

**TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
May 18, 2011**

CALL TO ORDER

The May 18, 2011 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Chairman Angello in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA 17033.

ROLL CALL

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

Board members absent: Secretary Frank Nardo

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

Public registering attendance: Robert and Mary Smith, 101 Almond Drive; JoAnn Lippincott, 1366 Fox Glen Drive; Jon Montgomery, Sunburst Hospitality Corp./Comfort Inn; Frank Grove, Comfort Inn; Julie A. Clingan, 515 East Main Street; Dom DeSantis, Ames Services; Larry Nelson, 306 Bahia Avenue; Jen Kissane, 532 Chestnut Avenue; Don Dinello, 1321 Fox Glen Drive; Sandy Ballard, 650 Cocoa Avenue; John Potochny, 1429 Stonecutter Circle; Geraldine Gelbaugh, 721 Fishburn Road; Nick Melfa, 709 Fishburn Road; Kurt Stoner, Stoner Graphix, Inc.; Lee Wolaniuk, Capital Construction Management

APPROVAL OF MINUTES

On a motion by Vice Chairman Davies, seconded by Member Hammer, and a unanimous vote, the April 20, 2011 minutes were approved.

OLD BUSINESS

- A. Adoption of Decision in the Case of Robert and Mary Smith (2011-06)
Property location: 65 E. Areba Avenue, Hershey**
- B. Adoption of Decision in the Case of Thomas Carricato & Sons (2011-07)
Property location: 208 Maple Avenue, Hershey**
- C. Adoption of Decision in the Case of Bushra A. Melton (2011-08)
Property location: 129 Apple Lane, Hershey**
- D. Adoption of Decision in the Case of John H. and Patricia Mengel (2011-09)**

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Property location: 1319 E. Chocolate Avenue, Hershey

On a motion by Vice Chairman Davies, seconded by Member Hammer, and a majority vote, the decisions for items 'A' through 'D' were adopted by consent agenda. Member Tafuto abstained from voting due to absence.

**E. Continuance in the Case of Julie A. Clingan (2011-02)
Property location: 515 E. Main Street, Hummelstown**

This property, located in the Business Office and General Sign Overlay zoning district, is improved with a salon and spa. The applicant appeared before the Zoning Hearing Board previously to request relief to retain a sign that exceeds the height and area requirements.

Julie Clingan was sworn in and gave testimony. Ms. Clingan distributed photographs of signs in the nearby area. Ms. Clingan stated that due to the unique location of her business and the fact that it resembles a private residence, an eye-catching sign is needed to draw attention to the salon.

Chairman Angello questioned how far the salon is from the road. Ms. Clingan replied that the salon is over 100 feet from the road.

Mr. Emerick added that the sign exceeds the area requirements by 2.64 square feet and confirmed that businesses along that area of East Main Street have little or unusual road frontage due to the road being reconfigured several years ago. No other persons provided testimony at this hearing.

Chairman Angello 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 Donald J. Dinello (2011-10)
Property location: 1321 Fox Glen Drive, Hummelstown**

This property, located in the Agricultural/Conservation zoning district, is improved with a single family dwelling with an in-ground pool. The applicant is proposing to expand an existing patio in the pool area.

Relief is sought as follows:

- a. A Variance from Article 5, Section 225-25.D regarding side yard setback

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Donald Dinello was sworn in and gave testimony. Dr. Dinello stated he would like to repair and expand an existing patio, but due to the narrow irregular shape of the lot and a sanitary sewer line, he is limited on where his patio can be placed. The patio would not be visible to any adjacent neighbors.

Chairman Angello questioned what the slope of the lot is. Dr. Dinello replied that it is not greater than 20% in the buildable area. Mr. Emerick added that only .6 of an acre of the lot is useable property.

PUBLIC COMMENT

JoAnn Lippincott questioned if public access along the sanitary sewer line to Shenk Park will still be permitted. Ms. Lippincott stated that access was recently denied by a young person. Dr. Dinello replied that he has allowed access during the past seven years that he has owned the property and will continue to do so.

Member Hammer questioned if the proposed patio would prohibit that public access. Dr. Dinello stated that he is not permitted to build over the sanitary sewer line.

Geraldine Gelbaugh stated that Dr. Dinello could use orange cones or another method to demark the access area.

No other persons provided testimony at this hearing.

Chairman Angello 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 Laurence and Colette Nelson (2011-11)
Property location: 306 Bahia Avenue, Hershey

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

Relief is sought as follows:

- a. A Variance from Article 8, Section 225-36D.2(c) regarding side yard setback
- b. A Variance from Article 8, Section 225.36.F regarding impervious coverage

Laurence Nelson was sworn in and gave testimony. Mr. Nelson would like to install a 20 foot by 20 foot paver patio in the rear of his home matching up with existing French

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doors. The proposed patio would not extend beyond the home but would come within 4 feet, 8 inches of the side yard. The total impervious cover would increase from 4,788 square feet to 5,188 square feet.

PUBLIC COMMENT

Sandy Ballard stated her concerns about stormwater runoff and questioned if a smaller patio or use of pervious pavers would be considered. Ms. Ballard believes it is important to keep zoning ordinances for the good of all.

No other persons provided testimony at this hearing.

Chairman Angello 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 M&M at Oak Springs, LLC (2011-12)
Property location: Berne Court, Hummelstown

This property, located in the Suburban Residential zoning district, is improved with two 6-unit townhouse condominiums. The applicant is proposing to extend the road, add parking, and construct 6 additional townhouse condominiums.

Relief is sought as follows:

- a. A Special Exception from Article 3, Section 225-10.B regarding expansion of a non-conforming use
- b. A Variance from Article 10, Section 225-32.B regarding maximum residential density

Craig Adler, attorney for the applicant; Brian Evans, Evans Engineering; and Michael Kushner and Michael Sheffit, M&M at Oak Springs, LLC were sworn in and gave testimony.

The applicant is proposing to develop the premises by completing the build out of a condominium development known as the Village of Innsbruck.

Mr. Evans stated that the current plan is similar to the plan that was approved in 1993 which called for 18 units of which only 12 were built. Mr. Evans also stated that pervious paving material will be used on new parking areas and roadways.

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Mr. Emerick clarified that under the new stormwater ordinance, pervious surfaces must have a maintenance agreement in order to be considered pervious.

Mr. Adler stated that this development will have a condo association that will maintain the buildings and pavements.

No other persons provided testimony at this hearing.

Chairman Angello 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 Brendan and Jennifer Kissane (2011-13)
Property location: 532 Chestnut Avenue, Hershey

This property, located in the Village Residential zoning district, is improved with a single family dwelling. The applicants are proposing to expand the dwelling, and add a front porch, pergola, and rear deck.

Relief is sought as follows:

- a. A Variance from Article 3, Section 225-10 regarding floor area

Jennifer Kissane was sworn in and gave testimony. Ms. Kissane stated that due to her growing family, she is proposing to expand the kitchen and add a family room and bedroom. The proposed expansion will add 1,216 square feet to the home. The proposed impervious coverage on the lot will be 28.37%.

Mr. Emerick clarified that with the proposed patio, the total impervious cover would be 31%. Ms. Kissane replied that she is no longer planning to install the patio.

No other persons provided testimony at this hearing.

Chairman Angello 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 Pietro Amato (2011-14)
Property location: 709 Fishburn Road, Hershey

This property, located in the Neighborhood Commercial zoning district, is improved with an Italian restaurant. The applicant is proposing to retain a shed.

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Relief is sought as follows:

- a. A Variance from Article 12, Section 225-52.C.2 regarding rear yard setback

Mito Amato and Nick Melfa were sworn in and gave testimony. Mr. Melfa stated that the existing shed was bought prefabricated and is used for storage only. The shed sits 16 feet from the rear property line. Mr. Melfa noted that most existing garages in the area are closer to the alley than the shed. Mr. Melfa further clarified that the light on the shed will be shielded to limit excess light.

Mr. Emerick stated that the shed sits on a pad that once was a larger building that sat closer to the alley.

PUBLIC COMMENT

Geraldine Gelbaugh stated that she is the adjacent neighbor and does not have a problem with the location of the shed. She did want to note to the Township that the restaurant owner has been helpful in attempting to block through traffic on a shared driveway with her property.

Chairman Angello questioned if a condition for traffic control could be added to the relief. Solicitor Nestico replied that it could if it is related to the case.

No other persons provided testimony at this hearing.

Chairman Angello 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 Capital Construction Management, LLC (2011-15)
Property location: Mae Street, Hummelstown

This property, located in the General Commercial zoning district, is improved with the Hershey Square Shopping Center. The applicant is proposing to replace the existing multiuse identification sign with a larger multiuse identification sign.

Relief is sought as follows:

- a. A Variance from Article 27, Section 225-129.B.(1)(l) regarding a multiuse identification sign with an existing pole sign
- b. Removing the size limitations from Case No. 1993-41.

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Lee Wolaniuk and Kurt Stoner were sworn in and gave testimony. Mr. Wolaniuk is proposing to replace the existing pylon sign with a new compliant sign. There is an existing directional sign for the Comfort Inn nearby.

PUBLIC COMMENT

Jon Montgomery, the General Manager of the Comfort Inn, supports the proposal.

No other persons provided testimony at this hearing.

Chairman Angello 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 Robert and Mary Smith (2011-16)
Property location: 101 Almond Drive, Hershey

This property, located in the Attached Residential zoning district, is improved with a semidetached dwelling unit. The applicant is proposing to construct an addition and a patio.

Relief is sought as follows:

- a. A Variance from Article 9, Section 225-40.D(1)(b) regarding rear yard setback
- b. A Variance from Article 9, Section 225-40.D(4)(b) regarding accessory rear yard setback

Robert and Mary Smith were sworn in and gave testimony. Mr. Smith is proposing to construct a bedroom/bathroom addition to the north side of his home. The addition will be 19 feet from the side yard line. The patio will be 14 feet 10 inches from the side yard line. Mr. Smith stated that his neighbors support the proposal and the Cocoa Townes homeowner's association has approved the proposed modification.

No other persons provided testimony at this hearing.

Chairman Angello 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.

H. Hearing in the Case of Ames Services, LTD (2011-17)
Property location: 1429 Stonecutter Circle, Hershey

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This property, located in the Suburban Residential zoning district, is improved with a single family dwelling. The applicant is proposing to expand an existing patio and add a deck to the rear of the home.

Relief is sought as follows:

- a. A Variance from Article 26, Section 225-11.4(b) regarding side and rear yard setback

Dominick DeSantis and John Potochny were sworn in and gave testimony.

Mr. DeSantis stated that due to the steep slope in the rear yard, the useable space is limited. Mr. DeSantis also stated the rear lot line adjoins a common space with thick foliage cover which allows neighbor privacy, and that there is at least a 20 foot easement between the lots.

The proposed deck would encroach into the setback by 2.33 feet and the patio would encroach 3.66 feet.

No other persons provided testimony at this hearing.

Chairman Angello 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 Julie A. Clingan (2011-02); Donald J. Dinello (2011-10); Laurence and Colette Nelson (2011-11); M&M at Oak Springs, LLC (2011-12); Brendan and Jennifer Kissane (2011-13); Pietro Amato (2011-14); Capital Construction Management, LLC (2011-15); Robert and Mary Smith (2011-16); and Ames Services, LTD (2011-17), and directed the Solicitor to prepare the draft decisions on each case for formal action at the June, 2011 meeting.
