

TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
June 15, 2011

CALL TO ORDER

The June 15, 2011 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:00 p.m. by Vice Chairman Davies in the Meeting Room of the Derry Township Municipal Complex, 600 Clearwater Road, Hershey, PA 17033.

ROLL CALL

Board members in attendance: Vice Chairman Matthew Davies; Secretary Frank Nardo; Member William Tafuto

Board members absent: Chairman Michael Angello; Member Rick Hammer

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: Larry Nelson, 306 Bahia Avenue; Ted Mandes, 1343 Harding Avenue; Ron Secary, SSA; Ed Consalo, Derry Township School District; Phil Guarino, 109 W. Caracas Avenue; Mark Montgomery, Apex; Barbara Myers, 412 Center Street; M.V. & S. S. Tevethia, 120 Sand Road; Caydence Rapp, 350 Chocolate Avenue; David Wimer, Days Inn; Michael Small, 210 S. Railroad Street, Palmyra; Scott Butler, Nevco, Inc.; Randy Wright, 1342 E. Derry Road; Ty Kreamer, 240 Clark Road; Sandy Ballard, 650 Cocoa Avenue; Jon Sheppard, 243 Clark Road; Linda Misceovich, Swatara Station Partners; Madeline Saville, 220 Para Avenue. Elaine Dye, 51 Woodland Avenue; Karen Galli, 48 Woodland Avenue; Jeff Snavelly, 48 Woodland Avenue; Douglas Miller, 228 Clark Road; David Phelps and Nikos Phelps, 10 Hillside Avenue; Suzanne Friday, Nauman Smith

APPROVAL OF MINUTES

On a motion by Member Tafuto, seconded by Chairman Angello (via telephone), and a unanimous vote, the May 18, 2011 minutes were approved.

OLD BUSINESS

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

- B. Adoption of Decision in the Case of Donald J. Dinello (2011-10)**
Property location: 1321 Fox Glen Drive, Hummelstown

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- C. Adoption of Decision in the Case of Laurence and Colette Nelson (2011-11)
Property location: 306 Bahia Avenue, Hershey**

On a motion by Secretary Nardo, seconded by Vice Chairman Davies, and a majority vote, case 2011-11 was continued.

- D. Adoption of Decision in the Case of M&M at Oak Springs, LLC (2011-12)
Property location: Berne Court, Hummelstown**
- E. Adoption of Decision in the Case of Brendan and Jennifer Kissane (2011-13)
Property location: 532 Chestnut Avenue, Hershey**
- F. Adoption of Decision in the Case of Pietro Amato (2011-14)
Property location: 709 Fishburn Road, Hershey**
- G. Adoption of Decision in the Case of Capital Construction Management, LLC (2011-15)
Property location: Mae Street, Hummelstown**
- H. Adoption of Decision in the Case of Robert and Mary Smith (2011-16)
Property location: 101 Almond Drive, Hershey.**
- I. Adoption of Decision in the Case of Ames Services, LTD (2011-17)
Property location: 1429 Stonecutter Circle, Hershey**

On a motion by Member Tafuto, seconded by Chairman Angello (via telephone), and a majority vote, the decisions for items A, B, D, E, F, G, H, and I were adopted by consent agenda.

NEW BUSINESS

- A. Hearing in the Case of Ted and Donna Mandes (2011-18)
Property location: 1343 Harding Avenue, Hershey**

This property, located in the Village Residential zoning district, is improved with a single family dwelling with a one-car garage. The applicant is proposing to raze the one-car garage and replace it with a two-car garage.

Relief is sought as follows:

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

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Ted Mandes was sworn in and gave testimony. Mr. Mandes stated he is proposing to remove the current 18 x 22 foot garage and replace it with a 26 x 36 foot garage. While some pavement will be replaced with grass, the project will have 35-37% impervious cover. The proposed garage will be located 4 feet from the alley. Mr. Mandes stated that the neighborhood has other garages similar in size and location to the one he is proposing.

Member Tafuto questioned if the applicant sought a variance when the property was paved. Mr. Emerick replied that if the paving was done prior to 1993, the impervious cover was different than the current requirements. Mr. Mandes added that he was not sure when the property was paved, but noted that it was done in stages.

PUBLIC COMMENT

Randy Wright was sworn in and gave testimony. Mr. Wright supports his neighbor's request and affirms that the proposed garage size and location are similar to others in the neighborhood.

Mr. Mandes further requested a 12-month time frame in which to obtain the building permit due to uncertainty about whether the garage will be built this fall or delayed until next spring.

No other persons provided testimony at this hearing.

Vice Chairman Davies 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 M RAE, Inc., Fenicci's of Hershey
(2011-19)
Property location: 102 W. Chocolate Avenue, Hershey**

This property, located in the Downtown Commercial zoning district, is presently improved with a restaurant and other commercial space. The applicant is proposing to modify and expand relief granted at Case No. 2007-23 by relocating 16 previously-approved outdoor seats to another location and adding 16 seats to the new outdoor location.

Relief is sought as follows:

- a. A Variance from Article 14, Section 225-60.D.(1) regarding front yard setback

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Phil Guarno was sworn in and gave testimony. Mr. Guarno stated that over the past year he had many improvements done to his restaurant and now offers outdoor dining on the side of the restaurant facing Linden Road. Mr. Guarno is proposing to remove an attached storage shed in order to extend the patio area to increase outdoor seating by 16 seats for a total of 32 outdoor seats. During the season the outdoor section is used, 32 seats will be removed from the interior of the restaurant so parking increases will not be needed.

Mr. Guarno stated that improving his exterior to echo The Hershey Story across the street and improving the façade facing Linden Road are important to his desire to be a good neighbor.

Mr. Guarno added that no live music will be played outside and alcohol will only be served along with meals. The outside area will not be open on Sunday mornings and Mr. Guarno stated he will work with the adjacent church when necessary to not disrupt services and events.

Mr. Emerick questioned if the proposed canopy covering the outside seating area will be made of hard or soft materials. Mr. Guarno replied that the canopy will be soft tarp-like material. Mr. Guarno further explained that the lighting on the patio will match the rest of the exterior and will be turned off when the patio is not in use. Mr. Guarno does not intend on extending the patio's use with exterior heaters.

PUBLIC COMMENT

Sandy Ballard was sworn in and gave testimony. Ms. Ballard supports the use of a variance in this case due to the age and difficulty of the property. Further, Ms. Ballard believes the increase in outdoor dining adds to the walk-ability of the downtown area.

No other persons provided testimony at this hearing.

Vice Chairman Davies 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 Chocolate Town Inn, Inc. d/b/a Days Inn of Hershey (2011-20)
Property location: 350 W. Chocolate Avenue, Hershey

This property, located in the Downtown Commercial zoning district, is improved with a hotel. The applicant is proposing to retain a canopy and outdoor seating area.

Relief is sought as follows:

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- a. A Variance from Article 14, Section 225-60.D(1) regarding front yard setback
- b. A Variance from Article 4, Section 225-60.F regarding maximum impervious coverage

Ron Secary was sworn in and gave testimony. Mr. Secary stated that the patio is 26 feet from the front yard line and 17 feet into the setback. The patio was built behind an existing knee wall that is 15 feet from the front of the building.

Advisor to the applicant David Wimer was sworn in and testified that a letter was sent to the Derry Township Design Review Board, and a Certificate of Appropriateness was received from them.

Mr. Wimer stated that the limited service hotel offers breakfast for guests only and the patio expands the seating area during the heavy summer season.

Secretary Nardo questioned if there was any place in the interior of the hotel to expand the breakfast seating area. Mr. Wimer replied that there is no available space adjacent to the breakfast area.

PUBLIC COMMENT

Sandy Ballard stated that she supports the expansion due to the deep setback requirements.

Phil Guarino stated that he believes the Days Inn is impeccably maintained and looks classy.

No other persons provided testimony at this hearing.

Vice Chairman Davies 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 Kirk and Madeline Saville (2011-21)
Property location: 220 Para Avenue, Hershey

This property, located in the Village Residential zoning district, is improved with a single family dwelling and detached garage. The applicant is proposing to expand the dwelling.

Relief is sought as follows:

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- a. A Variance from Article 3, Section 225-10.A regarding expansion of a non-conforming dwelling
- b. A Variance from Article 8, Section 225-36.D(1)(c) regarding side yard setback

Kirk and Madeline Saville were sworn in and gave testimony. Mr. Saville stated that he would like to add a two-story addition to his home that will contain a family room, breakfast area, laundry room and bedroom. The total expansion will add 55% to the existing square footage. The impervious coverage would be expanded by 5.65% over the maximum requirement.

Mr. Saville stated that his lot is long, narrow and sloped. Mr. Saville would also like to preserve a large old tree in his yard.

No other persons provided testimony at this hearing.

Vice Chairman Davies 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 Swatara Station Partners (2011-22)
Property location: Woodland Avenue and Hillside Road, Hershey

This property, located in the Agricultural/Conservation zoning district, is unimproved. The applicant is proposing to subdivide the 17.5-acre property into 5 lots.

Relief is sought as follows:

- a. A Variance from Article 34, Section 225-163.C regarding minimum lot width with regard to Lots #4 and #5

Jon Sheppard and Linda Misceovich were sworn in and gave testimony. Mr. Sheppard stated that on June 7, 2011 the Planning Commission recommended conditional approval to subdivide the property. Mr. Sheppard stated that in order to preserve the woodland feel, an originally proposed cul-de-sac was eliminated. To have included the cul-de-sac would have required deep cuts in the bank, therefore Lots #4 and #5 now branch off the end of Woodland Avenue by way of private driveways.

Mr. Sheppard further clarified that the Phelps property is landlocked. Swatara Station Partners will grant road frontage on Hillside Road and an easement for sewer.

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Mr. Emerick stated that 65 feet of depth is requested for Lot #5. Mr. Emerick further clarified that Hillside Road and Woodland Avenue are Township streets.

PUBLIC COMMENT

David Phelps was sworn in and gave testimony. Mr. Phelps questioned whether the Township will stop plowing at the intersection of Hillside Road and Woodland Avenue.

Mr. Sheppard replied that snow dump locations are on the Hillside Road cul-de-sac. Lots #4 and #5 will be responsible for the end of Woodland Avenue.

Elaine Dye was sworn in and gave testimony. Ms. Dye questioned whether the two driveways off Woodland Avenue will contain pervious materials to lessen water runoff. Ms. Dye is concerned about water runoff in front of her home.

Mr. Sheppard stated that the driveways will wind through the property, directing water away from Woodland Avenue into basins and trenches that will be installed at the bottom of the driveways to collect any remaining runoff.

Member Tafuto questioned where the last 150 feet of Woodland Avenue's water runoff will be directed. Mr. Sheppard stated that the runoff in that area will be directed into the existing stormwater sewer system.

Jeff Snavelly was sworn in and gave testimony. Mr. Snavelly is concerned about water runoff along Woodland Avenue and questioned if the proposed drains on private property will be maintained.

Mr. Sheppard replied that Woodland Avenue will not be expanded and all water from the proposed driveways will be diverted or infiltrated.

Mr. Emerick added that a stormwater management maintenance agreement will need to be entered into between the property owners and the Township.

Dwayne Faust was sworn in and gave testimony. Mr. Faust stated that he is concerned about snow removal and water runoff.

Sandy Ballard added that residents have the right to call the Township if they believe private stormwater methods are not being maintained.

Mr. Sheppard stated that he appreciates neighbors' concerns and believes the proposed development will improve the runoff issues in the area.

No other persons provided testimony at this hearing.

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Vice Chairman Davies 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.

MOTION TO APPOINT HEARING OFFICERS

On a motion by Secretary Nardo, seconded by Member Tafuto, Secretary Nardo and Vice Chairman Davies were appointed as hearing officers due to Member Tafuto leaving the hearing at 8:10 p.m.

F. Hearing in the Case of Apex Maintenance Group (2011-23)
Property location: 550 Homestead Road, Hershey

This property, located in the Public zoning district, is improved with the Derry Township School District. The applicant is proposing to replace one freestanding sign with a LED message pole sign.

Relief is sought as follows:

- a. A Variance from Article 27, Section 225-129.B(2)(a)(b) regarding maximum sign area
- b. A Variance from Article 27, Section 225 regarding minimum sign clearance
- c. A Variance from Article 27, Section 225-129.B(3) regarding maximum number of signs
- d. A Variance from Article 27, Section 225-129.B(1)(A)(g) regarding pole signs

Ed Consalo (Derry Township Schools), Mark Montgomery (Apex), and Scott Butler (Nevco Sign Co.) were sworn in and gave testimony.

Mr. Consalo requested a written record of the hearing be given to the full board for vote at a special meeting.

Mr. Consalo stated that an LED sign was donated to the school by the Rotary Club. The sign measures 8 foot by 3 foot and will be installed on a 7 foot pole.

Mr. Butler stated that the sign message and brightness are regulated by proprietary software.

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Mr. Emerick stated that scrolling or blinking messages are not permitted. Mr. Emerick clarified that an existing similar sign located at Members 1st limits themselves to one change per day except when important time sensitive messages need to be posted.

Mr. Consalo stated that the school would prefer to be able to change the sign more than once a day to be able to honor students achievements and special events. Mr. Consalo stated that changing the sign at most once an hour would be preferable. The sign could remain idle at certain hours such as after 10 p.m. and while students are entering or exiting the buildings during the regular start and stop times.

Vice Chairman Davies questioned if any of the other signs would be converted to LED. Mr. Consalo replied that at this time it is not in the plans due to cost.

Mr. Emerick added that the total of the four signs on the property will be 210.39 square feet with the new sign increasing the area by 13.55 square feet.

Mr. Nestico questioned if the Township will consider the small Rotary sign on the LED sign as an off-site advertisement. Mr. Emerick replied that the Rotary sign will be considered an acknowledgment.

Mr. Butler stated that the sign is capable of 16 different brightness levels and can be controlled manually or by a photo cell that can adjust automatically to light and weather conditions. Mr. Butler stated that the sign is capable of a maximum brightness of 5000 nits. Mr. Butler stated that the nits level can go below 600, but he would have to work with the company engineer to determine the minimum level.

Mr. Nestico questioned if the school would be willing to agree to a set shut off time. Mr. Consalo replied that the school would be willing to keep the sign off from 10 p.m. until 7 a.m. and is also willing to turn down the brightness level in the evening.

No other persons provided testimony at this hearing.

Vice Chairman Davies 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 Ty J. Kreamer (2011-24)
Property location: 240 Clark Road, Hershey

On a motion made by Secretary Nardo, seconded by Vice Chairman Davies, case 2011-24 was continued at the request of the applicant.

Hearings closed at 9:10 p.m.

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DELIBERATIONS

The Board met to deliberate in the cases of Ted and Donna Mandes (2011-18); M RAE, Inc., Fenicci's (2011-19); Chocolate Town Inn, Inc. d/b/a Days Inn of Hershey (2011-20); Kirk and Madeline Saville (2011-21); Swatara Station Partners (2011-22); and Apex Maintenance Group (2011-23) and directed the Solicitor to prepare the draft decisions on each case for formal action at the July, 2011 meeting.

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