



HEARING MINUTES

Thornbury Township Board of Supervisors Hearing Wednesday, July 20, 2022

The Board of Supervisors held a public hearing on July 20, 2022 for the adoption of proposed Ordinance 2 of 2022 "Outdoor Dining Ordinance".

AN ORDINANCE AMENDING THE THORNBURY TOWNSHIP CODE, CHAPTER 27, ZONING AND PLANNED RESIDENTIAL DEVELOPMENT, AS AMENDED, TO AMEND ARTICLE 10, COMMERCIAL DISTRICT, SECTIONS 27-1002, USE REGULATIONS, AND 27-1003, AREA, HEIGHT AND SPECIAL REGULATIONS, TO PERMIT SEASONAL OUTDOOR DINING IN CONJUNCTION WITH A PERMITTED RESTAURANT USE BY CONDITIONAL USE, AND ESTABLISHING MINIMUM STANDARDS THEREFORE.

PRESENT:

James P. Kelly, Chairman
Sheri L. Perkins, Vice Chairman
Michael Mattson, Supervisor
Jeffrey T. Seagraves, Manager
Geoffrey Carbutt, Township Secretary
Art Risley, Roadmaster
Peter Barsz, CPA, Treasurer
Kenneth Kynett, Esq., Township Solicitor
Michael Ciocco, PE, Township Engineer
Charles Faulkner, PE, Township Sewer Engineer
Attendees: 24

On a motion by Michael Mattson, seconded by Sheri Perkins, and carried unanimously, opening the Hearing for Proposed Outdoor Dining Ordinance 2022-2, was approved.

Chairman Kelly then opened the hearing at 7:00 PM and introduced the Township Solicitor, Mr. Kenneth Kynett, Esq., who entered several items as exhibits and gave an overview detailing the ordinance. Solicitor Kynett entered the following items as exhibits:

Exhibit B1: Proof of Publication advertised in the News & Press of Delco on 6/29/22 & 7/6/22

Exhibit B2: Draft Ordinance from 4/21/22

Exhibit B3: Review Letters from the Delaware County Planning Department dated 5/20/22, and also a staff comments dated 5/19/22, recommending approval considering regulation of heating devices be prohibited unless approved by conditional use and making sure that location of outdoor dining did not take away from parking.

Exhibit B4: 2 Review Letters from the Thornbury Township Planning Commission dated 4/19/22 with questions about access, music/entertainment without amplification with shut down at 10pm Sunday through Thursday, and 11pm on Friday and Saturday, and their second letter dated 6/8/22, recommending approval, along with county recommendations.

Chairman Kelly explained, this not a blanket approval for outdoor dining. It allows an applicant to apply for conditional use of outdoor dining, which will provide individual conditions to each application. So, this ordinance will amend our existing conditional use ordinance.

Mr. Kynett then gave an overview detailing the draft process history in amending the existing ordinance. Beginning July of 2012, the Board began to consider this ordinance by discussions with restaurant owners and residents who provided proposed amendments and recommendations back in September of 2013. The Board did not take action at that point. As part of this Collaborative effort, the Township carefully reviewed those recommendations and where appropriate included them in the current draft resulting in six prior iterations of the Ordinance. Public Hearings were Held on: October 17, 2012, March 20, 2013 and September 17, 2014. Ultimately, the Ordinance was not adopted.

With the COVID-19 pandemic, the Board, the Commonwealth and the Country saw a shift in the operation of restaurants and proliferation of outdoor dining as a necessary health measure and for restaurant economic survival.

Emergency provisions allowed restaurants to provide outdoor dining during the pandemic emergency. Change is a phenomenon which isn't expected to revert back to prior restaurant operations being conducted primarily indoors. Case in point is that the PLCB is extending previously issued licenses for outdoor dining to 12-31-2024 upon application.

In response to this new business frontier and the importance of the financial stability of the Township's few restaurants the Board felt the time appropriate to take another look at outdoor dining within the Township.

Although the seventh version, does change from the 6th, it revises the Township Zoning Code to amend the use provisions of in the Commercial District to allow Seasonal Out-Door Dining only in connection with a permitted Restaurant Use.

Outdoor Dining would be allowed only by Conditional Use – Subjects every Application to a public hearing before BOS to consider the specific aspects of the particular application and permit public participation.

It allows the Board to Address particular aspects of each application on a case-by-case basis, not simply yes or no – allows imposition of conditions on any approval.

It requires a restaurant owner to publicly detail their plans for outdoor dining and allows affected residents a voice in the particular application.

It allows property owners to participate, ask questions, voice concerns and in some cases, participate in a way in which certain property owners could become parties and have the right to present their own witnesses and evidence and appeal any decision of the Board, or participate in any appeal filed by a restaurant owner.

Specific standards and criteria for the establishment and operation of seasonal outdoor dining:
Allowed Only in side or rear yards.

Limited to 25% or existing dining floor space of the restaurant.

Side and rear yard setbacks are commercial except when located next to a residential district set back is the largest residential setback for that district Minimum would be 45 feet.

In addition to increased setbacks, Landscape buffer (a year-round, opaque landscape buffer when adjacent to a residential district or use).

Access (only through the restaurant).

Meal and beverage service requirements (meals must be served/no outside bar).

Security (wall or fence enclosure of at least 48" in height and minimum-security lighting).

Seasonal (in operation from April 2nd to October 31st).

Hours of operation (no service after 9:00 p.m. and area vacated between 11:00 p.m. and 8:30 a.m.).

Prohibitions against the conduct of certain other activities (such as, exterior signs, banners and other forms of display, live entertainment, amplified sound and unrelated activities, such as horseshoes, bocce ball courts and putting greens).

Televisions and video with audible sound, outdoor fireplaces and other furniture and equipment are also prohibited except when permitted during the conditional use process.

Chairman Kelly mentioned that we have been considering this since 2012, so it is pretty well vetted. He then asked the Board first for any comment, and then the public.

Supervisor Mike Mattson thanked everyone involved with this process, Ken, JP, Sheri, former Chairman Raith and the Planning Commission for all of their hard work.

Chairman Kelly then asked for any public comment.

Ed Schmitt asked how many restaurants are there in the township. The Chairman answered two.

Lee Weersing first thanked the Board for their efforts and asked if the restaurant in Thornton is subject to the guidelines for shutting down outdoor dining as detailed in the ordinance, or how they are presently operating. The Chairman said they are presently under the Governor's mandate until 2024 unless they wanted to make application for the new process which would mean they would have to go through the Conditional Use Process. Ken Kynett reiterated that and added it will take some time to get that done. Lee then asked how long, to which the Chairman answered the time frame hasn't been established yet. Lee then asked if we will continue to be subject to the noise and their inconsiderate operating procedures. The Chairman said Lee should continue to contact us when this happens and we will take steps to help the best we can. Lee then detailed all of the disturbances they continue to subject the neighborhood to. The Chairman thanked Lee for his comments and acknowledging our efforts.

Dennis Zajac commented that he and his neighbors think the new restaurant is a good thing. Mike Belashov commented that we hate what we have to hear every night coming from the new restaurant and we had to put up a fence. He complained about the parking right next to his house, the music playing, the car alarms going off, the children screaming and conversations in the parking lot till all hours. We have to wear earplugs to get to sleep. He said something needs to be done. The Chairman thanked Mike for his comments.

Jack Cockcroft submitted comments and asked how the noise and lighting will be controlled and cited the recent fireworks. Ken Kynett commented noise and lighting are difficult to enforce because special equipment is needed which most townships don't have. Ken detailed the abilities of state police and the PLCB. Equipment for measuring these things was discussed but it was concluded they fall under nuisance complaints and would be handled by the police and the PLCB. Nothing can be done without their involvement. There is only so much the township can do, they cannot regulate conduct.

Mike Mattson asked Ken about the new fireworks laws and Ken said yes, there is new legislation and the recent fireworks display that was previously mentioned was cited by the township.

Sherry Weersing commented how long they have lived here and mentioned past situations at the restaurant, having to install air conditioning to block the noise. But this is a quality-of-life issue and we have to listen to this every single night. If it was just dining without the music and kids' activities, it might be different. This is a quality-of-life issue and we do not have any recourse. Like the Highway in front of our house, no recourse for us at all and it's very frustrating. Chairman Kelly stated that is why we are putting this ordinance together. One situation may be different from another and that is why these will go through the Conditional Use process. So, you will have recourse through this process.

Mike Belashov asked about the number of people that will be allowed to dine out doors and the Chairman Kelly said 25% to which Mike replied they sometimes have 65 or more people out there.

Dennis Charko mentioned you somehow must have enforcement because if there is no compliance there needs to be some recourse. The Chairman agreed and it will be through this ordinance.

Evan Seaman asked if there is a noise ordinance and Jeff said yes, from 7 am to 9 pm there is a limit of 70 decibels.

Chairman Kelly said he appreciated all of the comments and then said if there aren't any more, we will close the hearing.

Chairman Kelly closed the hearing at 7:37 PM.

Respectfully submitted,

Geoffrey Carbutt, Township Secretary

cc: Board of Supervisors
Kenneth Kynett, Esq.
Jeffrey Seagraves, Township Manager