

DERRY TOWNSHIP PLANNING COMMISSION
MEETING MINUTES
April 5, 2022

CALL TO ORDER

The Tuesday, April 5, 2022 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 Tom Wilson.

ROLL CALL

Commission Members Present: Tom Wilson, Chairman; Glenn Rowe, Vice Chairman; Matt Tunnell, Secretary; Don Santostefano

Commission Member Absent: Mike Guntrum

Township Staff and Review Agency Representatives Present: Chuck Emerick, Director of Community Development; David Habig, Assistant Director of Community Development; Jenelle Stumpf, Planning/Zoning Coordinator; Matt Bonanno, HRG, Inc.; Diane Myers-Krug, Dauphin County Planning Commission representative

Public Registering Attendance: Amanda Krall, Nora Campanella, Kevin Wiest – 1121 East Chocolate Avenue, Hershey

APPROVAL OF MINUTES

On a motion made by Member Santostefano, seconded by Member Rowe, and a unanimous vote, the Planning Commission approved the minutes from the March 1, 2022 meeting, as written.

OLD BUSINESS

None.

NEW BUSINESS

A. Review and recommendation of the Preliminary/Final Land Development and Stormwater Management Site Plan for Hershey Square Proposed Outparcel Development, Plat 1353

Chuck Emerick reported that this plan represents the expansion of the existing Hershey Square Shopping Center. The expansion includes the addition of a 7,500-square-foot freestanding commercial building and associated improvements, to be located along Hersheypark Drive. The area proposed for development is separated from the main shopping center by a private access road to the Comfort Inn.

A trip generation assessment was submitted with the land development plan. The proposal has the potential to generate 1,626 average weekday trips. Of the total average daily traffic, approximately 117 new trips (enter/exit) will occur during the AM peak hour and approximately 76 new trips will occur during the PM peak hour when accounting for pass-by trips. The applicant did not submit a full traffic study as required by the Subdivision and Land Development Ordinance, which is required as more

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than 100 new trips will occur during the AM peak hours. The traffic will discharge into the Mae Street and Hersheypark Drive intersection, which has been identified as a problem intersection and was the subject of the Walton Avenue Corridor Alternatives Study in May of 2014 and is also included in the Greater Hershey Area Regional Transportation Study. Under Section 185-42.B of the SALDO, the Township may require a traffic study for areas that have been identified as a problem and will be further impacted by a proposed development. The developer made a \$5,000 contribution in lieu of providing a traffic study while processing the Preliminary/Final Land Development Plan for Hershey Square Shopping Center, Plat 1259, in 2015. Since the current proposal is similar in nature to the prior proposal, Mr. Emerick believes another contribution would be of more value to the Township than a traffic study.

The applicant presently has a variance request submitted to the Township's Zoning Hearing Board for relief from the requirements of the Hersheypark Drive/Route 39 Overlay (O3) regarding the 40-foot required landscape buffer, the construction of a white fence to match existing established fencing in the Overlay, and the planting of additional trees. This case is scheduled to be heard at the April 20, 2022 meeting, which typically leads to a decision being adopted at the Zoning Hearing Board's following meeting scheduled for May 18, 2022.

Mr. Emerick summarized the waivers and deferment that the applicant has requested from the Subdivision and Land Development Ordinance and Stormwater Management Ordinance.

Mr. Emerick went over his plan review comments and noted that comments 3.a.vii (regarding the condition of monuments and markers) and 3.b.vii (regarding providing the anticipated flood elevation over the proposed driveway) should be disregarded. Matt Bonanno, HRG, Inc., and Diane Myers-Krug, Dauphin County Planning Commission representative, also went over their plan review comments.

Vice Chairman Rowe asked for clarification on what Mr. Emerick is recommending regarding the submission of a traffic impact study. Mr. Emerick responded that the Township has collected contributions when offered by developers in lieu of a traffic study when it is believed that the contributions for the mitigation of existing traffic issues are more beneficial than having another traffic study, especially in areas that have been already been studied numerous times. The Township tries to make the contribution amount reasonably similar to what a traffic study would cost.

Member Santostefano commented that anyone who has been to Hershey Square is aware that drivers are strongly encouraged to turn left out of the shopping center exits and not drive through the residential neighborhood to the east of the shopping center. This situation has been getting bad in recent years as far as stacking of vehicles, and Member Santostefano assumes the proposed development will exacerbate the situation.

Vice Chairman Rowe stated that it is great to see the reuse of the existing shopping center; however, he feels as though the developer has been getting a free pass with the redevelopment of the property. Traffic is horrendous at the intersection of Hersheypark Drive and Mae Street. Vice Chairman Rowe thinks it is a disservice to collect a \$5,000 contribution instead of requiring the developer to provide a plan to address and correct the traffic situation. At some point the Township has to say no and require a

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solution before any further development is permitted. Hershey Square's western driveway is in a poor location because it is too close to the intersection. Vice Chairman Rowe thinks it is fundamental that nothing else should be approved on the site until traffic is addressed.

Holly Evans of Evans Engineering represented the applicant and confirmed that she is authorized to speak on the applicant's behalf. She noted that they basically have no issues with most of the review comments. Regarding providing a traffic study, Ms. Evans stated that this project does not propose more than 100 peak hour trips. The Subdivision and Land Development Ordinance requires the submission of a traffic study if more than 100 peak hour trips are proposed; however, the applicant understands the Township's concern about additional traffic in this area and they would rather work with the Township on the matter of providing a financial contribution towards the mitigation of traffic problems than do another traffic study. Ms. Evans explained that the location of the shopping center's western driveway was pushed further back from the intersection of Hersheypark Drive and Mae Street with the initial development of Hershey Square as a result of the original traffic study conducted in 1993. When the driveway only served the hotel, it was located closer to the intersection. The applicant had done studies at that time for additional improvements at the intersection that have been incorporated over the years. The applicant has been involved and trying to help out with traffic mitigation.

Mr. Emerick suggested that the Planning Commission briefly table consideration of Plat 1353 so that he can gather information regarding the 2014 Walton Avenue Corridor Alternatives Study and the Greater Hershey Area Regional Transportation Study to show the Commission.

MOTION TO TABLE

On a motion made by Secretary Tunnell, seconded by Vice Chairman Rowe, and a unanimous vote, the Planning Commission tabled consideration of Plat 1353 until later in the meeting.

- B. Review and recommendation of Conditional Use Application No. 2022-02, as filed by Linlo Governor Crossing, LLC and Sheetz, Inc. regarding a Master Plan Development for redevelopment of approximately 7.42 acres of land generally located in the southwestern quadrant of the intersection of West Governor Road and Fishburn Road to include a: (i) convenience store with fuel service - major; (ii) 3-story mixed use building with ground floor food service (i.e., restaurant) and retail - small scale and upper floors multifamily apartment dwellings; (iii) dialysis center; and (iv) group child care facility**

This plan was withdrawn by the applicant prior to the meeting.

- C. Review and recommendation of Conditional Use Application No. 2022-03, as filed by Doors & Dreams REI, LLC, regarding a Short-Term Rental at 1121 East Chocolate Avenue**

David Habig 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 short-term rental on the property located at 1121 East Chocolate

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Avenue, Hershey. The property is located in the Palmdale Mixed Use and East Chocolate Avenue Overlay zoning districts and contains a former dwelling unit that was converted to an office building for a former used car dealership. The building will be converted back into a single-family dwelling with four bedrooms.

Mr. Habig reviewed the required performance standards for the Conditional Use and the applicant's responses as to how they will meet the standards.

Mr. Habig recommended that the Conditional Use authorization be granted, subject to the following conditions:

- A. The establishment of the short-term rental shall be in substantial compliance with the information presented with the Conditional Use Application and the testimony during the April 26, 2022 public hearing before the Board of Supervisors.
- B. If, in the future, the Applicant propose to increase the number of bedrooms in the dwelling beyond the proposed four, they must apply for further approval from the Township.
- C. The operation of the short-term rental must at all times comply with the requirements of Sections 225-501.20.B through O of Chapter 225 (Zoning) of the Code of the Township of Derry.
- D. Any rental lease or agreement for the short-term rental shall include language stating that special events and public functions such as concerts, conferences, or weddings are prohibited on the lot of the short-term rental.
- 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 two individuals (excluding children under the age of three) may occupy any bedroom.
- F. The Applicant shall provide the required five parking spaces in a manner consistent with the Zoning Ordinance.
- G. The granting of approval of the Application shall not relieve the Applicant from filing and having the Township approve any permit, land development, subdivision, or site plan that may be required by other Township regulations or from otherwise complying with all applicable Township regulations.
- H. The granting of approval of the Application 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.
- I. The Applicant shall comply with all other applicable provisions of the Derry Township Zoning Ordinance.

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J. The short-term rental shall meet all other requirements of the Township that may apply.

Vice Chairman Rowe noted that there is a two-car garage at the rear of the property and inquired if there are any restrictions regarding the owners renting out the garage for storage. Mr. Habig replied that the Zoning Ordinance does not permit two principal uses on the property, so the use of the garage for storage would have to be accessory to the principal short-term rental use.

MOTION

On a motion made by Secretary Tunnell, seconded by Member Santostefano, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the Conditional Use represented by Application No. 2022-03 be granted, subject to conditions ‘A’ through ‘J’ as outlined by Township staff.

Additional discussion regarding short-term rentals

Secretary Tunnell commented that the provision for short-term rentals was put into place when the 2019 Zoning Ordinance was adopted. He asked if the Township has looked at the zoning districts that allow short-term rentals in terms of meeting the purpose of redevelopment thoughts in those areas by having the short-term rental provision. Chuck Emerick stated that in the case of the Conditional Use request for 1121 East Chocolate Avenue, the property owner is converting a commercial use back into a residential use for a short-term rental, and that is why the Zoning Ordinance is very specific as to where short-term rentals are allowed because they tend to be a high commodity, especially in a tourist area like Hershey. Mr. Emerick wants to be careful about how much that would be expanded. Secretary Tunnell wondered if we are maximizing the highest and best use of the property in that area in terms of the redevelopment of an assemblage of numerous small properties, or if the value we are getting is just the redevelopment of some dilapidated properties. Mr. Emerick stated that under the previous Zoning Ordinance, the properties along East Chocolate Avenue in Palmdale were zoned Neighborhood Commercial, which did not permit short-term rentals, so every single-family dwelling in that zoning district was an existing nonconformity. The idea was that we would build an assemblage of properties for commercial uses; however, there are restricting factors, such as the shallow depth of most of the properties. It just does not seem that the depth of the lots works for most of today’s commercial users. Secretary Tunnell commented that at some point maybe we need to take a second look at the Township’s vision for that area.

A. Continued review and recommendation of the Preliminary/Final Land Development and Stormwater Management Site Plan for Hershey Square Proposed Outparcel Development, Plat 1353

MOTION TO CONTINUE CONSIDERATION OF PLAT 1353

On a motion made by Member Santostefano, seconded by Secretary Tunnell, and a unanimous vote, the Planning Commission voted to continue consideration of Plat 1353.

Chuck Emerick summarized the recommendations of the 2014 Walton Avenue Corridor Alternatives Study. He noted that some of the recommendations have been implemented, and that the Greater

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Hershey Area Regional Transportation Study expanded on some of the 2014 Walton Avenue Corridor Alternatives Study's recommendations.

Vice Chairman Rowe said it is great that the studies were done and there are recommendations available. Now is the time to hold the developer accountable because 80% of the traffic generated on that leg of the intersection is from Hershey Square. The taxpayers should not be responsible for funding the mitigation efforts. Ms. Evans responded that the developer is willing to work with the Township and discuss an agreeable amount for a financial contribution as a condition of plan approval.

Vice Chairman Rowe asked what leverage the Township has to get the developer to contribute to traffic mitigation based on this one minor traffic generator, knowing that the entire development has been redeveloped with more intense uses. Ms. Evans stated that intersection improvements have already been done as part of the first two phases of Hershey Square. It was only the recent land development plan for the Kmart redevelopment that there was a \$5,000 contribution made towards traffic improvements.

Member Santostefano assumes that most of the traffic making a left turn onto Mae Street from the site's western driveway is coming from the shopping center's main parking lot and asked if anyone has considered a second driveway from the main parking lot. Ms. Evans explained that the grading is too steep to allow for a second driveway.

Chairman Wilson commented on the fact that right turns onto Mae Street from the shopping center's eastern driveway are prohibited. There was discussion about the benefits of allowing vehicles to turn right out of the shopping center in order to reduce the amount of stacking at the intersection of Mae Street and Hersheypark Drive.

Member Santostefano agreed with Ms. Evans that another traffic impact study is not going to improve the situation; however, we cannot ignore the fact that there is a problem that is about to get worse with the proposed development. Chairman Wilson suggested that maybe an engineering analysis could be conducted to determine if the prohibited right turn movement is warranted.

In response to an inquiry from Secretary Tunnell, Ms. Evans stated that the applicant is not proposing a pedestrian walkway to the new development.

Ms. Evans withdrew the applicant's request for a waiver from Section 174-14.A.(1) of the Stormwater Management Ordinance regarding rate controls.

MOTION ON WAIVERS AND DEFERMENT

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

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- a. Waivers from Sections 185-12.D.(2) and 185-13.E.(3) regarding plan scale for the overall site plans so that the entire site can be depicted on one plan sheet for clarity purposes.
- b. Waivers from Sections 185-12.D.(3).(a).[7] and 185-13.E.(4).(a).[7] regarding providing metes and bounds for all existing street centerlines and the 20-foot-wide easements around the existing stream and existing drainageways.
- c. Waiver from Section 185-12.D.(3).(a).[9] regarding depicting existing structures within 200 feet of the subject property for two areas that will be unaffected by the project.
- d. Waivers from Sections 185-12.D.(3).(a).[21] and 185-13.E.(4).(a).[19] regarding providing plans and profiles for existing stormwater systems that will be unaffected by the proposed project.
- e. Waivers from Sections 185-12.D.(3).(a).[22] and 185-13.E.(4).(a).[20] regarding providing plans and profiles for existing sanitary systems that will be unaffected by the proposed project.
- f. Waivers from Sections 185-12.D.(3).(a).[23] and 185-13.E.(4).(a).[21] regarding providing plans and profiles for existing utility systems that will be unaffected by the proposed project.
- g. Waiver from Section 185-18 regarding providing monuments and markers for the two property corners that lie within the sidewalk and the street.
- h. Waivers from Sections 174-17.B.(1) and 174-17.B.(2) regarding emergency spillway design criteria.
- i. Waiver from Section 174-17.B.(10) regarding stormwater management facility bottom elevations being greater than adjacent floodplain elevations.
- j. Deferment from Section 185-22.E.(5) regarding installing curbing along Hersheypark Drive and Route 422 adjacent to the subject property, with the stipulation that the owner enters into an agreement with the Township that would allow the Township to require the installation of curbing in the future if deemed necessary.
- k. Waiver from Section 185-34 regarding the installation of sidewalks, walkways, and/or bicycle paths along the Hersheypark Drive, Mae Street, and Route 422 frontages of the property.

MOTION ON PLAT 1353

On a motion made by Vice Chairman Rowe, seconded by Member Santostefano, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Plat 1353 be approved, subject to the following being satisfactorily addressed:

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- a. The comments in Item 3 of the Township staff report.
- b. The comments in the March 31, 2022 HRG letter.
- c. The comments in the March 30, 2022 DTMA letter.
- d. Comments 2 and 3 in the March 28, 2022 Dauphin County Planning Commission Review Report.
- e. The applicant shall work with Township staff to come up with a plan to address traffic problems at the intersection of Hersheypark Drive and Mae Street and the intersections of Mae Street and Hershey Square's driveways.

D. Review and recommendation of Ordinance No. 2022-02, amending Chapter 225 (Zoning) of the Code of Derry Township regarding regulations related to Wireless Communications Facilities

Chuck Emerick explained that there have been recent changes in the laws governing how municipal regulations apply to wireless communications facilities. The PA General Assembly approved the "Small Wireless Facilities Deployment Act" (PA Act 50), and the Governor signed it into law on June 30, 2021. Act 50 adds a new set of regulations to municipal management of small cell wireless communications facilities in the public rights-of-way, including timing for permit approvals; permissible fees for review and permitting, dimensions of "small wireless communications facilities"; and the ability to enact local design standards for these facilities. Additionally, on June 28, 2021, the U.S. Supreme Court let stand the Federal Communications Commission's Third Report and Order of 2018, which, among other rulings, created and defined a new classification of "Small Wireless Facilities"; imposed certain "shot clocks" for approval or denial of small wireless communications facilities applications; established "presumptively reasonable" fees that may be assessed on wireless providers; and prescribed general rules for enacting local design standards for small wireless communications facilities. Importantly, the Act states that if a municipality has not adopted a wireless communications facilities ordinance that complies with the Act by October 28, 2021, then the Act alone will govern the review, approval/denial, and management of wireless communications facilities in the right-of-way without any municipal involvement.

Mr. Emerick noted that the Dauphin County Planning Commission supports the proposed amendment.

Vice Chairman Rowe asked what leverage the Township has regarding collocation. Mr. Emerick replied that collocation is promoted. The construction of a new tower would require Special Exception approval from the Zoning Hearing Board.

Chairman Wilson asked if there are restrictions regarding viewshed impacts. Mr. Emerick responded that the ordinance refers to stealth design for a small wireless communications facility to match into the pole that it is mounted on. In response to another question from Chairman Wilson, Mr. Emerick stated that if someone applied to the Zoning Hearing Board to request a Special Exception for the

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construction of a new tower, property owners within a 200-foot radius of the subject site would be notified.

MOTION

On a motion made by Secretary Tunnell, seconded by Member Santostefano, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that Ordinance No. 2022-02 be adopted as written.

OTHER BUSINESS

None.

ADJOURNMENT

On a motion made by Secretary Tunnell, seconded by Member Santostefano, and a unanimous vote, the meeting was adjourned at 7:23 p.m.

Respectfully submitted,

Matthew Tunnell
Planning Commission Secretary

Submitted by:

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