

**DERRY TOWNSHIP PLANNING COMMISSION
MEETING MINUTES
October 1, 2019**

CALL TO ORDER

The Tuesday, October 1, 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 Secretary Tom Wilson.

ROLL CALL

Commission Members Present: Tom Wilson, Secretary; Matt Tunnell; Glenn Rowe

Commission Members Absent: Don Santostefano, Chairman; Joyce St. John, Vice Chairwoman

Also Present: Chuck Emerick, Director of Community Development; Jenelle Stumpf, Planning/Zoning Coordinator

Public Registering Attendance: Laura and Brian Holton, 280 Jacobs Creek Drive, Hershey; Steve and Kathy Seidl, 450 West Granada Avenue, Hershey

APPROVAL OF MINUTES

On a motion made by Member Tunnell and seconded by Member Rowe, the Planning Commission unanimously approved the minutes from the September 3, 2019 meeting, as written.

OLD BUSINESS

None.

NEW BUSINESS

A. Review and recommendation of Conditional Use Application No. 2019-05 for 1625 East Chocolate Avenue, as filed by Brian and Laura Holton

Mr. Emerick explained that the applicants are requesting Conditional Use authorization under the provisions of Chapter 225 (Zoning), Section 225-501.20 of the Code of the Township of Derry. The applicants propose to establish a Specialty Home (i.e. short-term rental home) on their property located at 1625 East Chocolate Avenue, Hershey. The subject property is located in the Palmdale Mixed Use and East Chocolate Avenue Overlay zoning districts. Mr. Emerick reviewed the required performance standards for the Conditional Use and the applicants' responses as to how they will meet the standards. Mr. Emerick is recommending that the Conditional Use authorization be granted, subject to the following conditions:

- a. The establishment of the Specialty Home shall be in substantial compliance with the information presented with the Conditional Use Application and during the

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October 8, 2019 Board of Supervisors public hearing.

- b. If, in the future, the applicant proposes to increase the number of bedrooms in the dwelling beyond the existing three, they must apply for further approval from the Township.
- c. The operation of the Specialty Home must at all times comply with the requirements of Sections 225-501.20.A through L of Chapter 225 (Zoning) of the Code of the Township of Derry.
- d. The garage must remain accessible to and be used by the Specialty Home renters.
- e. Notwithstanding any lesser restriction required by the Township's Property Maintenance Code, Chapter 143 of the Code of the Township of Derry, no more than 2 individuals (excluding children under the age of 3) may occupy any bedroom.
- f. Any outdoor amenities or improvements to the Specialty Home such as decks, seating areas, horseshoe pits, patios, and the like must be at least 25 feet from any adjacent single-family dwelling.
- g. The owner or operator must pay all State, County, and local hotel occupancy taxes that are applicable to the temporary lodging.
- h. The owner or operator must register the unit and pay the fee for any rental inspection program operated by the Township.
- i. If the Derry Township Police Department receives excessive noise complaints regarding the use of the Specialty Home, upon receipt of the third complaint the owner or operator shall install and monitor a noise monitoring system such as Noiseaware™, Hive Hub 360, or an equivalent device to monitor the noise levels in an attempt to circumvent complaints.
- j. The granting of approval of the Conditional Use request shall not relieve the applicants from filing and having the Township approve any permit, land development, subdivision, or site plan which may be required by other Township regulations or from otherwise complying with all applicable Township regulations.
- k. The granting of approval of this Conditional Use shall expire if a zoning permit, building permit, or certificate of use and occupancy is not obtained within 12 months from the date of the granting of approval of the Conditional Use.
- l. The Specialty Home shall meet all other requirements of the Township that may apply.

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Member Rowe commented that noise is always a concern with a specialty home and that Mr. Emerick is pretty prescriptive in his suggested condition 'i' regarding the number of complaints received and the types of noise monitoring systems to be used. Member Rowe said he researched the Hive Hub 360 device and it appears that it could be used to listen to conversations in the specialty home. Mr. Emerick agreed that is a possibility. Member Rowe feels uncomfortable with that, knowing the device could be abused. He does not think the Township should make specific recommendations about which noise monitoring systems should be used. It should be up to the owner of the specialty home. He also does not think the Township should specify the number of noise complaints that are to be received by the Police Department before the specialty home owner is required to install a noise monitoring device. It should be in the owner's best interest to monitor noise levels so that there are no noise complaints.

Mr. Emerick stated that the condition can be revised to remove specific reference to NoiseAware and Hive Hub 360 noise monitoring devices. His reasoning for specifying a maximum of three noise complaints is so that the specialty home use does not become a nuisance to the Police Department.

Member Rowe asked if the zoning will allow us to go back and revisit the permitted use if it becomes an issue. Mr. Emerick replied that now is the time and if it turns out to not be an issue, the noise monitoring condition is pretty meaningless. He believes it is a good condition to have even if it does not have to be acted on.

Member Rowe noted that when being so prescriptive as to specify the number of noise complaints that have to be received before the Township will require action on the owner's part, the Township is responsible for keeping track of the timeline.

In response to an inquiry from Member Tunnell, Mr. Emerick explained that the Township does not have a noise ordinance. Member Tunnell stated that it is nice to have a condition of approval regarding noise monitoring so that the specialty home owner is put on notice, but there is no noise ordinance to enforce if there are more than three noise complaints. Mr. Emerick commented that the condition is a way to have the owner or the property manager be able manage the property instead of the police.

Member Rowe noted that he does not like the idea of establishing policies that are not going to be enforced. He does not have a problem with including the noise monitoring condition as part of the approval of this Conditional Use request based on the location of the property; however, future Conditional Use applications for specialty homes may be for properties that are in more sensitive areas, and the Township should consider how they are going to enforce excessive noise issues.

Secretary Wilson asked if the applicants are amenable to the suggested conditions of approval. The applicants, Brian and Laura Holton, answered yes.

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MOTION

On a motion made by Member Tunnell, seconded by Member Rowe, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the Conditional Use represented by Application No. 2019-05 be granted, subject to Township staff's suggested conditions 'a' through 'l'.

B. Introduction of the draft new Zoning Ordinance

Mr. Emerick clarified that this item is only intended to be a brief overview so the Planning Commission has an idea of what changes are proposed to the Zoning Ordinance. A summary of the changes is as follows:

- The Downtown Core (O9) Overlay was slightly reduced in size and now contains three districts. The O9.1 Overlay allows the greatest building heights, impervious coverages, and range of uses. The O9.2 Overlay reduces the building heights but still allows a large range of uses. The O9.3 Overlay lowers the building heights to 35 feet and reduces the lot coverage to be consistent with the Hershey Mixed Use (HMU) zoning district and further reduces the permitted uses. This overlay acts as a transition from the HMU district to the Downtown Core Overlay districts.
- Adjustments were made to the Downtown Core Overlay parking regulations to allow parking areas to span properties. Other parking adjustments were made to enhance the ability to repurpose existing buildings by reducing the parking requirements within the Downtown Core Overlay.
- The General Commercial zoning district was extended across developed properties along Hersheypark Drive to provide them with a more conforming land use status.
- The Planned Campus North zoning district was expanded to Kieffer and Swatara Roads to better allow existing land uses the ability to expand. The North Master Plan Approval Area Overlay was also expanded in the same fashion.
- The Compact Development (O8) Overlay was expanded to the east and south to encompass some existing uses that were removed from the Downtown Core Overlay as well as some existing uses that become more conforming within the O8 Overlay. Other areas were included to avoid voids in the O8 Overlay and increase development potential of single-family residential properties that are surrounded by more intense uses.
- The Southern Core (O13) Overlay was expanded to properties along the northern side of Governor Road to provide them with a more conforming land use status.
- The East Chocolate Avenue (O10) Overlay was extended to encompass a 0.17-acre property to provide it with a more conforming land use status.

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- References for general regulations for permitted uses were added to the dashboards.
- An adjustment was made to the Medical Campus Central zoning district's interior lot line requirements to account for other Penn State entities.

Member Rowe questioned why the Milton S. Hershey Medical Center is specifically referenced in the Medical Campus Central dashboard. Mr. Emerick responded that the Medical Center has some outparcels on Cherry Drive that technically could be sold to another party and in that case, they would need to respect the side yard setbacks. That is the only exclusion in the Medical Campus Central district. Member Rowe said that if the reference is generic, nothing will need to be revised in the Zoning Ordinance if the Milton S. Hershey Medical Center changes its name in the future. Mr. Emerick stated that he has discussed this with the Medical Center representatives and he believes that changing the reference to "Penn State and their affiliates" would be acceptable.

Secretary Wilson noted that there are a number of internal lots on the Medical Center campus that are encumbered by deed restrictions. Mr. Emerick agreed and explained that the Zoning Hearing Board granted relief in terms of setbacks so that the Medical Center can work around the deed restrictions regarding the development of the lots.

- Front yard requirements within the Downtown Core (O9) Overlay were made to preserve and expand the tree lawn areas.
- Language to strengthen access management goals within the Middletown Road corridor was included.
- Regulations for the use of mechanical lifts, automated parking facilities, and tandem parking were added. These methods can only be used in areas where surplus parking exists.
- Enhanced regulations and details for bicycle parking facilities have been included.

Member Rowe asked if the proposed Zoning Ordinance regulations will affect bike sharing stations. Mr. Emerick answered no. Member Rowe then asked what criteria bike sharing stations fall under. Mr. Emerick responded that the location of the station is typically on private property and not used as a means to meet the minimum parking requirement, so the station would not be regulated by the Zoning Ordinance. However, if someone would propose Zagster parking in order to meet their minimum parking requirement, then Mr. Emerick believes the station would be regulated by the Zoning Ordinance.

Member Tunnell inquired if Mr. Emerick is concerned that developers might abuse the

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option of using bike sharing as a way to eliminate vehicle parking. The developer could potentially build more density than they reasonably should. How is bike sharing a logical equivalent for a parking space at a hotel site? Mr. Emerick explained that the Zoning Ordinance does not discriminate against where the vehicle parking can be supplemented by bike parking and a maximum of two vehicle spaces can be replaced by bike spaces, no matter how large the lot is. Member Tunnell is concerned that we are mixing policies objectives that do not match by encouraging people to bike as their means of transportation and encouraging developers to use bike parking spaces as a way to eliminate vehicle parking spaces. Maybe it is not a big deal if a maximum of only two vehicle spaces can be replaced by bike spaces.

Secretary Wilson asked Mr. Emerick why he is including the word ‘substantially’ in the following proposed regulation under Section 225-402.7.B: “*Bicycle racks and bicycle storage facilities shall be designed and installed substantially in accordance with Appendix G, Essentials of Bike Parking, published by the Association of Pedestrian and Bicycle Professionals.*” Mr. Emerick responded that because this is a national standard and not a requirement, it allows for the applicant to address the matter to the satisfaction of the Zoning Officer.

- The limit of fence heights within 10 feet of the street right-of-way was adjusted to only regulate the street address side of the property.
- Performance standards for short-term rentals (known as ‘specialty homes’ in the 2017 Zoning Ordinance) as permitted uses in the Downtown Core (O9.1 and O9.2) Overlay have been provided.
- The Downtown Core Design Standards have been included as Section 225-429 of the new Zoning Ordinance.
- The Conditional Use standards for short-term rentals have been expanded.

Member Rowe referenced the proposed standard regarding noise complaints and the requirement for the owner or operator to install and monitor a noise monitoring system upon the Township’s receipt of the third complaint. He asked why Mr. Emerick is not proposing noise monitoring systems for short-term rentals as part of their approval instead of waiting for complaints to be received. Mr. Emerick thinks the owner would have to disclose that fact to potential renters, and that might make the renters uncomfortable. Mr. Emerick suggested that the requirement to install the system only be used when the owner demonstrates that they cannot manage the noise level otherwise.

Secretary Wilson asked if short-term rentals are required to have permits and if so, could the Township revoke the permit if it becomes a nuisance property? Mr. Emerick responded that it is a zoning permit for a change of use so yes, an option would be to

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revoke the permit. Member Tunnell commented that he does not disagree with Secretary Wilson's point of view; however, it could be a complicated situation. If people in the neighborhood do not want the short-term rental to operate, they could gang up on the short-term rental owner and make complaints about excessive noise so that the Township revokes the use permit.

Mr. Emerick stated that he is proposing this language as a way to put short-term rental owners on notice that the Township will not tolerate excessive noise on the property. Member Rowe thought that maybe language should be included in the regulations to make the short-term rental owners aware that their use will be re-evaluated if the Township receives too many complaints.

Member Tunnell thought that the language should be removed, and that noise is a Board of Supervisors' issue because they would have to adopt a noise ordinance in order to enforce regulations. Mr. Emerick responded that it is not uncommon to regulate light and noise in the Zoning Ordinance.

Secretary Wilson commented that if a neighbor is opposed to the short-term rental, all they have to do is call the police three times with noise complaints. Mr. Emerick noted that upon receipt of the third noise complaint, the owner would be required to install the monitoring system. Then, the next time the neighbor complains, the system will indicate whether or not there was truly excessive noise coming from the short-term rental. Mr. Emerick advised the Planning Commission to continue to think about this matter for further discussion at the next meeting.

- Off-street parking standards for bed and breakfast homes now promote use of alleys for access.
- A section was added to cite that "use variances" are not to be treated as nonconforming uses.
- Other minor text changes were made throughout the document to make the Ordinance clearer.
- The Definitions section was supplemented and modified.

Secretary Wilson inquired if the Township has any regulations regarding electronic scooter rentals, such as Bird or Lime. Mr. Emerick answered that there are no such regulations.

Public comment

Kathy Seidl, 450 West Granada Avenue, hopes the Planning Commission has some impact in the review of the new Zoning Ordinance so that the changes to the Downtown Core Overlay give

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protection to the residents. She feels as though downtown Hershey is becoming less considerate of residents and is catering more to businesses. If the Downtown Core Overlay is not worded better than it was in the 2017 Zoning Ordinance, it is going to allow for very tall buildings and an increase in impervious cover. Because we have seen so much traffic this year, Ms. Seidl believes there is a loose ability to have traffic studies that are carried out in the dead of winter instead of during the busiest times of the year that could be more reflective of what the impact of the use is going to be. The regulations regarding front yard setbacks are written in broad terms but it is to the detriment of West Granada Avenue in particular. The setback from the street would allow people on West Granada Avenue to add on to the front of their houses and be 10 feet closer to the street, which Ms. Seidl thinks could ruin the character of West Granada Avenue and other streets.

Steve Seidl, 450 West Granada Avenue, stated that to clarify the setback issue his wife mentioned, on certain streets in the Hershey Mixed Use zoning district, the setback was reduced to 20 feet. On some streets that is much more than the current location of the houses. There was an exception made in the language for Elm Avenue, but why is the exception only for Elm Avenue? The houses on West Granada Avenue are located 30 feet from the street, so why would the Township not maintain a 30-foot setback on West Granada Avenue? Mr. Emerick responded that his summary of the proposed changes was “high-level” overview, not a detailed overview. He explained the language regarding front yard exceptions and believes the changes Mr. Seidl requested have been incorporated. Mr. Seidl noted that this is one of many important things in terms of what is going on and what is existing. We are not talking about greenfield development in the downtown in the Hershey Mixed Use district, for the most part. If we are treating it as greenfield development, that is a problem in terms of the impact on the community. Mr. Seidl is concerned about what he is hearing regarding the tree lawn versus front setback for lots fronting on Chocolate Avenue. He understands that providing more of a tree lawn may be an incentive but that is a pretty big incentive, given the 15-foot difference for a 6-foot tree lawn versus a 5-foot tree lawn. He thinks this regulation needs to take the existing character into account.

Regarding the proposed reduction of required parking spaces for properties in the Downtown Core Overlay with a nonresidential use containing 1,200 square feet or less of floor area, Mr. Seidl commented that it is one thing if it is an existing structure that has no parking today because it has never had parking, but it is another thing if someone proposes to demolish the existing structure and redevelop the property. He thinks the wording needs to be looked at more closely.

Mr. Seidl commented that changes have not been made to the permitted maximum of 85% impervious cover in the downtown area, and that is an issue. By reclassifying the areas where Hygate and Pronio's are located to Downtown Core Overlay 9.2, the regulations are giving people incentive to demolish existing buildings, construct 50-foot buildings, and maximize the 85% impervious cover limit. Mr. Seidl stressed that the zoning regulations are not really an issue for reasonable developers, but we have had some unreasonable developers recently. He knows we cannot address everything, but we have to think about what the worst case could be based on

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what the Zoning Ordinance is allowing in terms of maximum impervious coverage, maximum building heights, and minimum setbacks in the middle of a residential area.

OTHER BUSINESS

None.

ADJOURNMENT

On a motion made by Member Tunnell, seconded by Member Rowe, and a unanimous vote, the meeting was adjourned at 7:16 p.m.

Respectfully submitted,

Thomas P. Wilson
Planning Commission Secretary

Submitted by:

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