

TOWNSHIP OF DERRY
ZONING HEARING BOARD MEETING MINUTES
September 28, 2011

CALL TO ORDER

The September 28, 2011 meeting of the Township of Derry Zoning Hearing Board was called to order at 6:05 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 Rick Hammer; Member Tafuto

Board members absent: Chairman Michael Angello

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: Aron Beatty, 1740 Tenby Drive; Bruce & Mary Hinkle, 1675 Sandhill Road; Shawn & Jessie Nissley, 135 E. Glenn Road; Barb & Hal Myers, 412 Center Street; Ted & Judy Tevethia, 120 Sand Road; Dick Dougherty, 2221 Church Road; Larry Nelson, 306 Bahia; Mike Zigarelli, 1710 Tenby Drive; Linda Miscevich, 159 Maple/Swatara Station; Edie Harter, 1335 Church Road; Ira Shoop, 264 Highland Road; Rebecca Boehmer, 141 Hanshue Road, Hummelstown; Ed & Rose Maloy, 316 Bahia Avenue; Paul Thompson, 33 Elm Avenue; Matthew McKenzie, 1340 Jill Drive, Hummelstown; Ty Kreamer, 240 Clark Road; Sandy Ballard, 650 Cocoa Avenue; Kevin Parrey, 1144 Duryea; Keith Hoover, 72 Cedar Avenue; David Drobnoch, Jack Gaughan Realtor; Maria Thompson, 33 Elm Avenue; Craig Fasnacht, 258 East Areba Avenue; Randy Wright, Hanover Eng. Assoc.; Odette Bergkopp, 640 Sand Hill Road/Hershey Food Bank; Janet Hoffman, 184 Candlewyck Lane, Dan Hogg, 147 Brinser Road, Hummelstown

APPROVAL OF MINUTES

On a motion by Member Tafuto, seconded by Member Hammer, and a unanimous vote, the August 24, 2011 minutes were approved.

OLD BUSINESS

- A. Adoption of Decision in the Case of Ralph O'Donnell, Jr.
(2011-34)
Property location: 1802 E. Granada Avenue, Hershey**

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- B. Adoption of Decision in the Case of Hersey Entertainment & Resorts Company (2011-35)
Property location: 100 W. Hersheypark Drive, Hershey**
- C. Adoption of Decision in the Case of Matt and Corinne Edris (2011-36)
Property location: 170 W. Governor Road, Hershey**
- D. Adoption of Decision in the Case of Daryl Byler (2011-37)
Property location: 671 Hill Church Road, Hummelstown**
- E. Adoption of Decision in the Case of New Cingular Wireless PCS, LLC (2011-39)
Property location: 311 Middletown Road, Hummelstown**
- F. Adoption of Decision in the Case of New Cingular Wireless PCS, LLC (2011-40)
Property location: 215 W. Chocolate Avenue, Hershey**
- G. Adoption of Decision in the Case of New Cingular Wireless PCS, LLC (2011-41)
Property location: 883 W. Chocolate Avenue, Hershey**
- H. Adoption of Decision in the Case of Dick Dougherty (2011-42)
Property location: 1005 W. Chocolate Avenue, Hershey**

On a motion by Member Tafuto seconded by Secretary Nardo, and a majority vote, the decisions for items a-h were adopted by consent agenda.

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

The applicant requested a continuance.

- J. Continuance in the Case of Ty J. Kreamer (2011-24)
Property location: 240 Clark Road, Hershey**

Applicant Ty Kreamer stated that his attorney is currently in the process of completing title work on his property and has discovered that wording regarding a driveway was left out of the title transfer. The 435 foot driveway is either a private road or an easement. Mr. Kreamer stated that his property has two driveways, one off Tice Road and the untitled private road or easement driveway.

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Mr. Kreamer stated that development of the adjacent property by Swatara Station Partners revealed a property line discrepancy. Swatara Station Partners sold a portion of their land to Mr. Kreamer to help with setback issues.

Mr. Kreamer stated that in 2005 a two-car detached garage was built on the property and was at a later date connected to the home. A portion of the garage sits 23 feet away from the rear property line. When the detached garage was built, the rear setback minimum was 20 feet. As the garage is currently an attached structure, the rear yard setback is now 30 feet, requiring 7 feet of relief.

Vice Chairman Davies asked what the agreement between Mr. Kreamer and Swatara Station Partners was in regards to storm water detention.

Mr. Kreamer replied that he cannot abide by the agreement until Swatara Station Partners begins development of their property, but he will comply. In the interim, Mr. Kreamer has installed rain barrels, placed large rocks around the property, and added topsoil to certain areas of his property to help guide storm water runoff.

PUBLIC COMMENT

Linda Misceovich, Swatara Station Partners was sworn in and gave testimony. Ms. Misceovich is concerned about not having access to Mr. Kreamer's calculations of his property area and impervious coverage and wishes to confirm Mr. Kreamer's numbers. Ms. Misceovich stated that the calculations done by Swatara Station Partners seem to conflict with the numbers Mr. Kreamer has determined. Ms. Misceovich believes an "as built" survey should be done of Mr. Kreamer's property for accuracy. Further, Ms. Misceovich believes relief should be denied until a time when accurate measurements can be done.

Mr. Emerick stated that he advised Mr. Kreamer's attorney that a survey should be done to get the most accurate calculations.

Harold Myers, neighbor, was sworn in and gave testimony. Mr. Myers is concerned about non-compliance with impervious coverage and the resulting storm water runoff.

Mr. Kreamer stated that he understands the issues with storm water runoff and has experienced flooding in his own basement recently. Mr. Kreamer stated that his calculations for his impervious cover are on the higher side and the reality is likely much lower.

Member Tafuto questioned if the disputed private driveway/easement services other lots. Mr. Emerick replied that the road serves four other lots.

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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, he has 30 days to appeal the decision.

**K. Continuance in the Case of David A. Quillen (2011-33)
Property location: 1126 Sand Hill Road, Hershey**

The applicant requested a continuance.

**L. Continuance in the Case of Matthew and Sherry McKenzie
(2011-38)
Property location: 1340 Jill Drive, Hummelstown**

This property, located in the Suburban Residential zoning district, is presently improved with a single family dwelling. The applicants are proposing to expand the footprint of the dwelling and attach a 2-car garage.

Relief is sought as follows:

- a. A Variance from Article 7, Section 225-32.D(1)(a) regarding front yard setback
- b. A Variance from Article 7, Section 225-32.D.1 (c) regarding side yard setback

Matthew McKenzie was sworn in and gave testimony. Mr. McKenzie stated that he would like to add a 24 by 36 foot garage which will be attached via a breezeway on the first floor and attached to the second floor expansion of the living room. Attaching the garage to the first floor would require a lower foundation on the garage and would radically alter the appearance of the home in a non-aesthetically pleasing manner. Also, attaching the garage to the first floor could cause drainage issues and create unusable space within the garage. Mr. McKenzie has shared his proposed plans with his neighbors and they responded favorably.

No other persons provided testimony at this hearing.

Vice Chairman Davies 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.

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NEW BUSINESS

A. Hearing in the Case of Bruce & Mary Hinkle (2011-43)
Property location: 1675 Sand Hill Road, Hershey

This property, located in the Suburban Residential zoning district, is presently improved with dwelling unit, barn, and other accessory structures. The applicant is proposing to re-establish the use of keeping farm animals.

Relief is sought as follows:

- a. A Variance from Article 31, Section 225-145.N regarding keeping of farm animals

Bruce Hinkle was sworn in and gave testimony. Mr. Hinkle is in the process of selling his property and has entered into a contract with a buyer who is interested in keeping two horses on the property. Mr. Hinkle stated that the barn, which is in good condition, had been used in the past to house livestock and contains four horse stalls. Currently, the barn is used to store hay.

Mr. Emerick stated that the property was part of a larger parcel that was subdivided in 1984 and rezoned Suburban Residential in 1993. Mr. Emerick asked if the chicken coops are still on the property. Mr. Hinkle replied that they are, but are no longer in use.

Member Hammer questioned whether there were any issues when animals were kept on the property in the past. Mr. Hinkle responded that there were none.

PUBLIC COMMENT

Dave Drobnoch, Jack Gaughan Realtor, was sworn in and gave testimony. Mr. Drobnoch stated that the buyers are planning to have a maximum of three horses. He further clarified that manure would be used in the existing gardens and composted.

Mike Zigarelli, neighbor, was sworn in and gave testimony. Mr. Zigarelli is opposed to farm animals being permitted. He believes it would alter the current neighborhood and he is concerned about odor and contamination from the manure.

Aron Beatty, neighbor, was sworn in and gave testimony. Mr. Beatty also believes livestock would be out of character with the area and has health-related concerns that animals may bring. Mr. Beatty feels the property is too close to residences to house livestock.

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Mr. Hinkle replied that the barn location is on the opposite side of the property and away from other development. Mr. Hinkle further stated that he had not noticed strong odors when livestock was permitted on the property in the past.

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, he has 30 days to appeal the decision.

**B. Hearing in the Case of Jessica A. Nissley (2011-44)
Property location: 135 E. Glenn Road, Hershey**

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

Relief is sought as follows:

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

Shawn Nissley was sworn in and gave testimony. Mr. Nissley stated that he would like to put a 8 by 14 foot shed on an existing 8 by 14 foot concrete pad. The shed will be five feet from the side property line and 7 feet from the rear property line. The rear line borders an alley and the side line contains an evergreen barrier. Mr. Nissley stated that his lot is small and in order to be able to enjoy his back yard, the shed needs to be placed where he is proposing.

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, he has 30 days to appeal the decision.

**C. Hearing in the Case of Hershey Food Bank and Community Outreach (2011-46)
Property location: East Derry Road and Trinidad Avenue intersection,
Hershey**

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This property, located in the Village Residential zoning district, is unimproved. The applicant is proposing to construct a 3,300-square-foot community food bank building and associated parking.

Relief is sought as follows:

- a. A Variance from Article 8, Section 225-33 regarding permitted uses
- b. A Variance from Article 8, Sections 225-36.E & F regarding minimum vegetative cover and maximum impervious cover
- c. A Variance from Article 32, Section 225-133 regarding minimum off-street parking requirements
- d. A Special Exception from Article 34, Section 225-177 regarding front yard area reduction
- e. A Variance from Section 225-36.A regarding one acre minimum for non-residential use

Randy Wright, Hanover Engineering, and Craig Fasnacht, Food Bank President, were sworn in and gave testimony.

Mr. Fasnacht stated that the food bank was started 44 years ago. The food bank is open twice a month during the morning and early evening for clients to pick up boxes of food. Mr. Fasnacht hopes to increase the days the food bank is open to once a week.

Mr. Wright stated that the property is adjacent to industrial properties and part of the property is paved for use by The Hershey Company for trucks to maneuver into their docks. The Hershey Company will retain use of this area and the food bank is proposing to use this area for loading.

The property contains .82 acres on two parcels which will be combined. Mr. Wright stated that the proposed food bank use is unique and not currently covered in any of the Township's ordinances.

Mr. Wright stated the proposed project will contain 13,000 square feet of impervious area.

Due to the slope of the lot and the needed square footage of the building, only 15 parking spaces will be created on the site.

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Vice Chairman Davies questioned whether a preliminary building plan exists. Mr. Wright replied that the plans aren't complete, but the building will most likely be a single story.

Member Tafuto asked if storm water plans are yet known. Mr. Wright replied that the storm water plans cannot be done until a building plan is decided.

Mr. Wright stated that the property's location on the edge of the Village Residential district is not suitable to residential use due to the adjacent Industrial district. Mr. Wright believes the food bank would be a good transition from residential to industrial. An evergreen barrier would be installed along the property adjacent a residence.

PUBLIC COMMENT

John Fugad, neighbor, was sworn in and gave testimony. Mr. Fugad is concerned about traffic and questioned whether the food bank would have a Trinidad address, as the avenue narrows near the proposed entrance to the food bank.

Mr. Emerick stated that the food bank would have a Derry Road address.

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 All Saints' Episcopal Church (2011-47)
Property location: 310 Elm Avenue, Hershey

This property, located in the Village Residential zoning district, is improved with a church complex and parking area. The applicant is proposing to construct an addition to the church.

Relief is sought as follows:

- a. A Variance from Article 3, Section 225-10 regarding minimum front yard setback

Rev. Susan Clater and Davis Orinda, architect, were sworn in and gave testimony.

Rev. Clater stated that the congregation was one of the original land grants from Milton S. Hershey and she appreciates the history and neighborhood and wishes to make the best use of the church with the community in mind.

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Mr. Orinda stated that in order to include the uses the church needs, such as an elevator, a portion of the proposed building will encroach 25 feet into the 50 foot front yard setback.

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 John and Elizabeth Ingraham (2011-48)
Property location: 825 Olde Trail Road, Hummelstown

This property, located in the Suburban Residential zoning district, is improved with a single family dwelling. The applicants are proposing to construct a patio.

Relief is sought as follows:

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

John Ingraham was sworn in and gave testimony. Mr. Ingraham stated that his current deck is in poor condition and awkwardly placed in the center of the yard. He is proposing to replace the deck with a patio located to the side of the property to allow more use of the yard. The patio is proposed to be 22 by 15 feet and made of brick stone. Mr. Ingraham has received permission from the Stoney Run Homeowners Association.

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, he has 30 days to appeal the decision.

F. Hearing in the Case of Keith and Teri L. Hoover (2011-49)
Property location: 312 W. Areba 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 detached 2-car garage.

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Relief is sought as follows:

- a. A Variance from Article 3, Section 225-10.B regarding expansion of a non-conforming structure
- b. A Variance from Article 8, Section 225-36.D.(2)(b) & (c) regarding rear and side yard setback

Keith Hoover was sworn in and gave testimony. Mr. Hoover stated that building a detached 2-car garage which will come within 5 feet of the side property line and 8 feet of the rear property line and a 38.6% expansion of the home to include a master bed and bath will be a one to two year project. Mr. Hoover stated that the garage will be constructed first due to a lack of off-street parking.

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 A.D. Hogg Builder, Inc. (2011-50)
Property location: 33 Elm Avenue, Hershey

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

Relief is sought as follows:

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

Representative for the applicant Dan Hogg was sworn in and gave testimony. Mr. Hogg is proposing to enclose an existing second floor balcony to create additional bedroom space of 232 square feet.

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.

Hearings closed at 9:00 p.m.

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DELIBERATIONS

The Board met to deliberate in the cases of Ty Kreamer (2011-24), Matthew and Sherry McKenzie (2011-38), Bruce and Mary Hinkle (2011-43), Jessica A. Nissley (2011-44), Hershey Food Bank and Community Outreach (2011-46), All Saints' Episcopal Church (2011-47), John and Elizabeth Ingraham (2011-48), S. Keith and Teri L. Hoover, (2011-49), and A.D. Hogg Builder, Inc. (2011-50) and directed the Solicitor to prepare the draft decisions on each case for formal action at the October, 2011 meeting.
