

**TOWNSHIP OF DERRY**  
**ZONING HEARING BOARD MEETING MINUTES**  
**September 20, 2017**

**CALL TO ORDER**

The September 20, 2017 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Chairman Michael Kushner in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA 17033.

**ROLL CALL**

Board members in attendance: Chairman Michael Kushner; Vice Chairman Philip Wood; Secretary Matthew Luttrell; Member Steve Moniak; Member Mark Shrift

Board members absent: None

Also Present: Megan Huff, Solicitor to the Board; Brandon Williams, Assistant Director of Community Development; Diane Smith, Court Reporter; Tracy Telesha, Stenographer

Public Registering Attendance: David Tshudy, Pepper Hamilton, LLP; Aaron Donato, Mette, Evans & Woodside; Kamron Abedi, Mette, Evans & Woodside; Jim Wenger, Derck Edson Assoc.; Blair Ray, Foremark; Michael Pacini, Primanti Brothers; Tina & Brian Gardner, 695 Swatara Street; Melanie Boehner, Milton Hershey School; John Osmolinski, Milton Hershey School, Frank Rapisarda, Milton Hershey School; Ed Fetter, Hershey DTC, LP; Charles Huth, *The Sun*

**APPROVAL OF MINUTES**

On a motion by Member Moniak, seconded by Member Shrift, and a majority vote, the August 16, 2017 minutes were approved as written. Vice Chairman Wood abstained from voting.

**OLD BUSINESS**

- A. Adoption of Decision in the Case of Hershey Entertainment & Resorts Company (2017-06)**  
**Property location: 11 East Chocolate Avenue, Hershey**
- B. Adoption of Decision in the Case of Timothy J. and Christine L. Baker (2017-09)**  
**Property location: 2391 Raleigh Road, Hummelstown**
- C. Adoption of Decision in the Case of Milton S. Hershey Medical Center (2017-11)**  
**Property location: 600 University Drive, Hershey**

On a motion by Member Moniak, seconded by Member Shrift, and a majority vote, the decision for items 'A' through 'C' were adopted by consent agenda. Vice Chairman Wood abstained from voting.

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**D. Continuance in the Case of Milton Hershey School (2017-10)**  
**Property location: Governor Road, Hershey**

This property, located in the Planned Campus South, Governor Road Overlay, and General Sign Overlay zoning districts, is improved with the Milton Hershey School educational facility. The applicant is proposing to construct decorative wall structures with attached signage along Governor Road at the entrances to the school campus heading in both the east and west directions. Relief was sought regarding front yard setback requirements for an accessory structure and maximum vertical sign face dimension for a wall sign.

David Tshudy, attorney; Jim Wenger, engineer; and Melanie Boehmer, John Osmolinski, and Frank Rapisarda, Milton Hershey School, were sworn in and gave testimony. Mr. Tshudy amended the application by clarifying that the applicant's name is Hershey Trust Company, Trustee for Milton Hershey School.

Mr. Tshudy stated that the applicant is proposing to construct 4 gateway structures, 2 on each end of the campus with one on each side of Route 322. The proposed structures will be 14 feet, 8 inches in height and will feature soft LED lighting and a 4-foot high by 2-foot, 3-inch wide plaque with the school's name and logo. The structures will be set back 5 feet from the road right-of-way. The proposed structures along with the existing roundabouts serve as markers for the campus as well as traffic calming devices.

Vice Chairman Wood questioned whether PennDOT needed to be informed of the proposal. Mr. Tshudy responded that with the structures being located outside of the right-of-way, PennDOT does not need to be informed.

Member Moniak asked what the applicant is considering as the property. Mr. Tshudy stated that the entire campus is considering the property.

Member Moniak stated that 50 feet is the requirement and questioned why the applicant was proposing only a 5-foot setback. Mr. Tshudy replied that the 5-foot setback is to create the effect of a gateway and to allow the signage to be visible to passing motorists.

Member Moniak questioned what the speed limit is in the area. Mr. Tshudy replied that is 45 and 50 MPH, although it is not currently posted except for in the roundabouts, where it is 20 MPH.

No other persons provided testimony at this hearing.

Chairman Kushner 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.

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**NEW BUSINESS**

**A. Hearing in the Case of James L. Goldsmith, Esq.; Mette, Evans and Woodside (2017-12)**  
**Property location: 695 Swatara Street, Hummelstown**

This property, located in the R-2 zoning district, is improved with a single-family dwelling, which was approved by issuance of permit in 2006. The applicant discovered through a 2017 property survey that the dwelling does not conform to the side yard setback requirements of the R-2 zoning district. The applicant now requests relief in the form of a variance by estoppel to maintain the existing side yard setback.

Aaron Donato, attorney; Ted Stefan, realtor; and Tina Gardner were sworn in and gave testimony.

Mr. Donato stated that an encroachment was discovered when a survey was done in the process of listing the home for sale. The house is 8 feet, 9 inches from the side property line and was properly permitted when it was built in 2006. The driveway and dog run that encroached on the neighbor's property have been removed and reconfigured.

Member Moniak questioned whether it was common in 2006 to use hand-drawn documents, or if the Township would have required physical measurements and property surveys for the construction of a new dwelling. Brandon Williams replied that hand-drawn documents showing setbacks would have sufficed for permit issuance at that time and that even under current regulations, survey work is typically only seen with dwellings that are part of a subdivision plan or where projects may require submittal of a stormwater management plan under the Stormwater Management Ordinance.

Mrs. Gardner added that her late husband was responsible for the house design and construction.

Mr. Stefan stated that he spoke with the neighbors and offered to negotiate the purchase of a piece of land to correct the encroachment. The neighbor wanted to exchange the small triangular piece with an 1,100-square-foot strip of land to allow them access across Mrs. Gardner's property to the nearby creek. This would in effect cut Mrs. Gardner's property in half, which was not acceptable to her.

Vice Chairman Wood questioned whether the Kupprats (adjacent neighbors) had any other suggestions on how to rectify the situation. Mr. Stefan stated that they did not. The Kupprats discovered the encroachment as early as 2008 and did not inform with the Township or Mrs. Gardner.

Mr. Moniak questioned the Township's view on the request for a variance by estoppel. Mr. Williams answered that the Township is not opposed to a variance, but the request for a

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variance by estoppel would imply the Township knew in advance of an error in issuing the permit. The 2017 survey completed by the owner was the first notice the Township had that the home did not comply with the setback requirements. Mr. Williams stated further that he believes with the steep sloping nature of the property down to the Swatara Creek, there would be sufficient claim to a hardship for a variance request since this is really the only location on the property where the home could have been constructed due to the existence of the steep slopes.

No other persons provided testimony at this hearing.

Chairman Kushner 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.

**B. Hearing in the Case of Foremark, LTD (2017-13)**  
**Property location: West Chocolate Avenue and Ridge Road, Hershey**

This property, located in the Hershey Mixed Use, Downtown Core Overlay, and Downtown Commercial Sign Overlay zoning districts, is improved with a commercial building. Three new 1-story, multi-tenant commercial buildings have been proposed for future construction on the property. The applicant desires to install signage for a future tenant (Primanti Bros). Relief was sought in the form of a special exception to permit a larger wall sign than what is typically prescribed by the Ordinance due to unique circumstances that exist on the property; or in-lieu thereof, the applicant requested a variance for the maximum permitted height of a wall sign. Relief was also requested from the illumination requirements for signs in the Downtown Commercial Sign Overlay.

Blair Ray, Foremark, LTD; Michael Pacini, Primanti Bros.; and Edric Fetter, Hershey DTC, LP, were sworn in and gave testimony.

Ms. Ray stated that Primanti Bros. sandwich shop will be moving in to the new building. The building has a tower feature on which the tenant would like to locate its 6-foot by 8.75-foot illuminated sign. The sign will feature the logo of a sandwich with a red LED circle around it. The rest of the sign will be halo-lit in white. The building itself is an unusually tall (30 feet) single story building.

Vice Chairman Wood questioned when the building project will begin. Mr. Fetter replied that it is slated for a November start and should be complete in April/May 2018.

Secretary Luttrell asked what the average size of the company's sign is on other locations. Mr. Pacini stated most signs are just over 7 feet on the 34 locations.

No other persons provided testimony at this hearing.

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Chairman Kushner 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.

**C. Hearing in the Case of Calicutts Spice Co. (2017-14)**  
**Property location: 130 West Chocolate Avenue, Hershey**

This case was withdrawn prior to the meeting.

Hearings closed at 7:30 p.m.

**DELIBERATIONS**

The Board met to deliberate in the cases of Milton Hershey School (2017-10); James L. Goldsmith, Esq.; Mette, Evans and Woodside (2017-12); and Foremark, LTD (2017-13) and directed the Solicitor to prepare the draft decisions on each case for formal action at the October 2017 meeting.

Submitted by:

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Matthew Luttrell, Secretary