

**TOWNSHIP OF DERRY
BOARD OF SUPERVISORS**

PUBLIC HEARING

Tuesday, April 9, 2013

600 Clearwater Road, Hershey, Pennsylvania 17033

CALL TO ORDER

The April 9, 2013 Public Hearing of the Township of Derry Board of Supervisors was called to order at 6:30 p.m. by Chairman E. Christopher Abruzzo.

ROLL CALL

Supervisors Present:

E. Christopher Abruzzo, Chairman - *present*
Sandy A. Ballard - *present*
Kelly C. Fedeli, Vice-Chairman - *present*
John Foley, Jr. - *present*
Marc A. Moyer, Secretary - *present*

Also Present:

Charles E. Emerick, Director of Community Development
James N. Negley, Township Manager/Township Treasurer
Patrick O'Rourke, Chief of Police
Brandon Williams, Assistant Director of Community Development
Jon Yost, Solicitor

Public Present: Lee Freeman, Jeff Gelbaugh, Jonathan Crist, Doug Plank, Mark Brace, Steve Todd, Young Yi, Justin Engle, John Dunn, Phil Friedrich, Bob Welsh, Tim Anderson, Todd Pagliarulo, Ken Gall, Rich Gamble, David Edwards, Matt Weir

NEW BUSINESS:

The purpose of the hearing is to receive public comment regarding proposed Ordinance No. 632 which would amend Chapter 225 (Zoning) of the Code of the Township of Derry by defining the terms: restaurant, full service restaurant, fast casual restaurant, fast food restaurant, drive-in restaurant, and drive-through restaurant; and by revising the permitted uses as they relate to restaurants in the Business Office district, Neighborhood Commercial district, General Commercial district, Downtown Commercial district, Village Core district, Commercial Recreation district, and Commercial Entertainment district.

Charles Emerick –Director of Community Development – During the outreach meetings with the Comprehensive Plan study, about 1500 people responded and indicated they wanted a vibrant, active, walkable downtown. In 1993, when our present zoning ordinance was adopted

the dialogue in the minutes and the text of the ordinance indicated the fast food restaurants that was attempted to be regulated in that ordinance were McDonald's, Wendy's, Burger Kings, and Hardee's. Mr. Emerick does not believe it meant to regulate sub or pizza shops or cafeterias, all of which would be considered fast food under our ordinance today. This policy led two business owners to the Zoning Hearing Board seeking relief to establish coffee and pastry shops with seating determining those to be restaurants.

The Comprehensive Plan Vision Committee desired a more variety in the downtown restaurants. The Planning Commission did generally support issuing other definitions for what restaurants are including fast food, fast casual and full service. This ordinance was reviewed by the Dauphin County Planning Commission and they have recommended the ordinance be adopted with the revisions noted in their April 1, 2013 letter which namely includes the deletion of the drive-in restaurant definition and inclusion of that with fast food.

The Derry Township Planning Commission also reviewed this ordinance at their public meeting on April 2, 2013. They were generally in support of an ordinance change to allow for fast casual restaurants acknowledging that it is an industry standard and it is a facility that is different from fast food or full service restaurants. They discussed that a conditional use process could be incorporated into the ordinance. This was also recommended by the County Planning Commission.

Upon further consideration, the conditional use process could be supported as it provides additional layers of review by the Supervisors. This will allow the Supervisors to better understand and monitor the impacts more closely until that market is more well-established and impacts known. Mr. Emerick read the conditional uses that require hearings. It will require a developer to seek land development approval and a Certificate of Appropriateness from the Design Review Board if the proposal is within the Chocolate Avenue Preservation Overlay district and to seek conditional use authorization from the Board of Supervisors. This could complicate the approval process and remove some of the certainty that the developer may have in pursuing development in the downtown.

The Planning Commission indicated that some oversight might be appropriate for requiring a project's presentation to the Design Review Board when located in the Downtown Commercial or Village Core zoning districts. This would ensure that the proposal fits into the neighborhood and is not in the fashion or design of a formula restaurant such as a Kentucky Fried Chicken or the golden arches.

Mr. Emerick presented the Board with three options: 1) advertise to adopt the ordinance as written; 2) direct Community Development to revise the ordinance as suggested and to include a conditional use clause; or 3) direct Community Development to revise the ordinance as suggested and to include a link to the Chocolate Avenue Preservation Overlay zoning district requirements. Mr. Emerick noted that Options 2 and 3 would require the reprocessing of the ordinance and an additional public hearing.

PUBLIC COMMENT

Rich Gamble, Hockersville Road – Mr. Gamble said we want a walkable downtown that meets the needs of the residents. His concern is not what is presented but what the intent is to put there and the impact it will have on the area. He suggested they get a proper traffic study before proceeding and not change the ordinance for the benefit one entity.

David Edwards, 30 W. Granada Avenue – Mr. Edwards rents office space at 205 West Caracas Avenue in the old Reese Building. He is concerned with what will be built on Chocolate Avenue. It could bring hundreds of people a day to the alley behind the office building he rents and where will people park. Is this really what the community needs? He has nothing against the restaurants, but is concerned about what is going to happen. In his opinion, eliminating the drive-thru is not enough.

Lee Freeman, 218 Eveling Road – Mr. Freeman referred to Options 1 and 2. He understands that condition use means whatever goes there has to be approved and permitted use means if it is defined in there if it is allowed. Supervisor Ballard explained that they are both permitted uses. Option 2 is a conditional use but is a use that is permitted provided they meet the conditions.

Mr. Freeman said he researched Fast Casual and it seems that much of that is oriented into larger chains like a Chipolte or similar, versus more mom and pop establishments. It is a way to redefine fast casual to allow it to be in areas where fast food would be normally permitted. In essence, we are allowing a portion of fast foods in areas they were not intended. Mr. Freeman recommended that the Board not use fast casual and keep it the way it is.

Phil Guarno, Fennici's Restaurant, 102 West Chocolate Ave, Phillip Arthurs, 108 West Chocolate Avenue, residence at 109 West Caracas and also at 454 West Chocolate – Mr. Guarno stated the he did not agree with the way the meeting was posted. The Township met all the legalities; however on the website you had to look under latest news to find out about the public hearing. That could be why the attendance tonight is low.

Mr. Guarno said he considers himself an expert in the restaurant field because he has been in the food business for over 35 years. He worked for Mariott Corporation for 20 years. He opened everything from thru-way operations which include McDonalds, Burger Kings, Taco Bell, etc. for Mr. Mariott to causal restaurants, night clubs, bars in major cities and small towns. He opened up restaurants in New York City, Long Island, Harrisburg, etc. He said he was versed on what fast food is and what restaurants are and the classifications.

Mr. Guarno would like the Board to think about allowing fast food into downtown Hershey. Fast food casual is a manufactured marketing term really created by the National Restaurant Association and by various fast food outlets to try to market themselves as being different from a typical fast food outlet. Mr. Guarno showed a presentation of his trips around town to the different fast food restaurants. If the ordinance is passed, establishments such as Taco Bell,

Chipoltes, Wendy's, McDonalds, Sheetz, and Panera Bread will be allowed downtown. Mr. Guarino said if you want to make an exception for The Hershey Trust to put something downtown, just come out and do it.

Douglas Plank, Director of Transportation Services for ELA Group – Mr. Plank said he was hired by the citizen's group to review the Chipolte plan and to provide comments on the proposed ordinance change. He gave the Board a copy of a letter he crafted. He said his biggest concern is the traffic. Even though it is considered fast casual it will still generate a considerable amount of traffic. Along with some other proposals in the works, he wondered if the infrastructure can handle all the extra traffic. If it can't handle the traffic then they need to put in place the infrastructure that can handle the traffic.

Jonathan Crist - 226 W. Chocolate – The current zoning ordinance in 1993 was dedicated to the idea to keep the traffic moving along Chocolate Avenue. You had to limit the traffic on Chocolate Avenue especially in and out like casual fast food and keep the traffic moving. They did not want Chocolate Avenue to become another Hersheypark Drive East, which has happened.

There has been a proposal to move Park Blvd around the Parkview Golf Course. It has been in the works since 2007 and engineering bills were approved totaling over \$750,000. They will call this road the Rt. 39 extension and give it to the state to maintain. The road will come out Ridge Road onto Chocolate Avenue. If they add 17 acres to the park, the additional traffic will dump out on Ridge Road creating more traffic. Supervisor Foley, Transportation Liaison, said that was an incorrect statement regarding where the ingress is going from Park Blvd.

Mr. Crist said a presentation was made to Penn DOT for Rt. 39 and it will cost \$21 million to move Park Blvd. and all the traffic will go to Ridge Road. Supervisor Foley stated again that his statements are incorrect. Supervisor Foley said Park Blvd will abut to Park Avenue. That is where the connector will be. Ridge Road will be a one way road heading northbound.

Mr. Crist said it will still dump traffic to the center of downtown Hershey. He understands why all the fast casual restaurants now want to be in Hershey. The infrastructure is not there to support it and there are no left turn arrows in either direction with the proper cues all the way from Hockersville through town. There will be traffic problems until you have the proper infrastructure.

Maria Yi, 218 W. Chocolate Avenue – Ms. Yi said she is concerned about downtown Hershey. Kids enjoy riding bikes, scooters, roller skates in the downtown and now there is no place to go. The drive through town is so beautiful without the fast casual food. The area could be used better than those types of restaurants such as place for teenagers to go.

Rich Gamble, Hockersville Road – Mr. Gamble is concerned with the quick push to get this done. Years ago when they had their first meeting about redeveloping downtown Hershey, the entities were there and everybody had great ideas. The only thing we got is the Press Building

refurbished for the offices for Hershey interest and The Hershey Story in the interest of the tourism. 50 years ago we were a walkable downtown with places that met our needs instead of places to go and eat.

Chairman Abruzzo thanked everyone for their comments.

Ken Gall, Hershey Trust Company – Mr. Gall asked Mr. Emerick if a Cocoa Beanery that exists at the Research Park or Sorrentos Pizza would be a permitted use under the current ordinance. Mr. Emerick said it would not.

Mr. Gall said the way things stand today the uses that are permitted particular in the restaurants are designed for empty nesters. We do not have anything in the mix or permit anything in the mix such as fast casual where a teenager can go. If we can get this going we can have a downtown where kids will want to come. The traffic issues are already here. Traffic comes from Harrisburg through downtown Hershey to get to Palmyra and Lebanon. It would be good if we can come up with some mix uses where people will be stopping in Hershey on their way through. Actually a bank draws more traffic through peak hours than some of these fast casual.

Phil Guarno – Mr. Guarno asked Mr. Emerick if Phillip Arthur's would be permitted. Mr. Emerick said it would not. Mr. Guarno asked why not. Mr. Emerick said because it operates as a fast food under the terms of the ordinance. Mr. Guarno believes that is incorrect. He told Mr. Emerick that he as a staff person could not make that decision. Supervisor Foley said that Mr. Emerick is our community development director who is charged with that responsibility and he can make that determination. This zoning ordinance is actually a benefit to Mr. Guarno because his restaurant by definition is fast food.

Mr. Guarno said if you want to put fast food downtown, just do it. Supervisor Foley said the terminology was pulled from commonly known definitions. It has been a process over several months and we heard a lot. There have been a lot of representations and you have characterized a bunch of misrepresentations. More heated discussion occurred and Mr. Guarno left the meeting.

Supervisor Foley said when individuals make salacious remarks and charge this body with corruption multiple times, it is very difficult to sit back. Every one of these meetings has been opened.

Chairman Abruzzo said based on the information we heard tonight, some we have heard multiple times and some for the first time, the Board needs time to review and discuss further. We will try to come up with a decision by our next meeting to give direction to Mr. Emerick.

ADJOURNMENT

Chairman Abruzzo adjourned the public hearing at 7:20 p.m.

SUBMITTED BY:

Marc A. Moyer
Township Secretary

Brenda Van Deursen
Recording Secretary