

**TOWNSHIP OF DERRY  
ZONING HEARING BOARD MEETING MINUTES  
September 16, 2015**

**CALL TO ORDER**

The September 16, 2015 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:06 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; Member Mark Shrift; Member Catherine Wagner

Board member absent: Secretary Matthew Luttrell

Also Present: Anthony Nestico, Solicitor to the Board; Brandon Williams, Assistant Director of Community Development; Tammy Baker, Court Reporter

Public registering attendance: Jo Ellen Myers, Jim Huebner – Holy Trinity Lutheran Church; Matthew Schwenk, 8 Boxwood Dr., Hershey; Jeff Gelbaugh, P.O. Box 85, Hershey; Charles Huth, *The Sun*; Randy Wright, Hanover Engineering Associates; Mark Winter, 310 W. Chocolate Ave.; Massimo Rizzotto, Tomassi, LLC; Anne Newman, 531 Elm Ave., Hershey

**APPROVAL OF MINUTES**

On a motion by Vice Chairman Wood, seconded by Member Shrift, and a unanimous vote, the August 19, 2015 minutes were approved as written.

**OLD BUSINESS**

- A. **Adoption of Decision in the Case of 169 Chocolate Group, LLC (2015-21)**  
**Property location: North of West Chocolate Avenue, west of North Linden Road, south of the Norfolk Southern railroad tracks, and east of Ridge Road, Hershey**
- B. **Adoption of Decision in the Case of Barbara Conklin (2015-22)**  
**Property location: 128 East Caracas Avenue, Hershey**
- C. **Adoption of Decision in the Case of Joseph Kulasinsky (2015-23)**  
**Property location: 304 Para Avenue, Hershey**
- D. **Adoption of Decision in the Case of Scott and Vickie Feinstein (2015-24)**  
**Property location: 1319 Quail Hollow Road, Hummelstown**

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- E. Adoption of Decision in the Case of Lewis and Stephanie Shaw (2015-25)  
Property location: 218 and 214 Elm Avenue, Hershey**
- F. Adoption of Decision in the Case of Tyler Boland (2015-26)  
Property location: 268 McCorkel Road, Hershey**
- G. Adoption of Decision in the Case of Michael J. Kondraski (2015-27)  
Property location: 1099 Swatara Road, Hershey**
- H. Adoption of Decision in the Case of DSG Development Corporation (2015-28)  
Property location: West of Whitetail Drive, adjacent to the Swatara Creek, and on the north and south sides of Fawn Lane, Hummelstown**
- I. Adoption of Decision in the Case of DSG Development Corporation (2015-29)  
Property location: North of JoAnn Avenue and east of Locust Street, Hummelstown**

On a motion made by Chairman Kushner, seconded by Vice Chairman Wood, and a unanimous vote, the decisions for items 'A'-I' were adopted by consent agenda.

**NEW BUSINESS**

- A. Hearing in the Case of Stoner Graphix, Inc. (2015-30)  
Property location: 128 and 212 Cocoa Avenue, Hershey**

These properties are located in the Village Residential and Limited Sign Overlay zoning districts. The property at 128 Cocoa Avenue is improved with a parking lot, and the property at 212 Cocoa Avenue is improved with a church and office building. The petitioner desires to install a ground sign attached to an existing stone wall at 128 Cocoa Avenue; and alter the existing freestanding sign in front of the church and install a wall sign and permanent window signs on the office building at 212 Cocoa Avenue. Relief was sought regarding maximum permitted area for a freestanding, ground, and permanent window sign, and for the maximum permitted height of a wall sign.

Kurt Stoner of Stoner Graphix, Inc. was sworn in and gave testimony. Mr. Stoner stated that the church is looking to have larger signage than what is permitted by the ordinance. The existing freestanding/monument sign is made of the same stone work as the church, and rather than demolishing the sign, it is proposed to retain the existing structure and update the signage with a more tasteful, distinguished design.

Brandon Williams stated that the Zoning Ordinance permits a maximum sign area of 32 square feet for the monument sign, and the applicant is proposing a 72.81-square-foot sign.

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The Ordinance also does not permit the alteration of an existing nonconforming sign unless it is for the purpose of bringing the sign into conformance.

Member Shrift asked what the size of the current message board is. Mr. Stoner responded that it is 4 feet high and 3 feet wide.

Chairman Kushner asked if the monument sign is illuminated. Mr. Stoner stated that it is externally illuminated by ground spotlights. The lighting will not change.

Mr. Stoner explained that the office is not well marked, so the applicant is requesting relief to place a permanent window sign on the office door. Mr. Williams noted that since the size of the proposed window sign is less than 15% of the total door area, relief is not necessary. The window sign will not be illuminated.

Finally, the applicant is seeking relief in order to install a sign on the existing retaining wall located at 128 Cocoa Avenue. Two options were presented for the sign. Mr. Williams stated that this is considered a ground sign, since it cannot be considered a wall sign because it will not be affixed to the wall of a building. Mr. Stoner testified that the size of Option A is 18" by 105", and the size of Option B is 16" by 80."

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 Jeffrey S. Gelbaugh (2015-31)**  
**Property location: 565 Park Avenue, Hershey**

This property, located in the Neighborhood Commercial zoning district, is improved with a single family dwelling. The applicant desires to renovate and expand the structure for use as a 39-seat fast-casual restaurant and to create an associated parking lot. Relief was sought in the form of a special exception for expansion limitations of a nonconforming structure, and from the front, side, and rear yard setback requirements regarding the location of the parking lot.

Mark Winter, attorney, and Jeffrey Gelbaugh were sworn in and gave testimony. Mr. Winter testified that Mr. Gelbaugh is proposing to remove an existing garage, breezeway, and driveway from the property and construct a 20' by 30' addition. The parking area will be located to the rear of the property.

Mr. Gelbaugh stated that vehicles would access the site from Northeast Drive and would exit onto Locust Street (behind the property). Mr. Gelbaugh acquired the property in 1997, and the dwelling was constructed in 1956. He does not think the change of use of the property will create a detrimental effect on the neighborhood; in fact, Wendy's, Red Robin, and Dunkin

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Donuts are located to the north of the subject property. He added that there is only one owner-occupied property along Park Avenue between Northeast Drive and East Derry Road.

Brandon Williams asked the applicant if he had calculations to submit for the record regarding the proposed increase in floor area of 47%. Mr. Gelbaugh responded that he has a worksheet he could submit. Tony Nestico commented that for the Board's purposes, they will use Mr. Williams' calculation of 48.4%.

Mr. Williams stated that the required front yard setback from Northeast Drive is 25 feet and the applicant is proposing a setback of 3 feet from the property line to the parking area. The required rear yard setback is 35 feet, and the applicant is proposing a setback of 7 feet. The required side yard setback is 15 feet, and the applicant is proposing a setback of 3 feet. Mr. Williams added that the proposed one way in/one way out was recommended by Township staff, who is concerned with the backup of traffic at the intersection of Northeast Drive and Park Avenue.

Member Wagner questioned why the property cannot be developed in compliance with the Zoning Ordinance. Mr. Gelbaugh answered that it is because of the required setbacks. Chairman Kushner asked if the number of seats in the restaurant would have to be reduced in order to reduce the number of parking spaces in the setbacks. Mr. Winter responded that if the parking is reduced to comply with setbacks, the number of seats permitted in the restaurant would need to be significantly reduced to a very small number. Mr. Williams indicated that required parking is one space per every three seats.

Vice Chairman Wood asked what kind of restaurant is proposed. Mr. Gelbaugh replied that it will probably be a pizza and sub shop, or something similar. He estimated that the hours of operation would be 11:00 AM to 11:00 PM. The restaurant would not have a liquor license.

Public comment: Brian Bott, 34 West Sheridan Avenue, Annville, read the following letter into the record: *"To the Township of Derry Zoning Hearing Board: I, Jack Nethercutt, give permission to Brian Bott on my behalf to read the following statement that I have formed to the Township of Derry Zoning Hearing Board in regards to the above-mentioned petition. It is my opinion that the Petition 2015-31 is inappropriate for the neighborhood. This is a residential neighborhood and it is our view that it should remain residential. To expand a residential home and make it a 39-seat fast-casual restaurant completely changes the neighborhood for the worse. We have owned this home at 524 Park Avenue since the late '70s. We have no intention of selling this home, although Mr. Jeffrey S. Gelbaugh has been attempting to purchase this property for at least a decade. It is my belief that Mr. Gelbaugh would put in a fast-casual restaurant and make it so untenable to the neighbors that he could then buy properties and develop the whole street in a non-very attractive mini mall. It is my belief that most of the residents on Park Avenue would not like to see any special exceptions for explanation of a nonconforming structure. We urge the Zoning Hearing Board to deny the petition and keep this area residential. Respectfully, Jack Nethercutt."*

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Mr. Winter asked Mr. Bott if he is related to, works for, or is a friend of Mr. Nethercutt's. Mr. Bott responded that he is a friend. Mr. Winter questioned if he knows where Mr. Nethercutt currently lives. Mr. Bott answered he did not know and could not confirm if Mr. Nethercutt lives in the house on his Park Avenue property. Mr. Gelbaugh stated that Mr. Nethercutt lives in California and he only occupies the house for one week a year, during the Antique Auto Show. To the best of his knowledge, it is not currently occupied by anyone.

Mr. Winter asked Mr. Gelbaugh what the Hershey Trust Company uses some of their properties along Park Avenue for. Mr. Gelbaugh responded that they have residential rentals and they also have lodging facilities for student apprenticeships who are there for 3 to 6 months.

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.

**C. Hearing in the Case of Tomassi, LLC (2015-32)**  
**Property location: 10 Tomassi Drive, Hummelstown**

This property, located in the Agricultural/Conservation zoning district, is currently vacant. The applicant desires to construct a single family dwelling with a 3-car attached garage, a patio, and a swimming pool. Relief was sought from front yard setback requirements and maximum impervious coverage.

Randy Wright, Hanover Engineering, was sworn in and gave testimony. Mr. Wright explained that this property is part of a 4-lot subdivision known as Hill Church Glen. The other 3 lots have already been developed with single family dwellings. The lots were created under the Agricultural/Conservation zoning district exemption criteria, which allowed reduced lot sizes. The subject lot is the smallest of the 4, at a size of approximately 38,881 square feet. There is a drainage easement to the rear of the property, along the northern edge, and the entire lot drops approximately 14 feet in grade from Tomassi Drive to the cul-de-sac. The applicant is seeking relief to reduce the front yard setback along Tomassi Drive from 50 feet to 35 feet, and to increase the impervious coverage.

Mr. Wright stated that, due to the required setback of 50 feet from all property lines, the building envelope is reduced to approximately 9,500 square feet. Additionally, the drainage easement on the north side of the lot further reduces to the building envelope to about 7,800 square feet, or 20% of the lot area.

Vice Chairman Wood asked if there is a requirement that the home be a certain number of feet from the stormwater drainage swale. Mr. Wright answered no, it can be right on the

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easement if it is possible from a grading standpoint, but the easement encroaches into the building envelope.

In response to a question from Chairman Kushner, Mr. Williams noted that setback relief has been granted by the Zoning Hearing Board for other lots in this development.

Member Shrift commented that this development was approved with the allowance for smaller lots, and now the developer has requested relief from the Zoning Ordinance regulations for 3 of the 4 lots. Mr. Wright stated that the average floor area of these dwellings is about 4,000 square feet, and are probably much larger than what was anticipated during the approval of the subdivision plan.

Mr. Wright stated that the maximum impervious cover for this zoning district is 15%; the applicant is proposing impervious cover of 19%, which is an increase of approximately 1,500 square feet of impervious area. The increase will allow this lot to fit in with the character of the other 3 lots in terms of exterior improvements such as hardscaping.

Vice Chairman Wood asked Mr. Wright if he was familiar with how the stormwater management systems have held up on the other 3 lots. Mr. Wright responded that he is familiar with the system on the lot across Tomassi Drive from the subject property, and it has handled the stormwater runoff well.

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.

**D. Hearing in the Case of Main & Walton Development Company, LLC (2015-33)**  
**Property location: 550 East Main Street, Hummelstown**

The applicant requested a continuance of the hearing to the regularly-scheduled October meeting.

**E. Hearing in the Case of Matthew and Amy Schwenk (2015-34)**  
**Property location: 8 Boxwood Dr., Hershey**

This property, located in the Suburban Residential zoning district, is improved with a single family dwelling. The applicants desire to install a storage shed. Relief was sought from rear and side yard setback requirements for a detached accessory use.

Matthew Schwenk was sworn in and gave testimony. He stated that theirs is a corner lot and based on the placement of the dwelling, the only other locations on the lot where they could

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place the shed and be in conformance with the setbacks are in front of the house, or on the side of the house. They are proposing to place the shed in between a couple of trees so that it will not be a prominent feature. The shed will measure 16 feet by 12 feet. The testimony indicated that the neighborhood was developed in the 1970s, and there is a great deal of mature vegetation on the property and in the neighborhood in general. Where the shed is proposed is well screened and will preserve the vegetation on the property. Proposed setbacks are three feet from the rear yard and two feet from the side yard.

No other persons provided testimony at this hearing.

Chairman Kushner 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.

**F. Hearing in the Case of the Michael J. Kondraski (2015-35)**  
**Property location: 1099 Swatara Road, Hershey**

This property, located in the Agricultural/Conservation zoning district, is improved with a single family dwelling. The applicant desires to renovate and expand the dwelling. Relief was sought from expansion limitations of a nonconforming structure and maximum impervious cover.

Michael Kondraski was sworn in and gave testimony. He indicated that the property is owned by Irene Kyle, his mother. The applicant proposes to expand and modernize the home with additional living area, new roofing, and siding, as well as a new heating system, updated electrical system, and the replacement of an existing one car detached garage with a two car attached garage.

The current home contains 1,107 square feet of area, and the applicant proposes an addition of 1,488 square feet, or an increase of 134%. The Ordinance limits maximum impervious coverage to 15%, and the applicant proposes 19.45%. Testimony indicated that the subject property is small and oddly shaped, with uneven sides. The property is also significantly undersized relative to the minimum lot size standards applicable in the Agricultural/Conservation zoning district.

Brenda Peffley, owner (but not the occupant) of 1091 Swatara Road, also testified. She indicated concern about whether the septic system is sufficiently sized for the increased size of the home. Her concern is that the homes in the area are all serviced by wells, and if the applicant's septic system fails, it could contaminate surrounding wells. Brandon Williams indicated that the septic system's size is based on the number of bedrooms proposed. The number of bedrooms will not increase with this proposal; therefore, as long as the septic system is adequate and functioning appropriately, there will be no need to install a new system. The applicant would, as a part of the building permit process, be required to demonstrate that the system is working.

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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.

Hearings closed at 7:15 p.m.

**DELIBERATIONS**

The Board met to deliberate in the cases of Stoner Graphix, Inc. (2015-30); Jeffrey S. Gelbaugh (2015-31); Tomassi, LLC (2015-32); Matthew and Amy Schwenk (2015-34); and Michael J. Kondraski (2015-35) and directed the Solicitor to prepare the draft decisions on each case for formal action at the October 2015 meeting.

Submitted by:

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Matthew Luttrell, Secretary