

MAY 8, 2013  
WAYNESBORO, PA 17268  
CONDITIONAL USE HEARING

Council President Jason Stains called the public hearing to order at 6:00 p.m. with the following in attendance:

Borough Council Members – Benjamin Greenawalt, Craig Newcomer, Darrel Potts, Jason Stains, Wayne Driscoll and Michael Cermak

Mayor Richard Starliper was absent

Borough Staff – Lloyd R. Hamberger, II, Borough Manager  
Dan Sheffler, Zoning-Code Enforcement Officer  
Kevin Grubbs, Head of Engineering Services  
Sam Wisner, Borough Solicitor (Salzmann Hughes, PC)  
Jason Cohen, Assistant Borough Manager

Mr. Stains noted that the purpose of the hearing was to discuss the following conditional use application:

**CASE NUMBER 2013-CU-01: HARRY MORNINGSTAR, JR., OWNER OF THE PROPERTY LOCATED AT 100 W. MAIN STREET, WAYNESBORO, WHICH IS LOCATED IN THE DOWNTOWN BUSINESS DISTRICT (DBD) ZONE. HARRY MORNINGSTAR, JR. HAS APPLIED FOR A CONDITIONAL USE TO ALLOW FOR AN OUTDOOR DINING AREA IN ACCORDANCE WITH ORDINANCE NO. 1120, WHICH AMENDED THE WAYNESBORO BOROUGH ZONING ORDINANCE NO. 937, ARTICLE VII, SECTION 34.**

The hearing was duly advertised, pursuant to the applicable State and Local Codes, in *The Record Herald* on April 23<sup>rd</sup> and April 30<sup>th</sup>, 2013. The meeting was then turned over to the Solicitor, Sam Wisner. Mr. Wisner administered the oath to those individuals wishing to testify.

Kevin Grubbs, Head of Engineering Services, was requested to give a procedural history of the application. He testified as follows:

February 27, 2013 - The Borough of Waynesboro received the initial request from Mr. Morningstar, via email.

February 28, 2013 - The request was reviewed by the Solicitor.

March 5, 2013 - Response and comments were sent to Mr. Morningstar.

Basically, those comments were to request a hand-drawn sketch of the area (showing dimensions with the café and any type of encroachment within the 5' area).

March 5, 2013 - Sketch supplied, as requested, by Mr. Morningstar.

April 8, 2013 - Waynesboro Planning Commission reviewed the request for a conditional use. The Planning Commission's motion was as follows: "recommending to Borough Council approval of the request for the outdoor café as a conditional use based on the submitted sketch plan, including dimensions, indicating that the outdoor café shall not encroach within the 5'-0" clear pedestrian walkway area between the tree opening and the café area".

April 17, 2013 - Borough Council scheduled a public hearing for the conditional use request (05/08 at 6:00 p.m.).

April 23 and 30, 2013 - Notice of Public Hearing published in *The Record Herald* and posted in the lobby of Borough Hall.

Mr. Wisner stated that a conditional use is a permitted use subject to certain conditions; and Council is required to grant the applicant's request, provided that the applicant can demonstrate that they meet the specific criteria set forth in the ordinance. As Council is aware, Ordinance No. 1120 amended the Borough's Zoning Ordinance to allow for outdoor dining areas, subject to four (4) criteria; and he asked Mr. Morningstar to offer testimony regarding the proposed use and compliance with those four (4) criteria.

Mr. Morningstar testified that the submitted paperwork is correct, and there is enough space to be in compliance with the ordinance.

Mr. Wisner asked for specific testimony, for the record, clarifying compliance with the four (4) separate criteria contained in Ordinance No. 1120, as follows:

- Mr. Wisner stated the first criteria is that the outdoor dining area be in a front, side or rear yard. He asked if Mr. Morningstar's proposed use is in a front, side or rear yard? Mr. Morningstar stated it is on the front side, facing Main Street.
- Mr. Wisner noted that that satisfies one of the other criteria ... if it is in a side or rear yard, there must be a fence.
- Mr. Wisner asked if Mr. Morningstar will maintain at least five (5) feet of passable sidewalk space? Mr. Morningstar responded "yes".
- Mr. Wisner asked for confirmation that any tables or chairs associated with the use will remain movable and will not be affixed to the ground? Mr. Morningstar stated "correct".

Mr. Wisner stated that the applicant has offered testimony relating to all the specific criteria that he is required to demonstrate compliance with. He asked if anyone else wished to offer testimony related to the use being considered at this time. Seeing none, the hearing was closed; and Mr. Wisner noted that Borough Council may choose to take further action on the application at this time.

Councilman Newcomer made a motion to approve the conditional use, as requested. Councilman Driscoll seconded; the motion passed unanimously.

Mr. Wisner stated that he had prepared two (2) alternate decisions for Council's execution, depending on which direction was decided, and the Council President will execute the appropriate statement this evening. He added that there is a 30-day appeal period, during which an aggrieved person could challenge the granted conditional use. Therefore, anything the owner does within those 30 days would be at his own risk and subject to appeal. After the 30-day appeal period expires, the use is granted in total.

The meeting adjourned at 6:10 p.m.

Respectfully Submitted,

Melinda S. Knott  
Administrative Assistant