

TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
September 19, 2012

CALL TO ORDER

The September 19, 2012 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; Secretary Matthew Davies; Member Philip Wood

Board members absent: Vice Chairman Rick Hammer; Member Michael Angello

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

Public registering attendance: D. Troy Sellars, 2030 Raleigh Road; I. J. Hess, Desserts, Etc.; Paul Gross, Buchart-Horn; Jim Rafferty, Tana Properties, LLC; Glen Foster, 2439 Raleigh Road; Brendon Foster, 2439 Raleigh Road; George Porter, 909 E. Chocolate Avenue; Mark Allshouse, 4833 Spring Road, Shermansdale, PA; Joe Burget, Jr., New Bloomfield, PA

APPROVAL OF MINUTES

On a motion by Secretary Davies, seconded by Member Wood, and a unanimous vote, the August 22, 2012 and August 30, 2012 minutes were approved.

OLD BUSINESS

- A. Adoption of Decision in the Case of Case of Russell Wertz (2012-22)**
Property location: 1315 E. Caracas Avenue, Hershey
- B. Adoption of Decision in the Case of Thomas M. DeDonatis (2012-24)**
Property location: 1080 Swatara Road, Hershey
- C. Adoption of Decision in the Case of Brad and Nancy Kiscadden (2012-27)**
Property location: 1412 E. Derry Road, Hershey
- D. Adoption of Decision in the Case of Ekrem and Senada Abdic (2012-28)**
Property location: 441 Learden Road, Hershey
- E. Adoption of Decision in the Case of ARM Group, Inc. (2012-29)**

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Property location: 1129 W. Governor Road, Hershey

**F. Adoption of Decision in the Case of Jack Billmyer, Inc. (2012-30)
Property location: 58 Cedar Avenue, Hershey**

**G. Adoption of Decision in the Case of David Gasper (2012-31)
Property location: 222 W. Granada Avenue, Hershey**

On a motion by Member Wood, seconded by Secretary Davies, and a unanimous vote, the decisions for items a-g were adopted by consent agenda.

**H. Continuance in the Case of The Evangelical Lutheran Church of the Holy Trinity (2012-32)
Property location: 20 W. Granada Avenue, Hershey**

**I. Continuance in the Case of The Evangelical Lutheran Church of the Holy Trinity (2012-33)
Property location: 128 Cocoa Avenue, Hershey**

The applicant requested a continuance to the October meeting.

NEW BUSINESS

**A. Hearing in the Case of Brian and Jennifer Krause (2012-34)
Property location: 525 W. Areba Avenue, Hershey**

The applicants requested a continuance to the October meeting.

**B. Hearing in the Case of Robert M. Gurt (2012-35)
Property location: 139-141 W. Granada Avenue, Hershey**

This property, located in the Village Residential zoning district, is presently improved with a duplex dwelling. The applicant is proposing to construct two paver patio areas at the rear of the dwelling.

Relief is sought as follows:

- a. A Variance from Article 8, Section 225-36.D(2)(c) regarding side yard setback
- b. A Variance from Article 8, Section 225-36.F regarding impervious cover

Robert Gurt was sworn in and gave testimony. Mr. Gurt is proposing to install 12 foot by 12 foot paver patios on both sides of the duplex property. The narrow lots and location

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of existing sidewalks limit the placement of the proposed patios. On the east side, the side yard setback will be within 3 feet of the property line. On the west side, the patio will be on the property line.

Mr. Gurt stated that other similar patios with similar placement exist in the neighborhood. Mr. Gurt stated that the 6,000-square-foot lot will contain 3,928 square feet of impervious cover. Member Wood questioned whether the neighbors are in agreement with the proposed patios. Mr. Gurt replied that he has spoken with them and they support the proposed additions.

Mr. Williams stated that the vegetative coverage would be 34.53% and suggested a variance to allow for less than the required vegetative coverage.

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 the Derry Township Municipal Authority (2012-36)
Property location: 670 Clearwater Road, Hershey

This property, located in the Public zoning district, is presently improved with the DTMA administration building. The applicant is proposing to make alterations and construct an addition to the existing administration building. Relief is sought as follows:

- a. A Variance from Article 32, Section 225-150.E regarding design and construction standards for buildings located within the Floodplain Overlay District

Ralph Watters and Paul Gross were sworn in and gave testimony. Mr. Watters stated that the present building was constructed prior to FEMA's establishment of floodplains. Mr. Watters stated that the pumping system and tanks are currently 42 feet below ground with office space and labs located above.

Currently only one third of the second floor is useable. A staircase/elevator tower is needed to be able to access the larger portion of the second floor. Using the second floor for offices and storage of sensitive items would raise those uses out of the flood zone.

DTMA is working with an engineer who has designed an elevator with all the mechanicals located above the floodplain. Water and mold-resistant materials will be used in the construction.

No other persons provided testimony at this hearing.

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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 D. Troy and Heather L. Sellars (2012-37)
Property location: 2030 Raleigh Road, Hummelstown

This property, located in the Village Residential zoning district, is presently improved with a single family dwelling. The applicants are proposing to construct a covered porch.

Relief is sought as follows:

- a. A Variance from Article 3, Section 225-10.A.6 regarding expansion of a non-conforming use
- b. A Variance from Article 3, Section 225-36.D regarding front yard setback

Troy Sellars was sworn in and gave testimony. Mr. Sellars stated that he would like to install a gabled porch roof over an existing concrete pad. The pad is 7 feet 1 inch by 5 feet. Two 6 inch by 6 inch posts will support the porch which will be located 25 feet from the front 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, he has 30 days to appeal the decision.

E. Hearing in the Case of James and Julie Larkin (2012-38)
Property location: 2007 Raleigh Road, Hummelstown

This property, located in the Village Residential zoning district, is improved with a single family dwelling. The applicants are proposing to install an in-ground pool.

Relief is sought as follows:

- a. A Variance from Article 8, Section 225-36.F regarding maximum impervious coverage limitations
- b. A Variance from Article 8, Section 225-36.D.2.B regarding rear yard setback

James and Julie Larkin were sworn in and gave testimony. Mr. Larkin stated that he would like to install a 16 by 32 foot pool in his irregularly shaped yard. The pool will include a three-foot concrete apron around the edges and have the pool overflow

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hooked into the public sewer. The 324 square feet will increase the impervious coverage to 36.67%.

Secretary Davies asked what the closest distance is from the decking to the property line. Mr. Larkin replied that the distance is two feet.

Mr. Williams suggested the following additional variances:

- a. A Variance from Article 8, Section 225-36.D(2)(c) regarding side yard setback
- b. A Variance from Article 8, Section 225-36.E regarding minimum vegetative coverage

The side yard setback requires 7.5 feet of relief. The vegetative cover will require 3.42% of relief.

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.

F. Hearing in the Case of Irvin J. and Lucinda L. Hess (2012-39)
Property location: 840 E. Chocolate Avenue, Hershey

This property, located in the Neighborhood Commercial zoning district, is improved with a commercial building currently being used as office and retail space. The applicants are proposing to operate a mixed retail and fast food restaurant selling fresh baked goods on the first floor, and utilize the second floor as office space.

Relief is sought as follows:

- a. A Variance from Article 2, Section 225-8 regarding the definition of “fast food” restaurant
- b. A Variance from Article 7, Section 225-49 regarding classification of proposed use as a fast food restaurant

George Porter, attorney for the applicant, and Irvin Hess were sworn in and gave testimony. Mr. Porter stated that the applicant and customers would like to add seating. 21 seats are proposed, along with 14 parking spaces and one handicapped-accessible space.

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Mr. Emerick, the Zoning Officer, determined that the bakery under the Township's current definition is classified as "fast food". Mr. Emerick added that he feels the spirit of the requirement is to regulate high intensity restaurants with drive thru service.

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.

G. Hearing in the Case of Bill Delinsky, dba Tana Properties, LLC (2012-40)
Property location: 810 Old West Chocolate Avenue, Hershey

This property, located in the Industrial zoning district, is improved with a nonresidential building, commonly referred to as Curry's Mill. The applicant is proposing to convert the building to a full service restaurant use.

Relief is sought as follows:

- a. A Variance from Article 18, Section 225-73 regarding permitted uses
- b. A Variance from Article 18, Section 225-76.F regarding maximum impervious coverage
- c. A Variance from Article 18, Section 225-66.D.(1) regarding front yard setback
- d. A Variance from Article 18, Section 225-76.D.2 regarding rear yard setback
- e. A Variance from Article 18, Section 225-76.D.1 regarding front yard setback
- f. A Variance from Article 18, Section 225-76.D.3 regarding side yard setback
- g. A Variance from Article 18, Section 225-173 regarding permitted encroachments in yard areas
- h. A Variance from Article 18, Section 225-132.H regarding minimum access drive width

Joe Burget, James Rafferty, and Mark Allshouse, attorney for the applicant, were sworn in and gave testimony.

Mr. Rafferty stated that he would like to convert the former Curry's Mill, which has been unused for 35 years, into a full service restaurant which will feature outdoor seating, bar

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service, and limited entertainment. Mr. Rafferty stated that the building is a large, unique structure that is conducive to open gathering and social space.

Mr. Rafferty stated that public water and sewer lines exist in the area; however, the building has no service. Mr. Rafferty is proposing to add a new kitchen area and a structure to house bathrooms, stairs and elevator for safety and to adhere to ADA standards.

The lower level will be used for commercial use and storage. The second level could include a mezzanine area and be used as a restaurant. The anticipated occupancy would be 207 patrons. 74 parking spaces are proposed plus 2 handicapped-accessible spaces.

The proposed impervious area is 68%; 8% relief is requested. 31.5% vegetative coverage is proposed; 1.5% relief is requested.

Mr. Rafferty stated that he has an agreement in place with the adjacent neighbor to allow the neighbor to use a portion of the restaurant parking area for a daily delivery truck that would make deliveries prior to the restaurant's business day.

Mr. Emerick questioned whether the number of seats would increase when the outdoor seating area was in use. Mr. Rafferty replied that the seats inside the restaurant would be removed to keep the number at 207 seats year round.

Mr. Emerick added that the proposed entertainment changes the classification from restaurant to nightclub.

The applicant requested a continuance.

Hearings closed at 7:55 p.m.

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DELIBERATIONS

The Board met to deliberate in the cases of Robert M. Gurt (2012-35); the Derry Township Municipal Authority (2012-36); D. Troy and Heather L. Sellars (2012-37); James and Julie Larkin (2012-38); and Irvin J. and Lucinda L. Hess (2012-39) and directed the Solicitor to prepare the draft decisions on each case for formal action at the October, 2012 meeting.
