

Swarthmore Planning Commission

Meeting Minutes

Meeting Date December 15, 2022

Commission Attendees	Chris DeBruyn – Chair, Acting Secretary David Virgil - Vice Chair Rex Brien Don Jones Nancy Templeton Elizabeth Jenkins	James Levine Steve Minton - Recused Douglas Perry - Recused Doug Harnsberger-Recused John MacCallum
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Also in Attendance

Kristen Seymore Bill Webb Eric Johnson Marty Spiegel	Borough Council Liaison Borough Manager Borough Engineer Mayor
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Meeting Location Park Avenue Community Center

- C. DeBruyn called the meeting to order at approximately 7:35 PM
- **Agenda Item 1** – Approval of November meeting minutes. So moved, seconded, and approved.
- **Agenda Item 2** – Committee Reports: No reports were discussed.
- **Agenda Item 3:** Henderson Stormwater project Approval
 - Chris: Our role in this is to determine if it meets goals set out in the multi-Municipal plan, and provide an approval related to that, so that the borough can search out grant funding for the project.
 - The MMPC includes goals for maintaining and improving stormwater management. This project will improve drainage, improve usability of Henderson field, and should have been completed 75 years ago when the roads were laid out.
 - This is one of the times we are not acting as an advisory body. The project is to provide a drainage connection between a manhole on Forest Ave. and a storm main on “Henderson Way”, by the swim club entrance. The system will both connect the two systems, and provide a large diameter infiltration pipe, which will act to reduce ponding on Forest Ave., erosion and swampy ground on the 2 homes that are adjacent to the manhole, and provide drainage for a swampy part of Henderson field.
 - Motion for approval of a letter recommending and approving the installation of storm water equipment at the Henderson Field area, along with seeking grant funding for the project.
 - The motion was seconded. A showing of hands was requested, all showed in favor.
 - The motion passes.
- **Agenda Item 4:** 110 Park Avenue Land Development Application
 - **Schedule:**
 - Bill Webb detailed the various schedules set up by statute and various agreements:

- The Conditional use application is required by statute to be approved within 60 days from the date the request is received, which creates a deadline on January 28, 2023. Borough Council intends to vote on January 17, a day prior to the January Planning Commission meeting.
- Land Development/Lot Consolidation – the applicant has agreed that the current application period begins with this Planning Commission meeting, and runs 90 days to March 14, 2023.
- If Borough Council fails to take action on either application within the time limits, the respective application will be “deemed approved”.
- **Presentation**
 - 110 Park Conditional Use Approval, Land Development and Lot Consolidation
 - Don Petrosa, Bill Cumby Jr., Bill Cumby III, Dave Damon, Al Federico
 - Don P. introduced the project and team.
 - Bill Cumby Jr. briefly discussed some changes to the plan, and the timeline and conversations that brought the change about, including discussions with Doug Harnsberger.
 - Bill Cumby III
 - Noted that 110/12 Park was a residence converted to office condominiums, and appeared to be different from other buildings located in the Town Center district.
 - Noted that 75% of the parcels in Town Center were listed in the Historic Survey, and that the ordinance specifically made provisions to allow demolition of buildings listed on that survey.
 - Described the project more in depth, showed the various revisions to the plan made since the previous presentation
 - The revised plan retains the front half of 102/4 Park which does contribute to the character of town center.
 - Public space added adjacent to the sidewalk.
 - Outdoor space for the building tenants added.
 - Significant reduction in apparent massing
 - Ground level setback from street @ 102/4 Park
 - Façade step-backs beyond those required by the TC design standards.
 - Porches @ corners to further reduce the massing impact and provide private outdoor space for residents.
 - Reduced from 36 to 30 dwelling units.
 - James asked if the ground level public space was open to the public, Bill III clarified that the public space was primarily adjacent to the sidewalk, and that the areas further back into the lot were intended to be for resident use, although there were not current plans to fence or gate them off. He noted that an area noted as current public space by some commenters is behind a locked gate at present. He also noted a retaining wall at the property sideline/alleyway behind the 102 Park building that remains as a design issue they are working on.
 - Rex reminded the applicant’s counsel that the demolition of a building of historic value, as is proposed here, may not be permitted unless the applicant establishes, inter alia, that the demolition will not

have a substantial negative effect on the character of the Town Center, under Section 1256.06(a) of the Borough Ordinance. Rex noted that this condition precedent is not met merely by having a witness state that he/she does not believe the demolition will have a substantial negative effect on the character of the Town Center, without substantiation, or by arguing that it is difficult “to prove a negative”. We are not free to ignore the Borough Ordinance as written.

- Don P. noted that due to the difficulty of proving, in particular, “that the development did not substantially degrade the character of the Town Center”, it was not clear who had the burden.
- Chris noted there are no legal rules of evidence in this meeting, and that it was the applicant’s burden to make a case for the project, and any opposing groups burden to make a case against. It is the role of the Planning Commission to make the decision as to the adequacy of both the applicant’s case and any opposition to the plan.
- Pennoni Letter:
 - Dave Damon – In general, Pennoni comments are acceptable and the applicant will comply.
 - Fire Marshal
 - Rex asked if the fire marshal had provided comments.
 - Bill Cumby Jr. noted that they had met and the only concerns were regarding the potential location of site items due to interference with fire equipment. Otherwise, he had no negative comments at this level of design.
 - Rex noted that given the serious consequences of a fire, the applicant should fully document its discussions with the Fire Marshall and provide a final, written sign-off by the Fire Marshall. In addition, the acknowledged remaining questions regarding fire equipment access must be fully resolved before approval of the application may be granted.
 - Traffic Study
 - Al Federico presented the traffic study, and noted that it was an adjustment of the original study, a partial count of traffic within a designated radius from the site.
 - While the original traffic counts were conducted during COVID and the volume was likely suppressed, a PENNDOT (temporarily) approved multiplier to adjust traffic counts had been applied. Additionally, he reviewed more recent traffic study which had been conducted for a separate project. The counts of the recent study were lower than the adjusted counts for the study in question, leading Al to believe the adjusted counts were not unfairly low.
 - Al stated the adjusted study concluded that overall traffic impact for the project would not require any mitigation.
 - The applicant requests a waiver to accept the adjusted partial traffic study as acceptable. Al noted that due to the very low impact calculated from the data collected, counting traffic at the full (ordinance required) ½ mile range would not provide any additional insight, and would not alter the conclusions of the study. Chris noted that the study was conducted about a year ago, and the applicant had opportunity to pursue an approval for this partial study prior to this late date. Al noted that they had requested this

- approval from the borough, but had not received a response. Chris noted that the applicant should understand that they were proceeding at their own risk.
- Al presented a turning radius diagram relating to ingress and egress from the building parking area for the first time during the meeting and acknowledged that review and approval by the Borough Engineer was required.
- Chris asked if the parallel parking scheme for Park Avenue included in the traffic report was intended to be part of the approval or was to be disregarded as part of this process.
- The applicant stated that a revised parking scheme on Park Avenue was not a requirement of the project, but that they were willing to work with the borough if they are interested in considering options.
- Delaware County Planning Review
 - The report notes various approvals and requirements that the applicant stated are in progress and/or will be complied with, in collaboration with the Borough. The report provides some guidance for the design team, recommends structuring the roof to provide the ability to install Solar panels at some point, recommends changing the parking on Park Ave to “back-in angle” parking from the “front-in” angle parking currently in place.
- **General board discussion of the project.**
 - Nancy asked about how driveway notification was to be implemented. Bill III noted that there were 2 flashing bollards on the plan to indicate exiting cars. Nancy noted that didn’t seem like a great solution,
 - Bill III replied that it was just the next choice after eliminating the idea of sound based notifications, and that they were open to discussion on notification methods.
 - Al noted that there are multiple similar conditions in Town Center at present, most with no notification, some have mirrors, some have warning signs to the drivers.
 - Rex noted that there would be substantially more deliveries for a 30 unit building housing high income residents, and noted that Park Ave is “narrow to begin with”. The December 11, 2022 Borough Engineers report states that “[i]n addition to the proposed commercial store fronts, the applicant has acknowledged that the proposed residential units will create increased delivery truck demand on Park Avenue; however, the site plan does not provide any accommodations for increased commercial and residential delivery traffic.” Rex noted that the applicant’s response to the Pennoni letter merely states that “[a]s previously noted, it is anticipated that deliveries will occur in a manner consistent with deliveries to the existing properties within the Town Center,” which essentially is a non-response. This issue must be resolved as a condition to approval of the land development application.
 - The applicant replied that they are not aware of any studies or data that indicate that to be a problem, the buildings in place are commercial/mixed use and receive deliveries.
 - Al noted that Park Ave is “far from the narrowest of streets in Swarthmore, with a wide cartway.”
 - Al stated he did not believe the delivery question is required to be addressed specifically as part of the code.
 - Eric Johnson, Borough Engineer noted that he included the note as a topic of discussion, not as an item requiring compliance.
 - General comment that deliveries to building with an accessible delivery location generally had shorter dwell times and could lead to faster delivery times.
- **Public comment**

- Beth Fitzsimons – 813 Westdale - Concern with trucks as a safety issue as they park on sidewalks.
- Alison Manaker – 211 College Ave – showed image of massing. Character of the town center is important, including scale, massiveness etc. Scale and aesthetics of the project violate the character of the town center. The subjective opinion of the developer should not matter more than the opinion of members of the community.
- Judy Farley 107 Rutgers Ave. – Massive building thanks for the improvements to the plan. Concerned about melting snow on adjacent building roofs. TC zoning should reconsider setbacks at building rear. Concerned about delivery trucks.
- Jennifer Baker 306 South Chester Road – will totally destroy the character of downtown. Will look like every other generic suburb.
- Susan Wright - 147 Park Ave Swarthmore – Refer to email sent 12/15/2022 to Planning Commission.
- Lorraine Boudreaux – 420 Rutgers - Believe that opponents of the project want a town where no shade is allowed, where people have to move out of town to downsize, and where increased foot traffic in town is discouraged- Development would benefit local businesses
- Chris Kenney 321 Park Ave. – SOS Member. - Save Our Swarthmore did not receive all materials concerning the project – only small drawing and not much additional information - Building height is inconsistent with 45' height limit currently under consideration - Delco Planning Department believes that lower height limit will be more in line with existing structures - Concerned about single-lane driveway and location near the PAC center and the ballet school. Concerned about the combined preliminary/final approval process.
- Catherine Chappelka for Melanie Rodbart – 620 N. Chester Road for Melanie Rodbart Nothing to do with the community. Traffic Study is magical thinking.
- Brock Porch 111 Columbia Long term resident. Not many residential options for people with mobility limitations in Swarthmore. 30 units that will be 100% accessible for HC or impaired people is a community improvement. The project will improve accessibility in Town Center.
- Jeannette Howe – 107 Rutgers – Generally in support of the project.
- Howard 114 Park – Reference to the public speakers at the last public meeting. Not hearing much in support of the conditional use request. Questions about compliance with: parking and trash? Utility lines? Deliveries. Suggested to relocate the driveway entry to the side alley. Concern about the fire review.
- Shannon Eliot 523 Cedar Lane – - If this plan is approved, more consideration should be given to how to address delivery trucks - Lots of delivery trucks stop and idle on Park Avenue - Pro-development but that the Borough is doing a great job with business development without this project - Believe changing from 5 to 4 stories would be an improvement
- Billy Hodges 123 Princeton – Moral obligation to build smart dense sustainable housing near our transit hub. Solving Amazon is not the developer's problem.
- Scott Chappleka – 620 N Chester Road. - Development (including scale) should be consistent with the character of the town – Does not believe that the benefit to the town is worth the damage to the town
- Cordelia Delson - Will be a miracle if the developers break even on the project - Built townhouses on Dartmouth Avenue and lost a lot of money
- **Environmental Advisory Committee**
 - The EAC indicated that it had reviewed the project, and requested that plantings and trees be Southeast PA Native species.
- **Discussion**
 - Don J. Alison's 3d massing model is not fair for several reasons, not least that it's not possible to determine if the dimensions are accurate.

- Chris:
 - Explained his position on the project: I don't believe that people move to Swarthmore because of the beauty of Town Center. They come for the College, or the great schools, or proximity to Philadelphia, the train station, and of course the community, and recently the buzz of activity in Town Center. The character of Swarthmore is not in the buildings of Town Center. Nobody moved here because of the town center. It's not a classically beautiful town center... This an urban Pennsylvania inner-ring suburb, and it's been well-used. And we're trying to make it better. And in my lifetime here, we've made it significantly better. And I think this is another step in the process. He noted that he is in favor of the project primarily because Swarthmore has a moral obligation to lead on sustainable development because of its location on a commuter rail line serving Philadelphia. The opportunity to provide housing for 30 families on a very small lot adjacent to a transit hub, is massively sustainable, particularly if compared to the 30 single family homes on ex-farm land or forest, all of which will require extensive automobile usage, that it is displacing.
 - Adding 30 living units to town will not destroy its character.
- Rex:
 - In favor of the project, not if in favor of 5 stories. Should be 4.
 - The current plans are inconsistent with, and detrimental to, the visual character of the surrounding buildings and architectural scale of the Town Center.
 - Downtown has great architectural and historic character, which is precisely why the applicant wants to build there.
 - Suggests that all open questions and conditions should be resolved by the applicant before submission of a final plan for review.
 - The applicant has failed to meet its burden of proof under Section 1256.06(a) of the Borough Ordinance, thus precluding approval of its conditional use application. Moreover, approval of the conditional use application would be inconsistent with the Borough Comprehensive Plan and "the spirit, purpose, intent and provisions of [the] Zoning Code," as expressed in Sections 1256.01(b), (c), (d) and 1264.11(e) of the Borough Ordinance.
 - The Borough is obligated to preserve its historic buildings and "shall conserve and maintain them for the benefit of the people", pursuant to Sections 1280.02(g), 1280.03, and 1293.01(a) of the Borough Subdivision and Land Development Code (which reference and quote Article 1, Section 27 of the Pennsylvania Constitution). See also Section 10603(g)(2) of the MCP.
- Waiver to combine the preliminary and final approvals.
 - Rex:
 - noted that the applicant's written request for a waiver "from Section 1286.06 to submit a Preliminary / Final Plan in lieu of a Preliminary Plan" failed to "state in full the grounds and facts of unreasonableness or hardship on which the request is based", as is required under Section 512.1(b) of the MCP.
 - Noted that the requirement of a preliminary plan for land development applications such as this is mandatory under the Borough Ordinance (see Sections 1286.01(c)(2) ("mandatory"); 1286.06 ("shall be required"); and 1286.09 ("In the case of major subdivisions and land divisions, the final plan shall not be submitted until all conditions required by the preliminary plan approval have been met.")).

- Rex noted, and the applicant’s solicitor acknowledged, that under Section 512.1(a) of the MCP, the Borough is authorized to grant a waiver only if the applicant establishes that “the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question.” Rex noted that, nevertheless, at no time during the meeting did the applicant present any evidence or argument to support its waiver request. Accordingly, granting the waiver request would be ultra vires (meaning acting beyond one’s legal power or authority).
- In response to the applicant’s counsel’s comment that such waivers are typically granted for college projects, Rex noted that the applicant is essentially asking that the mandatory preliminary plan provisions be written out of the Ordinance and that given the substantial nature of this land development application, the multiple conditions raised, and substantial public concern, waiver of the mandatory preliminary plan requirements would not be appropriate, even if the applicant had met its burden of proof under Section 512.1(a) of the MCP.
- Don P noted that the distinction between preliminary and final is the amount of detail, if “final” level of detail is provided, having the second meeting does not add value. Waivers are routinely granted throughout the Commonwealth.
- Chris noted that the Planning Commission routinely recommends approval of combining preliminary and final submissions into a single vote, and that our action is a recommendation to the borough council to combine the presentations, not an approval of that request.
- **Motion to vote**
 - Motion:
 - “Planning Commission recommends approval of the Land development application, lot consolidation and conditional use request
 - Including:
 - A waiver to combine the approval process into a preliminary and final review
 - A waiver of the requirement for a full traffic study:
 - Subject to:
 - Satisfaction of comments from the borough engineer
 - Trees to be replaced with native Southeast PA species.
 - Fire Marshall Review
 - Review of traffic exit turning diagram provided by Al Federico.”
- Notes: Chris noted that there are no alternate members voting, so there is no question about who on the commission should vote. The quorum for the PC is 3 members. 1 commission member is not present, 2 are recused. One alternate is recused, one is not present. There are 6 eligible voters, 5 voted in favor of the motion, 1 voted in opposition to the motion.
- The motion passes.

Member	Vote
Elizabeth Jenkins	Not Present
James Levine	Yes
Chris DeBruyn	Yes

Steve Minton	Recused
Rex Brien	No
Don Jones	Yes
David Virgil	Yes
Nancy Templeton	Yes
Doug Perry	Recused
John MacCallum - Alternate	Not Present
Doug Harnsberger- Alternate	Recused

The meeting adjourned at approximately 10:15 PM.

NEXT MEETING:

The next scheduled meeting is scheduled for January 18, 2022 at Swarthmore Borough Hall.

End of Meeting Minutes