

**DERRY TOWNSHIP PLANNING COMMISSION
MEETING MINUTES
August 6, 2013**

CALL TO ORDER

The Tuesday, August 6, 2013 Derry Township Planning Commission meeting was called to order at 6:03 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; Glenn Rowe

Commission Members Absent: Gregg Mangione, Secretary; Ned Wehler

Also Present: Chuck Emerick, Director of Community Development; Brandon Williams, Assistant Director of Community Development; Matt Bonanno, HRG; Jenelle Stumpf, Community Development Secretary

Public Registering Attendance: Joe Eisenhauer, Light-Heigel; Nicole Kline, McMahon Associates; Ken Gall, Hershey Trust Company; Craig Smith, RGS Associates; Ken Scardino, Sal Lando, Richard Hasz – Deer Run HOA; Ron Lucas, Stevens & Lee; John Osmolinski, Melanie Boehmer – Milton Hershey School; David Tshudy, Pepper Hamilton, LLP; Gary Frederick, Hillwood; Sue Stough, 750 Creekside Drive

APPROVAL OF MINUTES

On a motion made by Member Rowe and seconded by Vice Chairwoman St. John, the Planning Commission unanimously approved the minutes of the May 13, 2013 Comprehensive Plan workshop meeting as written.

On a motion made by Member Rowe and seconded by Vice Chairwoman St. John, the Planning Commission unanimously approved the minutes of the June 4, 2013 meeting as written.

On a motion made by Member Rowe and seconded by Vice Chairwoman St. John, the Planning Commission unanimously approved the minutes of the July 2, 2013 meeting as written.

OLD BUSINESS

None.

NEW BUSINESS

- A. Review and recommendation of the Preliminary/Final Land Development Plan for East Point Trade Center – Building C, Plat #1234**

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Mr. Emerick stated that this plan represents the development of a 374,125-square-foot commercial distribution warehouse on a 163.145-acre site owned by Hillwood Palmyra, LP, located east of North Lingle Avenue and south of the Norfolk Southern rail line. Of the 163.145 acres, 23.897 acres are located in Derry Township, 82.346 acres are in North Londonderry Township, Lebanon County, and 56.903 acres are in Palmyra Borough, Lebanon County. The Derry Township lands are zoned Industrial and Agricultural/Conservation; in North Londonderry Township the lands are zoned Industrial-1; and in Palmyra Borough the lands are zoned Manufacturing.

The applicant has requested waivers from the Subdivision and Land Development Ordinance as follows:

- a. From Sections 185-12.D.(2) and 185-13.E.(3) – Plan scale. Mr. Emerick recommended that the waiver be granted.
- b. From Sections 185-12.D.(3).(a).[21], [22], [23] and 185-13.E.(4).(a).[19], [20], [21] – Stormwater sewer, sanitary sewer, and water and gas plans and profiles.
Mr. Emerick recommended that the waiver be granted from providing profiles of existing, unaffected storm sewer, sanitary sewer, water, and gas facilities; however, plans are to be provided of all existing stormwater, sanitary sewer, water, and gas facilities.
- c. From Section 185-22.E.(5) – Curbs. Mr. Emerick recommended that the waiver be granted.
- d. From Section 185-34 – Sidewalk, walkways, and bicycle paths. Mr. Emerick recommended that the waiver be granted.

Mr. Emerick and Matt Bonanno, HRG, went over their plan review comments.

Joe Eisenhauer, Light-Heigel & Associates; Ron Lucas, Stevens & Lee; Nicole Kline, McMahon Associates; and Gary Frederick, Hillwood, represented the plan. Mr. Eisenhauer requested an additional waiver from Section 185-22.D.(3) regarding cartway widening, based on the fact that Lingle Avenue was improved in 2003/2004 during the initial construction of the site. A deceleration lane already exists on the northbound side, and a left turn lane exists on the southbound side on Lingle Avenue. Mr. Eisenhauer commented that in addition to the new warehouse, the applicant is proposing improvements to the existing access drive to further encourage the right-turn-only use from the access drive onto Lingle Avenue.

Mr. Emerick added that the Dauphin County Conservation District deferred approval of the project to the Lebanon County Conservation District, since that is where all of the stormwater will be directed.

Vice Chairwoman St. John asked if the bicycle path proposed by the applicant (in lieu of concrete sidewalk) conforms to Township regulations. Mr. Emerick answered yes, and that in some ways a bicycle path is the better option in this situation.

Member Rowe asked if the applicant is doing some kind of traffic demand management to shift the hours of the employees so that they do not coincide with peak hours. Nicole Kline explained that for

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the weekday commuter hours, they collected the traffic volumes on the driveway for both the employees and the trucks and applied that information to the new building, which is anticipated to operate similarly to the existing warehouses. They do not expect the vehicle trips for the new warehouse to have any impact on the traffic operations.

Chairman Tunnell asked Mr. Emerick if he supports the applicant's additional waiver request regarding cartway widening. Mr. Emerick responded yes, because of the road improvements that were done in 2003/2004.

Chairman Tunnell asked for verification that a vegetative buffer currently exists, and that the Township supports an easement being put in place to buffer those properties. Mr. Emerick stated that a substantial buffer was installed in 2003, but he is not sure how that came to be. He thinks it would be beneficial to create an easement to ensure that the buffer will remain. Chairman Tunnell asked if Mr. Emerick might suggest the buffer be removed at some point in the future if the zoning of the adjacent property changed and further commercial development occurred. Mr. Emerick responded that it is a possibility.

In response to a question from Chairman Tunnell, Ron Lucas stated that the applicant had initially proposed a restrictive covenant agreement with the 3 municipalities to address the impervious coverage problem, but Mr. Emerick and the Township's solicitor did not find this to be acceptable. The applicant then provided a legal analysis stating their opinion that the impervious coverage on the entire property is 20%. However, Mr. Emerick did not agree with that position, so the applicant filed an appeal of the Zoning Officer's (Mr. Emerick's) decision to the Zoning Hearing Board. Mr. Lucas added that the location of the proposed building cannot be moved because of the existing quarries and rail spur lines.

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 'd' (with the conditions noted by Township staff) and the waiver requested by Mr. Eisenhower during the meeting be granted.

MOTION ON PLAT #1234

On a motion made by Vice Chairwoman St. John, seconded by Member Rowe, and a unanimous vote, the Planning Commission recommended approval of Plat #1234, subject to the outstanding comments of Township staff, HRG, DTMA, and the Dauphin County Planning Commission being satisfactorily addressed.

B. Review and recommendation of the Sketch Plan for Stover Farmhouse, Plat #1235

Mr. Emerick stated that the plan depicts the development of a 2.287-acre parcel of land located on the west side of Middletown Road, north of Deer Run Drive. The site presently contains the Edward Stover homestead. Although the property has frontage along Middletown Road, access is gained by way of an existing 30' easement connecting the subject property through lands of the Deer Run Homeowners Association to Deer Run Drive. The applicant is proposing to improve the 30'-wide access easement with a 24'-wide access drive. The access drive will lead not only to the homestead,

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but to a proposed cluster of 3 buildings, each containing 4 single family attached dwelling units. It is noted in the project narrative that there is an intention to develop the property as a condominium or planned community type of development.

The applicant has requested the following waiver from the Subdivision and Land Development Ordinance, understanding that without it a major modification of the concept would be necessary:

- a. From Section 185-25.A to allow the driveway to occur within the existing access easement, less than 60 feet from the Stover Court/Deer Run Drive intersection. Mr. Emerick recommended that the waiver not be granted.

Mr. Emerick and Matt Bonanno, HRG, went over their plan review comments.

Craig Smith, RGS Associates; and Doug Gelder, developer, represented the plan. Mr. Smith explained that it is the developer's intent to incorporate the farmhouse elements into the architecture of the proposed units. Ideally the driveway would be located directly across from Stover Court, and the developer had approached the Deer Run Homeowners Association (HOA) about relocating and expanding the easement to accommodate the driveway access. The HOA has stated that they will not grant either the additional easement or its relocation for this project.

Chairman Tunnell asked for a more detailed explanation as to why the HOA denied the request. Doug Gelder stated that the farmhouse was built in 1830 and remains in the same location. The Stover family asked him to research the possibility of developing the property while at the same time preserving the farmhouse. The HOA Board members had informed Mr. Gelder that they received opposition to the proposed development from the rest of members in their community. Mr. Gelder noted that a similar, recently-constructed off-set intersection occurs nearby with Alicia Lane and Locust Lane. He does not think the off-set alignment is a safety issue, otherwise the Township would not have built such an intersection.

Mr. Gelder questioned the need for a second access to the property because more than 10 units are proposed, when Farmhouse Lane contains 20 units and exists by way of a waiver granted for the Deer Run development in the mid-1990s.

Mr. Smith stated that they researched other alternatives for access to the site, such as from Middletown Road. Because of the volume of traffic, access from Middletown Road would need to be a right-in/right-out configuration. They are also concerned with topography in that area and the ability to achieve safe sight distance. As a result, they think what is proposed is much safer.

PUBLIC COMMENTS:

Sal Lando stated that he is a Board member of the Deer Run HOA, and the primary reason why they said no to Mr. Gelder's proposal is because the new units will not match the existing Deer Run units. Also, the residents on Farmhouse Lane will be "closed off", and the feeling of open space will be gone. There was great opposition from the residents who live closest to the proposed development site. Mr.

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Lando commented that if the units were to be designed to be similar to the existing Deer Run units, he believes there would be a lot less opposition.

Brad Miller stated that Ed Stover is his grandfather. His family has had a number of people look at the property and they all wanted to remove the farmhouse, which the family is not in favor of. The proposed units intentionally do not match the Deer Run units, but it was not meant to offend the Deer Run residents. He hopes the differences can be resolved.

Mr. Emerick noted that the Alicia Lane/Carter Cove off-set connection was done as a result of the need to get a multitude of vehicles to a traffic signal. Regarding a second access being required, Mr. Emerick explained that the Subdivision and Land Development Ordinance states that *“all land subdivided and/or all lots developed which are to be the site of 10 or more dwelling units shall provide for at least 2 street connections to existing public streets”* in reference to this proposed type of development as opposed to a cul-de-sac or Farmhouse Lane, which contain fee-simple lots.

Member Rowe commented that access management is very critical, and the layout of the proposed off-set could create somewhat of a gridlock for vehicles turning onto Deer Run Drive from Middletown Road. If the off-set was in the other direction, it probably would not be as critical. He is not comfortable with the off-set or its proximity to Middletown Road.

Richard Hasz, a member of the Deer Run HOA, asked if there is visitor parking proposed because if not, he has a feeling that vehicles will be parked on Deer Run Drive, which will create a hazard. He also asked if Mr. Miller has considered designating the farmhouse as a historical site.

In response to Mr. Hasz’s question, Mr. Smith reported that overflow parking is provided. Additionally, all of the units would have a 2-car garage and there is room outside of the garages to accommodate more parking.

Ken Scardino, a member of the Deer Run HOA, stated that the key issue for the Township seems to be access, but for his HOA it is the preservation of open space.

PLANNING COMMISSION COMMENTS:

Member Rowe is concerned about the possibility of adding another access onto Middletown Road. Chairman Tunnell noted that if the Commission recommended approval of the waiver requested regarding driveway location, and additional waiver would have to be requested regarding a second access to the site.

Vice Chairwoman St. John asked if there truly are no other options other than the off-set intersection. Mr. Smith responded that an access from Middletown Road is a possibility, but they are concerned with safety regarding the proximity of deceleration lanes and sight distances.

Mr. Smith commented that they would potentially need to return to the Planning Commission if they request a waiver regarding the additional access issue, but their main focus currently is resolving the

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driveway location issue. He also pointed out that this property is totally independent of the Deer Run development (in response to Mr. Scardino's comments).

Chairman Tunnell stated that he thinks he supports the waiver regarding driveway location, because he would like to see density of development occur in these areas. Regarding the design of the units, he hopes the developer can come up with a solution for a style that would blend in well with the surrounding area.

MOTION ON WAIVER

Member Rowe made a motion that the Planning Commission deny a waiver from Section 185-25.A regarding driveway location. The motion died for lack of a second.

Vice Chairwoman St. John believes that the developer should have the opportunity to pursue the proposal further. She made a motion that the Planning Commission grant a waiver from Section 185-25.A regarding driveway location. The motion died for lack of a second.

Member Rowe believes there is an opportunity for Mr. Gelder to meet with the Deer Run HOA again to see if they can come to a compromise regarding the easement.

C. Review and recommendation of a waiver from filing a land development plan as requested by the Hershey Trust Company, Trustee for Milton Hershey School, regarding construction of a staff home on the consolidated campus property

Mr. Emerick reported that this request is associated with the lands of the Milton Hershey School and more specifically with their campus, which contains in excess of 2,600 acres of land. The applicant proposes the construction of a 2,168-square-foot staff home on Crest Lane. Since 2010, the school has removed 2 dwelling units and other support buildings from the campus so that in the Township's tracking of stormwater control, they presently have a credit for 29,054 square feet of new impervious area. Additionally, the proposed improvement will be connected to public water and public sewer systems and will not necessitate the extension of any public or private road. However, this improvement would add another residential building to the campus and would technically be a land development.

Mr. Emerick noted that Diane Krug, representative for the Dauphin County Planning Commission, is of the opinion that the Municipalities Planning Code prohibits the full and complete waiver of a subdivision or land development plan. Mr. Emerick noted that the Township solicitor does not agree with the County's interpretation.

Mr. Emerick recommended that the waiver be granted, with the condition that any further improvements to the campus will require the processing of a land development plan unless it is done seamlessly with the demolition and replacement of a structure.

David Tshudy of Pepper Hamilton represented the Hershey Trust Company, Trustee for Milton Hershey School. He stated that the main reason for the request is because it is a school project, and the applicant wants to begin work as soon as possible. A land development plan will be submitted for the

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next 2 student homes that are constructed as part of the same program. Mr. Tshudy noted that in regards to any traffic concerns, a student home (which housed 12 students) was demolished in 2010, and the proposed staff home will house just one staff family, so the amount of traffic created will be less than before.

MOTION ON WAIVER

On a motion made by Member Rowe, seconded by Vice Chairwoman St. John, and a unanimous vote, the Planning Commission recommended that the requested waiver be granted.

D. Review and recommendation of proposed Ordinance No. 637 to amend Chapter 225 (Zoning) of the Code of the Township of Derry by defining and regulating formula fast casual restaurants

Mr. Williams stated that this proposed ordinance is a refinement to the recently-adopted Zoning Ordinance amendment (Ordinance No. 632) which added and revised definitions and regulations for full service, drive-in, fast food, and fast casual restaurants. Some concern was expressed that changing regulations to permit fast casual restaurants at a time when development trends heavily favor such restaurants would permit certain areas of the Township to become saturated with this use. As a result, there may be decreased opportunity for small businesses to establish themselves in the Township. To address some of these concerns, Township staff has researched regulations of similar tourist destination communities, on a national scale, to find common trends in regulating the restaurant industry. The amendments in Ordinance No. 637 are proposed in an effort to (1) support the design guidelines of the Chocolate Avenue Preservation Overlay District, (2) direct development to areas where development is already occurring and where infill development is at its greatest potential, and (3) encourage a variety of restaurant uses that provide unique dining opportunities for local residents as well as visitors.

Vice Chairwoman St. John asked if the Zoning Hearing Board would review the design criteria of projects. Mr. Emerick responded that the only way the Zoning Hearing Board would become part of the process is if an applicant appealed the Zoning Officer's decision. Vice Chairwoman St. John agreed that it is good to have architectural standards, but it is also good that projects not within the Chocolate Avenue Preservation Overlay district do not have to receive approval from the Design Review Board.

Member Rowe commented that he likes the proposed separation distance requirement and allowing only one formula fast casual restaurant per building.

Mr. Williams reported that the Dauphin County Planning Commission has reviewed the proposed ordinance and they do not support it as currently drafted. They stated that the ordinance appears to be discriminatory and recommended that the Township's solicitor review the ordinance to verify its legality.

Chairman Tunnell asked if there are any other municipalities in Pennsylvania that enforce this kind of restriction. Mr. Williams responded that he is not aware of any. Mr. Emerick added that staff is not aware of any other Pennsylvania municipality that has 'fast casual' as a restaurant type.

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Vice Chairwoman St. John asked if the Dauphin County Planning Commission is questioning the definition of ‘fast casual restaurant.’ Mr. Williams responded that they are not. Vice Chairwoman St. John asked how restrictive the design standards are in the proposed ordinance. Mr. Emerick stated that the reason for any design standards at all is to maintain the identity of Hershey throughout the entire Township.

Dave Tshudy of Pepper Hamilton, representing the Hershey Trust Company, stated that he reviewed the proposed ordinance and has concerns regarding whether it passes constitutional muster under the Dormant Commerce Clause, which prohibits local laws from discriminating against interstate commerce by favoring locally-owned businesses over out-of-state businesses. Pepper Hamilton strongly suggests that the Township solicitor engage in a significant review of the ordinance before the Planning Commission makes a recommendation on its adoption. Mr. Tshudy noted that the Trust Company would not object to the design standards if they were applied consistently to all commercial structures.

Chairman Tunnell thinks that Mr. Tshudy and Pepper Hamilton provided a great analysis and it is very helpful. In trying to define the different types of restaurants, he believes that it will be difficult to keep up with the innovations in the retail industries, and he does not think it is the Planning Commission’s role to do that.

Mr. Emerick stated that he thinks the Township solicitor needs to complete a comprehensive review of the language of the ordinance, and Mr. Emerick needs to review the information submitted by Mr. Tshudy. Based on that, he thinks the Planning Commission should postpone making a recommendation on the proposed ordinance.

E. Review and recommendation of proposed Ordinance No. 639 to amend Chapter 225 (Zoning) of the Code of the Township of Derry by extending the Chocolate Avenue Preservation Overlay district and the Downtown Commercial Sign Overlay district

Mr. Emerick stated that this ordinance proposes the extension of the Chocolate Avenue Preservation Overlay district and the Downtown Commercial Sign Overlay district boundaries to encompass all areas zoned Downtown Commercial and all areas zoned Village Core. The seed for this modification of the Zoning Ordinance was planted when The Hershey Company began rezoning portions of the 19 East Chocolate Avenue property, and has been accelerated by both the Hershey Trust Company’s desire to dispose of real estate that does not directly serve their mission and the recent adoption of Ordinance 632 that makes provisions for “Fast Casual” dining within the Township. This zoning amendment is also strongly supported by the 1991 Comprehensive Plan as well as the more recent citizen survey and Comprehensive Plan study group findings.

Member Rowe stated that he is concerned about the proposed expansion of the overlay district to include residential areas, and the cost to the homeowner to appear before the Design Review Board for modifications such as changing the paint color of a door. Mr. Emerick stated that the filing fee is \$25 only if the construction cost of the proposed project is more than \$2,500.

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Vice Chairwoman St. John questioned the logistics of adopting this ordinance before the new Comprehensive Plan is adopted. Mr. Emerick is of the opinion that if the proposed ordinance is not adopted soon, an opportunity will be missed to regulate the design criteria for projects in this area.

Vice Chairwoman St. John noted that the Design Review Board guidelines state that modifications should be similar to the other buildings in the area and asked how that will be enforced with the redevelopment of the downtown. Mr. Emerick responded that her point is a good argument for slowing down the approval process of the proposed expansion of the Chocolate Avenue Preservation Overlay District, because the Township wants to revise the guidelines to give more guidance. Vice Chairwoman St. John asked if the Zoning Hearing Board will have more jurisdiction over the design of a project as a result of the proposed ordinance, and if the answer is yes, whether the Design Review Board will still be necessary. Mr. Emerick responded that the Zoning Hearing Board will not review the design aspects.

Chairman Tunnell stated that Member Ned Wehler had e-mailed the following comments to be read into the record: *“I recommend that we first revisit the design review procedures, standards, and criteria, and consider clarifying changes so that an applicant or a landowner or a developer can look at the ordinance and make some sense of what the requirements are. I made the comment that the ordinance was way too subjective and non-specific and allows the Design Review Board very broad discretion to pick and choose what they like and don’t like, something unpredictable and not guided in any specific way by the language of the enabling ordinance. I also said that I was not too favorable to a lateral expansion of the Chocolate Avenue Historic District Overlay because of 1) the ambiguity and subjectiveness of the procedures for review and decisions by the Design Review Board, and 2) for a very long time, that corridor has been well-established as the parallel set of lines running along Chocolate Avenue, and I do not really see the merit of making such a significant broadening of the boundaries all the way to the railroad tracks throughout the town. It seemed to me that the broadening was yet another barrier being considered that would probably be an added hindrance to the redevelopment of our downtown area. If the Planning Commission chooses to take this matter under further advisement and give it more time for consideration and for formulation of a recommendation or recommendations, I would certainly support such a stance.”* Mr. Emerick commented that he would be happy to revisit the matter when Member Wehler is in attendance.

Chairman Tunnell stated that he shares Mr. Emerick’s concern about missing the opportunity to regulate the design of future development, but he also worries that the proposed overlay district expansion may ward off significant redevelopment in some areas because of the addition of another layer of regulations. He does not want to recommend adoption of the ordinance without first reviewing the parameters of the Design Review Board. Mr. Emerick noted that the Chocolate Avenue Preservation Overlay district and Design Review Board have been in existence for 20 years.

Member Rowe stated that he agrees with Member Wehler’s comments. Vice Chairwoman St. John stated she would prefer that all 5 members of the Planning Commission are present to make a recommendation on the ordinance.

The Planning Commission postponed making a recommendation on Ordinance No. 639.

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OTHER BUSINESS

None.

ADJOURNMENT

On a motion made by Vice Chairwoman St. John, seconded by Member Rowe, and a unanimous vote, the meeting adjourned at 8:34 p.m.

Respectfully submitted,

Gregg Mangione
Secretary

Submitted by:

Jenelle Stumpf
Community Development Secretary