

**TOWNSHIP OF DERRY**  
**ZONING HEARING BOARD MEETING MINUTES**  
**January 16, 2013**

**CALL TO ORDER**

The January 16, 2013 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Chairman William 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; Member Michael Angello

Board members absent: none

Also Present: Anthony Nestico, Solicitor to the Board; Charles Emerick, Director of Community Development; Brandon Williams, Assistant Director of Community Development; Pam Packer, Court Reporter; Tracy Telesha, Stenographer

Public registering attendance: Curt Stevens, 643 Carroll Drive, Hummelstown; Roy Wells, Pheasant Run Road, Hummelstown; Jonathan M. Crist, Esq., 226 W. Chocolate Avenue; Maria Yi, 218 W. Chocolate Avenue; Frank A. Deleo, 203 W. Caracas Avenue; Jere & Barb Gish, 210 W. Caracas Avenue; Sam Fenton, 940C Innsbruck Drive, Hummelstown; Jeff Musser, Musser Home Builders, Inc.; Chris Camposarcone, 7066 Beaver Spring Road, Harrisburg; Jason Scott, CPBJ; Kevin Feldon, 546 Stauffers Church Road; Jeff Gelbaugh, PO Box 85, Hershey; Dennis Phillippy, Holy Trinity Lutheran Church; Todd Pagliarulo, Hershey Trust; Keith Heigel, Light-Heigel; Lauren Pugliese, Chipotle Mexican Grill; Phil Guarno, 109 W. Caracas Avenue; John Dunn, 712 Linden Road; Gary Gilbert, Apple Retail Properties; Craig Mellott, TPD Harrisburg; Keith Hoover, 72 Cedar Avenue; Alex Sadowski, 65 Sylvania Road; Justin Engle, 430 E. Derry Road; Darian Grove, Caracas Avenue; Craig Sharnetzki, CGA Law Firm; Jessica Demopoulos, The Chocolate Avenue Grill; Scott A. and Nancy Stein, 148 W. Granada Avenue; John Christopher, Johnny's Barbershop; Phyllis Ingold, 7 Spring Creek Manor; Lisa Schirato, 102 W. Caracas Avenue; Dennis Drobenak, 13 Hockersville Road; Ken Gall, Hershey Trust Co.; Judi Hummel, 340 Clark Road; Jay Franklin, 238 Mine Road; Lou Bushman, 32 Maple Avenue; Lou Mione, 309 Cocoa Avenue; R. K. Erwin, 1745 Brookline Drive, Hummelstown

**APPROVAL OF MINUTES**

On a motion by Member Angello, seconded by Member Wood, and a unanimous vote, the December 19, 2012 minutes were approved.

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**REORGANIZATION**

On a motion by Member Angello, seconded by Vice Chairman Hammer, and a unanimous vote, the following reorganization was approved:

Chairman William Tafuto  
Vice Chairman Rick Hammer  
Secretary Philip Wood

**OLD BUSINESS**

- A. Adoption of Decision in the Case of The Evangelical Lutheran Church of the Holy Trinity (2012-32)  
Property location: 128 Cocoa Avenue, Hershey**
  
- B. Adoption of Decision in the Case of The Evangelical Lutheran Church of the Holy Trinity (2012-33)  
Property location: 20 West Granada Avenue, Hershey**
  
- C. Adoption of Decision in the Case of Site Enhancement Services (2012-50)  
Property location: 305 West Governor Road, Hershey**

On a motion by Member Angello, seconded by Vice Chairman Hammer, and a unanimous vote, the decisions for items A - C were adopted by consent agenda.

**NEW BUSINESS**

- A. Hearing in the Case of Chris and Nichole Camposarcone (2012-51)  
Property location: 225 Dunham Drive, Hummelstown**

This property, located in the Agricultural/Conservation zoning district, is presently unimproved, but has been approved for construction of a single family home. The applicants are proposing to construct an accessory dwelling unit to be located within the principal dwelling.

Relief is sought as follows:

- a. A Special Exception from Section 225-103 regarding accessory dwelling units

Jeff Musser, builder, was sworn in and gave testimony. Mr. Musser stated that he will be building the applicants' new home. The applicants wish to include a living space for Nichole Camposarcone's mother which will allow her privacy and easy accessibility. The

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proposed accessory dwelling will have two bedrooms and will contain approximately 1,100 square feet. It will not be rented in any way to any tenant. The proposed main dwelling will be approximately 4,000 square feet and will have four bedrooms.

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 Allen V. Zarlenga (2012-52)**  
**Property location: 215 William Drive, Hershey**

This property, located in the Village Residential zoning district, is presently improved with a single family dwelling. The applicant is proposing to replace an existing detached accessory storage shed with a larger shed.

Relief is sought as follows:

- a. A Variance from Article 3, Section 225-10A regarding expansion of a nonconforming use
- b. A Variance from Article 8, Section 225-36.D(2)(c) regarding side yard setback for a detached accessory use

Allen Zarlenga was sworn in and gave testimony. Mr. Zarlenga stated that he owns a rental home with an attached garage. Presently the garage is used for Mr. Zarlenga's storage. The tenant has requested the use of the garage. In order to allow adequate storage for Mr. Zarlenga's snow blower and other items, he is proposing to remove an existing storage shed that is in disrepair and replace it with a 16 foot by 16 foot shed. Due to the slope of the yard, the best placement for the shed is 3 feet from the rear yard line and 15 feet from the side yard line.

Chairman Tafuto questioned whether the adjacent neighbors approved of the proposed plan. Mr. Zarlenga stated that the neighbors were in agreement.

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, he has 30 days to appeal the decision.

**C. Hearing in the Case of 202-214 West Chocolate Avenue, LP (2012-54)**  
**Property location: 202, 208 & 214 W. Chocolate Avenue, Hershey**

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This property, located in the Downtown Commercial zoning district, is presently unimproved. The applicant is proposing to construct a Chipotle Mexican Grill restaurant with outdoor patio seating.

Relief is sought as follows:

- a. A Variance from Section 225-57 regarding permitted uses
- b. A Variance from Section 225-170 regarding commercial landscape buffer
- c. A Variance from Section 225-173 regarding encroachment into yard area
- d. A Variance from Section 225-180 regarding sales or service in the front yard area

The following people were sworn in and gave testimony: Craig Sharnetzki, attorney; David Tshudy, attorney; Ken Gall, Hershey Trust Company; Keith Heigel, Light-Heigel and Associates; Lauren Pugliese, Chipotle Mexican Grill; Craig Mellott, TPD; and Gary Gilbert, Apple Retail Properties.

Mr. Tshudy stated that the Hershey Trust Company purchased the property in 2008. The blighted property had been on the market for two years. In 2010, the properties were razed. The Hershey Trust Company does not actively market available properties; however, realtors and other developers routinely contact the Hershey Trust Company's real estate department and make inquiries about open properties. During the time that the properties were owned by the Hershey Trust Company, two banks and two sit-down style restaurants inquired about the properties. None of those parties extended an offer to purchase the properties.

Mr. Sharnetzki stated that he had been advised by Chuck Emerick, Director of Community Development, that a landscape buffer along the alley would not be necessary and asked that the variance request be withdrawn.

Mr. Heigel added that the proposed restaurant would be in line with other buildings along Chocolate Avenue. The berm along Chocolate Avenue would be topped with a decorative wall or fence which will block the view of vehicles in the parking area and prevent headlights from shining onto Chocolate Avenue. The parking area will contain 27 spots plus 2 handicapped accessible spots.

Mr. Heigel added that the applicant had appeared before the Design Review Board and the design elements have been conditionally approved.

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Member Angello questioned how the applicant defines fast food. Mr. Heigel replied that the restaurant is classified as a casual fast food and does not have a drive through service.

Mr. Mellott added that the proposed restaurant is not a high intensity fast food restaurant. The restaurant will have no morning service, as it opens for business at 11 a.m. The anticipated mid-day service will be 56% fewer than a typical McDonald's and 32% fewer than a typical bank. The traffic study utilizing PennDOT's standards was completed in December, 2012 with levels raised to account for summer traffic.

Mr. Gall stated that the Hershey Trust Company did not solicit any type of buyer for the property.

Ms. Pugliese stated Chipotle has been in business for over twenty years and focuses on gourmet food fast and uses many products that are locally sourced. Ms. Pugliese added that Chipotle has a history of locating restaurants in historic areas such as Federal Hill in Baltimore, Georgetown, Old Town Alexandria, and most recently in Annapolis. The restaurants are designed with their neighbor aesthetics in mind.

Ms. Pugliese stated that fast casual restaurants attract other similar businesses which tend to be more upscale.

Member Angello questioned what other developable land is owned by the Hershey Trust Company. Mr. Gall replied that presently the post office block is open. Mr. Angello asked if further fast casual restaurants were planned for that area. Mr. Gall replied that there are too many factors to make a determination of any future development on that site. Vice Chairman Hammer questioned whether Chipotle was the first step of a larger development plan for that part of town. Mr. Gall replied that there is no plan.

Mr. Emerick stated that he had testified at previous hearings that he believed the intent of the 1993 Zoning Ordinance was to exclude fast food restaurants with drive through service and not fast casual/coffee shops.

**PUBLIC COMMENT**

Maria Yi, 218 W. Chocolate Avenue, owner of Maria's Flowers, read a letter stating her concerns with the proposed plan. Ms. Yi believes the traffic study volume is understated. Ms. Yi is also concerned with noise and odors associated with the dumpster which is proposed to be located adjacent to her property.

Richard Gamble, 39 Hockersville Road, has concerns about the Trust Company purchasing many of the downtown properties such as the former Lucy's restaurant and

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the Lumber Yard, among others. He questioned what the Trust has planned for those properties.

Bob Garret, 4331 Carlisle Pike, Camp Hill, former owner of DeMarco's Restaurant stated that he had a verbal contract with Northwest Bank to purchase this property in 2007. He stated that the Trust approached Northwest Bank and offered them another property further east on Chocolate Avenue.

Jonathan Crist, 226 W. Chocolate Avenue, stated that he feels the Zoning Hearing Board is being asked to do spot re-zoning on use variances. Mr. Crist added that most of the properties in the neighborhood have deed restrictions which only allow non-residential use if approved by Hershey Estates. Mr. Crist also questioned the wisdom of using an alleyway with limited sight distance onto Ridge Road as an egress for the restaurant. Mr. Crist further questioned whether the burdens of hardship for the variance requests are being met.

Jim Polchzynski, 37 W. Main Street, stated that he supports the creation of a Chipotle's in Hershey and believes the food and atmosphere are a good fit for the community and will be good for the young adult/teen crowd.

Phil Guarno, owner of Fenicci's Restaurant, stated that while he supports the Trust, he is unhappy with the real estate department. He believes the state of disrepair that both Lucy's and DeMarco's were in were no worse than Fenicci's when he purchased it. Mr. Guarno feels it would be better to rehabilitate existing structures rather than raze them. Mr. Guarno feels that using the term fast casual is simply a marketing tactic for what is essentially fast food.

Mr. Guarno added that the alleyway behind the proposed property is used by homeowners as their only access to their homes, as parking along Chocolate Avenue is not permitted in that area.

Mr. Guarno, who is the Chairman of the Design Review Board, stated that the developer stated that placement of the Chipotle's was done as far east as possible to allow for future development on the site.

Alex Sadowski, 65 Sylvania Road, presented a petition with over 200 signatures to promote small business and to preserve buildings and Hershey's uniqueness.

Scott Nye, 148 Granada Avenue, stated that his family frequently walks to downtown businesses and he appreciated the possibility of having another restaurant option. Mr. Nye stated his concern with the resistance developers receive when attempting to bring changes to the Hershey area.

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Jessica Demopoulos, owner of The Chocolate Avenue Grill, stated that she was not aware the lot was on the market, as there was no signage. Ms. Demopoulos added that she had been approached by Mr. Gall regarding development ideas for the lot. Ms. Demopoulos stated that she was interested in acquiring the lot. Ms. Demopoulos added that she believes the Trust Company and Chipotle are large enough companies to be able to wait until a comprehensive plan for the downtown area is complete so the Township can develop proactively rather than reactively.

On a motion made by Vice Chairman Hammer, seconded by Member Angello and a unanimous vote, the hearing was continued.

Hearings closed at 9:40 p.m.

**DELIBERATIONS**

The Board met to deliberate in the cases of Chris and Nichole Camposarcone (2012-51) and Allen V. Zarlenga (2012-52) and directed the Solicitor to prepare the draft decisions on each case for formal action at the February, 2013 meeting.

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