



**UPPER MACUNGIE TOWNSHIP
PLANNING COMMISSION
MEETING MINUTES**

August 17, 2022

I. CALL TO ORDER/PLEDGE TO THE FLAG:

Meeting called to order at 7:00 PM by Chairman Charles Deprill

MEMBERS PRESENT: Chairman; Charles Deprill, Vice Chairman; Paul McNemar, Kim Snelling, Tim Helmer, Aubrie Miller

STAFF PRESENT: Director of Community Development; Daren Martocci, Planning & Zoning Specialist; John Toner, Township Engineer; Dave Alban, Township Solicitor; Andrew Schantz, Permits Clerk; Roxann Colfer

Chairman Charles Deprill opened the meeting and asked all present to join him in the Pledge of Allegiance to the Flag of the United States of America. Chairman Deprill asked if there was any action necessary for pending projects in review. J. Toner stated not this evening and updated the Planning Commission on current timelines for projects.

II. ACTION ITEMS:

P. McNemar asked if Staff could look into a motion made on Docket No. 2324: Glenlivet Drive Ext. & Residential Subdivision. He recalled a conversation regarding having parkland dedicated to the Township that the developer of that project currently owns and thought that was included in the motion made to the Board of Supervisors to consider. J. Toner said he would look into it to confirm before posting the minutes.

T. Helmer made a motion was made to approve the July 20, 2022, meeting minutes with the condition that if Staff needs to make a correction to do so before posting the minutes. It was 2nd by A. Miller and the motion passed unanimously (5-0).

III. PLANNING DOCKET REVIEW TIMETABLE:

Projects in Review		
Docket	Project	90 or 45 Day Period <i>(MPC Section 508)</i>
2343	121 Nestle Way & 8361 Schantz Road – Sketch Plan	N/A
2326	Carriage East – Preliminary Sub/LD Plan	8/12/2022
2330	Taco Bell – Prelim/Final LD Plan	8/22/2022
2202	6500 Chapmans Road – Land Development	8/24/2022
2305	5239 W Tilghman Street Addition – Land Development	9/7/2022
2324	Glenlivet Drive W Extension & Subdivision – Sub/LD Plan	9/10/2022
<i>*2328</i>	<i>Millipore Sigma Distribution Center – Prelim/Final Land Development</i>	<i>9/10/2022</i>
2317	1001 Glenlivet Drive – Prelim/Final Land Development	9/12/2022
2341	Newtown Road Subdivision – Prelim/Final Subdivision	9/13/2022
2335	8451 Hamilton Boulevard – Preliminary Land Development	10/18/2022
2339	Air Products Redevelopment of Cetronia Road Site – Preliminary Land Development	10/24/2022

**Projects being heard in August*

IV. PLAN REVIEW

- A. **#2328 Millipore Sigma Distribution Center, Preliminary/Final Land Development Plan, 7034 Ambassador Drive**, the applicant is proposing the construction of a 154,000 sqft warehouse, associated parking, and stormwater management facilities at the site. The project is located within the Township's LI – Light Industrial Zoning District. *(Waivers & Deferrals Only)*

J. Toner explained the proposed plan noting that the Planning Commission has seen this plan before citing a Sketch Plan submission and the Preliminary/Final Submission they see this evening. He also explained that the applicant has received the required Special Exception for this proposal at July 13, 2022, Zoning Hearing Board Meeting. One of the conditions of the Special Exception is to abide by all Federal, State and Local Laws, which includes Township Ordinances. The applicant is requesting several waivers from the Township SLDO. If not granted, the applicant must comply with the ordinance or go back before the Zoning Hearing Board to amend their Special Exception. J. Toner added that although Staff performed a full land development review on this submission, the Planning Commission should only make recommendations on the requested waivers this evening if they choose to do so.

Chris Williams, Barry Isett & Associates, represented the plan as the applicant's engineer. He reiterated some of what J. Toner explained and asked the Planning Commission if they would want to go through each waiver and the justifications for them. The Planning Commission listened to the justifications for each waiver noting that Township Staff & Engineer have reviewed the requests and are in support of the requests based off the justifications listed in the application.

D. Alban did point out the changes that the applicant made based off previous Planning Commission comments which including extending curbing along the access drive further into the lot and extending the internal sidewalk up to the existing LANTA Bus Stop sign on the frontage of the property.

Chris McLean, Fitzpatrick, Lentz & Bubba, spoke on behalf of the applicant asking if the Planning Commission would consider making a recommendation on the plan itself so the applicant can continue moving forward. A. Schantz explained that he would advise the Planning Commission that they should hold off on making a recommendation on the plan as part of the final submission is to have cost estimates for financial security, draft agreements and other requirements into the Township which the Township does not have yet. D. Alban agreed and noted that there are also some minor cleanup items on the plan as well. D. Martocci added that the because of the Special Exception that is in play with this application, the waiver should be granted first. The Planning Commission did a similar, if not identical process, for the Sheetz application and most recently the Redevelopment of Air Products, he would be hesitant to have a recommendation for the plan itself be made. The Planning Commission and C. McClean agreed.

- P. McNemar made a motion to recommend to the Board of Supervisors approve the following waiver requests based on comments found in a letter from the Township Engineer, Dave Alban, dated August 15, 2022:

1. A Waiver from Section 22-503.1: to allow the applicant to submit the plan as a combined Preliminary/Final plan.
2. A Waiver from Section 22-703.3.D(1): to allow the applicant to utilize a smaller curb radius of 25' to tie into the existing adjacent driveway.
3. A Waiver from Section 22-704.9(C): to allow the applicant to not install curbing on the north side of the car parking lot.
4. A Waiver from Section 22-705.3(F): to allow the applicant to not extend the sanitary sewer line across their road frontage as required.

The motion was seconded by A. Miller. The motion passed 5-0. There was no public comment.

- P. McNemar made a motion to recommend to the Board of Supervisors approve the following deferral request based on comments found in a letter from the Township Engineer, Dave Alban, dated August 15, 2022:

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1. A deferral from Section 22-704.9(A): to allow the applicant not install sidewalk and curbing along their road frontage until a time when the Township deems it appropriate.

The motion was seconded by A. Miller. The motion passed 5-0. There was no public comment.

V. OTHER BUSINESS (14:20)

A. Zoning Hearing Board Advisory Review Request: 253 Lenape Trail Fence Placement

J. Toner explained that the property owner at 253 Lenape Trail applied for a fence permit, which the permit was denied as a 25' Conservation & Open Space Easement exists on the property and exists on other properties within the Olde Town Development. The property owner claims that neighboring properties have not abided by the easement and have placed other structures within this easement (some without Township knowledge). The Zoning Hearing Board requested that the applicant speak to the Planning Commission, as is their right to do so, before making a decision to get their opinion on if the easement as it exists today functions as it did when originally approved in the early 1990's.

D. Martocci noted that this development utilized the Cluster Development Ordinance which no longer exists, it has been replaced by the Conservation by Design Ordinance. The developer was allowed to use smaller lots to preserve more open space on the land. The strip of land in question is not a common area of the development but did abut an open field at the time, assumingly farmland which has since been developed. He continued by saying that if this was a newer development that had active covenants, he would suggest the Planning Commission take a closer look at it, however in this case Staff doesn't see a reason to make a recommendation to the Zoning Hearing Board other than that it is recognized that the easement has been encroached upon over the years.

P. McNemar asked if this is a recorded subdivision plan, with an easement, how can there be zoning relief from this easement? And how does it work with every other property in this development? D. Martocci said that the Zoning Hearing Board may grant relief when it involves an easement on a property. A. Schantz explained that he understands that in the Zoning Officer's opinion, the Zoning Hearing Board could grant relief however the covenants on the plan may still prohibit the fencing. He also stated that the property owner's attorney has stated that the easement had a time expiration on it, however he has not seen that language.

The property owner's attorney, Jim Lavelle, explained that there is language within the original deed that states that the easement would expire within five years unless the HOA chose to extend the timeline by a resolution. A. Miller asked if he had a copy of the original deed, the property owner handed a copy of the deed to the Planning Commission for their review. There is language that states the five-year limitation on the easement. He also noted that in the Zoning Officer's opinion, he referenced the Conservation Area definition in the zoning ordinance. In J. Lavelle's opinion, that definition does not match what this area currently is. K. Snelling noted that she thinks there is two issues here of the ambiguity of the deed language and the fact that other property owners have erected other structures within this easement. P. McNemar asked if the Zoning Hearing Board has granted other relief for structures, some larger than a fence, why is this issue before the Planning Commission. D. Martocci explained that the Zoning Hearing Board has the right to request an advisory review under the ordinance. He noted that if a newer development that follows the Conservation by Design Ordinance has same issue, he would want the Planning Commission to take a closer look at those in the future because the Township has control over those easements rather than an HOA.

There is language in the deeds that states the five-year limitation on the easement. The property owner explained that he was aware of this language and had waited to see if the HOA would renew this easement before installing

any structures. Chairman Deprill stated that considering the recorded deed that we know now of this is a Township Staff and possibly legal issue at this point and not a Planning Commission issue. J. Lavelle, understands the issue however his concern is that the Zoning Hearing Board's decision would not be in favor of his client if the Planning Commission does not weigh in. A. Miller asked if they could stay neutral. T. Helmer stated he was leaning towards neutral as in his opinion, the easement was originally there to protect some of the vegetation and even farmland at the time however isn't serving that purpose anymore. P. McNemar is in the opinion that they cannot make a recommendation because of the legality of the issue and if anyone else has the right to that issue.

A. Miller asked if the property owner contacted the HOA to see if they had a resolution in their files that could clear this issue of if the easement expired. He stated that he has been to most HOA meetings and cannot recall any motion to keep the easement and has not seen mention of it in the minutes of the HOA minutes. In A. Miller's opinion, that would be the missing piece of information needed to make a recommendation. Chairman Deprill said that if there was a property management company in existence, they may have that information.

Chairman Deprill made a motion to remain neutral as this is the outside of the Planning Commission's prevue and send it back to the Zoning Hearing Board. The motion was not seconded. The motion died.

A. Schantz added that the motion could simply be that the Planning Commission has reviewed the request and has no comment if they so choose too. The property owner stated that it was his understanding that if the Planning Commission recommended a neutral or positive comment back to the Zoning Hearing Board, the relief would most likely be granted, and if they recommended not to have it in the easement, he would most likely not get the relief. D. Martocci searched for the official transcript of that Zoning Hearing Board Meeting. A. Schantz stated that it seems from the transcript that the Zoning Hearing Board is seeking advise from a purely planning standpoint, taking the legality out of it for a moment, does the easement as it exists today serve the same purpose as it did in the early 1990's when it was established; that is what the Planning Commission should be looking at.

P. McNemar made a motion that the Planning Commission has reviewed this issue and supportive materials and will choose not to render an opinion on the matter. Chairman Deprill seconded the motion. The motion passed 5-0.

K. Snelling made a motion to adjourn the meeting at 7:57 PM. The motion was seconded by P. McNemar and passed 5-0.