



TOWNSHIP OF DERRY

Board of Supervisors Special Workshop Meeting Minutes

Wednesday, June 7, 2023

CALL TO ORDER

Chairman Abruzzo called the Special Workshop Meeting of the Township of Derry Board of Supervisors to order at 3:05 p.m. in the meeting room of the Township of Derry Municipal Complex, 600 Clearwater Road, Hershey, PA. He advised that all public meetings are recorded for providing accurate notes.

ROLL CALL

SUPERVISORS PRESENT:

E. Christopher Abruzzo, Chairman
Natalie L. Nutt, Vice Chairwoman
Carter E. Wyckoff, Secretary
Michael P. Corado
Richard D. Zmuda

ALSO PRESENT:

Patrick Armstrong, Township Solicitor
Chuck Emerick, Director of Community Development (via Zoom)
David Habig, Assistant Director of Community Development
Jenelle Stumpf, Planning/Zoning Coordinator

ABSENT:

None

Public in Attendance:

Juliet Waldron, 1241 Coolidge Avenue, Hershey; Nikki Soliday, 40 Northeast Drive; Vicki Caloiero, Hershey History Archives; Jonathan M. Crist, 2865 Church Road; Sue and Cliff Myers, 1248 Harding Avenue; Carol Gisselquist, 29 West Governor Road; Olivia Lewis, *The Sun*

NEW BUSINESS

Discussion regarding proposed modifications to the Derry Township Zoning Ordinance related to Master Plan requirements, building setbacks in the Palmdale Mixed Use and Hershey Mixed Use zoning districts, and Downtown Core Design Standards

Chairman Abruzzo explained that the purpose of this workshop meeting is for the Board of Supervisors to publicly discuss changes to the Zoning Ordinance that they would like to see. Mr. Emerick and Solicitor Armstrong have drafted the requested changes per the Board's direction.

Proposed modifications to Section 225-501.58 – Development Approval Process (Master Plan)

Solicitor Armstrong referenced his track changes draft of the proposed amendments to this Section and noted that in general, changes are being made to *require* (instead of *encourage*) when discussing providing usable open space and other items associated with the Master Plan process. Vice Chairwoman Nutt noted that this change would also apply to applicants providing for design standards that maintain historical development patterns of existing neighborhoods,

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encourage a mix of land uses that are complementary to the surrounding neighborhoods, and promote revitalization and tourism to the downtown.

Proposed modifications to Section 225-501.58.A.2 – Property Requirements for Master Plan Approval Process

Solicitor Armstrong explained that the modifications to this Section will clarify that ownership of a site for a Master Plan shall be held in a single ownership by the developer/applicant in fee simple or equitable form. Currently the regulations allow for flexibility with respect to ownership.

Proposed modifications to Section 225-501.58.A.4 – Master Plan Application and Requirements, and Section 225-501.58.A.5 – Required Land Development Plan Approvals

Solicitor Armstrong stated that modifications are proposed regarding the types of plans and how the plan will be processed and reviewed. Currently the Master Plan is viewed as the Preliminary Plan of the land development plan. The proposed revisions will change that, and a Master Plan approval will no longer be considered a Preliminary Land Development Plan approval. The applicant will be required to obtain Master Plan approval prior to and independent of the Preliminary and Final Land Development Plan approvals. The proposed revisions require the submission of a Sketch Plan prior to the Master Plan application to allow the Planning Commission and Board of Supervisors an opportunity to review a proposed project in an informal manner during a public meeting and provide comments and feedback to the applicant. Sometimes that helps to avoid issues after the Master Plan application is submitted.

Vice Chairwoman Nutt pointed out that the proposed revisions will add the requirement for a Master Plan applicant to provide a traffic study as part of the submission, if deemed necessary by the Township.

Chairman Abruzzo added that the revisions to Section 225-501.58.A.5 will require that following Master Plan approval, the Subdivision and/or Land Development Plan will have to be submitted as a Preliminary Plan first and then as a Final Plan, unless approval is given by the Township to combine the Preliminary Plan and Final Plan into one submission.

Regarding Section 225-501.58.A.4.g.viii, Environmental Assessment Plan, Supervisor Zmuda commented that this Section should require that streams and underground aquifers be depicted on the environmental assessment plan. Solicitor Armstrong asked if this information is required to be provided by way of another Township ordinance. Mr. Emerick stated that there is no mention of underground waters in any of the Township ordinances, unless it has to do with a development that is on well water and needs a hydro study as required by the Subdivision and Land Development Ordinance. Solicitor Armstrong commented that he does not know if that would be difficult information for an applicant to obtain. Mr. Emerick summarized the list of sensitive environmental areas under Section 225-401.2.1.A of the Zoning Ordinance and stated that underground waters are generally covered under that Section. Unless there is a proposal to tap into an underground stream, Mr. Emerick does not see the point in requiring this information to be part of a Master Plan submission and does not think it will be easily accessible. Chairman Abruzzo commented that he agrees it makes sense to request information on aboveground streams, but aquifers can be found at varying levels below the surface. The Township would need to be specific about what information would be required regarding

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aquifers. Mr. Emerick stated that for on-lot septic or infiltration systems, the Township is concerned with limiting zones and high groundwater tables, and that is explored when necessary. Solicitor Armstrong stated that this information could be requested under Section 225-501.58.A.4.g.xvi, which allows the Township to require the submission of any other reports, plans, or exhibits deemed necessary.

Proposed modifications to Section 225-501.58.A.7 – Master Plan Uses and Site Requirements

Solicitor Armstrong noted that the modifications state that the only uses that would be permitted as part of a Master Plan are those uses permitted by right, by special exception, or by conditional use. Adjustments have been made to decrease the amounts of the density and impervious cover bonuses that an applicant would be entitled to.

Vice Chairwoman Nutt inquired if a Master Plan is required for the development of apartments. Mr. Emerick answered that it depends on where the apartments are proposed and in which zoning district as to whether Master Plan approval is required. Solicitor Armstrong added that the revisions propose to delete apartments from the list of Master Plan uses.

Supervisor Zmuda referenced language that requires a Master Plan applicant to provide something “when possible” and asked how the Township determines when something is possible. He is concerned that this ambiguity opens the Township to questions from contractors and construction companies who may disagree with the Township’s interpretation. Solicitor Armstrong agreed that this a good point, and such ambiguous language was the main reason for a lot of the proposed revisions, such as changing ‘applicants are encouraged’ to ‘applicants shall be required’. If there are other provisions that the Board wants to make mandatory (as opposed to using language such as ‘suggested’ or ‘encouraged’), they should let Solicitor Armstrong or Mr. Emerick know.

Proposed modifications to Section 225-501.58.A.8 – Master Plan open space

Solicitor Armstrong stated that the majority of the revisions to this Section relate to open space being ‘required’ as part of a Master Plan application, instead of ‘encouraged’. Vice Chairwoman Nutt added that the revisions specify what qualifies as open space. For example, stormwater management facilities will no longer qualify as acceptable open space in a development.

Addition of a new Section 225-501.58.A.10 (existing Sections would be renumbered) – Park, Recreation, and Open Space Dedication

Solicitor Armstrong explained that these regulations are already in Subdivision and Land Development Ordinance. He clarified that the open space specific to the Master Plan will be separate from and in addition to what is required by Subdivision and Land Development Ordinance.

Proposed modifications to (renumbered) Section 225-501.58.A.12 – Variances, Modifications, and Alterations to the Master Plan

Solicitor Armstrong commented that this is where some of the more substantive revisions are being proposed. The intent of the revisions is that if an applicant has received Master Plan approval and a certain amount of time has passed and nothing happens or the applicant makes revisions to the Master Plan, the Board of Supervisors would like the developer to return for an

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amended Master Plan approval or a new Master Plan approval. Specifics are provided as to what changes would be considered de minimis and what changes would result in an amended or new Master Plan that would require further approval by the Board of Supervisors.

Chairman Abruzzo stated that these revisions would prevent a developer from making changes to an approved Master Plan that might not require further Board of Supervisors approval under the current regulations. The Board does not want to be overly burdensome to the developer and require additional approval for every little minor change; however, it is difficult for the Board to approve large, phased plans such as Hershey West End as one Master Plan. He asked if the revised regulations allow for any flexibility for multiple phase plans. Mr. Emerick responded that the current regulations have a list of things that can and cannot be modified. Under the proposed regulations, the entire Master Plan would have to be returned to the Board of Supervisors for reapproval whether there is a major phase change, a negligible change, or a change that reduces the originally proposed impact. He is curious about how the proposed revisions will affect the Hershey West End project. Chairman Abruzzo commented that most of the current members of the Board of Supervisors were not seated in 2018 when the initial Master Plan approval was given for Hershey West End and asked if all of the phases of the development were approved in one Master Plan. Mr. Emerick answered yes. The Master Plan approval acted as a Preliminary Plan to lay out the development's road system and uses. Chairman Abruzzo wondered if it is wise to approve such a project as Master Plan, even for the developer's purposes, because it is difficult to know for sure what future phases will turn out to be in 10 or so years. Mr. Emerick stated that the Master Plan approval offers the developer protection if the regulations change substantially in the future. There was further discussion regarding what changes would require an amended Master Plan and what changes would require a new Master Plan. Chairman Abruzzo suggested that Solicitor Armstrong and Mr. Emerick further revise this language.

In reference to what would be considered a de minimis change, Supervisor Zmuda inquired if the Board's goal is to always be involved in the approval process, or if there are situations where Township staff would be able to issue approval without the Board's involvement. Solicitor Armstrong responded that it is not going to be Mr. Emerick's office that will approve a change to a Master Plan, the change will be approved by the Board of Supervisors as part of the land development plan process instead of the Conditional Use process. Mr. Emerick explained that the current Master Plan regulations were written a little differently than the revisions that the Board is reviewing. There are certain things that would trigger an amended plan. If those points were not met, then it was just a matter of the developer submitting a Final Land Development Plan that shows the difference between the Master Plan and the Final Land Development Plan. The proposed regulations would not allow the developer to go straight from Master Plan approval to Final Land Development Plan approval unless the plans are identical. Chairman Abruzzo commented that because of the way the Township has developed and how traffic congestion has become such a huge priority, he thinks the Board of Supervisors needs to be involved and have control over modifications to Master Plan approvals at this point in time, but the language can be adjusted to be slightly more flexible and not require a new Master Plan submission for every change in a development.

Proposed modifications to Section 225-429 – Downtown Core Design Standards

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Mr. Emerick summarized the proposed revisions regarding the membership composition of the Downtown Core Design Board (DCDB), the DCDB's review process, and appeals from the DCDB's recommendations. Chairman Abruzzo stated that he thinks Mr. Emerick addressed the Board of Supervisors' concerns in the proposed revisions. Chairman Abruzzo asked what will happen to current members of the DCDB if the proposed revisions are adopted before the end of the year and the members no longer meet the membership requirements. Solicitor Armstrong recommended that the Board of Supervisors allow the members to finish their terms; however, the following appointments would need to comply with the revised regulations.

Proposed modifications regarding building setbacks in the Hershey Mixed Use and Palmdale Mixed Use zoning districts

Mr. Emerick explained that presently, the Zoning Ordinance permits minimum yard areas of 5 feet in the Palmdale Mixed Use zoning district and within the East Chocolate Avenue (O10) Overlay. The Zoning Ordinance also permits minimum yard areas of 5 feet in the Hershey Mixed Use zoning district and all Overlays of that zoning district. A concern has been raised regarding a permitted minimum distance of 10 feet between homes. To address that concern, Mr. Emerick is suggesting that a sliding scale for side yard setbacks be instituted as follows:

- Lots up to 40 feet wide – 5 feet.
- Lots greater than 40 feet wide, up to 85 feet wide – 8 feet.
- Lots greater than 85 feet wide – 15 feet.

He is also suggesting that the rear yard setback for principal structures be 20 feet and the rear yard setback for accessory structures be 10 feet.

Vice Chairwoman Nutt noted that a property owner is allowed to develop their lot based on the current footprint, so even if the side yard setbacks are increased, a property owner would still be allowed to be consistent with the current footprint of the home. Solicitor Armstrong believed Vice Chairwoman Nutt was referring to the nonconformity regulations of the Zoning Ordinance, which allow for the restoration of nonconforming buildings or structures that are destroyed by accident or on purpose, subject to certain stipulations. Those regulations only apply to lots that are improved with a structure or dwelling. If an owner wants to build on an unimproved lot and is proposing to encroach into the setbacks, they would be required to go to the Zoning Hearing Board to seek relief to do so. Vice Chairwoman Nutt stated that at least in the Zoning Hearing Board process, neighbors are notified of the proposal and they can attend the meeting and voice their opinions.

Chairman Abruzzo commented that 5-foot side yard setbacks are not conducive to the charm of the neighborhoods in the downtown area. By having a sliding scale of side yard setback distances on smaller lots, that should reduce the number of variances that are requested. His hope is that future Zoning Hearing Boards will stick to those setbacks and not grant variances. Chairman Abruzzo stated that he would like to see the 5-foot setback increased to 8 feet for lots that are 40 feet wide or less.

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Secretary Wyckoff stated that 5 feet is the equivalent of 12.5% of 40 feet and suggested using 12.5% of all lots to determine setback distances. Solicitor Armstrong commented that he has never seen setbacks determined in this manner, and it might be cumbersome for the Zoning Officer.

Secretary Wyckoff asked if there are limitations or setbacks on lot depth and if someone could build further into the lot instead of wider in order to construct a larger house. Solicitor Armstrong responded that the proposed revisions pertain to the side yard setback, but there are also front yard and rear yard setbacks. Mr. Emerick reiterated that he is also recommending that the rear yard setback for principal structures be 20 feet and the rear yard setback for accessory structures be 10 feet. Chairman Abruzzo stated that he feels more comfortable with Mr. Emerick's proposed sliding scale for side yard setbacks if the rear yard setback is also going to be adjusted because that will address the size of the house on all sides of the property. Vice Chairwoman Nutt agreed with Chairman Abruzzo. Mr. Emerick commented that he would be comfortable with a 30-foot rear yard setback for principal structures.

Chairman Abruzzo noted that it sounds like the Board is comfortable with the proposed sliding scale for the side yard setback in the Hershey Mixed Use and Palmdale Mixed Use zoning districts, particularly the 15-foot side yard setback for lots that are greater than 85 feet wide, and the Board is open minded on the smaller numbers (5-foot side yard setback for lots up to 40 feet wide; 8-foot side yard setback for lots greater than 40 feet wide, up to 85 feet wide). He does not know yet if he is comfortable with a 5-foot side yard setback for lots up to 40 feet wide and an 8-foot side yard setback for lots greater than 40 feet wide, up to 85 feet wide. He also does not know if we should go to a percentage or stay with feet, but he agrees that determining the setback by feet is easier to administer. Mr. Emerick explained that he chose the 5-foot and 8-foot side setback numbers because typically the smaller lots are combined. Secretary Wyckoff and Chairman Abruzzo suggested that it would help to restructure the proposed sliding scale for the side yard setback as follows: Lots up to 40 feet wide – 5 feet; lots greater than 40 feet wide, up to 60 feet wide – 8 feet; lots greater than 60 feet wide, up to 85 feet wide – 10 feet; and lots greater than 85 feet wide – 15 feet.

Chairman Abruzzo stated that he thinks it is good to increase the rear yard setback to 20 or 30 feet, but if someone came in with a variance request on a rear yard setback, there may be more willingness from the neighbors to agree to something like that versus an encroachment into the side yard setback, which seems to be what people are upset about.

Mr. Habig asked Mr. Emerick if he is still looking at changing the rear yard setback for accessory structures to 10 feet, in addition to changing the rear yard setback for principal structures. Mr. Emerick responded that it is part of the proposal. Mr. Habig asked if the Board wants to include a provision that would allow an accessory structure, such as a detached garage, to be in the same location as others to maintain the character of the neighborhood. Chairman Abruzzo stated that it seems reasonable to assume that neighbors would find it acceptable for someone to build a detached garage in alignment with existing detached garages. Mr. Emerick noted that there is already a similar provision in the Zoning Ordinance for the front yard setback to be adjusted for a proposed structure to be in proper relation to existing adjacent uses within 100 feet of the proposed structure.

VISITOR/PUBLIC COMMENTS

Clifford Myers, 1248 Harding Avenue, stated that he was under the impression from the discussion that a vacant 40-foot-wide lot could not be improved at the current 5-foot side yard setback if the proposed revisions are adopted because the side yard setback would be increased to 15 feet. Solicitor Armstrong clarified that as currently drafted, the side yard setback sliding scale for properties in the Hershey Mixed Use and Palmdale Mixed Use zoning districts proposes to maintain a 5-foot side yard setback for lots that are up to 40 feet in width. Mr. Myers stated that he misunderstood what was said and thanked Solicitor Armstrong for the clarification.

Jonathan Crist, 2865 Church Road, commented on ‘environmentally sensitive areas’ being mentioned in the proposed revisions to the Master Plan regulations. That is a defined term in the Zoning Ordinance that partially reflects what is seen nationally. Environmentally sensitive areas are generally anything over 20% slope. Derry Township’s Zoning Ordinance adds ‘in a natural state’ and Mr. Crist has had an ongoing debate with Mr. Emerick about what that means. Mr. Crist stated that Mr. Emerick’s position on the matter is that ‘in a natural state’ refers to properties in the woods or the mountains and does not include anything in the downtown area of the Township. Mr. Crist’s position is that it means he has not added fill to the property and changed the natural state of the ground. He thinks the 20% slope applies in the Village of Hershey. Mr. Crist cautioned everyone that with side yard setbacks, there are other statutes, including the Uniform Construction Code, that have side yard setbacks in certain instances, and the Uniform Construction Code is very clear that it trumps local zoning regulations in the event of a conflict.

ADJOURNMENT

Supervisor Zmuda made a motion to adjourn the meeting at 4:57 p.m. Vice Chairwoman Nutt seconded the motion. Motion carried 5-0.

SUBMITTED BY:

Carter E. Wyckoff, Township Secretary