

**TOWNSHIP OF DERRY**  
**ZONING HEARING BOARD MEETING MINUTES**  
**August 16, 2017**

**CALL TO ORDER**

The August 16, 2017 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 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; Secretary Matthew Luttrell; Member Steve Moniak; Member Mark Shrift

Board member absent: Vice Chairman Philip Wood

Also Present: Megan Huff, Solicitor to the Board; Brandon Williams, Assistant Director of Community Development; Maria O'Donnell, Court Reporter; Jenelle Stumpf, Community Development Secretary

Public Registering Attendance: Christine Baker, 2391 Raleigh Road, Hummelstown; Garrett Gallia, Hershey Entertainment & Resorts Company; Timothy Anderson, Pepper Hamilton, LLP; Keith Davis, KRD Design; Chris Dawson, CDA; Marvin Smith, Carolyn Stoner – Penn State Hershey

**APPROVAL OF MINUTES**

On a motion by Member Moniak, seconded by Secretary Luttrell, and a unanimous vote, the July 19, 2017 minutes were approved as written.

**OLD BUSINESS**

- A. Adoption of Decision in the Case of Mark Pierce (2017-04)**  
**Property location: 2053 Church Road, Hummelstown**

This case was withdrawn prior to the meeting.

- B. Adoption of Decision in the Case of Penn State Hershey Rehabilitation Hospital, LLC (2017-07)**  
**Property location: 1135 Old West Chocolate Avenue, Hummelstown**

On a motion by Secretary Luttrell, seconded by Member Moniak, and a unanimous vote, the decision was adopted as written.

- C. Continuance in the Case of Hershey Entertainment & Resorts Company (2017-06)**  
**Property location: 11 East Chocolate Avenue, Hershey**

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This property is located in the Hershey Mixed Use, Downtown Core Overlay, and Downtown Commercial Sign Overlay zoning districts, and is improved with a commercial building that is currently being renovated for a day spa and offices. The petitioner proposes to provide signage for the uses. Relief was sought from the permitted number of signs and sign types; the permitted size of projecting and freestanding signs; and the permitted location relative to placement of a wall and projecting sign on the face of a building.

Garrett Gallia, Hershey Entertainment & Resorts Company; Tim Anderson, Pepper Hamilton, LLP; Keith Davis, KRD Design; and Chris Dawson, Architect, were sworn in. Mr. Gallia noted that they came before the Board in July seeking relief for the signage package for 11 East Chocolate Avenue. The applicant was aware there were additional considerations that needed to be revisited based on the discussion with the Board; therefore, the applicant requested a continuance after the July meeting. The applicant has significantly revised their request for relief, resulting in the following reductions:

- The signage was originally proposed to be backlit, which is not compliant with the Zoning Ordinance. The applicant is now proposing halo-lit signage, so relief regarding lighting is no longer necessary.
- The fabrication materials are now proposed to be metal instead of acrylic.
- The window signs have been removed from the sign package.
- The area of the freestanding sign on the western side of the building has been reduced. It was originally 25 square feet and is now proposed to be 20 square feet.
- The JSDC Law canopy sign on the western side of the building has been removed from the proposal.

Mr. Gallia stated that the remaining requests for relief relate to the projecting sign (square footage, vertical dimension, and placement). The building is unique in size and placement, and there is limited frontage on East Chocolate Avenue. The road to the west of the building is one way out of the site, so the only way to access parking for the building, if one is traveling eastbound, is to make a left turn movement from East Chocolate Avenue approximately 200 feet before the building and then travel another 50 feet or so and make a right turn movement onto the property. There needs to be the ability to provide direction to drivers from a distance; therefore, a larger sign is necessary.

Keith Davis explained that he analyzed the approach distances from all directions. The distances were taken into consideration using the United States Sign Council (USSC) guidelines for legibility. The proposed design is actually less than the USSC recommended

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sizes so in a sense it is representative of the least possible modification of the Ordinance to make the sign successful in this environment.

Mr. Gallia presented a rendering of the building with a compliant sign to help make the point that a smaller sign would not be effective given the size and location of the building. Chris Dawson, who prepared the rendering, testified to the accuracy of the size of the compliant sign.

Mr. Gallia stated that 'The Melt Spa by Hershey' is the trademarked name of the business. The integrity of the mark is critical in how the applicant positions the business, so the full name of the mark always has to be included in printed materials and signage. Lowering the placement or reducing the size of the sign will result in the mark being illegible. Because this is a new business, the applicant wants to provide as much visual identity as possible, and that is not easily accomplished given the location of the building.

Mr. Gallia stated that the hardship was not created by the applicant because the size and scale of the building were pre-existing. Additionally, the one-way traffic pattern was not caused by the applicant.

Mr. Dawson noted that The Hershey Company has a large sign on the neighboring property; the Press Building has a similar projecting sign for Devon and significant signage for Houlihans; and the Hershey Story museum has a significant amount of signage. Mr. Dawson stated that the proposed projecting sign will not alter the essential character of the neighborhood and in fact, the design was based on the character of the building and is more subdued than other signs in the area.

Member Moniak asked the applicant to explain the thought process regarding the placement of the sign in terms of its height. Mr. Gallia responded that they needed to make sure the entire trademark is visible, so the sign could not be located too far down on the building. Mr. Dawson added that the canopy also dictated the location of the projecting sign.

Mr. Anderson noted that this matter was applied for as a variance, including the area of the sign, but if the Board believes the request should have been filed as a special exception, Mr. Anderson can go through the elements of a special exception for sign area. The Board agreed that it is not necessary to present the same evidence as a request for a special exception.

Chairman Kushner asked if the variance for the JSDC Law sign is still part of the requested relief. Mr. Williams responded that the Township's interpretation is that this could be considered a 'highwall' sign, which would be permitted by the Board of Supervisors' authorization of a conditional use request by the applicant.

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Mr. Anderson identified 5 exhibits and requested that they be entered into evidence and made part of the record. Mr. Anderson also requested that Chris Dawson and Keith Davis be qualified as expert witnesses. The Board agreed to these requests.

Secretary Luttrell asked if it is anticipated that the majority of guests for The Melt Spa will be from outside of the area. Mr. Gallia responded that it will likely be an equal mix of tourists and local residents.

In response to questions from Solicitor Huff, Mr. Anderson stated that the projecting sign will be 37 square feet; will have a vertical dimension of 14 feet, 6 inches; and will extend approximately 4-5 feet above the lower sill of the upper story windows.

No other persons provided testimony.

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.

**NEW BUSINESS**

- A. Hearing in the Case of Hershey Entertainment & Resorts Company  
(2017-08)  
Property location: 100 West Hersheypark Drive, Hershey**

This case was withdrawn prior to the meeting.

- B. Hearing in the Case of Timothy J. and Christine L. Baker (2017-09)  
Property location: 2391 Raleigh Road, Hummelstown**

This property, located in the R-2 zoning district, is improved with a single-family dwelling. The applicants desire to install a paver patio. Relief was sought from rear yard setback requirements.

Christine Baker was sworn in and testified that the proposed patio will be 15 feet by 16 feet. The property has tight boundaries, due to a 20-foot drainage easement on the west side of the lot; and a small rear yard because the lot was formerly on a cul-de-sac, which required the construction of the dwelling further back on the property than most of the other dwellings on the street. The cul-de-sac has since be eliminated. The yard is sloping, which also limits their ability to get the most use out of their property. Ms. Baker stated that the existing deck will remain.

Member Moniak asked how far the patio will encroach into rear yard setback. Mr. Williams responded that it will encroach by 2.5 feet into the 10-foot required setback.

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Secretary Luttrell asked if there is an open swale in the drainage easement. Mr. Williams answered yes.

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 Milton Hershey School (2017-10)**  
**Property location: Governor Road, Hershey**

Brandon Williams stated that the applicant has requested a continuance until the September meeting.

**D. Hearing in the Case of Milton S. Hershey Medical Center (2017-11)**  
**Property location: 600 University Drive, Hershey**

This property, located in the Medical Campus Central zoning district, is improved with a hospital facility. The applicant desires to construct three additional floors onto the existing Children's Hospital. Relief was sought from maximum height and area for roof penthouse structures that house mechanical equipment.

Marvin Smith, Director of Facilities for the Medical Center was sworn in. He stated that the three additional floors will be used for in-patient care; therefore, required mechanical equipment will be housed on the rooftop. Elevator access to the rooftop mechanical equipment is essential for maintenance. The elevator shaft is proposed to be 24 feet, 6 inches in height, which will be 4.5 feet above the 150-foot maximum permitted height. Mr. Smith further testified that the mechanical penthouse will be slightly more than 12,000 square feet, which equates to 33% of the total roof area.

Brandon Williams inquired if the elevator will extend above the elevation of the building, or if it will be limited to just the mechanical pullies and equipment. Mr. Smith responded that it is enclosed equipment space, with the enclosure preventing exposure to the weather. The enclosure will be 4.5 feet above the maximum permitted height. Mr. Williams commented that if it is just strictly the mechanical equipment related to the elevator that exceeds the 130-foot maximum height, Township staff's opinion is that it would still qualify for the exceptions up to 150 feet in height. The Zoning Ordinance does not specify what type of mechanical equipment is allowed to have that height encroachment.

Member Shrift asked about the overall height in relation to the existing hospital. Mr. Smith responded that the existing hospital is approximately 95 feet in height.

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Secretary Luttrell asked if there are height restrictions for this building related to helicopter traffic. Mr. Smith responded that the flight plans will have to be reviewed with the FAA, but noted that this building is not in the flight path.

Mr. Williams inquired if the façade on the addition will cover the mechanical equipment in such a manner that the penthouse be not be visible from street level. Mr. Smith stated that a portion of the penthouse will be visible from a distance.

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 7:06 p.m.

**DELIBERATIONS**

The Board met to deliberate in the cases of Hershey Entertainment & Resorts Company (2017-06); Timothy J. and Christine L. Baker (2017-09); and Milton S. Hershey Medical Center (2017-11) and directed the Solicitor to prepare the draft decisions on each case for formal action at the September 2017 meeting.

Submitted by:

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Matthew Luttrell, Secretary