

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

**CALL TO ORDER**

The Tuesday, November 5, 2019 Derry Township Planning Commission meeting was called to order at 5:59 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; Matt Tunnell

Commission Member Absent: Glenn Rowe

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

Public Registering Attendance: Mike Weidner, Weidner Construction; Cindy Eckels, Heather Eckels – Goddard School; Kevin O’Brien, 142 West Caracas Avenue; Holly Evans, Evans Engineering; Chuck Hess, P.E., Navarro & Wright Consulting Engineers, Inc.; Oleg Badmaev, 826 Reese Avenue; Craig Smith, RGS Associates; Dennis Burd; Dale Holte, Middletown Road Coalition; Brian Holton, 280 Jacobs Creek Drive; John Trogner, Chris Trogner – Troeg’s; Ken Gall, Hershey Trust Company; Marc J. Infantino, Joanne R. Reed, Linette Quinn, Patrick Beaver, Edward Hoke – PA State Police; Elliott Robinson, Milton Hershey School; Jonathan M. Crist, 226 West Chocolate Avenue, Hershey; Kathy and Steven Seidl, 450 West Granada Avenue, Hershey; Sandy Cappelli; Taryn Gruber, 1661 Palm Street, Hershey; Mark Hackenburg, RGS Associates

**APPROVAL OF MINUTES**

On a motion made by Member Tunnell and seconded by Secretary Wilson, the Planning Commission approved the minutes from the October 1, 2019 meeting, as written. Chairman Santostefano and Vice Chairwoman St. John abstained from voting because they were not present at the October meeting.

**OLD BUSINESS**

**A. Report of the Board of Supervisors’ action regarding the Preliminary/Final Subdivision and Land Development Plan for Towneplace Suites Hotel, Plat #1315**

Chuck Emerick stated that the Board voted to reject the plan and summarized the reasons for rejection.

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**B. Report of the Board of Supervisors' action regarding adoption of a Decision for Conditional Use Application No. 2019-05 regarding 1625 East Chocolate Avenue, as filed by Brian and Laura Holton**

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

**NEW BUSINESS**

**A. Review and recommendation of the Preliminary/Final Lot Add-On and Land Development Plan for Goddard School of Hershey Expansion, Plat 1318**

Mr. Emerick explained that Plat 1318 proposes to further subdivide and develop the lands of Dennis L. and Karin M. Burd located along Middletown Road. The property is within the Planned Campus West zoning district and is also subject to the Middletown Road Overlay. Lots 1, 2, 3, 4, and R (residue) were created in 2002 by the Subdivision and Land Development Plan of Dennis Burd, Plat 981. Plat 981 also proposed land development details for Lot 1 as a Turkey Hill Minit Market. Lot R contains the garden center operated by Stauffers of Kissel Hill. Lot 3 was developed as a car wash and lubrication facility (Plat 1125) and Lot 2 was developed as The Goddard School (Plat 1202). Lot 4 remains undeveloped. One of the purposes of the planning done through these plats was to provide an access road to service the commercial development, thus avoiding multiple driveway connections to Middletown Road.

Mr. Emerick noted that Lot 2 is the focus of Plat 1318, as it proposes to expand the lot and building of The Goddard School. It proposes a 6,081-square-foot expansion to the existing 8,655-square-foot building. The applicant has indicated that the addition of 50 students would yield about 41 new PM peak hour trips, falling short of the Township's normal standard of 100 peak hour trips for a traffic impact study.

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

Chuck Hess, Navarro & Wright, represented the applicant and stated that they take no exception to the review comments.

**MOTION ON WAIVERS**

On a motion made by Secretary Wilson, seconded by Member Tunnell, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the following waivers be granted from the Subdivision and Land Development Ordinance:

- a. From Sections 185-12.D.(2) and 185-13.E.(3) regarding showing the property at a minimum scale of 1" = 50'.

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- b. From Sections 185-12.D.(3).(a).[21] and 185-13.E.(4).(a).[19] regarding providing storm sewer profiles at a minimum horizontal scale of 1" = 50' and a minimum vertical scale of 1" = 5'.
- c. From Sections 185-12.D.(3).(a).[22] and 185-13.E.(4).(a).[20] regarding providing sanitary sewer profiles at a minimum horizontal scale of 1"=50' and a minimum vertical scale of 1" = 5'.

*MOTION ON PLAT 1318*

On a motion made by Secretary Wilson, seconded by Vice Chairwoman St. John, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Plat 1318 be approved, subject to the following being satisfactorily addressed:

- a. The comments in Item 3 of the Township staff report.
- b. The comments in the October 17, 2019 HRG letter.
- c. Comments 2, 3, 4, and 6 of the October 29, 2019 Dauphin County Planning Commission staff review report.

**B. Review and recommendation of Conditional Use Application No. 2019-06 for 826 Reese Avenue, as filed by Oleg Badmaev**

Mr. Emerick explained that this application requests a Conditional Use authorization be granted under the provisions of Chapter 225 (Zoning), Section 225-501.20 of the Code of the Township of Derry. The applicant proposes to establish a Specialty Home (i.e. short-term rental home) on his property located at 826 Reese Avenue, Hershey. The subject property is located in the Hershey Mixed Use and Downtown Core 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 recommended 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 November 12, 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.

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- D. 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.
- E. 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.
- F. The owner or operator must pay all State, County, and local hotel occupancy taxes that are applicable to the temporary lodging.
- G. The owner or operator must register the unit and pay the fee for any rental inspection program operated by the Township.
- H. 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™ or an equivalent device to monitor the noise levels in an attempt to circumvent complaints.
- I. The granting of approval of the Conditional Use request shall not relieve the applicant 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.
- J. 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 grant of approval of the Conditional Use.
- K. The Specialty Home shall meet all other requirements of the Township that may apply.

In response to a question from Vice Chairwoman St. John, Mr. Emerick stated that currently the only proposed improvement to the property is the paving and striping of three parking spaces. He explained that a section of Half Street was vacated by the Township several years ago but never formally acquired by the adjacent property owners. Mr. Badmaev recently filed the deed to transfer the vacated land to his property. The parking spaces will be located on this portion of the property.

**MOTION**

On a motion made by Vice Chairwoman St. John, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the Conditional Use represented by Application No. 2019-06 be granted with conditions 'A' through 'K' as outlined by Township staff (above).

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**C. Review and recommendation of Conditional Use Application No. 2019-07 for 1446 East Chocolate Avenue, as filed by Oleg Badmaev**

Mr. Emerick explained that this application requests a Conditional Use authorization be granted under the provisions of Chapter 225 (Zoning), Section 225-501.20 of the Code of the Township of Derry. The applicant proposes to establish a Specialty Home (i.e. short-term rental home) on the property located at 1446 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 applicant's 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 November 12, 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. 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.
- E. 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.
- F. The owner or operator must pay all State, County, and local hotel occupancy taxes that are applicable to the temporary lodging.
- G. The owner or operator must register the unit and pay the fee for any rental inspection program operated by the Township.
- H. 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™ or an equivalent device to monitor the noise levels in an attempt to circumvent

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complaints.

- I. The granting of approval of the Conditional Use request shall not relieve the applicant 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.
- J. 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 grant of approval of the Conditional Use.
- K. The Specialty Home shall meet all other requirements of the Township that may apply.

**MOTION**

On a motion made by Member Tunnell, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the Conditional Use represented by Application No. 2019-07 be granted with conditions ‘A’ through ‘K’ as outlined by Township staff (above).

**D. Review and recommendation of the Revised Final Subdivision Plan for Crystal A Drive, Plat 1319**

Mr. Emerick explained that Plat 1319 is being processed to simply correct some errors in the metes and bounds and to revise the identification of corner monumentation to reflect what has been set in the field, as inspected by HRG on January 25, 2018, for Plat 1283, which was recorded in December 2017. All other elements of the plan remain unchanged. Plat 1283 represented the proposed subdivision for the Crystal A Drive Hershey Corporate Office campus. The subject property is 145.23 acres and is bound by Hersheypark Drive to the south, Sand Beach Road to the west, Kieffer Road to the north, and the Pennsylvania State Police Academy campus to the east. The property is located within the Planned Campus North zoning district and the Hersheypark Drive/Route 39 and North Master Plan Approval Area Overlays. Both plans propose to subdivide the tract into three separate parcels. Tract A will be 52.33 acres in area and will contain the 17,100-square-foot Global Customer Insights Center building. Tract A will maintain frontage along Sand Beach Road and Kieffer Road. Tract B will be 50.9 acres in area and will contain the two corporate office buildings (these buildings contain footprints of 51,767 and 35,462 square feet, respectively). Tract B will also contain the 6,350-square-foot Fitness Center building and will maintain frontage along Hersheypark Drive. Lastly, Tract C will be 41.45 acres in area and will remain undeveloped. Tract C will maintain street frontage along Sand Beach Road and Hersheypark Drive. No development or improvements are proposed for any of the tracts represented on either plan.

Mr. Emerick stated that a waiver has been requested from Section 185-18 of the Subdivision and Land Development Ordinance regarding monuments and markers. He noted that it is not necessary for the Planning Commission to take further action on the other requested waivers from the

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Subdivision and Land Development Ordinance and Stormwater Management Ordinance that were granted with Plat 1283 since Plat 1319 is a minor revision to Plat 1283.

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

*MOTION ON WAIVER*

On a motion made by Member Tunnell, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the following waiver be granted from the Subdivision and Land Development Ordinance:

- a. From 185-18 regarding monuments and markers.

*MOTION ON PLAT 1319*

On a motion made by Member Tunnell, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Plat 1319 be approved, subject to the following being satisfactorily addressed:

- a. The comments in Item 3 of the Township staff report.
- b. The comments in the October 21, 2019 HRG letter.

**E. Review and recommendation of the Revised Preliminary/Final Land Development Plan for Derry Township Community Center, Plat 1320**

Mr. Emerick explained that this plan revises Plat 1303, which was recorded in March 2019. The subject property is in the Hershey Mixed Use zoning district and currently contains the Township's recreation center, outdoor swimming pool, Cocoa Castle playground, tennis courts, and associated parking. Plat 1320 proposes demolition of the building and outdoor pool, and construction of a new community center building, including an indoor competition pool, leisure pool, gymnasium, exercise/fitness areas, locker rooms, senior center, and office space. A new outdoor swimming pool is also proposed to replace the existing outdoor pool facility. Cocoa Castle playground will be retained for use with the new center. In addition to the development proposed on the above-mentioned property, a parking facility expansion is proposed on the Derry Township Public Library site. The northern access drive currently serving the community center will remain. Two macadam pedestrian paths are proposed to connect to the Township School District property to the north and east of the community center building to accommodate pedestrian access and shared parking areas.

Mr. Emerick stated that the waivers requested from the Subdivision and Land Development Ordinance and Stormwater Management Ordinance for Plat 1320 are the same as the waivers that were approved with Plat 1303. It is not necessary for the Planning Commission to take further action on the waivers since Plat 1320 is a minor revision to an approved and recorded preliminary/final plan (Plat 1303).

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Mr. Emerick; Matt Bonanno, HRG; and Diane Myers-Krug, Dauphin County Planning Commission representative, went over their plan review comments. Chairman Santostefano asked Mr. Bonanno if any of his review comments were significantly different than his comments for Plat 1303. Mr. Bonanno responded that the biggest difference is Plat 1303 showed the pool overflow as being tied into the sanitary sewer system and that is not the case with Plat 1320. Secretary Wilson asked if that is permissible under the MS4 permit. Mr. Bonanno answered yes. Based on calculations provided by the applicant's engineer, there is enough freeboard to handle a 100-year storm event on top of the normal level of the pool water before overflow would occur.

Chairman Santostefano asked for confirmation that the main change to the plan regarding the Community Center property is the building went from a two-story aboveground, one level below grade to a single level. Mr. Emerick concurred. The other aspect that was eliminated was the driveway connection between the School District's high school parking lot and the Library parking lot. Mr. Emerick agrees with Ms. Myers-Krug that it would be beneficial to retain the connection; however, the School District is no longer interested in that as part of this project.

Matt Mandia, Director of Parks and Recreation, commented that he thinks both the Township and the School District understand there are connectivity issues on the campus, and they will continue to revisit the matter when opportunities arise in the future. He pointed out that the two pedestrian connections have been retained. In response to a question from Secretary Wilson, Mr. Mandia stated that the Township does not have any issues with addressing the review comments.

Craig Smith, RGS Associates, provided an update on parking in response to Mr. Emerick's review comment regarding van-accessible spaces on the Library property.

*MOTION ON PLAT 1320*

On a motion made by Vice Chairwoman St. John, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Plat 1320 be approved, subject to the following being satisfactorily addressed:

- a. The comments in Item 3 of the Township staff report.
  - b. The comments in the October 24, 2019 HRG letter.
  - c. Comments 2 and 3 of the October 31, 2019 Dauphin County Planning Commission staff review report.
- F. Review and recommendation of a waiver from filing a land development plan, as requested by Hershey Square 2014, LP regarding redevelopment of Hershey Square Shopping Center**

Mr. Emerick explained this request is for relief from processing a land development plan as required in Sections 185-5.A and 185-5.B of the Derry Township Subdivision and Land



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Development Ordinance. The request is associated with Hershey Square Shopping Center, in the area near Panera Bread. The tract is bordered by Mae Street, Hersheypark Drive, and PA Route 422 and contains about 28.09 acres. The property is within the General Commercial zoning district and contains many businesses, including the former K-Mart; Weis; and a Wine & Spirits store. The development proposed within this commercial center is demolition of 4,464+/- square feet of area to accommodate loading docks; demolition of 3,720+/- square feet of the former K-Mart garden shop, to be replaced with a 3,520+/- square-foot addition; and the construction of a 2,400+/- square-foot new food service building with a drive-through facility. This work will result in a 2,264-square-foot reduction in floor area. A land development plan is required when more than 2,500 square feet of floor area is added to an existing building or when an additional principal building is added to a property. In this case, the addition of the restaurant with drive-through facilities would trigger a land development plan; however, the new building, combined with the other projects proposed on the property, will reduce the total commercial footprint by 2,264 square feet.

Chairman Santostefano inquired if anything can be done to reduce the speed at which people travel on Lucy Avenue and Mae Street as they are going to and from the shopping center. Mr. Emerick recommended contacting the Police Department regarding speed enforcement. Chairman Santostefano noted that this is an issue that has been around for a long time and it is probably going to get worse with more activity in the shopping center.

**MOTION**

On a motion made by Secretary Wilson, seconded by Member Tunnell, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the requested waiver from filing a land development plan be granted.

**G. Review and recommendation of proposed Comprehensive Plan amendment necessary for consistency with proposed new Zoning Ordinance**

**H. Review and recommendation of proposed new Zoning Ordinance**

Mr. Emerick explained that the 2017 Zoning Ordinance was adopted in a manner consistent with the 2015 Comprehensive Plan, which set forth policies to govern the future physical development of the Township. When the Township Board of Supervisors adopted the Comprehensive Plan (on 1/26/16) and the 2017 Zoning Ordinance (on 3/28/17), they understood that these documents must be reviewed and updated when and as necessary. With that understanding, on May 14, 2019, the Board of Supervisors authorized the start of a process to have Urban Design Associates (UDA) evaluate the Township's Zoning Ordinance and Architectural Guidelines, with a focus on the downtown area. This study was approved to ensure that the 2017 Zoning Ordinance was producing the results desired by the Township. Additionally, Township staff's experiences with the implementation and use of the 2017 Zoning Ordinance has led to other modifications.

Within their study, UDA has indicated that the Downtown Core Overlay zoning district should be refined to encompass the areas that would best be considered the "core" areas. They have noted that not all of these areas have the same strengths, weaknesses, and opportunities and as a result,

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some areas should be zoned differently than others. They studied the grain of the downtown to identify neighborhoods, building sizes and styles, development and redevelopment potential, and development dimensions (setback, heights, coverages, etc.). This study led them to recommend three differing zoning districts. Those three districts are to be overlaid with the Downtown Core Design Standards. Within each of the districts, UDA recommends differing building heights, setbacks, and lot coverages. Within their scope of services, they have also provided a study of the Township's existing Chapter 89 (Downtown Core Design Standards). UDA is supportive of the Township's efforts to treat the core downtown area as a Traditional Neighborhood Development area and apply standards based on the authority granted by Article VII-A of the Pennsylvania Municipalities Planning Code (MPC) to achieve the purposes and objectives expressly indicated in Article VII-A of the MPC.

Mr. Emerick noted that the first step necessary to implement UDA's study is to update the 2015 Comprehensive Plan. This will be accomplished by Resolution of the Board of Supervisors, thereby adding UDA's study to the 2015 Comprehensive Plan as an attachment. That step will allow the Township to update the Zoning Ordinance in a manner generally consistent with the revised Comprehensive Plan. The UDA study and Township staff's experience working with the 2017 Zoning Ordinance has led to the development of the new Zoning Ordinance. The new Zoning Ordinance is based in part and builds on what was drafted by the Township's consultants (Derck & Edson and Environmental Planning & Design) and Township staff in 2016.

Mr. Emerick summarized the changes proposed in the new Zoning Ordinance 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.

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- 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.
- 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.
- 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.
- 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.
- Off-street parking standards for bed and breakfast homes now promote use of alleys for access.

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Secretary Wilson inquired if this change was also applied to the standards for short-term rentals. Mr. Emerick replied that it was not, but it would be a good idea to do so.

- 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.

Vice Chairwoman St. John noted that the Zoning Ordinance mentions hotels, motels, and short-term rentals but not boutique hotels, which are small hotels with only 10-12 rooms. She asked how boutique hotels would be classified. Mr. Emerick responded that a bed and breakfast home allows up to 10 rooms and is owner occupied. Any lodging facility that is not owner occupied and has more than 10 rooms is considered a hotel or motel. Township staff chose not to define boutique hotels; however, in the O9.1 Overlay, a requirement has been added that if a hotel or motel contains more than 20 rooms, it must also have a commercial element.

Secretary Wilson and Chairman Santostefano commended Mr. Emerick for all his hard work on the amendments.

Public comment

Jonathan Crist, owner of the property at 226 West Chocolate Avenue, Hershey, commented that his concerns basically deal with the Chocolate Avenue corridor. By way of background, Mr. Crist stated that Chapter 89 [*the Township’s Downtown Core Design Standards*] was enacted as a standalone ordinance in 2017, which included the design standards and the ability to remove properties on Chocolate Avenue. The hotel people [*Towneplace Suites*], particularly attorneys David Getz and Ron Lucas, filed a challenge to Chapter 89 being a standalone ordinance. The reason is that Chapter 89 referenced Article VII-A of the MPC, which is entitled ‘Traditional Neighborhood Development’ (TND), as its ability to exist. However, per the MPC, TND can only be under the Zoning Ordinance. The attorneys’ challenge was that Chapter 89 was made a standalone ordinance and therefore was unenforceable. Mr. Crist expects the Dauphin County Court to rule in favor of the hotel people and find Chapter 89 unenforceable as a standalone ordinance. The Township is now proposing to incorporate the Design Standards back into the Zoning Ordinance. The Township has taken the concept of TND and used it as an umbrella to control development on Chocolate Avenue. TND was never intended for that; it was intended to give a developer who is generally doing brand-new development on open space the chance to do a retro-type plan and create more density as an option. The Township has declared all of Chocolate Avenue a TND, but the problem is that TND only applies to new construction, so it cannot be used to control existing buildings, which is what the Township is trying to do.

Mr. Crist also stated that the regulation of aesthetics is not permitted under the MPC. Zoning is a function of police power, meaning health, safety, and welfare, so everything that is judged under

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zoning has to be judged under the microscope of how it relates to health, safety, and welfare. Zoning does not regulate aesthetics, which are in the eye of the beholder. It is not the function of the government to tell a property owner what types of materials and colors are to be used on their building.

Mr. Crist believes proposed Section 225-429.G.1 [*Downtown Core Overlay Design Standards, Demolition of Existing Buildings*], improperly attempts to prohibit demolition in the Chocolate Avenue corridor. Zoning can control demolition in terms of health, safety, and welfare, but cannot determine if a building can or should be demolished. That is a property owner's choice. Under the guise of zoning, the Township is attempting to give the Downtown Core Design Board the authority to approve or deny the demolition of a building based on a structural engineer's report regarding the integrity of the building and its ability to be adaptively reused. What if a property owner wants to demolish a building that is structurally sound so they can construct a different use?

Mr. Crist disagrees with the appeal process for the Downtown Core Design Board. Currently, two of the Design Board members are also Board of Supervisors members. If the Design Board denies a proposal, the appeal goes to the Board of Supervisors. Mr. Crist finds that offensive for due process purposes. Members of the Design Board should not be part of the review process for an appeal. If the Township is going to put the Design Standards under the Zoning Ordinance, appeals related to the Design Standards should be to the Zoning Hearing Board.

Mr. Crist commented that the minimum side yard setback of five feet in the Downtown Core Overlay is a deficiency. There is no way to construct a building five feet from a property line without causing severe damage to the neighboring property. He agrees with the O9.1, O9.2, and O9.3 Overlays and Caracas Avenue being put back into residential because it never should have been commercial; however, because of that change back to residential, there are now five-foot rear yard setbacks against commercial properties on the south side of Chocolate Avenue. Mr. Crist thinks it should go back to what it was under the 1993 Zoning Ordinance – minimum 15-foot side and rear setbacks and a landscape buffer between commercial and residential.

Mr. Crist stated that he understands the Township is trying to control Chocolate Avenue, but what they should have done years ago was create a historic preservation district instead. If a building is registered as a historic building, the Township could prohibit demolition and control the aesthetics.

Kathy Seidl, 450 West Granada Avenue, Hershey, asked that the Planning Commission look at the proposed changes to the Zoning Ordinance from the resident perspective. She has lived in the Township since 1987 and feels that the downtown has become a different place since then. The focus has changed away from the residents. Ms. Seidl would love to see different language regarding traffic study requirements so that the studies are conducted during the busiest time of year instead of in the dead of winter. When was the traffic analysis for Towneplace Suites conducted and what decisions were based on that analysis? Also, with the new Community Center being proposed in addition to the existing library and school district facilities, the Township needs to do something to calm traffic on Cocoa Avenue. It is difficult to cross Cocoa Avenue now and it is only going to get worse. Ms. Seidl is not clear on whether all the language that is addressing parking is going to

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create loopholes to allow hotels to be able to build bigger structures. She asked the Planning Commission to pay attention to that and think about it from the residential standpoint. The Zoning Ordinance is allowing for more development on Caracas Avenue and Ms. Seidl believes a ripple effect will be created. At some point we are going to lose the residential aspect of this town and it will only be commercial. We should not allow any more commercial buildings on the in-town end of Caracas Avenue. Ms. Seidl is also concerned about what the Zoning Ordinance allows on the heights, setbacks, and impervious coverages on some of these commercial buildings that are now being permitted.

Vice Chairwoman St. John stated that she understands where Ms. Seidl is coming from when she looks at downtown Hershey. She is concerned that the Township might be over-regulating properties by taking individuality away from the property owner and restricting the demolition of buildings.

Kevin O'Brien, owner of 142 West Caracas Avenue, Hershey, commented that the regulations regarding short-term rentals are a lot cleaner now, and he appreciates all the time and effort that went into creating the proposed new Zoning Ordinance. He wanted to share concerns about the Downtown Core Overlay. Regarding Caracas Avenue, Mr. O'Brien thinks the proposal for classifying the Chocolate Avenue corridor in the downtown as the O9.2 Overlay makes perfect sense. There are also areas along Caracas Avenue that have been given this designation, including the entire block where the firehouse sits, existing businesses, and several corner lots, some of which are commercial, some of which are not. Mr. O'Brien does not have an issue with this designation being applied to lots that are in close proximity to Chocolate Avenue so that they have the capability to be commercial. His objection is that the remaining lots on Caracas Avenue will be designated O9.3, which is unequitable and will restrict property owners' rights. Property owners on this block are being asked to tolerate some of the inconveniences of being in close proximity to the Chocolate Avenue corridor, such as noise, compromised on-street parking, and increased traffic due to one-way traffic patterns in this area. These property owners should not have to surrender their rights to operate commercially if desired.

Mr. Emerick stated that Mr. O'Brien is misinterpreting the intent of the Downtown Core Overlays. O9.1 is more intense and O9.2 is intermediate. O9.3 is not restricted to Hershey Mixed Use zoning district uses. It still allows some of the more intense uses to act as a transition district from the residential to the commercial areas. Mr. O'Brien stated that his concern is focused on short-term rentals being permitted by right in O9.2 and as a conditional use in O9.3. Mr. Emerick explained that permitting short-term rentals only as conditional uses in O9.3 was intentional because the Township wants to buffer short-term rentals from the adjacent Hershey Mixed Use zoning district. This transition is something that was evaluated by UDA and it was agreed that this was the best way to break up the neighborhoods.

Mr. O'Brien clarified that he does not disagree with a lot of what the previous speakers before him said; however, he also does not think short-term rentals are the death of neighborhoods if they are managed properly. He asked if the decision to grant a conditional use for a short-term rental in O9.3 will be based more on the conditions listed in the proposed Zoning Ordinance or on the

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neighborhood's opinion. Mr. Emerick replied that a conditional use should not be influenced by the neighbors, as long as the individual proposing the short-term rental meets all the conditions.

Steve Seidl, 450 West Granada Avenue, Hershey, stated that, overall, he thinks a lot of good things are proposed in the new Zoning Ordinance, but there are still a couple of issues. He asked if the Planning Commission or Board of Supervisors can adjust any of the proposed provisions or if adoption of the Zoning Ordinance is an all or nothing situation. Mr. Emerick responded that the Dauphin County Planning Commission has recommended adoption of the proposed Zoning Ordinance and the Township Planning Commission will make a recommendation at this meeting, prior to the Board of Supervisors' public hearing on November 26, 2019. At this point some modifications can be made but there cannot be any substantive changes, otherwise the Zoning Ordinance will have to go back through the review process from the beginning. The Board of Supervisors has the option to adopt the proposed Zoning Ordinance in December as it is currently drafted and then adopt amendments later.

Mr. Seidl stated that the parts of O9.2 that are projecting into residential are not providing a buffer between heavy commercial and solely residential, and he objects to that. He thinks those projecting parts should be in O9.3 instead. He is concerned about commercial uses creeping into residential areas. The commercial uses in the projecting areas are existing anomalies. That should not become the rule for Caracas Avenue. Mr. Seidl does not understand why the Township put Caracas Avenue into the Downtown Core Overlay in 2017. That decision affects the Seidls and all the other people who live on residential streets. Mr. Seidl stated that as it stands currently, Pronio's could be demolished and a 45-foot high building could take its place, right up against all the residential homes.

Chairman Santostefano commented that he thinks the fact the Zoning Ordinance is recognizing the reality of existing commercial uses makes sense. He asked if Mr. Seidl is concerned about what could happen on these properties in the future. Mr. Seidl responded that he is worried about what the zoning is going to allow in the future. He understood the need to reduce the number of cases to the Zoning Hearing Board due to issues with the 1993 Zoning Ordinance because there needed to be a balance. However, he thinks the Township is now going too far the other way to try to make properties conforming.

Mr. Seidl thinks the dimensional changes for properties in O9.2 is a good change for the intention of still being commercial but not as intense as O9.1. Going to a maximum principal structure height of 45 feet and a maximum of 60% impervious makes sense. O9.3 essentially has the characteristics of the Hershey Mixed Use zoning district but allows for some other uses, which makes sense as a transition from O9.2. Mr. Seidl thinks the issue is getting the map correct and if the Township does not do that right now, it should be a future amendment to the new Zoning Ordinance.

Mr. Seidl referenced Section 225-206.G.1 [*Dimensional Criteria, Yard Area Exception*] regarding setback adjustment and commented that this is a good example of looking at the character and context of the neighborhood instead of trying to prevent something. He advocated for this change and is glad to see it has been incorporated into the new Zoning Ordinance. He would like to see this

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change be approved so that as buildings are modified or demolished and replaced, there is some consistency within that part of the neighborhood because the setbacks vary in certain parts of the Hershey Mixed Use zoning district.

Mr. Seidl stated that he is still concerned about the reduction of parking requirements for smaller lots in town [*Section 225-401.1.I.3*] and how that, together with the O9.2 Overlay in particular, could result in way too much development on a small lot. Mr. Seidl believes that if the parking requirements are reduced, people will think they can jam in more development and still achieve the same impervious coverage. It works against the changes the Township is making to make the development in those transitional areas more reasonable.

Ken Gall, Hershey Trust Company, commented that he gives the Township credit for reviewing the Zoning Ordinance for necessary updates. Regarding the proposed changes in town, Mr. Gall noted that someone will always say this or that could be done differently, but the good news is there are not vacant lots and things have happened. He commended the Township for expanding the Planned Campus North zoning district to include the State Police Academy because it is important to keep the Academy in the Township and give them the opportunity to expand. Speaking on behalf of a major landholder in the Township, Mr. Gall appreciates the amount of thought and work that went into these changes.

Mr. Emerick stated that he prepared responses to the written objections that Mr. Crist presented to the Dauphin County Planning Commission as follows:

- Regarding Mr. Crist's argument that the Township cannot use Traditional Neighborhood Development as the basis for requiring owners of existing buildings to comply with design standards, Mr. Emerick stated that it is not unusual for existing buildings to have to comply with that overlay. He believes the MPC allows the Township to get into some aesthetic items because under Article VII-A of the MPC, the Township is creating a manual of written and graphic design guidelines, which is how the Design Standards ended up being taken of the Zoning Ordinance in 2017. The consultants at that time thought it would be best to have a manual of written Design Standards. In light of the lawsuit Mr. Crist mentioned and after reviewing the MPC, Mr. Emerick and Township counsel feel that the Design Standards should go back into the Zoning Ordinance because it seems to best follow what the MPC wants to see.
- The Design Board has existed for almost 440 cases. The goal of the Design Board is not to demand but to manipulate and encourage good design. The Design Standards are written to be easily waived by the Design Board, with the exception of appeals to the Board of Supervisors. The Design Board acts as an advisory board only and yes, there are two Board of Supervisors members on the Design Board. The MPC allows the Planning Commission, which also acts as an advisory board, to have two members of the Board of Supervisors. Mr. Crist feels that is bad for any appeals that go to the Board of Supervisors. The appeal is from the Design Board's recommendation and the Board of Supervisors has the final say. Mr. Crist believes the appeals should go to the Zoning Hearing Board, but that is not listed in the



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things the Zoning Hearing Board can do under the MPC. Appeals from actions by the Board of Supervisors typically go to Commonwealth Court.

- Adaptive reuse has been a theme of the Township’s Comprehensive Plan since 1991 to maintain the fabric of the downtown. Mr. Emerick does not know how to legislate that other than to put some restrictions on changes, and that is what the Township has tried to do with the Design Standards since 1991.
- Mr. Crist also feels that the minimum side yard setbacks are too small. Generally speaking, many of the existing buildings in the downtown area 10 feet apart. The five-foot setback is a minimum requirement. It is not mandatory for a developer to build up to the five-foot setback. Many of the lots in the downtown are 40 or 50 feet wide, and to have 15-foot side yard setbacks is ridiculous. One of the reasons the setback was changed to five feet in the 2017 Zoning Ordinance was to maintain the fabric and character of the downtown.

Chairman Santostefano thanked Mr. Emerick for taking the time to prepare the responses because these are important issues. He noted that the Zoning Ordinance is a living document and the Planning Commission will likely continue to see amendments in the future as the result of the kind of input that has been shared tonight.

Vice Chairwoman St. John referenced Section 225-429.G.1.a, b, c [*Downtown Core Design Standards, Demolition of Existing Buildings*]and stated that she has an issue with the regulations requiring that when a property owner wants to demolish a building, they have to provide information on the infeasibility of the building’s adaptive reuse. She inquired why the owner is not allowed to demolish the structure because they cannot accomplish what is permitted by the Zoning Ordinance within the confines of the building. When the matter goes to the Board of Supervisors, can the Board say that the applicant is right, the existing building is not going to meet the needs of what the owner wants to do, and grant approval for demolition without the owner providing the required information under Section 225-429.G.1? Mr. Emerick thought the Board of Supervisors would have that ability. The Design Standards are meant to be flexible, even though they are proposed to be part of the Zoning Ordinance.

**MOTION ON COMPREHENSIVE PLAN AMENDMENT**

On a motion made by Member Tunnell, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the amendment to the Comprehensive Plan be adopted.

**MOTION ON NEW ZONING ORDINANCE**

On a motion made by Member Tunnell, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the proposed new Zoning Ordinance be adopted.

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**I. Review and recommendation of Ordinance No. 718, amending Chapter 185 (Subdivision and Land Development) of the Code of the Township of Derry as necessary for consistency with the Township's revised Tree Ordinance (Chapter 201)**

Mr. Emerick explained that a minor amendment to Section 185-31 of the Subdivision and Land Development Ordinance is necessary for consistency with the Township's revised Tree Ordinance, which was adopted on October 8, 2019. The amendment will remove specific requirements from the Subdivision and Land Development Ordinance regarding the placement and size of landscaping and shade trees and make reference to Chapter 201 (Trees) instead.

**MOTION**

On a motion made by Member Tunnell, seconded by Secretary Wilson, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Ord. 718 be adopted.

**OTHER BUSINESS**

None.

**ADJOURNMENT**

On a motion by Secretary Wilson, seconded by Member Tunnell, and a unanimous vote, the meeting adjourned at 8:30 p.m.

Respectfully submitted,

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Thomas P. Wilson  
Planning Commission Secretary

Submitted by:

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