

# **TOWNSHIP OF DERRY BOARD OF SUPERVISORS**

## **PUBLIC HEARING**

**Tuesday, July 9, 2013**

600 Clearwater Road, Hershey, Pennsylvania 17033

### **CALL TO ORDER**

The July 9, 2013 Public Hearing of the Township of Derry Board of Supervisors was called to order at 6:40 p.m. by Chairman E. Christopher Abruzzo.

### **ROLL CALL**

#### ***Supervisors Present:***

E. Christopher Abruzzo, Chairman  
Sandy A. Ballard  
Kelly C. Fedeli, Vice-Chairman  
John Foley, Jr.

#### ***Supervisors Absent:***

Marc A. Moyer, Secretary

#### **Also Present:**

Charles E. Emerick, Director of Community Development  
Jill E. Henry, Assistant Township Manager  
James N. Negley, Township Manager/Township Treasurer  
Jon Yost, Solicitor  
Brenda Van Deursen, Recorder

#### **Public Present:** Rich Gamble, Matt Weir, Stephen Libhart, Jon Sheppard

### **NEW BUSINESS:**

The purpose of the hearing is for public comment regarding the appeal of the Design Review Board's denial of a Certificate of Appropriateness to ABBCO Real Properties Corp., regarding alterations to add a sign face on the eastern side of an existing billboard located at 818 Reese Avenue.

**Charles Emerick, Director of Community Development** – ABBCO Real Properties petitioned the Design Review Board for the covering of the back side of a billboard at 818 Reese Avenue. Under the terms of our Ordinance that is an alteration to an existing sign and an alteration to an existing sign can only be done if it is brought in to full compliance with the Zoning Ordinance. The Zoning Hearing Board did grant relief for the alteration of the billboard. The Design Review Board has jurisdiction in the Chocolate Avenue Preservation Overlay district for determining if a

Certificate of Appropriateness is appropriate for any changes to signs, buildings, or other outdoor improvements within that district. The Design Review Board heard the case and denied the Certificate of Appropriateness.

**Tom Scott, Attorney with Killian and Gephart, representing the applicant, ABCO Real Properties** – Attorney Scott introduced his associate and Frank Nardo from ABCO.

Attorney Scott said the billboard at 818 Reese Avenue has existed for over 40 years. The face of that sign faces west for traffic coming into town. It currently has an advertisement for the Luna Restaurant. Over the years it has had many advertisements on it, but there has never been anything on the back side of the sign. In 2012, the applicant wanted to add advertising to the back side of the sign which is east facing. They started the process to obtain approval since it would be an alteration to a pre-existing non-conforming sign. The Ordinance does make provision for not only its existence, but also changes in the future to keep it appropriate. In May 2012 the applicant filed an application to the Zoning Hearing Board. A hearing was held on June 20, 2012 and one neighbor came and registered an objection to the change. On July 18, 2012, the Zoning Hearing Board's decision was that the sign could not be moved, it could not be made into a "V", but they could put a second face on the sign. The approval would not significantly alter or adversely affect the character of the neighborhood, or the immediate neighbor and is consistent with what exists in that part of the community. There was an appeal period for 30 days and no one came forward to appeal.

The applicant submitted an application to the Design Review Board for the approval of the sign in May 2013. On May 20, 2013 a hearing was held before the Design Review Board and they determined they would not issue a Certificate of Appropriateness for the addition of the new face to the sign. Their reasons related to the visual impact, restrictions of distractions, and coordination of material and colors.

Attorney Scott said the Township cannot deny through the Design Review Board for something that has already been declared lawful by the Zoning Ordinance and something that has already been approved by the Zoning Hearing Board.

**Discussion:**

Vice-Chairman Fedeli asked Mr. Nardo about the history of the applications dealing with this sign. Mr. Nardo said the same thing was applied for in 2004, but was never done because they just didn't get to it. Vice-Chairman Fedeli asked what approval they received from the Zoning Hearing Board in 2004. Mr. Nardo said to add another face to the other side of the sign.

Vice-Chairman Fedeli referred to the reasoning from the Design Review Board's decision and asked why Mr. Nardo did not answer the Board regarding what the ads were going to look like. Mr. Nardo said all he could offer them was the picture of the existing sign as an example of what would be seen on the other side. Mr. Nardo said colors were talked about and his comment was that it starts to eliminate the whole idea under a billboard. He was never asked specifically if he could adhere to the colors.

Vice-Chairman Fedeli said that the Design Review Board may not have standards for billboards but that is because billboards are not permitted in that district. However, it is the Design Review Board's responsibility to regulate the look, the character, and the overall feel of things that are in the Chocolate Avenue Preservation Overlay district in our historic downtown.

Supervisor Foley asked Mr. Emerick if the Design Review Board existed in 2004 and Mr. Emerick said it did. Supervisor Foley asked if this actually went through the approval process and was approved. Mr. Nardo said his father went to the Design Review Board for this sign although nothing was ever issued. Mr. Emerick said there were no records that the billboard came before the Board until now. Mr. Nardo said in 2004, the application was to utilize the backside of the sign only. When he reapplied in 2012, he had asked to relocate it away from the building and in from the roadway a little more and make it a V, but was denied by the Zoning Hearing Board.

Supervisor Foley asked what negative impacts other than the lack of conformity to the existing code did the Design Review Board look at. Mr. Emerick said they said it is an auto oriented sign, technically doubling the size of an auto oriented sign as opposed to a sign that would just address the use on the property. The idea in this district is to have human scale signs and not signs that are meant strictly for automobiles.

Attorney Scott said when he looked at the Design Review Board's decision he noted they found the existence of the billboard and expansion of the signing was inappropriate, the billboard is meant for automobiles and automobile signs are prohibited, and they found a billboard is a prohibited sign in the District. Because the sign was grandfathered in it can continue to exist and is not in their jurisdiction to control, it's for the Zoning Hearing Board to control.

Vice-Chairman Fedeli stated that the Design Review Board has standards for those signs and they must conform to a pattern. Attorney Scott said the DRB did not turn it down because they didn't like the colors or materials. They simply said they do not allow billboards but the Zoning Hearing Board does. Mr. Emerick clarified that the Ordinance does not allow billboards in this district. Attorney Scott stated again that the Zoning Hearing Board approved their request and no one appealed their decision.

Mr. Emerick responded that the Design Review Board did reference colors in their denial. Under Section 8, item A of the appeal it states that the property is not within the Chocolate Avenue Preservation Overlay district, but in fact it is. Attorney Scott said he agrees and withdraws that statement. Mr. Emerick referred to item B in the appeal – it was noted that the DRB does not have any authority over billboards, but by the terms of our Ordinance a billboard is a sign and the DRB is tasked with signs. Under 3, the appeal states the applicant's proposal to alter the eastern side of the existing billboard does not constitute an expansion of the non-conforming use. That is not true. Both sides would be measured its own square footage and that would double the size. Attorney Scott replied that that is exactly what the Zoning Hearing Board looked at and stated in their decision on page 3 when they said the Board finds that the

applicant should be permitted to add a sign face to the rear of the sign. On page 4 they said the Board is not authorizing the expansion or movement of the sign so the Board finds the variances the minimum necessary to afford some relief. They also said the Board finds that addition of a sign on the rear side of the existing sign a reasonable continuation of the existing use.

Supervisor Foley asked if the applicant is compelled to come before the Design Review Board each time they are changing the advertisement. Mr. Emerick said the Ordinance defines an alteration of a sign as anything other than the change of message. No permit is required for a change of message on a sign. Supervisor Foley said if we don't review the color and context of the existing billboard, how can we reasonably do that to the other side of the billboard. Mr. Emerick said Community Development has conceded that the billboard is existing, nonconformity, and was never regulated by number of colors so that each change in that particular sign face would be permitted. Supervisor Ballard said at the meeting the Design Review Board agreed that if the Board of Supervisors allows the second side of the billboard, they want to be able to review what is proposed on it, including the existing western side. Supervisor Foley said he has real concerns with this, but is reluctant to vote against the Design Review Board. Attorney Scott said he understands that reluctance, but the other side is the Zoning Hearing Board is an equal volunteer entity that did approve this request.

Chairman Abruzzo said he is conflicted with the Zoning Hearing Board decision and then the Design Review Board's decision. We need to understand the law and apply the law to the facts we have heard.

Supervisor Ballard thought the Zoning Hearing Board knew that it would have to go before the Design Review Board. Mr. Emerick said he is not sure if the Zoning Hearing Board was aware of that or not, but he did mention it to Mr. Nardo. For many proposals, it is necessary to go before both boards.

**PUBLIC COMMENT:**

**Jon Sheppard** – Mr. Sheppard attended the Zoning Hearing Board and expressed concern and objection to the billboard. The Ordinance is very clear that billboards are not permitted in Derry Township. They objected to the sign in 1996 when the Township approved our Ordinance and that Ordinance specifically states in multiple places billboards are not permitted in Derry Township. He has been before many Boards before and sometimes a board will turn him down, but he knows that you have to get approval from all applicable Boards. If you are going to let billboards in our most restrictive district of the community, you might as well let them all in. He mentioned he wanted to paint a sign on the side of his building but he was denied because billboards are not permitted in this district.

Chairman Abruzzo clarified that billboards are permitted in some areas of the Township just not in the Chocolate Preservation Overlay district.

**Rich Gamble, Hockersville Road** – Mr. Gamble questioned why there is so much discussion of a sign that has been here for over 40 years.

**Jonathan Crist, 226 West Chocolate** – Mr. Crist said as Attorney Scott pointed out when the Zoning Hearing Board issued its decision nobody filed an appeal. The Township is an interested party in any decision of the Zoning Hearing Board and should have appealed it if they had a problem with the Zoning Hearing Board's decision.

Chairman Abruzzo said they would consider all the information and testimony and probably make a decision at their next Board of Supervisor's meeting.

**ADJOURNMENT**

Chairman Abruzzo called for an adjournment. Supervisor Ballard moved to adjourn the Public Hearing at 7:30 p.m. Vice-Chairman Fedeli seconded. ***Motion carried, 4-0.***

SUBMITTED BY:

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Marc A. Moyer  
Township Secretary

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Brenda Van Deursen  
Recording Secretary