

**DERRY TOWNSHIP PLANNING COMMISSION  
MEETING MINUTES  
April 2, 2013**

**CALL TO ORDER**

The Tuesday, April 2, 2013 Derry Township Planning Commission meeting was called to order at 6:04 p.m. in the meeting room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA, by Chairman Matt Tunnell.

**ROLL CALL**

Commission Members Present: Matt Tunnell, Chairman; Joyce St. John, Vice Chairwoman; Gregg Mangione, Secretary; Ned Wehler; Glenn Rowe

Commission Members Absent: None

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

Public Registering Attendance: George Porter, 909 East Chocolate Avenue, Hershey; James Hartman, D. L. Reiber & Associates; Rob Cramer, 753 Fishburn Road; Jeff Reitz, 430 East Main Street, Palmyra; Jeff Gelbaugh, P.O. Box 85, Hershey; Sue Stough, 750 Creek Side Drive, Hummelstown; Ed Urvic, 333 Cedar Avenue, Hershey; Lee Freeman, 218 Evelina Road, Hershey; John B. N. Dunn, 712 Linden Road, Hershey; Roger Olson, 17 Sylvania Road, Hershey; Steve Todd, 629 Bullfrog Valley Road, Hummelstown; Garrett Gallia, 835 Olde Trail Road, Hummelstown; Jonathan M. Crist, 226 West Chocolate Avenue; Matt Weir, 1986 Church Road; Rich Gamble; Mike Moravetz, 111 Forest Avenue, Hershey; Sandy Ballard, 650 Cocoa Avenue; Phil and Eikveta Guarno, 109 West Caracas Avenue; Jeffrey S. Campbell, 314 Laurie Avenue; Phyllis Ingold, 7 Spring Creek Manor, Hershey; Todd Pagliarulo, 321 Concord Court; Phil Friedrich, 440 West Chocolate Avenue

**APPROVAL OF MINUTES**

On a motion made by Member Rowe and seconded by Member Wehler, the Planning Commission unanimously approved the minutes of the March 5, 2013 meeting as written.

**OLD BUSINESS**

- A. Report of the Board of Supervisors' action regarding the adoption of Ordinance No. 631 to amend the zoning classification of a portion of the property located at 19 East Chocolate Avenue, and the accompanying Resolution No. 1363 to amend the Comprehensive Plan**

Mr. Emerick reported that the ordinance and resolution were adopted, as recommended by the Planning Commission.

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

**B. Report of the Board of Supervisors' action regarding the Preliminary/Final Land Development and Stormwater Management Site Plan for the Select Medical Building Expansion, Plat #1222**

Mr. Emerick stated that the plan was conditionally approved, as recommended by the Planning Commission.

**NEW BUSINESS**

**A. Review and recommendation of the Preliminary/Final Subdivision Plan for Lands of The Hershey Company, Hershey Trust Company, and Robert B. Cramer, Plat #1228**

Mr. Emerick stated that this plan represents the modification of existing lot lines and creates no new lots. The subject properties are located along the eastern side of Sand Beach Road. Lot 1 is presently vacant, Lot 7 contains The Hershey Company Corporate Center, and Tract 26A contains a Hershey Trust Company farmhouse and customary accessory buildings.

Mr. Emerick recommended that the following requested waivers be granted from the Subdivision and Land Development Ordinance:

- a. From Sections 185-12.D.(3).(a).[9] and 185-13.E.(4).(a).[9] – Existing features within 200 feet and 50 feet of The Hershey Company and Hershey Trust Company lands.
- b. From Sections 185-12.D.(3).(a).[11] and 185-13.E.(4).(a).[12] – Providing net developable area calculations for The Hershey Company and Hershey Trust Company lands.
- c. From Section 185-12.D.(3).(a).[15] – Providing USDA soils boundaries. Mr. Emerick recommended that the waiver be granted for Lot 7 and Tract 26A (lands of the Trust Company and The Hershey Company), but the soils boundaries should be shown on sheet 3.
- d. From Section 185-13.E.(4).(a).[7] – Metes and bounds descriptions of The Hershey Company and Hershey Trust Company lands. Mr. Emerick stated that the applicant should also request a waiver from Section 185-12.D.(3).(a).[7], and he recommended that it be granted.
- e. From Sections 185-12.D.(3).(a).[21] and 185-13.E.(4).(a).[19] – Storm sewer plans and profiles.
- f. From Sections 185-12.D.(3).(a).[22] and 185-13.E.(4).(a).[20] – Sanitary sewer plans and profiles.
- g. From Sections 185-12.D.(3).(a).[23] and 185-13.E.(4).(a).[21] – Gas and water lines plans and profiles.

**DERRY TOWNSHIP PLANNING COMMISSION  
MEETING MINUTES  
April 2, 2013**

- h. From Section 185-12.D.(3).(a).[35] – Topographic land contours for The Hershey Company and Hershey Trust Company lands. Mr. Emerick stated that the applicant should also request a waiver from Section 185-13.E.(4).(a).[36], and he recommended that it be granted.
- i. From Section 185-22.D – Required cartway and right-of-way width.
- j. From Section 185-22.E.(5) – Installation of curbing along existing streets.
- k. From Section 185-34.A.(1) – Installation of sidewalks along existing streets.
- l. From Section 185-30.F – Lot lines perpendicular to street.
- m. From Section 185-49 – Wetland certification.

Mr. Emerick; Matt Bonanno, HRG; and Diane Krug, Dauphin County Planning Commission representative, went over their plan review comments.

Jim Hartman, D. L. Reiber & Associates, represented the plan on behalf of Dr. Cramer. He requested additional waivers from Sections 185-12.D.(3).(a).[7], 185-13.E.(4).(a).[36], 185-18, 185-12.D.(3).(a).[8], 185-13.E.(4).(a).[8], 185-12.D.(3).(a).[11], and 185-13.E.(4).(a).[12] as recommended by Mr. Emerick. Mr. Hartman stated that most of the waivers have to do with the two large tracts.

Mr. Hartman stated that he is concerned with Mr. Emerick’s review comment regarding providing legal descriptions for all land transfers and consolidations, specifically for ‘Lot 2A joined to Tract 26A.’ Attorney George Porter noted that the legal description for Tract 26A was written over 100 years ago, and to create a new deed to join Lot 2A with Tract 26A, Tract 26A would have to be surveyed for a new narrative description at a cost of tens of thousands of dollars. Mr. Emerick was not expecting a survey and thought that the lands of the Hershey Trust Company and The Hershey Company would be described as “the following two tracts”, and would include a photocopy of the existing description and the Lot 2A transfer, as well as a clause that the lots are being conveyed together. He believes that the County tax assessment office will find that arrangement acceptable.

**MOTION ON WAIVERS**

On a motion made by Member Wehler, seconded by Vice Chairwoman St. John, and a unanimous vote, the Planning Commission recommended that the requested waivers [*to include ‘a’ through ‘m’ listed above and those requested by Mr. Hartman during the meeting*] be granted.

**MOTION ON PLAT #1228**

On a motion made by Member Wehler, seconded by Secretary Mangione, and a unanimous vote, the Planning Commission recommended approval of Plat #1228, subject to the outstanding comments of Township staff (including the resolution of the description of Tract 26A, as discussed), HRG, and the Dauphin County Planning Commission being satisfactorily addressed.

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

**B. Review and recommendation of the Preliminary/Final Land Development Plan for Apple Retail Properties (Chipotle), Plat #1229**

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

**C. Review and recommendation of the Preliminary/Final Subdivision Plan for Robert Ketterling, Plat #1230**

Mr. Williams stated that this plan involves the properties at 593 Hilltop Road (Lot 1) and 621 Hilltop Road (Lot 2). Lot 1 is improved with a single-family dwelling, a detached garage, a macadam driveway, and two more detached accessory buildings. Lot 2 is improved with a single-family dwelling, a detached storage shed, and a macadam driveway. It is proposed to transfer a 1.875-acre piece of land from Lot 1 to Lot 2.

Waivers are requested from the Subdivision and Land Development Ordinance as follows:

- a. From Sections 185-12.D.(3).(a).[9] and 185-13.E.(4).(a).[9] – The location of all existing features within 200 feet and 50 feet of the tract of land to be subdivided or developed. Mr. Williams recommended that the waiver be granted.
- b. From Sections 185-12.D.(3).(a).[21] and 185-13.E.(4).(a).[19] – Stormwater sewer plans and profiles. Mr. Williams recommended that the waiver be granted, provided that the applicant verifies that no existing stormwater easements or rights-of-way will be affected by the change in lot lines.
- c. From Sections 185-12.D.(3).(a).[22] and 185-13.E.(4).(a).[20] – Sanitary sewer plans and profiles. Mr. Williams recommended that the waiver be granted.
- d. From Sections 185-12.D.(3).(a).[23] and 185-13.E.(4).(a).[21] – Gas and water systems plans and profiles. Mr. Williams recommended that the waiver be granted, provided that the applicant verifies that no existing utility easements or rights-of-way will be affected by the change in lot lines.
- e. From Sections 185-12.D.(3).(a).[35] and 185-13.E.(4).(a).[36] – Topographic land contours. Mr. Williams recommended that the waiver be granted for only those contour elevations located 200 feet from the perimeter of the subject properties.
- f. From Section 185-18 – Monuments and markers. Mr. Williams recommended that the waiver be granted for only those markers of existing property corners, and provided that monuments and markers are placed at new property corner locations in accordance with the plan and Section 185-18.

**DERRY TOWNSHIP PLANNING COMMISSION  
MEETING MINUTES  
April 2, 2013**

- g. From Section 185-22.D.(3) – Street widening. Mr. Williams recommended that the waiver be granted.
- h. From Section 185-22.E – Curbing. Mr. Williams recommended that the waiver be granted.
- i. From Sections 185-22.K – Driveway sight distance. Mr. Williams recommended that the waiver be granted.
- j. From Section 185-34 – Sidewalks. Mr. Williams recommended that the waiver be granted in the form of a deferment of sidewalk construction.

Mr. Williams; Matt Bonanno, HRG; and Diane Krug, Dauphin County Planning Commission representative, went over their plan review comments.

Jeff Reitz, Light-Heigel & Associates, represented the plan. In response to one of Mr. Bonanno's review comments, he asked if it would be acceptable to add a note to the plan stating that 'upon construction activity, a wetlands study will be performed', since no construction is currently proposed. Mr. Bonanno suggested it would be best to request a waiver instead. Mr. Reitz requested a waiver from Section 185-49 regarding wetlands delineation.

**MOTION ON WAIVERS**

On a motion made by Vice Chairwoman St. John, seconded by Member Rowe, and a unanimous vote, the Planning Commission recommended that waiver requests 'a' through 'j' be granted as recommended by Township staff, and also that the additional waiver requested by Mr. Reitz (185-49) be granted.

**MOTION ON PLAT #1230**

On a motion made by Secretary Mangione, seconded by Member Rowe, and a unanimous vote, the Planning Commission recommended approval of Plat #1230, subject to the outstanding comments of Township staff, HRG, and the Dauphin County Planning Commission being satisfactorily addressed.

**D. Review and recommendation of proposed Ordinance No. 632 to amend Chapter 225 (Zoning) of the Code of the Township of Derry by defining types of restaurants**

Mr. Emerick explained that the present Derry Township Zoning Ordinance dates back to 1993, and the current Comprehensive Plan is even older. Staff has noticed changes in the restaurant industry whereby certain restaurants that have the land use characteristics of more traditional sit-down restaurants are nevertheless embraced within the Derry Township Zoning Ordinance's definition of 'fast food restaurant'. Throughout the past two decades, a new type of restaurant has emerged in the industry that incorporates certain efficiencies of fast food restaurants while delivering the décor and quality of food of traditional sit-down restaurants. Under the current Zoning Ordinance, these types of restaurants are, out of necessity, grouped within the fast food restaurant definition because of their use of counter service and disposable wrappings and containers.

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

Mr. Emerick believes the Zoning Ordinance should be modernized and amended to allow for 'fast casual' types of restaurants in the Business Office, Neighborhood Commercial, Downtown Commercial, Village Core, Commercial Recreation, and Commercial Entertainment zoning districts, while still excluding the fast food restaurants with drive-through service from these districts. The proposed ordinance provides definitions for four different types of restaurants (full service, fast casual, fast food, and drive-in), and definitions of 'drive-through service' and 'drive-in service' that are incorporated into the new restaurant definitions. In addition, the uses permitted by right in all of the districts except General Commercial and Economic Development are amended to expressly allow for 'fast casual' restaurants, while continuing to exclude 'fast food' restaurants from the Neighborhood Commercial, Downtown Commercial, and Village Core districts. The proposed ordinance will resolve the current ambiguities in the definition of 'fast food restaurant' while stimulating economic development by expressly permitting 'fast casual' restaurants.

Mr. Emerick reviewed the sections of the proposed ordinance and suggested that the definition for 'drive-in restaurant' be removed. He also suggested that the definition for 'fast food restaurant' be amended to note the possibility of a walk-up window as opposed to a drive-in window and to note that if a restaurant exceeds 4 parking spaces used for drive-in service, it would be considered a fast food restaurant. Mr. Emerick stated that there currently is no timeline for when this ordinance will be adopted.

Diane Krug noted that at their April 1, 2013 meeting, the Dauphin County Planning Commission voted unanimously to support the proposed ordinance with the following recommended revisions: 1) Because the proposed text amendment defines "drive-in service", the Township should consider eliminating the proposed category of "drive-in restaurant" and include that higher level of drive-in service within the fast food restaurant definition. 2) Given the fact that the "fast casual restaurant" market is still evolving, it would be prudent for the Township to permit fast casual restaurants as a conditional use to better understand and monitor the impacts more closely until that market is more well-established and impacts are known. This would be most applicable for the Downtown Commercial, Village Core, and Neighborhood Commercial districts, given their proximity to residential neighborhoods.

Mr. Emerick suggested the following conditions as part of a conditional use option:

- The use may not substantially injure or detract from the lawful existing or permitted use of other properties.
- The use shall be served by a public sewage system.
- The use shall be served by a public water supply system.
- The use may not be detrimental to the health, safety or welfare of the Township residents.
- When utilizing existing buildings, that the building has been used as a principal building, rather than as an accessory building or use; provided, however, if an accessory building has historical or architectural significance worthy of preservation by adaptive re-use, the Board of Supervisors may waive this requirement.
- When altering an existing building or constructing a new building, the building appearance and site design shall conform to any and all applicable design standards or guidelines as adopted by the Township. If no guidelines exist or apply, the site shall be designed in substantial

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

conformance with the existing character of the area including, but not limited to, architectural style, size, mass, scale, color, materials, windows, illumination, signage, street furniture, and landscaping.

- That the proposed building use will comply with all height, coverage, area, and yard requirements of the zoning district in which it is located, unless currently nonconforming. All other zoning, subdivision and State and local code requirements must be met, to the extent applicable, unless waivers or variances are obtained from the appropriate agency.
- The applicant shall provide a minimum of 3 bicycle parking spaces for every 50 off-street vehicular parking spaces, or fraction thereof, required for the use. Unique bike racks that are complementary to the principal building architecture are encouraged; however, each space must, at a minimum, contain a device to which the bicycle frame and 1 tire can be attached using a chain or cable.
- The applicant shall submit a sketch plan showing the location of the building, access to public roads, proposed and existing parking and other pertinent information which may be requested by the Township, together with a detailed description of the proposed use, to include proposed interior and exterior changes.
- The proposed use, if approved, may not be later expanded without first seeking a conditional use, subject to the requirements of §225-14 (Existing Nonconformities).
- The applicant and property owner must accept such reasonable conditions and safeguards as the Board of Supervisors deems necessary to preserve the spirit and intent of this chapter and the Comprehensive Plan, which may include, but is not limited to, larger than normal buffer yards, screening, landscaping, restrictions on exterior changes or other acts which will reduce the impact of the proposed use on the surrounding property, and to maintain the character of the zoning district.

*PLANNING COMMISSION COMMENTS:*

Vice Chairwoman St. John asked how pizzerias are classified in the downtown area. Mr. Emerick responded that currently, if the customer places their order at a counter, it is considered ‘fast food’; if the customer’s order is taken at their table, then it is a full service restaurant. Vice Chairwoman St. John asked for verification that ice cream shops are not included. Mr. Emerick stated that is correct, because based on what is sold, they are considered ‘sweets and treats’ and not necessarily a restaurant. Vice Chairwoman St. John asked if the interpretation of the use of an ice cream shop would change if it were to start serving coffee or muffins. Mr. Emerick answered that it is a possibility.

Secretary Mangione inquired about the conditional use option. Mr. Emerick stated that there are 3 types of uses in zoning – permitted use, special exception use (granted by the Zoning Hearing Board), and conditional use (granted by the Board of Supervisors).

Chairman Tunnell asked if Mr. Emerick is suggesting the conditional use option for all fast casual approvals in all zoning districts. Mr. Emerick stated that he thinks it would be primarily appropriate in the Downtown Commercial, Village Core, and Neighborhood Commercial districts. Chairman Tunnell asked if there are ancillary use provisions in the Zoning Ordinance. Mr. Emerick stated that if the use is something that is located within an office (for example), it is an accessory use specific to that office and is permitted by right.

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

Member Wehler asked if the definitions in the proposed ordinance are entirely rewritten (*i.e., different from the definitions in the current Zoning Ordinance*). Mr. Emerick answered yes. Member Wehler asked if a fast casual restaurant could contain up to 2 parking spaces for limited drive-in service and a full service restaurant can contain up to 4 spaces, how is a restaurant with 3 designated spaces categorized? Mr. Emerick stated that it would have to be a full service restaurant.

PUBLIC COMMENTS:

**Rich Gamble, 39 Hockersville Road, Hershey** – Mr. Gamble thanked Mr. Emerick for his presentation. He agrees that there is a need for the improvement and redesign of downtown, but it took 20 years for this amendment to be proposed and it has been initiated by a Hershey interest so that their proposed restaurant use will fit. Mr. Gamble does not want to see the Planning Commission or any other board associated with the redevelopment of the community get impression that the regulations have to be changed to fit a need. Mr. Gamble noted that Mr. Emerick referenced the Comprehensive Plan survey results that indicated the desires of the respondents, but Mr. Gamble does not think Mr. Emerick is hearing what people are saying today about the Chipotle restaurant and its proposed location and traffic impact. There needs to be a realistic balance between what people would like to see in downtown and what can be supported, particularly in the roadways. Mr. Gamble stated that he is not challenging the development of the property, but the use needs to fit the location. Transparency is important and when decisions like this are made, they should be done in the interest of the community, not just one entity. Mr. Emerick commented that the proposed ordinance involves almost every zoning district in the Township; it goes far beyond the intersection of Ridge Road and West Chocolate Avenue. It is something that was long overdue. In view of the Comprehensive Plan, Mr. Emerick thinks it is important to get the ordinances as accurate and modern as possible to keep up with development that is going to happen. Mr. Gamble answered that it seems as though the Township is allowing a lot of ‘spot’ variances lately, and that could end up ruining the future plan.

**Ed Uravic, 333 Cedar Avenue, Hershey** – Mr. Uravic stated that he served on the Comprehensive Plan ‘workgroup’ committee. He is part of the 73% of survey respondents who want a wider range of things to do in the downtown and the majority of respondents who specifically desire more casual dining options. However, he is also part of 83% of respondents who want to preserve Hershey’s historical image. Mr. Uravic suggests that fast casual restaurants should be conditional uses, and that he agrees with all of Mr. Emerick’s proposed conditions. Mr. Uravic listed a few more conditions for consideration in addition to those suggested by Mr. Emerick, as a compromise between those who do not want to have any fast casual restaurants and those who want to have more options downtown:

- Limited number of fast casual restaurants in each zoning district.
- Minimum of 2 stories to get away from 1-story suburban buildings.
- Constructed of brick or stone, or alternatively specify prohibited materials, such as concrete masonry and vinyl siding.
- Main entrance of Chocolate Avenue, with secondary entrances on side streets.
- No surface parking allowed in front of the building.
- Front built close to the sidewalk with outdoor seating facing the street.



**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

- Awnings to cover seating and provide a human, small town welcoming scale.
- Bike rack to encourage patronage by residents and visitors and reduce traffic congestion.
- Street trees that conform to the Township tree ordinance.
- Controlled lighting and discreet signage.
- Front and side of the building should have windows.

Mr. Uravic would like these conditional uses to only apply to free-standing fast casual restaurants, not larger development where the restaurant is part of the overall use of multi-use building. Mr. Uravic stated that the idea is to come up with conditional uses that apply to fast casual restaurants, and he envisions it filling a gap between the current regulations and the broad set of design guidelines or requirements that affect all of the zoning districts around Chocolate Avenue he hopes will exist in the Comprehensive Plan. Member Rowe asked if Mr. Uravic's suggested condition that main entrances are to be on Chocolate Avenue means the doorway of the building, not the driveway. Mr. Uravic agreed.

**Phil Friedrich, 440 West Chocolate Avenue** – Mr. Friedrich commented that he used to work in Princeton, New Jersey, and he thinks many of Mr. Uravic's suggestions regarding managing the development should be strongly considered by the Planning Commission because they can make a big difference.

**Dan Sheffey** stated that the proposed ordinance is overly complicated about restaurant uses and how they are defined. The focus should be on whether the proposed site is big enough, if there is enough parking available, and how the project impacts traffic and the community.

**Maria Yi, 218 West Chocolate Avenue**, agrees with having a revitalized, walkable downtown, but the proposed Chipotle restaurant will be right next to her property, and she is concerned about dumpster placement and odors. She agreed with Mr. Gamble's statement that the Chipotle use is one that does not fit on the subject property. She is also concerned about the number of traffic accidents in this area.

**Jonathan Crist, 226 West Chocolate Avenue** – Mr. Crist also has traffic concerns regarding Chipotle and the proposed ordinance. If the ordinance is adopted to allow for fast casual restaurants as permitted uses, there could be a restaurant on every corner and the existing infrastructure cannot support that. Mr. Crist stated that a lot of changes are proposed for the roads in this area which will bring in more traffic, and before any ordinances are changed the Township needs to have a comprehensive traffic study done. Chairman Tunnell stated that traffic issues related to the Chipotle development will be addressed during the land development plan process.

**Phil Guarno, owner of Fenicci's, Philip Arthur's, and properties at 109 West Caracas Avenue and 454 West Chocolate Avenue** – Mr. Guarno stated that he is not against more restaurant development downtown, but he would like to see that in conjunction with other development. Mr. Guarno worked for Marriott in the hotel and restaurant business for 18 years and is familiar with definitions of restaurants. He agrees with Mr. Emerick's suggestion of fast casual restaurants as a conditional use. Mr. Guarno thinks that traffic in the downtown is a good thing because it brings business into Hershey. He believes 'fast casual' is more of a marketing term than a practical term in

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

the restaurant business. The real definition of it is ‘formula fast food.’ Mr. Guarno distributed copies of zoning ordinances from different areas in New York that have defined formula fast food and their uses, and many times the uses are granted on an exception basis. Mr. Guarno thinks ‘formula fast food’ would fit a large number of restaurants commonly referred to as fast food restaurants. He does not agree with the fast pace at which the proposed ordinance is being processed. He thinks it would be a mistake to allow fast casual restaurants as a permitted use.

Mr. Guarno asked if the conditional use aspect of the proposed ordinance that Mr. Emerick introduced at this meeting would be voted on by the Board of Supervisors on April 9<sup>th</sup>. Mr. Emerick responded that the hearing will still take place, but the required advertising was not done which would allow the Supervisors to vote on the matter on the same night. Mr. Guarno stated that he agrees there needs to be more transparency in matters such as the proposed ordinance. He added that the food industry has not changed that much over the last 20 years, it is that people now want to have access to a healthy, quick meal in a more upscale restaurant. Mr. Emerick commented that ‘formula’ restaurants are named as such to protect the ‘mom and pop’ shops, and is another way to define a type of restaurant. Mr. Guarno disagreed and stated that the definition varies by municipality.

**Rich Gamble** clarified with Maria Yi that he thinks the idea of improvement is good, but it depends on what and how.

**Ken Gall, Hershey Trust Company** – Mr. Gall thanked Mr. Emerick for his effort in what is perceived as something negative. He stated that there has been collaboration between the Township and the Hershey interests for years. The Trust Company has participated in the update of the Comprehensive Plan. Mr. Gall stated that the smart growth principles make a lot of sense, and he thinks everyone wants to see downtown Hershey developed in a walkable fashion. Mr. Gall stated that society has changed and fast casual is the type of restaurant people are frequenting. He thinks that the restaurants currently permitted in downtown are attractive to older people, and it is desired that the downtown also draw young adults and teenagers. Having ‘fast casual’ in the mix would be an opportunity to fill some of the vacant properties in the downtown. Without it, it is highly likely that the properties will remain vacant. Mr. Gall thinks that most of the conditional use conditions suggested by Mr. Emerick and Mr. Urvic are currently covered or should be covered under Township regulations. The Design Review Board guidelines are not specific enough, but there is a better way to achieve the desired result other than adding the conditions to one specific use. Developers looking at vacant properties want predictability, and the conditional use aspect takes that out of the equation.

**David Tshudy, Pepper Hamilton** – Mr. Tshudy stated that his firm represents the Hershey Trust Company, and they have concerns about the conditional use application. The proposed conditional use for only the fast casual restaurant in the Downtown Commercial, Village Core, and Neighborhood Commercial zoning districts is unique because there are many other permitted commercial uses that are less or more intense than fast casual. It does not make sense to single out the fast casual restaurant as a conditional use. The conditions proposed by Mr. Emerick and Mr. Urvic are very duplicative of what the Design Review Board reviews for properties in the Chocolate Avenue Preservation Overlay district, and a Certificate of Appropriateness is required before a building permit can be issued. The Subdivision and Land Development Ordinance requires the review of a proposed development’s traffic impact prior to plan being approved. Some of the proposed conditions, although necessary for smart

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

development, are already addressed in the Zoning Ordinance. Instead of creating a new conditional use, Mr. Tshudy recommended that the existing design criteria for the Chocolate Avenue Preservation Overlay district be modified to cause all commercial development within that area to meet those standards.

Chairman Tunnell asked Mr. Emerick to give a summary of the Design Review Board process. Mr. Emerick stated that they review all exterior property changes within the Chocolate Avenue Preservation Overlay district. Many of the proposed conditions for the fast casual restaurant conditional use option would be addressed through the Design Review Board and their issuance of a Certificate of Appropriateness, but the conditional use option is also proposed for the Neighborhood Commercial, Downtown Commercial, and Village Core zoning districts, which are not all within the Design Review Board's jurisdiction. Chairman Tunnell commented that Mr. Emerick raised a number of points with the conditional use option and the conditions. The three zoning districts would have to be reviewed closely to make sure that it all works together well. He understands the concern with the conditional use approach because there might now be a third layer of conditions in some areas and then potentially, without looking at the zoning map, there might be some unintended conditions in areas that do not make as much sense.

**Ed Urvic** stated that he is primarily concerned with Chocolate Avenue for the conditional use option. The Design Review Board guidelines are recommendations, whereas the proposed conditional use conditions would be requirements.

**John Dunn, 712 Linden Road**, commented that with regard to the conditional use option, the Hershey Trust Company does not own 100% of the properties in this corridor, and Mr. Dunn is concerned that allowing fast casual restaurants as a permitted use would result in an overabundance of this use that would destroy the imagery of the downtown corridor. He suggested that the Township put the proposed ordinance on hold to do a quantitative traffic study of existing conditions, and that there are other, less congested areas of the Township where the fast casual use could be permitted.

**Ken Gall** clarified that the Trust Company is not opposed to the conditional use concept, but the proposed conditions seem duplicative of existing regulations. He also commented that there is lot of traffic passing through Hershey every day, and he hopes the fast casual restaurant concept would help create a situation where that traffic would stop and do business in Hershey instead of just passing through.

**Rich Gamble** stated that he is not against restaurants, but they should be developed in an appropriate area. He added that downtown property owners need to stop demolishing the buildings and the history of the town.

**Maria Yi** commented that everyone is concerned with Chocolate Avenue, but no one ever mentions the traffic on the alleys.

Mr. Emerick noted that the current proposal has been substantially revised and will need to come back to the Planning Commission for a second review after the Board of Supervisors hearing. He also

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

recommended that any members of the public who spoke at this meeting and have suggested changes should bring their changes to the April 9<sup>th</sup> hearing.

*PLANNING COMMISSION COMMENTS:*

Member Rowe stated he hopes people understand that the conditional use process provides some of the transparency that is being sought, but he also appreciates the fact that the process can be too restrictive. It is important to make sure there is not too much overlap with existing ordinances.

Member Wehler commented that society is changing, and he thinks the fast casual category is by far the fastest growing segment of the restaurant world. The need for downtown revitalization means there is a need for investment, which will be proposed to meet a successful business model, not an ideal. He thinks that the Township needs to enable a way for the fast casual restaurant to appear in this corridor. He is supportive of Mr. Emerick's proposal, and he likes the idea of a conditional use process. There are already regulations in the Subdivision and Land Development Ordinance regarding how traffic should be handled. Member Wehler does not think the burden of a holistic traffic study should fall on one applicant.

Vice Chairwoman St. John commented that everyone is looking at this as Chipotle's issue, and the applicant will have to talk about traffic during the land development plan process. What is important is how downtown will be made walkable. Vice Chairwoman St. John understands the reasoning behind having a conditional use process, but at the same time she thinks that all downtown buildings, not just restaurants, should meet certain standards.

Member Rowe stated that the Comprehensive Plan is painting a picture of what downtown should look like, and everyone is anxious to see it come to fruition. He thinks there needs to be a mix of food services available because sometimes people do not have the time to wait for sit down service at a restaurant. The conditional use option definitely needs to be considered. Member Rowe commented that he is initially comfortable with fast casual restaurants being a permitted use because he believes that the restaurants cannot support themselves, especially if drive-through service is not allowed – there have to be other aspects to draw pedestrian traffic. However, he also thinks that the Board of Supervisors should consider the conditional use option because the Design Review Board would like to have the leverage to achieve the vision of the Comprehensive Plan, but that is not possible currently.

Chairman Tunnell stated that it seems as though the Planning Commission is supportive of the concept of fast casual restaurants in the zoning districts Mr. Emerick has mentioned. Chairman Tunnell thinks consideration needs to be given to the process that is going to take place under land development, particularly regarding dimensional issues, materials, and the other kinds of issues that may relate to a potential conditional use process. There is some concern as to how the conditional use process is going to work when compared to the Design Review Board process, and possibly how that will lay out across the zoning districts. He suggested that the proposed conditional use option and conditions be reviewed closely and revised by staff regarding whether it is a conditional use or something that is reviewed by the Design Review Board, or some other changes embedded into the code in terms of different kinds of requirements. The revised ordinance would then be returned to the Planning Commission for consideration. Chairman Tunnell added that he agrees with Vice Chairwoman St.

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

John in that the conditions should apply to all buildings, not just fast casual restaurants in certain districts. He heard a lot of concerns about the aesthetics of how the town will look.

Mr. Emerick asked for feedback on the following two proposed conditions:

- *When altering an existing building or constructing a new building, the building appearance and site design shall conform to all applicable design standards or guidelines as adopted by the Township. If no guidelines exist or apply, the site shall be designed in substantial conformance with the existing character of the area.* Mr. Emerick stated that this is discretionary upon the Board of Supervisors and it is the burden of the applicant to prove that the architectural style is being met.
  
- *That the proposed building will comply with all height, coverage, area, and yard requirements of the zoning district in which it is located.*

Mr. Uravic agrees with the guidelines, but asked if the first condition would relieve the Design Review Board of discretion and how they apply the guidelines to fast casual restaurants. Mr. Emerick responded that it would have to come before the Board of Supervisors. Mr. Uravic stated that there is so much discretion built into it, there is no certainty as to how the use will turn out because the guidelines might be applied in different ways. If Mr. Emerick's language would essentially require the Design Review Board to issue a Certificate of Appropriateness if a project meets the guidelines, that would have the same kind of effect that Mr. Uravic intended. But if it simply references the law in that process, Mr. Uravic would like to make it more restrictive and give it more weight with the conditional use. Mr. Emerick responded that the project would still require a Certificate of Appropriateness. He added that he is in the process of removing the word "suggested" and replacing it with "required" in those standards, and some other changes that the Supervisors are considering.

Chairman Tunnell thinks that the current review process, particularly in the Chocolate Avenue Preservation Overlay district, seems to be working well. It might be appropriate to eventually review and alter the Design Review Board guidelines, but he would not want to see projects that are moving down the right path being held up for global architectural criteria to come into play. With regard to revisions to the proposed ordinance, Chairman Tunnell stated that the Planning Commission is in a good position to do a final review of the ordinance as quickly as Mr. Emerick is able to bring it back for their consideration.

**OTHER BUSINESS**

None.

**DERRY TOWNSHIP PLANNING COMMISSION**  
**MEETING MINUTES**  
**April 2, 2013**

**ADJOURNMENT**

On a motion made by Vice Chairwoman St. John, seconded by Member Rowe, and a unanimous vote, the meeting adjourned at 9:11 p.m.

Respectfully submitted,

---

Gregg Mangione  
Secretary

Submitted by:

---

Jenelle Stumpf  
Community Development Secretary