

**EAST GOSHEN TOWNSHIP  
PLANNING COMMISSION  
Workshop Meeting Agenda  
Wednesday, May 4, 2016  
7:00 PM**

- A. Call to Order / Pledge of Allegiance and Moment of Silence
- B. Chairman will ask if anyone is going to record the meeting
- C. Review of Tracking Log / Determine need for Workshop Meeting**
- D. Public Comment on Non-Agenda Items
- E. Approval of Minutes**
  - 1. April 6, 2016**
- F. Subdivision and Land Development Applications
- G. Conditional Uses and Variances
- H. Ordinance Amendments
- I. Old Business**
  - 1. Zoning Ordinance Recommendations**
- J. New Business
- K. 2016 Goals**
  - 1. Objective 6.2 / 2015 Comp Plan**
- L. Any Other Matter
- M. Liaison Reports
- N. Correspondence

Newsletter Deadlines for 2016:

**Fall: August 1, 2016 to be delivered the 3<sup>rd</sup> week of September**

**Bold Items indicate new information to review.**

East Goshen Township Planning Commission  
Application Tracking Log

Application Name	Application (CU,LD,O, SD,V, SE, CA	Type (Sk, P, F)	Date Filed	Start Date	Date to Township Engineer	Date to CCPC	Date to Abutting Prop. / ABC's	Extension	PC NLT Action Date	BOS NLT Action Date	Hearing Date	Drop Dead date	Comments
NONE													
<b>Bold = New Application or PC action required</b>													

**Completed in 2016**

<b>943 Cornwallis Drive</b>	SD/LD	P/F	2/16/16	3/2/16	2/17/16	2/17/16	2/18/16	NA	5/11/16	5/31/16	NA	5/31/16	
<b>1325 Boot Rd. / SSPP Church</b>	V	S	3/8/16	3/8/16	NA	NA	3/30/16	NA	<b>4/6/16</b>	4/5/16	4/28/16	5/7/16	
<b>814 N. Chester Rd. / Goshen Friends School</b>	LD	S	2/25/16	3/2/16	NA	NA	2/26/16		NA	NA	NA	NA	APPVD.
<b>1420 E. Strasburg Rd.</b>	SD/LD	Sk	1/26/16	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
<b>930 N. Chester Rd. / Gary and Paula Moore</b>	SD	P/F	10/23/15	11/4/15	10/26/15	10/26/15	10/28/15		1/13/16	2/2/16	NA	2/2/16	APPVD.
<b>942 Cornwallis Drive / Gionfriddo</b>	SD	P/F	11/25/15	12/2/15	11/25/15	11/25/15	11/25/15		2/3/15	3/1/15	NA	3/1/15	APPVD.

**Draft**  
**EAST GOSHEN TOWNSHIP**  
**PLANNING COMMISSION MEETING**  
**April 6, 2016**

The East Goshen Township Planning Commission held a regularly scheduled meeting on Wednesday, April 6, 2016 at 7:00 p.m. at the East Goshen Township building. Members present were: Co-Chairman Lori Kier, Jim McRee, Dan Daley, Dan Landis and Brad Giresi. Also present was Mark Gordon, Zoning Officer and Janet Emanuel, Supervisor.

**COMMON ACRONYMS:**

<i>BOS – Board of Supervisors</i>	<i>CPTF – Comprehensive Plan Task Force</i>
<i>BC – Brandywine Conservancy</i>	<i>CVS – Community Visioning Session</i>
<i>CB – Conservancy Board</i>	<i>SWM – Storm Water Management</i>
<i>CCPC – Chester Co Planning Commission</i>	

**A. FORMAL MEETING – 7:00**

1. Lori called the meeting to order at 7:00 pm. She led the Pledge of Allegiance and a moment of silence to remember our troops.
2. Lori asked if anyone would be recording the meeting and if there were any public comments about non-agenda items. There was no response.
3. Lori reviewed the Tracking Log and determined no need for a workshop
4. Lori noted that the minutes of the March 2 and March 16, 2016 meetings were approved.

**B. ORDINANCE AMENDMENTS**

1. Pool Setback Requirements for Single-family Open Space Developments - Mr. and Mrs. Robbins, 905 Sorrell Hill, and attorney Brian Nagel were present. Brian thanked the Commission for moving this agenda item to be heard first. He mentioned that some neighbors were present at the March 16, 2016 meeting. He agrees with the revised amendment that Mark Gordon is recommending and asked the Planning Commission to approve and move it on to the Board of Supervisors.

Jim had four items he wanted to discuss;

Sec. Q 1 line 1 – “where applicable” replace with “...if a regulated building setback line exists, the edge....”

Sec. Q 1 Exception, line 3 – “abuts” was discussed but no change was made.

Sec. Q 1 Exception, line 6 - “.. and at least..” change to “and at least 25 feet from any principle structure not owned by the applicant which exists as of the date of permit issuance.”

Sec. Q 2 line (5) – Drainage of pools was discussed.

Jim made a motion to recommend that the Board of Supervisors consider amending the accessory use requirement for swimming pools, §240-32.Q with amendments discussed, adding an exception for pools constructed within Single-family open space developments due to the reduced lot sizes and surrounding open space. This will permit a normal size swimming pool to be constructed on residential lots within single-family open space developments while still maintaining an ultimate setback of 25 feet to the boundary of the Single-family open space development. The existing ordinance requirement for pools essentially prohibits standard size swimming pools within Single-family open space developments. This will permit equitable use of swimming pools as an accessory use for property owners within single-family open space developments. Dan L. seconded the motion. The motion passed unanimously.

**C. SUBDIVISION & LAND DEVELOPMENT**

1. 943 Cornwallis Drive (Subdivision/Land Development) – T R Moser was present. Mr. Moser reviewed the revisions to the plan. He met with the Conservancy Board who recommended a list of plants proposed for landscaping be included on the final plan and a landscape plan be included with the building permit application. He mentioned that he received a comment letter from the Township Engineer today.

1 Lori made a motion to recommend that the Board of Supervisors grant the requested waivers and approve  
2 the final subdivision plan for 943 Cornwallis Drive with the following conditions:

- 3 1. The applicant shall list the proposed varieties and number of plants proposed for landscaping  
4 on the final plan.
- 5 2. The applicant shall correct the waiver requests to reflect the correct ordinance sections.
- 6 3. Landscape plans for each lot shall be submitted to the Township along with the building  
7 permit application. The Township staff will confirm that the proposed plantings are not  
8 invasive species, the trees proposed are listed on the Township Recommended Tree Species  
9 List (Resolution 2015-20) and that the landscaping is installed prior to issuance of a use and  
10 occupancy certificate.
- 11 4. In consideration of the Street Tree Waiver (205-62), each individual lot landscaping plan  
12 shall include two trees that meet the street tree requirements and those trees shall be planted  
13 outside the proposed street right of way as depicted on the plan.

14 Jim seconded the motion. Discussion about Storm Water Management resulted in the following  
15 amendment to the motion:

- 16 5. Applicant shall submit to the Township Engineer for review and approval a final revised  
17 storm water management plan.

18 Jim seconded the amendment to the motion. Dan Daley abstained because he works for the applicant's  
19 engineering firm. The motion passed unanimously.  
20

#### 21 **D. CONDITIONAL USES AND VARIANCES**

22 1. 1325 Boot Road – Dimensional Variance Application. Ss. Peter & Paul Church was  
23 represented by Daniel Bush, attorney and CYO Board member; John Callahan, School Board Member;  
24 Brian Wilcox and Ralph Betts, CYO members. Dan Bush explained that they currently have 2 sheds on  
25 the property. One is for the facilities department and the other is for the CYO to store equipment. They  
26 need a 3<sup>rd</sup> to store sports equipment and maybe have a small concession stand. Janet mentioned that she  
27 has received calls from the Hershey's Mill residents whose properties back up to the church property  
28 voicing concern about the refreshment stand use. Dan explained that the season games are all played after  
29 school, not evenings or weekends. They only plan to have water/Gatorade in a cooler and some candy  
30 bars so parents don't have to drive to the Wawa. Post season games are played at a high school. They  
31 met with the Hershey's Mill management staff to explain their plan and they will do some landscaping  
32 along the fence behind the sheds. The proposed shed is 12' x 24' (288 S.F.) and the proposed setback is  
33 20 feet. It would be placed next to the other sheds. There is no other space on the property for it and  
34 impervious coverage was discussed. After discussion, Jim made a motion that the Planning Commission  
35 recommend that the Board of Supervisors take No Position on the dimensional variance request  
36 application of Ss Peter and Paul Church for the proposed shed. Should the Board of Supervisors choose  
37 to support the request, the following conditions are recommended:

- 38 1. The shed shall be placed 20 feet or more from the rear property line and no closer than the  
39 two existing sheds in the immediate vicinity as depicted in their application.
- 40 2. Evergreen trees shall be installed to create a visual screen from the adjoining properties for all  
41 3 sheds.

42 Lori seconded the motion. Dan abstained since he is a member of the Church. The following  
43 amendments were added to the motion:

- 44 3. There will be no plumbing or exterior lighting.
- 45 4. There will be no food concession from the shed.
- 46 5. They must meet impervious space requirements.

47 Lori seconded the amended motion. The motion passed unanimously.  
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1 **E. 2016 GOALS**

2 The Commission tabled discussion until next month. Mark mentioned that the Board of  
3 Supervisors approved the request for him to pursue grants. He has started that process.  
4 Brad met with the Futurist Committee. He showed the before and after renderings he developed for the  
5 entrances on Paoli Pike to the Town Center and lighting, buffers, crosswalks, landscaping, etc. along  
6 Paoli Pike.  
7

8 **E. ADJOURNMENT**

9 There being no further business, Lori moved to adjourn the meeting. Dan Landis seconded the  
10 motion. The meeting adjourned at 9:30 pm. The next regular meeting will be held Wednesday,  
11 May 4, 2016 at 7:00 pm.  
12

13  
14 Respectfully submitted, \_\_\_\_\_  
15 *Ruth Kiefer, Recording Secretary*

# Memorandum

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East Goshen Township  
1580 Paoli Pike  
West Chester, PA 19380  
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E-mail: [mgordon@eastgoshen.org](mailto:mgordon@eastgoshen.org)

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Date: 4/29/2015  
To: Planning Commission  
From: Mark Gordon, Township Zoning Officer  
Re: Zoning Ordinance Review Recommendations

Commissioners,

Here are the items identified in **Articles I-IV** in the Review of the Zoning Ordinance that either pose some inconsistencies or require some clarifications in the code. I made the suggested improvements to the matrix as discussed; removed the priority column and clarified some of the recommendations.

I suggest we review these recommendations and forward them along to the Board for consideration.

## **Article V Supplemental Regulations:**

There was a lot of discussion on this article, however because of its length it the PC had a difficult time pulling together a complete list of recommendations. My thought was to work on one section at a time as a group. I have included the first section of the article, SIGNS, for your review so that we can begin to develop a clear outline of recommendations to present to the board. Please read and we can begin or discussion on SIGNS.

## **Draft Motion:**

**Mr. Chairman, I recommend that the Planning Commission forward our ZO amendment recommendations for Articles I – IV to the Board of Supervisors for their consideration.**

# East Goshen Township

## Planning Commission Review of the Zoning Ordinance CH 240

### Zoning Ordinance Recommendations

4/28/2016

#### Article II Residential Districts

Title	Section	Issue	Recommendation
Animal Husbandry	9.B(2)	Animal Husbandry is listed as accessory use however referred to as requiring conditional use approval in the R-2 [240-9.B.(2)]. As I read the ordinance closely I believe that there are substantial inconsistencies and find the code nearly impossible to interpret.	All aspects of this ordinance be amended to be more readable and enforceable. The PC should develop a clear and simple objective to communicate to the Board that would encompass the use across the Zoning Ordinance. Once a clear objective is established the solicitor could draft an amendment for review.
	6	There are two definitions of Animal Husbandry in 240-6 that need consistency.	This needs to be included in the review of Animal Husbandry. Look at the applicability of this use in the R-2 and R-4. The use could be permitted for all Residential districts as long as a clear definition and standard is outlined for setbacks, etc.
			a. Look at the applicability of this use in the R-2 and R-4
			The use could be permitted for all Residential districts as long as a clear definition and standard is outlined for setbacks, etc.
Temporary Structure	6	There is no Definition in the ordinance for "Temporary Structure"	Recommendation: We could add a definition for temporary structure which includes a finite period of time. We could specify that a permit is required for the temporary structure and a permit shall only be valid for a defined period of time.
			Webster's online Definition of Temporary: lasting for a limited time

## Zoning Ordinance Recommendations

### 4/28/2016

Temporary Use	6	"Temporary Use" is identified in the ordinance and it is also not defined.	Recommendation: Define Temporary Use and develop a standard that specifies that a permit is required for the temporary use and a permit shall only be valid for a defined period of time.
Public and Private Recreation		These terms should be consistent	identify inconsistencies and correct
Windmill	32.T	This use is permitted in all residential districts except the R-2 and R-5 a standard is outlined in §240-32.T Accessory Uses / Windmill.	Amend the R-2 to permit this use, I believe it was an oversight since it's allowed in Milltown with ~10K s.f. lots (R-3) and not in the R-2 with 25K s.f. lots. The terminology could be looked at too, for consistency: i.e. Windmill and Wind-generated Energy systems but this isn't a huge concern, the meanings are synonymous.
Single Family Cluster Development	9.G	This section of the ordinance is somewhat hidden	Single Family Cluster should be highlighted in the NOTES of 240-9.G directing readers to 240-28 for specific area and bulk regulations.
Single Family Openspace Development	9.G	This section of the ordinance is somewhat hidden	Single Family Openspace should be highlighted in the NOTES of 240-9.G referring readers to 240-36 for specific area and bulk regulations.

## Article III Commercial Districts

Title	Section	Issue	Recommendation
C-1 Uses	14.B/C/E	B(6): C-1 Post Office Sale of goods on site?	Sale of goods on site?
		B(13): Outdoor retail sales of Christmas trees	By Right?
		C(2): Outdoor retail sales of Christmas trees	CU, WHY?
		E(2): Outdoor Storage	(Define!)
		E(6): Temporary Use	Define ?
C-2 Uses		Restaurants? It's not very clear.	Restaurant uses should be clear and concise



# Zoning Ordinance Recommendations

## 4/28/2016

### Article IV

### Industrial and Business Park Districts

Title	Section	Issue	Recommendation
I / BP Uses	19.C.(23)	Research – This is allowed in I2 but not BP.	Permit in BP
	19.G.	Max Building Height	Since the height for apartments has been raised should this be raised. Dan pointed out that West Goshen allows up to 40 feet high.
	20	Review I-2 district.	There appears to be a lot of redundancy in I-1 & I-2. Review purpose of the I districts and determine if there are any uses that can be allowed in both I-1 and I-2.
	20.D.(6) and (24)	Treatment center is listed twice.	Remove (24)
	20.F.(2)	Typo:	change 1-2 to I-2.
	20.F.(2) (b)	Just say Permitted Uses because the uses are shown in (a).	( c ) and (d) have references to Article V. This may need some additional thought because permitted uses include conditional uses.
	20.F.(3) (a)	330/150 feet from what?? Minimum perimeter building setback?	Can the editor's notes be incorporated into the zones for clarification. The notes are attached to the definitions.
	20.F.(3)(g)	Two buildings on one lot	Do we want to keep this? Yes, I believe this adds some flexibility to property owners.
	20.F.(4)	National Register of Historic Places	Ask the Historical Commission to review and make any comments on this section? This section was written to preserve the Chamber building and allow it to be subdivided and conveyed separately.

**FYI**

## **Memorandum**

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**East Goshen Township**  
**1580 Paoli Pike**  
**West Chester, PA 19380**

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Date: 4/28/2016  
To: Board of Supervisors  
From: Mark Gordon, Township Zoning Officer  
Re: 2017 TCDI Grant Program Resolution

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Dear Board Members,

At your meeting on April 5, 2016 the Board authorized the staff to submit a TCDI Grant application to the DVRPC.

The TCDI Grant application has been submitted and in order to complete the application the Board needs to adopt the enclosed resolution.

The project cost for the Paoli Pike Corridor Plan is \$70,000. We are requesting \$52,500 in grant funding, combined with 25% Township matching funds of \$17,500 to fund the total cost of the project.

### **Draft Motion**

I move that we, the East Goshen Township Board of Supervisors, authorize participation in the Delaware Valley Regional Planning Commission's 2017 Transportation & Community Development Initiative (TCDI) Grant Program. These funds will be used to develop a Paoli Pike Corridor Master Plan.

RESOLUTION NO. \_\_\_\_\_

**TOWNSHIP OF EAST GOSHEN  
CHESTER COUNTY, PENNSYLVANIA**

A Resolution Authorizing Participation in the Delaware Valley Regional Planning Commission's  
Transportation & Community Development Initiative (TCDI) Grant Program

**RESOLUTION OF:** East Goshen Township, County of Chester

**WHEREAS,** East Goshen Township supports the request for planning grant dollars from the Delaware Valley Regional Planning Commission; and

**WHEREAS,** East Goshen Township understands the grant amount requested must provide 20% of the total project cost as match in local, county, state, or private funds or documented in-kind services; and

**WHEREAS,** East Goshen Township fully understands the application requirements and contracting process if awarded the planning grant dollars; and

**NOW, THEREFORE, BE IT RESOLVED,** that East Goshen Township **HEREBY AUTHORIZES**, Mark A. Gordon, Township Zoning Officer, to submit an application to DVRPC for a TCDI planning grant; and

**THEREFORE BE IT RESOLVED THAT** East Goshen Township agrees to, if selected for the TCDI grant, to:

- Engage in contracting procedures including the competitive Request for Proposals and budget allocation;
- Sign grant agreement documents;
- Agree to submit reimbursement invoices and progress reports along with necessary supporting documentation on a quarterly basis;
- Take all necessary action to complete the project associated with the grant agreement within the 24 month timeframe, and submit the final deliverable to DVRPC; and
- Provide proof of adoption or acceptance by the governing body through a resolution that must be submitted no later than August 31, 2018 to DVRPC. DVRPC will reserve payment of the last 10% of the grant award until such resolution and the final deliverable is received.

SO RESOLVED this day \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_

By a vote of: \_\_\_\_ in favor \_\_\_\_ against \_\_\_\_ abstain

**Attest**

**Signatures**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# TCDI Application Print

## GENERAL INFORMATION

1. **Applicant:** East Goshen Township
2. **County:** Chester  
**Municipality:** East Goshen Township
3. **Chief Elected Official:** Senya Isayeff  
**Title:** Board of Superviors, Chairman
4. **Project Contact:** Mark Gordon  
**Title:** Township Zoning Officer
5. **Address:** 1580 Paoli Pike  
**City:** West Chester **State:** PA **Zip:** 19380
6. **Phone:** 610-692-7171  
**Fax:** 610-692-8950
7. **Email:** [mgordon@eastgoshen.org](mailto:mgordon@eastgoshen.org)
8. **Proposed Project Title:** Paoli Pike Corridor Master Plan
9. **Does this project involve more than one municipality?** No  
If yes, please provide the name of the communities and contact persons.
10. **All TCDI applicants are required to coordinate with their respective county planning department. Please provide the date of this coordination meeting:** 04/08/2016

## APPLICANT CAPACITY

1. **Have you received and managed previous DVRPC grant funds in the past?** Yes  
If yes, please provide the title of the grant, the year awarded, and the project status.  
*DVRPC Retro-active Reimbursement Bridge Project – 2016 - East Boot Road over Ridley Creek, MPMS #1035773. Construction is underway at this time and anticipated to be completed ahead of schedule.*
2. **Have you received other federal or state grants in the past 5 years?** Yes  
If yes, please provide the agency awarding the grant, the year awarded, and the project status.  
*Pennsylvania Commonwealth Financing Authority (Greenways, Trails and Recreation Program), 2014, Paoli Pike Trail Feasibility Study and Master Plan. The plan was completed and adopted by the Board of Supervisors on January 4, 2016, the grant is closed.*
3. **Briefly explain the readiness to proceed for this project. Is this part of a larger planning project?**  
*East Goshen Township has recently completed a new Comprehensive Plan (October 2015) and a Paoli Pike Trail Master Plan and Feasibility Study (January, 2016). A Master Plan for the Paoli Pike Corridor will specifically address Objectives 6.1 and 6.2 of the East Goshen Township Comprehensive Plan 2015. The project readiness for the proposed Paoli Pike Corridor Master Plan is High. The planning done for the Paoli Pike Trail Master Plan and the Township Comprehensive Plan have laid a solid foundation for this project.*

## PROJECT NARRATIVE

### 1. Community Need (Points= 25/100)

**Describe the identified problem, citing quantitative and qualitative data. Include a brief description of the project area and affected population, including demographic, economic and physical conditions and trends.**

*The project is to develop a Master Plan for the Paoli Pike corridor, a 2.8-mile Major Arterial road (primarily two-lanes) which traverses East Goshen Township and carries an average daily traffic volume of 14,000 vehicles. Paoli Pike is vitally important transportation corridor, as it links a wide variety of key destinations, including schools, offices, community facilities, retail shops, parks, and residential neighborhoods. The goal is to plan for the effective development of the corridor as a walkable "Town Center", to safely accommodate pedestrian, bicycle, and vehicular circulation. The Plan will address land use as well as mobility issues.*

*This project will support the objectives of the East Goshen Township Comprehensive Plan (2015; <http://eastgoshen.org/about-us/planning-documents>) and provide a broad framework for the implementation of the Paoli Pike Trail (Paoli Pike Trail Feasibility Study adopted in January 2016; <http://eastgoshen.org/wp-content/uploads/2016/01/Paoli-Pike-Trail-Adopted-Report-01042016.pdf>). The Comprehensive Plan highlights planning for the Paoli Pike corridor as one of the Township's highest priority needs. The*

*Comprehensive Plan notes eight (8) high-priority initiatives. Among these, five (5) are directly related to Paoli Pike. These are:*

- *Transform the Town Center into a walkable, visitable place. (Objective 6.1)*
- *Transform the Paoli Pike corridor into a walkable, connected artery. (6.2)*
- *Increase pedestrian circulation along Paoli Pike, especially in the form of a "Paoli Pike Promenade" with sidewalks and crosswalks. (8.6)*
- *Identify and implement regional highway improvement projects that enhance mobility, safety, and reduce congestion. (8.2)*
- *Develop the Paoli Pike Trail. (9.2)*

*An improved corridor promises positive impact to Township residents, businesses, and visitors. Within the five census-block groups adjacent to Paoli Pike, there are more than 10,000 residents, approximately 4,000 of whom reside within a 10-15 minute walking distance. With enhanced mobility options, many of these residents will be able to bike or walk to Paoli Pike and the enhanced Town Center, rather than drive.*

## **2. Project Scope and Methodology (Points =30/100)**

**The project scope should explain the solution to the identified problem and include goals and objectives, schedule, and deliverables. Describe the short and long term vision and provide three measurable outcomes. Include a brief explanation of how the proposed solution will implement one or more of the four key principles of the long-range plan, Connections 2040. The methodology should describe the tasks to be undertaken to achieve the goals outlined in the scope. Be sure to include people, materials, supplies, and activities that will be used during the project. In the event of partial funding availability, applicants should indicate what or whether strategies can be moved to another planning phase.**

*The proposed Master Plan for the Paoli Pike corridor will provide a definitive framework for circulation and land use along this busy commercial artery in East Goshen Township. It will facilitate development of a pedestrian oriented "Town Center" served effectively by a balanced and well-integrated multimodal circulation network. The final product will be a Plan document that provides conceptual plans for the corridor with accompanying narrative descriptions. At minimum, the plan will generally include the following elements:*

- *Existing Conditions Analysis – Identify opportunities and constraints related to circulation and potential development of a pedestrian-oriented physical environment.*
- *Review of Prior Planning Efforts – Review of prior planning studies for background and consistency with goals and objectives.*
- *Bicycle and Pedestrian Circulation Plan –Recommendations on the alignment and conceptual design of bicycle and pedestrian facilities that connect local neighborhoods and other nearby destinations to the Paoli Pike trail and Town Center.*
- *Traffic Calming Plan –Recommendations for calming traffic and improving safety along Paoli Pike with emphasis on pedestrian crossings near East High School and the East Goshen Township Park..*
- *Streetscape Plan –Recommendations for consistent streetscape treatments within the Town Center including lighting, landscaping, public gathering spaces, gateway treatments, and other amenities. Review the need for connected and continuous pedestrian facilities within the Town Center.*
- *Economic Analysis – Identify realistic opportunities for new infill development and/or redevelopment of underutilized sites.*
- *Land Use Recommendations – Identify zoning and ordinance updates to promote pedestrian-oriented and mixed-use development based on the economic analysis and focused on key parcels poised for development or redevelopment.*
- *Implementation Plan – Action plan with specific implementation tasks, priorities, responsible parties, potential partners, estimated costs, and fundraising strategies.*
- *Graphical concept plans, renderings, and maps of the recommended improvements*

*The Master Plan is intended to fulfill all four of the key principles noted within DVRPC's Connections 2040 Plan for Greater Philadelphia (<http://www.dvrpc.org/reports/13042.pdf>):*

1. *Manage Growth and Protect the Environment – The Master Plan will establish guidelines for land use along the corridor, to encourage pedestrian-oriented development.*
2. *Create Livable Communities – The Master Plan will identify opportunities to develop a walkable Town Center, which will help establish a sense of place for the Township and provide an attractive venue for community interaction.*
3. *Build the Economy – By providing a clear framework for new development, as well a clear plan to provide effective multimodal infrastructure, the Master Plan will encourage new private development of the desired type and scale.*
4. *Establish a Modern Multimodal Transportation System – The Master Plan will develop recommendations for a circulation plan that balances the needs of pedestrians, bicycles, and vehicular traffic, to maximize mobility to and through the corridor.*

### 3. Transportation Nexus (Points 25/100)

**Although a direct connection to the transportation network is a prerequisite for eligibility, the degree to which that connection is demonstrated will be ranked. For example, explain how the proposal enhances access to a range of travel modes such as transit, walking, and biking.**

*Paoli Pike is the principal commercial corridor within East Goshen Township, and a comprehensive and consistent Master Plan for this corridor will help to promote and integrate true multimodal circulation. Currently Paoli Pike is dominated by vehicles, and does not provide for alternate modes of travel. A valuable step in planning for bicycle and pedestrian circulation has recently been taken. Earlier this year, the Township adopted a Feasibility Study and Master Plan for a multi-use trail along Paoli Pike. An initial funding commitment from the Township in addition to grant awards of \$1,000,000 via a DVRPC TAP grant and \$150,000 via the Chester County Municipal Grant program, kick starting implementation of the first phases of the trail. When fully implemented, this trail will serve as an effective means of bicycle and pedestrian circulation to connect local destinations, and will fulfill a significant missing link trail link in Chester County. It is envisioned that the trail will connect to neighboring municipalities and the regional trail network.*

*The Master Plan will build upon previous plans, including the Township's Comprehensive Plan, Central Chester County Bicycle and Pedestrian Plan, and the Paoli Pike Trail Feasibility Study and Master Plan. The Master Plan will provide a detailed blueprint and implementation plan for the transformation of Paoli Pike into a safe, comfortable, and desirable corridor for walking, biking, and driving. The plan will focus on identifying and developing bicycle and pedestrian connections between the Town Center, Paoli Pike Trail, and nearby destinations, including schools, offices, corporate parks, community facilities, retail shops, parks, and residential neighborhoods. The Master Plan will also identify specific streetscape elements, traffic-calming features, and other traffic modifications to strike the appropriate balance between different modes of travel.*

*In accordance with the needs expressed in the Comprehensive Plan, it will be a priority of the Master Plan to establish a consistent vision and identity for the Pike. A goal is to establish a true "Town Center" with connected sidewalks, trails, and pedestrian-oriented streetscape amenities such as landscaping, decorative lighting, and street furnishings. By providing bicycle and pedestrian infrastructure, the Township will be positioned to attract pedestrian-oriented retail and mixed-use development that may alleviate reliance on motor vehicles and provide alternatives to a large portion of the residents and employees living and working in close proximity to the Paoli Pike corridor.*

*These goals of the Master Plan in promoting a balanced multimodal corridor are very consistent with the recommendations of previous planning studies, which include:*

- East Goshen Township Comprehensive Plan (2015)*
- East Goshen Township Parks, Recreation and Open Space Plan (2015)*
- Central Chester County Bicycle and Pedestrian Plan (2013)*
- Landscapes2, Chester County Comprehensive Policy plan (2009)*
- Chester County Transportation Improvements Inventory (2015)*
- Connections 2040, Greater Philadelphia Region's Long Range Transportation Plan (2013)*
- DVRPC Congestion Management Process (2012)*
- PennDOT Bicycle and Pedestrian Plan (2007)*
- Pennsylvania Statewide Comprehensive Outdoor Recreation Plan (2014)*

### 4. Outreach (Points =10/100)

**Explain how the local community will be engaged for the short and long term. Who are the stakeholders? Does this project area affect the underserved? The project must include at least two public meetings. Provide an explanation on how and when they will be conducted.**

*The Township recognizes that the success of long-term planning initiatives is highly dependent on public consensus built from extensive outreach. To assure that ample opportunity is provided for input by the community and project stakeholders, we will conduct a public process that solicits input from Township residents and constituent groups.*

- a. Steering Committee Meetings: A project Steering Committee will be established to provide direction and serve as a sounding board for recommendations. Members of the Steering Committee may include Township officials, members of the business*

community, civic leaders, and others which may be identified. We anticipate a minimum of four Steering Committee meetings which may occur at the following stages in the design process:

- Meeting 1: Introduce project, clarify objectives, gather input as to priorities for evaluating alternatives, and identify resources and challenges.
- Meeting 2: Discuss initial findings and preliminary ideas.
- Meeting 3: Discuss key issues and evaluate potential strategies to address them.
- Meeting 4: Discuss draft Master Plan and solicit feedback on concepts and implementation strategy.

b. *Stakeholder Meetings:* In addition to the input provided by the Steering Committee, we anticipate meeting one-on-one with other relevant stakeholders as may be necessary to review specific aspects of the project in detail as the Plan is being developed and refined. These may include local property owners, merchants, the school district, and others.

c. *Public Meetings:* The Township will hold a minimum of two (2) public meetings to present findings and gather community input. It is expected that one meeting will occur near the beginning of the process to solicit input, and the other will take place near the end of the process as final recommendations are being formulated.

d. *Electronic Media:* To encourage public input and discussion, the Township will provide graphic materials and written material on the website (<http://eastgoshen.org/>), and updates within the Township newsletter (<http://eastgoshen.org/services/communication/newsletter>), email distribution system, Twitter account ([https://twitter.com/east\\_goshen](https://twitter.com/east_goshen)) and Facebook page (<https://www.facebook.com/eastgoshen/>).

## 5. Sponsor Capacity (Points =10/100)

**Consideration will be given to factors such as project readiness, ability of applicant to manage DVRPC-funded grants, and extent of local contribution (project match).**

East Goshen Township is fully capable and experienced to manage the grant funding and scope of work for this project. The Township has successfully managed numerous grants from public sources in recent years, including grants from the Pennsylvania DCED and DVRPC. The administrative process and project oversight will be led by the Township Manager, with oversight by the Township Board of Supervisors, and input from the Township Planning Commission. Having recently completed the study for the Paoli Pike Trail, the Township is eager to move forward swiftly with this important next phase of planning for the corridor.

## SUPPORTING DOCUMENTATION

### GRANT BUDGET FORM

Category	Total Project Cost (Includes TCDI Amount plus match)
TCDI requested amount	52500
Matching Funds	17500

### Provide the source of the required matching funds.

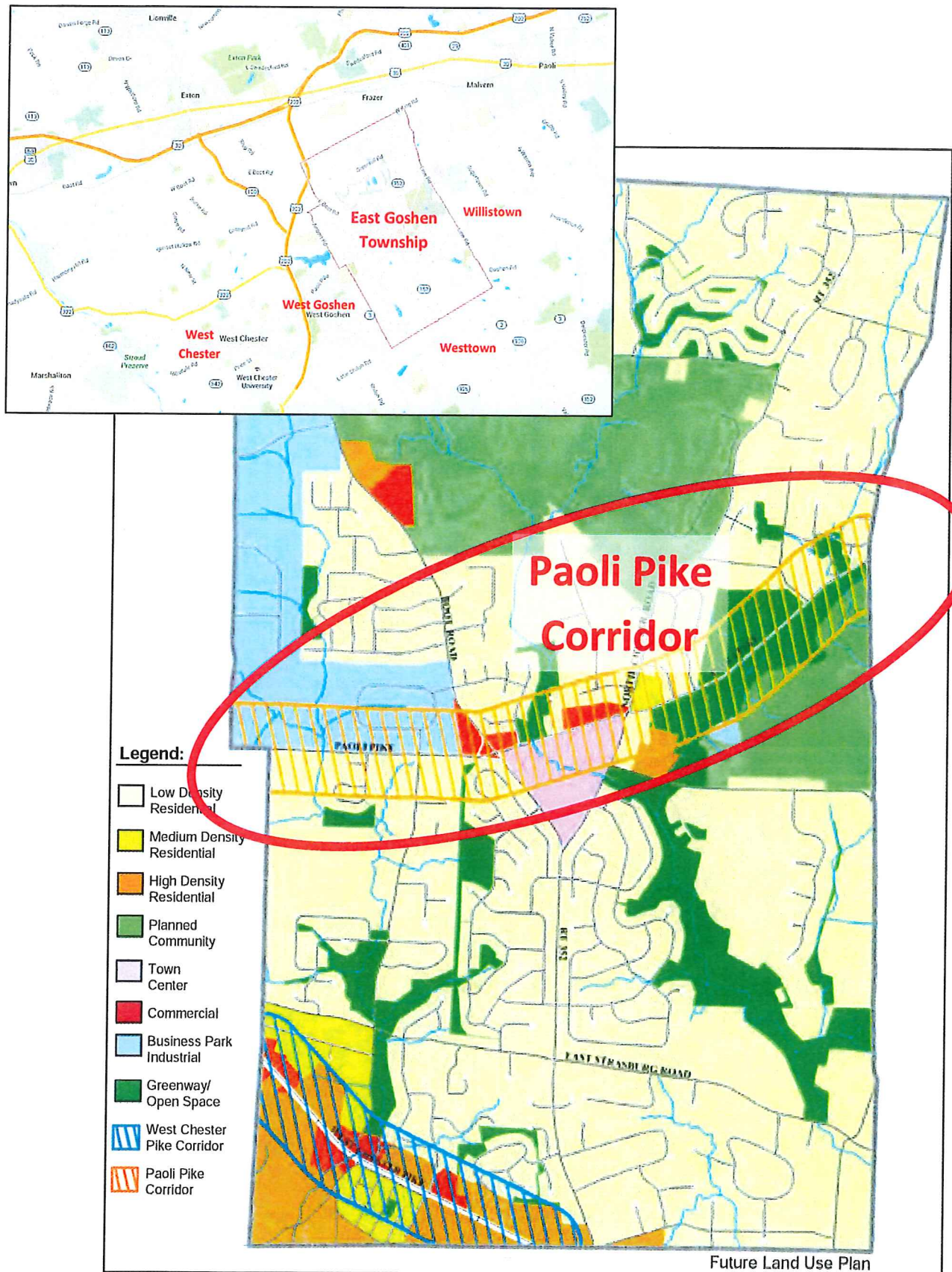
East Goshen Township will fund the matching contribution for the Paoli Pike Corridor Master Plan project from the Township General Fund.

### If using in-kind match, please provide information on what type of services will be used.

East Goshen Township is not proposing any "in-kind" match for the Paoli Pike Corridor Master Plan project.

Contact: Karen Cilurso







**Mark Gordon**

**From:** Rick Smith <rsmith@eastgoshen.org>  
**Sent:** Thursday, April 28, 2016 12:43 PM  
**To:** Mark Gordon; Brian McCool  
**Subject:** FW: Announcing the Next Master Planner Course- Subdivision Review

FYI

**From:** Ward, David D. [mailto:dward@chesco.org]  
**Sent:** Wednesday, April 27, 2016 2:14 PM  
**To:** Atglen Boro - Caren Andrews - Manager; Avondale Boro - Becky Brownback - Secretary; Birmingham Twp - Quina Nelling - Secretary; Caln Twp - Peter Marshall - Interim Township Manager; Charlestown Twp - Linda Csete - Secretary; City of Coatesville - Michael Trio - Manager; Dowingtown Boro - Steve Sullins - Manager; East Bradford Twp - Michael P. Lynch - Manager; East Brandywine Twp - Scott T. Piersol - Manager; East Caln Twp - Barbara Kelly - Manager; East Coventry Twp - Bernard A. Rodgers - Manager; East Fallowfield Twp - Lisa Valaitis - Secretary; East Goshen Twp - Louis F. Smith, Jr. - Manager; East Marlborough Twp - Jane R Laslo - Manager; East Nantmeal Twp - Kathy Brumfield - Secretary; East Nottingham Twp - Pat Brady - Secretary; East Pikeland Twp - Kimberly B. Moretti - Manager; East Vincent Twp - Mary E. Flagg - Manager/Secretary/Treasurer; East Whiteland Twp - John B. Nagel - Manager; Easttown Twp - Dan Fox - Manager; Elk Twp - Terri Kukoda - Secretary; Elverson Boro - Lori Kolb - Secretary; Franklin Township - Joan N. McVaugh - Manager/Treasurer; Highland Twp - Barbara Davis - Secretary; Honey Brook Twp - Steven Landes - Manager/Secretary; Honeybrook Boro - Janis Rambo - Secretary; Kennett Square Boro - Joe Scalise - Manager; Kennett Twp - Lisa M Moore - Secretary; London Britain Twp - Carolyn Matalon - Secretary; London Grove Twp - Steve Brown - Manager; Londonderry Twp - Janice H. Hearne - Secretary; Lower Oxford Twp - Sara Laganelli - Secretary; Malvern Boro - Christopher Bashore - Manager/Secretary; Modena Boro - Clayton Ayers - Council President; New Garden Twp - Tony Scheivert - Manager; New London Twp - Trish Fagan - Secretary; Newlin Twp - Gail Abel - Secretary; North Coventry Twp - Kevin Hennessey - Manager; Oxford Boro - Betsy Brantner - Manager; Parkesburg Boro - L. James Thomas - Manager; Penn Twp - Caitlin Ianni - Township Secretary; Pennsbury Twp - Kathleen Howley - Manager; Phoenixville Boro - E. Jean Krack - Manager; Pocopson Township - Susan Simone - Secretary; Sadsbury Twp - Linda Shank - Secretary; Schuylkill Twp - Mary R. Bird - Manager; South Coatesville Boro - VACANT - Manager; South Coventry Twp - Mildred W. Donnell - Secretary; Spring City Boro - Dennis Rittenhouse - Manager; Thornbury Twp - Judy Lizza - Manager/Treasurer; Tredyffrin Twp - William F. Martin - Manager; Upper Oxford Twp - Jane Daggett - Secretary; Upper Uwchlan Twp - Cary Vargo - Manager; Uwchlan Twp - Douglass Hanley - Manager; Valley Twp - Robert Glisson - Municipal Manager; Wallace Twp - Betty Randzin - Secretary; Warwick Twp - Joan Grimley - Secretary; West Bradford Twp - Justin Yaich - Manager; West Caln Twp - Tom Siedenbuehl - Manager; West Chester Boro - Michael Cotter - Manager; West Fallowfield Twp - Gina M. Wheeler - Secretary; West Goshen Twp - Casey LaLonde - Manager; West Grove Boro - Sharon B. Nesbitt - Manager; West Marlborough Twp - Shirley Walton - Secretary; West Nantmeal Twp - Susan L Ward - Secretary; West Nottingham Twp - Candace Miller - Secretary; West Pikeland Twp - Vacant; West Sadsbury Twp - Cindy Mammarella - Secretary; Westtown Twp - Robert Pingar - Manager; Willistown Twp - Dave Burman - Manager  
**Cc:** William Stevens (williamjstevensiii@gmail.com)  
**Subject:** Announcing the Next Master Planner Course- Subdivision Review

Good afternoon. I wanted to pass along to you the Master Planner Course schedule for 2015-2016 for your reference. This May, the Chester County Planning Commission, in partnership with Chester County 2020 and the West Chester University, will be hosting a three night course in Subdivision and Land Development Review. This is an excellent overview of planning in Pennsylvania. We recommend that every municipal planning commissioner attend these courses.

It is part of a three course series that constitutes the Master Planner Program here in Chester County. Please pass this announcement along to your elected officials and planning commissioners.

Enrollment is limited, so I encourage interested planning commissioners to register early to guarantee a seat. Chester County 2020 is managing the registration at [http://cc2020.org/?page\\_id=191](http://cc2020.org/?page_id=191)

*David D. Ward, AICP*

Assistant Director  
Chester County Planning Commission  
610.344.6285

Visit us at [www.landscapes2.org](http://www.landscapes2.org)

This County of Chester e-mail message, including any attachments, is intended for the sole use of the individual(s) and entity(ies) to whom it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone this e-mail message including any attachments, or any information contained in this e-mail message including any attachments. If you have received this e-mail message in error, please immediately notify the sender by reply e-mail and delete the message. Thank you very much.

**PLANNING COMMISSION**  
**NEW APP. REVIEW/CHECKLIST/CONSIDERATIONS**

- A. IS THE APP COMPLETE? (Township checklists)**
- B. CLOCK – TIMETABLE:**
1. SD/LD – 90 DAYS FROM DATE OF FIRST PC MTG.FOLLOWING SUBMISSION OF COMPLETE APP TO TOWNSHIP
  2. CONDITIONAL USE – 90 DAYS FROM SUBMISSION
- C. IMPACTS OF PLAN**
1. Adjacent properties- **Historical Commission issues**
  2. Visual/suitable for standards of township
  3. Signs
  4. Noise
  5. Lights
  6. Storm Water/Impervious Coverage-**Conservancy Bd. issues**
  7. Trash generation/disposal/storage
  8. Deliveries
  9. Landscaping/Tree removal
  10. Compatible with **Comprehensive Plan goals**
- D. CONSTRAINTS ON PROPERTY**
1. Floodplains
  2. Wetlands
  3. Steep Slopes
  4. Woodlands
  5. Protected geological features- rock features- soil type, etc.
- E. TRAFFIC/CARS/PARKING**
1. Number of trips
  2. Correct sight distances for access points/signalization, if applicable
  3. Deliveries (number and time of day if applicable)
  4. Correct number of parking spaces per township requirements
  5. Location of parking spaces, including handicap space
- F. UTILITIES**
1. Water – public or well
  2. Sewer – public/community/on-lot system
- G. VARIANCE REQUESTS – are they reasonable/self-imposed, etc.**
- H. OVERALL CONSIDERATION**
- Does the plan present the best option for the health, safety and welfare of the community within the constraints of the township ordinances ?



# **EAST GOSHEN TOWNSHIP PLANNING COMMISSION BYLAWS**

## **Article I. Name of Commission**

The name of this organization shall be the East Goshen Township Planning Commission (Commission).

## **Article II. Authorization**

The authorization for the establishment of this Planning Commission is set forth under Section 201 of the Pennsylvania Municipalities Planning Code, Act 247 of July 31, 1968, reenacted and amended by Act 170 of December 21, 1988, P.L. 1329. Powers and duties are delegated to the Planning Commission by the Board of Supervisors of East Goshen Township by Ordinance 21 of August 15, 1972 in accordance with the aforementioned enabling law.

## **Article III. Membership**

**Section 1.** Membership shall consist of seven persons to be appointed by the East Goshen Township Board of Supervisors (Supervisors). The term of office of members shall be four (4) years and should expire December 31<sup>st</sup> except that the terms of the members first appointed shall be so fixed that no more than two (2) shall be appointed during any future calendar year. In the event of vacancies, the Supervisors shall appoint a member to fill the unexpired term. Members whose terms have expired shall hold office until their successors have been appointed. All members of the said Commission shall reside within East Goshen Township. Each member present shall be entitled to one vote.

**Section 2.** If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term according to the terms of this article. Should the Supervisors determine to increase the number of members of the Commission, the additional members shall be appointed as provided in this article. If the Supervisors shall determine to reduce the number of members on the Commission, such reduction shall be effectuated by allowing the term to expire and by making no new appointments to fill the vacancy. Any reduction or increase in the number of members shall be by ordinance.

**Section 3.** Members must attend a minimum of 75% of meetings and workshops each calendar year. Missing four or more consecutive sessions, except for medical reasons, shall be cause for removal. Malfeasance, misfeasance, or nonfeasance on the part of a member shall also be cause for removal.

## **Article IV. Officers**

**Section 1.** The Officers of the Planning Commission shall consist of a Chairman and Vice-Chairman.

Section 2. The Chairman shall preside at all meetings and hearings of the Planning Commission and shall have the duties normally conferred by parliamentary usage on such officers.

Section 3. The Vice-Chairman shall act for the Chairman in his absence.

Section 4. Vacancies in office shall be filled immediately by regular election procedures.

Section 5. Officers shall be elected in December for a one-year term that commences in January. A member may not serve more than two consecutive years in the same office.

#### Article V. Meetings

Section 1. Regular meetings will be held at 7:00pm on the first Wednesday of the month at the East Goshen Township Building, located 1580 Paoli Pike, in East Goshen Township. The first 30 minutes shall consist of an informal workshop session. In the event of conflict with holidays or other events, the Chairman is authorized to change the date or location of said meeting with one (1) day's notice.

Section 2. A quorum shall consist of four members. A quorum is necessary to transact business. If a quorum is present, then a majority of the votes cast on any particular matter of business will carry the issue. This is the case even if this number does not constitute a majority of the quorum. A non-voting member cannot prevent action or recommendation by the Planning Commission by their silence.

Voting shall be by a voice vote unless the Chairman or a member specifically asks for a roll call. A record of all votes shall be kept as part of the minutes.

Section 3. The Chairman may call special meetings or workshops. It shall be the duty of the Chairman to call a special meeting or workshop when requested to do so by a majority of members of the Commission. The Township Manager or his designee shall notify all members of the Commission not less than 24 hours in advance of such special meeting and provide notice to the public as required by the Sunshine Law.

Section 4. All regular meetings, special meetings, workshops or public hearings shall be open to the general public. Any person attending a meeting shall have the right to use recording devices to record all proceedings. Use of devices such as audio, video or other recording equipment shall be subject to rules and guidelines as prepared and approved by the Commission. However, in accordance with the Sunshine Law, such rules or restrictions shall not serve to exclude use of recording devices to record the proceedings of a public meeting.

Section 5. An annual organization meeting shall be held as part of the first regular meeting of the Commission in January. At the organization meeting the members will select the time, location and dates for regular and work sessions.

Section 6. The Commission may establish procedures for conducting its business.

**Section 7.** All meetings of the Planning Commission shall be conducted in accordance with the provisions of the Pennsylvania Open Meetings Law, P.L. 388, No. 84 of 1986, as amended (Sunshine Law).

**Section 8.** The Recording Secretary, provided by the Township, shall prepare the minutes of the Commission. The Township Manager or his designee with the assistance of such staff as is available, shall prepare the agenda for regular meetings and special meetings, hearings, and workshops under the direction of the Chairman, provide notice of all meetings to Commission members, arrange proper and legal notice of meetings, workshops, and hearings, attend to correspondence of the Commission and such other duties as are required.

#### **Article VI. Order of Business**

**Section 1.** The order of business at regular meetings shall be:

- a. Call to Order/Pledge of Allegiance
- b. Review of Tracking Log
- c. Public Comments on Non-Agenda Items
- d. Approval of Minutes
- e. Acknowledge receipt of new applications
- f. Subdivision Plans
- g. Land Development Plans
- h. Conditional Uses and Variances
- i. Ordinance Amendments
- j. New Business
- k. Any Other Matter
- l. Meetings and Dates of Importance
- m. Correspondence
- n. Liaison Reports
- o. Adjournment

**Section 2.** The meeting agenda shall be delivered personally or by mail to the Commission members not less than three (3) working days before all regular meetings of the Commission.

**Section 3.** The agenda may be amended by the Chairman or Commission members at the meeting.

#### **Article VII. Consultants**

**Section 1.** The Commission, within the resources provided by the governing body, may employ such staff and/or experts as it sees fit to aid the Commission in its work.

#### **Article VIII. Committees/Liaisons**

**Section 1.** Special committees may be appointed by the Chairperson for purposes and terms which the Commission approves.

Section 2. The Chairman shall appoint liaisons to other ABCs.

Section 3. The Commission will play a role in the revision of the Comprehensive Plan.

#### Article IX. Public Hearings

Section 1. In addition to those required by law, the Commission may hold public hearings when it decides that such hearings will be in the public interest.

Section 2. Notice of the time and place of such hearings shall be published pursuant to the Sunshine Law.

Section 3. The Chairman or a member of the Commission designated by the Chairman may present the matter before the Commission in summary.

Section 4. A record shall be kept of those speaking before the Commission at such hearings.

#### Article X. Amendments

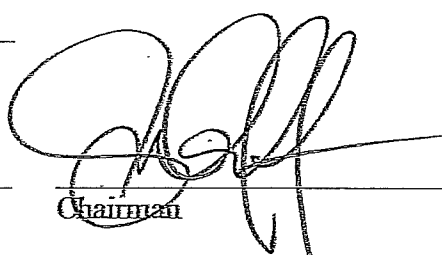
These bylaws may be amended by a majority vote of the entire membership of the Planning Commission.

Adopted this date.

12-3-08

Attested:

  
Vice Chairman

  
Chairman

## § 6.6.1

a flood plain area. The evidence showed the construction on the only alternative site would involve the destruction of a mature stand of pine trees, and there was evidence that the flood waters would not adversely affect the proposed construction site.

A municipality may deny approval for the installation of an individual sewer system within an area mapped as part of a flood plain. The Court noted that the applicant had not utilized the procedures available to him to contest the propriety of the mapping. *Dennis v. Texas Township Board of Supervisors*, 113 Pa. Cmwlth 261, 537 A.2d 65 (1988).

The fact that a zoning ordinance improperly excludes a use throughout the municipality does not relieve the owner of the need to comply with valid flood plain restrictions contained in the zoning ordinance. *Tohickon Valley Transfer, Inc. v. Tinicum Twp. Zoning Hearing Board*, 97 Pa. Cmwlth. 244, 509 A.2d 896 (1986).

## § 6.6 DE MINIMIS VARIANCES

### § 6.6.1 In General

The doctrine that a very small variance—a “de minimis” variance—can be granted without proof of all of the traditional requirements for a variance is a relatively new concept in Pennsylvania. While one can find a few instances where variances were granted under circumstances that now would be considered de minimis,<sup>3</sup> the doctrine was not recognized as such the case were considered unusual, or as reflecting quite special circumstances where relief could be granted even though the applicant failed to meet one or more of the traditional criteria.

If one accepts the idea that a doctrine doesn't exist until it begins to be recognized, then the starting point of the de minimis variance concept surely is the Supreme Court's decision in *Pzydrowski v. Pittsburgh Board of Adjustment*, 437 Pa. 481, 263 A.2d 426 (1970). The case involved an application for a use and occupancy permit for a two-family dwelling (the use was nonconforming) in a single-family zone. The property was nonconforming in other respects, but a subdivision by the same owner left the house with a side yard from 9'3" to 9'6" in width while the ordinance required 10 feet. Stating that the alternatives were to deny any use to the building or to require removal of part of the structure, the Court affirmed the grant of a variance despite the fact that the hardship was self-created. See § 6.2.11. Although the opinion distinguishes prior cases, it is apparent that the very small size of the variance carried the day. From this seed has grown the cases which now permit a zoning board greater leeway in granting a de minimis variance, if it really is de minimis.

3. For example, in *Moyerman v. Cheltenham Township Zoning Board of Adjustment*, 391 Pa. 387, 138 A.2d 681 (1958), the Court affirmed the grant of a side yard variance to an

owner who had misslocated his house by mistake, because a 25' easement on adjacent land provided the functional equivalent of the missing side yard. See § 6.3.5.



## VARIANCES

Almost everyone involved in zoning has had the sense that application of the normal variances standards is sound in the usual case, but not when a very small dimensional variance will solve a significant problem. However, the new doctrine raises three basic problems. First, if the normal variance criterion can be ignored, how does one keep the doctrine from becoming the equivalent of a rule that anyone can violate a zoning requirement by "just a little bit?" If the municipal governing body has decided that front yards should be 25' deep, the zoning board is exercising a legislative power when it routinely allows 24' front yards. Secondly, if very small variances are not granted routinely, then what are the criteria which cause one owner to win and another to lose? Finally, how much discretion is permitted the zoning hearing board in these matters?

It seems to the author that the answer to the first two problems is in the development of criteria which give form to the law in this area. The answer to the third problem lies in giving the zoning hearing board greater leeway in granting or denying de minimis variances than is true in the usual variance case.

### § 6.6.2 Reserved

### § 6.6.3 What Is "De Minimis"?

The first step in defining when an application can be treated as "de minimis" is to define that term. Most of the cases to date have dealt with this issue. Property owners often seek variances from dimensional requirements without establishing unnecessary hardship, relying on the theory that the variance should be granted because "it will do no harm." The Courts have rejected this approach as a general matter. *Ottaviano v. Zoning Board of Adjustment of Philadelphia*, 31 Pa. Cmwlth. 366, 376 A.2d 286 (1977); *Gottlieb v. Zoning Hearing Board*, Pa. Cmwlth. 365, 349 A.2d 61 (1975). Indeed, since zoning is not the equivalent of the law of nuisance, it has long been held that a zoning regulation is valid even though in enacting its zoning plan the municipality prohibits something that cannot be shown to be injurious. See § 3.1.7.

For a variance request to be treated as a de minimis, then, an applicant must show the relief sought is very minor. Usually this involves measuring the relief against the zoning requirement that would be varied. *Leonard v. Zoning Hearing Board of the City of Bethlehem*, 136 Pa. Cmwlth. 182, 583 A.2d 11 (1990), is an example of this approach. In that case, applicant owned a property that had an area of 15,000 square feet. He sought and obtained permission to create two 7,500 square foot lots in a district with a minimum lot area requirement of 8,000 square feet, on the ground that the variance was a de minimis. The Commonwealth Court reversed. The deviation involved—6% of the minimum lot area requirement—was too large to be considered de minimis.

However, the test is not limited to a mechanical application of percentages. The requested variance may be very small in an absolute sense. The 8.4" inch variance in

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## § 6.6.3

application of the normal a very small dimension. A new doctrine raises the question of whether it can be ignored, how does it affect anyone who can violate the governing body has decided. Exercising a legislative power, very small variances are not the owner to win and the zoning hearing board

comes is in the development of the third prohibiting or denying de

as "de minimis" is to issue. Property owners establishing unnecessary variance wanted because "it will be a general matter. *Ottaviano v. Township of Middletown*, 366, 376 A.2d 286 (Pa. Cmwlth. 1977). In *West Bradford Township v. Evans*, 35 Pa. Cmwlth. 167, 384 A.2d 1382 (1978), an owner held two tracts of land subject to commercial zoning with a one acre minimum lot size requirement. The first tract contained 5-6 acres of land. The second (apparently a nonconforming lot) contained .8 of an acre. Wishing to sell off the existing duplex dwelling on the smaller lot, owner sought permission to sell that lot with a .5 of an acre of land, retaining the remaining .3 of an acre, which he was willing to subject the sewer easement in favor of the lot to be sold. Owner stipulated that he would not build on the .3 acre lot. The zoning hearing board granted a variance. The Commonwealth Court affirmed. Noting that the owner was willing to provide a sewer easement and retain the .3 acre lot as open space, the Court indicated that the variance served the public interest and could be considered as de minimis, since very little had changed.

1 applicant must show the relief against the *Hearing Board of the Township of Middletown* is an example of this area of 15,000 square foot lots in a district, on the ground that the deviation was large to be considered

in of percentages. The 8.4" inch variance in

*Pzydrowski* (see § 6.6.1) was 7% of the 10' side yard requirement, but the fact is that 8.4" inches is small by any measure.

In unusual cases the facts may establish that a variance is de minimis even though it involves a percentage change in the requirement that otherwise would not be considered small enough for de minimis treatment. That was the case in the *Moyerman* case (§ 6.6.1, fn 1) where an easement replaced an absent side yard. In *West Bradford Township v. Evans* 35 Pa. Cmwlth. 167, 384 A.2d 1382 (1978), an owner held two tracts of land subject to commercial zoning with a one acre minimum lot size requirement. The first tract contained 5-6 acres of land. The second (apparently a nonconforming lot) contained .8 of an acre. Wishing to sell off the existing duplex dwelling on the smaller lot, owner sought permission to sell that lot with a .5 of an acre of land, retaining the remaining .3 of an acre, which he was willing to subject the sewer easement in favor of the lot to be sold. Owner stipulated that he would not build on the .3 acre lot. The zoning hearing board granted a variance. The Commonwealth Court affirmed. Noting that the owner was willing to provide a sewer easement and retain the .3 acre lot as open space, the Court indicated that the variance served the public interest and could be considered as de minimis, since very little had changed.

The Commonwealth Court has made the point explicitly. In *Township of Middletown v. Zoning Hearing Board of Middletown Township*, 682 A.2d 900 (Pa. Cmwlth. 1996), owners of a residential property sought a variance to build a garage that would increase the building area on the lot involved from the 2,472 square feet permitted by the ordinance to 2,639 square feet, an excess of 167 feet representing 6.76% of the building area requirement. The zoning hearing board noted that many properties in the area had been developed with buildings in excess of the building area and that owners' home would be the same size as other residences in the area after the addition and granted a variance subject to conditions permitting the addition on a de minimis basis. Rejecting the Township's argument that the deviation was too large to be considered de minimis, the Commonwealth Court ruled that percentages were not the sole criteria, and affirmed the variance because in these circumstances the conditions imposed by the board eliminated any impact from the variance.

On the other hand, the cases to date have held uniformly that a variance in a use provision of a zoning ordinance cannot be de minimis. See § 6.6.4 below. The *Pzydrowski* opinion (§ 6.6.1) itself noted the difference in the importance of a use variance and the dimensional variance involved in that case. See 437 Pa. 489. Perhaps someday an applicant may present a case where a use variance is as insignificant as the types of dimensional matters which have been accepted as de minimis. However, it remains difficult to conceive of a use variance that really would be de minimis. The possibility seems remote enough to justify adopting the rule that a use variance cannot be considered de minimis.

## VARIANCES

### § 6.6.4 What Is De Minimis?—Decisions—Use Variances

In *Application of Burroughs Corporation*, 54 Pa. Cmwlth. 514, 422 A.2d 1183 (1980), the Commonwealth Court reversed the action of a zoning board which had granted a de minimis variance permitting land which had been zoned for a retail sales use to be used as a warehouse for equipment to be sold elsewhere. *Comment:* The opinion indicates that a de minimis variance is available only with respect to dimensional requirements of the zoning ordinance, and cites with approval the statement that "it is difficult to conceive of a use variance which would be truly de minimis." To the same effect, see *Kensington South Neighborhood Advisory Council v. Zoning Board of Adjustment of the City of Philadelphia*, 80 Pa. Cmwlth. 546, 471 A. 2d 1317 (1984) (ignoring a legislative decision to distinguish between retail and wholesale activities subverts the legislative judgement); *Arnold v. Doylestown Borough Zoning Hearing Board*, 33 Bucks Co. L. Rep. 241 (1979).

*Rollins Outdoor Advertising, Inc. v. Zoning Board of Adjustment*, 108 Pa. Cmwlth. 277, 529 A.2d 99 (1987), involved a request for a de minimis variance to permit the maintenance of an advertising sign that was permitted in the particular district, but not within 75 ft. of a residentially zoned property. The sign had been erected within 75 ft. of such a property. The Commonwealth Court characterized the particular application as involving a request for a use variance, because the ordinance in effect prohibited the location of signs in commercial districts within 75 ft. of a residential district. The Court adhered to its prior rulings to the effect that a use variance may not be granted on a de minimis basis.

A de minimis variance may not authorize a prohibited use on the ground that it is similar to a permitted use. *B.A.C., Inc., v. Zoning Hearing Board of Millcreek Township*, 89 Pa. Cmwlth. 285, 492 A.2d 477 (1985).

### § 6.6.5 What Is De Minimis?—Decisions—Dimensional Variances

In *Stewart v. Zoning Hearing Board of Radnor Township*, 110 Pa. Cmwlth. 111, 531 A.2d 1180 (1987), the Court affirmed the action of the zoning hearing board which had granted a variance permitting a two lot subdivision where one of the subdivided lots may have lacked 15 square feet of the one-acre minimum lot area requirement. The Court noted that the deviation was minor and that rigid compliance was not necessary for the protection of the public policy concerns of the ordinance.

A variance permitting the creation of a lot that lacks 7000 sq. ft. of a 45,000 sq. ft. minimum lot area requirement is not de minimis. *Andreucci v. Zoning Hearing Board of Lower Milford Township*, 104 Pa. Cmwlth. 223, 522 A.2d 107 (1987). See the *Leonard* decision in § 6.6.3.

An existing church school building exceeded the 20% lot area coverage requirement by an additional 30%, covering approximately 50% of the lot. The church was granted a de minimis variance to erect an addition increasing coverage to 58%. The

th. 514, 422 A.2d 1183  
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church argued that moving the kindergarten from the church basement to the new addition reduced safety hazards, relieved traffic congestion and reduced seating requirements. Noting that the increase was substantial as compared with the 20% requirement imposed by the ordinance, the Commonwealth Court held that the board had erred in granting the variance. *King v. Zoning Hearing Board of the Borough of Nazareth*, 76 Pa. Cmwltth. 318, 463 A.2d 505 (1983).

The zoning board granted a variance to place a satellite dish at a location 9 feet within the required 40-foot setback. There was no evidence that the dish could not be located to comply with the setback, or that there was anything unique about the property. The Court held that the variance (22% of the 40-foot requirement) was not de minimis and that applicants had not established a right to relief. *Hirsch v. Zoning Hearing Board of the Borough of Fox Chapel*, 163 Pa. Cmwltth. 296, 641 A.2d 32 (1994).

A five-foot variance from an eight-foot setback requirement was held not to be justified as a “de minimis” variance in *Heilman v. Zoning Hearing Board of Adjustment of Philadelphia County*, 69 Pa. Cmwltth. 157, 450 A.2d 318 (1982).

In a congested area, variances of 3 feet from a 9-foot rear yard requirement and 3 feet from a 5-foot open court requirement are too large to be considered as de minimis. *Chacona v. Zoning Board of Adjustment of the City of Philadelphia*, 143 Pa. Cmwltth. 408, 599 A.2d 255 (1991).

A 13% reduction in required open area (from 211 sq. ft. to 185 sq. ft.) in a crowded area is too great to be de minimis. *D’Amato v. Zoning Board of Adjustment of the City of Philadelphia*, 137 Pa. Cmwltth. 157, 585 A.2d 580 (1991).

A variance permitting building coverage to be doubled from the permitted 20% to 44% is clearly not de minimis. *Ramondo v. Zoning Hearing Board of Haverford Township*, 61 Pa. Cmwltth. 242, 434 A.2d 204 (1981).

Variances that would reduce rear yard depth from 15 ft. to 9 ft., reduce required open area from 50% to 31%, eliminate an 8 ft. side yard setback and increase fence height from 3’6” to 6 feet are not de minimis. *Zoning Board of Adjustment of the City of Philadelphia v. Pasha*, 118 Pa. Cmwltth. 190, 544 A.2d 1101 (1988).

A violation of from 20% to 50% of a requirement that a retaining wall not exceed five feet in height is not de minimis. *Constantino v. Zoning Hearing Board of the Borough of Forest Hills*, 152 Pa. Cmwltth. 258, 618 A.2d 1193 (1992).

In *Appeal of Ressler Mill Foundation*, 132 Pa. Cmwltth. 569, 573 A.2d 675 (1990), the Commonwealth Court affirmed the grant of a variance on de minimis grounds. Applicant owned a tract of land that was conforming as to lot area, but lacked 7 feet of the 150-foot lot width requirement. The Court held that a de minimis dimensional variance could be granted where the variance is small and rigid compliance with the

## VARIANCES

ordinance is not necessary to protect the underlying public policy concerns of the ordinance and stated that an applicant for de minimis variance is not required to prove that the requested variance will not adversely affect the public health, safety and welfare. *Comment:* The Court noted that the variance was only 4.7% of the requirement. Deleting the requirement that an applicant show that a variance would not be injurious to the public interest probably reflects the Court's view that de minimis variances cannot that effect. In the *Ressler* case, it appears that the property could not have been developed absent the variance, but the Court did not rely on that fact.

### § 6.6.6 What Is De Minimis?—Decisions—Other Cases

Not all cases fit nicely into the "use variance" or "dimensional variance" classifications. These are the types of matters that are likely to be less predictable in outcome.

A zoning provision establishing required street frontages is not the type of "dimensional" requirement that can be the subject of a de minimis variance. *Zimmerman v. Zoning Hearing Board of Adjustment of The City of Philadelphia*, 156 Pa. Cmwlth. 618, 628 A.2d 1182 (1993), *aff'd* as to this point at 540 Pa. 13, 654 A.2d 1054 (1995). *Comment:* In the particular case the lots involved lacked any street frontage on a "confirmed" street. Compare *Appeal of Ressler Mill Foundation* described in § 6.6.5.

The zoning ordinance required that access to a dwelling be located on the same lot as the dwelling. Applicant sought a subdivision that would leave a part of an existing access driveway on a newly created lot. The board granted a variance from the location requirement. The Commonwealth Court affirmed. The variance was de minimis since it involved no physical change in the existing access route and no additional burden on the right of way. *Dotterer v. Zoning Hearing Board of Upper Pottsgrove Township*, 138 Pa. Cmwlth. 615, 588 A.2d 1023 (1991).

In *Gatti v. Zoning Hearing Board of Salisbury Township*, 117 Pa. Cmwlth. 399, 543 A.2d 622 (1988), the Court affirmed the action of a zoning hearing board that had granted a variance on de minimis grounds permitting a 30% expansion of a building housing a nonconforming use, where the ordinance permitted only a 25% expansion.

In *Marlow v. Zoning Hearing Board of Haverford*, 52 Pa. Cmwlth. 224, 415 A.2d 946 (1980), the Court explicitly recognized that the de minimis concept furnishes a separate ground for granting a dimensional variance. Applying the rule, it approved the action of a zoning board in granting variances with respect to a shopping center which were de minimis in terms of the center, and were not injurious to the public interest. *Comment:* Query whether this decision would be followed today.

### § 6.6.7 Res

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### § 6.6.7 Reserved

### § 6.6.8 Standards for De Minimis Cases—Decisional Law

A de minimis variance begins with the question whether the relief requested really is de minimis. However, the analysis can't end there. If there were no other standards, then all very small variances could be granted. A good zoning board finds—or should find—this position uncomfortable, for the board is legislating if it always is willing to grant a 2% variance request, and it is exercising a small but essentially irrational power if it picks and chooses without being able to explain why one applicant wins and the other loses.

The earlier decisions of the Commonwealth Court articulated very restrictive criteria for the grant of a de minimis variance. See *Ottaviano v. Zoning Hearing Board of Adjustment of Philadelphia*, 31 Pa. Cmwlth. 366, 376 A.2d 286 (1977); *Gottlieb v. Zoning Hearing Board*, 22 Pa. Cmwlth. 365, 349 A.2d 61 (1975). In these cases, the Court described its prior rulings as limited to situations where strict enforcement of the ordinance would require alteration or removal of a structure, and the variance sought did not thwart the purpose behind the zoning requirement, because it was minimal or because that purpose was achieved in some other manner: e.g., by an easement. In a somewhat later decision, the Commonwealth Court recognized that a de minimis variance also could be granted in unique situations where rigid compliance with the ordinance did not further the policy concerns underlying the particular restriction. *King v. Zoning Hearing Board of the Borough of Nazareth*, 76 Pa. Cmwlth. 318, 483 A.2d 505 (1983).

The more recent cases have abandoned the requirement that a de minimis variance can be granted only if necessary to prevent the removal of all or part of a structure. The most common articulation states that the de minimis doctrine is a limited exception to the normal variance rules applied only to minor deviations from dimensional requirements, and then only where rigid compliance is not necessary for the protection of the public policy concerns inherent in the ordinance. *Township of Middletown v. Zoning Hearing Board of Middletown Township*, 682 A.2d 900 (Pa. Cmwlth. 1996) (see § 6.6.3); *Constantino v. Zoning Hearing Board of the Borough of Forest Hills*, 152 Pa. Cmwlth. 258, 618 A.2d 1193 (1992) (see § 6.6.5); *Stewart v. Zoning Hearing Board of Radnor Township*, 110 Pa. Cmwlth. 111, 531 A.2d 1180 (1987) (see § 6.6.5).

### § 6.6.9 Standards for De Minimis Cases—Analysis

As in all variance law, the essential problem with any de minimis variance concept lies in maintaining the legislative power of the municipal governing body and the limited power of a zoning hearing board. This is reflected in the rule that even where the deviation proposed is minor, a de minimis variance should not be granted unless compliance is not necessary for the protection of the policy concerns inherent in the particular zoning restriction involved. See § 6.6.8 above. This precludes relief in the

## VARIANCES

usual cases where an owner asks the zoning board to reduce a requirement by several percentage points. In zoning as in most other matters, lines have to be drawn, and, once drawn, cannot be revised whenever an owner would like to see the hurdle lowered "just a little."

In all cases, a request for de minimis treatment necessarily is limited to a minor deviation from zoning requirements. See §§ 6.6.3–6.6.6. This is the essential first hurdle. Where the applicant meets this test, it seems to the author that a the zoning hearing board does not encroach on the legislative function if it grants a minor variance in the following situations.

1. Where the potential loss to the owner is quite large. This was the situation in *Pzydrowski* (§ 6.6.1) and, in a somewhat different sense, in the *Stewart* case (§ 6.6.5), where a 15-square foot shortfall would have cost owner a building lot.

2. Where the owner, while not meeting all traditional variance requirements, proves that the zoning limitation has a unique and particularly injurious impact on his lot. An example would be the case where a building that can be used as zoned is limited severely because of an unusual lot shape or special topographic effects and the difficulty can be cured by a minor variance.

3. Where application of the zoning limitation simply does not fulfill any of its purposes. The *West Bradford Township* decision (§ 6.6.3) is an example of that phenomenon. In that case, the existing lot was already undersized and its division into two lots—one of which was to remain as open space—really added nothing to the nonconformity.

In all of these instances, the action of the board in granting relief is similar to the site-specific functions traditionally assigned to a zoning hearing board.

### § 6.6.10 Reserved

### § 6.6.11 Scope of Review in a De Minimis Variance Case

The scope review in a case involving a claim that a de minimis variance should be granted is the same as in the usual zoning appeal (see § 9.5.10), but the small size of the variance involved should result in practical differences in the review process.

First, most de minimis variance cases are simple and take very little hearing time. While the lower courts have power to hear additional evidence in de minimis cases, it is unlikely that they will clutter their dockets with such cases when a remand to the zoning board is the obvious alternative in the rare situation where the owner has been denied the right to produce testimony. This necessarily means that de minimis cases will be reviewed to see whether the zoning hearing board committed an error of law or an abuse of discretion.

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Second, the normal variance rules permit—and sometimes require—relief in the most compelling variance cases. There is no general right to seek relief from the courts on the theory that the “variance I seek is so small that the court ought to grant it as a matter of equity.” See *Kline Zoning Case*, 395 Pa. 122, 148 A.2d 915 (1959), where the zoning board refused to grant a variance to permit a slight encroachment into the front yard, and the Supreme Court held that the lower court had erred in reversing that denial. Accordingly, it can be expected that a court will intervene to reverse a refusal to grant a de minimis variance only in the rare case where failure to grant appropriate de minimis relief will result in a very large loss to the owner.

Finally, requests for relief on a de minimis basis necessarily involve lesser matters. If the applicant can show that the request really is de minimis and the board has considered the question whether granting relief will undercut the policies reflected in the ordinance, it is unlikely that the courts will find it worth their while to review the board’s exercise of its discretion.

The cases reflect this type of approach. While there are a number of instances in which the courts have reversed the grant of a variance because it was not de minimis—an essential control on the process—the action of a board in granting relief in a case that meets this test seldom is reversed.

On the other side of the coin, zoning boards are likely to deny relief in circumstances where a de minimis variance can avoid a very large loss to the owner. Absent this, the courts are unlikely to overrule the board’s exercise of discretion and require that relief be granted even where the relief sought is de minimis. Indeed, if the courts were not to hold this line, it is hard to see how they could avoid a flood of minor “equity” variance claims.



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Owner obtained permission to expand his restaurant if he could provide 15 additional parking spaces. Owner acquired a commercially zoned lot in the area and sought variances from side and rear yard requirements to permit construction of a parking garage. His evidence of hardship related to his restaurant use and his inability to obtain other parking rather than to the property on which the garage was to be located. The zoning board granted the variances and the trial court affirmed. The Commonwealth Court reversed. The hardship necessary to support a variance must relate to the property for which the variance is sought. *Sotereanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh*, 711 A.2d 549 (Pa. Cmwlth. 1998).

### § 6.5.4 Variances from Flood Plain Regulations

Owner's properties were located on Venice Island, in the floodway of the Schuylkill River in Philadelphia. The property had been rezoned to a district that permitted apartments, but the zoning ordinance floodplain provisions prohibited any development within the floodway of the river. Owner proposed to build 160 apartments 14 feet above the 100 year flood level, and presented evidence that the property was valueless unless the proposed use was permitted and that its plans would not increase flood levels or injure the public interest. Protestants produced evidence to the contrary. The zoning board found that the property was valueless without a variance, that the variance sought was the least that would grant relief, and that the proposal would not be injurious to the public interest, and granted relief. The lower court reversed, but the Commonwealth Court sustained the action of the board. The property would be valueless without relief by variance and evidence was sufficient to support the board's findings. The fact that owners knew of the floodway restrictions before purchasing the land does not, without more, mean that the hardship was self-created. *Manayunk Neighborhood Council v. Zoning Board of Adjustment of the City of Philadelphia*, 815 A.2d 653 (Pa. Cmwlth. 2003).

*Patullo v. Zoning Hearing Board of the Township of Middletown*, 701 A.2d 295 (Pa. Cmwlth. 1997). Owner's property was located in a floodplain district. It was improved with a home which predated the floodplain regulations. Owner sought permission to build a large private garage to house his collection of antique cars. The evidence showed that this would increase the 100 year flood elevation by one tenth of a foot; the ordinance prohibited any increase. The Court held that owner was not entitled to a variance. His hardship was not unique, but affected the entire floodplain district. Since the property was being used as a residence, owner was not deprived of any reasonable use of the land. The ordinance specifically forbade *de minimis* variances from flood plain regulations.

## § 6.6 DE MINIMIS VARIANCES

### § 6.6.1 In General

A claim that a requested variance is *de minimis* which is not raised before the zoning board is waived and cannot be raised on appeal without the permission of the common pleas court. *Segal v. Zoning Hearing Board of Buckingham Township*, 771 A.2d 90 (2001).

## VARIANCES

While the issues were different than in a variance case, the Supreme Court's opinion in *Bailey v. Zoning Board of Adjustment of the City of Philadelphia*, 569 Pa. 147, 801 A.2d 492 (2002), contains in footnotes 20 and 21 a short discussion of the *de minimis* concept that is of interest in variance cases.

In affirming the denial of variances which the landowner asserted were *de minimis*, the Commonwealth Court, citing *Segal v. Zoning Hearing Board of Buckingham Township*, 771 A.2d 90, 94-95 (Pa. Cmwlth. 2001) observed that there is no general right to a *de minimis* variance in Pennsylvania, and the decision of whether to grant such a request is at the discretion of the zoning board. *200 W. Montgomery Ave. Ardmore, LLC v. Zoning Hearing Board of Lower Merion Township*, 985 A.2d 996 (Pa. Cmwlth. 2009).

### § 6.6.5 What Is *De Minimis*?—Decisions—Dimensional Variances

A variance increasing the number of apartment units in an affordable housing project from 8 to 12 is too large to be *de minimis*. *Browning v. Perkasio Borough Zoning Hearing Board*, 59 Bucks Co. L. Rep. 69 (1991).

The landowner wished to renovate a dilapidated home which predated the Pittsburgh Zoning Code. The home consisted of a basement and two and a half stories. The existing gabled roofline was 42 feet high, which exceeded the applicable height requirement of 40 feet. The landowner proposed to replace the gabled roof with a flat roof which was four inches higher than the existing gabled roof. The requested increase in height, together with the flat roof, would allow the landowner to replace the existing top half-story with a full-floor story.

The zoning board, as affirmed by the trial court, authorized the proposed four inches of additional roof height as a *de minimis* variance. Affirming the trial court, the Commonwealth Court held that under the Pittsburgh Zoning Code, both the basement and the top-half story counted as "stories", thereby placing the building out of compliance with a zoning limitation of three stories. This situation predated zoning in Pittsburgh, however, so the four-story building itself was non-conforming. Accordingly, the only requisite variance relief was the four-inch increase in the roof height. The Commonwealth Court found that, regardless of whether the variance was measured from the 42-foot existing roof height, or the 40-foot roof height limitation specified in the zoning ordinance, the zoning board had not abused its discretion of granting the variance as *de minimis*. *Comment*: It is clear from the opinion that the neighbors' objection focused on the expansion of the top floor of the home to a full story, rather than on the four-inch increase in the roof height. The decision includes an extensive and useful summary of the current Pennsylvania case law on *de minimis* variances. *Lench v. Zoning Board of Adjustment of the City of Pittsburgh*, 13 A.3d 576 (Pa. Cmwlth. 2011).