

TOWNSHIP OF DERRY
BOARD OF SUPERVISORS

PUBLIC HEARING
Tuesday, January 27, 2015
600 Clearwater Road, Hershey, Pennsylvania 17033

CALL TO ORDER

The January 27, 2015 Public Hearing of the Township of Derry Board of Supervisors was called to order at 6:30 p.m. by John W. Foley, Chairman.

ROLL CALL

Supervisors Present:

Sandy A. Ballard
Justin C. Engle, Secretary
John W. Foley, Chairman
Marc A. Moyer, Vice-Chairman
Matthew A. Weir

Also Present:

Charles E. Emerick, Director of Community Development
Jill E. Henry, Assistant Township Manager
James N. Negley, Township Manager/Township Treasurer
Jon Yost, Solicitor
Brenda Van Deursen, Recorder

Public Present: Dale Holte, R.W. Smith, Dennis Trout, AJ Troncelliti, Kim Mione, Lou Mione, Rich Gamble

NEW BUSINESS:

The purpose of this hearing is to receive public comment regarding proposed Zoning Petition No. 2014-04, as filed by Catherine E. R. Wagner, Esq., on behalf of A.J. Troncelliti, requesting that Chapter 225 (Zoning) of the Township of Derry to define terms for 'Automotive Car Wash Facility', 'Automotive Lubrication Facility', 'Motor Vehicular Repair Garages', and 'Motor Vehicular Sales and Service' and regarding the requirement that all work at an Automotive Lubrication Facility must be performed in an enclosed building.

Charles Emerick, Director of Community Development – This petition represents a revised text amendment to the zoning ordinances as it relates mostly to automotive lubrication facilities in the Neighborhood Commercial zoning district. Although, in order to properly amend that section there are some other amendments. We added four definitions to the ordinance and are looking to add a portion of the services that are presently not

permitted to happen outside of the building to happen outside of the building. That would be mainly the test drives associated with state inspections.

The purpose of this amendment is to try and define what an automotive lubrication facility is, what it isn't, and what they are permitted to do. This stems from an action taken by the Township when we found that the Jiffy Lube was doing state inspections and didn't feel that fell under the terms of the present ordinance for automotive lubrication facilities.

Mr. Emerick focused on two definitions – Motor Vehicle Repair Garage and Automotive Lubrication Facility. There are other definitions added to automotive type facilities in the ordinance, but he doesn't believe they play much of a role. The Motor Vehicle Repair Garage allows all services permitted under the Automotive Lubrication Facility and engine and transmission repairs, rebuilding and reconditioning, collision servicing, tire replacement (the lube facility is limited to tire maintenance and rotation). The Motor Vehicle Repair Garage is permitted to do brake and suspension replacement, glass replacement, and painting. The lubrication facility is limited to glass repair, but not glass replacement. By contrast, the Automotive Lubrication Facility is permitted to do vehicular lubrication services, but may also include PA State Inspection & Emission diagnostic inspections, replacement of filters, fluids, bulbs, and wipers, minor glass repair (not replacement), tire maintenance and rotation (not replacement), and similar services. The similar services were placed in there because we are not sure what kind of minor maintenance the cars (5-10 years from now) are going to require.

This was before the Board in October at which time the Board had asked that the applicant, Attorney Catherine Wagner, Mr. Emerick and Chris Brown from Derck & Edson get together and try to rewrite this ordinance. The Derry Township Planning Commission recommended approving the amendment and suggested that we remove "and similar services." Mr. Brown and Mr. Emerick do not support that removal because it is not so broad and it allows enough flexibility that we won't have to amend this later to adapt to what the vehicles are doing.

The Dauphin County Planning Commission recommended that the prior ordinance be adopted. After talking to their staff, although their official meeting is not until February 2, they believe they would support the changes.

Chris Brown, Derck & Edson, Derry Township Planner – Mr. Brown said although they are early on with the comprehensive planning and the zoning process, the bulk of these four definitions are consistent with the process for the zoning audits and zoning clean up. He agrees with Mr. Emerick that "and similar services" is an important feature to keep in the definition. We, as a municipality, do not want to have unclear intent in our definitions. To the extent possible, we want the language to be very definitive, descriptive and understandable for our business owners.

Discussion:

Vice-Chairman Moyer said he is extremely concerned by the proposal and he disagrees with the assessment that the language "and similar services" is not overly expansive. We

need to remember what the original purpose of this whole Automotive Lubrication facility was when it was originally developed back in April 2006. He believes the current proposal is a material expansion of the intent of that and brings with it the potential to burden an already overburden Middletown Road. He is not so concerned about being able to distinguish by definition the difference between a Motor Vehicle Repair Garage and Automotive Lubrication facility as he is to define what an Automotive Lubrication facility is and what it can and cannot do. He is concerned about the language in which it says “a portion thereof” which the primary business is Automotive Lubrication services meaning that 51% of the business could be Automotive Lubrication facility leaving 49% to other types of business operations. He is concerned about the ambiguity of the language “but may include” as opposed to a more definitive language such as “shall be limited to.”

Vice-Chairman Moyer thinks that some defining language such as tire maintenance and rotation not to include tire replacement should be put in the definition. He thinks minor glass repair not to include glass replacement should be in there to avoid any ambiguity. Perhaps, the most concern about the PA State Safety Emissions Diagnostic inspections is its implication of including associated road tests which possibly will burden an already overburdened Middletown Road. Also, the expressed prohibition of overnight storage onsite is a cause for concern. It may be addressed in conditional use elsewhere, but he believes in self-contained ordinances so that you don’t have to cross reference other types of ordinances if you don’t have to.

Supervisor Ballard asked why we removed the reference to automobiles not being stored over night. She thought it might be clearer even if it is repetitive to add that to the definition. Mr. Emerick said within the conditional use section of the ordinance, there are five to seven criteria that are associated with this as a conditional use. The overnight storage is one of them, as well as no outdoor storage, etc. The definition is meant to define the use and then the ordinance shapes what it looks like

Chris Brown added that the definition is for the entire Township. The conditional use requirements are to protect the character. The protection you are asking for are covered internally in the zoning ordinance by that conditional use.

Vice-Chairman Moyer said if PA State Safety & Diagnostic inspections include associated road test and it is not within this definition, could they be permitted in some other area of the Township outside of the Automotive Lubrication facility definition. His concern is in the event state inspections are not appropriate for a particular location, if it is within this definition, we are stuck with it.

Attorney Catherine Wagner said when you have an application for a conditional use it can be determined by the Board of Supervisors whether or not that particular use is acceptable. So by including state inspections you are not necessarily allowing state inspections across the board in Derry Township. There is still a requirement that people must apply in this district to conduct them.

Supervisor Engle asked how the repairs and parts replacement would factor into state inspections. Mr. Troncelliti said what they do in their other locations is refer the work out because they do not do repairs. Attorney Wagner said that is another condition you could put on the application.

Supervisor Engle asked if there is a precedence created when the Board approves a conditional use. Mr. Emerick reviewed the conditions that a use would have to meet.

The Board of Supervisors will find that the use will not adversely affect the health or safety of the residents or neighborhoods in the district in which the use is located. The Board of Supervisors shall find that the use will not overburden existing public services including water, sanitary sewer, public roads, storm drainage or other public improvements. The Board of Supervisors shall find the use will not be detrimental to the use or development of or change the essential character of the neighborhood or district in which the use is proposed. The Board of Supervisors shall consider at a minimum the impact of noise, dust, light, odor, and adequacy of parking. The use shall meet all other requirements that may apply. No overnight parking of vehicles will occur. No inoperable or unlicensed vehicles will be stored on the property for any length of time. No outdoor storage of equipment or materials will occur. All work must be performed in an enclosed building (which we are working to amend to allow road tests). Buildings in which an Automotive Lubrication facility are located must be located no closer than 200 feet to a building used as a dwelling which exists at the time of the establishment of the Automotive Lubrication facility.

Supervisor Engle asked if the conditional use meets those conditions do, we have a legal obligation to approve it. Mr. Emerick said we do.

Vice-Chairman Moyer asked how those conditions would be proven. Mr. Emerick explained the burden of proof is on the applicant to show that they meet these requirements. If the Township doesn't feel the requirement is met then the Board may authorize staff or a consultant to do a study to show that maybe what the applicant is portraying is not true.

Attorney Wagner clarified that the specific criteria for conditional use is already approved. It was passed years ago. Vice-Chairman Moyer said that is his concern because the conditional use has already been approved and now we are defining the definition of what an Automotive Lubrication is.

Mr. Emerick explained that if this ordinance would be adopted and Mr. Troncelliti would want to add state inspection to his services, he would need to come before the Board for a conditional use. All new applicants would have to come before the Board for a conditional use. Solicitor Yost added that you have to be certain you are satisfied with the definition.

PUBLIC COMMENT

Robert Smith, Hershey Auto – Mr. Smith said to approve this you have to be sure this isn't going to burden the health or safety of the area. In this case, the safety of the area is already burdened with traffic. Test driving a vehicle is part of the inspection process. It

was proposed at the Planning Commission that they could do this on a service road which is very short in size and wouldn't work according to the state inspection codes. So approving this and allowing test drives to be done on a service road where you have a school 220 feet down the road is not safe. It is going to burden the public roads and be detrimental to the neighborhoods with noise and dust. Mr. Smith recalled that at the September 8, 2005 meeting of the Derry Township Planning Commission, Mr. Emerick stated he was against this because he did not feel a 200 foot buffer satisfied not having these noisy uses within a Neighborhood Commercial and Village Residential area and now he is recommending it.

Mr. Emerick said he did say that. He explained this ordinance came through the same time as car washes that would also be permitted in the district. This was a tandem ordinance to permit auto lube facilities and car washes. His main concern was a 24/7 car wash with vacuum cleaners isolated 200 feet away from the dwelling not the property.

Chairman Foley said what is on the agenda tonight is the approval, denial or modification of Ordinance 651 as it relates to the definitions for this Ordinance and not a specific property.

Mr. Smith said at the Planning Commission meeting a couple weeks ago, their Board specifically voted on not having the terminology "similar services".

Dennis Trout – Mr. Trout said his family has lived across from what now is the Turkey Hill for over 60 years. There is an existing problem with the traffic on Middletown Road as well as a flooding problem and a pollution problem both emissions and noise. It is only going to get worse with time, even if there is no further development. In Londonderry Township, just to the south of Middletown Road, a truck stop and a Rutter's recently opened. They are expecting a Sheetz store near the Stoverdale Church and Wood Road. The existing traffic problems during rush hour traffic will be backed from 322 to Grove Street on occasion as well as from the Turkey Hill south to Dartmouth Farms. In 2004, the Planning Commission denied the applicants for a lube and car wash facility in this location that was subsequently amended with a concession by the applicants to have this conditional use permitted. Mr. Trout submitted by email to the Board on 12/31/14 and 1/7/15, on his specifics how this would impact the area. Mr. Trout recommends that if the Township wants to mitigate such problems, that it be zoned back to what it was before the owner of that property was able to get it changed to Economic Development.

David DeMorie, Princeton Drive – Mr. DeMorie said he can verify the flooding problem that Mr. Trout mentioned. There were only two businesses when he moved to Princeton Drive; it was a peaceful area. Since then, 45 years ago, there is now Deer Run, Stone Creek, and additional businesses. Even though it is not in Derry Township, they have to deal with Rutter's, a truck stop and now a Sheetz disrupting the quiet and serenity of the Stoverdale Church. He is concerned with doing repairs and test drives on Middletown Road which is already burdened. If we allow this, what is next?

Chairman Foley asked if there was anyone who wanted to talk about the definitions to the zoning ordinance. It has nothing to do with Middletown Road; it has solely to do with this zoning ordinance and the definitions.

Rich Gamble, Hockersville Road – Mr. Gamble said changing definitions or titles such as casual fine dining is a way to change something to allow something else to happen. Are we doing the same thing again? Are we opening the door to have a Jiffy Lube, etc. on every corner? The ordinance was good up to this point and now it isn't good?

Vice-Chairman Moyer said he believe this does involve Middletown Road because if this definition does not include PA State Safety Emissions at all, then that type of facility will not exist on Middletown Road or anywhere else in the Township. If this does pass in its current form, then we as a Board could identify particular locations where we don't think it is appropriate. Attorney Wagner said not approving it would continue to have an undefined term under the ordinance. Chairman Foley added that in the absence of definition we would have to side or err with the applicant. Vice-Chairman Moyer said he is not talking about void of the definition, but it could be this definition modified limiting to specifically enumerated services just not including state emissions. Then we would have the definition to satisfy everybody. The problem then it would apply Township-wide. If it is included, we would still be able to say not here for specific reasons according to the conditional use requirements.

Mr. Trout wanted to clarify that when he read the public notice in The Sun, it had specific reference to the Jiffy Lube as opposed to the definitions. As far as the definition goes, he would like to compliment Supervisor Moyer because he has the same concerns that he expressed.

ADJOURNMENT

Supervisor Engle moved to adjourn the meeting at 7:25 p.m. Supervisor Ballard seconded.

The motion carried, 5-yes 0-no.

Chairman Foley announced that the zoning proposal for Prometheus will not be on the agenda this evening.

SUBMITTED BY:

Justin C. Engle
Township Secretary

Brenda Van Deursen
Recording Secretary