

DERRY TOWNSHIP PLANNING COMMISSION
MEETING MINUTES
January 6, 2015

CALL TO ORDER

The Tuesday, January 6, 2015 Derry Township Planning Commission meeting was called to order at 6:05 p.m. in the meeting room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA, by Member Matt Tunnell.

ROLL CALL

Commission Members Present: Matt Tunnell; Joyce St. John; Gregg Mangione; Glenn Rowe

Commission Members Absent: Ned Wehler

Also Present: Chuck Emerick, Director of Community Development; Brandon Williams, Assistant Director of Community Development; Diane Myers-Krug, Dauphin County Planning Commission representative; Jenelle Stumpf, Community Development Secretary

Public Registering Attendance: Chris Brown, Derck & Edson; Robert Smith, Hershey Auto Center; Cate Wagner, Strokoff & Cowden, P.C.; Charles Huth, *The Sun*; John Boland, Meineke; Charlton Zimmerman; Rich Gamble

APPROVAL OF MINUTES

On a motion made by Member St. John and seconded by Member Mangione, the Planning Commission unanimously approved the minutes of the December 3, 2014 meeting as written.

REORGANIZATION

Member Mangione made a motion (*prior to Member Rowe's arrival*) that the offices of Chairman, Vice Chairman, and Secretary be filled as follows for the 2015 calendar year:

Chairwoman – Joyce St. John
Vice Chairman – Gregg Mangione
Secretary – Matt Tunnell

Member Tunnell made an amendment to the motion (*after Member Rowe's arrival*) as follows:

Chairwoman – Joyce St. John
Vice Chairman – Gregg Mangione
Secretary – Glenn Rowe

The amended motion was seconded by Member St. John, and passed unanimously.

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OLD BUSINESS

- A. Report of the Board of Supervisors' action regarding adoption of a decision in the case of Conditional Use Request No. 2014-02 as filed by DSG Development Corporation**

Mr. Emerick stated that the Board of Supervisors adopted the Decision.

- B. Report of the Board of Supervisors' action regarding the Preliminary/Final Land Development Plan for Hilton Garden Inn Hershey – Building Addition, Plat #1244**

Mr. Emerick stated that the Board of Supervisors conditionally approved the plan.

- C. Report of the Board of Supervisors' action regarding the Preliminary/Final Subdivision Plan for Woodland Hills, Plat #1203 (as revised November 2014)**

Mr. Emerick stated that the Board of Supervisors conditionally approved the plan as revised.

- D. Report of the Board of Supervisors' action regarding a waiver from filing a land development plan, as requested by 169 Chocolate Group, LLC**

Mr. Emerick stated that the Board of Supervisors granted the waiver with the conditions recommended by the Planning Commission, and an additional condition that the applicant provide a smooth surface (but not necessarily ADA accessible) from the site's driveway to the temporary structure.

- E. Report of the Board of Supervisors' action regarding the Pennsylvania State University Milton S. Hershey Medical Center University Technology Center, Healing Garden Infill, and Original Hospital Courtyard Infill, Plat #1243**

Mr. Emerick stated that the Board of Supervisors tabled taking action on the plan until their January 27, 2015 meeting.

- F. Review and recommendation of Zoning Petition No. 2014-04 as filed by Catherine E. R. Wagner, Esq., on behalf of A. J. Troncelliti, to amend the text of the Zoning Ordinance by adding definitions for 'Automotive Car Wash Facility', 'Automotive Lubrication Facility', 'Motor Vehicular Repair Garages', and 'Motor Vehicular Sales and Service' – *REVISED November 2014***

Mr. Emerick reported that this proposed amendment adds 4 definitions to Section 225-8 of the Zoning Ordinance, and modifies Section 225-123.2.B.(8) of the conditional use requirements for automotive lubrication facilities, as permitted in the Neighborhood Commercial zoning district. The provisions for automotive lubrication facilities and automotive car wash facilities as conditional uses were added to the Zoning Ordinance by Ordinance No. 554, April 30, 2006. These particular uses are only permitted in the Neighborhood Commercial zoning district by conditional use, which allows the Board of Supervisors scrutiny to ensure the peace and tranquility of adjacent residential areas. When originally adopted, there

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were no definitions added to the Zoning Ordinance for automotive lubrication facilities or automotive car wash facilities.

Mr. Emerick added that this is the second presentation to the Planning Commission of the proposed amendment. The amendment was initially recommended for approval by the Planning Commission in September 2014. When the matter came before the Board of Supervisors, they wanted more differentiation between two of the proposed definitions, and the applicant was instructed to rewrite portions of the ordinance. The revisions were substantial enough that it was necessary to have the proposed amendment go back through the review process, which is why the matter is before the Planning Commission again. Mr. Emerick recommends approval of the revised amendment.

Cate Wagner, attorney for the applicant, stated that they worked with the Township and Derck & Edson to make the requested revisions to the proposed amendment.

Vice Chairman Mangione questioned why the last sentence was removed from the definition for 'Automotive Lubrication Facility' (*regarding overnight storage of vehicles and outdoor storage of equipment and materials*). Ms. Wagner responded that the language was viewed as repetitive by the Board of Supervisors because it is already in the Zoning Ordinance as part of the conditional use requirements. She added that the applicant had testified before the Board of Supervisors and Planning Commission that he requires all vehicles to be removed from the property, regardless of their condition, to ensure that there is no overnight parking on the property.

Member Tunnell noted that when the Planning Commission reviewed this text amendment at the September 2014 meeting, they also reviewed the applicant's conditional use request. Mr. Emerick clarified that the revised text amendment does not affect the conditional use request in a way that would require another review and recommendation by the Planning Commission.

Chairwoman St. John asked if test drives on the private road adjacent to the property are being addressed as part of this revised amendment. Mr. Emerick responded that it is addressed as part of the conditional use request. One of the standards that has to be met in order for the Board of Supervisors to grant a conditional use authorization involves an applicant demonstrating that they will not overburden existing public services, including public roads. If an applicant could not demonstrate that the test drives conducted as part of state inspections can be done safely, their conditional use request could be denied.

Secretary Rowe asked if the private road is capable of handling the type of test drive that is required as part of a state inspection. Mr. Emerick responded that was part of the conditional use request discussion at the September 2014 Planning Commission meeting. Jenelle Stumpf read the following statement made by A. J. Troncelliti at the September meeting: "*Mr. Troncelliti stated that they have to make sure the car stops within 20 feet when driven at 20 mph...*" Ms. Wagner stated that the private road is long enough and sufficient to perform such testing.

Public Comments

John Boland asked how long the private road is and what its speed limit is. Mr. Emerick commented that the issue relates to the conditional use request, which is not being discussed at this meeting. He estimated that the private road is approximately a block in length. Member Tunnell stated that it is a

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private road with no posted speed limit. Mr. Boland believes that cars *are* kept on the property overnight as a matter of course in order to make the repairs necessary as a result of the state inspections. Mr. Emerick stated that under the proposed definition of ‘Automotive Lubrication Facility’, repairs are not permitted.

Charleton Zimmerman, 119 North Roosevelt Avenue, asked if the proposed definitions relate only to commercial businesses where money is exchanged, or if they will also affect residential “hobbies.” Mr. Emerick stated that the definitions are meant for the Neighborhood Commercial and General Commercial zoning districts to address the commercial uses.

Robert Smith, owner of the Hershey Auto Center at 503 West Chocolate Avenue, stated that he does not understand why the Planning Commission would go against the regulations of the Dauphin County Planning Commission. Mr. Smith believes the regulations do not allow automotive repairs in a lubrication facility or automotive facilities in a Neighborhood Commercial zoning district. He stated that the Jiffy Lube owner knew the regulations when they purchased the property, and now they are trying to change the regulations for monetary benefit. He noted that this facility was brought before the Planning Commission in September 2005, and the Director of Community Development at that time, Jeff Keiser, recommended that the Zoning Ordinance *not* be amended to allow automotive lubrication facilities in the Neighborhood Commercial district, as requested by Zimmerman Automotive Services (the first owner of the facility). Mr. Smith referenced the minutes from the November 7, 2005 Board of Supervisors public hearing and statements that were made by the petitioner that the facility was only to be a car wash and lube facility. No mention was made of automotive repair or inspections. Mr. Smith also stated that a state inspection requires the car being brought up to normal operating speeds, and he does not see how that can be done on a 100-foot-long road. The Goddard School has been built right down the road from the Jiffy Lube facility, and he does not think anyone would want test drives being conducted on the private road adjacent to the school. Mr. Smith believes that if the rules are changed, the doors are going to be open for all sorts of automotive garages and facilities in the Neighborhood Commercial district.

Planning Commission Comments

Secretary Rowe asked Mr. Smith if there is a liability to an automotive facility owner if a vehicle does not pass state inspection and is then driven off the property. What happens if a vehicle requires repairs that cannot be performed immediately and the vehicle has to be kept overnight? Secretary Rowe thinks an enforcement problem will be created regarding storing the vehicle overnight. Mr. Smith responded that the vehicle has to be inspected the way it is presented. If it does not pass inspection, a list of the reasons why the vehicle failed the inspection are made that the owner has to sign. At that point it is up to the vehicle owner to remove it from the property and the automotive facility is no longer liable.

Ms. Wagner stated that Mr. Troncelliti has testified in previous meetings that they have a tow truck company to call for the removal of vehicles that cannot be driven so that the vehicles do not remain on the property overnight.

Mr. Emerick commented that if the Board of Supervisors grants a conditional use authorization, this restriction can also be reiterated as a condition of the authorization. Secretary Rowe responded that what is on paper is one thing, but whether or not the applicant actually abides by the conditions is another.

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Member Tunnell asked if a condition of the conditional use approval could be the requirement for a plan to remove vehicles so that they are not on the property overnight. Ms. Wagner answered yes. Member Tunnell asked what the enforcement action would be if there was a violation. Mr. Emerick responded that it would be a Zoning Ordinance violation and the property owner would be cited as such. Secretary Rowe asked if the Board of Supervisors would have the ability to revoke or amend the conditional use approval if such a violation occurs repeatedly. Mr. Emerick stated that the Board of Supervisors could revoke the inspections part of the conditional use approval separately.

Member Tunnell thinks the proposed revisions to the text of the Zoning Ordinance would be beneficial, even though that does not change the debate of whether or not a specific facility should be approved.

Vice Chairman Mangione noted that part of the revisions to the proposed definition for 'Automotive Lubrication Facility' include changing "*tire rotation*" to "*tire maintenance and rotation*", and asked how "tire maintenance" is characterized. Mr. Emerick stated that it refers to fixing a flat tire. Vice Chairman Mangione commented that if an air gun is used, it will be very noisy. Ms. Wagner stated that the work is done inside the facility. Vice Chairman Mangione asked about the noise impact if the facility's doors are open during warm weather. Ms. Wagner stated that a condition of approval of the conditional use could be that the doors have to be closed.

Mr. Emerick noted that although they did not provide a new letter for their review of this revised proposal, the Dauphin County Planning Commission is supportive of the change.

Secretary Rowe stated that he does not have much of an issue with the proposed language but he thinks that in general, the Zoning Ordinance allows for pitfalls and there are a lot of challenges to make sure that all of the conditions of the conditional use approval are being followed.

Vice Chairman Mangione commented that the quick lube business model is a struggling model, and that will probably always pressure these business owners to challenge the zoning.

Member Tunnell stated that the proposed definition for 'Automotive Lubrication Facility' lists a number of services that are permitted, but how is "*and similar services*" being defined? Mr. Emerick responded that if the other services are covered under the proposed definition for 'Motor Vehicular Repair Garages', then the facility is considered a repair garage. There was an intentional effort to mirror the service and then the level of the service in each definition.

Member Tunnell thinks the addition of "*and similar services*" has expanded the matter beyond what was discussed by the Planning Commission in September 2014. That means the Township Zoning Officer will have to determine whether or not services that are not listed under the definition for 'Motor Vehicular Repair Garages' are appropriate for an automotive lubrication facility. Mr. Emerick responded that when the conditional use decision is written, there is some ability to use plainer language so there could be a condition that mechanical automobile repairs are not permitted. It would be counterproductive to be that specific in the definition.

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Mr. Zimmerman commented that he thinks all of this discussion will be moot because when the new Economic Community manager comes in, Mr. Zimmerman thinks it will be his responsibility to define these business definitions. He predicts that the Economic Community manager will recommend that Derry Township move to business licensing that will define exactly what businesses can do.

Mr. Smith is also uncomfortable with what the term “*and similar services*” means and how it will be enforced. The only way to be definitive on the matter is to list specifically in the definition what is and is not allowed. Otherwise, lube facilities are going to end up being full service automotive facilities.

Ms. Wagner commented that the phrase is intended to be protection for the Township when interpreting the Zoning Ordinance. She would be wary to make the definition too restrictive and specific. Member Tunnell thinks if the services are very well defined, that will be a stronger enforcement position for the Township to be in.

Richard Gamble, a Hershey resident, stated that there are many lubrication facilities that are franchises, and they have their own guidelines regarding what services they provide. Based on the size of this particular facility, Mr. Gamble thinks it is possible that the owner may want to expand the building in the future as the business becomes more successful. He asked how many of these facilities are needed, and whether approving these requests will set a precedent.

MOTION

Member Tunnell made a motion that the Planning Commission recommend to the Board of Supervisors that the ordinance changes be approved, as recommended by staff and presented to the Planning Commission, with an alteration to the definition of ‘Automotive Lubrication Facility’ to read “*A use of a structure, or portion thereof, in which the primary business is vehicle lubrication services, but may include Pennsylvania state safety and emissions (diagnostics) inspections; replacement of fluids, filters, bulbs, and wipers; minor glass repair; and tire maintenance and rotation.*”¹

Vice Chairman Mangione stated that he would like to amend the motion because he is uncomfortable with the applicant’s addition of tire maintenance in the definition of ‘Automotive Lubrication Facility.’ He believes that the word “maintenance” should be removed from “*tire maintenance and rotation*”, and “tire maintenance” should be added to the proposed definition for ‘Motor Vehicular Repair Garages.’ Chairwoman St. John commented that part of the services provided by an automotive lubrication facility is to put air in tires to ensure that they meet the required pressure. Vice Chairman Mangione asked if the facility would not be permitted to put air in tires if “tire maintenance” is removed from the proposed definition for ‘Automotive Lubrication Facility.’ Mr. Emerick thinks it is acceptable for “tire maintenance” to remain in the proposed definition for ‘Automotive Lubrication Facility’ because “tire replacement” is proposed to be included in the definition for ‘Motor Vehicular Repair Garages.’ Vice Chairman Mangione withdrew his amendment to the motion.

¹ A ‘redlined’ version of Member Tunnell’s proposed amendments to the applicant’s definition of ‘Automotive Lubrication Facility’ is as follows: “*A use of a structure, or portion thereof, in which the primary business is vehicle lubrication services, but may include, e.g., Pennsylvania state safety and emissions (diagnostics) inspections; replacement of fluids, filters, bulbs, and wipers; minor glass repair; and tire maintenance and rotation; ~~and similar services.~~*”

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Ms. Wagner commented that the word 'similar' appears in the proposed definition for 'Motor Vehicular Sales and Service' ("*similar vehicles*"), so if the Planning Commission is uncomfortable with the word 'similar', she recommends that they include an amendment to the definition for 'Motor Vehicular Sales and Service' in their motion to the Board of Supervisors.

Secretary Rowe seconded Member Tunnell's motion, and the motion was passed by a unanimous vote.

NEW BUSINESS

A. Review and recommendation of the Preliminary/Final Subdivision and Land Development Plan for the Hershey Gardens Grand Conservatory, Plat #1247

This plan was withdrawn by the applicant prior to the meeting.

B. Presentation of report regarding blighted and/or underdeveloped areas for inclusion in the development of a Tax Increment Financing (TIF) district; adoption of a resolution to certify area of Township as redevelopment area

Brandon Williams stated that at the December meeting, the Planning Commission authorized Community Development staff to prepare an area study regarding whether a portion of the downtown would qualify as redevelopment area under the PA Urban Redevelopment Law. The area that staff is proposing contains 243 acres of land, and the next step in the process is for the Planning Commission to adopt a resolution that would certify this 243 acres as redevelopment area.

Chairwoman St. John asked how individual properties will be developed and if they will be evaluated separately. Mr. Williams responded that if the TIF district is declared, the tax value of that property would be frozen at the year that the TIF district was implemented. Once improvement happens, there will be more tax revenues generated to the taxing authorities. The additional revenue would then be used as a tax increment that would pay back the bonds that were used for public improvements. Chairwoman St. John asked if the motivation for doing this is to make the undesirable locations more desirable to be developed. Mr. Williams stated that this would offer the opportunity to use generated tax revenues rather than raising taxes or using existing tax dollars to complete some of the improvements and desires expressed through the community surveys that were done as part of the revised Comprehensive Plan process.

Member Tunnell asked for verification that there is no particular right that a property owner would have to any kind of TIF financing, and that they would still have to present a plan for approval by all of the taxing entities on how the bonds are going to be serviced and what percentage of tax revenues they would be giving up for specific improvements. Mr. Williams stated that there will be presentations to the taxing authority in the near future. They will have the opportunity to opt into the program, and there will be discussion on the percentage of tax increments. Member Tunnell asked if a percentage is established up front, or if it is done project by project. Chuck Emerick responded that it would be determined by a TIF committee. He clarified that the action of the Planning Commission tonight would only enable the next step.

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MOTION

On a motion made by Member Tunnell, seconded by Vice Chairman Mangione, and a unanimous vote, the Commission adopted Planning Commission Resolution No. 2015-01, certifying 243 acres of land as redevelopment area.

OTHER BUSINESS

None.

ADJOURNMENT

The meeting adjourned at 7:52 p.m.

Respectfully submitted,

Glenn Rowe
Secretary

Submitted by:

Jenelle Stumpf
Community Development Secretary