

**TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
February 15, 2012**

CALL TO ORDER

The February 15, 2012 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Chairman Tafuto in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA 17033.

ROLL CALL

Board members in attendance: Chairman William Tafuto; Vice Chairman Rick Hammer Secretary Matthew Davies; Member Philip Wood

Board member absent: Member Michael Angello

Also Present: Anthony Nestico, Solicitor to the Board; Charles Emerick, Director of Community Development; Sharon Dougherty, Court Reporter; Jenelle Stumpf, Community Development Secretary

Public Registering Attendance: David Tshudy, Pepper Hamilton, LLP; Troy Valenti, Valenti Mid-Atlantic; Darryl Kirsch, Light-Heigel; Linda and Ron Eaton, 1182 Jill Drive, Hummelstown

APPROVAL OF MINUTES

On a motion by Vice Chairman Hammer, seconded by Member Wood, and a unanimous vote, the January 18, 2012 minutes were approved.

OLD BUSINESS

- A. Adoption of Decision in the Case of Jeffrey and Barbara Rex (2011-60)
Property location: 2008 Raleigh Road, Hummelstown**
- B. Adoption of Decision in the Case of Dan and Ann Panchik (2011-61)
Property location: 950 Front Street, Hershey**
- C. Adoption of Decision in the Case of William and Jean Bruggemeier
(2011-62)
Property location: 165 West Governor Road, Hershey**
- D. Adoption of Decision in the Case of Centric Bank (2011-63)
Property location: 1201 Governor Road, Hershey**
- E. Adoption of Decision in the Case of Kerrie L. Wolfe (2011-64)
Property location: 236 Cedar Avenue, Hershey**

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F. Adoption of Decision in the Case of Andrew Alessie (2011-65)

Property location: 1349 Harding Avenue, Hershey

G. Adoption of Decision in the Case of Victoria Marchese (2011-66)

Property location: 1230 E. Chocolate Avenue, Hershey

On a motion by Vice Chairman Hammer, seconded by Secretary Davies, and a unanimous vote, the decisions for items 'A' through 'G' were adopted by consent agenda.

NEW BUSINESS

A. Hearing in the Case of Ron and Linda Eaton (2012-01)

Property location: 1182 Jill Drive, Hummelstown

This property is in the Suburban Residential zoning district and is improved with a single family dwelling. The petitioners desire to construct a covered porch on the property and seek relief regarding maximum impervious coverage.

Ron Eaton was sworn in and gave testimony. He stated that they purchased their home in 1987. They installed an in-ground pool with a cement patio in 1993, bringing their total impervious coverage to within 12.5 square feet of the maximum 30% allowed in the Suburban Residential zoning district. The applicants propose to construct a covered porch at the back of the house and extend the existing cement patio. The covered porch will replace an existing wood deck. These improvements will cover 410 square feet and will exceed the impervious cover limit by 397.5 square feet.

Mr. Eaton stated that their lot contains 12,750 square feet and of that, 3,825 square feet of impervious cover is permissible. Under the current Zoning regulations, the minimum size of a new lot is 18,750 square feet and 5,625 square feet of impervious cover is allowed. The Eaton's lot would be considered narrow by 2012 standards and because of that, they are unable to develop their lot in the same manner as newer homeowners. Mr. Eaton stated that the proposed improvements will not alter the character of the neighborhood.

No other persons provided testimony at this hearing.

Chairman Tafuto informed the applicants that the Board has 45 days to render a decision and if the applicants are aggrieved in any way, they have 30 days to appeal the decision.

B. Hearing in the Case of Valenti Mid-Atlantic Realty, LLC (2012-02)

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Property location: 625 East Main Street, Hummelstown

This property is in the General Commercial zoning district and General Sign overlay district, and is the site of the former Wendy's restaurant. The petitioner desires to reconstruct the restaurant and establish new signage for the building and site. Relief is sought regarding total sign area permitted on site and dimensional signage requirements.

Troy Valenti was sworn in and gave testimony. Mr. Valenti is Vice President of Real Estate and Acquisitions for Valenti Mid-Atlantic Management, LLC.

David Tshudy of Pepper Hamilton, LLP, stated that the property located at 625 East Main Street has been the site of a Wendy's restaurant for over 30 years. The applicant also leases land for parking from the owner of the adjacent Pizza Hut lot, Edward Catalone.

In September 2011, the restaurant building was substantially damaged by severe flooding. The building has since been demolished and the applicant desires to build a new prototype restaurant and install signage as mandated by Valenti Management's franchise agreement.

One of the proposed directional signs will be placed on the leased property. The applicant has provided an Acknowledgement and Statement of Support, signed by Edward A. Catalone, regarding this matter.

Mr. Valenti stated that they plan to retain 4 of the existing signs on the property. He does not intend to relocate or alter any of the existing signs.

The applicant explained the proposed signage as depicted in the exhibits. Mr. Tshudy stated that they are of the opinion that the 'WENDY'S' wall signs do not need any relief as to their location on the building; however, they do require some relief regarding vertical dimension. Mr. Valenti verified that although Exhibit 10 of the February 15, 2012 package indicates red LED illumination, it is actually white LED. The apostrophe between the 'y' and 's' will be attached to the 'y', not separated from as depicted on Exhibit 6.

Mr. Valenti stated that no individual relief is necessary for the 'QUALITY IS OUR RECIPE' wall sign or the interior Wendy's hanging cameo.

Mr. Tshudy stated that relief is necessary for the menu board (Exhibit 13) regarding horizontal dimension and total sign area for a freestanding sign. The pedestal dimensions of the menu board are 1.17 feet by 3 feet. The pre-sell menu board (Exhibit 14) and the digital box (Exhibit 15) do not require individual relief. Mr. Tshudy

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further stated that relief is required for the menu board and the pre-sell menu board under Section 225-129.B.(5).(d) to allow for more than 3 colors, as photographs of the menu items will be placed on these signs.

The 'ENTER' sign (Exhibit 16) requires relief regarding total sign area. Because the 'EXIT' sign (Exhibit 17) is located on the leased property, it is considered a directional sign and the applicant is requesting relief to allow its placement on the leased property.

Mr. Tshudy explained that cumulative relief is being sought as follows:

- From Section 225-129.B.(1).(a) regarding the allowance of only 1 freestanding sign per street frontage. The applicant is proposing 3 freestanding signs on the 'new' East Main Street frontage.
- From Section 225-129.B.(3).(a) regarding the allowance of only 3 signs per street frontage. Mr. Tshudy stated that the property has two frontages and the applicant is proposing 8 total signs.
- From Section 225-129.B.(3).(c), which allows only 1 freestanding or pole sign per street frontage. The applicant is proposing 4 such signs.
- From Section 225-129.B.(2).(a) and (b) regarding total permitted sign area.

Mr. Tshudy stated that the relief requested is due to the hardship created by the September 2011 flooding and the subsequent demolition of the old restaurant. The relocation of East Main Street also presented an unusual circumstance.

Mr. Nestico suggested that the application be amended to include a request for relief from Section 225-128.P regarding off-premises signs.

Mr. Emerick stated that he interprets the signs on the side of the building as signs because they announce and they will be trademarked, but he concedes that they are not street-fronting signs because of the fence that McDonald's has installed, and for that reason he would not count them as signs in this application package. Mr. Emerick would like the Board to attach a condition to the decision noting that if McDonald's would choose to remove their stockade fence, Wendy's would be required to either install their own fence to shield their drive-thru from the street or remove the signs.

In regards to the shear wall, Mr. Emerick explained to the Board that many of the restaurants in the Township have a wall that is extended above the roofline and historically, Derry Township has considered signs on such walls as wall signs.

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Mr. Tshudy stated that the applicant is withdrawing the request for a special exception; and amending the application to request relief as stated by Mr. Nestico and to request relief from Section 225-129.B.(1).(a) as it relates to the number of freestanding and pole signs permitted on each street frontage.

No other persons provided testimony at this hearing.

Chairman Tafuto informed the applicant that the Board has 45 days to render a decision and if the applicant is aggrieved in any way, they have 30 days to appeal the decision.

Hearings closed at 6:56 p.m.

DELIBERATIONS

The Board met to deliberate in the cases of Ron and Linda Eaton (2012-01) and Valenti Mid-Atlantic Realty, LLC, and directed the Solicitor to prepare the draft decisions on each case for formal action at the March 2012 meeting.

