

**DERRY TOWNSHIP PLANNING COMMISSION
MEETING MINUTES
March 5, 2019**

CALL TO ORDER

The Tuesday, March 5, 2019 Derry Township Planning Commission meeting was called to order at 6:00 p.m. in the meeting room of the Derry Township Municipal Complex, Administration Building, 600 Clearwater Road, Hershey, PA, by Chairman Don Santostefano.

ROLL CALL

Commission Members Present: Don Santostefano, Chairman; Joyce St. John, Vice Chairwoman; Tom Wilson, Secretary (*left at 6:55 p.m.*); Glenn Rowe

Commission Member Absent: Matt Tunnell

Also Present: Chuck Emerick, Director of Community Development; Jenelle Stumpf, Planning/Zoning Coordinator; Diane Myers-Krug, Dauphin County Planning Commission representative

Public Registering Attendance: Dave Getz, 508 North 2nd Street, Harrisburg; Mark Bradshaw, 17 North 2nd Street, 16th Floor, Harrisburg

APPROVAL OF MINUTES

On a motion made by Secretary Wilson and seconded by Chairman Santostefano, the Planning Commission unanimously approved the minutes from the February 5, 2019 meeting, as written.

OLD BUSINESS

- A. Report of the Board of Supervisors' action regarding the adoption of all or a portion of Ordinance No. 708, amending Chapter 225 (Zoning) of the Code of the Township of Derry to change the zoning classification of 65.893 acres of land located east of Middletown Road, north of Kaylor Road, and south and west of Stoverdale Road from a Conservation classification to a Planned Campus West classification and an Active-Adult Community Overlay classification, and to add an Active-Adult Community Overlay classification to 53.531 acres of land located north of Route 322, west of Route 39/Hersheypark Drive, and south of East Main Street**

Chuck Emerick stated that the Board chose to add an Active-Adult Community Overlay to the property along East Main Street and to not rezone the Middletown Road property at this time.

- B. Report of the Board of Supervisors' action regarding the adoption of Ordinance No. 709, amending Chapter 225 (Zoning) of the Code of the Township of Derry to make revisions to regulations regarding Active-Adult Communities and associated uses and dimension and bulk development requirements**

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Mr. Emerick reported that the Board adopted the ordinance.

- C. Report of the Board of Supervisors' action regarding the adoption of a Decision for Conditional Use Application No. 2019-01, as filed by A to Z Realty, LLC, to convert a building formerly used as a medical office at 739 Fishburn Road into a group child care facility**

Mr. Emerick reported that the Board adopted a Decision approving the Conditional Use, with conditions.

NEW BUSINESS

- A. Review and recommendation of Ordinance No. 713, amending Chapter 225 (Zoning) of the Code of the Township of Derry to make general revisions, corrections, and clarifications**

Mr. Emerick summarized the changes represented in proposed Ordinance No. 713 as follows:

- Section 1 refers to the matrix of permitted uses (Table 1). Hotels and Motels are being removed from Downtown Core Overlay (O9) in the Hershey Mixed Use zoning district. Hotels and Motels will remain as permitted uses in the East Chocolate Avenue Overlay (O10) and the Southern Core Overlay (O13). They are also permitted as a Conditional Use in the Compact Development Overlay (O8). Guest Lodging, Dining and Conference Facilities have also been removed from the Hershey Mixed Use zoning district.
- Section 2 – Previously, this section allowed a property owner the discretion to only reduce a front yard area (front building setback) to be in alignment with adjacent buildings. Modification to this section will allow the Zoning Officer to determine if a proposed structure is in proper relation with adjacent existing structures along street frontages and thereby would allow the Zoning Officer to require a front yard area adjustment from the required front yard areas of the zoning district. This is intended to allow either greater or lesser yard areas depending on the built environment of a neighborhood.
- Section 3 refers to the “dashboard” (§225-315) for the Hershey Mixed Use zoning district. The same modifications stated in Section 1 have been reflected in Table 28 of §225-315.
- Section 4 modifies the parking regulations to clarify that fractional parking spaces in calculations are to be rounded up.

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- Section 5 clearly states that residential density bonuses within a Master Plan application are credited to the zoning district applicable to the property, including overlay zoning districts.
- Section 6 corrects an erroneous section reference from §501-501.43.D to §225-501.43.D.
- Section 7 corrects an erroneous reference from “Board of Supervisors” to “Zoning Hearing Board.”
- Section 8 clarifies that to establish a “Family Child Care Home” as an accessory use, the principal use of a dwelling on the lot must either exist or be permitted in the subject zoning district.
- Section 9 removes the special exception criteria for “Guest Lodging, Dining and Conference Facilities” since they will no longer be permitted in the Hershey Mixed Use zoning district.
- Section 10 clarifies that to establish an “Accessory Dwelling Unit” as an accessory use, the principal use of a dwelling on the lot must either exist or be otherwise permitted in the subject zoning district.

Mr. Emerick noted that there are currently 29 lodging facilities in Derry Township (including hotels, motels, the cabins at the campground, and a bed and breakfast), consisting of a total of 2,418 rooms. In 2015, the Township hired a consultant to prepare a plan for the revitalization of the downtown, entitled *Downtown Hershey, a Plan for Continued Revitalization*. This plan explained what the community envisioned for the redevelopment of the downtown. In light of some of the development that has occurred under the 2017 Zoning Ordinance, the Board of Supervisors are considering engaging a consultant to re-review what is happening in the downtown. The proposed removal of hotels and motels from the Downtown Core Overlay of the Hershey Mixed Use zoning district is in preparation for another amendment to the Zoning Ordinance at a later date that would likely require any hotels or motels in the Downtown Core Overlay of the Hershey Mixed Use zoning district to have a mixed-use element that engages the population of the Township. That is part of the goal of the Comprehensive Plan and the plan for the revitalization of the downtown. With the recent construction of a few hotels, there is concern about what shape the downtown is taking.

Chairman Santostefano asked if there is a specific reason why hotels and motels are proposed to be removed from the Downtown Core Overlay of the Hershey Mixed Use zoning district at this time. Will it make the future amendment to the Zoning Ordinance easier? Mr. Emerick responded that there is land in the downtown that could easily be redeveloped into hotels. If we want to keep the momentum going in the downtown and also shape what we envision it to be, it is proposed to remove hotels and motels as by-right permitted uses in the Downtown Core

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Overlay of the Hershey Mixed Use zoning district so that the uses can be re-evaluated and reinstated into the Zoning Ordinance at a later date.

Vice Chairwoman St. John commented that it is a shame the Downtown Core Design Standards are only guidelines and cannot be implemented in a manner to help slow down the rate of development and create the desired vision for the downtown. As an example, when a large hotel is constructed next to houses, that does not reflect character of the existing neighborhood. Mr. Emerick stated that in trying to create a downtown that allows for taller buildings, there are going to be some conflicts with adjacent zoning district that allow houses. It would be beneficial to be able to transition the types of uses allowed in zoning districts but sometimes that is not possible.

Vice Chairwoman St. John asked how the removal and eventual reinstatement of hotels and motels as permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district will affect the conversion of existing buildings into hotels if a mixed-use element is required. Mr. Emerick replied that as an example, the Zoning Ordinance could require that a hotel or motel building with more than 20 rooms would need to have a mixed-use component.

Member Rowe inquired if the proposed removal of hotels and motels as by-right permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district will preclude non-owner-occupied house rentals (currently identified in the Zoning Ordinance as ‘specialty homes’). Mr. Emerick responded that specialty homes will not be affected because they are considered to be a different use than hotels and motels.

In response to a comment from Member Rowe, Mr. Emerick explained that hotels and motels will still be permitted uses in several other zoning districts in the Township even if they are removed as by-right permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district. Member Rowe stated that we want the downtown to be reflective of what the community really desires, not what is driven by tourism, and that was made clear in the Comprehensive Plan.

Vice Chairwoman St. John commented that essentially what the Township is proposing is the removal of hotels and motels as by-right permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district as part of Ordinance No. 713 and then the eventual reinstatement of the uses in a more thoughtful manner to reflect what the community would be more comfortable with. Mr. Emerick agreed and added that the Township will be looking comprehensively at the downtown development in its entirety as well. We want to make sure we are heading in the right direction for what we want to see in place for the next 50 years.

Public comment

Jonathan Crist, attorney on West Chocolate Avenue, stated that he represents the owners of Advanced Insurance Solutions, which is located at 546 West Chocolate Avenue, directly east of the proposal to demolish six existing dwellings and construct a new Towneplace Suites hotel.

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Mr. Crist stated that the problem is not the hotel use, it is the Township's attempt to unify the downtown by way of the Downtown Core Design Standards, which Mr. Crist believes was a horrendous mistake. It does not matter that a hotel is proposed next to his client's property, it is the fact that the Township regulations allow for huge 60-foot high buildings, 80% lot coverage, and 5-foot property setbacks. The solution to the problem is not to remove hotels and motels as by-right permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district, it is to incorporate the Design Standards back into the Zoning Ordinance.

Dave Getz, attorney from Harrisburg, stated that he represents Bears Creek Hotel II, the proponent of the proposed Towneplace Suites hotel on the properties currently addressed as 554-574 West Chocolate Avenue. He explained that the Downtown Core Design Board reviewed the proposal and unanimously approved the demolition of the buildings and the site elements for the proposed hotel. They also recommended the approval of the design of the hotel by a vote of 4-1, and they asked the applicant to provide additional renderings to the Board of Supervisors to show the view of the project from west and the south. The applicant did what was requested, and the Board of Supervisors rejected the plan. The applicant has appealed the Board of Supervisors' decision. What is stunning is that within weeks of the Board of Supervisors' rejection of the plan, the Township is proposing an ordinance that would remove hotels and motels as by-right permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district. Mr. Getz stated that five (558, 562, 566, 570, and 574) of the six properties at 554-574 West Chocolate Avenue are owned by one entity, and the other lot (554) is owned by Mr. Getz's client. His client bought the property at 554 West Chocolate Avenue with the knowledge that hotels were a permitted use. They had an investment-backed expectation in building a hotel. Ordinance No. 713 removes that investment-backed expectation, frustrates the client's intention, and exposes the Township to financial liability. This is an inopportune time to remove hotels and motels as by-right permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district, particularly because the Towneplace Suites plan rejection is under appeal. Mr. Getz is requesting that the removal of hotels and motels not be part of Ordinance No. 713.

Vice Chairwoman St. John noted that a hotel is a permitted use now and asked what will happen to the applicant's appeal, if granted, if the Zoning Ordinance is amended to removed hotels and motels as by-right permitted uses in the Downtown Core Overlay of the Hershey Mixed Use zoning district. Mr. Emerick responded that if the applicant wins the appeal and the Zoning Ordinance is amended to remove hotels and motels, the Towneplace Suites hotel that is constructed will be a nonconforming use. However, if the Township goes through the process of reinstating hotels and motels as permitted uses in this district and the Zoning Ordinance requires a commercial element, the Towneplace Suites hotel would still be a nonconforming use. Mr. Getz added that being nonconforming could potentially cause issues with the use of the property as far as future alterations and expansions to the building.

Mr. Getz commented that an unintended consequence of removing hotels and motels as permitted uses in the downtown is the loss of walkability from the hotels to the new restaurants at Hershey Towne Square. Vice Chairwoman St. John pointed out that Hershey Towne Square was originally intended to be a mixed-use development, but it did not turn out that way. She does

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not want that to be the standard for what happens to the rest of the downtown and would hate to see new construction driven by the Hershey Towne Square restaurants.

Secretary Wilson asked for clarification on what the percentages of expansion of a nonconforming use are based on in the Zoning Ordinance. Mr. Emerick summarized the regulations in Section 225-602 (Expansion or Alteration of Nonconforming Uses of Land, Buildings, or Structures) of the Zoning Ordinance.

Mark Bradshaw, attorney with Stevens & Lee in Harrisburg, stated that he represents PJJ Realty, LLC, the owner of the five properties addressed as 558, 562, 566, 570, and 574 West Chocolate Avenue. Mr. Bradshaw questioned the logic of removing hotel and motel uses from the Downtown Core Overlay of the Hershey Mixed Use zoning district only to reinstate the uses at a later date. He believes what is proposed is actually special legislation that is focused on one project (Towneplace Suites) based on the chronology and timing involved. If hotels and motels are eliminated from this particular zoning district, it is going to frustrate the highest and best use of the properties involved in the Towneplace Suites project and potentially negatively affect other hotels when they become nonconforming uses, in terms of financing and expansion of the existing footprint. Ordinance No. 713 would not be an inconsequential change to the Zoning Ordinance, and Mr. Bradshaw and his client see this as an attempt to backstop against the Towneplace Suites project if the appeal is unsuccessful.

Vice Chairwoman St. John indicated that when the regulations for the downtown were formulated, it was not possible to foresee every type of development proposal that might occur in the future. There are situations where what was envisioned when the regulations are formulated is not what happens after the regulations are adopted. In that case, it makes sense to continue to make thoughtful changes to the regulations in order to accomplish the desired vision for the area. Mr. Getz and Mr. Bradshaw have questioned the timing of proposed Ordinance No. 713 so soon after the rejection of the Towneplace Suites plan, but perhaps Ordinance No. 713 is more about re-evaluating what the community's expectations were with the 2017 Zoning Ordinance. Whether the Township removed hotels and motels from the Downtown Core Overlay of the Hershey Mixed Use zoning district now or in six months, the Towneplace Suites hotel would still end up being a nonconforming use if the applicant of the project is successful in their appeal of the Board of Supervisors' decision to reject the plan.

Secretary Wilson left the meeting at this point due to a previously-scheduled professional obligation.

Vice Chairwoman St. John inquired why the removal of hotels and motels from the Downtown Core Overlay of the Hershey Mixed Use zoning district and the reformulation and reinstatement of those regulations are not being proposed at the same time. Mr. Emerick replied that they are not being proposed simultaneously because there are so many moving parts in trying to craft the regulations in the way the community and Township officials would want them to be. Additionally, the Township is looking at engaging a consultant to revisit the downtown in its entirety. Mr. Emerick has received numerous phone calls from potential developers interested in

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building hotels. He and the Board of Supervisors believe the best first step in the process of amending the Zoning Ordinance is to slow down the development of hotels in this district and then incorporate revised regulations in the future.

Chairman Santostefano stated that he is uncomfortable with the proposed removal of hotels and motels from the Downtown Core Overlay in terms of general fairness to both Township residents and people who want to do business in the Township. A substantial amount of time and effort went into the development of the 2015 Comprehensive Plan and the 2017 Zoning Ordinance. It seems unusual that all of the sudden the Township is taking a different position on the allowance of hotels and motels in the downtown. Mr. Emerick stated that recent development and numerous inquiries about potential development have led to the concern that what was envisioned for the redevelopment of the downtown may not be what ends up happening. During the creation of the 2017 Zoning Ordinance, Township staff, consultants, and officials tried to not create new nonconformities. There are existing hotels in the downtown, so the only way to keep them from becoming nonconformities was to allow hotels as a permitted use in the 2017 Zoning Ordinance. In hindsight, that may not have been the right decision.

Vice Chairwoman St. John commented that it is impossible to foresee every future development proposal and how the developments will affect the neighborhoods and the community. If slowing down development is what is necessary to achieve the desired outcome for the downtown, that is what should be done.

Member Rowe agreed with Chairman Santostefano. He stated that the Township has to send a message to the community and potential developers regarding what is permitted. The Township should be careful about changing ordinances mid-stream. Member Rowe thinks the Zoning Ordinance should not be amended to remove hotels and motels as permitted uses in the downtown until after the completion of a study to document the reasoning for the amendment.

Chairman Santostefano commented that it seems as though this change is being proposed as a result of the Towneplace Suites project, and that feels wrong to him. The developer believed they followed all the applicable regulations but were refused the approval of their project, and now a short time later Ordinance No. 713 is being proposed for consideration and adoption.

MOTION

Vice Chairwoman St. John made a motion that the Planning Commission make a recommendation to the Board of Supervisors that Ordinance No. 713 be adopted as written and presented by Township staff. *The motion died for lack of a second.*

Member Rowe made a motion that the Planning Commission make a recommendation to the Board of Supervisors that consideration of Ordinance No. 713 be tabled until the Township retains a consultant to conduct a re-review of the vision for the downtown so that the amendments to the Zoning Ordinance can happen simultaneously. Chairman Santostefano seconded the motion. *Discussion:* Chairman Santostefano amended Member Rowe's motion to make a recommendation to the Board of Supervisors that Ordinance No. 713 be approved with

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the removal of the hotels and motels component. Member Rowe seconded the amended motion. *Discussion:* Mr. Emerick asked for clarification as to whether the Planning Commission's recommendation includes or excludes the language in Ordinance No. 713 regarding Guest Lodging, Dining, and Conference Facilities. The Commissioners agreed that the language regarding Guest Lodging, Dining, and Conference Facilities can remain in Ordinance No. 713. The amended motion passed by a vote of 2 to 1 (Chairman Santostefano and Member Rowe voted in the affirmative; Vice Chairwoman St. John voted in opposition).

OTHER BUSINESS

None.

ADJOURNMENT

On a motion made by Chairman Santostefano, seconded by Member Rowe, and a unanimous vote, the meeting adjourned at 7:10 p.m.

Respectfully submitted,

Thomas P. Wilson
Planning Commission Secretary

Submitted by:

Jenelle Stumpf
Planning/Zoning Coordinator (*acting as stenographer*)