

PUBLIC NOTICE TOWNSHIP OF DERRY

Pursuant to Section 916.2 of the Pennsylvania Municipalities Planning Code, 53 P.S. 10916.2, Cacao Way, LLC (“Cacao”) has requested a preliminary opinion of the Derry Township Zoning Officer regarding Chapter 225 (Zoning) of the Code of the Township of Derry (“ZO”) as it relates to the development of an apartment building at 50 Northeast Drive, Hershey (“Tract”). Cacao is the equitable owner of the Tract. The Tract, also known as Dauphin County tax parcel no. 24-009-067, is located within the Hershey Mixed Use (“HMU”), Compact Development Overlay (“O8”), and North Master Plan Approval Area Overlay (“NMPAA”) zoning districts and consists of 3.178 acres. More specifically, Cacao has requested a written determination regarding their ability to file a Master Plan; the method of measurement of required lot frontage; and the manner in which the density bonus is calculated for their project.

The Zoning Officer has provided a preliminary opinion as follows:

Regarding the ability of Cacao to file a Master Plan. Cacao is entitled to file a Conditional Use application for a Master Plan in accordance with Section 225-501.58 of the ZO since the property is located within the NMPAA Overlay (see ZO Section 225-501.58.A.1.b); is greater than 1 acre in size (see ZO Section 225-501.58.A.2.a.ii); and contains in excess of 150 feet of lot frontage (see ZO Section 225-501.58.A.2.a.iii). Cacao will need to provide credible evidence during the required hearing that they will control the entire site (see ZO Section 225-501.58.A.2.a.i); provide ingress and egress in a convenient and safe manner (see ZO Section 225-501.58.A.2.a.iv); and preserve sensitive environmental features (see ZO Section 225-501.58.A.2.a.v). Cacao will also need to address all other specific requirements of ZO Section 225-501.58 and the general requirements of ZO Section 225-501.K to the satisfaction of the Township of Derry Board of Supervisors.

Regarding measurement of the 150-foot lot frontage as required by ZO Section 225-501.58.A.2.a.iii, which states *“The minimum frontage abutting on a public right-of-way shall not be less than 150 feet”*, the Tract meets the requirement by combining frontage on Northeast Drive and East Derry Road. This determination is based in great part on two plans of record. The plan recorded in Plan Book R, Volume 3, at Page 101 and the plan recorded in Plan Book F, Volume 4, at Page 23 both depict an arc length of 131.94 feet along the frontage of Northeast Drive and a distance of 72.58 feet along the frontage of East Derry Road, totaling 204.52 feet of lot “frontage abutting on a public right-of-way.” There is no specific language in the ZO prohibiting the combination of multiple frontages. Further, if the ZO had intended to require all of the “frontage” to contact a single street, then it would have been appropriate to require 150 feet of “lot width” on one street frontage, as “minimum lot width” is defined in the ZO as *“The minimum horizontal distance between side lot lines measured at the minimum required front yard line and at the street right-of-way line.”*

Regarding calculation of the 25% density bonus as permitted by ZO Section 225-501.58.A.7.b.iii, the density bonus shall be calculated using the 25 dwelling units per net developable acre, as authorized by ZO Section 225-315, Table 29, for the apartments. While ZO Section 225-501.58.A.7.b states in part *“...the permitted residential densities of the underlying **base** zoning district maybe increased by up to the following percentages:”* (emphasis added), and the “base” zoning district allows apartments at a rate of 8 dwelling units per net developable acre, the ZO definition of “base zoning district” notes in part *“...The regulations of a base zoning district may be supplemented or altered by regulations imposed in an overlay zoning district”*, indicating that the base zoning district includes and combines the requirements of an overlay district. It would be irrational to think that providing a density bonus as an incentive to promote well-conceived development would reduce the number of units that a developer could create, which is exactly what would happen if the 8 dwelling units per net

developable acre equation were required to be used. The “bonus” in that case ($8 \times 1.25\% = 10$) would be 15 units less than the 25 dwelling units per net developable acre allowed without the Master Plan process. The use of the greater density is also supported by and consistent with ZO Section 225-501.58.A, regarding the purpose of Master Plans, which strives to incorporate Smart Growth principles, including compact building design and preservation of open space. Allowing a greater density encourages vertical building design and less surface parking and allows increased density on a tract that is being developed, thus preserving other undeveloped lands.

This preliminary opinion does not constitute zoning or land development approval. Its purpose is limited to providing the public with reasonable notice of details related to the proposed development and establishing a limit on the period of time in which an appeal of the preliminary opinion may be filed. The appeal period will expire 30 days from August 22, 2019. Cacao will be required to obtain subdivision/land development approval.

The materials submitted by Cacao may be examined by the public at the Dept. of Community Development, 600 Clearwater Rd., Hershey, PA, during normal business hours.

Charles W. Emerick, Jr., Director of Community Development