

Date of Decision: 2/15/22
Date Mailed: 2/16/22

MT. LEBANON PLANNING BOARD

Written Decision on the Application of Craft Pittsburgh USA, Inc. For a Preliminary Land Development Approval for 50 Moffett Street

Craft Pittsburgh USA, Inc. ("Applicant") submitted an application for preliminary approval for Developer's Land Development Plan ("Development") for property located at 50 Moffett Street (the "Property").

The Planning Board has decided to deny the application.

Section references in this decision are to the Mt. Lebanon Subdivision and Land Development Ordinance ("SALDO") unless otherwise stated.

I. Background

The applicant applied for a preliminary land development approval from Mt. Lebanon's Planning Board (the "Planning Board") on November 24, 2021. The Planning Board considered the application at its December 21, 2021 meeting and again at its January 18, 2022 meeting. The Application was opposed by neighboring residents and a community group (collectively referred to herein as the "Residents," although that does not imply that the individuals and the group operated as a single party). The Planning Board accepted testimony and exhibits from the Applicant and Residents.

The Development is located on a 3.28 Acre parcel with an address of 50 Moffett Street in Mt. Lebanon. The Property is located in an R-3 Zoning District.

The Property was formerly an assisted living facility operated by UPMC. It is located across Moffett Street from Jefferson Middle School and Jefferson Elementary School.

The Development will remove all existing structures and parking on the Property, and replace these structures with 41 townhouses. The townhouses will be in groups of three to six houses per overall structure. The townhouses will essentially be in two rows, one along the front set back of the Property, and a second row along the back of the Property. The two rows of townhouses will be separated by an access way. The access way has been described at various times as a street, road, alley or driveway. For purposes of this decision, the access way will be referred to as "Road A."

The Development is occurring on a single lot. The R-3 District allows for multiple structures on one lot.

No modifications or waivers have been requested, which are permitted in accordance with and subject to the terms of the SALDO.

II. Decision

The Land Development Plan is denied for the reasons which follow. These decisions are based on the application as it currently exists. The following defects exist which merit denial of the Land Development Plan.

A. Road A

1. Background

Road A will service all 41 dwellings. The row of townhouses at the front of the lot faces Moffett Street, and these Dwellings access Road A from the rear of the Dwellings. The Dwellings in this row have no direct access to Moffett Street. The row of Dwellings in the rear also access Road A, but these Dwellings access Road A from the front of the Dwellings.

Road A has the following dimensions. It has a right of way of 29 feet, and the cartway is 22 feet wide. It has a hammerhead for a turnaround.

2. Road A does not meet the standards for a street

The SALDO has two classifications which are relevant here, street and driveway. Road A must be one of these, as there are no other classifications. Section 503.6.29 contains this requirement. It requires that an application for preliminary approval show all means of vehicular access for ingress and egress to and from the site onto public streets, showing the size and location of internal streets or driveways and curb cuts including the organization of traffic channels, acceleration and deceleration lanes, additional width and any other improvements on the site or along the site's street frontage necessary to prevent a difficult traffic situation.

Road A does not meet the standards for a street. The requirements for a street are found in Appendix V of the SALDO and include a right of way of 50 feet and a cartway width of 26 feet.

Since Road A does not meet the requirements for a street, it must be classified as a driveway. Road A cannot be public, as there are no public driveways.

3. Requirements for a Driveway

The requirements for a driveway are found in section 812.3.4. That section requires that the width of a two (2) way driveway shall be a minimum of twenty-

two (22) feet. If parking on a driveway is authorized, eight (8) feet additional width shall be provided to allow for parallel parking in accordance with Diagram 16 in Appendix II. As Road A is 22 feet, parking is not permitted on Road A.

4. Discussion

a. Definitions

Driveway and Street are defined as follows in section 104.2 of the SALDO.

Driveway: An impervious surface for vehicular access to a building, garage, parking facility or other vehicular facility, lot or parcel of land.

Street: Includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct and any other ways or strips of land used or intended to be used by vehicular traffic or pedestrians whether public or private and including the entire street right-of-way.

b. Effect of definitions.

The Board believes Road A needs to be a street based on the definitions. The terms road, lane and alley have all been used to describe Road A indicating it is a street.

Additionally, the Development consists of 41 houses, each of which has a driveway to an integral garage, and these all access Road A. Half of the houses front the Road. The number of individual houses and the length of Road A indicate it is a street, not a shared or common driveway.

c. Additional requirements

The distinction between a street and a driveway has several consequences under the Municipality's ordinances.

Sections 703 and 808 requires that every lot in a subdivision or proposed to be developed have frontage on a street. The Developer has pointed out, and the Board agrees, that there is only one 3.28 acre lot present, and it does have frontage on a public street (Moffett). Implicit in this position is the fact that, again, Road A does not meet the standards for a street.

It is also important as section 808.9 requires that the number of each house be able to be seen and easily read from the street. The back row of houses will not meet this section because the back row will be blocked from view from Moffett by the first row of houses. Again, the "street" is Moffett.

This item is more than a minor detail. It will create obvious problems of locating houses for emergency and delivery services. It is also evidence of overdevelopment of a lot. The problem is created by the Developer not wanting to size a street in accordance with the ordinance, as that would take up too much land and would lessen the number of houses. Instead, the Developer has elected to maximize density at the permitted 41 houses, but at the cost of designing a shared driveway instead of a street. This issue merits denial.

Lastly, the width of Road A is 22 feet. Eight more feet would be necessary if parking were to be permitted, but the Development intends Road A for no parking. This appears unrealistic, as it would mean no delivery parking, no contractor parking, no guest parking, and no resident parking at all at any time.

B. Condominium Documents

Section 503.6.7 requires submission of a copy of any existing or proposed covenants, deed restrictions, which are applicable to the property. In addition, 503.6.34 requires a detailed proposal, including covenants, agreements, or other specific documents showing the ownership and method of assuring perpetual maintenance to be applied to those areas which are to be used for private streets, sewers, recreational or other common purposes.

While the Developer did in January submit such documents, they are lacking in several respects.

1. They do not mention the sanitary sewer at all. There is a significant joint sewer which will service all 41 houses. There is no other notice to prospective owners that they will be responsible for this sewer.
2. The documents and the plans do not address that no parking can occur on Road A. The dimensions of Road A were selected by Developer to include no parking, and that must be accounted for in the documents. In addition, fire and emergency services vehicles need Road A for access. Any approval for Road A is based on Road A being clear at all times.
3. The covenants are not perpetual but are subject to change and termination.

The Application is denied until these fundamental aspects of the infrastructure can be resolved.

C. Sewer

Section 812.2.3 requires that sewers shall be designed where practical to traverse under seeded and planted areas. Sewers constructed within ten (10) feet of road paving, walks or other surfaced areas shall have a maximum compaction of backfill to prevent settlement.

The sanitary sewer is located underneath Road A. There has been no demonstration that it is not practical to locate it under seeded or planted areas.

It is also evidence that the private nature of the sewer must be set forth with much more clarity in the governing documents, and as such, supplements the decision and discussion under B above.

This is a demonstration of the compact design of Road A and the desire to overdevelop the lot with structures rather than utilizing space for the proper installation of utilities.

Accordingly, this supports a denial.

D. Garbage

Section 503.6.33 requires that the methods, placement and screening of solid waste disposal and storage facilities be set forth.

There has been no plan for how garbage is going to be picked up as required by this section. Again, the narrowness and tightness of the Road would seem to prohibit a dumpster type arrangement.

As this item has not been addressed, the application is denied.

E. Engineer's comments.

Attached is a draft letter from the Engineer which letter has open items that continue to be addressed. The Application is denied on the bases and for the reasons set forth in that letter.

F. School

It is acknowledged that the Development is directly across from an Elementary School and a Middle School. Arguments were presented that approval of the Development might overburden these schools. The MPC section 508.1 provides that on final approval of a development, the school district is to be notified so that the district can plan. The Municipality cannot deny an application on this basis.

G. Traffic

It is also acknowledged that traffic is a problem, especially at pick up and drop off time. The existence of a school and its attendant traffic problems are not being created by the Development, the traffic plans have been reviewed by the Municipal Traffic Engineer, and accordingly do not serve as a basis to deny the Application.

H. Stormwater.

There have been concerns raised about stormwater. The Municipal Engineer has reviewed the concerns, and after revision of the plans by Developer, is now satisfied that the Municipality's ordinances have been met. Accordingly, the concerns over stormwater are not a basis to deny the Application.

I. Subdivision

There have been concerns expressed that the application is really one for subdivision instead of land development, and therefore the ordinance requires that each townhouse be regarded as its own lot, and have frontage on a public street. The Board has not adopted this position. This application is viewed as a land development, as multiple principal uses are permitted on one lot. As one lot, it does have frontage on a public street.

Once the development is built, it can be sold as condominiums without being regarded as a subdivision. See *Cunius v. Board of Assessment Appeals of Chester County*, 976 A.2d 635 (Pa Cmwlth. 2009) (the creation of or conversion to a condominium does not constitute a subdivision of property for purposes of the application and approval process set forth in the MPC).

This decision is limited to the particular plan submitted to the Municipality, which plan includes the specific items referenced above. Any changes or alterations will require a new application.

PLANNING BOARD OF MT. LEBANON, PA

By:  _____
Chair

Date of decision: February 15, 2022