

1. CALL TO ORDER

PLANNING COMMISSION PRESENT:

Carroll Sinquett, Chair  
Zoe Warner, Ph.D., Vice-Chair  
David Knies, Ph.D., Commissioner  
Mark Niemiec, Commissioner  
Chris Mongeau, Commissioner  
Scott Oswald, Commissioner

ABSENT:

Geoff Rubino, Commissioner  
Brian Hamilton, Alternate Commissioner

Staff & Professionals Present:

Christopher Bashore, Borough Manager  
Tiffany M. Loomis, Assistant Borough Manager & Zoning Officer  
Kenneth Kynett, Esq., Planning Commission Solicitor

2. MINUTES

A motion was made by Dr. David Knies, Ph.D., seconded by Mr. Mark Niemiec and carried by a vote of 6-0, to approve the minutes from the January 7, 2021 meeting of the Planning Commission as submitted.

3. UNFINISHED BUSINESS

There were no items of Unfinished Business for discussion.

4. NEW BUSINESS

a. Planning Commission Annual Report

Chair Carroll Sinquett asked if everyone had a chance to review the report and if there were any suggestions.

A motion was made by Dr. David Knies, Ph.D., seconded by Mr. Mark Niemiec and carried by a vote of 6-0, to approve the Planning Commission Annual Report as submitted to be forwarded to Borough Council.

b. Zoning and Subdivision & Land Development Ordinance Amendments

- Street Tree Requirements and Plan Material List
- Outdoor Dining/ Café Regulations

Chair Carroll Sinquett asked if everyone had a chance to review the Street Tree Requirements and Plan Material List.

Mr. Christopher Bashore explained that the matter was brought to the Borough's attention five (5) years ago and referenced the proposed ordinance. In year 2016 this proposed ordinance was

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authorized to be sent to the Chester County Planning Commission (CCPC) for review by Borough Council. CCPC recommended further evaluations be made and various revisions. Due to the comments made by CCPC it was considered that the Shade Tree Ordinance be potentially modified and a more thorough review be completed of the plant material list. The Shade Tree Ordinance has been recently updated and the plan material list is now before you for review.

Mr. Christopher Bashore recommended that both the street tree list and plant material list be amended simultaneously to correspond with one another. The street tree list was taken from West Chester Borough's Ordinance.

Dr. Zoe Warner, Ph.D. asked when the ordinance for this matter was passed by West Chester Borough. Her reason for asking is to verify if this is the most up to date list and potentially have Philadelphia Horticultural Society recommend the latest list to consider.

Mr. Christopher Bashore clarified that this approximately took place in late 2019.

Chair Carroll Sinquett explained that there is a certified arborist on Borough Council and this matter would be reviewed with the most up to date information.

Mr. Christopher Bashore recommended that the Ordinance be reviewed by the Shade Tree Commission at their February 22, 2021 meeting to comment on any further revisions that may need to be made.

Dr. Zoe Warner, Ph.D. would like to see the list focus specifically on native species which would provide a range of trees for homeowners to choose from.

Mr. Christopher Bashore explained this list if not for homeowners and for Subdivision and Land Development application when they are submitted due to the street tree requirement for plantings in the Subdivision.

Dr. Zoe Warner, Ph.D. reiterated that it's important the list be narrowed down to native species to increase the environmental services in Malvern Borough's Community.

Chair Carroll Sinquett is in agreement and asked if there is a caliper requirement regarding street trees.

Mr. Christopher Bashore confirmed that there are caliper requirements for street trees in both the Zoning and Subdivision & Land Development Ordinances.

Mr. Christopher Bashore asked Dr. Zoe Warner, Ph.D. to mark off trees provided on Malvern Borough's street tree list to discuss with the Shade Tree Commission on Monday, 2/22/2021. She agreed accordingly.

Mr. Christopher Bashore and Dr. Zoe Warner, Ph.D. discussed overall tree requirements. Dr. Zoe Warner, Ph.D. suggested that non-native trees and plants be removed from all lists that are currently in place.

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Mr. Christopher Bashore explained the attachments provided to the Planning Commission outlining the tree species provided in the list such as white pine, box elder, ash, and ten (10) new species proposed to be added to the list.

Mr. Christopher Bashore explained that the Borough Solicitor recommended that the Planning Commission in addition review the Borough's buffering requirements located in the Zoning Ordinance to correspond with the street tree requirements.

Mr. Christopher Bashore asked the Planning Commission's stance on increasing the caliper requirement currently required.

Mr. Mark Niemiec asked if a green giant species is a shrub or tree due to how large the species grows. Dr. Zoe Warner, Ph.D. answered that she believes a green giant is a shrub. Dr. Dave Knies, Ph.D. is in agreement.

Dr. Zoe Warner, Ph.D. confirmed that the green giant species is not on the plant material list.

Mr. Mark Niemiec commented that the green giant species is excellent to plant for buffering due to their size and how quickly the species grows. It also offers great coverage overall, has minimal maintenance, and has an aesthetic look.

Chair Carroll Siquett explained that the green giant species is also known as "arborvitae" and is not located anywhere in the Borough's requirements.

Mr. Christopher Bashore asked if the green giant species should be added to the evergreen tree species list.

Chair Carroll Siquett responded that this is an item that needs to be presented to the Shade Tree Commission.

Dr. Zoe Warner, Ph.D. addressed that there is a native arborvitae that can be provided on the list.

The Planning Commission agreed that arborvitae are great screening buffers.

Mr. Christopher Bashore confirmed that he will ask the Shade Tree Commission if arborvitae should be provided in the list under evergreen trees.

Dr. Zoe Warner, Ph.D. asked if northern white cedar, a native arborvitae, is on the evergreen list. Mr. Christopher Bashore confirmed that northern white cedar is not on the list and will discuss in further detail with the Shade Tree Commission on Monday, 2/22/2021 to have it added to the list.

Dr. Zoe Warner, Ph.D. commented that native species tend to be heartier and have a longer survival rate when planted.

Mr. Christopher Bashore asked Mr. Ken Kynett, Esq. if the Borough can mandate that screening be of native species.

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Mr. Ken Kynett, Esq. answered that screening using native species can be a requirement mandated by the Borough. The Planning Commission is in agreement.

Mr. Christopher Bashore will discuss about mandating that screening be of native species with the Shade Tree Commission at its Monday meeting, 2/22/2021.

Chair Carroll Sinquett commented that he was surprised the ash trees are remaining on the list.

Mr. Christopher Bashore confirmed that the ash trees are being removed from the list.

Mr. Christopher Bashore commented that he will review the proposed lists with Mr. Joe Bones, a certified arborist, to mark what species are native.

Both Mr. Ken Kynett, Esq. and Mr. Scott Oswald made comments regarding the proposed format of the Ordinance. Mr. Christopher Bashore will ensure all format errors are corrected.

Chair Carroll Sinquett asked if there were any further comments. Mr. Christopher commented he will forward the above comments to the Shade Tree Commission. Upon the Shade Tree Commission making its comments the proposed ordinances will be revised accordingly and sent back to the Planning Commission for review.

Mr. Ken Kynett, Esq. explained the review process for both the Malvern Borough and Chester County Planning Commissions having to review the final proposed ordinances prior to being adopted by Borough Council.

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Mr. Christopher Bashore explained outdoor dining/ café regulation amendment being needed due to the COVID19 pandemic occurring. Many municipalities have gotten creative to address the restrictions placed on restaurants due to the pandemic. The current ordinance requires that a conditional use approval be obtained to permit outdoor dining in all commercial zoning districts.

The Borough Council President requested the office to look into potentially allowing outdoor dining by-right, meeting various conditions set forth in the zoning, to be processed through the zoning permit process versus first having to obtain conditional use approval.

Mr. Christopher Bashore explained he researched this matter through the Chester County Manager's Consortium and received two (2) relevant responses which have been provided to the Planning Commission (i.e. West Chester Borough and Kennett Square). Both municipalities allow for this kind of by-right use in their community.

Dr. Dave Knies, Ph.D. commented that the West Chester ordinance seems too large in nature and a less restrictive ordinance may need to be considered for Malvern Borough.

Mr. Christopher Bashore explained that the Flying Pig would like to continue to offer outdoor dining, however will have trouble meeting the current standards set forth in the Zoning Ordinance.

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Chair Carroll Siquett asked what difficulties the Flying Pig would have to meet the current standards.

Mr. Christopher Bashore explained that if the restaurant is within ten (10) feet of a sidewalk a full blown barrier has to be installed very similar to what Christopher's was required to do. This is not possible due to the present layout of the lot and placement of the restaurant. He clarified that the patio and side area are best to have tables versus including tables near the intersection at King & Bridge streets.

Mr. Mark Niemiec commented that many restaurants have been affected financially due to the pandemic and these considerations have been on the table for quite some time now in order for restaurants to survive.

Mr. Dave Knies, Ph.D. commented that Anthony's proved to be difficult with their outdoor seating due to taking as many parking spaces as they did making the parking lot tough to navigate.

Mr. Christopher Bashore explained that Anthony's outdoor seating took up a lot of space, however the product created is very nice. The Planning Commission was in agreement with this perspective.

Dr. Zoe Warner, Ph.D. commented that having outdoor seating for restaurants creates a lively environment and invites people in. She encourages such as long as safety standards can be met.

Mr. Mark Niemiec commented that the West Chester Borough Ordinance formalizes this effort prior to the pandemic.

Chair Carroll Siquett commented that Gay Street was shut down for four (4) blocks in West Chester during the pandemic.

Mr. Christopher Bashore commented that Dave Campi addressed with him that he did not want to see King Street shut down during the pandemic. This would not be feasible given this is a main artery of Malvern Borough.

Mr. Chris Mongeau commented shutting down King St is a different animal than in West Chester or Phoenixville. He further explained that Malvern Borough does not have the best set up due to the streets and sidewalks being narrow.

Mr. Scott Oswald commented that one of the benefits of the conditional use process is to fully vet any issues at hand. He further explained that this does not benefit the restaurants.

Chair Carroll Siquett asked what the current program to keep outdoor dining that has been approved.

Mr. Christopher Bashore explained that outdoor dining approvals are to be renewed every sixty (60) days. He further explained that when COVID19 ends this option will end and the Zoning Ordinance requirements will be enforced.

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Mr. Christopher Bashore deferred to Mr. Ken Kynett, Esq. regarding municipalities that have waived their policies on this matter. He explained that Edgmont Township enacted a formal moratorium on enforcement against outdoor dining during the pandemic.

Discussion and questions ensued regarding the conditional use approval process.

Dr. Zoe Warner, Ph.D. asked about the sixty (60) day review period currently established and why such is done. Mr. Christopher Bashore explained that this is a checks and balance measure given that this option was created for restaurants to survive during the pandemic. If a restaurant decides to apply for conditional use and receives approval the sixty (60) day review period does not apply.

Dr. Dave Knies, Ph.D. recommended that a hybrid approach be taken where certain conditions must be met and anything outside that scope a conditional use hearing be required.

Mr. Chris Mongeau commented that anyone opting to have outdoor dining completely on private property should be considered by-right versus when public property is affected, such as sidewalks, should then be considered by conditional use approval.

Mr. Ken Kynett, Esq. commented that to-go institutions such as WaWa are going to be part of the restaurant model after the pandemic has concluded as well as restaurants always offering outdoor seating options. He further explained parking standards will need to be addressed, etc....

Chair Carroll Sinquett addressed how Anthony's affected parking. Mr. Christopher Bashore explained that the property owner had to sign off on this matter prior to Council approving this request.

Dr. Zoe Warner, Ph.D. commented that it would be beneficial to have the revitalization plan applied to this parking lot which would rectify this issue.

Mr. Mark Niemiec asked if people utilize the bank to park across the street when one cannot find parking in this strip mall.

Mr. Scott Oswald replied that this takes place every day.

Dr. Dave Knies, Ph.D. responded that he does not know if this has been formalized to park in this area officially and the Septa parking lot is also used to access the strip mall.

Mr. Christopher Bashore confirmed that Septa allows for afterhours parking in their lot.

The Planning Commission discussed how parking has been inadequate since Anthony's has provided outdoor seating removing parking spots from the existing lot.

Mr. Christopher Bashore recommended to differentiate the by-right use of outdoor seating per the zoning district in which the restaurant is located (i.e. C1, C2, C3, or C4).

Chair Carroll Sinquett asked if it could be recommended if the property included public sidewalk or not regarding whether the outdoor seating is considered by-right.

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Mr. Ken Kynett, Esq. confirmed that this may be a requirement if the Planning Commission so desires. He also explained the Liquor Control Board has its own regulations that may come into effect if the establishment has a liquor license..

Chair Carroll Sinquett asked about on street parking and if anyone would want to utilize this option for outdoor dining.

Mr. Christopher Bashore explained that this has not been an issue or a request at this juncture. He does not foresee Borough Council looking favorably if a request of this nature were made.

The Planning Commission discussed on-street parking being used for outdoor dining and is not in favor.

Mr. Christopher Bashore will consult with the Borough Solicitor to tailor a recommendation to allow outdoor dining by-right as long as the dining area is located on private property and if public sidewalks are involved the conditional use approval process is required. The Planning Commission was in agreement with this approach.

Mr. Mark Niemiec requested that maps also be provided at the next meeting to address the recommendation regarding what areas will be affected. Mr. Christopher Bashore agreed to provide such.

### 5. PUBLIC COMMENT

A discussion occurred regarding if there have been any interested parties to take tenancy at the former Christopher's Restaurant location. Mr. Christopher Bashore confirmed that he has not been made aware of any.

A discussion occurred regarding the status of the Comprehensive Plan. The Borough is in the process of collecting surveys and will report back accordingly. In addition, a sub-committee has been created to work on a future land use plan that would include, but is not limited to, the Malvern Retreat House Property and the L&I Zoning District located on Pennsylvania Avenue due to the size of these properties, and potential development that may occur in the future.

### 6. ADJOURNMENT

A motion was made by Mr. Chris Mongeau, seconded by Dr. Dave Knies, Ph.D., and carried by a vote of 6-0, to adjourn the meeting at 8:45 p.m.

Respectfully submitted by,

Tiffany M. Loomis  
Assistant Borough Manager & Zoning Officer