

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

CALL TO ORDER

The July 17, 2013 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Vice Chairman Rick Hammer in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA 17033.

ROLL CALL

Board members in attendance: Vice Chairman Rick Hammer; Member Michael Angello; Member Matthew Davies

Board members absent: Chairman William Tafuto; Secretary Philip Wood

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

Public registering attendance: Robert Watkins, Ed Wagoner – Grace U.M. Church; Mark Winter, 310 W. Chocolate Avenue; Kenny Hinebaugh, Evans Engineering; C.F. Construction, 414 W. Granada Avenue; Sharon, Charles, and Dorothy Hope Bickle, 570 Hilltop Road; Joseph Bressi, 12 Swatara Avenue; Rick Russell, The Hershey Company; James Strong, McNees, Wallace & Nurick; Chris Trogner, John Trogner – Troeg’s; Alexis and Kurt Startoni, 520 Hillcrest Road; Jim Rafferty, Tana Properties; Barry Burkholder, 33 Long Lane; David Jones, Stoch and Leader; David & Sheryl Sheffer, 1315 Penn Avenue; Jim Snyder, Snyder, Secary & Assoc.; Dudley Peffley, 604 Hilltop Road; Gary Perlakowski, 600 Hilltop Road; John and Michelle McDonald, 2527 Raleigh Road; Brian Miller, Susan Schulters, Adrian Timms, Sandy Grimes, Jeff Rosensteel – Grace U.M. Church; J.T. Swick, 124 Jacobs Creek Drive; Pamela and Carl Fackler, 124 McKinley Avenue; Charles Huth, *The Sun*

APPROVAL OF MINUTES

On a motion by Member Angello, seconded by Member Davies, and a unanimous vote, the June 19, 2013 minutes were approved.

OLD BUSINESS

- A. Adoption of Decision in the Case of Philip A. Guarno (2013-30)
Property location: 108 West Chocolate Avenue, Hershey**

- B. Adoption of Decision in the Case of Ekrem Abdic (2013-31)
Property location: 520 Hillcrest Road, Hershey**

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C. Adoption of Decision in the Case of Franklin Romero (2013-32)
Property location: 328 Mill Street, Hershey

D. Adoption of Decision in the Case of The Hershey Company (2013-33)
Property location: 19 East Chocolate Avenue, Hershey

On a motion made by Member Angello, seconded by Member Davies, and a unanimous vote, the decisions for items A-D were adopted by consent agenda.

E. Continuance in the Case of Barry Burkholder (2013-27)
Property location: 1020 West Chocolate Avenue, Hershey

This property, located in the Industrial zoning district, is improved with an auto repair facility. The applicant is proposing to maintain use of an existing parking area on his lot.

Relief is sought as follows:

- a. A Variance from Section 225-76.D(2) & (3) regarding parking within the setbacks of the property

David Jones and Barry Burkholder were sworn in and gave testimony. Mr. Burkholder has held a perpetual easement agreement to allow use of the disputed area for parking since 1997. The area was lined for parking when it was purchased. The adjacent property which includes this parking area was recently sold and the new owner would like to cease the easement agreement. The new adjacent property owner has offered to lease the parking area back to Mr. Burkholder.

PUBLIC COMMENT

Mark Winter, attorney for the owner of 1016 Old West Chocolate Avenue, stated that while the easement states that the parcel can be utilized, parking is not a permitted use.

Robert W. Smith, owner of 1016 Old West Chocolate Avenue, stated that he has concerns about liability and environmental issues regarding vehicles parked on his property. Mr. Smith added that in March, 2012, he made an offer to Mr. Burkholder to lease the parking area for use, which Mr. Burkholder declined.

No other persons provided testimony at this hearing.

Vice Chairman Hammer 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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F. Continuance in the Case of 1016 Old West Chocolate Avenue, LLC (2013-28)

Property location: 1016 West Chocolate Avenue, Hershey

The applicant requested that the application be withdrawn.

G. Continuance in the Case of Grace United Methodist Church (2013-34)

Property location: 433 East Main Street, Hummelstown

This property, located in the Business Office zoning district, is improved with a church facility. The applicant is proposing to construct a pole building to be used for accessory storage of materials.

Relief is sought as follows:

- a. A Variance from Section 225-48 regarding maximum height of a detached accessory use

Robert Watkins and Jeffrey Rosensteel were sworn in and gave testimony. Mr. Watkins stated that the church currently has five vans to accommodate the daycare, pre-school, and youth group, and three storage sheds which are filled to capacity. The church would like to replace the storage sheds with a 44' x 60' pole building to house the vans and contents of the storage sheds. The building will comply with rear and side yard setbacks. The height of the proposed building will be 25 feet, 6 ¼ inches; relief of 5 feet, 6 ¼ inches is requested. The additional height will allow the building to have extra storage in the attic area. The proposed building will not be taller than the church itself.

No other persons provided testimony at this hearing.

Vice Chairman Hammer 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 John T. Swick II and Monina Joy Swick (2013-35)

Property location: 124 Jacobs Creek 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 deck with a larger deck.

Relief is sought as follows:

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a. A Variance regarding rear yard setback requirements

John Swick was sworn in and gave testimony. Mr. Swick stated that he would like to remove an existing 12' x 18' deck and replace it with a larger deck that would be irregularly shaped and would be the length of the rear of his home. A portion of the deck would extend to within 4 feet of the rear property line. Mr. Swick explained that his property is adjacent to an open common area and is about 50 feet from the Township's bike trail.

Mr. Swick added that his homeowners' association board has reviewed and approved his plan. He also added that his property has a steep downward slope from the rear of his home, making his rear yard narrow and not useable.

Member Angello, who lives in the neighborhood, confirmed that Mr. Swick's property is steeply sloped.

No other persons provided testimony at this hearing.

Vice Chairman Hammer 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 Dave and Sheryl Sheffer (2013-36)
Property location: 1315 Penn Avenue, Hershey

This property, located in the Village Residential zoning district, is improved with a single family dwelling. The applicant is proposing to construct a screened porch over an existing patio, which is to be enlarged.

Relief is sought as follows:

- a. A Variance regarding non-conforming floor area expansion greater than 25%
- b. A Variance regarding maximum impervious coverage

Dave and Sheryl Sheffer were sworn in and gave testimony. Mr. Sheffer stated that he would like to expand his 10' x 15' patio to 15' x 15', and to enclose it with screened windows. Mr. Sheffer added that the rear stairwell from the patio will encroach into the rear yard setback by 4.5 feet.

No other persons provided testimony at this hearing.

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Vice Chairman Hammer 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 Carl and Pamela Fackler (2013-37)
Property location: 124 McKinley Avenue, Hershey

This property, located in the Village Residential zoning district, is improved with a single-family dwelling and a detached garage. The applicant is proposing to demolish the existing garage and construct a larger garage in its place.

Relief is sought as follows:

- a. A Variance regarding expansion of a non-conforming use
- b. A Variance regarding front setback for a detached accessory use

Carl Fackler was sworn in and gave testimony. Mr. Fackler is proposing to construct a 36' x 24', three-bay garage. Mr. Fackler stated that his property is irregularly shaped. The alleyway is considered to be a front yard setback. The new garage will extend no further into the setback than the existing garage, which is 2 feet from the property line.

No other persons provided testimony at this hearing.

Vice Chairman Hammer 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 C. F. Construction (2013-38)
Property location: 12 Swatara Avenue, Hershey

This property, located in the Downtown Commercial zoning district, is improved with a single family dwelling. The applicant is proposing to construct a deck.

Relief is sought as follows:

- a. A Variance from Section 225-60.D regarding rear yard setback requirements

Charles Faust and Joseph Bressi were sworn in and gave testimony. Mr. Faust stated that currently there is only one exit from the home; the deck will create a second exit. Mr. Faust added that the yard slopes downward away from the house. Mr. Williams questioned whether there will be gravel or grass under the deck. Mr. Faust replied that

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while there will be 7 feet of clearance under the deck, due to low light levels, gravel will most likely be used.

No other persons provided testimony at this hearing.

Vice Chairman Hammer 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.

E. Hearing in the Case of Troeg's Brewing Company (2013-39)
Property location: 200 East Hersheypark Drive, Hershey

This property, located in the Economic Development zoning district, is improved with a brewing facility. The applicant is proposing to construct multiple accessory structures to the rear of the property, including 24 fermentation tanks to be constructed in phases, a pump control building, and a grain storage tank.

Relief is sought as follows:

- a. A Variance from Section 225-68.F(2) regarding maximum height for a detached accessory structure

Chris Trogner and Jim Snyder were sworn in and gave testimony. Mr. Trogner stated that a total of twenty-four 48 foot high fermentation tanks will be added to the rear of the building along the railroad tracks at a rate of eight per year for the next three years. The taller tanks are needed to keep the amount of tanks at a minimum. If the tanks were kept to the 20 foot height limit, 192 tanks would be needed to contain the same amount. In addition to the fermentation tanks, a 40 foot grain silo will be added in the next year to contain raw material.

Mr. Trogner stated that his business is growing rapidly, so storing the beer in fermenting tanks outside the building will allow more room inside for increased production.

Mr. Williams questioned whether there will be a need to increase the number of employees, which may affect the parking calculations that were based on 20 employees and 334 seats in the tasting area.

Mr. Trogner replied that the employees have increased to between 30-34, but not all of them are full time and not all employees are on site at the same time. Also, the second floor event area which was included in the 334 seat count is not being used. The main floor tasting area currently uses less than 200 seats.

No other persons provided testimony at this hearing.

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Vice Chairman Hammer 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 Ketterline, Inc. (2013-40)
Property location: 593 Hilltop Road, Hummelstown

This property, located in the Agricultural/Conservation zoning district, is improved with a single family dwelling. The applicant is proposing to construct a 60' x 30' pole building to be used as a detached garage.

Relief is sought as follows:

- a. A Variance from Section 225-25.D.(3) regarding side yard setback requirements

Robert Kettering was sworn in and gave testimony. Mr. Kettering is proposing to construct a pole building to be located 20 feet from the property line.

Mr. Williams stated that he would like to see a better site development plan to determine whether the pole building could be placed in a way to comply with the setback.

Mr. Kettering stated that the proposed placement of the building is in order to utilize an existing driveway and also to preserve a small fish pond and large trees. Mr. Kettering stated that the adjacent neighbor is agreeable to the building so long as an evergreen barrier screen is planted.

PUBLIC COMMENT

Dorothy Hope Bickle was sworn in and gave testimony. Ms. Bickle has concerns that not all the neighbors in the area received notice of this hearing. She also has concerns about storm water runoff, erosion, and aesthetics that the pole building construction may create. Ms. Bickle added that recently an elderly neighbor was taken advantage of and had their property clear cut of trees, which has created storm water runoff and erosion issues in the area and she is concerned that the development of this property may increase those issues. Ms. Bickle questioned why so many trees on the property were marked with spray paint. She also questioned whether pool cleaning supplies related to the owner's business would be stored in the pole building and added that she has environmental concerns regarding possible chemical leaks. Ms. Bickle questioned whether there are any guidelines regarding preservation in the Agricultural/Conservation zoning district.

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Mr. Williams stated that other than density and setbacks, there are no guidelines.

John McDonald, owner of the property, was sworn in and gave testimony. Mr. McDonald stated that the marked trees are either growing at dangerous angles or are diseased and will be removed. Mr. McDonald added that the pole building will be used to house his business van, tools, and some pool-related chemicals. Mr. McDonald added that he has never had any PA DEP-related issues regarding his business. Mr. McDonald stated that his intention is to build his new house and the pole building to complement the property, as it will be his personal home.

The applicant requested a continuance.

On a motion made by Member Angello, seconded by Member Davies, and a unanimous vote, Case No. 2013-40 was continued.

**G. Hearing in the Case of The Hershey Company (2013-41)
Property location: 11 East Chocolate Avenue, Hershey**

This property, located in the Village Core, Downtown Commercial Sign Overlay, and Chocolate Avenue Preservation Overlay zoning districts, is improved with an office building and parking lot. The applicant is proposing to consolidate three tracts of land into one lot. The subject property is called Lot 1.

Relief is sought as follows:

- a. A Variance from Section 225-64.D.(4) regarding side yard setback
- b. A Variance from Section 225-64.F regarding maximum impervious cover
- c. A Variance from Section 225-132.L regarding parking in setbacks
- d. A Variance from Section 225-133 regarding minimum off-street parking
- e. A Special Exception from Section 225-134 regarding general parking regulations

**H. Hearing in the Case of The Hershey Company (2013-42)
Property location: 19 East Chocolate Avenue, Hershey**

This property, located in the Village Core, Downtown Commercial Sign Overlay, and Chocolate Avenue Preservation Overlay zoning districts, is improved with an office building undergoing renovation and the decommissioned chocolate plant. The applicant desires to consolidate seven tracts of land into three individual lots; this application

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being Lot A which is proposed to contain parking for the 11 and 19 East Chocolate Avenue properties.

Relief is sought as follows:

- a. A Variance from Section 225-132.L regarding parking in setbacks

I. Hearing in the Case of The Hershey Company (2013-43)
Property location: 19 East Chocolate Avenue, Hershey

This property, located in the Village Core, Downtown Commercial Sign Overlay, and Chocolate Avenue Preservation Overlay zoning districts, is improved with an office building undergoing renovation and the decommissioned chocolate plant. Petitioner desires to consolidate seven tracts of land into three individual lots; this application being Lot B which is proposed to contain the western portion of the existing chocolate plant undergoing renovations for office space.

Relief is sought as follows:

- a. A Variance from Section 225-64.F regarding maximum impervious cover
- b. A Variance from Section 132.J.(1) regarding minimum interior landscaping requirements for parking lots
- c. A Variance from Section 132.L regarding parking in the setbacks
- d. A Special Exception from Section 225-134 regarding general parking regulations
- e. A Variance from Section 225-135 regarding minimum number of off-street loading spaces

J. Hearing in the Case of The Hershey Company (2013-44)
Property location: 19 East Chocolate Avenue, Hershey

This property, located in the Village Core, Downtown Commercial Sign Overlay, and Chocolate Avenue Preservation Overlay zoning districts, is improved with an office building undergoing renovation and the decommissioned chocolate plant. Petitioner desires to consolidate seven tracts of land into three individual lots; this application being Lot C which is proposed to be residual property containing only the current powerhouse building, following demolition of the eastern portion of the chocolate plant.

Relief is sought as follows:

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- a. A Variance from Section 225-132.J.(1) regarding minimum interior landscaping requirements for parking lots

Kenny Hinebaugh and Judd Dayton were sworn in and gave a combined testimony for cases 2013-41, 2013-42, 2013-43, and 2013-44.

Mr. Hinebaugh stated that Lot 1 will combine three lots into one and include a .03 acre parcel from the adjacent property in order to lessen the existing non-conformities within the property lines. The impervious cover will be decreased from 96% down to 87%.

Lot A will consist mostly of parking area for both 11 East and 14 East Chocolate Avenue.

Lot B will consist of the western portion of the former chocolate plant to be converted into offices for The Hershey Company.

Lot C will be the remainder of the property and the powerhouse. Other than some possible parking, no development is planned for Lot C at this time.

No other persons provided testimony at these hearings.

Vice Chairman Hammer informed the applicant that the Board has 45 days to render decisions and if the applicant is aggrieved in any way, they have 30 days to appeal the decisions.

**K. Hearing in the Case of Burget & Associates, Inc. (2013-45)
Property location: 810 West Chocolate Avenue, Hershey**

This property, located in the Industrial zoning district, is improved with a non-residential building which is currently under renovation for a full service restaurant and nightclub. The applicant is proposing to construct a wall sign on the building and a raised sidewalk to the rear of the property.

Relief is sought as follows:

- a. A Variance from Section 225-173.B regarding sidewalks or walkways on grade
- b. A Variance from Section 225-129.B(1)(d) regarding wall signs
- c. A Variance from Section 225-76.D(1) regarding front yard setback requirements for HVAC condenser pad screening

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Jim Rafferty was sworn in and gave testimony. Mr. Rafferty stated that in order to allow for emergency egress, a sidewalk will be built to the rear of the building facing the railroad tracks. Due to the slope, the sidewalk will be elevated and graduated to meet the exit doors. The sidewalk will end at the dock area, which is 2 feet from the railroad property line.

Mr. Rafferty also testified that due to the size of the building, larger than normal signage will be needed. A 6' x 15' sign will be placed on the northern face of the building. A 3' x 5' sign will be placed on the eastern face of the building. The lighting for the signs will comply with the Township's regulations and will most likely feature some sort of "goose-neck" lamp.

No other persons provided testimony at this hearing.

Vice Chairman Hammer 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.

L. Hearing in the Case of A to Z Realty, LLC (2013-46)
Property location: 721 Fishburn Road, Hershey

This property, located in the Neighborhood Commercial zoning district, is improved with a single family dwelling. The applicant is proposing to convert the residence to office space and to construct a rear addition to the building and a parking lot.

Relief is sought as follows:

- a. A Variance from Section 225-10.A(6) regarding linear expansion greater than 75%
- b. A Variance from Section 225-10.A(2) regarding increase of floor area greater than 25%
- c. A Variance from Section 225-52.C.(2) and (3) regarding parking in setbacks

Annette Cassel-Means was sworn in and gave testimony. Ms. Cassel-Means is proposing to eliminate the non-conforming residential use by converting the property to a conforming office use. In order to use the building as a viable office, it must be expanded from the current 1,008 square feet to 2,160 square feet, plus a parking area. Ms. Cassel-Means is in negotiation with a medical office to occupy the space. Similar buildings in the neighborhood have been converted from private homes to professional offices.

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No other persons provided testimony at this hearing.

Vice Chairman Hammer 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 9:45 p.m.

DELIBERATIONS

The Board met to deliberate in the cases of Barry Burkholder (2013-27), Grace United Methodist Church (2013-34), John T. Swick II and Monina Joy Swick (2013-35), Dave and Sheryl Sheffer (2013-36), Carl and Pamela Fackler (2013-37), C.F. Construction (2013-38), Troeg's Brewing Company (2013-39), The Hershey Company (2013-41, -42, -43, -44), Burget & Associates, Inc. (2013-45), and A to Z Realty, LLC (2013-46) and directed the Solicitor to prepare the draft decisions on each case for formal action at the August, 2013 meeting.
