

**DERRY TOWNSHIP PLANNING COMMISSION
MEETING MINUTES
March 5, 2024**

CALL TO ORDER

The Tuesday, March 5, 2024 Derry Township Planning Commission meeting was called to order at 6:00 p.m. in the main meeting room of the Derry Township Municipal Complex, Administration Building, 600 Clearwater Road, Hershey, PA, by Chairman Matt Tunnell.

ROLL CALL

Commission Members Present: Matt Tunnell, Chairman; Mike Guntrum, Vice Chairman; Sean Guay, Secretary; Tom Wilson

Commission Member Absent: Glenn Rowe

Township Staff and Review Agency Representatives Present: Chuck Emerick, Director of Community Development; Dave Habig, Assistant Director of Community Development; Jenelle Stumpf, Planning/Zoning Coordinator

Public Registering Attendance: Michael Bruce, Hockersville, LLC

APPROVAL OF MINUTES

On a motion made by Member Wilson, seconded by Vice Chairman Guntrum, and a unanimous vote, the Planning Commission approved the minutes from the February 6, 2024 meeting, as written.

OLD BUSINESS

- A. Report on the Board of Supervisors' action regarding adoption of Ordinance No. 2023-09, amending Chapter 225 (Zoning) of the Code of the Township of Derry regarding setbacks in the Hershey Mixed Use and Palmdale Mixed Use zoning districts; Downtown Core Design Standards; and other miscellaneous minor revisions**

Mr. Emerick reported that the Board adopted the Ordinance.

- B. Report on the Board of Supervisors' action regarding adoption of Ordinance No. 2023-10, amending Chapter 225 (Zoning) of the Code of the Township of Derry regarding Section 225-501.58 (Development Approval Process [Master Plan])**

Mr. Emerick reported that the Board adopted the Ordinance.

- C. Report on the Board of Supervisors' action regarding adoption of a Decision for Conditional Use Application No. 2023-03, as filed by Mary Driscoll, amending previously approved Conditional Use Application No. 2022-04 regarding the property located at 981 Bullfrog Valley Road**

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

- D. Report on the Board of Supervisors' action regarding adoption of Ordinance No. 2024-01, amending Chapter 225 (Zoning) of the Code of Ordinances of Derry Township by revising the definition of Outpatient Medical Treatment Facility and adding new definitions for Massage Therapy and Physical, Occupational or Speech-Language Therapy Facility and further adding Physical, Occupational or Speech-Language Therapy Facility as a use permitted by right in the General Commercial, Planned Campus West, Medical Campus Central and Commercial Recreation zoning districts**

Mr. Emerick reported that the Board adopted the Ordinance.

NEW BUSINESS

- A. Review and recommendation of Conditional Use Application No. 2024-02, as filed by Melvin King for 11 Lucy Avenue**

Dave 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 54 Ethel Avenue, Hummelstown. The property contains a 1,786-square-foot, three-bedroom single-family dwelling built in 2004.

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 provided during the March 12, 2024 public hearing before the Board of Supervisors.
- B. If, in the future, the Applicant proposes to increase the number of bedrooms in the dwelling beyond the existing five, 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.C through O of Chapter 225 (Zoning) of the Code of the Township of Derry.

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- D. Special events and public functions such as concerts, conferences, or weddings are prohibited on the lot of the short-term rental. Any rental lease or agreement for the short-term rental shall include language stating that restriction.
- 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. Any listing to rent the property shall be limited to ten persons over the age of three.
- F. The Applicant shall provide the required six 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.
- J. The short-term rental shall meet all other requirements of the Township that may apply.

In response to a question from Chairman Tunnell, Melvin King stated that he intends to pave the driveway, which is currently gravel.

MOTION ON CONDITIONAL USE APPLICATION NO. 2024-02

On a motion made by Vice Chairman Guntrum, seconded by Secretary Guay, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the Conditional Use represented by Application No. 2024-02 be granted, subject to conditions ‘A’ through ‘J’ as outlined by Township staff.

B. Review and recommendation of Conditional Use Application No. 2024-01, as filed by Hockersville, LLC, for 228 and 238 Hockersville Road

Chuck Emerick explained that this application requests that a Conditional Use authorization be granted under the provisions of Chapter 225 (Zoning), Section 225-501.3 (Single-Family Attached Dwellings [Townhouses], [HMU zoning district]) of the Code of the Township of Derry. The applicant proposes to establish a four-unit townhouse development at 228 and 238 Hockersville Road. The subject property is located in the Hershey Mixed Use zoning district and the Compact

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Development Overlay (O8). The property is comprised of two deeds that will be joined together as a part of the land development. Each lot had previously contained a single-family dwelling.

Mr. Emerick stated that the applicant applied to the Zoning Hearing Board for relief from certain Zoning Ordinance regulations prior to filing this Conditional Use application. The applicant sought variances from (i) the minimum lot depth; (ii) driveway access provided to a rear alley; and (iii) the front yard setback for a principal structure. The application also noted that if the variance for the driveway access was not granted, the applicant, in the alternative, sought variances from (i) the minimum width of an access drive, and (ii) the front yard setback for egress doors. The Order in the Zoning Hearing Board's February 21, 2024 Decision on Case No. 2023-19 reads as follows:

1. *The applicant's request for a variance from §225-315, Table 29, Item B, regarding the minimum lot width is GRANTED. The applicant may maintain a lot width of 70.1 feet.*
2. *The applicant's request for a variance from §225-501.3.C., regarding driveway access to a rear alley is GRANTED. The driveway access to Third Street is permitted instead of the private alley.*
3. *The applicant's request for a variance from §225-315, Table 29, Item D, regarding the front yard setback for a principal structure is DENIED.*
4. *The applicant's request for a variance from §225-402.2.E., regarding the minimum width of an access drive is MOOT as a result of the granting of a variance under paragraph 2 of this Order.*
5. *The applicant's request for a variance from §225-206.H.16., regarding encroachment into the front yard for egress doors is MOOT as a result of the granting of a variance under paragraph 2 of this Order.*

Mr. Emerick reviewed the required performance standards for the Conditional Use and the applicant's responses as to how they will meet the standards. He also outlined his, HRG's, and DTMA's review comments.

Member Wilson commented that he is concerned with the proximity of the access drive to Hockersville Road. Mr. Emerick stated Township regulations require new driveways to be at least 60 feet from the intersection of rights-of-ways. It may be possible to link the driveways together and improve the ability to meet the 60-foot distance from the intersection.

In response to a question from Chairman Tunnell, Mr. Emerick stated that a PennDOT permit will not be required for this project, but the Township will be concerned with the sight distance issue at the intersection of Third Avenue and Hockersville Road. It may be possible to achieve the required sight distance if some improvements are made along the bank.

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Michael Bruce, a professional engineer and the manager of Hockersville, LLC, stated that there are two major issues for discussion: sight distance and right-of-way. Sight distance looking left towards West Chocolate Avenue cannot be met and it cannot be corrected because the abutting property is privately owned. The applicant has the ability to fix the sight distance looking right; however, there are no regulations in the Subdivision and Land Development Ordinance requiring the applicant to improve the sight distance at the intersection. Mr. Bruce is confident that the applicant can achieve the required sight distance from the proposed driveways onto Third Avenue.

Member Wilson commented that he is not convinced that the applicant cannot correct the sight distance issue at the Third Avenue and Hockersville Road intersection. Mr. Emerick noted that the Board of Supervisors cannot condition the approval of the Conditional Use request on off-site improvements; however, Section 225-501.K.1 of the Zoning Ordinance states *“That the use will not adversely affect the health or safety of residents in the neighborhood or district in which the use is located.”* Mr. Bruce stated that in a recent adjudication by the Board of Supervisors regarding Governor Crossing, the Board cited ample case law stating that the applicant need not demonstrate or prove that the general conditions are met. It is the burden of an opposing party to prove that the applicant does not meet the general conditions.

Mr. Bruce stated that the Zoning Hearing Board granted relief for the applicant to maintain a lot width of 70.1 feet. That means the applicant cannot dedicate right-of-way on Third Avenue because then they cannot achieve the 70.1-foot minimum lot width as granted by the Zoning Hearing Board, and the site will become undevelopable in terms of the Subdivision and Land Development Ordinance. Requiring right-of-way dedication on Third Avenue is unreasonable. The applicant would be agreeable to the Township restricting turns out of the proposed driveways onto Third Avenue to left turns or making Third Avenue one way.

Mr. Emerick explained that Section 225-501.K of the Zoning Ordinance states, in part: *“...the applicant must demonstrate that the following conditions have been addressed to the maximum extent applicable”*, so it is the applicant’s burden to address the general conditions. The Township has rarely waived the requirement for road widening or right-of-way dedication, especially on the development frontage side.

In response to a question from Vice Chairman Guntrum, Mr. Bruce stated that right-of-way dedication would result in the property being undevelopable because it would not meet the minimum lot width of 70.1 feet as granted by the Zoning Hearing Board. Mr. Emerick commented that based on density, a single-family dwelling and a duplex could be developed on the property.

Chairman Tunnell stated that he has concerns about waiving the dedication of right-of-way along Third Avenue. Vice Chairman Guntrum stated he is not convinced that what the applicant is proposing is the only possible use for the property.

MOTION ON CONDITIONAL USE APPLICATION NO. 2024-01

On a motion made by Member Wilson, seconded by Vice Chairman Guntrum, and a unanimous vote, the Planning Commission made a recommendation to the Board of Supervisors that the

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Conditional Use represented by Application No. 2024-01 be denied based on safety concerns associated with sight distance at the intersection of Third Avenue and Hockersville Road.

OTHER BUSINESS

None.

ADJOURNMENT

On a motion made by Member Wilson, seconded by Secretary Guay, and a unanimous vote, the meeting was adjourned at 7:01 p.m.

Respectfully submitted,

Sean Guay
Planning Commission Secretary

Submitted by:

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