

**TOWNSHIP OF SOUTH WHITEHALL**  
**LEHIGH COUNTY, PENNSYLVANIA**  
**PLANNING COMMISSION**

**REGULAR SESSION**

**MINUTES**

**MAY 20, 2021**

The Regular Session of the South Whitehall Township Planning Commission was held on the above date in a virtual meeting held on GoToMeeting.com.

Members in attendance:

William H. MacNair, Chairman  
Brian Hite, Vice-Chairman  
Alan Tope, Secretary  
David Wilson

Staff members in attendance:

Gregg Adams, Planner  
Laura Harrier, Zoning Officer  
David Manhardt, Community Development Director  
Anthony Tallarida, Assistant Township Engineer  
Joseph Zator, Township Solicitor

**AGENDA ITEM #1 – CALL TO ORDER/PLEDGE OF ALLEGIANCE**

Chairman MacNair called the meeting to order at 7:30 p.m. He announced that all meetings are electronically monitored. He then led the assembled in the Pledge of Allegiance.

**AGENDA ITEM #2 – APPROVAL OF MINUTES**

Chairman MacNair announced that the minutes of the March 18 and April 15, 2021 meetings were distributed prior to this evening's meeting for review and comment. Chairman MacNair asked the members if they had any changes to the minutes of the March 18, 2021 meeting. Hearing none, Chairman MacNair called for a motion to approve the minutes as submitted. Mr. Hite made a motion to that effect. Mr. Tope seconded the motion and it passed unanimously. 4-0. Chairman MacNair asked the members if they had any changes to the minutes of the April 15, 2021 meeting. It was pointed out that there are only three Commission members present who attended the April 15<sup>th</sup> meeting, therefore the approval of the minutes of the April 15, 2021 meeting was tabled until a quorum of Commission members is present to vote.

### **AGENDA ITEM #3 – COMPREHENSIVE PLAN UPDATE SUMMARY**

Mr. Manhardt stated that staff is working with Michael Baker International to schedule the first meeting to assemble the Working Groups in the first full week of June. He stated that staff intends that the Working Groups meet weekly in June, present their findings in July and hand off the process to the Planning Commission in August.

Chairman MacNair inquired as to the public notice requirements.

Mr. Manhardt stated that staff anticipates that most, if not all, of the Planning Commission and the Board Of Commissioners will attend the first meeting in June, therefore the meeting will be noticed appropriately. He stated that staff will advertise all the meetings using a number of different methods. He stated that as much participation as possible is the goal.

### **AGENDA ITEM #4 – SUBDIVISION REVIEW**

#### **A. PROPOSED FLEX BUILDING 1215 HAUSMAN ROAD MAJOR PLAN 2018-106 REQUEST FOR PRELIMINARY/FINAL PLAN REVIEW**

Chairman MacNair polled the audience for interested parties other than the developer regarding the application to develop the property located at 1215 Hausman Road. There was no response.

At the request of Chairman MacNair, Mr. Adams read the Community Development Department's recommendation into the record. The Department recommended that the Planning Commission recommend preliminary/final plan approval to the Board of Commissioners subject to the applicant complying with the following conditions:

1. That the applicant shall execute subdivision improvement, security, maintenance and indemnification agreements acceptable to the Township and its Solicitor, that sufficient security in a form acceptable to the Township be posted, such security shall be available for draws/presentation no further than 60 miles from the Township's office, and evidence of necessary insurance coverage shall be provided prior to the plan being recorded.
2. That the applicant shall address to the satisfaction of the Township Engineer, the comments of Mr. Anthony Tallarida, as contained in his review dated May 14, 2021.
3. That the applicant shall address to the satisfaction of the Township Water and Sewer Engineer, the comments of Mr. Jason Newhard, as contained in his review dated February 12, 2021
4. That the applicant shall address to the satisfaction of the Township Geotechnical Consultant, the comments of Mr. Chris Taylor, as contained in his reviews dated July 22, 2020 and January 11, 2021.
5. That the applicant shall address to the satisfaction of the Public Works Department, the comments of Mr. Herb Bender, as contained in his review dated May 11, 2021.

6. That the applicant shall address to the satisfaction of the Community Development Department, the comments of Mr. Gregg Adams, as contained in his review dated May 14, 2021.
7. That the applicant shall comply with the October 15, 2018 recommendation of the Parks and Recreation Board.
8. That the applicant shall addresses all issues and obtains all approvals deemed necessary by the South Whitehall Township Board of Commissioners in so far as matters pertaining to the Township's water and sewer service are concerned.
9. That the applicant shall obtain a letter from the Pennsylvania Department of Environmental Protection and/or the Lehigh County Conservation District approving the NPDES Permit application pursuant to Sections 312-14(b)(2)(C) and 312-39(e) of the Subdivision and Land Development Ordinance.
10. That the applicant shall obtain a letter from the Pennsylvania Department of Environmental Protection approving a sewage facilities planning module.
11. That the applicant shall dedicate to the Township additional right-of-way along the frontage of Hausman Road at a width acceptable to the Township. The dedication shall occur prior to the plan being recorded. The dedication shall be by Deed of Dedication in a form acceptable to the Township Solicitor, and an Opinion of Record Title prepared by applicant's counsel indicating that the dedication is free and clear of liens and encumbrances that would affect the Township's use of said property. The applicant shall furnish to the Township Solicitor a description for the dedication that has been approved by the Township Engineer, a copy of the current deed for the property showing current ownership and recites the deed book volume and page reference.
12. That the applicant shall dedicate to the Township a utility easement of sufficient size in an area acceptable to the Township for accessing the water meter pit. The dedication shall occur prior to the plan being recorded. The dedication shall be by Deed of Easement in a form acceptable to the Township Solicitor, and an Opinion of Record Title prepared by developer's counsel indicating that the easement is free and clear of liens and encumbrances that would affect the Township's use of said property. The developer shall furnish to the Township Solicitor a description for the easement that has been approved by the Township Engineer, a copy of the current deed for the property showing current ownership and recites the deed book volume and page reference.
13. That a Declaration of Covenants and Easement for Maintenance of Stormwater Management Facilities prepared by the Township Solicitor be executed for the maintenance of the on-site stormwater facilities.
14. That the applicant shall reconcile all open invoices for Township engineering and legal services prior to the plan being recorded.
15. That the plan shall be revised and deemed "clean" prior to the presentation to the Board of Commissioners.

Engineer Paul Szewczak and Attorney Blake Marles accompanied Andrew Baldo to present the plan and answer questions. Attorney Marles started by stating that the Conditional Use application was not active.

Mr. Baldo stated that staff was helpful in explaining the Flex Building Use as understood by South Whitehall and that he is looking for Uses that are permitted within by right.

Mr. Hite suggested that the building could attract manufacturing, which would be an asset to the Township.

Mr. Adams stated that the applicant should submit a letter formally withdrawing the Conditional Use application and the Township would shut the project down and return the applicant's escrowed funds.

Attorney Marles stated that he would do so.

Solicitor Zator inquired as to whether the requirement of a zoning review for each prospective tenant would be in the conditions of approval of the plan. Mr. Adams opined that it would but he stated his preference for a plan note stating the requirement.

Attorney Marles stated that he has no objection to such a note.

Chairman MacNair opened the floor to questions from the public. There were none.

Mr. Wilson inquired as to the requested waivers.

Chairman MacNair started with the requested waiver of Stormwater Management Ordinance Section 296-12.1(4)(e) regarding the 100-foot setback of an infiltration bed from a property line.

Mr. Wilson stated his preference for the inclusion of an on-site review of Hausman Road for frost heave for a 5-year period after construction, due to the close proximity of the infiltration bed.

Mr. Baldo stated that the requirement seems reasonable but that he did not want to be held accountable for normal roadway maintenance. He stated that he would be happy to reach an agreement with staff on the details.

Mr. Hite agreed, noting that there could be a few mild winters that would not manifest frost heaves.

Chairman MacNair suggested extending the maintenance period from two to five years.

There was a discussion of the wording of the condition.

Mr. Manhardt inquired as to the width of the proposed road widening at that location.

Mr. Tallarida stated that the road is proposed to be widened about five feet in that area. He stated that he doesn't know how subsurface water will impact the new roadway or the old roadway. He suggested bringing the Geotechnical Consultant in to review the matter.

Solicitor Zator suggested language for the condition.

Attorney Marles inquired as to how long an agreement should take.

Mr. Tallarida opined a week or so.

Attorney Marles noted that the applicant wanted to appear before the Board of Commissioners before the end of June.

Mr. Manhardt suggested that the condition be limited to one hundred feet from the infiltration bed.

Mr. Tallarida stated that the Section requires a one-hundred foot setback from property lines.

Engineer Szewczak stated that the subsurface water appears to generally flow south in the area and that one hundred feet should be adequate.

Mr. Wilson made a motion to recommend the waiver of the requirement of Section 296-12.l(4)(e) of the Stormwater Management Ordinance that infiltration facilities be set back 100 feet from the property line.

Mr. Hite seconded and the motion passed unanimously, 4-0.

Mr. Hite made a motion to recommend the waiver of the requirement of Section 312-35(b)(3)(A)(iv) of the Subdivision and Land Development Ordinance pertaining to the requirement for concrete aprons.

Mr. Tope seconded and the motion passed unanimously, 4-0.

Mr. Tope made a motion to recommend the waiver of the requirement of Section 312-36(c)(5)(A) of the Subdivision and Land Development Ordinance requiring that the width of a driveway for a non-residential subdivision not exceed 40 feet.

Mr. Wilson seconded and the motion passed unanimously, 4-0.

Mr. Tope made a motion to recommend preliminary/final plan approval to the Board of Commissioners subject to the applicant complying with the following conditions:

1. That the applicant shall execute subdivision improvement, security, maintenance and indemnification agreements acceptable to the Township and its Solicitor, that sufficient security in a form acceptable to the Township be posted, such security shall be available for draws/presentation no further than 60 miles from the Township's office, and evidence of necessary insurance coverage shall be provided prior to the plan being recorded.
2. That the applicant shall address to the satisfaction of the Township Engineer, the comments of Mr. Anthony Tallarida, as contained in his review dated May 14, 2021.

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12. That the applicant shall dedicate to the Township a utility easement of sufficient size in an area acceptable to the Township for accessing the water meter pit. The dedication shall occur prior to the plan being recorded. The dedication shall be by Deed of Easement in a form acceptable to the Township Solicitor, and an Opinion of Record Title prepared by developer's counsel indicating that the easement is free and clear of liens and encumbrances that would affect the Township's use of said property. The developer shall furnish to the Township Solicitor a description for the easement that has been approved by the Township Engineer, a copy of the current deed for the property showing current ownership and recites the deed book volume and page reference.

13. That a Declaration of Covenants and Easement for Maintenance of Stormwater Management Facilities prepared by the Township Solicitor be executed for the maintenance of the on-site stormwater facilities.
14. That the applicant shall reconcile all open invoices for Township engineering and legal services prior to the plan being recorded.
15. That the plan shall be revised and deemed “clean” prior to the presentation to the Board of Commissioners.
16. That a note, the language of which is subject to review and approval by the Township Solicitor, be placed on the plan detailing the responsibilities of each new tenant to obtain Zoning review and approval as required by the Zoning Ordinance.
17. That the developer has a responsibility for five (5) years to address road damage of the proposed right-of-way improvements due to frost heave (also known as the freeze/thaw effect) as determined by the Township Engineer, the exact wording of the Condition to be worked out between Township staff and the applicant.

Mr. Hite seconded and the motion passed unanimously, 4-0.

#### **AGENDA ITEM #5 – ZONING ORDINANCE AMENDMENT**

##### **Low-Impact/No-Impact Home-Based Business**

Mr. Adams reviewed the draft Ordinance amendment.

Chairman MacNair stated that he was happy with the draft.

Mr. Wilson inquired as to the parking requirements of the No-Impact Home-Based Business.

Mr. Adams stated that Commonwealth defines No-Impact Home-Based Business as not having clients or employees permitted at the dwelling, so there is no traffic impact.

Mr. Hite stated his appreciation for the work.

Mr. Tope inquired as to whether a resident would need an attorney for the Special Exception hearing.

Mr. Adams stated that most residential zoning appeals do not have attorneys present.

Mr. Tope stated that he was happy with that response. He opined that COVID’s demise may reduce the need for this amendment.

Mr. Wilson stated that he is happy with the draft amendment.

Zoning Officer Laura Harrier opined that the draft should be amended to allow for no more than 25% of the dwelling or 25% of the accessory structure, not both.

Mr. Manhardt suggested placing an “and/or” at the end of the first line in the subsection to clarify.

Mr. Adams disagreed, noting the requirement for parking business-related vehicles in the garage which may require more space.

Staff discussed the proportionality intent of the amendment and agreed to come back with a revised amendment at the next meeting.

#### **AGENDA ITEM #6 – TRANSPORTATION INFRASTRUCTURE UPDATE**

Mr. Tallarida stated that the PA Turnpike Commission anticipates replacing the bridge over Huckleberry Road in the next five to ten years.

Mr. Hite noted that the Turnpike Commission will be skipping the bridge over US Route 22 for now. He noted that construction on PA Route 309 south of Ridgeview Drive will trigger the placement of an ITS (Intelligence Transportation System) sign in the area, which will carry valuable project messages.

#### **AGENDA ITEM #7 – COMPREHENSIVE PLAN UPDATE**

Mr. Manhardt described the post-Phase 4 Comprehensive Plan process. He stated that the workbooks generated by each Working Group will be forwarded to the Planning Commission, complete with recommendations. The Planning Commission's job will be to resolve conflicting recommendations. He noted that staffs focus will be planning for the impacts of development.

Chairman MacNair reviewed the process for Phase 5, including the resolution of conflicting recommendations, creation of the Future Land Use Plan and the Final Draft of the Comprehensive Plan Update.

Mr. Manhardt agreed with the process as described.

Chairman MacNair noted that the remaining steps would be public notification, review and comment by surrounding municipalities and the LVPC, public comment and then adoption hearings by the Board of Commissioners.

Mr. Hite noted that North Whitehall Township is starting their Comprehensive Plan Update.

#### **AGENDA ITEM #8 – COURTESY OF THE FLOOR**

Engineer Adam Whalen accompanied Rick Molchany to discuss a proposed layout of the intersection of Cedarbrook Road and Dorney Park Road. Engineer Whalen presented a plan and stated that the revised plan shows one driveway entering the intersection and improved sight distances for the right-out driveway. He stated that he added a sidewalk in the area with connections for future consideration.

Mr. Wilson inquired as to the proposed sight distance.

Mr. Tallarida stated that 150 feet of clear sight distance is required for a 25-MPH speed limit. He stated that the right-out driveway is proposed at 182 feet. He also noted that the speed limit at the driveway is 30 MPH, which requires 204 feet of clear sight. He noted that there is a curve warning at that location and that lower speeds are expected for vehicles exiting the intersection. He noted that he personally negotiated the intersection repeatedly and felt comfortable at 20 MPH. He stated that the SALDO Section requires 300 feet of clear sight, which the driveway cannot meet due to property constraints. He stated that he won't speak for the Public Safety Commission on the matter, but they have historically preferred two means of access to a site, particularly one so heavily populated.

Engineer Whalen stated that he will submit a revised plan set for the July Planning Commission meeting.

Mr. Lee Solt of 3731 Manchester road inquired as to a potential connection to the Cedarview complex on the west side of the property.

Mr. Molchany stated that the connection was discounted due to the differentiation of the two facilities. He suggested that such a connection may be confusing to the Cedarview residents who still drive. He suggested creating an emergency-only access at the western side of the complex.

Mr. Solt inquired about the No-Impact/Low-Impact Home-Based Business amendment. He inquired as to the number of employees that would be permitted by the Low-Impact Section.

Mr. Adams stated that the proposed Low-Impact section would permit only one non-resident employee onsite.

Ms. Harrier noted that the Special Exception review may also allow for variances. She noted that the Special Exception review allows for additional conditions to be imposed and placed on the record for future enforcement.

Mr. Adams pointed out that the applicant's testimony would also be on the record.

Mr. Solt inquired about the Comprehensive Plan Phase 4. He inquired as to whether the modelling for the traffic and economic models accounts for stress on the system overall.

Mr. Manhardt stated that it does, but part of the capacity analysis includes the cost of maintenance.

Mr. Solt inquired about 1215 Hausman Road Flex Warehouse. Noting the expanded driveway width, he noted that, in opposition of traffic laws, many trucks encroach into the oncoming traffic lane when making right-hand turns.

Mr. Tallarida stated that truck turning movements are reviewed during the plan review process to ensure that the turning trucks do not encroach in the opposite travel

lanes. He stated that such a review cannot guarantee that individual drivers do not encroach into the oncoming travel lane.

Mr. Solt noted that the Weis driveway onto Winchester Road is a good example of a driveway design that does not allow trucks to make the turn safely.

Mr. Adams reviewed the materials relating to High Cube Warehouses. He reviewed the IC-1 Zoning, noting that it is the only zoning district in South Whitehall that permits warehouses and has a maximum height of 70 feet. He noted that Warehousing and Distribution is a Conditional Use within the IC-1 zone, which allows for an additional review process and additional conditions to be placed on warehouses. He noted that applicants may seek variances before the Zoning Hearing Board, including for exceeding the maximum height limitation, but variances have standards by which they are to be granted. He also noted that there are few parcels left in the IC-1 zone that would be available for warehousing.

Solicitor Zator stated that South Whitehall's Zoning Ordinance with regard to warehousing is strong but not impenetrable. He opined that it should be reviewed and updated to account for the latest warehousing trends. He opined that an applicant could argue that the Township's "Warehousing and Distribution" definition is not sufficiently similar to a High Cube Warehouse and therefore is fatally flawed.

Mr. Wilson opined that it would be good to discuss the matter further.

Chairman MacNair inquired as to other regulations that have successfully dealt with high Cube Warehouses.

Mr. Hite stated that many new regulations have been proposed recently, including some nearly municipalities.

There was a discussion of possible changes versus the status quo.

Mr. Solt inquired as to why the Township can't simply prohibit them.

Ms. Harrier stated that the PA MPC does not permit municipalities to prohibit uses.

Mr. Adams noted that if a developer successfully argues that a High Cube Warehouse is sufficiently dissimilar to the Township's definition of Warehousing and Distribution, they can do a Curative Amendment and essentially write the rules for High Cube Warehouses themselves.

Ms. Harrier inquired as to how this matter fits into the Comprehensive Plan.

Mr. Manhardt stated that staff is looking at the ITE (Institute of Transportation Engineers) as a source for Uses within the Zoning Ordinance. He noted that South Whitehall's Uses don't always line up with ITE's Uses and the ITE could be used to better align the Zoning Ordinance to mitigate impacts of particular Uses.

Ms. Harrier suggested that a new district be created to house similar types of uses.

Solicitor Zator opined that such an approach may work but it may not be the best resolution of the problem. He also noted that the ITE currently is outdated with regard to high Cube Warehouses.

Mr. Hite agreed, noting that it will be two to four years before the ITE has sufficient studies to define the Use.

Mr. Solt inquired as to the percentage of the Township that any given Use is required to be zoned for.

Solicitor Zator stated that there are no such requirements and the Township must rely on interpretation of case law for defensible Fair-Share percentages. He noted that the most important factor in determining Fair-Share is whether the Township is in the path of growth.

Monica Hodges inquires as to how Lower Macungie Township removed warehousing from their zoning.

Solicitor Zator stated that they looked at the situation and took an educated guess.

**AGENDA ITEM #9 – ADJOURNMENT**

Chairman MacNair requested a motion to adjourn at 10:12 p.m. Vice-Chairman Hite made the motion, Mr. Tope seconded the motion and it passed unanimously.

**ADOPTED THIS DATE: June 17, 2021**

**ATTEST:**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Chairman**