review period. Those two things have to be incorporated in the ordinance: the review period and the maximum fee permitted. Beyond that is the question as to how to manage the application: should it be coming before a zoning body, a governing body, or is it an administrative approval on the permit? If an administrative approval, it is important to make sure the guidelines and requirements are clear enough and stringent enough to give direction to staff to do that.

Mr. Morrison continued by stating that the other issue is the aesthetic value or impact that it may have on the community. He said the members found out at the last meeting that Crown needed 5G to operate, which means that it will be available in the community where 5G is currently available, or the demand by a particular customer is going to be great enough that they will run 5G to service it. The next logical step is to use existing poles and decide what to do with the neighborhoods. He asked if the municipality wants up to 50 foot antennas in the neighborhoods because they can’t be run underground. He threw out the idea that maybe this

becomes part of a zoning issue and only permitted on certain roads in the Municipality and found out from Crown that they have a 1,000 foot range and they need to be five feet above the next highest point. Mr. Morrison said it seems to him that if 5G hasn't come to Murrysville yet, it's not coming anytime soon. He said if there will be antennas, they will probably be along Rt. 22. Old Rt. 22, Rt. 286, maybe Sardis, maybe Manor/Mellon Road. Until the demand becomes great enough in the suburbs (the wi-fi demand in some homes is growing every day)....

Mr. Patrick noted that, right now, Crown is talking about using existing right-of-ways, and if it is anticipated that citizens are going to want to have access to this kind of service, why isn't staff thinking about ways of making that possible without it being intrusive? Because of Murrysville's topography, the range is limited, residential areas clustered, etc., he suggested looking at the community topographically (density-wise) to determine the best place to put the antennas. Mr. Morrison said that's a good thought but he thinks the providers will go wherever they want or wherever the demand is; if the Municipality can't regulate them from a zoning perspective (i.e. limit them to major thoroughfares) he doesn't know if the Municipality can limit them geographically because of topography. Mr. Patrick said his approach would not be to limit the provider but to make the Municipality's plan attractive to them. If the Municipality can suggest antennas in certain areas to get the necessary coverage, he believes it would be a win-win situation.

Mr. Kansler said as a baseline the municipality has to require co-location, but the company won't want to do it because it costs the company a very small amount of money to put in a new pole; they don't want to co-locate because they have to pay rent on the poles in perpetuity. He said staff needs to be strong on co-location and from a structure standpoint he doesn't have a problem with staff review of ones that are going to be co-located and not go above a certain threshold for feet. He doesn't believe there is a need for a legislative process for co-locating on an existing utility pole if it's not going to be onerous. Regarding making the antennas less obtrusive/more aesthetically pleasing, Mr. Kansler said a recent FCC ruling indicated that municipalities couldn't require stealthing so the municipality would be stuck with what it looks like.

Mr. Mitall said that part of the problem, from a practical standpoint, is the need to put the antennas 5' above the nearest structure. He said if you look at the poles that now hold utilities, none are above the tree canopy. Ms. Hoy said that's the co-locator. Mr. Kansler said they won't go higher than 50' because that requires a whole new level of engineering. Mr. Mitall said the existing poles are not high enough. Ms. Hoy asked if they can put an antenna-type thing on an existing pole to get up to the necessary height. Mr. Kansler said he's never seen anything more than a 5' extender; they usually drive new poles with the antenna topping out at 40-42 feet. Mr. Morrison said he doubts that the Municipality will see co-location. Ms. Hoy asked if there will be a PA one-call if a new pole is being put in and digging 5'. Mr. Kansler said that is sometimes how municipalities find out a pole is being put in without getting a permit.

Ms. Hoy said with technology changing so rapidly, this may not be an issue in 2 years. Mr. Morrison said he thinks the only reason to get a small cell in Murrysville is because there is a

demand, and it would be a business demand probably more than anything else. He said it's just coming to some of the major urban areas now and he doesn't see it happening very quickly. Mr. Mitall reiterated that Crown said it wants to be treated like other utilities (gas, water, etc.), yet in reading the materials provided, it just talks about poles, electric, etc. He said he doesn't see why the Municipality can't just regulate Crown as a separate entity but believes staff needs outside counsel who is familiar with this issue to prepare an ordinance and consider the concerns being expressed (aesthetics, sight distance, etc.). Mr. Morrison said he had concerns about the maintenance – or lack thereof – of facilities owned by other utility providers.

Mr. Mitall asked if staff should get a proposal from someone to attend a meeting or two and draft an ordinance. It was the general consensus of the group to proceed with proposals. Mr. Mitall asked about the regulations regarding street openings. Mr. Morrison explained the street opening procedure, which is drawn up according to PennDOT regulations.

Other Business: Mr. Morrison advised that there will be 3 plans coming up at the next meeting for approval.

Adjournment:

Mr. Muzika: Moved to adjourn at 7:51 p.m.

Mr. Patrick: Seconded

Motion Approved: 6-0