

**TOWNSHIP OF DERRY**  
**ZONING HEARING BOARD MEETING MINUTES**  
**April 17, 2013**

**CALL TO ORDER**

The April 17, 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 Philip Wood; Member Michael Angello

Board members absent: Member Matthew Davies

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: Jessica Mathers, 200 N. Carlisle Street, New Bloomfield; Abdurrahman Unal, 1171 Julianne Drive, Hummelstown; Joseph Hawn, 1107 Woodridge Drive; Scott Milsteen, 1041 Stoney Run Road, Hummelstown; Joe White, 305 Linden Street, Lititz; Keith Heigel, Light-Heigel Associates; Frank Gentile, 1180 Julianne Drive, Hummelstown; Massimo Rizzotto, Tomassi, LLC; Randy Wright, Hanover Engineering; Gerald Stephens, 1184 Julianne Drive, Hummelstown; Mark Winter, 310 W. Chocolate Avenue; Susan & Bernie Hockman, 1185 Roush Road, Hummelstown; Kathy & Jim Mitchell, 1193 Roush Road, Hummelstown; David Grove, 1195 Edgewood Drive, Hummelstown; Pam Nelson, 1204 Julianne Drive, Hummelstown; Dennis & Mary Young, 1232 Julianne Drive, Hummelstown; Niki & Meeta Patel, 210 Hockersville Road; LaDonna Zeller, 860 Fairhaven Road, Hummelstown; Jonathan Crist, 226 W. Chocolate Avenue; Yong Yi, 218 W. Chocolate Avenue; Sheryl Hawn, 1107 Woodridge Drive, Hummelstown; Romy Laudermilch, 1116 Woodridge Drive, Hummelstown; Gary Gilbert, Apple Retail; Tom Luttrell, Luttrell Design Group; Jay Yupcavage, 951 Carriage House Court; Jim Flaherty, Derry Homes, LLC; Rich Gamble, 39 Hockersville Road

**APPROVAL OF MINUTES**

On a motion by Member Angello, seconded by Secretary Wood, and a unanimous vote, the March 20, 2013 minutes were approved.

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**OLD BUSINESS**

- A. Adoption of Decision in the Case of Hanuman, LLC (2013-04)  
Property location: 210 Hockersville Road, Hershey**
- B. Adoption of Decision in the Case of Thomas Alan Logan (2013-07)  
Property location: 554 Stauffers Church Road, Palmyra**
- C. Adoption of Decision in the Case of Fairfield Inn and Suites (2013-08)  
Property location: 651 W. Areba Avenue, Hershey**
- D. Adoption of Decision in the Case of Sheetz, Inc. (2013-09)  
Property location: 777 Middletown Road, Hummelstown**
- E. Adoption of Decision in the Case of James Flaherty/Derry Homes, LLC (2013-10)  
Property location: Vacant lots, one on each side of 956 Clifton Heights Road, Hummelstown**

On a motion by Member Angello, seconded by Secretary Wood, and a unanimous vote, the decisions for items A – E were adopted by consent agenda.

- F. Continuance in the Case of 202-214 West Chocolate Avenue, LP (2012-54)  
Property location: 202, 208, 214 West Chocolate Avenue, Hershey**

Case 2012-54 was continued from the previous hearing. Representative for the applicant, Craig Sharnetska, was sworn in and gave testimony. Mr. Sharnetska stated that the applicant has withdrawn the use variance request.

Mr. Sharnetska stated that the variance from Section 225-173 regarding front yard encroachment for two parking spaces would come within 24 feet of the front property line.

Additionally, the variance from Section 225-180 regarding seating in the front yard area is proposing seasonal passive seating for 12-16 people and will feature no table service.

**PUBLIC COMMENT**

Jonathan Crist stated that he was representing Dr. DeLeo who owns the property adjacent to the site along the alleyway. Mr. Crist believes a variance should be requested regarding landscape screening.

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Mr. Sharnetska objected to the rebuttal by Mr. Crist as there was no additional testimony presented.

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.

**NEW BUSINESS**

**A. Hearing in the Case of Wilco Electric, Inc. (2013-11)**  
**Property location: 1041 Stoney Run Road, Hummelstown**

This property, located in the Suburban Residential zoning district, is presently improved with a single family dwelling. The applicant is proposing to construct an accessory power generator on the property.

Relief is sought as follows:

- a. A Variance from Article VII, Section 225-32.D(2)(c) regarding side yard setback
- b. A Variance from Article VII, Section 225-32.D(2)(a) regarding front yard setback

Joseph White, Wilco Electric, and Scott Milsteen, property owner, were sworn in and gave testimony.

Mr. White stated that due to the house configuration, the only logical placement of the generator is on the side of the dwelling. An easement for a sewer line abuts the property. Mr. Milsteen has received approval from the Derry Township Municipal Authority as well as his homeowners' association for placement of the generator. The generator will be placed on the side of the house furthest from the adjacent neighbor.

Chairman Tafuto questioned what the homeowners' association approval letter meant by "back of the house". Mr. Milsteen clarified that due to the placement of the home, the side is considered the back.

Secretary Wood asked what the decibel level of the unit will be. Mr. Milsteen stated that the generator will be slightly louder than an average A/C condenser when in use. Mr. Williams clarified that the generator will be 68 decibels while on low and 73 decibels while at full speed.

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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.

**B. Hearing in the Case of Gerald T. Stephens (2013-12)**  
**Property location: 1184 Julianne Drive, Hummelstown**

This property, located in the Suburban Residential zoning district, is currently improved with a single-family dwelling. The applicant is proposing to establish a lawful accessory dwelling unit to provide housing for a health care provider.

Relief is sought as follows:

- a. A Special Exception from Article XXV, Section 225-103 regarding accessory dwelling unit

Gerald Stephens was sworn in and gave testimony. Mr. Stephens stated that he is disabled and needs live-in assistance. His home was originally built with an additional kitchen/living area.

Mr. Williams stated that the addition built in 1994 by a previous owner was approved as a washroom and not as an additional kitchen/living space.

Mr. Stephens added that the size of the home and the dimensions of the accessory living space comply with the zoning codes. Only one person would live in the space and the only person to live there would be a health care aid to assist Mr. Stephens.

Mr. Stephens purchased the home in 2006 and assumed the accessory use was permitted since it was constructed as such in 1995. Further, Mr. Stephens believes that granting permission to classify the additional living space as a permitted accessory use would be an asset in the future should the home be sold.

Mr. Williams stated that the special exception would not be transferable upon a sale.

**PUBLIC COMMENT**

Frank Gentile, adjacent neighbor, stated that the property has been inhabited by messy tenants who were running an illegal daycare and caused parking issues.

Abdurrahman Unal, neighbor, stated that there were so many cars at the property that he had concerns that too many people were living in the home. Mr. Stephens stated

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that during his recovery from a serious accident, he leased his house. Those tenants have been evicted. Mr. Stephens will live in his home.

Cheryl Hawn, neighbor, questioned why there were two addresses listed on the application. Ms. Hawn also added that the term "health care provider" can mean anyone in the field and could technically allow for leasing space to medical students or others.

Chairman Tafuto asked Mr. Stephens where he resides. Mr. Stephens stated that he lives at Julianne Drive, but when he made the application, he was convalescing at a friend's home on Meadow Drive.

David Green, neighbor, stated that there are two mailboxes at the house stating Apartment 1 and Apartment 2. Mr. Green also had concerns about large amounts of trash that were left outside all winter after the tenants had been evicted.

Dennis Young, neighbor, believes the property should not receive a special exception because the area is not zoned for apartments.

Mr. Stephens added that the space would be used only for a health care aid for his personal use.

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.

**C. Hearing in the Case of Ash Suri (2013-13)**  
**Property location: 730 Stauffers Church Road, Palmyra**

This property, located in the Agricultural/Conservation zoning district, is being improved with a single-family dwelling. The applicant is proposing to construct a drainage pipe under the driveway and place fill in a depression area adjacent to the driveway where slopes exceed 20%.

Relief is sought as follows:

- a. A Variance from Section 225-188.A(1) regarding disturbance of a grade greater than 20 percent.

Mark Winter, the applicant's attorney, was sworn in and gave testimony. Mr. Winter stated that the applicant wishes to install a drainage pipe under the driveway to alleviate wash out and erosion.

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Chairman Tafuto questioned if the Township's consulting engineer, HRG, will review the plan. Mr. Emerick replied that HRG will review the plan.

Mr. Williams added that the applicant will need a letter from the state to determine whether or not the proposed area is considered to be a wetland.

Mr. Winter stated that the applicant will comply, but added that he lives in the area and does not believe it is a wetland.

**PUBLIC COMMENT**

Larry Moyer, neighbor, stated that he was informed several years ago by a federal agency that the area is a wetland and he will not be able to make any improvements on his property.

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.

**D. Hearing in the Case of Tomassi, LLC (2013-15)**  
**Property location: 20 Tomassi Drive, Hummelstown**

On a motion made by Vice Chairman Hammer, seconded by Member Angello, and a unanimous vote, case no. 2013-15 was continued at the request of the applicant.

**E. Hearing in the Case of Kent and LaDonna Zeller (2013-16)**  
**Property location: 860 Fairhaven Road, Hummelstown**

This property, located in the Suburban Residential zoning district, is presently improved with a single-family dwelling. The applicant is seeking to construct a storage shed.

Relief has been requested as follows:

- a. A Variance from Article VII, Section 225-32.D(2)(b) regarding rear yard setback
- b. A Variance from Article VII, Section 225-32.D(2)(c) regarding side yard setback

LaDonna Zeller was sworn in and gave testimony. Ms. Zeller stated that she placed a storage shed in the corner of her sloped property. If the shed were to be moved to be in compliance, it would have to be raised and it would cut into an existing swale. Ms. Zeller

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stated that the 16' x 12' shed is similar to others in the neighborhood and will be screened with evergreen shrubs. The shed is 9.5 feet from the rear property line and 5.5 feet from the side property line.

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.

**F. Hearing in the Case of Luttrell Design Group (2013-17)**  
**Property location: 132-134 W. Granada Avenue, Hershey**

This property, located in the Village Residential zoning district, is presently unimproved. The applicant is seeking to construct a single-family dwelling and detached garage.

Relief has been requested as follows:

- a. A Variance from Article VIII, Section 225-36.D.(1)(c) regarding side yard setback
- b. A Variance from Article VIII, Section 225-36.D.(2)(b) regarding rear yard setback
- c. A Variance from Section 225-36.F regarding maximum impervious cover
- d. A Special Exception from Section 225-177 regarding alignment with adjacent properties

Thomas Luttrell was sworn in and gave testimony. Mr. Luttrell is proposing to build a standard-size four bedroom single family dwelling. Due to the narrow lot, relief is sought for 5 feet on either side for the home, and 2 feet on the side and rear for the detached garage. The front yard setback will be 14 feet 6 inches from the property line to the front porch step.

**PUBLIC COMMENT**

Jessica Mathers, adjacent neighbor, stated that a typical home in the area has less than four bedrooms and are mostly duplexes. Ms. Mathers is concerned about storm water run-off and potential flooding. Ms. Mathers feels that a 5 foot setback on the side is too close.

Mr. Luttrell stated that a 41 inch escape well and A/C condenser will be moved to the rear of the home.

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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.

**G. Hearing in the Case of John Bitner (2013-18)**  
**Property location: 640 Linden Road, Hershey**

This property, located in the Village Residential zoning district, is presently improved with a single-family dwelling. The applicant is seeking to construct a second floor over the existing attached garage.

Relief has been requested as follows:

- a. A Variance from Article III, Section 225-10.A(6) regarding vertical expansion of a non-conformance

John Bitner was sworn in and gave testimony. Mr. Bitner stated that he would like to build above the garage to include an extension of the master bedroom area and a viewing room. The addition will take into account the age and style of the home. The addition will connect to the home's dormer and will be approximately 13 feet in height.

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 7:55 p.m.



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**DELIBERATIONS**

The Board met to deliberate in the cases of 202-214 West Chocolate Avenue, LP (2012-54); Wilco Electric, Inc. (2013-11); Gerald T. Stephens (2013-12); Ash Suri (2013-13); Kent and LaDonna Zeller (2013-16); Luttrell Design Group (2013-17); and John Bitner (2013-18), and directed the Solicitor to prepare the draft decisions on each case for formal action at the May, 2013 meeting.

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