

**TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
October 24, 2012**

CALL TO ORDER

The October 24, 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; Vice Chairman Rick Hammer; Secretary Matthew Davies; Member Philip Wood

Board member absent: Member Michael Angello

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

Public registering attendance: Joe Burget, Jr., Burget & Associates, Inc.; Dan Bierzonski, E.I. Associates; Mark Winter, 310 West Chocolate Avenue; Don Klinger, Value By Design; Jennifer Zimmerman Krause & Brian Krause, 525 West Areba Avenue; Jonathan M. Crist, 226 West Chocolate Avenue; Arlan Hollinger; Thomas L. Memmi, 500 Hockersville Road; Susan Newkam, 1134 Quail Hollow Road; Susan Foxx, 675 Olde Ventura Farm Road; Jason & Erika Manotti, 419 West Areba Avenue; Douglas K. Shenfeld, 2379 River Road, Bainbridge; James B. Manotti, Jr., 2147 South Market Street, Elizabethtown; Jeff Budgeon, Holy Trinity; Tom Nehilla, Holy Trinity; David Miller, Rettew Associates; Dennis Phillippy, Holy Trinity; Jim Rafferty, Tana Properties; Ty Kreamer; Alexander Roca, Stoney Run HOA; George Porter, 909 East Chocolate Avenue; Justin Engle, East Derry Road; Barbara Hasson, St. Joan of Arc Church; Linda Mischevich, 159 Maple Avenue; Rene Davila 741 Olde Trail Road, Hummelstown; Raquel Davila, 741 Olde Trail Road, Hummelstown; William R. Haak, Holy Trinity; Barbara Myers, 412 Center Street

APPROVAL OF MINUTES

On a motion by Secretary Davies, seconded by Member Wood, and a unanimous vote, the September 19, 2012 minutes were approved.

OLD BUSINESS

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

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- B. Adoption of Decision in the Case of the Derry Township Municipal Authority (2012-36)
Property location: 670 Clearwater Road, Hershey**
- C. Adoption of Decision in the Case of D. Troy and Heather L. Sellars (2012-37)
Property location: 2030 Raleigh Road, Hummelstown**
- D. Adoption of Decision in the Case of James and Julie Larkin (2012-38)
Property location: 2007 Raleigh Road, Hummelstown**
- E. Adoption of Decision in the Case of Irvin J. and Lucinda L. Hess (2012-39)
Property location: 840 E. Chocolate Avenue, Hershey**

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

- F. Continuance in the Case of Justin Engle (2012-10)
Property location: 150 W. Chocolate Avenue, Hershey**

This property, located in the Downtown Commercial zoning district and the Chocolate Avenue Preservation and Downtown Commercial Sign overlay zoning districts, is presently improved with a commercial office building. The applicant is proposing to maintain office space and establish a 36-seat restaurant with indoor and outdoor seating.

Relief was sought regarding parking, types of restaurants, signage, minimum vegetative coverage, front yard setback, and maximum impervious coverage.

George Porter was sworn in and gave testimony. Mr. Porter stated that the building was converted from a residential duplex to office space in 2007. The first floor will be opened up to become mostly one large room to accommodate a café. A porch is proposed to be constructed on the west side of the building to accommodate outdoor seating. 1,052 square feet of space on the second floor will remain as office space. An existing parking area is located adjacent to the property on land owned by the Township, and an easement agreement is in place to allow parking.

Mr. Porter explained that the restaurant portion of the building will utilize disposable plates, cups and utensils, but is not the intention of the applicant for the building to be used a fast food style of restaurant.

Mr. Porter added that the proposed porch on the west side of the building will have a set of stairs leading to the sidewalk and therefore will be at a zero setback to the property

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line. A proposed awning for the front of the building will come within 6 feet of the front property line.

PUBLIC COMMENT

Mark Winter was sworn in and testified that he is the adjacent property owner and he supports the proposed plan.

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

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

These properties, located in the Village Residential zoning district, are presently improved with a commercial building and a single-family dwelling, respectively. The applicant is proposing to raze both buildings and construct parking areas.

David Miller, engineer for the applicant, was sworn in and gave testimony. Mr. Miller stated that storm water runoff infiltration pits are proposed to the west for the Cocoa Avenue property and to the south for the Granada Avenue property, with a combined area capable of containing the runoff for up to a 100-year storm level.

Chairman Tafuto stated that he was concerned by the test results regarding infiltration being marginal in an area known to have slow-draining soils. Mr. Tafuto also expressed concern about the variability of the infiltration test results. Mr. Tafuto expressed concern that the thickness of the aggregate may be insufficient to store even a 25-year storm, much less a 100-year storm. Mr. Tafuto also inquired about whether any provisions to mitigate sinkhole-related activity were considered. Mr. Tafuto would like to have more detail on how testing was accomplished, how the calculations were performed, and the basis for assumptions made relative to aggregate properties and other design values relied upon to conclude that the site would be acceptable for infiltration of storm water.

Mr. Miller questioned whether the Board is requesting a full storm water management plan at this point.

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Mr. Tafuto replied that it would be beneficial for the Board to have the information to make their decision.

Upon a motion made by Vice Chairman Hammer, seconded by Member Wood, and a unanimous vote, the hearings were continued to the December meeting.

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

This property, located in the Village Residential zoning district, is presently improved with a single family dwelling. The applicants are proposing to make alterations and construct an addition to the existing dwelling and patio area.

Relief is sought as follows:

- a. A Variance from Article 8, Section 225-36.D(1)(c) regarding side yard setback
- b. A Variance from Article 8, Section 225-36.D(2)(c) regarding side yard setback for a detached accessory use
- c. A Variance from Article 3, Section 225-10.A(2) regarding expansion of a non-conforming use
- d. A Variance from Article 8, Section 225-36.F regarding maximum impervious coverage

Brian Krause, Jennifer Zimmerman Krause, and architect Don Klinger were sworn in and gave testimony.

Mr. Krause stated that he is proposing to construct an addition to his home which has been in his family since 1962. A variety of energy efficient materials and systems will be used. The addition to the home will increase it from 1,382 square feet to 2,306 square feet and increase the impervious coverage to 42.68%.

Mr. Krause added that the exterior aesthetics will be in keeping with the look of the neighborhood and confirmed that the Township has approved the storm water management plan.

Vice Chairman Hammer questioned what materials are being proposed for the patio. Ms Zimmerman Krause replied that the patio already exists and is constructed with pavers.

No other persons provided testimony at this hearing.

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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.

**J. Continuance in the Case of Bill Delinsky, d/b/a Tana Properties (2012-40)
Property location: 810 West Chocolate Avenue, Hershey**

This property, located in the Industrial zoning district, is presently 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 and nightclub.

Jim Rafferty and Joe Burget, engineer, were sworn in and gave testimony. Mr. Rafferty stated that the proposed music will be low-key and in the background, consisting mostly of duos and trios. Live music will occur weekly to biweekly and be groups specializing in jazz, alternative, and other styles geared towards 30- to 50-year-old adults.

Mr. Burget requested to withdraw the variance request for vegetative cover, as the applicant will be able to comply with Township regulations.

Brandon Williams added that conditions for approval of the plan include 74 parking spaces and a maximum of 222 seats, and that signage be erected to denote the small parking area is to be for employees and deliveries only.

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 William and Carolyn Seaman (2012-41)
Property location: 228 W. Granada Avenue, Hershey**

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

Relief is sought as follows:

- a. A Variance from Article 3, Section 225-10.A.(6) regarding expansion of a non-conforming use

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- b. A Variance from Article 8, Section 225-36.D.1.(6) regarding side yard setback

William Seaman was sworn in and gave testimony. Mr. Seaman stated that he would like to construct a 15 foot by 16 foot screened-in porch over an existing patio. The existing patio currently encroaches into the side yard setback by 3 feet, 7 inches and the screened-in patio will continue that encroachment.

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 Ty J. Kreamer (2012-42)
Property location: 240 Clark Road, Hershey

This property, located in the Village Residential zoning district, is presently improved with a single family dwelling. The applicant is proposing to relocate a property line.

Relief is sought as follows:

- a. A Variance from Article 8, Section 225-36.D(1)(b) regarding rear yard setback
- b. A Variance from Article 8, Section 225-36.F regarding impervious cover
- c. A Variance from Article 3, Section 225-10.A regarding expansion of a non-conforming building

Ty Kreamer and Joe Burget, engineer, were sworn in and gave testimony. Mr. Burget stated that this application is submitted in order to be able to reapply for a subdivision plan, due to failure to submit the plan within 180 days of the decision for case no. 2011-24 being rendered.

Mr. Kreamer added that an agreement with adjacent property owner Swatara Station Partners to create a storm-water runoff/detention system, while not required by the Township, has been completed.

PUBLIC COMMENT

Linda Misceovich, Swatara Station Partners, stated that she had received two copies of a corrective deed and questioned which one was correct. Ms. Misceovich added that she has not seen the proposed subdivision plan.

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Mr. Kreamer stated that the current subdivision plan contains the same information as Swatara Station Partner's subdivision plan.

Harold Myers, a downhill neighbor, questioned whether the Board requires any safeguards to protect neighbors.

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 Thomas L. Memmi (2012-43)
Property location: 500 Hockersville Road, Hershey

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

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 maximum impervious coverage

Thomas Memmi was sworn in and gave testimony. Mr. Memmi stated that there is a large asphalt slab in the rear of the property that is used for parking. Because no parking is permitted along Hockersville Road, this area is needed for parking for two vehicles. Placement of a 10 foot by 12 foot storage shed will increase the impervious coverage. The storage shed would be 9 feet 6 inches 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.

D. Hearing in the Case of Jason B. Manotti (2012-44)
Property location: 419 W. Areba Avenue, Hershey

This property, located in the Village Residential zoning district, is presently improved with a single family dwelling. The applicant is proposing to construct a covered porch to the rear of the dwelling which will replace an existing smaller porch roof.

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Relief is sought as follows:

- a. A Variance from Article 3, Section 225-10.A.2 regarding expansion of a non-conforming use
- b. A Variance from Article 3, Section 225-10.A.6 regarding horizontal expansion of a non-conforming use

Jason Manotti was sworn in and gave testimony. Mr. Manotti stated that an 8 foot by 22 foot rear patio and roof cover was damaged during a summer wind storm. Mr. Manotti removed the damaged porch roof and is proposing to replace it with an 18 foot by 27 foot porch roof to match the dwelling and current roof line.

Mr. Manotti further requested that the Zoning Hearing Board render their decision this evening as he is to be deployed in January and will have little contact with his family and he would prefer to have the construction completed prior to his departure in January. Time limitations set forth by his insurance company and weather limitations of concrete curing were also issues in Mr. Manotti's request for a quick deliberation.

Chairman Tafuto stated that while the Board will vote tonight, the decision is not official until a written notice is received, therefore commencement of construction is at the risk of the applicant.

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 Saint Joan of Arc Roman Catholic Church (2012-45)
Property location: 359 W. Areba Avenue, Hershey

This property, located in the Village Residential zoning district, is improved with a church facility. The applicant is proposing to construct entrance canopies over the existing entrances along W. Areba Avenue, Glen Road and the rear of the property and would also like to construct an exterior handicapped accessible ramp and landing at the southeast corner of the church.

Relief is sought as follows:

- a. A Variance from Article 8, Section 225-36.F regarding maximum impervious coverage limitations

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- b. A Variance from Article 8, Section 225-36.D.1.A and B regarding rear yard setback

Arlan Hollinger and David Miller were sworn in and gave testimony. Mr. Hollinger stated that proposed handicapped accessible ramp would increase the total impervious area to 58.7%. Mr. Hollinger also stated that the new exterior entrance canopies would extend 2 feet beyond the property line into the right of way along Areba Avenue, and 4 feet along Glen Road.

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 Rene Davila (2012-46)
Property location: 741 Olde Trail Road, Hummelstown

This property, located in the Suburban Residential zoning district, is improved with a single family dwelling. The applicant is proposing to install a natural gas powered generator.

Relief is sought as follows:

- a. A Variance from Article 7, Section 225-32.D(2)(a) regarding front yard setback
- b. A Variance from Article 7, Section 225-32.D(2)(c) regarding side yard setback

Rene Davila was sworn in and gave testimony. Dr. Davila stated that he requires a piece of medical equipment to treat his sleep apnea. Dr. Davila is proposing to install a 48 inch by 22 inch by 29 inch natural gas powered generator to be used as an emergency backup in the event of a power failure to operate his machine.

Dr. Davila stated the generator which would be located 5 feet from the house and 11 feet from the property line creates 60-66 decibels at 23 feet which is equivalent to the sound a standard A/C unit creates. The slope of the property, locations of an A/C condenser and basement egress window limit the location of the generator.

Dr. Davila stated that the generator will perform a weekly self-test which will operate the generator for a few minutes at a time that can be programmed to be the least intrusive.

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Chairman Tafuto questioned why the generator must be located so far from the home. Dr. Davila replied that the contractor who will install the generator suggested the location for safety reasons.

PUBLIC COMMENT

Alexander Roca, Stoney Run Homeowners' Association, presented an email from the adjacent neighbor. In the email, the neighbor stated that he does not support the location of the generator due to noise concerns.

In addition, Mr. Roca stated that the Board should know that the Stoney Run Homeowners' Association objects to the request and that their By-Laws prohibit the placement of the generator.

Chairman Tafuto informed Mr. Roca that the Board does not enforce By-Laws and Covenants of the Homeowners' Association and that the Homeowners' Association would have to take its own enforcement actions outside of whatever the Board elects to do relative to the decision.

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 8:10 p.m.

DELIBERATIONS

The Board met to deliberate in the cases of Justin Engle (2012-10); Brian and Jennifer Krause (2012-34); Bill Delinsky, dba Tana Properties, LLC (2012-40); William and Carolyn Seaman (2012-41); Ty J. Kreamer (2012-42); Thomas L. Memmi (2012-43); Jason B. Manotti (2012-44); Saint Joan of Arc Roman Catholic Church (2012-45); and Rene Davila (2012-46) and directed the Solicitor to prepare the draft decisions on each case for formal action at the November, 2012 meeting.

