

MALVERN BOROUGH
PLANNING COMMISSION
Zoom Conference
Malvern, PA 19355

July 1, 2021
7:30 P.M.

1. CALL TO ORDER – 7:35PM

PLANNING COMMISSION PRESENT:

Carroll Sinquett, Chair
Zoe Warner, Ph.D., Vice Chair
David Knies, Ph.D., Commissioner
Chris Mongeau, Commissioner
Mark Niemiec, Commissioner
Scott Oswald, Commissioner
Brian Hamilton, Alternate Commissioner via ZOOM

ABSENT:

Geoff Rubino, Commissioner

Staff & Professionals Present:

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

Christopher Bashore, Borough Manager

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 June 3, 2021 meeting of the Planning Commission as submitted.

3. UNFINISHED BUSINESS

Zoning Ordinance Amendment

- Outdoor Dining/ Café Regulations

Chairman Carroll Sinquett re-introduced the proposed outdoor dining/ café regulations amendment. He asked the Planning Commission to discuss the design of dining space being located in current parking spaces and hours of operation.

Dr. Dave Knies, Ph.D. asked if the spirit of the proposed amendment is to ensure that no particular restaurant has an advantage over another.

Chairman Carroll Sinquett confirmed that this is not the case. He explained that due to the ending of the forbearance agreements, Borough Council has requested to enact legislation for the outdoor dining/ café's to be allowed by-right, with the exception that if seating is in the public right-of-way the café is required to go through the conditional use process.

Chairman Carroll Sinquett further use the Malvern Shopping Center as an example regarding the parking discussion (i.e. Anthony's) to start the discussion.

Ms. Tiffany M. Loomis was asked to provide background information to the MPC on this matter and Chairman Sinquett authorized such. Ms. Loomis explained that when the forbearance agreement was completed for Anthony's, located in the Malvern Shopping Center, parking calculations were performed by the Zoning Officer, Borough Engineer, and confirmed by the Borough Solicitor. Malvern Shopping

PLANNING COMMISSION MEETING

July 1, 2021

Page 2 |

Center has an agreement with Septa to use their parking lot in the rear, which in turn, was the qualifying factor for the shopping center to have enough off-street parking.

Mr. Chris Mongeau clarified that the parking has not been affected at Malvern Shopping Center.

Chairman Carroll Siquett then addressed Malvern Pizza which is using parking space as well for seating. He further asked the MPC if parking spaces, used in this manner, is something that needs to be addressed.

Dr. Dave Knies, Ph.D. commented that whatever is recommended, it is important it is done in a way that restaurants are not coming back to Borough Council complaining how this ordinance was enacted regarding the overall fairness across the Board.

Mr. Chris Mongeau is in agreement.

Mr. Mark Niemiec asked if the spaces where the benches are located at Malvern Pizza is public property.

Chairman Carroll Siquett confirmed that this is private property and the spaces located on the other side of this area is public property.

Dr. Dave Knies, Ph.D. asked if there is a standing agreement with Septa that exists for the Malvern Shopping Center.

Ms. Tiffany M. Loomis confirmed such.

The MPC discussed parking agreements held for Brick and Brew, Alba, and Malvern Pizza. The main discussion encompassed if Malvern Pizza and others will want to maintain the outdoor seating they currently have and if there is a seasonal nature to the outdoor cafes.

Mr. Chris Mongeau would just as soon leave the cafes as they are.

Mr. Scott Oswald referred to the parking requirements in the Malvern Zoning Ordinance and clarified the formula needs to be applied to any outdoor café making application to the Borough.

Mr. Brian Hamilton commented that the MPC may be underestimating the restaurant's need and want for permanent outdoor dining/ cafes. He further commented it appears there will be a constant pressure for outdoor dining.

Chairman Carroll Siquett asked if the hours of operation for the forbearance agreements is case by case or if a standard hours of operation was used for all forbearance agreements.

Ms. Tiffany M. Loomis confirmed that a standard hours of operation was used and was provided in an informational email to the MPC for review.

Chairman Carroll Siquett asked the MPC to discuss what hours to recommend to Borough Council.

Mr. Mark Niemiec and Mr. Mongeau recommended that the hours of operation and music regulations match that of what was approved in Brick & Brew's conditional use approval.

PLANNING COMMISSION MEETING

July 1, 2021

Page 3 |

Dr. Zoe Warner, Ph.D. commented that the closing hours established for Brick & Brew were done specifically due to the restaurant serving alcohol.

The MPC discussed how Pennsylvania Liquor licenses are obtained and transferred. Mr. Ken Kynett, Esq. further explained rules and regulations of liquor licenses mandated by the Pennsylvania Liquor Control Board (PLCB). Liquor licenses may be held in safekeeping for two (2) years. Transfer of liquor licenses may occur if a public hearing is held before Borough Council, a requirement of the state, and the serving of alcohol may occur until 2 A.M.

Dr. Dave Knies, Ph.D. commented that at most there have been four (4) restaurants, at any time, to serve alcohol in the Borough: Alba, Anthony's, Brick & Brew, and Christopher's.

Mr. Scott Oswald asked to address the hours of operation in relation to the restaurant use being adjacent to a residential zoning district.

Brew and Brew was discussed in detail in relation to this discussion item. Mr. Scott Oswald is in agreement with the wording that is currently provided in Section 220-2418 regarding operational hours. The hours provided in the forbearance agreements were discussed in detail.

Mr. Chis Mongeau asked if anyone has complained about any of the restaurants in relation to noise, etc.

Ms. Tiffany M. Loomis confirmed that no such complaints have been received to date.

The MPC discussed in detail section 220-2418 of the Malvern Borough Zoning Code to make various recommendations to Borough Council per Borough Council's request.

Dr. Dave Knies, Ph.D. asked if there have been any issues with walking the streets with alcohol in hand.

Ms. Tiffany M. Loomis confirmed that no complaints or reports of such have been made to the Malvern Police to date.

Chairman Sinquett commented that there are times already listed in Section 220-2418 of the existing code. The Planning Commission is in agreement to leave the language as is.

Dr. Dave Knies, Ph.D. asked if there have been any complaints turned in on Malvern Arts.

Ms. Tiffany M. Loomis confirmed that no such complaints have been received to date.

Dr. Zoe Warner, Ph.D. asked if action can be taken if there is a complaint received.

Ms. Tiffany M. Loomis explained the procedure to enforce regarding non-compliance of the zoning code.

Dr. Zoe Warner, Ph.D. asked if it is best to have a safety valve clause to come back to Section 220-2418 if these regulations set forth cause issues for the community.

Mr. Ken Kynett, Esq. explained that anything in existence presently will be grandfathered upon new legislation being passed.

PLANNING COMMISSION MEETING

July 1, 2021

Page 4 |

Chairman Carroll Sinquett and Mr. Scott Oswald are in agreement that the experiment of having outdoor dining has been completed the past eighteen (18) months and the purpose of the amendment is to allow for outdoor dining/ cafes in the Malvern Borough community by-right.

Mr. John Buckley complained about the height of the umbrellas, closest to the sidewalk, located at Flying Pig.

Ms. Tiffany M. Loomis confirmed the Code Enforcement Officer will look into this matter and get back to Mr. Buckley.

Mr. Scott Oswald asked to address each change that has been proposed to Section 220-2418 that is before the MPC. He asked why there is a requirement for indoor seating and referenced Malvern Pizza.

Mr. Ken Kynett, Esq. explained that he deleted the 15 seating capacity altogether and the ordinance is not a stand-alone and has been revised to be a part of a restaurant use.

Mr. Scott Oswald asked if this means there has to then be one (1) based on how the language is written.

Dr. Zoe Warner, Ph.D. asked if this section of the code would be better satisfied by stating indoor service be required.

Mr. Ken Kynett, Esq. commented that this a valid question to be proposed to Borough Council regarding requiring indoor seating.

Mr. Brian Hamilton asked about if reservations are still required if outdoor seating is in existence.

Mr. Ken Kynett, Esq. explained that this requirement was made part of the forbearance agreements and is not part of the existing or proposed amendments for outdoor dining/ café regulations.

Mr. Mark Niemiec commented that more restaurants may be designed to have take-out only similar to a beach restaurant model.

Mr. Scott Oswald asked about the ten (10') feet clause regarding the sidewalk and if this stated width is necessary anymore.

Chairman Carroll Sinquett explained that if the outdoor dining/ café is within the public right of way a conditional use approval is required.

Ms. Tiffany M. Loomis explained that the Code Enforcement Officer of the Borough would make a recommendation regarding the access width in the event this matter came up in the future in a conditional use hearing.

Mr. Ken Kynett, Esq. explained the proposed code requires anything located in the public right of way to receive a conditional use approval and that the applicant, if approved, is still not permitted to go past the ten (10') feet regulation stated.

PLANNING COMMISSION MEETING

July 1, 2021

Page 5 |

Mr. Oswald asked about the word adequately mentioned in the buffering regulations and this appears to not be as straightforward as previously written.

Mr. Ken Kynett, Esq. explained this word was added to be able to give flexibility to the Borough.

Mr. Scott Oswald asked about the proposed language that prohibits music and thinks music would be nice.

Mr. Ken Kynett, Esq. explained these were suggested changes and not mandatory.

Chairman Carroll Sinquett explained this is for sound spillover regarding residential neighboring properties.

Dr. Zoe Warner, Ph.D. commented that Alba has music on their back patio.

Mr. Ken Kynett, Esq. explained that Alba would be grandfathered if this proposed amendment were to pass with this restriction.

Dr. Zoe Warner, Ph.D. suggested that item #2 be deleted in the proposed language and it be stated as no live musical performances be permitted in the outdoor cafe areas. This is the same restriction that is in place per Brick and Brews conditional use approval.

Mr. Ken Kynett, Esq. explained how the PLCB regulates restaurants versus how local zoning code regulates such.

The Planning Commission discussed outdoor music that occurs currently at restaurant establishments and how best to address this section of the code. Discussion and questions ensued.

The Planning Commission agreed as a whole.

Ms. Tiffany M. Loomis confirmed that the Borough has not received any complaints about live musical performances regarding the existing outdoor dining cafes.

Mr. Scott Oswald addressed table service being required asking what this specifically means. The Planning Commission agreed as whole that it is someone waiting on and/or servicing the table.

Dr. Zoe Warner, Ph.D. explained that the beach model would not be allowed if table service is required.

RECOMMENDATION:

A motion was made by Mr. Chris Mongeau, seconded by Dr. David Knies, Ph.D., carried by a vote of 6-0, recommending the proposed Outdoor Dining Amendment, including Section 220-2418, with the exception that there shall be no live musical performances within the outdoor café area, passed unanimously.

4. NEW BUSINESS

There were no items of new business for discussion.

PLANNING COMMISSION MEETING

July 1, 2021

Page 6 |

5. PUBLIC COMMENT

Mr. Mark Niemiec asked about Malvern Preparatory's status on the future sidewalk being installed.

Ms. Tiffany M. Loomis responded the Borough Engineer has been asked to create a plan for the proposed sidewalk.

Mr. John Buckley made comments regarding future sidewalks at Malvern Preparatory School and Warren Avenue. He said sidewalks are needed throughout Malvern Borough including the Battlefield & First Avenue. He also said there are parking safety issues throughout the Borough and purported there are other violations throughout the community.

Ms. Tiffany M. Loomis will look into the purported violations and follow up with Mr. John Buckley.

Dr. David Knies, Ph.D. asked about the status of the vacant lot located at Bridge and King Streets.

Ms. Tiffany M. Loomis responded that a sketch plan has been received, the Borough staff offered preliminary comments, and is awaiting a revised sketch plan.

6. ADJOURNMENT

A motion was made by Mr. Mark Niemiec., seconded by Dr. David Knies, and carried by a vote of 6-0, to adjourn the meeting at 8:55 p.m.

Respectfully submitted by,
Tiffany M. Loomis
Assistant Borough Manager & Zoning Officer